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A B I L L

To amend sections 1339.51, 5111.15, and 5121.04 of the 1
Revised Code relative to the creation of trusts to 2
fund supplemental services for certain 3
beneficiaries with physical or mental disabilities. 4

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 5
Revised be amended to read as follows: 6

Sec. 1339.51. (A) As used in this section: 7

(1) "Ascertainable standard" includes a standard in a trust 8
instrument requiring the trustee to provide for the care, comfort, 9
maintenance, welfare, education, or general well-being of the 10
beneficiary. 11

(2) "Disability" means any substantial, medically 12
determinable impairment that can be expected to result in death or 13

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

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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 108
mental illness created by section 5119.17 of the Revised Code or 109
the services fund for individuals with mental retardation and 110
developmental disabilities created by section 5123.40 of the 111
Revised Code. 112

(E) In 1994, the trust principal maximum amount for a trust 113
created under this section shall be two hundred thousand dollars. 114
The maximum amount for a trust created under this section prior to 115
~~the effective date of this amendment~~ November 11, 1994, may be 116
increased to two hundred thousand dollars. 117

In 1995, the maximum amount for a trust created under this 118
section shall be two hundred two thousand dollars. Each year 119
thereafter, the maximum amount shall be the prior year's amount 120
plus two thousand dollars. 121

(F) This section does not limit or otherwise affect the 122
creation, validity, interpretation, or effect of any trust that is 123
not created under this section. 124

(G) Once a trustee takes action on a trust created by a 125
settlor under this section and disburses trust funds on behalf of 126
the beneficiary of the trust, then the trust may not be terminated 127
or otherwise revoked by a particular event or otherwise without 128
payment into the services fund created pursuant to section 5119.17 129
or 5123.40 of the Revised Code of an amount that is equal to the 130
disbursements made on behalf of the beneficiary for medical care 131
by the state from the date the trust vests but that is not more 132
than fifty per cent of the trust corpus. 133

Sec. 5111.15. If a recipient of medical assistance is the 134
beneficiary of a trust created pursuant to section 1339.51 of the 135
Revised Code, then, notwithstanding any contrary provision of this 136
chapter or of a rule adopted pursuant to this chapter, divisions 137
(C) and (D) of that section shall apply in determining the assets 138

or resources of the recipient, ~~his~~ the recipient's estate, the 139
settlor, or the ~~testator's~~ settlor's estate and to claims arising 140
under this chapter against the recipient, ~~his~~ the recipient's 141
estate, the settlor, or the ~~testator's~~ settlor's estate. 142

Sec. 5121.04. (A) The department of mental health and the 143
department of mental retardation and developmental disabilities 144
shall investigate the financial condition of the patients in 145
hospitals and residents in institutions, residents whose care or 146
treatment is being paid for in a private facility or home under 147
the control of the department of mental retardation and 148
developmental disabilities, and of the relatives named in section 149
5121.06 of the Revised Code as liable for the support of such 150
patients or residents, in order to determine the ability of any 151
patient, resident, or such relatives to pay for the support of the 152
patient or resident and to provide suitable clothing as required 153
by the superintendent of the institution. 154

The department of mental health shall investigate the 155
financial condition of patients receiving state-operated community 156
mental health services and of the liable relatives to determine 157
the patient's or relative's ability to pay for the patient's 158
support. In all cases, in determining ability to pay and the 159
amount to be charged, due regard shall be had for others who may 160
be dependent for support upon such relatives or the estate of the 161
patient. 162

(B) The department shall follow the provisions of this 163
division in determining the ability to pay of a patient or 164
resident or the patient's or resident's liable relatives and the 165
amount to be charged such patient or resident or liable relatives. 166

(1) Subject to divisions (B)(10) and (11) of this section, a 167
patient or resident without dependents shall be liable for the 168
full applicable cost. A patient or resident without dependents who 169

has a gross annual income equal to or exceeding the sum of the 170
full applicable cost, plus fifty dollars per month, regardless of 171
the source of such income, shall pay currently the full amount of 172
the applicable cost; if the patient's or resident's gross annual 173
income is less than such sum, not more than fifty dollars per 174
month shall be kept for personal use by or on behalf of the 175
patient or resident, except as permitted in the state plan for 176
providing medical assistance under Title XIX of the "Social 177
Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, and 178
the balance shall be paid currently on the patient's or resident's 179
support. Subject to divisions (B)(10) and (11) of this section, 180
the estate of a patient or resident without dependents shall pay 181
currently any remaining difference between the applicable cost and 182
the amounts prescribed in this section, or shall execute an 183
agreement with the department for payment to be made at some 184
future date under terms suitable to the department. However, no 185
security interest, mortgage, or lien shall be taken, granted, or 186
charged against any principal residence of a patient or resident 187
without dependents under an agreement or otherwise to secure 188
support payments, and no foreclosure actions shall be taken on 189
security interests, mortgages, or liens taken, granted, or charged 190
against principal residences of patients or residents prior to 191
October 7, 1977. 192

(2) The ability to pay of a patient or resident with 193
dependents, or of a liable relative of a patient or resident 194
either with or without dependents, shall be determined in 195
accordance with the patient's, resident's, or liable relative's 196
income or other assets, the needs of others who are dependent on 197
such income and other assets for support, and, if applicable, 198
divisions (B)(10) and (11) of this section. 199

For the first thirty days of care and treatment of each 200
admission and for the first thirty days of care and treatment from 201

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)								Rate of Support (In Percentages)
								8 or	
	1	2	3	4	5	6	7	more	
\$15,000 or less	--	--	--	--	--	--	--	--	227
15,001 to 17,500	20	--	--	--	--	--	--	--	228
17,501 to 20,000	25	20	--	--	--	--	--	--	229
20,001 to 21,000	30	25	20	--	--	--	--	--	230
21,001 to 22,000	35	30	25	20	--	--	--	--	231
22,001 to 23,000	40	35	30	25	20	--	--	--	232
23,001 to 24,000	45	40	35	30	25	20	--	--	233
24,001 to 25,000	50	45	40	35	30	25	20	--	234

25,001 to 26,000	55	50	45	40	35	30	25	20	235
26,001 to 27,000	60	55	50	45	40	35	30	25	236
27,001 to 28,000	70	60	55	50	45	40	35	30	237
28,001 to 30,000	80	70	60	55	50	45	40	35	238
30,001 to 40,000	90	80	70	60	55	50	45	40	239
40,001 and over	100	90	80	70	60	55	50	45	240

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.

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(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.

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(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.

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(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

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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 330
information concerning the patient or resident to the insurance 331
carrier or other third party payor in question, in order to effect 332
collection from the carrier or payor of the state's claim for care 333
and treatment under this division. For such disclosure, the 334
managing officer is not subject to any civil or criminal 335
liability. 336

(9) The rate to be charged for pre-admission care, 337
after-care, day-care, or routine consultation and treatment 338
services shall be based upon the ability of the patient or 339
resident or the patient's or resident's liable relatives to pay. 340
When it is determined by the department that a charge shall be 341
made, such charge shall be computed as provided in divisions 342
(B)(1) and (2) of this section. 343

(10) If a patient or resident with or without dependents is 344
the beneficiary of a trust created pursuant to section 1339.51 of 345
the Revised Code, then, notwithstanding any contrary provision of 346
this chapter or of a rule adopted pursuant to this chapter, 347
divisions (C) and (D) of that section shall apply in determining 348
the assets or resources of the patient or resident, the patient's 349
or resident's estate, the settlor, or the ~~testator's~~ settlor's 350
estate and to claims arising under this chapter against the 351
patient or resident, the patient's or resident's estate, the 352
settlor, or the ~~testator's~~ settlor's estate. 353

(11) If the department of mental retardation and 354
developmental disabilities waives the liability of an individual 355
and the individual's liable relatives pursuant to section 5123.194 356
of the Revised Code, the liability of the individual and relative 357
ceases in accordance with the waiver's terms. 358

(C) The department may enter into agreements with a patient 359
or resident or a liable relative for support payments to be made 360
in the future. However, no security interest, mortgage, or lien 361

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.