



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 49 (as reported without amendment)
Sponsor: Senator Darwin L. Booher
Committee: Judiciary

Date Completed: 1-31-17

RATIONALE

Article 5 of the Estates and Protected Individuals Code (EPIC) deals with the protection of individuals and their property. It authorizes the probate court to appoint or approve a professional guardian or professional conservator, as appropriate, if the court finds that the appointment is in the best interests of the ward, developmentally disabled individual, incapacitated individual, or protected individual, and that there is no other person who is competent, suitable, and willing to serve in that fiduciary capacity. The Code prohibits a professional guardian or conservator from collecting a benefit other than the statutorily authorized compensation for the type of service provided. Evidently, this restriction was meant to prevent an appointee from charging unreasonable or excessive costs and fees to the protected person's estate.

The need to appoint professional guardians and conservators reportedly has increased rapidly, as family members have become less likely than in the past to be willing or able to serve in those capacities. At least one county has developed a county office of public guardian to provide a professional guardian with office space and supplies as well as pay the public guardian a salary and benefits. There is some concern, however, that such an arrangement might violate the statutory prohibition against receiving additional benefits. It has been suggested that the provision should specifically restrict the receipt of extra benefits from the estate of the protected individual, enabling professional guardians and conservators to accept compensation from other sources.

CONTENT

The bill would amend the Estates and Protected Individuals Code to revise a provision prohibiting a court-appointed professional guardian or conservator from receiving a benefit beyond his or her authorized compensation.

The Code prohibits a professional guardian or professional conservator appointed under Article 5 from receiving, as a result of that appointment, a benefit beyond compensation specifically authorized for that type of fiduciary by EPIC or the Mental Health Code. Under the bill, the prohibition would limit the receipt of a benefit from the estate of the ward, developmentally disabled individual, incapacitated individual, or protected individual, and would apply unless the extra compensation was specifically allowed by the court.

The bill would take effect 90 days after its enactment.

MCL 700.5106

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Huron County, in Michigan's Thumb area, established the position of public guardian in December 1980. In 2016, Huron County's office of public guardian was restructured and the county now authorizes the office itself (rather than an individual public guardian) to serve as professional guardian and professional conservator for wards in the county. The head of that office is known as the public guardian and the office's caseworkers are recognized as assistant public guardians. Huron County provides the office with facilities and supplies, and each employee receives a salary and benefits as a county employee. The office evidently collects guardianship and conservatorship fees authorized by EPIC and the Mental Health Code to offset the county's costs in providing this public service. Reportedly, some other Michigan counties have established similar offices.

Although there has not been a challenge to the legality of Huron County's office of public guardian and the services it provides, it was pointed out that the provision of facilities and supplies and the payment of a salary and benefits to the public guardian and assistant guardians could be considered to violate the prohibition in Article 5 against receiving extra benefits. By prohibiting a professional guardian or conservator from receiving benefits from the *estate* of a protected individual beyond the compensation authorized for the type of fiduciary activity performed, the bill would legitimize the system in Huron County, and others like it, by enabling appointees to accept compensation from other sources. This restriction also would reinforce protection of the estate. In addition, the bill would accommodate the arrangement in Huron County and elsewhere by indicating that the prohibition would apply *except* as allowed by the court.

Supporting Argument

According to the testimony of a retired probate judge before the Senate Judiciary Committee, the need for guardians and conservators to assist legally incapacitated individuals is rising and, increasingly, family members are either not available or not able to serve in that capacity. This results in a growing demand for professional guardianship and conservatorship services. Private practice attorneys, who typically may provide those services, are becoming less willing to do so, however, because of the limited fees that may be charged under the law. The Huron County model of establishing and operating a public guardian office is an appropriate and efficient way to address the shortage of guardians and conservators. Professional guardians and conservators are an essential link in the chain of social services that are provided to developmentally disabled individuals and others who are legally incapacitated. The bill would provide a tremendous benefit to individuals protected by this area of the law.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.