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Senate Bill 863 (Substitute S-3 as reported by the Committee of the Whole)
Sponsor: Senator George Z. Hart
Committee: Families, Mental Health and Human Services

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to allow a court to appoint or approve a "professional guardian" or "professional conservator", as appropriate, as a guardian, limited or temporary guardian, or conservator under EPIC or as a plenary guardian or partial guardian under the Mental Health Code. "Professional guardian" would mean a person that provided guardianship services for a fee and that was appointed for three or more individuals, but would not include an individual who was related to all but two of the wards for whom he or she was appointed. "Professional conservator" would mean a person that provided conservatorship services for a fee and that was appointed for three or more protected individuals, but would not include an individual who was related to all but two of the protected individuals for whom he or she was appointed. The bill would take effect on June 1, 2001.

The bill would delete current authorization under EPIC for a court to appoint a nonprofit corporation or a corporation as a guardian, limited or temporary guardian, conservator, plenary guardian, or partial guardian. Instead, a court could appoint or approve a professional guardian or professional conservator. As currently provided regarding a corporation, the court could appoint a professional guardian or professional conservator only if the appointment were in the incapacitated individual's or protected individual's best interests and no other person were competent, suitable, and willing to serve in that fiduciary capacity.

A professional guardian would have to establish and maintain a visitation schedule so that an individual associated with the professional guardian who was responsible for the ward's care visited the ward within three months after the professional guardian's appointment and at least once within three months after each previous visit. In addition, a professional guardian would have to ensure that there were a sufficient number of employees assigned to the care of wards for the purpose of providing proper and appropriate care.

The Code specifically allows the court to appoint a competent person, including a nonprofit corporation whose primary function is to provide fiduciary services, as guardian of an incapacitated individual. The bill would delete reference to a nonprofit corporation. In appointing a guardian of an incapacitated individual, the court must appoint a person designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a person is not designated, or the person designated is not suitable or willing to serve, the court may appoint someone who is related to the incapacitated individual, in the following order of preference: 1) the individual's spouse; 2) an adult child of the individual; 3) a parent of the individual; 4) a relative of the individual with whom he or she has resided for more than six months before the filing of the petition; and 5) a person nominated by someone who is caring for the individual or paying benefits to him or her. If none of those persons is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve. The bill would allow the appointment of a competent person, including a professional guardian.

The Code allows the court to appoint an individual, a corporation authorized to exercise fiduciary powers, or a nonprofit corporation to serve as conservator of a protected individuals' estate. The bill would delete a nonprofit corporation from that authorization and add a professional conservator.

MCL 700.1106 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. The FY 2000-01 Family Independence Agency budget includes \$600,000 (80/20 Federal/State match) for guardianship contracts. Actual expenditures in FY 1998-99 totaled \$461,659. No Statewide data are available on current amounts paid by local units of government for guardians.

Date Completed: 11-14-00

Fiscal Analyst: B. Bowerman

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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.