



Office of The Attorney General
State of Connecticut

TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE JUDICIARY COMMITTEE
FEBRUARY 25, 2015

I appreciate the opportunity to testify about House Bill 6774, An Act Concerning Adoption of the Connecticut Uniform Power of Attorney Act. I support the intent of the bill, which is to create a strong, uniform and easy to use power of attorney ("POA"). A POA is a useful and important legal tool, particularly for the elderly. Unfortunately, it also can be misused by unscrupulous individuals seeking to exploit others financially. This bill will help protect against such abuse by, among other things, clarifying the duties of an agent and the powers an agent is prohibited from exercising absent POA provisions expressly authorizing such actions, establishing liability for agents who violate POA law, and addressing third-party acceptance and reliance on a POA and the circumstances under which a third-party may refuse to accept a POA.

Though I support the intent of the bill, I am requesting a relatively minor, but important change. Section 24(a)(1) of the bill authorizes an agent under a POA to "create, amend, revoke or terminate an intervivos trust." One form of intervivos trust is a self-settled spendthrift trust established for the purpose of maintaining Medicaid eligibility. The federal statutes permitting these types of "supplemental" or "special needs" trusts are 42 U.S.C. 1396p(d)(4)(A) and 42 U.S.C. 1396p(d)(4)(C). The state statute is C.G.S. 45a-655 (e). These statutes do not permit a principal or agent acting under a POA to be a settlor of such a trust. The settlor of such a trust must be a parent, grandparent, legal guardian, conservator of an estate, or a court. Supplemental and special needs trusts are irrevocable and terminate only upon the death of a beneficiary or if the trust assets are exhausted in accordance with the terms of the trust. Such trusts only may be amended to maintain eligibility for Medicaid. To the extent that an amendment is permissible, the authority vests exclusively in a trustee, subject to approval of a probate court.

To avoid any confusion about whether the bill contradicts well-settled law governing supplemental and special needs trusts, I respectfully request that section 24(a)(1) of the bill be amended. In particular, I ask that it be amended to provide that an agent under a power of attorney may, on behalf of a principal, create, amend, revoke or terminate an intervivos trust "other than a supplemental needs or special needs trust established under 42 U.S.C. 1396p(d)(4)(A) or 42 U.S.C. 1396p(d)(4)(C), as from time to time amended."

Thank you for the opportunity to provide testimony on this important proposal. Please feel free to contact me with any questions or concerns.