

HB 2885

FILED

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OFFICE OF THE CLERK  
WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2885**

(By Delegates Ellem, D. Campbell, Perdue, Poore,  
Barill, Fleischauer, Border, Moore, Hatfield  
and Rodighiero)



Passed March 11, 2011

In Effect From Passage

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FOR

**H. B. 2885**

(BY DELEGATES ELLEM, D. CAMPBELL, PERDUE, POORE,  
BARILL, FLEISCHAUER, BORDER, MOORE, HATFIELD AND  
RODIGHIRO)

[Passed March 11, 2011; in effect from passage.]

AN ACT to amend and reenact §44A-1-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §44A-1-15, all relating to the eligibility of guardians or conservators to be hired to provide care to a protected person through employment with a behavioral health provider in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §44A-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §44A-1-15, all to read as follows:

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.**

**§44A-1-8. Persons and entities qualified to serve as guardian and conservator; default guardian and conservator; exemptions from conservator appointment.**

1 (a) Any adult individual may be appointed to serve as a  
2 guardian, a conservator or both upon a showing by the  
3 individual of the necessary education, ability and background  
4 to perform the duties of guardian or conservator and upon a  
5 determination by the court that the individual is capable of  
6 providing an active and suitable program of guardianship or  
7 conservatorship for the protected person. The individual may  
8 not be employed by or affiliated with any public agency,  
9 entity or facility that is providing substantial services or  
10 financial assistance to the protected person except as set forth  
11 in section fifteen of this article.

12 (b) The court may, after first determining it to be in the  
13 best interest of the protected person, appoint coguardians,  
14 coconservators or both.

15 (c) Any person being considered by a court for  
16 appointment as a guardian or conservator shall provide  
17 information regarding any crime, other than traffic offenses,  
18 of which he or she was convicted and the court or mental  
19 hygiene commissioner may order a background check to be  
20 conducted by the State Police or county sheriff. The court  
21 shall consider this information in determining the person's  
22 fitness to be appointed a guardian or conservator.

23 (d) Any nonprofit corporation chartered in this state and  
24 licensed as set forth in subsection (e) of this section or a  
25 public agency that is not a provider of health care services to  
26 the protected person may be appointed to serve as a guardian,

27 a conservator or both so long as the entity is capable of  
28 providing an active and suitable program of guardianship or  
29 conservatorship for the protected person and is not otherwise  
30 providing substantial services or financial assistance to the  
31 protected person.

32 (e) A nonprofit corporation chartered in this state may be  
33 appointed to serve as a guardian or conservator or as a  
34 limited or temporary guardian or conservator for a protected  
35 person if it is licensed to do so by the Secretary of Health and  
36 Human Resources. The secretary shall propose legislative  
37 rules for promulgation in accordance with the provisions of  
38 chapter twenty-nine-a of this code, for the licensure of  
39 nonprofit corporations and shall provide for the review of the  
40 licenses. The rules shall, at a minimum, establish standards  
41 to assure that any corporation licensed for guardianship or  
42 conservatorship:

43 (1) Has sufficient fiscal and administrative resources to  
44 perform the fiduciary duties and make the reports and  
45 accountings required by this chapter;

46 (2) Will respect and maintain the dignity and privacy of  
47 the protected person;

48 (3) Will protect and advocate the legal human rights of  
49 the protected person;

50 (4) Will assure that the protected person is receiving  
51 appropriate educational, vocational, residential and medical  
52 services in the setting least restrictive of the individual's  
53 personal liberty;

54 (5) Will encourage the protected person to participate to  
55 the maximum extent of his or her abilities in all decisions  
56 affecting him or her and to act in his or her own behalf on all  
57 matters in which he or she is able to do so;

58 (6) Does not provide educational, vocational, residential  
59 or medical services to the protected person; and

60 (7) Has written provisions in effect for the distribution of  
61 assets and for the appointment of temporary guardians and  
62 conservators for any protected persons it serves in the event  
63 the corporation ceases to be licensed by the Department of  
64 Health and Human Resources or otherwise becomes unable  
65 to serve as guardian.

66 (f) A duly licensed nonprofit corporation that has been  
67 appointed to serve as a guardian or as a conservator pursuant  
68 to the provisions of this article is entitled to compensation in  
69 accordance with the provisions of section thirteen of this  
70 article.

71 (g) Except as provided in sections thirteen and fifteen of  
72 this article, no guardian or conservator nor any officer, agent,  
73 director, servant or employee of any guardian or conservator  
74 may do business with or in any way profit, either directly or  
75 indirectly, from the estate or income of any protected person  
76 for whom services are being performed by the guardian or  
77 conservator.

78 (h) A person who has an interest as a creditor of a  
79 protected person is not eligible for appointment as either a  
80 guardian or conservator of the protected person except that a  
81 bank or trust company authorized to exercise trust powers or  
82 to engage in trust business in this state may be appointed as  
83 a conservator if the court determines it is capable of  
84 providing suitable conservatorship for the protected person.

85 (i) The Secretary of the Department of Health and Human  
86 Resources shall designate the adult protective services  
87 division of the county of appointment, or another agency  
88 under his or her jurisdiction, to be appointed as guardian

89 when there is no other individual, nonprofit corporation or  
90 other public agency that is equally or better qualified and  
91 willing to serve. The department may not refuse to accept the  
92 guardianship appointment when ordered by the court but may  
93 not be appointed as conservator.

94 (j) The sheriff of the county in which a court has  
95 jurisdiction shall be appointed as conservator when there is  
96 no other individual, nonprofit corporation or other public  
97 agency that is equally or better qualified and willing to serve.  
98 The sheriff may not refuse to accept the conservatorship  
99 appointment when ordered by the court but may not be  
100 appointed as guardian.

101 (k) A conservator shall not be appointed when the alleged  
102 protected person's total assets are worth less than \$2,000 or  
103 the alleged protected person's income is:

104 (1) From the Social Security Administration and a  
105 representative payee has been appointed to act in the best  
106 interest of the individual;

107 (2) From Medicaid and the only income distributed to the  
108 individual is the personal account allotment; or

109 (3) Less than \$50 per month or \$600 per year. In these  
110 instances, the guardian, representative payee or health care  
111 facility, if there is no other person or entity, shall manage the  
112 personal care account or assets.

**§44A-1-15. Eligibility of guardians or conservators employed  
pursuant to a Department of Health and Human  
Resources waiver program.**

1 (a) A person employed pursuant to a written contract or  
2 other employment arrangement with a licensed provider of

3 behavioral health services for the purpose of providing  
4 services to a protected person, may be appointed by a court  
5 as the guardian or conservator of the protected person if:

6 (1) payment for services provided under the contract or  
7 employment agreement is made pursuant to a waiver  
8 program;

9 (2) the person is related to the protected person by blood,  
10 marriage or adoption;

11 (3) the contract or arrangement is disclosed in writing to  
12 the court, and

13 (4) the court finds that the appointment is in the best  
14 interests of the protected person.

15 (b) Without the prior approval of a court, a guardian or  
16 conservator may not enter into a written contract or other  
17 employment arrangement with a licensed provider of  
18 behavioral health services in which the guardian or  
19 conservator will receive compensation pursuant to a waiver  
20 program.

21 (c) For the purposes of this section:

22 (1) "Behavioral health services" means services provided  
23 for the care and treatment of persons with mental illness,  
24 intellectual disability, developmental disabilities or alcohol  
25 or drug abuse problems in an inpatient, residential or  
26 outpatient setting, including, but not limited to, habilitative or  
27 rehabilitative interventions or services and cooking, cleaning,  
28 laundry and personal hygiene services provided for such care;  
29 and

30 (2) "Waiver program" means a West Virginia  
31 Department of Health and Human Resource administered  
32 waiver program, including, but not limited to, the "MR/DD"  
33 or "Intellectual and Developmental Disabilities" waiver  
34 program authorized by section 1915(c) of the Social Security  
35 Act.

36 (d) A person appointed to serve as a guardian or  
37 conservator prior to the effective date of this section, enacted  
38 during the 2011 Regular Session of the Legislature, who  
39 meets the requirements contained in subsection (a), shall  
40 retain his or her authority, powers and duties in that capacity  
41 under the provisions of this section, *Provided*, That the  
42 guardian or conservator informs the court, in writing, that he  
43 or she is employed pursuant to a written contract or other  
44 employment arrangement with a licensed provider of  
45 behavioral health services under the waiver program.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Michael T. Ford*

Chairman, House Committee

*Carl J. Mohr*

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

*Dwight M. Sawyer*  
Clerk of the House of Delegates

*Darrell Johns*  
Clerk of the Senate

*Bo*  
Speaker of the House of Delegates

*Jeffrey K*  
Acting President of the Senate

The within is approved this the 24<sup>th</sup> day of March, 2011.

*Carl R. Smith*  
Governor

2011 MAR 24 PM 4:20  
OFFICE OF THE CLERK OF THE SENATE  
STATE OF MONTANA

PRESENTED TO THE GOVERNOR

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