

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2609 Session of
2006

INTRODUCED BY MCILHINNEY, BEYER, HARPER, KILLION, MUSTIO,
E. Z. TAYLOR, THOMAS AND PALLONE, APRIL 24, 2006

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
APRIL 24, 2006

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," further providing for
4 special needs trusts.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 1414 of the act of June 13, 1967 (P.L.31,
8 No.21), known as the Public Welfare Code, added July 7, 2005
9 (P.L.177, No.42), is amended to read:

10 Section 1414. Special Needs Trusts.--(a) A special needs
11 trust must be approved by a court of competent jurisdiction if
12 required by rules of court.

13 (b) A special needs trust shall comply with all of the
14 following:

15 (1) The beneficiary shall be an individual under the age of
16 sixty-five who is disabled, as that term is defined in Title XVI
17 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1381 et
18 seq).

1 (2) The beneficiary shall have special needs that will not
2 be met without the trust.

3 (3) The trust shall provide:

4 (i) That all distributions from the trust must be for the
5 sole benefit of the beneficiary.

6 (ii) That any expenditure from the trust must have a
7 reasonable relationship to the needs of the beneficiary.

8 (iii) That, upon the death of the beneficiary or upon the
9 earlier termination of the trust, the department and any other
10 state that provided medical assistance to the beneficiary must
11 be reimbursed from the funds remaining in the trust up to an
12 amount equal to the total medical assistance paid on behalf of
13 the beneficiary before any other claimant is paid: Provided,
14 however, That in the case of an account in a pooled trust, the
15 trust shall provide that no more than fifty percent of the
16 amount remaining in the beneficiary's pooled trust account may
17 be retained by the trust without any obligation to reimburse the
18 department.

19 (4) [The department, upon review of the trust, must
20 determine that the trust conforms to the requirements of Title
21 XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), this
22 section, any other State law and any regulations or statements
23 of policy adopted by the department to implement this section.]
24 Review of the trust shall be as follows:

25 (i) The department shall review the trust to determine if it
26 conforms with the requirements of Title XIX of the Social
27 Security Act (42 U.S.C. § 1396 et seq.), this section, any other
28 State law and any regulations or statements of policy adopted by
29 the department to implement this section.

30 (ii) If the department finds that the trust does not meet

1 any of the requirements of subparagraph (i), the department
2 shall provide the trustee, within forty-five business days of
3 its receipt of the trust for review, written notice stating the
4 areas of nonconformity and possible solutions.

5 (iii) If the trustee does not receive notification from the
6 department under subparagraph (ii) within forty-five business
7 days of the department's receipt of the trust for review, the
8 trust shall be deemed to be in conformity with the requirements
9 of subparagraph (i) as of the date it was submitted.

10 (iv) Upon receipt of the written notice under subparagraph
11 (ii), a trustee shall have forty-five business days to resubmit
12 a revised trust to the department for review. A revised trust
13 found to be in nonconformity with the requirements of
14 subparagraph (i) shall be considered void. If the department
15 determines that the revised trust conforms with the requirements
16 of subparagraph (i), the trust shall be deemed to be in
17 conformity with the requirements of subparagraph (i) as of the
18 date the trust was originally submitted under subparagraph (i).

19 (c) If at any time it appears that any of the requirements
20 of subsection (b) are not satisfied or the trustee refuses
21 without good cause to make payments from the trust for the
22 special needs of the beneficiary and, provided that the
23 department or any other public agency in this Commonwealth has a
24 claim against trust property, the department or other public
25 agency may petition the court for an order terminating the
26 trust.

27 [(d) Before the funding of a special needs trust, all liens
28 and claims in favor of the department for repayment of cash and
29 medical assistance shall first be satisfied.]

30 (e) At the death of the beneficiary or upon earlier

1 termination of the trust, the trustee shall notify and request a
2 statement of claim from the department, addressed to the
3 secretary.

4 (f) As used in this section, the following words and phrases
5 shall have the following meanings:

6 "Pooled trust" means a trust subject to the act of December
7 9, 2002 (P.L.1379, No.168), known as the "Pooled Trust Act."

8 "Special needs" means those items, products or services not
9 covered by the medical assistance program, insurance or other
10 third-party liability source for which a beneficiary of a
11 special needs trust or his parents are personally liable and
12 that can be provided to the beneficiary to increase the
13 beneficiary's quality of life and to assist in and are related
14 to the treatment of the beneficiary's disability. The term may
15 include medical expenses, dental expenses, nursing and custodial
16 care, psychiatric/psychological services, recreational therapy,
17 occupational therapy, physical therapy, vocational therapy,
18 durable medical needs, prosthetic devices, special
19 rehabilitative services or equipment, disability-related
20 training, education, transportation and travel expenses, dietary
21 needs and supplements, related insurance and other goods and
22 services specified by the department.

23 "Special needs trust" means a trust or an account in a pooled
24 trust that is established in compliance with this section for a
25 beneficiary who is an individual who is disabled, as such term
26 is defined in Title XVI of the Social Security Act (42 U.S.C. §
27 1382c(a)(3)), as amended, consists of assets of the individual
28 and is established for the purpose or with the effect of
29 establishing or maintaining the beneficiary's resource
30 eligibility for medical assistance.

1 Section 2. This act shall take effect immediately.