

Chapter 455

(Senate Bill 332)

AN ACT concerning

Estates and Trusts – Special and Supplemental Needs Trusts – Regulations by State Agencies

FOR the purpose of requiring each State agency that provides public benefits to individuals of any age with disabilities to adopt certain regulations that are not more restrictive than any State ~~statutes, regulations, or common~~ law regarding trusts and that do not require disclosure of a beneficiary's personal or confidential information without the consent of the beneficiary; providing that nothing in a certain provision of law shall be interpreted to require a court order to authorize a disbursement from a special or supplemental needs trust; establishing that a certain regulation enacted by a State agency regarding pooled special needs trusts shall apply only to certain trust beneficiaries; making stylistic changes; and generally relating to special and supplemental needs trusts.

BY repealing and reenacting, with amendments,
 Article – Estates and Trusts
 Section 14–115
 Annotated Code of Maryland
 (2011 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Estates and Trusts

14–115.

(a) In this section, “special needs trust” and “supplemental needs trust” include a trust funded by a trust beneficiary or by a third party.

(b) It is the policy of the State to encourage the use of a special needs trust or supplemental needs trust by an individual of any age with disabilities to preserve funds to provide for the needs of the individual not met by public benefits and to enhance quality of life.

(c) (1) Each State agency that provides public benefits to individuals [with disabilities of all ages] **OF ANY AGE WITH DISABILITIES** through means–tested

programs, including the Medical Assistance Program, shall adopt regulations that [are]:

(I) ARE not more restrictive than existing federal law, regulations, or policies with regard to the treatment of a special needs trust or supplemental needs trust, including a trust defined in 42 U.S.C. § 1396p(c)(2) and (d)(4);

(II) ~~ARE NOT MORE RESTRICTIVE THAN STATE STATUTES, REGULATIONS, OR COMMON LAW REGARDING TRUSTS, INCLUDING THE REASONABLE EXERCISE OF TRUSTEE DISCRETION, GUARDIANSHIP OF THE PROPERTY, OR CONSERVATORSHIP OF AN ALLEGED DISABLED ADULT~~ ANY STATE LAW REGARDING TRUSTS, INCLUDING ANY STATE LAW REGARDING THE REASONABLE EXERCISE OF DISCRETION BY A TRUSTEE, GUARDIAN, OR CONSERVATOR IN THE BEST INTERESTS OF THE BENEFICIARY; AND

(III) DO NOT REQUIRE DISCLOSURE OF A BENEFICIARY'S PERSONAL OR CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE BENEFICIARY.

(2) The regulations described in paragraph (1) of this subsection shall allow:

(i) An individual account in a pooled asset special needs trust to be funded without financial limit;

(ii) A fund in a special needs trust, supplemental needs trust, or pooled asset special needs trust to be used for the sole benefit of the beneficiary including, at the discretion of the trustee, distributions for food, shelter, utilities, and transportation;

(iii) An individual to establish or fund an individual account in a pooled asset special needs trust without an age limit or a transfer penalty;

(iv) An individual to fund a special needs trust or supplemental needs trust for the individual's child with disabilities without a transfer penalty and regardless of the child's age; and

(v) All legally assignable income or resources to be assigned to a special needs trust, supplemental needs trust, or pooled asset special needs trust without limit.

(3) NOTHING IN THIS SUBSECTION MAY BE INTERPRETED TO REQUIRE A COURT ORDER TO AUTHORIZE A DISBURSEMENT FROM A SPECIAL OR SUPPLEMENTAL NEEDS TRUST.

(d) (1) A determination of the Internal Revenue Service regarding the nonprofit status of an organization operating a pooled asset special needs trust shall be sufficient to satisfy the nonprofit requirement of 42 U.S.C. § 1396p(d)(4)(C).

(2) A State agency may not impose additional requirements on an organization described in paragraph (1) of this subsection for the purpose of qualifying or disqualifying the organization from offering a pooled asset special needs trust.

(E) A REGULATION ADOPTED BY A STATE AGENCY REGARDING POOLED SPECIAL NEEDS TRUSTS SHALL APPLY ONLY TO THOSE TRUST BENEFICIARIES WHO ARE STATE RESIDENTS OR WHO RECEIVE PUBLIC BENEFITS FUNDED BY THE STATE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 16, 2013.