

HOUSE BILL 1328

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3lr1644
CF SB 332

By: **Delegates Smigiel, Glass, Hershey, Jacobs, McDermott, and Parrott**
Introduced and read first time: February 8, 2013
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Special and Supplemental Needs Trusts – Regulations**
3 **by State Agencies**

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

15 BY repealing and reenacting, with amendments,
16 Article – Estates and Trusts
17 Section 14–115
18 Annotated Code of Maryland
19 (2011 Replacement Volume and 2012 Supplement)

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

22 **Article – Estates and Trusts**

23 14–115.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

5 (c) (1) Each State agency that provides public benefits to individuals
6 [with disabilities of all ages] **OF ANY AGE WITH DISABILITIES** through means-tested
7 programs, including the Medical Assistance Program, shall adopt regulations that
8 [are]:

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

13 (ii) **ARE NOT MORE RESTRICTIVE THAN STATE STATUTES,**
14 **REGULATIONS, OR COMMON LAW REGARDING TRUSTS, INCLUDING THE**
15 **REASONABLE EXERCISE OF TRUSTEE DISCRETION, GUARDIANSHIP OF THE**
16 **PROPERTY, OR CONSERVATORSHIP OF AN ALLEGED DISABLED ADULT; AND**

17 (iii) **DO NOT REQUIRE DISCLOSURE OF A BENEFICIARY'S**
18 **PERSONAL OR CONFIDENTIAL INFORMATION WITHOUT THE CONSENT OF THE**
19 **BENEFICIARY.**

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

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

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

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

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

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

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

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

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

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

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