

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1086

By: Boatman of the House

and

Daniels of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to guardian and ward; providing for
12 the transfer or conveyance of property to protective
13 arrangements; specifying the petition process;
14 defining term; providing for notice and hearing;
15 exempting transfer or conveyance of property to
16 protective arrangements from definitions and
17 regulations of sale; providing for bonds for transfer
18 or conveyance of property to protective arrangements;
19 providing scope and purpose of protective
20 arrangements; providing for homestead liens;
21 providing for codification; and providing an
22 effective date.

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

24 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

1 is or may be deemed an available resource by the United States
2 Social Security Administration or by the applicable Medicaid rules
3 promulgated by the Oklahoma Health Care Authority or other state
4 agency, the guardian may petition the court for permission to
5 transfer or convey such property to a protective arrangement in
6 accordance with this section.

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

- 15 a. to a first-party Medicaid payback trust, also known as
16 a d4A trust,
- 17 b. to a pooled trust approved by the Oklahoma Department
18 of Human Services, also known as a d4C trust,
- 19 c. as permitted by the administrative rules promulgated
20 by the Oklahoma Health Care Authority, such as to a
21 spouse or qualified disabled child of the ward,
- 22 d. to a sole benefit trust for the benefit of the spouse
23 or qualified disabled child of the ward,

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1 e. to a sole benefit trust for any qualified disabled
2 person,

3 f. to a qualified disabled child or caregiving child of
4 the ward who qualifies pursuant to administrative
5 rules by providing caregiving services for the
6 required period of time, or

7 g. to a qualified Achieving a Better Life Experience
8 (ABLE) account within or without the State of
9 Oklahoma.

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

13 a. Notice of the hearing shall be given to those persons
14 entitled to notice of the guardian's annual report
15 pursuant to Section 4-307 of Title 30 of the Oklahoma
16 Statutes. If the court has previously waived the
17 filing of the guardian's annual report, then notice
18 shall be given to those persons entitled to notice
19 pursuant to Section 3-110 of Title 30 of the Oklahoma
20 Statutes.

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

7 B. If the court approves the petition and authorizes the
8 guardian to transfer or convey the ward's property that is or may be
9 deemed an available resource to a protective arrangement, such
10 transfer or conveyance shall not be considered a sale of the
11 property and shall not be subject to the provisions of Sections 4-
12 751 through 4-770 of Title 30 of the Oklahoma Statutes. Sections
13 380 through 512 of Title 58 of the Oklahoma Statutes shall not apply
14 to any transfer or conveyance of the ward's assets to a protective
15 arrangement pursuant to this section.

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

21 D. For the purposes of this section, a protective arrangement
22 shall not create, expand or otherwise modify any state or federally
23 authorized rules regarding exemption or transfer of assets or
24 resources for determination of Medicaid or Social Security

1 eligibility. Nor shall a court's order authorizing a protective
2 arrangement have any effect or impact on the protective
3 arrangement's consideration in the actual Medicaid eligibility
4 determination decision by the Oklahoma Department of Human Services,
5 Oklahoma Health Care Authority or other appropriate determining
6 agency. The primary purpose of this section is to authorize a
7 guardian to pursue on behalf of his or her ward those same steps
8 that any legally competent person could pursue to apply for or
9 retain Medicaid or Social Security benefits.

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

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

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16 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
17 SERVICES, dated 02/10/2021 - DO PASS, As Amended and Coauthored.

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