



# Community Fund Management Foundation dba Community Fund Ohio

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## **PLEASE VISIT OUR WEBSITE TO LEARN HOW COVID-19 MAY IMPACT THESE INSTRUCTIONS** **ATTORNEY'S REFERENCE AND INSTRUCTIONS FOR COMPLETING** **POOLED MEDICAID PAYBACK TRUST JOINDER APPLICATIONS**

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

- Completed original Joinder Agreement and Application for Admission to Establish Pooled Medicaid Payback Trust Sub-Account identifying The Huntington National Bank as Trustee (updated 10/2019);
- Mandatory Investment Questionnaire (required starting September 1, 2020);
- W-9 for Beneficiary if Item 13 of the Joinder Application isn't signed and dated;
- 65 or Over Acknowledgement if Beneficiary is age 65 or older at time of Trust establishment;
- Attorney Acknowledgment;
- Two Forms of Proof of Identity/Address for Beneficiary;
- Check made payable to "**Community Fund Management Foundation fbo [Beneficiary's Name]**" for Community Fund's Setup Fee and trust funding or separate checks for the Setup Fee and trust funding; and
- 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 for Proof of Identity/Address**

A Pooled Medicaid Payback Trust Joinder Application must be accompanied by two (2) forms of proof of identity or address for the Beneficiary. **The two forms must be identical to the information on the Joinder Application.** For example, a utility statement addressed to the Beneficiary at an address that is not listed on the Joinder Application will not be accepted as one proof of identity or address. Community Fund **strongly** 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  
Passport  
State ID  
Birth Certificate  
Social Security Card (PREFERRED)  
Letters of Guardianship

Billing Statement from Nursing Home  
NH Intake Form (including SSN and DOB)  
Utility Bill  
Medicaid Card  
Social Security Award Letter  
Statement from Residential Provider

Community Fund 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 Application**

All applicable sections of the Joinder Application must be completed before the Trust Advisor and Trustee will review and accept the Joinder Application. Incomplete Joinder Applications or Joinder Applications with errors will not be accepted.

### **1. Agreement Number – Item 1**

Please leave this line, and the lines at the top of each subsequent page, blank. Community Fund, as Trust Advisor, will assign a unique Agreement Number upon our approval of the Joinder Application.

### **2. Trustee – Item 2**

Please confirm you are using current forms. The Joinder Application should refer to The Huntington National Bank as Trustee and be dated 10/2019. Community Fund will not accept Joinder Applications submitted on outdated forms. Please contact one of our Trust Development Coordinators at (216) 736-4540 or [joinderanddeposit@cfmf.org](mailto:joinderanddeposit@cfmf.org) if you have questions regarding forms.

### **3. Trust Advisor – Item 3**

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

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

The person establishing the Sub-Account must be an Ohio resident with a disability, or his/her parent, grandparent, guardian, or court. Community Fund will also accept a Joinder Application signed by the Beneficiary's 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. If an agent is establishing the Sub-Account, Item 4.a. should be completed using the Beneficiary/Principal's information. All initials and signatures should be made by the agent on behalf of the Beneficiary and should clearly indicate the person is signing as an agent.

Community Fund will accept a Joinder Application signed by a guardian of person, but it is the responsibility of the person establishing the trust and his/her 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.

#### **4.b. Court Supervision – Item 4.b.**

If a guardian or court is establishing the Sub-Account, Option 1 or Option 2 must be selected. If Option 2 is checked, Community Fund requires more information to understand if the Trustee is required to file a trust accounting or if the Court requires the Trustee to seek prior approval before making distributions, paying trustee fees, or paying attorney fees. In a minority of cases, the court may retain supervision over the Sub-Account in the guardianship case number and requires the guardian to file accountings and/or seek prior

approval of distributions from the Trust.

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

The Beneficiary is the person with a disability for whom the Sub-Account is being established; in other words, the individual with a disability who benefits from the Trust. The person establishing the Sub-Account 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.

#### **5.b. Disability Information – Item 5.b.**

Please indicate the Beneficiary's disability. Community Fund does not decide if a Beneficiary is disabled and does not independently verify that the disability information provided to Community Fund is accurate. 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 to respond to any inquiries regarding the Beneficiary's disability. See 42 U.S.C. 1382c.

#### **5.c. Medicaid Information – Item 5.c.**

At the death of the Beneficiary, Community Fund notifies every state Medicaid agency who has provided Medicaid-covered services and is known to Community Fund for the purpose of identifying any potential Medicaid claims. It is therefore necessary for Community Fund 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. Community Fund strongly recommends that several successor Designated Advocates be named to avoid a situation where there is no person or entity serving. If the Designated Advocate is an organization, Community Fund requires that a contact person be identified. The organization's leadership has the ability to change the contact person. If an individual is named and that individual is employed by an organization providing services to the Beneficiary, the individual will remain as Designated Advocate even if the individual leaves the organization. Please give careful thought as to whether a Designated Advocate is being named in an individual capacity or as a contact person at an organization.

### **7. Fees – Item 7**

Please visit our website to view our fee schedule.

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

Community Fund 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 the distribution of trust assets remaining at the death of the Beneficiary. The first option is to allow Community Fund or one of our nonprofit partners to retain all funds at the death of the Beneficiary. The retained funds will be used to further Community Fund's charitable and educational purposes. Community Fund also maintains partnerships with specific nonprofits and a separate Joinder Application 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 individuals or charities, which Community Fund calls "remainder distributees," to receive any balance remaining after repayment to the state(s). Community Fund will not allow class gifts or gifts to people or entities that are not in existence at the time the Joinder Application is signed. For example, Community Fund will not accept a Joinder Application that distributes the remainder "to my children, per stirpes" or "to my heirs at law." Community Fund will not accept a designation "to the Beneficiary's children" when the Beneficiary does not currently have children.

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 a court order granting the guardian the authority to name specific remainder distributees other than the estate is attached to the Joinder Application.

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

All Pooled Medicaid Payback Trusts are irrevocable.

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

Community Fund accepts check deposits. Please refer to our website or speak with our Trust Development Coordinators if you have questions on the type of assets that can be deposited in a Community Fund PMPT.

## **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 Community Fund's Administrative Office. Community Fund makes every effort to be aware of rules and policies governing special needs trusts and government benefits. Community Fund 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.a. Attorney's Declaration – Item 15.a.**

This section must be completed and signed by the attorney of record for the person establishing the trust. Community Fund will send confirmation when the Sub-Account has been accepted to the attorney identified in Item 15. Community Fund does not accept altered Joinder Applications and no attorney should make changes to Community Fund's forms.

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 Community Fund 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 Application 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. Community Fund does not notify any agency that the trust has been established. Community Fund strongly suggests that any notice be in writing via tracked mail. Community Fund also recommends that a copy of the notice and proof of delivery be provided to Community Fund 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.

### **15.b. Optional Authorization – Item 15.b.**

Once Community Fund notifies the attorney identified in Section 15.a. that the Joinder Application has been accepted, Community Fund will not continue to disclose information to the attorney. If the **Designated Advocate** wishes to authorize the attorney to request information from Community Fund, the Designated Advocate may sign and date Section 15.b. or submit a separate authorization to Community Fund. The Trustee will not send duplicate statements to an attorney unless the attorney is also serving as the Designated Advocate, but Community Fund will disclose information to the attorney when requested without repeatedly asking the Designated Advocate for authority to do so if Section 15.b. is signed and dated or a separate authorization is submitted to Community Fund.

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

This section will be completed by Community Fund upon successful acceptance of the Joinder Application.

### **17. Trustee's Approval – Item 17**

This section will be completed by the Trustee upon successful acceptance of the Joinder Application. The Trustee will also assign an EIN to the Sub-Account.

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

Please identify how the Sub-Account will be funded. If the trust is being funded with periodic payments, please provide a copy of the contract or policy. Community Fund does not act as a Qualified Income Trust and will not accept a Joinder Application if the only deposits to the sub-account are monthly (e.g., periodic payments) and are expected to be spent each month, resulting in a zero balance at the end of each month.

### **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 records the check number(s) and amount(s) for the initial deposit.

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

Please identify if a second check for the Community Fund setup fee has been submitted. If “no” is checked, Community Fund will deduct its Setup Fee from the initial deposit.

### **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 if the initial deposit is less than \$5,000. This section should not be initialed if the initial deposit is \$5,000 or more.

### **Common Questions**

Community Fund 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 quarterly trust statements as well as tax documents; is the only person who can request specific information regarding the Sub-Account from Community Fund; and acts as the beneficiary surrogate. The Designated Advocate is also often called upon to help Community Fund 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 Community Fund waive the requirement for an attorney to sign the Joinder Application?**

A: No.

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

A: Please contact Community Fund if you have a time-sensitive Joinder Application so we can be prepared to receive it. Generally speaking, an original Joinder Application received by Community Fund on or before 9:00 a.m. on the last business day of the month will be accepted for that month. Community Fund posts its hours of operation and holiday calendar on its website. Community Fund 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 Community Fund's Administrative Office and we will gladly review it in advance and provide you with written feedback within two (2) business days. We advise against emailing the packet to Community Fund unless it is redacted or submitted by secure email due to the confidential nature of the documents.

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

A: No. Community Fund only accepts original Joinder Applications sent to Community Fund's Administrative Office.

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

A: Community Fund is happy to process a distribution request as soon as the Sub-Account is established and the Trust is distributable. It is not necessary to wait until you have confirmation the Sub-Account was accepted to submit a Distribution Request form. Please remember, however, to also include the Beneficiary Resource Record (BRR) with any Distribution Request form submitted as Community Fund requires a current BRR be on file before a Distribution Request will be considered.

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

A: Absolutely. Please contact the Community Fund 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 Community Fund notify government agencies of the establishment of the trust?**

A: No. Community Fund will, however, provide information at the Designated Advocate's request for redeterminations or agency inquiries. Community Fund will also respond to any subpoenas or less formal requests directly from government agencies.

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

A: Once the pooled Medicaid payback trust is established, Community Fund will only provide information to the Designated Advocate unless Section 15.b. or a separate authorization is signed by 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 Community Fund's Administrative Office located at 17900 Jefferson Park, Suite 102, Middleburg Heights, OH 44130. Even though our Trustee is recognizable in Ohio, the bank branches cannot provide statements, accept deposits, make distributions, or offer assistance regarding Trusts. It may be helpful to view the pooled trust relationship like this: the Sub-Accounts are Community Fund's clients, and Community Fund is the Trustee's client, but the Sub-Accounts are not the Trustee's clients. We ask that all correspondence and questions be directed to Community Fund.

**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 if the deadline is quickly approaching. You or your client should also fax **every page** of the notice to Community Fund and contact Community Fund's Executive Director to discuss how to proceed. Community Fund 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 Community Fund of the issue. Community Fund's Trusts are on file with the Social Security Administration's trust file. We want to help ensure that positive local precedents are set as well.

**Common Errors to Avoid**

These are some of the errors that we see most commonly on Joinder Applications. These errors prevent Community Fund from approving the Joinder Application and continuing the setup process.

1. One or more sections are incomplete.
2. Sections contradict each other (e.g., the same person is the Designated Advocate and Remainder Distributee, but the addresses do not match).
3. All of the boxes are not checked.



4. Typos in the Social Security Number and/or relying on family or the beneficiary to provide the beneficiary's correct Social Security Number (and they are wrong). We strongly recommend including a copy of the Social Security card with the Joinder Application.
5. Typos in the date of birth and/or relying on family or the beneficiary to provide the beneficiary's correct date of birth (and they are wrong).
6. Submitting a Joinder Application signed by a guardian of person when a guardian of estate is needed.
7. The person establishing the trust is doing so as guardian, but their signature doesn't make that clear.
8. The person establishing the trust is a guardian, but the notary clause doesn't make that clear.
9. Submitting a Joinder Application signed by guardian but forgetting to include the letters of guardianship.
10. The person establishing the trust is doing so as a financial agent, but their signature doesn't make that clear.
11. The person establishing the trust is an agent under a power-of-attorney, but the notary clause doesn't make that clear.
12. Submitting a Joinder Application signed by an agent under a power of attorney but forgetting to include the power of attorney document or submitting a power of attorney document that doesn't grant the requisite authority.
13. Failing to include a trust agreement and/or EIN when a trust is named as the remainder distributee under Item 9.
14. Naming a remainder distributee that is not the beneficiary's estate even though a guardian is establishing the sub-account and there is no court order granting authority to name another distributee.
15. The notary seal is missing.
16. Identity documents are not enclosed.
17. Identity documents are enclosed but are not legible.
18. Identity documents are enclosed but do not match the information provided on the Joinder Application.
19. Missing pages from the Joinder Application, power of attorney, etc.
20. Failing to include the 65 and over acknowledgment if the beneficiary is age 65 or over.
21. Failing to include the Investment Questionnaire that is mandatory starting September 1, 2020.
22. Forgetting to check your email or voicemail for time-sensitive messages from our staff seeking clarification in order to approve a Joinder Application. Community Fund staff sends confirmation emails to the attorney identified in Section 15.a. when a Joinder Application has been accepted. If you are the attorney of record and have not received an email confirmation within 3 business days of our receipt of the Joinder Application (or sooner if at the end of the month), please contact our Trust Development Coordinators.