

FINAL REPORT  
STATE POLICY FOR GUARDIANS AND CONSERVATORS STUDY COMMITTEE

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AVAILABILITY OF MINUTES

Copies of the minutes of the meetings of the committee  
are available from the Legislative Service Bureau.

## F I N A L R E P O R T

### STATE POLICY FOR GUARDIANS AND CONSERVATORS STUDY COMMITTEE

February 1989

#### APPOINTMENT AND CHARGE

The State Policy for Guardians and Conservators Study Committee was established by the Legislative Council to "[r]eview the current role and function of volunteer guardians and conservators, report on the need for guardians and conservators and the reasons for a shortage of persons willing to serve as volunteer guardians and conservators, recommend improvements to increase the number of volunteer guardians and conservators to assure that persons who are permanently or temporarily incapacitated and cannot make decisions regarding health care, money management, or independent living will have access to volunteer guardians and conservators". The following members were appointed:

Senator Richard Varn, Solon, Co-chairperson  
Representative Wayne McKinney, Waukee, Co-chairperson  
Senator Eugene Fraise, Fort Madison  
Senator David Readinger, Des Moines  
Representative Mark Haverland, Polk City  
Representative Joseph Kremer, Jesup

#### MEETINGS

The Interim Study Committee was authorized to hold two meetings which were held Monday, October 10, 1988, and Wednesday, December 14, 1988.

#### TESTIMONY AND PRESENTATIONS

At its first meeting the Study Committee received information from various interested parties. The testimony and presentations were as follows:

1. Ms. Jane Roberts and Ms. Eleanor Elbert of the American Association of Retired Persons regarding the Association's concerns and recommendations. In particular, Ms. Roberts objected to the lack of termination procedures in current Iowa law. Ms. Elbert, herself a volunteer guardian and conservator, stated that indigency and guardian/conservator liability are the two greatest obstacles the system faces.

2. Ms. Kay Weiler, Assistant Professor, University of Iowa College of Nursing, discussed a survey she is currently conducting, which survey is designed to gather data regarding the complications facing family members when an elderly member can no longer make their own health care decisions.

3. Mr. Jay Cayner, Director of Social Work at the University of Iowa, stressed the importance of recruiting programs for guardians and conservators, and the difficulties facing guardians and conservators when emergency and life-threatening health care decisions must be made.

4. Ms. Marion Hanson, Area I Agency On Aging, commented on the potential over-use of guardianship/conservatorship proceedings, funding of such programs, and viable alternatives to formal proceedings.

5. Ms. Betty Grandquist, Iowa Department of Elder Affairs, described her department's concern over the lack of adequate monitoring of guardianship/conservatorship proceedings under current law.

6. Ms. Judy Dierenfeld, Community Mental Health Centers Association of Iowa, remarked that mentally ill persons are extremely vulnerable, and money management poses great problems for them. She added that if the guardianship/conservatorship process provided more incentives, perhaps more people would be willing to volunteer for such programs.

At its second meeting on December 14, 1988, the Committee heard the following persons:

1. Margaret Ward, Standards Officer, Department of Human Services, Division of Mental Health, Mental Retardation and Developmental Disabilities, presented to the Committee the Department's proposed administrative rules for nonprofit corporate guardians and conservators.

2. Mr. Bob Oberbillig, Legal Aid Society of Polk County, discussed the number of guardianship/conservatorships his office handles per year, and the dire need for voluntary guardians. He felt that the reporting requirements, while in most cases favorable, have worked a hardship on those cases pending prior to enactment of the new reporting law.

3. Mr. Gary Hassel, Attorney at Law, proposed the Committee recommend legislation creating a "standing fiduciary" for those proposed wards who have no other alternative. He further commented on the need to maintain the exempt status of a ward's assets.

COMMITTEE RECOMMENDATIONS

The Committee made the following recommendations based upon consideration of the testimony presented and Committee discussions.

1. Recommends the provisions of Co-chairperson McKinney's original bill draft relating to the filing and notification requirements of guardianship and conservatorship proceedings, be amended as proposed by Co-chairperson Varn, to include language clearly advising the proposed wards of their right to counsel and the potential deprivation of rights. A copy of a proposed bill which contains the provisions of Co-chairperson McKinney's original proposal with amendments and also contains the other listed recommendations of the study committee for statutory changes is attached.

2. Recommends the formation of a State Emergency Medical Board whose function shall be to formulate policy and guidelines for the operations of local emergency medical boards, and to act when no such local board has been formed. Each county is to be granted discretionary authority to form and fund a local emergency medical board, which is to be comprised of medical professionals and lay persons. The local board's purpose shall be to act as a surrogate decision-maker for individuals when those individuals are incapable of making their own medical care decisions and no other surrogate decision maker is available. The local board shall not be liable, jointly or severally, for any actions taken in the official discharge of its duties except those actions constituting willful or wanton misconduct. Any physician or other health care provider who acts on a decision of a local emergency medical board shall not be held liable for any damages resulting therefrom, unless such physician's or other health care provider's actions amount to willful or wanton misconduct. The local emergency medical boards shall be granted decision-making authority in medical emergencies where the life of a patient is endangered and a reasonably prudent person would consider a decision to be medically necessary. When a medically necessary decision is to be made by a local medical emergency board, good cause shall exist for filing a petition in the district court for appointment of a guardian ad litem.

3. Recommends that volunteer guardians and conservators be immune from liability for actions taken in the official discharge of their duties unless those actions amount to willful or wanton misconduct. A mechanism shall be developed to advise these guardians and conservators of their immunity from liability.

4. Recommends that separate filing systems be created and utilized by the clerks of court for guardianship and conservatorship proceedings by providing that petitions be kept in separate files and that each petition clearly indicate which type of proceeding is involved.

5. Recommends that filing fees and attendant costs be waivable by the court in indigent cases, with subsequent recoupment of the fees and costs from the ward's estate if possible.

6. Recommends the adoption of a nullification resolution by the General Assembly to nullify the nonprofit corporate guardianship and conservatorship rules as proposed by the Department of Human Services, and statutory amendment of Code section 633.63, subsection 3, to provide that the qualifications, duties, and liabilities are uniform for all guardians and conservators. A copy of the proposed nullification resolution is attached.

7. Recommends preliminary or advanced training, as appropriate, for guardians and conservators by a designated agency or if appropriate, by an individual associated with the guardianship/conservatorship system.

8. Recommends adoption of the American Association of Retired Persons (AARP) representative payee project proposal.

9. Recommends a statutory provision specifically advising all proposed wards of their right to counsel and right to be present at all proceedings, unless waived, in voluntary and involuntary guardianship/conservatorship proceedings.

## APPENDIX

### Legislative Proposals

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

- A Joint Resolution to nullify an administrative rule of the department of human services relating to nonprofit corporate guardians and conservators, and providing an effective date.

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED STATE POLICY  
FOR GUARDIANS AND  
CONSERVATORS STUDY  
COMMITTEE BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, 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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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  
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,  
19 office supplies, and postage.

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.

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

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.

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.

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

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  
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 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 JOINT RESOLUTION \_\_\_\_\_  
BY (PROPOSED STATE POLICY FOR  
GUARDIANS AND CONSERVATORS  
STUDY COMMITTEE RESOLUTION)

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

**SENATE JOINT RESOLUTION**

1 A Joint Resolution to nullify an administrative rule of the  
2 department of human services relating to nonprofit corporate  
3 guardians and conservators, and providing an effective date.  
4 BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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1 Section 1. Proposed chapter 23 in ARC 9507, appearing in  
2 Iowa administrative bulletin 12 (December 14, 1988), if  
3 adopted, is nullified.

4 Sec. 2. This joint resolution, being deemed of immediate  
5 importance, takes effect upon enactment.

6 EXPLANATION

7 This joint resolution nullifies the proposed rules of the  
8 department of human services, if adopted, regarding  
9 qualifications of private nonprofit corporate guardians and  
10 conservators, and takes effect upon enactment.

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