

HOUSE RESEARCH

Bill Summary

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Subject: Guardianships and conservatorships; health care directives

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Overview

This bill provides that only a court, rather than a guardian, may declare a person's health care directive unenforceable, and modifies certain informational reports that must be submitted to the court by a guardian or conservator.

Section

- 1 Power to declare health care directive unenforceable.** Provides that only a court, rather than an appointed guardian, may invalidate an existing health care directive. The court may only do so if it finds, by clear and convincing evidence, that the directive was executed under coercion or fraud, or if the directive does not meet the legal requirements for sufficiency under current law.
- 2 Bill of rights for wards and protected persons.** Adds to the explicit rights of a ward or protected person the right to execute a health care directive, if the court has not granted the person's guardian any powers or duties related to making medical decisions.
- 3 Judicial appointment; guardianship petition.** Requires additional information on a proposed guardian be included in the initial petition to the court for a guardianship appointment.

The additional information is currently required to be submitted to the court in an annual informational statement; the informational statement requirement is eliminated in section 4 of the bill.
- 4 Judicial appointment; preliminaries to hearing.** Eliminates the requirement that an informational statement be submitted to the court before initial appointment as a guardian and annually thereafter. The information required to be included in the statement must be submitted as part of the original petition for appointment, as provided in section 3 of the bill.
- 5 Who may be guardian; priorities.** Modifies language related to health care agents in the

existing law specifying the order of priority for appointment as a guardian.

- 6 Findings; order of appointment.** Provides that a previously appointed health care agent's power to make health care decisions is suspended, absent additional court order, if the court grants a guardian medical decision-making powers.

This section also provides language related to revocation of a health care directive, or a declaration that the directive is unenforceable by the court, and specifies decision-making authority for purpose of organ and tissue donation and disposition of an individual's final remains.

- 7 Rights and immunities of guardian; limitations.** Eliminates language related to a guardian's revocation of a health care agent's appointment. Consistent with section 1 of the bill, this power would be granted only to the court.

- 8 Reports; monitoring of guardianship.** Provides additional content requirements for the annual well-being report of the guardian. The information being added to the report is the same information that is currently required to be submitted in the guardian's annual informational statement to the court. The informational statement requirement is eliminated in this bill.

This section also permits an interested person of record to opt out of the otherwise required receipt of the guardian's well-being report.

- 9 Judicial appointment; conservatorship petition.** Requires additional information on a proposed conservator be included in the initial petition to the court for a conservatorship appointment.

The additional information is currently required to be submitted to the court in an annual informational statement; the informational statement requirement is eliminated in section 10 of the bill.

- 10 Original petition for conservatorship; preliminaries to hearing.** Eliminates the requirement that an informational statement be submitted to the court before initial appointment as a conservator and annually thereafter. The information required to be included in the statement must be submitted as part of the original petition for appointment, as provided in section 9 of the bill.

- 11 Reports; monitoring of conservatorship.** Provides additional content requirements for the annual report of the conservator. The information being added to the report is the same information that is currently required to be submitted in the conservator's annual informational statement to the court. The informational statement requirement is eliminated in this bill.

This section also permits an interested person of record to opt out of the otherwise required receipt of the conservator's report.

- 12 Anatomical gifts.** Corrects an erroneous cross-reference.

- 13 Effective date.** Provides that the bill is effective the day following final enactment, and applies to petitions filed and protective orders issued or renewed on or after August 1, 2010, or earlier, as directed by the court.

