

As Introduced

124th General Assembly
Regular Session
2001-2002

H. B. No. 178

REPRESENTATIVE Salerno

A B I L L

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.

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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 be amended to read as follows:

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

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(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.

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(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.

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

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(4) "Supplemental services" means services specified by rule 21
of the department of mental health under section 5119.01 of the 22
Revised Code or the department of mental retardation and 23
developmental disabilities under section 5123.04 of the Revised 24
Code that are provided to an individual with a disability in 25
addition to services ~~he~~ the individual is eligible to receive 26
under programs authorized by federal or state law. 27

(B) Any person may create a ~~testamentary~~ trust under this 28
section to provide funding for supplemental services for the 29
benefit of another individual who meets either of the following 30
conditions: 31

(1) The individual has a physical or mental disability and is 32
eligible to receive services through the department of mental 33
retardation and developmental disabilities or a county board of 34
mental retardation and developmental disabilities; 35

(2) The individual has a mental disability and is eligible to 36
receive services through the department of mental health or a 37
board of alcohol, drug addiction, and mental health services. 38

The trust may confer discretion upon the trustee and may 39
contain specific instructions or conditions governing the exercise 40
of the discretion. 41

(C) The general division of the court of common pleas and the 42
probate court of the county in which the beneficiary of a trust 43
authorized by division (B) of this section resides or is confined 44
have concurrent original jurisdiction to hear and determine 45
actions pertaining to the trust. In any action pertaining to the 46
trust in a court of common pleas or probate court and in any 47
appeal of the action, all of the following apply to the trial or 48
appellate court: 49

(1) The court shall render determinations consistent with the 50
testator's or other settlor's intent in creating the trust, as 51

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; 84

(2) The trust instrument contains a statement of the 85
~~testator's~~ settlor's intent, or otherwise clearly evidences ~~his~~ 86
the settlor's intent, that the beneficiary does not have authority 87
to compel the trustee under any circumstances to furnish the 88
beneficiary with minimal or other maintenance or support, to make 89
payments from the principal of the trust or from the income 90
derived from the principal, or to convert any portion of the 91
principal into cash, whether pursuant to an ascertainable standard 92
specified in the instrument or otherwise; 93

(3) ~~The testator is deceased;~~ 94

~~(4)~~ The trust instrument provides that trust assets can be 95
used only to provide supplemental services, as defined by rule of 96
the director of mental health under section 5119.01 of the Revised 97
Code or the director of mental retardation and developmental 98
disabilities under section 5123.04 of the Revised Code, to the 99
beneficiary; 100

~~(5)~~(4) The trust is maintained and assets are distributed in 101
accordance with rules adopted by the director of mental health 102
under section 5119.01 of the Revised Code or the director of 103
mental retardation and developmental disabilities under section 104
5123.04 of the Revised Code; 105

~~(6)~~(5) The trust instrument provides that on the death of the 106
beneficiary, a portion of the remaining assets of the trust, which 107
shall be not less than fifty per cent of such assets, will be 108
deposited to the credit of the services fund for individuals with 109
mental illness created by section 5119.17 of the Revised Code or 110
the services fund for individuals with mental retardation and 111
developmental disabilities created by section 5123.40 of the 112
Revised Code. 113

(E) In 1994, the trust principal maximum amount for a trust 114

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.

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 145
by the superintendent of the institution. 146

The department of mental health shall investigate the 147
financial condition of patients receiving state-operated community 148
mental health services and of the liable relatives to determine 149
the patient's or relative's ability to pay for the patient's 150
support. In all cases, in determining ability to pay and the 151
amount to be charged, due regard shall be had for others who may 152
be dependent for support upon such relatives or the estate of the 153
patient. 154

(B) The department shall follow the provisions of this 155
division in determining the ability to pay of a patient or 156
resident or the patient's or resident's liable relatives and the 157
amount to be charged such patient or resident or liable relatives. 158

(1) Subject to divisions (B)(10) and (11) of this section, a 159
patient or resident without dependents shall be liable for the 160
full applicable cost. A patient or resident without dependents who 161
has a gross annual income equal to or exceeding the sum of the 162
full applicable cost, plus fifty dollars per month, regardless of 163
the source of such income, shall pay currently the full amount of 164
the applicable cost; if the patient's or resident's gross annual 165
income is less than such sum, not more than fifty dollars per 166
month shall be kept for personal use by or on behalf of the 167
patient or resident, except as permitted in the state plan for 168
providing medical assistance under Title XIX of the "Social 169
Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and 170
the balance shall be paid currently on the patient's or resident's 171
support. Subject to divisions (B)(10) and (11) of this section, 172
the estate of a patient or resident without dependents shall pay 173
currently any remaining difference between the applicable cost and 174
the amounts prescribed in this section, or shall execute an 175
agreement with the department for payment to be made at some 176

future date under terms suitable to the department. However, no 177
security interest, mortgage, or lien shall be taken, granted, or 178
charged against any principal residence of a patient or resident 179
without dependents under an agreement or otherwise to secure 180
support payments, and no foreclosure actions shall be taken on 181
security interests, mortgages, or liens taken, granted, or charged 182
against principal residences of patients or residents prior to 183
October 7, 1977. 184

(2) The ability to pay of a patient or resident with 185
dependents, or of a liable relative of a patient or resident 186
either with or without dependents, shall be determined in 187
accordance with the patient's, resident's, or liable relative's 188
income or other assets, the needs of others who are dependent on 189
such income and other assets for support, and, if applicable, 190
divisions (B)(10) and (11) of this section. 191

For the first thirty days of care and treatment of each 192
admission and for the first thirty days of care and treatment from 193
state-operated community mental health services, but in no event 194
for more than thirty days in any calendar year, the mentally ill 195
patient or mentally retarded resident with dependents or the 196
liable relative of a mentally ill patient or a mentally retarded 197
resident either with or without dependents shall be charged an 198
amount equal to the percentage of the average applicable cost 199
determined in accordance with the schedule of adjusted gross 200
annual income contained after this paragraph. After such first 201
thirty days of care and treatment, such mentally ill patient or 202
mentally retarded resident or such liable relative shall be 203
charged an amount equal to the percentage of a base support rate 204
of four dollars per day for mentally ill patients and mentally 205
retarded residents, as determined in accordance with the schedule 206
of gross annual income contained after this paragraph, or in 207
accordance with division (B)(5) of this section. Beginning January 208

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 213

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|-------------------------------|-----|
| Income of Patient or Resident | 214 |
|-------------------------------|-----|

| | | |
|---------------------------|-----------------------------|-----|
| or Liable Relative (FN a) | Number of Dependents (FN b) | 215 |
|---------------------------|-----------------------------|-----|

8 or 216

1 2 3 4 5 6 7 more 217

Rate of Support (In Percentages) 218

| | | | | | | | | |
|------------------|----|----|----|----|----|----|----|-----|
| \$15,000 or less | -- | -- | -- | -- | -- | -- | -- | 219 |
|------------------|----|----|----|----|----|----|----|-----|

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|------------------|----|----|----|----|----|----|----|-----|
| 15,001 to 17,500 | 20 | -- | -- | -- | -- | -- | -- | 220 |
|------------------|----|----|----|----|----|----|----|-----|

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| 17,501 to 20,000 | 25 | 20 | -- | -- | -- | -- | -- | 221 |
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| 20,001 to 21,000 | 30 | 25 | 20 | -- | -- | -- | -- | -- | 222 |
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| 21,001 to 22,000 | 35 | 30 | 25 | 20 | -- | -- | -- | -- | 223 |
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| 22,001 to 23,000 | 40 | 35 | 30 | 25 | 20 | -- | -- | -- | 224 |
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| 23,001 to 24,000 | 45 | 40 | 35 | 30 | 25 | 20 | -- | -- | 225 |
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| 24,001 to 25,000 | 50 | 45 | 40 | 35 | 30 | 25 | 20 | -- | 226 |
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| 25,001 to 26,000 | 55 | 50 | 45 | 40 | 35 | 30 | 25 | 20 | 227 |
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| 26,001 to 27,000 | 60 | 55 | 50 | 45 | 40 | 35 | 30 | 25 | 228 |
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| 27,001 to 28,000 | 70 | 60 | 55 | 50 | 45 | 40 | 35 | 30 | 229 |
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| 28,001 to 30,000 | 80 | 70 | 60 | 55 | 50 | 45 | 40 | 35 | 230 |
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| 30,001 to 40,000 | 90 | 80 | 70 | 60 | 55 | 50 | 45 | 40 | 231 |
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| 40,001 and over | 100 | 90 | 80 | 70 | 60 | 55 | 50 | 45 | 232 |
|-----------------|-----|----|----|----|----|----|----|----|-----|

Footnote a. The patient or resident or relative shall furnish 233

a copy of the patient's, resident's, or relative's federal income 234

tax return as evidence of gross annual income. 235

Footnote b. The number of dependents includes the liable 236

relative but excludes the patient or resident in the hospital or 237

institution. "Dependent" includes any person who receives more 238

than half the person's support from the patient or the patient's 239

liable relative. 240

(3) A patient or resident or liable relative having medical, 241
funeral, or related expenses in excess of four per cent of the 242
adjusted gross annual income, which expenses were not covered by 243
insurance, may adjust such gross annual income by reducing the 244
adjusted gross annual income by the full amount of such expenses. 245
Proof of such expenses satisfactory to the department must be 246
furnished. 247

(4) Additional dependencies may be claimed if: 248

(a) The liable relative is blind; 249

(b) The liable relative is over sixty-five; 250

(c) A child is a college student with expenses in excess of 251
fifty dollars per month; 252

(d) The services of a housekeeper, costing in excess of fifty 253
dollars per month, are required if the person who normally keeps 254
house for minor children is the patient or resident. 255

(5) If with respect to any patient or resident with 256
dependents there is chargeable under division (B)(2) of this 257
section less than fifty per cent of the applicable cost or, if the 258
base support rate was used, less than fifty per cent of the amount 259
determined by use of the base support rate, and if with respect to 260
such patient or resident there is a liable relative who has an 261
estate having a value in excess of fifteen thousand dollars or if 262
such patient or resident has a dependent and an estate having a 263
value in excess of fifteen thousand dollars, there shall be paid 264
with respect to such patient or resident a total of fifty per cent 265
of the applicable cost or the base support rate amount, as the 266
case may be, on a current basis or there shall be executed with 267
respect to such patient or resident an agreement with the 268
department for payment to be made at some future date under terms 269
suitable to the department. 270

(6) When a person has been a patient or resident for fifteen 271

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 336
the beneficiary of a trust created pursuant to section 1339.51 of 337
the Revised Code, then, notwithstanding any contrary provision of 338
this chapter or of a rule adopted pursuant to this chapter, 339
divisions (C) and (D) of that section shall apply in determining 340
the assets or resources of the patient or resident, the patient's 341
or resident's estate, the settlor, or the ~~testator's~~ settlor's 342
estate and to claims arising under this chapter against the 343
patient or resident, the patient's or resident's estate, the 344
settlor, or the ~~testator's~~ settlor's estate. 345

(11) If the department of mental retardation and 346
developmental disabilities waives the liability of an individual 347
and the individual's liable relatives pursuant to section 5123.194 348
of the Revised Code, the liability of the individual and relative 349
ceases in accordance with the waiver's terms. 350

(C) The department may enter into agreements with a patient 351
or resident or a liable relative for support payments to be made 352
in the future. However, no security interest, mortgage, or lien 353
shall be taken, granted, or charged against any principal family 354
residence of a patient or resident with dependents or a liable 355
relative under an agreement or otherwise to secure support 356
payments, and no foreclosure actions shall be taken on security 357
interests, mortgages or liens taken, granted, or charged against 358
principal residences of patients or residents or liable relatives 359
prior to October 7, 1977. 360

(D) The department shall make all investigations and 361
determinations required by this section within ninety days after a 362
patient or resident is admitted to an institution under the 363
department's control or a patient begins to receive state-operated 364
community mental health services, and immediately shall notify by 365
mail the persons liable of the amount to be charged. 366

(E) All actions to enforce the collection of payments agreed 367

upon or charged by the department shall be commenced within six 368
years after the date of default of an agreement to pay support 369
charges or the date such payment becomes delinquent. If a payment 370
is made pursuant to an agreement which is in default, a new 371
six-year period for actions to enforce the collection of payments 372
under such agreement shall be computed from the date of such 373
payment. For purposes of this division an agreement is in default 374
or a payment is delinquent if a payment is not made within thirty 375
days after it is incurred or a payment, pursuant to an agreement, 376
is not made within thirty days after the date specified for such 377
payment. In all actions to enforce the collection of payment for 378
the liability for support, every court of record shall receive 379
into evidence the proof of claim made by the state together with 380
all debts and credits, and it shall be prima-facie evidence of the 381
facts contained in it. 382

Section 2. That existing sections 1339.51, 5111.15, and 383
5121.04 of the Revised Code are hereby repealed. 384