



# Community Fund Management Foundation

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## ATTORNEY'S REFERENCE AND INSTRUCTIONS FOR COMPLETING POOLED MEDICAID PAYBACK TRUST JOINDER AGREEMENTS

### **Quick Checklist: Pooled Medicaid Payback Trust**

- Completed original Joinder Agreement and Application for Admission to Establish Pooled Medicaid Payback Trust Sub-Account
- W-9 for Beneficiary
- Over 65 Acknowledgement if Beneficiary is age 65 or older at time of Trust establishment
- Two Forms of Proof of Identity/Address for Beneficiary
- Check made payable to "Equity Trust, Trustee fbo [Beneficiary's Name]" for CFMF Setup Fee and Trust Funding
- Optional: A separate check for the CFMF Setup Fee
- Copy of Letters of Guardianship, court order, and/or power of attorney document if a guardian, court, or agent is establishing the Trust

### **Acceptable Forms of Proof of Identity/Address**

A Pooled Medicaid Payback Trust Joinder Agreement must be accompanied by two (2) forms of proof of identity or address for the Beneficiary. CFMF recommends submitting a copy of the Social Security card or other government-issued documentation that includes the Social Security Number to avoid errors. A copy of the following will be accepted as proof of identity/address:

Driver License	Credit Card Statement
Passport	Billing Statement from Nursing Home
State ID	Medicare Card
Birth Certificate	Medicaid Card
Social Security Card	Social Security Award Letter
Letters of Guardianship	Statement from Residential Provider
Utility Statement	

CFMF and our Trustee will also accept a signed statement from the attorney of record confirming the attorney knows the Beneficiary and the Beneficiary is a U.S. Citizen, an Ohio Resident, and resides at the address identified on the Joinder Application as one proof of identity/address for the Beneficiary.

## **Instructions for Completing Joinder Agreement**

All sections of the Joinder Agreement must be completed before the Trust Advisor and Trustee will review and accept the Joinder Agreement. Incomplete Joinder Applications may be returned to the attorney of record via regular U.S. mail.

### **1. Agreement Number – Item 1**

Please leave this line and the lines at the top of each subsequent page blank. CFMF, as Trust Advisor, will assign an Agreement Number upon our approval of the Joinder Application and enter this data.

### **2. Trustee – Item 2**

Please confirm you are using a Joinder Agreement that names "Equity Trust Company of Westlake, Ohio" as Trustee effective 06/2017. CFMF will not accept Joinder Applications submitted on outdated forms.

### **3. Trust Advisor – Item 3**

Community Fund Management Foundation (CFMF) is the Trust Advisor. No action is needed.

### **4. Person Establishing Trust Sub-Account – Item 4**

The person establishing the Sub-Trust must be an Ohio resident with a disability, or his/her parent, grandparent, guardian, or court. CFMF will also accept a Joinder Agreement signed by an agent under a valid power of attorney if the power of attorney document grants the agent the express authority to establish (not just fund) a trust, subject to changes in Ohio law. If an agent is establishing the Sub-Trust, Item 4 should state the Beneficiary/Principal's information. All initials and signatures should be made by the agent on behalf of the Beneficiary and the signatures should clearly indicate the person is signing as an agent.

CFMF will accept a Joinder Agreement signed by a guardian of person, but it is the responsibility of the person establishing the trust and their counsel to ensure both establishment and funding is properly handled and consistent with the policies and rules issued by the governing agencies and probate court, if applicable. The Social Security Administration and, more recently, the Ohio Department of Medicaid requires that the person who funds the trust have legal authority to act with regard to the assets of the individual. See POMS 01120.203B.2.f.

### **5. Beneficiary Information – Item 5**

The Beneficiary is the person with a disability for whom the Sub-Trust is being established; in other words, the individual with a disability who benefits from the Trust. The person establishing the Sub-Trust and the Beneficiary may be the same person if the Beneficiary is a competent adult or the Beneficiary granted authority to an agent under a financial power of attorney.

Please indicate the Beneficiary's disability. CFMF does not independently verify this information; it is the responsibility of the person establishing the trust, usually with advice of counsel, to follow federal and state

law regarding what constitutes a disability and defending any determination that the Beneficiary is not a person with a disability. See 42 U.S.C. 1382c.

CFMF notifies every state Medicaid agency who has provided Medicaid-covered services and is known to CFMF that the Beneficiary has died for the purpose of identifying any potential Medicaid claims. It is therefore necessary for CFMF to be informed of all states that may have provided Medicaid-covered services to the Beneficiary.

## **6. Designated Advocate – Item 6**

The Designated Advocate and Successor Designated Advocate(s) may be a relative, friend, organization, or the Beneficiary if he/she is competent. CFMF strongly recommends that several successor Designated Advocates be named to avoid a situation where there is no person or entity serving.

## **7. Fees – Item 7**

Please visit our website or call our Administrative Office to confirm the fee schedule in place at the time of establishment.

## **8. Distributions to the Beneficiary – Item 8**

CFMF as Trust Advisor shall direct the Trustee to distribute income and/or principal to benefit the Beneficiary.

## **9. Distributions Upon Death of Beneficiary – Item 9**

Pursuant to federal and state law, the person establishing the Trust may elect one of two options for distribution of remaining trust assets at the death of the Beneficiary. The first option is to allow CFMF or one of our nonprofit partners to retain all funds at the death of the Beneficiary. The retained funds will be used to further CFMF's charitable and educational purposes. CFMF also maintains partnerships with specific nonprofits and a separate Joinder Agreement is available to name one of our partners as the remainder distributee. Please visit our forms page or call our Administrative Office for more information. We ask that you please discuss with your client the benefits of choosing Option 1.

The second option is to allow all states who have provided medical assistance to be repaid from the trust assets remaining at the Beneficiary's death. The person establishing the trust may identify remainder distributees to receive any balance remaining after repayment to the state(s). The person establishing the trust and his/her attorney should give careful consideration as to whether the person establishing the Trust has legal authority to name remainder distributees other than the Beneficiary's estate. If a guardian is establishing the trust, the guardian may only name the ward's estate as a remainder distributee under Option 2, unless there is a court order granting the guardian the authority to name specific remainder distributee other than the estate.

#### **10. Irrevocability of Trust – Item 10**

All Pooled Medicaid Payback Trusts are irrevocable.

#### **11. Property Transferred to Trustee – Item 11**

CFMF accepts check deposits. We do not accept title to real property or in-kind transfers at the present time. Please contact the Executive Director to discuss CFMF's policy if your client wishes to transfer non-cash assets to the trust.

#### **12. Application of Person Establishing Trust – Item 12**

All Joinder Applications must be accompanied by two forms of identity/address as stated on page 1 of these instructions.

All trusts are invested. As such, there is the possibility of gains and the risk of loss. The Investment Policy may be requested from the CFMF's Administrative Office.

CFMF makes every effort to be aware of rules and policies governing special needs trusts and government benefits. CFMF and the Trustee do not, however, guarantee the receipt or continuation of benefits.

#### **13. Certification of Person Establishing Trust Sub-Account – Item 13**

This section must be signed and dated by the person establishing the trust or a completed W-9 must be submitted with the Joinder Application.

#### **14. Witness or Notary Declaration – Item 14**

Each Joinder Application must be either witnessed by two disinterested witnesses or notarized. The date written on Item 14 must be consistent with the date written on Item 12.

#### **15. Attorney's Declaration – Item 15**

This section must be completed and signed by the attorney of record for the person establishing the trust. CFMF will send confirmation when the sub-trust has been accepted to the attorney identified in Item 15.

By signing this section, the licensed attorney is verifying the beneficiary is a person with a disability as defined in 42 USC 1382c(a)(3) and that a CFMF Trust is appropriate for the beneficiary. The attorney is also verifying that the person establishing the trust has the authority to do so and the correct joinder agreement was completed.

The attorney of record should discuss with his or her client who will be responsible for notifying government agencies of the existence of the trust. CFMF does not notify any agency that the trust has been established. CFMF strongly suggests that any notice be in writing via tracked mail. CFMF also recommends that a copy of the notice and proof of delivery be provided to CFMF for retention in our files should any agency request

proof of disclosure in the future. The proof of prior disclosure is often a key piece of evidence should an agency question the establishment or funding of a trust.

**16. Trust Advisor's Approval – Item 16**

This section will be completed by CFMF upon successful acceptance of the Joinder Agreement.

**17. Trustee's Approval – Item 17**

This section will be completed by the Trustee upon successful acceptance of the Joinder Agreement.

**18. Asset Transfer and Beneficiary Designation Record – Item 1**

Please identify how the sub-trust will be funded. If the trust is being funded with periodic payments, please provide a copy of the contract or policy.

**19. Asset Transfer and Beneficiary Designation Record – Item 2**

This section requires confirmation that the funds received by the trust were owned by the Beneficiary.

**20. Asset Transfer and Beneficiary Designation Record – Item 3**

This section asks for each check number and amount to be identified.

**21. Asset Transfer and Beneficiary Designation Record – Item 4**

Please identify if a second check for the CFMF setup fee has been submitted. If "no" is checked, then CFMF will deduct its setup fee from the initial deposit and this will be reflected on the first account statement.

**22. Asset Transfer and Beneficiary Designation Record – Item 5**

Any pooled Medicaid payback trust that is established with less than \$5,000 is a "roll-in" pooled Medicaid payback trust and distributions will not be made until the trust balance reaches \$5,000. This section must be initialed by the person establishing the trust acknowledging the distribution rule. This section should not be completed if the initial deposit is \$5,000 or more.

**Common Questions**

CFMF does not provide legal advice, but our experience allows us to suggest answers to the following questions:

**Q: Who should serve as Designated Advocate?**

A: This answer is specific to the Beneficiary and his/her situation. The Designated Advocate has a significant role as he/she: completes and submits distribution requests and the beneficiary resource record;

receives monthly or quarterly trust statements as well as tax documents; is the only person who can request specific information regarding the Sub-Trust from CFMF; and acts as the beneficiary surrogate. The Designated Advocate is also often called upon to help CFMF wrap up the Trust at the Beneficiary's death by providing a death certificate or other information.

Ideally, the Designated Advocate should be someone who knows the Beneficiary and is familiar with his/her disability and the benefits received. The Designated Advocate should be trustworthy and able to follow-through with the responsibilities of being a Designated Advocate. It is not necessary for the Designated Advocate to be an Ohio resident so long as he/she can fulfill the duties of a Designated Advocate.

**Q: Will CFMF waive the requirement for an attorney to sign the Joinder Agreement?**

A: No.

**Q: It is getting close to the end of the month and I haven't sent the Joinder Application to CFMF. When can I send it to CFMF and still have it accepted for the same month?**

A: Please contact CFMF if you have a time-sensitive Joinder Application so we can be prepared to receive it. Generally speaking, an original Joinder Application received by CFMF on or before 9:00 a.m. on the last business day of the month will be accepted for that month. CFMF strongly recommends that the funding check be submitted via guaranteed check, such as a bank check or money order, to ensure the funds are withdrawn from the Beneficiary's account before the end of the month.

**Q: I am an attorney and I am unsure if the Joinder Application will be accepted. Will you review the packet in advance?**

A: Yes. Please fax or mail a copy of the entire packet to CFMF's Administrative Office and we will gladly review it in advance and provide you with a provisional acceptance (subject to CFMF's receipt of the original packet by 9:00 a.m. on the last business day of the month) or a list of items that need to be addressed. We advise against emailing the packet to CFMF unless it is redacted or submitted by secure email due to the confidential nature of the documents.

**Q: Will CFMF accept a Joinder Application by email or fax?**

A: No. CFMF only accepts original Joinder Applications sent to CFMF's Administrative Office. We suggest utilizing FedEx or UPS if sending via overnight mail as the United States Postal Service may not deliver overnight or express mail packages directly to our suite, which can lead to delivery delays.

**Q: May I submit a Distribution Request with the Joinder Application or do I need to tell the Designated Advocate to wait?**

A: CFMF is happy to process a distribution request as soon as the Sub-Trust is established and the Trust is distributable. It is not necessary to wait until you have confirmation the Sub-Trust was accepted. Please remember, however, to also include the beneficiary resource record as any distribution request submitted without a current beneficiary resource record will not be processed.

**Q: Will you attend a meeting with my client and me to discuss the trusts offered by CFMF?**

A: Absolutely. Please contact the CFMF office closest to you or contact our Administrative Office and our Executive Director or one of our Associate Directors will schedule an appointment to meet with you and your client by phone or in-person at the location of your choosing.

**Q: Does CFMF notify government agencies of the establishment of the trust?**

A: No. CFMF will, however, provide information at the Designated Advocate's request for redeterminations or agency inquiries.

**Q: I am the attorney identified in Item 15, but CFMF will not release information to me.**

A: Once the trust is established, CFMF will only provide information to the grantor (if a master trust) or the Designated Advocate (if it is a pooled Medicaid payback trust or a funded master trust). The grantor or Designated Advocate may send written consent to CFMF allowing CFMF to disclose information to an attorney or other third-party. CFMF includes such an authorization form on our website. CFMF will also accept a written authorization not submitted on our form if it meets our criteria. CFMF will provide limited information to a beneficiary or the beneficiary's guardian or power of attorney unless otherwise instructed by the designated advocate or the beneficiary's guardian. This information may include the balance in the trust and the name and contact information for the designated advocate.

**Q: Should I send correspondence directly to the Trustee or to the Associate Director closest to me?**

A: No. All communication should be directed to CFMF's Administrative Office located at 14955 W. Sprague Road, Suite 290, Strongsville, OH 44136-1799.

**Q: My client has been notified that the Trust is a countable resource. What should he/she do?**

A: The first item is to identify due dates and submit the necessary documents to preserve the appeal. You or your client should fax every page of the notice to CFMF and contact CFMF's Executive Director to discuss how to proceed. CFMF may offer to direct the case to our outside counsel at no charge to your client if the Trust is the reason for the denial or termination of benefits, and not due to another reason (failure to comply, fraud, countable resources outside of trust, etc.). If you elect to represent your client, we ask that you notify CFMF of the issue as we may be able to offer assistance. CFMF's Trusts are on file with the Social Security Administration's trust precedents file. We want to help ensure that positive local precedents are set as well.