

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

House Bill 109 (Delegates Dumais and Vallario)  
Health and Government Operations

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**Guardianship of the Person - Disabled Persons - Attorney's Fees**

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This bill authorizes a court to order payment of necessary and reasonable attorney's fees incurred by an interested person in successfully petitioning for the appointment of a guardian of the person of a disabled person. The bill also authorizes a court to require the deposit of an appropriate sum into an attorney's escrow account within 15 days of the attorney's appointment by the court as counsel to an alleged disabled person.

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**Fiscal Summary**

**State Effect:** This bill is not expected to materially affect State operations or finances.

**Local Effect:** This bill is not expected to materially affect State operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** No statutes or court rules exist that address the recovery of necessary and reasonable attorney's fees incurred by an interested person in successfully petitioning for the appointment of a guardian of the person of a disabled person. An interested person may petition a court for the appointment of a guardian of the person of a disabled adult. An interested person can be the guardian, the heirs of the disabled person, or any person or agency eligible to service as a guardian of the disabled person under law. If an interested person is also a disabled person, an interested person can also be a judicially appointed guardian, committee, conservator, or trustee for that person, or, if none, the parent or other person having assumed responsibility for the person.

The court may (1) superintend and direct the care of a disabled person; (2) appoint a guardian of the person; and (3) pass orders and decrees respecting the person as seems proper, including an order directing the disabled person to be sent to a hospital. On petition and after any required notice or hearing, a guardian of the person of a disabled person is appointed if the court determines from clear and convincing evidence that (1) the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or drug addiction and (2) no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

Unless the alleged disabled person has counsel of his or her own choice, the court must appoint an attorney to represent the alleged disabled person during the pendency of the guardianship proceeding. The court is required to fix the fee of an appointed attorney, which is paid out of the fiduciary (guardianship) estate or as the court directs. In relation to a guardianship proceeding, a fiduciary estate is the real or personal property administered by a guardian of the person of a disabled person to the extent that the guardian exercises control over any property of the disabled person. Once a guardian is appointed, no attorney's fee in an amount exceeding \$50 may be paid in a fiduciary estate administered under court jurisdiction unless the amount of the fee has been first approved by court order.

If the alleged disabled person is indigent, the State is required to pay a reasonable attorney's fee. In any action in which payment for the services of a court-appointed attorney for the alleged disabled person is the responsibility of the local department of social services, unless the court finds that it would not be in the best interests of the alleged disabled person, the court must (1) appoint an attorney who has contracted with the Department of Human Resources (DHR) to provide those services, in accordance with the terms of the contract and (2) strike the appearance of a previously appointed attorney and appoint an attorney who is under contract with DHR, in accordance with the terms of the contract.

**Background:** DHR's Maryland Legal Services Program (MLSP) is statutorily mandated to provide, among other things, legal representation for indigent adults during the pendency of a disability proceeding. Such legal representation is generally provided by attorneys that have contracted with MLSP. In 2014, MLSP contractors represented a total of 2,054 adult clients, or 97% of the total number of MLSP's adult guardianship cases. MLSP advises that each attorney, on average, has two in-person contacts with each client for an average total of eight hours spent on each matter. The Governor's proposed fiscal 2016 budget includes approximately \$1.14 million in general funds for MLSP contractors in adult guardianship matters, which is a 114.5% increase over the \$530,118 appropriated in fiscal 2015.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Human Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 9, 2015  
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