Revised
Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL:	**Sub. H. B. 59**	DATE:	**June 22, 1999**
STATUS:	**As Reported by Senate Judiciary**	SPONSOR:	**Rep. Womer Benjamin**
LOCAL IMPACT STATEMENT REQUIRED:	**No —**		**No local cost**
CONTENTS:	**Revises the probate laws**		

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Unknown increase	Unknown increase	Unknown and growing increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- By creating additional trust avenues, new opportunities are created for assets to be set aside and not affect Medicaid eligibility, and result in additional costs to the Medicaid program and ultimately the state's GRF. These costs would likely grow over time.

Local Fiscal Highlights

- No direct fiscal effect on local governments.

Detailed Fiscal Analysis

The bill would make several changes to Ohio's Probate Laws, which will have no direct fiscal effect on either the state or local governments. Provisions in the bill regarding trusts, wills and the determination of present values in probate matters do not have direct fiscal effects upon any unit of government in Ohio. The main focus of the bill is to set probate law in conformity with Ohio's Estate Tax Law. However, the provision regarding inter vivos trusts will have the following effects.

Health Care/Medicaid – Ohio Department of Human Services

The bill allows the creation of inter vivos trusts for the benefit of physically or mentally disabled, Medicaid eligible individuals, and further requires that such trusts shall not render the individual ineligible for Medicaid or other benefits through the Department of Human Services. In addition, the bill exempts inter vivos trusts from claims of political subdivisions, the state and other governmental entities, and limits the current law pay back provision, (which allows the state to recover costs associated with Medicaid from the remainder of the funds in the trust) to testamentary trusts.

According to the Department of Human Services, while current law allows for Ohioans with disabling conditions to qualify for Medicaid without first having to utilize their assets, current law also requires the recovery of costs. There are currently several hundred eligible trusts for current Medicaid consumers, and anecdotal information indicates that more individuals with trusts under the current regulations are becoming eligible for Medicaid.

Thus the additional trust avenues would create new opportunities for assets to be set aside and not affect Medicaid eligibility for consumers who tend to be the most expensive to care for. In FY 1997, the annual average cost of caring for an adult with disabilities was $10,936, while a "disabled" individual who spends an entire year in an intermediate care facility for the mentally retarded could cost as much as $91,463. While it is difficult to predict consumer behavior, it would be possible for individuals to use the trust provisions to reduce the applicants' assets to become Medicaid eligible sooner, if they would otherwise have had too many assets to qualify; in addition to more persons becoming eligible. Resulting in an increase in Medicaid expenditures, and ultimately, costs to the GRF.

By limiting the recovery of Medicaid costs to testamentary trusts, assets could be placed in inter vivos trusts, and not be recovered. These assets, which would currently be used in lieu of Medicaid, or recoverable upon the death of the consumer, are exempted from pay back provisions of current law; hence, costs to the program would likely grow over time. The Department of Human Services provides the following examples to illustrate the impact of these changes:

Trust Scenarios under Sub. H. B. 59 - Highlights		
Scenario 1	Scenario 2	Scenario 3
Disabled adult - malpractice award	Mentally Retarded Adult - in an institution	Mentally Retarded Adult - in the community on an MR waiver
An adult is disabled during routine surgery and becomes eligible for Medicaid Home Care Waiver, the family files a malpractice lawsuit and is awarded $1.5 million in punitive damages. A disability trust could be created by the consumer which puts all or most of the award into the trust and funds can be distributed to provide for services not covered by Medicaid, such as clothing. Under current regulations a disability trust is created using the assets of the Medicaid consumers.	A trust could be created by the estate of the parents of a mentally retarded Medicaid consumer in a state developmental center for up to $200,000 to provide for supplemental services. When the consumer dies, only 50% of the value of the trust is subject to pay back. For example: if the consumer lives in the developmental center for 25 years at an average cost of $91,500 per year, the costs to the Medicaid program are $2.38 million.	A trust could be created by the estate of the parents of a mentally retarded Medicaid consumer living in the community on a MR waiver for up to $200,000 to provide for supplemental services not covered by Medicaid. When the consumer dies, only 50% of the value of the trust is subject to pay back. For example: if the consumer receives services for 25 years at an average cost of $48,084 per year, the costs to the Medicaid program are $1.25 million.
Current Law When the consumer dies there is a **pay back** provision which allows the state to recover costs associated with Medicaid from the remainder of the funds in the trust. For example: if the individual received an average of $35,000 in Medicaid services per year for 15 years the state could recover up to $525,000.	Current Law If at the time of death, the trust holds $195,000, with $97,500 subject to recovery. The state would recover $97, 500 with the remaining $97,500 to be distributed to any heirs or other parties.	Current Law If at the time of death, the trust holds $195,000, with $97,500 subject to recovery. The state would recover $97, 500 with the remaining $97,500 to be distributed to any heirs or other parties.
Amended Law The same disabled adult with the malpractice award could transfer the assets or have the award structured in such a way that they are awarded to another. Then, a trust would be created with some portion of the $1.5 million to provide the same services. However, the trust would not be subject to the pay back provisions. This means that the state does not recover any portion of the $525,000 because if the transfer is made, there is a period of ineligibility. In this example, it would mean that the state would not recover $420,000 because 3 years of care would not be covered.	Amended Law The same mentally retarded adult could have a trust created by anyone for the consumer without a limit and without the payback provisions, if the trust was not created by will. For these **inter vivos trusts** the state would not recover any funds.	Amended Law The same mentally retarded adult could have a trust created by anyone for the consumer without a limit and without the payback provisions, if the trust was not created by will. For these **inter vivos trusts** the state would not recover any funds

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