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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **1396**

February 26, 2007

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to guardians and conservators; changing certain requirements and
1.3 procedures; amending Minnesota Statutes 2006, sections 245.91, by adding
1.4 subdivisions; 245.94, subdivisions 1, 3, 4; 524.5-316; 524.5-502.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2006, section 245.91, is amended by adding a
1.7 subdivision to read:

1.8 Subd. 3a. **Conservator.** "Conservator" means a conservator as defined in section
1.9 524.5-102, subdivision 3.

1.10 Sec. 2. Minnesota Statutes 2006, section 245.91, is amended by adding a subdivision
1.11 to read:

1.12 Subd. 4a. **Guardian.** "Guardian" means a guardian as defined in section 524.5-102,
1.13 subdivision 5.

1.14 Sec. 3. Minnesota Statutes 2006, section 245.94, subdivision 1, is amended to read:

1.15 Subdivision 1. **Powers.** (a) The ombudsman may prescribe the methods by which
1.16 complaints to the office are to be made, reviewed, and acted upon. The ombudsman may
1.17 not levy a complaint fee.

1.18 (b) The ombudsman may mediate or advocate on behalf of a client.

1.19 (c) The ombudsman may investigate the quality of services provided to clients and
1.20 determine the extent to which quality assurance mechanisms within state and county
1.21 government work to promote the health, safety, and welfare of clients, other than clients in
1.22 acute care facilities who are receiving services not paid for by public funds.

2.1 (d) At the request of a client, or upon receiving a complaint or other information
2.2 affording reasonable grounds to believe that the rights of a client who is not capable
2.3 of requesting assistance have been adversely affected, the ombudsman may gather
2.4 information about and analyze, on behalf of the client, the actions of an agency, guardian,
2.5 conservator, facility, or program.

2.6 (e) The ombudsman may examine, on behalf of a client, records of an agency,
2.7 guardian, conservator, facility, or program if the records relate to a matter that is within
2.8 the scope of the ombudsman's authority. If the records are private and the client is
2.9 capable of providing consent, the ombudsman shall first obtain the client's consent. The
2.10 ombudsman is not required to obtain consent for access to private data on clients with
2.11 developmental disabilities or on clients with a mental illness who are under guardianship
2.12 or conservatorship. The ombudsman is not required to obtain consent for access to
2.13 private data on decedents who were receiving services for mental illness, developmental
2.14 disabilities, or emotional disturbance.

2.15 (f) The ombudsman may subpoena a person to appear, give testimony, or produce
2.16 documents or other evidence that the ombudsman considers relevant to a matter under
2.17 inquiry. The ombudsman may petition the appropriate court to enforce the subpoena. A
2.18 witness who is at a hearing or is part of an investigation possesses the same privileges
2.19 that a witness possesses in the courts or under the law of this state. Data obtained from a
2.20 person under this paragraph are private data as defined in section 13.02, subdivision 12.

2.21 (g) The ombudsman may, at reasonable times in the course of conducting a review,
2.22 enter and view premises within the control of an agency, facility, or program.

2.23 (h) The ombudsman may attend Department of Human Services Review Board
2.24 and Special Review Board proceedings; proceedings regarding the transfer of patients
2.25 or residents, as defined in section 246.50, subdivisions 4 and 4a, between institutions
2.26 operated by the Department of Human Services; and, subject to the consent of the affected
2.27 client, other proceedings affecting the rights of clients. The ombudsman is not required to
2.28 obtain consent to attend meetings or proceedings and have access to private data on clients
2.29 with developmental disabilities.

2.30 (i) The ombudsman shall have access to data of agencies, facilities, or programs
2.31 classified as private or confidential as defined in section 13.02, subdivisions 3 and 12,
2.32 regarding services provided to clients with developmental disabilities.

2.33 (j) To avoid duplication and preserve evidence, the ombudsman shall inform
2.34 relevant licensing or regulatory officials before undertaking a review of an action of
2.35 the facility or program.

3.1 (k) Sections 245.91 to 245.97 are in addition to other provisions of law under which
3.2 any other remedy or right is provided.

3.3 Sec. 4. Minnesota Statutes 2006, section 245.94, subdivision 3, is amended to read:

3.4 Subd. 3. **Complaints.** The ombudsman may receive a complaint from any source
3.5 concerning an action of an agency, guardian, conservator, facility, or program. After
3.6 completing a review, the ombudsman shall inform the complainant and the agency,
3.7 guardian, conservator, facility, or program. No client may be punished nor may the general
3.8 condition of the client's treatment be unfavorably altered as a result of an investigation, a
3.9 complaint by the client, or by another person on the client's behalf. An agency, guardian,
3.10 conservator, facility, or program shall not retaliate or take adverse action against a client
3.11 or other person, who in good faith makes a complaint or assists in an investigation. The
3.12 ombudsman may classify as confidential, the identity of a complainant, upon request
3.13 of the complainant.

3.14 Sec. 5. Minnesota Statutes 2006, section 245.94, subdivision 4, is amended to read:

3.15 Subd. 4. **Recommendations to agency.** (a) If, after reviewing a complaint or
3.16 conducting an investigation and considering the response of an agency, facility, or
3.17 program and any other pertinent material, the ombudsman determines that the complaint
3.18 has merit or the investigation reveals a problem, the ombudsman may recommend that
3.19 the agency, facility, or program:

- 3.20 (1) consider the matter further;
- 3.21 (2) modify or cancel its actions;
- 3.22 (3) alter a rule, order, or internal policy;
- 3.23 (4) explain more fully the action in question; or
- 3.24 (5) take other action.

3.25 (b) At the ombudsman's request, the agency, facility, or program shall, within a
3.26 reasonable time, inform the ombudsman about the action taken on the recommendation
3.27 or the reasons for not complying with it.

3.28 (c) If, after reviewing a complaint or conducting an investigation and considering the
3.29 response of a guardian or conservator and any other pertinent material, the ombudsman
3.30 determines that the complaint has merit or the investigation reveals a problem, the
3.31 ombudsman may submit recommendations to the court with jurisdiction over the
3.32 guardianship or conservatorship.

4.1 Sec. 6. Minnesota Statutes 2006, section 524.5-316, is amended to read:

4.2 **524.5-316 REPORTS; MONITORING OF GUARDIANSHIP.**

4.3 (a) A guardian shall report to the court in writing on the condition of the ward at
4.4 least annually and whenever ordered by the court. A report must state or contain:

4.5 (1) the current mental, physical, and social condition of the ward;

4.6 (2) the living arrangements for all addresses of the ward during the reporting period;

4.7 (3) the medical, educational, vocational, and other services provided to the ward and
4.8 the guardian's opinion as to the adequacy of the ward's care; and

4.9 (4) a recommendation as to the need for continued guardianship and any
4.10 recommended changes in the scope of the guardianship.

4.11 (b) The guardian shall provide a copy of the report at the time it is submitted to
4.12 the court to the ward or to a person designated by the ward for review and opportunity
4.13 to comment to the court.

4.14 (c) The court may appoint a visitor to review a report, interview the ward or
4.15 guardian, and make any other investigation the court directs.

4.16 ~~(c)~~ (d) The court shall establish a system for monitoring guardianships, including the
4.17 filing and review of annual reports.

4.18 Sec. 7. Minnesota Statutes 2006, section 524.5-502, is amended to read:

4.19 **524.5-502 COMPENSATION AND EXPENSES.**

4.20 (a) The court may authorize a proceeding under this article to proceed in forma
4.21 pauperis, as provided in chapter 563.

4.22 (b) In proceedings under this article, a lawyer or health professional rendering
4.23 necessary services with regard to the appointment of a guardian or conservator, the
4.24 administration of the protected person's estate or personal affairs, or the restoration of
4.25 that person's capacity or termination of the protective proceeding shall be entitled to
4.26 compensation from the protected person's estate or from the county having jurisdiction
4.27 over the proceedings if the ward or protected person is indigent. When the court
4.28 determines that other necessary services have been provided for the benefit of the ward or
4.29 protected person by a lawyer or health professional, the court may order fees to be paid
4.30 from the estate of the protected person or from the county having jurisdiction over the
4.31 proceedings if the ward or protected person is indigent. If, however, the court determines
4.32 that a petitioner, guardian, or conservator has not acted in good faith, the court shall order
4.33 some or all of the fees or costs incurred in the proceedings to be borne by the petitioner,
4.34 guardian, or conservator not acting in good faith. In determining compensation for a
4.35 guardian or conservator of an indigent person, the court shall consider a fee schedule

5.1 recommended by the Board of County Commissioners. The fee schedule may also include
5.2 a maximum compensation based on the living arrangements of the ward or protected
5.3 person. If these services are provided by a public or private agency, the county may
5.4 contract on a fee-for-service basis with that agency.

5.5 (c) When the court determines that a guardian or conservator has rendered necessary
5.6 services or has incurred necessary expenses for the benefit of the ward or protected person,
5.7 the court may order reimbursement or compensation to be paid from the estate of the
5.8 protected person or from the county having jurisdiction over the guardianship or protective
5.9 proceeding if the ward or protected person is indigent. The court may not deny an award
5.10 of fees solely because the ward or protected person is a recipient of medical assistance. In
5.11 determining compensation for a guardian or conservator of an indigent person, the court
5.12 shall consider a fee schedule recommended by the Board of County Commissioners. The
5.13 fee schedule may also include a maximum compensation based on the living arrangements
5.14 of the ward or protected person. If these services are provided by a public or private
5.15 agency, the county may contract on a fee-for-service basis with that agency.

5.16 (d) The court shall order reimbursement or compensation if the guardian or
5.17 conservator requests payment and the guardian or conservator was nominated by the court
5.18 or by the county adult protection unit because no suitable relative or other person was
5.19 available to provide guardianship or protective proceeding services necessary to prevent
5.20 maltreatment of a vulnerable adult, as defined in section 626.5572, subdivision 15. In
5.21 determining compensation for a guardian or conservator of an indigent person, the court
5.22 shall consider a fee schedule recommended by the Board of County Commissioners. The
5.23 fee schedule may also include a maximum compensation based on the living arrangements
5.24 of the ward or protected person. If these services are provided by a public or private
5.25 agency, the county may contract on a fee-for-service basis with that agency. A person
5.26 reimbursed personally or on behalf of an agency pursuant to a county fee schedule or
5.27 contract must be certified by the National Guardianship Foundation.

5.28 (e) When a county employee serves as a guardian or conservator as part of
5.29 employment duties, the court shall order compensation if the guardian or conservator
5.30 performs necessary services that are not compensated by the county. The court may
5.31 order reimbursement to the county from the protected person's estate for compensation
5.32 paid by the county for services rendered by a guardian or conservator who is a county
5.33 employee but only if the county shows that after a diligent effort it was unable to arrange
5.34 for an independent guardian or conservator.