

FILED MAR 01 1989  
Judiciary  
Amend v. Coburn  
3-10-89 (p-729)

SENATE FILE 309  
BY VARN

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to guardians and conservators, by providing for  
2 notice to proposed wards, formation of state and local  
3 emergency medical boards, immunity from liability, waiver of  
4 filing fees and costs, training of guardians and conservators,  
5 and implementation of a representative payee project.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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**SENATE FILE 309**

**S-3228**

1 Amend Senate File 309 as follows:

2 1. Page 6, by inserting after line 24, the  
3 following:

4 "Sec. \_\_\_\_ . Section 633.679, Code 1989, is amended  
5 to read as follows:

6 633.679 PETITION TO TERMINATE.

7 At any time, ~~not less than six months~~ after the  
8 appointment of a guardian or conservator, the person  
9 under guardianship or conservatorship may apply to the  
10 court by petition, alleging that the person is no  
11 longer a proper subject thereof, and asking that the  
12 guardianship or conservatorship be terminated."

13 2. Renumber as necessary.

By COMMITTEE ON JUDICIARY  
DONALD V. DOYLE, Chairperson

S-3228 FILED MARCH 10, 1989

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1 Section 1. NEW SECTION. 217.40 TRAINING FOR GUARDIANS  
2 AND CONSERVATORS.

3 The department of human services, or a person designated by  
4 the director, shall establish training programs designed to  
3583-5 assist duly appointed guardians and conservators in  
6 understanding their fiduciary duties and liabilities, the  
7 special needs of the ward, and how to best serve the ward and  
8 the ward's interests.

9 Sec. 2. NEW SECTION. 217.41 REPRESENTATIVE PAYEE  
10 PROJECT.

11 1. The department of human services shall provide  
12 appropriate public and private organizations with written  
13 notice of the department's intent to serve as sponsor of the  
14 representative payee project in Iowa. The director shall  
15 designate a departmental staff person to serve as the project  
16 staff coordinator.

17 2. The department shall provide logistical support for the  
18 project including office space, telephone communications,  
3583-19 office supplies, and postage.

3583-20 3. The department shall establish and maintain an advisory  
21 council for the project which shall hold meetings quarterly.  
22 The department shall determine the council's membership by  
23 rule.

3583-24 4. The department shall meet at least quarterly with the  
25 representative payees, and shall negotiate banking services  
26 for the project.

3583-27 5. The department shall designate a volunteer as the  
28 public liaison to inform interested agencies and persons about  
29 the project, and to undertake to increase public awareness and  
30 referral of potential clients.

3583-31 6. A person acting as a representative payee shall be  
32 considered acting in a fiduciary capacity, and shall be liable  
33 for acts or omissions of the representative payee constituting  
34 a breach of the fiduciary duty imposed by chapter 633.

3583-35 Sec. 3. NEW SECTION. 217.42 STATE EMERGENCY MEDICAL

1 BOARD.

2 A state emergency medical board is established to formulate  
3 policy and guidelines for the operations of local emergency  
4 medical boards, and to act if a local board does not exist.

5 The state board is comprised of medical professionals and  
6 lay persons appointed by the director and the council on human  
7 services according to rules adopted by the department.

8 Sec. 4. NEW SECTION. 217.43 LOCAL EMERGENCY MEDICAL  
9 BOARD.

10 1. Each county in this state may establish and fund a  
11 local emergency medical board. The local board shall be  
12 comprised of medical professionals and lay persons appointed  
13 pursuant to the guidelines established by the state emergency  
14 medical board.

15 2. The local board shall act as a surrogate decision maker  
16 for patients incapable of making their own medical care  
17 decisions if no other surrogate decision maker is available to  
18 act. The local board may exercise decision-making authority  
19 in medical emergencies where the life of a patient is  
20 endangered, and a reasonably prudent person would consider a  
21 decision to be medically necessary. Such medically necessary  
22 decisions shall constitute good cause for subsequently filing  
23 a petition in the district court for appointment of a guardian  
24 ad litem pursuant to chapter 633, but the local board shall  
25 continue to act in the patient's best interests until a  
26 guardian ad litem is appointed.

27 3. The local board shall not be held liable, jointly or  
28 severally, for any actions or omissions taken or made in the  
29 official discharge of its duties, except those acts or  
30 omissions constituting willful or wanton misconduct. A  
31 physician or other health care provider who acts on a decision  
32 or directive of the local board shall not be held liable for  
33 any damages resulting from that act, unless such physician's  
34 or other health care provider's actions or omissions  
35 constitute negligence in the practice of the profession or

1 occupation, or willful or wanton misconduct.

2 Sec. 5. Section 237.13, subsection 5, Code 1989, is  
3 amended to read as follows:

4 5. Except as provided in this section, the fund shall pay,  
5 on behalf of a guardian or conservator, the reasonable and  
6 necessary legal costs incurred in defending against a suit  
7 filed by a ward or the ward's representative and the damages  
8 awarded as a result of the suit, so long as it is determined  
9 that the guardian or conservator acted in good faith in the  
10 performance of their duties. A payment shall not be made if  
11 there is evidence of intentional misconduct or a knowing  
12 violation of the law by the guardian or conservator,  
13 including, but not limited to, failure to carry out the  
14 responsibilities required under sections 633.633 through  
15 633.635 and 633.641 through 633.651 633.650.

16 Sec. 6. Section 602.8102, Code 1989, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 105A. Provide written notice to all duly  
19 appointed guardians and conservators of their liability as  
20 provided in sections 633.633A and 633.633B.

21 Sec. 7. Section 633.63, subsection 3, Code 1989, is  
22 amended to read as follows:

23 3. A private nonprofit corporation organized under chapter  
24 504 or 504A is qualified to act as a guardian, as defined in  
25 section 633.3, subsection 19, or a conservator, as defined in  
26 section 633.3, subsection 7, where the assets subject to the  
27 conservatorship are less than fifteen thousand dollars, ~~if the~~  
28 ~~department of human services, under rules established by the~~  
29 ~~department, finds the corporation a suitable agency to perform~~  
30 ~~such duties and determines that the corporation does not~~  
31 ~~possess a proprietary or legal interest in an organization~~  
32 ~~which provides direct services to the individual.~~

33 Sec. 8. Section 633.561, subsection 2, Code 1989, is  
34 amended to read as follows:

35 2. The court shall ensure that all proposed wards entitled

1 to representation have been provided with notice of the right  
2 to representation and right to be personally present at all  
3 proceedings and shall make findings of fact in any order of  
4 disposition setting out the manner in which notification was  
5 provided.

6 Sec. 9. NEW SECTION. 633.562 NOTIFICATION OF  
7 GUARDIANSHIP POWERS.

8-8 Service of process upon the proposed ward in involuntary or  
9 voluntary guardianship proceedings shall be accompanied by a  
10 notice which advises the proposed ward that if a guardian is  
11 appointed, the guardian may, without court approval, provide  
12 for the care of the ward, manage the ward's personal property  
13 and effects, assist the ward in developing self-reliance and  
14 receiving professional care, counseling, treatment or services  
15 as needed, and ensure that the ward receives necessary  
16 emergency medical services. The notice shall also advise the  
17 proposed ward that, upon the court's approval, the guardian  
18 may change the ward's permanent residence to a more  
19 restrictive residence, and arrange for major elective surgery  
20 or any other nonemergency major medical procedure. The notice  
21 shall clearly advise the proposed ward in boldfaced type of a  
22 minimum size of ten points, of the right to counsel and the  
23 potential deprivation of the proposed ward's civil rights.

24 Sec. 10. Section 633.575, subsection 2, Code 1989, is  
25 amended to read as follows:

26 2. The court shall ensure that all proposed wards entitled  
27 to representation have been provided with notice of the right  
28 to representation and right to be personally present at all  
29 proceedings and shall make findings of fact in any order of  
30 disposition setting out the manner in which notification was  
31 provided.

32 Sec. 11. NEW SECTION. 633.576 NOTIFICATION OF  
33 CONSERVATORSHIP POWERS.

34-34 Service of process upon the proposed ward in involuntary or  
35 voluntary conservatorship proceedings shall be accompanied by

383 1 a notice which advises the proposed ward that if a conservator  
2 is appointed, the conservator may, without court approval,  
3 manage the proposed ward's principle, income, and investments,  
4 sue and defend any claim by or against the ward, sell and  
5 transfer personal property, and vote at corporate meetings.  
6 The notice shall also advise the proposed ward that, upon the  
7 court's approval, the conservator may invest the ward's funds,  
8 execute leases, make payments to or for the benefit of the  
9 ward, support the ward's legal dependents, compromise or  
10 settle any claim, and do any other thing that the court  
11 determines is in the ward's best interests. The notice shall  
12 clearly advise the proposed ward, in boldfaced type of a  
13 minimum size of ten points, of the right to counsel and the  
14 potential deprivation of the proposed ward's civil rights.

15 Sec. 12. NEW SECTION. 633.629 PETITION CAPTIONS --  
16 SEPARATE FILINGS.

17 1. A petition filed under this division shall clearly  
18 indicate in the caption the following:

19 a. Whether the petition is filed for appointment of a  
20 guardian or conservator.

21 b. Whether the petition is voluntary or involuntary.

22 2. The clerk of the district court shall maintain separate  
383 23 filings for guardianship and conservatorship proceedings, and  
24 indicate on the filings whether the proceedings are voluntary  
25 or involuntary.

26 Sec. 13. NEW SECTION. 633.633A LIABILITY OF GUARDIANS  
27 AND CONSERVATORS.

28 Guardians and conservators shall not be held personally  
29 liable for actions or omissions taken or made in the official  
30 discharge of the guardian's or conservator's duties, except  
31 for any of the following:

32 1. A breach of fiduciary duty imposed by this Code.

33 2. Willful or wanton misconduct in the official discharge  
34 of the guardian's or conservator's duties.

35 Sec. 14. NEW SECTION. 633.633B TORT LIABILITY OF

1 GUARDIANS AND CONSERVATORS.

2 The fact that a person is a guardian or conservator shall  
3 not in itself make the person personally liable for damages  
4 for the acts of the ward.

5 Sec. 15. Section 633.672, Code 1989, is amended to read as  
6 follows:

7 633.672 PAYMENT OF COURT COSTS IN CONSERVATORSHIPS.

8 No order shall be entered approving an annual report of a  
9 conservator until the court costs which have been docketed  
10 have been paid or provided for. The court may, upon  
11 application, enter an order waiving payment of the court costs  
12 in indigent cases. However, if the conservatorship  
13 subsequently becomes financially capable of paying any waived  
14 costs, the conservator shall immediately pay the costs.

15 Sec. 16. Section 633.673, Code 1989, is amended to read as  
16 follows:

17 633.673 COURT COSTS IN GUARDIANSHIPS.

18 The ward or the ward's estate shall be charged with the  
19 court costs of a ward's guardianship, including the guardian's  
20 fees and the fees of the attorney for the guardian. The court  
21 may, upon application, enter an order waiving payment of the  
22 court costs in indigent cases. However, if the ward or ward's  
23 estate becomes financially capable of paying any waived costs,  
24 the costs shall be paid immediately.

25 Sec. 17. Section 633.651, Code 1989, is repealed.

26 EXPLANATION

27 This bill relates to guardians and conservators, and  
28 surrogate decision makers. The bill provides for specific  
29 notification to a proposed ward of the ward's right to  
30 counsel, right to be personally present at all hearings, and  
31 the potential deprivation of rights which may result if a  
32 guardian or conservator is appointed.

33 The bill establishes a state emergency medical board and  
34 authorizes the establishment of local boards to provide for a  
35 surrogate decision-maker mechanism for medical care decisions.

1 The department of human services is to provide training for  
2 guardians and conservators, and is to implement a  
3 representative payee project. Filing fees and court costs in  
4 guardianship and conservatorship proceedings are made waivable  
5 in indigent cases. Guardians and conservators are immunized  
6 from liability in the official discharge of their duties, and  
7 the clerk of the district court is to notify such guardians  
8 and conservators of their immunity.

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## SENATE FILE 309

S-3583

1 Amend Senate File 309 as follows:

- 2 1. Page 1, line 5, by inserting after the word  
3 "assist" the following: "all".
- 4 2. Page 1, by inserting after line 19 the  
5 following:  
6 "3. The department shall provide for the training  
7 of representative payees."  
8 3. Page 1, line 20, by striking the figure "3"  
9 and inserting the following: "4".
- 10 4. Page 1, line 24, by striking the figure "4"  
11 and inserting the following: "5".
- 12 5. Page 1, line 27, by striking the figure "5"  
13 and inserting the following: "6".
- 14 6. Page 1, line 27, by inserting after the word  
15 "volunteer" the following: ", who may be a  
16 representative payee,".
- 17 7. Page 1, line 31, by striking the figure "6"  
18 and inserting the following: "7".
- 19 8. Page 1, by inserting after line 34 the  
20 following:  
21 "8. For purposes of this section, "representative  
22 payee" means a person appointed by the Social Security  
23 administration to provide financial management  
24 services, without compensation, to individuals  
25 receiving Social Security administration or other  
26 government benefits, who are medically incapable of  
27 making responsible financial decisions."  
28 9. Page 2, line 7, by inserting after the word  
29 "department." the following: "The state board and its  
30 members are not liable, jointly or severally, for  
31 actions or omissions taken or made in the official  
32 discharge of their duties, except those acts or  
33 omissions constituting willful or wanton misconduct."  
34 10. Page 2, line 15, by striking the word "shall"  
35 and inserting the following: "may".
- 36 11. Page 2, by striking lines 19 and 20 and  
37 inserting the following: "in situations where there  
38 is sufficient time to review the patient's condition,  
39 and a reasonably prudent person would consider a".
- 40 12. Page 2, line 24, by striking the words "ad  
41 litem".
- 42 13. Page 2, line 26, by striking the words "ad  
43 litem".
- 44 14. Page 2, line 27, by inserting after the word  
45 "board" the following: "and its members".
- 46 15. Page 2, line 29, by striking the word "its"  
47 and inserting the following: "their".
- 48 16. Page 2, line 32, by inserting after the word  
49 "board" the following: "or state board".
- 50 17. Page 3, by striking lines 30 through 32 and

S-3583

Page 2

1 inserting the following: "~~such-duties and determines~~  
2 that the corporation does not possess a proprietary or  
3 legal interest in an organization which provides  
4 direct services to the individual."

5 18. Page 4, by striking lines 8 and 9 and

6 inserting the following:

7 "In a proceeding for the appointment of a guardian,  
8 the proposed ward shall be given written".

9 19. Page 4, line 23, by inserting after the word  
10 "rights." the following: "In an involuntary  
11 guardianship proceeding, the notice shall be served  
12 upon the proposed ward with the notice of the filing  
13 of the petition as provided in section 633.554. In a  
14 proceeding for appointment of a guardian on a  
15 voluntary petition, the notice shall be served upon  
16 the proposed ward prior to the appointment of a  
17 guardian."

18 20. Page 4, by striking lines 34 and 35, and  
19 inserting the following:

20 "In a proceeding for the appointment of a  
21 conservator, the proposed ward shall be given  
22 written".

23 21. Page 5, line 1, by striking the words "a  
24 notice" and inserting the following: "notice".

25 22. Page 5, line 3, by striking the word  
26 "principle" and inserting the following: "principal".

27 23. Page 5, line 14, by inserting after the word  
28 "rights." the following: "In an involuntary  
29 conservatorship proceeding, the notice shall be served  
30 upon the proposed ward with the notice of the filing  
31 of the petition as provided in section 633.568. In a  
32 proceeding for appointment of a conservator on a  
33 voluntary petition, the notice shall be served upon  
34 the proposed ward prior to the appointment of a  
35 conservator."

36 24. Page 5, line 23, by inserting after the word  
37 "proceedings," the following: "except where the  
38 petitions are combined,".

By RICHARD VARN

S-3583 FILED APRIL 6, 1989

ADOPTED

4-6-89 (p. 1236)

**SENATE FILE 309  
FISCAL NOTE**

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A fiscal note for **SENATE FILE 309** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 309 relates to guardians, conservators, and surrogate decision makers. The bill provides for specific notification to a proposed ward of the ward's right to counsel, right to be personally present at all hearings, and the potential deprivation of rights which may result if a guardian or conservator is appointed.

The bill establishes a state emergency medical board and authorizes the establishment of local boards to provide for a surrogate decision-maker mechanism for medical care decisions. The Department of Human Services is to provide training for guardians and conservators, and is to implement a representative payee project. Filing fees and court costs in guardianship and conservatorship proceedings are made waivable in indigent cases. Guardians and conservators are immunized from liability in the official discharge of their duties, and the clerk of the district court is to notify such guardians and conservators of their immunity.

Fiscal Effect:

Senate File 309 is estimated to cost \$169,845. This includes \$109,731 for 3.5 FTE positions, \$15,000 for guardian and conservator training, \$15,000 for statewide telephone listings for the state emergency medical board, and \$30,114 for miscellaneous support.

Source: Department of Human Services

(LSB 1708s, JMN)

FILED APRIL 3, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR