



SENATE BILL 344: Pooled Trust Transfers/Public Benefits Elig.

2025-2026 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 10, 2025
Introduced by:	Sens. Galey, Ford, Alexander	Prepared by:	Jennifer Hillman
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 344 would require the Department of Health and Human Services (DHHS), to amend its rules and policies for determining eligibility for the Medicaid program and the State-County Special Assistance (SA) program so that a disabled individual aged 65 years or older may transfer funds into a pooled special needs trust without incurring an eligibility penalty period when the transfer is made for fair market value.*

BACKGROUND:

Medicaid

Under federal Medicaid law, in order for a disabled individual to be eligible for Medicaid, the individual must not have resources in excess of a specified threshold. If the disabled individual otherwise qualifies for Medicaid but has resources in excess of the resource limit, the individual is subject to a penalty period before receiving Medicaid benefits. In accordance with federal law, when determining whether an individual meets the resource limits for eligibility for Medicaid benefits, the State must consider whether the individual transferred any assets within the prior five years. This is often referred to as the "lookback" period. If the individual transferred assets for less than fair market value during the lookback period, the individual is subject to a penalty period based on the amount of the transfer. G.S. 108A-58.1 governs the establishment of a penalty period when assets were transferred for less than fair market value.

One type of asset transfer is a transfer of funds to a trust that meets the criteria in 42 U.S.C. § 1396p(d)(4)(C), which is commonly referred to as a "pooled special needs trust." The criteria for a pooled special needs trust are: (i) the trust is established and managed by a nonprofit association, (ii) a separate account is maintained for each beneficiary of the trust but the accounts are pooled for purposes of investment and management, (iii) accounts in the trust are solely for disabled individuals and may only be established by the individual, a parent, a grandparent, a legal guardian, or the court, and (iv) amounts remaining in the account after the individual's death that are not retained under the trust must be used to reimburse the State for Medicaid expenditures that were made for the individual.

Federal Medicaid law has a specific exemption from the transfer penalty for transfers made to pooled special needs trust, when the transfer is made by an individual who is under the age of 65. Federal Medicaid law does not contain a specific exemption from a transfer penalty for the same transfers when made by an individual who is aged 65 or older. Although transfers made by individuals aged 65 and older are not specifically exempted under 42 U.S.C. § 1396p(c)(2)(B)(iv), if those transfers can be shown to have been made for fair market value, then the transfer is exempt from a transfer penalty under 42 U.S.C. § 1396p(c)(2)(C)(i).

Currently the North Carolina Medicaid program imposes a penalty period based on the entire amount transferred to a pooled special needs trust, without evaluating whether the transfer was made for fair market value.

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State-County Special Assistance (SA)

North Carolina's SA program is an optional state supplementation payment made to individuals who meet eligibility criteria for the Social Security Supplemental Security Income (SSI) program. As an optional state supplementation program, it is subject to federal requirements in the federal Social Security Act. Like with the Medicaid program, to be eligible for SA, an individual must not have resources above a specified threshold, and the individual is subject to a lookback period for transfers for less than fair market value. For purposes of eligibility for the SA program, resources and transfers of assets are determined under the laws and rules applicable to the SSI program. G.S. 108A-46.1 specifically states that transfers of assets are determined under SSI policy.

Federal SSI law has a specific exemption from the transfer penalty for transfers made to pooled special needs trust, when the transfer is made by an individual who is under the age of 65. Federal SSI law does not contain a specific exemption from a transfer penalty for the same transfers when made by an individual who is aged 65 or older. Although transfers made by individuals aged 65 and older are not specifically exempted under 42 U.S.C. § 1382b(c)(1)(C)(ii)(IV), if those transfer can be shown to have been made for fair market value, then the transfer is exempt from a transfer penalty under 42 U.S.C. § 1382b(c)(1)(C)(iii)(I).

Currently the State policies and rules applicable to the SA program do not contain language explicitly stating criteria for determining whether a transfer to a pooled special needs trust was made for fair market value.

BILL ANALYSIS: **Section 1** would direct DHHS to amend its rules policies for the Medicaid and SA programs regarding transfers to pooled special needs trusts that meet the criteria of 42 U.S.C. § 1396p(d)(4)(C) to provide a way for an individual to demonstrate that the transfer to a pooled special needs trust was made for fair market value. Under the amended policies, the individual would be exempt from a penalty period if the individual shows that the funds transferred into the trust are intended to be used by the trustee of the trust, within the life expectancy of the individual, to provide to the individual goods and services valued at the fair market value of the funds transferred into the trust.

If it is determined that federal law does not allow this change to the Medicaid program or the SA program, the change would not be required for that program.

EFFECTIVE DATE: This act would be effective when it becomes law.