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## SB-280 Review of conservatorships: care plans. (2023-2024)

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### Senate Bill No. 280

#### CHAPTER 705

An act to amend Section 2352.5 of, and to add Section 2351.2 to, the Probate Code, relating to conservatorships.

[ Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023. ]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 280, Laird. Review of conservatorships: care plans.

Existing law generally provides for the establishment, review, and termination of conservatorships. Existing law specifies the persons who may be appointed as a conservator and requires the court to review a conservatorship 6 months after the initial appointment of the conservator, one year after the appointment of the conservator, and annually thereafter. Existing law sets forth the powers and duties of a conservator for the care, custody, and control of a conservatee.

This bill, commencing January 1, 2025, would require a conservator, within 120 calendar days of appointment and not later than 10 days before a hearing to determine the continuation or termination of an existing conservatorship, and to file a care plan regarding the care, custody, and control of the conservatee. The bill would require delivery of the care plan to specified persons, including the conservatee and their attorney, but would otherwise make the care plan confidential, except as specified, thereby limiting public access to the records. The bill would require the Judicial Council to develop a mandatory form for the care plan, which would be required to include specified information, including descriptions of the conservatee's living arrangement and level of care and any plans to modify those within the next 12 months. The bill would impose sanctions for a conservator's failure to timely file a care plan, including authorizing the court to impose a civil penalty in any amount up to \$500, payable to the estate of the conservatee, and authorizing the court to remove a conservator for failure to file a care plan. The bill would require an investigator to review the most recent care plan as part of an investigation.

Existing law requires a conservator, upon appointment, to determine the appropriate level of care for the conservatee and to make that determination in writing, signed by the conservator under penalty of perjury, and requires it to be submitted to the court within 60 days of appointment as conservator.

This bill would remove the requirements that the determination be provided in writing and signed under penalty of perjury, as well as the delivery timeline, and would instead require that it be included in the care plan.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

**SECTION 1.** Section 2351.2 is added to the Probate Code, to read:

**2351.2.** (a) (1) Within 120 calendar days of appointment by the court and no later than 10 days before a hearing to determine the continuation or termination of an existing conservatorship, a conservator granted powers under this chapter shall file with the clerk of the court a care plan for the care, custody, and control of the conservatee as provided in this section. The court may require a conservator to update the care plan at any time. The court shall review the most recent care plan in determining the continuation or termination of the conservatorship.

(2) (A) The conservator shall deliver, pursuant to Section 1215, a copy of any care plan filed pursuant to paragraph (1) to the conservator of the estate, if a separate conservator is appointed, and that conservator's attorney, the attorney for the conservator, the attorney for the conservatee, and the conservatee. The conservator shall also deliver a copy of the care plan to the conservatee's spouse or registered domestic partner and relatives within the first degree unless the court determines that delivery of the care plan will result in harm to the conservatee. If the conservatee does not have a spouse, registered domestic partner, or relatives within the first degree, to the greatest extent possible, the conservator shall deliver the care plan to the conservatee's relatives within the second degree, unless the court determines that the delivery of the care plan will result in harm to the conservatee.

(B) Confidential medical information in a care plan shall be redacted in compliance with applicable state and federal medical privacy laws before transmission to a spouse, registered domestic partner, or relative, as described in paragraph (1).

(b) The care plan shall include, but not be limited to, all of the following:

(1) A description of the current living arrangement for the conservatee and any plans to modify this living arrangement within the next 12 months.

(2) A description of the conservatee's current level of care and any plans to modify the level of care within the next 12 months.

(3) A description of the status of the conservatee's health that lists medications currently prescribed for the conservatee, and any medical treatments, supports, or devices.

(4) A description of the conservator's schedule of visitation with the conservatee and actions to ensure the conservatee is able to exercise their rights to visitation and communications.

(5) A description of the normal activities of the conservatee, including outings and social and recreational activities.

(6) A description of any special problems raised by the court investigator, the court, or any other interested person, and a description of how the conservator has addressed or intends to address those problems.

(7) A description of the conservatee's financial needs, stating the conservatee's estimated monthly expenses, including food, entertainment, rent or mortgage, transportation, utilities, medication, clothing, and other relevant health care and living expenses, to the extent the conservator has that information.

(8) A list of all health care providers who provide care for the conservatee, including the provider's name, contact information, license type and number, and a description of the treatment provided by each provider.

(c) The Judicial Council shall, by January 1, 2025, develop and adopt a mandatory form to be used in preparing the care plan required by subdivision (a) with, at a minimum, all of the information required by subdivision (b). The form shall be combined with the information or form required to be submitted to the court by subdivision (c) of Section 2352.5.

(d) (1) If a conservator does not file a care plan as required by subdivision (a), the court may impose a civil penalty in any amount up to five hundred dollars (\$500), payable to the estate of the conservatee.

(2) If the conservator is a professional fiduciary, in addition to the civil penalty imposed pursuant to paragraph (1), the court may find a failure to file a care plan is a separate and independent reason to refer the conservator to the Professional Fiduciaries Bureau for investigation.

(3) The court may remove the conservator for failure to file a care plan as required by this section.

(e) The care plan shall be confidential and shall be made available only as provided in this section. The court shall have discretion to release the care plan to other persons if it would serve the best interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the care plan exclusively to persons entitled thereto under this section.

(f) The court investigator shall review the most recent care plan when conducting an investigation pursuant to Section 1851.

(g) The requirement to file a care plan is effective January 1, 2025.

(h) This section does not apply to a limited conservator appointed for a developmentally disabled adult, as set forth in subdivision (d) of Section 1801, if the limited conservator is a relative within the first degree of the conservatee.

**SEC. 2.** Section 2352.5 of the Probate Code is amended to read:

**2352.5.** (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from the conservatee's personal residence is appropriate, that presumption may be overcome by clear and convincing evidence.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in their personal residence.

(2) If the conservatee is living at a location other than the conservatee's personal residence at the commencement of the proceeding, that determination shall either include a plan to return the conservatee to their personal residence or an explanation of the limitations or restrictions on a return of the conservatee to their personal residence in the foreseeable future.

(c) The determination made by the conservator pursuant to subdivision (b) shall be included in the care plan as required by Section 2351.2.

(d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

(e) (1) This section shall not apply to a conservatee with developmental disabilities for whom the Director of Developmental Services or a regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator and who receives services from a regional center pursuant to the Lanterman Developmental Disabilities Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code).

(2) Services, including residential placement, for a conservatee described in paragraph (1) who is a consumer, as defined in Section 4512 of the Welfare and Institutions Code, shall be identified, delivered, and evaluated consistent with the individual program plan process described in Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

**SEC. 3.** The Legislature finds and declares that Section 1 of this act, which adds Section 2351.2 to the Probate Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The care plans required by this section contain information about a conservatee's finances, assets, and health that could be used to harm people in a vulnerable population and should therefore not be released to the public.