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Senate Bill 863 (as introduced 10-28-99)
Sponsor: Senator George Z. Hart
Committee: Families, Mental Health and Human Services

Date Completed: 11-6-00

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to allow a court to appoint or approve a "professional fiduciary" 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 fiduciary" would mean a person or organization that provided fiduciary services for a fee to three or more unrelated individuals. The bill would take effect on April 1, 2000, which is the effective date of EPIC.

The Estates and Protected Individuals Code allows a court to appoint or approve as a guardian, limited or temporary guardian, or conservator under EPIC, or as a plenary guardian or partial guardian under the Mental Health Code, a nonprofit corporation whose primary function is to provide fiduciary services in the same manner as other fiduciaries under EPIC. This provision specifies that it may not be construed to make a person that is not a nonprofit corporation described in this manner ineligible to be appointed or approved as a fiduciary. The court may appoint a corporation only if it finds on the record that the appointment is in the ward's or developmentally disabled individual's best interests and another qualified, suitable person has not come before the court and expressed a willingness to serve in that fiduciary capacity.

The bill would delete this authorization for a court to appoint a nonprofit corporation or a corporation. Instead, a court could appoint or approve a professional fiduciary as a guardian, limited or temporary guardian, or conservator under EPIC, or as a plenary or partial guardian under the Mental Health Code. The court could appoint a professional fiduciary only if it found on the record that the appointment was in the respondent's best interests; there was no suitable individual willing to serve in that fiduciary capacity; and the professional fiduciary had agreed in writing to comply with all of the following as prescribed by statute or Supreme Court rule:

- All standards prescribed for that class of fiduciary.
- All court reporting requirements prescribed for that class of fiduciary, including accurately and completely divulging all fiduciary, attorney, accounting, and other professional fees.
- Providing to the State Court Administrative Office an annual report that included at least the number of individuals for whom the professional fiduciary served as a guardian or conservator; the number of employees providing those services; and a professionally audited income and expense record.

In addition, a professional fiduciary would have to agree in writing not to do any of the following:

- Petition a court for the appointment of a guardian or conservator.
- Commingle a ward's or protected individual's money with the professional fiduciary's money.
- Engage in a transaction with a conflict of interest, including a conflict of interest in the sale of real property.
- Offer or give a reward, monetary incentive, or kickback to a public official, public employee, or other person in return for being nominated or being appointed as a guardian or conservator or for favorable treatment by a public official, public employee, or other person.
- Solicit or accept a reward, monetary incentive, or kickback from a person in return for purchasing products or services, including health care and funeral services, for a ward or protected individual.
- Have an officer, executive, or principal of the professional fiduciary give a campaign contribution to

a judge or judicial candidate in the county or counties in which the person accepted fiduciary appointments by the court.

- Allow a public official or court employee to have an ownership interest in the professional fiduciary.

The Code also allows the court to appoint a competent person, including a nonprofit corporation whose primary function is to provide fiduciary services in the same manner as other fiduciaries under EPIC, 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, if suitable and willing to serve, 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 a person designated is not suitable or willing to serve, the court may appoint as guardian an individual who is related to the person who is the subject of the petition, in the following order of preference:

- The incapacitated individual's spouse.
- An adult child of the incapacitated individual.
- A parent of the incapacitated individual.
- A relative of the incapacitated individual with whom he or she has resided for more than six months before the filing of the petition.
- A person nominated by a person who is caring for the incapacitated individual or paying benefits to him or her.

If none of the persons listed above is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve. The bill specifies that the court could not find a professional fiduciary suitable to serve unless all of the following were true:

- The professional fiduciary had at least one employee exclusively assigned to the care of wards for each 25 individuals for whom it served as guardian.
- The professional fiduciary established and maintained a schedule of visitation so that an employee responsible for a ward's care visited the ward at least once each calendar month.
- The professional fiduciary had filed a bond that was at least the amount of collective annual income within its control for all individuals for whom it served as guardian.

(The Estates and Protected Individuals Code defines "protected individual" as a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in the Code. "Incapacitated individual" means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.)

MCL 700.1106 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills 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.

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.