

NYSARC COMMUNITY TRUST II
FREQUENTLY ASKED QUESTIONS

1. What is the NYSARC, Inc. Community Trust II?

This Community Trust is established pursuant to federal and state law which permits a disabled person to shelter their own resources in order to remain eligible for governmental benefits that are subject to means tests. Disbursements must be for the sole benefit of the disabled beneficiary. Community Trust II is a “spend down” trust and receives monthly income. NYSARC retains the right to assign the beneficiary to the appropriate Community Trust.

2. Who is eligible?

All individuals who are disabled as defined in Social Security Law Section 1614(a)(3)[42USC 1382c(a)(3)j] are eligible to establish a NYSARC, Inc. Community Trust account. There are no funding restrictions with respect to an individual’s disability, ethnicity, religious beliefs, or geographic location.

3. Can a person terminate being in the Trust?

No. The Trust is irrevocable. However, once the person no longer contributes monthly income to the Trust they effectively are no longer participating in the Trust.

4. How do I become part of the NYSARC, Inc., Community Trust II?

A Joinder Agreement must be completed, signed, and notarized by the trust beneficiary (account holder), their parent, grandparent, guardian or agent under a Power of Attorney. Mail the Joinder Agreement with the funds to open the account to:

NYSARC, Inc.
Trust Services Dept.
393 Delaware Ave.
Delmar, NY 12054

Note that accounts are not accepted or set up until funded. It is the responsibility of the account beneficiary to submit trust documents to Medicaid for approval.

The documents required to be submitted with the Medicaid application are as follows:

- (a) LDSS486T Disability booklet (25 pages)
- (b) MAP 252F (Addendum to the 486T - Aids Medical Report)
- (c) MAP 751E (Authorization to release medical information)
- (d) 1151 (Disability Interview)
- (e) Copy of NYSARC Joinder Agreement

5. Who can sign the Joinder Agreement?

The Joinder Agreement may only be signed by one of the following: the Disabled Beneficiary (must have capacity), a parent, grandparent, or Guardian. (If signed by the Guardian, proof of Guardianship is required). If the account is established by court order, contact the NYSARC office for instructions regarding the completion of the Joinder Agreement. Power of Attorney must specifically include the powers to make gifts and establish trusts; a copy of the Power of Attorney must accompany the Joinder.

6. How will I know my account has been opened?

You, or the contact person listed in your Joinder Agreement, will receive a confirmation letter and copy of your accepted Joinder Agreement in the mail. (Please allow 14 days to set up your account).

7. While Medicaid is pending, does NYSARC accept the surplus income or do they wait for Medicaid approval?

NYSARC will accept the surplus income while Medicaid is pending. Medicaid will be retroactive to the date that the Trust is established. There is a \$50 per month administrative charge to keep the beneficiary's account open while Medicaid is pending.

8. What is the minimum amount I must have in my account to request disbursements?

A month's minimum deposit is equal to the person's "spend down" (Medicaid excess income), plus the amount necessary to cover the expected monthly distribution(s) and fees. This sum is required to be in the account at all times. Therefore, beneficiaries must have deposited two months minimum deposits before starting distributions. In addition, the amount available for use each month will be the current month's deposit less fees.

Requests for disbursement may be submitted 14 days after the second month's deposit is made. If two months deposits are made as the initial deposit to open the account, please allow 14 days from the date your account is accepted before requesting disbursements.

9. How should funds be made payable?

Funds should be made payable to NYSARC, Inc. Community Trust with a note indicating "fbo: name of beneficiary". Funds deposited into the trust account must be those of the beneficiary. Therefore, deposits must be in the form of a check (beneficiary's name must be on the account), money order, or cashier's check. **Cash deposits will not be accepted.** The initial \$300.00 deposit to establish the account must be from guaranteed funds (i.e. cashier's check, money order or certified check drawn on the beneficiary's bank account).

10. Where do I send future deposits?

Continue to send deposits to:

NYSARC, Inc.
Attn: Trust Dept.
393 Delaware Ave.
Delmar, NY 12054

11. Can NYSARC accept direct deposit and wire transfers?

Unfortunately, due to the nature of the pooled trust account, NYSARC cannot accept deposits in a form other than check, money order, cashier's check or certified check.

12. How do I request a disbursement?

All requests for disbursement must be submitted in writing. Appropriate documentation regarding the request must be attached. All information contained on the form must be completed. Disbursements must be for the sole benefit of the account beneficiary. Disbursements can also be faxed or e-mailed with a scanned copy of the disbursement form attached.

Documentation may be in the following forms:

- (a) an invoice, which has the disabled beneficiary's name on it;
- (b) a price quote;
- (c) rent: a copy of the lease showing the disabled beneficiary as tenant must be submitted. If you are requesting monthly rental payments and no payment coupon is necessary, a one-time written request for automatic monthly payments may be made. Be sure to indicate the payee, mailing address, amount, and date payment must be sent;
- (d) credit card statement showing all current charges. Payment for past purchases will not be made. Additional documentation may be requested as necessary. In addition, no charges from a pharmacy, physician, or medical office will be paid. Payment for cash advances also will not be paid;
- (e) utility bill with disabled beneficiary's name on it.

*Note: Disbursements are approved at the discretion of the Trustees and **must** be for the sole benefit of the disabled beneficiary.*

13. Where do I send requests for disbursements?

All requests must be in writing.

Mail to: NYSARC, Inc.
Attn: Trust Dept.
393 Delaware Ave.
Delmar, NY 12054
or Fax: 518-439-1893
Attn: Trust Department

14. What disbursements are prohibited?

The following distributions are prohibited:

- (a) Payments for rent relating to a lease between spouses;
- (b) tobacco and alcohol;
- (c) bail, restitution, and related legal fees;
- (d) fire arms;
- (e) Medicaid eligible expenses incurred after the trust was established.

15. Can a family member be reimbursed for a purchase made on my behalf?

Upon submission of a written request and appropriate receipts, another individual may be reimbursed for expenses paid on behalf of the beneficiary. Each request is reviewed individually, therefore contact the NYSARC office prior to making the expenditure to assure reimbursement.

16. Can I give a gift using my trust account?

Because the trust must be used for the sole benefit of the trust beneficiary, the following policy has been developed regarding gifts. Distributions for **non-cash** gifts with a value no greater than \$75 may be approved if it can be shown that the beneficiary receives pleasure in giving the gift.

Charitable Donations cannot be made from the trust.

17. Can the trust pay medical related expenses?

The policy of the trust is to only pay Non-Medicaid eligible expenses. Therefore, the trust will not pay for any medical expenses incurred after the date the trust is accepted.

Detailed accountings required for benefit recertification and by court order are prepared by NYSARC upon specific request.

18. Can a family pay for private home health care from the Trust if Medicaid is not providing enough hours?

Yes, but it has to be a certified agency and NYSARC would pay the agency directly (not family reimbursement). NYSARC would also need to see a copy of the Medicaid approval regarding how many hours Medicaid is providing to the beneficiary.

19. Will I receive a monthly statement?

Monthly statements are mailed approximately 30 days after the end of each month to the person indicated in the Joinder Agreement. Statements include a summary of the activity in the account.

20. I have not received my statement yet, how do I know the balance in my account?

Because a pooled supplemental needs trust is very complicated in nature, account information is only available to the trustees at months end. Therefore, NYSARC suggests that beneficiaries keep a record of their deposits and disbursement requests submitted monthly. Beneficiaries should not submit disbursement requests in excess of their monthly deposit less fees.

21. Does NYSARC provide proof of deposit to Medicaid?

Upon request, NYSARC will fax monthly deposit confirmations to Medicaid within 72 hours. NYSARC must be given the name, telephone, and fax number of the individual to receive the confirmation.

Note: NYSARC will also notify Medicaid of any check returned to it for Insufficient Funds.

22. If pension monies are going into the Trust, what happens to these monies if the beneficiary of the Trust predeceases the community spouse who is the beneficiary of the pension?

The Trust ceases upon the beneficiary's passing, so future pensions monies would pass to the surviving spouse.

23. How does the Trust handle funeral and burial expenses?

Because funeral and burials are affected by personal, family and religious values, it is preferable that funeral and burial arrangements be established during the beneficiary's lifetime with funds outside of the Trust. Requests to purchase prepaid burial contracts or otherwise arrange for these expenses may be made during the beneficiary's lifetime. Because prepaid funerals and burial accounts may be subject to SSI and Medicaid resource limits, the Trustees may reduce or deny these requests.

Any consideration of requests to pay reasonable funeral and burial expenses that may benefit a former beneficiary's family after the beneficiary's death are considered as a matter outside of the deceased beneficiary's former Community Trust account administration. Such requests will be evaluated by specific circumstances and payment is subject to the Trustees' sole discretion.

25. What happens to the balance in my account upon my death?

Upon the death of the beneficiary, any balance remaining in the account will remain with the trust to further its purposes. Only bills incurred prior to the date of death will be paid.

NOTE: The above is merely informational and not legal advice. This memorandum was published in September 2005 and based on New York law. You should contact us for any updates in the law or changes to your plan. If you have any questions regarding this alert, please do not hesitate to call VINCENT J. RUSSO & ASSOCIATES, P.C.

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