



Rep. Martha Deuter

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10400HB3811ham002

LRB104 10924 JRC 36602 a

1 AMENDMENT TO HOUSE BILL 3811

2 AMENDMENT NO. _____. Amend House Bill 3811, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

8 (755 ILCS 5/11a-5) (from Ch. 110 1/2, par. 11a-5)

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

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

15 (1) has attained the age of 18 years;

16 (2) is a resident of the United States;

1 (3) is not of unsound mind;

2 (4) is not an adjudged person with a disability as
3 defined in this Act; and

4 (5) has not been convicted of a felony, unless the
5 court finds appointment of the person convicted of a
6 felony to be in the best interests of the person with a
7 disability, and as part of the best interests
8 determination, the court has considered the nature of the
9 offense, the date of offense, and the evidence of the
10 proposed guardian's rehabilitation. No person shall be
11 appointed who has been convicted of a felony involving
12 harm or threat to a minor or an elderly person or a person
13 with a disability, including a felony sexual offense.

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

26 (b-5) (1) The court may appoint separate individuals or

1 entities that are qualified to act as guardian under
2 subsection (b) or (c) to act as the guardian of the person and
3 the guardian of the estate of a person with a disability if the
4 court finds it is in the best interests of the person with a
5 disability that separate guardians be appointed. The court
6 shall not appoint a separate person or entity to act as
7 guardian of the person or guardian of the estate with a public
8 guardian or the Office of State Guardian unless the public
9 guardian or the Office of State Guardian agrees to such an
10 appointment.

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

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

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

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

2 Sec. 11a-15. Successor guardian.

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

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

20 (c) Notwithstanding the notice requirement in subsection
21 (b), if a private professional guardian is serving as a
22 limited or plenary guardian of a person with a disability and
23 intends to name the Office of State Guardian or public
24 guardian as successor, notice shall be provided to the court
25 and the Office of State Guardian or a public guardian not less
26 than 120 days before the hearing for a successor to a limited

1 or plenary guardian. If the assets of the person with a
2 disability at the time of the appointment of the limited or
3 plenary guardian do not exceed the estimated amount necessary
4 for funding of the needs of the person with a disability for a
5 period of 120 days, this subsection does not apply. This
6 subsection does not apply to temporary guardians.

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

8 (755 ILCS 5/11a-26 new)

9 Sec. 11a-26. Private professional guardian.

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

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

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

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

24 (b) A petitioner who nominates a private professional
25 guardian to be appointed as temporary, limited, or plenary

1 guardian for a person with a disability shall (i) attach an
2 affidavit to the petition for guardianship stating the
3 petitioner's efforts to contact the respondent's nearest
4 relatives as defined in subsection (e) of Section 11a-8, agent
5 under power of attorney, or other fiduciaries regarding the
6 respondent's need for a guardian, if known or reasonably
7 ascertainable, and (ii) provide notice of the petition for
8 guardianship to the public guardian. This subsection does not
9 apply if a family member of the respondent nominates a private
10 professional guardian.

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

15 (1) Before being appointed as guardian for a person
16 with a disability, the private professional guardian shall
17 certify, in open court or by affidavit: (i) that the
18 private professional guardian has personally met with and
19 assessed the respondent or, if not reasonably possible,
20 consistent with the National Guardianship Association
21 Standards of Practice, certify that the private
22 professional guardian will meet with the respondent as
23 soon as feasible after the appointment; (ii) that it is in
24 the best interests of the respondent that a guardian be
25 appointed and what is the least restrictive form of
26 guardianship that is appropriate; and (iii) an initial

1 evaluation of options regarding the respondent's living
2 arrangements including community-based, least restrictive
3 living settings that incorporate the respondent's values,
4 preferences, and known wishes. The court may waive the
5 requirements of this subsection upon good cause being
6 shown by the petitioner.

7 (2) The president, director, or other corporate
8 officer of a not-for-profit corporation qualified to act
9 as guardian in accordance with subsection (b) of Section
10 11a-5 shall be named in the order appointing that private
11 professional guardian as guardian of a person with a
12 disability.

13 (3) A private professional guardian may not:

14 (i) have any direct or indirect beneficial
15 interest, financial or otherwise, in entities or
16 corporations that transact business with the estate or
17 receive benefits, including referral fees, from
18 persons, entities, or corporations that transact
19 business with the estate or on behalf of the person
20 under its guardianship, excluding any fixed salary
21 received from its employer;

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

25 (iii) on behalf of a person with a disability
26 under its guardianship, directly or indirectly

1 purchase, rent, lease, or sell any property or service
2 from or to any business entity in which the private
3 professional guardian, a spouse, or an immediate
4 family or household member is an owner, officer,
5 partner, director, shareholder, or retains a financial
6 interest.

7 (4) Within 2 years of the effective date of the
8 amendatory Act of the 104th General Assembly, a person or
9 the president, director, or chief executive officer of a
10 not-for-profit corporation who serves as a private
11 professional guardian shall be certified as a national
12 master guardian or a national certified guardian by the
13 Center for Guardianship Certification or its successor
14 organization. Within 2 years of the effective date of the
15 amendatory Act, employees of the private professional
16 guardian who are responsible for exercising the guardian's
17 powers and duties as guardian of a person with a
18 disability shall be certified as national certified
19 guardians by the Center for Guardianship Certification or
20 its successor organization.

21 (5) Use sound fiscal controls and policies in managing
22 the estates under its guardianship and, for a private
23 professional guardian that manages, in the aggregate, more
24 than \$1 million of assets as a guardian of persons with a
25 disability, arrange for an independent audit by a
26 qualified examiner of its financial records on an annual

1 basis. This report shall be made available to any court
2 presiding over any persons with disabilities for whom the
3 private professional guardian serves as guardian.

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

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

15 (8) Upon presentation of its initial inventory and
16 with every annual account thereafter, file a budget with
17 the court that outlines the annual anticipated estate
18 expenses that also includes a statement estimating the
19 length of time the estate of the person with a disability
20 can afford the services of the private professional
21 guardian before the estate is depleted.

22 The private professional guardian shall promptly
23 notify the court at such time that it estimates the estate
24 of the person with a disability can no longer afford the
25 services of the private professional guardian or, if the
26 sale of respondent's residence would be required for the

1 continued services of a private professional guardian,
2 within 36 months or less. Upon providing the notification,
3 the private professional guardian shall also present a
4 transition plan for the guardianship of the person with a
5 disability.

6 (d) Upon appointment and annually thereafter, a private
7 professional guardian acting as temporary, limited, or plenary
8 guardian of a person with a disability shall file an affidavit
9 with the court stating that all of its officers, directors,
10 and employees who are responsible for exercising the
11 guardian's powers and duties as guardian of a person with a
12 disability have, within 5 years of the affidavit filing date,
13 undergone an Illinois State Police background check. This
14 background check shall include a State criminal history, a
15 national criminal history, and the Child Abuse and Neglect
16 Tracking System and be found to be in compliance with
17 paragraph (5) of subsection (a) of Section 11a-5. The private
18 professional guardian shall pay any fees and costs associated
19 with the background checks.

20 (e) In addition to taking into consideration the
21 requirements set forth in this Section and in Section 11a-12,
22 the court may appoint a private professional guardian as
23 guardian for a person with a disability only upon a finding
24 that the appointment is in the best interests of the person
25 with a disability, taking into consideration the respondent's
26 immediate need for timely medical decision-making including,

1 but not limited to, discharge planning and costs to the estate
2 in appointing a private professional guardian as compared to
3 other available and appropriate options.

4 (755 ILCS 5/23-2) (from Ch. 110 1/2, par. 23-2)

5 Sec. 23-2. Removal.

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

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

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

14 (3) the representative is convicted of a felony;

15 (4) the representative wastes or mismanages the
16 estate;

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

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

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

25 (8) the representative conceals himself or herself so

1 that process cannot be served upon the representative or
2 notice cannot be given to the representative;

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

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

9 (11) ~~(10)~~ there is other good cause.

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

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