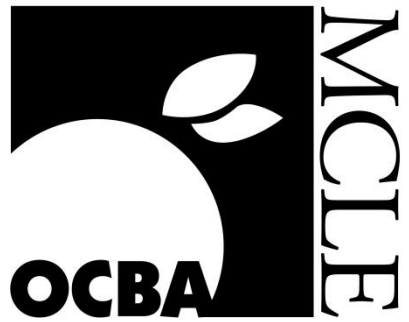

ORANGE COUNTY BAR ASSOCIATION

ELDER LAW & SPECIAL NEEDS

SECTION WEBINAR

Modern Pooled Trust Expectations



Monday, May 3, 2021

Is the Pooled Trust Provider Maintaining Modern Expectations?

Understanding modern expectations from a Pooled Trust Provider is often the biggest hurdle when selecting a program. This unbiased tool is for evaluating and comparing programs. Simply ask the questions listed below, circle their response, total the columns, and create a weighted total using the formula below. This tool is intended to be used by a qualified attorney and is not all-inclusive.

Column Calculation	
Below Average x 1	=
Average = ____ x 2	=
Ideal = ____ x 3	=
Weighted Total	=

Weighted Total	Is the PSNT Maintaining Modern Expectations?
19 - 21	Ideal program maintaining the industry's highest expectations
14 - 18	Average to above-average program
8 - 13	Below-average to average program
< 7	Severely below-average program

Evaluation Questions for Pooled Trust Providers		
Below Average = 1 point	Average = 2 points	Ideal = 3 points
1) Pricing: Can you provide a detailed fee schedule (in writing) that includes any additional fees that may appear during administration?		
a) Hidden or undisclosed fees that will drastically increase the cost. b) 2.5% money-management all-in AND % charged on the anniversary date of funding.	a) Some additional fees for additional services described, and all fees are disclosed in writing. b) ≤ 2.5% money-management all-in AND % is prorated based on the anniversary date of funding.	a) All fees, including additional fees for additional services, are publicly available. b) Flat Rate < \$1,200 annually OR ≤ 1.5% money-management all-in AND % based on average daily balance
2) Retention: What is your retention policy and when does it vary?		
>3% retention policy + termination fee	<3% retention policy and/or termination fee	Flat and fixed rate termination charge
3) Investments: Can you provide an investment report with multiple models and long-term averages?		
Investment model is below industry averages and Cannot provide averages > 3 years	At least 2 investment models, and provides 3- and 5-year averages	At least 3 investment models, and provides 3-, 5-, and 10-year averages
4) Intake Process: How do I refer cases and introduce my client to your organization's way of work?		
a) PSNT established > week with inconsistent policies and procedures. b) Limited resources for clients, only written exposure to client trust expectations before funding, or no meeting with client	a) PSNT established < week, and process is well established and available online. b) Written orientation packet provided with a client meeting to discuss trust expectations before funding.	a) PSNT established < 3 days, and process is well established and available online. b) Written orientation packet with multimedia resources with at least 1 client meeting to discuss trust expectations beforehand and a formal orientation after funding.

5) Administration: What is your process for administering the account and are there any restrictions on spending (e.g. supplemental standard, Principal Reduction Rules, static budgets, etc.)?		
<ul style="list-style-type: none"> a) Unclear administration process or process is explained post-funding. b) Supplemental Standard with some spending restrictions based on amount c) Will not fund ABLE accounts or fund Secured Debit Card regularly 	<ul style="list-style-type: none"> a) Clear administration process explained verbally w/ written resources before funding. b) Discretionary Standard with some spending restrictions based on amount c) Will regularly fund ABLE accounts and Secured Debit Card when requested 	<ul style="list-style-type: none"> a) Publicly displayed administration process explained verbally w/ multimedia resources before funding. b) Discretionary Standard without spending restrictions based on amount. c) Will regularly promote and fund ABLE accounts and Secured Debit Card
6) Communication, Response and Access: Communication is the number one complaint from trust beneficiaries, how does your organization address this?		
<ul style="list-style-type: none"> a) Call center without dedicated person b) Admin Timelines in Business Days <ul style="list-style-type: none"> a. Routine Disbursements > 3 for approval b. Complex disbursements > 5 for approval c. Emails and voicemails < 5 c) Irregular statements with No online portal to show account balances w/ No notification process on status of requests 	<ul style="list-style-type: none"> a) Dedicated contact person b) Admin Timelines in Business Days <ul style="list-style-type: none"> a. Routine Disbursements < 3 for approval b. Complex disbursements < 5 for approval c. Emails and voicemails < 2 c) Regular statements with basic online portal to show account balances w/ notifications on status of requests 	<ul style="list-style-type: none"> a) Dedicated person with warm introduction b) Admin Timelines in Business Days <ul style="list-style-type: none"> a. Routine Disbursements = 1 for approval b. Complex disbursements < 2 for approval c. Emails and voicemails = 1 c) Regular statements with online portal to show account balances, and detailed disbursement history. Includes an email/text notification system
7) Compliance and Support: Is your trust document compliant in [state] and what systems of support do you have in that area for my client?		
<ul style="list-style-type: none"> a) National trust docs and address state-specific issues as they rise b) Cannot list the networks of support in a given area. c) No annual independent financial audit and carries insurance below \$1,000,000. 	<ul style="list-style-type: none"> a) State-specific docs b) Lists the attorneys, case management service providers, payroll services, CPAs, etc. in a given area. c) Participates in an annual independent financial audit and carries insurance of at least \$2,000,000. 	<ul style="list-style-type: none"> a) State-specific docs already approved by the state b) Can describe the process for utilizing attorneys, case management service providers, payroll services, CPAs ,etc. In any given area. c) Participates in an annual independent financial audit and carries insurance of at least \$5,000,000.
Total =	Total =	Total =

Modern Pooled Trust Expectations

Presented by:



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Cameron Lindahl, M.S.

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— LAW FIRM, P.C. —

A SPECIAL NEEDS AND SETTLEMENT PLANNING LAW FIRM

Kevin Urbatsch, Esq.

Topics Covered

1. History and Evolution of PSNT Providers
2. Ideal Intake Process
3. Compare Pricing Models
4. Ideal Customer Service Expectations
5. Ideal Investment Management
6. National and Non-Profit Compliance

Evolution of Pooled Trusts

- Even before OBRA '93, large nonprofits/charities were setting up pooled trusts for their clients
- Historically, there were issues with administration
 - *See The Darkside of Pooled SNTs by Renee Lovelace*
- Today, many Pooled Trust Programs are established and run by experienced professionals, however:
 - Charities attempt to start a new program without proper expertise
 - Existing established programs not evolving with modern expectations

Evolution of Pooled Trusts

- Not just for D4C or Pooled First-Party Special Needs Trusts anymore
- Addition of Pooled Trusts
 - Third-Party Special Needs Trusts
 - Settlement Management
 - Minor's Settlement Trusts
 - Medicare Set-Aside only Special Needs Trusts
 - Miller/Income Trusts
 - Mass Tort Programs
 - More to come!
- Easy and experienced professionals

Modern Day Practice of Retention

- After OBRA in 1993, majority of programs 100% Retention
 - >40% attrition
 - Attracted expensive and small cases
- Modern-Day Hybrid Retention
 - Small local programs may still retain 100%
 - No national provider retains more than 5%, before releasing to family
 - If Medicaid owned more than the amount in Trust, most programs retain all funds
 - *May vary by state, but see Lewis v. Alexander, 3rd Cir., 2012*

Comparing PSNTs with Individual

Same Statutory Protection

Individual Trust / D4A

- 1.42 U.S.C. §1396p(d)(4)(A)
- 2.Trustee:** Individual person or Corporate
- 3.Termination:** Payback to Medicaid only
- 4.Pricing:** Professional Admin is at least 2x more expensive
- 5.Can Hold Real Property**
- 6.Can be labor-intensive, but more attentive**

Pooled Trust / D4C

- 1.42 U.S.C. §1396p(d)(4)(C)
- 2. Trustee =** A 501(c)(3) or nonprofit association
- 3.Termination:** Charity has option of retain funds before payback
- 4.Pricing:** Professional Admin is at least 2x less expensive
- 5.Most Cannot Hold Real Property**
- 6.Efficiency created by volume**

Ideal Intake Process

- **Weak intake process results in difficult admin and unhappy clients**
 - Clear procedure for the attorney to establish the account for the client.
 - Importance of setting client expectations
 - Sets clear and transparent process for establishing accounts
 - Multiple exposures of rules and procedures (e.g. consult, signing, and orientation)
 - Dedicated contact person and procedure in organization
 - Accessibility to content in text, video and consultations
- Discloses ALL fees publicly including a description for additional services
- Discloses the limitations of the program and educates clients to the reality of trust administration

Common Fee Structures

Flat-Rate	Percentage	Additional Fees
<p>Trustee charges flat-rate + investment firm will charge a separate percentage of assets undermanagement</p> <p>Pros:</p> <ul style="list-style-type: none"> • Client knows what to expect • No pressure to spend down small accounts • Minimizes conflicts of interest <p>Cons:</p> <ul style="list-style-type: none"> • Can deplete small accounts faster 	<p>Trustee charges percentage + investment firm will charge a separate percentage of asset undermanagement</p> <p>Pros:</p> <ul style="list-style-type: none"> • Simple • Encourages Trustee to make the account larger <p>Cons</p> <ul style="list-style-type: none"> • Potential conflict of interest • Encourages rapid depletion of small accounts 	<p>Trustee charges flat-rate or percentage + Trustee charges per named service provided</p> <p>Pros:</p> <ul style="list-style-type: none"> • Less expensive for accounts with little contact <p>Cons:</p> <ul style="list-style-type: none"> • Fees can pose a barrier to access • The Spirit Airlines model

Example of Proper Fee Disclosure and Disclaimers

Trustee's Website Language	Practical Translation
No proprietary investments	Trustee monitors the investment agent(s) to ensure they are investing for the client, not for their own gain
No consultation fees	The client is not charged for calling and speaking to a representative for help
Money-management based on true balance	Client pays 1/365 th of the annual fee daily (typically withdrawn periodically)
No per check fees	No limit on the number of disbursement requests in each time frame

Additional/Hidden Fees

1. If you see “Separate and Additional Charges” ... Always Ask, “When specifically does your fee schedule vary or have additional charges?”
 1. Hidden or sliding scales for small corpus
 2. Additional fees per phone call, disbursement, or when third-party partner is needed
 3. Retention policy
 4. Do they charge to hold Medicare Set-Aside funds?
2. Review the written fee disclosures and question on variance from website
3. Do you have a sliding fee schedule, or can you negotiate the fee?
4. Should not be finder’s fees to third-party providers = increased cost to client

Analyzing Fee Disclosures

Trustee's Website Language	Implications
[Administrator], [Trustee], and [Investment Firm] reserve the right to change the fees.	When was the last time fees were changed? What is the process and notice procedure?
Describing additional charges: Some examples are special investment management situations , court accountings, attorney fees, extraordinary fees, and case management services .	We need to ask more question Detailed list of additional fees Scope of services
Trustee's Consultation Fee and Investment & Management Fee are based on the current balance of each Beneficiary's sub-account.	Fee schedule is a sliding scale or check for minimum fees Your client may pay more based on the size of the case or our relationship with you.

Ideal Distribution Procedure

1. Discretionary Standard vs. Supplemental Standard
2. Process for approval: checks and balances to prevent embezzlement
3. How do they handle disbursement requests?
 1. Who has authority to submit disbursement requests? Who is administering the account? Could result in additional costs or devalue relationship
 2. Complex vs. reoccurring expenses
 3. Process described publicly
 4. Do they evaluate a disbursement request? Do they focus more on value to the client or risk to organization?
4. Maintaining modern expectations while staying flexible:
 1. Outright refusal to disburse to ABLE accounts
 2. Rejects the practice of principal reduction rules
 3. Accepts communication through email, phone, mail, fax and mobile applications
 4. Do they still physically write checks?
5. Retained or Staff attorney

Additional/Hidden Fees

1. Dedicated Trust Administrator with direct number to build rapport and identify needs
 1. Email: same-day
 2. On phone: 1 business day
2. Disbursement times excluding mail time
 1. Common/reoccurring items before 12pm = same day, after 12pm = next business day
 2. Complex disbursements have clear processes and procedures (e.g. home purchase, vehicle, caregiving, etc.). Once received = 2 business days
3. Annual Wellness Checks

Longer response times = overburdened trust administrator or lack of policies/procedure

Ideal Communication Standards

Empowering clients to access information autonomously

=

Happier clients which can lead to lower fees across the board

1. Only way to be more efficient is investing in technology
 1. Online portals or mobile applications for immediate access to account information
 2. Instant notification through email or text to notify clients on the status of their pending requests
 3. Remain flexible with traditional processes (e.g. snail mail)
2. Detailed disbursement and history reports such as
 1. Quarterly or monthly statements for account and investments
 2. Status of requests
 3. Total of pending requests

Ideal Coaching for Difficult Clients

1. Empathetic warning on-phone
2. Written notification detailing potential consequence
3. Suspension from verbal communication
4. Forgiveness process designed to teach empathy to both sides and reestablish trust

Warning: Look out for programs who cannot describe procedures and policies on the spot

If the client wants to transition to a new program, what's the process?

Importance of Trusted Partners

1. Hiring External Case Management Services (e.g. National Care Advisors)
 1. Level of support is dynamic and matches client need at that time
 2. Basic Support < \$100 an hour (varies by region)
 3. Case Management < \$150 an hour (varies by region)
 4. Does the Trustee charge for partnering?
2. Hiring Payroll Services (e.g. Team Risk Management Services)
 1. Minimizes liability to Trustee and Client
 2. Does the Trustee charge for engaging?
3. Maintaining network of experts in various related fields: (e.g. Special Needs Attorneys, CPAs, public benefit consultants, special education advocates, etc.)

Ideal Investment Management

1. At least 3 investment models to fit different client circumstances
2. How do they hold the investment manager accountable?
 1. How often do they meet?
 2. Have they delegated the investment authority to external investment advisor(s)?
 3. Beware of hidden fees: proprietary investments, trail fees, expense ratios, etc.
3. Track Record of Success with Returns:
 1. Long-term averages of at least 5 years
 2. 10-year averages are best, pre 2008 if possible

National and Non-Profit Compliance

Cornerstone of PSNT viability = Strong policies and procedures

1. Trust advisory attorney state-by-state
2. Annual Independent Financial Audit
 1. Checking the 990: <https://apps.irs.gov/app/eos/>
 2. Reserves
3. Non-profit counsel ensuring adequate standards for board and compensation of Trustee leadership
 1. Do they have financial incentives for their staff that conflict with purpose?
 2. Anti-embezzlement
 3. Private inurement policies and procedures
4. Require trust documents compliant with each state.
5. What type of insurance do they have?

The Evaluation Tool

Attached Evaluation Tool to compare PSNT programs.

1. Ideal Intake Process
2. Ideal Pricing Models
3. Ideal Customer Service Expectations
4. Ideal Investment Management
5. National and Non-Profit Compliance



Questions

If you have a recent case that seemed strange, let's unpack it together! Please use the chat to have us unmute you.



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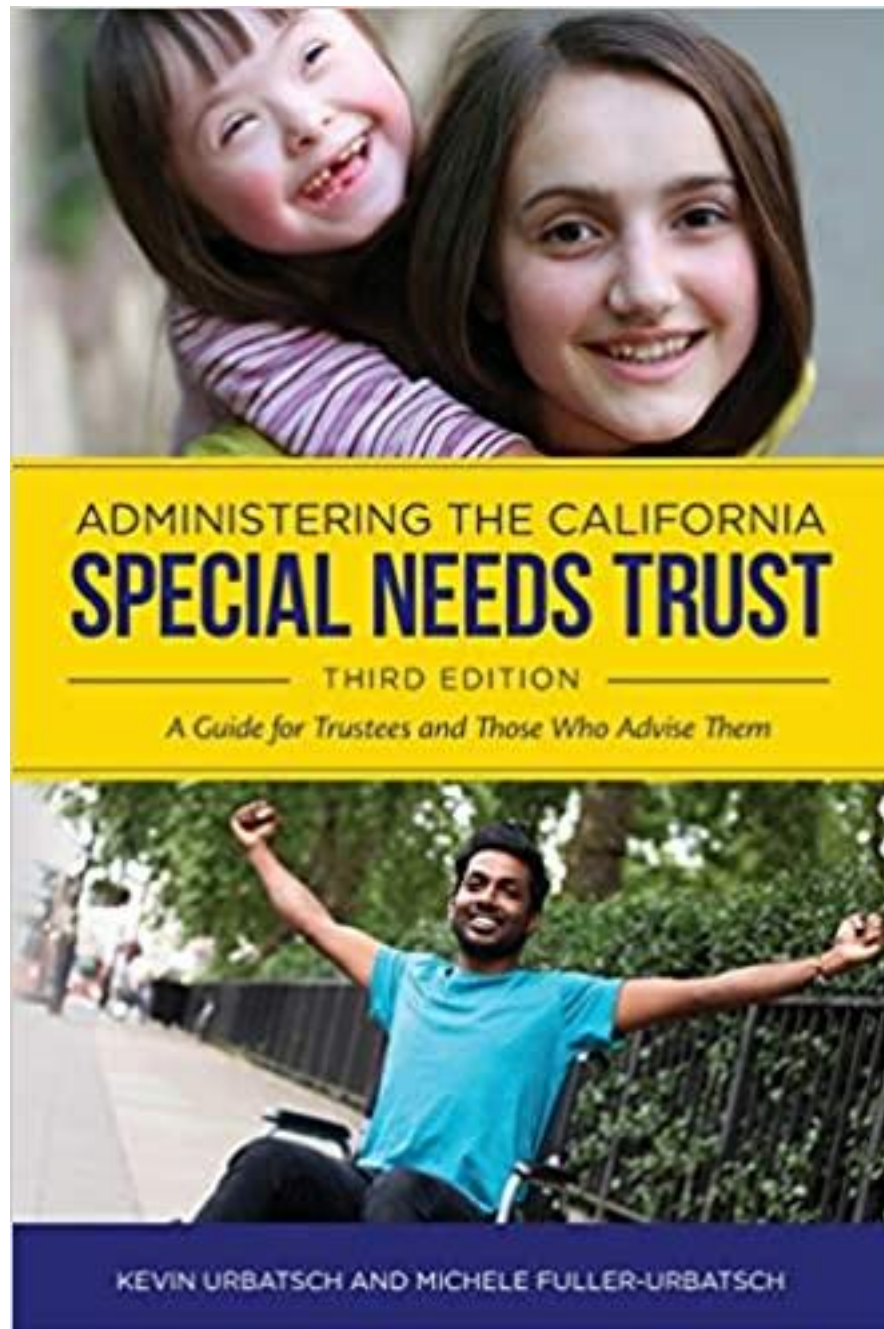
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The Urbatsch Law Firm PC provides comprehensive special needs and settlement planning from the nation's leading experts that includes:

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- Planning for Funds for a Minor
- Elder Law Planning
- Special Needs Trust Administration



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