SENATE, No. 3135

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:
Senator JOSEPH A. LAGANA
District 38 (Bergen and Passaic)
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Establishes guardianship monitoring program in Office of Public Guardian for Elderly Adults.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/16/2020)

AN ACT concerning guardians for the elderly and amending P.L.1985, c.298.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1985, c.298 (C.52:27G-25) is amended to read as follows:

6. The public guardian, as administrator and chief executive officer:

a. Shall administer and organize the work of the office and establish therein any administrative divisions he may deem necessary, proper and expedient. The public guardian may delegate to subordinate officers or employees of the office any of his powers as he may deem desirable to be exercised under his supervision and control;

b. Shall adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this act;

c. Shall appoint and remove stenographic, clerical and other secretarial assistants as may be required for the proper conduct of the office, subject to the provisions of Title 11A of the New Jersey Statutes, and other applicable statutes, and within the limits of funds appropriated or otherwise made available therefor. In addition, and within funding limits, the public guardian may appoint, retain or employ, without regard to the provisions of Title 11A of the New Jersey Statutes or any other statutes, any officers, financial managers, social workers or other professionally qualified personnel on a contract basis or otherwise as the public guardian deems necessary;

d. Shall maintain suitable headquarters for the office and other quarters as the public guardian may deem necessary to the proper functioning of the office;

e. May accept the services of volunteer workers or consultants at no compensation, at nominal or token compensation, or at full compensation, as appropriate, and reimburse them for their proper and necessary expenses;

f. Shall keep and maintain proper financial and statistical records concerning all cases in which the public guardian provides guardianship or conservatorship services, provided that the privacy and confidentiality of these records for each ward are preserved;

g. May serve as guardian and conservator or either of these, after appointment by a court pursuant to the provisions of Title 3B of the New Jersey Statutes, and with the same powers and duties of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

a private guardian or conservator, except as otherwise limited by law or court order;

h. May intervene in any guardianship or conservatorship proceeding involving a ward, by appropriate motion by the court, if the public guardian or the court deems the intervention to be justified because an appointed guardian or conservator is not fulfilling his duties, the estate is subject to disproportionate waste because of the costs of the guardianship or conservatorship, or the best interests of the ward require intervention;

i. Shall establish a guardianship monitoring program within the office to monitor court-appointed legal guardians of elderly adults to detect abuse, neglect or exploitation. The monitoring program shall provide a system for review of reports submitted by a court-appointed guardian of an elderly adult, which may include reports concerning the ward's well-being, and inventory and accounting reports.

In order to accomplish the goal of the program, the public guardian shall:

(1) Ensure that the court-appointed guardian is in compliance with the initial and periodic reporting requirements for a guardian of an elderly adult as established by the Superior Court pursuant to a judgment of incapacity or judgment of guardianship, or as required pursuant to letters of guardianship issued by the Surrogate;

(2) Review reports and accompanying documentation submitted by the court-appointed guardian in accordance with the established reporting requirements; and

(3) If any problems or inconsistencies are identified following review of the reports and documentation, the Public Guardian may intervene in proceedings in accordance with subsection h. of this section.

For the purposes of this section, the Office of the Public Guardian for Elderly Adults shall be deemed an interested party and therefore be served with any initial and periodic reports as required by the Superior Court or Surrogate.

j. Shall perform any other function which may be prescribed by this act or by any other law;

[j.**]** k. Shall appoint and employ, notwithstanding the provisions of P.L.1944, c.20 (C.52:17A-1 et seq.), a general counsel and such other attorneys or counsel as the public guardian may require, for the purpose, among other things, of providing legal advice on such matters as the public guardian may from time to time require, of attending to and dealing with all litigation, controversies, and legal matters in which the public guardian or any ward of the public guardian may be a party or in which these rights and interests may be involved, and of representing the public guardian and any ward in all proceedings or actions of any kind which may be brought for or against them in any court of this State. With respect to all of the foregoing, the counsel and attorneys shall

be independent of any supervision or control by the Attorney General or by the Department of Law and Public Safety, or by any division or officer thereof.
(cf: P.L.1989, c.248, s.2)

2. This act shall take effect on the 60th day following enactment.

STATEMENT

This bill establishes a guardianship monitoring program within the Office of the Public Guardian for Elderly Adults.

Under current law, if a court finds that a person is unable to govern himself or manage his affairs, the court may make a determination that the person is incapacitated and appoint a guardian to exercise all rights and powers of the incapacitated person.

Unless relieved of doing so by the court, a guardian must furnish a bond in accordance with N.J.S.3B:15-1 et seq. In addition, pursuant to N.J.S.3B:12-42, a guardian must report on the condition of the person and the condition of the property of the person for whom the guardian has been appointed, unless the court waives this requirement. The guardian must report at time intervals established by the court or Surrogate, which is most often on a yearly basis. The guardian may be required to report on the person's well-being, an inventory of the person's property, and an accounting of the person's estate.

The periodic reports must be filed with the Surrogate and must be served on all interested parties. An interested party includes the nearest of kin of the incapacitated person, any agent appointed pursuant to a power of attorney or advance directive, the director of a residential care facility having custody of the incapacitated person, and an attorney appointed for the incapacitated person in the guardianship action.

P.L.1985, c.298 (C.52:27G-20 et seq.), which established the Public Guardian for Elderly Adults, provides for guardianship services to be provided to elderly persons when private guardianship is not feasible.

Under the statutes setting out the powers and duties of the Office of the Public Guardian for Elderly Adults, an elderly adult is defined as a person aged 60 years or older. Pursuant to 2010 census data, New Jersey had the 10th highest population of elderly individuals, with the elderly population increasing 15 percent during the period from 2000 to 2010.

Due to the volume of adult guardianship cases, some reports submitted by court-appointed guardians may not be thoroughly reviewed, allowing abuse to go undetected. These periodic reports

can provide key information as to whether a guardian is abusing, neglecting or exploiting an elderly person. While most guardians are family members and friends who are dedicated to the care of the individual for whom they are responsible, there have been a number of documented cases of abuse, neglect and exploitation of elderly adults by their guardians. It is the sponsor's belief that the guardianship monitoring program will help provide protection for those individuals.

Under the bill, the Office of the Public Guardian for Elderly Adults is designated as an "interested party" that must be served with the periodic reports that must be filed by a court-appointed guardian. The bill provides for review of these reports and accompanying documentation through the guardianship monitoring program.