



Conservatorship in Connecticut

for Public Act No. 25-168 section 190

Working Group to Evaluate Hospital Discharge Challenges

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Office of Probate Court Administrator (PCA)

PCA supports Probate Court operations, through financial, information technology, court procedural operations, and legislative policy initiatives as required by C.G.S. § 45a-77.

Connecticut Probate Courts

- Consist of fifty-four (54) Probate Court Districts with one probate judge per district elected for a term of four years and six (6) Regional Children's Probate Court Districts
- Jurisdiction over 70 different areas of the law, including appointment of Conservators under C.G.S. §§ 45a-644 through 45a-677v
- Check out the website www.ctprobate.gov for more information

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Agenda:

What is a Conservator?

Voluntary Conservators

Involuntary Conservators

Temporary Conservators

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What is a Conservator?

- A person appointed by a Probate Court to supervise the financial and/or personal affairs of a living adult who has been found incapable or who has voluntarily requested the appointment of a conservator.



Conservator of Estate:
Assist with financial affairs



Conservator of Person:
Assist with personal affairs,
including healthcare decisions



Conservator of Both: Estate and Person
Can be appointed depending on individual needs of the person

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Least Restrictive Means of Intervention

- Conservator may be appointed only if Probate Court finds it to be the least restrictive means of intervention available to meet needs of respondent:
 - within the resources available
 - sufficient to provide for personal needs or property management
 - affording conserved person the greatest amount of independence and self-determination
- Results in narrowly tailored authorities granted by Probate Court to meet the specific incapacity needs that are not being met
 - Any specific authority granted by Probate Court to conservator cannot be exercised independently by conserved person
- Example, a properly functioning Healthcare Representative appointment is a less restrictive means than a conservatorship to meet the needs of the patient – in which case, a conservator for healthcare decisions may not be appointed

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Constitutional Rights Equal Protection and Due Process

- Required to follow Probate Court rules and processes which are designed to protect rights and liberties of all people
- Examples: prior to appointment of a Conservator, respondent/patient must be provided:
 - Written personal “in-hand” notice
 - Opportunity to be heard and to respond
 - Right to be represented by legal counsel in cases where there is an incapacity allegation
 - Court must make findings by “clear and convincing evidence”

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Probate Procedural Paths to Conservatorship

Voluntary conservator

- Petition filed by the adult requesting assistance
- No finding of incapacity; no medical evidence

Involuntary conservator

- Petition filed by any adult requesting assistance for another adult
- Finding of incapacity; medical evaluation required

Temporary conservator

- Expedited Hearing or may be granted *ex parte* (without notice and hearing)
- Exigent circumstances and immediate and irreparable harm
- Finding of incapacity; medical evaluation required
- Valid for 30 days, may be extended for 30 days pending permanent petition

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Voluntary Conservatorship

C.G.S. § 45a-646

- Filed by person seeking assistance
- No appointment of counsel
- No personal service
- A hearing is required
- No finding of incapacity needed prior to appointment
- Appointment on average within two (2) to four (4) weeks

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Involuntary Conservatorship

C.G.S. § 45a-649

- A petition is filed by an interested party seeking appointment of a Conservator for someone who is alleged to be incapable (the respondent)
 - Medical evidence by a medical doctor is required
- There is a right to the appointment of counsel for the respondent
- Personal service given to respondent at least ten (10) days before hearing
- Statutory notice of rights to respondent is required
- A hearing is required to be held within thirty (30) days of the petition being filed
 - With knowledge of urgent circumstances, courts will typically schedule hearings earlier
- Appointment of an Involuntary Conservator can be a minimum of ten (10) days from the filing of a petition or up to a maximum of thirty (30) days, if not continued

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Temporary Conservatorship

C.G.S. § 45a-654

- A petition is filed by an interested party seeking appointment of a conservator for someone who is alleged to be incapable (the respondent)
 - Medical evidence is required HD1
- There is a right to the appointment of counsel for the respondent
- Personal service given to respondent not less than five (5) days before hearing
- Requires clear and convincing evidence that:
 1. The adult is incapable and;
 2. Immediate and irreparable harm will result if a conservator is not appointed
- A Temporary Conservator can be appointed within five (5) business days if the requirements for appointment under the statute are met

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Ex Parte Temporary Conservatorship

C.G.S. § 45a-654(d)(1)

- *Ex parte* (appointment without notice and hearing) is available when there is such an emergency that any delay resulting from giving notice, holding a hearing, and appointing an attorney to represent the respondent may cause immediate and irreparable harm to the financial and/or personal affairs of the respondent
- If Court proceeds with appointment, it must:
 - Appoint counsel for respondent
 - Cause in-hand notice to be served the respondent; and
 - Hold a hearing to review the *ex parte* appointment within three (3) business days of issuing the *ex parte* appointment

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Who may serve as a conservator?

- Someone who is:
 - 1) Chosen by respondent or conserved person
 - 2) Nominated by petitioner and qualified by factor test from statute
 - 3) Known to the conserved person, family, friends, etc. and not disqualified
 - 4) A third-party independent (professional conservator) when no other options available
 - 5) The Commissioner of Social Services, in limited circumstances
- Delays in making appointments can stem from limited pool of available of qualified conservators

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Conservatorships and Emergency Departments

Things to think about

- Conservatorship *Incapacity* defined by statute:
 - Mental, emotional or physical condition that results in inability to receive & evaluate information or make/communicate decisions
 - Even with appropriate assistance to perform functions inherent in managing affairs and/or meeting essential needs (least restrictive)
- Probate Courts must adhere to timelines, but delays can occur from legal objections or failure to present evidence, provide proper notice, or identify/appoint a qualified conservator
 - Voluntary Conservatorship: hearing on average within two (2) to four (4) weeks
 - Involuntary Conservatorship: hearing within ten (10) days from the filing of a petition or maximum of thirty (30) day (average is two (2) to four (4) weeks)
 - Temporary Conservatorship: immediate (three (3) to five (5) business days)

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Conservatorships and Emergency Departments

Further thoughts

- Current statutory alternatives available to Probate Court procedures that also permit surrogate decision making such as:
 - Powers of Attorney: Healthcare Representative Designations; Living Wills; other pre-made medical orders
- Connecticut law for appointing conservators is robust
- Education and training for public can be challenging; especially with people experiencing crisis with serious personal/medical and financial consequences
- If resources or information are limited for the patient, resources and information will be limited for conservator

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