

## § 36D-2. Definitions.

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

- (1) Beneficiary. – Any of the following persons:
  - a. Any person of any age with a severe chronic disability who has qualified as a member of the Community Third Party Trust, funded with assets of a third party or by will.
  - b. Any person who meets the definition of disability as defined in 42 U.S.C. § 1382c(a)(3) on whose behalf an individual Medicaid Pooled Trust subaccount was established by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court.
- (2) Community Third Party Trust. – A trust funded with the assets of a third party for the benefit of a person of any age with severe chronic disabilities, that is administered by a nonprofit corporation that offers the following services:
  - a. Administration of trust funds for persons with severe chronic disabilities.
  - b. Follow along services.
  - c. Guardianship for persons with severe chronic disabilities who are incompetent, when no other family member or immediate friend is available for this purpose.
  - d. Information and referral services to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.
- (2a) Department. – The Department of Health and Human Services.
- (2b) Family members. – Persons who are related by blood or marriage within the sixth degree to the beneficiary.
- (3) Follow-along services. – Includes the following: (i) those services offered by Community Third Party or Pooled Trusts that are designed to ensure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, (ii) participation in the development of individualized plans being made by service providers for the beneficiary, and (iii) other similar services consistent with the purposes of this Chapter.
- (3a) Medicaid Pooled Trust, pooled trust, or umbrella pooled trust. – A trust pursuant to 42 U.S.C. § 1396p(d)(4)(C) and the rules set forth for pooled trusts by the Department that meets all of the following requirements:
  - a. The trust is irrevocable.
  - b. The trust contains a separate subaccount for each beneficiary of the trust, but the funds in the accounts are pooled for the purpose of investment and management of funds. Investment of funds pursuant to this subdivision shall be in accord with G.S. 32-71, the Prudent Person rule.
  - c. The beneficiary is disabled as defined by 42 U.S.C. § 1382c(a)(3).
  - d. The trust is established solely for the benefit of the beneficiary by a parent, grandparent, legal guardian, by the beneficiary, or by a court.
  - e. The trust was created on or after April 1, 1994.
  - f. The trust provides that upon the death of the beneficiary the State will receive all amounts remaining in the beneficiary's account up to

- the total amount of medical assistance paid on behalf of the beneficiary as set forth in G.S. 36D-6.
- g. Trust language governing each Medicaid Pooled Trust shall be approved by the Department.
  - h. A Medicaid Pooled Trust shall be established by a nonprofit corporation that offers any of the following:
    - 1. Administration of trust funds for persons with a disability as defined in 42 U.S.C. § 1382c(a)(3).
    - 2. Follow-along services.
    - 3. Guardianship for individuals with a disability pursuant to 42 U.S.C. § 1382c(a)(3) who are incompetent, when no other family member or immediate friend is available for this purpose.
    - 4. Information and referral services to persons who have been appointed as individual guardians of the persons or estates of persons with a disability pursuant to 42 U.S.C. § 1382c(a)(3).
- (4) Severe chronic disability. – A disability which impairs one or more areas of independent functioning.
  - (5), (6) Repealed by Session Laws 2010-118, s. 1, effective July 20, 2010.
  - (7) Sole benefit. – No individual other than the beneficiary benefits from the trust, either directly or indirectly.
  - (8) Surplus trust funds. – All funds remaining in the trust upon termination of the trust, whether by death of the beneficiary or otherwise.
  - (9) Trustee. – An original, additional, or successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust.
  - (10) 36D Trust. – Any trust governed by this Chapter. (1991 (Reg. Sess., 1992), c. 768, s. 1; 2005-192, s. 3; 2010-118, s. 1.)