

**ASSEMBLY BILL**

**No. 436**

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**Introduced by Assembly Member Jones**

February 19, 2015

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An act to amend Section 2356.5 of the Probate Code, relating to protective proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 436, as introduced, Jones. Guardian or conservator: powers and duties.

Existing law provides that, upon a court's findings that a conservatee has dementia, as defined, and a functional impairment, a conservator may place the conservatee in a prescribed secured residential or nursing facility and authorize the administration of prescribed medications appropriate for the care and treatment of dementia. A petition for authority to act under these provisions requires, among other things, that the conservatee be represented by an attorney, as provided.

This bill would require the court, upon granting or denial of that authority to a conservator, to either discharge the attorney or order continuation of the representation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 SECTION 1. Section 2356.5 of the Probate Code is amended
- 2 to read:
- 3 2356.5. (a) The Legislature hereby finds and declares:

1 (1) That people with dementia, as defined in the last published  
2 edition of the “Diagnostic and Statistical Manual of Mental  
3 Disorders,” should have a conservatorship to serve their unique  
4 and special needs.

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

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

16 (b) Notwithstanding any other law, a conservator may authorize  
17 the placement of a conservatee in a secured perimeter residential  
18 care facility for the elderly operated pursuant to Section 1569.698  
19 of the Health and Safety Code, and which has a care plan that  
20 meets the requirements of Section 87705 of Title 22 of the  
21 California Code of Regulations, upon a court’s finding, by clear  
22 and convincing evidence, of all of the following:

23 (1) The conservatee has dementia, as defined in the last  
24 published edition of the “Diagnostic and Statistical Manual of  
25 Mental Disorders.”

26 (2) The conservatee lacks the capacity to give informed consent  
27 to this placement and has at least one mental function deficit  
28 pursuant to subdivision (a) of Section 811, and this deficit  
29 significantly impairs the person’s ability to understand and  
30 appreciate the consequences of his or her actions pursuant to  
31 subdivision (b) of Section 811.

32 (3) The conservatee needs or would benefit from a restricted  
33 and secure environment, as demonstrated by evidence presented  
34 by the physician or psychologist referred to in paragraph (3) of  
35 subdivision (f).

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

39 (c) Notwithstanding any other law, a conservator of a person  
40 may authorize the administration of medications appropriate for

1 the care and treatment of dementia, upon a court’s finding, by clear  
2 and convincing evidence, of all of the following:

3 (1) The conservatee has dementia, as defined in the last  
4 published edition of the “Diagnostic and Statistical Manual of  
5 Mental Disorders.”

6 (2) The conservatee lacks the capacity to give informed consent  
7 to the administration of medications appropriate to the care of  
8 dementia, and has at least one mental function deficit pursuant to  
9 subdivision (a) of Section 811, and this deficit or deficits  
10 significantly impairs the person’s ability to understand and  
11 appreciate the consequences of his or her actions pursuant to  
12 subdivision (b) of Section 811.

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

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

22 (e) A conservatee who is to be placed in a facility pursuant to  
23 this section shall not be placed in a mental health rehabilitation  
24 center as described in Section 5675 of the Welfare and Institutions  
25 Code, or in an institution for mental disease as described in Section  
26 5900 of the Welfare and Institutions Code.

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

29 (1) The conservatee shall be represented by an attorney pursuant  
30 to Chapter 4 (commencing with Section 1470) of Part 1. *Upon*  
31 *granting or denial of authority to a conservator under subdivisions*  
32 *(b) or (c), the court shall discharge the attorney or order the*  
33 *continuation of the legal representation.*

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

36 (3) The petition shall be supported by a declaration of a licensed  
37 physician, or a licensed psychologist within the scope of his or her  
38 licensure, regarding each of the findings required to be made under  
39 this section for any power requested, except that the psychologist  
40 has at least two years of experience in diagnosing dementia.

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

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

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

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

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

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

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

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