



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 49 (as enacted)
Sponsor: Senator Darwin L. Boohar
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 136 of 2017

Date Completed: 11-6-17

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 is meant to prevent an appointee from charging unreasonable or excessive costs and fees to the protected person's estate, but it could be problematic in some situations.

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 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. Some people raised concerns, however, that such an arrangement might violate the statutory prohibition against receiving additional benefits. It was suggested that the provision should specify that it would not prevent a guardian or conservator from receiving compensation or other benefits from a source other than the estate of the protected individual.

CONTENT

The bill amends 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 will not prevent a person from providing compensation or other benefits, from a source other than the estate of the ward, developmentally disabled individual, incapacitated individual, or protected individual, to an appointed or approved professional guardian or conservator.

The bill also provides that, if an appointed or approved professional guardian or conservator receives or is to receive compensation or other benefits as a result of that appointment from a person other than the State, a political subdivision of the State, or a trust created under Section 5407(2), the guardian or conservator must file with the appointing or approving court a written statement of the compensation or other benefits received or to be received, in a form and in a manner prescribed by the Michigan Supreme Court. The guardian or conservator must serve a copy of the form on the ward, developmentally disabled individual, incapacitated individual, or protected individual, and on interested persons.

(Section 5407(2) specifies powers that a court may exercise directly or through a conservator with respect to a protected individual's estate and business affairs. These include the power to create a revocable or irrevocable trust of estate property that may extend beyond the disability or life of the individual.)

The bill will take effect on January 24, 2018.

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 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 evidently 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 specifying that the prohibition does not prevent a person from providing compensation or benefits from a source other than the estate of the person for whom a professional guardian or conservator was appointed, the bill will legitimize the system in Huron County, and others like it, by enabling appointees to accept compensation from other sources. This restriction, as well as the requirement to file a statement with the court, also will reinforce protection of the estate.

Supporting Argument

According to the testimony 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. As a result, there is 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 will provide a great benefit to individuals protected by this area of the law.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will 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.