

Legislative Analysis



PROTECTIONS FOR INDIVIDUALS WITH GUARDIAN OR CONSERVATOR

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House Bill 4619

Sponsor: Rep. Kate Segal

Committee: Senior Health, Security, and Retirement

Complete to 3-22-10

A SUMMARY OF HOUSE BILL 4619 AS INTRODUCED 3-18-09

The Estates and Protected Individuals Code establishes the rules for when a guardian may be appointed to take care of an individual and when a conservator may be appointed to take care of an individual's financial affairs. A person can have both a guardian and a conservator appointed. Generally speaking, a guardian is appointed when a finding is made by a court that a person is legally incapacitated—that is, unable to make informed decisions about his or her own care and custody. During the process to determine if an individual is legally incapacitated, a guardian ad litem is appointed to represent the best interests of the individual in question if the individual does not already have legal counsel. A person who has had a guardian assigned is referred to as a "ward" and a person who has had a conservator appointed is referred to as a "protected individual."

House Bill 4619 would amend the Estates and Protected Individuals Code (MCL 700.5305) to put in place additional safeguards to protect certain assets of wards and protected individuals.

In addition to the current duties of a guardian ad litem (GAL) appointed for an individual alleged to be incapacitated, the bill would add require the GAL to ask the individual and the petitioner for guardianship about the amount of cash and property readily convertible into cash that is in the individual's estate (liquid assets). An estimate of those assets would have to be included in the report that GALs are required to prepare for the court.

Under the bill, if a court determined that the total amount of cash and property readily convertible into cash exceeded the limit for administering a small estate (under Section 3982 of EPIC), or if the court determined that financial protection was required for the ward for another reason, a court could order the guardian to petition for the appointment of a conservator or for another protective order for the ward's estate. If a conservator has not been appointed for a ward's estate, and the guardian determined that there were more liquid assets in the ward's estate than was reported by the guardian ad litem, the guardian would have to report the amount of the additional cash or property to the court.

A guardian ad litem must make numerous determinations. The determinations must be included in the report the GAL prepares for the court. The bill would revise one of the required determinations. Currently, the GAL must determine whether there are one or more appropriate alternatives to the appointment of a full guardian. The code lists as

alternatives the appointment of a limited guardian; appointment of a conservator or another protective order; or execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney. The bill would require the GAL to also determine whether one or more actions should be taken in addition to the appointment of a guardian, and would require the GAL to consider the appropriateness of at least each of the listed alternatives described above as alternatives or additional actions to the appointment of a guardian. Also, in determining whether the appointment of a conservator or another protective order is appropriate, the guardian ad litem would have to include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

FISCAL IMPACT:

House Bill 4619 will have an indeterminate, but likely negligible, fiscal impact on the judicial branch

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