

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 765
House Committee Substitute Favorable 7/1/10
House Committee Substitute #2 Favorable 7/6/10

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, State~~
30 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.~~

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



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

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

44 "**§ 36D-2. Definitions.**

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

- 46 (1) ~~"Beneficiary" means~~Beneficiary. – Any of the following persons:
 47 a. Any person of any age~~any person~~with a severe chronic disability
 48 who has qualified as a member of the Community Third Party Trust,
 49 funded with assets of a third party or by will.
 50 b. Any person who meets the definition of disability as defined in 42
 51 U.S.C. § 1382c(a)(3) on whose behalf an individual Medicaid Pooled

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

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

50 "§ 36D-3. Scope.

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

14 **"§ 36D-4. Administration of Community Third Party and Pooled Trusts; powers and**
15 **duties.**

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

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

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

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

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

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

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