

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 704 (First Edition)

SHORT TITLE: Pooled Trusts/Medicaid Reimbursement.

SPONSOR(S): Senator Rand

<b>FISCAL IMPACT</b>					
	<b>Yes ( )</b>	<b>No ( )</b>	<b>No Estimate Available (X)</b>		
	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>
<b>REVENUES</b>					
<b>EXPENDITURES</b>					
<b>POSITIONS (cumulative):</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
<b>EFFECTIVE DATE:</b> When bill becomes law.					

**BILL SUMMARY:**

Amends GS Chapter 36D to substitute the term severe chronic disability with the term disabled where applicable. Amends GS 36D-2 to delete the definition of severe chronic disability and create a definition for disabled person or disabled individual. Clarifies in the definition of community trust that it is a nonprofit corporation (was, organization) that administers pooled trust funds for disabled persons (was, special trust funds for persons with severe chronic disabilities) as one of its offered services. Defines pooled trust or umbrella pooled trust as a trust that contains the assets of individuals who are disabled, which is established in accordance with rules set forth by the Department of Health and Human Services (DHHS), and contains a separate sub-account for each beneficiary of the trust, but the funds in the accounts are pooled for the purposes of investment and management of funds, with one trust investment governing the umbrella pooled trust that is approved by DHHS. Makes conforming changes to the definitions of surplus trust funds, beneficiary, and trustee.

Amends GS 36D-1 by replacing the term community with pooled throughout. Provides that the Article is intended to promote the purpose of facilitating sound administration of trust funds for disabled persons by allowing the community trust (was, allowing family members and others to pool resources) to pool trust funds in order to make professional management investment more efficient. Makes conforming changes.

Amends GS 36D-4 by allowing the community trust to authorize the expenditure of funds from a beneficiary's sub-account for any goods or services, including recreational services, but not including luxury items, which the community trust (was, the community trust board) determines is for the sole benefit of the beneficiary (was, well-being of any beneficiary). Also authorizes funds from a beneficiary's sub-account to be expended for reasonable burial expenses. Prohibits a trustee, board member, or paid staff member of a community trust from undertaking legal representation or other professional services on behalf of the trust or its beneficiaries.

Amends GS 36D-5 to make available to DHHS, upon request, a copy of the community trust's (1) an annual itemized statement that shows funds collected for the year, income earned, salaries, other expenses incurred, and the opening and final pooled trust and individual trust sub-account balances and (2) a detailed individual statement showing services provided to the trustor's beneficiary in the preceding 12 months, and services to be provided in the upcoming 12 months.

Amends GS 36D-6 to remove the discretion on the part of the community trust to determine the extent and character of services and selection of beneficiaries when accepting gifts and using surplus funds for the purpose of qualifying as beneficiary any indigent person whose family lacks the resources to make a full contribution on the beneficiary's behalf. Allows 50% of surplus trust funds to be retained for this purpose. Requires, upon termination of an individual trust account, that at least 50% of the surplus funds be used to satisfy any claims or liens of DHHS, up to an amount equal to the total medical assistance paid on behalf of or to the disabled individual by DHHS. Provides that the amount retained by the trust be based on a sliding scale calculation, based upon the number of years the individual received services from the community trust, but in no instance may it exceed 50% of the surplus funds. Prohibits the community trust from distributing surplus funds to any remaindermen identified in the trust document. Makes a conforming change.

Amends GS 36D-7 to provide that the fact that the community trust agrees to serve as trustee for a private trust does not mean the trust meets the rules adopted by DHHS or that the disabled beneficiary is eligible for public benefits. Makes clarifying and conforming changes.

Amends GS 36D-8 to delete the provision concerning irrevocability of a community trust. Instead, requires that DHHS adopt rules governing the eligibility of pooled trust beneficiaries for state medical assistance and state-county special assistance, including pre-execution requirements, permissible trust terms, accounting and termination requirements, disbursements, and other necessary rules, as well as establishing a trust instrument template to be used for the creation of each beneficiary's trust sub-account. Specifies that rules must specifically state that (1) the pool trust is irrevocable, (2) the state must be paid an amount equal to the total medical assistance paid on behalf of the disabled individual by DHHS from funds remaining in the individual trust sub-account upon death of the beneficiary or termination of the trust, and (3) if the pooled trust is to be subject to DHHS's subrogated rights of recovery, such subrogated rights of recovery are to be satisfied in full prior to execution or judicial approval of the trust.

Amends 36D-9 to provide that an agency may not reduce the benefits or services available to a disabled individual because that person is the beneficiary of a pooled trust, if the trust complies with rules adopted by DHHS. Makes conforming and technical changes.

Amends GS 36D-11 to require that the trustee provide a final disbursement and accounting for an individual sub-account to the Division of Medical Assistance, Third Party Recovery Section, within 60 days of the date of the beneficiary's death or upon termination of the trust. Makes technical changes

*Source: Bill Digest S.B. 704 (03/19/0200).*

**ASSUMPTIONS AND METHODOLOGY:** This bill would have a positive fiscal impact to the State, as it requires that the State must be paid an amount equal to the total medical assistance paid on behalf of the disabled individual from funds remaining in an individual trust sub-account upon death of the beneficiary or termination of the trust.

There are two pooled trusts for disabled individuals in North Carolina. One is run by the ARC, which has had a long-standing policy of reimbursing the State a minimum of 50% of funds remaining. The other is run by the Corporation of Guardianship, which has taken the position that it can retain all funds remaining in the individual's account, even when there are funds remaining that are sufficient to pay Medicaid's entire claim.

Currently there are six Medicaid recipients with pooled trusts totaling \$493,443. The Program Integrity Unit of the Division of Medical Assistance is responsible for collecting payment from third parties and tracks this information. However it is unknown the amount (if any) that would be available to the State upon the deaths of the beneficiaries.

**SOURCES OF DATA:** Division of Medical Assistance, Attorney General's Office

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** June 8, 2009



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