

Part One: State Agency Guidance and Oversight is Needed for Conservatorship Assessments and Reports by Regional Centers

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The Department of Developmental Services has a statutory obligation to ensure that regional centers provide services that comply with applicable state laws. (Welfare and Institutions Code Section 4629) The department must take corrective action when it has reason to believe that regional centers are providing services that are not in compliance with the Americans with Disabilities Act. (Welfare and Institutions Code Section 11136)

Pursuant to its statutory obligations, DDS has included provisions in its contracts with regional centers that require them to provide services in compliance with state and federal statutes. This commentary identifies state statutes that establish the framework for regional centers to conduct conservatorship assessments and issue reports to the probate courts for people with developmental disabilities who are involved in such proceedings, and for DDS oversight.

After a petition for limited conservatorship is filed, the court decides whether a conservatorship is necessary, and if so, who should be appointed as conservator. The court must also decide whether to grant the petitioner's request to assume control over decisions in any of seven areas if such a request is included in the petition.

Probate Code Section 2351.5 specifies that a limited conservator does not have powers in any of seven specified areas unless specifically requested in the petition and specifically granted by the court in its order granting the petition.

The seven areas are: (1) To fix the residence or specific dwelling of the limited conservatee; (2) Access to the confidential records and papers of

the limited conservatee; (3) To consent or withhold consent to the marriage of, or the entrance into a registered domestic partnership by, the limited conservatee; (4) The right of the limited conservatee to contract; (5) The power of the limited conservatee to give or withhold medical consent; (6) The limited conservatee's right to control his or her own social and sexual contacts and relationships; (7) Decisions concerning the education of the limited conservatee.



Probate Code Section 1800 declares that it is the intent of the Legislature in enacting statutes pertaining to conservatorships and limited conservatorships that the following are done in such proceedings: (a) Protect the rights of persons who are placed under conservatorship; (b) Provide that an assessment of the needs of the person is performed in

order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible; (c) Provide that the health and psychosocial needs of the proposed conservatee are met; and (d) Provide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible.

Probate Code Section 1801 states that a conservator of the person may be appointed for someone who is unable to properly care for his personal needs for physical health, food, clothing, or shelter. Section 1800.3 states that such a conservatorship shall not be granted unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. Section 1801(e) states that the standard of proof for appointment of a conservator is clear and convincing evidence.

Probate Code Section 1827.5(a) specifies that proposed limited conservatees shall be assessed by regional centers when a petition is filed to establish a limited conservatorship and that a written report shall be submitted to the court containing the findings and recommendations of the regional center. Subdivision (c) states that the report shall include a description of the specific areas, nature, and degree of disability of the proposed limited conservatee. The findings and recommendations of the regional center are not binding on the court.

Welfare and Institutions Code Section 4646.5 gives further instruction on how assessments shall be conducted by a regional center. The assessment must be done by a qualified individual. In conducting an assessment, information shall be taken from the client, as well as his or her parents, relatives, friends, advocates and service providers. In other words, the Legislature contemplates an assessment to be done by a professional who is qualified to evaluate and make recommendations in the areas being assessed. The Legislature also contemplates that the source of information for an assessment shall come from a wide range of people involved in the life of the proposed conservatee.

Welfare and Institutions Code Section 4629 requires DDS to include clauses in its contracts with regional centers to: (1) perform services in compliance with relevant statutes; (2) include annual performance objectives; and (3) specify steps to be taken to ensure contract compliance.

Although there is a generic provision in these contracts requiring compliance with state and federal laws, there is no specific reference to statutes regulating conservatorship assessment and reporting services. Also lacking is any specific mention of annual performance objectives for these services, or steps to ensure compliance with laws regulating such assessment and reporting services. These generic provisions are sufficient, but more specific reference to these issues would be helpful.

Information obtained from DDS through public records requests indicates that DDS does not provide regional centers with performance stan-

dards for conservatorship assessments, or offer training materials or training programs. Likewise, DDS does not monitor regional centers to ensure compliance with state statutes pertaining to conservatorship assessments and reporting services or compliance with ADA requirements that clients have meaningful access to these services.

To comply with its oversight responsibilities pursuant to relevant federal and state laws, and to comply with its obligation to ensure that regional centers are meeting their contractual agreements with DDS, the department must take steps to: (1) develop performance standards for conservatorship assessment and reporting services by regional centers; (2) conduct training and provide educational materials on the issues involved in providing such services; (3) define who is qualified to conduct assessments in each of the seven areas under review in limited conservatorship proceedings; (4) define the diagnostic criteria for capacity in each of these seven areas; (5) establish annual performance objectives on these issues; (6) specify steps to be taken by regional centers to ensure contract compliance; and (7) establish effective monitoring mechanisms by DDS to ensure compliance by regional centers with applicable laws requiring ADA-compliant limited conservatorship assessment services.

This framework should guide regional centers in fulfilling their duties to provide conservatorship assessment and reporting services, and should help DDS better fulfill its regulatory and oversight role. Details on *how* regional centers and DDS should fulfill these duties is found in Part II of this commentary. DDS and the Association of Regional Center agencies should use this information to develop performance standards, training materials, and effective monitoring mechanisms. ◇◇◇

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