



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4562

Introduced 2/5/2020, by Rep. Thomas M. Bennett

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

from Ch. 110 1/2, par. 11a-17

Amends the Guardians For Adults With Disabilities Article of the Probate Act of 1975. Provides that a guardian shall consider the ward's current preferences to the extent the ward has the ability to participate in decision making when those preferences are known or reasonably ascertainable by the guardian. Provides that decisions by the guardian shall conform to the ward's current preferences unless the guardian reasonably believes that doing so would result in substantial harm to the ward's welfare or personal or financial interests. Provides that if the guardian is unable to ascertain the ward's preferences, then the decisions may be made by conforming as closely as possible to what the ward would have done or intended under the circumstances. Makes conforming changes. Effective immediately.

LRB101 17485 LNS 66895 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Section 11a-17 as follows:

6 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

7 Sec. 11a-17. Duties of personal guardian.

8 (a) To the extent ordered by the court and under the
9 direction of the court, the guardian of the person shall have
10 custody of the ward and the ward's minor and adult dependent
11 children and shall procure for them and shall make provision
12 for their support, care, comfort, health, education and
13 maintenance, and professional services as are appropriate, but
14 the ward's spouse may not be deprived of the custody and
15 education of the ward's minor and adult dependent children,
16 without the consent of the spouse, unless the court finds that
17 the spouse is not a fit and competent person to have that
18 custody and education. The guardian shall assist the ward in
19 the development of maximum self-reliance and independence. The
20 guardian of the person may petition the court for an order
21 directing the guardian of the estate to pay an amount
22 periodically for the provision of the services specified by the
23 court order. If the ward's estate is insufficient to provide

1 for education and the guardian of the ward's person fails to
2 provide education, the court may award the custody of the ward
3 to some other person for the purpose of providing education. If
4 a person makes a settlement upon or provision for the support
5 or education of a ward, the court may make an order for the
6 visitation of the ward by the person making the settlement or
7 provision as the court deems proper. A guardian of the person
8 may not admit a ward to a mental health facility except at the
9 ward's request as provided in Article IV of the Mental Health
10 and Developmental Disabilities Code and unless the ward has the
11 capacity to consent to such admission as provided in Article IV
12 of the Mental Health and Developmental Disabilities Code.

13 (a-3) If a guardian of an estate has not been appointed,
14 the guardian of the person may, without an order of court,
15 open, maintain, and transfer funds to an ABLE account on behalf
16 of the ward and the ward's minor and adult dependent children
17 as specified under Section 16.6 of the State Treasurer Act.

18 (a-5) If the ward filed a petition for dissolution of
19 marriage under the Illinois Marriage and Dissolution of
20 Marriage Act before the ward was adjudicated a person with a
21 disability under this Article, the guardian of the ward's
22 person and estate may maintain that action for dissolution of
23 marriage on behalf of the ward. Upon petition by the guardian
24 of the ward's person or estate, the court may authorize and
25 direct a guardian of the ward's person or estate to file a
26 petition for dissolution of marriage or to file a petition for

1 legal separation or declaration of invalidity of marriage under
2 the Illinois Marriage and Dissolution of Marriage Act on behalf
3 of the ward if the court finds by clear and convincing evidence
4 that the relief sought is in the ward's best interests. In
5 making its determination, the court shall consider the
6 standards set forth in subsection (e) of this Section.

7 (a-10) Upon petition by the guardian of the ward's person
8 or estate, the court may authorize and direct a guardian of the
9 ward's person or estate to consent, on behalf of the ward, to
10 the ward's marriage pursuant to Part II of the Illinois
11 Marriage and Dissolution of Marriage Act if the court finds by
12 clear and convincing evidence that the marriage is in the
13 ward's best interests. In making its determination, the court
14 shall consider the standards set forth in subsection (e) of
15 this Section. Upon presentation of a court order authorizing
16 and directing a guardian of the ward's person and estate to
17 consent to the ward's marriage, the county clerk shall accept
18 the guardian's application, appearance, and signature on
19 behalf of the ward for purposes of issuing a license to marry
20 under Section 203 of the Illinois Marriage and Dissolution of
21 Marriage Act.

22 (b) If the court directs, the guardian of the person shall
23 file with the court at intervals indicated by the court, a
24 report that shall state briefly: (1) the current mental,
25 physical, and social condition of the ward and the ward's minor
26 and adult dependent children; (2) their present living

1 arrangement, and a description and the address of every
2 residence where they lived during the reporting period and the
3 length of stay at each place; (3) a summary of the medical,
4 educational, vocational, and other professional services given
5 to them; (4) a resume of the guardian's visits with and
6 activities on behalf of the ward and the ward's minor and adult
7 dependent children; (5) a recommendation as to the need for
8 continued guardianship; (6) any other information requested by
9 the court or useful in the opinion of the guardian. The Office
10 of the State Guardian shall assist the guardian in filing the
11 report when requested by the guardian. The court may take such
12 action as it deems appropriate pursuant to the report.

13 (c) Absent court order pursuant to the Illinois Power of
14 Attorney Act directing a guardian to exercise powers of the
15 principal under an agency that survives disability, the
16 guardian has no power, duty, or liability with respect to any
17 personal or health care matters covered by the agency. This
18 subsection (c) applies to all agencies, whenever and wherever
19 executed.

20 (d) A guardian acting as a surrogate decision maker under
21 the Health Care Surrogate Act shall have all the rights of a
22 surrogate under that Act without court order including the
23 right to make medical treatment decisions such as decisions to
24 forgo or withdraw life-sustaining treatment. Any decisions by
25 the guardian to forgo or withdraw life-sustaining treatment
26 that are not authorized under the Health Care Surrogate Act

1 shall require a court order. Nothing in this Section shall
2 prevent an agent acting under a power of attorney for health
3 care from exercising his or her authority under the Illinois
4 Power of Attorney Act without further court order, unless a
5 court has acted under Section 2-10 of the Illinois Power of
6 Attorney Act. If a guardian is also a health care agent for the
7 ward under a valid power of attorney for health care, the
8 guardian acting as agent may execute his or her authority under
9 that act without further court order.

10 (e) Decisions made by a guardian on behalf of a ward shall
11 be made in accordance with the following standards for decision
12 making. The guardian shall consider the ward's current
13 preferences to the extent the ward has the ability to
14 participate in decision making when those preferences are known
15 or reasonably ascertainable by the guardian. Decisions by the
16 guardian shall conform to the ward's current preferences unless
17 the guardian reasonably believes that doing so would result in
18 substantial harm to the ward's welfare or personal or financial
19 interests. If the guardian is unable to ascertain the ward's
20 preferences, then the decisions ~~Decisions made by a guardian on~~
21 ~~behalf of a ward~~ may be made by conforming as closely as
22 possible to what the ward, if competent, would have done or
23 intended under the circumstances, taking into account evidence
24 that includes, but is not limited to, the ward's personal,
25 philosophical, religious and moral beliefs, and ethical values
26 relative to the decision to be made by the guardian. Where

1 possible, the guardian shall determine how the ward would have
2 made a decision based on the ward's previously expressed
3 preferences, and make decisions in accordance with the
4 preferences of the ward. If the ward's wishes are unknown and
5 remain unknown after reasonable efforts to discern them, or
6 when the guardian reasonably believes that a decision made in
7 conformity with the ward's preferences would result in
8 substantial harm to the ward's welfare or personal or financial
9 interests, the decision shall be made on the basis of the
10 ward's best interests as determined by the guardian. In
11 determining the ward's best interests, the guardian shall weigh
12 the reason for and nature of the proposed action, the benefit
13 or necessity of the action, the possible risks and other
14 consequences of the proposed action, and any available
15 alternatives and their risks, consequences and benefits, and
16 shall take into account any other information, including the
17 views of family and friends, that the guardian believes the
18 ward would have considered if able to act for herself or
19 himself.

20 (f) Upon petition by any interested person (including the
21 standby or short-term guardian), with such notice to interested
22 persons as the court directs and a finding by the court that it
23 is in the best interest of the person with a disability, the
24 court may terminate or limit the authority of a standby or
25 short-term guardian or may enter such other orders as the court
26 deems necessary to provide for the best interest of the person

1 with a disability. The petition for termination or limitation
2 of the authority of a standby or short-term guardian may, but
3 need not, be combined with a petition to have another guardian
4 appointed for the person with a disability.

5 (g) (1) Unless there is a court order to the contrary, the
6 guardian, consistent with the standards set forth in subsection
7 (e) of this Section, shall use reasonable efforts to notify the
8 ward's known adult children, who have requested notification
9 and provided contact information, of the ward's admission to a
10 hospital or hospice program, the ward's death, and the
11 arrangements for the disposition of the ward's remains.

12 (2) If a guardian unreasonably prevents an adult child,
13 spouse, adult grandchild, parent, or adult sibling of the ward
14 from visiting the ward, the court, upon a verified petition,
15 may order the guardian to permit visitation between the ward
16 and the adult child, spouse, adult grandchild, parent, or adult
17 sibling. In making its determination, the court shall consider
18 the standards set forth in subsection (e) of this Section. The
19 court shall not allow visitation if the court finds that the
20 ward has capacity to evaluate and communicate decisions
21 regarding visitation and expresses a desire not to have
22 visitation with the petitioner. This subsection (g) does not
23 apply to duly appointed public guardians or the Office of State
24 Guardian.

25 (Source: P.A. 100-1054, eff. 1-1-19; 101-329, eff. 8-9-19.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.