

PROTECT POOLED TRUSTS FOR DISABLED SENIORS

Sponsors: Senator Jehlen and House Speaker Pro Tempore Hogan

[H.1202/S.756](#)

What the bill does: This bill 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 Bill Necessary?

For 30 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. This is age discrimination, and it should not be tolerated in Massachusetts.

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 at greater expense to the Commonwealth.

Why have Pooled Trusts been Favored under Medicaid law?

On the death of the disabled beneficiary, *up to 95% of 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.) *As a result, pooled trusts do not incur net costs for Massachusetts.*

Does Federal law Permit Pooled Trusts for Disabled Seniors?

- Yes. The Medicaid statute was amended in 1993¹ to allow disabled individuals to benefit from pooled trusts. Those age 65 or older are eligible if the trust returns fair-market value.
- Pooled trusts provide supplemental goods and services at fair-market value.
- Up to 95% of the assets remaining in a pooled trust are used to reimburse the state for medical services that are provided at fair-market value.
- For 30 years MassHealth has recognized that pooled trusts are not "gifts," and that they are not subject to penalties, regardless of the person's age.
- The First Circuit Court of Appeals in 2019 recognized that a trust that provides fair-market value to the individual is not subject to penalty, regardless of the individual's age.

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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¹ The Omnibus Budget Reconciliation Act of 1993.