

# Master Pooled Trust Allows Sheltering of Assets

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on July 1, 2003.

People with disabilities often need the support of public benefit programs. Even modest assets can be a barrier to the receipt of public benefits, unless those assets are properly sheltered. A device provided for in federal law for sheltering such assets is the pooled trust.

A pooled trust is one established and managed by a non-profit association for persons who are disabled under Social Security's guidelines. A separate account is maintained for each beneficiary, but for investment and management purposes the funds are pooled. An individual account may be set up by the disabled individual, or by his parent, grandparent, guardian, or a court.

A pooled trust may be: (1) self-settled, meaning that it contains the assets of the disabled beneficiary, or (2) third party-settled, meaning that it contains the assets of someone other than the disabled beneficiary. The law requires that a self-settled pooled trust for Medicaid recipients include a "reversionary clause." Such a clause stipulates that at the beneficiary's death, to the extent that funds remaining in his sub-account are not retained by the trust, the Medicaid program will be reimbursed for assistance provided during his lifetime. But this does not necessarily mean that Medicaid gets everything left in the sub-account upon the beneficiary's demise. The beneficiary's "joinder agreement" (signed at the time the sub-account is set up) may specify that certain sums remaining at his death be retained by the trust to benefit other disabled participants in the pooled trust.

The Association of Retarded Citizens (ARC) of Texas has a Master Pooled Trust which is approved by both SSI and Medicaid. The Master Pooled Trust consists of both self-settled and third party-settled trusts. The self-settled trust for Medicaid recipients functions as a supplemental needs trust, meaning that its purpose is to supplement, and not supplant, public benefits. The trustee may not make disbursements for basic support needs (e.g., for food, clothing, or shelter), but may make disbursements for supplemental needs (e.g., for medical or social purposes).

May anyone who has a disability within the definition of Social Security law participate in the ARC's Master Pooled Trust? There is no age limit, nor must the individual have a diagnosis of mental retardation. However, persons age 65 and older who place their assets into a self-settled pooled trust may incur time-limited penalties for certain types of public benefits.

You cannot take a tax deduction if you use your assets to fund a third party-settled pooled trust for a disabled person. Contributions to the Master Pooled Trust for a disabled individual are not considered by the IRS to be charitable donations. However, using your assets to fund a third party-settled pooled trust for the sole benefit of your disabled child (minor or adult) will not disqualify you from receiving public benefits, including Medicaid, should you need these benefits in the future.

How are distributions from the Master Pooled Trust made, and are family members involved in making decisions about disbursements? Requests for payments from the trust are made in writing by designated family members or professionals who work with the disabled beneficiary. Disbursements

are at the trustee's discretion with the advice and consultation of the ARC. This relieves family members of the burden of having to know the rules of public benefit programs.

ARC officials are very familiar with these rules and know what types of distributions from the trust will not affect eligibility.

The Master Pooled Trust is an excellent device for protecting public benefits and for ensuring a quality lifestyle for disabled persons beyond that which might otherwise be available.