

1 **SENATE FLOOR VERSION**

2 March 23, 2021

3 ENGROSSED HOUSE
4 BILL NO. 1086

By: Boatman and Lawson of the
House

5 and

6 Daniels of the Senate

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8
9 An Act relating to guardian and ward; providing for
10 the transfer or conveyance of property to protective
11 arrangements; specifying the petition process;
12 defining term; providing for notice and hearing;
13 exempting transfer or conveyance of property to
14 protective arrangements from definitions and
15 regulations of sale; providing for bonds for transfer
16 or conveyance of property to protective arrangements;
17 providing scope and purpose of protective
18 arrangements; providing for homestead liens;
19 providing for codification; and providing an
20 effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 4-710 of Title 30, unless there
24 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

1 agency, the guardian may petition the court for permission to
2 transfer or convey such property to a protective arrangement in
3 accordance with this section.

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

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

1 rules by providing caregiving services for the
2 required period of time, or

- 3 g. to a qualified Achieving a Better Life Experience
4 (ABLE) account within or without the State of
5 Oklahoma.

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

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

- 17 b. If all persons entitled to notice have waived such
18 notice, no notice shall be given and the court shall
19 proceed without delay to hear the petition.

- 20 c. At the hearing, the court shall hear testimony
21 regarding the public benefits that may be beneficial
22 to the ward or others and if and how the transfer or
23 conveyance of the ward's property to a protective
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1 arrangement may allow the ward or others to receive
2 such public benefits.

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

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

17 D. For the purposes of this section, a protective arrangement
18 shall not create, expand or otherwise modify any state or federally
19 authorized rules regarding exemption or transfer of assets or
20 resources for determination of Medicaid or Social Security
21 eligibility. Nor shall a court's order authorizing a protective
22 arrangement have any effect or impact on the protective
23 arrangement's consideration in the actual Medicaid eligibility
24 determination decision by the Oklahoma Department of Human Services,

1 Oklahoma Health Care Authority or other appropriate determining
2 agency. The primary purpose of this section is to authorize a
3 guardian to pursue on behalf of his or her ward those same steps
4 that any legally competent person could pursue to apply for or
5 retain Medicaid or Social Security benefits.

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
12 March 23, 2021 - DO PASS
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