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REPRESENTATIVES Salerno, Willamowski, Seitz, DePiero, Jerse, Sulzer,
Flowers, Widowfield, Wolpert, Calvert, Coates, Schmidt, Jolivette, Perry,
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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

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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

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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

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action, subrogation, execution, garnishment, attachment, judicial 80
sale, or other legal process, if all of the following apply: 81

(1) At the time the trust is created, the trust principal 82
does not exceed the maximum amount determined under division (E) 83
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. 115
The maximum amount for a trust created under this section prior to 116
~~the effective date of this amendment~~ November 11, 1994, may be 117
increased to two hundred thousand dollars. 118

In 1995, the maximum amount for a trust created under this 119
section shall be two hundred two thousand dollars. Each year 120
thereafter, the maximum amount shall be the prior year's amount 121
plus two thousand dollars. 122

(F) This section does not limit or otherwise affect the 123
creation, validity, interpretation, or effect of any trust that is 124
not created under this section. 125

Sec. 5111.15. If a recipient of medical assistance is the 126
beneficiary of a trust created pursuant to section 1339.51 of the 127
Revised Code, then, notwithstanding any contrary provision of this 128
chapter or of a rule adopted pursuant to this chapter, divisions 129
(C) and (D) of that section shall apply in determining the assets 130
or resources of the recipient, ~~his~~ the recipient's estate, the 131
settlor, or the ~~testator's~~ settlor's estate and to claims arising 132
under this chapter against the recipient, ~~his~~ the recipient's 133
estate, the settlor, or the ~~testator's~~ settlor's estate. 134

Sec. 5121.04. (A) The department of mental health and the 135
department of mental retardation and developmental disabilities 136
shall investigate the financial condition of the patients in 137
hospitals and residents in institutions, residents whose care or 138
treatment is being paid for in a private facility or home under 139
the control of the department of mental retardation and 140

developmental disabilities, and of the relatives named in section 141
5121.06 of the Revised Code as liable for the support of such 142
patients or residents, in order to determine the ability of any 143
patient, resident, or such relatives to pay for the support of the 144
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
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.

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|-------------------------------|----------------------------------|----|----|----|----|----|----|------|------|-----|
| Adjusted Gross Annual | | | | | | | | | | 213 |
| Income of Patient or Resident | | | | | | | | | | 214 |
| or Liable Relative (FN a) | | | | | | | | | | 215 |
| | | | | | | | | | 8 or | 216 |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | more | | 217 |
| | Rate of Support (In Percentages) | | | | | | | | | 218 |
| \$15,000 or less | -- | -- | -- | -- | -- | -- | -- | -- | -- | 219 |
| 15,001 to 17,500 | 20 | -- | -- | -- | -- | -- | -- | -- | -- | 220 |
| 17,501 to 20,000 | 25 | 20 | -- | -- | -- | -- | -- | -- | -- | 221 |
| 20,001 to 21,000 | 30 | 25 | 20 | -- | -- | -- | -- | -- | -- | 222 |
| 21,001 to 22,000 | 35 | 30 | 25 | 20 | -- | -- | -- | -- | -- | 223 |
| 22,001 to 23,000 | 40 | 35 | 30 | 25 | 20 | -- | -- | -- | -- | 224 |
| 23,001 to 24,000 | 45 | 40 | 35 | 30 | 25 | 20 | -- | -- | -- | 225 |
| 24,001 to 25,000 | 50 | 45 | 40 | 35 | 30 | 25 | 20 | -- | -- | 226 |
| 25,001 to 26,000 | 55 | 50 | 45 | 40 | 35 | 30 | 25 | 20 | -- | 227 |
| 26,001 to 27,000 | 60 | 55 | 50 | 45 | 40 | 35 | 30 | 25 | -- | 228 |
| 27,001 to 28,000 | 70 | 60 | 55 | 50 | 45 | 40 | 35 | 30 | -- | 229 |
| 28,001 to 30,000 | 80 | 70 | 60 | 55 | 50 | 45 | 40 | 35 | -- | 230 |
| 30,001 to 40,000 | 90 | 80 | 70 | 60 | 55 | 50 | 45 | 40 | -- | 231 |
| 40,001 and over | 100 | 90 | 80 | 70 | 60 | 55 | 50 | 45 | -- | 232 |

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 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 272
been paid for the fifteen-year period, the liable relative shall 273
be relieved of any further support charges. 274

(7) The department shall accept voluntary payments from 275
patients or residents or liable relatives whose incomes are below 276
the minimum shown in the schedule set forth in this division. The 277
department also shall accept voluntary payments in excess of 278
required amounts from both liable and nonliable relatives. 279

(8) If a patient or resident is covered by an insurance 280
policy, or other contract that provides for payment of expenses 281
for care and treatment for mental illness or mental retardation at 282
or from an institution, facility (including a hospital or 283
community service unit under the jurisdiction of the department), 284
or state-operated community mental health service, the other 285
provisions of this section, except divisions (B)(8), (10), and 286
(11) of this section, and of section 5121.03 of the Revised Code 287
shall be suspended to the extent that such insurance policy or 288
other contract is in force, and such patient or resident shall be 289
charged the full amount of the applicable cost. Any insurance 290
carrier or other third party payor providing coverage for such 291
care and treatment shall pay for this support obligation in an 292
amount equal to the lesser of either the applicable cost or the 293
benefits provided under the policy or other contract. Whether or 294
not an insured, owner of, or other person having an interest in 295
such policy or other contract is liable for support payments under 296
other provisions of this chapter, the insured, policy owner, or 297
other person shall assign payment directly to the department of 298
all assignable benefits under the policy or other contract and 299

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. 332
When it is determined by the department that a charge shall be 333
made, such charge shall be computed as provided in divisions 334
(B)(1) and (2) of this section. 335

(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