



**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

**ASSEMBLY, No. 1292**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**SYNOPSIS**

Authorizes courts to establish trusts for persons with disabilities.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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2

1 AN ACT concerning special needs trusts and amending P.L.1968,  
2 c.413 and supplementing Title 3B of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. (New section) The Legislature finds and declares that:

8 a. It is in the public interest to encourage persons to set aside  
9 amounts to supplement and augment assistance provided by  
10 government entities to persons with severe chronic disabilities;

11 b. By enacting section 13611 of the federal Omnibus Budget  
12 Reconciliation Act of 1993, 42 U.S.C. s.1396p(d)(4), the United  
13 States Congress affirmed this view by permitting the establishment of  
14 a trust to supplement and augment assistance for a person who is  
15 disabled without disqualifying that person from benefits under the  
16 Medicaid program;

17 c. In some instances, trusts must be established by a court in order  
18 to comply with the provisions of 42 U.S.C. s.1396p(d)(4);

19 d. However, the current law in New Jersey does not specifically  
20 authorize the establishment of these trusts and subsection f. of section  
21 6 of P.L.1968, c.413 (C.30:4D-6) may be construed as impeding their  
22 establishment; and

23 e. Therefore, legislation is appropriate to facilitate the  
24 establishment of trusts to supplement and augment assistance provided  
25 by government entities to persons with severe chronic disabilities and  
26 persons who are disabled under the federal Social Security Act.

27  
28 2. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read as  
29 follows:

30 6. a. Subject to the requirements of Title XIX of the federal Social  
31 Security Act, the limitations imposed by this act and by the rules and  
32 regulations promulgated pursuant thereto, the department shall  
33 provide medical assistance to qualified applicants, including authorized  
34 services within each of the following classifications:

35 (1) Inpatient hospital services;

36 (2) Outpatient hospital services;

37 (3) Other laboratory and X-ray services;

38 (4) (a) Skilled nursing or intermediate care facility services;

39 (b) Such early and periodic screening and diagnosis of individuals  
40 who are eligible under the program and are under age 21, to ascertain  
41 their physical or mental defects and such health care, treatment, and  
42 other measures to correct or ameliorate defects and chronic conditions  
43 discovered thereby, as may be provided in regulations of the Secretary

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

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- 1 of the federal Department of Health and Human Services and approved  
2 by the commissioner;
- 3 (5) Physician's services furnished in the office, the patient's home,  
4 a hospital, a skilled nursing or intermediate care facility or elsewhere.
- 5 b. Subject to the limitations imposed by federal law, by this act,  
6 and by the rules and regulations promulgated pursuant thereto, the  
7 medical assistance program may be expanded to include authorized  
8 services within each of the following classifications:
- 9 (1) Medical care not included in subsection a.(5) above, or any  
10 other type of remedial care recognized under State law, furnished by  
11 licensed practitioners within the scope of their practice, as defined by  
12 State law;
- 13 (2) Home health care services;
- 14 (3) Clinic services;
- 15 (4) Dental services;
- 16 (5) Physical therapy and related services;
- 17 (6) Prescribed drugs, dentures, and prosthetic devices; and  
18 eyeglasses prescribed by a physician skilled in diseases of the eye or by  
19 an optometrist, whichever the individual may select;
- 20 (7) Optometric services;
- 21 (8) Podiatric services;
- 22 (9) Chiropractic services;
- 23 (10) Psychological services;
- 24 (11) Inpatient psychiatric hospital services for individuals under 21  
25 years of age, or under age 22 if they are receiving such services  
26 immediately before attaining age 21;
- 27 (12) Other diagnostic, screening, preventive, and rehabilitative  
28 services, and other remedial care;
- 29 (13) Inpatient hospital services, nursing facility services and  
30 intermediate care facility services for individuals 65 years of age or  
31 over in an institution for mental diseases;
- 32 (14) Intermediate care facility services;
- 33 (15) Transportation services;
- 34 (16) Services in connection with the inpatient or outpatient  
35 treatment or care of drug abuse, when the treatment is prescribed by  
36 a physician and provided in a licensed hospital or in a narcotic and  
37 drug abuse treatment center approved by the Department of Health  
38 pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.) and whose staff  
39 includes a medical director, and limited to those services eligible for  
40 federal financial participation under Title XIX of the federal Social  
41 Security Act;
- 42 (17) Any other medical care and any other type of remedial care  
43 recognized under State law, specified by the Secretary of the federal  
44 Department of Health and Human Services, and approved by the  
45 commissioner;
- 46 (18) Comprehensive maternity care, which may include: the basic

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1 number of prenatal and postpartum visits recommended by the  
2 American College of Obstetrics and Gynecology; additional prenatal  
3 and postpartum visits that are medically necessary; necessary  
4 laboratory, nutritional assessment and counseling, health education,  
5 personal counseling, managed care, outreach and follow-up services;  
6 treatment of conditions which may complicate pregnancy; and  
7 physician or certified nurse-midwife delivery services;

8 (19) Comprehensive pediatric care, which may include: ambulatory,  
9 preventive and primary care health services. The preventive services  
10 shall include, at a minimum, the basic number of preventive visits  
11 recommended by the American Academy of Pediatrics;

12 (20) Services provided by a hospice which is participating in the  
13 Medicare program established pursuant to Title XVIII of the Social  
14 Security Act, Pub.L.89-97 (42 U.S.C.1395 et seq.). Hospice services  
15 shall be provided subject to approval of the Secretary of the federal  
16 Department of Health and Human Services for federal reimbursement;

17 (21) Mammograms, subject to approval of the Secretary of the  
18 federal Department of Health and Human Services for federal  
19 reimbursement, including one baseline mammogram for women who  
20 are at least 35 but less than 40 years of age; one mammogram  
21 examination every two years or more frequently, if recommended by  
22 a physician, for women who are at least 40 but less than 50 years of  
23 age; and one mammogram examination every year for women age 50  
24 and over.

25 c. Payments for the foregoing services, goods and supplies  
26 furnished pursuant to this act shall be made to the extent authorized  
27 by this act, the rules and regulations promulgated pursuant thereto  
28 and, where applicable, subject to the agreement of insurance provided  
29 for under this act. Said payments shall constitute payment in full to  
30 the provider on behalf of the recipient. Every provider making a claim  
31 for payment pursuant to this act shall certify in writing on the claim  
32 submitted that no additional amount will be charged to the recipient,  
33 his family, his representative or others on his behalf for the services,  
34 goods and supplies furnished pursuant to this act.

35 No provider whose claim for payment pursuant to this act has been  
36 denied because the services, goods or supplies were determined to be  
37 medically unnecessary shall seek reimbursement from the recipient, his  
38 family, his representative or others on his behalf for such services,  
39 goods and supplies provided pursuant to this act; provided, however,  
40 a provider may seek reimbursement from a recipient for services,  
41 goods or supplies not authorized by this act, if the recipient elected to  
42 receive the services, goods or supplies with the knowledge that they  
43 were not authorized.

44 d. Any individual eligible for medical assistance (including drugs)  
45 may obtain such assistance from any person qualified to perform the  
46 service or services required (including an organization which provides

1 such services, or arranges for their availability on a prepayment basis),  
2 who undertakes to provide him such services.

3 No copayment or other form of cost-sharing shall be imposed on  
4 any individual eligible for medical assistance, except as mandated by  
5 federal law as a condition of federal financial participation.

6 e. Anything in this act to the contrary notwithstanding, no  
7 payments for medical assistance shall be made under this act with  
8 respect to care or services for any individual who:

9 (1) Is an inmate of a public institution (except as a patient in a  
10 medical institution); provided, however, that an individual who is  
11 otherwise eligible may continue to receive services for the month in  
12 which he becomes an inmate, should the commissioner determine to  
13 expand the scope of Medicaid eligibility to include such an individual,  
14 subject to the limitations imposed by federal law and regulations, or

15 (2) Has not attained 65 years of age and who is a patient in an  
16 institution for mental diseases, or

17 (3) Is over 21 years of age and who is receiving inpatient  
18 psychiatric hospital services in a psychiatric facility; provided,  
19 however, that an individual who was receiving such services  
20 immediately prior to attaining age 21 may continue to receive such  
21 services until he reaches age 22. Nothing in this subsection shall  
22 prohibit the commissioner from extending medical assistance to all  
23 eligible persons receiving inpatient psychiatric services; provided that  
24 there is federal financial participation available.

25 f. (1) A third party as defined in section 3 of P.L.1968, c.413  
26 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in  
27 this or another state when determining the person's eligibility for  
28 enrollment or the provision of benefits by that third party.

29 (2) In addition, any provision in a contract of insurance, health  
30 benefits plan or other health care coverage document, will, trust  
31 agreement, court order or other instrument which reduces or excludes  
32 coverage or payment for health care-related goods and services to or  
33 for an individual because of that individual's actual or potential  
34 eligibility for or receipt of Medicaid benefits shall be null and void, and  
35 no payments shall be made under this act as a result of any such  
36 provision.

37 (3) Notwithstanding any provision of law to the contrary, the  
38 provisions of paragraph (2) of this subsection shall not apply to a trust  
39 agreement that is established to supplement and augment assistance  
40 provided by government entities to a person who is disabled as defined  
41 in section 1614(a)(3) of the federal Social Security Act (42 U.S.C.  
42 s.1382c (a)(3)) and where the undistributed income and corpus of the  
43 trust would not constitute countable income or resources to the person  
44 with a disability for Medicaid eligibility purposes.

45 g. The following services shall be provided to eligible medically  
46 needy individuals as follows:

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1 (1) Pregnant women shall be provided prenatal care and delivery  
2 services and postpartum care, including the services cited in subsection  
3 a.(1), (3) and (5) of this section and subsection b.(1)-(10), (12), (15)  
4 and (17) of this section, and nursing facility services cited in  
5 subsection b.(13) of this section.

6 (2) Dependent children shall be provided with services cited in  
7 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),  
8 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing  
9 facility services cited in subsection b.(13) of this section.

10 (3) Individuals who are 65 years of age or older shall be provided  
11 with services cited in subsection a.(3) and (5) of this section and  
12 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),  
13 (12), (15) and (17) of this section, and nursing facility services cited  
14 in subsection b.(13) of this section.

15 (4) Individuals who are blind or disabled shall be provided with  
16 services cited in subsection a.(3) and (5) of this section and subsection  
17 b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and  
18 (17) of this section, and nursing facility services cited in subsection  
19 b.(13) of this section.

20 (5) (a) Inpatient hospital services, subsection a.(1) of this section,  
21 shall only be provided to eligible medically needy individuals, other  
22 than pregnant women, if the federal Department of Health and Human  
23 Services discontinues the State's waiver to establish inpatient hospital  
24 reimbursement rates for the Medicare and Medicaid programs under  
25 the authority of section 601(c)(3) of the Social Security Act  
26 Amendments of 1983, Pub.L.98-21 (42 U.S.C.1395ww(c)(5)).  
27 Inpatient hospital services may be extended to other eligible medically  
28 needy individuals if the federal Department of Health and Human  
29 Services directs that these services be included.

30 (b) Outpatient hospital services, subsection a.(2) of this section,  
31 shall only be provided to eligible medically needy individuals if the  
32 federal Department of Health and Human Services discontinues the  
33 State's waiver to establish outpatient hospital reimbursement rates for  
34 the Medicare and Medicaid programs under the authority of section  
35 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21  
36 (42 U.S.C.1395ww(c)(5)). Outpatient hospital services may be  
37 extended to all or to certain medically needy individuals if the federal  
38 Department of Health and Human Services directs that these services  
39 be included. However, the use of outpatient hospital services shall be  
40 limited to clinic services and to emergency room services for injuries  
41 and significant acute medical conditions.

42 (c) The division shall monitor the use of inpatient and outpatient  
43 hospital services by medically needy persons.

44 h. In the case of a qualified disabled and working individual  
45 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C.1396d), the  
46 only medical assistance provided under this act shall be the payment



1 of premiums for Medicare part A under 42 U.S.C.1395i-2 and 1395r.

2 i. In the case of a specified low-income medicare beneficiary  
3 pursuant to 42 U.S.C. 1396a(a)10(E)iii, the only medical assistance  
4 provided under this act shall be the payment of premiums for Medicare  
5 part B under 42 U.S.C.1395r as provided for in 42  
6 U.S.C.1396d(p)(3)(A)(ii).

7 (cf: P.L.1995, c.292, s.2)

8

9 3. (New section) a. As used in this section "payback trust" means  
10 a trust established pursuant to 42 U.S.C. s.1396p(d)(4)(A) or an  
11 account within a pooled trust pursuant to 42 U.S.C. s.1396p(d)(4)(C).

12 b. Upon the request of an interested party, a court may establish a  
13 payback trust for a person who is disabled as defined in section  
14 1614(a)(3) of the federal Social Security Act (42 U.S.C. s.1382c  
15 (a)(3)), whether or not the person is an incapacitated person as defined  
16 in N.J.S.3B:1-2, and may direct that the assets of the person with a  
17 disability be placed in the payback trust.

18 c. Prior to establishing a payback trust for a person with a  
19 disability who is incapacitated, the court shall consider the factors  
20 listed in N.J.S.3B:12-3.

21 d. Nothing in this act shall be construed to require that all payback  
22 trusts shall be created by a court.

23 e. Notwithstanding any provision or principle of law to the  
24 contrary, a beneficiary of a payback trust that is established by a court  
25 or otherwise may not revoke or terminate the payback trust if the  
26 instrument that governs the payback trust designates the payback trust  
27 as irrevocable or otherwise provides that the beneficiary shall not have  
28 authority to revoke or terminate the payback trust.

29

30 4. This act shall take effect immediately.

31

32

33

#### STATEMENT

34

35 This bill excludes a special needs trust that is established to  
36 supplement and augment assistance of a person with a disability from  
37 the provisions of N.J.S.A.30:4D-6f. This section of law provides that  
38 any provision in a contract of insurance, health benefits plan or other  
39 health care coverage document, will, trust agreement, court order or  
40 other instrument which reduces or excludes coverage or payment  
41 because of actual or potential eligibility for or receipt of Medicaid  
42 benefits, shall be null. Although an interpretation of N.J.S.A.30:4D-  
43 6f as limiting Medicaid eligibility because of the establishment of a  
44 special needs trust may be unlikely, this legislation ensures that the  
45 provisions of N.J.S.A.30:4D-6f do not apply to special needs trusts  
46 that are established to supplement and augment assistance.

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1       The bill also authorizes the courts in the State to establish a  
2       payback trust for a person with a disability, without disqualifying that  
3       person from receiving benefits under the Medicaid program. Although  
4       the State courts may have inherent power to establish payback trusts,  
5       the State law does not provide so explicitly. Therefore, a court may  
6       be reluctant to establish a payback trust, particularly if the disabled  
7       person is legally competent. Thus, the bill authorizes courts to  
8       establish payback trusts but does not preclude the establishment of  
9       payback trusts outside the courts.

10       A payback trust is defined pursuant to federal law as a trust  
11       established pursuant to 42 U.S.C. s.1396p(d)(4)(A) or an account  
12       within a pooled trust pursuant to 42 U.S.C. s.1396p(d)(4)(C). For a  
13       trust established pursuant to 42 U.S.C.s.1396p(d)(4)(A), upon the  
14       death of the person with a disability, the trust shall pay to the State  
15       from remaining amounts in the trust an amount equal to the total  
16       amount of medical assistance paid on behalf of the person with a  
17       disability. For an account within a pooled trust established pursuant  
18       to 42 U.S.C. s.1396p(d)(4)(C), upon the death of the person with a  
19       disability, the account shall pay to the State from remaining amounts  
20       in the account that are not retained by the pooled trust, an amount  
21       equal to the total amount of medical assistance paid on behalf of the  
22       person with a disability.

23       In the Omnibus Budget Reconciliation Act of 1993, Congress  
24       provided that certain kinds of special needs trusts, that is, payback  
25       trusts, may contain assets attributable to a person with a disability,  
26       without disqualifying the person for benefits under the Medicaid  
27       program. To prevent windfalls to the beneficiaries of a person with a  
28       disability who may not be disabled, and to protect funds in the  
29       Medicaid program, amounts remaining in the payback trust at death  
30       are repaid to the State, as provided for in 42 U.S.C.s.1396p(d)(4)(A)  
31       and 42 U.S.C.s.1396p(d)(4)(C).

32       Because a trust may disqualify a disabled beneficiary from eligibility  
33       for benefits if the beneficiary has authority to revoke the trust, the bill  
34       provides that a beneficiary of a payback trust that is established by a  
35       court or otherwise may not revoke or terminate the payback trust if  
36       the instrument that governs the payback trust designates the payback  
37       trust as irrevocable or otherwise provides that the beneficiary shall not  
38       have authority to revoke or terminate the payback trust. This  
39       provision will help ensure that a person with a disability will not be  
40       disqualified from receiving benefits if a trust is construed under  
41       common law principles as being revocable even though the trust  
42       instrument designates the trust as irrevocable.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1292**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 20, 2000

The Assembly Senior Issues and Community Services Committee reports favorably and with committee amendments Assembly Bill No. 1292.

This bill excludes a special needs trust that is established to supplement and augment assistance of a person with a disability from the provisions of subsection f. of N.J.S.A.30:4D-6 concerning Medicaid eligibility. This section of law provides that any provision in a contract of insurance, health benefits plan or other health care coverage document, will, trust agreement, court order or other instrument which reduces or excludes coverage or payment because of actual or potential eligibility for or receipt of Medicaid benefits, shall be null. Although an interpretation of subsection f. of N.J.S.A.30:4D-6 as limiting Medicaid eligibility because of the establishment of a special needs trust may be unlikely, this legislation ensures that the provisions of subsection f. of N.J.S.A.30:4D-6 do not apply to special needs trusts that are established to supplement and augment assistance.

The bill would authorize the courts in the State to establish a trust for a person with a disability, without disqualifying that person from receiving benefits under the Medicaid program. Although the State courts may have inherent power to establish such trusts, the State law does not provide so explicitly. Therefore, a court may be reluctant to establish a trust, particularly if the disabled person is legally competent. Thus, the bill authorizes courts to establish trusts but does not preclude the establishment of trusts outside the courts.

In its original form, the bill referred to these trusts as "payback trusts" the committee amended the bill to identify the trusts as "OBRA '93 trusts."

An "OBRA '93" is defined pursuant to federal law as a trust established pursuant to 42 U.S.C. s.1396p(d)(4)(A), or an account within a pooled trust pursuant to 42 U.S.C. s.1396p(d)(4)(C). In the Omnibus Budget Reconciliation Act of 1993, Congress provided that certain kinds of special needs trusts, that is OBRA '93 trusts, may

contain assets attributable to a person with a disability, without disqualifying the person for benefits under the Medicaid program. To prevent windfalls to the beneficiaries of a person with a disability who may not be disabled, and to protect funds in the Medicaid program, amounts remaining in the OBRA '93 trust at death are repaid to the State, as provided for in 42 U.S.C.s.1396p(d)(4)(A) and 42 U.S.C.s.1396p(d)(4)(C). For a trust established pursuant to 42 U.S.C.s.1396p(d)(4)(A), upon the death of the person with a disability, the trust shall pay to the State from remaining amounts in the trust an amount equal to the total amount of medical assistance paid on behalf of the person with a disability. For an account within a pooled trust established pursuant to 42 U.S.C. s.1396p(d)(4)(C), upon the death of the person with a disability, the account shall pay to the State from remaining amounts in the account that are not retained by the pooled trust, an amount equal to the total amount of medical assistance paid on behalf of the person with a disability.

Because a trust may disqualify a disabled beneficiary from eligibility for benefits if the beneficiary has authority to revoke the trust, the committee amended the bill to provide that a beneficiary, grantor, trustee or other person would not have the authority to revoke an OBRA '93 trust. This provision applies whether or not the OBRA '93 trust instrument designates the trust as irrevocable or whether the OBRA '93 trust was created by a court or otherwise. This provision ensures that a person with a disability will not be disqualified from receiving benefits if a trust is construed under common law principles as being revocable even though the trust instrument designates the trust as irrevocable.

This bill was prefiled for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE SENIOR CITIZENS, VETERANS' AFFAIRS AND  
HUMAN SERVICES COMMITTEE

STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 1292**

**STATE OF NEW JERSEY**

DATED: MAY 22, 2000

The Senate Senior Citizens, Veterans' Affairs and Human Services Committee reports favorably Assembly Bill No. 1292 (1R).

This bill excludes a special needs trust that is established to supplement and augment assistance of a person with a disability from the provisions of subsection f. of N.J.S.A.30:4D-6 concerning Medicaid eligibility. This section of law provides that any provision in a contract of insurance, health benefits plan or other health care coverage document, will, trust agreement, court order or other instrument which reduces or excludes coverage or payment because of actual or potential eligibility for or receipt of Medicaid benefits, shall be null. Although an interpretation of subsection f. of N.J.S.A.30:4D-6 as limiting Medicaid eligibility because of the establishment of a special needs trust may be unlikely, this legislation ensures that the provisions of subsection f. of N.J.S.A.30:4D-6 do not apply to special needs trusts that are established to supplement and augment assistance.

The bill would authorize the courts in the State to establish a trust for a person with a disability, without disqualifying that person from receiving benefits under the Medicaid program. Although the State courts may have inherent power to establish these trusts, the State law does not provide so explicitly. Therefore, a court may be reluctant to establish a trust, particularly if the disabled person is legally competent. Thus, the bill authorizes a court to establish an OBRA '93 trust but does not preclude the establishment of trusts outside the courts.

An OBRA '93 trust is defined pursuant to federal law as a trust established pursuant to 42 U.S.C. s.1396p(d)(4)(A), or an account within a pooled trust pursuant to 42 U.S.C. s.1396p(d)(4)(C). In the Omnibus Budget Reconciliation Act of 1993, Congress provided that certain kinds of special needs trusts, that is OBRA '93 trusts, may contain assets attributable to a person with a disability, without disqualifying the person for benefits under the Medicaid program. To prevent windfalls to the beneficiaries of a person with a disability who

may not be disabled, and to protect funds in the Medicaid program, amounts remaining in the OBRA '93 trust at death are repaid to the State, as provided for in 42 U.S.C.s.1396p(d)(4)(A) and 42 U.S.C.s.1396p(d)(4)(C). For a trust established pursuant to 42 U.S.C.s.1396p(d)(4)(A), upon the death of the person with a disability, the trust shall pay to the State from remaining amounts in the trust an amount equal to the total amount of medical assistance paid on behalf of the person with a disability. For an account within a pooled trust established pursuant to 42 U.S.C. s.1396p(d)(4)(C), upon the death of the person with a disability, the account shall pay to the State from remaining amounts in the account that are not retained by the pooled trust, an amount equal to the total amount of medical assistance paid on behalf of the person with a disability.

Because a trust may disqualify a disabled beneficiary from eligibility for benefits if the beneficiary has authority to revoke the trust, the bill provides that a beneficiary, grantor, trustee or other person would not have the authority to revoke an OBRA '93 trust. This provision applies whether or not the OBRA '93 trust instrument designates the trust as irrevocable or whether the OBRA '93 trust was created by a court or otherwise. This provision ensures that a person with a disability will not be disqualified from receiving benefits if a trust is construed under common law principles as being revocable even though the trust instrument designates the trust as irrevocable.

This bill is identical to S-662 Sca (Bucco) which the committee also reported favorably on this date.

[First Reprint]

**ASSEMBLY, No. 1292**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**Co-Sponsored by:**

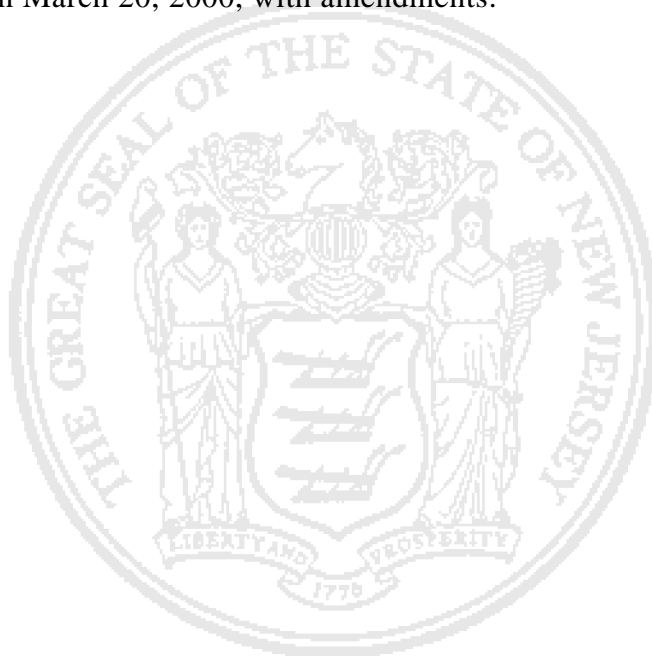
**Assemblywomen Gill, Greenstein, Assemblyman Gusciora and Senator Bucco**

**SYNOPSIS**

Authorizes establishment by courts of trusts for persons with disabilities.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Senior Issues and Community Services Committee on March 20, 2000, with amendments.



**(Sponsorship Updated As Of: 6/9/2000)**

1 AN ACT concerning special needs trusts and amending P.L.1968,  
2 c.413 and supplementing Title 3B of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. (New section) The Legislature finds and declares that:

8 a. It is in the public interest to encourage persons to set aside  
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11 b. By enacting section 13611 of the federal Omnibus Budget  
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13 States Congress affirmed this view by permitting the establishment of  
14 a trust to supplement and augment assistance for a person who is  
15 disabled without disqualifying that person from benefits under the  
16 Medicaid program;

17 c. In some instances, trusts must be established by a court in order  
18 to comply with the provisions of 42 U.S.C. s.1396p(d)(4);

19 d. However, the current law in New Jersey does not specifically  
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21 6 of P.L.1968, c.413 (C.30:4D-6) may be construed as impeding their  
22 establishment; and

23 e. Therefore, legislation is appropriate to facilitate the  
24 establishment of trusts to supplement and augment assistance provided  
25 by government entities to persons with severe chronic disabilities and  
26 persons who are disabled under the federal Social Security Act.

27  
28 2. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read as  
29 follows:

30 6. a. Subject to the requirements of Title XIX of the federal Social  
31 Security Act, the limitations imposed by this act and by the rules and  
32 regulations promulgated pursuant thereto, the department shall  
33 provide medical assistance to qualified applicants, including authorized  
34 services within each of the following classifications:

35 (1) Inpatient hospital services;

36 (2) Outpatient hospital services;

37 (3) Other laboratory and X-ray services;

38 (4) (a) Skilled nursing or intermediate care facility services;

39 (b) Such early and periodic screening and diagnosis of individuals  
40 who are eligible under the program and are under age 21, to ascertain  
41 their physical or mental defects and such health care, treatment, and  
42 other measures to correct or ameliorate defects and chronic conditions

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ASC committee amendments adopted March 20, 2000.



1 discovered thereby, as may be provided in regulations of the Secretary  
2 of the federal Department of Health and Human Services and approved  
3 by the commissioner;

4 (5) Physician's services furnished in the office, the patient's home,  
5 a hospital, a skilled nursing or intermediate care facility or elsewhere.

6 b. Subject to the limitations imposed by federal law, by this act,  
7 and by the rules and regulations promulgated pursuant thereto, the  
8 medical assistance program may be expanded to include authorized  
9 services within each of the following classifications:

10 (1) Medical care not included in subsection a.(5) above, or any  
11 other type of remedial care recognized under State law, furnished by  
12 licensed practitioners within the scope of their practice, as defined by  
13 State law;

14 (2) Home health care services;

15 (3) Clinic services;

16 (4) Dental services;

17 (5) Physical therapy and related services;

18 (6) Prescribed drugs, dentures, and prosthetic devices; and  
19 eyeglasses prescribed by a physician skilled in diseases of the eye or by  
20 an optometrist, whichever the individual may select;

21 (7) Optometric services;

22 (8) Podiatric services;

23 (9) Chiropractic services;

24 (10) Psychological services;

25 (11) Inpatient psychiatric hospital services for individuals under 21  
26 years of age, or under age 22 if they are receiving such services  
27 immediately before attaining age 21;

28 (12) Other diagnostic, screening, preventive, and rehabilitative  
29 services, and other remedial care;

30 (13) Inpatient hospital services, nursing facility services and  
31 intermediate care facility services for individuals 65 years of age or  
32 over in an institution for mental diseases;

33 (14) Intermediate care facility services;

34 (15) Transportation services;

35 (16) Services in connection with the inpatient or outpatient  
36 treatment or care of drug abuse, when the treatment is prescribed by  
37 a physician and provided in a licensed hospital or in a narcotic and  
38 drug abuse treatment center approved by the Department of Health  
39 and Senior Services<sup>1</sup> pursuant to P.L.1970, c.334 (C.26:2G-21 et  
40 seq.) and whose staff includes a medical director, and limited to those  
41 services eligible for federal financial participation under Title XIX of  
42 the federal Social Security Act;

43 (17) Any other medical care and any other type of remedial care  
44 recognized under State law, specified by the Secretary of the federal  
45 Department of Health and Human Services, and approved by the  
46 commissioner;

1 (18) Comprehensive maternity care, which may include: the basic  
2 number of prenatal and postpartum visits recommended by the  
3 American College of Obstetrics and Gynecology; additional prenatal  
4 and postpartum visits that are medically necessary; necessary  
5 laboratory, nutritional assessment and counseling, health education,  
6 personal counseling, managed care, outreach and follow-up services;  
7 treatment of conditions which may complicate pregnancy; and  
8 physician or certified nurse-midwife delivery services;

9 (19) Comprehensive pediatric care, which may include: ambulatory,  
10 preventive and primary care health services. The preventive services  
11 shall include, at a minimum, the basic number of preventive visits  
12 recommended by the American Academy of Pediatrics;

13 (20) Services provided by a hospice which is participating in the  
14 Medicare program established pursuant to Title XVIII of the Social  
15 Security Act, Pub.L.89-97 (42 U.S.C.1395 et seq.). Hospice services  
16 shall be provided subject to approval of the Secretary of the federal  
17 Department of Health and Human Services for federal reimbursement;

18 (21) Mammograms, subject to approval of the Secretary of the  
19 federal Department of Health and Human Services for federal  
20 reimbursement, including one baseline mammogram for women who  
21 are at least 35 but less than 40 years of age; one mammogram  
22 examination every two years or more frequently, if recommended by  
23 a physician, for women who are at least 40 but less than 50 years of  
24 age; and one mammogram examination every year for women age 50  
25 and over.

26 c. Payments for the foregoing services, goods and supplies  
27 furnished pursuant to this act shall be made to the extent authorized  
28 by this act, the rules and regulations promulgated pursuant thereto  
29 and, where applicable, subject to the agreement of insurance provided  
30 for under this act. Said payments shall constitute payment in full to  
31 the provider on behalf of the recipient. Every provider making a claim  
32 for payment pursuant to this act shall certify in writing on the claim  
33 submitted that no additional amount will be charged to the recipient,  
34 his family, his representative or others on his behalf for the services,  
35 goods and supplies furnished pursuant to this act.

36 No provider whose claim for payment pursuant to this act has been  
37 denied because the services, goods or supplies were determined to be  
38 medically unnecessary shall seek reimbursement from the recipient, his  
39 family, his representative or others on his behalf for such services,  
40 goods and supplies provided pursuant to this act; provided, however,  
41 a provider may seek reimbursement from a recipient for services,  
42 goods or supplies not authorized by this act, if the recipient elected to  
43 receive the services, goods or supplies with the knowledge that they  
44 were not authorized.

45 d. Any individual eligible for medical assistance (including drugs)  
46 may obtain such assistance from any person qualified to perform the

1 service or services required (including an organization which provides  
2 such services, or arranges for their availability on a prepayment basis),  
3 who undertakes to provide him such services.

4 No copayment or other form of cost-sharing shall be imposed on  
5 any individual eligible for medical assistance, except as mandated by  
6 federal law as a condition of federal financial participation.

7 e. Anything in this act to the contrary notwithstanding, no  
8 payments for medical assistance shall be made under this act with  
9 respect to care or services for any individual who:

10 (1) Is an inmate of a public institution (except as a patient in a  
11 medical institution); provided, however, that an individual who is  
12 otherwise eligible may continue to receive services for the month in  
13 which he becomes an inmate, should the commissioner determine to  
14 expand the scope of Medicaid eligibility to include such an individual,  
15 subject to the limitations imposed by federal law and regulations, or

16 (2) Has not attained 65 years of age and who is a patient in an  
17 institution for mental diseases, or

18 (3) Is over 21 years of age and who is receiving inpatient  
19 psychiatric hospital services in a psychiatric facility; provided,  
20 however, that an individual who was receiving such services  
21 immediately prior to attaining age 21 may continue to receive such  
22 services until he reaches age 22. Nothing in this subsection shall  
23 prohibit the commissioner from extending medical assistance to all  
24 eligible persons receiving inpatient psychiatric services; provided that  
25 there is federal financial participation available.

26 f. (1) A third party as defined in section 3 of P.L.1968, c.413  
27 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in  
28 this or another state when determining the person's eligibility for  
29 enrollment or the provision of benefits by that third party.

30 (2) In addition, any provision in a contract of insurance, health  
31 benefits plan or other health care coverage document, will, trust  
32 agreement, court order or other instrument which reduces or excludes  
33 coverage or payment for health care-related goods and services to or  
34 for an individual because of that individual's actual or potential  
35 eligibility for or receipt of Medicaid benefits shall be null and void, and  
36 no payments shall be made under this act as a result of any such  
37 provision.

38 (3) Notwithstanding any provision of law to the contrary, the  
39 provisions of paragraph (2) of this subsection shall not apply to a trust  
40 agreement that is established <sup>1</sup>pursuant to 42 U.S.C.  
41 s.1396p(d)(4)(A) or (C)<sup>1</sup> to supplement and augment assistance  
42 provided by government entities to a person who is disabled as defined  
43 in section 1614(a)(3) of the federal Social Security Act (42 U.S.C.  
44 s.1382c (a)(3)) <sup>1</sup>[and where the undistributed income and corpus of  
45 the trust would not constitute countable income or resources to the  
46 person with a disability for Medicaid eligibility purposes] <sup>1</sup>.

1 g. The following services shall be provided to eligible medically  
2 needy individuals as follows:

3 (1) Pregnant women shall be provided prenatal care and delivery  
4 services and postpartum care, including the services cited in subsection  
5 a.(1), (3) and (5) of this section and subsection b.(1)-(10), (12), (15)  
6 and (17) of this section, and nursing facility services cited in  
7 subsection b.(13) of this section.

8 (2) Dependent children shall be provided with services cited in  
9 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),  
10 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing  
11 facility services cited in subsection b.(13) of this section.

12 (3) Individuals who are 65 years of age or older shall be provided  
13 with services cited in subsection a.(3) and (5) of this section and  
14 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),  
15 (12), (15) and (17) of this section, and nursing facility services cited  
16 in subsection b.(13) of this section.

17 (4) Individuals who are blind or disabled shall be provided with  
18 services cited in subsection a.(3) and (5) of this section and subsection  
19 b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and  
20 (17) of this section, and nursing facility services cited in subsection  
21 b.(13) of this section.

22 (5) (a) Inpatient hospital services, subsection a.(1) of this section,  
23 shall only be provided to eligible medically needy individuals, other  
24 than pregnant women, if the federal Department of Health and Human  
25 Services discontinues the State's waiver to establish inpatient hospital  
26 reimbursement rates for the Medicare and Medicaid programs under  
27 the authority of section 601(c)(3) of the Social Security Act  
28 Amendments of 1983, Pub.L.98-21 (42 U.S.C.1395ww(c)(5)).  
29 Inpatient hospital services may be extended to other eligible medically  
30 needy individuals if the federal Department of Health and Human  
31 Services directs that these services be included.

32 (b) Outpatient hospital services, subsection a.(2) of this section,  
33 shall only be provided to eligible medically needy individuals if the  
34 federal Department of Health and Human Services discontinues the  
35 State's waiver to establish outpatient hospital reimbursement rates for  
36 the Medicare and Medicaid programs under the authority of section  
37 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21  
38 (42 U.S.C.1395ww(c)(5)). Outpatient hospital services may be  
39 extended to all or to certain medically needy individuals if the federal  
40 Department of Health and Human Services directs that these services  
41 be included. However, the use of outpatient hospital services shall be  
42 limited to clinic services and to emergency room services for injuries  
43 and significant acute medical conditions.

44 (c) The division shall monitor the use of inpatient and outpatient  
45 hospital services by medically needy persons.

46 h. In the case of a qualified disabled and working individual

1 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C.1396d), the  
2 only medical assistance provided under this act shall be the payment  
3 of premiums for Medicare part A under 42 U.S.C.1395i-2 and 1395r.

4 i. In the case of a specified low-income medicare beneficiary  
5 pursuant to 42 U.S.C. 1396a(a)10(E)iii, the only medical assistance  
6 provided under this act shall be the payment of premiums for Medicare  
7 part B under 42 U.S.C.1395r as provided for in 42  
8 U.S.C.1396d(p)(3)(A)(ii).  
9 (cf: P.L.1995, c.292, s.2)

10  
11 3. (New section) a. As used in this section "<sup>1</sup>[payback] OBRA  
12 '93<sup>1</sup> trust" means a trust established pursuant to 42 U.S.C.  
13 s.1396p(d)(4)(A) or an account within a pooled trust pursuant to 42  
14 U.S.C. s.1396p(d)(4)(C).

15 b. Upon the request of an interested party, a court may establish  
16 <sup>1</sup>[a payback] an OBRA '93<sup>1</sup> trust for a person who is disabled as  
17 defined in section 1614(a)(3) of the federal Social Security Act (42  
18 U.S.C. s.1382c (a)(3)), whether or not the person is an incapacitated  
19 person as defined in N.J.S.3B:1-2, and may direct that the assets of the  
20 person with a disability be placed in the <sup>1</sup>[payback] OBRA '93<sup>1</sup> trust.

21 c. Prior to establishing <sup>1</sup>[a payback] an OBRA '93<sup>1</sup> trust for a  
22 person with a disability who is incapacitated, the court shall consider  
23 the factors listed in N.J.S.3B:12-3.

24 d. <sup>1</sup>Prior to establishing an OBRA '93 trust for a person who is a  
25 minor, the court shall consider the applicable Rules of Court and State  
26 law relating to the handling of funds for a minor, including, but not  
27 limited to, the provisions of N.J.S.3B:15-16 and N.J.S.3B:15-17.

28 e.<sup>1</sup> Nothing in this <sup>1</sup>[act] section<sup>1</sup> shall be construed to <sup>1</sup>[require  
29 that all payback trusts shall created by a court] preclude an OBRA '93  
30 trust from being created by any person in addition to a court as would  
31 be consistent with 42 U.S.C. s.1396p(d)(4)<sup>1</sup> .

32 <sup>1</sup>[e] f<sup>1</sup>. Notwithstanding any provision or principle of law to the  
33 contrary, a beneficiary <sup>1</sup>[of a payback trust that is established by a  
34 court or otherwise may not revoke or terminate the payback trust if  
35 the instrument that governs the payback trust designates the payback  
36 trust as irrevocable or otherwise provides that the beneficiary shall not  
37 have authority to revoke or terminate the payback trust], grantor,  
38 trustee or other person shall not have authority to revoke an OBRA  
39 '93 trust. This provision shall apply whether or not an OBRA '93 trust  
40 instrument designates the trust as irrevocable or whether the OBRA  
41 '93 trust was created by a court or otherwise<sup>1</sup>.

42  
43 4. This act shall take effect immediately.

Title 3B.  
Chapter 11.  
Article 5 (New)  
Special Needs  
Trusts.  
§§1, 3  
C.3B:11-36  
&  
3B:11-37

P.L. 2000, CHAPTER 96, *approved August 29, 2000*  
Assembly, No. 1292 (*First Reprint*)

1 AN ACT concerning special needs trusts and amending P.L.1968,  
2 c.413 and supplementing Title 3B of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. (New section) The Legislature finds and declares that:

8 a. It is in the public interest to encourage persons to set aside  
9 amounts to supplement and augment assistance provided by  
10 government entities to persons with severe chronic disabilities;

11 b. By enacting section 13611 of the federal Omnibus Budget  
12 Reconciliation Act of 1993, 42 U.S.C. s.1396p(d)(4), the United  
13 States Congress affirmed this view by permitting the establishment of  
14 a trust to supplement and augment assistance for a person who is  
15 disabled without disqualifying that person from benefits under the  
16 Medicaid program;

17 c. In some instances, trusts must be established by a court in order  
18 to comply with the provisions of 42 U.S.C. s.1396p(d)(4);

19 d. However, the current law in New Jersey does not specifically  
20 authorize the establishment of these trusts and subsection f. of section  
21 6 of P.L.1968, c.413 (C.30:4D-6) may be construed as impeding their  
22 establishment; and

23 e. Therefore, legislation is appropriate to facilitate the  
24 establishment of trusts to supplement and augment assistance provided  
25 by government entities to persons with severe chronic disabilities and  
26 persons who are disabled under the federal Social Security Act.

27  
28 2. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read as  
29 follows:

30 6. a. Subject to the requirements of Title XIX of the federal Social  
31 Security Act, the limitations imposed by this act and by the rules and  
32 regulations promulgated pursuant thereto, the department shall  
33 provide medical assistance to qualified applicants, including authorized

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ASC committee amendments adopted March 20, 2000.

- 1 services within each of the following classifications:
- 2 (1) Inpatient hospital services;
  - 3 (2) Outpatient hospital services;
  - 4 (3) Other laboratory and X-ray services;
  - 5 (4) (a) Skilled nursing or intermediate care facility services;
  - 6 (b) Such early and periodic screening and diagnosis of individuals
  - 7 who are eligible under the program and are under age 21, to ascertain
  - 8 their physical or mental defects and such health care, treatment, and
  - 9 other measures to correct or ameliorate defects and chronic conditions
  - 10 discovered thereby, as may be provided in regulations of the Secretary
  - 11 of the federal Department of Health and Human Services and approved
  - 12 by the commissioner;
  - 13 (5) Physician's services furnished in the office, the patient's home,
  - 14 a hospital, a skilled nursing or intermediate care facility or elsewhere.
  - 15 b. Subject to the limitations imposed by federal law, by this act,
  - 16 and by the rules and regulations promulgated pursuant thereto, the
  - 17 medical assistance program may be expanded to include authorized
  - 18 services within each of the following classifications:
  - 19 (1) Medical care not included in subsection a.(5) above, or any
  - 20 other type of remedial care recognized under State law, furnished by
  - 21 licensed practitioners within the scope of their practice, as defined by
  - 22 State law;
  - 23 (2) Home health care services;
  - 24 (3) Clinic services;
  - 25 (4) Dental services;
  - 26 (5) Physical therapy and related services;
  - 27 (6) Prescribed drugs, dentures, and prosthetic devices; and
  - 28 eyeglasses prescribed by a physician skilled in diseases of the eye or by
  - 29 an optometrist, whichever the individual may select;
  - 30 (7) Optometric services;
  - 31 (8) Podiatric services;
  - 32 (9) Chiropractic services;
  - 33 (10) Psychological services;
  - 34 (11) Inpatient psychiatric hospital services for individuals under 21
  - 35 years of age, or under age 22 if they are receiving such services
  - 36 immediately before attaining age 21;
  - 37 (12) Other diagnostic, screening, preventive, and rehabilitative
  - 38 services, and other remedial care;
  - 39 (13) Inpatient hospital services, nursing facility services and
  - 40 intermediate care facility services for individuals 65 years of age or
  - 41 over in an institution for mental diseases;
  - 42 (14) Intermediate care facility services;
  - 43 (15) Transportation services;
  - 44 (16) Services in connection with the inpatient or outpatient
  - 45 treatment or care of drug abuse, when the treatment is prescribed by
  - 46 a physician and provided in a licensed hospital or in a narcotic and

1 drug abuse treatment center approved by the Department of Health  
2 and Senior Services pursuant to P.L.1970, c.334 (C.26:2G-21 et  
3 seq.) and whose staff includes a medical director, and limited to those  
4 services eligible for federal financial participation under Title XIX of  
5 the federal Social Security Act;

6 (17) Any other medical care and any other type of remedial care  
7 recognized under State law, specified by the Secretary of the federal  
8 Department of Health and Human Services, and approved by the  
9 commissioner;

10 (18) Comprehensive maternity care, which may include: the basic  
11 number of prenatal and postpartum visits recommended by the  
12 American College of Obstetrics and Gynecology; additional prenatal  
13 and postpartum visits that are medically necessary; necessary  
14 laboratory, nutritional assessment and counseling, health education,  
15 personal counseling, managed care, outreach and follow-up services;  
16 treatment of conditions which may complicate pregnancy; and  
17 physician or certified nurse-midwife delivery services;

18 (19) Comprehensive pediatric care, which may include: ambulatory,  
19 preventive and primary care health services. The preventive services  
20 shall include, at a minimum, the basic number of preventive visits  
21 recommended by the American Academy of Pediatrics;

22 (20) Services provided by a hospice which is participating in the  
23 Medicare program established pursuant to Title XVIII of the Social  
24 Security Act, Pub.L.89-97 (42 U.S.C.1395 et seq.). Hospice services  
25 shall be provided subject to approval of the Secretary of the federal  
26 Department of Health and Human Services for federal reimbursement;

27 (21) Mammograms, subject to approval of the Secretary of the  
28 federal Department of Health and Human Services for federal  
29 reimbursement, including one baseline mammogram for women who  
30 are at least 35 but less than 40 years of age; one mammogram  
31 examination every two years or more frequently, if recommended by  
32 a physician, for women who are at least 40 but less than 50 years of  
33 age; and one mammogram examination every year for women age 50  
34 and over.

35 c. Payments for the foregoing services, goods and supplies  
36 furnished pursuant to this act shall be made to the extent authorized  
37 by this act, the rules and regulations promulgated pursuant thereto  
38 and, where applicable, subject to the agreement of insurance provided  
39 for under this act. Said payments shall constitute payment in full to  
40 the provider on behalf of the recipient. Every provider making a claim  
41 for payment pursuant to this act shall certify in writing on the claim  
42 submitted that no additional amount will be charged to the recipient,  
43 his family, his representative or others on his behalf for the services,  
44 goods and supplies furnished pursuant to this act.

45 No provider whose claim for payment pursuant to this act has been  
46 denied because the services, goods or supplies were determined to be



1 medically unnecessary shall seek reimbursement from the recipient, his  
2 family, his representative or others on his behalf for such services,  
3 goods and supplies provided pursuant to this act; provided, however,  
4 a provider may seek reimbursement from a recipient for services,  
5 goods or supplies not authorized by this act, if the recipient elected to  
6 receive the services, goods or supplies with the knowledge that they  
7 were not authorized.

8 d. Any individual eligible for medical assistance (including drugs)  
9 may obtain such assistance from any person qualified to perform the  
10 service or services required (including an organization which provides  
11 such services, or arranges for their availability on a prepayment basis),  
12 who undertakes to provide him such services.

13 No copayment or other form of cost-sharing shall be imposed on  
14 any individual eligible for medical assistance, except as mandated by  
15 federal law as a condition of federal financial participation.

16 e. Anything in this act to the contrary notwithstanding, no  
17 payments for medical assistance shall be made under this act with  
18 respect to care or services for any individual who:

19 (1) Is an inmate of a public institution (except as a patient in a  
20 medical institution); provided, however, that an individual who is  
21 otherwise eligible may continue to receive services for the month in  
22 which he becomes an inmate, should the commissioner determine to  
23 expand the scope of Medicaid eligibility to include such an individual,  
24 subject to the limitations imposed by federal law and regulations, or

25 (2) Has not attained 65 years of age and who is a patient in an  
26 institution for mental diseases, or

27 (3) Is over 21 years of age and who is receiving inpatient  
28 psychiatric hospital services in a psychiatric facility; provided,  
29 however, that an individual who was receiving such services  
30 immediately prior to attaining age 21 may continue to receive such  
31 services until he reaches age 22. Nothing in this subsection shall  
32 prohibit the commissioner from extending medical assistance to all  
33 eligible persons receiving inpatient psychiatric services; provided that  
34 there is federal financial participation available.

35 f. (1) A third party as defined in section 3 of P.L.1968, c.413  
36 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in  
37 this or another state when determining the person's eligibility for  
38 enrollment or the provision of benefits by that third party.

39 (2) In addition, any provision in a contract of insurance, health  
40 benefits plan or other health care coverage document, will, trust  
41 agreement, court order or other instrument which reduces or excludes  
42 coverage or payment for health care-related goods and services to or  
43 for an individual because of that individual's actual or potential  
44 eligibility for or receipt of Medicaid benefits shall be null and void, and  
45 no payments shall be made under this act as a result of any such  
46 provision.

1       (3) Notwithstanding any provision of law to the contrary, the  
2 provisions of paragraph (2) of this subsection shall not apply to a trust  
3 agreement that is established <sup>1</sup>pursuant to 42 U.S.C.  
4 s.1396p(d)(4)(A) or (C)<sup>1</sup> to supplement and augment assistance  
5 provided by government entities to a person who is disabled as defined  
6 in section 1614(a)(3) of the federal Social Security Act (42 U.S.C.  
7 s.1382c (a)(3)) <sup>1</sup>[and where the undistributed income and corpus of  
8 the trust would not constitute countable income or resources to the  
9 person with a disability for Medicaid eligibility purposes] <sup>1</sup>.

10       g. The following services shall be provided to eligible medically  
11 needy individuals as follows:

12       (1) Pregnant women shall be provided prenatal care and delivery  
13 services and postpartum care, including the services cited in subsection  
14 a.(1), (3) and (5) of this section and subsection b.(1)-(10), (12), (15)  
15 and (17) of this section, and nursing facility services cited in  
16 subsection b.(13) of this section.

17       (2) Dependent children shall be provided with services cited in  
18 subsection a.(3) and (5) of this section and subsection b.(1), (2), (3),  
19 (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing  
20 facility services cited in subsection b.(13) of this section.

21       (3) Individuals who are 65 years of age or older shall be provided  
22 with services cited in subsection a.(3) and (5) of this section and  
23 subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10),  
24 (12), (15) and (17) of this section, and nursing facility services cited  
25 in subsection b.(13) of this section.

26       (4) Individuals who are blind or disabled shall be provided with  
27 services cited in subsection a.(3) and (5) of this section and subsection  
28 b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and  
29 (17) of this section, and nursing facility services cited in subsection  
30 b.(13) of this section.

31       (5) (a) Inpatient hospital services, subsection a.(1) of this section,  
32 shall only be provided to eligible medically needy individuals, other  
33 than pregnant women, if the federal Department of Health and Human  
34 Services discontinues the State's waiver to establish inpatient hospital  
35 reimbursement rates for the Medicare and Medicaid programs under  
36 the authority of section 601(c)(3) of the Social Security Act  
37 Amendments of 1983, Pub.L.98-21 (42 U.S.C.1395ww(c)(5)).  
38 Inpatient hospital services may be extended to other eligible medically  
39 needy individuals if the federal Department of Health and Human  
40 Services directs that these services be included.

41       (b) Outpatient hospital services, subsection a.(2) of this section,  
42 shall only be provided to eligible medically needy individuals if the  
43 federal Department of Health and Human Services discontinues the  
44 State's waiver to establish outpatient hospital reimbursement rates for  
45 the Medicare and Medicaid programs under the authority of section  
46 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21

1 (42 U.S.C.1395ww(c)(5)). Outpatient hospital services may be  
2 extended to all or to certain medically needy individuals if the federal  
3 Department of Health and Human Services directs that these services  
4 be included. However, the use of outpatient hospital services shall be  
5 limited to clinic services and to emergency room services for injuries  
6 and significant acute medical conditions.

7 (c) The division shall monitor the use of inpatient and outpatient  
8 hospital services by medically needy persons.

9 h. In the case of a qualified disabled and working individual  
10 pursuant to section 6408 of Pub.L.101-239 (42 U.S.C.1396d), the  
11 only medical assistance provided under this act shall be the payment  
12 of premiums for Medicare part A under 42 U.S.C.1395i-2 and 1395r.

13 i. In the case of a specified low-income medicare beneficiary  
14 pursuant to 42 U.S.C. 1396a(a)10(E)iii, the only medical assistance  
15 provided under this act shall be the payment of premiums for Medicare  
16 part B under 42 U.S.C.1395r as provided for in 42  
17 U.S.C.1396d(p)(3)(A)(ii).

18 (cf: P.L.1995, c.292, s.2)

19

20 3. (New section) a. As used in this section "<sup>1</sup>[payback] OBRA  
21 '93<sup>1</sup> trust" means a trust established pursuant to 42 U.S.C.  
22 s.1396p(d)(4)(A) or an account within a pooled trust pursuant to 42  
23 U.S.C. s.1396p(d)(4)(C).

24 b. Upon the request of an interested party, a court may establish  
25 <sup>1</sup>[a payback] an OBRA '93 <sup>1</sup>trust for a person who is disabled as  
26 defined in section 1614(a)(3) of the federal Social Security Act (42  
27 U.S.C. s.1382c (a)(3)), whether or not the person is an incapacitated  
28 person as defined in N.J.S.3B:1-2, and may direct that the assets of the  
29 person with a disability be placed in the <sup>1</sup>[payback] OBRA '93<sup>1</sup> trust.

30 c. Prior to establishing <sup>1</sup>[a payback] an OBRA '93<sup>1</sup> trust for a  
31 person with a disability who is incapacitated, the court shall consider  
32 the factors listed in N.J.S.3B:12-3.

33 d. <sup>1</sup>Prior to establishing an OBRA '93 trust for a person who is a  
34 minor, the court shall consider the applicable Rules of Court and State  
35 law relating to the handling of funds for a minor, including, but not  
36 limited to, the provisions of N.J.S.3B:15-16 and N.J.S.3B:15-17.

37 e.<sup>1</sup> Nothing in this <sup>1</sup>[act] section<sup>1</sup> shall be construed to <sup>1</sup>[require  
38 that all payback trusts shall created by a court] preclude an OBRA '93  
39 trust from being created by any person in addition to a court as would  
40 be consistent with 42 U.S.C. s.1396p(d)(4)<sup>1</sup> .

41 <sup>1</sup>[e] f<sup>1</sup>. Notwithstanding any provision or principle of law to the  
42 contrary, a beneficiary <sup>1</sup>[of a payback trust that is established by a  
43 court or otherwise may not revoke or terminate the payback trust if  
44 the instrument that governs the payback trust designates the payback  
45 trust as irrevocable or otherwise provides that the beneficiary shall not

1 have authority to revoke or terminate the payback trust], grantor,  
2 trustee or other person shall not have authority to revoke an OBRA  
3 '93 trust. This provision shall apply whether or not an OBRA '93 trust  
4 instrument designates the trust as irrevocable or whether the OBRA  
5 '93 trust was created by a court or otherwise<sup>1</sup>.

6

7 4. This act shall take effect immediately.

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12 \_\_\_\_\_  
13 Authorizes establishment by courts of trusts for persons with  
disabilities.

## CHAPTER 96

AN ACT concerning special needs trusts and amending P.L.1968, c.413 and supplementing Title 3B of the New Jersey Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.3B:11-36 Findings, declarations regarding special needs trusts.

1. The Legislature finds and declares that:

a. It is in the public interest to encourage persons to set aside amounts to supplement and augment assistance provided by government entities to persons with severe chronic disabilities;

b. By enacting section 13611 of the federal Omnibus Budget Reconciliation Act of 1993, 42 U.S.C. s.1396p(d)(4), the United States Congress affirmed this view by permitting the establishment of a trust to supplement and augment assistance for a person who is disabled without disqualifying that person from benefits under the Medicaid program;

c. In some instances, trusts must be established by a court in order to comply with the provisions of 42 U.S.C. s.1396p(d)(4);

d. However, the current law in New Jersey does not specifically authorize the establishment of these trusts and subsection f. of section 6 of P.L.1968, c.413 (C.30:4D-6) may be construed as impeding their establishment; and

e. Therefore, legislation is appropriate to facilitate the establishment of trusts to supplement and augment assistance provided by government entities to persons with severe chronic disabilities and persons who are disabled under the federal Social Security Act.

2. Section 6 of P.L.1968, c.413 (C.30:4D-6) is amended to read as follows:

C.30:4D-6 Basic medical care and services.

6. a. Subject to the requirements of Title XIX of the federal Social Security Act, the limitations imposed by this act and by the rules and regulations promulgated pursuant thereto, the department shall provide medical assistance to qualified applicants, including authorized services within each of the following classifications:

(1) Inpatient hospital services;

(2) Outpatient hospital services;

(3) Other laboratory and X-ray services;

(4) (a) Skilled nursing or intermediate care facility services;

(b) Such early and periodic screening and diagnosis of individuals who are eligible under the program and are under age 21, to ascertain their physical or mental defects and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary of the federal Department of Health and Human Services and approved by the commissioner;

(5) Physician's services furnished in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere.

b. Subject to the limitations imposed by federal law, by this act, and by the rules and regulations promulgated pursuant thereto, the medical assistance program may be expanded to include authorized services within each of the following classifications:

(1) Medical care not included in subsection a.(5) above, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice, as defined by State law;

(2) Home health care services;

(3) Clinic services;

(4) Dental services;

(5) Physical therapy and related services;

(6) Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(7) Optometric services;

(8) Podiatric services;

(9) Chiropractic services;

(10) Psychological services;

(11) Inpatient psychiatric hospital services for individuals under 21 years of age, or under age

22 if they are receiving such services immediately before attaining age 21;

(12) Other diagnostic, screening, preventive, and rehabilitative services, and other remedial care;

(13) Inpatient hospital services, nursing facility services and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;

(14) Intermediate care facility services;

(15) Transportation services;

(16) Services in connection with the inpatient or outpatient treatment or care of drug abuse, when the treatment is prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center approved by the Department of Health and Senior Services pursuant to P.L.1970, c.334 (C.26:2G-21 et seq.) and whose staff includes a medical director, and limited to those services eligible for federal financial participation under Title XIX of the federal Social Security Act;

(17) Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary of the federal Department of Health and Human Services, and approved by the commissioner;

(18) Comprehensive maternity care, which may include: the basic number of prenatal and postpartum visits recommended by the American College of Obstetrics and Gynecology; additional prenatal and postpartum visits that are medically necessary; necessary laboratory, nutritional assessment and counseling, health education, personal counseling, managed care, outreach and follow-up services; treatment of conditions which may complicate pregnancy; and physician or certified nurse-midwife delivery services;

(19) Comprehensive pediatric care, which may include: ambulatory, preventive and primary care health services. The preventive services shall include, at a minimum, the basic number of preventive visits recommended by the American Academy of Pediatrics;

(20) Services provided by a hospice which is participating in the Medicare program established pursuant to Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C.1395 et seq.). Hospice services shall be provided subject to approval of the Secretary of the federal Department of Health and Human Services for federal reimbursement;

(21) Mammograms, subject to approval of the Secretary of the federal Department of Health and Human Services for federal reimbursement, including one baseline mammogram for women who are at least 35 but less than 40 years of age; one mammogram examination every two years or more frequently, if recommended by a physician, for women who are at least 40 but less than 50 years of age; and one mammogram examination every year for women age 50 and over.

c. Payments for the foregoing services, goods and supplies furnished pursuant to this act shall be made to the extent authorized by this act, the rules and regulations promulgated pursuant thereto and, where applicable, subject to the agreement of insurance provided for under this act. Said payments shall constitute payment in full to the provider on behalf of the recipient. Every provider making a claim for payment pursuant to this act shall certify in writing on the claim submitted that no additional amount will be charged to the recipient, his family, his representative or others on his behalf for the services, goods and supplies furnished pursuant to this act.

No provider whose claim for payment pursuant to this act has been denied because the services, goods or supplies were determined to be medically unnecessary shall seek reimbursement from the recipient, his family, his representative or others on his behalf for such services, goods and supplies provided pursuant to this act; provided, however, a provider may seek reimbursement from a recipient for services, goods or supplies not authorized by this act, if the recipient elected to receive the services, goods or supplies with the knowledge that they were not authorized.

d. Any individual eligible for medical assistance (including drugs) may obtain such assistance from any person qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability on a prepayment basis), who undertakes to provide him such services.

No copayment or other form of cost-sharing shall be imposed on any individual eligible for medical assistance, except as mandated by federal law as a condition of federal financial

participation.

e. Anything in this act to the contrary notwithstanding, no payments for medical assistance shall be made under this act with respect to care or services for any individual who:

(1) Is an inmate of a public institution (except as a patient in a medical institution); provided, however, that an individual who is otherwise eligible may continue to receive services for the month in which he becomes an inmate, should the commissioner determine to expand the scope of Medicaid eligibility to include such an individual, subject to the limitations imposed by federal law and regulations, or

(2) Has not attained 65 years of age and who is a patient in an institution for mental diseases, or

(3) Is over 21 years of age and who is receiving inpatient psychiatric hospital services in a psychiatric facility; provided, however, that an individual who was receiving such services immediately prior to attaining age 21 may continue to receive such services until he reaches age 22. Nothing in this subsection shall prohibit the commissioner from extending medical assistance to all eligible persons receiving inpatient psychiatric services; provided that there is federal financial participation available.

f. (1) A third party as defined in section 3 of P.L.1968, c.413 (C.30:4D-3) shall not consider a person's eligibility for Medicaid in this or another state when determining the person's eligibility for enrollment or the provision of benefits by that third party.

(2) In addition, any provision in a contract of insurance, health benefits plan or other health care coverage document, will, trust agreement, court order or other instrument which reduces or excludes coverage or payment for health care-related goods and services to or for an individual because of that individual's actual or potential eligibility for or receipt of Medicaid benefits shall be null and void, and no payments shall be made under this act as a result of any such provision.

(3) Notwithstanding any provision of law to the contrary, the provisions of paragraph (2) of this subsection shall not apply to a trust agreement that is established pursuant to 42 U.S.C. s.1396p(d)(4)(A) or (C) to supplement and augment assistance provided by government entities to a person who is disabled as defined in section 1614(a)(3) of the federal Social Security Act (42 U.S.C. s.1382c (a)(3)).

g. The following services shall be provided to eligible medically needy individuals as follows:

(1) Pregnant women shall be provided prenatal care and delivery services and postpartum care, including the services cited in subsection a.(1), (3) and (5) of this section and subsection b.(1)-(10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(2) Dependent children shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1), (2), (3), (4), (5), (6), (7), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(3) Individuals who are 65 years of age or older shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(4) Individuals who are blind or disabled shall be provided with services cited in subsection a.(3) and (5) of this section and subsection b.(1)-(5), (6) excluding prescribed drugs, (7), (8), (10), (12), (15) and (17) of this section, and nursing facility services cited in subsection b.(13) of this section.

(5) (a) Inpatient hospital services, subsection a.(1) of this section, shall only be provided to eligible medically needy individuals, other than pregnant women, if the federal Department of Health and Human Services discontinues the State's waiver to establish inpatient hospital reimbursement rates for the Medicare and Medicaid programs under the authority of section 601(c)(3) of the Social Security Act Amendments of 1983, Pub.L.98-21 (42 U.S.C.1395ww(c)(5)). Inpatient hospital services may be extended to other eligible medically needy individuals if the federal Department of Health and Human Services directs that these services be included.

(b) Outpatient hospital services, subsection a.(2) of this section, shall only be provided to eligible medically needy individuals if the federal Department of Health and Human Services discontinues the State's waiver to establish outpatient hospital reimbursement rates for the Medicare and Medicaid programs under the authority of section 601(c)(3) of the Social Security Amendments of 1983, Pub.L.98-21 (42 U.S.C.1395ww(c)(5)). Outpatient hospital services may be extended to all or to certain medically needy individuals if the federal Department of Health and Human Services directs that these services be included. However, the use of outpatient hospital services shall be limited to clinic services and to emergency room services for injuries and significant acute medical conditions.

(c) The division shall monitor the use of inpatient and outpatient hospital services by medically needy persons.

h. In the case of a qualified disabled and working individual pursuant to section 6408 of Pub.L.101-239 (42 U.S.C.1396d), the only medical assistance provided under this act shall be the payment of premiums for Medicare part A under 42 U.S.C.1395i-2 and 1395r.

i. In the case of a specified low-income medicare beneficiary pursuant to 42 U.S.C. 1396a(a)10(E)iii, the only medical assistance provided under this act shall be the payment of premiums for Medicare part B under 42 U.S.C.1395r as provided for in 42 U.S.C.1396d(p)(3)(A)(ii).

#### C.3B:11-37 Establishing an OBRA '93 trust.

3. a. As used in this section "OBRA '93 trust" means a trust established pursuant to 42 U.S.C. s.1396p(d)(4)(A) or an account within a pooled trust pursuant to 42 U.S.C. s.1396p(d)(4)(C).

b. Upon the request of an interested party, a court may establish an OBRA '93 trust for a person who is disabled as defined in section 1614(a)(3) of the federal Social Security Act (42 U.S.C. s.1382c (a)(3)), whether or not the person is an incapacitated person as defined in N.J.S.3B:1-2, and may direct that the assets of the person with a disability be placed in the OBRA '93 trust.

c. Prior to establishing an OBRA '93 trust for a person with a disability who is incapacitated, the court shall consider the factors listed in N.J.S.3B:12-3.

d. Prior to establishing an OBRA '93 trust for a person who is a minor, the court shall consider the applicable Rules of Court and State law relating to the handling of funds for a minor, including, but not limited to, the provisions of N.J.S.3B:15-16 and N.J.S.3B:15-17.

e. Nothing in this section shall be construed to preclude an OBRA '93 trust from being created by any person in addition to a court as would be consistent with 42 U.S.C. s.1396p(d)(4).

f. Notwithstanding any provision or principle of law to the contrary, a beneficiary, grantor, trustee or other person shall not have authority to revoke an OBRA '93 trust. This provision shall apply whether or not an OBRA '93 trust instrument designates the trust as irrevocable or whether the OBRA '93 trust was created by a court or otherwise.

4. This act shall take effect immediately.

Approved August 29, 2000.



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*Office of the Governor*  
**NEWS RELEASE**

CONTACT: Jayne O'Connor  
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RELEASE: August 29, 2000

Governor Christie Whitman today signed the following pieces of legislation:

**A-1292**, sponsored by Assemblyman Guy F. Talarico (R-Bergen) and Senator Anthony R. Bucco (R-Morris), confers specific authority upon the State courts to establish special needs trusts to assist disabled individuals and ensures that Medicaid eligibility is not affected by assets in the trust. The bill does not prevent the establishment of such trusts outside the courts. The bill also insures that upon the disabled person's death, funds remaining in the trust are repaid to the State in an amount equal to the medical assistance that was paid on behalf of the disabled person.

This bill was drafted in response to changes in federal law regarding special needs trusts, which are established to assist disabled individuals by paying for health-related items or services after Medicaid benefits have been exhausted.

**A-2550**, sponsored by Assembly Members Anthony Impreveduto (D-Bergen/Hudson) and Nicholas R. Felice (R-Bergen/ Passaic), amends the law governing criminal history record background checks for individuals working with the developmentally disabled in community agencies by adding a rehabilitation provision. The Governor had signed the law on January 14, 2000.

The bill provides that an individual, otherwise disqualified from employment because of a conviction disclosed by a background check, can qualify for employment if the individual affirmatively demonstrates to the agency director that he or she was rehabilitated. If the individual with the conviction were the agency director, then the agency's board would make the determination.

Also, the bill requires a criminal history record background check to be conducted at least once every two years for agency directors and their employees (as is required for State institutions and facilities for the mentally ill and developmentally disabled).

**A-2578**, sponsored by Assembly Members Charlotte Vandervalk (R-Bergen) and Francis J. Blee (R-Atlantic) and Senators Jack Sinagra (R-Middlesex) and Robert W. Singer (R-Burlington/Monmouth/Ocean), enables the New Jersey Health Care Facilities Financing Authority (HCFFA) to refinance outstanding bond indebtedness of hospitals that cease acute care operations or transition to alternative services. The Appropriations Act for the current 2001 Budget set aside up to \$8 million for this purpose.

This bill was drafted in response to recommendations made by the New Jersey Hospital Advisory Commission at the end of 1999 which found that the State's hospital industry faced a serious financial crisis because of an excessive number of underutilized beds.

**S-904**, sponsored by Senators Diane B. Allen (R-Burlington/Camden) and Joseph A. Palaia (R-Monmouth) and Assembly Members James W. Holzapfel (R-Monmouth/Ocean) and Joel M. Weingarten (R-Essex/Union) clarifies procedures with regard to the payment of filing fees by inmates in connection with appeals from administrative determinations. This bill clarifies legislative intent regarding the payment of partial filing fees by indigent inmates by requiring inmates to pay a partial filing fee to appeal administrative rulings.

**S-1116**, sponsored by Senators Henry P. McNamara (R-Bergen/Passaic) and John H. Adler (D-Camden) and Assembly Members John C. Gibson (R-Cape May/Atlantic/Cumberland) and Larry Chatzidakis (R-Atlantic/Burlington/Camden), excludes federal and other public or private financial aid received by New Jersey for open space or farmland preservation purposes from the \$200 million annual appropriations cap for projects approved by the Garden State Preservation Trust. This bill amends the Garden State Preservation Trust Act.

**S-1320**, sponsored by Senators Joseph A. Palaia (R-Monmouth) and Robert W. Sinagra (R-Middlesex) Assembly Members Clare M. Farragher (R-Monmouth) and Joseph R. Malone, III (R-Burlington/Monmouth/Ocean), appropriates funds to the Department of Environmental Protection for environmental infrastructure projects. Specifically, the bill appropriates federal Clean Water Funds to the DEP for zero-interest loans to local governments and privately owned water companies for up to 50 percent of the eligible project costs for the approved projects. The bill also authorizes DEP to issue a federal hardship grant to Swedesboro Borough in the amount of \$415,000 for a clean water project. The bill, along with S-1321, comprises the annual New Jersey Environmental Infrastructure Financing Program for Fiscal Year 2001.

**S-1321**, sponsored by Senators Henry P. McNamara (R-Bergen/Passaic) and Norman M. Robertson (R-Essex/Passaic) and Assembly Members Tom Smith (R-Monmouth) and Joseph V. Doria, Jr. (D-Hudson), authorizes the New Jersey Environmental Infrastructure Trust to make up to \$100 million in loans for environmental infrastructure projects. In addition, the bill authorizes the Trust to use unspent balances (in excess of \$44 million) from previously approved projects to finance loans for projects on the FY2001 Priority Project List. The bill, along with S-1320, comprises the annual New Jersey Environmental Infrastructure Financing Program for Fiscal Year 2001.