House
Legislative
Analysis
Section

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# GUARDIANS AND CONSERVATORS

**House Bill 5919 as enrolled**
**Public Act 312 of 2000**
**Sponsor: Rep. Andrew Richner**

**House Bill 5921 as enrolled**
**Public Act 313 of 2000**
**Sponsor: Rep. Gary Woronchak**

**First Analysis (10-5-00)**
**House Committee: Family and Civil Law**
**Senate Committee: Judiciary**



## *THE APPARENT PROBLEM:*

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 guardian may be appointed for a person who is legally incapacitated - that is, unable to make informed decisions about his or her own care and custody. The reasons for such inability are varied and can include mental deficiency, mental illness, physical illness or disability, or substance abuse. A person who has had a guardian assigned to care for him or her is referred to as a "ward." A person who has had a conservator appointed to take care of his or her money or property is referred to as a "protected individual." A conservator may be assigned to protect the money or property of a person who has been confined, has disappeared, or is legally incapacitated, or when a person due to age or infirmity specifically requests that a conservator be appointed on his or her behalf. A person can have both a guardian and a conservator appointed on his or her behalf. [It should also be noted that persons with developmental disabilities may also have guardians appointed to care for them; however, the provisions outlining when and how such guardianships may be established are contained in the Mental Health Code.]

While most guardians and conservators are friends or family members, there are a number of individuals and corporations that serve as professional fiduciaries, and there are also a number of public and volunteer guardians. While problems may arise in any situation where one person is given authority over the person or belongings of another, a myriad of abuses have been chronicled regarding the actions of certain professional guardianship companies. These abuses have ranged from the outright theft of money and property to neglect of the wards themselves. In 1996, in response to publicity over reports that a professional company appointed to act as guardian and/or conservator for its clients had mishandled the assets of more than 300 people in Wayne County, the Michigan Supreme Court established a task force to provide recommendations for improving the ability of trial courts to protect the rights and interests of those unable to protect themselves. The Task Force on Guardianships and Conservatorships released its report and recommendations on September 10, 1998. Legislation has been proposed to place some of those recommendations into statute.

## *THE CONTENT OF THE BILLS:*

Both bills would amend the Estates and Protected Individuals Code to provide certain regulations regarding guardians for incapacitated individuals, and both would take effect on July 1, 2001.

Under House Bill 5919, a patient advocate designation that was made prior to a court's determination of legal incapacity would bar that person's guardian from making medical treatment decisions that were granted to the patient advocate. If a court was aware that an incapacitated individual had properly executed a patient advocate designation, it could not grant patient advocate powers to that individual's guardian. Conversely, if a guardian was responsible for making medical treatment decisions, then the incapacitated individual could not designate someone else to make those decisions. However, even where a patient advocate designation had been made, a guardianship's terms could include patient advocate powers, if the petition for guardianship or a petition to modify an

existing guardianship alleged, and the court found, any of the following: 1) that the existing patient advocate designation had not been properly executed, 2) that the patient advocate was not meeting his or her responsibilities as an advocate, or 3) that the patient advocate was not acting in a manner that was consistent with the ward's best interests.

In addition, current law requires a conservator to file a complete inventory of a protected individual's estate within 63 days after his or her appointment as conservator. The bill would require the inventory to be filed within 56 days. Furthermore, the bill would require the conservator to provide a copy of this inventory and of the annual account to "interested persons" as that term is defined in the Michigan Court Rules and, to the protected individual, if he or she is 14 years of age or older and can be located.

[Note: The term "interested persons" does not appear to be defined within the Michigan Court Rules; however, MCR 5.205 contains a definition of the term "interested parties." That term specifies that the following parties are considered "interested" in a petition for the appointment of a conservator or for a protective order: (a) the person to be protected if 14 years of age or older, (b) the presumptive heirs of the person to be protected, (c) if known, a person named as attorney in fact under a durable power of attorney, and (d) the nominated conservator.]

The bill would also specify that the findings needed to support the appointment of a guardian -- that the person is incapacitated and that the appointment of a guardian is needed for that person's continuing care and supervision -- would have to be supported separately on the record. Further, if a court determined that a ward's property needed protection, the bill would require the court to include restrictions in the letters of guardianship to protect the property, or order the guardian to furnish a bond. Finally, current law also prohibits public or private agencies from being appointed as an individual's guardian where the agency would financially benefit from providing that individual's housing, medical, or social services. The bill would add to this list mental health services.

House Bill 5921 would amend the Estates and Protected Individuals Code to require a guardian to give a copy of his or her report about a ward to the ward and "interested persons." Under the code, a guardian must 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 than annually. The bill would require the guardian also to serve the report on the ward and the "interested persons" as specified in the Michigan Court Rules.

[Note: The term "interested persons" does not appear to be defined within the Michigan Court Rules; however, MCR 5.205 contains a definition of the term "interested parties." That term specifies that the following parties are considered "interested" in a petition for appointment of a guardian of an alleged legally incapacitated person: (a) the alleged legally incapacitated person, (b) if known, a person named as attorney in fact under a durable power of attorney, (c) the alleged legally incapacitated person's spouse, (d) the alleged legally incapacitated person's children or, if no child is living, the person's parents, (e) if no spouse, child, or parent is living, the presumptive heirs of the person, (f) the person who has the care and custody of the alleged legally incapacitated person, and (g) the nominated guardian.]

MCL 700.5306 et al.

## *FISCAL IMPLICATIONS:*

According to the House Fiscal Agency, House Bills 5919 and 5921 would have no impact on state or local government costs or revenues. (10-24-00)

## *ARGUMENTS:*

### *For:*

Michigan is apparently leading the nation in the number of assigned guardians. According to an article in the Detroit Free Press ( May 26, 2000), in the past 20 years the number of guardianships has quadrupled, to over 100,000. While Michigan is not the only state that has had problems with guardians, given the number of guardianships in the state it is important to provide for meaningful oversight. By requiring a guardian or conservator to report, not only to the court, but to the interested parties, the bills will increase the amount of oversight without placing an undue burden on guardians and conservators or on the court system. The heirs and family members will also be better situated than the court to notice discrepancies or other problems with these reports.

### *Against:*

The bills may not improve the lack of supervision and regulation that currently allows the unscrupulous to take advantage of the persons placed under their care. Requiring reports to be provided to an individual's family and heirs will only help where the individual has friends or family. Even then, the reports will be of

limited assistance. There is no guarantee that the friends and family will be able to learn anything from the reports. Often, the interested parties may not have sufficient understanding of the individual's status and finances to tell whether the guardian or conservator is stealing from the person under their care.



Analyst: W. Flory

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