

By the Committee on Children, Families and Seniors and Senator Rossin

300-1802-98

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A bill to be entitled
An act relating to the developmentally disabled and mentally ill persons' umbrella trust fund (RAB); amending s. 402.175, F.S.; revising duties of the Department of Children and Family Services with respect to such fund; providing definitions; requiring annual accounting; providing for rules; providing an effective date.

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

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

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

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

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

(a) "Individual trust" means a trust created with the model individual trust agreement by which the family of a developmentally disabled or mentally ill person contributes

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

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

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

10 (3)(2) The department shall cause to be established
11 ~~with a trust company which has its principal place of business~~
12 ~~in this state~~ an umbrella trust fund for the benefit of
13 developmentally disabled and mentally ill persons in this
14 state. Such trust shall be funded by:

15 (a) State appropriations.

16 (b) Grants and donations.

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

19 (4)(b)(3)(b).

20 (4)(3) In order to qualify for inclusion in the
21 umbrella trust fund, a family of a developmentally disabled or
22 mentally ill person which ~~that~~ establishes an individual trust
23 for the developmentally disabled or mentally ill person shall:

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

30 (b) Leave an irrevocable remainder interest from the
31 individual trust to the main umbrella trust except that any

1 remainder in excess of \$10,000 at the death of the
2 developmentally disabled or mentally ill person shall be
3 subject to the conditions set forth by the individual trust
4 agreement rather than the main umbrella trust.

5 (c) Have the individual trust administered by the
6 trustee of the umbrella trust fund.

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

10 ~~(5)(4)~~(a) Each developmentally disabled or mentally
11 ill person's income shall be derived from the funds available
12 in the individual trust and income therefrom.

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

18 ~~(6)(5)~~ The department shall by rule:

19 (a) Establish specific expenditure categories within
20 which the trustee may make disbursements.

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

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

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

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

7 (d) Establish additional rules pertaining to the
8 administration of expenditures from the individual trust and
9 the establishment of fees for administering the umbrella trust
10 fund.

11 ~~(7)(6)~~ The department shall contract for the
12 administration of the umbrella trust fund with a trust company
13 that will serve as trustee of the umbrella trust fund and has
14 its principal place of business in this state. Trustees shall
15 serve without compensation other than for the usual and
16 customary fees ~~charges~~ for similar administration of trusts of
17 a like amount. Administration fees shall be deducted from the
18 income on the umbrella trust fund prior to the quarterly
19 income distribution.

20 ~~(8)(7)~~ The trustee shall:

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

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

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

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

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

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

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

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

19 Section 2. This act shall take effect upon becoming a
20 law.

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22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 Senate Bill 1152

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26 - Removes the language authorizing the Department of
Children and Family Services from acting as trustee.
27 - Adding language to provide that administration fees shall
28 be deducted from the income on the umbrella trust fund
prior to the quarterly income distribution.
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