

REVISED LEGISLATIVE DIGEST

(6/4/2019, Amended in Board)

[Health, Administrative Codes - Housing Conservatorships]

Ordinance amending the Health Code to authorize procedures for the appointment of a conservator for a person incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, and designating the City Attorney to institute judicial proceedings to establish housing conservatorships; and amending the Administrative Code to establish the Housing Conservatorship Working Group to conduct an evaluation of the City's implementation of the housing conservatorship program.

Existing Law

Currently, state law establishes a procedure for the appointment of a conservator for a person who is determined to be gravely disabled as a result of a mental health disorder or an impairment by chronic alcoholism. State law also establishes a procedure for the appointment of a conservator for individuals who are unable to properly provide for their needs for physical health, food, clothing and shelter, and for individuals who are substantially unable to manage their finances or resist fraud or undue influence.

On September 27, 2018, Governor Brown signed into law S.B. 1045 (Housing Conservatorship for Persons with Serious Mental Illness and Substance Use Disorders), to be codified at Chapter 5 of Part 1 of Division 5 of the California Welfare and Institutions Code. S.B. 1045, which went into effect on January 1, 2019, authorizes the counties of San Francisco, San Diego, and Los Angeles, to establish procedures for the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, for the purpose of providing the least restrictive and most clinically appropriate alternative needed for the protection of the person.

S.B. 1045 provides that before a county Board of Supervisors may authorize the establishment of a housing conservatorship program, local government departments must develop a plan to implement the program, in consultation with specified stakeholders, and must present the plan to the Board of Supervisors. In addition, after a public hearing and based on materials presented, the Board of Supervisors must make a finding that the county has enumerated services, including but not limited to supportive housing with wraparound services and adequate beds, outpatient mental health counseling, psychiatric and psychological services, and substance use disorder services, in sufficient quantity, resources, and funding levels to serve the identified population that the Board of Supervisors intends to serve. The Board of Supervisors must also make a finding that no voluntary mental health program serving adults, no children's mental health program, and no services or supports

provided in other conservatorship programs, including the availability of conservators, may be reduced as a result of the implementation of the housing conservatorship program. Once the Board of Supervisors has established a housing conservatorship program consistent with the requirements of S.B. 1045, a conservatorship of the person may be appointed for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment pursuant to Section 5150. The procedures for establishing, administering, and terminating a housing conservatorship are set forth in state law.

The establishment of a housing conservatorship is subject to a finding by the court that the county has previously attempted by petition to obtain a court order authorizing assisted outpatient treatment ("AOT") and that the petition was denied or the AOT was insufficient to treat the person's mental illness, and AOT would be insufficient to treat the person in lieu of a housing conservatorship.

A person for whom a housing conservatorship is sought shall have a right to be represented by the public defender and to demand a jury trial to determine whether the person meets the criteria for the appointment of the conservator.

S.B. 1045 also requires the appointment of a working group that is charged with evaluating the effectiveness of the implementation of S.B. 1045 in addressing the needs of persons with serious mental illness and substance use disorders, and preparing reports to Legislature on its findings and recommendations regarding implementation.

Amendments to Current Law

The proposed ordinance would authorize the implementation of S.B. 1045 through the establishment of a Housing Conservatorship Program. The ordinance would designate the San Francisco Public Conservator as the agency that would provide conservatorship investigations and that may appoint a conservator of the person for San Francisco residents who are incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment pursuant to Section 5150.

The proposed ordinance would provide that the process for establishing, administering, and terminating a housing conservatorship would be as set forth in state law.

Before the Public Conservator conducts an evaluation of eligibility for a Housing Conservatorship, the ordinance would require that: 1) a Care Team, consisting of a forensic psychologist, a peer specialist, and a family liaison, work with the individual who has been recommended for evaluation to maximize engagement in voluntary treatment; and 2) the City make a documented offer of intensive case management, mental health services, substance use treatment, placement in a clinically appropriate treatment program, and upon discharge

from such program, placement in permanent housing that is clinically appropriate for the individual, as determined upon placement.

The ordinance would allow the Public Conservator to file a petition for a Housing Conservatorship upon conducting an evaluation only after finding that the person meets the eligibility criteria for a Housing Conservatorship, that the City made a documented offer of services and clinically appropriate housing, and that the Housing Conservatorship is the least restrictive alternative.

The ordinance would authorize the court to appoint the San Francisco Public Conservator as conservator if the court makes an express finding that it is necessary for the protection of the proposed conservatee and the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. Housing conservatorships will automatically terminate one year after the appointment of the conservator by the court, or shorter if ordered by the court.

The proposed ordinance would designate the City Attorney's office to represent the Public Conservator in housing conservatorship proceedings. It would also establish a Working Group charged with evaluating the City's implementation of S.B. 1045. The Working Group would consist of 12 members, appointed by the Mayor, the Board of Supervisors, and specified department heads.

The Working Group evaluation of the effectiveness of the Housing Conservatorship program would be required to include data about the number of persons who had been recommended or evaluated for eligibility for the program, as well as the number of persons who are conserved. It would also require information about the number of persons who were subject to detention for evaluation and treatment under Section 5150 of the California Welfare and Institutions Code during the evaluation period.

The Working Group would provide its first evaluation report to the Mayor and the Board of Supervisors by no later than six months after the effective date of the ordinance, and annually thereafter. The Working Group would submit to the Legislature a preliminary report by November 2020, and a final report by November 2022.

Background Information

This legislative digest reflects amendments made at a hearing of the full Board of Supervisors on June 4, 2019.

Notwithstanding State and City laws and programs designed to provide care for persons who are unable to care for themselves, some people fall through the cracks. For example, conservatorships under the Lanterman-Petris-Short Act, Chapter 3 of Part 1 of Division 5 of the California Welfare and Institutions Code ("LPS conservatorships"), do not take into consideration substance use disorders other than alcoholism. Therefore, individuals with a

serious mental illness and co-occurring substance use disorder other than alcohol can be ineligible for LPS conservatorships, notwithstanding their mental health disorder and resulting needs.

Individuals grappling with severe mental illness and a debilitating substance use disorder are often difficult to treat under existing short-term psychiatric programs and outpatient drug treatments available outside of conservatorship; these individuals often cycle in and out of treatment and have difficulty maintaining stable housing. Currently, there is no avenue to conserve individuals in a supportive housing environment that provides wraparound services to those individuals.

On April 2, 2019, the Board of Supervisors held public hearing at which City departments presented a Housing Conservatorship Plan and other information relating to the available resources for the implementation of S.B. 1045.

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