



# Basics of Special Needs Trusts

Thursday, October 15, 2015

Breakout Session 2

2:30 P.M. – 3:30 P.M.

## (Re)Introduction to Pooled Trusts

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- Materials
- Appendix A
- Appendix B
- PowerPoint

**Stetson University College of Law presents:**

2015 SPECIAL NEEDS TRUSTS

THE NATIONAL CONFERENCE

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**(Re)Introduction to Pooled Trusts**  
**By: Laurie Hanson, Long, Reher & Hanson, P.A.**  
**2015 Special Needs Trusts National Conference**  
**October 15, 2015**

A pooled trust is a trust with separate sub-accounts for multiple beneficiaries.<sup>1</sup> Contributions and distributions are tracked separately in sub-accounts established for each beneficiary. To minimize each beneficiary's cost of participation in the pooled trust, however, the property held in the multiple sub-accounts is pooled together for purposes of administration and investment. Pooling multiple sub-accounts together can command better interest rates, and minimize fees for managing the trust.

The *special needs* pooled trust (pooled SNT) is a creature of the federal Medicaid Statute;<sup>2</sup> it is a particular type of special needs trust that is maintained by a non-profit entity for the benefit of multiple beneficiaries, all of whom are living with disabilities. Funds placed by a client or third parties in a qualified pooled SNT sub-account are treated as excluded assets for purposes of determining the client's eligibility for Medicaid (MA)<sup>3</sup> and Supplemental Security Income (SSI).<sup>4</sup> When correctly established and administered, a pooled SNT sub-account can provide a source of funds to improve the quality of life of a person who relies on needs-based public benefits to meet basic daily needs.

This paper comprises a general overview of pooled SNTs and their relationship to public benefits eligibility. The paper will cover the essential features of a pooled SNT and sub-accounts therein; the circumstances in which placing funds in a pooled trust sub-account might benefit a

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<sup>1</sup> For a comprehensive discussion of pooled trusts, see Renee C. Lovelace, Pooled Trust Options: A Guidebook, 13 (Melange Press, 2010) and Thomas D. Begley, Jr. and Angela E. Canellos, Special Needs Trust Handbook, *Pooled Trusts*, Chapter 16 (2015).

<sup>2</sup> 42 U.S.C. § 1396p(d)(4)(C).

<sup>3</sup> Id. Funds may also be excluded for other public benefits such as food support or public housing, but not because the funds are in a §1396p(d)(4)(C) trust but because of the particular program's rules about trusts in general.

<sup>4</sup> The Foster Care Independence Act of 1999 authorized first-party special needs trusts for SSI recipients. 42 U.S.C. § 1382(B).

client and in fact may be more appropriate than a traditional special needs trust; the history of pooled trusts in the context of Medicaid and SSI eligibility rules, sources of the law governing pooled trusts, advantages and disadvantages of using a pooled SNT, and how to assist a client to open a pooled trust sub-account.

## **I. History of Pooled Trusts' Treatment under the Medicaid Statute**

The history and evolution of special needs trusts and pooled SNTs is complex; this section contains only a brief outline of the critical features of this history. The first pooled “disability trusts” were created in the 1970s and 1980s by non-profits and public charities serving individuals with disabilities and their families as a means to provide for their future financial needs.<sup>5</sup> For example, The Arc<sup>6</sup> and its state branches operated pooled disability trusts for many years.<sup>7</sup>

Prior to 1993, an individual who placed funds in a pooled trust sub-account did not incur Medicaid eligibility transfer penalties. In addition, the estate recovery provisions of the Medicaid statute were not widely implemented or enforced by the states; and there was no payback requirement tied to the pooled disability trust sub-account. Because pooled trusts of the past had no payback requirements, a beneficiary could specify the remainder beneficiaries of his or her sub-account other than the charity that operated the trust. At the death of the pooled trust beneficiary, a certain percentage of the assets remaining in the trust would be paid to the charity and the remaining assets distributed to the residual beneficiaries named in the pooled trust sub-account.

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<sup>5</sup> See generally National Guardianship Association, *Pooled Trusts Pre-Conference Intensive, Developing Trust Programs for People with Disabilities, Current Practice and Important Issues* at 4)A. (1998). See also The ARC, *Pooled Trust Programs for People with Disabilities, A Guide for Families* (2002) at [www.uic.edu/orgs/rrtcamr/300005\\_PooledtrustPrograms.pdf](http://www.uic.edu/orgs/rrtcamr/300005_PooledtrustPrograms.pdf) ; PLAN (Planned Lifetime Assistance Network), a service component of the National Alliance for the Mentally Ill (NAMI) at [www.nami.org/helpline/plan.htm](http://www.nami.org/helpline/plan.htm)

<sup>6</sup> Formerly known as the Association for Retarded Citizens (“ARC”)

<sup>7</sup> Kathleen Kienitz, *Pooled Disability Trusts: A History and Survey of their Use in the United States*, 20, NAELA News, December 2005/January 2006.

In 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (“OBRA ‘93”), a budget bill with provisions aimed at minimizing perceived abuses of the Medicaid program by the wealthy. So-called “Medicaid millionaires” were reportedly transferring all their wealth into Medicaid Qualifying Trusts (“MQTs”), creating artificial impoverishment for the sole purpose of becoming eligible for Medicaid coverage of long term care costs. This practice was perceived to be (and probably was) widespread. With OBRA ‘93, Congress sought to limit the practice of “Medicaid planning” through amendments to the Social Security Act, which governs eligibility for many public benefits including Medicaid.

OBRA ‘93 amended the Social Security Act by adding language aimed at restricting the practice of divestment of assets into virtually any trust, including MQTs, by individuals seeking to qualify for Medicaid.<sup>8</sup> Through OBRA ‘93, Congress extended existing penalty provisions applicable to other types of transfers to all transfers of assets into an irrevocable trust, even when there was no way the individual could access the benefit.<sup>9</sup>

Specifically, OBRA ‘93’s amendments provide that:

- section 1396p(d) governs trusts established by individuals receiving or applying for benefits;<sup>10</sup>
- the corpus of a revocable trust shall always be considered available to the individual applying for or receiving benefits;<sup>11</sup>
- in the case of an irrevocable trust, the corpus of the trust shall be considered *available* if under the terms of the trust there are any circumstances under which payment from the trust could be made to or for the benefit of the individual;<sup>12</sup>
- all transfers of assets into irrevocable trusts that are *not available* for purposes of Medicaid eligibility, are subject to the transfer penalties set forth in the statute.;<sup>13</sup>

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<sup>8</sup> 42 U.S.C. § 1396p(d)(3)(A),(B).

<sup>9</sup> *Id.* See also *Appendix C*

<sup>10</sup> 42 U.S.C. § 1396p(d)(1).

<sup>11</sup> 42 U.S.C. § 1396p(d)(3)(A)(i).

<sup>12</sup> 42 U.S.C. § 1396p(d)(3)(B).

<sup>13</sup> 42 U.S.C. § 1396p(d)(3)(B); The OBRA 1993 House Budget Committee Report stated that irrevocable trusts that benefit the grantor will be considered available resources, but made an exception for special needs trusts, Miller

- any portion of the irrevocable trust, or any income on the corpus from which no payment could under any circumstance be made to the individual, shall be considered, as of the date of establishment of the trust...*to be assets disposed by the individual for purposes of subsection (c)*;<sup>14</sup> and
- Certain trusts that are exempt from these rules are set forth in 42 U.S.C. § 1396p(d)(4) and include the pooled trust — the “(d)(4)(C)” trust.

OBRA '93 also created a partial exemption from the new transfer restrictions and penalty provisions for certain irrevocable trusts, including first party special needs trusts and pooled SNTs established for the benefit of persons certified as disabled by the Social Security Administration.<sup>15</sup> The exempted trust categories are described in 2 U.S.C. § 1396p(d)(4). As long as these “(d)(4)” trusts are established and administered in accordance with the statute, assets in the trust remain excluded and transfers of assets to the trust are generally permissible.<sup>16</sup>

Despite the fact that federal law defines the relationship between pooled SNTs and public benefits, there are significant differences among the states on critical issues such as whether or not an individual age 65 and older can establish a pooled trust sub-account without penalty or how much of the beneficiary’s funds the non-profit entity may retain at the death of the beneficiary. Further, state laws differ on requirements for third party special needs trust. For instance, in Minnesota there are strict requirements as to who may fund the third party trust, when the assets in the trust are exempt for MA purposes, and specific language that must be in the trust. Thus, it is imperative that the practitioner is familiar with both state and federal law.

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income trusts, and pooled trusts. House Conf. Rep. No. 103-213, at 834, reprinted in 1993 U.S.C.C.A.N. 1523. The enacted statute implements the Committee Report.

<sup>14</sup> 42 U.S.C. § 1396p(d)(3)(B)(ii).

<sup>15</sup>The provisions of 42 U.S.C. §1396p(d)(3)(B) (concerning irrevocable trusts and transfers in and out of trusts) do not apply to pooled trust sub-accounts. 42 U.S.C. §1396p(d)(4)(C); This is consistent with legislative intent as expressed in the OBRA 1993 committee reports and a detailed summary of the House’s legislation that said (d)(4) “exempts certain trusts for the benefit of disabled individuals from the transfer rules.” CRS Bill Summary description of § 5111, H.R. 2138, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. (1993) available at [www.thomas.gov](http://www.thomas.gov).

<sup>16</sup>In some states, a penalty may be imposed if the individual establishing the trust is over the age of 64.

There are two types of pooled special needs trusts. The first party SNT trust, also known as a self-settled SNT is a trust funded with property belonging to the beneficiary of the trust or sub-account. A third party SNT is funded with assets belonging to someone other than the beneficiary. The purpose of the modern (post-1993) pooled SNT remains much the same as it was at the beginning: to pool funds of multiple individuals with disabilities for management purposes and to administer the trust in a manner that maintains the beneficiary's eligibility for public benefits. The only difference? Strict compliance with both federal and state regulations concerning pooled trust establishment and administration. A comparison of the main differences and similarities of the two trusts follows:<sup>17</sup>

## **II. The First Party Pooled Special Needs Trust**

A. **The Statutory Requirements.** With a self-settled trust the person funding the trust and the beneficiary are the same person.<sup>18</sup> To be exempt from the new transfer rules and considered an exempt asset and not a Medicaid qualifying trust under MA and SSI eligibility rules, the trust must meet the following requirements:

### **1. The beneficiary may be of any age and must be disabled.**<sup>19</sup>

This means that the beneficiary must be found to be disabled using the criteria established by the Social Security Administration.<sup>20</sup> An individual who is receiving SSI or Social Security Disability Insurance (SSDI) benefits meets this criteria. If a person is disabled but is not receiving SSI or SSDI, the state Medicaid agency has a process for making the disability

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<sup>17</sup> See Comparison Chart, *infra*, p. 13.

<sup>18</sup> POMS SI 01120.199 E.3.

<sup>19</sup> 42 U.S.C. § 1396p(d)(4)(C)

<sup>20</sup> 42 U.S.C 1382c(a)(3)

determination. The statute contains no age restriction regarding who may establish a pooled trust sub-account.<sup>21</sup>

**2. The trust must be established and managed by a nonprofit association.**<sup>22</sup>

The master pooled trust (the “master trust”) must be established by a nonprofit association as defined under state law.<sup>23</sup> The master pooled trust agreement<sup>24</sup> governs the overall operation of the pooled trust. The nonprofit organization is generally the settlor and trustee and the agreement sets forth the terms of a pooled trust including the purpose of the trust, the intent of the settlor in establishing the trust, requirements to establish a sub-account and duties of the trustee in the administration of the sub-accounts, and what happens to the funds in the sub-account upon the beneficiary’s death. The beneficiary of the trust is the group of individuals who establish sub-accounts within the trust.

The nonprofit must also maintain managerial control over the trust. For instance the nonprofit association must be responsible for example, for investment, removal or replacement of the trustee, and day-to-day decisions regarding the pooled trust beneficiaries.<sup>25</sup>

**3. A separate account must be maintained for each beneficiary of the trust. The trustee may pool these accounts together for purposes of investment and management.**<sup>26</sup>

Each account must be separately maintained; accountings must be provided, and distributions monitored. Individual accounts must have a separate tax ID number; generally the beneficiary’s social security number is used.

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<sup>21</sup> 42 U.S.C. § 1396p(d)(4)(C)

<sup>22</sup> § 1396p(d)(4)(C)(i)

<sup>23</sup> POMS SI 01150.121

<sup>24</sup> See LSS Pooled Trust Agreement, Appendix A.

<sup>25</sup> POMS SI 01120.225 D. See also Begley and Canellos, *supra* fn. 3 at 16.5-6.

<sup>26</sup> § 1396p(d)(4)(C)(ii)

4. **The sub-account must be established for the individual's sole benefit by the disabled individual or by his or her parent, grandparent, legal guardian, or a court.**<sup>27</sup>

There are four separate issues/requirements in this clause of the statute:

- i. **How is a sub-account established?** A sub-account is established by executing a joinder agreement,<sup>28</sup> a written agreement between the trustee and the establisher of the sub-account. There must be a joinder agreement for every beneficiary's sub-account. The joinder agreement sets out the minimum initial deposit that the entity requires to establish the sub-account, and provides a fee schedule associated with administering the trust account. Joinder agreements differ among the non-profit associations that administer pooled SNTs. Some are very detailed, while others are relatively simple. Because pooled trust sub-accounts must be reported to various public agencies, many organizations do not include details about the trust or the beneficiary within the joinder document itself. Comprehensive and generally private information is commonly maintained in a separate file that is not given to public agencies, therefore maintaining a beneficiary's privacy.

Practitioners should check with the pooled trusts operating in their state to determine how long the non-profit has operated the pooled trust, how many beneficiaries it has receiving MA and SSI in your state, to review their joinder agreements and become familiar with the organization's threshold eligibility requirements.<sup>29</sup>

- ii. **Who may execute the joinder agreement?** The joinder agreement may be executed by the disabled individual or by his or her parent, grandparent, legal

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<sup>27</sup> §1396p(d)(4)(A)(C) (iii)

<sup>28</sup> See Joinder Agreement for Lutheran Social Service of Minnesota Special Needs Pooled Trust, Appendix B.

<sup>29</sup> For a list of pooled trust nationwide see, Begley and Canellos, *supra* fn3, at Appendix 16-4.



guardian, or a court. Because the individual him or herself may execute the joinder agreement, an attorney-in-fact<sup>30</sup> or a representative payee<sup>31</sup> may also establish and fund the trust. All of the issues regarding establishment of a special needs trust by a guardian or court are relevant to the establishment of a pooled trust sub-account and are outside the scope of this discussion.

**PRACTICE TIP:** Joining a pooled trust and creating a sub-account is generally a simple process. You should discuss the different pooled trust providers within your state with your client and allow the client to familiarize herself with each organization, how the entity operates its trust, the minimum deposit required, and the fee schedule. The client must feel comfortable with the staff members who will be administering the trust. Creating healthy and lasting relationships with the administrators of the trust is very important, as the beneficiary will have to work with these staff members as long as the sub-account exists.

Once the client decides on the pooled trust organization she wishes to use, she should complete the joinder agreement document provided by the pooled SNT organization. This document establishes the sub-account into which funds will be placed for the client's benefit. The client can make additional contributions to the account as funds that would otherwise jeopardize the client's public benefits are received.

- iii. **Who has authority to fund the sub-account?** Technically, the sub-account is a grantor trust. This is because the beneficiary's assets are used to fund the trust. Some pooled trusts use the individual's social security number because the assets belong to

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<sup>30</sup> POMS SI 01120.203B.19

<sup>31</sup> POMS GN 0602.075

the individual. If the beneficiary is not competent, it is imperative that the person funding the trust have the authority to act with regard to the assets of the disabled beneficiary. The beneficiary may fund a pooled trust sub-account with current Title II and/or title XVII benefits, current earnings, personal injury awards, inheritances received directly, and other resources or income.<sup>32</sup>

**iv. The sub-account must be used for the individual's sole benefit.** This provision generally requires that distributions from each sub-account be made for the sole benefit of the individual. If any individual or entity benefits (or may benefit) from a distribution, the trust is not an exempt trust. Issues raised in the administration of a sole benefit trust are, for instance, payment to family members, purchasing a home in which individuals other than the beneficiary live, paying for companion services, etc.<sup>33</sup>

**5. The pooled trust sub-account must provide that any funds remaining in the beneficiary's account upon his or her death not retained by the trust be paid to the State for an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.**<sup>34</sup>

Check your state law! While the federal law seems clear – any amount “not retained by the trust” must be paid back to the state. States all over the country have imposed various restrictions. For instance, in Minnesota, the non-profit association may retain only 10% of the funds remaining in the sub-account at death and the balance must be paid to the State for an amount equal to the total amount of medical assistance paid on behalf of the beneficiary. Right

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<sup>32</sup> Most pooled SNTs will not accept real property or tangible assets into a pooled trust sub-account.

<sup>33</sup> POMS SI 01120.201F.2

<sup>34</sup> §1396p(d)(4)(A)(C)(iv)

across the border in Wisconsin, there is no pay-back provision - the non-profit may retain 100% of the balance.<sup>35</sup>

In Pennsylvania, state law provided that the non-profit association could retain only 50% of funds remaining and required that the other 50% be used for reimbursement. The Third Circuit struck down this law and stated that the federal statute allows for 100% retention and that states may not place restrictions on retention.<sup>36</sup>

Trustees must comply with rules and regulations regarding administrative expenses after the death of the beneficiary. Some expenses may be paid - taxes due from the trust to the state or federal government because of the death of the beneficiary and reasonable fees for administration of the trust estate.<sup>37</sup> Prohibited expenses and payments after the death of the beneficiary include taxes due from the estate of the beneficiary not arising from the trust, inheritance taxes due for residual beneficiaries, payment of debts owed to third parties, funeral expenses, and payments to residual beneficiaries.<sup>38</sup> Like the first party special needs trust administration following death, coordination with the state Medicaid agency is important to ensure that expenses are not prohibited – BEFORE making the payment!

## **B. Advantages of First Party Pooled Special Needs Trusts.**

An individual on public benefits who receives an inheritance or a personal injury award or settlement, or sells property and is suddenly over resource limits may establish a pooled trust sub-account to retain eligibility. An individual who needs to apply for MA because he or she needs long-term care services, or apply for SSI due to being unable to work and having no income, may establish a pooled trust sub-account to become eligible. These individuals always

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<sup>35</sup> For an anecdotal list of reported states on retention in pooled trusts see, Begley and Canellos, *supra* fn3, at Appendix 16-7

<sup>36</sup> *Lewis v. Alexander*, 653 F.3d 325 (3<sup>d</sup> Cir. 2012)

<sup>37</sup> POMS SI 01120.203 2.g and 3

<sup>38</sup> *Id.* at 3(b).

have the option of spending their money until it is gone and then applying for benefits. Also, if they are under the age of 65 they can establish a first party special needs trust. There are circumstances when it is prudent to use a pooled trust:

- the value of the client's otherwise available assets is not significant enough to justify initiating a court proceeding to establish a court-supervised special needs trust;
- a competent beneficiary wishes to self-settle—the pooled SNT sub-account is the only type of Medicaid-exempt trust that the individual can establish for himself or herself; or
- there is no appropriate family member or other individual who can serve as trustee of a special needs trust, but the value of the assets to be placed in the trust are not enough to warrant hiring a corporate trustee; or
- Joining a pooled SNT is usually a less expensive option for the client than establishing a standard special needs trust, especially if there is no family member who will serve as trustee at no cost and thus joining the pooled trust sub-account helps to maximize the amount of assets that will be available to provide for the client's direct needs.

## **II. Third Party Pooled Trust Sub-Accounts**

A third party pooled trust sub-account is funded by a third party—that is, someone other than the beneficiary. Third parties might include parents, grandparents, siblings, and extended family or friends who have no legal obligation to support the beneficiary. Funds placed in the sub-account must be those in which the beneficiary has no ownership interest. In contrast with the first-party sub-account discussed above, federal law does not require a payback provision in connection with a third party pooled trust account.

Third party pooled SNT sub-accounts may be appropriate when a client is planning for a child or a loved one with a disability and

- there is no family member or other individual who can serve as trustee;
- the funds to be contributed by the third-party are insufficient to warrant hiring a professional or corporate trustee; or

- services provided by the pooled trust such as care management and monitoring are desired by the family.

### **III. Transferring Assets into First Party Pooled Special Needs Trusts.**

Individuals age 64 and younger may place assets in a pooled trust sub-account without penalty in every state in the country. Based on an informal survey of lawyers and pooled trust administrators,<sup>39</sup> however, nineteen states allow individuals over the age of 64 to place funds in a pooled trust sub-account without penalty<sup>40</sup> and twenty two states impose a period of ineligibility without considering whether the beneficiary received fair market value when funding the pooled trust sub-account.<sup>41</sup> Five states are in flux – either advocates are currently litigating the imposition of a penalty or are developing fair market value criteria<sup>42</sup> and we currently have no information about two states.<sup>43</sup> Sometimes even county agencies within states have inconsistent policies. For example, Minnesota’s Department of Human Services allows an individual certified as disabled to establish and fund a pooled trust sub-account without assessing a transfer penalty if the person is under the age of 65. If the individual is over age 64, however, some county agents in Minnesota will regard the transfer of assets into a qualified pooled SNT sub-account as an uncompensated transfer of assets per se, and impose a transfer penalty on the beneficiary. In

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<sup>39</sup> Informal survey of 50 states and the District of Columbia, conducted by and on file with Laurie Hanson, Long, Reher & Hanson, P.A., Minneapolis, Minnesota. Last updated August 16, 2015.

<sup>40</sup> (*Id.*) – they are: AL, AK, CA, CT, DE, FL, IA, IN, ID, KS, KY, MA, MD, MT, NY, OH, OK, RI, WV, WI, AND DC (20 states and DC).

<sup>41</sup> (*Id.*) – they are AZ, GA, HI, LA, ME, MS, NC, ND, NH, NJ, NM, NV, OR, PA, SC, SD, TX, UT, VA, VT, WA, WY

<sup>42</sup> (*Id.*) – they are CO, MI, MN, TN (Fair Market Value/Litigation) IL (allows a public guardian to establish a pooled trust sub-account for a ward without penalty but imposes a penalty on all other applicants and recipients. 305 ILCS 5/3-1.2 (Section 3-1.2)(2013). This is a distinction without precedent in federal Medicaid law.)

<sup>43</sup> (*Id.*) - they are AR and NE.

other counties in Minnesota, though, a fair market value analysis of the transfer will be conducted, and the transfer may not result in any penalty period.

	<b>Third Party SNT (pooled or otherwise)</b>	<b>First Party SNT</b>	<b>First Party Pooled SNT</b>
Beneficiary Requirements	A person with a disability of any age	A person with a certified disability under the age of 65 at time of establishment.	A person of any age with a certified disability.
Established by	Master Pooled Trust Agreement established by non-profit association generally as settlor and trustee.  Sub-accounts and standalone trusts may be established by any third party.	Parent, grandparent, court appointed guardian/conservator, or court.	Master Pooled Trust Agreement established by non-profit association generally as settlor and trustee.  Sub-accounts established by <b>Individual</b> , parent, grandparent, court appointed guardian, or court who execute joinder agreements to “join” the master trust.
Funded By	Assets belonging to third parties only.	Assets belonging to the beneficiary or anyone else.	Subaccount can be funded by assets belonging to the beneficiary or anyone else.
Limited Funding?	No limit to amount held by Trust.	No limit to amount held by Trust.	No limit to amount held by Trust in the federal statute.
Transfer penalty?	None except if individual funding trust is applying for MA, then it must be a sole benefit SNT.	No penalty.	No penalty in all states if individual is under age 65; if individual is 65 or older, some states penalize the transfer, others do not.
Distribution upon death of Beneficiary	To persons, charities etc. as designated by the Settlor. <u>No payback to the State is required.</u>	<u>Payback to the State is required.</u> Distribution to state agency to reimburse for all medical assistance (Medicaid) benefits paid during lifetime. Any excess is then distributed according to terms of the trust.	Generally, if the non-profit does not retain all of the assets, <u>there must be a payback to the state</u> and then remaining assets may be distributed as set forth in the joinder agreement.

#### **IV. Comparison of First Party and Third Party Trusts**

#### **V. Conclusion**

First and third party pooled SNTs are a disability planning option often overlooked by practitioners. Establishing a pooled SNT sub-account may be an excellent planning strategy when the client's resources are limited or when no reliable family member or friend is available to serve as the trustee of a first-party special needs trust. Be familiar with your own state's law regarding transfers to pooled trusts by persons over 64 as well as retention issues. Finally, the practitioner should become acquainted with the various pooled SNT options that are available within the state, and cultivate relationships with staff members of these entities so as to be able to advise the client regarding the best pooled trust for the client's particular needs.

## **JULY 2012 AMENDED AND RESTATED LSS POOLED TRUST AGREEMENT**

**THIS JULY 2012 AMENDED AND RESTATED POOLED TRUST AGREEMENT** effective this 28<sup>th</sup> day of August, 2012, amends and restates the LSS Pooled Trust Agreement originally dated December 31, 2007, amended December 11, 2008 and as amended and restated on the 29th day of December, 2009, as amended and restated on the 28<sup>th</sup> day of September, 2010, and as amended and restated on the 11<sup>th</sup> day of April 2012, and shall be referred to as (the "Trust Agreement"), and is by and between LUTHERAN SOCIAL SERVICE OF MINNESOTA, a Minnesota non-profit corporation, as Settlor and as Trustee, hereinafter called the "Settlor" and "Trustee."

### **ARTICLE 1 CREATION OF TRUST**

**1.01 Definitions.** The following capitalized terms shall have the definitions set forth below; other defined terms are defined elsewhere in this Trust Agreement.

- (a) "Assets" will include both principal and income.
- (b) "Beneficiary" will mean a "disabled person" as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)), who qualifies under 42 U.S.C. §1396p, as amended, to be a recipient of benefits and services under this Trust Agreement.
- (c) "Charitable Trust" means the trust created and administered to hold funds transferred as part of the Remainder Shares from Sub-Accounts under this Trust Agreement, as well as other contributions made to the Charitable Trust from time to time.
- (d) "Effective Date" means the date of this Trust Agreement set forth above.
- (e) "Grantor" means a Beneficiary, parent(s), grandparent(s) or legal guardian of a Beneficiary, or any court, using the Beneficiary's funds to establish the Sub-Account.
- (f) "Joinder Agreement" means the individual and separate written agreement between the Trustee and a Grantor by which the Grantor establishes a Sub-Account for the sole benefit of a Beneficiary.
- (g) "Personal Representative" means legal guardian, conservator, or agent acting under a durable power of attorney, Trust Funds Manager, representative payee, custodian, or other legal representative or fiduciary of a Beneficiary.



- (h) "Primary Representative" means the person named in the Joinder Agreement with whom the Funds Manager and Trustee is authorized to communicate the Beneficiary's interest.
- (i) "Public Benefits" or "Government Assistance" may be used conjunctively, interchangeably or separately within this Trust Agreement, and will mean all services benefits, medical care, financial assistance and any other assistance of any kind that may be provided by any local, state or federal agency, to or on behalf of a Beneficiary. Such Public Benefits and Government Assistance benefits include, but are not limited to, the Supplemental Security Income program ("SSI"), the Old Age Survivor and Disability Insurance program ("OASDI"), Social Security Disability Insurance program ("SSDI"), and any Medicaid/Medical Assistance program, together with any additional, similar, or successor public programs.
- (j) "Remainder Share" means that portion of the Sub-Account that is designated according to the Joinder Agreement to be paid over to the Lutheran Social Services, as Trustee, upon termination of the Sub-Account to be held and administered as part of the Charitable Trust established under this Trust Agreement. The Remainder Share must not exceed ten percent (10%) of the account value at the time of the beneficiary's death or termination of the trust, and must only be used for the benefit of disabled individuals who have a beneficiary interest in a Trust Sub-Account.
- (k) "Sub-Account" means a trust account established, held and maintained for the sole benefit of a Beneficiary which includes assets provided by (1) the Beneficiary or the Beneficiary's spouse, (2) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the Beneficiary, or (3) any person, including a court or administrative body, acting at the direction or upon the request of the Beneficiary.
- (l) "Supplemental care" and "supplemental needs" may be used conjunctively, interchangeably or separately within this Trust Agreement and the terms will always mean care that is not otherwise provided, or needs that are not met, by any public or private financial assistance that might be otherwise available to any Beneficiary.
- (m) "Trust" means the LSS Pooled Trust established pursuant to this Agreement.
- (n) "Trustee" means Lutheran Social Service of Minnesota ("LSS"), or its successor organization, or any successor Trustee to LSS as may be provided in this Trust Agreement.

- (o) "Property" means any cash, investments, accounts or other assets of any kind that the Grantor transfers to the Trust to be added to the Sub-Account for the Beneficiary's benefit.
- (p) "Trust Fund Manager" or "Funds Manager" means a bank or trust company that is doing business in the State of Minnesota as per Article 8 and is investing the Property of the Trust for the Trustee and the Trust Beneficiaries.

**1.02 Name and Creation.** This Trust, named the "LSS Pooled Trust," is created and established pursuant to the Omnibus Reconciliation Act of 1993 (OBRA '93), codified at 42 U.S.C. 1396(p) which provides that a trust established with the assets of a disabled individual that meets the criteria of 42 U.S.C. 1396(p)(d)(4)(C) will not be used in determining a disabled person's eligibility for benefits.

**1.03 Funding.** The Settlor previously transferred, assigned and conveyed an initial contribution of One Hundred Dollars (\$100.00) to the Charitable Trust. The Trust estate will consist of this contribution by the Settlor and any additional contributions in cash or property made to the Trust estate at any time by any Grantor in accordance with the provisions of this Trust Agreement.

**1.04 Irrevocability.** This Trust Agreement is irrevocable. Neither the Settlor, Grantor, nor the Beneficiaries will have any right to change, modify, amend or revoke any term or provision hereof, or to terminate this Trust Agreement or any trust created pursuant to this Trust Agreement.

**1.05 Amendments.** Notwithstanding Section 1.04 of this Trust Agreement, this Trust Agreement may be amended by the Trustee from time to time to effectuate its purposes and intent. The Trustee may also amend, but is not required to amend, the Trust Agreement to conform with any rules, regulations or legislative changes that are approved by any federal, state, or local governing body or agency relating to 42 U.S.C. §1396p or related statutes, including state statutes and regulations that are consistent with the provisions of OBRA '93, amended 42 U.S.C. §1396p. Notice of proposed amendments will be provided to the Minnesota Department of Human Services and the Social Security Administration.

## ARTICLE 2 SETTLOR'S PURPOSE AND INTENT

**2.01 Purpose.** This Trust has been created for the purpose of providing supplemental assistance to Beneficiaries. The Trust assets will be managed, invested, and disbursed to promote the comfort and well-being of each Beneficiary by providing for supplemental needs. The Trustee will not make any disbursements that would have the effect of replacing, reducing or substituting any Government Assistance or other Public Benefit otherwise available to a Beneficiary or which would render the Beneficiary ineligible for Government Assistance. It is vitally important that each Beneficiary have eligibility to

participate in such programs in order to maintain a level of dignity and humane care. It is the Settlor's Intent that this Trust be considered a Pooled Trust under 42 U.S.C. §1396p(d)(4)(C)(i), and the Trustee shall manage the trust consistent with this intent.

**2.02 *Settlor's Intent.*** Settlor's intent in creating this Trust is to establish a supplemental trust under the authority of 42 U.S.C. 1396(p) and Minn. Stat. § 256B.056 or Minn. Stat §501B.89, subd. 3, as the case may be, for the benefit of the Beneficiaries of this Trust to facilitate a Beneficiary's eligibility for means-tested Public Benefits. Private or Public Benefits or Government Assistance should not be made unavailable to a Beneficiary or be terminated because of this Trust. Notwithstanding any other provision of this Trust, no assets of the Trust, including but not limited to any Sub-Account or the Charitable Trust may be used to satisfy claims of any Beneficiary's Creditors. The Trust is not intended to, and will not, be used to defeat the rights of pre-existing creditors. The Trust and Sub-Accounts are intended for Beneficiaries who need the support of public programs with limitations on the amount of income and resources a recipient may receive on their own. The provisions of this Trust are designed for a continuing conservation and enhancement of funds to be used by the Trustee to supplement, rather than supplant, financial and service benefits, including but not limited to Government Assistance, which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any local, county, state or federal agency, or through any public or private profit or nonprofit corporations, entities or agencies.

**2.03 *Beneficiaries Have No Interest in Trust Assets.*** A Beneficiary will have no interest in either the income or principal of the Trust. This is not a support trust, and assets held in the Trust and in Sub-Accounts of this Trust are not intended to be the primary means of support for any Beneficiary. The Trust assets and each Sub-Account may only be used for the supplemental needs of a Beneficiary. The Trustee does not owe any obligation of support to any Beneficiary, and no Beneficiary will have any right of entitlement to the principal or income of the Trust or to any Sub-Account, except as the Trustee may direct the Trust Funds Manager to disburse, in the Trustee's sole discretion.

**2.04 *Spendthrift Provisions.*** This Trust is a spendthrift trust. Each Sub-Account created by this Trust Agreement shall be a spendthrift trust to the fullest extent allowed by law. No Beneficiary will have any power to sell, assign, transfer, encumber, or in any other manner to anticipate, or dispose of, his or her interest in the Trust or any Sub-Account. No portion of the Trust or Sub-Account will be subject to garnishment, attachment or other legal process by any Beneficiary's creditors. Under no circumstances may a Beneficiary compel a distribution from a Sub-Account maintained for that Beneficiary or any other part of the Trust estate. Prior to the actual receipt of trust property by any beneficiary, no property (income or principal) distributable under any Sub-Account created by this Trust Agreement shall, voluntarily or involuntarily, be subject to anticipation or assignment by any Beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any Beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder prior to distribution shall be void.

### ARTICLE 3 GRANTOR CONTRIBUTIONS

**3.01 *Grantor's Intent as to Sub-Accounts.*** Each Grantor, in making contributions to the Trust to fund a Sub-Account, intends to supplement, rather than supplant, financial and service benefits which a Beneficiary might become eligible to receive as a result of said Beneficiary's disability from any governmental agency or through any public or private entities or agencies, including Government Assistance. Each Grantor intends for each Sub-Account to establish a supplemental fund pursuant to 42 U.S.C. §1396p and to limit the Trustee's disbursements to, or on behalf of, a Beneficiary to that respective Beneficiary's supplemental care and supplemental needs only. To the extent there is a conflict between the terms of this Trust and the governing law, the law and regulations shall control.

**3.02 *Terms Applicable to Grantor Contributions.*** Subject to the approval of the Trustee and the Trust Funds Manager, the Trust will be effective as to any individual Beneficiary upon contribution of cash or property ("Property") to the Trust and the execution of a Joinder Agreement by a Grantor and the Trustee. Upon delivery of Property that is approved and accepted by the Trust Funds Manager, the Trust will be irrevocable as to such Grantor and Beneficiary; the contributed Property will not be refundable to the Grantor of such Property and the Grantor will have no further interest, rights in, or control over any interest in such contributed Property; and the designation of the respective Beneficiary may not be revoked, amended or altered; provided that a Grantor may designate a remainder beneficiary to receive any remainder of the contributed Property upon the termination of the Beneficiaries Trust Sub-Account subject to payment of a Remainder Share and repayment to the state(s) as required under Section 6.02.

**3.03 *Effect of Grantor's Contribution.*** Subject to the provisions of Article 3 of this Trust Agreement, and subject to the Trustee's sole discretion in making any and all distributions, the effect of a Grantor's contribution to the Trust as it applies to any one Beneficiary is such that the total distributions made on behalf of a Beneficiary will not exceed any amount equal to the total of all contributions made to such Beneficiary's Trust Sub-Account, plus any undistributed income.

**3.04 *Future Transfer of Property.*** Property, or any interest in Property, may be designated for future transfer by a Grantor as a contribution to the Trust. Such designated contributions may be revoked by the Grantor at any time during the Grantor's lifetime and continued capacity, provided the Grantor gives prior written notice to the Trust Funds Manager and provided such contributions have not actually been made to the Trust prior to the revocation. Such written notice will be by certified mail, return receipt requested.



## ARTICLE 4 ADMINISTRATION OF SUB-ACCOUNTS

**4.01 Sub-Accounts.** Trustee will maintain a separate Sub-Account for each Beneficiary. The Trust Funds Manager will pool the Sub-Accounts for purposes of investment and management of funds. Trustee will maintain records for each Sub-Account in the name of, and showing the contributions, expenditures and costs for, each Beneficiary.

**4.02 Fees and Expenses.** Trustee will charge the fees and expenses associated with each Sub-Account as set forth in the Joinder Agreement.

**4.03 Taxes.** The Joinder Agreement will establish whether the Sub-Account will be taxed as a grantor trust or a trust account. The Trustee or its agents will cause to be prepared on behalf of each Sub-Account that is not a grantor trust the appropriate federal and state income tax returns, the costs and expenses of which will be charged to each Sub-Account in accordance with the actual time and expense incurred for the preparation of such tax returns for that Sub-Account. Any Sub-Account which is not a grantor trust will file its own federal and state income tax returns and any taxes assessed against the income of such Sub-Account will be paid from and out of the Sub-Account assets and Property. If the Sub-Account is treated as a grantor trust, then the income tax returns so prepared for the Sub-Account will be informational returns only. Such informational return will report to the federal and state authorities all allocable income, gains, or losses which are required to be reported on the Grantor's federal income tax return. The Beneficiary and the Primary Representative will be responsible for completing, signing and mailing the annual income tax returns for the Beneficiary which are applicable to any income of the Sub-Account passed through and taxable directly to a Beneficiary under the rules and regulations of the Internal Revenue Code.

**4.04 Accountings to Grantor and Beneficiary.** The Trustee has designated the Trust Funds Manager to render accountings of each Sub-Account on an annual or more frequent basis (but not more frequent than monthly), as may be required under Minnesota law including, but not necessarily limited to accountings to any required governmental agency, or upon the direction of a court of competent jurisdiction to each Grantor during the Grantor's lifetime and thereafter to each Beneficiary (or to the Personal Representative of a Beneficiary, if one is acting). The accountings will show all assets, receipts, disbursements and distributions to or from such Sub-Account during the reporting period.

**4.05 Records Available for Inspection.** The records of a Beneficiary's Sub-Account will be open and available for inspection by the Beneficiary or the Personal Representative of a Beneficiary, if one is acting, or both, at all reasonable business hours. The Trustee is not required to furnish Trust records, Sub-Account records, or documentation to any individual, corporation, or other entity who (a) is not a Beneficiary, (b) is not the legal representative of the Beneficiary, or (c) does not have the express

written authorization of the Beneficiary to receive such information. The Trustee's decision will be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation.

## **ARTICLE 5 DISTRIBUTIONS**

**5.01 *Discretionary Distributions by Trustee.*** The Trustee will apply to or expend for the benefit of a Beneficiary such sum or sums from the income or principal of the Trust as the Trustee will determine, in the Trustee's sole and absolute discretion, to be necessary or advisable to provide for the supplemental care or supplemental needs of the Beneficiary. The Trustee will possess and exercise the sole discretion and authority to allocate all distributions between income and principal. Any income not distributed from a Sub-Account will be added to the principal of that Sub-Account. The Trustee is under no obligation to direct the expenditure of income or principal and the Trustee will have the discretion to refuse to make any such distributions.

**5.02 *Distributions Limited.*** The Trustee will not make distributions or disbursements:

- (a) if the effect of such distributions and disbursements will have the effect of replacing, reducing or substituting for Government Assistance or would render the Beneficiary ineligible for otherwise available means-tested publicly funded benefits;
- (b) if such distributions and disbursements would be in excess of the resource and income limitations of any Public Benefit program to which the Beneficiary is entitled;
- (c) if such distribution or disbursement would provide or pay for any care or service that is a "Medical Assistance covered service" in any state where the Beneficiary resides, unless such Medical Assistance benefits have been terminated or the application for such benefits denied and such termination or denial is no longer the subject of review or contest;
- (d) for anything other than necessary services or for services which will enhance the quality of life for the Beneficiary; or
- (e) to pay or to reimburse any amounts to the federal government, State of Minnesota, any other state, or any other governmental unit or non-governmental agency for the care, support, maintenance and education of any Beneficiary, other than as provided in paragraph 6.02 of this Trust Agreement after the death of the Beneficiary.

**5.03 *Non-Exclusive List of Permissible Distributions.*** The Trustee will have the discretion to make distributions for anything that is a supplemental or special need of the

Beneficiary that is not otherwise provided for the Beneficiary, including but not limited to the following:

- (a) medical, dental and diagnostic work and treatment for which there are no available private or public funds;
- (b) medical procedures that are, in the Trustee's discretion, advisable even though such procedures may not be medically necessary or life saving and not covered by public or other private funds;
- (c) supplemental nursing care, supplemental occupational or supplemental physical therapy that is not covered by public or other private funds;
- (d) care appropriate for a Beneficiary that Government Assistance programs may not or do not otherwise provide;
- (e) expenditures for travel, companionship by a personal care attendant (PCA) and other expenditures that the Trustee, in the Trustee's discretion, deems advisable to improve the Beneficiary's quality of life; or
- (f) an item of similar nature contained in the above.

**5.04 Payee of Disbursements.** The Trust Funds Manager, at the Trustee's direction and as determined by the Trustee in the Trustee's discretion, may make any payment from a Sub-Account in any form allowed by law, to a person deemed suitable by the Trustee (as determined by the Trustee in the Trustee's discretion), or by direct payment of a Beneficiary's expenses.

## **ARTICLE 6**

### **TERMINATION OF SUB-ACCOUNTS ONLY UPON DEATH**

**6.01 Sub-Account Terminations.** No Trust Sub-Accounts may be terminated during the life of the Beneficiary of a Sub-Account.

**6.02 Distribution upon Death of Beneficiary.** Upon the death of a Beneficiary, any amounts that remain in that Beneficiary's Sub-Account (the "Remaining Assets") will be administered so as to conform with all the requirements of 42 U.S.C. §1396p and/or related laws and regulations, including state statutes and regulations that are consistent with the provisions of OBRA '93, amending 42 U.S.C. §1396p and pertaining to reimbursements to States for Government Assistance provided on behalf of such Beneficiary. Such Remaining Assets, after payment of reasonable expenses and administration fees, will be distributed as follows:

- (a) A Remainder Share of 10% of the Remaining Assets in the Sub-Account, will be transferred by the Trustee to the Charitable Trust as established under paragraph 6.03 of this Trust Agreement and pursuant to Minnesota

Statute § 256B.056, subd. 3b(d) allowing said distribution to the Charitable Trust.

- (b) Any Remaining Assets in a Sub-Account will be subject to claims for reimbursements from the State of Minnesota and any other state which provided Medical Assistance benefits to the Beneficiary. In the event the Remaining Assets are insufficient to pay all claims, then each state's claim will be pro-rated based on each state's proportionate share of the total Medical Assistance benefits paid by all of the states on the Beneficiary's behalf.
- (c) The Trustee is also authorized pursuant to the Social Security Administration POMS SI 01120.203(B)(3)(a) and any applicable Federal and state laws to pay any taxes due from the Sub-Trust to the State(s) or Federal government because of the death of the Beneficiary prior to reimbursement to the State of Minnesota or any other state as provided in paragraph 6.02(b) of this Trust Agreement as long as it does not violate the provisions of 42 U.S.C. § 1396(p)(d)(4)(c). Specifically, Taxes due from the estate of the Beneficiary, (other than those arising from inclusion of the Sub-Account in the estate) and inheritance taxes due for residual beneficiaries are not permitted prior to reimbursement of the state for medical assistance.
- (d) The remaining assets, if any after payment under the foregoing paragraphs, will be distributed as directed by the Grantor in the Joinder Agreement, or if the Joinder Agreement is silent, such remaining assets will be transferred by the Trustee to the Charitable Trust as established under paragraph 6.03 of this Trust Agreement.

**6.03 Charitable Trust.** The Charitable Trust will be held and administered, organized and operated as follows:

- (a) Exclusively in such charitable activities as may qualify it for exemption from federal income tax under Section 501(c)(3) of the Code, with its purpose being to improve the lives of disabled Beneficiaries when their existing Sub-Accounts are insufficient to meet their special and supplemental needs providing relief of the poor, the distressed, or the underprivileged.
- (b) Notwithstanding any other provisions of this Trust, the Charitable Trust shall not carry on any other activities not permitted to be carried on (a) by a Trust exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law); (b) by a trust, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States



Internal Revenue Law), or (c) by a Trust that meets the criteria of 42 U.S.C. 1396(p)(d)(4)(C) such that it will not be used in determining a disabled person's eligibility for benefits.

- (c) The Charitable Trust assets shall be used solely in furtherance of the purposes set forth above and no part of the Charitable Trust assets shall inure or be payable to or for the benefit of any private individual, except to make payments in furtherance of the purposes of the Charitable Trust.
- (d) The Charitable Trust Assets shall not be used for the carrying on of propaganda, or otherwise attempting to influence legislation. No part of the activities of the Charitable Trust shall be the participation in, or intervention in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.
- (e) Upon termination of the Charitable Trust, any assets in the Charitable Trust will be paid to Lutheran Social Service of Minnesota; provided however, that if Lutheran Social Service has ceased to exist, has been dissolved, or is no longer exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law); then the Charitable Trust will be applied and paid over to such other nonprofit organization(s) as the Trustee will determine, in the Trustee's sole discretion, to serve the interests and needs of disabled persons, as defined in §1614(a)(3) of the Social Security Act (42 U.S.C. §1382c(a)(3)).

## ARTICLE 7 TRUSTEE

**7.01 Trustee.** In addition to its role as Settlor of this Trust, Lutheran Social Service of Minnesota, or its successor charitable organization, will be the Trustee of the Trust. The Trustee, Lutheran Social Service of Minnesota and any successor trustee, will manage the Trust, as required by 42 U.S.C. § 1396(p)(d)(4)(C)(i), and will perform such acts and duties as set forth in the Joinder Agreement, and otherwise as the Trustee and the Trust Funds Manager will mutually agree. The Trustee specifically has full authority and power to prosecute, defend, contest or otherwise litigate legal actions or other proceedings for the protection or benefit of this Trust and to pay compromise, release, adjust, or submit to arbitration any debt, claim or controversy, and to insure the Trust against any risk, and to insure the Trust Funds Manager and the Trustee against liability with respect to third persons.

**7.02 Appointment of Successor Trustee.** Lutheran Social Service may nominate another nonprofit corporation that meets the requirements of Internal Revenue Code 501(c)(3) as a successor Trustee of the Trust. Lutheran Social Service of Minnesota, and any duly designated successor Trustee, will request a court of competent jurisdiction to

designate an appropriate successor Trustee, and will provide notice of proceedings for that purpose to the Minnesota Attorney General, the United States Attorney for the State of Minnesota, and the Minnesota Department of Human Services. In the event that Lutheran Social Service of Minnesota nominates, and a court designates a successor Trustee, then that successor will succeed to all the rights, powers, and privileges accorded Lutheran Social Service of Minnesota as Trustee of the Trust, including the right to name a successor Trustee.

**7.03 Trustee Powers.** The Trustee shall have the power, and the authority, to do any act or any thing reasonably necessary or advisable for the proper administration and distribution of the Trust and to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the Trustee's duties as such, and to do such other acts or things concerning the Trust as may be advisable. Further, except as may be otherwise expressly directed or required by this Trust Agreement, and in extension, but not in limitation, of the powers provided by applicable law (including but not limited to the powers stated in Minnesota Statutes §501B.81, or corresponding provisions of successor law, which are incorporated in this Trust Agreement by this reference), the Trustee shall have full power and authority as to any properties, at any time comprising a part of any trust hereunder and, without the necessity of notice to, or license or approval of, any court or person during the term of such trust and, for the purposes of administration and distribution of such trust, after its termination, in the Trustee's continuing sole discretion, to perform the following:

(a) Asset Retention and Disposal. The Trustee may retain cash or other assets for so long as it deems advisable. The Trustee may also sell, exchange, mortgage, lease, or otherwise dispose of any assets of the Trust estate for terms ending within, or extending beyond, the term of the trust.

(b) Permissible Investments. Except as provided in paragraph 8.04 of this Trust Agreement, the Trustee may invest, and reinvest in, or exchange assets for, any securities and properties it deems advisable, and as enumerated in the Minnesota Prudent Investor Rule of Minnesota Statutes §501B.151, or corresponding provisions of any successor law, which are incorporated into this Trust Agreement by reference.

(c) Rights of Ownership. The Trustee shall have the right to: (i) to collect, receive, and receipt for any principal or income; (ii) to enforce, defend against, compromise, or settle any claim by, or against, the Trust; (iii) to vote, issue proxies to vote, join in, or oppose any plans for reorganization; and (iv) to exercise any other rights incident to the ownership of any stocks, bonds, or other properties of the Trust estate.

(d) Allocations of Receipts and Disbursements. Except as otherwise provided in this Trust Agreement, the Trustees shall apply the rules stated in the Minnesota Revised Uniform Principal and Income Act in determining whether receipts shall be income or principal and whether disbursements shall be paid out of income or principal.

(e) Division, Distribution, or Allocation. As permitted in Minnesota Statutes §501B.63, the Trustee may use "income" as defined therein to pay the expenses of administration, including the payment of any taxes.

(f) Employment and Delegation. The Trustee may employ such trust fund managers, accountants, attorneys, bankers, brokers, custodians, investment counsel, and other agents as determined by the Trustee to be necessary. The Trustee may delegate to them such of the rights, powers, and duties herein conferred upon the Trustee as the Trustee deems proper. The Trustee shall act in these matters without liability for any mistake or default of any such person selected or retained with reasonable care and prudence.

**7.04 *Trustee May Seek Advice.*** The Trustee may, but is not required to, seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, the Grantor, Primary Representative, any guardian or guardians of a Beneficiary, and any federal, state, or local agencies that are established to assist persons with disabilities. Associated costs, if any, will be a proper expenses of the Trust and may be apportioned on a pro rata basis against all Sub-Accounts or may be charged only against the Sub-Account about which the Trustee seeks such advice or assistance. The Trustee may use available resources to assist in identifying programs that may be of legal, social, financial, developmental or other assistance to Beneficiaries.

**7.05 *The Trustee Not Liable for Failure to Identify Resources.*** The Trustee will identify private or governmental programs that may be of legal, social, financial, developmental, or other assistance to any Beneficiary. In no event, however, will the Trustee be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary or to create programs when such programs do not exist.

**7.06 *Trustee to Obtain and Maintain Eligibility.*** The Trustee has full authority and power to take any and all steps necessary to obtain and maintain eligibility of any Beneficiary for any and all Public Benefits and entitlement programs, which programs may include but are not limited to Social Security, Supplemental Security Income, Medicare, Medical Assistance, services provided or authorized or licensed by the Minnesota Department of Human Services, other State services and other community services. In no event, however, will the Trustee be liable to any Beneficiary for failure to obtain or maintain the eligibility of such Beneficiary for any such programs.

**7.07 *Trustee Entitled to Reasonable Compensation.*** The Trustee, including its agents, will be entitled to reasonable compensation and to reimbursement of costs and expenses properly incurred in the management and/or administration of the Trust. All such compensation and reimbursements will be made in accord with a schedule of fees and charges as specified in each Beneficiary's Joinder Agreement.

**7.08 *No Bond.*** Neither the Trustee, nor successor Trustee, will be required to pay a bond for the faithful performance of any duties. If a bond is required by law or by a court

of competent jurisdiction, no surety will be required on such bond, and such bond will be a proper expense of the Trust.

**7.09 Indemnification.** Except as is otherwise provided in this paragraph, the Trustee and any successor Trustee and their respective agents, employees, officers, and directors as well as their heirs, successors, assigns, and personal representatives of such parties will be and hereby are indemnified by the Trust and the Trust assets against all claims, demands, liabilities, fines, or penalties and against all costs and expenses (including attorney's fees and disbursements and the cost of reasonable settlements) and expressly including claims for the negligence of the indemnified parties and their agents, employees, officers and directors, imposed upon, asserted against or reasonably incurred thereby in connection with or arising out of any claim, demand, action, suit, or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee, whether or not he, she, or it will have continued to serve as such at the time of incurring such claims, demands, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. This right of indemnification will not be exclusive of, or prejudicial to, other rights to which the Trustee and any successor Trustee, and each of their respective agents or employees may be entitled as a matter of law or otherwise. The Trustee and any successor Trustee and their respective agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

## **ARTICLE 8 TRUST FUNDS MANAGER**

**8.01 Trust Funds Manager's Reliance on Trustee.** The Trust Funds Manager may rely on the Trustee's directions.

**8.02 Resignation or Removal.** The Trust Funds Manager may be removed without cause by the Trustee at any time upon giving ninety (90) days advance notice to the Trust Funds Manager. The Trust Funds Manager may resign for any reason, at any time, provided that the Trust Funds Manager gives ninety (90) days advance notice to the Trustee of its intention to resign. No court approval is required for the Trust Funds Manager's removal or resignation. If both the Trustee and the Trust Funds Manager agree, the notice requirement may be waived or reduced.

**8.03 Successor Trust Funds Manager.** If the Trust Funds Manager resigns or is removed, the Trustee will select and appoint a Successor Trust Funds Manager. The Successor Trust Funds Manager must be a bank or trust company doing business in the State of Minnesota. If the Trustee does not appoint a Successor Trust Funds Manager within sixty (60) days after removing a Trust Funds Manager or within sixty (60) days after receiving notice of the Trust Funds Manager's intent to resign, a successor Trust Funds Manager will be selected and appointed by a court of competent jurisdiction in



Minnesota. Any successor Trust Funds Manager will act as such without any liability for the acts or omissions of any predecessor Trust Funds Manager. Any corporation that will succeed (by purchase, merger, consolidation or otherwise) to all or the greater part of the assets of any corporate Trust Funds Manager will succeed to all the rights, duties and powers of such corporate Trust Funds Manager as Trust Funds Manager of this Trust.

**8.04 *Trust Funds Manager Powers.*** The Trust Funds Manager will have full power and authority to perform the Trust Funds Manager's duties as such and to receive, hold, manage, and control all the income arising from such Trust and the corpus thereof and to do such other acts or things concerning the Trust as may be advisable; the Trust Funds Manager's power and authority will include, but not be limited to, all powers conferred upon fiduciaries by Minnesota Statute § 48A.07, as amended from time to time, or the provisions of any trust laws of the state of Minnesota, and the powers conferred upon the Trust Funds Manager by applicable law are hereby incorporated into this Agreement by reference; provided, however, that the Trust Funds Manager is specifically prohibited from making direct investments of the Trust assets in real estate or oil, gas and other mineral interests, leases, overriding royalties, production payments, and other oil, gas and mineral properties. The Trust Funds Manager may invest the assets of the Trust in its common trust funds. If the Trust Funds Manager accepts non-productive property contributed by a Grantor, the Trust Funds Manager is authorized to retain such non-productive property as an asset of the Trust.

**8.05 *Limits of Trust Funds Manager's Authority.*** No authority described in this Trust or available to the Trustee or Trust Funds Manager pursuant to applicable law will be construed to enable the Trustee or Trust Funds Manager to purchase, exchange or otherwise deal with or dispose of the assets of any Sub-Account for less than an adequate or full consideration in money or money's worth, or to enable any person to borrow the assets of any Sub-Account, directly or indirectly, without adequate interest or security.

**8.06 *No Bond Required.*** The Trust Funds Manager will not be required to furnish any bond for the faithful performance of the Trust Funds Manager's duties. If bond is required by any law or court of competent jurisdiction, no surety will be required on such bond.

**8.07 *No Court Supervision of Trust.*** The Trust established under this instrument will be administered free from the active supervision of any court. Any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trust Funds Manager or by the Trustee in any court having jurisdiction of these matters relating to the construction and administration of the Trust.

**8.08 *Trust Funds Manager's Compensation.*** The Trust Funds Manager will be entitled to reasonable compensation, commensurate with the services actually performed, and as from time to time agreed to by the Trustee.

**8.09 *Trust's Defense Costs and Expenses.*** Costs and expenses of defending the Trust or any Sub-Account, including attorneys' fees incurred prior to, during or after trial, and on appeal, against any claim, demand, legal or equitable action, suit, or proceeding may,

in the sole discretion of the Trustee, either (a) be charged on a pro rata basis to all Trust Sub-Accounts, or (b) be charged only against the Trust Sub-Accounts of the affected Beneficiaries.

**8.10 Indemnification.** As evidenced by each Joinder Agreement executed by a Grantor, such Grantor acknowledges that the Trust Funds Manager is a financial institution and is not licensed or skilled in the field of social services. The Trust Funds Manager may conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries. Except as is otherwise provided in this paragraph 8.10, the Trust Funds Manager, its agents and employees, as well as its agents, employees, heirs and legal and personal representatives will not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Trust Funds Manager so long as the Funds Manager acts in good faith. The Trust Funds Manager, its agents and employees (and their heirs or personal representatives) will not be indemnified with respect to matters as to which he, she, or it will be finally determined to have been guilty of willful misconduct, gross negligence in the performance of any duty as such, or violation of any fiduciary obligation or duty to a Grantor or Beneficiary, by a court of competent jurisdiction.

## **ARTICLE 9 GENERAL GOVERNING PROVISIONS**

**9.01 Captions and Headings.** The captions and headings of each paragraph of this Trust Agreement are for purposes of convenience only, and it is the Settlor's intent that no such caption will be considered in the construction of any provision of this Trust Agreement, or in any of the Exhibits, or in any Joinder Agreement executed by a Grantor and the Trustee.

**9.02 Governing law.** This Trust Agreement will be construed and regulated according to the laws and regulations of the State of Minnesota and the United States.

**9.03 Complete Authority.** This Trust Agreement, the attached Exhibits, and any Joinder Agreement approved by the Trustee will determine all rights, authority and duties of the parties, as well as designate the fiduciaries and Beneficiary under this Trust Agreement.

**9.04 Severability.** If any part or portion of this Trust Agreement is adjudicated by a court of competent jurisdiction to be unlawful, or is made invalid by legislative changes and rulings, this Trust Agreement will remain in effect, and in force, as if that part, or portion, were no longer a part of this Trust Agreement.



**JOINDER AGREEMENT**  
**FOR LUTHERAN SOCIAL SERVICE OF MINNESOTA**  
**SPECIAL NEEDS POOLED TRUST**

***Instructions for Completing the Joinder Agreement***

Please read this Joinder Agreement and the related Lutheran Social Service of Minnesota (“LSS”) Special Needs Pooled Trust Agreement (“Pooled Trust”) in full and have it reviewed by your legal counsel before execution.

- 1.** This is a non-revocable agreement. Once established, you cannot ask for a return of your funds. The funds contributed to the Special Needs Pooled Trust must be funds that are those of the Beneficiary and not of a third party.
- 2.** Please note that the Pooled Trust cannot disburse funds for basic needs (shelter or food). The funds are budgeted for supplemental items which are appropriate to the Sub-Account Beneficiaries’ needs. Under current law, the Trustee can approve a disbursement for a pre-paid burial plan but cannot approve disbursements after the Beneficiary’s death for a funeral.
- 3.** Federal law requires that all unspent amounts in a Beneficiary funded Sub-Account at the Beneficiary’s death must be used to reimburse the State or States (if the beneficiary has received aid from more than one State) for medical services received. The LSS Remainder Share of 10% of the Pooled Trust for other indigent Beneficiaries is deducted before the State(s) reimbursements.
- 4.** The “Beneficiary” is the individual whose funds are contributed to the Special Needs Pooled Trust Sub-Account and who is the sole individual that may benefit from the Sub-Account created for his or her lifetime benefit. The Beneficiary of the Trust must meet the definition of having a disability to join the Trust. A Beneficiary shall provide written evidence to the Trustee of disability by providing confirmation of the Social Security Administration or the State Medical Review Team’s (SMRT) determination of disability.
- 5.** The “Grantor” of the Sub-Account must be the Beneficiary, the parent of the Beneficiary, the grandparent of the Beneficiary or a Legal Representative who signs the Joinder Agreement on behalf of the Beneficiary. Alternatively, the Court may establish the Sub-Account on behalf of the Beneficiary. A Grantor enters into the Joinder Agreement using the Beneficiary’s own funds to establish the Sub-Account for the Beneficiary’s sole benefit.
- 6.** The “Legal Representative” is the person who may request disbursements from the Sub-Account for the benefit of the Beneficiary and will receive copies of the financial reports and other fee information from the Trustee. If the Legal Representative is someone other than the Grantor, please provide the information for the Legal Representative on Schedule B along with a copy of the document or documents that appoint the Legal Representative in his or her capacity (i.e. Copy of Power of Attorney, Guardianship or Conservatorship court appointment



documentation). Please provide an alternate Legal Representative, if there is one. This will ensure that Lutheran Social Service has someone to contact in the event the primary Legal Representative is unavailable.

7. Concerning distribution upon the death of the Beneficiary, please be very clear who the Grantor wishes to receive the funds remaining after satisfying the State's claim for Medical Assistance/Medicaid reimbursement and LSS' Remainder Share or whether the Grantor wants any remainder to be held in the Pooled Trust for the benefit of other disabled individuals with sub-accounts in the Pooled Trust. If the Grantor designates "heirs at law" as the beneficiary, please attach contact information for the person who would be best able to locate heirs. If the Trustee is unable to locate heirs within a reasonable amount of time, the funds will be used for the benefit of other indigent disabled beneficiaries, as if no beneficiary had been named.

8. On the last page of the Joinder Agreement is the checklist for self-funded Sub-Accounts. Please review this checklist carefully. LSS strongly recommends that an attorney be consulted who is familiar with trust and benefits issues before signing the bottom of the checklist. If the Grantor chooses not to review the checklist with an attorney, please make note on the checklist that you are waiving that right and then sign and date the checklist.

9. Funding Instructions: To fund the Sub-Account, please make the check payable to: "Lutheran Social Service of Minnesota, fbo (for the benefit of) [Beneficiary's name]" or alternatively LSS can provide wire instructions at the time the Joinder Agreement is signed. Please send checks and the completed Joinder Agreement, to:

Attn: LSS Trust Administrator  
Lutheran Social Service of Minnesota  
1605 Eustis Street, Suite 310  
St. Paul, MN 55108

10. Please note that LSS has the right to enter into a Joinder Agreement and the Joinder Agreement is not effective until and unless it is executed by an authorized representative of LSS.

11. If you have any questions, please contact the LSS Trust Administrator, (651) 310-9400.

12. The trusts created pursuant to the Trust Agreement and the Joinder Agreement are subject to the requirements of state and federal law and may be amended as deemed necessary or appropriate by LSS to remain in compliance with applicable legal requirements for pooled trusts governed by 42 U.S.C. 1396(p) and Minn. Stat. § 256B.056 and Minn. Stat §501B.89.

# JOINDER AGREEMENT FOR LSS SPECIAL NEEDS POOLED TRUST

**This is a legal document. You are encouraged to seek independent, professional advice before signing.**

This Joinder Agreement ("Joinder Agreement") is by and between Lutheran Social Service of Minnesota ("LSS" and "Trustee") and [name] \_\_\_\_\_, a Minnesota resident ("Grantor"), for the benefit of [name] \_\_\_\_\_ ("Beneficiary") for the purpose of enrolling in and adopting the LSS Special Needs Pooled Trust Agreement ("Pooled Trust") which is incorporated herein by reference.

**1. Adoption of Special Needs Pooled Trust Agreement.** The Grantor, hereby agrees to transfer the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the benefit of the Beneficiary into the Pooled Trust sub-account number \_\_\_\_\_ ("Sub-Account") to be administered by the Trustee in accordance with the terms and conditions contained in the Pooled Trust Agreement.

**2. Distributions of the Remainder upon the Beneficiary's death.** All unspent amounts in the Beneficiary's Sub-Account at the Beneficiary's death (after payment of the LSS Remainder Share) must be used to reimburse the state or states for medical services received ("State Reimbursement Claims"). If there are funds remaining in the Beneficiary's Sub-Account after the Trust's Remainder Share has been satisfied and after the State claims have been satisfied, such amounts are available to be distributed to heirs or descendants of the Grantor as provided under Section 3 of this Joinder Agreement.

**3. Pooled Trust's Remainder Share.** Federal and State regulations allow the Pooled Trust to retain a remainder share upon the death of a beneficiary. The LSS Pooled Trust shall retain a remainder share of 10% of the value of a Sub-Account as of the date of termination and prior to payment of any amounts to the State(s).

The Trust's Remainder share shall be used in the discretion of the Trustee for the direct or indirect benefit of other Beneficiaries of the Trust.

If funds remain after distributions of the Trustee's Remainder Share, payment of allowable expenses and taxes, payments to the State of Minnesota and/or any other state(s) for State Reimbursement Claims, remaining funds in the Sub-Account, if any, will be distributed pursuant to Schedule B of this Joinder Agreement.

**4. No Early Termination of Sub-Account.** The Trust provides that a Sub-Account may not be terminated prior to the Beneficiary's death.

**5. *Locating Descendants or Heirs of Beneficiaries.*** Grantor acknowledges that the Pooled Trust may incur additional costs if the Recipients listed in Schedule B of this Joinder Agreement cannot be located easily. Grantor acknowledges and agrees that the Trustee may recover its reasonable costs and expenses associated with locating such Recipients.

**6. *Fees.*** Grantor agrees to pay the fees in accordance with Schedule A that is attached hereto and that may be amended from time to time in the sole discretion of the Trustee. If fees are not paid in advance by Grantor, the Trust Funds Manager and Trustee are authorized to charge such fees to a Beneficiary's Sub-Account. The Trustee shall give notice of any amendment to Schedule A at least thirty (30) days prior to the effective date of the amendment by giving written notice to the Grantor or Legal Representative. Please note that fees are not refundable.

**7. *Informational Forms.*** Schedule B contains the relevant information regarding the Beneficiary and eligibility for participation in the Pooled Trust and Grantor has completed this Schedule B accurately and truthfully with the intention that LSS will rely on the information provided in establishing the Sub-Account and managing the funds deposited into the Sub-Account.

**8. *Management of Sub-Account.*** The Trust Sub-Account will be managed and administered for the benefit of the Beneficiary. Pending the preparation of the Beneficiary's case assessment and supplemental needs plan, disbursements for any non-support items for the benefit of the Beneficiary may be made when, in the discretion of the Trustee, such supplemental needs are not being provided by any public agency, or are not otherwise being provided by any other source of income available to the Beneficiary. The Grantor recognizes that all disbursements are discretionary, as directed by the Trustee. With this in mind, the Grantor may express Grantor's desires as to how funds in the Sub-Account might be used in the forms attached as Schedule B.

**9. *LSS Contact Information.*** Contact information for Pooled Trust and the Trust Funds Manager are included on Schedule C, and may be amended from time to time.

**10. *Amendment.*** The provisions of this Joinder Agreement may be amended as the Grantor and the Trustee may jointly agree, so long as any such amendment is consistent with the Pooled Trust Agreement and the then-applicable law. Provided, however, that after a Sub-Account is funded, the Grantor may not revoke a transfer pursuant to this Joinder Agreement.

**11. *Taxes.*** The Grantor acknowledges that the Trustee has made no representation to the Grantor that contributions to the Trust are deductible as charitable gifts, or otherwise. Grantor acknowledges that the Trustee has made no representations as to the gift or tax consequences of directing funds to the Trust and has recommended that the Grantor seek independent legal and tax advice. Sub-Account income, whether paid in cash or distributed in other property, may be taxable to the Beneficiary subject to applicable exemptions and deductions. Professional tax advice is recommended. Sub-Account income may be taxable to the Trust, and when this is the case, such taxes shall be payable from the applicable Sub-Accounts. Upon the Beneficiary's death, taxes due from the trust to the State(s) or federal government because of the death of the beneficiary and inclusion of the trust in the estate may be paid (except inheritance taxes) prior to reimbursement of the State(s) for medical assistance.

**12. *Additional Sub-Accounts.*** If the Grantor intends to enroll more than one Beneficiary under a Trust Sub-Account, an additional agreement is required between the Grantor and the Trustee regarding such matters as the enrollment fee or consultation fees for funded enrollments, Special Assessments, and other fees (as described on Schedule A).

**13. *Federal and State Law Control.*** This Trust managed by the Trustee is a pooled trust, governed by the laws of Minnesota (Minn. Stat. § 256B.056 and/or Minn. Stat §501B.89) in conformity with the provisions of 42 U.S.C. § 1396p, amended August 10, 1993, by the Omnibus Budget Reconciliation Act of 1993. To the extent there is a conflict between the terms of the Trust or this Joinder Agreement and the governing law, the law and regulations shall control. The Trustee may amend the Pooled Trust and/or this Joinder Agreement from time to time in its discretion to meet the requirements of applicable law.

**14. *Acknowledgments By Grantor.***

Each Grantor acknowledges:

- (i) Unless waived below, that he or she has been advised to have the Pooled Trust Agreement and this Joinder Agreement reviewed by his or her own attorney prior to the execution of this Joinder Agreement;
- (ii) that the Trust Funds Manager is a financial institution and is not licensed or skilled in the field of social services;
- (iii) that the Trust Funds Manager may conclusively rely upon the Trustee to identify programs that may be of social, financial, developmental or other assistance to Beneficiaries;
- (iv) that the Trust Funds Manager, its agents and employees, as well as their agents' and employees' heirs and legal personal representatives, shall not in any event be liable to any Grantor or Beneficiary or any other party for its acts as Trust Funds Manager so long as the Trust Funds Manager acts reasonably and in good faith;
- (v) the uncertainty and changing nature of the guidelines, laws, and regulations pertaining to governmental benefits and each Grantor agrees that the Trustee will not in any event be liable to any Grantor or Beneficiary or any other party for any loss of benefits or any other liability as long as the Trustee acts reasonably in good faith;
- (vi) that upon execution of the Joinder Agreement by Grantor and the Trustee, and the funding of a Sub-Account for a Beneficiary, that this Trust, as to Grantor and Beneficiary, is irrevocable. Each Grantor acknowledges that after the funding of a Sub-Account, the Grantor shall not have further interest in and does thereby relinquish and release all rights in, control over, and all incidents of interest of any kind or nature in and to the contributed assets and all income thereon;
- (vii) that he or she has not been provided, nor is he or she relying upon, any representation of or any legal advice by LSS in deciding to execute this Joinder Agreement;

- (viii) that he or she is entering into this Joinder Agreement voluntarily, as his or her own free act and deed;
- (ix) that if he or she has not had the LSS Pooled Trust Agreement or the Joinder Agreement reviewed by his or her own attorney, that he or she voluntarily waives and relinquishes such right;
- (x) that if he or she has not had the LSS Pooled Trust Agreement or the Joinder Agreement reviewed by his or her own CPA, that he or she voluntarily waives and relinquishes such right;
- (xi) that he or she has been provided a true and correct copy of the LSS Pooled Trust Agreement and this Joinder Agreement prior to the signing of this Joinder Agreement;
- (xii) that he or she has reviewed and understands to his or her full satisfaction the legal, economic and tax effects of these instruments;
- (xiii) that the LSS Pooled Trust or its designee may be a Remainder Beneficiary of a portion of the Sub-Account established hereby upon the death of the Beneficiary as provided in this Joinder Agreement; and
- (xiv) that Trustee shall file an annual accounting with the Minnesota Department of Human Services for any Sub-Account where the Beneficiary is receiving Medicaid benefits or as otherwise required by law.

**15. *Federal Taxes; Indemnification by Grantor.*** Each Grantor acknowledges that a trust Sub-Account may be treated as a grantor trust for federal income tax purposes as provided under IRC § 671 et. seq. and the income tax regulations thereunder. In such event, all allocable income, gains or losses shall be reported on the Grantor's federal income tax return and taxable to the Grantor. Each Grantor acknowledges that the Grantor, the primary representative, or the Beneficiary shall be responsible for mailing their own federal and/or state income tax returns to report the income of the Trust which is taxable to them as their interest may appear. Each Grantor hereby indemnifies the Trustee and the Trust Funds Manager from any and all claims for income tax liabilities of his or her Sub-Account which is treated as a grantor trust for federal income tax purposes.

**16. *Accounting Period.*** The accounting period for the Sub-Account shall be the last day of \_\_\_\_\_ of each year of the Sub-Trust.

IN WITNESS WHEREOF, the undersigned Grantor(s) have reviewed and signed this Joinder Agreement, understand it, and agree to be bound by its terms, and the Trustee has accepted this Joinder Agreement. The parties hereby execute this Joinder Agreement to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Lutheran Social Service of Minnesota**  
as Trustee of the LSS Special Needs Pooled  
Trust

By:

\_\_\_\_\_  
Grantor signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Grantor signature

\_\_\_\_\_  
Typed name & title

STATE OF MINNESOTA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me by \_\_\_\_\_ and  
\_\_\_\_\_, as  
Grantor(s), on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me by \_\_\_\_\_, an  
authorized representative of Lutheran Social Service of Minnesota, on the \_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

# **SCHEDULE A**

## **TO THE LSS SPECIAL NEEDS POOLED TRUST JOINDER AGREEMENT**

### **FEE INFORMATION**

The following Fees are established as of January 1, 2015 for sub-accounts to the LSS Special Needs Pooled Trust. All fees will be deducted from sub-account balances. LSS and Securian Trust Company, as the Trust Fund Manager, each reserve the right to change its fees by giving Client no less than thirty days advance written notice.

#### **FEES TO LSS:**

1. One Time Enrollment Fee	\$1,000.00
2. Hourly Fee Rate*	\$85.00/hour

\* Hourly Fees will be charged only for work performed by LSS employees in reference to the sub-account management.

#### **FEES TO SECURIAN TRUST COMPANY:**

Fees are based on the combined market value of all of the assets of the sub-accounts in the Pooled Trust, and then divided proportionately and charged to each sub-account monthly.

The annual fee is as follows:

First	\$1.0 Million	1.25%
Next	\$2.0 Million	1.00%
Next	\$2.0 Million	0.75%
Excess over	\$5.0 Million	0.50%

Additional fees may be charged for extraordinary and/or special services.

# SCHEDULE B

## TO THE LSS SPECIAL NEEDS POOLED TRUST JOINDER AGREEMENT

### INFORMATION FOR SUB-ACCOUNT

LSS Special Needs Pooled Trust Sub-Account Number:	
Sub-Account Tax Identification Number:	

1.	Beneficiary:					SSN:	
	Address:						
	Telephone:	Day:		Cell:		Evening:	
	Birth date:			Place of birth: Hospital:			
	Mother:					SSN:	
	Father					SSN:	

2.	Grantor <sup>1</sup> :					SSN:	
	Address:						
	Telephone:	Day:		Cell:		Evening:	
	Birth date:						
	Relationship to Beneficiary (if someone other than the Beneficiary):						

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<sup>1</sup> The Grantor must be the Beneficiary, the parent, grandparent, or the legal guardian of such individual Beneficiary, or alternatively established by the court on behalf of the Beneficiary. Any individual Grantor, other than the Beneficiary or parent or grandparent, must provide documented evidence of his or her legal authority to sign this Joinder Agreement on behalf of the Beneficiary (i.e. copy of a durable Power of Attorney, Paperwork from the Court appointing as a Conservator or Guardian of the Beneficiary). In addition, all Grantors must provide a birth date and social security number when completing the Joinder Agreement. Please note that the birth date and social security number are required in order to open up the Sub-Account with the Special Needs Pooled Trust and are required as part of the “Know Your Client” under the United States Patriot Act.



3.	Conservators, Guardians or other Legal Representatives <sup>2</sup> who are authorized to receive information, communicate with the Trustee and may request funds on behalf of the Beneficiary if the Beneficiary is unable to do so		SSN:	
Address:				
Telephone:	Day:		Cell:	
Evening:				
Birth date				
Legal Relationship to Beneficiary:				
Legal Representative		Unless the Grantor requests otherwise and until the Grantor is no longer able to serve as such, the Grantor shall be the Beneficiary's Legal Representative. When the Grantor is no longer able to act as the Beneficiary's Legal Representative, the Guardian or representative listed above shall be the Legal Representative (with a court-appointed Guardian or Conservator, if any, taking precedence). If the Conservator, Guardian or Legal Representative listed above ceases to serve, please list below, in order, the persons that you would like to be successor Legal Representatives:		

1 <sup>st</sup> Alternate Legal Representative:		SSN:	
Address:			
Telephone:	Day:		Cell:
Evening:			
Birth Date			
Relationship to Beneficiary:			

2 <sup>nd</sup> Alternate Legal Representative:		SSN:	
Address:			
Telephone:	Day:		Cell:
Evening:			
Birth Date			
Relationship to Beneficiary:			

If none of the named Legal Representatives or successors is able to serve, how would you like the Trustee to select another Legal Representative (i.e., family member, public official, non-profit corporation, court appointment)?

<sup>2</sup> If the Beneficiary has a Legal Representative (e.g., legal guardian, conservator, duly appointed agent acting under a durable Power of Attorney, trustee, or other legally appointed representative acting on behalf of the beneficiary, parent of a minor Beneficiary or other legal fiduciary), insert the name, address and relationship of such person to the Beneficiary. In addition, all individuals listed under this section must provide a birth date and social security number when completing the Joinder Agreement. Please note that the birth date and social security number are required in order to open up the Sub-Account with the Special Needs Pooled Trust and are required as part of the "Know Your Client" under the United States Patriot Act.

Current Benefits	
1. Does Beneficiary receive Supplemental Security Income (SSI)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. If the answer to question 1 was yes, how much per month?	\$ /month
3. Does Beneficiary receive Supplemental Security Disability (SSDI)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. If the answer to question 3 was yes, how much per month?	\$ /month
5. Does Beneficiary receive Medical Assistance?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. If the answer to question 5 was yes, what is the Medical Assistance card number?	Card #
7. In the space below, list all other forms of government assistance that the Beneficiary receives:	
8. If the Beneficiary is covered under any policy of health insurance, what is the insurer's name and address, and what is the policy number?	
Insurer:	
Address:	
Policy Number:	
9. If the Beneficiary is covered under any prepaid funeral or burial insurance plan, what is the insurer's name and address, and what is the policy number?	
Insurer:	
Address:	
Policy Number:	
Disability	
10. What is the nature of the Beneficiary's disability?	
11. If the Beneficiary's condition has been medically diagnosed, what is the diagnosis?	
12. What is the prognosis at this time?	
13. Source of Funds (check one):	Describe source:
<input type="checkbox"/> Beneficiary's funds <input type="checkbox"/> Third party funds with support obligation for Beneficiary	

Grantor's Desires as to Anticipated Special/Supplemental Needs:

Grantor's Acknowledgment as to Handling of Sub-Account Remainder upon Termination					
<input type="checkbox"/> I acknowledge that: <ul style="list-style-type: none"> <li>• Upon Termination of the Sub-Account, the Trustee will pay to LSS its 10% Remainder Share to continue to be held in the trust for other disabled beneficiaries. Any funds remaining after payment of the 10% Remainder Share shall be used to repay the appropriate State(s) for amounts they have paid for my support.</li> <li>• Any remainder after LSS and the State(s) are paid should be paid over to the Recipient(s) listed below.</li> <li>• <b>I understand that if I do not list anyone below, or if none of the Recipients listed below are living at the time this Sub-Account is terminated, any remainder will be transferred to an LSS Pooled Trust Sub-Account for the benefit of other disabled beneficiaries.</b></li> </ul>					
Recipient:				SSN:	
Address:					
Telephone:	Day:		Cell:		Evening:
Relationship to Grantor:				Percentage:	

Recipient:				SSN:	
Address:					
Telephone:	Day:		Cell:		Evening:
Relationship to Grantor:				Percentage:	

Recipient:				SSN:	
Address:					
Telephone:	Day:		Cell:		Evening:
Relationship to Grantor:				Percentage:	

Please note the distribution of the Remainder of the Sub-Account will be after payment of the applicable amounts under Article 6 of the Trust Agreement. Please ensure that the applicable percentages to the Recipients above total 100%.

**SCHEDULE C**  
**TO THE LSS SPECIAL NEEDS POOLED TRUST JOINDER AGREEMENT**

**CONTACT INFORMATION**

For information regarding a Beneficiary's Sub-Account, or for requests for disbursements, call or write LSS at:

**LSS SPECIAL NEEDS POOLED TRUST**  
**LUTHERAN SOCIAL SERVICE OF MINNESOTA**  
**ATTENTION: LSS TRUST ADMINISTRATOR**  
**1605 Eustis Street, #310**  
**St. Paul, MN 55108**  
**651-310-9400**

**It is not the intent of LSS to provide legal advice.** Attorneys working with families should be experienced in trust and government benefit issues. LSS urges attorneys who are not experienced in these areas for persons with disabilities to direct families on to attorneys who have such experience.

**Please submit this checklist with the Joinder Agreement**

**ATTORNEY'S CHECKLIST FOR SELF-FUNDED SUB-ACCOUNTS  
LSS SPECIAL NEEDS POOLED TRUST**

- ☐ My client has been advised of the tax consequences of Trust Sub-Account profit.
- ☐ I have advised my client that the Pooled Trust cannot disburse funds for basic needs (shelter or food) but is a supplemental trust. The funds are budgeted for supplemental items which are appropriate to the Sub-Account Beneficiaries' needs. The trust account can approve a disbursement for a pre-paid burial plan but cannot approve disbursements after the Beneficiary's death for a funeral.
- ☐ I have advised my client that federal law requires that all unspent amounts in a Beneficiary funded Sub-Account at the Beneficiary's death (remaining after payment of the remainder share) must be used to reimburse the State or States for medical services received. The remainder share of 10% of the Pooled Trust for other indigent Beneficiaries is paid before the State or States reimbursements.
- ☐ There are no Medicaid liens against these funds.
- ☐ There are no other liens or claims against the Trust Sub-Account funds.
- ☐ The Beneficiary of the Trust meets the definition of having a disability according to the Social Security definition (*check appropriate options*). The Beneficiary is currently eligible for SSI ☐ SSDI ☐ Medicaid ☐ or the Beneficiary has obtained a disability determination by \_\_\_\_\_ or for recipients with long-term care Medicaid over the age of 65 ☐.
- I have advised my client that, under 42 U.S.C. § 1396(p)(c), certain transfers of assets for **less** than fair market value (including but not limited to the purchase of an annuity that will not pay back to the purchaser the amount paid for it) can result in a period of ineligibility for certain types of Medicaid, including long-term care Medicaid, home or community-based waiver services, home health care services, home and community care for functionally disabled elderly individuals, and personal care services; and I have further advised my client that the act of joining the LSS Pooled Trust is not considered such a transfer of assets for less than fair market value, but I have so advised my client that if such a transfer of assets for less than fair market value has occurred, as would be penalized under 42 U.S.C. § 1396(p)(c), joining the LSS Pooled Trust will not avoid or mitigate the penalty period. If my client is over the age of 65 I have advised my client of the position currently being taken by the government that such transfer may result in a period of ineligibility and I have provided the Trustee with a Transfer Penalty Acknowledgement signed by my client as required by the Trustee.

Attorney name, print or type

Client name, print or type

Signature

Signature

Date

Date

I (We) have read the above Attorney Checklist and waive review by an attorney: ☐

Signature

Signature

Date

Date