



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2796

Introduced 2/4/2020, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-9
755 ILCS 5/11a-18

from Ch. 110 1/2, par. 11a-9
from Ch. 110 1/2, par. 11a-18

Amends the Guardians for Adults with Disabilities Article of the Probate Act of 1975. Provides that one of the persons who performed the evaluations upon which the report relating to the adjudication of disability is based shall be a licensed physician or a licensed clinical psychologist (rather than "shall be a licensed physician"). Provides that the report in support of a verified petition to allow a ward to execute a will or codicil may be from a licensed clinical psychologist (rather than only a current physician).

LRB101 17272 LNS 66677 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 Sections 11a-9 and 11a-18 as follows:

6 (755 ILCS 5/11a-9) (from Ch. 110 1/2, par. 11a-9)
7 Sec. 11a-9. Report.)

8 (a) The petition for adjudication of disability and for
9 appointment of a guardian should be accompanied by a report
10 which contains (1) a description of the nature and type of the
11 respondent's disability and an assessment of how the disability
12 impacts on the ability of the respondent to make decisions or
13 to function independently; (2) an analysis and results of
14 evaluations of the respondent's mental and physical condition
15 and, where appropriate, educational condition, adaptive
16 behavior and social skills, which have been performed within 3
17 months of the date of the filing of the petition; (3) an
18 opinion as to whether guardianship is needed, the type and
19 scope of the guardianship needed, and the reasons therefor; (4)
20 a recommendation as to the most suitable living arrangement
21 and, where appropriate, treatment or habilitation plan for the
22 respondent and the reasons therefor; (5) the name, business
23 address, business telephone number, and signatures of all

1 persons who performed the evaluations upon which the report is
2 based, one of whom shall be a licensed physician or a licensed
3 clinical psychologist, and a statement of the certification,
4 license, or other credentials that qualify the evaluators who
5 prepared the report.

6 (b) If for any reason no report accompanies the petition,
7 the court shall order appropriate evaluations to be performed
8 by a qualified person or persons and a report prepared and
9 filed with the court at least 10 days prior to the hearing.

10 (b-5) Upon oral or written motion by the respondent or the
11 guardian ad litem or upon the court's own motion, the court
12 shall appoint one or more independent experts to examine the
13 respondent. Upon the filing with the court of a verified
14 statement of services rendered by the expert or experts, the
15 court shall determine a reasonable fee for the services
16 performed. If the respondent is unable to pay the fee, the
17 court may enter an order upon the petitioner to pay the entire
18 fee or such amount as the respondent is unable to pay. However,
19 in cases where the Office of State Guardian is the petitioner,
20 consistent with Section 30 of the Guardianship and Advocacy
21 Act, no expert services fees shall be assessed against the
22 Office of the State Guardian.

23 (c) Unless the court otherwise directs, any report prepared
24 pursuant to this Section shall not be made part of the public
25 record of the proceedings but shall be available to the court
26 or an appellate court in which the proceedings are subject to

1 review, to the respondent, the petitioner, the guardian, and
2 their attorneys, to the respondent's guardian ad litem, and to
3 such other persons as the court may direct.

4 (Source: P.A. 98-1094, eff. 1-1-15.)

5 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

6 Sec. 11a-18. Duties of the estate guardian.

7 (a) To the extent specified in the order establishing the
8 guardianship, the guardian of the estate shall have the care,
9 management and investment of the estate, shall manage the
10 estate frugally and shall apply the income and principal of the
11 estate so far as necessary for the comfort and suitable support
12 and education of the ward, his minor and adult dependent
13 children, and persons related by blood or marriage who are
14 dependent upon or entitled to support from him, or for any
15 other purpose which the court deems to be for the best
16 interests of the ward, and the court may approve the making on
17 behalf of the ward of such agreements as the court determines
18 to be for the ward's best interests. The guardian may make
19 disbursement of his ward's funds and estate directly to the
20 ward or other distributee or in such other manner and in such
21 amounts as the court directs. If the estate of a ward is
22 derived in whole or in part from payments of compensation,
23 adjusted compensation, pension, insurance or other similar
24 benefits made directly to the estate by the Veterans
25 Administration, notice of the application for leave to invest

1 or expend the ward's funds or estate, together with a copy of
2 the petition and proposed order, shall be given to the
3 Veterans' Administration Regional Office in this State at least
4 7 days before the hearing on the application.

5 (a-5) The probate court, upon petition of a guardian, other
6 than the guardian of a minor, and after notice to all other
7 persons interested as the court directs, may authorize the
8 guardian to exercise any or all powers over the estate and
9 business affairs of the ward that the ward could exercise if
10 present and not under disability. The court may authorize the
11 taking of an action or the application of funds not required
12 for the ward's current and future maintenance and support in
13 any manner approved by the court as being in keeping with the
14 ward's wishes so far as they can be ascertained. The court must
15 consider the permanence of the ward's disabling condition and
16 the natural objects of the ward's bounty. In ascertaining and
17 carrying out the ward's wishes the court may consider, but
18 shall not be limited to, minimization of State or federal
19 income, estate, or inheritance taxes; and providing gifts to
20 charities, relatives, and friends that would be likely
21 recipients of donations from the ward. The ward's wishes as
22 best they can be ascertained shall be carried out, whether or
23 not tax savings are involved. Actions or applications of funds
24 may include, but shall not be limited to, the following:

25 (1) making gifts of income or principal, or both, of
26 the estate, either outright or in trust;

1 (2) conveying, releasing, or disclaiming his or her
2 contingent and expectant interests in property, including
3 marital property rights and any right of survivorship
4 incident to joint tenancy or tenancy by the entirety;

5 (3) releasing or disclaiming his or her powers as
6 trustee, personal representative, custodian for minors, or
7 guardian;

8 (4) exercising, releasing, or disclaiming his or her
9 powers as donee of a power of appointment;

10 (5) entering into contracts;

11 (6) creating for the benefit of the ward or others,
12 revocable or irrevocable trusts of his or her property that
13 may extend beyond his or her disability or life;

14 (7) exercising options of the ward to purchase or
15 exchange securities or other property;

16 (8) exercising the rights of the ward to elect benefit
17 or payment options, to terminate, to change beneficiaries
18 or ownership, to assign rights, to borrow, or to receive
19 cash value in return for a surrender of rights under any
20 one or more of the following:

21 (i) life insurance policies, plans, or benefits,

22 (ii) annuity policies, plans, or benefits,

23 (iii) mutual fund and other dividend investment
24 plans,

25 (iv) retirement, profit sharing, and employee
26 welfare plans and benefits;

1 (9) exercising his or her right to claim or disclaim an
2 elective share in the estate of his or her deceased spouse
3 and to renounce any interest by testate or intestate
4 succession or by inter vivos transfer;

5 (10) changing the ward's residence or domicile; or

6 (11) modifying by means of codicil or trust amendment
7 the terms of the ward's will or any revocable trust created
8 by the ward, as the court may consider advisable in light
9 of changes in applicable tax laws.

10 The guardian in his or her petition shall briefly outline
11 the action or application of funds for which he or she seeks
12 approval, the results expected to be accomplished thereby, and
13 the tax savings, if any, expected to accrue. The proposed
14 action or application of funds may include gifts of the ward's
15 personal property or real estate, but transfers of real estate
16 shall be subject to the requirements of Section 20 of this Act.
17 Gifts may be for the benefit of prospective legatees, devisees,
18 or heirs apparent of the ward or may be made to individuals or
19 charities in which the ward is believed to have an interest.
20 The guardian shall also indicate in the petition that any
21 planned disposition is consistent with the intentions of the
22 ward insofar as they can be ascertained, and if the ward's
23 intentions cannot be ascertained, the ward will be presumed to
24 favor reduction in the incidents of various forms of taxation
25 and the partial distribution of his or her estate as provided
26 in this subsection. The guardian shall not, however, be

1 required to include as a beneficiary or fiduciary any person
2 who he has reason to believe would be excluded by the ward. A
3 guardian shall be required to investigate and pursue a ward's
4 eligibility for governmental benefits.

5 (a-6) The guardian may, without an order of court, open,
6 maintain, and transfer funds to an ABLE account on behalf of
7 the ward and the ward's minor and adult dependent children as
8 specified under Section 16.6 of the State Treasurer Act.

9 (b) Upon the direction of the court which issued his
10 letters, a guardian may perform the contracts of his ward which
11 were legally subsisting at the time of the commencement of the
12 ward's disability. The court may authorize the guardian to
13 execute and deliver any bill of sale, deed or other instrument.

14 (c) The guardian of the estate of a ward shall appear for
15 and represent the ward in all legal proceedings unless another
16 person is appointed for that purpose as guardian or next
17 friend. This does not impair the power of any court to appoint
18 a guardian ad litem or next friend to defend the interests of
19 the ward in that court, or to appoint or allow any person as
20 the next friend of a ward to commence, prosecute or defend any
21 proceeding in his behalf. Without impairing the power of the
22 court in any respect, if the guardian of the estate of a ward
23 and another person as next friend shall appear for and
24 represent the ward in a legal proceeding in which the
25 compensation of the attorney or attorneys representing the
26 guardian and next friend is solely determined under a

1 contingent fee arrangement, the guardian of the estate of the
2 ward shall not participate in or have any duty to review the
3 prosecution of the action, to participate in or review the
4 appropriateness of any settlement of the action, or to
5 participate in or review any determination of the
6 appropriateness of any fees awarded to the attorney or
7 attorneys employed in the prosecution of the action.

8 (d) Adjudication of disability shall not revoke or
9 otherwise terminate a trust which is revocable by the ward. A
10 guardian of the estate shall have no authority to revoke a
11 trust that is revocable by the ward, except that the court may
12 authorize a guardian to revoke a Totten trust or similar
13 deposit or withdrawable capital account in trust to the extent
14 necessary to provide funds for the purposes specified in
15 paragraph (a) of this Section. If the trustee of any trust for
16 the benefit of the ward has discretionary power to apply income
17 or principal for the ward's benefit, the trustee shall not be
18 required to distribute any of the income or principal to the
19 guardian of the ward's estate, but the guardian may bring an
20 action on behalf of the ward to compel the trustee to exercise
21 the trustee's discretion or to seek relief from an abuse of
22 discretion. This paragraph shall not limit the right of a
23 guardian of the estate to receive accountings from the trustee
24 on behalf of the ward.

25 (d-5) Upon a verified petition by the plenary or limited
26 guardian of the estate or the request of the ward that is

1 accompanied by a current physician's or licensed clinical
2 psychologist's report that states the ward possesses
3 testamentary capacity, the court may enter an order authorizing
4 the ward to execute a will or codicil. In so ordering, the
5 court shall authorize the guardian to retain independent
6 counsel for the ward with whom the ward may execute or modify a
7 will or codicil.

8 (e) 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 will have no power, duty or liability with respect to
12 any property subject to the agency. This subsection (e) applies
13 to all agencies, whenever and wherever executed.

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

25 (Source: P.A. 101-329, eff. 8-9-19.)