

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 765  
House Committee Substitute Favorable 7/1/10  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S765-PCS35489-TC-85

Short Title: Special Needs/Pooled Trusts/Medicaid Reimbur.

(Public)

Sponsors:

Referred to:

March 24, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE GENERAL STATUTES WITH RESPECT TO COMMUNITY  
3 THIRD PARTY TRUSTS, MEDICAID SPECIAL NEEDS TRUSTS AND MEDICAID  
4 POOLED TRUSTS, AND TO PROVIDE FOR MEDICAID REIMBURSEMENT IN  
5 CERTAIN CIRCUMSTANCES.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Chapter 36D of the General Statutes reads as rewritten:

8 "Chapter 36D.

9 **North Carolina Community Third Party Trusts, Pooled Trusts and Special Needs Trusts,**  
10 **Trust for Persons with Severe Chronic Disabilities.**

11 "§ 36D-1. Title; findings.

12 (a) This ~~Article~~ Chapter shall be known and may be cited as the "North Carolina  
13 Community Third Party Trusts, Pooled Trusts and Special Needs Trusts Act." ~~Trust for Persons~~  
14 ~~With Severe Chronic Disabilities Act".~~

15 (b) The General Assembly finds that it is in the public interest to encourage activities by  
16 voluntary associations and private citizens that will supplement and augment those services  
17 provided by local, State, and federal government agencies in discharge of their responsibilities  
18 toward individuals with severe chronic disabilities. The General Assembly further finds that, as  
19 a result of changing social, economic, and demographic trends, families of persons with severe  
20 chronic disabilities are increasingly aware of the need for a vehicle by which they can assure  
21 ongoing individualized personal concern for a ~~severely disabled~~ family member with a  
22 disability who may survive ~~that disabled person's~~ his or her parents or other family members,  
23 and provide for the efficient management of ~~small legacies or~~ trust funds to be used for the  
24 benefit of that person with a disability. ~~disabled person~~. In a number of other states, voluntary  
25 associations have established foundations or trusts intended to be responsive to these concerns.  
26 Therefore, the General Assembly finds that North Carolina will benefit by the enactment of  
27 enabling legislation expressly authorizing the formation of ~~community trusts~~ Community Third  
28 Party Trusts, Pooled Trusts and Special Needs Trusts in accordance with 42 U.S.C. §  
29 1396p(d)(4) and criteria set forth by statute and administered by the Secretary of ~~State,~~  
30 State under Chapter 55A of the General Statutes. ~~These community trusts permit the pooling of~~  
31 ~~resources contributed by families or persons with philanthropic intent, along with the~~  
32 ~~reservation of portions of these funds for the use and benefit of designated beneficiaries.~~



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1 (c) This ~~Article~~ Chapter shall be liberally construed and applied to promote its  
2 underlying purposes and policies, which are, among others, to:

- 3 (1) ~~Encourage the orderly establishment of community trusts for the benefit of~~  
4 ~~persons with severe chronic disabilities;~~
- 5 (2) Ensure that ~~community trusts~~ Community Third Party or Pooled Trusts for  
6 the benefit of persons with severe chronic disabilities are established and  
7 administered properly and that the managing boards of the trusts are free  
8 from conflicts of interest; ~~interest.~~
- 9 (3) Facilitate sound administration of trust funds for persons with severe chronic  
10 disabilities by allowing family ~~members~~ members, persons with disabilities,  
11 and others to pool resources in order to make professional management  
12 investment more efficient; ~~efficient.~~
- 13 (4) Provide parents of persons with severe chronic disabilities peace of mind in  
14 knowing that a means exists to ensure that the interests of their children who  
15 have severe chronic disabilities are properly looked after and managed after  
16 the parents die or become ~~incapacitated;~~ incapacitated.
- 17 (5) ~~Help make~~ Assist in making guardians available for persons with severe  
18 chronic disabilities who are incompetent, when no other family member is  
19 available for this ~~purpose;~~ purpose.
- 20 (6) Encourage the availability of private resources to purchase for persons with  
21 severe chronic disabilities goods and services that are not available through  
22 any governmental or charitable program and to conserve these resources by  
23 limiting purchases to those that are not available from other ~~sources;~~ sources.
- 24 (7) Encourage the inclusion, as beneficiaries of ~~community~~ Community Third  
25 Party or Pooled Trusts, ~~trusts,~~ of persons who lack resources and whose  
26 families are indigent, in a way that does not diminish the resources available  
27 to other beneficiaries whose families have contributed to the ~~trust;~~ trust; and
- 28 (8) Remove the disincentives that discourage parents and others from setting  
29 aside funds for the future protection of persons with severe chronic  
30 disabilities by ensuring that the interest of beneficiaries ~~in community~~ of  
31 trusts that meet the rules set forth by the Department are not considered  
32 assets or income that would disqualify them from any governmental or  
33 charitable entitlement program with an economic means test.
- 34 (9) Require, pursuant to 42 U.S.C. § 1396p(d)(4), the payback of monies from  
35 Pooled Trusts and Special Needs Trusts up to an amount equal to the total  
36 amount of assistance paid for by the Department on behalf of or to the  
37 beneficiary from any funds remaining in the beneficiary's individual trust  
38 account upon the death of the individual or the termination of the individual  
39 trust account.

40 (d) Nothing in this Chapter shall affect the establishment, interpretation, or construction  
41 of Pooled or Special Needs Trust instruments which do not conform with the provisions of this  
42 Chapter, nor shall this Chapter impair the State's authority to be paid from or seek  
43 reimbursement from any Pooled or Special Needs Trust which does not conform with the  
44 provisions of this Chapter or to deem the principal or income of any nonconforming 36D Trust  
45 an available resource under any program of government benefits or assistance.

46 **"§ 36D-2. Definitions.**

47 As used in this ~~Article,~~ Chapter, unless the context clearly requires otherwise:

- 48 (1) ~~"Beneficiary" means~~ Beneficiary. – Any of the following persons:
- 49 a. Any person of any age ~~any person~~ with a severe chronic disability  
50 who has qualified as a member of the Community Third Party Trust,  
51 funded with assets of a third party or by will.

- 1                   b.     Any person who meets the definition of disability as defined in 42  
2                   U.S.C. § 1382c(a)(3) on whose behalf an individual Medicaid Pooled  
3                   Trust sub-account was established by the parent, grandparent, or  
4                   legal guardian of the individual, by the individual, or by a court.
- 5                   c.     Any person who meets the definition of disability as defined in 42  
6                   U.S.C. § 1382c(a)(3) on whose behalf a Medicaid Special Needs  
7                   Trust account was established by the parent, grandparent, or legal  
8                   guardian of the individual, or by a court. ~~community trust program~~  
9                   and who has the right to receive those services and benefits vested  
10                  with the management of the business and affairs of a corporation,  
11                  formed for the purpose of managing a community trust, irrespective  
12                  of the name by which the group is designated.
- 13                  (2)    "Community trust" means a Community Third Party Trust. – A trust funded  
14                  with the assets of a third party for the benefit of a person of any age with  
15                  severe chronic disabilities, that is administered by a nonprofit ~~organization~~  
16                  corporation that offers the following services:
- 17                   a.     Administration of ~~special~~ trust funds for persons with severe chronic  
18                   disabilities; disabilities.
- 19                   b.     Follow along ~~services;~~ services.
- 20                   c.     Guardianship for persons with severe chronic disabilities who are  
21                   incompetent, when no other family member or immediate friend is  
22                   available for this ~~purpose; and~~ purpose.
- 23                   d.     ~~Advice and counsel~~ Information and referral services to persons who  
24                   have been appointed as individual guardians of the persons or estates  
25                   of persons with severe chronic disabilities.
- 26                  (2a)   Department. – The Department of Health and Human Services.
- 27                  (2b)   Family members. – Persons who are related by blood or marriage within the  
28                  sixth degree to the beneficiary.
- 29                  (3)    ~~"Follow along services"~~ Follow along services. – Includes the following:  
30                  means (i) those services offered by ~~community trusts~~ Community Third Party  
31                  or Pooled Trusts that are designed to ensure that the needs of each  
32                  beneficiary are being met for as long as may be required and may include  
33                  periodic visits to the beneficiary and to the places where the beneficiary  
34                  receives services, (ii) participation in the development of individualized  
35                  plans being made by service providers for the beneficiary, and (iii) other  
36                  similar services consistent with the purposes of this ~~Article.~~ Chapter.
- 37                  (3a)   Medicaid Pooled Trust, pooled trust, or umbrella pooled trust. – A trust  
38                  pursuant to 42 U.S.C. § 1396p(d)(4)(C) and the rules set forth for pooled  
39                  trusts by the Department that meets all of the following requirements:
- 40                   a.     The trust is irrevocable.
- 41                   b.     The trust contains a separate sub-account for each beneficiary of the  
42                   trust, but the funds in the accounts are pooled for the purpose of  
43                   investment and management of funds. Investment of funds pursuant  
44                   to this subdivision shall be in accord with G.S. 32-71, the Prudent  
45                   Person rule.
- 46                   c.     The beneficiary is disabled as defined by 42 U.S.C. § 1382c(a)(3).
- 47                   d.     The trust is established solely for the benefit of the beneficiary by a  
48                   parent, grandparent, legal guardian, by the beneficiary, or by a court.
- 49                   e.     The trust was created on or after April 1, 1994.
- 50                   f.     The trust provides that upon the death of the beneficiary the State  
51                   will receive all amounts remaining in the beneficiary's account up to

- 1                   the total amount of medical assistance paid on behalf of the  
2                   beneficiary as set forth in G.S. 36D-6.  
3                   g.   Trust language governing each Medicaid Pooled Trust shall be  
4                   approved by the Department.  
5                   h.   A Medicaid Pooled Trust shall be established by a nonprofit  
6                   corporation that offers all of the following:  
7                   1.   Administration of trust funds for persons with a disability as  
8                   defined in 42 U.S.C. § 1382c(a)(3).  
9                   2.   Follow along services.  
10                  3.   Guardianship for individuals with a disability pursuant to 42  
11                  U.S.C. § 1382c(a)(3) who are incompetent, when no other  
12                  family member or immediate friend is available for this  
13                  purpose.  
14                  4.   Information and referral services to persons who have been  
15                  appointed as individual guardians of the persons or estates of  
16                  persons with a disability pursuant to 42 U.S.C. § 1382c(a)(3).  
17                  (3b) Medicaid Special Needs Trust, SNT, or special needs trust. – A trust  
18                  pursuant to 42 U.S.C. § 1396p(d)(4)(A) and the rules set forth for special  
19                  needs trusts by the Department that meets all of the following requirements:  
20                  a.   The trust is irrevocable.  
21                  b.   The trust contains only the assets of a beneficiary under sixty-five  
22                  years of age.  
23                  c.   The beneficiary is disabled as defined by 42 U.S.C. § 1382c(a)(3).  
24                  d.   The trust is established solely for the benefit of the beneficiary by a  
25                  parent, grandparent, legal guardian, or a court.  
26                  e.   The trust requires that on the death of the beneficiary the Department  
27                  will receive all amounts remaining in the trust up to an amount equal  
28                  to the total amount of services paid on behalf of the applicant or  
29                  recipient.  
30                  f.   The trust was created on or after April 1, 1994.  
31                  (4)   ~~"Severe chronic disability" means~~Severe chronic disability. – A disability  
32                  which impairs one or more areas of independent functioning. ~~a physical or~~  
33                  ~~mental impairment that is expected to give rise to a long term need for~~  
34                  ~~specialized health, social, and other services, and that makes the person with~~  
35                  ~~the disability dependent upon others for assistance to secure these services.~~  
36                  (5)   ~~"Surplus trust funds" means funds accumulated in the trust from~~  
37                  ~~contributions made on behalf of an individual beneficiary that, after the~~  
38                  ~~death of the beneficiary, are determined by the board to be in excess of the~~  
39                  ~~actual cost of providing services during the beneficiary's lifetime, including~~  
40                  ~~the beneficiary's share of administrative costs.~~  
41                  (6)   ~~"Trustee" means any member of the board of a corporation, formed for the~~  
42                  ~~purpose of managing a community trust, whether that member is designated~~  
43                  ~~as a trustee, director, manager, governor, or by any other title.~~  
44                  (7)   Sole benefit. – No individual other than the beneficiary benefits from the  
45                  special needs trust, either directly or indirectly.  
46                  (8)   Surplus trust funds. – All funds remaining in the trust upon termination of  
47                  the trust, whether by death of the beneficiary or otherwise.  
48                  (9)   Trustee. – An original, additional, or successor trustee, and a cotrustee,  
49                  whether or not appointed or confirmed by a court. The term does not include  
50                  trustees in mortgages and deeds of trust.  
51                  (10) 36D Trust. – Any trust governed by this Chapter.

1 **"§ 36D-3. Scope.**

2 This ~~Article-Chapter~~ applies to every ~~community trust~~ Community Third Party Trust,  
3 Medicaid Pooled Trust, or Special Needs Trust established in this State. In addition to meeting  
4 the other requirements of this ~~Article, Chapter,~~ every board that administers a Community  
5 Third Party Trust or Medicaid Pooled Trust ~~community trust~~ shall incorporate as a nonprofit  
6 corporation under Chapter 55A of the General Statutes. Except as otherwise provided in this  
7 Chapter, Chapter 55A of the General Statutes applies to ~~community trusts~~ all trusts governed  
8 by this Chapter. Article 9 of Chapter 36C of the General Statutes, the Uniform Trust Code,  
9 applies to 36D Trusts in the same manner that it applies to trusts under the Uniform Trust Code,  
10 with the exception of the following: The trustee of a pooled or special needs trust is liable to  
11 the Department to the extent the trustee administers the trust in a way that is not for the sole  
12 benefit of the beneficiary, regardless of the terms of the trust. Reasonable reliance on the terms  
13 of the trust is not a valid defense to a claim that the trustee has acted in a way that is not for the  
14 sole benefit of the beneficiary.

15 **"§ 36D-4. Administration of Community Third Party and Pooled Trusts; powers and**  
16 **duties.**

17 (a) Every ~~community trust~~ Community Third Party or Pooled Trust shall be  
18 administered by a board. The board shall be comprised of no less than nine and no more than  
19 21 members, at least one-third of whom are parents or relatives of persons with severe chronic  
20 disabilities. No board member shall be a provider of habilitative, health, social, or educational  
21 services to persons with severe chronic disabilities or an employee of such a service provider.  
22 The board may, however, allow service providers to serve on the board in an advisory capacity.  
23 Board members shall be selected, to the maximum extent possible, from geographic areas  
24 throughout the area served by the trust.

25 The certificate of incorporation filed with the Secretary of State under Chapter 55A of the  
26 General Statutes shall, in addition to the requirements set forth in that Chapter, demonstrate that  
27 the requirements of this section have been met.

28 (b) Notwithstanding any other law, no trustee may be compensated for services  
29 provided as a member of the board of a Community Third Party or Pooled Trust. ~~community~~  
30 ~~trust.~~ No fees or commissions shall be paid to these trustees; however, a trustee may be paid for  
31 necessary expenses incurred by the trustee and may receive indemnification as permitted under  
32 Chapter 55A of the General ~~Statutes.~~ Statutes as it applies to nonprofit organizations.

33 (c) For every Community Third Party or Pooled Trust ~~community trust~~ incorporated  
34 under this ~~Article, Chapter,~~ the corporation itself is considered the trustee of any funds  
35 administered by it. No individual board member is considered to be trustee of any fund  
36 deposited on behalf of any individual beneficiary with severe chronic disabilities.

37 (d) The board shall adopt bylaws that include a declaration delineating the primary  
38 geographic area serviced by the trust and the principal services to be provided. The board shall  
39 file the bylaws with the Secretary of State.

40 (e) The board may retain paid staff as it considers necessary to provide follow along  
41 services to the extent required by each beneficiary.

42 (e1) The Community Third Party or Pooled Trust ~~community trust~~ may authorize the  
43 expenditure of funds for any goods or services, including recreational services, which ~~the~~  
44 ~~board, in its sole discretion, determines~~ will promote the well-being ~~of and~~ is for the sole benefit  
45 of the any beneficiary. The Community Third Party or Pooled Trust ~~community trust~~ may pay  
46 for the reasonable burial expenses of any beneficiary-beneficiary; however, if the beneficiary  
47 receives SSI benefits, burial expenses may only be paid for as allowed by Social Security  
48 Administration regulations. The Community Third Party or Pooled Trust ~~community trust,~~  
49 however, may not expend funds for any goods or services of comparable quality to those  
50 available to any particular beneficiary through any governmental or charitable program,  
51 insurance, or other sources. The Community Third Party or Pooled Trust ~~community trust~~ may

1 expend funds to meet the reasonable costs of administering the Community Third Party or  
2 Pooled Trust.~~community trust.~~

3 (f) The Community Third Party or Pooled Trust ~~community trust~~ is not required to  
4 provide services to a beneficiary who is a competent adult and who has refused to accept the  
5 services. Further, the Community Third Party or Pooled Trust ~~community trust~~ shall not  
6 provide services of a nature or in a manner that would be contrary to the public policy of this  
7 State at the time the services are to be provided. In either case, the Community Third Party or  
8 Pooled Trust ~~community trust~~ may offer alternate services that are consistent with the purposes  
9 of this ~~Article~~ Chapter and in keeping with the best interests of the beneficiary.

10 (g) The Community Third Party or Pooled Trust ~~community trust~~ may accept  
11 appointment as guardian of the person, guardian of the estate, or guardian of both on behalf of  
12 any beneficiary. If the Community Third Party or Pooled Trust ~~community trust~~ accepts  
13 appointment as guardian of the person of an individual, it shall assign a staff member to carry  
14 out its responsibilities as the guardian. The Community Third Party or Pooled Trust ~~community~~  
15 ~~trust~~ may, upon request, offer consultative and professional assistance to an individual, private  
16 or public guardian of any of its beneficiaries.

17 (h) The Community Third Party or Pooled Trust ~~community trust~~ may accept  
18 contributions, bequests, and designations under life insurance policies to the Community Third  
19 Party or Pooled Trust ~~community trust~~ on behalf of individuals with severe chronic disabilities  
20 for the purpose of qualifying them as beneficiaries.

21 (i) At the time a contribution, bequest, or assignment of insurance proceeds is  
22 ~~made,~~ made to a Community Third Party Trust, or to a beneficiary of a Pooled Trust, the trustor  
23 shall receive a written statement of the services to be provided to the beneficiary. The statement  
24 shall include a starting date for the delivery of services or the condition precedent, such as the  
25 death of the trustor, which shall determine the starting date. The statement shall describe the  
26 frequency with which services shall be provided and their duration, and the criteria or  
27 procedures for modifying the program of services from time to time in the best interests of the  
28 beneficiary. In addition, there shall be a properly executed trust agreement between the  
29 Community Third Party or Pooled Trust and the trustor.

30 (j) No trustee, board member, or paid staff member of a Community Third Party or  
31 Pooled Trust shall undertake legal representation or other professional services on behalf of the  
32 trust or its beneficiaries.

33 (k) The Department shall be given a minimum of 30 days notice if there is to be a  
34 change in trustee.

35 **"§ 36D-5. Community Third Party and Pooled Trust Accountability.**

36 (a) Along with the annual report filed with the Secretary of State under Chapter 55A of  
37 the General Statutes, the Community Third Party or Pooled Trust ~~community trust~~ shall file an  
38 itemized statement that shows the funds collected for the year, income earned, salaries, other  
39 expenses incurred, and the opening and final trust balances. A copy of ~~this statement~~ the annual  
40 individual accounting statement of each beneficiary's sub-account shall be made  
41 ~~available,~~ available by the trustee, upon request, to the Department, any beneficiary, guardian,  
42 trustor, or designee of the trustor. In addition, once annually, each trustor or the trustor's  
43 designee shall receive a detailed individual statement of the services provided to the trustor's  
44 beneficiary during the previous 12 months and the services to be provided during the following  
45 12 months. The Community Third Party or Pooled Trust ~~community trust~~ shall make a copy of  
46 the individual statement available to any beneficiary, upon request.

47 (b) The Department or its agents may perform annual audits of any Community Third  
48 Party or Pooled Trusts existing in the State.

49 **"§ 36D-6. Gifts, Community Third Party or Pooled Trust surplus trust funds.**

50 (a) Community Third Party and Pooled Trusts may accept gifts and use surplus trust  
51 funds to meet reasonable start-up costs and reduce the charges to the trust for the cost of

1 administration and for the purpose of qualifying as beneficiary any indigent person whose  
2 family members lack the resources to make a full contribution on that person's behalf. A  
3 maximum of fifty percent (50%) of the surplus trust funds may be retained in the Community  
4 Third Party or Pooled Trust account for this purpose as well as to cover administrative costs.  
5 Gifts made to the Community Third Party or Pooled Trust for an unspecified purpose shall be  
6 used by the trust either to qualify indigent persons whose families lack the means to qualify  
7 them as beneficiaries of the trust or to meet any reasonable start-up or administrative costs that  
8 the trust incurs.

9 (b) For Community Third Party Trusts, remaining surplus trust funds may be distributed  
10 to additional beneficiaries as specified in the Trust Agreement.

11 (c) For Medicaid Pooled Trusts, upon termination of an individual trust account, the  
12 surplus trust funds remaining in the individual account shall be used to satisfy any claims or  
13 liens of the Department, up to an amount equal to the total medical assistance paid on behalf of  
14 or to the disabled individual by the Department. The amount retained by the trust shall be  
15 determined on a sliding scale calculation, based upon the number of years the disabled  
16 individual received services from the nonprofit corporation, but in no instance shall the trust  
17 retain more than fifty percent (50%) of the surplus trust funds, unless the claims or liens of the  
18 Department are less than fifty percent (50%) of the surplus trust funds.

19 (d) A Medicaid Pooled Trust may not distribute surplus trust funds to any  
20 remaindermen identified in the trust document unless there are funds remaining after all claims  
21 or liens of the Department have been satisfied, nor shall it use surplus trust funds to make any  
22 charitable contribution on behalf of any beneficiary or any group or class of beneficiaries.~~The  
23 community trust may accept gifts and use surplus trust funds for the purpose of qualifying as  
24 beneficiary any indigent person whose family members lack the resources to make a full  
25 contribution on that person's behalf. The extent and character of the services and selection of  
26 beneficiaries are at the discretion of the community trust. The community trust may not use  
27 surplus trust funds to make any charitable contribution on behalf of any beneficiary or any  
28 group or class of beneficiaries. The community trust may accept gifts to meet start up costs,  
29 reduce the charges to the trust for the cost of administration, and for any other purpose that is  
30 consistent with this Article. Gifts made to the trust for an unspecified purpose shall be used by  
31 the community trust either to qualify indigent persons whose families lack the means to qualify  
32 them as beneficiaries of the trust or to meet any start-up costs that the trust incurs.~~

33 **"§ 36D-7. Special requests on behalf of beneficiary.**

34 ~~The community trust~~Community Third Party Trust may agree to fulfill any special requests  
35 made on behalf of a beneficiary as long as the requests are consistent with this ~~Article~~Chapter  
36 and provided that an adequate contribution has been made for this purpose on behalf of a  
37 beneficiary. The Medicaid Pooled Trust may only disburse sub-account trust funds if such  
38 disbursement is in the sole benefit of the beneficiary.~~The community trust may agree to serve  
39 as trustee for any individual trust created on behalf of a beneficiary, regardless of whether the  
40 trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or  
41 any other condition, so long as the individual trust is consistent with the purposes of this  
42 Article.~~

43 **"§ 36D-8. Irrevocability; impossibility of fulfillment.**

44 ~~A community trust for persons with severe chronic disabilities is irrevocable, but the~~  
45 ~~trustees in their sole discretion may provide compensation for any contribution to the trust to~~  
46 ~~any trustor who, upon good cause, withdraws a beneficiary designated by the trustor from the~~  
47 ~~trust, or if it becomes impossible to fulfill the conditions of the trust with regard to an~~  
48 ~~individual beneficiary for reasons other than the death of the beneficiary.~~

49 **"§ 36D-9. Beneficiary's interest in trust not asset for income eligibility determination.**

50 ~~Notwithstanding any provisions of Chapter 108A of the General Statutes, the~~The  
51 ~~beneficiary's interest in any community trust~~36D Trust is not considered to be an asset for the

1 purpose of determining income eligibility for any publicly operated program, nor shall that  
2 interest be reached in satisfaction of a claim for support and maintenance of the beneficiary.  
3 The Department shall not reduce the benefits or services available to any individual because  
4 that person is the beneficiary of a 36D Trust. The Department may authorize termination of an  
5 individual's eligibility for medical assistance or impose sanctions as necessary for failure of a  
6 purported 36D Trust to comply with the requirements of this Chapter and any rules adopted by  
7 the Department pursuant to this Chapter. The Department may authorize termination of an  
8 individual's eligibility for medical assistance or impose sanctions as necessary for failure of the  
9 trustee to administer the 36D Trust in a manner consistent with this Chapter, the rules adopted  
10 by the Department pursuant to this Chapter, and federal law and policy. No agency shall reduce  
11 the benefits of services available to any individual because that person is the beneficiary of a  
12 community trust.

13 **"§ 36D-10. Trust not subject to law against perpetuities; restraints on alienation.**

14 A ~~community trust~~36D Trust shall not be subject to or held to be in violation of any  
15 principle of law against perpetuities or restraints on alienation or perpetual accumulations of  
16 trusts.

17 **"§ 36D-11. Settlement; trustee limitations.**

18 ~~The community trust shall settle a community trust by filing a final accounting in the~~  
19 ~~superior court. In addition, at~~

20 (a) The trustee of a Medicaid Pooled Trust shall provide a final disbursement and  
21 accounting for an individual Pooled Trust sub-account to the Division of Medical Assistance,  
22 Third Party Recovery Section, within 30 days of the receipt of an accounting of charges from  
23 Medicaid, after the death of the beneficiary or other termination of the trust. An individual  
24 Pooled Trust sub-account shall terminate upon the death of the beneficiary and the satisfaction  
25 of all outstanding charges.

26 (b) At any time before the settlement of the final account, the ~~community~~  
27 trust, Community Third Party or Pooled Trust, the Secretary of State, or the Attorney General  
28 may bring an action for the dissolution of a nonprofit corporation in the superior court for the  
29 purpose of terminating the trust or merging it with another charitable trust.

30 (c) No trustee or any private individual is entitled to share in the distribution of any of  
31 the trust assets upon dissolution, merger, or settlement of the Community Third Party or Pooled  
32 Trust. ~~community trust.~~ Upon dissolution, merger, or settlement, the superior court shall  
33 distribute all of the remaining net assets of the Community Third Party or Pooled Trust  
34 ~~community trust~~ in a manner that is consistent with the purposes of this Article.Chapter.

35 **"§ 36D-12. Special Needs Trust Administration and Accountability.**

36 (a) The trustee of a special needs trust may be either an individual or an institution. The  
37 trustee shall be bonded in an amount not less than the assets held in trust. The trustee of a  
38 special needs trust shall not accept appointment as guardian of the person nor guardian of the  
39 estate on behalf of any beneficiary.

40 (b) A copy of any proposed special needs trust shall be submitted to the Department at  
41 least 60 days prior to the execution or judicial approval of the trust. For any special needs trust  
42 requiring court approval, notice of the time and place of any hearing regarding such approval  
43 shall be served upon the designated agent for service of legal process for the Department at  
44 least 15 business days prior to the hearing. A copy of an executed or judicially approved special  
45 needs trust shall be sent to the Department within 10 days of its execution or approval.

46 (c) All liens or claims, including subrogation claims arising under G.S. 108A-57,  
47 against funds received by a Medicaid recipient or the recipient's heirs or assigns, or someone on  
48 behalf of the Medicaid recipient or the recipient's heirs or assigns, in favor of the State shall be  
49 satisfied in full prior to execution or judicial approval of the special needs trust.

50 (d) Upon execution or approval of the special needs trust, an initial accounting of the  
51 trust funds shall be submitted to the Department. The trustee of a special needs trust shall file



1 an itemized statement that shows the funds collected for the year, income earned, other  
2 expenses incurred, and the opening and final trust balances. A copy of this statement shall be  
3 made available, upon request, to the beneficiary, trustor, or designee of the trustor. Each trustor  
4 or the trustor's designee shall receive a detailed individual statement of the services provided to  
5 the beneficiary during the previous 12 months and the services to be provided during the  
6 following 12 months. The trustee shall make a copy of the individual statement available to the  
7 beneficiary upon request. When ordered by the court, inventories, annual accountings, and final  
8 accountings shall be filed with and are subject to the approval of the clerk of superior court.

9 (e) The Department or its agents may perform annual audits of any special needs trust  
10 existing in the State.

11 (f) Upon each redetermination of the individual's eligibility for medical assistance, the  
12 beneficiary, the beneficiary's spouse, parent or legal guardian, or trustee shall submit to the  
13 applicable county department of social services each of the following documents:

14 (1) An itemized statement showing the trust balance as of the date of  
15 redetermination, all assets or items purchased with trust funds and all wages  
16 or payments for services paid for with trust funds during the months  
17 preceding the redetermination, and since the last application or  
18 redetermination.

19 (2) Copies of all bank and other financial institution statements of the trust for  
20 the preceding six months.

21 (3) If a specially equipped vehicle or real property has been purchased with trust  
22 funds during the preceding six months, a copy of the purchase and sale  
23 agreement, and deed or title to such property.

24 (g) The Department shall be given a minimum of 30 days' notice if there is to be a  
25 change in trustee.

26 (h) The trustee shall give notice to the Department within 10 days of the death of the  
27 beneficiary. The trustee shall provide to the Department a final accounting and disbursement of  
28 the special needs trust within 60 days of the death of the beneficiary.

29 (i) Any addition or augmentation of the trust by the beneficiary with the beneficiary's  
30 own assets after the beneficiary has attained 65 years of age shall be treated as an improper  
31 disposition of assets.

32 **"§ 36D-13. Special Needs Trust Termination.**

33 (a) Following execution or approval of a trust as a special needs trust, the special needs  
34 trust may not be terminated, changed, or converted to any other form of trust, including a trust  
35 formed pursuant to 42 U.S.C. § 1396p(d)(4)(C) and this Chapter unless the Department first  
36 receives an amount equal to the total medical assistance paid on behalf of the individual up to  
37 the date of the termination, change or conversion from the funds remaining in the special needs  
38 trust.

39 (b) If a special needs trust is found to be invalid or the beneficiary no longer qualifies  
40 for Medicaid services, the special needs trust shall be deemed to have terminated, and the  
41 termination provision mandating reimbursement to the Department shall apply.

42 (c) Upon termination of the trust, due to the death of the beneficiary or otherwise, only  
43 the following may be paid from the special needs trust prior to the payment to the Department  
44 required under this Chapter:

45 (1) Taxes due from the special needs trust to the State or federal government  
46 due to the death of the beneficiary;

47 (2) Reasonable fees payable to the trustee for administration of the special needs  
48 trust.

49 **"§ 36D-14. Special Needs Trust Purchases, Payments, and Disbursements.**

1       (a)     The trustee shall have sole discretion in all purchases, payments, and disbursements  
2 from the special needs trust in accordance with 42 U.S.C. § 1396p(d)(4)(A) and the rules set  
3 forth for special needs trusts by the Department.

4       (b)     The trustee of a special needs trust shall make only those payments and  
5 disbursements that are for the sole benefit of the beneficiary. Distributions, in cash or  
6 otherwise, shall not directly or indirectly benefit family members of the beneficiary.  
7 Distributions to family members for care and services provided to the beneficiary are not for  
8 the sole benefit of the beneficiary. The trustee of a special needs trust shall not make cash  
9 distributions to a beneficiary.

10       (c)     Any real or personal property purchased by the trustee which is capable of being  
11 titled to someone or to some entity shall be titled solely in the name of the trust.

12       (d)     The trustee of a special needs trust may authorize the expenditure of funds for any  
13 goods or services, including recreational services, which the trustee, in its sole discretion,  
14 determines will promote the well-being of any beneficiary. The trustee shall not expend funds  
15 for any goods or services of comparable quality to those available to any particular beneficiary  
16 through any governmental or charitable program, insurance, or other sources. The trustee may  
17 expend funds to meet the reasonable costs of administering the trust.

18       (e)     The trustee shall not make purchases, payments, or disbursements for services of a  
19 nature or in a manner that would be contrary to the public policy of this State at the time the  
20 services are to be provided. The trustee shall not make purchases, payments, or disbursements  
21 which are contrary to the purpose of special needs trusts as that purpose is made evident by  
22 federal law and policy, this Chapter, and the rules adopted by the Department pursuant to this  
23 Chapter.

24     **§ 36D-15. Administrative Rules.**

25       The Department shall adopt rules pursuant to Chapter 150B of the General Statutes  
26 governing the eligibility of beneficiaries for State medical assistance and State-County Special  
27 Assistance, and to supplement and expand upon the general requirements set forth in this  
28 Chapter, including but not limited to rules that may be more restrictive than the general  
29 requirements of this Chapter. With respect to Medicaid Pooled Trusts, a sub-account is  
30 irrevocable. The State shall be paid an amount up to the total medical assistance paid on behalf  
31 of the beneficiary by the Department from funds remaining in the individual trust sub-account  
32 upon the death of the beneficiary or termination of the trust as described in this Chapter. If the  
33 pooled trust is to be funded with the proceeds of a settlement of a lawsuit against a third party,  
34 the settlement proceeds are subject to the Department's subrogated rights of recovery as set  
35 forth in G.S. 108A-57 and all such subrogated rights of recovery shall be satisfied in full prior  
36 to execution and judicial approval of the trust, or both."

37             **SECTION 2.** This act is effective when it becomes law.