

1 **H. B. 2885**

2
3 (By Delegates Ellem, D. Campbell, Perdue, Poore,
4 Barill, Fleischauer, Border, Moore,
5 Hatfield and Rodighiero)

6 [Introduced January 27, 2011; referred to the
7 Committee on Health and Human Resources then the
8 Judiciary.]
9

10 A BILL to amend and reenact §44A-1-8 of the Code of West Virginia,
11 1931, as amended, relating to the eligibility of guardians or
12 conservators to be hired to provide care to a protected person
13 through employment with a behavioral health provider in
14 certain circumstances.

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

16 That §44A-1-8 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

19 **§44A-1-8. Persons and entities qualified to serve as guardian and**
20 **conservator; default guardian and conservator;**
21 **exemptions from conservator appointment.**

22 (a) Any adult individual may be appointed to serve as a
23 guardian, a conservator or both upon a showing by the individual of
24 the necessary education, ability and background to perform the

1 duties of guardian or conservator and upon a determination by the
2 court that the individual is capable of providing an active and
3 suitable program of guardianship or conservatorship for the
4 protected person. The individual may not be employed by or
5 affiliated with any public agency, entity or facility that is
6 providing substantial services or financial assistance to the
7 protected person except as set forth in subsection (g) of this
8 section.

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

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

19 (d) Any nonprofit corporation chartered in this state and
20 licensed as set forth in subsection (e) of this section or a public
21 agency that is not a provider of health care services to the
22 protected person may be appointed to serve as a guardian, a
23 conservator or both ~~Provided, That~~ so long as the entity is
24 capable of providing an active and suitable program of guardianship

1 or conservatorship for the protected person and is not otherwise
2 providing substantial services or financial assistance to the
3 protected person.

4 (e) A nonprofit corporation chartered in this state may be
5 appointed to serve as a guardian or conservator or as a limited or
6 temporary guardian or conservator for a protected person if it is
7 licensed to do so by the Secretary of Health and Human Resources.
8 The secretary shall propose legislative rules for promulgation in
9 accordance with the provisions of chapter twenty-nine-a of this
10 code, for the licensure of nonprofit corporations and shall provide
11 for the review of the licenses. The rules shall, at a minimum,
12 establish standards to assure that any corporation licensed for
13 guardianship or conservatorship:

14 (1) Has sufficient fiscal and administrative resources to
15 perform the fiduciary duties and make the reports and accountings
16 required by this chapter;

17 (2) Will respect and maintain the dignity and privacy of the
18 protected person;

19 (3) Will protect and advocate the legal human rights of the
20 protected person;

21 (4) Will assure that the protected person is receiving
22 appropriate educational, vocational, residential and medical
23 services in the setting least restrictive of the individual's
24 personal liberty;

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

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

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

12 (f) A duly licensed nonprofit corporation that has been
13 appointed to serve as a guardian or as a conservator pursuant to
14 the provisions of this article is entitled to compensation in
15 accordance with the provisions of section thirteen of this article.

16 (g) Except as provided in section thirteen of this article, no
17 guardian or conservator nor any officer, agent, director, servant
18 or employee of any guardian or conservator may do business with or
19 in any way profit, either directly or indirectly, from the estate
20 or income of any protected person for whom services are being
21 performed by the guardian or conservator except that a person who
22 seeks to be appointed a guardian or conservator for a family member
23 may be permitted by the court to be paid for the provision of
24 services to the protected person under a written contract or

1 employment arrangement with a licensed behavioral health provider
2 if the arrangement is disclosed in writing to the court making the
3 appointment of the guardian or conservator and only if the court
4 finds that it is in the best interest of the protected person that
5 such arrangement occur. If the appointment of the guardian or
6 conservator has occurred prior to the commencement of a contractual
7 arrangement for the provision of paid services to the protected
8 person by a family member or prior to the hiring of the family
9 member to provide services to the protected person, the court shall
10 be made aware of the proposed contract or hiring in writing and
11 shall approve or deny the arrangement prior to the commencement of
12 payment of services. Guardians or conservators who are employed by
13 or in a contractual relationship with a behavioral health provider
14 prior to the passage of this section are required only to inform
15 the court in writing of the employment and their employer.

16 (h) A person who has an interest as a creditor of a protected
17 person is not eligible for appointment as either a guardian or
18 conservator of the protected person except that a bank or trust
19 company authorized to exercise trust powers or to engage in trust
20 business in this state may be appointed as a conservator if the
21 court determines it is capable of providing suitable
22 conservatorship for the protected person.

23 (i) The Secretary of the Department of Health and Human
24 Resources shall designate the adult protective services division of

1 the county of appointment, or another agency under his or her
2 jurisdiction, to be appointed as guardian when there is no other
3 individual, nonprofit corporation or other public agency that is
4 equally or better qualified and willing to serve. The department
5 may not refuse to accept the guardianship appointment when ordered
6 by the court but may not be appointed as conservator.

7 (j) The sheriff of the county in which a court has
8 jurisdiction shall be appointed as conservator when there is no
9 other individual, nonprofit corporation or other public agency that
10 is equally or better qualified and willing to serve. The sheriff
11 may not refuse to accept the conservatorship appointment when
12 ordered by the court but may not be appointed as guardian.

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

16 (1) From the Social Security Administration and a
17 representative payee has been appointed to act in the best interest
18 of the individual;

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

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

NOTE: The purpose of the bill is to allow a guardian or conservator to be employed or in an employment contract with a behavioral health provider to provide care to the protected person under certain circumstances.

Strike throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.