

This sample language is provided only as a guide for attorneys assisting representatives of an individual with a disability through the process of seeking a court order. Each petition should be personalized to reflect the current situation of the individual beneficiary, but should also include the following key points:

- *Eligibility for the beneficiary's enrollment in the pooled trust;*
- *How this action is in the best interest of the Beneficiary.*
- *Authority for The Arc of Oregon to establish and manage the pooled trust;*
- *Authority of the Court to approve establishment and funding of an account;*
- *Court must grant authority to establish **AND** fund the trust.*

Please contact the OSNT Program Director to discuss any questions you may have regarding the court order process.

1. The Petitioner, (petitioner's name), is (describe relationship of Petitioner to the Beneficiary). The Petitioner's address and phone number are (address and phone number of Petitioner)
2. (Beneficiary's Name) resides at (address of Beneficiary), was born on (Beneficiary's date of birth), and is currently (age of Beneficiary) years old. (Beneficiary's name) has (list of diagnoses related to disability of the Beneficiary), and is disabled as defined by the Social Security Income Program.
3. Due to his/her disability, (Beneficiary's Name) now receives net monthly Social Security benefits of \$(amount of Social Security Income). He/She also receives medical benefits through the Oregon Medicaid program. As a result of receiving these means-tested benefits, (Beneficiary's Name) is not permitted to accumulate more than \$2,000 in assets in order to maintain eligibility for public benefits.
- 4a. (FOR LUMP SUM SETTLEMENT OR INHERITANCE)

On or about (date), the Petitioner was notified that (Beneficiary's Name) was entitled to receive a lump-sum payment in the amount of (\$) from (source of funds). The lump-sum payment is considered income in the month it is received and a resource in future months. The receipt of these funds places the (Beneficiary's Name)'s resources over the \$2,000 resource

limit for the SSI and Medicaid programs, jeopardizing his/her income and medical benefits.

4b. (FOR EXCESS RESOURCES)

Because (Beneficiary's Name)'s needs are so minimal, his/her income exceeds his/her living expenses by a modest amount each month (approximately \$_____) and he/she has accumulated savings. However, if he/she saves more than \$2,000 he/she exceeds the Medicaid and SSI resources limit, which disqualifies him/her for continued eligibility to receive those benefits. Without that eligibility he/she is unable to afford the medical care that he/she needs to survive. Therefore, funds must be spent to keep (Beneficiary's Name) under the resources limit, rather than be saved for future needs that may not be covered through Medicaid or other governmental assistance programs. This limitation leads to unnecessary expenditure of funds that could be accumulated and used later for (Beneficiary's Name)'s benefit. As such, it would be in (Beneficiary's Name)'s best interests to create a Special Needs Trust for his/her benefit to receive accumulated earnings that would otherwise disqualify him/her from Medicaid and/or SSI. These funds could then be available for supplemental needs, and thereby provide him/her with a greater level of financial security and a higher quality of life.

5. As an alternative to losing eligibility for the SSI and Medicaid programs, 42 USC 1396p(d)(4)(C) allows a disabled person, as defined by the Supplemental Security Income Program, to protect their eligibility for benefits by transferring his/her resources to a pooled special needs trust, provided the trust meets certain conditions. The rules provide: (1) The pooled trust is established and maintained by a nonprofit association; (2) Separate accounts are maintained for each beneficiary, but assets are pooled for investing and management purposes; (3) Accounts are established solely for the benefit of the disabled individuals; (4) The account in the trust is established through the actions of the individual, a parent, grandparent, legal guardian, or a court; and (5) The trust provides that, to the extent any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust will pay to the State(s) the amount remaining up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under State Medicaid plan(s).

6. Although there is no age restriction under 42 USC 1396p(d)(4)(C), a transfer of resources to a trust for an individual age 65 or over may result in a transfer penalty pursuant to OAR 461.145.0540(10)(a).
7. The Oregon Special Needs Trust (OSNT) is a pooled trust, established in 1999 and managed by The Arc of Oregon, which is a non-profit association. Funds transferred to the OSNT are held by the legal Trustee, Key Bank National Association. The Oregon Special Needs Trust meets all of the conditions required by 42 USC 1396p(d)(4)(C) and OAR 461.145.0540(10). The Arc of Oregon is willing and able to administer said funds in accordance with the OSNT Program.
8. After consideration of (Beneficiary's name's) circumstances, including legal research into the interpretive guidelines for 42 USC 1396p(d)(4)(C) and OAR 461.145.0540(10), the Petitioner, in consultation with counsel knowledgeable about the applicable laws, has determined that it is in the best interest of (Beneficiary's name) for this Court to approve the establishment and funding of a subaccount in the Oregon Special Needs Trust on (Beneficiary's name's) behalf with the (settlement proceeds, accumulated assets, inheritance or other source of funds) otherwise payable to (Beneficiary's name), in order that (Beneficiary's name) might continue to qualify for Medicaid and other public benefits; thereby preserving the assets to enable the administrator of the Trust to provide (Beneficiary's name) with those items and/or services which will enhance the quality of (his/her) life and which are not provided by Medicaid and other public benefits programs.
9. The Petitioner requests that this Court authorize the Petitioner to establish a Special Needs Trust account for (Beneficiary's Name) by Joinder Agreement with the Oregon Special Needs Trust, and to transfer to the Oregon Special Needs Trust funds the excess assets of (Beneficiary's Name), that would otherwise have to be spent down to maintain his/her eligibility for Medicaid and SSI.
10. Pursuant to ORS 125.440(2) the Court may authorize the creation and funding of an account for (Beneficiary's Name) in a pooled special needs trust. The creation and funding of an account in the pooled special needs trust serves in the best interest of (Beneficiary's Name). (Beneficiary's Name) will lose eligibility for the SSI and Medicaid programs if his/her excess resources are

held in his/her existing accounts, and he/she will be forced to spend down his/her savings which will deprive him/her of the opportunity to enhance his/her quality of life over a long period of time. The proposed transfer to the pooled special needs trust will provide for several years of supplemental care that will greatly enhance his/her life experience. The sum to be placed in the special needs trust is relatively modest and will not be disproportionate to the Protected Person's expected supplemental needs. The pooled trust offers professional oversight of the funds, and will allow (Beneficiary's Name) to retain eligibility for the SSI and Medicaid programs.

WHEREFORE, the Petitioner requests that the Court issue an Order:

1. Authorizing the Petitioner to execute the documents necessary to establish an account with the Oregon Special Needs Trust for the Sole Benefit of (Beneficiary's Name) pursuant to 42 USC 1396p(d)(4)(C) and OAR 46 1.145.0540(10);
2. Authorizing the Petitioner to transfer all of (Beneficiary's Name) resources in excess of \$2,000 to the Trustee to be held, managed, and administered through the trust account established for the benefit of (Beneficiary's Name) through the Oregon Special Needs Trust;
3. Directing the Petitioner to provide a copy of the signed *Joinder Agreement* and an *Acknowledgement of Receipt of Assets* within thirty (30) days of the date of the Order;
4. Approving, authorizing and directing Petitioner to pay attorney's fees to (Firm name), in the amount of (Amount);