



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4569

by Rep. David Harris

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-17

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

Amends the Probate Act of 1975. Provides that unless a guardian of the person of a disabled adult is specifically authorized by court order, the guardian may not restrict a ward's right of communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail. Provides that if a ward is incapacitated and unable to express consent to communication, visitation, or interaction with a person due to a physical or mental condition, then consent of the incapacitated ward may be presumed based on the incapacitated ward's prior relationship history with the person. Provides that the court may, upon motion by the guardian and good cause shown, place restrictions on a person's ability to communicate, visit, or interact with an incapacitated ward. Effective January 1, 2017.

LRB099 19423 HEP 43815 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) Unless specifically authorized by court order, a
14 guardian may not restrict a ward's right of communication,
15 visitation, or interaction with other persons, including the
16 right to receive visitors, telephone calls, or personal mail.
17 If a ward is incapacitated and unable to express consent to
18 communication, visitation, or interaction with a person due to
19 a physical or mental condition, then consent of the
20 incapacitated ward may be presumed based on the incapacitated
21 ward's prior relationship history with the person. The court
22 may, upon motion by the guardian and good cause shown, place
23 restrictions on a person's ability to communicate, visit, or
24 interact with an incapacitated ward.

25 (a-5) If the ward filed a petition for dissolution of
26 marriage under the Illinois Marriage and Dissolution of

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

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

1 under Section 203 of the Illinois Marriage and Dissolution of
2 Marriage Act.

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

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

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

17 (e) Decisions made by a guardian on behalf of a ward shall
18 be made in accordance with the following standards for decision
19 making. Decisions made by a guardian on behalf of a ward may be
20 made by conforming as closely as possible to what the ward, if
21 competent, would have done or intended under the circumstances,
22 taking into account evidence that includes, but is not limited
23 to, the ward's personal, philosophical, religious and moral
24 beliefs, and ethical values relative to the decision to be made
25 by the guardian. Where possible, the guardian shall determine
26 how the ward would have made a decision based on the ward's

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

15 (f) Upon petition by any interested person (including the
16 standby or short-term guardian), with such notice to interested
17 persons as the court directs and a finding by the court that it
18 is in the best interest of the person with a disability, the
19 court may terminate or limit the authority of a standby or
20 short-term guardian or may enter such other orders as the court
21 deems necessary to provide for the best interest of the person
22 with a disability. The petition for termination or limitation
23 of the authority of a standby or short-term guardian may, but
24 need not, be combined with a petition to have another guardian
25 appointed for the person with a disability.

26 (Source: P.A. 98-1107, eff. 8-26-14; 99-143, eff. 7-27-15.)

1 Section 99. Effective date. This Act takes effect January
2 1, 2017.