

LIFE PASSAGES¹ PSNT BEST PRACTICES GUIDELINES

“It is one of the most beautiful compensations of life that no man can sincerely try to help another without helping himself.” Ralph Waldo Emerson

Introduction

The area of Pooled Special Needs Trusts (PSNT) has seen tremendous growth over the last two decades. With that growth comes great challenges including: the challenge of keeping the beneficiary central to all services provided, the challenge to face and incorporate new technologies, and the need to balance growing the entity with assuring that the humanity of the clients is never lost. The purpose of this guide is to provide PSNT Executive Directors, Administrators and Boards of Directors with suggestions on how to operate their PSNT in a way that balances all of the competing factors.²

We recognize that PSNTs come in all different shapes and sizes,³ and we were trying to write guidelines that would cover the landscape, realizing that in doing so, not all of these guidelines would apply to every PSNT. A PSNT wishing to follow any of these best practices guidelines may need to pick those that would apply and modify them to fit their own special circumstances. These best practices can be adopted in their entirety, in part or modified to suit the specific needs of the PSNT.⁴

This guide is not intended to create a duty of care or standard that would be used in litigation against a PSNT but rather a guide that will be reviewed, edited, and expanded. Thus, this is why the document uses guide or guidelines rather than standard.

The mission, purpose and intent of PSNTs, is to serve beneficiaries and families, and continue to earn the support and trust of the government and the public. As the National Pooled Trusts Standards Committee (NPTSC) Guidelines offer, the “[m]ission [of a PSNT is] [t]o provide pooled trust services with integrity. The pooled trust program’s mission and primary purpose should be adherence to its fiduciary duties and the sole benefit status of each trust beneficiary’s account.”⁵

¹ We use life passages to mean the various stages of life through which an individual passes and how individuals with special needs and PSNT administrators need to plan for these stages for the individuals. These guidelines were created as part of a project funded by the May and Stanley Smith Charitable Trust.

² These materials are designed to guide the day to day operations of a PSNT, and are not intended to aid in the establishment of a PSNT.

³ “While effective pooled trusts share a broad range of best practices, variation still exists, indicating that a successful trust can take numerous shapes and forms.” *True Link* at 16. True Link notes variations amongst PSNTs on various items, including whether to provide “case management in-house, providing extensive hands-on support to the families they serve,” *True Link* at 17, and fees, with some using flat fees, others asset-based fees, still others based on time/resources used. *True Link* at 18.

⁴ Many of these practices can apply to stand alone accounts for those PSNTs that also administer stand-alone trusts.

⁵ National Pooled Trust Standards Committee, *Guidelines for Pooled Trust Organizations*, Guideline 1, Mission (06/21/2019), referred in this document as NPTSC, and available at http://nationalplanalliance.org/wp-content/uploads/2019/08/GuidelinesForPooledTrustOrganizations_v2_2019_06_21-rev.pdf. © NPTSC. “These [NPTSC] Guidelines were developed as part of an informal working group, the “National Pooled Trust Standards Committee”, comprised of members listed below, all stakeholders in non-profit organizations providing pooled trust services for beneficiaries with disabilities. Each author holds an undivided ownership interest in and to the final product in perpetuity until such right is extinguished by assignment back to the National Pooled Trust Standards

This mission requires a commitment to the highest standards of ethical conduct. Defining standards for ethical practice requires a thorough dissection of all the difficult and varied circumstances faced by trust personnel. This guide may seem at times lengthy; but hopefully, it addresses the most difficult situations faced by PSNT and provide steps that will help PSNTs prevent those situations. The length and complexity of the best practices is directly related to the complexity of taking the responsibility to recognize and facilitate a lifetime commitment to the beneficiaries. Some of the examples are based upon actual policies in use by a certain PSNT and provided to us with permission to reprint. In those instances, acknowledgement is provided. If the reader wishes to incorporate those examples into their publications, the reader should contact the PSNT for reprint permission.

These best practices are the compilation of a review of policy and procedure manuals that currently are used by some PSNTs, conversations with a number of PSNT administrators, and editing by a group of experts in the field of PSNT. There are several sources that we used in this Best Practices Guide. We have relied on True Link Financial, *Pooled Special Needs Trust Best Practices* (2016) (referenced as True Link);⁶ National Pooled Trust Standards Committee, *Guidelines for Pooled Trust Organizations* (06/21/2019) (NPTSC) and Plan of New Jersey's *Service Coordinator Handbook* (referenced as Plan of New Jersey).⁷ We also spoke with a number of leaders of PSNTs both as a group and individually, and with the members of the project's think tank.

The authors wish to thank the members of the project's think tank for their invaluable input.⁸ The authors particularly wish to thank the May and Stanley Smith Charitable Trust and the Poses Family Foundation for their financial support, which made this project possible.

The Life Passages Plan Team

Committee. It is the intent of the Committee that these Guidelines will be used in future academic, professional and industry publications, so as to advance and aid in standardizing the practices of pooled trust administration and management. To the extent these Guidelines are adopted or incorporated into subsequent publicly accessible third-party publications, proper attribution must be made to the National Pooled Trust Standards Committee and its authors.”

⁶ True Link, in its *Introduction*, explained the genesis of its PSNT Best Practices guide:

Through True Link's ongoing work with pooled special need trusts, we have found that the most successful trusts distinguish themselves in one or more of the following ways: how they communicate with beneficiaries, use technology, develop administrative processes, manage financial assets, and build their teams. These trusts develop advantages—often through a time-intensive and iterative process—and overcome the odds to thrive in a resource-constrained environment.

How do we know when something is a “best practice”? Trust leaders tell us. When it comes to technology, for example, people's own descriptions range from “Digitizing our documents has completely transformed our practice,” to “We succeed despite our technology—it's terrible.” Our hope is that by collecting and publishing best practice, effective trusts will learn from the innovations of others and continue to break ground in the field, and newer trusts will be more likely to succeed.

True Link at 1-2.

⁷ Plan of New Jersey's *Service Coordinator Handbook* is an internal document.

⁸ Those members are (list names & affiliations).

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I. Financial Management of the Trust

Trustees are fiduciaries and have duties to the beneficiaries. Each state has its own Trust Code that sets out the duties of the trustees. Many of the state trust codes are based on the Uniform Trust Code. Article 8 of the UTC provides the duties and powers of trustees. These include:

Duty to administer the trust	Recordkeeping and identification of trust property
Duty of loyalty	Enforcement and defense of claims
Impartiality	Collecting trust property
Prudent administration	Duty to inform and report
Costs of administration	Discretionary powers, tax savings
Trustee's skills	General powers of trustee
Delegation by trustee	Specific powers of trustee
Control and protection of trust property	Distribution upon termination

It is important to remember that a Pooled Special Needs Trust is still a trust and the PSNT trustee is still a trustee. As a result, those administering PSNTs must comply with the applicable rules of their state's trust codes. What follows is our take on some of the duties of the trustee that have unique applicability to a PSNT. As always, the PSNT should consult their state's trust code.

1. Distributions⁹

- a. The PSNT should have a regular schedule for routine and recurring distributions.
 - i. The beneficiary and any authorized representative should be provided with the distribution schedule when the account is created and whenever there is a change to the schedule.
 - ii. Vendors with whom the PSNT makes recurring distributions for beneficiaries should also be apprised of the distribution schedule.
 - iii. The executive director (or other member of the leadership team) should be authorized to make limited exceptions to the distribution schedule.
 - iv. Every distribution should have at least one supervisory approval beyond the initial staff approval. There should be a third level for amounts above an amount set by policy.

Example: *NPTSC Guidelines, Guideline 6(c) provides that “[t]he beneficiary or that person’s representative as applicable should be informed of the pooled trust program’s typical time frame for processing distributions.”*

- b. The PSNT should identify who can routinely approve distributions, any limit on the amount of distribution and who can approve a distribution over the approved amount.

⁹ As the UTC § 801 notes, the trustee has a duty to administer the trust. In the case of PSNTs, the duty would include making distributions.

Suggestion ☹ : A PSNT should consider approving a certain limit for discretionary distributions that an account manager is authorized to expend per beneficiary for the calendar year without further approval. The account manager must keep a record to track these distributions vis a vis the limit. If there is a request that would exceed the approved amount, the manager would seek approval of the supervisor. The PSNT should have a form for the account manager to use to document the distribution and the supervisor should do regular reviews of these discretionary distributions to make sure the process is correctly followed.

- c. The PSNT should have an internal review process for every (non-discretionary see-above) distribution that requires at least a two-step process.
 - i. First the account manager should determine the appropriateness of the expenditure.
 - ii. Second, the account manager should get approval from the Trust Director.
 - iii. Finally, the associate executive director (if any) or the Executive director approves the check request, examining the request for any anomalies.
- d. The PSNT should have a documented appeal process if a distribution request is denied. The appeal process should have reasonable time frames and allow for oversight of the process and a fair review. Any time a request is denied, the beneficiary and legal representative should be notified in writing of the appeals process.

Suggestion ☹ : The following (1-5) are a documented denial process from a successful PSNT with 30 years of experience. We would suggest that you develop the appropriate written denial process that fits your organizational structure and provide that to beneficiaries. Here is the example:

- 1. If the beneficiary requests a review of the denial of the request, then the account manager forwards the request and the denial to the Executive Director.
- 2. If the Executive Director agrees with the denial, then the beneficiary is notified.
- 3. If the beneficiary requests further review, then the request and denial are submitted to the Trust Advisory Committee for Review. Note: We suggest a committee like this be made up of volunteer lawyers well informed about what is and is not admissible.
- 4. If the Trust Advisory Committee supports the denial, the beneficiary is notified.
- 5. If the beneficiary requests further review, then the request and the denial are submitted to the PSNT's board of directors for review. The board recommends either approval or denial. The board's decision is final.

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- ii. If the Executive Director agrees with the denial, then the beneficiary is notified.
- iii. If the beneficiary requests further review, then the request and denial are submitted to the Trust Advisory Committee for Review.
- iv. If the Trust Advisory Committee supports the denial, the beneficiary is notified.

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