



PA 12-25—HB 5287

Judiciary Committee

AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY

SUMMARY: Under prior law, Superior and Probate court judges and family support magistrates had unlimited discretion to appoint *guardians ad litem* (GALs—see BACKGROUND) and there was no statutory limit on the functions they could perform. Consequently, GAL appointments and assignments varied from court to court.

This act sets uniform standards and limits court discretion in matters involving:

1. *habeas corpus* petitions (cases in which a person claims that he or she is being illegally restrained or treated) brought by someone who is the subject of a forced conservatorship or medication proceeding,
2. involuntary administration of medication to psychiatric patients,
3. conservatorship and related matters, and
4. estate and related fiduciary settlements.

The act prohibits GAL appointments in *habeas corpus* proceedings. And it prohibits judges and magistrates from appointing GALs in the other matters before a court has ruled that the patient's or applicant's mental status meets legal standards.

The act applies different standards to cases based primarily on whether their subject has a court-appointed conservator. And it incorporates Probate Court conservatorship-related definitions into forced medication proceedings brought in Superior Court.

The act also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2012

GAL APPOINTMENTS WHEN A PERSON IS CONSERVED

The act prohibits courts from appointing GALs to cases involving conserved mental patients (the act covers patients treated in out- or inpatient facilities and criminal defendants found incompetent to stand trial) or conservatorship-related matters unless (1) the court makes a specific finding that it needs to appoint a GAL for a specific purpose or to answer specific questions to assist it in making its determination or (2) the conserved person's attorney is unable to ascertain his or her client's preferences, including those previously expressed. Before

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appointing a GAL under the second scenario, the act permits the judge or magistrate to question the subject to determine his or her preferences or inability to express them.

Contents of GAL Appointment Orders

When he or she appoints a GAL, the act requires the judge's or magistrate's appointment order to:

1. indicate what functions the GAL can perform and when the appointment ends and
2. direct the GAL to take only the specific actions needed to answer questions the court poses, including those designed to ascertain if the subject's attorney's or conservator's proposed course of action is the least restrictive means of intervention available to assist the person in caring for him- or herself or managing his or her affairs.

The above requirements appear to apply only to matters involving conserved individuals who are unable to take care of themselves or manage their affairs; the act does not have a similar provision when the case involves a conserved patient's inability to give informed consent.

Terminating GAL Appointments

Consistent with the terms of a court's appointment order, GAL appointments end with their court report. As under existing law, judges and magistrates can terminate them earlier.

GAL APPOINTMENTS WHEN PERSON IS NOT CONSERVED

The act also sets standards for appointing GALs in situations where the person is not conserved. It encompasses those (1) subject to forced medication orders or (2) awaiting action on a petition for the appointment of a conservator. In such cases, judges and magistrates cannot appoint GALs unless a probate judge has made an initial determination that the former is not capable of giving informed consent or the latter is incapable of caring for himself or herself or managing his or her affairs. The act does not further limit court discretion.

BACKGROUND

GALs

GALs are individuals appointed by a Probate or Superior court judge or family support magistrate to represent the best interests of vulnerable populations, such as incapacitated adults or children. Their powers and duties are often specified in state statute and court rules.

Conservators

Probate judges appoint conservators to oversee personal or financial affairs of adults they find incapable of doing so on their own. There are two forms of conservatorship—conservator of the person and conservator of the estate. The

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conservator of the person's duties and powers include: (1) taking general custody of the conserved person; (2) establishing his or her residence; (3) consenting to medical or other professional care, counsel, treatment, or service; (4) providing for his or her care, comfort, and maintenance; and (5) taking reasonable care of his or her personal effects.

In carrying out the duties and authority assigned by the court, a conservator of the person must carry out the functions described above in a manner that is the least restrictive means of intervention.

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