

AN ACT

To amend sections 1339.51, 5111.15, and 5121.04 of the Revised Code relative to the creation of trusts to fund supplemental services for certain beneficiaries with physical or mental disabilities.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1339.51, 5111.15, and 5121.04 of the Revised Code be amended to read as follows:

Sec. 1339.51. (A) As used in this section:

(1) "Ascertainable standard" includes a standard in a trust instrument requiring the trustee to provide for the care, comfort, maintenance, welfare, education, or general well-being of the beneficiary.

(2) "Disability" means any substantial, medically determinable impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least twelve months, except that "disability" does not include an impairment that is the result of abuse of alcohol or drugs.

(3) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(4) "Supplemental services" means services specified by rule of the department of mental health under section 5119.01 of the Revised Code or the department of mental retardation and developmental disabilities under section 5123.04 of the Revised Code that are provided to an individual with a disability in addition to services ~~he~~ the individual is eligible to receive under programs authorized by federal or state law.

(B) Any person may create a ~~testamentary~~ trust under this section to provide funding for supplemental services for the benefit of another individual who meets either of the following conditions:

(1) The individual has a physical or mental disability and is eligible to receive services through the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;

(2) The individual has a mental disability and is eligible to receive

services through the department of mental health or a board of alcohol, drug addiction, and mental health services.

The trust may confer discretion upon the trustee and may contain specific instructions or conditions governing the exercise of the discretion.

(C) The general division of the court of common pleas and the probate court of the county in which the beneficiary of a trust authorized by division (B) of this section resides or is confined have concurrent original jurisdiction to hear and determine actions pertaining to the trust. In any action pertaining to the trust in a court of common pleas or probate court and in any appeal of the action, all of the following apply to the trial or appellate court:

(1) The court shall render determinations consistent with the testator's or other settlor's intent in creating the trust, as evidenced by the terms of the trust instrument.

(2) The court may order the trustee to exercise discretion that the trust instrument confers upon ~~him~~ the trustee only if the instrument contains specific instructions or conditions governing the exercise of that discretion and the trustee has failed to comply with the instructions or conditions. In issuing an order pursuant to this division, the court shall require the trustee to exercise ~~his~~ the trustee's discretion only in accordance with the instructions or conditions.

(3) The court may order the trustee to maintain the trust and distribute assets in accordance with rules adopted by the director of mental health under section 5119.01 of the Revised Code or the director of mental retardation and developmental disabilities under section 5123.04 of the Revised Code if the trustee has failed to comply with such rules.

(D) To the extent permitted by federal law and subject to the provisions of division (C)(2) of this section pertaining to the enforcement of specific instructions or conditions governing a trustee's discretion, a trust authorized by division (B) of this section that confers discretion upon the trustee shall not be considered an asset or resource of the beneficiary, ~~his~~ the beneficiary's estate, the settlor, or the ~~testator's~~ settlor's estate and shall be exempt from the claims of creditors, political subdivisions, the state, other governmental entities, and other claimants against the beneficiary, ~~his~~ the beneficiary's estate, the settlor, or the ~~testator's~~ settlor's estate, including claims based on provisions of Chapters 5111., 5121., or 5123. of the Revised Code and claims sought to be satisfied by way of a civil action, subrogation, execution, garnishment, attachment, judicial sale, or other legal process, if all of the following apply:

(1) At the time the trust is created, the trust principal does not exceed

the maximum amount determined under division (E) of this section;

(2) The trust instrument contains a statement of the ~~testator's~~ settlor's intent, or otherwise clearly evidences ~~his~~ the settlor's intent, that the beneficiary does not have authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, to make payments from the principal of the trust or from the income derived from the principal, or to convert any portion of the principal into cash, whether pursuant to an ascertainable standard specified in the instrument or otherwise;

~~(3) The testator is deceased;~~

~~(4)~~ The trust instrument provides that trust assets can be used only to provide supplemental services, as defined by rule of the director of mental health under section 5119.01 of the Revised Code or the director of mental retardation and developmental disabilities under section 5123.04 of the Revised Code, to the beneficiary;

~~(5)~~(4) The trust is maintained and assets are distributed in accordance with rules adopted by the director of mental health under section 5119.01 of the Revised Code or the director of mental retardation and developmental disabilities under section 5123.04 of the Revised Code;

~~(6)~~(5) The trust instrument provides that on the death of the beneficiary, a portion of the remaining assets of the trust, which shall be not less than fifty per cent of such assets, will be deposited to the credit of the services fund for individuals with mental illness created by section 5119.17 of the Revised Code or the services fund for individuals with mental retardation and developmental disabilities created by section 5123.40 of the Revised Code.

(E) In 1994, the trust principal maximum amount for a trust created under this section shall be two hundred thousand dollars. The maximum amount for a trust created under this section prior to ~~the effective date of this amendment~~ November 11, 1994, may be increased to two hundred thousand dollars.

In 1995, the maximum amount for a trust created under this section shall be two hundred two thousand dollars. Each year thereafter, the maximum amount shall be the prior year's amount plus two thousand dollars.

(F) This section does not limit or otherwise affect the creation, validity, interpretation, or effect of any trust that is not created under this section.

(G) Once a trustee takes action on a trust created by a settlor under this section and disburses trust funds on behalf of the beneficiary of the trust, then the trust may not be terminated or otherwise revoked by a particular event or otherwise without payment into the services fund created pursuant

to section 5119.17 or 5123.40 of the Revised Code of an amount that is equal to the disbursements made on behalf of the beneficiary for medical care by the state from the date the trust vests but that is not more than fifty per cent of the trust corpus.

Sec. 5111.15. If a recipient of medical assistance is the beneficiary of a trust created pursuant to section 1339.51 of the Revised Code, then, notwithstanding any contrary provision of this chapter or of a rule adopted pursuant to this chapter, divisions (C) and (D) of that section shall apply in determining the assets or resources of the recipient, ~~his~~ the recipient's estate, the settlor, or the ~~testator's~~ settlor's estate and to claims arising under this chapter against the recipient, ~~his~~ the recipient's estate, the settlor, or the ~~testator's~~ settlor's estate.

Sec. 5121.04. (A) The department of mental health and the department of mental retardation and developmental disabilities shall investigate the financial condition of the patients in hospitals and residents in institutions, residents whose care or treatment is being paid for in a private facility or home under the control of the department of mental retardation and developmental disabilities, and of the relatives named in section 5121.06 of the Revised Code as liable for the support of such patients or residents, in order to determine the ability of any patient, resident, or such relatives to pay for the support of the patient or resident and to provide suitable clothing as required by the superintendent of the institution.

The department of mental health shall investigate the financial condition of patients receiving state-operated community mental health services and of the liable relatives to determine the patient's or relative's ability to pay for the patient's support. In all cases, in determining ability to pay and the amount to be charged, due regard shall be had for others who may be dependent for support upon such relatives or the estate of the patient.

(B) The department shall follow the provisions of this division in determining the ability to pay of a patient or resident or the patient's or resident's liable relatives and the amount to be charged such patient or resident or liable relatives.

(1) Subject to divisions (B)(10) and (11) of this section, a patient or resident without dependents shall be liable for the full applicable cost. A patient or resident without dependents who has a gross annual income equal to or exceeding the sum of the full applicable cost, plus fifty dollars per month, regardless of the source of such income, shall pay currently the full amount of the applicable cost; if the patient's or resident's gross annual income is less than such sum, not more than fifty dollars per month shall be kept for personal use by or on behalf of the patient or resident, except as

permitted in the state plan for providing medical assistance under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and the balance shall be paid currently on the patient's or resident's support. Subject to divisions (B)(10) and (11) of this section, the estate of a patient or resident without dependents shall pay currently any remaining difference between the applicable cost and the amounts prescribed in this section, or shall execute an agreement with the department for payment to be made at some future date under terms suitable to the department. However, no security interest, mortgage, or lien shall be taken, granted, or charged against any principal residence of a patient or resident without dependents under an agreement or otherwise to secure support payments, and no foreclosure actions shall be taken on security interests, mortgages, or liens taken, granted, or charged against principal residences of patients or residents prior to October 7, 1977.

(2) The ability to pay of a patient or resident with dependents, or of a liable relative of a patient or resident either with or without dependents, shall be determined in accordance with the patient's, resident's, or liable relative's income or other assets, the needs of others who are dependent on such income and other assets for support, and, if applicable, divisions (B)(10) and (11) of this section.

For the first thirty days of care and treatment of each admission and for the first thirty days of care and treatment from state-operated community mental health services, but in no event for more than thirty days in any calendar year, the mentally ill patient or mentally retarded resident with dependents or the liable relative of a mentally ill patient or a mentally retarded resident either with or without dependents shall be charged an amount equal to the percentage of the average applicable cost determined in accordance with the schedule of adjusted gross annual income contained after this paragraph. After such first thirty days of care and treatment, such mentally ill patient or mentally retarded resident or such liable relative shall be charged an amount equal to the percentage of a base support rate of four dollars per day for mentally ill patients and mentally retarded residents, as determined in accordance with the schedule of gross annual income contained after this paragraph, or in accordance with division (B)(5) of this section. Beginning January 1, 1978, the department shall increase the base rate when the consumer price index average is more than 4.0 for the preceding calendar year by not more than the average for such calendar year.

Adjusted Gross Annual
Income of Patient or Resident

or Liable Relative (FN a)	Number of Dependents (FN b)							
	1	2	3	4	5	6	7	8 or more
	Rate of Support (In Percentages)							
\$15,000 or less	--	--	--	--	--	--	--	--
15,001 to 17,500	20	--	--	--	--	--	--	--
17,501 to 20,000	25	20	--	--	--	--	--	--
20,001 to 21,000	30	25	20	--	--	--	--	--
21,001 to 22,000	35	30	25	20	--	--	--	--
22,001 to 23,000	40	35	30	25	20	--	--	--
23,001 to 24,000	45	40	35	30	25	20	--	--
24,001 to 25,000	50	45	40	35	30	25	20	--
25,001 to 26,000	55	50	45	40	35	30	25	20
26,001 to 27,000	60	55	50	45	40	35	30	25
27,001 to 28,000	70	60	55	50	45	40	35	30
28,001 to 30,000	80	70	60	55	50	45	40	35
30,001 to 40,000	90	80	70	60	55	50	45	40
40,001 and over	100	90	80	70	60	55	50	45

Footnote a. The patient or resident or relative shall furnish a copy of the patient's, resident's, or relative's federal income tax return as evidence of gross annual income.

Footnote b. The number of dependents includes the liable relative but excludes the patient or resident in the hospital or institution. "Dependent" includes any person who receives more than half the person's support from the patient or the patient's liable relative.

(3) A patient or resident or liable relative having medical, funeral, or related expenses in excess of four per cent of the adjusted gross annual income, which expenses were not covered by insurance, may adjust such gross annual income by reducing the adjusted gross annual income by the full amount of such expenses. Proof of such expenses satisfactory to the department must be furnished.

(4) Additional dependencies may be claimed if:

- (a) The liable relative is blind;
- (b) The liable relative is over sixty-five;

(c) A child is a college student with expenses in excess of fifty dollars per month;

(d) The services of a housekeeper, costing in excess of fifty dollars per month, are required if the person who normally keeps house for minor children is the patient or resident.

(5) If with respect to any patient or resident with dependents there is

chargeable under division (B)(2) of this section less than fifty per cent of the applicable cost or, if the base support rate was used, less than fifty per cent of the amount determined by use of the base support rate, and if with respect to such patient or resident there is a liable relative who has an estate having a value in excess of fifteen thousand dollars or if such patient or resident has a dependent and an estate having a value in excess of fifteen thousand dollars, there shall be paid with respect to such patient or resident a total of fifty per cent of the applicable cost or the base support rate amount, as the case may be, on a current basis or there shall be executed with respect to such patient or resident an agreement with the department for payment to be made at some future date under terms suitable to the department.

(6) When a person has been a patient or resident for fifteen years and the support charges for which a relative is liable have been paid for the fifteen-year period, the liable relative shall be relieved of any further support charges.

(7) The department shall accept voluntary payments from patients or residents or liable relatives whose incomes are below the minimum shown in the schedule set forth in this division. The department also shall accept voluntary payments in excess of required amounts from both liable and nonliable relatives.

(8) If a patient or resident is covered by an insurance policy, or other contract that provides for payment of expenses for care and treatment for mental illness or mental retardation at or from an institution, facility (including a hospital or community service unit under the jurisdiction of the department), or state-operated community mental health service, the other provisions of this section, except divisions (B)(8), (10), and (11) of this section, and of section 5121.03 of the Revised Code shall be suspended to the extent that such insurance policy or other contract is in force, and such patient or resident shall be charged the full amount of the applicable cost. Any insurance carrier or other third party payor providing coverage for such care and treatment shall pay for this support obligation in an amount equal to the lesser of either the applicable cost or the benefits provided under the policy or other contract. Whether or not an insured, owner of, or other person having an interest in such policy or other contract is liable for support payments under other provisions of this chapter, the insured, policy owner, or other person shall assign payment directly to the department of all assignable benefits under the policy or other contract and shall pay over to the department, within ten days of receipt, all insurance or other benefits received as reimbursement or payment for expenses incurred by the patient or resident or for any other reason. If the insured, policy owner, or other

person refuses to assign such payment to the department or refuses to pay such received reimbursements or payments over to the department within ten days of receipt, the insured's, policy owners', or other person's total liability for the services equals the applicable statutory liability for payment for the services as determined under other provisions of this chapter, plus the amounts payable under the terms of the policy or other contract. In no event shall this total liability exceed the full amount of the applicable cost. Upon its request, the department is entitled to a court order that compels the insured, owner of, or other person having an interest in the policy or other contract to comply with the assignment requirements of this division or that itself serves as a legally sufficient assignment in compliance with such requirements. Notwithstanding section 5122.31 of the Revised Code and any other law relating to confidentiality of records, the managing officer of the institution or facility where a person is or has been a patient or resident, or the managing officer of the state-operated community mental health services from which the patient receives services, shall disclose pertinent medical information concerning the patient or resident to the insurance carrier or other third party payor in question, in order to effect collection from the carrier or payor of the state's claim for care and treatment under this division. For such disclosure, the managing officer is not subject to any civil or criminal liability.

(9) The rate to be charged for pre-admission care, after-care, day-care, or routine consultation and treatment services shall be based upon the ability of the patient or resident or the patient's or resident's liable relatives to pay. When it is determined by the department that a charge shall be made, such charge shall be computed as provided in divisions (B)(1) and (2) of this section.

(10) If a patient or resident with or without dependents is the beneficiary of a trust created pursuant to section 1339.51 of the Revised Code, then, notwithstanding any contrary provision of this chapter or of a rule adopted pursuant to this chapter, divisions (C) and (D) of that section shall apply in determining the assets or resources of the patient or resident, the patient's or resident's estate, the settlor, or the ~~testator's~~ settlor's estate and to claims arising under this chapter against the patient or resident, the patient's or resident's estate, the settlor, or the ~~testator's~~ settlor's estate.

(11) If the department of mental retardation and developmental disabilities waives the liability of an individual and the individual's liable relatives pursuant to section 5123.194 of the Revised Code, the liability of the individual and relative ceases in accordance with the waiver's terms.

(C) The department may enter into agreements with a patient or resident

or a liable relative for support payments to be made in the future. However, no security interest, mortgage, or lien shall be taken, granted, or charged against any principal family residence of a patient or resident with dependents or a liable relative under an agreement or otherwise to secure support payments, and no foreclosure actions shall be taken on security interests, mortgages or liens taken, granted, or charged against principal residences of patients or residents or liable relatives prior to October 7, 1977.

(D) The department shall make all investigations and determinations required by this section within ninety days after a patient or resident is admitted to an institution under the department's control or a patient begins to receive state-operated community mental health services, and immediately shall notify by mail the persons liable of the amount to be charged.

(E) All actions to enforce the collection of payments agreed upon or charged by the department shall be commenced within six years after the date of default of an agreement to pay support charges or the date such payment becomes delinquent. If a payment is made pursuant to an agreement which is in default, a new six-year period for actions to enforce the collection of payments under such agreement shall be computed from the date of such payment. For purposes of this division an agreement is in default or a payment is delinquent if a payment is not made within thirty days after it is incurred or a payment, pursuant to an agreement, is not made within thirty days after the date specified for such payment. In all actions to enforce the collection of payment for the liability for support, every court of record shall receive into evidence the proof of claim made by the state together with all debts and credits, and it shall be prima-facie evidence of the facts contained in it.

SECTION 2. That existing sections 1339.51, 5111.15, and 5121.04 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____