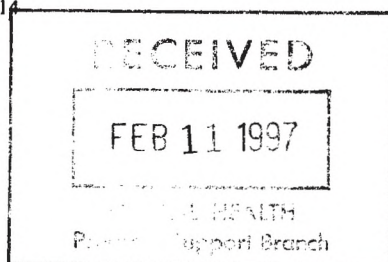


DEPARTMENT OF MENTAL HEALTH1600 - 9TH STREET
SACRAMENTO, CA 95814
(916) 654-2309

January 28, 1997

DMH INFORMATION NOTICE NO.: 97- 01

TO : LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH ADMINISTRATORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: CONSERVATORSHIPS FOR PEOPLE WITH DEMENTIA, CHAPTER 910,
STATUTES OF 1996 (SENATE BILL 1481)

This notice provides information regarding statutory changes to the California Probate Code enacted in the 1996 legislative session which establish a special conservatorship for persons with a diagnosis of dementia.

Chapter 910, Statutes of 1996 (SB 1481, Mello) specifies that conservatorships can be established for persons with dementia, as defined in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), to serve their unique and special needs. Upon the court's finding that a conservatee has dementia and a functional impairment in at least one mental function and lacks the capacity to give informed consent, an appointed conservator is permitted to authorize placement of the conservatee in a secured facility and also to authorize the administration of medications appropriate for the care and treatment of dementia. A person who is a conservatee as a result of having a dementia cannot be placed in a Mental Health Rehabilitation Center (MHRC) or an Institute for Mental Disease (IMD). A conservatee must be represented by an attorney and present in court at the conservatorship hearing, unless he or she is specifically excused. The petition for conservatorship must be supported by a declaration of a physician or psychologist with at least two years of experience in diagnosing dementia regarding each finding for any conservator powers being requested. The conservatee can be placed in a locked facility if the court determines that would be the least restrictive placement appropriate to the needs of the conservatee.

Court investigators are required to annually investigate and report biennially to the court if the powers granted to the conservator are warranted and on the status of the conservatee. A copy of that report to the court must be given to the attorney for the conservatee. Also, the conservatee must be specifically advised of the right to object to the conservator's powers as specified.

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It should be noted that the provisions of this statute do not affect an existing conservatorship until the conservatorship becomes subject to review and reporting pursuant to Section 1850. Newly established conservatorships would become subject to the provision of this statute upon the adoption of Judicial Council forms or January 1, 1998, whichever comes first.

Enclosed is a copy of the new law. If you have any questions, please consult with your county counsel or contact Mozell Zarit at (916) 327-9310.

Sincerely,


GARY M. PETTIGREW
Deputy Director
Systems of Care

Enclosures

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

Senate Bill No. 1481

CHAPTER 910

An act to add Section 2356.5 to the Probate Code, relating to conservatorships.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1481, Mello. Conservatorships: dementia.

Existing law provides for the establishment and regulation of conservatorships.

This bill would authorize, upon a court's findings that a conservatee has dementia and a functional impairment, a conservator to place the conservatee in a prescribed secured facility and authorize the administration of prescribed medication. This bill would require a court investigator to include a determination in a report required to be made to the court under existing law as to whether these powers granted to the conservator are warranted. The bill also would require the court investigator to advise the conservatee of his or her right to object to the conservator's powers under these provisions. By increasing the duties of court investigators, the bill would establish a state-mandated local program.

This bill would specify the application of its provisions to conservatorships established before or after specified dates.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 2356.5 is added to the Probate Code, to read: 2356.5. (a) The Legislature hereby finds and declares:

(1) That people with dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental

Disorders," should have a conservatorship to serve the unique and special needs of these patients.

(2) That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.

(3) That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize such medications for the treatment of dementia requires the protections specified in this section.

(b) Notwithstanding any other provision of law, a conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, or a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code, and which has a care plan that meets the requirements of Section 87724 of Title 22 of the California Code of Regulations, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.

(3) The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (1).

(4) The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

(c) Notwithstanding any other provision of law, a conservator of a person may authorize the administration of medications appropriate for the care and treatment of dementia, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of

dementia, and has at least one mental function deficit pursuant to subdivision (a) of Section 812, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 812.

(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (c) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

(f) A petition for authority to act under this section shall be governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition shall be supported by a declaration of a physician or psychologist as defined in subdivision (c) of Section 1890, regarding each of the findings required to be made under this section for any power requested, except that the psychologist has at least two years of experience in diagnosing dementia.

(4) The petition may be filed by any of the persons designated in Section 1891.

(g) The court investigator shall annually investigate and report to the court every two years pursuant to Sections 1850 and 1851 if the conservator is authorized to act under this section. In addition to the other matters provided in Section 1851, the conservatee shall be specifically advised by the investigator that the conservatee has the right to object to the conservator's powers granted under this section, and the report shall also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers granted under this section, or the investigator determines that some change in the powers granted under this section is warranted, the court shall provide a copy of the report to the attorney of record for the conservatee. If no attorney has been appointed for the conservatee, one shall be appointed pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days after receiving this report, do one of the following:

(1) File a petition with the court regarding the status of the conservatee.

(2) File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

(h) A petition to terminate authority granted under this section shall be governed by Section 2359.

(i) Nothing in this section shall be construed to affect a conservatorship of the estate of a person who has dementia.

(j) Nothing in this section shall affect the laws that would otherwise apply in emergency situations.

(k) Nothing in this section shall affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia.

(l) (1) Until such time as the conservatorship becomes subject to review pursuant to Section 1850, this section shall not apply to a conservatorship established on or before the effective date of the adoption of Judicial Council forms that reflect the procedures authorized by this section, or January 1, 1998, whichever occurs first.

(2) Upon the adoption of Judicial Council forms that reflect the procedures authorized by this section or January 1, 1998, whichever occurs first, this section shall apply to any conservatorships established after that date.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.