

PROTECT POOLED TRUSTS FOR DISABLED SENIORS

Amendment #116, S2842 (Economic Development)

Sponsor: Senator Jehlen

What the amendment does: This amendment would enable disabled seniors to continue to use special needs pooled trusts without penalty to pay for important services and care not covered by MassHealth.

Why is this Amendment Necessary?

For more than 20 years, disabled individuals of any age have been permitted to fund pooled trusts without interfering with their MassHealth eligibility. MassHealth proposed regulations that will penalize disabled individuals 65 and over who set up a pooled trust.

Why are Pooled Trusts Critical to Disabled Individuals 65 and Older?

To qualify for MassHealth, an individual 65 and over must have assets below \$2,000. A pooled trust provides a source of funds to pay for items and services not covered by MassHealth, which are necessary for disabled seniors to live independently in the community. Seniors can use funds from a pooled trust for home care services, uncovered medical, dental and pharmacy costs, transportation, clothing, personal needs and household items, nonmedical therapies, and assisted living expenses. Without pooled trusts, more seniors will be at risk of nursing home placement.

Why have Pooled Trusts been Favored under Medicaid law?

On the death of the disabled beneficiary, trust assets are paid to the Commonwealth of Massachusetts to reimburse the State for MassHealth benefits paid (with a small amount paid to the non-profit administering the pooled trust.) More than \$8 million dollars was reimbursed to the Commonwealth last year.

Does Federal law Permit Pooled Trusts for Disabled Seniors?

- The Omnibus Budget Reconciliation Act of 1993 allows disabled individuals of any age to benefit from pooled trusts.
- MassHealth allowed transfers to pooled trusts for two decades under current federal statute.
- At least 18 other states allow disabled seniors to transfer assets to pooled trusts.
- June 20, 2019, a court decision in federal court held that a Medicaid penalty may be imposed, if a senior (age 65+) creates a pooled trust account. There is no penalty, however, if fair-market value is received in exchange for the transfer.
- The decision invites Massachusetts to create a legally sound policy for determining what is a fair market exchange.

Permitting pooled trusts for disabled individuals *regardless of age* has been a wise public policy that benefits disabled seniors and the Commonwealth and should be continued.

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