

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1483

(Delegate Saab, *et al.*)

Health and Government Operations

Judicial Proceedings

Duties of a Guardian of the Person - Visitation

This bill authorizes a court, when appointing a guardian of a person of a disabled person, to require, as part of the guardian's duties, the duty to foster and preserve family relationships if it is in the best interest of the disabled person. This includes, as appropriate, assisting to arrange visitation and communication by telephone calls, personal mail, and electronic communications.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The change is procedural in nature and does not directly affect local governmental finances.

Small Business Effect: None.

Analysis

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 that 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 American Bar Association and the Kasem Cares Foundation, legislation has been considered in a number of states as part of a national effort to address visitation rights for the adult children and other family members of disabled or incapacitated individuals.

Additional Information

Prior Introductions: HB 1165 of 2017, a similar bill, passed the House as amended and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland Department of Aging; Judiciary (Administrative Office of the Courts); Register of Wills; American Bar Association; Kasem Cares Foundation; Department of Legislative Services

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Analysis by: Michelle Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510