

2-6-97 Judiciary

SENATE FILE 115
BY JENSEN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to guardianships and conservatorships and
2 providing penalties.

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

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S.F. 115

1 Section 1. Section 237.13, subsection 1, paragraph b, Code
2 1997, is amended to read as follows:

3 b. ~~A guardian-appointed-on-a-voluntary-petition-of-a-ward~~
4 ~~pursuant-to-section-633:557,-or-a~~ conservator appointed on a
5 voluntary petition of a proposed ward pursuant to section
6 633.572, provided the ward has an income that does not exceed
7 one hundred fifty percent of the current federal office of
8 management and budget poverty guidelines and who does not have
9 resources in excess of the criteria for resources under the
10 federal supplemental security income program. However, the
11 ward's ownership of one residence and one vehicle shall not be
12 considered in determining resources.

13 Sec. 2. Section 633.3, Code 1997, is amended by adding the
14 following new subsections:

15 NEW SUBSECTION. 9A. COURT EVALUATOR -- means a person
16 with knowledge of personal care skills, the problems
17 associated with disabilities and functional limitations, and
18 the private and public resources available to address the type
19 of alleged limitations of the proposed ward, including but not
20 limited to an attorney at law or a health care professional.
21 "Court evaluator" may include a staff representative of the
22 place of residence of a proposed ward if the proposed ward
23 resides in a health care facility, a hospital, a school, or a
24 chemical substance abuse facility, and if the staff
25 representative has the specified knowledge required under this
26 subsection.

27 NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS -- means the
28 behavior or condition of a person which impairs the person's
29 ability to care for the person's personal safety or to attend
30 to or provide for necessities for the person.

31 NEW SUBSECTION. 20A. HEALTH CARE PROFESSIONAL -- means a
32 person licensed to practice medicine and surgery pursuant to
33 chapter 148, physical therapy pursuant to chapter 148A,
34 osteopathy pursuant to chapter 150, osteopathic medicine and
35 surgery pursuant to chapter 150A, nursing pursuant to chapter

1 152, psychology pursuant to chapter 154B, social work pursuant
2 to chapter 154C, or marital and family therapy or mental
3 health counseling pursuant to chapter 154D.

4 NEW SUBSECTION. 24A. LEGAL SETTLEMENT -- means legal
5 settlement as acquired pursuant to section 252.16.

6 Sec. 3. Section 633.3, subsection 22, Code 1997, is
7 amended to read as follows:

8 22. INCOMPETENT -- includes means the condition of any
9 person who has been adjudicated by a court to be-incapable-of
10 managing-the-person's-property,-or-caring-for-the-person's-own
11 self,-or-both have a decision-making capacity which is so
12 impaired that the person is unable to care for the person's
13 personal safety or to attend to or provide for necessities for
14 the person such as food, shelter, clothing, or medical care,
15 without which physical injury or illness may occur.

16 Sec. 4. Section 633.12, Code 1997, is amended to read as
17 follows:

18 633.12 COUNTY OF JURISDICTION.

19 The court of each county shall have original and exclusive
20 jurisdiction to administer the estates of all persons who are
21 residents of the county, or who were residents at the time of
22 their death, and all nonresidents of the state who have
23 property, or who die leaving property in the county subject to
24 administration, or whose property is afterwards brought into
25 the county; to appoint conservators for nonresidents having
26 property in the county; and to appoint conservators and
27 guardians of residents of the county or of persons present in
28 the county.

29 Sec. 5. Section 633.22, subsection 1, Code 1997, is
30 amended to read as follows:

31 1. The appointment of personal representatives who are
32 residents of the state, guardians-and-conservators-for-minors,
33 the fixing and determining of the amount of the bond, or
34 waiving the same when permitted by law or by will, and the
35 approval of any and all bonds given by fiduciaries in the

1 discharge of their duties.

2 Sec. 6. NEW SECTION. 633.551A GUARDIANSHIPS AND
3 CONSERVATORSHIPS -- GENERAL PROVISIONS.

4 1. The determination of incompetency of the proposed ward
5 or ward and the determination of the need for the appointment
6 of a guardian or conservator or of the modification or
7 termination of a guardianship or conservatorship shall be
8 supported by clear and convincing evidence.

9 2. The burden of persuasion is on the petitioner in an
10 initial proceeding to appoint a guardian or conservator. In a
11 proceeding to modify or terminate a guardianship or
12 conservatorship, if the guardian or conservator is the
13 petitioner, the burden of persuasion remains with the guardian
14 or conservator. In a proceeding to terminate a guardianship
15 or conservatorship, if the ward is the petitioner, the ward
16 shall make a prima facie showing of some decision-making
17 capacity. Once a prima facie showing is made, the burden of
18 persuasion is on the guardian or conservator to show by clear
19 and convincing evidence that the ward is incompetent.

20 3. In determining whether a guardianship or
21 conservatorship is to be established, modified, or terminated,
22 the district court shall consider if a limited guardianship or
23 conservatorship pursuant to section 633.635 or 633.637 is
24 appropriate. In making the determination, the court shall
25 make findings of fact to support the powers conferred on the
26 guardian or conservator.

27 4. In proceedings to establish, modify, or terminate a
28 guardianship or conservatorship, in determining if the
29 proposed ward or ward is incompetent as defined in section
30 633.3, the court shall consider credible evidence from any
31 source to the effect of third-party assistance in meeting the
32 needs of the proposed ward or ward. However, neither party to
33 the action shall have the burden to produce such evidence
34 relating to third-party assistance.

35 Sec. 7. Section 633.552, Code 1997, is amended to read as

1 follows:

2 633.552 PETITION FOR APPOINTMENT OF GUARDIAN.

3 Any person may file with the clerk a verified petition for
4 the appointment of a guardian. The petition shall state the
5 following information so far as known to the petitioner.

6 1. The name, age date of birth, and post office address of
7 the proposed ward.

8 2. That the proposed ward is in either of the following
9 categories:

10 a. ~~By reason of mental, physical or other incapacity is~~
11 ~~unable to make or carry out important decisions concerning the~~
12 ~~proposed ward's person or affairs, other than financial~~
13 ~~affairs.~~ Is a person whose decision-making capacity is so
14 impaired that the person is unable to care for the person's
15 personal safety or to attend to or provide for necessities for
16 the person such as food, shelter, clothing, or medical care
17 without which physical injury or illness might occur.

18 b. Is a minor.

19 3. The name, telephone number, and post office address of
20 the proposed guardian, and that such person is qualified to
21 serve in that capacity, and the identity of any ward for whom
22 the person is currently acting as guardian or seeking to
23 become guardian.

24 4. That the proposed ward is a resident of the state of
25 Iowa or is present in the state, ~~and that the ward's best~~
26 ~~interests require the appointment of a guardian in this state.~~

27 5. The name and address of the person or institution, if
28 any, having the care, custody, or control of the proposed
29 ward.

30 6. The names, telephone numbers, and post office addresses
31 of the nearest relatives or friends of the proposed ward, if
32 any, as follows:

33 a. If the proposed ward is a minor, all of the following,
34 if applicable:

35 (1) Any parent of the minor.

1 (2) Any adult with whom the minor resides.

2 b. If the proposed ward is an adult, all of the following,
3 if applicable:

4 (1) Any spouse and any adult children of the proposed
5 ward.

6 (2) Any adult siblings and any parent of the proposed
7 ward.

8 (3) Any person with whom the proposed ward resides.

9 7. If the proposed ward is an adult, the petition shall
10 include a brief description of the nature and degree of the
11 alleged incompetency including any functional limitations and
12 a description of any acts or behavior of the proposed ward
13 which warrant the appointment of a guardian.

14 8. Any standby, current, or prior guardianship, in any
15 state, concerning the proposed ward, including the name of the
16 guardian and the current status of the guardianship.

17 9. The name, telephone number, and post office address of
18 any agent designated under a durable power of attorney of
19 which the proposed ward is the principal. The petitioner
20 shall attach a copy of any power of attorney, if available.

21 10. Any other information which the petitioner believes
22 will assist the court in determining the need for the
23 appointment of a guardian.

24 Sec. 8. NEW SECTION. 633.552A EVALUATION OF PROPOSED
25 WARD.

26 An evaluation by a health care professional of the proposed
27 ward's physical and mental condition, including a description
28 of the nature, type, and extent of the proposed ward's
29 functional limitations, shall be attached to the petition or
30 filed with the court at least fourteen days prior to the
31 hearing on the petition.

32 Sec. 9. Section 633.554, Code 1997, is amended to read as
33 follows:

34 633.554 NOTICE TO PROPOSED WARD.

35 1. If the proposed ward is an adult,--notice:

1 a. Notice of the filing of the petition shall be served
2 upon the proposed ward in the manner of an original notice and
3 the content of the notice is governed by the rules of civil
4 procedure governing original notice.

5 b. Notice shall be provided to all persons designated in
6 the petition pursuant to section 633.552, subsections 6, 8, 9,
7 and 10, unless the person designated is the petitioner.

8 2. If the proposed ward is a minor, notice in the manner
9 of original notice shall be provided to the parents or legal
10 guardian of the proposed ward and to any adult persons with
11 whom the minor resides, unless the parent or adult person is
12 the petitioner.

13 3. If the proposed ward is a minor or if the proposed ward
14 is an adult under a standby petition and the court determines,
15 pursuant to section 633.561, subsection 1, that the proposed
16 ward is entitled to representation, notice in the manner of
17 original notice, or another form of notice ordered by the
18 court, given to the attorney appointed to represent the ward
19 is notice to the proposed ward.

20 Sec. 10. Section 633.555, Code 1997, is amended to read as
21 follows:

22 633.555 PLEADINGS AND TRIAL -- RULES-OF-CIVIL-PROCEDURE
23 EVALUATION.

24 1. After the petition has been filed, the court shall set
25 a date for hearing on the issue of incompetency, and shall
26 provide notice of the hearing in the manner provided for
27 notice of the filing of the petition pursuant to section
28 633.554.

29 2. The court may appoint a court evaluator who shall
30 submit a written report to the court following completion of
31 the court evaluator's duties. The court may appoint
32 additional court evaluators as necessary. The duties of the
33 court evaluator include all of the following:

34 a. Retaining a medical expert to evaluate the proposed
35 ward. If the petition includes an evaluation by a health care

1 professional who is a medical expert, the court evaluator may
2 submit the previously completed evaluation. The court
3 evaluator may review and inspect the records of any previously
4 completed evaluation or any other medical, psychological, or
5 psychiatric examinations of the proposed ward if the court
6 determines that the records will assist the court evaluator in
7 completing the report.

8 b. Meeting with the proposed ward and discussing, in a
9 manner which the proposed ward is reasonably expected to
10 understand, the nature and possible consequences of the
11 proceedings, the general powers and duties of a guardian, and
12 the rights of the proposed ward, including the right to
13 counsel.

14 c. Interviewing the petitioner, or, if the petitioner is a
15 facility or agency, an individual within the facility or
16 agency who is familiar with the proposed ward's condition,
17 affairs, and situation.

18 d. Interviewing other persons listed in the petition.

19 e. Interviewing or consulting with professionals having
20 specialized knowledge in the area of geriatrics or in the area
21 of the proposed ward's alleged incompetency including but not
22 limited to mental retardation, developmental disabilities, and
23 chemical or substance abuse dependency.

24 f. Preparing a written report for the court, which is
25 dated and signed by the court evaluator, which includes all of
26 the following recommendations or information:

27 (1) The need for legal counsel for the proposed ward.

28 (2) The proposed ward's ability to be present at or to
29 participate in any hearing on the petition.

30 (3) Third-party assistance resources available to the
31 proposed ward and the sufficiency and reliability of the
32 resources to meet the proposed ward's needs.

33 (4) The functional limitations of the proposed ward with
34 respect to activities of daily living and any prognosis as to
35 the possibility of improvement, of reversal of any physical or

- 1 mental disability, or of rehabilitation from chemical or
- 2 substance abuse dependency.
- 3 (5) The proposed ward's understanding and appreciation of
- 4 the nature and consequences of an inability to manage the
- 5 activities of daily living.
- 6 (6) The proposed ward's preferences, wishes, and values
- 7 with regard to managing the activities of daily living.
- 8 (7) The least restrictive form of intervention consistent
- 9 with the proposed ward's functional limitations and the
- 10 recommended extent of the powers to be assigned to the
- 11 guardian.
- 12 (8) The financial resources and approximate value of the
- 13 proposed ward's property.
- 14 (9) The existence, if any, of persons financially
- 15 dependent on the proposed ward and the financial assistance
- 16 they require.
- 17 (10) The ability of the petitioner to identify and meet
- 18 the needs of the proposed ward.
- 19 (11) Potential conflicts of interest, including but not
- 20 limited to financial interests, if any, existing between or
- 21 among family members and other interested parties.
- 22 (12) The names and addresses of any additional parties who
- 23 should be provided notice and the opportunity to be heard.
- 24 (13) Any other issues to be addressed at the request of
- 25 the court.
- 26 g. The notes, records, and reports collected by the court
- 27 evaluator shall be available to the court, to the proposed
- 28 ward or the ward's legal counsel, to the petitioner or the
- 29 petitioner's legal counsel, and to any other person who the
- 30 court determines has a need.
- 31 h. The cost of the court evaluator and the expenses
- 32 associated with performing the evaluator's duties shall be
- 33 paid by the proposed ward, or, if the proposed ward is
- 34 indigent, by the county of legal settlement. If no county of
- 35 legal settlement exists, the costs shall be borne by the

1 state.

2 3. The proposed ward shall be present at any hearing on
3 the petition, unless there is good cause shown for the
4 absence. The hearing may be closed upon the request of the
5 proposed ward for good cause shown.

6 4. All other pleadings and the trial of the cause shall be
7 governed by the Rules rules of Civil-Procedure civil
8 procedure. The cause shall be tried as a law action, and
9 either party shall be entitled to a jury trial if demand is
10 made therefor as provided by the Rules rules of Civil
11 Procedure civil procedure.

12 Sec. 11. NEW SECTION. 633.555A JURISDICTION AND VENUE.

13 1. Venue for a guardianship proceeding is in the district
14 court of the county of residence of the proposed ward or where
15 the proposed ward is present.

16 2. The court may transfer the proceeding to another court
17 if the court finds that it is in the interest of justice.

18 3. Any guardianship involving a minor shall meet the
19 requirements of the uniform child custody jurisdiction Act
20 pursuant to chapter 598A.

21 Sec. 12. Section 633.556, Code 1997, is amended to read as
22 follows:

23 633.556 APPOINTMENT OF GUARDIAN.

24 1. If the allegations of the petition as to the status of
25 the proposed ward and the necessity for the appointment of a
26 guardian are proved by clear and convincing evidence, the
27 court may appoint a guardian.

28 2. The determination as to the appointment of a guardian,
29 the type of guardianship, and the specific areas of
30 protection, management, and assistance to be granted to the
31 guardian, shall be the exclusive decision of the court.

32 3. In making a determination regarding appointment of a
33 guardian, the court shall consider the proposed ward's
34 functional limitations. The court shall grant specific powers
35 to the guardian which constitute the least restrictive form of

1 intervention consistent with the findings regarding the
2 proposed ward's functional limitations.

3 4. Section 633.551A applies to an appointment of guardian
4 proceeding.

5 5. If the court appoints a guardian, the court shall
6 appoint a guardian who is a resident of this state.

7 Sec. 13. Section 633.559, Code 1997, is amended by adding
8 the following new unnumbered paragraph:

9 NEW UNNUMBERED PARAGRAPH. A person who is qualified and
10 suitable or who is nominated as a proposed guardian in a
11 standby petition may be appointed as the guardian of an adult
12 ward.

13 Sec. 14. Section 633.560, Code 1997, is amended by
14 striking the section and inserting in lieu thereof the
15 following:

16 633.560 GUARDIANSHIP -- STANDBY BASIS.

17 1. An individual who has sufficient capacity to form a
18 preference may at any time nominate another person to act as
19 the individual's guardian on a standby basis.

20 2. The individual may execute a petition for the
21 appointment of a standby guardian upon the express condition
22 that the petition shall be acted upon by the court only upon
23 the occurrence of an event specified in the petition or upon
24 determination by the court that the individual meets the
25 criteria in section 633.552, subsection 2, paragraph "b".

26 3. The standby petition may be deposited with the clerk of
27 the county in which the individual resides or with any other
28 person. The standby petition may be revoked at any time prior
29 to the appointment of a guardian by destruction of the
30 petition by the petitioner or by executing an acknowledged
31 instrument of revocation.

32 4. If the petition is filed with the clerk, the petition
33 may be brought for hearing upon the filing of a verified
34 statement that the requisite event has occurred or the
35 requisite criteria have been met. If the petition has not

1 been filed with the clerk, the petition may be brought for
2 hearing by filing with the clerk both the petition and the
3 verified statement.

4 5. Following the filing of both the petition and the
5 verified statement, the court, without notice, may support the
6 person nominated as guardian or may set the petition for
7 hearing.

8 6. The powers of the guardian shall be limited to the
9 powers specified in the petition or by the court following a
10 hearing on the petition.

11 Sec. 15. Section 633.561, subsection 4, Code 1997, is
12 amended by inserting the following new paragraph after
13 paragraph d and by relettering the subsequent paragraphs:

14 NEW PARAGRAPH. e. Provide notice to all persons
15 identified in the petition pursuant to section 633.552,
16 subsections 6, 8, 9, and 10. In the course of representation,
17 an attempt shall be made to identify and inform persons within
18 the categories specified in the petition who have not been
19 included in the petition. Notice may also be provided to any
20 other person who has information which will assist the court.

21 Sec. 16. Section 633.562, Code 1997, is amended to read as
22 follows:

23 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

24 In a proceeding for the appointment of a guardian, the
25 proposed ward shall be given written notice which advises the
26 proposed ward that if a guardian is appointed, the guardian
27 ~~may, without court approval,~~ make decisions regarding the
28 ward's personal safety or provide for the care of the ward,
29 ~~manage the ward's personal property and effects, assist the~~
30 ~~ward in developing self-reliance and receiving professional~~
31 ~~care, counseling, treatment or services as needed, and ensure~~
32 ~~that the ward receives necessary emergency medical services~~
33 necessities. The notice shall also advise the proposed ward
34 that, upon the court's approval, the guardian may change the
35 ~~ward's permanent residence to a more restrictive residence,~~

1 and arrange for major elective surgery or any other
2 nonemergency major medical procedure or consent to the
3 withholding or withdrawal of life-sustaining procedures. The
4 notice shall clearly advise the proposed ward in boldfaced
5 type of a minimum size of ~~ten~~ fourteen points, of the right to
6 counsel and the potential deprivation of the proposed ward's
7 civil rights. ~~In an involuntary guardianship proceeding, the~~
8 The notice shall be served upon the proposed ward with the
9 notice of the filing of the petition as provided in section
10 633.554.

11 Sec. 17. NEW SECTION. 633.562A GUARDIAN INSTRUCTION AND
12 TRAINING REQUIREMENTS.

13 1. A ward is entitled to a guardian whom the court
14 determines to be sufficiently competent to perform the duties
15 of a guardian necessary to protect the interests of the ward.

16 2. A person appointed by the court as guardian shall
17 receive a minimum of two hours of instruction and training
18 related to, but not limited to, all of the following:

19 a. The legal duties and responsibilities of a guardian.

20 b. The rights of a ward.

21 c. The availability of local resources to aid the ward.

22 d. The preparation of habilitation plans and annual
23 guardianship reports.

24 3. A person appointed by the court as a guardian shall
25 complete the two required hours of instruction and training
26 within the three-month period following the appointment as
27 guardian. The instruction and training shall be completed
28 through a course approved by the Iowa supreme court.

29 4. Expenses incurred by the guardian in satisfying the
30 instruction and training requirements under this section may
31 be reimbursed by the ward's estate.

32 5. The court, for good cause shown, may waive the
33 instruction and training requirements or may impose additional
34 instruction and training requirements.

35 Sec. 18. Section 633.566, subsection 2, paragraph a, Code

1 1997, is amended to read as follows:

2 ~~av--By-reason-of-mental,-physical-or-other-incapacity-is~~
3 ~~unable-to-make-or-carry-out-important-decisions-concerning-the~~
4 ~~proposed-ward's-financial-affairs.~~

5 a. Is a person whose decision-making capacity is so
6 impaired that the person is unable to care for the person's
7 personal safety or property or to attend to or provide for
8 necessities for the person such as food, shelter, clothing, or
9 medical care, without which physical injury or illness might
10 occur.

11 Sec. 19. Section 633.570, Code 1997, is amended to read as
12 follows:

13 633.570 APPOINTMENT OF CONSERVATOR.

14 1. If the allegations of the petition as to the status of
15 the proposed ward and the necessity for the appointment of a
16 conservator are proved by clear and convincing evidence, the
17 court may appoint a conservator.

18 2. Section 633.551A applies to an appointment of
19 conservator proceeding.

20 Sec. 20. Section 633.634, Code 1997, is amended to read as
21 follows:

22 633.634 COMBINATION OF VOLUNTARY-AND STANDBY PETITIONS
23 PETITION WITH INVOLUNTARY PETITION FOR HEARING APPOINTMENT OF
24 GUARDIAN.

25 If prior to the time of hearing on a petition for the
26 appointment of a guardian or a conservator, a petition is
27 filed under the provisions of section 633-557 633.560,
28 633.572, or 633.591, the court shall combine the hearing on
29 such petitions and determine who shall be appointed guardian
30 or conservator, and such petition shall be triable to the
31 court.

32 Sec. 21. Section 633.635, Code 1997, is amended to read as
33 follows:

34 633.635 RESPONSIBILITIES OF GUARDIAN.

35 ~~is--A-guardian-may-be-granted-the-following-powers-and~~

1 duties which may be exercised without prior court approval:
2 a. -- Providing for the care, comfort and maintenance of the
3 ward, including the appropriate training and education to
4 maximize the ward's potential.
5 b. -- Taking reasonable care of the ward's clothing,
6 furniture, vehicle and other personal effects.
7 c. -- Assisting the ward in developing maximum self-reliance
8 and independence.
9 d. -- Ensuring the ward receives necessary emergency medical
10 services.
11 e. -- Ensuring the ward receives professional care,
12 counseling, treatment or services as needed.
13 f. -- Any other powers or duties the court may specify.
14 2. -- A guardian may be granted the following powers which
15 may only be exercised upon court approval:
16 a. -- Changing, at the guardian's request, the ward's
17 permanent residence if the proposed new residence is more
18 restrictive of the ward's liberties than the current
19 residence.
20 1. A guardian shall have only the powers specified by the
21 court, consistent with the findings of the court regarding the
22 proposed ward's or ward's functional limitations.
23 2. In addition to the powers of the guardian specified
24 pursuant to subsection 1, the guardian may be granted
25 additional powers, only with the prior approval of the court,
26 including any of the following:
27 b. a. Arranging the provision of major elective surgery or
28 any other nonemergency major medical procedure.
29 b. Consent Consenting to the withholding or withdrawal
30 of life-sustaining procedures in accordance with chapter 144A.
31 3. The court may take into account all available
32 information concerning the capabilities of the ward and any
33 additional evaluation deemed necessary, including the
34 availability of third-party assistance to meet the needs of
35 the ward or proposed ward, and may direct that the guardian

1 have only a specially limited responsibility for the ward. In
2 that event, the court shall state those areas of
3 responsibility which shall be supervised by the guardian and
4 all others shall be retained by the ward. The court may make
5 a finding that the ward lacks the capacity to contract a valid
6 marriage.

7 4. From time to time, upon a proper showing, the court may
8 ~~alter~~ modify the respective responsibilities of the guardian
9 and the ward, after notice to the ward and an opportunity to
10 be heard. Any modification that would be more restrictive or
11 burdensome for the ward shall be based on clear and convincing
12 evidence that the ward continues to fall within the categories
13 of section 633.552, subsection 2, paragraph "a" or "b", and
14 that the facts justify a modification of the guardianship.
15 Section 633.551A applies to the modification proceedings.

16 5. A ward retains all rights not delegated to a guardian
17 by the court, including but not limited to any rights to legal
18 representation and the right to provide records to the ward's
19 attorney.

20 Sec. 22. Section 633.641, Code 1997, is amended by adding
21 the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. From time to time, upon a proper
23 showing, the court may modify the respective responsibilities
24 of the conservator and the ward, after notice to the ward and
25 an opportunity to be heard. Any modification that would be
26 more restrictive or burdensome for the ward shall be based on
27 clear and convincing evidence that the ward continues to fall
28 within the categories of section 633.566, subsection 2,
29 paragraph "a" or "b", and that the facts justify a
30 modification of the conservatorship. Section 633.551A applies
31 to the modification proceedings.

32 Sec. 23. Section 633.669, subsection 2, Code 1997, is
33 amended to read as follows:

34 2. Reports required by this section must include:

35 a. The current mental and physical condition of the ward,

1 including the necessity for any physical, dental, or mental
2 health examinations to determine the current needs of the
3 ward.

4 b. The present living arrangement of the ward, including a
5 description of each residence where the ward has resided
6 during the reporting period as well as a statement as to the
7 suitability of the ward's current residence in meeting the
8 needs of the ward.

9 c. A summary of the medical, educational, vocational,
10 dental, habilitative, and other professional services provided
11 for the ward and a plan for provision of those services during
12 the subsequent year.

13 d. A description of the guardian's visits with and
14 activities on behalf of the ward.

15 e. A recommendation as to the need for continued
16 guardianship and any recommendations relating to the scope of
17 the guardianship.

18 f. A statement of the social and personal services
19 utilized by the ward and a statement addressing the social
20 skills of the ward and maintenance of interpersonal
21 relationships.

22 f. g. Other information requested by the court or useful
23 in the opinion of the guardian.

24 Sec. 24. Section 633.669, Code 1997, is amended by adding
25 the following new subsections:

26 NEW SUBSECTION. 7. If the annual report sets forth any
27 reason for modification of the powers authorized by the court,
28 the guardian shall make an application for modification within
29 ten days of the filing of the report and shall provide notice
30 to the persons entitled to notice in accordance with section
31 633.554.

32 NEW SUBSECTION. 8. Any interested person may request a
33 hearing on the report. The court may order the guardian to
34 attend the hearing on the report on the court's own motion or
35 on the petition of any interested person.

1 Sec. 25. NEW SECTION. 633.669A EXAMINATION OF INITIAL
2 AND ANNUAL REPORTS.

3 1. Within thirty days of the filing of an initial or
4 annual report, the chief judge of the judicial district shall
5 examine, or cause to be examined by a person designated by the
6 presiding judge, all reports filed by a guardian.

7 2. a. If the guardian fails to file the initial or annual
8 report, the person authorized to examine the report shall
9 demand that the guardian file the report within fifteen days
10 after service of the demand upon the guardian. A copy of the
11 demand shall be served upon the guardian by certified mail.

12 b. If the person authorized to examine the report
13 determines that a more complete or satisfactory report should
14 be filed, the person authorized to examine the report shall
15 demand that the guardian file a revised report within fifteen
16 days of service of the demand upon the guardian. A copy of
17 the demand shall be served upon the guardian by certified
18 mail.

19 c. If the guardian fails to comply with a demand under
20 this subsection, the court may enter an order requiring
21 compliance with the demand and may deny or reduce the amount
22 of compensation of the guardian or may remove the guardian.

23 Sec. 26. Section 633.675, Code 1997, is amended to read as
24 follows:

25 633.675 CAUSE FOR MODIFICATION OR TERMINATION.

26 A guardianship shall cease or shall be subject to
27 modification, and a conservatorship shall terminate, upon the
28 occurrence of any of the following circumstances:

29 1. If the ward is a minor, when the ward reaches full age.

30 2. The death of the ward.

31 3. A determination by the court that the ward is competent
32 and-capable-of-managing-the-ward's-property-and-affairs,-and
33 no longer a person whose decision-making capacity is so
34 impaired as to bring the ward within the categories of section
35 633.552, subsection 2, paragraph "a", or section 633.566,

1 subsection 2, paragraph "a", and that the continuance of the
2 guardianship or conservatorship would not be in the ward's
3 best interests. Section 633.551A applies to a termination
4 proceeding.

5 4. Upon the disability, illness, or death of the guardian
6 or conservator.

7 5. Upon the removal of the ward from this state or if
8 reasonable access to the ward by the guardian or conservator
9 is not possible.

10 4- 6. Upon determination by the court that the
11 conservatorship or guardianship is no longer necessary for any
12 other reason.

13 Sec. 27. Section 633.679, Code 1997, is amended to read as
14 follows:

15 633.679 PETITION TO MODIFY OR TERMINATE.

16 1. At any time after the appointment of a guardian or
17 conservator, the person under guardianship or conservatorship,
18 the guardian, the conservator, or any interested party may
19 apply to the court by petition, ~~alleging that the person is no~~
20 ~~longer a proper subject thereof,~~ and asking that the
21 guardianship or conservatorship be modified or terminated.

22 2. Upon the filing of a petition, the court may order
23 modification or termination of the guardianship, the
24 conservatorship, or both. Prior to the issuance of the order,
25 notice of the petition to modify or terminate shall be
26 provided to all persons entitled to notice pursuant to section
27 633.554 and all persons entitled to notice shall be provided
28 the opportunity to provide evidence supporting continuance,
29 modification, or termination of the conservatorship or
30 guardianship at a hearing on the petition. The action shall
31 be triable as a proceeding in equity. The ward is entitled to
32 representation in the same manner as provided in section
33 633.561 and the court shall make every reasonable effort to
34 enable the ward to be present and to participate in the
35 proceedings.

1 3. In making a determination on the proposed modification
2 or termination, the court may appoint a court evaluator to
3 investigate the situation. A determination to continue,
4 modify, or terminate a guardianship or conservatorship shall
5 be based upon clear and convincing evidence. The burden of
6 persuasion in the continuation, modification, or termination
7 of a guardianship or conservatorship is on the petitioner. In
8 a petition to terminate a guardianship or conservatorship, a
9 ward shall make a prima facie showing that the ward has some
10 decision-making capacity. Following the initial showing by
11 the ward, the guardian or conservator shall have the burden of
12 persuasion to demonstrate by clear and convincing evidence any
13 incompetency on the part of the ward.

14 Sec. 28. NEW SECTION. 633.680A PETITION TO REMOVE
15 GUARDIAN OR CONSERVATOR -- BASIS FOR REMOVAL.

16 Upon a petition by an interested person or on the court's
17 own motion, the court may remove a guardian or conservator or
18 order other appropriate relief if the guardian or conservator
19 does any of the following:

- 20 1. Acts under letters secured by material
21 misrepresentation or mistake, whether fraudulent or innocent.
- 22 2. Is incapacitated or is suffering from an illness,
23 including substance abuse, which affects fitness for office,
24 or is a ward in this state or any other jurisdiction.
- 25 3. Is convicted of a crime which reflects on fitness for
26 office.
- 27 4. Wastes or mismanages the estate, unreasonably withholds
28 distributions or makes distributions in a negligent manner, or
29 otherwise abuses powers or fails to discharge duties.
- 30 5. Neglects the care and custody of the ward.
- 31 6. Has an interest adverse to the faithful performance of
32 duties such that there is a substantial risk that the guardian
33 or conservator will fail to properly perform specified duties.
- 34 7. Fails to file reports or accountings when required, or
35 fails to comply with any order of the court.

1 8. Acts in a manner which threatens the personal or
2 financial security of a co-guardian or co-conservator or
3 endangers surety on the bond.

4 9. Fails to file sufficient bond after being ordered by
5 the court to do so.

6 10. Avoids service of process or notice regarding matters
7 related to the guardianship or conservatorship.

8 11. Becomes incapable of or unsuitable for the discharge
9 of duties.

10 12. Is not acting in the best interests of the ward.

11 Sec. 29. NEW SECTION. 633.682A COURT EVALUATOR EDUCATION
12 REQUIREMENTS.

13 A ward or proposed ward is entitled to a court evaluator
14 whom the court finds to be sufficiently capable of performing
15 the duties of a court evaluator necessary to ensure that all
16 the relevant information regarding a petition for the
17 appointment, modification, or termination of a guardian comes
18 before the court and of assisting the court in reaching a
19 decision regarding the appointment, modification, or
20 termination of a guardian. A person appointed as a court
21 evaluator shall complete a training program approved by the
22 Iowa supreme court. The supreme court may waive some or all
23 requirements if the proposed court evaluator demonstrates an
24 educational background or experience sufficient to meet the
25 requirements. The training program shall include all of the
26 following:

27 1. The legal duties and responsibilities of the court
28 evaluator.

29 2. The rights of a ward with an emphasis on due process
30 rights to aid the court evaluator in determining
31 recommendations regarding the appointment of counsel and the
32 conduct of the hearing.

33 3. The available resources to aid the ward or proposed
34 ward.

35 4. An orientation relating to medical terminology,

1 particularly medical terminology related to the diagnostic and
2 assessment procedures used to characterize the extent and
3 reversibility of any impairment.

4 5. Entitlements.

5 6. Psychological and social concerns relating to disabled
6 elders and frail elders as defined by rule of the department
7 of elder affairs.

8 Sec. 30. NEW SECTION. 633.682B FILING.

9 The supreme court administrator shall establish a system of
10 notification for the following:

11 1. The filing of guardianship cases and records which
12 distinguish these cases from probate cases.

13 2. The filing of annual reports by guardians and
14 conservators to assure that the court will be notified of
15 annual reports as the reports become due and whether the
16 reports are filed.

17 Sec. 31. Sections 633.557 and 633.680, Code 1997, are
18 repealed.

19

EXPLANATION

20 This bill amends the portions of the Code relating to
21 guardianships and conservatorships. The bill includes many
22 changes based upon the Iowa Supreme Court decision in In Re
23 Guardianship of Hedin, 528 N.W.2d 567 (Iowa 1995). In Hedin,
24 the court held all of the following:

25 1. In proceedings to establish, modify, or terminate a
26 guardianship, the district court may make a finding of
27 incompetency only if the ward's or proposed ward's decision-
28 making capacity is so impaired that the ward is unable to care
29 for the ward's or proposed ward's personal safety or to attend
30 to and provide for such necessities as food, shelter,
31 clothing, and medical care, without which physical injury or
32 illness may occur. Additionally, in making the determination
33 of incompetency, the court is required to consider credible
34 evidence from any source of the effect of third-party
35 assistance.

1 2. In determining whether a guardianship is to be
2 established, modified, or terminated, the district court shall
3 consider if a limited guardianship is appropriate.

4 3. The standard of proof for determining incompetency in a
5 proceeding to establish, modify, or terminate a guardianship
6 is clear and convincing evidence.

7 4. The burden of persuasion is on the party petitioning
8 for guardianship and remains with the guardian in proceedings
9 to modify or terminate the guardianship. If the ward
10 petitions to terminate the guardianship, the ward must make a
11 prima facie showing that the ward has some decision-making
12 capacity. Once the prima facie showing is made, the guardian
13 has the burden of persuasion to show by clear and convincing
14 evidence that the ward is incompetent.

15 The bill provides definitions of "court evaluator",
16 "functional limitations", "health care professional", and
17 "legal settlement", and redefines the term "incompetent".

18 The bill provides general provisions which apply to all
19 guardianship and conservatorship proceedings. In the
20 appointment, modification, or termination of a guardianship,
21 incompetency of the proposed ward or ward must be supported by
22 clear and convincing evidence. The bill establishes the
23 burden of persuasion in guardianship and conservatorship
24 proceedings, requires the court to consider establishment of a
25 limited guardianship or conservatorship, and requires the
26 court to consider credible evidence from any source as to the
27 effect of third-party assistance in meeting the needs of the
28 proposed ward or ward.

29 The bill amends the sections relating to the petition for
30 guardianships and conservatorships to change the basis upon
31 which a person is alleged to require a guardian or conservator
32 to be that the person is a minor or is incompetent as defined
33 in the bill. The bill also requires new information to be
34 included in the petition for guardianship. The new
35 information required includes the names and addresses of

1 additional interested parties, the nature and degree of the
2 alleged incompetency, and any additional information which
3 might assist the court in making its determination. The bill
4 requires that an evaluation by a health care professional of
5 the proposed ward's physical and mental condition be attached
6 to the petition or provided at least 14 days prior to the
7 hearing on the petition.

8 The bill amends the notice provisions to include, if the
9 proposed ward is an adult, notice of the filing of the
10 petition to the proposed ward and to all persons included in
11 the petition as interested parties; if the proposed ward is a
12 minor, notice is to be provided to the parents or guardian and
13 to any adult person with whom the minor resides unless any of
14 these is the petitioner.

15 The bill amends the pleadings and trial portion of the
16 proceedings to include provisions which allow the court to
17 appoint a court evaluator to provide for an evaluation of the
18 proposed ward to carry out additional information-gathering
19 duties to assist the court in its determination. The costs of
20 the court evaluator are to be paid by the proposed ward or if
21 the proposed ward is indigent, by the county of legal
22 settlement and if there is no county of legal settlement, then
23 by the state. The bill requires that the proposed ward be
24 present at the hearing unless good cause is shown for the
25 absence and provides that the hearing may be closed upon
26 request of the proposed ward for good cause shown.

27 The bill provides that venue for the proceeding is in the
28 district court of the county of residence of the proposed ward
29 or where the proposed ward is present, that the court may
30 transfer the proceeding to another court if in the interest of
31 justice, and that any guardianship involving a minor is to
32 meet the requirements of the uniform child custody
33 jurisdiction Act.

34 The bill amends sections 633.556 and 633.570 regarding
35 appointment of a guardian and appointment of a conservator to

1 provide that the court may provide for the appointment of a
2 guardian or conservator if the allegations of the petition are
3 proved by clear and convincing evidence. In a guardianship
4 proceeding, the court is to grant specific powers to the
5 guardian that are the least restrictive for the ward, is to
6 consider if a limited guardianship is appropriate, and is to
7 consider whether third-party assistance is available to meet
8 the ward's needs. In a conservatorship proceeding, the court
9 may appoint a conservator if the allegations of the petition
10 are proved by clear and convincing evidence and the court is
11 to consider if a limited conservatorship is appropriate.

12 Regarding the appointment of a guardian, the bill provides
13 that the court may appoint a guardian if the allegations of
14 the petition as to the status of the proposed ward and
15 necessity for the appointment are proven by clear and
16 convincing evidence. If a guardian is appointed, the court is
17 directed to appoint a resident of this state as guardian, and
18 it is the exclusive decision of the court to make a
19 determination as to the appointment of a guardian, the type of
20 guardianship, and the specific areas of protection,
21 management, and assistance to be granted the guardian. The
22 court is directed to make its determination based upon its
23 consideration of the proposed ward's functional limitations,
24 to grant specific powers to the guardian which are the least
25 restrictive, and to consider a limited guardianship and the
26 availability of third-party assistance.

27 The bill provides that in the preference as to appointment
28 of a guardian for an adult ward, any person who is qualified
29 and suitable or any person nominated by a ward in a standby
30 guardianship petition may be appointed. The bill replaces the
31 current standby guardianship language by stating that any
32 person with sufficient capacity to form a preference may
33 petition for a standby guardianship. The bill provides that
34 the petition must specify the event or conditions which must
35 occur for the petition to be filed or acted upon by the court,

1 provides for deposit of the petition, provides for revocation
2 of the petition prior to the appointment of a guardian,
3 provides for the filing upon the receipt by the clerk of court
4 of both the petition and a verified statement that the event
5 or condition has occurred, provides for the appointment of the
6 person nominated as guardian without a hearing or the setting
7 of the petition for hearing, and provides that the powers of
8 the guardian are to be limited to only those powers expressed
9 in the petition or only those powers specified by the court
10 following a hearing on the petition.

11 The bill provides that an attorney appointed to represent a
12 proposed ward, in addition to existing duties, is to provide
13 notice to all interested parties specified in the petition and
14 to notify other interested parties not included in the
15 petition but who are identified during the course of the
16 representation.

17 The notification of guardianship powers provisions are
18 amended to provide notice to the proposed ward of the powers
19 of the guardian to make decisions regarding the ward's
20 personal safety or to provide for necessities and to include
21 notice of powers which must receive approval including
22 arranging for major elective surgery or any other nonemergency
23 major medical procedure or consent to the withholding or
24 withdrawal of life-sustaining procedures. The notice provided
25 to the proposed ward is to be in 14 point type rather than the
26 existing 10 point.

27 The bill deletes the provisions for the appointment of a
28 guardian under a voluntary guardianship petition, so that a
29 guardian may only be appointed under involuntary or standby
30 provisions.

31 The bill amends the provisions which specify the powers
32 which may be granted to a guardian by limiting the powers
33 granted without court approval to those powers specified by
34 the court, consistent with the findings of the court regarding
35 the ward's or proposed ward's functional limitations and by

1 limiting the powers granted with court approval to those
2 related to major elective surgery or nonemergency major
3 medical procedures and consenting to the withholding or
4 withdrawal of life-sustaining procedures. The bill also
5 specifies that the ward retains all rights not delegated to
6 the guardian by the court.

7 The bill provides new requirements for education of a
8 guardian which consist of a minimum of two hours of
9 instruction and training in specified subjects, to be
10 completed by the guardian within the three-month period
11 following the appointment. The bill provides for waiver of
12 the education requirements for good cause shown and provides
13 for payment of expenses by the ward's estate.

14 The bill also provides that if a guardianship or
15 conservatorship is modified, any modification which would be
16 more restrictive for the ward must be based on clear and
17 convincing evidence that the ward still falls into the
18 category noted in the petition and that the facts justify the
19 modification.

20 The bill expands the reporting requirements of the
21 guardian, provides that if an annual report sets forth any
22 reason for modification of the powers authorized, the guardian
23 is to make application for modification within 10 days of the
24 filing of the report and provide notice of the filing to all
25 interested parties, and provides that any interested party may
26 request a hearing on the report. The bill includes new
27 provisions for the examination of the initial and annual
28 reports by the chief judge of the judicial district or a
29 designee of the presiding judge, provides that the person
30 authorized to examine the report may demand that a report be
31 filed if the guardian fails to do so, and provides that the
32 person authorized to examine the reports may demand a revised
33 report if the report submitted is incomplete or
34 unsatisfactory. Failure of a guardian to comply with a demand
35 is grounds for entry of an order of compliance, denial or

1 reduction in the compensation of the guardian, or removal of
2 the guardian.

3 The bill provides new grounds for the modification or
4 termination of a guardianship or conservatorship including a
5 determination that the ward is no longer incompetent, that the
6 guardian or conservator has become disabled, ill, or has died,
7 or that the ward has been removed from the state or if
8 reasonable access to the ward by the guardian or conservator
9 is not possible.

10 The bill provides that any interested party may petition
11 for modification or termination of a guardianship or
12 conservatorship and that all of the procedural requirements
13 that apply to an initial guardianship or conservatorship
14 appointment apply to the modification or termination
15 proceedings. The bill provides several grounds for the
16 removal of a guardian or conservator including incapacity,
17 criminal conviction, wasting or mismanaging the estate,
18 neglecting the ward, failure to file required reports, and
19 other grounds.

20 The bill provides court evaluator education requirements
21 and requires the supreme court administrator to establish a
22 system of notification for the filing of guardianship cases
23 and records distinct from probate cases and for the filing of
24 annual reports so that the court will be notified of annual
25 reports as they become due and whether the reports have been
26 filed.

27 The bill repeals the section of the Code providing for the
28 appointment of a guardian on a voluntary petition and the
29 section which limits the applications to terminate a
30 guardianship or conservatorship by stating that if a petition
31 is denied, no other petition shall be filed until at least 6
32 months following the date of the denial of the petition.

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