
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 these 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.