

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5919 (Substitute H-2 as passed by the House)
Sponsor: Representative Andrew Richner
House Committee: Family and Civil Law
Senate Committee: Families, Mental Health and Human Services

Date Completed: 9-27-00

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to revise provisions concerning guardians and conservators. The bill would do the following:

- Require a court to make separate findings on the record regarding the appointment of a guardian.
- Prohibit a court from granting a guardian the powers held by a patient advocate, except under certain circumstances.
- Provide that, as a rule, a guardian would not have the power to sell a ward's property.
- Require a court to include restrictions in letters of guardianship, or order a guardian to furnish a bond, if a ward's property needed protection.
- Require a guardian to file an inventory of a ward's estate, and an account of income and assets, if a conservator were not appointed and other conditions were met.
- Require a court to review a guardian's accounting or a conservator's account.
- Require a conservator to give a copy of an inventory and an account to a protected individual who could be found and was at least 14 years old and to interested persons.

The bill would take effect on January 1, 2001.

Findings of the Court

The Code allows a court to appoint a guardian if the court is satisfied by clear and convincing evidence that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the individual. The bill would require the court to find, rather than be satisfied, by clear and convincing evidence that the individual was incapacitated and that the appointment was necessary. Each finding would have to be supported separately on the record, and the form for recording findings would have to reflect the requirement for separate findings on these issues.

Patient Advocate

The bill would prohibit a court from granting a guardian the same powers that were held by a patient advocate under a designation pursuant to Section 5506 of EPIC, except as provided below. (Section 5506 provides for an individual's written designation of another person (the patient advocate) to exercise powers concerning care, custody, and medical treatment decisions for the individual making the designation (the patient), which may be exercised when the individual is unable to participate in medical treatment decisions.)

If the guardian's ward executed a patient advocate designation in compliance with Section 5506 and named a person other than the guardian as his or her patient advocate, for those time periods when the patient advocate's authority, rights, and responsibilities were effective as provided in Sections 5506 to 5512, the court could not grant and the guardian could not exercise a power that the designation gave to the patient

advocate regarding the ward's care, custody, or medical treatment. If, however, a petition for guardianship or for modification alleged and the court found that the patient advocate designation was not executed in compliance with Section 5506, that the patient advocate was not complying with the terms of the designation or of Sections 5506 to 5512, or that the patient advocate was not acting consistently with the ward's best interests, the court could modify the guardianship's terms to grant those powers to the guardian. (Sections 5507 to 5512 provide for the implementation of a patient advocate designation; the advocate's authority, rights, responsibilities, and limitations; the exercise of authority; revocation of the designation; a patient's current desire for care; and a pregnant patient.)

Property of a Ward

Under the bill, if a court determined that a ward's property needed protection, the court would have to order the guardian to furnish a bond or would have to include restrictions in the letters of guardianship as necessary to protect the property.

The bill specifies that, except as provided in Section 5407 or 5408, a court could not authorize a guardian to sell a ward's real property, and a guardian would not have the power to do so. (Section 5407 prescribes the powers of a court that may be exercised by or through a conservator in regard to a protected individual's estate and business affairs. Section 5408 authorizes a court, without appointing a conservator, to accomplish a protective arrangement or transaction if a basis exists for affecting an individual's property and business affairs, and authorizes the court to appoint a special conservator to assist the court.)

The Code requires a guardian to report the condition of a ward and the ward's estate that is subject to the guardian's possession or control, as required by the court but not less often than annually. The bill would delete reference to the ward's estate.

Under the bill, if a conservator were not appointed for a ward, the guardian were not an individual related to the ward or a tax-exempt entity, and the guardian had control of any of the ward's estate, the guardian would have to prepare and file with the appointing court a complete inventory of the estate subject to the guardianship, within 63 days after appointment.

If a conservator were not appointed for a ward and the guardian were not an individual related to the ward or a tax-exempt entity, the guardian would have to file an account with the court of all income and assets in the guardian's control. The guardian would have to file this report as required by the court, but not less than annually. The court, or staff assigned by the court, would have to review the accounting.

If a guardian were not otherwise required to file an inventory or account, the court could order the guardian to prepare and file an inventory or account at the court's discretion.

Conservator's Inventory

Under EPIC, a conservator must prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship. The conservator also must give a copy of the inventory to the protected individual if he or she can be located, is at least 14 years old, and has sufficient mental capacity to understand the arrangement. The bill would delete reference to sufficient mental capacity.

The conservator also would have to give a copy of the inventory to the interested persons who were listed on the original or an amended petition for the conservator's appointment and (as currently required) to a parent or guardian with whom the protected individual resided.

Conservator's Account

The Code requires a conservator to account to the court for administration of a trust at least annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator must account to the court or to the individual or his or her successors.

The bill would require the court, or staff assigned by the court, to review an account. The conservator would have to provide a copy of an account to the protected individual if he or she could be located and were 14 years old or older, to the interested persons who were listed on the original or an amended petition for the conservator's appointment, and to a parent or guardian with whom the protected individual resided.

MCL 700.5306 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government.

Fiscal Analyst: B. Bowerman