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Pooled Trusts: A Creative Solution for Thorny Problems

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1. Introduction

Many experiences that families of and individuals with disabilities face can be daunting, overwhelming and frustrating. Planning for the long term and planning for now can be a grueling task, not only for the families but for the attorneys or other professionals involved. There are almost never quick or easy answers. Oftentimes creative solutions must be explored in order to achieve both the legal and personal goals of your client. One creative solution you should keep in your repertoire is a pooled trust. Pooled Trusts can be used as an alternative solution to a situation where a traditional special needs trust may not work or may be unsustainable.

2. Pooled Trusts

Through the Omnibus Budget and Reconciliation Act of 1993, pooled trusts were determined to be exempt assets for Social Security and later Medicaid purposes. Often called d4c trusts, pooled trusts are codified in 42 USC 1396p(d)(4)(C) stating:

(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) that meets the following conditions:

- (i) The trust is established and managed by a nonprofit association.
- (ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
- (iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3)) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.

There are pooled trusts in most states and several that serve multiple states. Academy of Special Needs Planners provides a list of available pooled trusts across the country. That information can be found at <https://specialneedsanswers.com/pooled-trust>. There are a number of pooled Trusts that serve residents of Texas.

3. The Arc of Texas Master Pooled Trust

Established in 1997, The Arc of Texas Master Pooled Trust is the oldest Texas based pooled trust. The Arc of Texas Master Pooled Trust was an innovation of a group of disability advocates, organizations and attorneys who worked together to provide Texans and in-state pooled trust option. After several years and copious amounts of hours, The Arc of Texas Master Pooled Trust opened the first sub-account in May of 1997. Since inception, The Arc of Texas Master Pooled Trust has served more than 2800 Texans with disabilities. Currently, The Arc of Texas Master Pooled Trust has over 1750 active, funded sub-accounts with assets in excess of 88 million dollars. The Arc of Texas Master Pooled Trust only serves individuals who are residents of Texas at the time the trust sub-account is established.

The Arc of Texas serves as the Manager of the Trust. As Manager, The Arc of Texas handles the day-to-day operations of the Master Pooled Trust. This includes:

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