

ASSEMBLY AGING AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4618

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2021

The Assembly Aging and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 4618.

This bill makes the following substantive changes to strengthen the existing guardianship law:

The bill requires, in accordance with the Rules Governing the Courts of the State of New Jersey: 1) a ward or proposed ward to be represented by counsel throughout the course of guardianship proceedings; 2) counsel to personally interview the ward or proposed ward; 3) If the ward or proposed ward is, at any time, not represented by counsel and is unable to afford counsel, the court to appoint counsel for the person; and 4) prior to the hearing date, counsel to file a report with the court in such form and include all such provisions as required by the Administrative Director of the Courts.

The bill further requires a court, in establishing a guardianship arrangement, to authorize only that level of intervention that the court finds to be least restrictive of the proposed ward's rights while being consistent with the protection of the ward's welfare and safety. The bill clarifies that the court may, at any time, expand or limit the powers of the guardian or revoke or revise any previously ordered expansion or limitation of powers. Under the bill, any proposed guardian is to comply with any applicable background screening policy for proposed guardians of incapacitated adults as is required by the Administrative Director of the Courts, including, but not limited to, fingerprinting.

The bill also specifies that all actions undertaken by a guardian, whether by a guardian of the person or by a guardian of the estate, are to be undertaken with due regard to, and are to be consistent with, the ward's best interests and the ward's expressed wishes and preferences, to the extent that the ward is capable of expressing those wishes and preferences.

Current law also requires a "guardian" to submit reports to the court, at time intervals ordered by the court, but it only imposes specific content requirements in association with reports that are submitted by guardians of the person; not guardians of the estate. The existing law also authorizes the court to waive the reporting requirement entirely, and it does not require the court to actually

review any of the submitted reports. The bill would amend the law to: 1) eliminate the court's discretion to waive the reporting requirement but allow for judicial discretion in ordering a report; 2) require a report submitted by a guardian of the estate to be made in such form as is required by the Administrative Director of the Courts and in accordance with the Court Rules, which is to state or contain information on the assets, income, disbursements, and liabilities of the guardianship estate; and 3) require the court to review the reports submitted pursuant to the bill, on at least an annual basis, in order to ensure that each guardian is properly fulfilling the guardian's duties with respect to the ward or the ward's estate, or both, as the case may be, and is operating in a manner consistent with the ward's best interests. The bill would also authorize the court, at any time, and would require the court whenever its annual review of the submitted reports reveals that the guardian may not be properly fulfilling the guardian's duties or acting in the ward's best interests, to appoint a third-party to interview the ward and the guardian, or undertake any other investigation the court may direct.

The existing law requires a guardian of the estate to consider the recommendations of the ward's parent or the guardian of the ward's person when expending and distributing funds from the ward's estate; however, an incapacitated person often does not have a living parent, and the guardian of the person may be the same as the guardian of the estate, meaning that, under existing law, there will often be no available third-party to provide recommendations to the guardian of the estate. The bill would, therefore, amend the law to require the guardian of the estate to consider the recommendations of all of the following individuals: 1) the ward, to the extent that the ward is capable of making the recommendations; 2) if the ward is a minor, the ward's parent; 3) if the ward is an incapacitated person, the spouse and any adult children of the ward or, if there are no adult children, the person or persons who are closest in degree of kinship to the ward; 4) the guardian of the ward's person; and 5) the person or persons with whom the ward resides or, if the ward resides in an institution, the chief administrator of that institution. This change will make the law consistent with the law pertaining to conservatorship, which requires a conservator to consider the recommendations of all these persons. The bill also explicitly requires that the expenditure or distribution of funds from a ward's estate to household members outside of the guardian are only to occur pursuant to order of the court.

The bill also amends the existing guardianship law to modernize and clarify the existing language and paragraph and sentence structure and ensure that language is used consistently and in an active and direct voice throughout the law.

COMMITTEE AMENDMENTS:

The committee amended the bill to require certain provisions of the bill as introduced, regarding the representation and interview of a ward or proposed ward by counsel, to be performed in accordance with the Rules Governing the Courts of the State of New Jersey. Such provisions were also amended to eliminate certain components: 1) requiring that, if a guardianship arrangement is established, that representation by counsel must continue until such time as the arrangement is terminated; and 2) requiring counsel to interview a ward not more than 72 hours before each scheduled hearing related to guardianship and to certify to the court that the interview has been performed. The committee added a provision requiring, prior to the hearing date, counsel to file a report with the court in such form, and include all such provisions, as required by the Administrative Director of the Courts.

The committee amended the bill to relocate provisions included in the bill, as introduced, regarding the least restrictive alternatives and expansion or limitation of the powers of the guardian to a more appropriate section of law. The committee also added a provision requiring any proposed guardian to comply with any applicable background screening policy for proposed guardians of incapacitated adults as is required by the Administrative Director of the Courts, including, but not limited to, fingerprinting.

The committee amended the bill to remove language providing that a guardian of the estate who is found to have breached the guardian's fiduciary duties to an incapacitated person will be liable for damages. The committee replaced this language with a reference to existing law requiring fiduciaries to furnish a bond to the court for the value of the estate, within the context of the appointment of a guardian of an estate of a minor or incapacitated person.

The committee amended the bill to eliminate provisions requiring: 1) a report to be submitted by both the guardian of the person and the guardian of the estate at time intervals ordered by the court, but not less often than every six months during the course of the guardianship arrangement; and 2) a report submitted by the guardian of the estate to include an itemized inventory and a formal accounting. As amended, the bill allows for judicial discretion in ordering guardian reports and requires a report submitted by a guardian of the estate to be made in such form as is required by the Administrative Director of the Court and in accordance with the Court Rules, which is required to state or contain information on the assets, income, disbursements, and liabilities of the guardianship estate.

The committee amended the bill to explicitly require that the expenditure or distribution of funds from a ward's estate to household members other than the ward or the ward's dependent are only to occur pursuant to an order of the court.

Finally, the committee amended the bill to take effect on the 120th day after the date of enactment. As introduced, the bill would have taken effect immediately.