

Assembly Bill No. 320—Assemblymen Pierce, McClain, Bobzien, Ohrenschall; Atkinson, Buckley, Conklin, Denis, Goedhart, Kihuen, Leslie, Manendo, Ocegüera and Segerblom

Joint Sponsor: Senator Parks

CHAPTER.....

AN ACT relating to guardianships; requiring additional information in a petition for appointment of a guardian under certain circumstances; requiring that a proposed adult ward be advised of his right to counsel; revising provisions relating to the attendance of a proposed adult ward at a guardianship hearing; requiring a guardian to petition a court before moving a ward into certain residential facilities under certain circumstances; making various other changes relating to guardianships; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill requires that a petitioner for the appointment of a guardian for a proposed adult ward provide the court with an assessment completed by a licensed physician of the proposed adult ward's needs and limitations in capacity before the court makes a final order in the case. (NRS 159.044)

Section 4 of this bill provides that a proposed adult ward must be advised of his right to counsel in the guardianship proceeding and requires that certain information or responses provided by the adult ward relating to his right to counsel and to the proceeding be transmitted to the court. (NRS 159.0485)

Existing law provides that a proposed ward found in this State must attend a hearing for the appointment of a guardian unless a certificate is signed indicating the reasons the proposed ward cannot appear. (NRS 159.0535) **Section 5** of this bill provides that a proposed ward who is unable to attend a hearing for the appointment of a general or special guardian may attend by videoconference. **Section 5** further provides that if a proposed ward is an adult and cannot attend the hearing or appear by videoconference, the court must have the person who signs the certificate to excuse the proposed adult ward from attending the hearing meet with the proposed adult ward and report back to the court regarding the proposed adult ward's desire for representation at the hearing, preferences if a guardianship is imposed and any information the person believes may have limited any of the proposed adult ward's responses.

Existing law provides that a guardian must file with the court annually, or at such other times the court deems appropriate, a written report on the condition of the ward and the exercise of authority and the performance of duties by the guardian. (NRS 159.081) **Section 6** of this bill: (1) provides that a guardian must also file with the court a report within 10 days of moving a ward to a secured residential long-term care facility; and (2) authorizes the court to determine the form and contents of such a report.

Section 7 of this bill requires a guardian to petition the court and receive the court's consent before moving a ward into a secured residential long-term care facility. However, a guardian does not need to petition the court if the court has already granted the guardian the authority to move the ward to such a facility or if a



licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of the county's office of protective services recommends the transfer in writing. (NRS 159.113)

Section 8 of this bill makes a technical correction to section 27 of Senate Bill No. 277 of this session, which establishes the allowable compensation of an attorney of a personal representative. (NRS 150.060)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 159 of NRS is hereby amended by adding thereto a new section to read as follows:

1. "Secured residential long-term care facility" means a residential facility providing long-term care that is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian.

2. The term does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living.

Sec. 2. NRS 159.013 is hereby amended to read as follows:

159.013 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 159.014 to 159.027, inclusive, *and section 1 of this act*, have the meanings ascribed to them in those sections.

Sec. 3. NRS 159.044 is hereby amended to read as follows:

159.044 1. Except as otherwise provided in NRS 127.045, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:

(a) The name and address of the petitioner.

(b) The name, date of birth and current address of the proposed ward.

(c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:



- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

➔ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) If the proposed ward is a minor, the date on which he will attain the age of majority and:

(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and

(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.

(e) Whether the proposed ward is a resident or nonresident of this State.

(f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.

(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.

(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which he was convicted and whether the proposed guardian was placed on probation or parole.



(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. The documentation may include, without limitation:

(1) A certificate signed by a physician who is licensed to practice medicine in this State stating the need for a guardian;

(2) A letter signed by any governmental agency in this State which conducts investigations stating the need for a guardian; or

(3) A certificate signed by any other person whom the court finds qualified to execute a certificate stating the need for a guardian.

(k) Whether the appointment of a general or a special guardian is sought.

(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.

(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.

(n) The relationship, if any, of the petitioner to the proposed ward and the interest, if any, of the petitioner in the appointment.

(o) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.

(p) Whether the guardianship is sought as the result of an investigation of a report of abuse or neglect that is conducted pursuant to chapter 432B of NRS by an agency which provides child welfare services. As used in this paragraph, "agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(q) Whether the proposed ward is a party to any pending criminal or civil litigation.

(r) Whether the guardianship is sought for the purpose of initiating litigation.

(s) Whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.

3. Before the court makes a finding pursuant to NRS 159.054, a petitioner seeking a guardian for a proposed adult ward must provide the court with an assessment of the needs of the proposed adult ward completed by a licensed physician which



identifies the limitations of capacity of the proposed adult ward and how such limitations affect the ability of the proposed adult ward to maintain his safety and basic needs. The court may prescribe the form in which the assessment of the needs of the proposed adult ward must be filed.

Sec. 4. NRS 159.0485 is hereby amended to read as follows:

159.0485 1. *At the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to NRS 159.0535 and is not appearing by videoconference at the hearing, the person who signs the certificate pursuant to NRS 159.0535 to excuse the proposed adult ward from attending the hearing shall advise the proposed adult ward of his right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding.*

2. If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel, at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney must represent the adult ward or proposed adult ward until relieved of the duty by court order.

~~[2-]~~ 3. Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation which must be paid from the estate of the adult ward or proposed adult ward. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney.

Sec. 5. NRS 159.0535 is hereby amended to read as follows:

159.0535 1. A proposed ward who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician who is licensed to practice in this State specifically states the condition of the proposed ward, ~~[and]~~ the reasons why the proposed ward is unable to appear



in court ~~[and]~~ *and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward;* or

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed ward, ~~[and]~~ the reasons why the proposed ward is unable to appear in court ~~[and]~~ *and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward.*

2. *A proposed ward found in this State who cannot attend the hearing for the appointment of a general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by videoconference. If the proposed ward is an adult and cannot attend by videoconference, the person who signs the certificate described in subsection 1 shall:*

(a) *Inform the proposed adult ward that the petitioner is requesting that the court appoint a guardian for the proposed adult ward;*

(b) *Ask the proposed adult ward for a response to the guardianship petition;*

(c) *Inform the proposed adult ward of his right to counsel and ask whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding; and*

(d) *Ask the preferences of the proposed adult ward for the appointment of a particular person as his guardian.*

3. *If the proposed ward is an adult, the person who signs the certificate described in subsection 1 shall state in the certificate:*

(a) *That the proposed adult ward has been advised of his right to counsel and asked whether he wishes to be represented by counsel in the guardianship proceeding;*

(b) *The responses of the proposed adult ward to the questions asked pursuant to subsection 2; and*

(c) *Any conditions that the person believes may have limited the responses by the proposed adult ward.*

4. *The court may prescribe the form in which the certificate must be filed. If the certificate consists of separate parts, each part must be signed by a person identified in subsection 1.*

5. *If the proposed ward is not in this State, the proposed ward must attend the hearing only if the court determines that the attendance of the proposed ward is necessary in the interests of justice.*



Sec. 6. NRS 159.081 is hereby amended to read as follows:

159.081 1. A guardian of the person shall make and file in the guardianship proceeding for review of the court a written report on the condition of the ward and the exercise of authority and performance of duties by the guardian:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian; ~~and~~

(b) *Within 10 days of moving a ward to a secured residential long-term care facility; and*

(c) At such other times as the court may order.

2. *A report filed pursuant to paragraph (b) of subsection 1 must:*

(a) *Include a copy of the written recommendation upon which the transfer was made; and*

(b) *Be served, without limitation, on the attorney for the ward, if any.*

3. *The court may prescribe the form and contents for filing a report described in subsection 1.*

4. The guardian of the person shall give to the guardian of the estate, if any, a copy of each report not later than 30 days after the date the report is filed with the court.

~~3.1~~ 5. The court is not required to hold a hearing or enter an order regarding the report.

Sec. 7. NRS 159.113 is hereby amended to read as follows:

159.113 1. Before taking any of the following actions, the guardian shall petition the court for an order authorizing the guardian to:

(a) Invest the property of the ward pursuant to NRS 159.117.

(b) Continue the business of the ward pursuant to NRS 159.119.

(c) Borrow money for the ward pursuant to NRS 159.121.

(d) Except as otherwise provided in NRS 159.079, enter into contracts for the ward or complete the performance of contracts of the ward pursuant to NRS 159.123.

(e) Make gifts from the ward's estate or make expenditures for the ward's relatives pursuant to NRS 159.125.

(f) Sell, lease or place in trust any property of the ward pursuant to NRS 159.127.

(g) Exchange or partition the ward's property pursuant to NRS 159.175.

(h) Release the power of the ward as trustee, personal representative or custodian for a minor or guardian.

(i) Exercise or release the power of the ward as a donee of a power of appointment.



- (j) Change the state of residence or domicile of the ward.
- (k) Exercise the right of the ward to take under or against a will.
- (l) Transfer to a trust created by the ward any property unintentionally omitted from the trust.
- (m) Submit a revocable trust to the jurisdiction of the court if:
 - (1) The ward or the spouse of the ward, or both, are the grantors and sole beneficiaries of the income of the trust; or
 - (2) The trust was created by the court.
- (n) Pay any claim by the Department of Health and Human Services to recover benefits for Medicaid correctly paid to or on behalf of the ward.

(o) Except as otherwise provided in subsection 6, move the ward into a secured residential long-term care facility.

2. Before taking any of the following actions, unless the guardian has been otherwise ordered by the court to petition the court for permission to take specified actions or make specified decisions in addition to those described in subsection 1, the guardian may petition the court for an order authorizing the guardian to:

(a) Obtain advice, instructions and approval of any other proposed act of the guardian relating to the ward's property.

(b) Take any other action which the guardian deems would be in the best interests of the ward.

3. The petition must be signed by the guardian and contain:

(a) The name, age, residence and address of the ward.

(b) A concise statement as to the condition of the ward's estate.

(c) A concise statement as to the advantage to the ward of or the necessity for the proposed action.

(d) The terms and conditions of any proposed sale, lease, partition, trust, exchange or investment, and a specific description of any property involved.

4. Any of the matters set forth in subsection 1 may be consolidated in one petition, and the court may enter one order authorizing or directing the guardian to do one or more of those acts.

5. A petition filed pursuant to paragraphs (b) and (d) of subsection 1 may be consolidated in and filed with the petition for the appointment of the guardian, and if the guardian is appointed, the court may enter additional orders authorizing the guardian to continue the business of the ward, enter contracts for the ward or complete contracts of the ward.

6. Without filing a petition pursuant to paragraph (o) of subsection 1, a guardian may move a ward into a secured residential long-term care facility if:



(a) The court has previously granted the guardian authority to move the ward to such a facility based on findings made when the court appointed the general or special guardian; or

(b) The transfer is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county's office for protective services.

7. As used in this section, "protective services" has the meaning ascribed to it in NRS 200.5092.

Sec. 8. Section 27 of Senate Bill No. 277 of this session is hereby amended to read as follows:

Sec. 27. NRS 150.060 is hereby amended to read as follows:

150.060 1. Attorneys for personal representatives are entitled to reasonable compensation for their services, to be paid out of the decedent's estate.

2. An attorney for a personal representative may be compensated based on:

(a) The applicable hourly rate of the attorney;

(b) The value of the estate accounted for by the personal representative;

(c) An agreement as set forth in subsection 4 of section 21 of this act; or

(d) Any other method preapproved by the court pursuant to a request in the initial petition for the appointment of the personal representative.

3. If the attorney is requesting compensation based on the hourly rate of the attorney, he may include, as part of that compensation for ordinary services, a charge for legal services or paralegal services performed by a person under his direction and supervision.

4. If the attorney is requesting compensation based on the value of the estate accounted for by the personal representative, the allowable compensation of the attorney for ordinary services must be determined as follows:

(a) For the first \$100,000, at the rate of 4 percent;

(b) For the next \$100,000, at the rate of 3 percent;

(c) For the next \$800,000, at the rate of 2 percent;

(d) For the next \$9,000,000, at the rate of 1 percent;

(e) For the next \$15,000,000, at the rate of 0.5 percent;

and

(f) For all amounts above \$25,000,000, a reasonable amount to be determined by the court.



5. *Before an attorney may receive compensation based on the value of the estate accounted for by the personal representative, the personal representative must sign a written agreement as required by subsection 8. The agreement must be prepared by the attorney and must include detailed information, concerning, without limitation:*

- (a) The schedule of fees to be charged by the attorney;*
- (b) The manner in which compensation for extraordinary services may be charged by the attorney; and*
- (c) The fact that the court is required to approve the compensation of the attorney pursuant to subsection 8 before the personal representative pays any such compensation to the attorney.*

6. *For the purposes of determining the compensation of an attorney pursuant to subsection 4, the value of the estate accounted for by the personal representative:*

(a) Is the total amount of the appraisal of property in the inventory, plus:

- (1) The gains over the appraisal value on sales; and*
- (2) The receipts, less losses from the appraisal value on sales; and*

(b) Does not include encumbrances or other obligations on the property of the estate.

7. *In addition to the compensation for ordinary services of an attorney set forth in this section, an attorney may also be entitled to receive compensation for extraordinary services as set forth in section 21 of this act.*

8. The ~~{amount}~~ *compensation of the attorney* must be fixed by *written* agreement between the personal representative and the attorney, *and is* subject to approval by the court, after petition, notice and hearing as provided in ~~{subsection 2.}~~ *this section.* If the personal representative and the attorney fail to reach agreement, or if the attorney is also the personal representative, the amount must be determined and allowed by the court. The petition *requesting approval of the compensation of the attorney* must contain specific and detailed information supporting the entitlement to compensation, including:

- (a) If the attorney is requesting compensation based upon the value of the estate accounted for by the personal representative, the attorney must provide the manner of calculating the compensation in the petition; and*



(b) If the attorney is requesting compensation based on an hourly basis, or is requesting compensation for extraordinary services, the attorney must provide the following information to the court:

- (1) Reference to time and hours;
- ~~[(b)]~~ (2) The nature and extent of services rendered;
- ~~[(c)]~~ (3) Claimed ordinary and extraordinary services;
- ~~[(d)]~~ (4) The complexity of the work required; and
- ~~[(e)]~~ (5) Other information considered to be relevant to a determination of entitlement.

~~[(2)]~~ 9. The clerk shall set the petition for hearing, and the petitioner shall give notice of the petition to the personal representative if he is not the petitioner and to all known heirs in an intestacy proceeding and devisees in a will proceeding. The notice must be given for the period and in the manner provided in NRS 155.010. If a complete copy of the petition is not attached to the notice, the notice must include a statement of the amount of the fee which the court will be requested to approve or allow.

~~[(3)]~~ 10. On similar petition, notice and hearing, the court may make an allowance to an attorney for services rendered up to a certain time during the proceedings.

~~[(4)]~~ *If the attorney is requesting compensation based upon the value of the estate as accounted for by the personal representative, the court may apportion the compensation as it deems appropriate given the amount of work remaining to close the estate.*

11. An heir or devisee may file objections to a petition filed pursuant to this section, and the objections must be considered at the hearing.

~~[(5)]~~ 12. Except as otherwise provided in this subsection, an attorney for minor, absent, unborn, incapacitated or nonresident heirs is entitled to compensation primarily out of the estate of the distributee so represented by him in those cases and to such extent as may be determined by the court. If the court finds that all or any part of the services performed by the attorney for the minor, absent, unborn, incapacitated or nonresident heirs was of value to the decedent's entire estate as such and not of value only to those heirs, the court shall order that all or part of the attorney's fee be paid to the attorney out of the money of the decedent's entire estate as a general administrative expense of the estate. The amount of



these fees must be determined in the same manner as the other attorney's fees provided for in this section.

Sec. 9. 1. This section and section 8 of this act become effective upon passage and approval.

2. Sections 1 to 7, inclusive, of this act become effective on October 1, 2009.

