

HOUSE RESEARCH

Bill Summary

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Overview

This bill makes several changes to the laws related to guardians and conservators, including establishing a bill of rights for wards and protected persons, and establishing procedures related to conflicts of interest for counsel representing a ward or protected person. The bill also clarifies a law related to reimbursement of a county for a child's cost of care.

Section

- 1 Cost of care.** Provides that a parent, custodian, or guardian is not required to use income and resources attributable to a child to reimburse a county for costs of care. The parent, custodian, or guardian is also not required to contribute to the county's cost of care of a child while the child is living at home.
- 2 Interested person.** Provides that an "interested person" for purposes of Minnesota's guardian and conservator laws includes a representative of the state ombudsman's office or a federal protection and advocacy program, so long as the representative has notified the court that it has a matter regarding the ward, protected person, or respondent.
- 3 Professionals.** Provides a definition of "professional guardian" and "professional conservator." A professional guardian or conservator is a person acting in that capacity for three or more individuals who are not related to the person by blood, adoption, or marriage.
- 4 Bill of rights for wards and protected persons.** Establishes certain rights that are guaranteed to a ward or protected person. These rights must be enforced by the court.
- 5 Judicial appointment of guardian.** Current law requires that a proposed ward be represented by counsel in an initial hearing to appoint a guardian, unless the proposed ward waives the right to counsel. This section requires that a waiver of the right to counsel be an informed decision, made in writing.

This section also requires that the counsel for a ward notify the court, ward, and any

interested persons if there is a risk that the counsel will have a conflict of interest between the ward and the guardian. If there is a risk of a conflict of interest, new counsel must be appointed unless the ward provides informed consent in writing, or the court determines that the conflict does not require the appointment of new counsel.

The lawyer's rules of professional conduct must be used as the basis for determining whether a risk of a conflict exists.

Also provided in this section is new language requiring that a guardian file an informational statement with the court prior to initial appointment, and annually thereafter. The statement must include: (1) the guardian's educational and work background; (2) contact information; (3) whether the guardian has ever been removed from another guardianship appointment for cause; (4) any changes to the guardian's criminal background; and (5) the amount of reimbursement for services to the ward received during the previous year.

- 6 Guardians; priority in appointment.** Adds to the list of persons who may be appointed as a guardian. The list is provided in order of priority of consideration. An adult related by blood, adoption, or marriage is added as second-to-last on the list, and any other adult or a professional guardian is listed as last on the list.
- 7 Findings; order of appointment.** Requires a guardian to annually provide a notice of the right to request termination or modification of a guardianship, or to request an order that is in the best interests of the ward or other appropriate relief. The notice must be provided to the ward and to any interested persons of record with the court.

- 8 Rights of guardian; limitations.** Prohibits a guardian from revoking a health care directive of a ward or protected person without a court order. The appointment of an agent for a health care directive may not be revoked unless the agent was appointed within the previous 60 days, multiple agents have been appointed, or a court has determined that the ward lacks the capacity to appoint an agent and has expressly given the guardian authority to make health care decisions for the ward.

The decisions of a health care agent takes precedence over the decisions of a guardian, unless the health care directive is revoked.

- 9 Monitoring of guardianship.** Requires the guardian to provide a copy of the report stating the condition of the ward to the ward and interested persons of record with the court. Currently, this report must be provided to the court at least annually and whenever ordered by the court.

A ward or protected person is permitted to submit a written statement disputing the statements or conclusions related to the condition of the ward as stated in the report, and may petition the court for an order that is in the best interests of the ward.

An order to show cause must be issued by the court if the required report is not filed within 60 days of its due date.

- 10 Termination or modification of guardianship.** Permits the court to make any order that is in the best interests of the ward, or grant any other appropriate relief based on the circumstances.
- 11 Judicial appointment of conservator.** Current law requires that a person that may be

subject to a conservatorship must be represented by counsel in an initial hearing to appoint a conservator, unless the right to counsel is waived. This section requires that a waiver of the right to counsel be an informed decision, made in writing.

This section also requires that the counsel notify the court, protected person, and any interested persons if there is a risk that the counsel will have a conflict of interest between the protected person and the conservator. If there is a risk of a conflict of interest, new counsel must be appointed unless the ward provides informed consent in writing, or the court determines that the conflict does not require the appointment of new counsel.

The lawyer's rules of professional conduct must be used as the basis for determining whether a risk of a conflict exists.

Also provided in this section is new language requiring that a conservator file an informational statement with the court prior to initial appointment, and annually thereafter. The statement must include: (1) the conservator's educational and work background; (2) contact information; (3) whether the conservator has ever been removed from another conservatorship appointment for cause; (4) any changes to the conservator's criminal background; and (5) the amount of reimbursement for services to the conservator received during the previous year.

- 12 Findings; order of appointment.** Requires a conservator to annually provide a notice of the right to request termination or modification of a conservatorship, or to request an order that is in the best interests of the protected person or other appropriate relief. The notice must be provided to the protected person and to any interested persons of record with the court.
- 13 Conservators; priority in appointment.** Adds to the list of persons who may be appointed as a conservator. The list is provided in order of priority of consideration. An adult related by blood, adoption, or marriage is added as second-to-last on the list, and any other adult or a professional conservator is listed as last on the list.
- This section also requires that the conservator post a bond if the initial inventory of the estate of the protected person is expected to show a worth of at least \$10,000.
- The bond requirement only applies to conservators appointed after this section becomes effective.
- 14 Petition for court orders subsequent to appointment.** Permits a protected person to petition the court for an order acting in the protected person's best interest.
- 15 Monitoring of conservatorship.** Allows a protected person to submit a written statement disputing the statements or conclusions related to the condition of the protected person as stated in the required annual report to the court, and may petition the court for an order that is in the best interests of the protected person.
- An order to show cause must be issued by the court if the required report is not filed within 60 days of its due date.