

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 193 (Senator Kelley, *et al.*)
Judicial Proceedings

Commission on the Monitoring of Guardians of Disabled Adults

This bill establishes a Commission on the Monitoring of Guardians of Disabled Adults. The commission must study best practices and emerging practices in other states regarding the monitoring of guardians of disabled adults; and make specified recommendations regarding enhanced monitoring of guardians to better protect the health and property of disabled adults. The Department of Legislative Services must provide staff support for the commission. The commission is required to report on its findings and recommendations by December 15, 2010.

The bill takes effect July 1, 2009, and terminates on June 30, 2011.

Fiscal Summary

State Effect: The Department of Legislative Services can handle the staffing requirement with existing budgeted resources; however, limited staff resources may be diverted from other responsibilities. Any expense reimbursements for commission members are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The circuit courts in Maryland have exclusive jurisdiction over guardianship and protective proceedings for disabled persons. A guardian is appointed for a disabled person if the court determines: (1) the person is unable to manage the

person's property and affairs effectively, for any number of specified reasons, and has or may be entitled to property or benefits that require proper management; or (2) based on clear and convincing evidence, the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and no less restrictive form of intervention is available that is consistent with the person's welfare and safety. (*See* Estates and Trusts Article §§ 13-105, 13-201, and 13-705.)

State law specifies those that may serve as guardians of the person or property of a disabled person and includes priorities of entitlement of different persons and entities to be appointed to serve as a guardian. (*See* Estates and Trusts Article §§ 13-206, 13-207, and 13-707.)

A court may grant to the guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person. A nonexclusive list of the rights, duties, and powers a court may order of the guardian is included in statute, including the duty to provide for the care, comfort, and maintenance of the disabled person and the authority to make certain medical decisions. A guardian must file an annual report with the court addressing the location and condition of the disabled person, the plan for the future care and well being of the disabled person, and other issues relating to the guardianship for review and approval by the court. (*See* Estates and Trusts Article § 13-708; Maryland Rules § 10-206.)

The appointment and qualification of a guardian of the estate of a person vests in the guardian title to all property of the protected person held at the time of the appointment or acquired later. The guardian has the same powers as a fiduciary and must exercise the care and skill of a person of ordinary prudence dealing with the person's own property. The guardian is liable to the disabled person or interested persons for damage or loss resulting from the improper exercise of a power to the same extent as a trustee of an express trust and a noncorporate guardian may be required to furnish bond by the nominating instrument (such as a will of a disabled person's parent) or the court, if deemed necessary. The guardian must file an initial inventory and information report for the estate and subsequently file annual accounts regarding the estate for review and approval by the court. (*See* Estates and Trusts Article §§ 13-206, 13-208, 13-209, 13-212, 13-213, and 13-216; Maryland Rules §§ 10-305, 10-706, and 10-707.)

Background: Two recent AARP Public Policy Institute reports (*Guardianship Monitoring: A National Survey of Court Practices* (2006); *Guarding the Guardians: Promising Practices for Court Monitoring* (2007)) indicated that court monitoring of guardians "is essential to ensure the welfare of incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance." The reports also indicated that the

need for effective court monitoring is increased by demographic trends expected to increase the number of guardianships in future years.

The institute's national survey of judges, court managers, guardians, elder law attorneys, and legal representatives of people with disabilities included findings that reporting practices had improved since a similar study in 1991, but verification of guardian reports and accounts and visits to vulnerable individuals under guardianship were frequently lacking; guardian training had increased but remained a compelling need; courts and community groups rarely collaborated regarding guardianship monitoring; and funding for guardianship monitoring was minimal. The institute's second report listed various best practices for effective monitoring and examples of courts with effective programs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Aging, Department of Disabilities, AARP Public Policy Institute, Department of Legislative Services

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