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BILL ANALYSIS

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Senate Bill 585 (Substitute S-1 as passed by the Senate)
Senate Bill 586 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Jeff Irwin (S.B. 585)
Senator Ruth Johnson (S.B. 586)
Committee: Housing and Human Services

Date Completed: 1-30-26

RATIONALE

In 2019, the Elder Abuse Task Force (Task Force) was created and tasked with providing policy recommendations for the prevention of elder abuse in Michigan (see **BACKGROUND**). Among other recommendations, the Task Force recommended protections against professional guardians selling an elderly ward's home and moving that ward into a permanent residential care facility or group home when not in the ward's best interest. According to testimony, many professional guardians do not evaluate the individual needs of their wards before selling their wards' homes and moving their wards into care facilities. The bills would establish protections in line with the Task Force's recommendation.

CONTENT

Senate Bill 585 (S-1) would amend Part 4 (Protection of Property of an Individual Under Disability or of a Minor) of the Estates and Protected Individuals Code (EPIC) to require a court, when considering whether to allow a conservator to sell or mortgage a protected individual's property, to include in its consideration of the property's value an appraisal conducted within the previous six months.

Senate Bill 586 (S-3) would amend Part 3 (Guardians of Incapacitated Individuals) of EPIC to do the following:

- **Prohibit a court from granting a guardian the authority to change an incapacitated individual's residence unless the court found upon the guardian's petition that certain conditions were met, including whether the move was to the least restrictive environment suitable to that individual's unique needs, abilities, and resources, among other things.**
- **Require a court to appoint a guardian ad litem upon the submission of a petition described above and hold a hearing within 28 days of the filing.**
- **Allow a guardian to move a ward before filing a petition if prior court authorization were based on a hearing or in an emergency.**
- **Require a court to appoint legal counsel for an individual that objected to a change in residence if that individual did not already have legal counsel.**
- **Require a guardian to notify a court within 14 days of a temporary change in residence if the move were made before a petition was filed.**

Senate Bill 585 (S-1)

Generally, EPIC governs matters related to protected individuals, such as individuals who by reason of age or physical impairment cannot manage their own affairs. The court may appoint a conservator to manage the assets of a protected individual; however, EPIC prohibits a conservator from selling, mortgaging, or pledging, or causing a lien against, a protected

individual's property without approval of the court. A court may approve such an action if, after a hearing, the court considers evidence of the value of the property and otherwise determines that the action is in the protected individual's best interest.

The bill would require a court to include in its consideration of the value of property an appraisal conducted within the preceding six months by a licensed real estate appraiser. Additionally, if the court approved the sale of the principal dwelling that was less than the appraised value of the property, the court would have to explain on the record why the sale was in the ward's best interest.

Senate Bill 586 (S-3)

The Estates and Protected Individuals Code also allows a court to appoint a guardian to care for an incapacitated individual if the court finds that the appointment is necessary as a means of providing the individual continuous care. The bill would prohibit a court from granting a guardian the authority to change the incapacitated individual's permanent residence unless the conditions described below were met.

"Permanent residence" would mean the individual's true, fixed, and permanent home to which, whenever absent, the individual intends to return.

Generally, a legally incapacitated individual would have the right, if possible, to remain in the individual's surroundings. If it were not possible, the individual would have the right in the least restrictive environment suitable to that individual's unique needs, abilities, and resources.

Before moving a legally incapacitated individual from a permanent residence, a guardian would have to file a petition that included all the following:

-- The individual's permanent residence.
-- The proposed new residence.
-- The reason for the proposed move.
-- Whether the move was to the least restrictive environment suitable to the individual's unique needs, abilities, and resources, including consideration of any potential for harm and the individual's rights under EPIC.[1]
-- How the move would affect the individual's ability to continue to participate in the individual's community activities and personal relationships.
-- The efforts made or resources explored to enable the individual to remain in the individual's own current residence, including home and community-based services, physical and occupational therapy, and available home modifications.
-- How the guardian had communicated with the individual about the proposed move and whether the individual objected to or supported the proposal.

The State Court Administrative Office would have to create the form described above.

If a petition for moving the legally incapacitated individual were filed, the court would have to appoint a guardian ad litem and hold a hearing within 28 days after the petition was filed. In such an instance, the guardian ad litem would have to do all the following in addition to the guardian ad litem's standard duties under EPIC:

[1] The Code prescribes rights for individuals for whom a guardian is sought or appointed including the right to participate in the selection process by having the opportunity to object, have legal representation, and attend hearings. Guardianship must be limited, encourage independence, and include open communication on decisions, among other things.

-- Advise the individual that a petition had been filed to move the individual from the individual's permanent residence.
-- Explain that if the court granted the petition to move the individual, the guardian would have the authority to change the individual's permanent residence to the location specified in the petition or another location the court determined appropriate.
-- Determine if possible the wishes of the individual to remain in the individual's permanent residence and whether the individual objected.
-- Include the information described above in the guardian ad litem's written report.

If the individual did not already have a retained legal counsel, the court would have to appoint legal counsel if the individual objected to the move, upon recommendation by the guardian ad litem, or if the court determined that the appointment of legal counsel was appropriate.

The court could not grant a petition for removal from an individual's permanent residence unless after a hearing the court found clear and convincing evidence that all the following applied:

-- The move would appropriately protect the individual's physical health, safety, or welfare.
-- The move was to the least restrictive environment suitable to the individual's unique needs, abilities, and resources, including any consideration of potential for harm to the individual's rights under EPIC.
-- If the individual did not consent to the move, there was no reasonable or appropriate way to provide similar benefits for the individual in the individual's permanent residence through the use of home and community-based services, physical and occupational therapy, and available home modifications, or other means.
-- The move would allow the legally incapacitated individual the greatest opportunity to continue to be involved in the individual's community activities and personal relationships.
-- The move was not being arranged solely or primarily for the guardian's convenience.

If the court found clear and convincing evidence that a location other than the permanent or proposed residence met the criteria described above, the court could order that the guardian move the individual to a location meeting those requirements.

The bill would allow a guardian to move a legally incapacitated individual before a petition was filed if either of the following applied:

-- The court previously granted the guardian authority to move the individual based on a hearing on the record consistent with the requirements for a petition for removal, including findings of fact on the record when the court appointed the guardian on an initial or subsequent petition.
-- An emergency condition existed, including an emergency that presented a risk of serious harm to the safety of the individual.

If a guardian moved an individual before a petition was filed, the guardian would have to take all reasonable steps to preserve the individual's permanent address. The guardian would also have to notify the court within 14 days of a temporary move.

If the guardian determined that following a temporary absence from the permanent residence, for reasons including an emergency, travel, short term rehabilitation, or hospitalization the ward would not be returning to the individual's permanent residence, the guardian would have to file a petition for moving permanent residences.

The court would have to order a review of the placement at a date set by the court if the ward's circumstances and resources were expected to change such that the current permanent

residence could no longer be the least restrictive environment suitable to the individual's needs, abilities, and resources.

Additionally, a guardian would have to file a petition for a permanent move if any of the following applied:

-- The ward's circumstances and resources changed.
-- The changes supported moving the individual to the new permanent residence.
-- The move was to the least restrictive environment suitable to the ward's needs, abilities, and resources, including considerations of a potential for harm and the individual's rights under EPIC.
-- The move was not being arranged solely or primarily for the guardian's convenience.
-- If the removal from the residence required the sale, transfer, or disposal of real or personal property, the guardian had made reasonable efforts to communicate with the ward's loved ones to identify and honor the ward's wishes to preserve sentimental personal property in the overall context of the ward's values, wishes, and resources.

The bill specifies that a court could remove a guardian for failure to comply with the provision described above.

The bill also would remove language requiring a guardian to notify the court within 14 days of a change in the *incapacitated individual's* residence.

MCL 700.5423 (S.B. 585); 700.5306 & 700.5614 (S.B. 586)

BACKGROUND

Guardians and Conservators

Generally, a guardian or conservator is appointed through the probate court system and is obligated to act in the best interest of the individual for whom the guardian or conservator is appointed. Appointments arise at the request of a concerned individual filing a petition to the court in which the individual alleged to be incapacitated is located. Generally, anyone at least 18 years old and willing to serve may fill the role of guardian or conservator. In some cases, a court may appoint a professional guardian or professional conservator.

Guardians are granted legal decision-making power on the grounds of that individual being determined as a "legally incapacitated individual", meaning the individual is determined as not able to make legal decisions for oneself. Commonly, guardians are appointed for the elderly, minors without guardians, and individuals who are unable to make decisions due to a mental illness or disability. Guardians can have total or partial control over decision-making for a legally incapacitated individual. In some cases, someone who is legally incapacitated will need a guardian and a conservator. Conservators are responsible for managing a legally protected individual's property and financial matters. In many cases, guardianship and a conservatorship are managed by the same person. If the legally protected individual has a large estate or significant finances, the role of a conservator is sometimes given to an attorney.[2]

Elder Abuse Task Force

The Task Force was created in 2019 under the Department of the Attorney General to address

[2] "Probate Information", State Bar of Michigan, https://www.michbar.org/public_resources/probate_guardianship. Retrieved 1-18-26.

and prevent cases of elder abuse in the State. The Task Force consists of the following committees: a) Public Awareness; b) Training and Education; c) Courts and State Court Administrative Office; d) Law Enforcement; e) Public Policy and Legislation; f) Multidisciplinary Team Development; g) Data Collection and Research; h) Funding and Resources; and i) Initiatives. The Task Force has initiatives to reform aspects of the guardianship system, expand mandatory reporting, raise public awareness, and improve legal responses to prevent financial exploitation, among other things.[3]

Specifically, Task Force Initiative five seeks to strengthen protections for wards when professional guardians seek relocation for a ward from the ward's home. It suggests requirements for consultation with the ward when possible and prioritization of support and services that would allow a ward to remain at the ward's permanent residence if possible. The initiative also specifies a need for court approval before moving a ward and the requirement that a court appoint a guardian ad litem or legal counsel and to hold a hearing prior to authorizing a change in residence.[4]

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Requiring appraisals for the sale of a primary residence would create a uniform and reliable standard to ensure that an individual under guardianship received the fair market value for that property. For many people, a primary residence is their most valuable asset, and those under guardianship often rely on the equity of their home to pay for long term care, medical services, or other basic living expenses. Currently, courts have broad discretion in determining whether a transaction serves the best interests of a ward and may use evidence such as appraisals, State Equalized Value (SEV), comparative market analyses, or other documentation. Reportedly, the variation among courts across the State allows for inconsistent valuations and sometimes errors or undervalued sales.

Testimony indicates that there have been incidents in which guardians or other parties involved in a transaction have financially benefited from the sale of a ward's primary residence. Additionally, a 2018 investigation on guardianship practices in Oakland County revealed that some homes belonging to those under guardianship were sold by guardians far below fair market value, sometimes for as little as $500 and were done so in shorter than normal time frames.[5] It has also been reported that the undervaluation and sale of properties has occurred when guardians are family members of a ward and are approached by third party entities offering assistance with property sales. Entities and guardians can acquire a property at a reduced price and subsequently resale the property for a large profit. Requiring a court to consider an appraisal of a property as a consideration to the approval of a sale will reduce opportunities for financial exploitation in which a guardian or third party entity may be acting without the best interest of the ward in mind.

Additionally, independent appraisers are held to professional standards and ethical rules in making a property value determination including a prohibition on having a direct or indirect

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[3] "Elder Abuse Task Force", Michigan Department of Attorney General. https://www.michigan.gov/ag/initiatives/elder-abuse/elder-abuse-task-force . Retrieved 1-6-26.
[4] "Elder Abuse Task Force Initiatives" Michigan Department of Attorney General. https://www.michigan.gov/ag/-/media/Project/Websites/AG/EATF/EATF-First-Initiatives.pdf?rev=e07884d1a350480d94cf7785bdfb2f75 Retrieved 1-6-26.
[5] Abu-Khadra, Husam *et al*. "Protecting the Protected"*, Journal of Forensic and Investigative Accounting,* Volume 13: Issue 1. January-June 2021.

interest in a property they have been contracted to appraise.[6] Alternative value methods used by courts can be variable because they are often produced by professionals who work on commission or have alternative interest in the final sale of the property. Variability can burden courts in determining if a sale reflects the fair market value. Without appraisals, wards are not sufficiently protected against potential conflicts of interest and those seeking financial gains. The bills would reduce reliance on valuations that may involve financial incentives and not be in a ward's best interest. Using a uniform system for evaluation will protect an individual's property and assets against conflicts of interest and will provide courts clear standards to evaluate the value of a property.

Response: The existing processes that courts use to determine the value of a property are effective. It has been reported that courts have specific safeguards such as 21-day rejection periods or mandates on notices prior to a sale. Additionally, local assessor offices are required to calculate and update the SEV of a property annually and courts can accurately use this metric in a decision. Probate courts currently can customize their oversight in these decisions to local housing markets, staffing structures, and available resources and do not need further requirements to do so.

Supporting Argument

Elder adults need enhanced protections from risks specific to seniors and vulnerable adults. Elder mistreatment such as financial abuse, removal from a home or community, and social isolation can have severe consequences such as depression and increased cognitive decline, leading to premature mortality.[7] Reportedly, elders are often moved for the convenience of a guardian or as a default without consideration for the services that individual needs or wants. As individuals under guardianship often do not have the capacity to challenge decisions affecting their lives, safeguards are necessary to ensure that actions taken on their behalf are consistent with their specific needs and preferences. Testimony also indicates that often after the sale of an individual's residence, that individual's personal items such as family photos are discarded without consideration of the value to the individual's identity, history, or emotional wellbeing. The loss of such items may affect a ward's levels of disorientation, grief, or social isolation.

It has also been reported that some professional guardians refuse to be responsible for an individual who is not receiving full-time professional care, forcing a ward to move as a condition of guardianship care and resulting in a pattern of immediate removal from a primary residence without regard to a ward's ability to remain in his or her primary residence safely. There are also instances where professional guardians are responsible for hundreds of wards. In 2018, Oakland County had 4,562 individuals under guardianship, of those 2,278 were under the guardianship or conservatorship of four professional guardians.[8] High caseloads have resulted in residential decisions being made by workload or administrative considerations rather than an assessment of a ward's specific needs or wants. Additionally, there have been instances where placements are made to facilities with inadequate staffing, revoked licenses, overcrowding, minimal professional oversight. The bills would prevent this practice from continuing.

Finally, while current law requires a guardian to petition a court before changing a ward's residence, there are often circumstances that result in a temporary move becoming permanent. Sometimes wards are moved for emergency reasons to ensure a ward's safety where there is not time to petition a court for the move that temporary transition ultimately

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[6] "Standards of Professional Practice", Appraisal Institute. https://www.appraisalinstitute.org/insights-and-resources/resources/standards-of-professional-practice Retrieved 1-22-26.

[7] "The Mortality of Elder Mistreatment" M.S. Lachs et al. August 5, 1998. https://pubmed.ncbi.nlm.nih.gov/9701077/

[8] *Id.* Abu-Khadra, Husam *et al.*

becomes permanent a default. Due to the loss of independence, community connection, and potential loss of personal property, court approval and proper consideration of a ward's specific needs for a temporary move to become a permanent move should be a requirement.

Supporting Argument

A lack of uniform standards and oversight for guardians result in few penalties for guardians who engage in abusive or neglectful practices. Guardians have a high level of power over the individuals under their care and a low level of accountability, which can enable financial abuse or neglect generally. Under current law, guardians are not subject to licensure, certification, or specific educational standards. According to testimony, this has left the State without a formal process to report or ability to discipline guardians who engage in practices like selling a ward's home below market value or moving a ward to a placement without regard to that ward's specific needs, among other things. Some believe that this combination of broad power and minimal accountably has created situations in which financial exploitation or disregard for a ward's specific needs have occurred, and the bills' provisions would address this concern.

Response: While the bills could improve current practices, they do not go far enough. Legislation also should include other protections for wards including specific licensing standards, a prohibition of moving a ward to an unlicensed group home, and strengthened reporting requirements, among other protections recommended by the Task Force.

Opposing Argument

Requiring appraisals creates an unnecessary financial burden on wards and guardians when the current system is effective. Generally, banks require an appraisal before financing the sale of a property. Appraisals cost $300 to $600 on average.[9] This fee can be significant for wards who have limited assets or who may use the sale of a primary residence to fund ongoing care, medical needs, or other basic living expenses. If wards lack the funds to pay for the upfront cost of an appraisal a guardian may need to cover the cost and seek later reimbursement. Securing an appraisal or requiring a guardian to cover the cost of an appraisal could create a delay in the sale of the property or unnecessary financial strain on the ward. Additionally, not all transactions require an appraisal to determine a reasonable listing, such as for a cash transaction where if an appraisal is ordered the buyer is typically responsible for paying that fee. Mandatory appraisals may delay the sale of a ward's property and could reduce the funds available for their support.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

To the extent that the bill would require additional hearings and judicial review, it would increase costs for local courts to a nominal degree. Indirectly, the substitute could reduce costs for courts and State law enforcement agencies to the degree that the bill reduced fraudulent financial elder abuses. The degree to which this would reduce indirect costs for the State is indeterminate. According to a 2023 report by the American Association of Retired Persons (AARP) Public Policy Institute, nationwide estimates of financial losses to seniors as a result of elder financial exploitation range from $2.9 billion to $273.5 billion annually.[10]

Fiscal Analyst: Michael Siracuse

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[9] "How Much Are Home Appraisal and Inspection Costs", American Family Insurance. Retrieved 1-18-26. https://www.amfam.com/resources/articles/at-home/inspection-appraisal-costs

[10] Gunther, Jilenne, *The Scope of Elder Financial Exploitation: What is Costs Victims,* AARP Public Policy. Pg.2 June 2023.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.