

Committee on Judiciary

CS/CS/CS/HB 5 — Guardianship Proceedings

by Judiciary Committee; Justice Appropriations Subcommittee; Civil Justice Subcommittee;
Rep. Passidomo and others (CS/CS SB 318 by Appropriations Committee; Judiciary Committee;
and Senators Diaz de la Portilla, Detert, Sobel, and Stargel;)

This bill revises the power of attorney and guardianship statutes to add due process protections to guardianship proceedings, preserve and protect a ward's quality of life, and clarify some ambiguities in current law. The specific statutory changes by the bill:

- Generally give an alleged incapacitated person and his or her attorney at least 24-hours advance notice of a hearing to appoint an emergency temporary guardian.
- Limit the automatic suspension of an alleged incapacitated person's power of attorney held by a close family member to circumstances in which neglect or wrongdoing is alleged.
- Ensure that alleged incapacitated persons who in fact have capacity are not responsible for paying the fees of an examining committee.
- Generally, require courts to explain why a particular guardian is chosen for a ward if the court does not use a rotation system to select guardians.
- Require a court to specify in its orders whether or to what extent a guardian's authority supersedes the authority of a health care surrogate. The bill also requires a guardian who displaces a ward's surrogate to follow any instructions the ward made in the designation of health care surrogate.
- Allow a court to appoint the office of criminal conflict and civil regional counsel to act as a court monitor if the ward is indigent.
- Provide that certain for-profit corporations are qualified to act as a guardian of a ward.
- Establish a code of prohibited conduct for guardians and a code of performance standards for guardians.
- Require a guardian to give a ward as much freedom as possible and assist a ward in regaining capacity.
- Allow family members of a ward to petition a court if a guardian is denying visitation between the ward and the ward's family.
- Recognize that the appointment of a guardian ad litem is not necessary to represent a minor's interest in the settlement of a claim, if the court has already appointed a guardian to represent the minor.
- Require annual guardianship plans to be filed with the court in advance of the plan year.
- Clarify that attorneys for the ward, whether court appointed or otherwise, are entitled to compensation from the guardianship estate.
- Clarify that expert testimony is not necessary to establish compensation for the guardian or the guardian's attorney. This change will benefit wards by, in many cases, eliminating charges for expert witness fees.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 113-0

