



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB6317

by Rep. Jil Tracy

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

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

Amends the Probate Act of 1975. Provides that upon petition by an adult child, the court may order the guardian to permit visitation between the ward and the adult child if the court finds that the visitation is in the ward's best interests. Provides that the court shall order the guardian to keep the adult children of the ward informed of hospitalizations of the ward, the death of the ward, and burial arrangements for the ward unless the court finds on its own motion or upon petition by the guardian that limiting such disclosure is in the best interests of the ward. Provides that if the issue of whether disclosure is in the best interests of the ward, the adult child has the right to a hearing upon the issue of whether to limit disclosure.

LRB098 22796 HEP 61743 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-5) If the ward filed a petition for dissolution of  
14 marriage under the Illinois Marriage and Dissolution of  
15 Marriage Act before the ward was adjudicated a disabled person  
16 under this Article, the guardian of the ward's person and  
17 estate may maintain that action for dissolution of marriage on  
18 behalf of the ward. Upon petition by the guardian of the ward's  
19 person or estate, the court may authorize and direct a guardian  
20 of the ward's person or estate to file a petition for  
21 dissolution of marriage or to file a petition for legal  
22 separation or declaration of invalidity of marriage under the  
23 Illinois Marriage and Dissolution of Marriage Act on behalf of  
24 the ward if the court finds by clear and convincing evidence  
25 that the relief sought is in the ward's best interests. In  
26 making its determination, the court shall consider the

1 standards set forth in subsection (e) of this Section.

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

17 (b) If the court directs, the guardian of the person shall  
18 file with the court at intervals indicated by the court, a  
19 report that shall state briefly: (1) the current mental,  
20 physical, and social condition of the ward and the ward's minor  
21 and adult dependent children; (2) their present living  
22 arrangement, and a description and the address of every  
23 residence where they lived during the reporting period and the  
24 length of stay at each place; (3) a summary of the medical,  
25 educational, vocational, and other professional services given  
26 to them; (4) a resume of the guardian's visits with and

1 activities on behalf of the ward and the ward's minor and adult  
2 dependent children; (5) a recommendation as to the need for  
3 continued guardianship; (6) any other information requested by  
4 the court or useful in the opinion of the guardian. The Office  
5 of the State Guardian shall assist the guardian in filing the  
6 report when requested by the guardian. The court may take such  
7 action as it deems appropriate pursuant to the report.

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

15 (d) A guardian acting as a surrogate decision maker under  
16 the Health Care Surrogate Act shall have all the rights of a  
17 surrogate under that Act without court order including the  
18 right to make medical treatment decisions such as decisions to  
19 forgo or withdraw life-sustaining treatment. Any decisions by  
20 the guardian to forgo or withdraw life-sustaining treatment  
21 that are not authorized under the Health Care Surrogate Act  
22 shall require a court order. Nothing in this Section shall  
23 prevent an agent acting under a power of attorney for health  
24 care from exercising his or her authority under the Illinois  
25 Power of Attorney Act without further court order, unless a  
26 court has acted under Section 2-10 of the Illinois Power of

1 Attorney Act. If a guardian is also a health care agent for the  
2 ward under a valid power of attorney for health care, the  
3 guardian acting as agent may execute his or her authority under  
4 that act without further court order.

5 (e) Decisions made by a guardian on behalf of a ward shall  
6 be made in accordance with the following standards for decision  
7 making. Decisions made by a guardian on behalf of a ward may be  
8 made by conforming as closely as possible to what the ward, if  
9 competent, would have done or intended under the circumstances,  
10 taking into account evidence that includes, but is not limited  
11 to, the ward's personal, philosophical, religious and moral  
12 beliefs, and ethical values relative to the decision to be made  
13 by the guardian. Where possible, the guardian shall determine  
14 how the ward would have made a decision based on the ward's  
15 previously expressed preferences, and make decisions in  
16 accordance with the preferences of the ward. If the ward's  
17 wishes are unknown and remain unknown after reasonable efforts  
18 to discern them, the decision shall be made on the basis of the  
19 ward's best interests as determined by the guardian. In  
20 determining the ward's best interests, the guardian shall weigh  
21 the reason for and nature of the proposed action, the benefit  
22 or necessity of the action, the possible risks and other  
23 consequences of the proposed action, and any available  
24 alternatives and their risks, consequences and benefits, and  
25 shall take into account any other information, including the  
26 views of family and friends, that the guardian believes the

1 ward would have considered if able to act for herself or  
2 himself.

3 (f) Upon petition by any interested person (including the  
4 standby or short-term guardian), with such notice to interested  
5 persons as the court directs and a finding by the court that it  
6 is in the best interest of the disabled person, the court may  
7 terminate or limit the authority of a standby or short-term  
8 guardian or may enter such other orders as the court deems  
9 necessary to provide for the best interest of the disabled  
10 person. The petition for termination or limitation of the  
11 authority of a standby or short-term guardian may, but need  
12 not, be combined with a petition to have another guardian  
13 appointed for the disabled person.

14 (g) Upon petition by an adult child, the court may order  
15 the guardian to permit visitation between the ward and the  
16 adult child if the court finds that the visitation is in the  
17 ward's best interests.

18 (h) The court shall order the guardian to keep the adult  
19 children of the ward informed of hospitalizations of the ward,  
20 the death of the ward, and burial arrangements for the ward  
21 unless the court finds on its own motion or upon petition by  
22 the guardian that limiting the disclosure required by this  
23 subsection (h) is in the best interests of the ward. If the  
24 issue of whether disclosure under this subsection (h) is in the  
25 best interests of the ward, the adult child has the right to a  
26 hearing upon the issue of whether to limit disclosure under

1 this subsection (h).

2 (Source: P.A. 98-1107, eff. 8-26-14.)