



Substitute Senate Bill No. 976

Public Act No. 17-7

AN ACT CONCERNING CONSERVATOR ACCOUNTABILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective January 1, 2018*) (a) The Probate Court Administrator, within available appropriations, may cause an account of a conservator of the estate, as defined in section 45a-644 of the general statutes, to be audited in accordance with the provisions of this section.

(b) The Probate Court Administrator may select conservator accounts for audit under this section on a random basis or on the basis of other criteria that the administrator deems effective in deterring and detecting fiduciary malfeasance. No account that a Probate Court has approved may be selected for audit.

(c) When the Probate Court Administrator selects an account for audit, the administrator shall assign an auditor to conduct the audit from the list of auditors maintained under section 45a-175 of the general statutes and shall notify the Probate Court before which the account is pending. The Probate Court shall continue any previously scheduled hearing on the account pending the outcome of the audit and shall notify all parties of the audit and the continuance by first-class mail.

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(d) A conservator of the estate whose account is subject to audit shall cooperate with the auditor and provide the auditor with access to all of the conservator's records relating to the conservatorship of the estate. The auditor shall notify the Probate Court, in writing, if the conservator fails to cooperate with the audit and shall send a copy of such notification to each party and attorney of record. On motion of a party or the court's own motion, the court may issue orders to compel compliance with the provisions of this subsection and may remove a conservator who fails to comply with the provisions of this subsection.

(e) An auditor performing an audit under this section shall complete the audit and submit a report of his or her findings to the Probate Court not later than ninety days after the date the auditor receives notice of the auditing assignment. On request of the auditor, the court may extend the deadline if it finds that additional time is necessary to complete the audit.

(f) Upon receipt of an audit report under subsection (e) of this section, the Probate Court shall send notice of the hearing on the account and audit report, together with a copy of the audit report, to all parties. The audit report shall be admissible in evidence, subject to the right of any interested party to require that the auditor appear as a witness, if available, and be subject to examination. The court shall hear and decide the conservator's account and shall determine the rights of the conservator and the parties under subsections (g) and (h) of section 45a-175 of the general statutes.

(g) The Probate Court Administrator shall pay the cost of an audit under this section from the Probate Court Administration Fund, subject to the provisions of section 45a-84 of the general statutes. The Probate Court Administrator may, from time to time, establish hourly rates and allowable expenses for the compensation of auditors under this section.

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Sec. 2. Section 45a-77 of the general statutes is amended by adding subsection (h) as follows (*Effective July 1, 2017*):

(NEW) (h) The Probate Court Administrator shall, in consultation with the Connecticut Probate Assembly, adopt standards of practice to provide guidance to court-appointed conservators in the performance of their duties.

Sec. 3. Section 45a-655 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) A conservator of the estate appointed under section 45a-646, 45a-650 or 45a-654 shall, within two months after the date of the conservator's appointment, make and file in the [Court of Probate] Probate Court, an inventory, under penalty of false statement, of the estate of the conserved person, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment. Such inventory shall include the value of the conserved person's interest in all property in which the conserved person has a legal or equitable present interest, including, but not limited to, the conserved person's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the conserved person and those members of the conserved person's family whom the conserved person has the legal duty to support and to pay the conserved person's debts, and may sue for and collect all debts due the conserved person. [The conservator shall use the least restrictive means of intervention in the exercise of the conservator's duties and authority] The conservator, in the exercise of his or her duties and authority, shall be guided by the standards of practice adopted under subsection (h) of section 45a-77, as amended by this act, and shall use the least restrictive means of intervention.

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(b) Any conservator of the estate of a married person may apply such portion of the property of the conserved person to the support, maintenance and medical treatment of the conserved person's spouse which the [Court of Probate] Probate Court, upon hearing after notice, decides to be proper under the circumstances of the case.

(c) Notwithstanding the provisions of section 45a-177, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under section 45a-649.

(d) In the case of any person receiving public assistance, state-administered general assistance or Medicaid, the conservator of the estate shall apply toward the cost of care of such person any assets exceeding limits on assets set by statute or regulations adopted by the Commissioner of Social Services. Notwithstanding the provisions of subsections (a) and (b) of this section, in the case of an institutionalized person who has applied for or is receiving such medical assistance, no conservator shall apply and no court shall approve the application of (1) the net income of the conserved person to the support of the conserved person's spouse in an amount that exceeds the monthly income allowed a community spouse as determined by the Department of Social Services pursuant to 42 USC 1396r-5(d)(2)-(4), or (2) any portion of the property of the conserved person to the support, maintenance and medical treatment of the conserved person's spouse in an amount that exceeds the amount determined allowable by the department pursuant to 42 USC 1396r-5(f)(1) and (2), notwithstanding the provisions of 42 USC 1396r-5(f)(2)(A)(iv), unless such limitations on income would result in significant financial duress.

(e) Upon application of a conservator of the estate, after a hearing with notice to the Commissioner of Administrative Services, the Commissioner of Social Services and to all parties who may have an

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interest as determined by the court, the court may authorize the conservator to make gifts or other transfers of income and principal from the estate of the conserved person in such amounts and in such form, outright or in trust, whether to an existing trust or a court-approved trust created by the conservator, as the court orders to or for the benefit of individuals, including the conserved person, and to or for the benefit of charities, trusts or other institutions described in Sections 2055(a) and 2522(a) of the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts or transfers shall be authorized only if the court finds that: (1) In the case of individuals not related to the conserved person by blood or marriage, the conserved person had made a previous gift to that unrelated individual prior to being declared incapable; (2) in the case of a charity, either (A) the conserved person had made a previous gift to such charity, had pledged a gift in writing to such charity, or had otherwise demonstrated support for such charity prior to being declared incapable; or (B) the court determines that the gift to the charity is in the best interests of the conserved person, is consistent with proper estate planning, and there is no reasonable objection by a party having an interest in the conserved person's estate as determined by the court; (3) the estate of the conserved person and any proposed trust of which the conserved person is a beneficiary is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such conserved person in accordance with such conserved person's established standard of living and for the support of persons the conserved person is legally obligated to support; (4) the purpose of the gifts is not to diminish the estate of the conserved person so as to qualify the conserved person for federal or state aid or benefits; and (5) in the case of a conserved person capable of making an informed decision, the conserved person has no objection to such gift. The court

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shall give consideration to the following: (A) The medical condition of the conserved person, including the prospect of restoration to capacity; (B) the size of the conserved person's estate; (C) the provisions which, in the judgment of the court, such conserved person would have made if such conserved person had been capable, for minimization of income and estate taxes consistent with proper estate planning; and (D) in the case of a trust, whether the trust should be revocable or irrevocable, existing or created by the conservator and court approved. The court should also consider the provisions of an existing estate plan, if any. In the case of a gift or transfer in trust, any transfer to a court-approved trust created by the conservator shall be subject to continuing probate court jurisdiction in the same manner as a testamentary trust including periodic rendering of accounts pursuant to section 45a-177. Notwithstanding any other provision of this section, the court may authorize the creation and funding of a trust that complies with section 1917(d)(4) of the Social Security Act, 42 USC 1396p(d)(4), as from time to time amended. The provisions of this subsection shall not be construed to validate or invalidate any gifts made by a conservator of the estate prior to October 1, 1998.

(f) When determining whether a conservator has breached a fiduciary duty, the Probate Court having jurisdiction over the conservatorship may consider evidence of a conservator's failure to adhere to a provision contained in the standards of practice adopted under subsection (h) of section 45a-77, as amended by this act, but such failure shall not, in itself, constitute a breach of fiduciary duty.

Sec. 4. Section 45a-656 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2018*):

(a) The conservator of the person shall have the duties and authority expressly assigned by the court pursuant to section 45a-650, which duties and authority may include: (1) The duty and responsibility for the general custody of the conserved person; (2) the authority to

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establish the conserved person's residence within the state, subject to the provisions of section 45a-656b; (3) the authority to give consent for the conserved person's medical or other professional care, counsel, treatment or service; (4) the duty to provide for the care, comfort and maintenance of the conserved person; (5) the authority to execute a written document in advance of the conserved person's death, in accordance with section 45a-318, directing the disposition of the conserved person's body upon the death of such person or designating an individual to have custody and control of the disposition of such person's body upon the death of such person; and (6) the duty to take reasonable care of the conserved person's personal effects.

(b) In carrying out the duties and authority assigned by the court, the conservator of the person shall be guided by the standards of practice adopted under subsection (h) of section 45a-77, as amended by this act, and shall exercise such duties and authority in a manner that is the least restrictive means of intervention. ~~[and]~~ The conservator shall (1) assist the conserved person in removing obstacles to independence, (2) assist the conserved person in achieving self-reliance, (3) ascertain the conserved person's views, (4) make decisions in conformance with the conserved person's reasonable and informed expressed preferences, (5) make all reasonable efforts to ascertain the health care instructions and other wishes of the conserved person, and (6) make decisions in conformance with (A) the conserved person's expressed health care preferences, including health care instructions and other wishes, if any, described in section 19a-580e, or validly executed health care instructions described in section 19a-580g, or (B) a health care decision of a health care representative described in subsection (b) of section 19a-580e, except under a circumstance set forth in subsection (b) of section 19a-580e. The conservator shall afford the conserved person the opportunity to participate meaningfully in decision-making in accordance with the conserved person's abilities and shall delegate to the conserved person reasonable responsibility

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for decisions affecting such conserved person's well-being.

(c) The conservator shall report at least annually to the [probate court] Probate Court that appointed the conservator regarding the condition of the conserved person, the efforts made to encourage the independence of the conserved person and the conservator's statement on whether the appointment of the conservator is the least restrictive means of intervention for managing the conserved person's needs. The duties, responsibilities and authority assigned pursuant to section 45a-650 or set forth in this section shall be carried out within the resources available to the conserved person, either through the conserved person's own estate or through private or public assistance.

(d) The conservator of the person shall not have the power or authority to cause the respondent to be committed to any institution for the treatment of the mentally ill except under the provisions of sections 17a-75 to 17a-83, inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive, 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 359.

(e) When determining whether a conservator has breached a fiduciary duty, the Probate Court having jurisdiction over the conservatorship may consider evidence of a conservator's failure to adhere to a provision contained in the standards of practice adopted under subsection (h) of section 45a-77, as amended by this act, but such failure shall not, in itself, constitute a breach of fiduciary duty.

Approved May 24, 2017