



## DISABILITY TRUST PROGRAMS

### POOLED TRUST PROGRAM & INDIVIDUAL TRUST SERVICES

The disability trust programs at Guardian Community Trust, Inc. ("Community Trust") are professionally-run, non-profit fiduciary platforms dedicated to the well-being of vulnerable seniors and persons who are disabled throughout Massachusetts. In cooperation with the Medicaid and SSI programs, our pooled and individual Special Needs Trusts offer personalized, supplemental support, enhancing the dignity, independence and comfort of our beneficiaries, all of whom depend upon public benefits for basic medical and financial needs.

Community Trust's beneficiaries include both young and old, married and unmarried, persons living in the community and persons living in nursing homes, assisted living, group homes and other congregate arrangements.

The benefits that we provide are as varied as the individuals we serve. A few of the more common types of expenditures are:

- Telephone and cable TV service
- Companionship support
- Chair car and other transportation
- Clothing, toiletries and other personal items
- Denture replacement and non-medical dental care
- Hearing aids, podiatry, and alternative therapies
- Fiduciary, social work and legal expenses

Benefits for each beneficiary are provided through the excess assets that he or she puts in trust. Community Trust presently administers trust accounts for more than 800 beneficiaries through its combined programs, with over \$65M under management.

### PARTNERSHIP WITH PUBLIC PROGRAMS

While Medicaid and SSI provide indispensable basic support, public programs do not have the ability to ensure quality of life in the circumstances of each member. Disability trusts fill these gaps.



Federal and state governments long have recognized the value of such private resources, by allowing recipients to set aside excess assets in qualifying trusts without jeopardizing Medicaid and/or SSI eligibility.

Among the criteria for an exempt trust are (1) the beneficiary must be disabled; (2) the trust must be for the “sole benefit” of the disabled beneficiary; and (3) the state Medicaid program must be the primary remainder beneficiary upon the death of the initial beneficiary. Pursuant to these laws, the trusts managed by Community Trust reimburse the state from the balance that remains at death. Under the same laws, we also retain a share of each Pooled Trust account (see schedule on Page 5, below) for our further charitable work.

## WORKING WITH A TRUSTEE

A trust is a relationship between a trustee and a beneficiary that governs the use of the donated assets for the beneficiary. Like any relationship, it takes commitment to maintain a quality trust experience. At Community Trust, we aspire to high standards, and we rely upon policies that have evolved over time through our experiences with thousands of beneficiaries.

Our standards include:

- Easy set-up. There is no application or initiation fee for new accounts, which typically are opened the next business day after receiving papers.
- We take care of your funds with advice from professional financial managers.
- We take your telephone calls in person, not on a machine.
- We get to know you and your support persons, so that we can use the trust with as much understanding and wisdom as possible.

## JOINING

The exemption under Medicaid and SSI applies only to trusts established by certain actors in the life of the beneficiary. The person or entity that creates the trust is referred to as the “Settlor.”

The Settlor must be:

- The beneficiary him- or herself
- A parent or grandparent of the beneficiary
- A guardian or conservator of the beneficiary’s estate
- A court

In addition to the Settlor criteria, age is a factor under the regulations. Individual Special Needs Trusts are available only to persons age 64 or younger. Persons of any age can join the Pooled Trust program. It is important to be aware of these age limits, especially for those who may be considering a disability trust while still under the age of 65. Acting before turning 65 will keep open the option of an individual Special Needs Trust. Only the Pooled Trust option will remain after the individual turns 65.

It is very common for a disability trust to be created by an agent under a Durable Power of Attorney (DPOA). Regulations view the agent as “the individual” for purposes of the Settlor criteria. In order to accept any trust created by an agent, however, or by a conservator or guardian of the estate, Community Trust must ensure that the documents that give authority to the fiduciary include specific trust-making language. Any DPOA or court decree that will be relied upon should be sent ahead of time to Community Trust for review. If there are any problems with the documents, we work with the beneficiary and/or responsible parties to correct them, or to find work-arounds if necessary.

## JOINING THE POOLED TRUST PROGRAM

Creating a Pooled Trust account is simple. There is no application or acceptance fee. The person creating the account simply completes a Sponsor Agreement, usually with the help of qualified legal counsel, and sends it in with the deposit. The Sponsor Agreement is not a separate trust, but rather a “joinder” agreement that incorporates the full text of the master trust instrument, the Guardian Community Trust for Supplemental Needs. This master trust was established originally in 2004 and has been joined by over 2,000 separate beneficiaries over the ensuing years.

If the trust is being created by a fiduciary, a copy of the authorizing documents must be included. An account being created by a court also must include a reference to the legal action or to the petition that authorizes creation of the account.

Another essential document for a Pooled Trust account is a “Beneficiary Distribution Plan,” where the beneficiary or responsible party provides their best estimate of the types and amounts of benefits the beneficiary will need from the account. This document does not have to be completed at the time of the Sponsor Agreement, but it should be submitted within a week or two thereafter.

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## CREATING AN INDIVIDUAL SPECIAL NEEDS TRUST

The process to create an individual Special Needs Trust initially is more complicated. The trust instrument must be drafted, and Community Trust must review and approve it before the appointment can be accepted. When it reviews the instrument, Community Trust is not yet a fiduciary. It acts on its own behalf at this stage, to ensure that the trust instrument is clear, lawful and within the purposes of Community Trust’s mission. For that reason, the beneficiary must have his or her own legal counsel to write the trust. Reviewing and approving an individual trust can take some time if multiple revisions are required.

Once the trust instrument is agreed to, however, the process becomes very easy. There is no application or set-up fee. If the trust is being created by a fiduciary, the same review process that is used for pooled trust accounts is used for individual trusts. The authorizing documents need to be reviewed and approved before the appointment can be accepted.

## OTHER INFORMATION

Contact names and other background information is gathered for all trusts, including both individual Special Needs Trusts and Pooled Trust accounts. This kind of data, such as living situation, public benefits, primary identification data, information about any non-trust assets that may need to be maintained, and similar information, is essential for establishing the trust relationship. We do not share beneficiary information with anyone, except to the extent required in order to set up accounts, make distributions and create tax documents.

The primary purpose of background information is to help Community Trust to anticipate the range of needs that the beneficiary is likely to present, and to understand the context for any particular request for a distribution.

## USING THE TRUST ACCOUNT

Beneficiaries and responsible parties have several ways to request distributions, including telephone, mail, fax and, in some circumstances, e-mail. Community Trust provides forms on its website to simplify the process of requesting distributions. As Trustee, we are responsible to account to our beneficiaries, and in connection with this duty, we have to keep records to explain our decisions. For this reason, we ask each beneficiary or responsible party to provide invoices and/or receipts to support most distributions.

Along with our authority as Trustee to make decisions about distributions, comes a responsibility to consider whether the trust instruments allow each distribution. The most important criterion is that distributions must be for the “sole benefit” of the beneficiary. Sometimes a beneficiary or responsible party may want Community Trust to distribute funds for a purpose that may benefit other individuals. The fact that our beneficiary may want the distribution to be approved may not be sufficient to characterize it as a benefit to him or her; if not, then we have to say “no.” Fortunately, denial of distributions is a rare occurrence.

The Community Trust staff includes a Clinical Relationship Coordinator who is a licensed Social Worker. She visits most beneficiaries at the outset of the relationship, and is available to provide information and perspective to our Trust Administrators when distribution requests are complex, or a decision is disputed.

Factors that we consider when making distribution decisions include:

- the beneficiary’s stated preferences
- the nature and priority of the proposed use
- the views of family members and other responsible parties
- impact, if any, upon the beneficiary’s public benefits
- the availability of alternative sources of support for the beneficiary
- whether there are enough funds to meet other present and future needs

## TAXES

99% of our trusts, including accounts in the Pooled Trust program and most individual Special Needs Trusts, are established with the beneficiary’s own assets. This means that almost all of our trusts are considered “grantor trusts” for tax purposes. Both the IRS and the Massachusetts Department of Revenue treat the income of a grantor trust as personal income of the beneficiary, whether or not the trustee actually distributed the income to the beneficiary, or used it for his or her benefit during the year.

In order to report the income of a grantor trust, the trustee must send the beneficiary a “Grantor Letter” that states the amount, plus any deductions that the beneficiary also can claim under the rules for grantor trusts. Community Trust sends Grantor Letters as early in the tax season as we can, so that beneficiaries who file tax returns will have this information in time to include it when they file. Sometimes, for reasons that we cannot control, the letters are delayed. Beneficiaries and their responsible parties are urged to communicate with Community Trust during tax season if they have urgent circumstances regarding tax filing.

Almost without exception, our beneficiaries do not actually have to pay any taxes on the income from their trusts, because they have large medical expense deductions each year. These deductions exist because MassHealth requires that some (or, in nursing home cases, most) of the individual’s income must be used for medical care before Medicaid coverage begins. If for some reason a beneficiary does owe income tax, whether as a result of trust income or any other type of income, Community Trust pays the tax from the trust, unless there are extreme circumstances that would prevent it from doing so.

## DEATH OF THE BENEFICIARY

After the lifetime of each beneficiary, Community Trust administers any assets that remain in the account as required by the terms of the trust. Some terms are required for the trust to qualify as exempt under Medicaid and SSI; one of the harshest of those requirements is that the trust cannot pay for the beneficiary’s funeral or burial expenses. Because of this limitation, Community Trust urges every beneficiary to purchase a pre-need funeral contract and other burial-related assets, before or immediately upon establishing a disability trust. We give notice to every new beneficiary of this important issue, and frequently we use assets of our trusts to purchase funeral and burial-related assets.

The order of final distribution for all disability trusts includes Medicaid reimbursement, up to the amount of MassHealth benefits the individual received. If any funds remain after reimbursement, they can go to private individuals or charities, as directed by the trust instrument.

Pooled Trust accounts (but not individual Special Needs Trusts) also are subject to a provision of federal law that allows some of the remaining balance to be retained by the trustee for its charitable purposes. Community Trust retains a varying amount, depending upon how long the account existed:

## SCHEDULE OF TRUST-RETAINED AMOUNTS

| Duration of Trust Prior to Death            | Percentage Retained |
|---|---------------------|
| Up to one year                              | 5%                  |
| More than one year, but less than two years | 10%                 |
| Two years or longer                         | 15%                 |

The trust-retained amounts are not cumulative. Only one percentage applies, based upon the number of years that the trust existed.

Amounts retained by Community Trust are added to an Endowment that was established in 2006 to support an Office of Public Guardian for Massachusetts. For more information about how the Endowment is used, you may visit the Institute website, at [www.guardianship.institute](http://www.guardianship.institute), where this mission is discussed in detail.

### FEES

The fees assessed by Community Trust pay for the costs of operating its trust programs. Services for most individual trusts are priced below cost. Professional investment advice is included in all trustee fees, as is the cost of our Clinical Relationship Coordinator and all other costs of administration, other than tax returns, which are billed at actual cost. Fees are billed at the end of each quarter (March 31, June 30, September 30 and December 31), based upon the principal balance of the trust on the last day of the quarter. The amount billed each quarter is one-fourth of the annual fee.

### RATE FOR INDIVIDUAL SPECIAL NEEDS TRUSTS

1.25% of principal per year

Tax Prep: \$250-\$400 annually, depending upon complexity

### RATES FOR POOLED TRUST ACCOUNTS

Fees for Pooled Trust accounts are charged on a schedule, as follows:

|   |       |
|---|-------|
| \$1,000 to \$ 80,000                      | 3.0%  |
| \$80,001 to \$120,000                     | 2.5%  |
| \$120,001 to \$200,000                    | 1.75% |
| Over \$200,000                            | 1.25% |
| Tax Prep (Grantor Letter): \$140 annually |       |

## MANAGEMENT AND INVESTMENT

Community Trust ensures the safety of the funds it holds in trust through relationships with strong financial institutions. Our custodian of funds is Wilmington Trust Company, a subsidiary of M & T Bank, which is a \$130B full-service financial institution. Records and individual trust transactions and accounts are managed by Fiduciary Technology Partners, a Connecticut company that handles accounts for 90 non-profit foundations with over \$50B in assets.

Community Trust obtains independent financial advice from Duffield Financial Group of Concord, Massachusetts. Investment goals for all but a small number of individual trusts are aimed at preservation of capital and generation of income. Most of the Pooled Trust accounts have a relatively short time horizon, and as a result there is almost no exposure to the equity markets in our portfolio. We maintain relatively high liquidity, and since 2014 our only investments have been in very short-term bond mutual funds.

Individual Special Needs Trusts are treated differently, because they often involve younger beneficiaries. Unlike Pooled Trust accounts, individual trust investments are not managed as a combined fund, but rather are invested separately on the basis of relevant facts about the beneficiary and his or her circumstances. Each trust is reviewed and assigned its own investment objectives, which may include income, growth and/or preservation of principal.

## STEPS TO ESTABLISH A DISABILITY TRUST

1. Determine whether a Disability Trust is appropriate for the individual.
2. If “yes,” evaluate what type of trust (individual vs. Pooled Trust account) is appropriate:
  - a. If considering a Pooled Trust account, the master trust instrument can be downloaded from the Community Trust website,<sup>1</sup> along with a sample of the Sponsor Agreement.<sup>2</sup>
  - b. If considering an individual Special Needs Trust, work with counsel to submit a draft of the proposed instrument to Community Trust for review. Allow one to two weeks for the review process.
3. Sign the trust papers.
  - a. If the beneficiary can sign the trust for himself or herself –
    - For a Pooled Trust account, download the Sponsor Agreement for self-settled accounts,<sup>3</sup> and have the beneficiary sign (in the presence of a Notary Public).
    - For an individual Special Needs Trust, work with legal counsel to arrange for signing of the instrument



b. If the beneficiary cannot sign for himself or herself –

- Provide Community Trust with a copy of the document that authorizes someone else– either a Conservator or an agent under a Durable Power of Attorney to sign.
- Community Trust will inform the parties if the authorization is inadequate, and if so, we will work with the parties to find appropriate alternative authority.

c. If a parent, grandparent or court will establish the trust, download the Sponsor Agreement that is appropriate for that settlor.

4. If possible, download and complete a Beneficiary Distribution Plan.<sup>4</sup>

5. Mail the signed instrument(s), along with the funds to be deposited, to Community Trust at the address below. Checks should be payable to “Guardian Community Trust, Inc.,” with a notation in the Memo section of the check, “f/b/o [name of beneficiary].”

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## GUARDIAN COMMUNITY TRUST, INC.

ONE ELM SQUARE, SUITE 2D  
ANDOVER, MA 01810  
(978) 775-3500

[www.guardiancommunitytrust.org](http://www.guardiancommunitytrust.org)

1 [www.guardiancommunitytrust.org/Trust--Family\\_Trust\\_for\\_Supplemental\\_Needs\\_II\\_with\\_Amendment.pdf](http://www.guardiancommunitytrust.org/Trust--Family_Trust_for_Supplemental_Needs_II_with_Amendment.pdf)

2 [www.guardiancommunitytrust.org/forms/sponsor\\_agreements.html](http://www.guardiancommunitytrust.org/forms/sponsor_agreements.html)

3 [www.guardiancommunitytrust.org/forms/Sponsor\\_Agreement\\_1\\_\(Self\\_or\\_3d\\_Party\).pdf](http://www.guardiancommunitytrust.org/forms/Sponsor_Agreement_1_(Self_or_3d_Party).pdf)

4 [www.guardiancommunitytrust.org/forms/Beneficiary\\_Distribution\\_Plan.pdf](http://www.guardiancommunitytrust.org/forms/Beneficiary_Distribution_Plan.pdf)