



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0266

Introduced 1/29/2021, 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.

LRB102 04304 LNS 14322 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
23 the court order. If the ward's estate is insufficient to

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

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

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

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

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

25 (b) If the court directs, the guardian of the person shall
26 file with the court at intervals indicated by the court, a

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

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

23 (d) A guardian acting as a surrogate decision maker under
24 the Health Care Surrogate Act shall have all the rights of a
25 surrogate under that Act without court order including the
26 right to make medical treatment decisions such as decisions to

1 forgo or withdraw life-sustaining treatment. Any decisions by
2 the guardian to forgo or withdraw life-sustaining treatment
3 that are not authorized under the Health Care Surrogate Act
4 shall require a court order. Nothing in this Section shall
5 prevent an agent acting under a power of attorney for health
6 care from exercising his or her authority under the Illinois
7 Power of Attorney Act without further court order, unless a
8 court has acted under Section 2-10 of the Illinois Power of
9 Attorney Act. If a guardian is also a health care agent for the
10 ward under a valid power of attorney for health care, the
11 guardian acting as agent may execute his or her authority
12 under that act without further court order.

13 (e) Decisions made by a guardian on behalf of a ward shall
14 be made in accordance with the following standards for
15 decision making. The guardian shall consider the ward's
16 current preferences to the extent the ward has the ability to
17 participate in decision making when those preferences are
18 known or reasonably ascertainable by the guardian. Decisions
19 by the guardian shall conform to the ward's current
20 preferences unless the guardian reasonably believes that doing
21 so would result in substantial harm to the ward's welfare or
22 personal or financial interests. If the guardian is unable to
23 ascertain the ward's preferences, then the decisions ~~Decisions~~
24 ~~made by a guardian on behalf of a ward~~ may be made by
25 conforming as closely as possible to what the ward, if
26 competent, would have done or intended under the

1 circumstances, taking into account evidence that includes, but
2 is not limited to, the ward's personal, philosophical,
3 religious and moral beliefs, and ethical values relative to
4 the decision to be made by the guardian. Where possible, the
5 guardian shall determine how the ward would have made a
6 decision based on the ward's previously expressed preferences,
7 and make decisions in accordance with the preferences of the
8 ward. If the ward's wishes are unknown and remain unknown
9 after reasonable efforts to discern them, or if the guardian
10 reasonably believes that a decision made in conformity with
11 the ward's preferences would result in substantial harm to the
12 ward's welfare or personal or financial interests, the
13 decision shall be made on the basis of the ward's best
14 interests as determined by the guardian. In determining the
15 ward's best interests, the guardian shall weigh the reason for
16 and nature of the proposed action, the benefit or necessity of
17 the action, the possible risks and other consequences of the
18 proposed action, and any available alternatives and their
19 risks, consequences and benefits, and shall take into account
20 any other information, including the views of family and
21 friends, that the guardian believes the ward would have
22 considered if able to act for herself or himself.

23 (f) Upon petition by any interested person (including the
24 standby or short-term guardian), with such notice to
25 interested persons as the court directs and a finding by the
26 court that it is in the best interest of the person with a

1 disability, the court may terminate or limit the authority of
2 a standby or short-term guardian or may enter such other
3 orders as the court deems necessary to provide for the best
4 interest of the person with a disability. The petition for
5 termination or limitation of the authority of a standby or
6 short-term guardian may, but need not, be combined with a
7 petition to have another guardian appointed for the person
8 with a disability.

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

17 (2) If a guardian unreasonably prevents an adult child,
18 spouse, adult grandchild, parent, or adult sibling of the ward
19 from visiting the ward, the court, upon a verified petition,
20 may order the guardian to permit visitation between the ward
21 and the adult child, spouse, adult grandchild, parent, or
22 adult sibling. In making its determination, the court shall
23 consider the standards set forth in subsection (e) of this
24 Section. The court shall not allow visitation if the court
25 finds that the ward has capacity to evaluate and communicate
26 decisions regarding visitation and expresses a desire not to

1 have visitation with the petitioner. This subsection (g) does
2 not apply to duly appointed public guardians or the Office of
3 State Guardian.

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

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.