

House File 2449 - Enrolled

House File 2449

AN ACT

RELATING TO THE SUBSTITUTE DECISION MAKER ACT.

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

Section 1. Section 22.7, subsection 61, Code 2018, is amended to read as follows:

61. Records of the department on aging pertaining to clients served by the state office or a local office of substitute decision-maker public guardian as defined in section 231E.3.

Sec. 2. Section 231E.1, Code 2018, is amended to read as follows:

231E.1 Title.

This chapter shall be known and may be cited as the "*Iowa ~~Substitute Decision Maker Public Guardian Act~~*".

Sec. 3. Section 231E.2, Code 2018, is amended to read as follows:

231E.2 Office of ~~substitute decision-maker~~ public guardian — findings and intent.

1. *a.* The general assembly finds that many adults in this state are unable to meet essential requirements to maintain their physical health or to manage essential aspects of their financial resources and are in need of substitute decision-making guardianship, conservatorship, or representative payee services. However, a willing and responsible person may not be available to serve as a private substitute decision-maker guardian, conservator, or representative payee or the adult may not have adequate income

or resources to compensate a private ~~substitute decision maker guardian, conservator, or representative payee.~~

b. The general assembly further finds that a process should exist to assist individuals in finding alternatives to ~~substitute decision-making guardianship, conservatorship, or representative payee~~ services and less intrusive means of assistance before an individual's independence or rights are limited.

~~c. The general assembly further finds that a substitute decision maker may be necessary to finalize a person's affairs after death when there is no willing and appropriate person available to serve as the person's personal representative.~~

2. a. It is, therefore, the intent of the general assembly to establish a state office of ~~substitute decision maker~~ public guardian and authorize the establishment of local offices of ~~substitute decision maker~~ public guardian to provide ~~substitute decision-making~~ public guardianship services to adults and their estates after their deaths, when no private ~~substitute decision maker guardian, conservator, or representative payee~~ is available.

b. It is also the intent of the general assembly that the state office of substitute decision maker public guardian provide assistance to both public and private ~~substitute decision makers~~ guardians, conservators, and representative payees throughout the state in securing necessary services for their wards, ~~principals, and clients, and decedents~~ and to assist ~~substitute decision makers~~ guardians, conservators, representative payees, wards, principals, clients, courts, and attorneys in the orderly and expeditious handling of ~~substitute decision-making guardianship, conservatorship, and representative payee~~ proceedings.

Sec. 4. Section 231E.3, Code 2018, is amended to read as follows:

231E.3 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. "*Client*" means an individual for whom a representative payee is appointed.
2. "*Commission*" means the commission on aging.

3. *“Conservator”* means conservator as defined in section 633.3.

4. *“Court”* means court as defined in [section 633.3](#).

5. ~~*“Decedent”* means the individual for whom an estate is administered or executed.~~

6. *“Department”* means the department on aging established in [section 231.21](#).

7. 6. *“Director”* means the director of the department on aging.

8. ~~*“Estate”* means estate as defined in [section 633.3](#).~~

9. 7. *“Guardian”* means guardian as defined in section 633.3.

10. 8. *“Incompetent”* means incompetent as defined in section 633.3.

11. 9. *“Local office”* means a local office of ~~substitute decision maker~~ public guardian.

12. 10. *“Local substitute decision maker”* public guardian means an individual under contract with the department to act as a ~~substitute decision maker~~ guardian, conservator, or representative payee.

13. ~~*“Personal representative”* means personal representative as defined in [section 633.3](#).~~

14. ~~*“Planning and service area”* means a geographic area of the state designated by the commission for the purpose of planning, developing, delivering, and administering services for elders.~~

15. ~~*“Power of attorney”* means a durable power of attorney for health care as defined in [section 144B.1](#) or a power of attorney executed pursuant to [chapter 633B](#).~~

16. ~~*“Principal”* means an individual for whom a power of attorney is established.~~

11. *“Public guardian”* means the state public guardian or a local public guardian.

12. *“Public guardianship services”* means guardianship, conservatorship, or representative payee services provided by the state public guardian or a local public guardian.

17. 13. *“Representative payee”* means an individual appointed by a government entity to receive funds on behalf of a client pursuant to federal regulation.

~~18.~~ 14. "State agency" means any executive department, commission, board, institution, division, bureau, office, agency, or other executive entity of state government.

~~19.~~ 15. "State office" means the state office of ~~substitute decision maker~~ public guardian.

~~20.~~ 16. "~~State substitute decision maker~~" public guardian" means the administrator of the state office of ~~substitute decision maker~~ public guardian.

~~21.~~ "~~Substitute decision maker~~" means a ~~guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative.~~

~~22.~~ "~~Substitute decision making~~" or "~~substitute decision-making services~~" means the provision of services of a ~~guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative.~~

~~23.~~ 17. "Ward" means the individual for whom a guardianship or conservatorship is established.

Sec. 5. Section 231E.4, Code 2018, is amended to read as follows:

231E.4 State office of ~~substitute decision maker~~ public guardian — established — duties — department rules.

1. A state office of ~~substitute decision maker~~ public guardian is established within the department to create and administer a statewide network of ~~substitute decision makers~~ guardians, conservators, and representative payees who provide ~~substitute decision-making~~ guardianship, conservatorship, or representative payee services if other ~~substitute decision makers~~ guardians, conservators, or representative payees are not available to provide the services.

2. The director shall appoint an administrator of the state office who shall serve as the state ~~substitute decision maker~~ public guardian. The state ~~substitute decision maker~~ public guardian shall be qualified for the position by training and expertise in ~~substitute decision-making~~ guardianship, conservatorship, and representative payee law and shall be licensed to practice law in Iowa. The state ~~substitute decision maker~~ public guardian shall also have knowledge of social services available to meet the needs of persons adjudicated incompetent or in need of ~~substitute decision~~

making guardianship, conservatorship, or representative payee services.

3. The state office shall do all of the following:

a. Select persons through a request for proposals process to establish local offices of ~~substitute decision maker in each of the planning and service areas~~ public guardian. Local offices shall be established ~~statewide on or before July 1, 2018~~ contingent upon the appropriation of necessary funds to the department as determined by the director.

b. Monitor and terminate contracts with local offices based on criteria established by rule of the department.

c. Retain oversight responsibilities for all local ~~substitute decision makers~~ public guardians.

d. Act as ~~substitute decision maker~~ a guardian, conservator, or representative payee if a local office public guardian is not available to so act.

e. Work with the department of human services, the Iowa department of public health, the Iowa developmental disabilities council, and other agencies to establish a referral system for the provision of ~~substitute decision-making~~ guardianship, conservatorship, and representative payee services.

f. Develop and maintain a current listing of public and private services and programs available to assist wards, ~~principals, and clients, personal representatives,~~ and their families, and establish and maintain relationships with public and private entities to assure the availability of effective ~~substitute decision-making~~ guardianship, conservatorship, and representative payee services for wards, principals, and clients, and estates.

g. Provide information and referrals to the public regarding ~~substitute decision-making~~ guardianship, conservatorship, and representative payee services.

~~*h.* Provide personal representatives for estates where a person is not available for that purpose.~~

~~*i.*~~ *h.* Maintain statistical data on the local offices including various methods of funding, the types of services provided, and the demographics of the wards, ~~principals, and clients, and decedents~~ and report to the general assembly on or

before November 1, annually, regarding the local offices and recommend any appropriate legislative action.

~~f.~~ i. Develop, in cooperation with the judicial council as established in [section 602.1202](#), a ~~substitute decision-maker~~ guardianship, conservatorship, and representative payee education and training program. The program may be offered to both public and private ~~substitute decision-makers~~ guardians, conservators, and representative payees. The state office shall establish a curriculum committee, which includes but is not limited to probate judges, to develop the education and training program. The state office shall be the sole authority for certifying additional curriculum trainers.

4. The state office may do any of the following:

a. Accept and receive gifts, grants, or donations from any public or private entity in support of the state office. Such gifts, grants, or donations shall be appropriated pursuant to section 231E.9. Notwithstanding [section 8.33](#), moneys retained by the department pursuant to [this section](#) shall not be subject to reversion to the general fund of the state.

b. Accept the services of individual volunteers and volunteer organizations. Volunteers and volunteer organizations utilized by the state office shall not provide direct ~~substitute decision-making~~ guardianship, conservatorship, or representative payee services.

c. Employ staff necessary to administer the state office and enter into contracts as necessary.

5. The department shall provide administrative support to the state office.

6. The department shall adopt rules in accordance with chapter 17A necessary to create and administer the state office and local offices, relating to but not limited to all of the following:

a. An application and intake process and standards for receipt of ~~substitute decision-making~~ guardianship, conservatorship, or representative payee services from the state office or a local office.

b. A process for the removal or termination of the state public guardian or a local ~~substitute decision-maker~~ public guardian.

c. An ideal range of staff-to-client ratios for the state public guardian and local ~~substitute decision makers~~ public guardians.

d. Minimum training and experience requirements for professional staff and volunteers.

e. A fee schedule. The department may establish by rule a schedule of reasonable fees for the costs of ~~substitute decision-making~~ public guardianship services provided under this chapter. The fee schedule established may be based upon the ability of the ward, ~~principal, or~~ client, ~~or estate~~ to pay for the services but shall not exceed the actual cost of providing the services. The state office or a local office may waive collection of a fee upon a finding that collection is not economically feasible. The rules may provide that the state office or a local office may investigate the financial status of a ward, ~~principal, or~~ client, ~~or estate~~ that requests ~~substitute decision-making~~ guardianship, conservatorship, or representative payee services or for whom ~~or which~~ the state public guardian or a local ~~substitute decision maker~~ public guardian has been appointed for the purpose of determining the fee to be charged by requiring the ward, ~~principal, or~~ client, ~~or estate~~ to provide any written authorizations necessary to provide access to records of public or private sources, otherwise confidential, needed to evaluate the individual's ~~or estate's~~ financial eligibility. The rules may also provide that the state public guardian or a local ~~substitute decision maker~~ public guardian may, upon request and without payment of fees otherwise required by law, obtain information necessary to evaluate the individual's ~~or estate's~~ financial eligibility from any office of the state or of a political subdivision or agency of the state that possesses public records. ~~In estate proceedings, the state or local decision maker shall be compensated pursuant to chapter 633, division III, part 8.~~

f. Standards and performance measures for evaluation of local offices.

g. Recordkeeping and accounting procedures to ensure that the state office and local offices maintain confidential, accurate, and up-to-date financial, case, and statistical records. The rules shall require each local office to file

with the state office, on an annual basis, an account of all public and private funds received and a report regarding the operations of the local office for the preceding fiscal year.

h. Procedures for the sharing of records held by the court or a state agency with the state office, which are necessary to evaluate the state office or local offices, to assess the need for additional ~~substitute decision makers~~ guardians, conservators, or representative payees, or to develop required reports.

Sec. 6. Section 231E.5, Code 2018, is amended to read as follows:

231E.5 Local office of ~~substitute decision maker~~ public guardian — requirements for state and local ~~substitute decision makers~~ public guardians.

1. The state ~~substitute decision maker~~ public guardian shall select persons to provide local ~~substitute decision-making~~ public guardianship services in each of the ~~planning and service areas~~, based upon a request for proposals process developed by the department.

2. ~~The~~ A local office shall comply with all requirements established for the local office by the department and shall do all of the following:

a. Maintain a staff of professionally qualified individuals to carry out the ~~substitute decision-making~~ guardian, conservator, and representative payee functions.

b. Identify client needs and local resources to provide necessary support services to recipients of ~~substitute decision-making~~ guardianship, conservatorship, and representative payee services.

c. Collect program data as required by the state office.

d. Meet standards established for the local office.

e. Comply with minimum staffing requirements and caseload restrictions.

f. Conduct background checks on employees and volunteers.

g. With regard to a proposed ward, the local office shall do all of the following:

(1) Determine the most appropriate form of ~~substitute decision-making~~ guardianship or conservatorship services needed, if any, giving preference to the least restrictive

alternative.

(2) Determine whether the needs of the proposed ward require the appointment of a guardian or conservator.

(3) Assess the financial resources of the proposed ward based on the information supplied to the local office at the time of the determination.

(4) Inquire and, if appropriate, search to determine whether any other person may be willing and able to serve as the proposed ward's guardian or conservator.

(5) Determine the form of guardianship or conservatorship to request of a court, if any, giving preference to the least restrictive form.

(6) If determined necessary, file a petition for the appointment of a guardian or conservator pursuant to chapter 633.

~~h. With regard to an estate, the local office may appoint a personal representative to file a petition to open an estate who shall do all of the following:~~

~~(1) Retain legal counsel as described in section 231E.11 to be compensated from the proceeds of the estate pursuant to [chapter 633, division III, part 8](#).~~

~~(2) Liquidate all assets of the estate.~~

~~(3) Distribute the assets of the estate pursuant to [chapter 633, division VII, parts 7 and 8](#), and other applicable provisions of law.~~

3. A local office may do any of the following:

a. Contract for or arrange for provision of services necessary to carry out the duties of a local substitute decision maker public guardian.

b. Accept the services of volunteers or consultants and reimburse them for necessary expenses.

c. Employ staff and delegate to members of the staff the powers and duties of the local substitute decision maker public guardian. However, the local office shall retain responsibility for the proper performance of the delegated powers and duties. All delegations shall be to persons who meet the eligibility requirements of the specific type of substitute decision maker public guardian.

4. An individual acting as the state public guardian or a

local ~~substitute decision maker~~ public guardian shall comply with applicable requirements for guardians, and conservators, or ~~personal representatives~~ pursuant to chapter 633, attorneys in fact under a power of attorney pursuant to ~~chapter 633~~ or a durable power of attorney for health care pursuant to ~~chapter 144B~~, or representative payees pursuant to federal law and regulations.

5. Notwithstanding any provision to the contrary, an individual acting as the state public guardian or a local ~~substitute decision maker~~ public guardian shall not be subject to the posting of a bond pursuant to chapter 633. An individual acting as the state public guardian or a local ~~substitute decision maker~~ public guardian shall complete at least eight hours of training annually as certified by the department.

Sec. 7. Section 231E.6, Code 2018, is amended to read as follows:

231E.6 Court-initiated or petition-initiated appointment of state or local ~~substitute decision maker~~ public guardian — guardianship or conservatorship — discharge.

1. The court may appoint on its own motion or upon petition of any person, the state office or a local office ~~of substitute decision maker~~, to serve as guardian or conservator for any proposed ward in cases in which the court determines that the proceeding will establish the least restrictive form of substitute decision making guardianship or conservatorship services suitable for the proposed ward and if the proposed ward meets all of the following criteria:

a. Is a resident of the ~~planning and~~ service area in which the local office is located from which services would be provided or is a resident of the state, if the state office would provide the services.

b. Is eighteen years of age or older.

c. Does not have suitable family or another appropriate entity willing and able to serve as guardian or conservator.

d. Is incompetent.

e. Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs.

2. For all appointments made pursuant to [this section](#), notice shall be provided to the state office or local office ~~of substitute decision maker~~ prior to appointment. For appointments made pursuant to [this section](#), the state office or local office ~~of substitute decision maker~~ shall only accept appointments made pursuant to the filing of an involuntary petition for appointment of a conservator or guardianship pursuant to [chapter 633](#).

Sec. 8. Section 231E.7, Code 2018, is amended to read as follows:

231E.7 ~~Substitute decision maker-initiated~~ Public guardian-initiated appointment — interventions.

The state office or local office may on its own motion or at the request of the court intervene in a guardianship or conservatorship proceeding if the state office or local office or the court considers the intervention to be justified because of any of the following:

1. An appointed guardian or conservator is not fulfilling prescribed duties or is subject to removal under section 633.65.
2. A willing and qualified guardian or conservator is not available.
3. The best interests of the ward require the intervention.

Sec. 9. Section 231E.8, Code 2018, is amended to read as follows:

231E.8 Provisions applicable to all appointments and designations — discharge.

1. The court shall only appoint or intervene on its own motion or act upon the petition of any person under section 231E.6 or [231E.7](#) if such appointment or intervention would comply with staffing ratios established by the department and if sufficient resources are available to the state office or local office. Notice of the proposed appointment shall be provided to the state office or local office prior to the granting of such appointment.

2. The state office or local office shall maintain reasonable personal contact with each ward, ~~principal,~~ or client for whom the state office or local office is appointed or designated in order to monitor the ward's, ~~principal's,~~ or

~~client's care and progress. For any estates in which the state office or local office is involved, the state office or local office shall move estate proceedings forward in a reasonable and expeditious manner and shall monitor the progress of any legal counsel retained on a regular basis.~~

3. Notwithstanding any provision of law to the contrary, the state office or local office appointed by the court ~~or designated under a power of attorney document~~ may access all confidential records concerning the ward ~~or principal~~ for whom the state office or local office is appointed or designated, including medical records and abuse reports.

4. In any proceeding in which the state or a local office is appointed or is acting as guardian or conservator, the court shall waive court costs or filing fees, if the state office or local office certifies to the court that the state office or local office has waived its fees in their entirety based upon the ability of the ward to pay for the services of the state office or local office. ~~In any estate proceeding, the court costs shall be paid in accordance with chapter 633, division VII, part 7.~~

5. The state public guardian or a local ~~substitute decision maker~~ public guardian shall be subject to discharge or removal, by the court, on the grounds and in the manner in which other guardians, or conservators, ~~or personal representatives~~ are discharged or removed pursuant to chapter 633.

6. The state public guardian or a local ~~substitute decision maker~~ public guardian may petition to be removed as guardian or conservator. A petition for removal shall be granted for any of the following reasons:

a. The ward displays assaultive or aggressive behavior that causes the ~~substitute decision maker~~ public guardian to fear for their personal safety.

b. The ward refuses the services of the ~~substitute decision maker~~ public guardian.

c. The ward refuses to have contact with the ~~substitute decision maker~~ public guardian.

d. The ward moves out of Iowa.

~~7. An appointment nominating the state office or a local office under a power of attorney shall not take effect unless~~

~~the nominated state or local office has consented to the appointment in writing.~~

Sec. 10. Section 231E.9, Code 2018, is amended to read as follows:

231E.9 Fees — appropriated.

Fees received by the state office and by local offices for services provided as the state public guardian or as a local substitute decision maker public guardian shall be deposited in the general fund of the state and the amounts received are appropriated to the department for the purposes of administering [this chapter](#).

Sec. 11. Section 231E.10, Code 2018, is amended to read as follows:

231E.10 Conflicts of interest — limitations.

Notwithstanding [section 633.63](#) or any other provision to the contrary, a local ~~substitute decision maker~~ public guardian shall not provide direct services to or have an actual or the appearance of any conflict of interest relating to any individual for whom the local ~~substitute decision maker~~ public guardian acts in a ~~substitute decision-making~~ the capacity of a guardian, conservator, or representative payee, unless such provision of direct services or the appearance of a conflict of interest is approved and monitored by the state office in accordance with rules adopted by the department.

Sec. 12. Section 231E.11, subsections 1 and 3, Code 2018, are amended to read as follows:

1. The attorney general ~~shall~~ may advise the state office on legal matters and represent the state office in legal proceedings.

3. A Notwithstanding section 13.7, the state public guardian or a local public guardian may retain a local attorney to represent the state office or a local office in legal proceedings. A local attorney retained under this subsection shall be experienced in probate matters ~~may represent the personal representative for all routine matters associated with probating an estate.~~

Sec. 13. Section 235B.6, subsection 2, paragraph e, subparagraph (11), Code 2018, is amended to read as follows:

(11) The state office or a local office of ~~substitute~~

~~decision-maker~~ public guardian as defined in [section 231E.3](#), if the information relates to the provision of legal services for a client served by the state or local office of ~~substitute decision-maker~~ public guardian.

Sec. 14. Section 633.63, subsection 4, Code 2018, is amended to read as follows:

4. The state public guardian or a local ~~substitute decision-maker~~ public guardian as defined in [section 231E.3](#) is authorized to act in a fiduciary capacity in this state in accordance with [chapter 231E](#).

LINDA UPMEYER
Speaker of the House

CHARLES SCHNEIDER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2449, Eighty-seventh General Assembly.

CARMINE BOAL
Chief Clerk of the House

Approved _____, 2018

KIM REYNOLDS
Governor