

House File 610

H-1025

1 Amend House File 610 as follows:

2 1. Page 8, after line 12 by inserting:

3 <8. The petition shall provide a brief description of
4 the respondent's alleged functional limitations that make
5 the respondent unable to communicate or carry out important
6 decisions concerning the respondent's financial affairs.>

7 2. Page 8, line 13, by striking <8.> and inserting <9.>

8 3. Page 9, lines 7 and 8, by striking <rule of civil
9 procedure 1.305> and inserting <the Iowa rules of civil
10 procedure>

11 4. Page 9, lines 13 and 14, by striking <rule of civil
12 procedure 1.308(5)> and inserting <the Iowa rules of civil
13 procedure>

14 5. Page 9, lines 24 and 25, by striking <rule of civil
15 procedure 1.305(2)> and inserting <the Iowa rules of civil
16 procedure>

17 6. Page 9, lines 28 and 29, by striking <rule of civil
18 procedure 1.305> and inserting <the Iowa rules of civil
19 procedure>

20 7. Page 9, lines 32 and 33, by striking <rule of civil
21 procedure 1.308(5)> and inserting <the Iowa rules of civil
22 procedure>

23 8. Page 11, after line 10 by inserting:

24 <Sec. ____ . NEW SECTION. 633.560A **Mediation.**

25 1. The district court may, on its own motion or on the
26 motion of any party, order the parties to participate in
27 mediation in any guardianship or conservatorship action.
28 Mediation performed under this section shall comply with the
29 provisions of chapter 679C. The court shall, upon application
30 of a party, grant a waiver from any court-ordered mediation
31 under this section if the party demonstrates that a history
32 of domestic abuse exists similarly as considered in section
33 598.41, subsection 3, paragraph "j". The court may, upon
34 application of a party, grant a waiver from any court-ordered
35 mediation if the action involves elder abuse pursuant to

1 chapter 235F.

2 2. Mediation shall comply with all of the following
3 standards:

4 a. The parties will participate in good faith.

5 Participation in mediation shall include attendance at
6 a mediation session with the mediator and the parties to
7 the action, listening to the mediator's explanation of the
8 mediation process, presentation of one party's view of the
9 case, and listening to the response of the other party.
10 Participation in mediation does not require that the parties
11 reach an agreement.

12 b. Unless the parties agree upon a mediator, the court shall
13 appoint a mediator. Any mediator appointed by the court shall
14 meet the qualifications established in this section.

15 c. Parties to the mediation shall have the right to
16 representation by an attorney at all times.

17 d. The parties to the mediation shall present any agreement
18 reached through the mediation to their attorneys, if any.
19 A mediation agreement reached by the parties shall not be
20 enforceable until approved by the court.

21 e. The costs of mediation shall be borne by the parties, as
22 agreed to by the parties, or as ordered by the court, and may
23 be taxed as court costs.

24 3. A mediator appointed by the court acting pursuant to this
25 section shall have the following qualifications:

26 a. Completed a one-hour internet seminar or live session
27 regarding the external resources available to a respondent with
28 particular focus on resources for older persons.

29 b. A minimum of twenty-five hours of general mediation
30 training.

31 c. Either of the following:

32 (1) Fifteen hours of probate-specific or elder-specific
33 mediation training.

34 (2) Ten continuous years of practice in Iowa as a licensed
35 attorney with the greater of four hundred hours or forty

1 percent of the total hours of law practice per year being
2 devoted to matters concerning wills, trusts, and estate work
3 for each of the ten continuous years. For mediations involving
4 guardianship of juveniles, the mediator shall also be currently
5 qualified as a family law mediator and have completed a
6 one-hour live session concerning guardianship procedures.>

7 9. Page 14, line 12, by striking <may> and inserting <shall>

8 10. By striking page 15, line 28, through page 16, line 2,
9 and inserting:

10 <1. At or before a hearing on petition for the appointment
11 of a guardian or conservator or the modification or termination
12 of a guardianship or conservatorship, the court shall order a
13 professional evaluation of the respondent unless one of the
14 following criteria are met:

15 a. The court finds it has sufficient information to
16 determine whether the criteria for a guardianship or
17 conservatorship are met.

18 b. The petitioner or respondent has filed a professional
19 evaluation.

20 2. Notwithstanding subsection 1, if the respondent has
21 filed a professional evaluation and the court determines an
22 additional professional evaluation will assist the court in
23 understanding the decision-making capacity and functional
24 abilities and limitations of the respondent, the court may
25 order a professional evaluation of the respondent.>

26 11. Page 16, line 3, by striking <2.> and inserting <3.>

27 12. Page 16, after line 6 by inserting:

28 <4. Unless otherwise directed by the court, the report must
29 contain all of the following:

30 a. A description of the nature, type, and extent of the
31 respondent's cognitive and functional abilities and limitation.

32 b. An evaluation of the respondent's mental and physical
33 condition and, if appropriate, educational potential, adaptive
34 behavior, and social skills.

35 c. A prognosis for improvement and recommendation for the

1 appropriate treatment, support, or habilitation plan.

2 d. The evaluator's qualifications to evaluate the
3 respondent's cognitive and functional abilities limitations and
4 lack of conflict of interest.

5 e. The date of examination on which the report is based.

6 5. The cost of the professional evaluation shall be paid by
7 the respondent unless the respondent is indigent as defined in
8 section 633.561, subsection 3, in which case the costs shall
9 be paid by the county in which the proceedings are pending or
10 unless the court orders otherwise.>

11 13. Page 16, line 7, by striking <3.> and inserting <6.>

12 14. Page 16, line 9, by striking <4.> and inserting <7.>

13 15. Page 16, line 10, by striking <4.> and inserting <7.>

14 16. Page 23, after line 28 by inserting:

15 <Sec. _____. Section 633.641, Code 2019, is amended by
16 striking the section and inserting in lieu thereof the
17 following:

18 **633.641 Duties of conservator.**

19 1. A conservator is a fiduciary and has duties of prudence
20 and loyalty to the protected person.

21 2. A conservator shall promote the self-determination of
22 the protected person and, to the extent feasible, encourage
23 the protected person to participate in decisions, act on the
24 protected person's own behalf, and develop or regain the
25 capacity to manage the protected person's financial affairs.

26 3. In making decisions for a protected person, the
27 conservator shall make the decision the conservator reasonably
28 believes the protected person would make if able, unless doing
29 so would fail to preserve the resources needed to maintain
30 the protected person's well-being and lifestyle or otherwise
31 unreasonably harm or endanger the welfare or personal or
32 financial interests of the protected person. To determine
33 the decision the protected person would make if able, the
34 conservator shall consider the protected person's prior or
35 current directions, preferences, opinions, values, and actions,

1 to the extent actually known or reasonably ascertainable by the
2 conservator.

3 4. If a conservator cannot make a decision under subsection
4 3 because the conservator does not know and cannot reasonably
5 determine the decision the protected person would make if
6 able, or the conservator reasonably believes the decision the
7 protected person would make would fail to preserve resources
8 needed to maintain the protected person's well-being and
9 lifestyle or otherwise unreasonably harm or endanger the
10 welfare or personal or financial interests of the protected
11 person, the conservator shall act in accordance with the best
12 interests of the protected person. In determining the best
13 interests of the protected person, the conservator shall
14 consider all of the following:

15 a. Information received from professionals and persons that
16 demonstrate sufficient interest in the welfare of the protected
17 person.

18 b. Other information the conservator believes the protected
19 person would have considered if the protected person were able
20 to act.

21 c. Other factors a reasonable person in the circumstances
22 of the protected person would consider, including consequences
23 to others.

24 5. Except when inconsistent with the conservator's duties
25 under subsections 1 through 4, a conservator shall invest and
26 manage the protected person's assets as a prudent investor
27 would, by considering the circumstances and property of the
28 protected person.

29 6. The propriety of a conservator's investment and
30 management of the conservatorship estate is determined in light
31 of the facts and circumstances existing when the conservator
32 decides or acts and not by hindsight.

33 7. A conservator that has special skills or expertise,
34 or is named conservator in reliance on the conservator's
35 representation of special skills or expertise, has a duty

1 to use the special skills or expertise in carrying out the
2 conservator's duties.

3 8. In investing and selecting specific property for
4 distribution, a conservator shall consider any estate plan or
5 other donative, nominative, or appointive instrument of the
6 protected person, known to the conservator.

7 9. A conservator shall maintain insurance on the insurable
8 real and personal property of the protected person, unless
9 the conservatorship estate lacks sufficient funds to pay for
10 insurance or the court finds any of the following:

11 a. The property lacks sufficient equity to justify the
12 insurance premium.

13 b. Insuring the property would unreasonably dissipate the
14 conservatorship estate.

15 c. Insuring the property would not be in the best interest
16 of the protected person.

17 10. If a protected person has executed a valid power of
18 attorney under chapter 633B, the conservator shall act in
19 accordance with the applicable provisions of chapter 633B.

20 11. The conservator shall report to the department of
21 human services the protected person's assets and income, if
22 the protected person is receiving medical assistance under
23 chapter 249A. Such reports shall be made upon establishment of
24 a conservatorship for an individual applying for or receiving
25 medical assistance, upon application for benefits on behalf
26 of the protected person, upon annual or semiannual review of
27 continued medical assistance eligibility, when any significant
28 change in the protected person's assets or income occurs, or
29 as otherwise requested by the department of human services.
30 Written reports shall be provided to the department of human
31 services office for the county in which the protected person
32 resides or the office in which the protected person's medical
33 assistance is administered.

34 Sec. ____ . NEW SECTION. **633.642 Responsibilities of**
35 **conservator.**

1 1. The conservator, acting reasonably and consistent
2 with the fiduciary duties of the conservator to accomplish
3 the purpose of the conservatorship, and acting in a manner
4 consistent with the conservator's plan, and consistent with
5 the order establishing the conservatorship, including any
6 limitations in the order, shall, without the necessity of prior
7 court approval, have all the following powers on behalf of the
8 protected person:

9 *a.* Collect, receive, receipt for any principal or income,
10 and to enforce, defend against, or prosecute any claim by or
11 against the protected person or the conservator; and to sue on
12 and defend claims in favor of or against the protected person
13 or the conservator.

14 *b.* Sell and transfer personal property of a perishable
15 nature and tangible personal property for which there is a
16 regularly established market.

17 *c.* Vote at corporate meetings in person or by proxy.

18 *d.* Receive additional property from any source.

19 *e.* Notwithstanding the provisions of section 633.123,
20 continue to hold any investment or other property originally
21 received by the conservator, and also any increase thereof,
22 pending the timely filing of the first annual report.

23 *f.* Pay court costs, bond premiums, and court-approved
24 expenses.

25 *g.* Open a depository account.

26 *h.* Receive bank statements and investment reports and
27 correspond with financial institutions.

28 *i.* Buy, sell, invest, or reinvest assets, except real
29 estate, pursuant to section 633.123.

30 *j.* Make payments on any existing mortgage, including for
31 real estate taxes and for property and liability insurance.

32 *k.* Pay for the protected person's housing under an existing
33 agreement.

34 *l.* Pay health care insurance premiums and prescription
35 medications, medical expenses, hospital expenses, and ambulance

1 bills.

2 *m.* Authorize preparation and filing of, and pay any amount
3 due for, state and federal income taxes.

4 *n.* Pay utilities on the real property owned or leased by the
5 protected person.

6 *o.* Purchase clothing.

7 *p.* Purchase food, cleaning supplies, toiletries, and
8 personal grooming for the protected person.

9 *q.* Reimburse the guardian or guardians for reasonable
10 out-of-pocket expenses advanced on behalf of the protected
11 person for health care and other items upon presentation of a
12 receipt or statement to the conservator.

13 *r.* Pay reasonable wages and any required employment taxes
14 to individuals or organizations that can assist the protected
15 person as needed with cooking, cleaning, shopping, and other
16 activities of daily living.

17 2. Except as otherwise ordered by the court, a conservator
18 must give notice to persons entitled to notice and receive
19 specific prior authorization by the court before the
20 conservator may take any other action on behalf of the
21 protected person. These other powers requiring court approval
22 include the authority of the conservator to:

23 *a.* Invest the protected person's assets consistent with
24 section 633.123.

25 *b.* Make gifts on the protected person's behalf from
26 conservatorship assets to persons or religious, educational,
27 scientific, charitable, or other nonprofit organizations to
28 whom or to which such gifts were regularly made prior to the
29 conservator's appointment; or on a showing that such gifts
30 would benefit the protected person from the perspective of
31 gift, estate, inheritance, or other taxes. No gift shall be
32 allowed which would foreseeably prevent adequate provision for
33 the protected person's best interest.

34 *c.* Make payments consistent with the conservator's plan
35 described above directly to the protected person or to others

1 for the protected person's education and training needs.

2 *d.* Use the protected person's income or assets to provide
3 for any person that the protected person is legally obligated
4 to support.

5 *e.* Compromise, adjust, arbitrate, or settle any claim by or
6 against the protected person or the conservator.

7 *f.* Make elections for a protected person who is the
8 surviving spouse as provided in sections 633.236 and 633.240.

9 *g.* Exercise the right to disclaim on behalf of the protected
10 person as provided in section 633E.5.

11 *h.* Sell, mortgage, exchange, pledge, or lease the protected
12 person's real and personal property consistent with subchapter
13 VII, part 6 of this chapter regarding sale of property from a
14 decedent's estate.

15 Sec. _____. Section 633.648, Code 2019, is amended to read as
16 follows:

17 **633.648 Appointment of attorney in compromise of personal**
18 **injury settlements.**

19 Notwithstanding the provisions of ~~section 633.647~~ 633.642
20 prior to authorizing a compromise of a claim for damages on
21 account of personal injuries to the ward, the court may order
22 an independent investigation by an attorney other than by the
23 attorney for the conservator. The cost of such investigation,
24 including a reasonable attorney fee, shall be taxed as part of
25 the cost of the conservatorship.>

26 17. Page 26, by striking lines 9 through 23 and inserting:

27 <Sec. _____. Section 633.670, Code 2019, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 **633.670 Reports by conservators.**

31 1. A conservator shall file an initial plan for protecting,
32 managing, investing, expending, and distributing the assets
33 of the conservatorship estate within ninety days after
34 appointment. The plan must be based on the needs of the
35 protected person and take into account the best interest of the

1 protected person as well as the protected person's preference,
2 values, and prior directions to the extent known to, or
3 reasonably ascertainable by, the conservator.

4 a. The initial plan shall include all of the following:

5 (1) A budget containing projected expenses and resources,
6 including an estimate of the total amount of fees the
7 conservator anticipates charging per year and a statement or
8 list of the amount the conservator proposes to charge for each
9 service the conservator anticipates providing to the protected
10 person.

11 (2) A statement as to how the conservator will involve
12 the protected person in decisions about management of the
13 conservatorship estate.

14 (3) If ordered by the court, any step the conservator plans
15 to take to develop or restore the ability of the protected
16 person to manage the conservatorship estate.

17 (4) An estimate of the duration of the conservatorship.

18 b. Within two days after filing the initial plan, the
19 conservator shall give notice of the filing of the initial plan
20 with a copy of the plan to the protected person, the protected
21 person's attorney and court advisor, if any, and others as
22 directed by the court. The notice must state that any person
23 entitled to a copy of the plan must file any objections to the
24 plan not later than fifteen days after it is filed.

25 c. At least twenty days after the plan has been filed, the
26 court shall review and determine whether the plan should be
27 approved or revised, after considering objections filed and
28 whether the plan is consistent with the conservator's powers
29 and duties.

30 d. After approval by the court, the conservator shall
31 provide a copy of the approved plan and order approving the
32 plan to the protected person, the protected person's attorney
33 and court advisor, if any, and others as directed by the court.

34 e. The conservator shall file an amended plan when there has
35 been a significant change in circumstances or the conservator

1 seeks to deviate significantly from the plan. Before the
2 amended plan is implemented, the provisions for court approval
3 of the plan shall be followed as provided in paragraphs "b",
4 "c", and "d".

5 2. A conservator shall file an inventory of the protected
6 person's assets within ninety days after appointment which
7 includes an oath or affirmation that the inventory is believed
8 to be complete and accurate as far as information permits.
9 Copies of the inventory shall be provided to the protected
10 person, the protected person's attorney and court advisor, if
11 any, and others as directed by the court. When the conservator
12 receives additional property of the protected person, or
13 becomes aware of its existence, a description of the property
14 shall be included in the conservator's next annual report.

15 3. A conservator shall file a written and verified report
16 for the period since the end of the preceding report period.
17 The court shall not waive these reports.

18 a. These reports shall include all of the following:

19 (1) Balance of funds on hand at the beginning and end of the
20 period.

21 (2) Disbursements made.

22 (3) Changes in the conservator's plan.

23 (4) List of assets as of the end of the period.

24 (5) Bond amount and surety's name.

25 (6) Residence and physical location of the protected
26 person.

27 (7) General physical and mental condition of the protected
28 person.

29 (8) Other information reflecting the condition of the
30 conservatorship estate.

31 b. These reports shall be filed:

32 (1) On an annual basis within sixty days of the end of the
33 reporting period unless the court orders an extension for good
34 cause shown in accordance with the rules of probate procedure.

35 (2) Within thirty days following removal of the

1 conservator.

2 (3) Upon the conservator's filing of a resignation and
3 before the resignation is accepted by the court.

4 (4) Within sixty days following the termination of the
5 conservatorship.

6 (5) At other times as ordered by the court.

7 c. Reports required by this section shall be served on the
8 protected person's attorney and court advisor, if any, and the
9 veterans administration if the protected person is receiving
10 veterans benefits.>

11 18. Page 28, line 32, by striking <and>

12 19. Page 28, line 32, after <633.576,> by inserting
13 <633.646, 633.647, 633.649, 633.650, and 633.652,>

14 20. By renumbering, redesignating, and correcting internal
15 references as necessary.

HINSON of Linn