

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1991

CHAPTER 768  
HOUSE BILL 1000

AN ACT TO ESTABLISH THE NORTH CAROLINA COMMUNITY TRUST FOR  
PERSONS WITH SEVERE CHRONIC DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 36A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4B.

"North Carolina Community Trust Act.

**"§ 36A-59.10. North Carolina Community Trust for Persons with Severe Chronic Disabilities; findings.**

(a) This act shall be known and may be cited as the 'North Carolina Community Trust for Persons with Severe Chronic Disabilities Act'.

(b) The General Assembly finds that it is in the public interest to encourage activities by voluntary associations and private citizens which will supplement and augment those services provided by local, State, and federal government agencies in discharge of their responsibilities toward individuals with severe chronic disabilities. The General Assembly further finds that, as a result of changing social, economic, and demographic trends, families of persons with severe chronic disabilities are increasingly aware of the need for a vehicle by which they can assure ongoing individualized personal concern for a severely disabled family member who may survive his parents or other family members, and provide for the efficient management of small legacies or trust funds to be used for the benefit of such a disabled person. In a number of other states voluntary associations have established foundations or trusts intended to be responsive to these concerns. Therefore, the General Assembly finds that North Carolina will benefit by the enactment of enabling legislation expressly authorizing the formation of community trusts in accordance with criteria set forth by statute and administered by the Secretary of State, pursuant to Chapter 55A of the General Statutes. These community trusts permit the pooling of resources contributed by families or persons with philanthropic intent, along with the reservation of portions of these funds for the use and benefit of designated beneficiaries.

(c) This act shall be liberally construed and applied to promote its underlying purposes and policies, which are, among others, to:

- (1) Encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities;
- (2) Ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest;

- (3) Facilitate sound administration of trust funds for persons with severe chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;
- (4) Provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become incapacitated;
- (5) Help make guardians available for persons with severe chronic disabilities who are incompetent, when no other family member is available for this purpose;
- (6) Encourage the availability of private resources to purchase for persons with severe chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those which are not available from other sources;
- (7) Encourage the inclusion, as beneficiaries of community trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the trust; and
- (8) Remove the disincentives that discourage parents and others from setting aside funds for the future protection of persons with severe chronic disabilities by ensuring that the interest of beneficiaries in community trusts are not considered assets or income that would disqualify them from any governmental or charitable entitlement program with an economic means test.

**"§ 36A-59.11. Definitions.**

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

- (1) 'Beneficiary' means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.
- (2) 'Community trust' means a nonprofit organization that offers the following services:
  - a. Administration of special 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; and

- d. Advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.
- (3) 'Follow along services' means those services offered by community 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, participation in the development of individualized plans being made by service providers for the beneficiary, and other similar services consistent with the purposes of this act.
- (4) 'Severe chronic disability' means a physical or mental impairment that is expected to give rise to a long-term need for specialized health, social, and other services, and which makes the person with such a disability dependent upon others for assistance to secure these services.
- (5) 'Trustee' means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.
- (6) 'Surplus trust funds' means funds accumulated in the trust from contributions made on behalf of an individual beneficiary which, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary's lifetime, including the beneficiary's share of administrative costs.

**"§ 36A-59.12. Scope.**

This Article shall apply to every community trust established in this State. In addition to meeting the other requirements of this act, every board which administers a community trust shall incorporate as a nonprofit corporation pursuant to Chapter 55A of the General Statutes. Except as otherwise provided herein, the provisions of Chapter 55A of the General Statutes shall apply to the community trusts.

**"§ 36A-59.13. Administration; powers and duties.**

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

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

(b) Notwithstanding any other provision of law to the contrary, no trustee may be compensated for services provided as a member of the board of a community trust. No

fees or commissions shall be paid to these trustees; however, a trustee may be paid for necessary expenses incurred by the trustee and may receive indemnification as permitted under Chapter 55A of the General Statutes.

(b1) For every community trust incorporated under this Article, the corporation itself shall be considered the trustee of any funds administered by it. No individual board member shall be considered to be trustee of any fund deposited on behalf of any individual beneficiary with severe chronic disabilities.

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

(d) The board may retain paid staff as it considers necessary to provide follow along services to the extent required by each beneficiary. The community trust may authorize the expenditure of funds for any goods or services which, in its sole discretion, it determines will promote the well-being of any beneficiary, including recreational services. The community trust may pay for the burial of any beneficiary. The community trust, however, may not expend funds for any goods or services of comparable quality to those available to any particular beneficiary through any governmental or charitable program, insurance, or other sources. The community trust may expend funds to meet the reasonable costs of administering the community trust.

(e) The community trust is not required to provide services to a beneficiary who is a competent adult and who has refused to accept the services. Further, the community trust shall not provide services of a nature or in a manner that would be contrary to the public policy of this State at the time the services are to be provided. In either case, the community trust may offer alternate services that are consistent with the purposes of this act and in keeping with the best interests of the beneficiary.

(f) The community trust may accept appointment as guardian of the person, guardian of the estate, or guardian of both on behalf of any beneficiary. If the community trust accepts appointment as guardian of the person of an individual, it shall assign a staff member to carry out its responsibilities as the guardian. The community trust may, on request, offer consultative and professional assistance to an individual, private or public guardian of any of its beneficiaries.

(g) The community trust may accept contributions, bequests, and designations under life insurance policies to the community trust on behalf of individuals with severe chronic disabilities for the purpose of qualifying them as beneficiaries.

(h) At the time a contribution, bequest, or assignment of insurance proceeds is made, the trustor shall receive a written statement of the services to be provided to the beneficiary. The statement shall include a starting date for the delivery of services or the condition precedent, such as the death of the trustor, which shall determine the starting date. The statement shall describe the frequency with which services shall be provided and their duration, and the criteria or procedures for modifying the program of services from time to time in the best interests of the beneficiary.

**"§ 36A-59.14. Accountability.**

Along with the annual report filed with the Secretary of State pursuant to Chapter 55A of the General Statutes, the community trust shall file an itemized statement which

shows the funds collected for the year, income earned, salaries, other expenses incurred, and the opening and final trust balances. A copy of this statement shall be made available, upon request, to any beneficiary, trustor, or designee of the trustor. In addition, once annually, each trustor or the trustor's designee shall receive a detailed individual statement of the services provided to the trustor's beneficiary during the previous 12 months and the services to be provided during the following 12 months. The community trust shall make a copy of the individual statement available to any beneficiary, upon request.

**"§ 36A-59.15. Gifts, surplus trust funds.**

The community trust may accept gifts and use surplus trust funds for the purpose of qualifying as beneficiaries any indigent person whose family members lack the resources to make a full contribution on that person's behalf. The extent and character of the services and selection of beneficiaries are at the discretion of the community trust. The community trust may not use surplus trust funds to make any charitable contribution on behalf of any beneficiary or any group or class of beneficiaries. The community trust may accept gifts to meet start-up costs, reduce the charges to the trust for the cost of administration, and for any other purpose that is consistent with this act. Gifts made to the trust for an unspecified purpose shall be used by the community trust either to qualify indigent persons whose families lack the means to qualify them as beneficiaries of the trust or to meet any start-up costs that the trust incurs.

**"§ 36A-59.16. Special requests on behalf of beneficiary.**

The community trust may agree to fulfill any special requests made on behalf of a beneficiary as long as the requests are consistent with this Article and provided an adequate contribution has been made for this purpose on behalf of a beneficiary. The community trust may agree to serve as trustee for any individual trust created on behalf of a beneficiary, regardless of whether the trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or any other condition, so long as the individual trust is consistent with the purposes of this Article.

**"§ 36A-59.17. Irrevocability; impossibility of fulfillment.**

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

**"§ 36A-59.18. Beneficiary's interest in trust not asset for income eligibility determination.**

Notwithstanding any provisions of Chapter 108A of the General Statutes, the beneficiary's interest in any community trust shall not be deemed to be an asset for the purpose of determining income eligibility for any publicly operated program, nor shall that interest be reached in satisfaction of a claim for support and maintenance of the beneficiary. No agency shall reduce the benefits of services available to any individual because that person is the beneficiary of a community trust.

**"§ 36A-59.19. Trust not subject to law against perpetuities, restraints on alienation.**

A community trust shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

**"§ 36A-59.20. Settlement; trustee limitations.**

The community trust shall settle a community trust by filing a final accounting in the superior court. In addition, at any time prior to the settlement of the final account, the community trust, the Secretary of State, or the Attorney General may bring an action for the dissolution of a nonprofit corporation in the superior court for the purpose of terminating the trust or merging it with another charitable trust.

No trustee or any private individual shall be entitled to share in the distribution of any of the trust assets upon dissolution, merger, or settlement of the community trust. Upon dissolution, merger, or settlement, the superior court shall distribute all of the remaining net assets of the community trust in a manner that is consistent with the purposes of this Article.

**"§ 36A-59.21. Funding.**

No State funds shall be utilized to implement this act."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1992.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives