

An Act

ENROLLED HOUSE
BILL NO. 1086

By: Boatman and Lawson of the
House

and

Daniels of the Senate

An Act relating to guardian and ward; providing for the transfer or conveyance of property to protective arrangements; specifying the petition process; defining term; providing for notice and hearing; exempting transfer or conveyance of property to protective arrangements from definitions and regulations of sale; providing for bonds for transfer or conveyance of property to protective arrangements; providing scope and purpose of protective arrangements; providing for homestead liens; providing for codification; and providing an effective date.

SUBJECT: Guardian and ward

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-710 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. If a ward is the owner of any real or personal property that is or may be deemed an available resource by the United States Social Security Administration or by the applicable Medicaid rules promulgated by the Oklahoma Health Care Authority or other state agency, the guardian may petition the court for permission to transfer or convey such property to a protective arrangement in accordance with this section.

1. The guardian shall file a verified petition setting forth what specific property is or may be deemed a resource by the federal or state authority, including an affirmative statement that such resource will or may affect the ward's receipt of public benefits unless such resource is transferred to a protective arrangement. As used in this section, "protective arrangement" includes, but is not limited to, any of the following transfers or conveyances of the ward's resources:

- a. to a first-party Medicaid payback trust, also known as a d4A trust,
- b. to a pooled trust approved by the Oklahoma Department of Human Services, also known as a d4C trust,
- c. as permitted by the administrative rules promulgated by the Oklahoma Health Care Authority, such as to a spouse or qualified disabled child of the ward,
- d. to a sole benefit trust for the benefit of the spouse or qualified disabled child of the ward,
- e. to a sole benefit trust for any qualified disabled person,
- f. to a qualified disabled child or caregiving child of the ward who qualifies pursuant to administrative rules by providing caregiving services for the required period of time, or
- g. to a qualified Achieving a Better Life Experience (ABLE) account within or without the State of Oklahoma.

2. The court shall set the petition for a hearing not less than ten (10) days nor more than thirty (30) days from the date of filing.

- a. Notice of the hearing shall be given to those persons entitled to notice of the guardian's annual report pursuant to Section 4-307 of Title 30 of the Oklahoma Statutes. If the court has previously waived the filing of the guardian's annual report, then notice shall be given to those persons entitled to notice

pursuant to Section 3-110 of Title 30 of the Oklahoma Statutes.

- b. If all persons entitled to notice have waived such notice, no notice shall be given and the court shall proceed without delay to hear the petition.
- c. At the hearing, the court shall hear testimony regarding the public benefits that may be beneficial to the ward or others and if and how the transfer or conveyance of the ward's property to a protective arrangement may allow the ward or others to receive such public benefits.

B. If the court approves the petition and authorizes the guardian to transfer or convey the ward's property that is or may be deemed an available resource to a protective arrangement, such transfer or conveyance shall not be considered a sale of the property and shall not be subject to the provisions of Sections 4-751 through 4-770 of Title 30 of the Oklahoma Statutes. Sections 380 through 512 of Title 58 of the Oklahoma Statutes shall not apply to any transfer or conveyance of the ward's assets to a protective arrangement pursuant to this section.

C. If a bond was previously required by the court, the court may continue the bond to include assets transferred or conveyed to a protective arrangement, require a new bond in a lesser amount due to the transfer of some or all of the ward's resources or waive the requirement of a bond on the value of the transferred assets.

D. For the purposes of this section, a protective arrangement shall not create, expand or otherwise modify any state or federally authorized rules regarding exemption or transfer of assets or resources for determination of Medicaid or Social Security eligibility. Nor shall a court's order authorizing a protective arrangement have any effect or impact on the protective arrangement's consideration in the actual Medicaid eligibility determination decision by the Oklahoma Department of Human Services, Oklahoma Health Care Authority or other appropriate determining agency. The primary purpose of this section is to authorize a guardian to pursue on behalf of his or her ward those same steps that any legally competent person could pursue to apply for or retain Medicaid or Social Security benefits.

E. This section shall not infringe upon or void an existing homestead lien of record that has been filed by the Oklahoma Health Care Authority pursuant to Section 5051.3 of Title 63 of the Oklahoma Statutes.

SECTION 2. This act shall become effective November 1, 2021.

Passed the House of Representatives the 22nd day of February, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 12th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____