

CHAPTER 98-115

Committee Substitute for Senate Bill No. 1152

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

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

(c) “Umbrella trust fund” means the main umbrella trust and the individual trusts.

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

(a) State appropriations.

(b) Grants and donations.

(c) The remainder interest left to the umbrella trust by the individual trusts as provided by paragraph ~~(4)(b)~~(3)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8)(7) The trustee shall:

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

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

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

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

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

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

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

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

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

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.