

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1082 Session of
1995

INTRODUCED BY REINARD, CORNELL, FLEAGLE, BROWNE, FLICK, NAILOR,
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E. Z. TAYLOR, L. I. COHEN, MUNDY, RAYMOND, HENNESSEY AND
SEMMELE, MARCH 8, 1995

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
MARCH 8, 1995

AN ACT

1 Establishing a community trust for persons with severe chronic
2 disabilities; and establishing the Community Trust Fund.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Community
7 Trust Fund Act.

8 Section 2. Legislative intent.

9 (a) Findings.--The General Assembly finds that it is in the
10 public interest to encourage activities by voluntary
11 associations and private citizens which will supplement and
12 augment those services provided by Federal, State and local
13 government agencies in discharge of their responsibilities
14 toward individuals with severe chronic disabilities. The General
15 Assembly further finds that, as a result of changing social,
16 economic and demographic trends, families of persons with severe

1 chronic disabilities are increasingly aware of the need for a
2 means by which they can assure ongoing individualized personal
3 concern for severely disabled family members who may survive
4 parents or other family members and can provide for the
5 efficient management of small legacies or trust funds to be used
6 for the benefit of such persons with disabilities. The Community
7 Trust Fund will pool resources contributed by families or
8 persons with philanthropic intent and will reserve portions of
9 these funds for the use and benefit of designated beneficiaries.

10 (b) Liberal construction.--This act shall be liberally
11 construed and applied to promote its underlying purposes and
12 policies, which are, among others, to:

13 (1) encourage the orderly establishment of community
14 trusts for the benefit of persons with severe chronic
15 disabilities;

16 (2) ensure that community trusts are administered
17 properly and that the managing boards of the trusts are free
18 from conflicts of interest;

19 (3) facilitate sound administration of trust funds for
20 persons with severe chronic disabilities by allowing family
21 members and others to pool resources in order to make
22 professional management investment more efficient;

23 (4) provide parents of persons with severe chronic
24 disabilities peace of mind in knowing that a means exists to
25 ensure that the interests of their children who have severe
26 chronic disabilities are properly looked after and managed
27 after the parents die or become incapacitated;

28 (5) encourage the availability of private resources to
29 purchase for persons with severe chronic disabilities goods
30 and services that are not available through any governmental

1 or charitable program and to conserve these resources by
2 limiting purchases to those which are not available from
3 other sources;

4 (6) encourage the inclusion, as beneficiaries of
5 community trusts, of persons who lack resources and whose
6 families are indigent, in a way that does not diminish the
7 resources available to other beneficiaries whose families
8 have contributed to the trust; and

9 (7) remove the disincentives which discourage parents
10 and others from setting aside funds for the future protection
11 of persons with severe chronic disabilities by ensuring that
12 the interests of beneficiaries in community trusts are not
13 considered assets or income which would disqualify them from
14 any governmental or charitable entitlement program with an
15 economic means test.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Beneficiary." A person with a severe chronic disability who
21 has qualified as a member of the community trust program and who
22 has the right to receive the services and benefits of the
23 community trust program as provided in this act.

24 "Board." The board of trustees or the group of persons
25 vested with the management of the business and affairs of a
26 nonprofit corporation, formed for the purpose of managing a
27 community trust, irrespective of the name by which the group is
28 designated.

29 "Community trust." A nonprofit organization which offers the
30 following services:

1 (1) Administration of special trust funds for persons
2 with severe chronic disabilities.

3 (2) Follow-up services.

4 (3) Advice and counsel to persons who have been
5 appointed as individual guardians of the persons or estates
6 of persons with severe chronic disabilities.

7 "Follow-up services." Services purchased or offered by
8 community trusts which are designed to insure that the needs of
9 each beneficiary are being met, for as long as may be required,
10 and may include periodic visits to the beneficiary and to the
11 places where the beneficiary receives services, participation in
12 the development of individualized plans being made by service
13 providers for the beneficiary and other similar services
14 consistent with the purposes of this act.

15 "Severe chronic disability." A physical or mental impairment
16 which is expected to give rise to a long-term need for
17 specialized health, social and other services, and which makes
18 the person with such a disability dependent upon others for
19 assistance.

20 "Surplus trust funds." Funds accumulated in the trust from
21 contributions made on behalf of an individual beneficiary which,
22 after the death of the beneficiary, are determined by the board
23 to be in excess of the actual cost of providing services during
24 the beneficiary's lifetime, including the beneficiary's share of
25 administrative costs.

26 "Trustee." A member of the board of a corporation, formed
27 for the purpose of managing a community trust, whether that
28 member is designated as a trustee, director, manager or
29 governor, or by any other title.

30 Section 4. Organization of community trust.

1 (a) Creation.--The community trust program is hereby created
2 to provide financial advice and counsel to benefit persons with
3 severe chronic disabilities.

4 (b) Administration.--Each community trust shall be
5 administered by a board of trustees, which shall be incorporated
6 as a nonprofit corporation.

7 (c) Board membership.--The board shall be comprised of at
8 least nine but not more than 21 members, and at least one-third
9 of the members shall be parents or other relatives of a person
10 with severe chronic disabilities. Board members shall be
11 selected in a manner which gives geographic representation
12 throughout the area served by the board.

13 (d) Limitation on members.--No board member, other than
14 those who serve in an advisory capacity, may be a provider of
15 habilitative, health, social or educational services to persons
16 with severe chronic disabilities, nor may an employee of such a
17 provider serve as a board member.

18 (e) Compensation.--No board member may receive compensation
19 for services provided as a member of the board. No fees or
20 commissions may be paid to a board member. A board member may be
21 reimbursed for necessary expenses incurred as a board member
22 upon presentation of receipts. A board member may receive
23 indemnification.

24 Section 5. Powers and duties of board.

25 (a) Adoption of bylaws.--The board shall adopt bylaws and
26 shall file them with the Secretary of Public Welfare, in
27 addition to complying with the provisions of 15 Pa.C.S. Part III
28 (relating to corporations not-for-profit). The bylaws shall
29 include a declaration delineating the primary geographic area
30 served by the trust and the principal services which are

1 provided.

2 (b) Employment of staff.--The board may retain necessary
3 paid staff to provide follow-up services to the extent required
4 by each beneficiary.

5 (c) Expenditure of moneys.--

6 (1) The board may authorize the following expenditures:

7 (i) Payment for goods or services which, in the sole
8 discretion of the board, will promote the well-being of a
9 beneficiary of the trust. This shall include recreational
10 services.

11 (ii) Payment for burial of a beneficiary.

12 (iii) Payment for the reasonable costs of
13 administering the community trust.

14 (2) The board may not expend or authorize the
15 expenditure of funds for goods or services of comparable
16 quality to those available to a particular beneficiary
17 through a governmental or charitable program, through
18 insurance or through other sources.

19 (d) Acceptance of moneys.--

20 (1) The board may accept contributions, bequests and
21 designations under life insurance policies to the community
22 trust on behalf of individuals with severe chronic
23 disabilities for the purpose of qualifying them as
24 beneficiaries of the trust. When a contribution, bequest or
25 assignment of insurance proceeds is made, the trustor shall
26 receive a written statement of the services to be provided to
27 the beneficiary. The statement shall include a starting date
28 for delivery of services or the condition precedent which
29 shall determine the starting date. The statement shall
30 describe the frequency with which services shall be provided,

1 the duration of provision and the criteria and procedure for
2 program modification which assure that services provided are
3 in the best interest of the beneficiary.

4 (2) The board may accept gifts and use surplus trust
5 funds for the purpose of qualifying as a beneficiary an
6 indigent person whose family members lack the financial
7 resources to make a full contribution on that person's
8 behalf. The extent and character of the services and
9 selection of beneficiaries are at the discretion of the
10 board. The board may accept gifts to meet start-up costs, to
11 reduce the charges to the trust for the cost of
12 administration and for any other purpose consistent with this
13 act. Gifts made to the trust for an unspecified purpose shall
14 be used by the board either to qualify indigent persons whose
15 families lack the means to qualify them as beneficiaries of
16 the trust or to meet any start-up costs that the trust
17 incurs. The board may not use surplus trust funds to make a
18 charitable contribution on behalf of a beneficiary or a group
19 or class of beneficiaries.

20 (e) Preparation and filing of annual financial report.--In
21 addition to reports required to be filed under 15 Pa.C.S. Part
22 III, the board shall file an annual report with the Secretary of
23 Public Welfare along with an itemized statement which shows the
24 funds collected for the year, income earned, salaries paid,
25 other expenses incurred and the opening and final trust
26 balances. A copy of this statement shall be available to a
27 beneficiary, trustor or designee of the trustor, upon request.

28 (f) Preparation of annual beneficiary's report.--The board
29 shall prepare and provide each trustor or the trustor's designee
30 annually with a detailed individual statement of the services

1 provided to the trustor's beneficiary during the previous 12
2 months and of the services to be provided during the following
3 12 months. The board shall provide a copy of this statement to
4 the beneficiary, upon request.

5 (g) Provision of services.--

6 (1) The board may agree to fulfill any special requests
7 made on behalf of a beneficiary if the request is consistent
8 with this act and if an adequate contribution has been made
9 for this purpose on behalf of a beneficiary.

10 (2) The board may agree to serve as trustee for an
11 individual trust created on behalf of a beneficiary,
12 regardless of whether the trust is revocable or irrevocable,
13 has one or more remaindermen or contingent beneficiaries, or
14 any other condition, as long as the individual trust is
15 consistent with the purposes of this act.

16 (3) The board may offer consultative and professional
17 assistance to a guardian of a beneficiary of its trust.

18 (h) Limitations on provision of services.--

19 (1) The board need not provide services to a beneficiary
20 who is a competent adult who refuses to accept the services.

21 (2) The board shall not provide services of a nature or
22 in a manner which is contrary to the public policy of the
23 Commonwealth at the time the services would be provided.

24 (i) Transmittal of trust moneys.--The board shall transmit
25 all moneys received by it as trustee to the State Treasurer, for
26 deposit receipts in the Community Trust Fund which shall be
27 maintained as a separate account.

28 Section 6. Community Trust Fund.

29 There is hereby established in the Office of State Treasurer
30 the Community Trust Fund. All moneys received from community

1 trust boards in this Commonwealth shall be deposited into this
2 account. Receipts shall be provided to a board at the time of
3 deposit. Quarterly accounting statements shall be provided to
4 each board having moneys deposited in the fund.

5 Section 7. Irrevocable nature of trust.

6 A community trust for persons with severe chronic
7 disabilities is irrevocable, but the trustees in their sole
8 discretion may provide compensation for any contribution to the
9 trust to any trustor who, upon good cause, withdraws a
10 beneficiary designated by the trustor from the trust, or if it
11 becomes impossible to fulfill the conditions of the trust with
12 regard to an individual beneficiary for reasons other than the
13 death of the beneficiary.

14 Section 8. Effect of participation.

15 Notwithstanding any other provision of law to the contrary,
16 the beneficiary's interest in community trust shall not be
17 deemed to be an asset for the purpose of determining income
18 eligibility for a publicly operated program, nor shall that
19 interest be reached in satisfaction of a claim for support and
20 maintenance of the beneficiary. No agency shall reduce the
21 benefits of services available to an individual because that
22 person is the beneficiary of a community trust.

23 Section 9. Rule against perpetuities abrogated.

24 A community trust shall not be subject to or held to be in
25 violation of a principle of law against perpetuities or
26 restraints on alienation or perpetual accumulations of trusts.

27 Section 10. Settlement and dissolution.

28 The board shall settle a community trust by filing a final
29 accounting in the court of common pleas. In addition, at any
30 time prior to the settlement of the final account, the board,

1 the Secretary of Public Welfare or the Attorney General may
2 bring an action for the dissolution of a nonprofit corporation
3 in the court of common pleas for the purpose of terminating the
4 trust or merging it with another charitable trust. No trustee or
5 any private individual shall be entitled to share in the
6 distribution of any of the trust assets upon dissolution, merger
7 or settlement of the community trust. Upon dissolution, merger
8 or settlement, the court of common pleas shall distribute all of
9 the remaining net assets of the community trust in a manner that
10 is consistent with the purposes of this act.

11 Section 11. Applicability.

12 This act shall apply to community trusts established on or
13 after the effective date of this act.

14 Section 12. Effective date.

15 This act shall take effect in 90 days.