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(Parts of this material are reprinted from an outline by Attorney Louis E. Archambault of Adams & Woodrow, S.C. in Neenah, WI)

### ***What is a WisPACT Special Needs Trust and When is it Useful?***

It is a Trust that holds and manages an individual's resources yet allows them to become eligible or remain eligible for public assistance benefits such as Medical Assistance (MA), Supplemental Security Income (SSI), Community Options Program (COP & COP-W), Community Support Program, Community Integration Program (CIP), Family Care, Katie Beckett and Medicaid Purchase Plan (MAPP).

### ***Self-Funded vs. Third-Party Funded –***

The source of the funds in the Trust is either from the person with the disability, or funds of a third party put in for the benefit of the disabled person.

Examples of “self-funded” Special Needs Trusts:

- ! Personal Injury Proceeds
- ! Divorce Proceeds
- ! Sale of house while on MA
- ! Inheritance received outright or payable on death proceeds
- ! Social Security back pay to be held beyond nine (9) months spend down period

Examples of “third party funded” Special Needs Trusts:

- ! Drafted into Wills or Trusts for disabled children or grandchildren
- ! Lifetime gifts
- ! Community spouse trust for nursing home spouse

### ***Alternatives to Special Needs Trusts –***

- ! Spending it down in month received – if the amount is small
- ! Equipment or assets beneficiary could purchase (car, house, power chair)
- ! Spend down by the end of the month or, if it is a Social Security back pay, they have nine (9) months to spend it down
- ! Third-Party can leave inheritance to siblings or others to be used for the benefit of the disabled person

## ***Operating the Trust –***

### **Good and Bad of Special Needs Trusts in Operation**

- Payments in-kind – not cash to beneficiary
- Beneficiary cannot control payments – just Trustee
- Payments under SSI regulations for food or shelter a problem
- Payments for shelter may increase waiver cost shares
- No gifts or payments that benefit others, such as beneficiary's child
- Investment regulations

### **Things Special Needs Trust can pay for to improve life for beneficiary**

- Advocacy, oversight, monitoring or private case management
- Some crisis intervention, guardianship
- Some housing costs, depending on public benefits person receives
- Private room or bathroom in a nursing home or CBRF
- Treatments or prescription drugs deemed experimental by MA
- Dental care
- Care by providers that are not MA certified
- More hours of care than MA will approve
- Medical equipment of a kind or quality that MA will not approve
- Physical, occupational, or speech therapy deemed medically unnecessary
- Vitamins, dietary supplements
- Routine foot care
- Transportation
- Education
- Communication and social interactions
- Home maintenance, lawn care, cleaning services, accessibility needs
- Clothing
- Vacation travel and, if necessary, for a caregiver
- Furniture and appliances
- Newspaper and magazine subscriptions

## ***Why WisPACT?***

Continuity.

Pre-approved by Social Security for SSI and by Wisconsin Medicaid agencies for MA and waiver programs, including MAPP.

Let's family be family.

Pools many small trusts for discounts on investment management.

A nonprofit charity.

Established and overseen by members of aging and disability advocacy organizations.

### Disability Trusts / Special Needs Trusts (SNTs)

Purpose: To meet special needs of persons with long-term continuing disabilities without disqualifying them from public benefits that provide basic medical care, food and shelter.

Legal Overview	Individual Trust		WisPACT Trusts		
Trust Manager may be?	Anyone except the beneficiary or, for housing assistance, a family member he/she lives with.		Only a non-profit association that is a public charity like WisPACT. Family may be Advisors.		
Whose \$ Funds It:	Third Party (not Beneficiary)	Beneficiary (Self)	Beneficiary (Self)		Third Party (not Beneficiary)
			Trust II	Trust I	
Common Name	Third Party Trust	Payback Trust	Payback	Pooled	Third Party Trust
Must be Disabled? Soc. Sec. Definition?	Yes No	Yes Yes	Yes Yes		Yes No
Beneficiary May Set Up and Fund Directly?	Not Applicable	No. Must be set up by Beneficiary's parent, grandparent, guardian or a court. Often requires court orders.		Yes	Not Applicable
Beneficiary's Age at Funding?	Any Age	Under 65		Any Age	Any Age
Excluded Asset for public benefits?	Yes	Only if under 65 when funded.		Yes	Yes
Medicaid Divestment Exception for Person Funding Trust?	Beneficiary < age 65, Parent to Child, or Testamentary Trust	Yes			Beneficiary < age 65, Parent to Child, or Testamentary Trust
Lifetime Distributions	Least restricted	Most restricted			Least restricted
Who decides?	Trust Manager		Trustee with input from WisPACT, the Advisors and the Beneficiary or his/her guardian.		
Distributions At Beneficiary's Death?	No restrictions. Third Party can designate heirs.	Must first pay State back for Medicaid (about 60% goes back to fed. govt.) unless kept in pooled trust. After Medicaid Payback liability is met, rest to heirs.		No restrictions. Third Party can designate heirs.	

This information, which is based on federal and Wisconsin law as of December 31, 2006, summarizes legal rules and is provided to inform and not to advise. More detailed exceptions or requirements may apply to your situation than can be shown in this overview. No person should ever apply or interpret a law without the aid of a trained expert who knows the facts, because the facts may change how the law applies or the law may have changed.