

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 139

AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-3-1-15.5, AS AMENDED BY P.L.72-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 15.5. "Volunteer advocate for **seniors and** incapacitated adults" means an individual who:

- (1) is a volunteer;
- (2) has completed a guardian training program approved by a court;
- (3) is supervised by a volunteer advocates for **seniors and** incapacitated adults program that is appointed by a court to serve as a guardian for **a senior or** an incapacitated person who is at least eighteen (18) years of age; and
- (4) provides reports and makes recommendations to a court.

SECTION 2. IC 29-3-1-16 IS REPEALED [EFFECTIVE JULY 1, 2020]. Sec. 16. "Volunteer advocate for seniors" means an individual who:

- (1) is a volunteer;
- (2) has completed a guardian training program approved by a court;
- (3) is supervised by a volunteer advocates for seniors program that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age;

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and

(4) ~~provides reports and makes recommendations to a court.~~

SECTION 3. IC 29-3-1-17, AS ADDED BY P.L.72-2010, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 17. "Volunteer advocates for **seniors and incapacitated adults program**" means:

- (1) an Indiana nonprofit or municipal corporation;
- (2) a program of an Indiana nonprofit or municipal corporation;
- or
- (3) a program operated by a county or court;

that is appointed by a court to serve as a guardian for **a senior or an incapacitated person who is at least eighteen (18) years of age and trains and supervises volunteers in a court approved guardian program for seniors and incapacitated adults and is certified by the Indiana supreme court as a volunteer advocate for seniors and incapacitated adults program.**

SECTION 4. IC 29-3-1-18 IS REPEALED [EFFECTIVE JULY 1, 2020]. Sec. 18. "Volunteer advocates for seniors program" means:

- (1) ~~an Indiana nonprofit or municipal corporation;~~
- (2) ~~a program of an Indiana nonprofit or municipal corporation;~~
- or
- (3) ~~a program operated by a county or court;~~

that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age and trains and supervises volunteers in a court approved guardian program for incapacitated persons who are at least fifty-five (55) years of age.

SECTION 5. IC 29-3-8.5-1, AS AMENDED BY P.L.72-2010, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. A court in a proceeding under this article may appoint a volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program.

SECTION 6. IC 29-3-8.5-2, AS AMENDED BY P.L.72-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. A volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program shall submit to the court:

- (1) a progress report thirty (30) days after the date of appointment describing:
 - (A) the matters required by the court; and
 - (B) the:
 - (i) current physical and mental condition;
 - (ii) residential placement; ~~and~~



- (iii) person centered care plan; and**
 - ~~(iii)~~ **(iv)** property, and any property related issues;
of the senior or the incapacitated adult;
 - (2) a progress report sixty (60) days after the date of appointment:
 - (A) describing the matters required by the court; and
 - (B) that includes a verified inventory describing the property, and any property related issues, of the incapacitated adult or senior;
 - (3) a progress report or final report ninety (90) days after the date of appointment:
 - (A) describing the matters required by the court; ~~and~~
 - (B) describing the person centered care plan; and**
 - ~~(B)~~ **(C)** making recommendations to the court as to whether the need continues to exist for the appointment of a guardian of the incapacitated adult or senior;
 - (4) an annual progress report on the anniversary date of the appointment if the appointment of the volunteer advocate is continued by the court for more than one (1) year:
 - (A) describing the matters required by the court;
 - (B) describing the:
 - (i) current physical and mental condition;
 - (ii) residential placement; ~~and~~
 - (iii) person centered care plan; and**
 - ~~(iii)~~ **(iv)** property, and any property related issues;
of the senior or the incapacitated adult; and
 - (C) making recommendations to the court as to whether the need continues to exist for the appointment of a guardian of the incapacitated adult or senior; and
 - (5) upon the death of the incapacitated person, a final report and financial accounting:
 - (A) describing the incapacitated person's:
 - (i) final physical and mental condition;
 - (ii) cause of death;
 - (iii) last residential placement; and
 - (iv) final burial arrangements;
 - (B) stating the actions taken by the program regarding the:
 - (i) person's care and custody; and
 - (ii) preservation of the person's property;
 - (C) making recommendations to the court to close the guardianship of the person; and
 - (D) containing all other matters required by the court.

SECTION 7. IC 29-3-8.5-3, AS AMENDED BY P.L.72-2010,



SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) A volunteer advocates for seniors ~~program~~ ~~or a volunteer advocates for~~ **and** incapacitated adults program shall:

- (1) serve as a guardian to represent and protect the best interests of an incapacitated person or senior including the person's property;
- (2) investigate and gather information regarding the health, welfare, and financial circumstances of the incapacitated person or senior, as directed by a court;
- (3) facilitate and authorize health care, social welfare, and residential placement services as needed by the incapacitated person or senior;
- (4) advocate for the rights of the incapacitated person or senior;
- (5) facilitate legal representation for the incapacitated person or senior;
- (6) provide the court with the required reports under section 2 of this chapter; and
- (7) perform any other responsibilities required by the court.

(b) A volunteer advocates for seniors ~~program~~ ~~or a volunteer advocates for~~ **and** incapacitated adults program has the duties of the guardian of a minor listed in IC 29-3-8-1 and IC 29-3-8-3.

SECTION 8. IC 29-3-8.5-4, AS AMENDED BY P.L.83-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) A volunteer advocates for seniors ~~program~~ ~~or a volunteer advocates for~~ **and** incapacitated adults program may:

- (1) consent to ~~medical~~ **health care (as defined in IC 16-36-1-1)** and other professional care and treatment for the incapacitated person's or senior's health and welfare;
- (2) secure the appointment of a guardian or coguardian in another state;
- (3) take custody of the incapacitated person or senior and establish the incapacitated person's or senior's residence within Indiana or another state in accordance with IC 29-3-9-2;
- (4) institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the incapacitated person's or senior's health or welfare;
- (5) protect and preserve the property of the incapacitated person or senior and preserve any property in excess of the incapacitated person's or senior's current needs;
- (6) delegate to the incapacitated person or senior certain responsibilities for decisions affecting the incapacitated person's or senior's business affairs and well-being; and



(7) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person as provided under IC 29-3-9-12.2.

(b) A volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program may exercise the powers of a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.

SECTION 9. IC 29-3-8.5-5, AS AMENDED BY P.L.72-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) If a court appoints a volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program, the initial appointment shall be for a period of ninety (90) days.

(b) After the initial ninety (90) day period, the court may, upon petition by the volunteer advocates for seniors ~~program or volunteer advocates for~~ **and** incapacitated adults program or upon the court's own motion, extend the appointment for a period as determined by the court to be necessary to protect the best interests and property of the incapacitated person or senior.

SECTION 10. IC 29-3-8.5-6, AS AMENDED BY P.L.72-2010, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. A volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program is considered an officer of the court for the purpose of representing the interests of an incapacitated person or senior.

SECTION 11. IC 29-3-8.5-7, AS AMENDED BY P.L.11-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7. The court may appoint an attorney to represent a volunteer advocate for seniors ~~or a volunteer advocate for~~ **and** incapacitated adults.

SECTION 12. IC 29-3-8.5-8, AS AMENDED BY P.L.11-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. Except for gross misconduct:

- (1) a volunteer advocate for seniors ~~program or a volunteer advocate for~~ **and** incapacitated adults program that;
 - (2) an employee of a volunteer advocates for seniors ~~program or a volunteer advocate for~~ **and** incapacitated adults program who;
 - or
 - (3) a volunteer for a volunteer advocates for seniors ~~program or a volunteer advocate for~~ **and** incapacitated adults program who;
- performs duties in good faith is immune from any civil liability resulting from the program's, employee's, or volunteer's performance.



SECTION 13. IC 29-3-8.5-9 IS REPEALED [EFFECTIVE JULY 1, 2020]. Sec. 9: A ~~volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program~~ under this chapter is not authorized to consent to or refuse health care (as defined in ~~IC 16-36-1-1~~) for an individual if:

- (1) a spouse; a parent; an adult child; or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or
- (2) the individual has previously:
 - (A) appointed a health care representative under IC 16-36-1;
 - (B) authorized health care under IC 16-36-1.5; IC 16-36-4; or IC 16-36-5;
 - (C) executed a power of attorney under IC 30-5-4; or
 - (D) had a guardian appointed by the court under IC 29-3.

SECTION 14. IC 29-3-8.5-9.5, AS ADDED BY P.L.72-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 9.5. IC 29-3-8-5 through IC 29-3-8-8 apply to a volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program under this chapter.

SECTION 15. IC 29-3-8.5-10, AS ADDED BY P.L.72-2010, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) A volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program may petition the court for reasonable compensation for services provided or for expenditures made in good faith on behalf of the incapacitated adult or senior.

(b) A court may grant reasonable compensation or expenditure reimbursement to a volunteer advocates for seniors ~~program or a volunteer advocates for~~ **and** incapacitated adults program upon the court's own motion.

SECTION 16. IC 29-3-8.5-11, AS ADDED BY P.L.72-2010, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11. (a) Courts with probate jurisdiction that are located in adjacent counties may establish joint or multiple county volunteer advocates for seniors ~~programs or volunteer advocates for~~ **and** incapacitated adults programs.

(b) Courts with probate jurisdiction may contract with an Indiana nonprofit or municipal corporation to provide volunteer advocates for seniors ~~programs or volunteer advocates for~~ **and** incapacitated adults programs.



SECTION 17. IC 29-3-8.5-12, AS ADDED BY P.L.72-2010, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 12. (a) A volunteer advocates for seniors ~~program or volunteer advocates for~~ **and** incapacitated adults program that is a program of an Indiana nonprofit corporation must establish policies and procedures to avoid a conflict of interest if the nonprofit corporation is also a provider of other necessary services to the incapacitated individual.

(b) A volunteer advocates for seniors ~~program or volunteer advocates for~~ **and** incapacitated adults program to which subsection (a) applies shall advise the court of the policies and procedures established to avoid a conflict of interest in the petition to the court for guardianship of the incapacitated individual.

SECTION 18. IC 29-3-9-2, AS AMENDED BY P.L.11-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. A guardian (other than a temporary guardian) ~~or a volunteer advocate for seniors or a volunteer advocate for~~ **and** incapacitated adults appointed under IC 29-3-8.5 may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place in Indiana or to another state if the court finds that such a change is in the best interests of the protected person. Upon such a change, the guardianship may be limited or terminated by the court.

SECTION 19. IC 34-30-2-125.5, AS AMENDED BY P.L.11-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 125.5. IC 29-3-8.5-8 (Concerning a volunteer advocate for seniors ~~or a volunteer advocate for~~ **and** incapacitated adults).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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