

POOLED TRUSTS FOR PERSONS WITH DISABILITIES

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House Bill 5028

Sponsor: Rep. Coleman Young

Committee: Judiciary

Complete to 6-8-10

A SUMMARY OF HOUSE BILL 5028 AS INTRODUCED 5-28-09

The bill would create the Pooled Trust Act, which would regulate trusts created to pool the assets of beneficiaries with disabilities. Such trusts could only be managed by nonprofit corporations. A separate account would be maintained for each beneficiary of a pooled trust, but the accounts would be pooled for the purposes of investment and fund management. Accounts could 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.

When a beneficiary died, the amounts in the account would be retained by the trust for the benefit of other beneficiaries or other people with disabilities, or could be used to reimburse the state for the total amount of medical assistance (Medicaid) paid by the state on behalf of the beneficiary.

Eligibility for Medical Assistance Benefits

The interest of any disabled person in a pooled trust could not be considered as a resource for determining eligibility for medical assistance benefits. No state agency could reduce the benefits or services available to an individual because that individual is a beneficiary of a pooled trust. The beneficiary's interest in a pooled trust could not be reachable in satisfaction of a claim for support and maintenance of the beneficiary.

The Attorney General would be required to make available information on the treatment of pooled trusts for the individuals with disabilities in the medical assistance program.

Administration of Trust

Under the bill, a pooled trust would be administered by a trustee (a nonprofit corporation) governed by a board. The members of a board and employees of a trust would stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and could not profit, either directly or indirectly, with respect to that investment.

The trustee would have exclusive control and authority to manage and invest the money in the pooled trust, subject to "the exercise of the 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 could charge a management fee.

A board member would have to disclose and abstain from participation in discussing or voting on an issue when a conflict of interest arises with the board member on a particular issue or vote. Board members could not receive compensation for board services, and no

fees or commissions could be paid to a board member. A board member could be reimbursed for necessary expenses incurred that are in the best interest of beneficiaries of the pooled trust, upon the presentation of receipts.

Disbursements

The trustee could disburse money from a beneficiary's account only on behalf of the beneficiary, and a disbursement could be made only if it was in the best interest of the beneficiary.

Deposits with Fiduciary

All money received for pooled trust funds would have to be deposited with a court-approved fiduciary or be deposited in the state treasury if no court-approved fiduciary is available. The fiduciary or State Treasurer would have to provide quarterly accounting statements to the trustee, and could charge a trust management fee to cover the costs of managing the funds.

Required Reporting

In addition to other reports required under federal or state law on partnerships and limited liability companies, the trustee would have to file an annual report with the Attorney General along with an itemized statement showing the funds collected for the year, income earned, salaries paid, other expenses incurred, and the opening and final trust balances. A copy of this report would have to be available to the beneficiary, trustor, or trustor's designee upon request.

Annually, the trustee would have to prepare and provide each trustor or trustor's designee with a detailed individual statement of services provided to the beneficiary during the previous 12 months and the services to be provided in the next 12 months. A copy would have to be provided to the beneficiary on request.

Application and Effective Date

The new act would apply to pooled trusts established on or after the bill's effective date and to the accounts of beneficiaries established on or after that date in pooled trusts created before that date. The bill would take effect 90 days after being enacted into law.

FISCAL IMPACT:

Regarding the Department of Community Health (DCH), staff concludes that there would be no fiscal impact on DCH from the bill as written.

The bill would have an indeterminate, but likely negligible, fiscal impact on the Michigan Department of Treasury. While the State Treasurer may be appointed to serve as a fiduciary of the pooled trust funds, he or she may charge a trust management fee to cover the costs of managing the funds. The judicial branch may experience some negligible costs associated with appointing fiduciaries and hearing challenges brought under the provisions of the bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.