

By Senator Rossin

35-884A-98

1 A bill to be entitled
2 An act relating to the developmentally disabled
3 and mentally ill persons' umbrella trust fund;
4 amending s. 402.175, F.S.; revising duties of
5 the Department of Children and Family Services
6 with respect to such fund; authorizing the
7 department to act as trustee; providing
8 definitions; requiring annual accounting;
9 providing for rules; providing an effective
10 date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 402.175, Florida Statutes, is
15 amended to read:

16 402.175 Legislative intent; developmentally disabled
17 and mentally ill persons' umbrella trust fund.--

18 (1) The Legislature finds and declares that estate
19 planning by families of developmentally disabled and mentally
20 ill persons encourages family ties and supports the health and
21 welfare of developmentally disabled and mentally ill persons.
22 The Legislature further recognizes that many families do not
23 have the continuing financial resources to establish
24 independent trusts for the benefit of their developmentally
25 disabled and mentally ill offspring. Therefore, it is the
26 intent of the Legislature by this act to develop an umbrella
27 trust in which families may participate by complying with the
28 provisions of this section.

29 (2) As used in this section, the term:

30 (a) "Individual trust" means a trust created with the
31 model individual trust agreement by which the family of a

1 developmentally disabled or mentally ill person contributes
2 assets for entrance into the umbrella trust fund for the
3 benefit of the developmentally disabled or mentally ill
4 person.

5 (b) "Main umbrella trust" means that portion of the
6 umbrella trust fund which is funded from state appropriations,
7 grants and donations, and remainder interests of individual
8 trusts, and interest thereon.

9 (c) "Umbrella trust fund" means the main umbrella
10 trust and the individual trusts.

11 (3)(2) The department shall cause to be established
12 ~~with a trust company which has its principal place of business~~
13 ~~in this state~~ an umbrella trust fund for the benefit of
14 developmentally disabled and mentally ill persons in this
15 state. Such trust shall be funded by:

16 (a) State appropriations.

17 (b) Grants and donations.

18 (c) The remainder interest left to the umbrella trust
19 by the individual trusts as provided by paragraph

20 (4)(b)(3)(b).

21 (4)(3) In order to qualify for inclusion in the
22 umbrella trust fund, a family of a developmentally disabled or
23 mentally ill person which ~~that~~ establishes an individual trust
24 for the developmentally disabled or mentally ill person shall:

25 (a) Create an individual trust that ~~which~~ shall equal
26 or exceed a minimum amount established by the department
27 through its rulemaking authority based on the life expectancy
28 of the developmentally disabled or mentally ill person. Such
29 rule shall require no less than \$2,500 and no more than
30 \$30,000 for entrance into the umbrella trust.

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1 (b) Leave an irrevocable remainder interest from the
2 individual trust to the main umbrella trust except that any
3 remainder in excess of \$10,000 at the death of the
4 developmentally disabled or mentally ill person shall be
5 subject to the conditions set forth by the individual trust
6 agreement rather than the main umbrella trust.

7 (c) Have the individual trust administered by the
8 trustee of the umbrella trust fund.

9 (d) Conform to the requirement of the model individual
10 trust as set forth by rule of the department pursuant to
11 paragraph(6)(c)(5)(c).

12 ~~(5)(4)~~(a) Each developmentally disabled or mentally
13 ill person's income shall be derived from the funds available
14 in the individual trust and income therefrom.

15 (b) The main umbrella trust and interest earned
16 thereon shall be used to fund the expenditures permitted by
17 paragraph(6)(a)~~(5)(a)~~upon the expiration of funds available
18 to the developmentally disabled or mentally ill person through
19 his or her individual trust.

20 ~~(6)(5)~~ The department shall by rule:

21 (a) Establish specific expenditure categories within
22 which the trustee may make disbursements.

23 1. Such categories shall be based on the most common
24 and reasonable unmet needs of developmentally disabled or
25 mentally ill persons.

26 2. With respect to the developmentally disabled or
27 mentally ill person's using the money available from the main
28 umbrella trust, a different category of expenditures may be
29 utilized, dependent upon the resources of the main umbrella
30 trust so that the principal of the main umbrella trust is not
31 substantially diminished.

1 (b) Establish which types of property will qualify for
2 contribution to the umbrella trust fund.

3 (c) Develop a model individual umbrella trust
4 agreement by which the family of a developmentally disabled or
5 mentally ill person can contribute assets for entrance into
6 the umbrella trust fund in order to minimize any possibility
7 of conflicts between the main umbrella trust and the
8 individual trust.

9 (d) Establish any additional policies necessary to
10 carry out this section.

11 (7)(6) The department may serve as trustee and
12 administrator of the umbrella trust fund or may ~~shall~~ contract
13 for the administration of the umbrella trust fund with a trust
14 company that will serve as trustee of the umbrella trust fund
15 and has its principal place of business in this state.

16 Trustees shall serve without compensation other than for the
17 usual and customary charges for similar administration of
18 trusts of a like amount.

19 (8)(7) The trustee shall:

20 (a) Determine that no funds from the umbrella trust
21 fund shall be used to pay for the types of services which the
22 state provides for developmentally disabled or mentally ill
23 persons.

24 (b) Determine that funds from the umbrella trust fund
25 shall be used for benefits to developmentally disabled or
26 mentally ill persons over and above those provided by state
27 and federal agencies.

28 (c) Accept grants and donations for the general
29 benefit of the main umbrella trust.

30 (d) Commingle and invest assets of trusts to obtain
31 the highest earnings for trusts.

1 (e) Maintain a record of receipts, income, and
2 expenditures on behalf of each developmentally disabled or
3 mentally ill person's individual trust and provide an annual
4 accounting thereon to the beneficiary of the trust or to the
5 beneficiary's representative.

6 (f) If the net income of the trust at the end of any
7 calendar year exceeds 10 percent of the state appropriations
8 to the trust, refund to the General Revenue Fund one-half of
9 the excess.

10 (g) Have all other powers and duties necessary to
11 carry out the intent of this section.

12 (9)~~(8)~~ The trustee shall make no payments to or
13 purchases for the developmentally disabled or mentally ill
14 person which would make the developmentally disabled or
15 mentally ill person ineligible for state or federal social
16 service programs.

17 Section 2. This act shall take effect upon becoming a
18 law.

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21 SENATE SUMMARY

22 Authorizes the Department of Children and Family Services
23 to act as trustee of the umbrella trust fund for
24 developmentally disabled or mentally ill persons in lieu
25 of contracting with a trust company for its services.
26 Requires the trustee to account annually to the trust
27 beneficiary or the beneficiary's representative.
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