

SENATE BILL 217

N2

5lr0936

By: **Senator Kelley**

Introduced and read first time: February 2, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Special or Supplemental Needs Trusts – Authorization to Fund**

3 FOR the purpose of providing that certain provisions of law concerning regulations adopted
4 by certain State agencies regarding certain special or supplemental needs trusts may
5 not be interpreted to require a court order to authorize the funding of a special or
6 supplemental needs trust; and generally relating to special or supplemental needs
7 trusts.

8 BY repealing and reenacting, with amendments,
9 Article – Estates and Trusts
10 Section 14.5–1002
11 Annotated Code of Maryland
12 (2011 Replacement Volume and 2014 Supplement)

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

15 **Article – Estates and Trusts**

16 14.5–1002.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) (1) Each State agency that provides public benefits to individuals of any
2 age with disabilities through means-tested programs, including the Medical Assistance
3 Program, shall adopt regulations that:

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

7 (ii) Are not more restrictive than any State law regarding trusts,
8 including any State law regarding the reasonable exercise of discretion by a trustee,
9 guardian, or conservator in the best interests of the beneficiary; and

10 (iii) Do not require disclosure of a beneficiary's personal or
11 confidential information without the consent of the beneficiary.

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

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

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

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

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

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

27 (3) Nothing in this subsection may be interpreted to require a court order
28 to authorize **THE FUNDING OF OR** a disbursement from a special or supplemental needs
29 trust.

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

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

1 (e) A regulation adopted by a State agency regarding pooled special needs trusts
2 shall apply only to those trust beneficiaries who are State residents or who receive public
3 benefits funded by the State.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2015.