

Part 3

Guardians of Incapacitated Persons

75-5-301 Appointment of guardian for incapacitated person.

- (1) The parent of an incapacitated person may by will, or by written instrument as provided in Section 75-5-202.5, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, or where the written instrument is filed, if prior thereto both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings. A provision contained in a person's will or written instrument appointing a guardian of his minor children is not to be considered to be an appointment of a guardian of an incapacitated adult child unless it appears from the will that this was the testator's intention.
- (2) The spouse of a married incapacitated person may by will or written instrument appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or the written instrument is filed. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.
- (3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.
- (4) On the filing with the court in which the will was probated or the written instrument was filed, of written objection to the appointment by the person for whom a testamentary or instrumental appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the nominee named by will or written instrument or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

Amended by Chapter 41, 1985 General Session

75-5-302 Venue.

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Enacted by Chapter 150, 1975 General Session

75-5-303 Procedure for court appointment of a guardian of an incapacitated person.

- (1) An incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.

- (2)
 - (a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.
 - (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent.
 - (c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.
 - (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.
- (3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:
 - (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;
 - (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or
 - (c) upon an express finding of good cause, the court orders otherwise.
- (4) The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.
- (5)
 - (a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.
 - (b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:
 - (i) fourth stage Alzheimer's Disease;
 - (ii) extended comatosis; or
 - (iii)
 - (A) an intellectual disability; and
 - (B) an intelligence quotient score under 25.
 - (c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.
 - (d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:
 - (i) the person is the biological or adopted child of the petitioner;

- (ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
- (iii) the person appears in court with the petitioner;
- (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;
- (v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);
- (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and
- (vii) the court appoints a visitor under Subsection (4).

Amended by Chapter 455, 2018 General Session

75-5-304 Findings -- Limited guardianship preferred -- Order of appointment.

- (1) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.
- (2)
 - (a) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.
 - (b) An order of appointment of a limited guardianship shall state the limitations of the guardianship. Letters of guardianship for a limited guardianship shall state the limitations of the guardianship unless the court determines for good cause shown that a limitation should not be listed in the letters.
- (3) A guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Amended by Chapter 403, 2017 General Session

75-5-305 Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the ward. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

Amended by Chapter 194, 1977 General Session

75-5-306 Termination of guardianship for incapacitated person.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 75-5-307. Resignation of a guardian does not terminate

the guardianship until it has been approved by the court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

Amended by Chapter 194, 1977 General Session

75-5-307 Removal or resignation of guardian -- Termination of incapacity.

- (1) On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.
- (2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.
- (3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian as provided in Section 75-5-303. The court is not required to appoint an attorney to represent the ward if the case is uncontested and the ward's incapacity is not at issue.

Amended by Chapter 274, 2012 General Session

75-5-308 Visitor in guardianship proceeding.

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Enacted by Chapter 150, 1975 General Session

75-5-309 Notices in guardianship proceedings.

- (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of an emergency guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:
 - (a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;
 - (b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;
 - (c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found;
 - (d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person; and
 - (e) Adult Protective Services if Adult Protective Services has received a referral under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, concerning

the welfare of the ward or person alleged to be incapacitated or concerning the guardian or conservator or proposed guardian or conservator.

- (2) The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.
- (3) Notice shall be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in Section 75-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor appointed pursuant to Section 75-5-303.

Amended by Chapter 455, 2018 General Session

75-5-310 Emergency guardians.

- (1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an emergency guardian for the person for a specified period not to exceed 30 days pending notice and hearing.
- (2) Upon request by an interested person after the appointment of an emergency guardian, the court shall hold a hearing within 14 days pursuant to Section 75-5-303.

Amended by Chapter 403, 2017 General Session

75-5-310.5 Temporary guardians.

- (1) If, after notice and hearing as required by Section 75-5-303, the court finds good cause, the court may:
 - (a) appoint a temporary guardian;
 - (b) convert an emergency guardian to a temporary guardian if an emergency guardian has been appointed under Section 75-5-310; or
 - (c) appoint a different person as temporary guardian to replace an emergency guardian appointed under Section 75-5-310.
- (2) Unless the allegedly incapacitated person has already obtained counsel in this proceeding or an attorney has been already appointed for the person, the court shall appoint an attorney to represent the person in the proceeding.
- (3) Until a full hearing and further order of the court, the temporary guardian shall be charged with the care and custody of the ward and may not permit the ward to be removed from the state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.
- (4) A temporary guardian may be removed at any time, and shall obey all orders and make any reports required by the court.
- (5) A temporary guardian has all of the powers and duties of a permanent guardian as set forth in Section 75-5-312.

Enacted by Chapter 142, 2014 General Session

75-5-311 Who may be guardian -- Priorities.

- (1) As used in this section:
 - (a) "Specialized care professional" means a person who is certified as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification or similar organization.
 - (b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.
- (2) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Guardian by an Adult

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)
on this _____ day of _____

(Signature)

- (3) Except as provided in Subsection (2), persons who are not disqualified have priority for appointment as guardian in the following order:
 - (a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection (2), if the incapacitated person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;
 - (b) the spouse of the incapacitated person;
 - (c) an adult child of the incapacitated person;
 - (d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;
 - (e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
 - (f) a person nominated by the person who is caring for him or paying benefits to him;
 - (g) a specialized care professional, so long as the specialized care professional does not:
 - (i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or
 - (ii) otherwise have a conflict of interest in providing those services;
 - (h) any competent person or suitable institution; or
 - (i) the Office of Public Guardian under Title 62A, Chapter 14, Office of Public Guardian Act.

Amended by Chapter 455, 2018 General Session

75-5-312 General powers and duties of guardian -- Penalties.

- (1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.

- (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.
- (3) In particular, and without qualifying Subsections (1) and (2), a guardian has the following powers and duties, except as modified by order of the court:
 - (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.
 - (b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.
 - (c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.
 - (d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.
 - (e) If no conservator for the estate of the ward has been appointed, the guardian may:
 - (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;
 - (ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and
 - (iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward:
 - (A) except that the guardian may not use funds from the ward's estate for room and board that the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult; and
 - (B) the guardian shall exercise care to conserve any excess for the ward's needs.
 - (f)
 - (i) A guardian is required to report the condition of the ward and of the estate that has been subject to the guardian's possession or control, as required by the court or court rule.
 - (ii) A guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 30 days, based on:
 - (A) the guardian's own observations; or
 - (B) information from the ward's physician or other medical care providers.
 - (iii) A guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward pursuant to Section 75-5-312.5 of:
 - (A) the ward's admission to a hospital for three or more days or to a hospice program;
 - (B) the ward's death; and
 - (C) the arrangements for the disposition of the ward's remains .
 - (iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take reasonable steps to notify all interested persons and to file the notice with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party.
 - (v)

- (A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis.
- (B) For estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out an informal annual report and mail the report to the court.
- (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information.
- (D) The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council.
- (E) An annual report shall be examined and approved by the court.
- (F) If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual report.
- (vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.
- (vii) The guardian shall also render an annual accounting of the status of the person to the court that shall be included in the petition or the informal annual report as required under this Subsection (3)(f). If a fee is paid for an accounting of an estate, a fee may not be charged for an accounting of the status of a person.
- (viii) If a guardian:
 - (A) makes a substantial misstatement on filings of annual reports;
 - (B) is guilty of gross impropriety in handling the property of the ward; or
 - (C) willfully fails to file the report required by this Subsection (3)(f), after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed \$5,000.
- (ix) The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.
- (x) The provisions and penalties in this Subsection (3)(f) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.
- (xi) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons" means those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-309.
- (g) If a conservator has been appointed:
 - (i) all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this code; and
 - (ii) the guardian shall account to the conservator for funds expended.
- (4)
 - (a) A court may, in the order of appointment, place specific limitations on the guardian's power.
 - (b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.
 - (c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (2).

- (5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.
- (6) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the protected person after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.
- (7) A guardian shall, to the extent practicable, encourage the ward to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward.

Amended by Chapter 244, 2018 General Session

Amended by Chapter 294, 2018 General Session

75-5-312.5 Association between an adult ward and a relative of the adult ward.

(1) As used in this section:

(a) "Associate" or "association" means:

- (i) visitation of an adult ward by a relative or qualified acquaintance; or
- (ii) communication between an adult ward and a relative or qualified acquaintance in any form, including by telephone, mail, or electronic communication.

(b) "Qualified acquaintance" means an individual, other than a relative of the adult ward, who:

- (i) has established a significant, mutual friendship with the adult ward; or
- (ii) is clergy in the adult ward's religion or religious congregation.

(c) "Relative" means an adult ward's spouse, parent, step-parent, child, step-child, sibling, step-sibling, half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.

(2)

(a) Except as otherwise provided by court order, a guardian may not restrict or prohibit the right of an adult ward to associate with a relative or qualified acquaintance of the adult ward.

(b) If an adult ward is unable to express consent to visitation by a relative or a qualified acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of a prior relationship between the adult ward and the relative or qualified acquaintance of the adult ward.

(c) A guardian may not permit a relative or qualified acquaintance of an adult ward to associate with the adult ward:

- (i) if a court order prohibits the association;
- (ii) in a manner prohibited by court order; or
- (iii) if the adult ward expresses a desire to not associate with the relative or qualified acquaintance.

(3) A guardian may, as part of the initial guardianship proceeding, petition the court to issue an order:

(a) prohibiting or placing conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward; or

- (b) granting the guardian the authority to prohibit or place conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward.
- (4) A guardian may, at any time after the initial guardianship proceeding:
 - (a) petition the court to issue an order described in Subsection (3) or to rescind or modify an order described in Subsection (3); or
 - (b) petition, subject to notice, the court on an emergency basis to issue a temporary order until further order of the court described in Subsection (3) or to rescind or modify an order described in Subsection (3).
- (5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult ward may, at any time after the initial guardianship proceeding, petition the court to rescind or modify an order described in Subsection (3).
- (6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or a qualified acquaintance of the adult ward may do one or more of the following, as applicable:
 - (a) petition the court to issue an order to show cause why the guardian should not be held in contempt of court;
 - (b) seek an injunction to enforce compliance by the guardian with the law and any applicable court order; or
 - (c) petition the court to have the guardian removed as guardian of the adult ward.
- (7) For a hearing on a petition filed under this section, a court:
 - (a) may appoint a court visitor to meet with the adult ward to determine the wishes of the adult ward regarding association;
 - (b) shall give notice and an opportunity to be heard to the guardian, the adult ward, and the relative or qualified acquaintance;
 - (c) shall preserve the right of the adult ward to be present at the hearing; and
 - (d) may order supervised visitation by the relative or qualified acquaintance before the hearing.
- (8) A court may not enter an order prohibiting or placing restrictions on association between an adult ward and a relative or qualified acquaintance, unless the court finds by a preponderance of the evidence that:
 - (a) the adult ward desires the prohibition or restriction;
 - (b) if the adult ward had the capacity to make a knowing and intelligent decision regarding the association, the adult ward would prohibit the association or impose the restriction; or
 - (c) the prohibition or restriction is the least restrictive means necessary to protect the health or welfare of the adult ward.
- (9) In making the determination described in Subsection (8), the court may consider any relevant evidence, including:
 - (a) the wishes of the adult ward, expressed during or before the guardianship;
 - (b) the history of the relationship between the adult ward and the relative or qualified acquaintance;
 - (c) any history of criminal activity, abuse, neglect, or violence by the relative or qualified acquaintance; or
 - (d) whether a protective order was ever issued against the relative or qualified acquaintance with respect to the adult ward.
- (10) Except as provided in Subsection (11), the guardian shall have the burden of proof when:
 - (a) seeking an order prohibiting association or placing restrictions on association with a relative or qualified acquaintance of the adult ward;
 - (b) modifying an order to place additional prohibitions or restrictions on association with a relative or qualified acquaintance of the adult ward; or
 - (c) opposing an action described in Subsection (6)(a) or (b).

(11) The relative or qualified acquaintance shall have the burden of proof if the relative or qualified acquaintance is seeking to modify an order previously entered by a court under this section.

(12)

- (a) If, in a proceeding under this section, the court finds that the petition was filed frivolously or in bad faith, the court shall award attorney fees to a party opposing the petition.
- (b) If, in a proceeding under this section, the court finds that the guardian is in contempt of court or has acted frivolously or in bad faith in prohibiting or restricting association, the court:
 - (i) may award attorney fees to the prevailing party; and
 - (ii) may impose a sanction, not to exceed \$1,000, against the guardian.
- (c) A court shall prohibit attorney fees awarded under this section from being paid by the adult ward or the adult ward's estate.

Amended by Chapter 244, 2018 General Session

75-5-313 Proceedings subsequent to appointment -- Venue.

- (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of an appointment by will or written instrument was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.
- (2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-314 Mentally incompetent veteran -- Evidence of necessity for appointment of guardian.

Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any money due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment.

Enacted by Chapter 150, 1975 General Session

75-5-315 Copies of public records furnished to veterans administration.

When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on behalf of the authorized representative of the veterans administration with a certified copy of such record.

Enacted by Chapter 150, 1975 General Session

75-5-316 Expedited guardianship proceedings.

- (1)
 - (a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship.
 - (b) For purposes of this section:
 - (i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.
 - (ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.
- (2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.
- (3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.
- (4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.
- (5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).
- (6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to other persons as the court may direct.
- (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.
- (8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:
 - (a) the appropriate parties have been given notice;
 - (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and
 - (c) it is necessary and desirable to establish the guardianship.
- (9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.
- (10) A petition for a limited guardianship shall include the following information:
 - (a) the interest of the petitioner;
 - (b) the name, age, residence, and address of the ward;
 - (c) verification that the ward is a resident of the Utah State Developmental Center;
 - (d) the name and address of the nearest relative of the ward; and
 - (e) the reason for appointment of guardianship.
- (11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:
 - (a) that the ward is a resident of the Utah State Developmental Center;
 - (b) the date the ward was originally admitted to the Utah State Developmental Center;
 - (c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of the ward's intellectual disability, and any medical or physical conditions of the ward;
 - (d) that the Utah State Developmental Center is certified as an intermediate care facility for people with an intellectual disability;

- (e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and
 - (f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.
- (12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:
- The court finds that:
- (a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;
 - (b) the ward is incapacitated;
 - (c)(named guardian) is appointed as the limited guardian of (named ward); and
 - (d) the guardianship is a limited guardianship solely for the purpose of:
 - (i) granting permission for medical and dental care on behalf of the ward; and
 - (ii) participation in the development and approval of the ward's individual program plan.
- (13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

Amended by Chapter 366, 2011 General Session

75-5-317 Guardianship proceedings for minor becoming an incapacitated adult.

- (1) As used in this section:
- (a) "Incapacitated" means the same as that term is defined in Section 75-1-201.
 - (b) "Joint legal decision-making" means parents or two individuals, regardless of whether they are married, sharing legal decision-making and no individual's rights or responsibilities being superior except with respect to specified decisions set forth by the court or the individuals in a final judgment or order.
 - (c) "Legal decision-making" means the legal right and responsibility to make all nonemergency legal decisions for a minor including those regarding education, health care, religious training, and personal care decisions.
 - (d) "Minor" means the same as that term is defined in Section 75-1-201.
 - (e) "Physician" means an individual:
 - (i) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
 - (ii) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
 - (f) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.
 - (g) "Sole legal decision-making" means one parent or one individual having the legal right and responsibility to make major decisions for the minor child.
- (2)
- (a) Notwithstanding the other provisions of this part, a person who may be a guardian of an incapacitated person under Section 75-5-301 may initiate guardianship proceedings pursuant to this Subsection (2) for a minor who is at least 17 years, six months of age and who is alleged to be incapacitated and request that a guardianship order take effect immediately on the day the minor turns 18 years of age.

- (b) The petitioner shall provide with the petition a written report of an evaluation of the minor by a physician or psychologist that meets the requirements of Subsection (2)(c). If the evaluation is conducted within six months after the date the petition is filed with the court, the petitioner may ask in the petition that the court accept this report in lieu of ordering any additional evaluation and the court may grant the request.
- (c) A written report filed pursuant to this section by a physician or psychologist acting within that person's scope of practice shall include the following information:
 - (i) a specific description of the physical, psychiatric, or psychological diagnosis of the person;
 - (ii) a comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions, with or without assistance, regarding that person;
 - (iii) an analysis of the tasks of daily living the alleged incapacitated person is capable of performing independently or with assistance;
 - (iv) a list of the medications the alleged incapacitated person is receiving, the dosage of the medications, and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge;
 - (v) a prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan; and
 - (vi) other information the physician or psychologist considers appropriate.
- (3)
 - (a) Notwithstanding the priorities in Section 75-5-311, if the petition for appointment of a guardian for the incapacitated person is filed pursuant to Subsection (2) or within two years after the day the incapacitated person turns 18 years of age, unless the court finds the appointment to be contrary to the incapacitated person's best interest:
 - (i) the court shall appoint as the incapacitated person's guardian any person who, by court order, had sole legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age; or
 - (ii) if two individuals had joint legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age, the court shall appoint both individuals as the incapacitated person's coguardians.
 - (b) If under Subsection (3)(a) the court finds the appointment of an individual described in Subsection (3)(a) is contrary to the incapacitated person's best interest or if the individual is unwilling to be appointed or serve as a guardian, the court may apply the priorities in Section 75-5-311 in appointing a guardian.
- (4) The court may appoint more than one person as the incapacitated person's coguardians if the appointment is required by Subsection (3) or the court finds that the appointment is in the incapacitated person's best interest. If the court appoints coguardians, the coguardians shall share legal decision-making for the incapacitated person and neither coguardian's rights or responsibilities are superior except as otherwise ordered by the court.

Enacted by Chapter 294, 2018 General Session