

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1804 Session of  
2001

INTRODUCED BY REINARD, O'BRIEN, L. I. COHEN, CORRIGAN,  
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JUNE 19, 2001

AS RE-REPORTED FROM COMMITTEE ON HEALTH AND HUMAN SERVICES,  
HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 11, 2002

## AN ACT

1 Providing for pooled trusts for persons with disabilities.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Pooled Trust  
6 Act.

7 Section 2. Definitions.

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

11 "Beneficiary." An individual with a disability who has the  
12 right to receive services and benefits of a pooled trust.

13 "Board." A group of persons vested with the management of  
14 the business affairs of a trustee.

15 "Disability." A physical or mental impairment as defined in  
16 section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C.

1 § 1382c).

2 "Pooled trust." A trust which meets all of the following:

3 (1) Contains assets of more than one beneficiary.

4 (2) Each beneficiary has a disability.

5 (3) It is managed by a nonprofit corporation.

6 (4) A separate account is maintained for each

7 beneficiary of the trust, but, for purposes of investment and  
8 management of funds, the trust pools these accounts. Accounts  
9 in the trust may be established by the parent, grandparent or  
10 legal guardian of the individual with a disability, by the  
11 individual with a disability or by a court.

12 (5) Upon the death of a beneficiary, amounts remaining

13 ~~in the beneficiary's accounts are:~~ <—

14 ~~(i) retained by the trust for the benefit of other~~  
15 ~~beneficiaries, or other individuals with disabilities; or~~

16 ~~(ii) used to reimburse the Commonwealth in an amount~~  
17 ~~equal to the total amount of medical assistance paid on~~

18 ~~behalf of the beneficiary.~~ IN THE BENEFICIARY'S ACCOUNTS <—

19 ARE RETAINED BY THE TRUST FOR THE BENEFIT OF OTHER

20 BENEFICIARIES, OR OTHER INDIVIDUALS WITH DISABILITIES.

21 "Trustee." A nonprofit organization which manages a pooled  
22 trust.

23 Section 3. Organization of a pooled trust.

24 (a) Administration.--A pooled trust shall be administered by  
25 a trustee governed by a board. The trust may employ persons as  
26 necessary.

27 (b) Fiduciary status of board.--The members of a board and  
28 employees of a trustee, if any, shall stand in a fiduciary  
29 relationship to the beneficiaries and the trustee regarding  
30 investment of the trust and shall not profit, either directly or

1 indirectly, with respect thereto.

2 (c) Control and management.--A trustee shall maintain a  
3 separate account for each beneficiary of a pooled trust, but for  
4 purposes of investment and management of funds, the trustee may  
5 pool theses accounts. The trustee shall have exclusive control  
6 and authority to manage and invest the money in the pooled trust  
7 in accordance with this section, subject, however, to the  
8 exercise of that degree of judgment, skill and care under the  
9 prevailing circumstances that persons of prudence, discretion  
10 and intelligence, who are familiar with investment matters,  
11 exercise in the management of their affairs, considering the  
12 probable income to be derived from the investment and the  
13 probable safety of their capital. The trustee may charge a trust  
14 management fee to cover the costs of administration and  
15 management of the pooled trust.

16 (d) Conflict of interest.--A board member shall disclose and  
17 abstain from participation in a discussion or voting on an issue  
18 when a conflict of interest arises with the board member on a  
19 particular issue or vote.

20 (e) Compensation.--No board member may receive compensation  
21 for services provided as a member of the board. No fees or  
22 commissions may be paid to a board member. A board member may be  
23 reimbursed for necessary expenses incurred which are in the best  
24 interest of the beneficiaries of the pooled trust as a board  
25 member upon presentation of receipts.

26 (f) Disbursements.--The trustee shall disburse money from a  
27 beneficiary's account only on behalf of the beneficiary. A  
28 disbursement from a beneficiary's account shall be in the best  
29 interest of the beneficiary.

30 Section 4. Pooled trust fund.

1 All moneys received for pooled trust funds shall be deposited  
2 with a court-approved corporate fiduciary or with the State  
3 Treasury if no court-approved corporate fiduciary is available  
4 to the trustee. The funds shall be pooled for investment and  
5 management. A separate account shall be maintained for each  
6 beneficiary, and quarterly accounting statements shall be  
7 provided to each beneficiary by the trustee. The court-approved  
8 corporate fiduciary or the State Treasury shall provide  
9 quarterly accounting statements to the trustee. The court-  
10 approved corporate fiduciary or the State Treasury may charge a  
11 trust management fee to cover the costs of managing the funds in  
12 the pooled trust.

13 Section 5. Reporting.

14 (a) Preparation and filing of annual financial report.--In  
15 addition to reports required to be filed under 15 Pa.C.S. Part  
16 III (relating to partnerships and limited liability companies),  
17 the trustee shall file an annual report with the Secretary of  
18 Public Welfare along with an itemized statement which shows the  
19 funds collected for the year, income earned, salaries paid,  
20 other expenses incurred and the opening and final trust  
21 balances. A copy of this statement shall be available to the  
22 beneficiary, trustor or designee of the trustor, upon request.

23 (b) Preparation of annual beneficiary's report.--The trustee  
24 shall prepare and provide each trustor or the trustor's designee  
25 annually with a detailed individual statement of the services  
26 provided to the trustor's beneficiary during the previous 12  
27 months and of the services to be provided during the following  
28 12 months. The trustee shall provide a copy of this statement to  
29 the beneficiary, upon request.

30 Section 6. Coordination of services.

1 (a) Medical assistance.-- In the determination of  
2 eligibility for medical assistance benefits, the interest of any  
3 disabled beneficiary in a pooled trust shall not be considered  
4 as a resource for purposes of determining the beneficiary's  
5 eligibility for medical assistance.

6 (b) Reductions.--No State agency shall reduce the benefits  
7 or services available to an individual because that person is a  
8 beneficiary of a pooled trust. The beneficiary's interest in a  
9 pooled trust shall not be reachable in satisfaction of a claim  
10 for support and maintenance of the beneficiary.

11 Section 7. Notice.

12 The Department of Public Welfare shall make available  
13 information on the treatment of pooled trusts for the persons  
14 with disabilities in the medical assistance program.

15 Section 8. Applicability.

16 This act shall apply to pooled trusts established on or after  
17 the effective date of this act and to the accounts of individual  
18 beneficiaries established on or after the effective date of this  
19 act in pooled trusts created before the effective date of this  
20 act.

21 Section 9. Effective date.

22 This act shall take effect in 90 days.