

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1003

Short Title: Gifts by Guardians.

(Public)

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Sponsors: Senators Kinnaird; Horton, Miller, and Soles.

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Referred to: Judiciary II.

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April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE STATUTES REGULATING THE ABILITY OF  
2 GUARDIANS TO MAKE GIFTS FROM INCOMPETENT WARDS' ESTATES  
3 UNDER CERTAIN CIRCUMSTANCES.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 35A-1335 reads as rewritten:

7 **"§ 35A-1335. Gifts authorized with approval of judge of superior court.**

8 With the approval of the resident judge of the superior court of the district in which  
9 the guardian ~~he~~ was appointed, upon a duly verified petition the guardian ~~or trustee~~ of a  
10 person judicially declared to be incompetent may, from the income of the incompetent,  
11 make gifts to the State of North Carolina, its agencies, counties or municipalities, or to  
12 the United States or its agencies or instrumentalities, or for religious, charitable, literary,  
13 scientific, historical, medical or educational ~~purposes.~~ purposes, or to individuals.  
14 References in this Article to the "guardian" include any Trustee appointed by the court  
15 under prior law as fiduciary for the incompetent ward's estate."

16 Section 2. G.S. 35A-1336 reads as rewritten:

17 **"§ 35A-1336. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or**  
18 **charitable purposes.**

19 The judge shall not approve ~~such~~ gifts from income for governmental or charitable  
20 purposes unless it appears to ~~his~~ the judge's satisfaction that all of the following apply:

- 1           (1) After ~~the making of such~~ the gifts and the payment of federal and State  
2 income taxes, the remaining income of the incompetent will be  
3 reasonable and adequate to provide for the support, maintenance,  
4 comfort and welfare of the incompetent and those legally entitled to  
5 support from the incompetent in order to maintain the incompetent and  
6 ~~such those dependents~~ those dependents in the manner to which the incompetent and ~~such~~  
7 those dependents are accustomed and in keeping with their station in life  
8 ~~(and in no event less than twice the average, for the five calendar years~~  
9 ~~preceding the calendar year of such gifts, of expenditures for the~~  
10 ~~incompetent's support, maintenance, comfort and welfare);~~ life.
- 11           (2) Each donee is a donee to which a competent donor could make a gift,  
12 without limit as to amount, without incurring federal or State gift tax  
13 ~~liability;~~ liability.
- 14           (3) Each donee is a donee qualified to receive tax deductible gifts under  
15 federal and State income tax ~~laws;~~ laws.
- 16           (4) The aggregate of ~~such~~ the gifts does not exceed the percentage of  
17 income fixed by federal law as the maximum deduction allowable for  
18 ~~such~~ the gifts in computing federal income tax liability.

19           Section 3. Chapter 35A of the General Statutes is amended by adding a new  
20 section to read:

21 **"§ 35A-1336.1. Prerequisites to approval by judge of gifts to individuals.**

22           The judge shall not approve gifts from income to individuals unless it appears to the  
23 judge's satisfaction that all three of the following requirements are met:

- 24           (1) After making the gifts and paying federal and State income taxes, the  
25 remaining income of the incompetent will be reasonable and adequate to  
26 provide for the support, maintenance, comfort, and welfare of the  
27 incompetent and those legally entitled to support from the incompetent  
28 in order to maintain the incompetent and those dependents in the  
29 manner to which the incompetent and those dependents are accustomed  
30 and in keeping with their station in life;
- 31           (2) The judge determines that either:
- 32           a. Both of the following apply:
- 33               1. The incompetent, prior to being declared incompetent,  
34 executed a paper-writing with the formalities required by  
35 the laws of North Carolina for the execution of a valid  
36 will, including a paper-writing naming a revocable trust  
37 created by the incompetent as beneficiary.
- 38               2. Each donee is entitled to one or more specific legacies,  
39 bequests, devises, or distributions of specific amounts of  
40 money, income, or property under the paper-writing or the  
41 revocable trust or both or is a residuary legatee, devisee,  
42 or beneficiary designated in the paper-writing or revocable  
43 trust or both.

1           b. That so far as is known the incompetent has not, prior to being  
2           declared incompetent, executed a will which could be probated  
3           upon the death of the incompetent and each donee is a person  
4           who would share in the incompetent's estate, if the incompetent  
5           died contemporaneously with the signing of the order of the  
6           approval of the gifts.

7           c. The donee is the spouse, parent, descendent of the incompetent,  
8           or descendant of the incompetent's parent and the amount of the  
9           gift does not exceed the federal annual gift tax exclusion.

10        The judge may order that the gifts be made in cash or in specific assets and may order  
11        that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to  
12        Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The  
13        judge may also order that the gifts be treated as an advancement of some or all of the  
14        amount the donee would otherwise receive at the incompetent's death."

15           Section 4. G.S. 35A-1340 reads as rewritten:

16        "**§ 35A-1340. Gifts authorized with approval of judge of superior court.**

17        With the approval of the resident judge of the superior court of the district in which  
18        the guardian ~~or trustee~~ was appointed upon a duly verified petition, the guardian ~~or trustee~~  
19        of a person judicially declared to be incompetent may, from the principal of the  
20        incompetent's estate, make gifts to the State of North Carolina, its agencies, counties or  
21        municipalities, or the United States or its agencies or instrumentalities, or for religious,  
22        charitable, literary, scientific, historical, medical or educational ~~purposes.~~ purposes, or to  
23        individuals. The incompetent's estate shall consist of all assets owned by the  
24        incompetent, including nonprobate assets. For purposes of this Article, nonprobate assets  
25        are those which would not be distributable in accordance with the incompetent's valid  
26        probated will or the provisions of Chapter 29 at the incompetent's death. The  
27        incompetent's nonprobate estate would include nonprobate assets only. References in  
28        this Article to the "guardian" include any Trustee appointed by the court under prior law  
29        as fiduciary for the incompetent ward's estate."

30           Section 5. G.S. 35A-1341 reads as rewritten:

31        "**§ 35A-1341. Prerequisites to approval by ~~judge.~~ judge of gifts for governmental or**  
32        charitable purposes.

33        The judge shall not approve ~~such any~~ gifts from principal for governmental or  
34        charitable purposes unless it appears to his the judge's satisfaction that: all of the  
35        following requirements are met:

36           (1) The making of ~~such the~~ gifts will not leave the incompetent's remaining  
37           principal estate insufficient to provide reasonable and adequate income  
38           for the support, maintenance, comfort and welfare of the incompetent  
39           and those legally entitled to support from the incompetent in order to  
40           maintain the incompetent and ~~such these~~ dependents in the manner to  
41           which the incompetent and ~~such those~~ dependents are accustomed and in  
42           keeping with their station in ~~life;~~ life.

- 1           (2) Each donee is a donee to which a competent donor could make a gift,  
2           without limit as to amount, without incurring federal or State gift tax  
3           ~~liability;~~ liability.
- 4           (3) Each donee is a donee qualified to receive tax deductible gifts under  
5           federal and State income tax ~~laws;~~ laws.
- 6           (4) The making of ~~such~~ the gifts will not jeopardize the rights of any  
7           creditor of the ~~incompetent;~~ and incompetent.
- 8           (5) It is improbable that the incompetent will recover competency during  
9           his or her ~~lifetime;~~ lifetime.
- 10          (6) Either:
- 11           a.     All of the following apply:
- 12                1.     The incompetent, prior to being declared incompetent,  
13                executed a ~~paper writing;~~ paper-writing with the formalities  
14                required by the laws of North Carolina for the execution  
15                of a valid ~~will;~~ will,  
16                including a paper-writing naming a revocable trust created  
17                by the incompetent beneficiary.
- 18                2.     Specific legacies, ~~bequests or devises~~ bequests, devises, or  
19                non-discretionary distributions of specific amounts of  
20                money, income or property included in ~~such~~ the paper-  
21                writing or revocable trust or both, will not be jeopardized  
22                by making ~~such gifts;~~ the gifts.
- 23                3.     All residuary ~~legatees and~~ legatees, devisees and  
24                beneficiaries designated in ~~such~~ the ~~paper writing;~~ paper-  
25                writing or revocable trust or both, who would take under  
26                the ~~paper writing~~ paper-writing or revocable trust or both,  
27                if the incompetent died contemporaneously with the  
28                signing of the order of approval of ~~such~~ the gifts and ~~such~~  
29                ~~paper writing~~ the paper-writing was probated as the  
30                incompetent's will and the spouse, if any, of ~~such~~ the  
31                incompetent have been given at least 10 days' written  
32                notice that approval for ~~such~~ the gifts will be sought and  
33                that objection may be filed with the clerk of superior court  
34                of the county in which the guardian ~~or trustee~~ was  
35                appointed, within the 10-day ~~period;~~ period.
- 36           b.     Both of the following apply:
- 37                1.     That so far as is known the incompetent has not prior to  
38                being declared incompetent, executed a will which could  
39                be probated upon the death of the incompetent; and
- 40                2.     All persons who would share in the incompetent's intestate  
41                estate, if the incompetent died contemporaneously with  
42                the signing of the order of approval, have been given at  
43                least 10 days' written notice that approval for ~~such~~ the gifts

1 will be sought and that objection may be filed with the  
2 clerk of the superior court, of the county in which the  
3 guardian ~~or trustee~~ was appointed, within the 10-day  
4 period.

- 5 (7) If the gift for which approval is sought is of a nonprobate asset, all  
6 persons who would share in that nonprobate asset if the incompetent  
7 died contemporaneously with the signing of the order of approval have  
8 been given at least 10 days' written notice that approval for the gifts will  
9 be sought and that objection may be filed with the clerk of superior  
10 court of the county in which the guardian was appointed within the 10-  
11 day period. This notice requirement shall be in addition to the notice  
12 requirements contained in G.S. 35A-1341(6)a.3. and (6)b.2."

13 Section 6. Chapter 35A of the General Statutes is amended by adding a new  
14 section to read:

15 "**§ 35A-1341.1. Prerequisites to approval by judge of gifts to individuals.**

16 The judge shall not approve gifts from principal to individuals unless it appears to the  
17 judge's satisfaction that all of the following requirements have been met:

- 18 (1) Making the gifts will not leave the incompetent's remaining principal  
19 estate insufficient to provide reasonable and adequate income for the  
20 support, maintenance, comfort, and welfare of the incompetent in order  
21 to maintain the incompetent and any dependents legally entitled to  
22 support from the incompetent in the manner to which the incompetent  
23 and those dependents are accustomed and in keeping with their station  
24 in life.
- 25 (2) The making of the gifts will not jeopardize the rights of any existing  
26 creditor of the incompetent.
- 27 (3) It is improbable that the incompetent will recover competency during  
28 his or her lifetime.
- 29 (4) The judge determines that either:
- 30 a. All of the following apply:
- 31 1. The incompetent, prior to being declared incompetent,  
32 executed a paper-writing with the formalities required by  
33 the laws of North Carolina for the execution of a valid  
34 will, including a paper-writing naming a revocable trust  
35 created by the incompetent as beneficiary.
- 36 2. Each donee is entitled to one or more specific legacies,  
37 bequests, devises, or distributions of specific amounts of  
38 money, income, or property under either the paper-writing  
39 or revocable trust or both or is a residuary legatee,  
40 devisee, or beneficiary designated in the paper-writing or  
41 revocable trust or both.

- 1                   3.     The making of the gifts will not jeopardize any specific  
2                   legacy, bequest, devise, or distribution of specific amounts  
3                   of money, income, or property.
- 4                   b.     That so far as is known the incompetent has not prior to being  
5                   declared incompetent, executed a will which could be probated  
6                   upon the death of the incompetent and each donee is a person  
7                   who would share in the incompetent's intestate estate, if the  
8                   incompetent died contemporaneously with the signing of the  
9                   order of approval of the gifts.
- 10                  c.     The donee is a person who would share in the incompetent's  
11                  nonprobate estate, if the incompetent died contemporaneously  
12                  with the signing of the order of approval.
- 13                  d.     The donee is the spouse, parent, descendant of the incompetent,  
14                  or descendant of the incompetent's parent and the amount of the  
15                  gift does not exceed the federal annual gift tax exclusion.
- 16                  (5)   If the incompetent, prior to being declared incompetent, executed a  
17                  paper-writing with the formalities required by the laws of North  
18                  Carolina for the execution of a valid will, including a paper-writing  
19                  naming a revocable trust created by the incompetent as beneficiary; then  
20                  all residuary legatees, devisees, and beneficiaries designated in the  
21                  paper-writing or revocable trust or both, who would take under the  
22                  paper-writing or revocable trust or both if the incompetent died  
23                  contemporaneously with the signing of the order of approval of the gifts  
24                  and the paper-writing was probated as the incompetent's will, the  
25                  spouse, if any, of the incompetent and all persons identified in G.S.  
26                  35A-1341.1(7) have been given at least 10 days' written notice that  
27                  approval for the gifts will be sought and that objection may be filed with  
28                  the clerk of superior court of the county in which the guardian was  
29                  appointed, within the 10-day period.
- 30                  (6)   If so far as is known the incompetent has not, prior to being declared  
31                  incompetent, executed a will which could be probated upon the death of  
32                  the incompetent, all persons who would share in the incompetent's  
33                  estate, if the incompetent died contemporaneously with the signing of  
34                  the order of approval, have been given at least 10 days' written notice  
35                  that approval for the gifts will be sought and that objection may be filed  
36                  with the clerk of the superior court of the county in which the guardian  
37                  was appointed, within the 10-day period.
- 38                  (7)   If the gift for which approval is sought is of a nonprobate asset, all  
39                  persons who would share in that nonprobate asset if the incompetent  
40                  died contemporaneously with the signing of the order of approval have  
41                  been given at least 10 days' written notice that approval for the gifts will  
42                  be sought and that objection may be filed with the clerk of superior of  
43                  the county in which the guardian was appointed within the 10-day

1 period. This notice requirement shall be in addition to the notice  
2 requirements contained in G.S. 35A-1341.1(5) and (6) above.

3 The judge may order that the gifts be made in cash or in specific assets and may order  
4 that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to  
5 Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The  
6 judge may also order that the gifts be treated as an advancement of some or all of the  
7 amount the donee would otherwise receive at the incompetent's death.

8 Section 7. G.S. 35A-1342 reads as rewritten:

9 **"§ 35A-1342. Who deemed specific and residuary legatees and devisees of**  
10 **incompetent under § 35A-1341.**

11 For purposes of G.S. 35A-1341(6)a and 35A-1341.1(4) and (5), ~~of this Article, if such~~  
12 ~~paper-writing~~ the paper-writing provides for the residuary estate to be placed in trust for a  
13 term of years, or if the paper-writing names a revocable trust created by the incompetent  
14 as beneficiary, and the trust or trusts include dispositive provisions which provide that  
15 assets continue in trust for a term of years with stated amounts of income payable to  
16 designated beneficiaries during the term and stated amounts payable to designated  
17 beneficiaries upon termination of the trust, such trust or trusts, the designated beneficiaries  
18 shall be deemed to be specific legatees and devisees—legatees, devisees, and beneficiaries  
19 and those taking the remaining income of the trust or trusts and, at the end of the term,  
20 the remaining principal shall be deemed to be residuary legatees and devisees—legatees,  
21 devisees, and beneficiaries who would take under the paper-writing—paper-writing or  
22 revocable trust or both if the incompetent died contemporaneously with the signing of the  
23 order of approval of such the gifts. In no case shall any prospective executor or trustee be  
24 considered either a specific or residuary legatee and devisee—legatee, devisee, or  
25 beneficiary on the sole basis of prospective service as executor or trustee."

26 Section 8. G.S. 35A-1343 reads as rewritten:

27 **"§ 35A-1343. Notice to minors and incompetents under § 35A-1341 and §**  
28 **35A-1341.1.**

29 If any person, to whom notice must be given under the provisions of G.S. 35A-1341(6)  
30 35A-1341 and G.S. 35A-1341.1 of this Article, is a minor or is incompetent, or  
31 is an unborn or unascertained beneficiary, then the notice shall be given to his duly  
32 appointed guardian or other duly appointed representative: Provided, that if a ~~minor or~~  
33 ~~incompetent~~ minor, incompetent, unborn, or unascertained beneficiary has no such  
34 guardian or representative—representative, then a guardian **ad litem** shall be appointed by  
35 the judge and such the guardian **ad litem** shall be given the notice herein required."

36 Section 9. G.S. 35A-1251 reads as rewritten:

37 **"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

38 In the case of an incompetent ward, a general guardian or guardian of the estate has  
39 the power to perform in a reasonable and prudent manner every act that a reasonable and  
40 prudent person would perform incident to the collection, preservation, management, and  
41 use of the ward's estate to accomplish the desired result of administering the ward's estate  
42 legally and in the ward's best interest, including but not limited to the following specific  
43 powers:

- 1 (1) To take possession, for the ward's use, of all the ward's estate, as defined  
2 in G.S. 35A-1202(5).
- 3 (2) To receive assets due the ward from any source.
- 4 (3) To maintain any appropriate action or proceeding to recover possession  
5 of any of the ward's property, to determine the title thereto, or to recover  
6 damages for any injury done to any of the ward's property; also, to  
7 compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise  
8 deal with and settle any other claims in favor of or against the ward.
- 9 (4) To complete performance of contracts entered into by the ward that  
10 continue as obligations of the ward or his estate, or to refuse to complete  
11 ~~such~~the contracts, as the guardian determines to be in the ward's best  
12 interests, taking into account any cause of action that might be  
13 maintained against the ward for failure to complete ~~such~~the contract.
- 14 (5) To abandon or relinquish all rights in any property when, in the  
15 guardian's opinion, acting reasonably and in good faith, it is valueless,  
16 or is so encumbered or is otherwise in ~~such~~a condition that it is of no  
17 benefit or value to the ward or his estate.
- 18 (5a) To renounce any interest in property as provided in Chapter 31B of the  
19 General Statutes, or as otherwise allowed by law.
- 20 (6) To vote shares of stock or other securities in person or by general or  
21 limited proxy, and to pay sums chargeable or accruing against or on  
22 account of securities owned by the ward.
- 23 (7) To insure the ward's assets against damage or loss, at the expense of the  
24 ward's estate.
- 25 (8) To pay the ward's debts and obligations that were incurred prior to the  
26 date of adjudication of incompetence or appointment of a guardian  
27 when the debt or obligation was incurred for necessary living expenses  
28 or taxes; or when the debt or obligation involves a specific lien on real  
29 or personal property, if the ward has an equity in the property on which  
30 there is a specific lien; or when the guardian is convinced that payment  
31 of the debt or obligation is in the best interest of the ward or his estate.
- 32 (9) To renew the ward's obligations for the payment of money. The  
33 guardian's execution of any obligation for the payment of money  
34 pursuant to this subsection shall not be held or construed to be binding  
35 on the guardian personally.
- 36 (10) To pay taxes, assessments, and other expenses incident to the collection,  
37 care, administration, and protection of the ward's estate.
- 38 (11) To sell or exercise stock subscription or conversion rights; consent,  
39 directly or through a committee or other agent, to the reorganization,  
40 consolidation, merger, dissolution, or liquidation of a corporation or  
41 other business enterprise.
- 42 (12) To expend estate income on the ward's behalf and to petition the court  
43 for prior approval of expenditures from estate principal.



- 1 (13) To pay from the ward's estate necessary expenses of administering the  
2 ward's estate.
- 3 (14) To employ persons, including attorneys, auditors, investment advisors,  
4 appraisers, or agents to advise or assist him in the performance of his  
5 duties as guardian.
- 6 (15) To continue any business or venture or farming operation in which the  
7 ward was engaged, where ~~such~~that continuation is reasonably necessary  
8 or desirable to preserve the value, including goodwill, of the ward's  
9 interest in ~~such~~the business.
- 10 (16) To acquire and retain every kind of property and every kind of  
11 investment, including specifically, but without in any way limiting the  
12 generality of the foregoing, bonds, debentures, and other corporate or  
13 governmental obligations; stocks, preferred or common; real estate  
14 mortgages; shares in building and loan associations or savings and loan  
15 associations; annual premium or single premium life, endowment, or  
16 annuity contracts; and securities of any management type investment  
17 company or investment trust registered under the Federal Investment  
18 Company Act of 1940, as from time to time amended.
- 19 (17) a. Without a court order to lease any of the ward's real estate for a term  
20 of not more than three years, or to sell, lease or exchange any of the  
21 ward's personal property including securities, provided that the  
22 aggregate value of all items of the ward's tangible personal property  
23 sold without court order over the duration of the estate shall not exceed  
24 one thousand five hundred dollars (\$1,500). When any item of the  
25 ward's tangible personal property has a value which when increased by  
26 the value of all other tangible personal property previously sold in the  
27 estate without a court order would exceed one thousand five hundred  
28 dollars (\$1,500), a guardian may sell the item only as provided in  
29 subdivision (17)b.
- 30 b. A guardian who is required by subdivision (17)a to do so shall,  
31 and any other guardian who so desires may, by motion in the  
32 cause, request the court to issue him an order to lease any of the  
33 ward's real estate or to sell any item or items of the ward's  
34 personal property. Notice of the motion and of the date, time and  
35 place of a hearing thereon shall be served, as provided in G.S.  
36 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record  
37 and upon ~~such~~any other persons ~~as~~ the clerk may direct, and the  
38 court may issue the order after conducting a hearing and upon  
39 ~~such~~any conditions ~~as~~that the court may require; provided that:
- 40 1. A sale, lease, or exchange under this subdivision may not  
41 be subject to Article 29A of Chapter 1 of the General  
42 Statutes unless the order so requires; and

- 1                   2.     The power granted in this subdivision shall not affect the  
2                   power of the guardian to petition the court for prior  
3                   approval of expenditures from estate principal under  
4                   subdivision (12) of this section.
- 5           (18)   To foreclose, as an incident to the collection of any bond, note or other  
6           obligation, any mortgage, deed or trust, or other lien securing ~~such~~the  
7           bond, note or other obligation, and to bid in the property at ~~such~~a  
8           foreclosure sale, or to acquire the property deed from the mortgagor or  
9           obligor without foreclosure; and to retain the property so bid in or taken  
10           over without foreclosure.
- 11          (19)   To borrow money for ~~such~~any periods of time and upon ~~such~~the terms  
12           and conditions as to rates, maturities, renewals, and security as the  
13           guardian shall deem advisable, including the power of a corporate  
14           guardian to borrow from its own banking department, for the purpose of  
15           paying debts, taxes, and other claims against the ward, and to mortgage,  
16           pledge, or otherwise encumber ~~such~~that portion of the ward's estate as  
17           may be required to secure ~~such~~the loan or loans; provided, in respect to  
18           the borrowing of money on the security of the ward's real property,  
19           Subchapter III of this Chapter is controlling.
- 20          (20)   To execute and deliver all instruments that will accomplish or facilitate  
21           the exercise of the powers vested in the guardian.
- 22          (21)   To expend estate income for the support, maintenance, and education of  
23           the ward's minor children, spouse, and dependents, and to petition the  
24           court for prior approval of expenditures from estate principal for these  
25           purposes; provided, the clerk, in the original order appointing the  
26           guardian or a subsequent order, may require that the expenditures from  
27           estate income also be approved in advance. In determining whether and  
28           in what amount to make or approve these expenditures, the guardian or  
29           clerk shall take into account the ward's legal obligations to his minor  
30           children, spouse, and dependents; the sufficiency of the ward's estate to  
31           meet the ward's needs; the needs and resources of the ward's minor  
32           children, spouse, and dependents; and the ward's conduct or expressed  
33           wishes, prior to becoming incompetent, in regard to the support of these  
34           persons.
- 35          (22)   To transfer to the spouse of the ward those amounts authorized for  
36           transfer to the spouse pursuant to 42 United States Code § 1396r-5.
- 37          (23)   To create a trust for the benefit of the ward pursuant to 42 United States  
38           Code § 1396p(d)(4), provided that all amounts remaining in the trust  
39           upon the death of the ward, other than those amounts which must be  
40           paid to a state government, are to be paid to the estate of the ward.
- 41          (24)   To petition the court for prior approval of transfers of assets of the ward  
42           to a revocable trust executed by the ward prior to the ward being  
43           declared incompetent, provided that the ward executed a paper-writing

1                   with all the formalities required by the laws of North Carolina for the  
2                   execution of a valid will prior to the ward being declared incompetent  
3                   and that will directs that the assets that are being transferred to the trust  
4                   are to be distributed to the trust at the ward's death or the revocable trust  
5                   has the same dispositive provisions as the ward's will or provides that  
6                   the assets in the trust are to be distributed to the ward's estate upon the  
7                   death of the ward. The guardian may at any time withdraw any assets  
8                   (or the proceeds of the sale of any assets) transferred by the guardian to  
9                   the trust upon 30 days' written notice to the trustee of the trust;  
10                  provided, however, no assets which have been distributed or otherwise  
11                  disposed of by the trustee (before the notice is received by the trustee) in  
12                  accordance with the terms of the trust can be so withdrawn."

13                  Section 10. This act becomes effective October 1, 1999.