

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

WHAT IS A POOLED TRUST?

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A pooled trust is a trust established and administered by a non-profit organization. A separate account is established for each beneficiary of the trust, but for the purposes of investment and management of funds, the trust pools these accounts. For self-settled, or (d)(4)(C) pooled trusts, each subaccount is established by the person with a disability, a parent, grandparent, guardian, or a court, and the trust is funded with the assets of the person with a disability. The trust provides that, upon the death of the disabled beneficiary, if there are funds remaining in the beneficiary's subaccount, the trust must pay to the state an amount up to the total amount of Medicaid assistance provided to the beneficiary, to the extent that the funds are not retained by the trust. The pooled trust should be irrevocable to avoid being treated as a resource.

Third-party pooled trust subaccounts can also be established by family members who want to leave inheritances for persons with disabilities. Because these accounts are not funded with the assets of the person with a disability, they do not include a Medicaid payback provision. The remainder of this article will discuss the self-settled (d)(4)(C) pooled trust.

When is a (d)(4)(C) Pooled Trust used?

Elder law attorneys often assist persons with disabilities who receive public benefits, including Supplemental Security Income (SSI) and Medicaid, and then receive a modest inheritance, divorce settlement, or personal injury settlement or award. The receipt of these funds may make this disabled person ineligible for public benefits. The disabled person could purchase exempt resources, and then reapply for benefits; however, in many cases, there are no appropriate exempt resources for the disabled person to purchase. The disabled person would then be ineligible for public benefits until these funds are spent down. The disabled person could give the funds away, however, the gifts would result in a period of ineligibility for SSI and Medicaid long-term care benefits. If under 65 years of age, the disabled person could transfer the funds to a d(4)(A) Special Needs Trust (SNT); however, it is frequently difficult to find an appropriate trustee for this type of trust, and the administrative expenses may be high for a trust funded with \$100,000 or less. A fourth alternative is to transfer the funds to a d(4)(C) ("Pooled Trust") subaccount.

What are the advantages of a (d)(4)(C) Pooled Trust subaccount compared to a d(4)(A) SNT?

The person with a disability under 65 years of age may create his or her own pooled trust subaccount. Because the pooled trust is managed by a non-profit organization, it is not necessary to find a trustee who is willing to manage the trust. Additionally, because the trust funds are pooled for investment and management purposes, the administrative expenses of these trusts are frequently lower than those of a d(4)(A) SNT.

What are the disadvantages of a (d)(4)(C) Pooled Trust compared to a d(4)(A) SNT?

The d(4)(A) SNT is a trust managed by a trustee for the sole benefit of the disabled beneficiary. A family member or friend of the disabled person may serve as the trustee, or a corporate or professional trustee may serve. The d(4)(A) SNT permits the trustee to customize the management and investment of the trust to meet the unique needs of the beneficiary.

When To Use

A person receives an inheritance from her mother of approximately \$50,000. A pooled trust subaccount could be created to hold the inherited funds. Because the client's resources were less than \$2,000 and there was no resulting period of ineligibility, the client continued to qualify for SSI and Medicaid assistance. The funds in her pooled trust subaccount may be used for goods and services, such as dental care, that SSI and Medicaid do not pay.

“Those Who Plan Ahead Win. Those Who Don't Plan Ahead Lose.”

This article is not intended as legal advice. It is basic information. I would recommend that you call Attorney Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Timothy P. Crawford can be reached toll-free at 1-888-634-6675. When you call in, please mention the fact that you have read this article.

*Attorney Timothy P. Crawford is a Nationally Board *Certified Elder Law Attorney. He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

**Timothy P. Crawford was invited to join the Council of Advanced Practitioners of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. The **Council of Advanced Practitioners (CAP) is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated the top in the nation by Martindale Hubbell. A Service that provides an independent rating of the quality of attorneys.

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“A majority of text has come from an article prepared by Attorney Andy Hook, friend of Attorney Timothy P. Crawford, is used here with permission.”