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HEALTH AND SAFETY CODE - HSC

DIVISION 1. ADMINISTRATION OF PUBLIC HEALTH [135 - 1179.102] (*Division 1 enacted by Stats. 1939, Ch. 60.)*

PART 1. STATE DEPARTMENT OF HEALTH SERVICES [137 - 429.997] (*Heading of Part 1 amended by Stats. 1980, Ch. 676.)*

CHAPTER 2. Powers and Duties [416 - 429.997] (*Chapter 2 enacted by Stats. 1939, Ch. 60.)*

ARTICLE 7.5. Conservatorship and Guardianship for Developmentally Disabled Persons [416 - 416.23] (*Heading of Article 7.5 amended by Stats. 1973, Ch. 546.)*

416. The Director of Developmental Services may be appointed as either guardian or conservator of the person and estate, or person or estate, of any developmentally disabled person, who is either of the following:

- (1) Eligible for the services of a regional center.
- (2) A patient in any state hospital, and who was admitted or committed to such hospital from a county served by a regional center.

Any reference in this article to the Director of Health shall be deemed a reference to the Director of Developmental Services.

(Amended by Stats. 1977, Ch. 1252.)

416.1. Unless exceptions are expressly made in this article, the provisions of Division 4 (commencing with Section 1400) of the Probate Code shall apply to guardianship and conservatorship appointments made under this article.

(Amended by Stats. 1979, Ch. 730.)

416.5. The director may be nominated by any one of the following to act as guardian or conservator for any developmentally disabled person; (1) who is or may become eligible for the services of a regional center, or (2) who is a patient in any state hospital, and who was admitted or committed to such hospital from a county served by a regional center:

- (a) A parent, relative or friend.
- (b) The guardian or conservator of the person or estate, or person and estate, of the developmentally disabled person to act as his successor.
- (c) The developmentally disabled person.

Such nomination shall be in writing and may provide that the authority of the director is to take effect at some date or occurrence in the future that may be fixed in the nomination.

The director shall promptly accept or reject such nomination in writing. His acceptance shall be binding upon him and his successors. Any nomination to take effect in the future may be withdrawn by the nominator before its effective date.

(Amended by Stats. 1973, Ch. 546.)

416.6. In every case in which he has agreed to do so, the director may petition for his appointment to act as conservator or guardian of the alleged developmentally disabled person and his estate or his person or estate in the superior court of the county where the main administrative office of the regional center serving such developmentally disabled person is located.

(Amended by Stats. 1973, Ch. 546.)

416.7. If the alleged developmentally disabled person is within the state and is able to attend, he shall be present at the hearing. If he is unable to attend by reason of physical or other inability, such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner as provided in Section 1825 of the Probate Code. Such affidavit or certificate shall be filed no later than 10 days prior to the time of the hearing.

(Amended by Stats. 1979, Ch. 730.)

416.8. In addition to the requirements of Division 4 (commencing with Section 1400) of the Probate Code, the court shall be provided by the regional center with a complete evaluation of the developmentally disabled person for whose protection the appointment is sought. The report shall include a current diagnosis of his physical condition prepared under the direction of a licensed medical practitioner and a report of his current mental condition and social adjustment prepared by a licensed and qualified social worker or psychologist. The evaluation report required by this section shall not be made part of the public record of the guardianship or conservatorship proceedings and shall be open to inspection only by court personnel, the person who is the subject of the proceeding, his parents, guardian or conservator, the attorneys for such parties, and such other persons as may be designated by the court. If an affidavit or certificate has been filed as provided in Section 416.7 evidencing the inability of the alleged developmentally disabled person to be present at the hearing, the psychologist or social worker who assists in preparing the report shall visit the alleged developmentally disabled person and be prepared to testify as to his present condition.

(Amended by Stats. 1979, Ch. 730.)

416.9. The court may appoint the Director of Developmental Services as guardian or conservator of the person and estate or person or estate of a minor or adult developmentally disabled person. The preferences established in Section 1812 of the Probate Code for appointment of a conservator shall not apply. An appointment of the Director of Developmental Services as conservator shall not of itself constitute a judicial finding that the developmentally disabled person is legally incompetent. The petition for the appointment of the Director of Developmental Services as conservator of an adult developmentally disabled person may include a request that the court adjudge the developmentally disabled person to be legally incompetent or such an adjudication may be made subsequently upon a petition made, noticed, and heard by the court in the same manner as a petition for the appointment of the director as conservator. If the Director of Developmental Services is serving as the guardian of an adult developmentally disabled person on December 31, 1980, after that date such appointment shall be deemed to be the appointment of a conservator and the conservatee shall be deemed to have been adjudged to be legally incompetent.

(Amended by Stats. 1979, Ch. 730.)

416.95. Prior to the appointment of the Director of Developmental Services as guardian or conservator of the person or estate of a minor or adult developmentally disabled person, the court shall inform the person of the nature and purpose of the guardianship or conservatorship proceedings and the effect of the proceedings on the basic rights of the person. After communicating the information to the alleged developmentally disabled person and prior to the appointment of the Director of Developmental Services as guardian or conservator, the court shall consult with the person to determine the person's opinion concerning the appointment.

Any adult developmentally disabled person for whom guardianship or conservatorship is sought pursuant to this article shall be informed by a member or designee of the regional center and by the court of the person's right to counsel; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent the person. The person shall pay the cost for such legal service if able.

If an affidavit or certificate has been filed, as provided in Section 416.7, evidencing the inability of the alleged developmentally disabled person to be present at the hearing, the psychologist or social worker assisting in preparing the report and who is required to visit each person as provided in Section 416.8 shall communicate such information to the person during the visit, consult the person to determine the person's opinion concerning the appointment, and be prepared to testify as to the person's opinion, if any.

(Amended by Stats. 1979, Ch. 730.)

416.10. No appointment of both the Director of Developmental Services and a private guardian or conservator shall be made for the same person and estate, or person or estate. The Director of Developmental Services may be appointed as provided in this article to succeed an existing guardian or conservator upon the death, resignation or removal of such guardian or conservator.

(Amended by Stats. 1977, Ch. 1252.)

416.11. No costs or fees shall be charged or received by the county clerk for the filing of any conservatorship or guardianship petition as provided in this article, or for any official services performed by him in the course of the proceeding under this article.

(Added by Stats. 1968, Ch. 1099.)

416.12. The Director of Developmental Services shall file an official bond in no event less than twenty-five thousand dollars (\$25,000), which bond shall inure to the joint benefit of the several guardianship or conservatorship estates and the State of California, and the Director of Developmental Services shall not be required to file bonds in individual cases.

(Amended by Stats. 1978, Ch. 429.)

416.13. The appointment by the court of the Director of Developmental Services as conservator or guardian shall be by the title of his office. The authority of the Director of Developmental Services as conservator or guardian shall cease upon the termination of his term of office as such Director of Developmental Services and his authority shall vest in his successor or successors in office without further court proceedings. The Director of Developmental Services shall not resign as conservator or guardian unless his resignation is approved by the court.

(Amended by Stats. 1977, Ch. 1252.)

416.14. The Director of Developmental Services shall:

- (a) Consult with developmentally disabled persons and their families with respect to the services the director offers.
- (b) Act as adviser for those developmentally disabled persons who request the director's advice and guidance or for whose benefit it is requested.
- (c) Accept appointment as guardian or conservator of the person and estate, or person or estate, of those developmentally disabled persons who need the director's assistance and protection.

(Amended by Stats. 1979, Ch. 730.)

416.15. The Director of Developmental Services, when acting as adviser, may provide advice and guidance to the developmentally disabled person without prior appointment by a court. The provision for such services shall not be dependent upon a finding of incompetency, nor shall it abrogate any civil right otherwise possessed by the developmentally disabled person.

(Amended by Stats. 1977, Ch. 1252.)

416.16. The Director of Developmental Services shall have the same powers and duties as those established for guardians and conservators in Division 4 (commencing with Section 1400) of the Probate Code and shall succeed the State Director of Health as guardian or conservator of developmentally disabled individuals for whom the State Director of Health was appointed guardian or conservator.

(Amended by Stats. 1979, Ch. 730.)

416.17. It is the intent of this article that the director, when acting as guardian or conservator of the person of a developmentally disabled person, shall maintain close contact with the developmentally disabled person no matter where the person is living in this state; shall act as a wise parent would act in caring for the parent's developmentally disabled child; shall permit and encourage maximum self-reliance on the part of the developmentally disabled person under their protection; and shall work with regional centers and the person, to the greatest extent possible, to develop and implement less restrictive alternatives to conservatorship.

(Amended by Stats. 2022, Ch. 894, Sec. 1. (AB 1663) Effective January 1, 2023.)

416.18. The director shall provide for at least an annual review in writing of the physical, mental, and social condition of each developmentally disabled person for whom he has been appointed conservator or guardian, or for whom he is otherwise acting in his official capacity under this article. These records shall be confidential but may be made available to persons approved by the director or the court.

(Amended by Stats. 1973, Ch. 546.)

416.19. (a) The services to be rendered by the director as adviser or as guardian or conservator of the person shall be performed through the regional centers or by other agencies or individuals designated by the regional centers.

(b) No later than January 1, 2024, the Director of Developmental Services shall develop guidelines to mitigate conflicts that may arise when a regional center is acting as the designee of the director for a conservatee, while at the same time is also responsible for service coordination activities pursuant to Section 4647 of the Welfare and Institutions Code for that same person. The guidelines shall also include a process for any conservatee or their legal representative to request assistance from the director or their designee if they are dissatisfied with a regional center's performance in carrying out its responsibilities under this section.

(Amended by Stats. 2022, Ch. 894, Sec. 2. (AB 1663) Effective January 1, 2023.)

416.20. The director shall receive such reasonable fees for his services as guardian or conservator of the estate as the court allows and such fees shall be paid into the General Fund of the State Treasury.

(Added by Stats. 1968, Ch. 1099.)

416.23. This article does not authorize the care, treatment, or supervision or any control over any developmentally disabled person without the written consent of his parent or guardian or conservator.

