



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 176 (as reported without amendment)
Sponsor: Senator Dave Hildenbrand
Committee: Families, Seniors and Human Services

Date Completed: 5-29-13

RATIONALE

The Mental Health Code allows a court to hold a hearing and designate a guardian for a developmentally disabled individual. An interested person or entity or a developmentally disabled individual may file a petition with a court for the appointment of a guardian for the individual. The court then must schedule a hearing to take place within 30 days of the date the petition was filed. At the hearing, the court must assess whether the individual is disabled and to what extent. Finally, the court must determine to what degree the individual has the capacity to care for himself or herself, and appoint a guardian accordingly.

Court proceedings and determinations regarding guardianship of an adult cannot begin until the person is at least 18 years old. This results in a period of up to 30 days between an individual's 18th birthday and a court hearing, if a petition is filed as soon as the person turns 18. If there is a delay, the gap between the person's 18th birthday and the appointment of a guardian, if any, will be longer. To close this gap, it has been suggested that the Code should allow for guardianship proceedings up to six months before an individual's 18th birthday, and for any resulting guardianship appointment to be effective when the individual turns 18.

CONTENT

The bill would amend the Mental Health Code to allow a court to hold a hearing regarding a guardianship determination for a developmentally disabled individual who was at least 17 years and six months of age, and make a guardianship appointment that would

take effect on the person's 18th birthday.

Filing a Petition

The bill provides that a petition could be filed for a developmentally disabled individual who was not less than 17 years and six months old. In that case, the court could schedule a hearing to take place before the individual's 18th birthday.

Guardianship Hearing

At a guardianship hearing, the court must first inquire about the intellectual functioning of the individual, determine the extent of impairment in his or her adaptive behavior, determine the individual's capacity to care for himself or herself, determine the capacity of the individual to manage his or her estate and financial affairs, and determine the appropriateness of proposed or current living arrangements and whether it is the least restrictive setting suited to the individual's condition.

The court then must determine, through findings of fact, whether the individual has the capacity to care for himself or herself. If the individual does not, the court must make findings of fact, based on clear and convincing evidence, regarding the disability of the individual. If the evidence shows that the individual lacks the capacity to do some of the tasks necessary to care for himself or herself or the individual's estate, the court may appoint a partial guardian to provide guardianship services to the individual. If the evidence shows the individual is totally without capacity to care for himself or

herself or the individual's estate, the court may appoint a plenary guardian of the individual, the individual's estate, or both.

Under the bill, for hearings that involved an individual not less than 17 years and six months old, the court could appoint a guardian if it made the required findings about lack of capacity. The guardianship would be effective on the individual's 18th birthday.

MCL 330.1609 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would allow a head start on having a guardian in place on a developmentally disabled individual's 18th birthday. This would eliminate the gap between a person's 18th birthday and a court's guardianship designation.

Some developmentally disabled people require a guardian as soon as they turn 18. Current limitations on the ability to schedule a hearing on a guardianship matter can place young developmentally disabled individuals, and those around them, at risk. Giving the court a head start on guardianship determinations could protect individuals, as well as allow a smoother transition for developmentally disabled minors, since they may need guidance and oversight into their early adult years.

Opposing Argument

The bill is not in the best interests of developmentally disabled individuals. Michigan reportedly has more guardianship filings per capita than any other state, and already fails to provide adequate assessments regarding guardianship necessity. Guardianship is too often relied upon when it should be a last resort. Any legislation that accelerated the current process would serve only to reduce its adequacy.

Also, the bill could remove the ability of some people to ever make decisions as adults. People should be given the opportunity to decide what medications to take, and what living arrangements to

make. Under the bill, however, an individual could go from being a minor to a ward, without ever having the experience of acting as an adult. Furthermore, having a court order in place before the actual need for a guardian could violate an individual's civil rights.

Rather than benefit developmentally disabled individuals, the bill would benefit parents who are irrationally fearful of a minor child becoming an independent adult, and seek a guardianship when it is unnecessary. The bill also would benefit specialized care servicers, which have a financial incentive to make certain that individuals do not leave their services.

Opposing Argument

Courts would be faced with making guardianship determinations without information that is inherently required. Under the Code, a court is required to make a finding of fact regarding an individual's capacity to care for himself or herself. If a hearing took place before an individual's 18th birthday, it would be before that individual had an opportunity to care for himself or herself as an adult. Although the need for a guardian might be clear in some cases, in others the court might not have the evidence it would need to make an informed decision. Also, a person's mental and adaptive limitations may change in the six months before his or her 18th birthday.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.