

5122-22-01 Trusts for supplemental services.

(A) Purpose

The purpose of this rule is to define those supplemental services that may be provided through a trust and to establish standards for the maintenance and distribution to a beneficiary of assets of a trust authorized by section 5815.28 of the Revised Code.

(B) Applicability

This rule applies to the maintenance and distribution of assets from trusts authorized by section 5815.28 of the Revised Code for mentally ill Ohio residents dependent upon public assistance for subsistence, for the payment of rehabilitative, supplemental services without jeopardizing the beneficiaries' public assistance.

(C) Definitions

- (1) "Ascertainable standard" means 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.
- (2) "Department" means the Ohio department of mental health and addiction services.
- (3) "Disability" has the same meaning as in section 5815.28 of the Revised Code.
- (4) "Guardian" means a guardian of the person, limited guardian, interim guardian, or emergency guardian pursuant to the appointment of the probate court under Chapter 2111. of the Revised Code.
- (5) "Supplemental services" means services specified in paragraph (D) of this rule that are provided to an individual with a disability in addition to services he is eligible to receive under programs authorized by federal or state law.
- (6) "Supplemental services fund" means the fund created in the state treasury pursuant to section 5119.51 of the Revised Code.
- (7) "Supplemental services trust" means a trust created pursuant to section 5815.28 of the Revised Code for the purpose of providing supplemental services to an individual with a mental disability.
- (8) "Protective service" means performance of the duties of a guardian, trustee, or conservator, with respect to a person with mental illness.
- (9) "Conservator" means a conservator of the person pursuant to an appointment by a probate court under Chapter 2111. of the Revised Code.
- (10) "Board" means has the same meaning as community mental health board (CMH) or board of alcohol, drug addiction and mental health services (ADAMH) as defined in Chapter 340. of the Revised Code.

(D) Supplemental services

- (1) Supplemental services are expenditures, items or services which meet the following criteria:
 - (a) The services are in addition to services an individual with a disability is eligible to receive under programs authorized by federal or state law or regulations, and the services do not supplant services which would otherwise be available without the existence of the trust;
 - (b) The services are in addition to basic necessities for such items as essential food, clothing, shelter,

education and medical care, and the services are in addition to other items provided pursuant to an ascertainable standard; and

- (c) The services are paid for with funds distributed pursuant to a trust which meets the requirements of section 5815.28 of the Revised Code or with funds distributed from the supplemental services fund created in section 5119.51 of the Revised Code, and the services would not be available without payment from the trust or fund.

(2) Supplemental services which meet the criteria outlined in paragraph (D)(1) of this rule may include, but are not limited to, the following:

- (a) Reimbursement for attendance at or participation in recreational or cultural events;
- (b) Travel and vacations;
- (c) Participation in hobbies, sports or other activities;
- (d) Items beyond necessary food and clothing (e.g., funds for dining out occasionally, for special foods periodically delivered, or for an article of clothing such as a coat which is extra but which is desirable because it is newer, more stylish, etc.);
- (e) Cosmetic, extraordinary, experimental or elective medical or dental care, if not available through other third party sources;
- (f) Visiting friends, companionship;
- (g) Exercise equipment, or special medical equipment if not available through other third party sources;
- (h) The cost differential between a shared room and a private room;
- (i) Equipment such as telephones, cable television, televisions, radios and other sound equipment, and cameras for private use by the individual;
- (j) Membership in clubs such as book clubs, health clubs, record clubs;
- (k) Subscriptions to magazines and newspapers;
- (l) Small, irregular amounts of personal spending money, including reasonable funds for the occasional purchase of gifts for family and friends, or for donations to charities or churches;
- (m) Advocacy;
- (n) Services of a representative payee or conservator if not available through other third party sources;
- (o) Guardianship or other protective service listed in paragraph (C)(9) of this rule;
- (p) Someone other than mental health community support staff members to visit the individual periodically and monitor the services he receives;
- (q) Intervention or respite when the person is in crisis if not available through other third party sources;
- (r) Vocational rehabilitation or habilitation, if not available through other third party sources;
- (s) Reimbursement for attendance at or participation in meetings, conferences, seminars or training sessions;

- (t) Reimbursement for the time and expense for a companion or attendant necessary to enable the individual to access or receive supplemental services including, but not limited to, travel and vacations and attendance at meetings, conferences, seminars, or training sessions;
- (u) Items which medicaid and other governmental programs do not cover or have denied payment or reimbursement for, even if those items include basic necessities such as physical or mental health care or enhanced versions of basic care or equipment (e.g., wheelchair, communication devices), and items which are not included for payment by the per diem of the facility in which the beneficiary lives; and
- (v) Other expenditures used to provide dignity, purpose, optimism and joy to the beneficiary of a supplemental services trust.

(3) Supplemental services also specifically include expenses for burial and related services for an individual, not otherwise paid for, and in an amount not to exceed four thousand five hundred dollars. Such burial services may be purchased by the trustee in an irrevocable prepaid burial contract while the beneficiary is alive, or paid by the trustee after the death of the beneficiary.

(E) Standards for maintenance of the trust

- (1) Upon creation of the trust, the trustee shall notify the director's office of the department of the creation of the trust, the situs of the assets, the probate court or court of common pleas that exercises jurisdiction over the trust, and the case/docket number of the case in that court.
- (2) It shall not be necessary for the trustee to submit reports to the department concerning the status of the trust or distributions made from the supplemental services trust until the death of the beneficiary of the trust. The trustee shall make such reports as otherwise required by statute or the relevant court.
- (3) The trust may confer discretion upon the trustee and may contain specific instructions or conditions governing the exercise of the trustee's discretion.
- (4) The department shall not impose any limitation as to the suitability of placing trust assets into different types of investments beyond that established by the trust instrument itself and any further requirements imposed by the court that has jurisdiction over the trust.
- (5) Multiple trusts for the same beneficiary may be combined for purposes of administrative convenience pursuant to section 1339.67 of the Revised Code. Reformation of the trust shall be at the discretion of the court that has jurisdiction over the trust and in accordance with applicable law.
- (6) The limitation imposed upon the amount of the trust by section 5815.28 of the Revised Code applies only to the initial funding of the trust. Trust assets, including interest, may be retained and accumulated beyond the amount of the statutory limitation imposed at the time of the creation of trust.
- (7) If the trust is funded to the maximum amount of the statutory limitation in section 5815.28 of the Revised Code at the time of its creation, the person who created the trust (i.e., the settlor) may not later add subsequent or periodic additional amounts to the trust by other arrangements such as other trust instruments or policies of insurance unless the original trust assets are entirely depleted, and then no more than the amount of the original trust corpus.
- (8) Parties other than the settlor who have no obligation to support the beneficiary may add funds to an established supplemental services trust by means of gift, bequest or otherwise without limitation as to amount. Such funds, once added, shall not later be subject to withdrawal by the party which provided

those funds.

- (9) The trustee shall carry a bond or other form of insurance payable from trust assets to guarantee against any possible loss of trust assets unless specifically waived by the settlor or waived by law. The bond or other insurance shall be equal to the value of the trust assets.
- (10) The trustee shall not commingle assets of a supplemental services trust with his own assets or with the assets of any other person or entity. However, trust assets or more than one supplemental services trust for more than one beneficiary, or trust assets from more than one trust created by the same settlor, may be combined as long as a bookkeeping system or computer records can be used to determine the amounts of principal and interest available and earned by each beneficiary or each trust at any time upon reasonable notice.
- (11) Trusts which were in existence prior to the passage of section 5815.28 of the Revised Code shall not be deemed to qualify as a supplemental services trust.

(F) Standards for distribution of the trust

- (1) During the lifetime of the beneficiary, the trustee shall:
 - (a) Avoid any expenditures which would jeopardize the beneficiary's eligibility for medicaid, supplemental security income (SSI), or other forms of public assistance;
 - (b) Expend trust assets only for supplemental services as defined in this rule;
 - (c) Whenever possible, pay directly for the supplemental services and not give funds directly to the beneficiary to make such payments. However, the trustee may distribute small, irregular amounts of personal spending money directly to the beneficiary, especially when the beneficiary is capable of managing small amounts of cash or is learning about the use of money pursuant to his individual treatment plan;
 - (d) Attempt to obtain a written denial of payment from medicaid or other third party payor when there is a doubt whether a particular service qualifies as a supplemental service; and
 - (e) When a provider of housing is receiving a per diem payment for items or services which otherwise might qualify as a supplemental service, attempt to ascertain the unavailability of other funds for that purpose prior to making an expenditure.
- (2) The beneficiary of a supplemental services trust shall not have any authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, to make payments from principal or income, or to convert trust assets into cash, whether pursuant to an ascertainable standard or otherwise.
- (3) Upon the death of the beneficiary, the trustee shall:
 - (a) Notify the court that has jurisdiction over the trust and the director's office of the department of the death of the beneficiary;
 - (b) Ensure that burial expenses for the beneficiary have been paid to the extent allowed in paragraph (D)(3) of this rule;
 - (c) Submit a portion (at least fifty per cent) of the remaining trust assets pursuant to the terms of the trust to the state treasurer for deposit to the supplemental services fund for individuals with mental illness

or disability;

(d) Notify the director's office of the department that such payment has been made to the state treasurer and the amount of such payment; and

(e) Distribute the remaining trust assets pursuant to the terms of the trust and the direction of the court that has jurisdiction over the trust.

(4) The trustee shall have the authority to pay all taxes, assessments, costs and other expenses arising in connection with the administration of the trust estate, including reasonable compensation to the trustee, its agents and attorneys, upon approval by the court that has jurisdiction over the trust.

(G) In the event it is determined by a state or federal court, the social security administration, the department of health and human services or another federal agency that any expenditures from a supplemental services trust would render a beneficiary ineligible for supplemental security income (SSI), medicaid or similar programs and thus defeat the purpose of this rule and the enabling legislation, the trustee shall terminate the trust and distribute the trust assets in a manner that ensures the beneficiary's continued eligibility for supplemental security income (SSI), medicaid or similar programs. In such event, the trustee is required to submit an amount equal to the disbursements made on behalf of the beneficiary for medical care by the state from the date the trust vests, but not more than fifty per cent of the trust corpus to the state treasurer for deposit to the supplemental services fund.

(H) Distribution of funds from the supplemental services fund.

(1) Two months prior to the end of each fiscal year, the department, after consulting with the boards of alcohol, drug abuse and mental health services, boards of community mental health, provider organizations and constituent organizations that represent consumers of mental health services and their families, shall determine whether sufficient funds exist in the supplemental services fund created in section 5119.51 of the Revised Code to justify distribution. If the department determines that there are sufficient funds in the supplemental services fund, the department shall distribute those funds or a portion thereof to boards of alcohol, drug abuse and mental health services, or boards of community mental health according to an allocation formula determined by the department.

(2) A board which receives funds from the supplemental services fund shall distribute those funds only for supplemental services as defined in paragraph (D) of this rule and pursuant to the standards for distribution as delineated in paragraph (F) of this rule.

(3) Eligibility for distribution shall not be determined upon the basis of living environment, age, or marital status. In order to be eligible for payment by a board under this rule, the individual must reside in the county served by the board and must be eligible to receive services from the board.

(4) An individual who is a beneficiary of a supplemental services trust established pursuant to this rule is not eligible for payments by a board under the supplemental services fund unless the supplemental services trust funds have been totally expended. Unless the allocation of a board is less than two thousand dollars, no more than one-tenth of a board allotment from the supplemental services fund shall be expended for the benefit of any one individual unless specifically approved by the board.

(5) Requests for distributions may be submitted by an eligible individual, or on behalf of an eligible individual by the individual's guardian, family member, advocate, community support program worker, or other interested party.

(6) The board shall not be required to make payments under this rule that exceed the amount of funds

received from the supplemental services fund.

- (7) No administrative costs may be taken by the department, a board or its contract agency from the allocation of supplemental services funds.
- (8) The board shall submit a written annual report to the department on forms provided by the department by the fifteenth of August of each year after the fiscal year in which funds were received from the supplemental services fund, or for years in which there was a carry-over from funds received in prior fiscal years. A board which received an allocation from the supplemental services fund but failed to submit the required report shall not be eligible for subsequent allocations until the report is submitted.
- (9) The board shall provide information to persons, families and agencies in the community to make them aware of the supplemental services program.
- (10) The state treasurer may receive and accept funds for deposit into the supplemental services fund by way of gift, bequest or otherwise in addition to funds received pursuant to the operation of sections 5815.28 and 5119.51 of the Revised Code. All assets shall be distributed from the supplemental services fund pursuant to this rule, no matter what their source.