

Fiscal: Fiscal impact issued

Revenue: No Revenue Impact

Action Date: 02/23/15

Action: Do Pass With Amendments And Requesting Referral To Ways And Means. (Printed A-Engrossed.)

Meeting Dates: 02/09, 02/23

Senate

Yeas: 5 - Burdick, Gelser, Thatcher, Prozanski, Kruse

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WHAT THE MEASURE DOES:

Requires appointment of counsel for person subject to protective proceeding when certain circumstances exist. Requires counsel be appointed when: 1) requested by person; 2) objection to petition or motion is filed by any person; 3) court appointed visitor recommends counsel be appointed; or, 4) court determines person is in need of counsel. Specifies court need not appoint counsel when person is already represented by counsel. Directs court to order payment of attorney fees and costs from estate of person if funds exist or from public defense services if person is determined to be financially eligible for counsel at state expense.

ISSUES DISCUSSED:

- Need for guardianship services
- Office of the Public Guardian within Long Term Care Ombudsman's Office
- Guardianship removes civil rights from protected person
- Need for guidance and oversight when transitioning from minor into protected adult
- Civil commitment proceeding automatically require counsel
- Forty-seven states have provisions for state payment of counsel for protected person

EFFECT OF COMMITTEE AMENDMENT:

Allows courts to appoint counsel even when protected person or respondent objects to appointment. Makes clarifying changes.

BACKGROUND:

Guardianship is a protective proceeding created by state law in which a court gives a person or entity the duty and power to make decisions for another. Conservatorship is a similar relationship, but is limited to financial oversight. The appointment of a guardian or conservator occurs after a petition is filed and a court finds that the person who is the subject of the proceedings lacks capacity to make decisions on his or her own behalf. Guardians are often family or friends, but may also be professionals. Appointment of a guardian may be appropriate or necessary in circumstances where an adult has significant developmental delays or illness, including dementia. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. The guardian may be making determinations on housing, daily activity, health care treatment, and finances. Under current Oregon law, a court may require a hearing be held in a guardianship proceeding, but there is no authority for a court to appoint counsel for a person who is subject to a protective proceeding.

Senate Bill 471 A allows a court to appoint counsel for the person subject to a proposed guardianship or conservatorship if the person requests counsel, an objection to the petition or other motion has been filed, the court-appointed visitor recommends appointment of counsel, or if the court determines the person is in need of counsel. Payment for attorney fees and costs are to

come from the estate of the person, if sufficient, or from the public defense services, as the court directs.