



SPONSOR: Rep. Seigfried & Sen. Poore
Reps. Brady, Mitchell; Sen. Lockman

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 123

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE APPOINTMENT OF
GUARDIANS AND THE OFFICE OF THE PUBLIC GUARDIAN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 3901, Title 12 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 3901. Appointment of guardians for persons with disabilities.

4 (d)(1) If, upon the filing of a petition, the Court finds the person with an alleged disability is in danger of incurring
5 imminent serious physical harm or substantial economic loss or expense the Court may without notice and hearing appoint
6 an interim guardian of the person or property to serve for a period of up to 30 days; provided, that a hearing shall be held
7 within 30 days of such appointment in accordance with subsection (c) of this section. ~~The guardian so appointed shall have~~
8 ~~all of the powers and duties granted to guardians in subchapter II of this chapter.~~

9 (2) The Court shall specifically enumerate the powers and duties of the guardian appointed under this
10 subsection, granting either of the following:

11 a. All of the powers and duties in Subchapter II of this chapter.

12 b. Limited powers based on the needs of the person with an alleged disability. A grant of limited
13 guardianship may specify 1 or more of the following:

14 1. The limitations upon the authority of the guardian.

15 2. The areas of decision-making retained by the person with an alleged disability.

16 3. The specific, limited purpose of the guardianship.

17 Section 2. Amend § 3909, Title 12 of the Delaware Code by making deletions as shown by strike through and
18 insertions as shown by underline as follows:

19 § 3909. Term of guardianship.

(c) The guardianship of the person or property, or both, of any person with a disability for reasons other than minority shall continue until ~~the~~ 1 of the following occur:

(1) The death of the person with a disability or until termination disability.

(2) Termination by the Court of Chancery upon application of the guardian, the person with a disability, or another interested party.

Section 3. Amend § 3981, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3981. Office established; appointment.

(a) There is established an Office of the Public Guardian, with a Public Guardian who shall serve as ~~the~~ follows:

(1) The guardian of last resort for the citizens of Delaware who have been determined to lack capacity to make decisions regarding their persons, their property, or both.

(2) The representative payee for Social Security benefits of last resort.

(3) The VA Fiduciary for Veteran's Administration Benefits of last resort.

(b) The Public Guardian shall advocate and provide ~~guardianship~~ services under subsection (a) of this section, for individuals who are incapacitated, work with advocacy groups and state agencies to promote systemic reform and recommend changes in the law, procedure and policy necessary to enhance the provision of ~~guardianship~~ services for substituted and supported decision-making, and act as an informational resource for the public. The Public Guardian shall serve as Executive Director of the Delaware Guardianship Commission and promote the purposes of the Commission, and shall represent the Office of the Public Guardian in matters in which the appointment of the Public Guardian is sought.

Section 4. Amend § 3982, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3982. Definitions.

For the purposes of this chapter:

(4) The term "last resort" ~~includes:~~ includes any of the following:

a. Circumstances in which there is no other suitable person related to the individual willing or able to serve as surrogate decision maker ~~or guardian, or guardian, representative payee, or VA fiduciary.~~

b. Circumstances in which a person willing or able to serve, or already serving, as a validly appointed agent of a durable power of attorney, a surrogate decision maker, representative payee, VA fiduciary, or a guardian, is available but sufficient cause has been found by the court that the individual available or so acting is

not suitable to serve and that the appointment of the Public Guardian is in the best interest of the person who is incapacitated.

c. Exceptional circumstances have been found by the court to establish that appointment of the Public Guardian is in the best interest of the person who is incapacitated.

(5) "Person who is incapacitated" ~~shall mean~~ means a "person with a disability" as that term is defined ~~in~~ under § 3901(a)(2) of this title.

(6) "Representative payee" means a person appointed by the Social Security Administration to receive Social Security or SSI benefits for an individual who cannot manage or direct the management of the individual's Social Security or SSI benefits.

(7) "VA fiduciary" means a person appointed by the Department of Veterans Affairs (VA) to receive VA benefits for an individual who is unable to manage the individual's VA benefits.

Section 5. Amend § 3983, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3983. Duties of the Public Guardian.

The Public Guardian:

(1) Shall establish case acceptance priorities and other administrative policies and procedures in consultation with the Guardianship Commission.

(2) Shall receive referrals and recommendations regarding individuals who may be in need of ~~a guardian~~ services under § 3981(a) of this title and independently evaluate the referral to make a determination as to the physical, social, and financial conditions of the individual, whether there are alternatives to public ~~guardianship~~, services under § 3981(a) of this title, and whether the individual is at risk of abuse, neglect, or exploitation.

(3) After evaluation of the conditions of the individual and in consideration of the established case acceptance priorities, ~~may~~ may do any of the following:

a. Make a recommendation as to a suitable individual who is available and willing to serve as guardian or surrogate decision maker or refer to an appropriate private, nonprofit, or other entity willing to serve as ~~guardian~~; or guardian, representative payee, or VA fiduciary.

b. File a petition for its own ~~appointment~~, appointment as guardian, or file for the appointment of any other individual as guardian where it is determined that the filing of a petition on behalf of another may avoid the need for public ~~guardianship~~; or guardianship.

79 c. Consent to serve as guardian where another entity or individual files a petition for the appointment of
80 the Public Guardian.

81 d. Consent to appointment as representative payee or VA fiduciary for an individual in an acute care
82 setting or who is a client of the Department of Health and Social Services.

83 (6)a. May offer advice and guidance, without court appointment as guardian, to persons who request assistance or
84 to those on whose behalf such assistance is requested for the purpose of encouraging maximum self-reliance and
85 independence and avoiding the need for appointment of a guardian.

86 b. May take all necessary action, including programs of public education and legislative advocacy, to secure
87 and ensure the legal, civil, and special rights of those determined by the court to be incapacitated.

SYNOPSIS

This Act allows the Public Guardian to act as a representative payee for Social Security benefits or as a VA fiduciary for Department of Veterans Affairs benefits. This Act also allows the Court to appoint a guardian with limited powers, to act as guardian for specific areas of decision-making or for a specific term. By making these changes, this Act will allow the Public Guardian to serve in a more limited role where appropriate, and assist more Delawareans who need short-term assistance, such as to qualify for Medicaid in order to arrange for long-term care or to handle routine financial matters but not make decisions about the care of the person. The ability to serve in a more limited role will increase the Public Guardian's capacity to assist people while the Non-Acute Patient Medical Guardianship Task Force studies options and develops recommendations to improve non-acute patient transitions from acute care settings to more appropriate locations. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

House Substitute No. 1 for House Bill No. 123 differs from House Bill No. 117 by clarifying that limited guardianships can be ordered for specific purposes, the process for terminating a limited guardianship, and that the Public Guardian serves as a representative payee or VA Fiduciary of last resort.