



Preserve Assets | Protect Benefits | Live Well

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# Special Needs Pooled Trust First Party Informational Guide

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Special Needs Trusts

## **Overview: Who We Are & What We Do**

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Planned Lifetime Assistance Network (PLAN) of MA & RI is a 501(c)(3) non-profit organization, incorporated in 1971, that serves as a professional trustee for special needs trusts.

**For over 50 years, we proudly serve people with disabilities – lifelong or related to illness, injury, or age – helping to preserve assets, to protect access to public benefits, and to live well.**

We help people with disabilities enhance the quality of their lives by —

- administering Special Needs Trusts that support beneficiaries' long-term needs
- providing support and guidance from licensed social workers, to help beneficiaries use their funds most effectively, and
- serving as a knowledgeable trustee to oversee the investment and disbursement of the trust's resources for both pooled and standalone trusts

### **Special Needs Pooled Trusts**

A Special Needs Trust (SNT) is a way to set aside money for a beneficiary's future use—while protecting and maintaining their eligibility for public benefits, such as Supplemental Security Income (SSI) and Medicaid benefits. SNTs are permitted by the Omnibus Budget Reconciliation Act (OBRA) 1993; they are irrevocable and must follow regulations set by the federal and state governments.

Distributions can only be used for the beneficiary, for goods and services that enrich their quality of life and supplement public benefits to support their basic needs.

Special Needs Trusts may be “pooled” (SNPT), where all beneficiaries' separate accounts are invested together—reducing administrative costs and overhead for each, or maintained individually.

**PLAN manages two SNPTs, described below, as well as d4A (individual first-party) and third-party standalone trusts.**

The MARC First-Party Special Needs Pooled Trust is the oldest pooled trust serving Massachusetts and the largest in Massachusetts and Rhode Island. The MARC Trust is a “first-party trust” (also known as a “Medicaid pay-back trust”). This means that each account is funded with the beneficiary's own assets—which often come from savings, inheritances, or personal injury settlements.

**The Third-Party Special Needs Pooled Trust** (created in 2005). “Third-Party” means that accounts are funded with assets from someone other than the beneficiary, such as



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family or friends. Funding can come from a variety of sources—including but not limited to gifts, inheritances, or insurance policies – and SNPTs do not have to be *funded* at the time they are created; they can be funded at some later time. (A **Guide to Third-Party SNPTs**, is available on the website or by request from our office.)

### **Personalized Support for Beneficiaries**

PLAN's Service Coordinators are a team of veteran social workers that provide support and guidance to our beneficiaries on a continuous basis. Each beneficiary is paired with a Service Coordinator, who is the primary point of contact for the beneficiary and their family.

Service Coordinators have three objectives: enhancing the beneficiary's life; helping the beneficiary use funds thoughtfully; and protecting the beneficiary's eligibility for public benefits, such as Medicaid and SSI benefits.

To achieve these objectives, Service Coordinators collaborate with the beneficiary, and their family when appropriate, to identify day-to-day needs and long-term goals. In doing their work, these caring professionals consider many factors—including the beneficiary's age, disability, needs, expenses, and trust account balance. Service Coordinators help each individual create a spending plan for their funds that addresses their unique needs and goals.

### **Knowledgeable Trustee**

PLAN serves as a Trustee for both pooled and stand-alone trusts. With decades of experience as Trustee, participants can be assured that PLAN will provide effective, knowledgeable, and accountable trust management. Additionally, working with a professional Trustee, such as PLAN, has the dual benefit of ensuring effective trust management and relieving family members of this responsibility.

As Trustee, we handle all accounting, investments, tax returns, and disbursements for each beneficiary. PLAN also stays informed and up-to-date with changing regulations and how those impact beneficiaries and their trusts. We are skilled in identifying which disbursements could negatively impact benefits and which do not—and helping beneficiaries (and families) plan accordingly for the effective use of their trust funds.

Contact us to learn more about how PLAN ensures high-quality management of our trusts and the funds in each beneficiary account.

## The First-Party Special Needs Trust:

Preserve Assets, Protect Benefits, Live Well

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### **Preserve Assets**

A special needs trust is a legal document that enables money to be set aside for a person with a disability. The trust is intended to help preserve the funds for the person, while protecting their access to public benefits, such as Medicaid and Supplemental Security Income (SSI).

### **Protect Benefits**

A First-Party Special Needs Trust, sometimes called a "self-settled trust" or a "Medicaid payback trust," is explicitly permitted by both Medicaid and Social Security regulations.<sup>1</sup> This type of trust is created by or on behalf of a person with disabilities for their own benefit. First-Party trust accounts are funded by an individual's own cash assets; personal and real property are not accepted. Applicants can decide to join PLAN's established MARC First-Party Special Needs Pooled Trust or create a standalone first-party trust tailored to the individual

Medicaid and SSI are means tested benefits, which base eligibility on an individual's assets and income. Assets of over \$2,000 that are not held by a Special Needs Trust can negatively impact an individual's eligibility for these and other means tested benefits. Applicants should consult with a knowledgeable attorney regarding what other assets count toward the \$2,000 threshold.

Funds held in a Special Needs Trust are not countable assets for Medicaid (called MassHealth in Massachusetts, and Rhode Island Medical Assistance in Rhode Island) or for SSI eligibility.<sup>2</sup> So, a person with a disability can deposit any amount of funds into the Trust account without jeopardizing their eligibility for public benefits. In technical terms, the deposit is not a "disqualifying transfer" for Medicaid or SSI eligibility.<sup>3</sup>

Generally, neither the funds held in an SNT nor the disbursements are subject to federal or state income tax. However, funds held in SNT are invested and may generate gains or losses, resulting in tax implications. A Grantor Letter, containing tax information for the trust account, will be sent to the mailing address on file by the second week in March. Consult with a knowledgeable attorney or accountant about how to address the taxes associated with the trust.

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<sup>1</sup> 42 U.S.C. § 1396p(d)(4)(C), 130 CMR 515.00; POMS § 01120.203(B)

<sup>2</sup> 42 U.S.C. § 1396p(d)(4)(C), 130 CMR 520.008(H), 520.023(D) and 515.001; 42 U.S.C. § 1382b(e), POMS § 01120.203(B)

<sup>3</sup> 42 U.S.C. § 1396p(c)(2), 130 CMR 520.019(D)



### **Live Well**

A PLAN Service Coordinator will be assigned to a beneficiary once the SNPT account is opened. The Service Coordinator will contact the beneficiary—and as appropriate, a family member or legal representative—to welcome them and schedule an introductory meeting.

The Service Coordinator will review the disbursement process, learn about the beneficiary's goals for how trust will be used, and review current and anticipated expenses. Through the initial meeting and subsequent conversations, the Service Coordinator will get to know the beneficiary, learning about their interests and needs.

Together, they will identify specific ways the trust account can be used to enhance the beneficiary's quality of life—while ensuring that disbursements don't undercut eligibility for public benefits. This will result in a created spending plan, which will guide disbursements from the trust. The spending plan will be updated regularly, based on ongoing collaboration with the beneficiary and other appropriate parties.

## **First-Party Trust | How Are Funds Disbursed?**

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### **Guiding Principles**

All disbursements from the First-Party Trust are subject to the following four principles:

- **Sole Benefit:** Disbursements must be used for the sole benefit of the participants. They are to enable the person to lead as normal, comfortable, dignified and fulfilling a life as possible.
- **Supplemental Needs:** the primary use of the funds is to supplement public benefits. Disbursements can be used to pay for things not covered by public benefits.
- **Payments to Third Parties:** Disbursements from the trust are paid to a third-party – either directly to vendors or to individuals who have made a purchase on the beneficiary’s behalf. Trust beneficiaries do not have direct access to the funds and cannot receive payments directly to themselves.
- **Sole Discretion:** As the Trustee, PLAN has sole discretion in whether a payment is made from a beneficiary’s Trust account. Neither the beneficiary nor any person acting for the beneficiary can demand that payments be made. This helps to ensure that disbursements are made on a completely objective basis; and that a beneficiary’s account is used in a way that serves their long-term needs.

### **Sample Disbursements / Uses of Trust Funds**

The following examples illustrate the types of disbursements that may be made for a trust beneficiary from a First-Party Trust account:

- Health and dental treatment and equipment that are not otherwise covered by insurance—or where out-of-pocket cost or deductibles are charged to the participant. This could include, for example, eyeglasses, supplemental nursing care, dietary supplements, rehabilitative services, or private therapy.
- Social services such as companion services or private case management
- Clothing and personal needs such as toiletries or haircuts
- Household items such as furniture, bedding, television, or microwave
- Communications such as internet service, mobile phone, and other devices
- Transportation such chair-car service, taxi or transportation service rides, and adaptive vehicle purchases
- Recreational and cultural items and activities such as travel, books, movies, and entertainment
- Education and training programs such as college courses, online learning, local lectures, and personal mentors and tutors

Disbursement requests are evaluated on a case-by-case basis and approval depends on the beneficiary's individual circumstances (including, but not limited to, public benefits, account balance, age, and disability.)

### **Prohibited Disbursements / Use of Trust Funds**

The following examples illustrate the types of disbursements that cannot be made for a trust participant. There may be additional restrictions depending on an individual's benefits. This list is not exhaustive.

- Gifts for Others
- Gift cards
- Alcohol
- Gambling
- Weapons
- Pornography

### **Requesting Disbursements**

There are two methods for requesting disbursements from a PLAN Trust account:

1. A beneficiary (or an authorized representative) submits a **Disbursement Request Form** to Billing via email ([billing@planofma-ri.org](mailto:billing@planofma-ri.org)), fax (617-795-0589), or mail along with a detailed written estimate or invoice before purchasing the item or service. PLAN will pay the vendor directly. A Disbursement Request Form can be found on the website.

-OR-

2. A beneficiary (or an authorized representative) submits to PLAN a **Disbursement Request Form** along with **itemized receipts and proof of payment**. In the case of payment by check, a copy of the cancelled check must be provided. In the case of payment with a debit card, a copy of a document showing that the beneficiary is not connected to the account must be provided. The beneficiary can request that PLAN pay a credit card company or a third party (family, friend, other). **No disbursements will be made if itemized receipts and proof of payment are not submitted along with the request form.**

If neither of the options above work for an individual's circumstances, an alternative may be discussed with their Service Coordinator.

Generally, disbursements are mailed within 7 to 10 business days after receipt of request.



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## **First-Party Trust | How Are Trust Funds Invested?**

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PLAN understands that the funds are critical to providing each and every trust beneficiary with the items and services needed. That's why PLAN partners with Webster Private Bank, a distinguished financial institution with a long history and a regional presence, to serve as PLAN's trust investment manager. Together, our chief objective is the continued preservation of trust assets with an eye toward long-term growth.

Webster Private Bank is the wealth management division of Webster Bank, a \$25 billion regional financial institution headquartered in Waterbury, Connecticut. WPB provides clients with holistic, integrated services and sophisticated fiduciary, planning, and investment offerings, taking pride in delivering straight-forward, objective advice and attentive service from a single relationship manager.

Webster Private Bank offers seven investment portfolios options, so that each beneficiary may benefit from the one that is right for their individual circumstances. Selection of the portfolio model is performed by Webster Private Bank in consultation with PLAN. When determining the investment strategy, the participant's age, disability, account size, and spending needs are among the factors taken into consideration. The portfolio selection is reviewed annually and may change over time as the participant's circumstances change.

### **A Message from Webster Bank – January 2023**

*In 2022 stock and bond markets repriced in response to stubbornly high levels of inflation and the Federal Reserve's actions to reign it in. As a result, this was one of just a handful of years over the past 100 years where both stocks and bonds ended the year at a loss. It is impossible to forecast the short-term direction of the markets, but we try to identify trends and risks and manage portfolios accordingly. Moving into 2023, markets could continue to see higher levels of volatility due to ongoing geopolitical issues and the Federal Reserve's continued campaign to conquer inflation. While this could be disconcerting to many, history has shown that the best course of action in periods such as this has been to stick to a disciplined and systematic investment approach predicated upon one's current and future needs.*

*All PLAN of MA & RI accounts are managed with this type of mindset and will continue to be moving forward to protect and grow participant assets over the long term. As a result, participant accounts have experienced less volatility than what is reported on the nightly news. Individual performance at the beneficiary level will be dependent upon several variables, including when moneys are invested, the investment strategy assigned to the participant and the actual cash flows in and out of the portfolio.*

## **First-Party Trust | What Are the Fees?**

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### **Enrollment Fee**

A one-time, non-refundable Enrollment Fee is payable to PLAN when an application form is submitted. It helps defray the costs of enrollment, such as legal and factual analysis of the individual's application; and preparation and submission of documents necessary for establishing a participant's account within the Trust (including the Instrument of Trust Assignment and the request for an IRS Tax Identification Number). There are two fee levels:

**The Basic Enrollment Fee of \$600** applies when a person can independently complete and sign a legal document (such as the Trust application) on their own behalf.

**The Fiduciary Enrollment Fee of \$750** applies for a person who is not able to complete and sign a legal document on their own behalf – and who requires the assistance of a Guardian, Conservator, Power of Attorney, or other fiduciary or agent.

### **Annual Fees**

PLAN's Annual Fee and the Professional Investment Management Fee are calculated quarterly, based on the balance at that time, and automatically deducted from each trust account. The trust balance must remain sufficient to cover such fees.

#### **PLAN's Annual Fee**

Effective 7/1/25, PLAN has simplified its fee structure:

- A flat fee of 2% will be applied to the first \$1,000,000.
- No additional fee (0%) will be applied to any amount over \$1,000,000.

This annual fee covers the cost of:

- Fiduciary and administrative services
- Service coordination by licensed social workers
- Disbursement and record keeping
- An annual report for each beneficiary (or their designated representative) showing all account activity
- Ongoing monitoring of public policies, rules, and regulations that affect Special Needs Trusts

The minimum PLAN Annual Fee is \$500.

#### **Professional Investment Management Fee**

All trust accounts invested with PLAN are subject to a professional investment management fee of a competitive 0.75% (or 75 basis points), regardless of value.



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### **Tax Preparation Fee (Annual)**

Effective January 1, 2022, there is a fee of \$224 for preparing and filing the Federal and State Fiduciary Income Tax Return and for producing a “Beneficiary Information Tax Letter” (also known as a Grantor Letter). This document is delivered to the tax participant and used for his/her personal income tax statement. The Tax Preparation Fee is subject to change.

### **Agency Reporting-of-Account Fee**

A person who receives public benefits (SSI or Medicaid) must report their enrollment in the First-Party Trust to the appropriate public agency; and the trust beneficiary should anticipate a cost for preparing and submitting this mandatory report. The beneficiary may ask their legal counsel to handle this report, and pay the counsel’s fee, or ask PLAN to handle the report—in which case a fee will be billed to their account.

### **Legal Action Assessments**

On rare occasions, PLAN may incur costs for defending claims against the Trust or for other legal actions involving the Trust; these may include attorney fees and other costs associated with the legal action. In those circumstances—and in PLAN’s sole discretion—special fees will be billed either to all Trust accounts on a *pro rata* basis or exclusively to the individual trust account(s) affected by the legal action.

### **Closing Costs and Closing-Related Tax Preparation Fees**

When a First-Party trust beneficiary dies or an individual’s account balance falls to an amount that is insufficient to cover costs and fees, PLAN will begin to close the trust account. The low balance benchmark is \$2,000, and it reflects the costs and fees that come due at the closing of a First-Party trust account. These costs and expenses will be deducted from the participant’s account and include:

- Reasonable administrative fees of \$500 for closing investment account and transferring funds into an escrow account; completion and filing of documents; communications with representatives of deceased, with third party vendors who have outstanding claims, and with relevant Medicaid agencies; preparation of final accountings and accounting to a court (where appropriate); and other actions required in connection with account closing.
- The final tax preparation fee is currently \$366. Upon the death of a trust participant, PLAN must prepare and file a Final Fiduciary Return (also known as a Form 1041). This document informs the Federal and State governments of the participant’s death and the closing of the trust account.

IF YOU HAVE QUESTIONS ABOUT THE FEES DESCRIBED ABOVE, PLEASE CONTACT OUR OFFICE AND A MEMBER OF OUR TEAM CAN DISCUSS THE DETAILS WITH YOU.



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## Final Distributions

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Final disbursements will be made 8-10 months after the date of death. This timeline allows for tax statement preparation, signed release for settlement under one year, and final 1041 tax projection. Funds remaining in the account are distributed as follows:

- 1) A percentage goes to PLAN's Community Fund to support people with disabilities as follows:
  - a) If the beneficiary dies within two (2) years of joining the Trust, PLAN will retain 10% of the remaining balance.
  - b) If the beneficiary dies two (2) years or more after joining the Trust, PLAN will retain 20% of the remaining balance.
- 2) After that charitable portion is deducted, Medicaid must be "paid back" the amount of the actual Medicaid payments the beneficiary received during his or her lifetime. That amount is determined by the state Medicaid agency.
- 3) Any remaining funds (after 1 and 2) are distributed to the "remainder beneficiaries;" those designated by the trust participant in the Instrument of Trust Assignment that created the trust account.



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## Considerations Before Enrolling

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A Special Needs Trust is a valuable tool for supplementing public benefits and enhancing the quality of life for individuals with disabilities. At the same time, the administration of these trusts is governed by federal and state regulations, which require that:

- The Trust is **irrevocable**; once an account is established, the beneficiary cannot undo it.
- The Trust is **discretionary**; only PLAN can authorize a payment. Neither the beneficiary nor anyone acting on their behalf can require payments from an individual's account.
- The trust funds are used for the **sole benefit** of the beneficiary; the funds in the account cannot be used for gifts or for the benefit of someone else.
- Payments from the Trust are made to vendors or **third parties**. Proper documentation is required when requesting payment.
- Initial Deposits & Balance Requirements
  - PLAN **does not have a minimum deposit for establishing a Special Needs Pooled Trust** account, but recommends a discussion with a member of our leadership team for accounts with an initial deposit below \$10,000. For accounts with relatively low balances, the enrollment and ongoing fees may undercut the benefit of a trust account. In those cases, a spend-down of assets might be a more appropriate route for the individual.
  - For **standalone accounts, there is a minimum balance required.**



**REMEMBER --**

The decision to join the Special Needs Trust is an important one, and it deserves informed thought.

We strongly encourage anyone interested in establishing a Trust account to consult his/her own attorney or financial advisor.

Please contact us if you have questions or need additional information as you make your decision.

**What Forms Do I Need to Complete?**

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**Application**

The application can be found on PLAN's website, <http://planofma-ri.org/>.