

Pooled Trusts for People with Disabilities

This Act enables people with disabilities to pool their assets into a common trust to help generate income without having to count the interest earned from the joint trust assets against their eligibility requirements for state medical assistance.

Submitted as:
Pennsylvania
Chapter 168 of 2002
Status: Enacted into law in 2002.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “The Pooled Trust Act.”

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3 Section 2. [*Definitions.*] The following words and phrases when used in this Act shall
4 have the meanings given to them in this section unless the context clearly indicates otherwise:

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

7 “Board” means a group of people vested with the management of the business affairs of
8 a trustee.

9 “Disability” means a physical or mental impairment as defined in section 1614 of the
10 Social Security Act (49 Stat. 620, 42 U.S.C. 2 § 1382c).

11 “Pooled Trust” means a trust that meets all of the following:

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

13 (2) Each beneficiary has a disability.

14 (3) Is managed by a nonprofit corporation.

15 (4) A separate account is maintained for each beneficiary of the trust, but, for
16 purposes of investment and management of funds, the trust pools these accounts. Accounts in
17 the trust may be established by the parent, grandparent or legal guardian of the person with a
18 disability, by the individual with a disability or by a court.

19 (5) Upon the death of a beneficiary, amounts in the beneficiary’s accounts are:

20 (i) Retained by the trust for the benefit of other beneficiaries, or other
21 people with disabilities; or

22 (ii) Used to reimburse the [state] in an amount equal to the total amount
23 of medical assistance paid on behalf of the beneficiary.

24 “Trustee.” A nonprofit organization that manages a pooled trust.

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26 Section 3. [*Organization of a Pooled Trust.*]

27 (a) Administration -- A pooled trust shall be administered by a trustee governed by a
28 board. The trust may employ people as necessary.

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

32 (c) Control and Management -- A trustee shall maintain a separate account for each
33 beneficiary of a pooled trust, but for purposes of investment and management of funds, the

34 trustee may pool these accounts. The trustee shall have exclusive control and authority to
35 manage and invest the money in the pooled trust in accordance with this section, subject,
36 however, to the exercise of that degree of judgment, skill and care under the prevailing
37 circumstances that a person of prudence, discretion and intelligence, who are familiar with
38 investment matters, exercise in the management of their affairs, considering the probable
39 income to be derived from the investment and the probable safety of their capital. The trustee
40 may charge a trust management fee to cover the costs of administration and management of the
41 pooled trust.

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

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

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

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53 Section 4. [*Pooled Trust Fund.*] All money received for pooled trust funds shall be
54 deposited with a court-approved corporate fiduciary or with the [State Treasury] if no court-
55 approved corporate fiduciary is available to the trustee. The funds shall be pooled for investment
56 and management. A separate account shall be maintained for each beneficiary, and quarterly
57 accounting statements shall be provided to each beneficiary by the trustee. The court-approved
58 corporate fiduciary or the [State Treasury] shall provide quarterly accounting statements to the
59 trustee. The court-approved corporate fiduciary or the [State Treasury] may charge a trust
60 management fee to cover the costs of managing the funds in the pooled trust.

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62 Section 5. [*Reporting.*]

63 (a) Preparation and Filing of Annual Financial Report -- In addition to reports required to
64 be filed under [insert citation relating to partnerships and limited liability companies], the
65 trustee shall file an annual report with the [Office Of Attorney General] along with an itemized
66 statement which shows the funds collected for the year, income earned, salaries paid, other
67 expenses incurred and the opening and final trust balances. A copy of this statement shall be
68 available to the beneficiary, trustor or designee of the trustor, upon request.

69 (b) Preparation of Annual Beneficiary's Report -- The trustee shall prepare and provide
70 each trustor or the trustor's designee annually with a detailed individual statement of the
71 services provided to the trustor's beneficiary during the previous 12 months and of the services
72 to be provided during the following 12 months. The trustee shall provide a copy of this
73 statement to the beneficiary, upon request.

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75 Section 6. [*Coordination of Services.*]

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

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

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Section 7. [*Notice.*] The [Office of the Attorney General] shall make available information on the treatment of pooled trusts to the people 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. [*Severability.*] [Insert severability clause.]

Section 10. [*Repealer.*] [Insert repealer clause.]

Section 11. [*Effective Date.*] [Insert effective date.]