

# Frequently Asked Questions

## **1. *What guarantees that some governmental agency will not challenge in court my child's eligibility for public benefits because of my participation in The Arc of Texas Master Pooled Trust?***

Our trust documents are consistent with favorable Congressional action. In August, 1993, Congress passed legislation allowing persons who have a disability to fund their own trust without interfering with Medicaid. Congress was recognizing the value of trusts such as ours. Our trust documents have also been approved by the Texas Department of Aging & Disability Services (TDADS) and the Dallas Regional Office of Social Security Administration (SSA). SSA & TDADS have sent informational memos to all Social Security and Medicaid officers concerning The Arc Trust.

## **2. *I already have a trust for my child who has a disability with another of my children serving as trustee. Why should I consider switching to The Arc of Texas Trust?***

One reason is continuity. Parents want continuity. They want the trust they create to last their child's entire lifetime. When another child serves as trustee, continuity depends on that other child. Will the child without a disability move, die, or for any other reason be unable to keep administering the trust? The Master Pooled Trust is managed by a corporate entity. It does not depend on an individual, so continuity is more likely.

A second reason is reliability. In planning for your child's future, you want a service that delivers. You want a service that meets the expectation it creates. The Arc of Texas representatives will meet the expectations we create.

The third reason is The Arc of Texas' management abilities. If another child serves as the trustee, the most challenging responsibility he might have is learning and staying current with regulations, and making reports to agencies such as the Social Security Administration or the Texas Department of Aging & Disability Services. To be eligible for certain benefits from these agencies, your child with a disability is allowed minimal income and assets. Every time the trust is used, income or assets might be created. Your child who administers the trust must report each expenditure to these agencies. The agencies then determine, based on their regulations, if the trust has created income or assets. If it has, and if the amount created exceeds the maximum allowed, eligibility is endangered. (Not surprisingly, no two agencies' regulations are identical. Thus, the more benefits received, the more regulations to learn.)

The Arc of Texas Master Pooled Trust will take responsibility for making these reports. Our research of the regulations minimizes the potential of challenges from government agencies.

## **3. *Does the Master Pooled Trust exclude family members from involvement in making decisions?***

No. The Arc encourages active participation in decisions on how the trust should be used. Family members do not, however, have to worry about learning regulations and dealing with bureaucrats. These are the responsibilities of The Arc of Texas.

## **4. *If I already have a trust for my child who has a disability and want to keep it, can I also use The Arc of Texas Trust?***

Yes. You may want our expertise but also want family members to control the bulk of trust assets.

**5. I already have a trust for my child who has a disability with a bank serving as trustee. Why should I consider switching to The Arc's Trust?**

The Master Pooled Trust uses JPMorgan-Chase Bank as the trustee. For many families, the combined expertise provided by JPMorgan-Chase and The Arc is highly attractive.

Also, many banks in Texas are reluctant to administer trusts under \$100,000. The Master Pooled Trust accepts any amount. Using The Arc's Trust, families who might otherwise be unable to do so gain the experience and professional management of a major Trust company.

The fee charged by the Arc's trust is generally less, often substantially less, than that charged by banks for an individually managed trust.

A bank trust department might be compelled to terminate a trust if the trust's principal or income is insufficient to justify the annual fee. This is something the Master Pooled Trust will not do. So long as any funds remain in your child's account, we will continue to administer it.

Some bank trust departments may know the regulations for Medicaid, SSI, etc., but most will not. Why? Because benefits like Medicaid and SSI are for low-income people, and bank trust departments generally do not deal with low-income people. The Arc has a thorough knowledge of these regulations and takes responsibility for reporting to these government entities.

***Note: If you intend to use a bank as trustee, determine if the bank has the expertise — or is fully prepared to develop such expertise—and at no additional cost to you or your child who has a disability. Get the bank's commitment to do so in writing. Make sure you and the bank agree on its liability. Make sure that the bank can discharge its responsibilities as you intend.***

When a family sets up a trust for a person with a disability, they frequently want more than professional management and expertise. They want insight into meeting the individual's personal needs. Few local banks have this insight. The Arc of Texas is a nonprofit organization interested in improving opportunities for people with disabilities. Because of our overall mission, we may have greater sensitivity to what families want.

**6. Is it possible for The Arc of Texas to change trustees?**

Yes. JPMorgan-Chase Bank has a reputation as an excellent trustee, but The Arc has the flexibility to replace it if it so desires.

**7. What do you mean when you say The Arc Trust is a pooled trust?**

Each beneficiary has his own separate account. But for purposes of investment, the money you leave for your child is combined (pooled) with the money left by other donors. This could enable the trustee to earn a higher rate of return than would be possible if each legacy were invested separately. For more information on JPMorgan-Chase investments, call The Arc of Texas for a brochure.

**8. How will requests for disbursement be made?**

Requests will be easy to make. We want to be accessible. Requests will be made in writing, through the mail, fax, or e-mail. They are made by designated family members or professionals who work closely with your child. A short form is available that includes all the information we need to process the request. Call The Arc of Texas for copies of these forms used for requests for disbursements.

### **9. What are the fees?**

There is a one-time enrollment fee of \$450 due at the time the joinder agreement is executed. The enrollment fee covers the cost of opening a Trust sub-account for the beneficiary.

The Arc also receives an annual fee for providing consultation to the trustee. This fee begins when the trust is funded. It is charged each year against each beneficiary's account. We believe our consultation fee is less than the trustee's fee charged annually by many banks. You might want to compare our fee with that charged by your local bank. Contact The Arc of Texas for details on fees or check the fee schedule on the joinder agreement.

There is no charge for accounts that are not yet funded.

### **10. Is each beneficiary also responsible for paying a fee to the trustee?**

No. The basic fees are those outlined above (enrollment and consulting). The Arc pays the trustee's fee.

### **11. How many people can serve as Donors?**

There may be one or multiple Donors to a beneficiary's account. Typically, if both parents are alive, both will be listed as Donors. Multiple Donors might also include other family members, such as grandparents and siblings without disabilities. Regardless of the number of Donors, only one fee is charged. A separate fee is not paid by each Donor.

### **12. Does The Arc Trust assume guardianship?**

No. If your child needs a guardian, someone other than The Arc should be chosen.

Whoever you choose should work cooperatively with the trust. On occasion, information only available to a guardian might be needed to properly administer the trust. In your written instructions to the guardian, stress the need to work cooperatively with The Arc so this information is available.

### **13. How much should I leave?**

No single answer can be given to this question. Every family's situation is unique. We can, however, provide examples of what a trust, funded at a specific level, might provide.

### **14. Does the amount I leave determine how much will be spent each year for my child?**

The amount you leave provides the trustee with a guide. The Arc will advise the primary representative how much should be spent each year so that the money can last the lifetime of the beneficiary.

### **15. What if I enroll, but learn later that I don't have enough money to actually fund my child's trust? Do I bear legal liability to contribute to the trust?**

No. Your enrollment lets you use the Trust if you want, but does not obligate you to do so. Some parents may enroll as a hedge against other plans not working out. Of course, if you do not leave money, then there will be no money to distribute.

*NOTE: If you need nursing home care for yourself, you may be able to fund your child's trust without negative consequences to you. For more information about this, contact the Arc of Texas.*

**16. When my child dies, what happens to money remaining in her account?**

There is no guarantee that any money will remain. In fact, our intent is to spend the entire amount during her actuarial lifetime. If your daughter or son lives to actuarial life expectancy, her trust should be completely depleted. However, if there is money left over, the trust shall distribute all remaining funds to the final remainder beneficiaries as identified in the joinder agreement by the Donor. If the Trust account is "self-funded" then TDADS (Medicaid) has the primary lien on amounts remaining in the trust account after the beneficiary passes away. After that lien is settled then the remainder will be distributed as described above.

**17. Doesn't The Arc require that a percentage of any remainder in the trust stay with the Arc?**

No. You can, however, voluntarily leave a remainder percentage to The Arc.

A remainder percentage left to The Arc will be used for the benefit of other beneficiaries who have a disability.

**18. If my son lives longer than life expectancy and nothing is left in his account, what happens?**

The goal of the Arc Trust is to continue some level of disbursement for your son, even if his account is completely depleted. However, there is no guarantee that this goal will be met.

To realize this goal, we need another source of revenue. This source is the remainder shares we hope Donors voluntarily leave to The Arc. This money can be used to continue disbursements for your son.

**19. Will my child be eligible for this extra money even if I choose against including The Arc as a remainderman?**

Yes, but remember, discretionary disbursements are made only if we have the revenue to do so. Only by Donors voluntarily contributing will we have this revenue.

**20. When must my child's account be funded?**

Your child's account does not need to be funded in advance. In most instances, it will be funded at the death of the second parent. Generally, it will be funded through your will or through life insurance specifically designated for this purpose.

**21. What if I want to fund The Arc Trust in advance?**

If you want to fund the account in advance, you can do so. One reason might be to assure that the money you leave will be available for your child who has a disability. Some parents worry that a catastrophic illness or similar situation may wipe out their entire savings. They worry that they may need nursing home care for themselves and have nothing left to leave for their child's trust.

If you fund the Master Pooled Trust while you are still alive, you are making an investment into the future for your son or daughter. Any money that is placed in the Master Pooled Trust is invested by JPMorgan-Chase Bank of Texas so that it will have an opportunity to grow. Even if your family

member is using trust disbursements to pay for current expenses, the account balance will continue to accrue interest and/or dividends.

***22. If I decide to fund my child's trust account in advance, rather than at my death, do I still pay an annual renewal fee?***

No. If you fund your child's trust in advance, you are assessed no annual renewal fee. However, your child's account is subject to either a consulting or maintenance fee. The consulting fee is assessed if disbursements are authorized to be made; the maintenance fee, if disbursements are not authorized. Contact The Arc of Texas for details or refer to the fee schedule attached to the joinder agreement.

***23. I want to fund the account at my death, but what if I am not enrolled?***

To fund a trust, you must be enrolled. If you are the last surviving parent and you instruct someone to enroll at your death, a substantial additional fee can be charged.

When you enroll in The Arc Trust, we start a file on your child. We update this file annually. We do this because your child's situation. And what you want for your child will change over time. We want our information to reflect these changes. If you aren't enrolled, then we aren't getting routine updates on important information that affects your child's future.

***24. I intend for another of my children to serve as guardian. If she is dissatisfied with The Arc Trust, can she withdraw without penalty?***

Once the account is funded, she cannot withdraw. She can, of course, ask for a review by such authorities as the trust's Advisory Committee or The Arc Board of Directors for whatever she believes to be wrong.

***25. What kind of effect will participation in The Arc Trust have on estate, gift, and death taxes?***

For most families, participation should have little effect on their taxes because the amount of money in their estate will be below that subject to substantial taxation. Families need to consult directly with their own attorneys or tax advisors.

***26. If I fund the trust while I am alive, can I take this as a tax deduction?***

No. Contributions to the Master Pooled Trust are not deductible as charitable gifts, or otherwise. The Internal Revenue Code treats these funds as being of direct benefit to your child and not disinterested general charity.

***27. What does it mean when you say that the Arc Trust is discretionary?***

Disbursement decisions are at the trustee's discretion, with advice and consultation from The Arc. If the trustee did not have discretion, a court of law might rule that your child's account is a resource available to him. As such, the account could be used in place of public benefits, rather than as a supplement to them.

***28. What does it mean when you say that The Arc Trust is for "nonsupport" purposes?***

The trustee is specifically prohibited from paying for basic maintenance and support when these costs can be provided by other sources. In some states, courts have ruled that if the document creating a

trust allows the trust to be used for basic maintenance and support, then the trust is a “support” trust and can be used to reimburse creditors who provide basic maintenance and support services. By specifically prohibiting basic maintenance and support, we focus on The Master Pooled Trust’s primary purpose, which is to supplement public benefit programs.

***29. Will The Arc Trust be used for funeral expenses?***

No. If you want to arrange for prepayment, we have information on what you can spend without endangering your child’s eligibility for public support.

***30. Is The Arc Master Pooled Trust intended to terminate in the future?***

No. The Arc Trust intends to last in perpetuity. The Arc of Texas is the state’s oldest and largest organization working on behalf of people with disabilities. Its staff are very committed and intend for the trust to continue. If by some chance The Arc could not continue, it has a list of stakeholder nonprofit organizations that have an interest and knowledge of the trust. One of the organizations involved would maintain the trust.

Still have questions? Chris Oglesby, the Master Pooled Trust Manager, is always available to answer your questions. You may contact him at **(800) 252-9729, (512) 454-6694, ext. 105, or at [chris@thearcoftexas.org](mailto:chris@thearcoftexas.org)**.