

ELDER LAW & DISABILITY RIGHTS SECTION
Respectfully submits the following position on:

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HB 4013

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The Elder Law & Disability Rights Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Elder Law & Disability Rights Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Elder Law & Disability Rights Section is 1,739.

The position was adopted after a discussion and vote. The number of members in the decision-making body is 18. The number who voted in favor to this position was 14. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Elder Law & Disability Rights Section

Contact person:

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Bill Number:

[HB 4013](#) (Heise) Human services; medical services; use of pooled trusts for medicaid eligibility; authorize. Amends sec. 106 of [1939 PA 280](#) (MCL [400.106](#)) & adds sec. 106b.

Date position was adopted:

February 2, 2013

Process used to take the ideological position:

We reaffirmed our interest in this legislation. A similar bill had been endorsed by the section in the last legislative session and this reaffirmation was approved in February at our Council meeting, without objection.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

0 Abstained from vote

4 Did not vote

Position:

Support

Explanation of the position, including any recommended amendments:

The passage of HB 4013 will allow for greater quality of life, care and advocacy for people with disabilities. The basis for all special needs trusts is federal statute 42 USC §1396(p)(D)(4), subparagraph (c) which describes the elements of a pooled special needs trust. State implementation of the statute and formation of policy determines the usefulness of the statute to people with disabilities. Further, the pending bill will help resolve a continuing problem for individuals, particularly those over the age of 65, attempting to create and fund a pooled trust account. With the passage of the OBRA in 1993, Congress recognized that federal and state benefits were not enough to meet the basic needs of individuals with disabilities and created specific exceptions to the rule that with regard to means-tested benefits, such as Medicaid, all trusts are countable assets.

For people with disabilities who need means-tested benefits, a pooled special needs trust can make a huge impact on the quality of their lives.

The use of the pooled trust would tremendously impact the ability of people with disabilities to age in their homes in a safe environment, and prevent the foreclosure of homes due to non-payment of taxes whether receiving services on the waiver program or even if they are in a nursing home facility. For individuals whose medical and personal needs require them to be placed in a nursing facility, the trust may help prevent fraud and mishandling of funds by family members who are trying to otherwise spend down assets without proper guidance. Most importantly, unlike other allowable methods to obtain Medicaid eligibility, the funds in the trust can only be used for the benefit of the person with disabilities. Typical allowable disbursements from pooled trusts include: home purchase; home improvements, repair and maintenance; tools; tuition, books and supplies; health insurance premiums; entertainment; travel; a car; insurance, repair and maintenance of an automobile; household goods; clothing; cleaning supplies; phone; internet; and dental care or other medical treatment not otherwise covered by other available means.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2013-HB-4013>