

## Professional Fiduciaries Bureau September 14, 2022 Legislative Update

### Important Dates

- **Aug. 25** – Last day to amend bills on the floor
- **Aug. 31** – Last day for each house to pass bills
- **Sept. 30** – Last day for Governor to sign or veto bills

### 2022 Legislation Related to the Bureau

#### **AB 1662 (Gipson) Licensing boards: disqualification from licensure: criminal conviction**

**Status:** Pending Senate Committee on Appropriations.

This bill would require a board to establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of licensure by the board. The bill states that the preapplication determination may be requested by the prospective applicant at any time prior to the submission of an application and would require the board to include specified written information regarding the criteria used to evaluate criminal history and how the prospective applicant may challenge a denial by the board. It provides that a preapplication determination does not constitute a denial or disqualification of an application and prohibits requiring a preapplication determination for licensure or for participation in any education or training program. The bill would require a board to publish information regarding its process for requesting a preapplication determination on its website and authorizes the board to charge a fee, to be deposited by the board into the appropriate fund and available only upon appropriation by the Legislature.

#### **AB 1663 (Maienschein) Protective proceedings**

**Status:** Pending Senate Committee on Appropriations.

This bill would revise various procedures in the conservatorship process. It would provide that, when equally qualified as other potential conservators, the Director of Developmental Services could be appointed subject to the order of preference. The bill would prohibit a regional center from acting as a conservator but would authorize the regional center to act as a designee of the director. The bill would only permit the appointment of the director as conservator if the proposed conservatee has not chosen another qualified person.

This bill would require the court to provide conservators with written information concerning the conservator's obligation to support the conservatee to maximize their autonomy, support and respect their preferences, accommodate their preferences to the greatest extent possible, keep them informed of decisions made on their behalf, and to use supported decision making as far as possible. The bill would require the court, within 30 days of the establishment of a conservatorship and annually thereafter, to provide conservatees under the court's jurisdiction with written information regarding their rights and options, including a personalized list of the rights the conservatee retains.

The bill would expand the annual duties and reporting requirements of court investigators conducting required visits to assess the progress of the conservatorship. The bill would revise the procedures for termination of a limited conservatorships by requiring the court to terminate an uncontested petition for termination under specified circumstances, and without a hearing.

The bill would require the Judicial Council to establish a conservatorship alternatives program, within each self-help center, in each superior court. The conservatorship alternatives program would provide information relating to less restrictive alternatives to conservatorship. The bill would designate the duties of court staff reviewing petitions under the conservatorship alternatives program and would require the Judicial Council to ensure that judges are provided with education on alternatives to conservatorship.

The bill would establish, and define, a supported decision making agreement for adults with disabilities. The bill would define “supported decision making” as an individualized process in which an adult with a disability chooses one or more trusted supporters to help them understand, make, communicate, implement, or act on, their own choices. The bill would authorize an adult with a disability to request and have present one or more adults, including supporters, in any meeting or communication. The bill would set forth the duties of supporters and would specify the elements of a written agreement, if one is used.

The bill would require the State Council on Developmental Disabilities to establish and staff Supported Decision making Technical Assistance Program (SDM-TAP), which would be administered in consultation with the University of California Davis MIND Institute and a specified protection and advocacy agency, and in consultation with a nonprofit organization with specified experience. The bill would require the SDM-TAP to provide support, education, and technical assistance, and to administer grants to expand and strengthen the use of supported decision making. The bill would require the council to report to the Legislature on the use of supported decision making, as prescribed, and would make the information about specific individuals engaging in supported decision making exempt from disclosure as public records. The bill would appropriate \$10,000,000 from the General Fund to the Judicial Council and the State Council on Developmental Disabilities, to be allocated for purposes of implementing the conservatorship alternatives program and the SDM-TAP.

### **AB 1733 (Quirk) State bodies: open meetings**

**Status:** Pending Assembly Committee on Governmental Organization.

This urgency bill would specify that a “meeting” held under the Bagley-Keene Open Meeting Act includes a meeting held entirely by teleconference, as defined, so long as the state body adheres to certain specified requirements such as: ensuring the public has the means to hear, observe, and address the state body during the meeting; providing the public with at least one physical location where they can participate; posting the meeting agendas online and at the

physical meeting location with information indicating how the meeting can be accessed; and ensuring that if a means of remote participation fails, the meeting must adjourn.

#### **AB 2616 (Low) Conservatorship and guardianship**

**Status:** Held in Assembly Appropriations Committee.

This bill removes the requirement that the Legislature makes an appropriation before certain duties imposed on court investigations and court oversight of guardianships and conservatorships are required.

It would also require a guardian or conservator to avoid all conflicts of interest, and even the appearance of conflicts of interest. It would require a guardian or conservator to avoid interaction with an entity that benefits the guardian or conservator and that is not directly in the best interest of the ward or conservatee.

#### **SB 602 (Laird) Review of conservatorships: care plans**

**Status:** Pending Assembly Appropriations Committee.

Beginning January 1, 2024, this bill would require a conservator, within 60 days of appointment and 30 days before a hearing, to file a care plan regarding the care, custody, and control of the conservatee. The bill would require the care plan to be delivered to specified persons, including the conservatee and their attorney, but would otherwise make the care plan confidential, except as specified, thereby limiting public access to the records.

The bill would require the Judicial Council to develop a mandatory form for the care plan, which would be required to include specified information, including descriptions of the conservatee's living arrangement and level of care and any plans to modify those within the next 12 months. This bill would impose sanctions for failure to timely file a care plan; including authorizing the court imposed civil penalty of up to \$1,000 payable to the estate of the conservatee, and authorizing the court to remove a conservator for failure to file a care plan. This bill would require an investigator to review the most recent care plan as part of an investigation.

#### **SB 1005 (Wieckowski) Conservatorship: sale of personal residence**

**Status:** Chaptered by Secretary of State. Chapter 91, Statutes of 2022.

This bill would revise the provisions authorizing the sale of a conservatee's present or former personal residence or other real or personal property of the estate, to specifically include the power to partition, or bring an action to partition, the personal residence or other real or personal property of the estate. The bill would also subject partition of the conservatee's present or former personal residence to the same conditions as would be applicable to the sale of the residence.

#### **SB 1024 (Jones) Replacement of an incapacitated or deceased professional fiduciary**

**Status:** Pending Assembly Committee on Appropriations.

Commencing January 1, 2024, this bill would authorize specified parties to petition for the appointment of a professional fiduciary practice administrator to act as a temporary

professional fiduciary when a professional fiduciary either becomes incapacitated or dies and a vacancy exists. The bill would require notice of the hearing on the petition for appointment of a professional fiduciary practice administrator as temporary successor to be given to all persons entitled to notice in each of the matters that are the subject of the petition.

The bill would authorize the court to appoint the professional fiduciary practice administrator, and to require the professional fiduciary practice administrator to file a surety bond in each matter in which they are appointed temporary successor. The bill would require the appointment of the professional fiduciary practice administrator to terminate, in each of the matters on which the professional fiduciary practice administrator was appointed as a temporary successor, 45 days after the entry of the order appointing the professional fiduciary practice administrator, except as specified. The bill would set forth compensation requirements for the professional fiduciary practice administrator.

The bill would also require the professional fiduciary practice administrator to provide written notice to all interested parties to advise those parties of the necessity and process for the appointment of a permanent successor. The bill would authorize the court to extend any of the time periods prescribed in the bill if the court determines that good cause exists, and that the extension is in the best interest of the minor, the conservatee, the decedent's estate, or the current income beneficiaries under a trust, as applicable. The bill would specify that the bill does not limit the authority granted to a court to remove or replace a guardian or conservator, personal representative, or trustee in accordance with specified provisions. The bill would require the Judicial Council to create or revise any forms or rules necessary to implement its provisions, no later than January 1, 2024.

### **SB 1365 (Jones) Licensing boards: procedures**

**Status:** Held in Senate Appropriations Committee.

This bill would require each board within the department to publicly post on its website a list of criteria used to evaluate applicants with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and resources into education, training, and application fees. The bill would require the department to establish a process to assist each board in developing its internet website, as specified.

The bill would also require the department to develop a process for each board to use in verifying applicant information and performing background checks of applicants, and would require that process to require applicants with convictions to provide certified court documents, instead of listing convictions on application documents. The bill would also require the board to develop a procedure to provide for an informal appeals process that would occur between an initial license denial and an administrative law hearing.