

SUBSTITUTE GUARDIANSHIP

Phone: (517) 373-8080
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Senate Bill 529 (reported from House committee as H-1)
Sponsor: Sen. Judy K. Emmons
House Committee: Judiciary
Senate Committee: Families, Seniors and Human Services
Complete to 12-2-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: This bill would amend the Guardianship Assistance Act by authorizing the Department of Health and Human Services (DHHS) to pay guardianship assistance to a successor guardian on behalf of an eligible child if the successor guardian was appointed due to the death or incapacitation of the initial guardian.

FISCAL IMPACT: Senate Bill 529 would have no significant fiscal impact to the state and could have a negligible positive fiscal impact to local units of government.

The payments that legal guardians receive for children in the child welfare system are funded through state and federal resources. Under current law, if a child's guardian in the Guardian Assistance Program (GAP) were to die or become incapacitated, then the child might be placed back into the state foster care system. If the child is not eligible for Federal IV-E funding, then the expenditures for foster care would be paid by the county and 50% of these eligible expenses would be reimbursed by the state. Thus, under the bill's provisions, any current GAP agreements that would be transferred to the appointed successor guardian might create savings for county governments in that the child may not be placed into the foster care system – in which case the county would have had to pay for 50% of the expenditures.

In FY 2014-15, there were approximately 800 Guardianship Assistance cases receiving payments from the state. The subset of cases that might have a successor guardian appointed and continue to receive GAP payments would not have a significant fiscal impact on the state or local governments.

THE APPARENT PROBLEM:

Currently, when a child's guardian dies or becomes incapacitated, the guardianship assistance paid by DHHS ceases. This leaves an already vulnerable child in a very difficult situation when financial support is most needed.

THE CONTENT OF THE BILL:

Senate Bill 529 seeks to ensure that the funds intended for the care of the dependent child may be transferred to a new guardian if the initial guardian dies or is incapacitated. Accordingly, it adds "successor guardian" to the Guardian Assistance Act and states that successor guardians may receive the same guardianship assistance as guardians, with the same eligibility requirements. ***Successor guardian*** is defined as a person appointed by the

court to act as a legal guardian upon the death or incapacitation of the preceding guardian. The term does not apply to a person appointed as a guardian if that person's rights have been terminated or suspended.

The only other change is that rather than requiring that the guardian have a strong commitment to caring for the child permanently, the bill clarifies that the commitment must last until the child reaches 18 years of age.

Guardianship Assistance Eligibility

The eligibility requirements for a successor guardian would mirror those currently in place for a guardian. The minor changes (in bold) introduced by this bill, as well as the full requirements, are listed below:

In order for a child to receive guardianship assistance, the following requirements must be met:

- A court has determined that allowing the child to remain in his or her previous home would be contrary to the child's welfare, and has removed the child;
- The child has lived with the prospective guardian for at least six months;
- Reunification and adoption are not appropriate permanency options;
- The child and prospective guardian demonstrate a strong attachment to one another, and the prospective guardian is strongly committed to caring for the child ***until the child reaches 18 years of age***; and
- If the child is at least 14, he or she has been consulted regarding the guardianship arrangement.

In order for a guardian to receive a child's guardianship assistance, the following requirements must be met:

- The guardian is the child's relative or legal custodian;
- The guardian is a licensed foster parent and approved for guardianship assistance by DHHS;
- The child has lived with the prospective guardian for the previous six months; and
- ***A successor guardian may receive guardianship assistance as long as the child is eligible for assistance under the criteria listed above.***

Application for Guardianship Assistance

If a child and successor guardian are eligible for guardianship assistance, the successor guardian may apply for that assistance as provided in subsection 5c of the bill. If a court has appointed him as successor guardian, he or she may either enter into a written, binding guardianship assistance agreement with DHHS **OR** ask that DHHS bestow the assistance once it finds the following:

- A guardianship assistance agreement for the child was in effect before the appointment of the successor guardian;
- The court appointed the successor guardian because of the death or incapacitation of the guardian;
- The preceding guardian had an active guardianship assistance agreement for the child before his or her death or incapacitation; and

- The successor guardian meets all of the conditions set forth in the act (listed above).

HOUSE COMMITTEE ACTION:

The House committee's substitute for the Senate bill contains two changes: (1) the House version changes the sections of the Probate Code referenced in the bill; and (2) adds subsection 5D, which authorizes DHHS to create additional rules as needed for the implementation of the program in compliance with federal law, under the Administrative Procedures Act.

ARGUMENTS:

For:

This bill would close a gap in financial support for vulnerable children. The state has an interest in ensuring continuity of care, and this would allow a child to continue to receive that support even when his or her initial guardian dies or is incapacitated.

Against:

No one spoke or voted against this bill.

POSITIONS:

Representatives of the Michigan Department of Health and Human Services testified in support of the bill. (11-6-15)

Legislative Analyst: Jennifer McInerney
Fiscal Analyst: Viola Bay Wild

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.