

SENATE, No. 2237

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 17, 1997

By Senators BASSANO, CONNORS and Lipman

1 AN ACT concerning placement trusts for persons with developmental
2 disabilities, amending R.S.30:4-63, and amending and
3 supplementing P.L.1985, c.424.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 9 of P.L.1985, c.424 (C.3B:11-27) is amended to read
9 as follows:

10 9. a. The board may retain paid staff as it may deem necessary to
11 provide follow-along services to the extent required by each
12 beneficiary. The board may authorize the expenditure of funds for any
13 goods or services which, in its sole discretion, it determines will
14 promote the well-being of any beneficiary, including recreational
15 services. The board may pay for the burial of any beneficiary. The
16 board, however, may not expend funds for any goods or services of
17 comparable quality to those available to any particular beneficiary
18 through any governmental or charitable program, insurance, or other
19 sources. The board may expend funds to meet the reasonable costs of
20 administering the community trust.

21 The board is not required to provide services to a beneficiary who
22 is a competent adult and who has refused to accept the services.
23 Further, the board shall not provide services of a nature or in a manner
24 that would be contrary to the public policy of this State at the time the
25 services are to be provided. In either case, the board may offer
26 alternative services that are consistent with the purposes of this act
27 and in keeping with the best interests of the beneficiary.

28 The board may accept appointment as guardian of the person,
29 guardian of the estate or guardian of both on behalf of any beneficiary.
30 If the board accepts appointment as guardian of the person of an
31 individual, it shall assign a staff member to carry out its responsibilities
32 as the guardian. The board may, on request, offer consultative and
33 professional assistance to an individual, private or public guardian of
34 any of its beneficiaries.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 b. Notwithstanding any law to the contrary, the board is authorized
2 to enter into an agreement with the Division of Developmental
3 Disabilities in the Department of Human Services, pursuant to rules
4 and regulations adopted by the Commissioner of Human Services, to
5 transfer trust funds to the division in return for the division's
6 acceptance and use of these funds, subject to appropriation by the
7 Legislature, to fund the cost of an appropriate residential functional
8 services placement and, if a day program is needed, the cost of an
9 appropriate day program, for a designated person who is a beneficiary
10 of the community trust or any other person eligible for division
11 services. The agreement may provide that if the transferred trust funds
12 have been exhausted or are not presently necessary for funding the
13 residential functional services placement and day program, if any, the
14 division shall grant these placements the same priority in the
15 apportionment of its legislative appropriations as a residential
16 functional services placement and day program funded by the State.
17 The division may require the transfer of funds to be irrevocable. The
18 division shall place all funds received pursuant to this subsection in the
19 Placement Trust Fund as required by paragraph (3) of subsection b.
20 of R.S.30:4-63, subject to the terms and conditions set forth therein.
21 (cf: P.L.1985, c.424, s.9)

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23 2. R.S.30:4-63 is amended to read as follows:

24 30:4-63. a. The court may, after final hearing, commit any patient
25 to any State or county psychiatric institution irrespective of the
26 patient's legal settlement where provision is made for his care and
27 maintenance, in an amount approved by the State Board of Human
28 Services or by the board of chosen freeholders, as the case may be.
29 The patient may remain as a full paying patient in such institution as
30 long as such sum shall be regularly paid out of the estate of such
31 patient, or by the person or persons chargeable by law with his care
32 and maintenance, or under contract. In the event that such sum cannot
33 be paid because of a change in the financial circumstances of the
34 patient or his legally responsible relatives then the court may make
35 such order as may be necessary with regard to the manner and the
36 amount of maintenance which shall be paid on behalf of the patient and
37 by whom.

38 b. (1) The department may admit a person found eligible for
39 functional services from the Division of Developmental Disabilities to
40 a residential functional services placement irrespective of the person's
41 legal settlement if provision is made for the payment of the full cost of
42 the person's care and maintenance, in an amount approved by the State
43 Board of Human Services. The person may remain as a full paying
44 person in the residential functional services placement, or in another
45 residential functional services placement deemed appropriate by the
46 department, as long as the full per capita amount for the placement is

1 regularly paid from the person's income, benefits, assets, resources or
2 estate, or by the person chargeable by law or under contract with his
3 care and maintenance.

4 (2) If an eligible person, legal guardian, legally responsible relative
5 or other interested person has created a placement trust pursuant to
6 section 3 of P.L. , c. (C.)(pending before the Legislature as this
7 bill), the division may enter into an agreement with the trustor, trustee
8 or beneficiary pursuant to rules and regulations adopted by the
9 Commissioner of Human Services, to accept and use, subject to
10 appropriation by the Legislature, the proceeds of the trust to pay the
11 cost of an appropriate residential functional services placement for a
12 designated person or any other person eligible for division services,
13 and if a day program is needed, the cost of an appropriate day
14 program. The agreement may provide that the transfer of funds is
15 irrevocable and that if the placement trust funds are not presently
16 necessary for funding the cost of the residential functional services
17 placement and day program, if any, the division shall grant these
18 placements the same priority in the apportionment of its legislative
19 appropriations as a residential functional services placement and day
20 program funded by the State.

21 (3) The division shall place all funds received pursuant to
22 paragraph (2) of this subsection, subsection c. of this section,
23 subsection b. of section 9 of P.L.1985, c.424 and section 3 of
24 P.L. , c. (C.)(pending before the Legislature as this bill) in a
25 special dedicated non-lapsing fund in the General Fund known as the
26 Placement Trust Fund, which shall be administered by the State
27 Treasurer. The Legislature may annually appropriate from the
28 Placement Trust Fund an amount necessary to pay the cost of
29 residential functional services placements and day programs, if
30 needed, for persons eligible for division services. Monies remaining
31 in the Placement Trust Fund and any unexpended balance of
32 appropriations from the Placement Trust Fund at the end of each fiscal
33 year shall be reappropriated for the purposes of the Placement Trust
34 Fund. All interest earned on the fund shall be credited to the
35 Placement Trust Fund.

36 c. If a person transfers funds sufficient to pay the cost of care and
37 maintenance to the division through methods, including, but not
38 limited to, contribution, gift, bequest or assignment or designation of
39 life insurance proceeds or other similar methods for the benefit of a
40 designated person or any other person eligible for division services, the
41 department may admit the designated person or other person eligible
42 for functional services from the Division of Developmental Disabilities
43 to a residential functional services placement and an appropriate day
44 program, if needed, irrespective of the person's legal settlement,
45 pursuant to rules and regulations adopted by the Commissioner of
46 Human Services. The division is authorized to accept the transfer and

1 may require it to be irrevocable. The division shall place all funds
2 received pursuant to this subsection in the Placement Trust Fund as
3 required by paragraph (3) of subsection b. of this section, subject to
4 the terms and conditions set forth therein.

5 (cf: P.L.1995, c.155, s.17)

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7 3. (New section) A person may create a placement trust for the
8 purpose of accruing sufficient funds to pay the cost of an appropriate
9 residential functional services placement and, if a day program is
10 needed, the cost of an appropriate day program, for a person eligible
11 for services from the Division of Developmental Disabilities in the
12 Department of Human Services. The trustor may establish terms
13 governing the operation of the trust, including the designation of the
14 division as beneficiary of the trust, which provide for a transfer of
15 funds to the division from the proceeds of the trust sufficient to fund
16 the cost of a residential functional services placement and day
17 program, if needed, for a designated person or any other person
18 eligible for division services .

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20 4. The Commissioner of Human Services shall adopt rules and
21 regulations pursuant to the "Administrative Procedure Act,"
22 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of
23 this act.

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25 5. This act shall take effect immediately.
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28 STATEMENT

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30 This bill establishes placement trusts for persons with
31 developmental disabilities and allows the Division of Developmental
32 Disabilities in the Department of Human Services to accept the
33 transfer of funds from placement trusts, community trust funds, or
34 from other methods, including contributions, gifts, bequests or
35 assignments or designations of life insurance proceeds, to pay for
36 residential functional services placements and day programs for a
37 designated person or any other person eligible for division services.
38 Also, the bill specifies that the transfer of funds may be irrevocable in
39 order to assure that the division will receive the funds once there has
40 been an agreement to provide the services at a future point.

41 This bill allows the division to work collaboratively with families
42 to provide a service at a mutually agreed upon point in time and,
43 therefore, should provide a family with some peace of mind concerning
44 their loved one. Also, the bill allows a family to pay directly for the
45 cost of residential care for a fixed period of time, but the family does
46 not have the burden of locating a placement on their own.

1 For community trust funds, the board administering the funds may
2 enter into an agreement with the division to transfer trust funds to the
3 division in return for the division's acceptance and use of these funds,
4 subject to appropriation by the Legislature, to fund the cost of an
5 appropriate residential functional services placement and, if a day
6 program is needed, the cost of an appropriate day program for a
7 designated person who is a beneficiary of the community trust or any
8 other person eligible for division services. The agreement may
9 stipulate that if the funds have been exhausted or are not presently
10 necessary for funding the placement and day program, the division
11 shall grant these placements the same priority in the apportionment of
12 its legislative appropriations as those placements funded by the State.

13 The bill provides that a person may create a placement trust for the
14 purpose of accruing sufficient funds to pay the cost of an appropriate
15 residential functional services placement and, if a day program is
16 needed, the cost of an appropriate day program. The division may
17 enter into an agreement with the trustor, trustee or beneficiary,
18 pursuant to rules and regulations adopted by the Commissioner of
19 Human Services, to accept and use, subject to appropriation by the
20 Legislature, the proceeds of the trust to pay the cost of an appropriate
21 residential functional services placement and a day program, if needed,
22 for a designated person or any other person eligible for division
23 services. The agreement may provide that if the trust funds are not
24 presently necessary for funding the placement and day program, if any,
25 the division shall grant these placements the same priority in the
26 apportionment of its legislative appropriations as those placements
27 funded by the State.

28 The division shall place all funds received pursuant to this bill in a
29 special dedicated non-lapsing fund in the General Fund, known as the
30 Placement Trust Fund, which shall be administered by the State
31 Treasurer. The Legislature may annually appropriate from the
32 Placement Trust Fund an amount necessary to pay the cost of
33 residential functional services placements and day programs for
34 persons eligible for division services. Monies remaining in the fund
35 and any unexpended balance of appropriations at the end of each fiscal
36 year shall be reappropriated for the purposes of the Placement Trust
37 Fund. Also, all interest earned on the fund shall be credited to the
38 Placement Trust Fund.

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43 Establishes placement trusts for persons with developmental
44 disabilities.