

No. 2002-168

AN ACT

HB 1804

Providing for pooled trusts for persons with disabilities.

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

Section 1. Short title.

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

Section 2. Definitions.

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

“Beneficiary.” An individual with a disability who has the right to receive services and benefits of a pooled trust.

“Board.” A group of persons vested with the management of the business affairs of a trustee.

“Disability.” A physical or mental impairment as defined in section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1382c).

“Pooled trust.” A trust which meets all of the following:

- (1) Contains assets of more than one beneficiary.
- (2) Each beneficiary has a disability.
- (3) It is managed by a nonprofit corporation.
- (4) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts. Accounts in the trust may be established by the parent, grandparent or legal guardian of the individual with a disability, by the individual with a disability or by a court.
- (5) Upon the death of a beneficiary, amounts remaining in the beneficiary’s accounts are:

- (i) retained by the trust for the benefit of other beneficiaries or other individuals with disabilities; or

- (ii) used to reimburse the Commonwealth in an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

“Trustee.” A nonprofit organization which manages a pooled trust.

Section 3. Organization of pooled trust.

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

(b) Fiduciary status of board.—The members of a board and employees of a trustee, if any, shall stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and shall not profit, either directly or indirectly, with respect thereto.

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

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

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

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

Section 4. Pooled trust fund.

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

Section 5. Reporting.

(a) Preparation and filing of annual financial report.—In addition to reports required to be filed under 15 Pa.C.S. Pt. III (relating to partnerships and limited liability companies), the trustee shall file an annual report with the Office of Attorney General along with an itemized statement which shows the funds collected for the year, income earned, salaries paid, other expenses incurred and the opening and final trust balances. A copy of this statement shall be available to the beneficiary, trustor or designee of the trustor upon request.

(b) Preparation of annual beneficiary's report.—The trustee shall prepare and provide each trustor or the trustor's designee annually with a

detailed individual statement of the services provided to the trustor's beneficiary during the previous 12 months and of the services to be provided during the following 12 months. The trustee shall provide a copy of this statement to the beneficiary upon request.

Section 6. Coordination of services.

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

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

Section 7. Notice.

The Office of Attorney General shall make available information on the treatment of pooled trusts for the persons with disabilities in the medical assistance program.

Section 8. Applicability.

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

Section 9. Effective date.

This act shall take effect in 90 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER