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SB-40 Conservatorship: serious mental illness and substance use disorders. (2019-2020)

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Senate Bill No. 40

CHAPTER 467

An act to amend Sections 5451, 5452, 5453, 5456, 5462, 5463, and 5555 of, and to add Section 5465.5 to, the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 40, Wiener. Conservatorship: serious mental illness and substance use disorders.

Existing law establishes a procedure, until January 1, 2024, for the County of Los Angeles, the County of San Diego, and the City and County of San Francisco, if the board of supervisors authorizes the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment, which is 8 or more detentions for evaluation and treatment in the preceding 12 months. Existing law automatically terminates a conservatorship initiated pursuant to these provisions one year after the appointment of the conservator unless the court specifies a shorter period. Existing law authorizes the person for whom conservatorship is sought to demand a court or jury trial on the issue of whether the person meets the criteria for the appointment of a conservator pursuant to these provisions. Existing law authorizes the Judicial Council to adopt rules, forms, and standards necessary to implement these provisions.

This bill would additionally authorize the court to establish a temporary conservatorship for a period of 28 days or less if the court is satisfied that the person is presently incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as those terms are defined by the bill, the person has been detained 8 times for evaluation and treatment in a 12-month period pursuant to existing law authorizing the detention of mentally disordered persons who are a danger to self or others or gravely disabled, without reference to evidence of frequent detention for evaluation and treatment, the temporary conservatorship is necessary, and the county health director, or their designee, has met specified requirements relating to those previous detentions. The bill would also change the definition of "frequent detention for evaluation and treatment" for purposes of these conservatorship provisions to mean 8 or more detentions in a 12-month period.

The bill would require that a petition seeking to establish the above-described conservatorship be filed with the court no later than 28 days following the 8th detention in a 12-month period, and would provide that the petition may be filed only in conjunction with a petition to establish a temporary conservatorship. The bill would require a supplement to the petition, which includes a detailed description of the comprehensive clinical evaluation of the person conducted during the temporary conservatorship, to be filed within 14 days after the initial petition. The bill would require a court making the determination of whether a person meets the criteria for appointment of a conservator to make that determination by clear and convincing evidence based on comprehensive clinical evaluations conducted under temporary conservatorship. This bill would require that the person for whom the conservatorship is sought have the right to demand a court or jury trial to determine whether the person meets the criteria for appointment of a conservator beyond a reasonable doubt.

The bill would provide that the conservatorship would automatically terminate 6 months, rather than one year, after the appointment of the conservator by the superior court, or a shorter period if ordered by the court. The bill would require the conservator to file a report with the court every 60 days regarding the conservatee's progress and engagement with treatment and, if the court is not satisfied that the conservatorship continues to be justified, the bill would require the court to terminate the conservatorship.

Existing law makes the establishment of a conservatorship pursuant to these provisions subject to, among other things, a finding by the court that the behavioral health director of the county or the city and county has previously attempted by petition to obtain a court order authorizing assisted outpatient treatment pursuant to the Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, for the person for whom conservatorship is sought, that the petition was denied or the assisted outpatient treatment was insufficient to treat the person's mental illness, and that assisted outpatient treatment would be insufficient to treat the person in the instant matter in lieu of a conservatorship.

This bill would instead make the establishment of the above-described conservatorship subject to a finding by the court that the health director, or the director's designee, has fulfilled specified requirements and (1) has previously attempted to obtain the above-described court order and that the petition was denied or the court finds by clear and convincing evidence that assisted outpatient treatment was insufficient to treat the person's mental illness, or (2) recommends, and the court finds by clear and convincing evidence, that the person, as a matter of law, does not meet the criteria described for assisted outpatient treatment or determines that assisted outpatient treatment would be insufficient to treat the person in lieu of a conservatorship, as specified. The bill would authorize assisted outpatient treatment to be ordered at that hearing if the behavioral health director, or the director's designee, fails to demonstrate that assisted outpatient treatment would be insufficient to treat the person, and the person qualifies for that treatment.

Existing law requires the County of Los Angeles, the County of San Diego, and the City and County of San Francisco to establish a working group to conduct an evaluation of the effectiveness of the implementation of the above-mentioned provisions in addressing the needs of persons with serious mental illness and substance use disorders in the county or the city and county, and requires the evaluation to include an assessment of the number and status of persons who have been conserved under those provisions, among other things.

This bill would additionally require the evaluation to include, among other things, the service planning and delivery process for those conserved persons, an analysis of demographic data of those conserved persons, and the number of those conserved persons who successfully complete substance use disorder treatment programs.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5451 of the Welfare and Institutions Code is amended to read:

5451. In the County of Los Angeles, the County of San Diego, and the City and County of San Francisco, subject to Section 5450, a conservator of the person may be appointed for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder. The procedure for establishing, administering, and terminating a conservatorship under this chapter shall be the same as provided for in Division 4 (commencing with Section 1400) of the Probate Code, except as follows:

(a) (1) The court may appoint the public conservator in the county of residence of the person to be conserved if the person requesting the appointment establishes, and the court makes an express finding, that it is necessary for the protection of the proposed conservatee, that the proposed conservatee is 18 years of age or older, and that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.

(2) (A) A conservator of the person may be appointed pursuant to this chapter only if the person is presently incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder.

(B) For an initial appointment of a conservator, a person meets the standard in subparagraph (A) only if the court determines by clear and convincing evidence based on comprehensive clinical evaluations conducted throughout the period in which the person has been temporarily conserved pursuant to Section 5465.5 that the person is incapable of caring for their own health and well-being due to a serious mental illness and substance use disorder, and that conservatorship is the least restrictive alternative needed for the protection of the person. The court may consider the medical history, including psychiatric history, of the person to support this determination.

(C) To reestablish a conservatorship, the person meets the standard in subparagraph (A) only if the person's condition at the time of the petition to reestablish the conservatorship shows that the person continues to meet the standard in subparagraph (A) based on the current behavior and condition of the person. The court may consider the medical history, including psychiatric history, of the person to support this determination.

(D) In any challenge to an existing conservatorship, the person meets the standard in subparagraph (A) only if the person's condition at the time of the challenge to the conservatorship shows that the person continues to meet the standard in subparagraph (A) based on the current behavior and condition of the person. The court may consider the medical history, including psychiatric history, of the person to support this determination.

(E) A proposed conservatee shall meet all of the following criteria:

(i) The person has both a serious mental illness and a substance use disorder, as those terms are defined in Section 5452, other than a developmental disorder or acquired traumatic brain injury, as defined in Section 4354, unless that person also has a serious mental illness and substance use disorder.

(ii) As a result of the serious mental illness and substance use disorder, the person has functional impairments, or a psychiatric history demonstrating that without treatment, it is more likely than not that the person will decompensate to functional impairment in the near future.

(iii) As a result of the functional impairment and circumstance, the person is likely to become so disabled as to require public assistance, services, or entitlements.

(b) (1) The person for whom conservatorship is sought shall have the right to demand a court or jury trial on the issue of whether the person is shown to be, beyond a reasonable doubt, incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder. For an initial conservatorship, demand for a court or jury trial shall be made no later than seven days following the establishment of a temporary conservatorship pursuant to Section 5465.5, provided the proposed conservatee has had the opportunity to confer with the attorney of the proposed conservatee during that time. If the proposed conservatee demands a court or jury trial before the date of the hearing as provided for in Section 5465, the demand shall constitute a waiver of that hearing.

(2) Court or jury trial shall commence within 10 days of the date of the demand, except that the court shall continue the trial date for a period not to exceed 10 days upon the request of the attorney for the proposed conservatee.

(3) This right shall also apply in subsequent proceedings to reestablish a conservatorship, except that the demand for a court or jury trial shall be made within seven days following the hearing on the petition to reestablish the conservatorship.

(c) Conservatorship investigation shall be conducted pursuant to Chapter 3 (commencing with Section 5350) and shall not be subject to Section 1826 of, or Chapter 2 (commencing with Section 1850) of Part 3 of Division 4 of, the Probate Code.

(d) Notice of proceedings under this chapter shall be given to a guardian or conservator of the person or estate of the proposed conservatee appointed under the Probate Code and as otherwise provided in Section 5350.2.

(e) As otherwise provided for in this chapter.

(f) A conservatorship pursuant to this chapter shall not be established if a conservatorship or guardianship exists under Division 4 (commencing with Section 1400) of the Probate Code or under Chapter 3 (commencing with Section 5350).

(g) A petition seeking to establish a conservatorship pursuant to this chapter shall be filed with the court no later than 28 days following the eighth detention for evaluation and treatment pursuant to Section 5150 in a 12-month period.

(h) (1) For the 28 days following the eighth detention, the court may establish a temporary conservatorship pursuant to Section 5465.5 in order to assess the need for a conservatorship pursuant to this chapter. A petition to establish an initial conservatorship pursuant to this chapter may be filed only in conjunction with a petition to establish a temporary conservatorship pursuant to Section 5465.5.

(2) A supplement to the petition for an initial conservatorship shall be filed within 14 days of the initial petition pursuant to paragraph (1). The supplemental petition shall include, at a minimum, all of the following information:

(A) A detailed description of the comprehensive clinical evaluation of the person that has been performed since initiating the temporary conservatorship.

(B) The results and determinations based on the evaluation described in subparagraph (A).

(C) A detailed description of any treatment attempted or provided for the person since initiating the temporary conservatorship.

(D) A description of the person's response to treatment, if any.

(E) Any additional information pertaining to the person's condition and behavior during the temporary conservatorship that may aid in determining whether a conservatorship pursuant to this chapter is appropriate.

(F) A determination as to whether, based on the evidence provided in subparagraphs (A) to (E), inclusive, the petition for an initial conservatorship pursuant to this chapter should be heard or withdrawn.

SEC. 2. Section 5452 of the Welfare and Institutions Code is amended to read:

5452. For purposes of this chapter, the following definitions apply:

(a) "Evaluation" consists of multidisciplinary professional analyses of an individual's medical, psychological, educational, social, financial, and legal conditions as they may appear to constitute a problem. Persons providing evaluation services shall be properly qualified professionals and may be full-time employees of an agency providing face-to-face, which includes telehealth, evaluation services or may be part-time employees or may be employed on a contractual basis.

(b) "Frequent detention for evaluation and treatment" means eight or more detentions for evaluation and treatment in a 12-month period.

(c) "Functional impairment" means being substantially impaired as the result of both a serious mental illness and a substance use disorder, being unable to live independently, and suffering an impaired physical condition.

(d) "Intensive treatment" consists of such hospital and other services as may be indicated. Intensive treatment shall be provided by properly qualified professionals and carried out in facilities qualifying for reimbursement under the Medi-Cal program as set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, or under the federal Medicare Program as set forth in Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act and regulations thereunder. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. This chapter does not prohibit an intensive treatment facility from also providing 72-hour evaluation and treatment.

(e) "Serious mental illness" means a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders that is severe in degree and persistent in duration, presents a major risk to the person's health and well-being, and causes behavioral functioning that interferes substantially with the primary activities of daily living and that results in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. Serious mental illnesses may include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders. This section shall not be construed to exclude persons with a serious mental disorder and a diagnosis of substance abuse, developmental disability, or other physical or mental disorder.

(f) "Substance use disorder" means a disorder, as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, involving the repeated abuse of alcohol or other drugs in a manner that is severe in degree and persistent in duration, presents a major risk to the person's health and well-being, and causes behavioral functioning that interferes substantially with the primary activities of daily living.

SEC. 3. Section 5453 of the Welfare and Institutions Code is amended to read:

5453. The purpose of conservatorship under this chapter is to provide the least restrictive and most clinically appropriate alternative needed for the protection of a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder. If the court determines that the person needs to be moved from the person's current residence, the placement shall be in supportive community housing that provides wraparound services, such as onsite physical and behavioral health services, unless the court, with good cause and by clear and convincing evidence, determines that such a placement is not sufficient for the protection of that person.

SEC. 4. Section 5456 of the Welfare and Institutions Code is amended to read:

5456. (a) The establishment of a conservatorship pursuant to this chapter is subject to a finding by the court that the health director of the county or the city and county, or the director's designee, has fulfilled all of the requirements specified in Section 5451 and that either of the following conditions has been met:

(1) The behavioral health director, or the director's designee, previously attempted by petition to obtain a court order authorizing assisted outpatient treatment pursuant to Article 9 (commencing with Section 5345) of Chapter 2 for the person for whom conservatorship is sought, and that the petition was denied or the court finds by clear and convincing evidence that the assisted outpatient treatment was insufficient to treat the person's mental illness.

(2) The behavioral health director, or the director's designee, reasonably recommends, and the court found by clear and convincing evidence, that the person, as a matter of law, does not meet the criteria described for assisted outpatient treatment pursuant to Article 9 (commencing with Section 5345) of Chapter 2, or that assisted outpatient treatment would be insufficient to treat the person in the instant matter in lieu of a conservatorship. The behavioral health director, or the director's designee, shall state specific facts to support the recommendation. If the behavioral health director, or the director's designee, fails to demonstrate that assisted outpatient treatment pursuant to Article 9 (commencing with Section 5345) of Chapter 2 would be insufficient to treat the person, and the person meets all criteria to qualify for assisted outpatient treatment, assisted outpatient treatment may be ordered at this hearing.

(b) The basis for the findings described in subdivision (a) shall be documented and included with the petition for a conservatorship.

SEC. 5. Section 5462 of the Welfare and Institutions Code is amended to read:

5462. (a) Except as provided in subdivision (c), a conservatorship initiated pursuant to this chapter shall automatically terminate six months after the appointment of the conservator by the superior court, or after a shorter period if ordered by the court. If upon the termination of an initial or a succeeding period of conservatorship the conservator determines that conservatorship is still required, the conservator may petition the superior court for the conservator's reappointment as conservator for a succeeding six-month period or any shorter period.

(b) Any program in which a conservatee is placed shall release the conservatee at the conservatee's request when the conservatorship terminates. A petition for reappointment filed by the conservator or a petition for appointment filed by a public guardian or public conservator shall be transmitted to the program at least 30 days before the automatic termination date.

(c) Every 60 days, a conservator shall file a report with the court regarding the conservatee's progress and engagement with treatment.

(1) The report shall set forth the reasons demonstrating the following:

(A) Continuing the conservatorship.

(B) The treatment plan for the following 60 days.

(C) That the treatment plan is the least restrictive alternative.

(2) If the court is not satisfied that the conservatorship continues to be justified, the court shall terminate the conservatorship.

SEC. 6. Section 5463 of the Welfare and Institutions Code is amended to read:

5463. (a) The clerk of the superior court shall notify each conservator, the conservatee, the person in charge of the program in which the conservatee receives services, and the conservatee's attorney, at least 60 days before the termination of the six-month or shorter period. Notification shall be given in person or by first-class mail.

(b) If the conservator does not petition to reestablish conservatorship at or before the termination of the six-month or shorter period, the court shall issue a decree terminating conservatorship. The decree shall be sent to the conservator and the conservatee by first-class mail.

(c) The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

SEC. 7. Section 5465.5 is added to the Welfare and Institutions Code, to read:

5465.5. (a) If a person has been detained eight or more times for evaluation and treatment pursuant to Section 5150 in a 12-month period, the court may establish a temporary conservatorship for a period not to exceed 28 days and appoint a temporary conservator on the basis of the comprehensive report of the officer providing conservatorship investigation filed pursuant to Section 5457, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for that person's recommendation, if the court is satisfied that the comprehensive report or affidavit shows that the person is presently incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, that a temporary conservatorship is necessary, and that the county health director, or the county health director's designee, has done all of the following:

(1) Before the eighth detention of the person in the 12-month period, all of the following:

(A) Made a finding pursuant to Section 5456.

(B) Confirmed that there are adequate resources, including clinically appropriate housing, to appropriately serve the person in the least restrictive manner.

(C) Confirmed that there are age-appropriate substance use disorder treatment resources, including, but not limited to, medication assisted treatment, as appropriate.

(D) Designated the public conservator to serve as the potential conservator, and instructed that person to begin preparing for the investigation required pursuant to this chapter.

(E) Identified an option or options for available and appropriate housing of the person upon discharge from a potential conservatorship established pursuant to Section 5451.

(F) Identified an option or options for available and age-appropriate substance use disorder treatment upon discharge from a potential conservatorship established pursuant to Section 5451.

(2) (A) On each detention of the person after the fifth detention in the 12-month period, provided the person with a written notice containing detailed information regarding the possibility that the person may be conserved pursuant to this chapter if they are detained eight times in the 12-month period, and the number of additional detentions that would qualify the person for conservatorship pursuant to this chapter.

(B) For any person who has been detained pursuant to Section 5150 more than five times in a 12-month period as of the effective date of the act that added this paragraph, the notice requirement described in subparagraph (A) shall apply only to those detentions that occur after the effective date of the act that added this paragraph.

(3) (A) Before each detention after the third detention in the 12-month period, provided the person with the opportunity to engage in voluntary treatment appropriate for their serious mental illness and substance use disorders. This opportunity shall be provided at the earliest time possible to prevent the worsening of the person's condition, and there shall be documented attempts to elicit the cooperation of the person and that these attempts have not been successful.

(B) An affidavit of the county health director, or the county health director's designee, attesting that the opportunity to engage in voluntary treatment was provided to the person shall be considered sufficient evidence, in lieu of contemporaneous records, that the requirement described in subparagraph (A) was fulfilled for detentions that occurred prior to the effective date of the act that added this paragraph.

(b) All temporary conservatorships established pursuant to this section shall expire automatically at the conclusion of 28 days, except as provided in subdivision (c).

(c) If the proposed conservatee demands a court or jury trial on the issue of whether the proposed conservatee is incapable of caring for their own health and well-being due to a serious mental illness and substance use disorder, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial. However, the extension shall not exceed a period of seven days, unless the court finds that the trial is ongoing when the temporary conservatorship is set to expire pursuant to subdivision (b) and, if the temporary conservatorship is not extended, the proposed conservatee will be released from the temporary conservatorship. Upon such a finding, the further extension may last no more than seven additional days.

(d) Any person detained on a temporary conservatorship under this section shall have the same right to judicial review as set forth in Article 5 (commencing with Section 5275) of Chapter 2. In lieu of the standard described in Section 5276, if the court finds that the person is not presently incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, that a conservatorship is not necessary, or that the county has not met the requirements of subdivision (a), the person shall be released immediately.

SEC. 8. Section 5555 of the Welfare and Institutions Code is amended to read:

5555. (a) The County of Los Angeles, the County of San Diego, and the City and County of San Francisco, subject to Section 5450, shall establish a working group to conduct an evaluation of the effectiveness of the implementation of Chapter 5 (commencing with Section 5450) in addressing the needs of persons with serious mental illness and substance use disorders in the county or the city and county. The evaluation shall include all of the following:

(1) An assessment of the number and status of persons who have been conserved under Chapter 5 (commencing with Section 5450), the effectiveness of these conservatorships in addressing the short- and long-term needs of those persons, and the impact of conservatorships established pursuant to that chapter on existing conservatorships established pursuant to Division 4

(commencing with Section 1400) of the Probate Code or Chapter 3 (commencing with Section 5350) and on mental health programs provided by the county or the city and county.

(2) The service planning and delivery process for persons conserved pursuant to Chapter 5 (commencing with Section 5450).

(3) The number of persons conserved pursuant to Chapter 5 (commencing with Section 5450) who are placed in locked, acute psychiatric, hospital, rehabilitation, transitional, board and care, or any other facilities or housing types, and the duration of the confinement or placement in each of the facilities or housing types, including descriptions and analyses of the various types of confinement or placements and the types of onsite wraparound or other services, such as physical and behavioral health services.

(4) The number of persons conserved pursuant to Chapter 5 (commencing with Section 5450) placed in another county and the types of facilities and the duration of the placements, including the types of onsite wraparound or other services, such as physical and behavioral health services.

(5) The number of persons conserved pursuant to Chapter 5 (commencing with Section 5450) by the conserving county who receive permanent supportive housing in any county during their conservatorship, whether permanent supportive housing was provided during the conservatorship, and the wraparound services or other services, such as physical and behavioral health services, provided.

(6) The number of persons conserved pursuant to Chapter 5 (commencing with Section 5450) who are able to maintain housing and the number who maintain contact with the treatment system after the termination of the conservatorship, including the type and level of support they were receiving at the time they were conserved pursuant to Chapter 5 (commencing with Section 5450).

(7) The number of persons conserved pursuant to Chapter 5 (commencing with Section 5450) who successfully complete substance use disorder treatment programs.

(8) The incidence and rate of persons conserved pursuant to Chapter 5 (commencing with Section 5450) who have been detained pursuant to Section 5150 subsequent to termination of the conservatorship at 6, 12, and 24 months following conservatorship.

(9) An analysis of demographic data of persons conserved pursuant to Chapter 5 (commencing with Section 5450), including gender, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, marital status, and sexual orientation.

(10) A survey of the individuals conserved pursuant to Chapter 5 (commencing with Section 5450) and an analysis of the effectiveness of the placements and services they were provided while conserved.

(11) The substance use relapse rate of persons conserved pursuant to Chapter 5 (commencing with Section 5450) at 6, 12, and 24 months following conservatorship, to the extent this information can be obtained.

(12) The number of deaths of persons conserved pursuant to Chapter 5 (commencing with Section 5450) within 6, 12, and 24 months following conservatorship, and the causes of death, to the extent this information can be obtained.

(13) A detailed explanation for the absence of any information required in paragraph (11) or paragraph (12) that was omitted from the evaluation.

(b) The working group shall be comprised of representatives of disability rights advocacy groups, the county mental health department, the county health department, the county social services department, law enforcement, labor unions, staff from hospitals located in the county or the city and county, and, if one exists, the county department of housing and homeless services.

(c) Each working group shall prepare and submit a preliminary report and a final report to the Legislature on its findings and recommendations regarding the implementation of Chapter 5 (commencing with Section 5450). The preliminary report shall be submitted to the Legislature no later than January 1, 2021, and the final report shall be submitted to the Legislature no later than January 1, 2023, in compliance with Section 9795 of the Government Code.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectively implement Senate Bill 1045 of the 2017–18 Regular Session (Chapter 845 of the Statutes of 2018), which established a procedure, in the County of Los Angeles, the County of San Diego, and the City and County of San Francisco, for the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, it is necessary that this act take effect immediately.