

**210.290 Cabinet may act as fiduciary for certain disabled or partially disabled adult residents -- Duties -- Guardianship trust fund -- Annual report -- Powers.**

- (1) The Cabinet for Health and Family Services may be appointed and act as executor, administrator, guardian, limited guardian, conservator, or limited conservator as provided in this section. In this capacity the cabinet may act as a fiduciary and transact business in the same manner as any individual and for fiduciary purposes may sue and be sued in any of the courts of the state. Bond shall not be required of the cabinet.
- (2)
  - (a) Whenever a resident of the state is adjudged partially disabled or disabled and no other suitable person or entity is available and willing to act as limited guardian, guardian, limited conservator, or conservator, the cabinet may be appointed as the resident's limited guardian, guardian, limited conservator, or conservator. As used in this paragraph, "resident of the state" means an individual who has a permanent, full-time residence in Kentucky prior to the filing of a petition for or appointment of a limited guardian, guardian, limited conservator, or conservator for at least the previous six (6) months that is not a hospital, treatment facility, correctional facility, or long-term care facility, and who is a citizen or permanent resident of the United States.
  - (b) Notwithstanding paragraph (a) of this subsection, except upon written order of the court in exceptional circumstances, the cabinet shall not be appointed as a limited guardian, guardian, limited conservator, or conservator of a partially disabled or disabled person when the person:
    1. Has been convicted of, pled guilty to, or entered an Alford plea for a sex crime as defined in KRS 17.500 or an offense that would classify the person as a violent offender under KRS 439.3401; or
    2. Is not alive or cannot be physically located.
  - (c) Before appointing the cabinet, consideration shall be given to the average caseload of each field social worker.
  - (d) The cabinet, acting through its designated officer, may apply to the District Court of the county in which the adjudication is made for appointment as limited guardian, guardian, limited conservator, or conservator for a partially disabled or disabled person who meets the requirements of this subsection.
- (3) When the cabinet is appointed as a limited guardian, guardian, limited conservator, or conservator of a partially disabled or disabled person, the cabinet shall not:
  - (a) Assume physical custody of the person;
  - (b) Be assigned as the person's caregiver or custodian; or
  - (c) Become personally liable for the person's expenses or placement, or to third parties for the person's actions. However, the cabinet shall procure resources and services for which the person is eligible when necessary and available.
- (4)
  - (a) Except as provided in paragraph (b) of this subsection, upon the death of a person for whom the cabinet has been appointed guardian or conservator, or upon the death of a person who has been committed to the cabinet leaving an estate and having no relatives at the time residing within the state, the cabinet

may apply for appointment as administrator and upon appointment shall close the administration of the estate.

- (b) If a person for whom the cabinet has been appointed guardian or conservator dies with less than ten thousand dollars (\$10,000) of personal property or money, the cabinet shall not be required to apply for appointment as administrator. However, prior to the release of funds to the person's estate, the cabinet shall ensure all outstanding bills related to living expenses, reasonable funeral expenses when not prepaid, and estate recovery are paid. Any funds that remain after those expenses are paid may be released first to other creditors and then to the relatives of the ward. The cabinet shall establish an online registry to provide public notice of remaining funds to other creditors and relatives of the ward, and the process for claiming those funds. Notwithstanding KRS 393.020, if the funds of a ward are less than ten thousand dollars (\$10,000) and remain unclaimed after the expiration of one (1) year from the date public notice is made, the funds shall escheat to the guardianship trust fund established in subsection (5) of this section.
- (5) There is created in the cabinet a trust and agency fund to be known as the guardianship trust fund. The trust shall consist of funds of deceased wards that remain after living, funeral, and estate recovery expenses are paid and that are unclaimed for one (1) year after public notice is made. The trust may also receive donations or grant funds for the support of indigent wards. Notwithstanding KRS 45.229, any unused trust balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year. Any interest earnings of the trust shall become part of the trust and shall not lapse. The trust may make investments as authorized by subsection (7) of this section and may use funds in the trust for the benefit of indigent wards for expenses including:
    - (a) Temporary housing costs;
    - (b) Medical supplies or transportation services not covered by Medicaid;
    - (c) Emergency personal needs, including clothing or food;
    - (d) Burial expenses if no county funds are available in the county of death; and
    - (e) Expenses necessary to ensure health, safety, and well-being when no other funds are available or accessible in a timely manner.
  - (6) The cabinet shall make available an annual report of income and expenditures from the guardianship trust fund. The trust shall be subject to an independent audit at the request of the General Assembly or the State Auditor.
  - (7) The cabinet may invest funds held as fiduciary in bonds or other securities guaranteed by the United States, and may sell or exchange such securities in its discretion. In addition, the cabinet may establish or place funds held as fiduciary in a trust.
  - (8) The cabinet shall receive such fees for its fiduciary services as provided by law. These fees shall be placed in a trust and agency account, from which may be drawn expenses for filing fees, court costs, and other expenses incurred in the administration of estates. Claims of the cabinet against the estates shall be

considered in the same manner as any other claim.

- (9) An officer designated by the secretary may act as legal counsel for any patient in a state mental hospital or institution against whom a suit of any nature has been filed, without being appointed as guardian, limited guardian, conservator, or limited conservator.
- (10) Patients hospitalized pursuant to KRS Chapters 202A and 202B who are not adjudged disabled or partially disabled may authorize the Cabinet for Health and Family Services to handle personal funds received by them at the hospital in the same manner as prescribed in subsections (7) and (8) of this section.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 129, sec. 1, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 13, sec. 1, effective July 14, 2018. -- Amended 2005 Ky. Acts ch. 99, sec. 323, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 268, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 141, sec. 70, effective July 1, 1982. -- Amended 1978 Ky. Acts ch. 290, sec. 1, effective June 17, 1978. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 201, effective January 2, 1978. -- Amended 1976 Ky. Acts ch. 332, sec. 26. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 107(1) and (9). -- Amended 1970 Ky. Acts ch. 278, sec. 2. -- Created 1960 Ky. Acts ch. 64, sec. 9.

**Note:** 1980 Ky. Acts ch. 396, sec. 74 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.