

March 23, 2009

**S 765. CLARIFY PATIENT DATA/MEDICAL CARE DATA ACT.** Filed 3/23/09. *TO CLARIFY THAT EMERGENCY DEPARTMENT DATA AND AMBULATORY SURGICAL DATA ARE INCLUDED IN THE PATIENT DATA SUBMISSION REQUIREMENTS OF THE MEDICAL CARE DATA ACT.*

Amends GS 131E-214.1(4) as the title indicates. Also provides that the term *patient data* includes *inpatient* data.

**Intro. by Stein.**

GS 131E

July 1, 2010

**S 765. SPECIAL NEEDS/POOLED TRUSTS/MEDICAID REIMBUR. (NEW).** Filed 3/23/09. House committee substitute deletes all provisions of the 1st edition and replaces it with *AN ACT TO AMEND THE GENERAL STATUTES WITH RESPECT TO COMMUNITY THIRD PARTY TRUSTS, MEDICAID SPECIAL NEEDS TRUSTS AND MEDICAID POOLED TRUSTS, AND TO PROVIDE FOR MEDICAID REIMBURSEMENT IN CERTAIN CIRCUMSTANCES.*

Amends GS Chapter 36D, providing that it may be cited as the *North Carolina Community Third Party Trusts, Pooled Trusts and Special Needs Trusts Act* (was, this Article may be cited as the North Carolina Community Trust for Persons with Severe Chronic Disabilities Act). Notes that the General Assembly finds that North Carolina will benefit from the enactment of legislation expressly authorizing the formation of the Community Third Party Trusts, Pooled Trusts and Special Needs Trust in accordance with 42 USC 1396p(d)(4) and additional criteria set out by statute and administered by the Secretary of State under GS Chapter 55A. Deletes provision regarding the pooling of resources contributed by persons with philanthropic intent. Amends language to refer to person or family member with a disability (was, disabled person or family member).

Provides that among the underlying purposes and policies of GS Chapter 36D is to (1) ensure that the Community Third Party or Pooled Trusts for the benefit of persons with severe chronic disabilities are established and administered properly and (2) require that money from Pooled Trusts and Special Needs Trusts up to the amount equal to the total amount of assistance paid for by the Department of Health and Human Services (DHHS) be paid back under 42 USC 1396p(d)(4). Deletes the provision that notes that a purpose and policy is to encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities. Makes additional conforming changes, replacing *community trusts* with *Community Third Party or Pooled Trusts*. Provides that the provisions of GS Chapter 36D are not to be construed to affect the establishment, interpretation, or construction of Pooled or Special Needs trust instruments that do not conform with the provisions of Chapter 36D.

Amends the definitions used in Article 36D, adding definitions for *Community Third Party Trust*; *Department* (DHHS); *family members*; *Medicaid Pooled trust*; *pooled trust*; or *umbrella pooled trust*; *Medical Special Needs Trust*; *sole benefit*; *surplus trust funds*; *trustee*; *36D trust* and redefining some terms to reflect the content of this bill. Defines Medicaid Pooled Trusts and Medicaid Special Needs Trusts as irrevocable.

Provides that the scope of the Chapter applies to every Community Third Party Trust, Medicaid Pooled Trust, or Special Needs Trust established in North Carolina. Provides that, except as otherwise provided in this Chapter, Article 9 of GS Chapter 36C applies to GS Chapter 36D trusts in the same manner as it applies to trusts under the Uniform Trust Code except provides that a trustee of a pooled or special needs trust is liable to DHHS to the extent that the trustee does not administer the trust in a way that is for sole benefit of the beneficiary, regardless of the terms of the trust. Provides that reasonable reliance on the terms of the trust is not a defense to a claim that the trustee has acted in a way that is not for the sole benefit of the beneficiary.

Provides criteria for the administration of the Community Third Party and Pooled Trusts. Prohibits a trustee, board member, or paid staff member of a Trust from providing legal representation or other professional services on behalf of the trust or its beneficiaries. Requires a 30-day notice to DHHS if there is to be a change in trustee.

Provides accountability requirements for Community Third Party and Pooled Trusts. Directs that a trustee make available the trustee's annual accounting statement of each beneficiary's sub-account to DHHS upon request. Allows DHHS to perform annual audits of the existing Community Third Party or Pooled Trusts.

Provides criteria for the handling of gifts and surplus trust funds. Includes limitations and restrictions on the use of surplus funds.

Allows special requests on behalf of a beneficiary. Permits the Community Third Party Trust to fulfill any special requests on the behalf of the beneficiary that are consistent with GS Chapter 36D providing that an adequate contribution has been made for that purpose on behalf of the beneficiary. Limits the Medicaid Pooled Trust to disbursing sub-account trust funds only if the disbursement is in the sole benefit of the beneficiary.

Deletes provision that makes a community trust irrevocable.

Directs DHHS not to reduce the benefits or services available to any individual because that individual is a beneficiary of a 36D Trust. Allows DHHS to terminate an individual's eligibility for medical assistance or impose sanctions if the person fails to comply with the requirements of Chapter 36D or if the trustee fails to administer the 36D Trust in a manner compliant with Chapter 36D.

Provides that a 36D Trust is not subject to the law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

Provides settlement criteria after the death of a beneficiary and limits on the trustee or any private individual's entitlement to share in the distribution of any trust assets upon dissolution of the trust.

Provides criteria for administration and accountability with regards to a Special Needs Trust. Provides that a special needs trustee may be an individual or an institution and requires that the trustee be bonded in an amount that is not less than the assets held in trust. Also provides criteria for the termination of a Special Needs Trust including circumstances under which there must be reimbursement made to DHHS for assistance paid on behalf of the beneficiary. Permits the trustee to have sole discretion in all purchases, payments, and disbursements from the Special Needs Trust in accordance with 42 USC 1396p(d)(4)(A) and the rules set forth for special needs trusts by DHHS. Provides restrictions to govern purchases, payments, and disbursements by a trustee for a Special Needs Trust.

July 6, 2010

**S 765. SPECIAL NEEDS/POOLED TRUSTS/MEDICAID REIMBUR.** Filed 3/23/09. House committee substitute makes the following changes to 2nd edition.

Amends proposed GS 36D-12 (Special Needs Trust administration and accountability) to require inventories, annual accountings, and final accountings be filed with and be subject to the approval of the clerk of superior court, when ordered by the court.

Adds a new section to enact new GS 36D-15, directing the Department of Health and Human Services (DHHS) to adopt rules pursuant to the Administrative Procedure Act to govern the eligibility of beneficiaries for state medical assistance and state-county special assistance and to expand on the Chapter's requirements. Provides additional administrative details and considerations.

Makes other clarifying changes.

July 8, 2010

**S 765. POOLED TRUSTS/MEDICAID REIMBUR (NEW).** Filed 3/23/09. House committee substitute makes the following changes to 3rd edition.

Deletes proposed sections that provided criteria for the administration, accountability, termination, and financial operations of special needs trusts. Renumbers the remaining proposed statute accordingly. Amends GS 36D-1 and GS 36D-2 to remove references to special needs trusts, including the definition for *Medicaid special needs trust*, and makes a conforming change to the title of GS Chapter 36D. Amends GS 36D-3 (scope of the NC Community Third Party Trusts, Pooled Trusts Act) to clarify that the terms of the trust will not contradict the meaning of sole benefit as defined in GS 36D-2(7) (was, reasonable reliance on the terms of the trust is not a

valid defense to a claim that the trustee acted in a way that was not for the beneficiary's sole benefit).

Makes additional technical changes, and makes a conforming change to the title.

July 28, 2010

**SL 2010-118 (S 765). POOLED TRUSTS/MEDICAID REIMBURSEMENT. AN ACT TO AMEND THE GENERAL STATUTES WITH RESPECT TO COMMUNITY THIRD PARTY TRUSTS AND MEDICAID POOLED TRUSTS, AND TO PROVIDE FOR MEDICAID REIMBURSEMENT IN CERTAIN CIRCUMSTANCES.** Summarized in *Daily Bulletin* 3/23/09, 7/1/10, 7/6/10, and 7/8/10. Enacted July 20, 2010. Effective July 20, 2010.