

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/27/07

A Bill

SENATE BILL 820

5 By: Senator Critcher
6 By: Representative Cooper
7
8

For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR PUBLIC GUARDIANSHIP OF
11 INCAPACITATED ADULTS WHO OTHERWISE WOULD HAVE NO
12 ONE TO MAKE AND COMMUNICATE DECISIONS NECESSARY
13 FOR THE ADULT'S HEALTH, SAFETY, AND WELFARE; AND
14 FOR OTHER PURPOSES.

Subtitle

16 AN ACT TO PROVIDE FOR PUBLIC
17 GUARDIANSHIP OF INCAPACITATED ADULTS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Legislative findings.

24 The General Assembly finds that:

25 (1) Many adults lack the capacity to provide informed consent to
26 necessary health care, have not executed an advance health care directive or
27 a durable power of attorney, and have no friend or family member qualified
28 and willing to consent on their behalf; and

29 (2) It is therefore necessary for the preservation of the public
30 health and safety to provide for a public guardian who can make informed
31 consent to needed medical and long-term care on behalf of incapacitated
32 adults who are unable to consent for themselves and for whom there is no
33 other person qualified and willing to consent.
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35 SECTION 2. Arkansas Code § 25-10-102(a), concerning the organization
36 of the Department of Health and Human Services, is amended to read as



1 follows:

2 (a) The Department of Health and Human Services shall consist of and
3 be operated under an integrated service system consisting of the following
4 twelve (12) divisions with responsibility and programs assigned to them as
5 determined by the Director of the Department of Health and Human Services:

6 (1)(A) A Division of Aging and Adult Services.

7 (B) The Division of Aging and Adult Services may include
8 the Office of Public Guardian for Adults;

9 (2) A Division of Medical Services;

10 (3) A Division of Behavioral Health, which shall include
11 community mental health centers, state hospitals, and the Bureau of Alcohol
12 and Drug Abuse Prevention;

13 (4) A Division of Developmental Disabilities Services, which
14 shall include both community programs and human development centers;

15 (5) A Division of County Operations;

16 (6) A Division of Administrative Services;

17 (7) A Division of Youth Services, which shall include serious
18 offender and community-based programs and the youth service centers;

19 (8) A Division of Volunteerism;

20 (9) A Division of State Services for the Blind;

21 (10) A Division of Children and Family Services;

22 (11) A Division of Child Care and Early Childhood Education; and

23 (12) A Division of Health.

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25 SECTION 3. Arkansas Code § 28-65-203(h), concerning the qualifications
26 of guardians, is amended to read as follows:

27 (h)(1) Except as provided in subsection (b) of this section, no public
28 agency or employee of any public agency acting in his or her official
29 capacity shall be appointed as guardian for any incapacitated person.

30 (2) No employee of a public agency which provides direct
31 services to the incapacitated person shall be appointed guardian of the
32 person or estate of the incapacitated person.

33 (3) No employee of a public agency which provides direct
34 services to the incapacitated person shall be appointed as a temporary
35 guardian.

36 (4) Notwithstanding any other provision of law, the Public

1 Guardian for Adults may serve as guardian of the person or the estate, or
2 both, of an incapacitated person receiving services from any public agency.

3 ~~(4)~~(5) The department shall ~~issue regulations~~ promulgate rules
4 to implement this provision.

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6 SECTION 4. Arkansas Code Title 28, Chapter 65 is amended to add an
7 additional subchapter to read as follows:

8 28-65-701. Office of Public Guardian for Adults – Creation.

9 (a) The Office of Public Guardian for Adults is created.

10 (b) The Public Guardian for Adults shall be the administrator of the
11 office.

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13 28-65-702. Public Guardian for Adults – Appointment – Qualifications.

14 (a) The Director of the Division of Aging and Adult Services of the
15 Department of Health and Human Services shall appoint an employee of the
16 division to serve as the Public Guardian for Adults.

17 (b)(1) In addition to the qualifications required under § 28-65-203,
18 the public guardian shall:

19 (A) Hold a degree in law or social work or a related
20 field;

21 (B) Submit to a criminal background check with
22 satisfactory results as prescribed by the Division of Aging and Adult
23 Services of the Department of Health and Human Services ;

24 (C) Attend and complete at least twenty (20) hours of
25 training approved by the division; and

26 (D) Demonstrate competency and ability to carry out the
27 values of the ward.

28 (2) The Public Guardian for Adults shall devote his or her
29 entire time to the duties of the Office of Public Guardian for Adults.

30 (c) The Public Guardian for Adults:

31 (1) May consent or withhold consent to health and long term care
32 treatment;

33 (2) Shall advocate for the ward; and

34 (3) Shall be functionally separate from and share no duties with
35 any Department of Health and Human Services employee whose job it is to
36 prepare and offer services, treatment plans, or both, to any person.

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2 28-65-703. Public Guardian for Adults – Duties.

3 (a) The Public Guardian for Adults:

4 (1) Shall administer and organize the work of the Office of
5 Public Guardian for Adults;

6 (2) May employ staff as necessary to carry out the functions of
7 the office; and

8 (3)(A) May accept the services of volunteers who shall possess
9 all of the qualifications of a guardian required under § 28-65-203.

10 (B) If approved by the Public Guardian for Adults, the
11 volunteer shall be reimbursed for expenses in the same manner as public
12 employees.

13 (C) A volunteer shall not be an employee of any facility
14 or program that provides services to the ward.

15 (D) Volunteers shall not be related to the owner or any
16 staff member of any facility or program that provides services to the ward.

17 (b) The Public Guardian for Adults shall receive and review referrals
18 for adult guardianship.

19 (c) The Public Guardian for Adults may petition to be appointed
20 guardian of the person of an adult or guardian of the property of an adult,
21 or both, if:

22 (1) The Public Guardian has probable cause to believe that the
23 adult lacks the capacity to make and communicate decisions necessary for the
24 adult's health, safety, and welfare or to manage his or her property;

25 (2) The Public Guardian believes that the adult is
26 incapacitated;

27 (3) There is no suitable private guardian qualified and willing
28 to accept the guardianship appointment; and

29 (4) A circuit court determines that the Public Guardian for
30 Adults would be a suitable guardian for the incapacitated adult.

31 (d) If requested by the court having jurisdiction of the ward, the
32 Public Guardian may petition to intervene in an established guardianship and
33 petition to be named a successor guardian if all of the following conditions
34 are met:

35 (1) The Public Guardian determines that the current guardian is
36 unable or unwilling to perform his or her duties under the guardianship;

1 (2) There is no suitable private guardian qualified and willing
2 to accept the guardianship appointment; and

3 (3) A circuit court determines that the Public Guardian would be
4 a suitable guardian for the incapacitated adult.

5 (e)(1) The Public Guardian for Adults either directly or through staff
6 or volunteered services shall monitor each ward and each ward's care and
7 progress on a continuing basis.

8 (2) The monitoring shall include quarterly personal contact with
9 each ward.

10 (3) A written record shall be created and maintained concerning
11 each personal contact and shall contain the information specified in § 28-65-
12 322.

13 (f)(1) The Public Guardian for Adults shall keep and maintain
14 financial, case control, and statistical records in accordance with generally
15 accepted professional business and accounting standards in all cases for
16 which the Office of Public Guardian for Adults has been appointed guardian.

17 (2) Office records that identify individuals for whom the office
18 has provided guardianship services shall be kept confidential except to the
19 extent that disclosure is required by other laws.

20 (3) Office records shall be retained in accordance with state
21 record retention rules.

22 (g) Unless specifically provided otherwise in this subchapter,
23 Arkansas Code Title 28, Chapter 65 is applicable to any guardianship
24 established under this subchapter.

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26 28-65-704. Correspondence and legal process.

27 All correspondence and legal process regarding a public guardianship
28 under this subchapter shall be to or from the Public Guardian for Adults in
29 his or her official capacity.

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31 28-65-705. No bond required.

32 Bond shall not be required in connection with public guardian services
33 under this subchapter.

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35 28-65-706. Termination of Guardianships.

36 (a) The court having jurisdiction of the ward shall not terminate the

1 guardianship of a living ward of the Public Guardian for Adults unless the
2 court declares that the ward is restored to capacity or a successor guardian
3 is appointed.

4 (b) Neither the Public Guardian for Adults, the Office of Public
5 Guardian for Adults, nor a volunteer shall be entitled to compensation under
6 § 28-65-108.

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8 28-65-707. Department of Health and Human Services – Adoption of
9 rules.

10 The Department of Health and Human Services may adopt rules necessary
11 to implement this subchapter.

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13 SECTION 5. Contingent effectiveness.

14 This act shall take effect upon the occurrence of the following:

15 (1) The Director of the Division of Aging and Adult Services of
16 the Department of Health and Human Services determines that adequate
17 appropriation, funding, and positions are available to carry out a public
18 guardianship program for adults; and

19 (2) The director appoints an employee of the Division of Aging
20 and Adult Services to serve as Public Guardian for Adults.

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22 /s/ Critcher
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