

CCS HCS SB 806 -- GUARDIANSHIP PROCEEDINGS

This bill adds debts for medical assistance owed to the State of Missouri under Section 473.398, RSMo, to the classes into which all claims and statutory allowances against the estate of a decedent shall be divided (Sections 473.397 and 473.398).

The bill changes and adds certain duties and reporting requirements for guardians and conservators. It also specifies that existing guardians and conservators have one year to meet any reporting requirements that change as of August 28, 2018. The bill gives the court authority, as part of its review and in its discretion, to contact the Department of Health and Senior Services or other appropriate agencies to investigate the conduct of the guardian (Section 475.016).

The bill adds a definition for "conservator ad litem" and for "interested persons" and amends the definition for "habilitation" and changes the term "least restrictive environment" to "least restrictive alternative" (Section 475.010).

Currently, under law in guardianship and conservator proceedings, the court is to consider the suitability of a list of persons for appointment. This bill provides that such persons are listed in the order of priority. The court may not appoint an unrelated third party unless there is no relative suitable and willing to serve, or if the appointment of a relative or a nominee is not in the best interest of the incapacitated or disabled person. Additionally, the bill requires individuals, except those specified in the bill, to submit to a background check at their own expense, and to file a report of the results of the check with the court at least 10 days prior to the appointment hearing date unless waived by the court for good cause. Guardians certified by a national accrediting organization may file proof of certification in lieu of the reporting requirements (Section 475.050).

Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of a minor. The petition shall include the name and address of the person having custody of the minor or who claims to have custody of the minor. If the petitioner requests the appointment of co-guardians additional information, as specified in the bill, is required to be in the petition. The bill also specifies the information in the petition that must be provided to the respondent when the appointment of a conservator is made due to the respondent's disability (Sections 475.060, 475.061, and 475.062).

This bill adds the person or entity nominated to service as the guardian or conservator to the list of people required to receive

notice of a filed petition to appoint a guardian or conservator for a minor (Section 475.070).

When the petition for the appointment of a guardian or conservator is filed based on grounds other than minority, the potential ward or protectee must be served with written notice in person. The notice must state the time and place for the petition to be heard by the court and the name and address of counsel appointed to represent the potential ward or protectee, among other information required to be in the notice. Notice must also be served on any person proposed to serve as guardian or conservator and on any cotenants or codepositors with the respondent. When the petition for the appointment of a guardian or conservator is filed based on grounds other than minority and a public administrator is nominated, the public administrator shall receive certain documents such as the petition and medical opinions and shall have an opportunity to be heard at the hearing (Sections 475.075, 475.078, 475.079, 475.080, and 475.082).

The bill also allows a guardianship to terminate if the court determines that the guardian is unable to provide guardianship services due to the ward's absence from the state or other specified circumstances of the ward. If a ward or protectee petitions the court to return rights to him or her, the petition may be an informal letter to the court, and anyone who interferes with the transmission of the letter or petition may be cited for contempt of court after notice and a hearing. The court may also, on its own motion, set the matter for a hearing if it has reason to believe the powers of a guardian or conservator should be increased or decreased or additional rights should be returned to the ward. Limited guardians and limited conservators may also petition the court at any time to increase the guardian's or conservator's powers or to remove rights from the ward. If a guardian has been appointed for a minor, a parent of the minor may petition the court for periods of visitation, and the court may order the visitation if it is in the best interest of the child (Sections 475.083 and 475.084).

The bill allows a conservator to, after notice to interested persons and with the express authorization by the court, make financial and property decisions, as specified in the bill, on behalf of a protectee. The bill specifies what the court must consider when exercising or approving a conservator's exercise of his or her powers expressed in the bill. The bill also establishes what a conservator has the power to do without authorization or approval from the court (Sections 475.094 and 475.130).

The bill repeals certain provisions related to the powers and duties of a guardian or limited guardian of an incapacitated person

(Section 475.120).

The bill adds that prior to a court order for the management of the estate of a protectee, in setting the amount of support allowance for the protectee or other persons entitled to such support, the court must consider the previous standard of living of the spouse or family, composition of the estate, income and other assets, and expenses (Section 475.125).

Currently, no medical or surgical procedure can be performed on a ward without the guardian's consent. This bill allows emergency treatment to be administered without the guardian's consent if such treatment is required. If the court appoints an attorney for the respondent, the order shall specify that the attorney has a right to obtain all medical and financial information of the respondent, and no medical care provider or financial institution shall be liable for damages or otherwise for the release of the information to the attorney. Upon entry of appearance by private counsel on behalf of the respondent, the court may permit the court-appointed attorney to withdraw only if, after a hearing, the court finds cause to permit the withdrawal. Additionally, the bill sets out what a court is required to consider when determining the amount of support allowance for a protectee or any other person entitled to such support.

The bill provides that, unless it is waived by the court for cause, a protectee is entitled to 10 days' prior notice of a required court hearing on the petition for the sale of the protectee's real or tangible personal property. The protectee is not entitled to notice of a hearing on the petition for the sale of the protectee's intangible personal property (Section 475.230).

Currently, a conservator must file a settlement of the conservator's accounts with the court, if required by the court. The annual settlement shall be made within 30 days after the anniversary of the appointment of the conservator. This bill revises that provision to require the conservator to file the settlement at least annually or more often if required by the court, the settlement must detail the current status of the estate under conservatorship, and it is required to be filed within 60 days after the anniversary of the appointment of the conservator. The bill specifies what information the settlement must include (Sections 475.270 and 475.290).

If a ward's estate and available public benefits are inadequate for the proper care of the ward, the ward's guardian is not obligated to use the guardian's own financial resources for the support of the ward. The guardian may apply to the county commission for such care. A guardian shall not have the authority to seek admission of

a ward to a mental health or intellectual disability facility for more than 30 days without a court order. Additionally, a social service agency serving as guardian of an incapacitated person is required to notify the court within 15 days after any change in the identity of the professional individual who has primary responsibility for providing guardianship services to the incapacitated person (Section 475.276).

A transaction entered into by the conservator for the conservator's personal gain or in which a conflict of interest exists is voidable, unless the transaction falls into one of the four exceptions as provided in the bill. A public administrator serving as conservator is prohibited from entering into transactions for personal gain. A conservator is prohibited from combining personal property and estate property and designating estate property so that any ownership appears in records maintained by a financial institution or party other than the conservator or protectee. With court approval, the conservator may delegate to an agent the conservator's duties and powers (Sections 475.341, 475.342, and 475.343).

The bill provides that the probate division of the court has jurisdiction over issues of the adjudication of incapacity and disability and over appointment of a guardian or conservator of an adult who is 18 or older or over whose parents have a matter pending under Chapters 210 or 452 (Section 475.357).

This bill establishes specified rights that every incapacitated person has in every guardianship (Section 475.361).