

AN ACT concerning regulation.

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

Section 5. The Probate Act of 1975 is amended by changing Sections 11a-5, 11a-15, and 23-2 and by adding Section 11a-26 as follows:

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

Sec. 11a-5. Who may act as guardian.

(a) A person is qualified to act as guardian of the person and as guardian of the estate of a person with a disability if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the person with a disability and that the proposed guardian:

- (1) has attained the age of 18 years;
- (2) is a resident of the United States;
- (3) is not of unsound mind;
- (4) is not an adjudged person with a disability as defined in this Act; and
- (5) has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the best interests of the person with a disability, and as part of the best interests determination, the court has considered the nature of the

offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a minor or an elderly person or a person with a disability, including a felony sexual offense.

(b) Any public agency, private professional guardian as defined in Section 11a-26, or not-for-profit corporation found capable by the court of providing an active and suitable program of guardianship for the person with a disability, taking into consideration the nature of such person's disability and the nature of such organization's services, may be appointed guardian of the person or of the estate, or both, of the person with a disability. The court shall not appoint as guardian an agency or employee of an agency that is directly providing residential services to the ward. One person or agency may be appointed guardian of the person and another person or agency appointed guardian of the estate.

(b-5)(1) The court may appoint separate individuals or entities that are qualified to act as guardian under subsection (b) or (c) to act as the guardian of the person and the guardian of the estate of a person with a disability if the court finds it is in the best interests of the person with a disability that separate guardians be appointed. The court shall not appoint a separate person or entity to act as guardian of the person or guardian of the estate with a public guardian or the Office of State Guardian unless the public

guardian or the Office of State Guardian agrees to such an appointment.

(2) The court may appoint co-guardians to act as guardian of the person, guardian of the estate, or both the guardian of the person and the guardian of the estate if the court finds it is in the best interests of the person with a disability. When considering appointing co-guardians, the court shall consider the proposed co-guardians' history of cooperating and working together on behalf of the person with a disability. The court shall appoint only co-guardians who agree to serve together. The court shall not appoint a public guardian or the Office of State Guardian as a co-guardian for a person with a disability.

(c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian or limited guardian of the estate of a person with a disability.

(Source: P.A. 102-72, eff. 1-1-22.)

(755 ILCS 5/11a-15) (from Ch. 110 1/2, par. 11a-15)

Sec. 11a-15. Successor guardian.

(a) Upon the death, incapacity, resignation, or removal of a guardian of the estate or person of a living ward, the court shall appoint a successor guardian or terminate the adjudication of disability. The powers and duties of the successor guardian shall be the same as those of the predecessor guardian unless otherwise modified.

(b) Notice of the time and place of the hearing on a petition for the appointment of a successor guardian shall be given not less than 3 days before the hearing for a successor to a temporary guardian and not less than 14 days before the hearing for a successor to a limited or plenary guardian. The notice shall be by mail or in person to the alleged person with a disability, to the proposed successor guardian, and to those persons whose names and addresses are listed in the petition for adjudication of disability and appointment of a guardian under Section 11a-8. The court, upon a finding of good cause, may waive the notice requirement under this Section.

(c) Notwithstanding the notice requirement in subsection (b), if a private professional guardian is serving as a limited or plenary guardian of a person with a disability and intends to name the Office of State Guardian or public guardian as successor, notice shall be provided to the court and the Office of State Guardian or a public guardian not less than 60 days before the hearing for a successor to a limited or plenary guardian. If the assets of the person with a disability at the time of the appointment of the limited or plenary guardian do not exceed the estimated amount necessary for funding of the needs of the person with a disability for a period of 60 days, this subsection does not apply. This subsection does not apply to temporary guardians or when guardianship services are paid for by a hospital licensed under the Hospital Licensing Act or the University of Illinois

Hospital Act.

(Source: P.A. 103-740, eff. 1-1-25; 104-417, eff. 8-15-25.)

(755 ILCS 5/11a-26 new)

Sec. 11a-26. Private professional guardian.

(a) As used in this Act, "private professional guardian" means:

(1) a person who receives compensation for services as a guardian to 5 or more persons with disabilities who are not related to the guardian by blood or marriage; or

(2) a not-for-profit corporation qualified to act as guardian under Section 11a-5, including that corporation's officers, directors, employees, and agents.

"Private professional guardian" does not include a government agency, the Office of State Guardian, a public guardian, a corporation qualified to accept and execute trusts in this State, or a financial institution as defined by Section 2 of the Illinois Banking Act.

(b) A petitioner who nominates a private professional guardian to be appointed as temporary, limited, or plenary guardian for a person with a disability shall (i) attach an affidavit to the petition for guardianship stating the petitioner's efforts to contact the respondent's nearest relatives as defined in subsection (e) of Section 11a-8, agent under power of attorney, or other fiduciaries regarding the respondent's need for a guardian, if known or reasonably

ascertainable, and (ii) provide notice of the petition for guardianship to the public guardian. This subsection does not apply if a family member of the respondent nominates a private professional guardian.

(c) A private professional guardian may be appointed as guardian if, in addition to meeting the requirements of subsection (a) or (b) of Section 11a-5, that guardian complies with the following requirements:

(1)(i) The private professional guardian will personally meet with and assess the respondent before or as soon as feasible after the appointment; (ii) evaluate what is the least restrictive form of guardianship that is appropriate; and (iii) evaluate options regarding the respondent's living arrangements including community-based, least restrictive living settings that incorporate the respondent's values, preferences, and known wishes.

(2) The president, director, or other corporate officer of a not-for-profit corporation qualified to act as guardian in accordance with subsection (b) of Section 11a-5 shall be named in the order appointing that private professional guardian as guardian of a person with a disability.

(3) A private professional guardian may not:

(i) have any direct or indirect beneficial interest, financial or otherwise, in entities or

corporations that transact business with the estate or receive benefits, including referral fees, from persons, entities, or corporations that transact business with the estate or on behalf of the person under its guardianship, excluding any fixed salary received from its employer;

(ii) own, acquire, or possess any pecuniary interest adverse to the persons or estates under its guardianship; or

(iii) on behalf of a person with a disability under its guardianship, directly or indirectly purchase, rent, lease, or sell any property or service from or to any business entity in which the private professional guardian, a spouse, or an immediate family or household member is an owner, officer, partner, director, shareholder, or retains a financial interest.

(4) Within 2 years of the effective date of the amendatory Act of the 104th General Assembly, a person or the president, director, or chief executive officer of a not-for-profit corporation who serves as a private professional guardian shall be certified as a national master guardian or a national certified guardian by the Center for Guardianship Certification or its successor organization. Within 2 years of the effective date of the amendatory Act, employees of the private professional

guardian who are responsible for exercising the guardian's powers and duties as guardian of a person with a disability shall be certified as national certified guardians by the Center for Guardianship Certification or its successor organization.

(5) Use sound fiscal controls and policies in managing the estates under its guardianship and, for a private professional guardian that manages, in the aggregate, more than \$1 million of assets as a guardian of persons with a disability, arrange for an independent audit by a qualified examiner of its financial records on an annual basis. This report shall be made available to any court presiding over any persons with disabilities for whom the private professional guardian serves as guardian.

(6) File an annual sworn statement affirming continued compliance with paragraph (3) of subsection (c) of this Section.

(7) Maintain a current fee schedule that sets forth information about its hourly rate, costs for its most common and anticipated services such as case management, social work, property management, and such other services as may be appropriate. The fee schedule shall be provided to the court before the appointment of the private professional guardian as guardian of a person with a disability.

(8) Upon presentation of its initial inventory and

with every annual account thereafter, file a budget with the court that outlines the annual anticipated estate expenses that also includes a statement estimating the length of time the estate of the person with a disability can afford the services of the private professional guardian before the estate is depleted.

The private professional guardian shall promptly notify the court at such time that it estimates the estate of the person with a disability can no longer afford the services of the private professional guardian or, if the sale of respondent's residence would be required for the continued services of a private professional guardian, within 36 months or less. Upon providing the notification, the private professional guardian shall also present a transition plan for the guardianship of the person with a disability.

(d) Upon appointment and annually thereafter, a private professional guardian acting as temporary, limited, or plenary guardian of a person with a disability shall file an affidavit with the court stating that all of its officers, directors, and employees who are responsible for exercising the guardian's powers and duties as guardian of a person with a disability have, within 5 years of the affidavit filing date, undergone an Illinois State Police background check. This background check shall include a State criminal history, a national criminal history, and the Child Abuse and Neglect

Tracking System and be found to be in compliance with paragraph (5) of subsection (a) of Section 11a-5. The private professional guardian shall pay any fees and costs associated with the background checks.

(e) In addition to taking into consideration the requirements set forth in this Section and in Section 11a-12, the court may appoint a private professional guardian as guardian for a person with a disability only upon a finding that the appointment is in the best interests of the person with a disability, taking into consideration the respondent's immediate need for timely medical decision-making including, but not limited to, discharge planning and costs to the estate in appointing a private professional guardian as compared to other available and appropriate options.

(755 ILCS 5/23-2) (from Ch. 110 1/2, par. 23-2)

Sec. 23-2. Removal.

(a) On petition of any interested person or on the court's own motion, the court may remove a representative if:

(1) the representative is acting under letters secured by false pretenses;

(2) the representative is adjudged a person subject to involuntary admission under the Mental Health and Developmental Disabilities Code or is adjudged a person with a disability;

(3) the representative is convicted of a felony;

(4) the representative wastes or mismanages the estate;

(5) the representative conducts himself or herself in such a manner as to endanger any co-representative or the surety on the representative's bond;

(6) the representative fails to give sufficient bond or security, counter security or a new bond, after being ordered by the court to do so;

(7) the representative fails to file an inventory or accounting after being ordered by the court to do so;

(8) the representative conceals himself or herself so that process cannot be served upon the representative or notice cannot be given to the representative;

(9) the representative becomes incapable of or unsuitable for the discharge of the representative's duties; ~~or~~

(10) the representative is a private professional guardian that fails to comply with the requirements of Section 11a-26; or

(11) ~~(10)~~ there is other good cause.

(b) If the representative becomes a nonresident of the United States, the court may remove the representative as such representative.

(Source: P.A. 99-143, eff. 7-27-15.)