

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 556

(Senator Bates)

Judicial Proceedings

Estates and Trusts - Guardianship of a Disabled Person - Visitation and
Notification

This bill authorizes specified “interested parties” who are also eligible to be appointed as a guardian of the person of a disabled person, to petition a court for visitation rights. A court may identify an interested party who is entitled to visitation in its order of appointment. The bill also requires a guardian of the person of a disabled person to notify interested parties and the disabled person’s designated emergency contact whenever the disabled person is moved, under specified circumstances, or in the event of the disabled person’s death.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: Any additional petitions or hearings due to the bill’s requirements can be handled by the circuit courts with existing budgeted resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

“Visitation” means in-person visitation and any oral or written communication, including telephone calls, email, and personal mail.

“Health care facility” means an assisted living program, a hospice, a hospital, or a nursing home.

“Emergency contact” means an individual designated by a disabled person to be notified, as specified.

“Interested party” means a person, agency, or corporation eligible to be appointed as guardian of the person of a disabled person under State law, including:

- a person, agency, or corporation nominated by a disabled person who is at least 16 years old and has sufficient mental capacity to designate a guardian, as determined by a court;
- a health care agent appointed by the disabled person in accordance with State law;
- a disabled person’s spouse, parent, or child;
- a person, agency, or corporation designated by the will of a deceased parent;
- an adult person who would be the disabled person’s heir if the disabled person were deceased;
- a person, agency, or corporation designated by a person caring for the disabled person; or
- any other person, agency, or corporation considered appropriate by the court.

“Interested party” does not include a local department of social services or the Secretary of Aging.

Visitation

The identification of an interested party entitled to visitation in a court's order of appointment may not limit visitation by other interested parties. All procedures and venue decisions must be in accordance with the Maryland Rules governing guardians and fiduciaries.

Notification

The bill requires a guardian of the person of a disabled person to notify the disabled person's designated emergency contact and each interested party for whom the guardian of the person of a disabled person has contact information within 72 hours of a disabled person being admitted to a health care facility or moved to a new health care facility or residence. In the event the disabled person dies, notification must occur as soon as possible but no later than 24 hours after the disabled person's death. In addition, notification must be made no later than 24 hours after the disabled person's funeral arrangements or final resting place has been determined. Notification must be made by telephone and in written form by an email or a text message.

Current Law: On petition and after any notice or hearing authorized by statute or the Maryland Rules, a court may appoint a guardian of the person of a disabled person. A guardian of the person of a disabled person must be appointed if a court determines from clear and convincing evidence that (1) a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs and (2) no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

While guardians of the person of a disabled person have general authority to direct the activities of a disabled person, there are no State statutory provisions that specifically limit or grant a guardian's authority to restrict or prohibit communication or visitation with adult family members or other individuals.

Generally, a court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person. The rights, duties, and powers which the court may order include:

- the same rights, powers, and duties that a parent has with respect to an unemancipated minor child, except that the guardian is not liable solely by reason of the guardianship to third persons for any act of the disabled person;

- the right to custody of the disabled person and to establish his or her place of abode, if there is court authorization for any change in the classification of abode, except that no one may be committed to a mental facility without an involuntary commitment proceeding, as specified;
- the duty to provide for care, comfort, and maintenance, including social, recreational, and friendship requirements, and, if appropriate, for training and education of the disabled person; and
- the duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the disabled person, and, if other property requires protection, the power to commence protective proceedings.

The following persons are entitled to appointment as guardian of the person in order of priority:

- a person, agency, or corporation nominated by the disabled person who is at least age 16 and has sufficient mental capacity to designate a guardian, as determined by a court;
- a health care agent appointed by the disabled person in accordance with State law;
- the disabled person's spouse;
- the disabled person's parents;
- a person, agency, or corporation designated by the will of a deceased parent;
- the disabled person's children;
- an adult person who would be the disabled person's heir if the disabled person were deceased;
- a person, agency, or corporation designated by a person caring for the disabled person;
- any other person, agency, or corporation considered appropriate by the court; or

- for adults younger than age 65, the director of the local department of social services, or for adults age 65 or older, the Secretary of Aging or director of the area agency on aging, as specified.

Among persons of equal priority, a court must select the one best qualified of those willing to serve. For good cause, a court may pass over a person with priority and appoint a person with lower priority. If a guardian of the estate has been appointed, a court may select him/her to be guardian of the person, regardless of priority.

Background: According to the Catherine Falk Organization, an advocacy group that represents vulnerable adults, bills have been introduced in at least eight states as part of a national effort to address the issue that adult children and other family members may not have access to, or any specific legal rights regarding, visitation or communication with their disabled or incapacitated family members in cases where the disabled person's guardian restricts access. The proposals are often referred to as "visitation bills" or "Peter Falk Laws." Similarly, the provisions in the bill are intended to authorize a court to order visitation to those with the status of "interested parties" under State law. The bill is also intended to impose specific notification duties on the guardians of the person of disabled persons.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Department of Human Resources; Catherine Falk Organization; Department of Legislative Services

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