

The NYSARC, Inc.
Community Trusts
I and II



**Information for Individuals
and Their Families**

NYSARC, Inc.
393 Delaware Avenue
Delmar, New York 12054
www.nysarc.org
trustdept@nysarc.org

Informational Booklet

The NYSARC, Inc.
Community Trusts
I and II

NYSARC, Inc.
393 Delaware Avenue
Delmar, New York 12054

Telephone: (518) 439-8323
Toll Free: (800) 735-8924
Facsimile: (518) 439-2670
E-Mail: trustdept@nysarc.org
Website: www.nysarc.org



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The NYSARC, Inc.
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NYSARC, Inc. and
JPMorgan Chase Bank
Trustees

Management Board

Warren H. Heilbronner, Esq. Chairman

Sonia A. Crannage, Esq.

James M. Hayes, Esq.

Joel Kaplan

John A. Schuppenhauer, Esq.

Howard Siegel

Edward V. Wilcenski, Esq.

Eric Stickels

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Please call the NYSARC Trust Department at (518) 439-8323 or Toll Free at (800) 735-8924 if you have any questions regarding the information provided in this booklet.

Nothing contained herein shall constitute legal advice. Please consult an attorney prior to signing any Trust documents.

General Overview of Self-Settled Trusts

General Overview of Self-Settled Trusts

A Self-Settled Trust, also known as a First-Party trust, is an irrevocable trust¹ that is funded with the Beneficiary's own assets. Many persons with disabilities have financial needs beyond essential medical care. Accordingly, Congress enacted legislation in 1993, named, The Omnibus Budget Reconciliation Act of 1993 (OBRA'93),² which enabled persons with disabilities to retain their resources without having those assets disqualify them from receiving government benefits. OBRA'93 established several exempt trusts, two of which, "A" and "C", are discussed below. The assets held in these trusts are not considered to be available resources or income for the purpose of determining an individual's eligibility for governmental assistance.

One such trust is commonly referred to as an "A" Trust. This is a Self-Settled Payback Trust created for the benefit of an individual who is disabled and under age 65. This Trust may be established by a parent, grandparent, legal guardian of the individual, or a court. With this type of Trust, the State will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan, during his or her lifetime.

Another trust is commonly referred to as a "C" Trust. This is a Self-Settled Not-for-Profit Pooled Trust, created for the benefit of an individual who has a disability without an age limitation.³ A "C" Trust must meet the following conditions:

¹ Please note that an irrevocable trust may not be revoked or changed after its creation.

² See 42 U.S.C. §1396p(d)(4)(A) and (C).

³ Please note that there may be other legal implications when funding a "C" trust.

General Overview of Self-Settled Trusts

- The Trust is established and managed by a non-profit organization;
- A separate sub-account is maintained for each Beneficiary of the Trust, but the funds in each sub-account are pooled for investment and management purposes;
- Accounts in the Trust are established solely for the benefit of individuals who are disabled as defined by Social Security Law. These accounts may be established by an individual having capacity, parent, grandparent, legal guardian of an individual, or by a court;
- To the extent that amounts remaining in the Beneficiary's sub-account upon their death are not retained by the Trust, the Trust pays to the State, from such remaining amounts in the sub-account, an amount equal to the total amount of medical assistance paid on behalf of the Beneficiary under the State plan.

Type “C” Supplemental Needs Trusts

NYSARC, Inc. Community Trusts **(Type “C” Supplemental Needs Trusts)**

NYSARC, Inc. Community Trusts are “Type C” Supplemental Needs Trusts created pursuant to federal and state companion laws pursuant to OBRA’93. The Community Trusts are pooled Supplemental Needs Trusts created for the benefit of people with disabilities, as defined by the Social Security Law.⁴ These irrevocable trusts are funded with the assets of the individual with disabilities and may be established by an individual having capacity, a parent, grandparent, guardian or court. In order to establish a sub-account under NYSARC, Inc.’s Community Trusts, a Joinder Agreement must be completed and submitted to the NYSARC, Inc. Trust Services Department along with the funds to be deposited. Funds must be made payable to NYSARC, Inc. Community Trust. The Trustees of the Community Trusts are NYSARC, Inc. and JPMorgan Chase Bank.

The Community Trusts enable an individual with a disability to create an irrevocable sub-account under the Trust and transfer assets into the account while remaining eligible to receive governmental benefits. Absent the establishment of a Supplemental Needs Trust, an individual could be forced to spend the majority of his or her assets in order to remain eligible to receive governmental benefits. The NYSARC, Inc. Community Trusts are tools for individuals who receive funds

⁴ Individuals establishing accounts under the Community Trusts must be disabled as defined in Social Security Law Section 1614(a)(3) [42 USC §1382c(a)(3)]. The NYSARC, Inc. Trust Department does not verify whether an individual is disabled as defined by the Social Security Law.

Type “C” Supplemental Needs Trusts

such as: an outright inheritance, an award from a lawsuit, retroactive benefit payments, or income from other sources, to effectively transfer those assets while remaining fully eligible to receive governmental benefits.

The NYSARC, Inc. Community Trusts, at the sole and absolute discretion of the Trustees, will make distributions on behalf of the Beneficiaries in order to enhance their quality of life. These distributions assist in meeting those needs not met, or intended to be met, by government benefits. Distributions from the sub-accounts are not intended to supplant, diminish or impair the Beneficiary’s receipt of any governmental benefits. The following are examples of items that a sub-account can pay for: food, clothing, rent, movies, vans, trips (domestic and international), televisions, computers, music, homes (including purchase, maintenance and sale of homes), companions, medical and dental services and reimbursement of guardian expenses. Disbursements for food, rent, medical and dental services will only be made to the extent that they are not covered by the Beneficiary’s governmental benefits.⁵

⁵ Please note that the Trustees of each sub-account have the absolute discretion to grant or deny any and/or all of the items listed above. Also, certain disbursements may be disallowed due to the legal requirements of the Trusts.

Types of NYSARC, Inc. Community Trusts

Community Trust I (Principal Trust) - Asset

Individuals Best Suited for this Trust

Community Trust I is primarily for individuals who are receiving governmental benefits, such as SSI or Medicaid benefits. Accounts are established with a lump sum of funds and are meant to be kept on deposit and drawn on as needed. Lump sums can include, but are not limited to: an inheritance, an award from a lawsuit, or retroactive benefit payments.

Remaining Funds at the Beneficiary's Death

Upon the death of the Beneficiary, the entire remaining balance of the Beneficiary's account will be paid to the Community Trust "Remainder Sub-Account". These monies may be used to provide assistance to other individuals with disabilities. As previously discussed, the funds remaining in a Beneficiary's account at death, are not required to be repaid to the State, as long as these funds remain with the non-profit organization to assist other individuals with disabilities.

Community Trust II (Spend-Down Trust) - Income

Individuals Best Suited For This Trust

This Trust is most effective for individuals who have excess monthly income for purposes of qualifying for Medicaid. The purpose of this Trust is to allow these individuals to transfer their monthly excess income (income determined by Medicaid to be "spent down") to the Trust so as to remain fully eligible to receive governmental benefits.

Types of NYSARC, Inc. Community Trusts

Remaining Funds at the Beneficiary's Death

As with Community Trust I, upon the death of the Beneficiary, the entire remaining balance of the Beneficiary's account will be paid to the Community Trust "Remainder Sub-Account". These monies may be used to provide assistance to other individuals with disabilities. As previously discussed, the funds remaining in a Beneficiary's account at death are not required to be repaid to the State, as long as these funds remain with the non-profit association to assist other individuals with disabilities.

Conflict of Interest –All Community Trusts

A potential conflict of interest may exist in the administration of the Trusts since the Trusts retain the funds remaining in the Beneficiary's account at death. All disbursement requests are reviewed by the Trustees in good faith, considering the best interests of the Beneficiaries.⁶ Any remaining funds may be used to assist other individuals with disabilities.

⁶ All disbursement requests are considered in light of the best interests of the Beneficiaries.

Why Choose NYSARC's Trust Program?

Why Choose NYSARC's Trust Program?

We believe that individuals should choose NYSARC, Inc. Trust Services for the following reasons:

- The NYSARC, Inc. Community Trusts have been in existence since 1997 and have a proven track record.
- The Trustees/Management Board includes parents and relatives of individuals with disabilities, all of whom are experienced with the needs of the individuals with disabilities.
- NYSARC, Inc. staff has an in-depth knowledge of governmental benefits.
- Trust accounts are generally established in two to four weeks.
- NYSARC, Inc. handles all trust administration and tax filings.
- NYSARC, Inc. provides accountings to government agencies and courts as needed.
- Community Trusts require little or no start-up costs.
- NYSARC, Inc. provides due diligence for all trusts.
- Community Trusts are audited by an independent certified public accounting firm.
- Trust funds will ultimately benefit other individuals with disabilities.
- NYSARC, Inc. Community Trust Trustees are available to serve as Trustee when no other individual may be available and will ensure continuity of service.
- A Trust Company retains all funds ensuring their safety.

The Trustees

The Trustees

NYSARC, Inc. and JPMorgan Chase Bank are the Trustees of the NYSARC, Inc. Community Trusts. The Trustees carry out the policies set forth in the Community Trust Master Trust Agreements and work closely with NYSARC, Inc.'s professional staff, as well as with employees of other agencies and professionals in the field. NYSARC, Inc. appoints a Trust Management Board, which is comprised of attorneys and financial professionals, many of whom are relatives of individuals with disabilities. The NYSARC Inc. Community Trusts are audited annually by a certified public accounting firm. In addition, the Trusts, as required by law, file all necessary annual statements and reports with the relevant federal and state governmental agencies. The Trustees have a fiduciary duty to the Beneficiaries. Accordingly, the Trustees administer the Trusts and make disbursement decisions in the best interests of the Trust Beneficiaries.

NYSARC, Inc.

NYSARC, Inc. (formerly known as the New York State Association for Retarded Children, Inc.) is a family-based not-for-profit, New York State corporation founded in 1949. Its mission is to assist and support children and adults with mental retardation and other developmental disabilities and their families in areas such as: education, employment, family support, recreation, advocacy, housing and guardianship. NYSARC, Inc. is committed to enhancing not only the desired

The Trustees

quality of life for persons with disabilities and their families, but in promoting autonomy, maximizing the development of individual skills, and fostering the individual's integration into the community. At present, NYSARC, Inc. has chapters located in every county in New York State with the exception of Tompkins County. These local chapters provide a host of programs, supports and services throughout the State of New York. NYSARC, Inc. has expanded its services in order to assist all individuals with disabilities, and enable them to live in the community.

JPMORGAN CHASE BANK

JPMorgan Chase Bank (JPMorgan Chase) is an international financial service firm that manages the investment funds for the Trusts. Additionally, JPMorgan Chase works closely with the NYSARC, Inc. Trust Services Department to provide quality customer service.

CONTACT INFORMATION

NYSARC, Inc.
393 Delaware Avenue
Delmar, New York 12054

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Toll Free: (800) 735-8924
Web info: www.nysarc.org
Facsimile: (518) 439-2670
E-mail: trustdept@nysarc.org

Trust Comparison Table

	Community Trust I	Community Trust II
Established by	Individual with disabilities, Parent, Grandparent, Guardian or Court	Individual with disabilities, Parent, Grandparent, Guardian or Court
Source of Funds	Beneficiary's own funds	Beneficiary's own funds
Disabilities Accepted	Any (Social Security Law Section 1614(a)(3)[42USC 1382c(a)(3)])	Any (Social Security Law Section 1614(a)(3)[42USC 1382c(a)(3)])
Trustees	NYSARC, Inc. and JPMorgan Chase Bank (Trustees of NYSARC Trust act as managers)	NYSARC, Inc. and JPMorgan Chase Bank (Trustees of NYSARC Trust act as managers)
Trust Document	Pooled Trust -One Trust Document governs entire pool and is already in place	Pooled Trust -One Trust Document governs entire pool and is already in place
Minimum Opening Deposit	\$100.00	\$300.00
Enrollment Fee	None	\$200.00
NYSARC Administrative Fees	Monthly. Greater of \$10 or .075% of average monthly balance	Monthly. Sliding scale based on regular monthly deposit amount
Bank Fees	Monthly Co-Trustee bank fee is % based on bank's current fee schedule, not to exceed .0625% (.75% annually)	Monthly Co-Trustee bank fee is % based on bank's current fee schedule, not to exceed .0625% (.75% annually)
Remaining Funds at Beneficiary Death	Entire balance remains with the Trust	Entire balance remains with the Trust
Reports	Monthly statements to Beneficiary or Representative. Accountings by request	Monthly statements to Beneficiary or Representative. Accountings by request
Tax Reports	Form K-1 for each Beneficiary as may be required; Reports any distributed income	Form K-1 for each Beneficiary as may be required; Reports any distributed income

Glossary of Terms

Beneficiary:

The person with a disability for whose benefit a trust or insurance policy has been established.

Developmental Disability:

A disability of a person which is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism which is attributable to any other condition of a person found to be closely related to mental retardation because the condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for people with mental retardation.

A disability of a person which is attributable to dyslexia resulting from a disability that originates before a person attains twenty-two (22) years of age, which has or can be expected to continue indefinitely and constitutes a substantial handicap to the person's ability to function normally in society.

Discretionary Powers:

Powers that permit the Trustee(s) to use its judgment and discretion when managing trust assets in order to make trust decisions that are in the Beneficiaries' best interest.

Distribute:

To pay over, convey, deliver, transfer, and assign absolutely forever, free of all trusts created.

Fiduciary:

A person or institution, usually a Trustee, who manages money or property for another and who must exercise a standard of care in that management role. The standard of care may be imposed by law or contract.

A Trustee possesses a fiduciary responsibility to the Beneficiaries of the trust to follow the terms of the trust and the requirements of applicable state law. A breach of fiduciary responsibility would make the Trustee liable to the Beneficiaries for any damage caused by the breach.

Grantor:

The creator of a trust.

Glossary of Terms

Irrevocable Trust:

A trust that Grantor cannot alter or terminate after its creation without court approval.

Joinder Agreement:

The instrument that is executed by the Grantor to establish an account with certain pooled or community-type Supplemental Needs Trusts.

OBRA '93:

The Omnibus Budget Reconciliation Act of 1993. This Act authorized the establishment of pooled supplemental needs trusts managed by non-profit corporations for the benefit of individuals with disabilities.

Payback Trust:

A trust created by federal law which enables a disabled Beneficiary, under age 65, to protect his or her own assets by transferring them to a trust and still qualify for governmental benefits, such as SSI or Medicaid. Upon the death of the Beneficiary, the State has the right to be reimbursed for the amount of correctly paid Medicaid benefits on behalf of the Beneficiary. Any remaining trust assets in excess of the payback amount may be distributed to the Beneficiary's family members.

Pooled Trust:

The pooling of monies into a trust by multiple Beneficiaries for investment purposes. A pooled trust under OBRA '93 can be established and managed by a non-profit corporation, such as NYSARC, Inc. Separate accounts within the trust are maintained for each Beneficiary. Funds remaining in a pooled Supplemental Needs Trust at the death of the Beneficiary must remain in the Trust to be used in accordance with the Trust purposes.

Remainderman:

The individual or entity that receives any money remaining in the Trust account of a deceased Beneficiary.

Glossary of Terms

Self-Settled Supplemental Needs Trust:

A Self-Settled Trust is funded with the Beneficiary's own assets. Typically, monies used to fund the trust are received as a result of a court order, inheritance, life insurance payout, a medical malpractice or personal injury action, or retroactive governmental benefit payment.

Funds remaining in this type of trust at the death of the Beneficiary may be repaid to the state for Medicaid costs paid to or on behalf of the Beneficiary. This type of trust is typically managed by a Trustee selected by the Grantor and does not have to be managed by a not-for-profit corporation.

Sub-account:

A separate account maintained for each Beneficiary of a pooled or community Supplemental Needs Trust.

Supplemental Needs Trust (SNT):

A trust which provides funds to a fiduciary (Trustee) for the benefit of a person with developmental disabilities. The assets contained in a Supplemental Needs Trust (SNT) are not considered "available assets or resources" for the purpose of determining whether a person is eligible to receive governmental benefits. SNT assets, when disbursed, are intended to supplement and not replace governmental benefits programs such as Medicaid and SSI.

The purpose of an SNT is to enhance the Beneficiary's quality of life by enabling the Trustee to supply items other than the Beneficiary's basic needs, and which are not considered to be food, clothing or shelter. Funds remaining in this type of trust, at the death of the Beneficiary, may be paid as directed by the Grantor.

Trust:

A legal entity created by a Grantor that holds legal title to assets under management by a Trustee for the benefit of a Beneficiary.

Trustee:

A person or a legally established and permitted entity that has legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to the Beneficiary.

NYSARC, Inc.
393 Delaware Avenue
Delmar, New York 12054

Telephone: (518) 439-8311
Facsimile: (518) 439-1893
E-mail: trustdept@nysarc.org

