

Amendment No. 694

Senate Amendment to Assembly Bill No. 320 First Reprint (BDR 13-906)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NMB/KEL



Date: 5/17/2009

A.B. No. 320—Revises provisions relating to guardianships. (BDR 13-906)



ASSEMBLY BILL NO. 320—ASSEMBLYMEN PIERCE, MCCLAIN, BOBZIEN,
OHRENSCHALL; ATKINSON, BUCKLEY, CONKLIN, DENIS, GOEDHART,
KIHUEN, LESLIE, MANENDO, OCEGUERA AND SEGERBLOM

MARCH 13, 2009

JOINT SPONSOR: SENATOR PARKS

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to guardianships. (BDR 13-906)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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 ~~4~~ 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~~ 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 ~~4~~ 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 ~~4~~ 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; ~~which provides long term care and which restricts the ward from leaving the facility without supervision~~ and (2) ~~establishes procedures for the handling of such a report following its filing~~; 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. ~~which provides long term care and restricts the ward from leaving the facility without supervision.~~ 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)

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.

~~[Section 1.]~~ **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.

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

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

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

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

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

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

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

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

24 (1) A social security number;

25 (2) A taxpayer identification number;

26 (3) A valid driver's license number;

27 (4) A valid identification card number; or

28 (5) A valid passport number.

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

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

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

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

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

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

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

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

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

51 (o) Requests for any of the specific powers set forth in NRS 159.117 to
52 159.175, inclusive, necessary to enable the guardian to carry out the duties of the
53 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, ~~the~~ 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. 2]~~ *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~~ 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. 3]~~ *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 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 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 pursuant to described in subsection 1 shall:

(a) Inform the proposed adult ward that the petitioner wishes to become the 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. ~~The~~ If the proposed ward is an adult, the person who signs the certificate pursuant to 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 ~~the~~ a person executing the certificate pursuant to 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. 4~~ 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 ; ~~which provides long-term care and restricts the ward from leaving the facility without supervision; 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, ~~and on the nearest advocate for residents of facilities for long-term care within the Aging Services Division of the Department of Health and Human Services; and~~

~~(c) Be accompanied by the form prescribed by the court which allows the guardian to indicate whether or not the guardian consents to have the Aging Services Division interview the ward and prepare and transmit a report to the court concerning the transfer of the ward.~~

~~3. If the guardian consents to the preparation and transmittal of the report to the court, the Aging Services Division shall prepare the report and transmit the report to the court, the guardian and the attorney for the ward, if any. In preparing the report, the Division is not required to review generally whether the ward's transfer exceeded the services provided to residents pursuant to NRS 427A.135.~~

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

~~[Sec. 5.]~~ 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. ~~[which provides long-term care and which restricts the ward from leaving the facility without supervision.]~~

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 ~~which provides long-term care and which restricts the ward from leaving the facility without supervision~~ 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.*