

**As Reported by the House Civil and Commercial Law Committee**

**124th General Assembly**

**Regular Session**

**2001-2002**

**H. B. No. 178**

**REPRESENTATIVES Salerno, Willamowski, Seitz, DePiero, Jerse, Sulzer**

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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  
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 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. 52

(2) The court may order the trustee to exercise discretion 53  
that the trust instrument confers upon ~~him~~ the trustee only if the 54  
instrument contains specific instructions or conditions governing 55  
the exercise of that discretion and the trustee has failed to 56  
comply with the instructions or conditions. In issuing an order 57  
pursuant to this division, the court shall require the trustee to 58  
exercise ~~his~~ the trustee's discretion only in accordance with the 59  
instructions or conditions. 60

(3) The court may order the trustee to maintain the trust and 61  
distribute assets in accordance with rules adopted by the director 62  
of mental health under section 5119.01 of the Revised Code or the 63  
director of mental retardation and developmental disabilities 64  
under section 5123.04 of the Revised Code if the trustee has 65  
failed to comply with such rules. 66

(D) To the extent permitted by federal law and subject to the 67  
provisions of division (C)(2) of this section pertaining to the 68  
enforcement of specific instructions or conditions governing a 69  
trustee's discretion, a trust authorized by division (B) of this 70  
section that confers discretion upon the trustee shall not be 71  
considered an asset or resource of the beneficiary, ~~his~~ the 72  
beneficiary's estate, the settlor, or the ~~testator's~~ settlor's 73  
estate and shall be exempt from the claims of creditors, political 74  
subdivisions, the state, other governmental entities, and other 75  
claimants against the beneficiary, ~~his~~ the beneficiary's estate, 76  
the settlor, or the ~~testator's~~ settlor's estate, including claims 77  
based on provisions of Chapters 5111., 5121., or 5123. of the 78  
Revised Code and claims sought to be satisfied by way of a civil 79  
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

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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

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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

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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

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1, 1978, the department shall increase the base rate when the									209
consumer price index average is more than 4.0 for the preceding									210
calendar year by not more than the average for such calendar year.									211
									212
Adjusted Gross Annual									213
Income of Patient or Resident									214
or Liable Relative (FN a)									215
	Number of Dependents (FN b)								216
								8 or	217
	1	2	3	4	5	6	7	more	218
	Rate of Support (In Percentages)								219
\$15,000 or less	--	--	--	--	--	--	--	--	220
15,001 to 17,500	20	--	--	--	--	--	--	--	221
17,501 to 20,000	25	20	--	--	--	--	--	--	222
20,001 to 21,000	30	25	20	--	--	--	--	--	223
21,001 to 22,000	35	30	25	20	--	--	--	--	224
22,001 to 23,000	40	35	30	25	20	--	--	--	225
23,001 to 24,000	45	40	35	30	25	20	--	--	226
24,001 to 25,000	50	45	40	35	30	25	20	--	227
25,001 to 26,000	55	50	45	40	35	30	25	20	228
26,001 to 27,000	60	55	50	45	40	35	30	25	229
27,001 to 28,000	70	60	55	50	45	40	35	30	230
28,001 to 30,000	80	70	60	55	50	45	40	35	231
30,001 to 40,000	90	80	70	60	55	50	45	40	232
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

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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

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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.

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(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

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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