



# PROTECT POOLED SPECIAL NEEDS TRUSTS FOR SENIORS

**H.1202/S.756: An Act to preserve special needs trusts for disabled seniors**

**Senate Sponsor:** Senator Patricia Jehlen

**House Sponsor:** Speaker Pro Tempore Kate Hogan

This bill preserves special needs pooled trusts for disabled seniors age 65 or older, consistent with the "fair market value" exception under federal Medicaid law. This exception has been recognized under state Medicaid regulations for 30 years. Despite no change in the federal statute, MassHealth will begin--as of June 1--assessing penalties against individuals aged 65 or older who try to establish a pooled special needs trust. The Legislature passed a statute in the last session to prevent such penalties. But Governor Baker vetoed the bill, and with less than a week to go in the Administration's term in office, MassHealth issued the penalty regulation, effective this June 1.

## Why Do Pooled Trusts Matter for Older Disabled Seniors? (See life stories, on reverse side.)

To qualify for MassHealth, an individual 65+ must have assets below \$2,000. Special needs trusts allow them to set aside their own assets for support that brings dignity, and eases their suffering for their remaining years.

Pooled trusts provide items and services not covered by MassHealth, enabling frail seniors to remain at home for longer, and giving more quality of life to those in facilities. Pooled trust accounts provide home care services, uncovered medical, dental and pharmacy costs, transportation, companionship, personal and household items, assisted living expenses, and so much more. Without pooled trusts, more seniors will be at risk of nursing home placement, and those already institutionalized will have diminished quality of life.

## Why have Pooled Trusts Been Favored for So Long Under Massachusetts law?

On the death of the disabled beneficiary, 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.) Millions of dollars are reimbursed to the Commonwealth each year.

## Does Federal Law Permit Pooled Trusts for Disabled Seniors?

- Yes. The Omnibus Budget Reconciliation Act of 1993 allows disabled individuals of any age to benefit from pooled trusts that are meant to return fair market value or other valuable consideration to the individual.
- Pooled trusts allow **only** the disabled trust-maker to benefit, and they provide much-needed supplemental goods and services at fair market value.
- Pooled trusts also assume the obligation of individual to reimburse MassHealth at death. MassHealth pays a market-based, negotiated rate for services during lifetime.
- A federal decision in the First Circuit included a concurring **opinion that invites states to rely upon the fair market value exception to penalties**, in order to protect the ability of disabled seniors 65 and older to have access to pooled trusts.

Permitting pooled trusts for disabled individuals **regardless of age** has been a wise public policy for 30 years, that benefits disabled seniors and the Commonwealth. It should be continued.

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## WHY POOLED TRUSTS MATTER TO SENIORS

The following are composites of people under circumstances where pooled trusts make an enormous difference, and where there is no other option to protect the independence, dignity and/or comfort of the individual:

Lucy is 77 years old. She is widowed and lives alone in a home in Revere. In February, she suffers a moderately severe stroke that leaves her partially paralyzed on the right side of her body, unable to walk. She has a good chance of recovery, but it will take up to a year of rehabilitation. She applies for MassHealth, but is denied because she has \$80,000 in savings. She needs the savings in order to pay taxes, insurance and utilities for her home while she is in rehab, so that she will have a home to return to after recovery. Without the pooled trust option, the cost of rehab will consume essentially all of her savings, as well as her income during that time, before she can qualify for MassHealth. She will lose the home and, after recovery, join the long lists of elders seeking state-subsidized housing, or move to a rest home at taxpayer expense.

Maria is 82 years old and lives alone in the community in an elderly housing project, with Medicaid as her primary medical coverage. She has high medication costs that are covered by MassHealth. But she also has severe dental problems that remain untreated, because Medicaid dental coverage does not include temporary dentures that are needed for up to six months after extraction of damaged teeth. It also does not pay for implants, which would avoid the problems with dentures. Maria inherits \$30,000 from her brother. This would be enough to pay for her dental care, but she loses her MassHealth immediately, and the funds must be used to pay for medication instead. The funds will be gone in less than six months, unless she is able to preserve them in a Medicaid-exempt pooled trust. Without the pooled trust, she is unlikely to ever receive the extensive dental care that she needs.

Robert is 73, widowed, and suffers from progressive dementia, as a result of which he is admitted to a nursing home. His income of \$1,200 per month is not enough to pay for the nursing home, so he will need Medicaid benefits for his care. In addition to medical needs, Robert has significant anxiety and related behavioral problems, which have become worse with the dementia. The best treatment for these issues is companionship. But the cost of a daily companionship visit is \$90, or about \$25,000 per year, none of which is covered by MassHealth. Robert's savings of \$65,000 would be enough to pay for a companion for two and a half years, but he will have to spend them instead on the nursing home if they cannot be set aside for companionship in a pooled trust account.