

CHAPTER 40
FORMERLY
SENATE BILL NO. 24
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE PUBLIC GUARDIAN AND TO ESTABLISH THE DELAWARE GUARDIANSHIP COMMISSION.

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

Section 1. Amend Title 12 of the Delaware Code by deleting sections 3991 through 3997 in their entirety and by substituting in lieu thereof, the following:

“CHAPTER 39.
GUARDIANSHIP
Subchapter VI.

Public Guardian

§3981. Office Established; Appointment.

There is established an Office of the Public Guardian, with a Public Guardian who shall serve as 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.

The Public Guardian shall advocate and provide guardianship services for incapacitated individuals, 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, 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.

To bring about these goals, the Public Guardian must be an attorney duly licensed to practice law in Delaware, selected by the Governor, and shall serve for a term of six years from the date of appointment.

§3982. Definitions.

For the purposes of this chapter:

(1) ‘Court’ means the Court of Chancery or the Court which has jurisdiction for the appointment of guardians for the person, or property, or both, pursuant to Title 12, Chapter 39.

(2) ‘Guardian’ means a court appointed guardian.

(3) ‘Guardianship Commission’ means the Delaware Guardianship Commission.

(4) ‘Incapacitated person’ shall mean a ‘disabled person’ as that term is defined in § 3901(a)(2) of this title.

(5) The term ‘Last Resort’ includes:

(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

(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, 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 incapacitated person.

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

§3983. Duties of the Public Guardian.

The Public Guardian:

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

(B) Shall receive referrals and recommendations regarding individuals who may be in need of a guardian 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, and whether the individual is at risk of abuse, neglect, or exploitation.

(C) After evaluation of the conditions of the individual and in consideration of the established case acceptance priorities, may:

(1) 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, non-profit, or other entity willing to serve as guardian; or

(2) File a petition for its own appointment, 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

(3) Consent to serve as guardian where another entity or individual files a petition for the appointment of the Public Guardian.

(D) When appointed as guardian by Court order, shall serve as guardian of last resort, either plenary or limited; temporary guardian; or successor guardian; of the person or property, or both, of persons who are determined to be incapacitated for reasons other than minority. The Public Guardian shall have the same powers and duties as a private guardian as set out by Title 12, Chapter 39 and as defined by the Court upon appointment;

(E) Shall acquire recognized certification as a guardian where available in a timely manner upon appointment and maintain certification while acting as Public Guardian, and promote and act in accordance with nationally recognized standards of guardianship and those developed in cooperation with the Delaware Guardianship Commission.

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

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

(G) Shall submit an annual report on the efforts of the office that shall be provided to the Guardianship Commission and included in the annual report of the Guardianship Commission;

(H) May coordinate volunteer legal representation for wards of the office to assist with needed representation before administrative agencies and courts to pursue the legal rights and remedies of the ward and a volunteer legal community outreach program to assist the Office of the Public Guardian in educating the community about guardianship and alternatives to guardianship;

(I) May apply for and accept grants, gifts and bequests of funds from other state, federal and interstate agencies, as well as private firms, individuals and foundations, for the purpose of carrying out the lawful responsibilities of the Office of the Public Guardian and the Guardianship Commission. The funds must be deposited with the State Treasurer in a restricted receipt account established to permit funds to be expended in accordance with the provision of the grant, gift, or bequest;

(J) Shall take whatever actions are necessary to help the Guardianship Commission accomplish its goals.

§3984. Staff; Budgeting; Finance.

The Public Guardian may appoint subordinates and delegate the appointed authority to subordinates to assist in carrying out the purposes of this subchapter. Subordinates may include such nonprofit organizations as the Public Guardian shall deem to be qualified in carrying out the duties as a subordinate guardian. The Public Guardian shall prepare an annual fiscal budget for the operation of the Office of the Public Guardian.

The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Public Guardian, the staff, and for the payment of actual expenses incurred by the

Office of the Public Guardian. The Office of the Public Guardian shall be operated within limitation of the annual appropriation and any other funds appropriated by the General Assembly or designated for that purpose from the estate of the disabled person by the Court.

Special funds may be used in accordance with approved programs, grants, and appropriations.

§3985. Court Costs and Allocation of Costs.

In any proceeding for appointment of the Office of the Public Guardian, or in any proceeding involving the estate of a disabled person for whom the Public Guardian has been appointed guardian of the person or of the property, the Court may waive any court costs or filing fees.

If the Public Guardian has been appointed guardian of the person or of the property, administrative costs and all costs incurred in the appointment procedure shall not be charged against the income or estate of the person. If at any time the Court determines that the income or the estate of the person can support the payment of any part of these costs, the Court may enter an order charging that part of the payment of cost against the income or estate.

§3986. Reserved.

§3987. Indemnification from liability.

No attorney, director, investigator, social worker, or other person employed by, contracted by, or volunteering for the Office of the Public Guardian shall be subject to suit directly, derivatively, or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her appointment or employment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith.

§3988. Bond.

The Public Guardian shall post bond as required by the Court upon the appointment of the office. The Office of the Public Guardian shall apply for and maintain bond sufficient to insure the assets managed by the office.

§3989. Reserved.”

Section 2. Amend Title 12 of the Delaware Code to establish a Guardianship Commission as follows:

“CHAPTER 39.
GUARDIANSHIP
Subchapter VII.

DELAWARE GUARDIANSHIP COMMISSION

§3991. The Guardianship Commission.

(a) The Delaware Guardianship Commission is hereby established, and shall be known as the ‘Guardianship Commission’. The Commission shall consist of 12 members and shall be staffed by the Office of the Public Guardian. The Guardianship Commission shall be comprised of the following:

- (1) One member from the Court of Chancery, designated by the Chancellor;
- (2) A representative from the Department of Justice, designated by the Attorney General;
- (3) The Director of the Guardianship Monitoring Program, or the Director’s designee;
- (4) One member of the House of Representatives, designated by the Speaker of the House;
- (5) One member of the Senate, designated by the President Pro Tempore of the Senate;
- (6) The Director of the Division of Services for Aging and Adults with Physical Disabilities, or the Director’s designee,
- (7) The Director of the Division of Substance Abuse and Mental Health, or the Director’s designee;
- (8) The Director of the Division of Developmental Disabilities Services, or the Director’s designee;

(9) The Secretary of the Department of Health and Social Services, or the Secretary's designee.

(10) A representative from the Disability Community, designated by the Secretary of Health and Social Services;

(11) A representative from the Senior Citizen Community, designated by the Secretary of Health and Social Services;

(12) A representative from the hospital community, designated by the Delaware Healthcare Association.

(b) The Public Guardian shall serve as the Executive Director of the Commission to effectuate its purposes. The Public Guardian may, with the concurrence of the members, invite other individuals to participate in the Commission to advance its work.

§3992. Duties of the Commission.

The Commission shall advocate for the welfare of incapacitated individuals; shall work with advocacy groups and state agencies to promote systemic reform; recommend changes in the law, procedure and policy necessary to enhance the provision of guardianship services and the protection of those unable to protect themselves; and act as an informational resource for the public. To that end, the Commission shall meet on a quarterly basis and shall:

(1) Act in an advisory capacity to the Office of the Public Guardian, providing assistance to the Public Guardian in establishing administrative policies and procedures in the Office of the Public Guardian, and assistance in developing case acceptance priorities for the Office of the Public Guardian;

(2) Examine and evaluate the policies, procedures and effectiveness of the guardianship system, and make recommendations for changes therein, including establishing statewide standards and regulation of public and private guardianships;

(3) Conduct an annual statewide needs assessment relating to the number of individuals currently and predicted to be in need of a decision maker due to incapacity, the resources available or needed to meet that need, and to the processes utilized to meet the need;

(4) Advocate for legislation and make legislative recommendations to the Governor and the General Assembly;

(5) Develop public and professional education programs on issues relating to guardianship, alternatives to guardianship, and concerns relating to the abuse, neglect, and exploitation of incapacitated individuals; and

(6) Provide an annual summary of the work and recommendations of the Guardianship Commission, including the work of the Office of the Public Guardian to the Governor, the General Assembly, and the Court.

§3993. Compensation.

Members of the Commission shall serve without compensation; however, they may be reimbursed, upon request, for reasonable and necessary expenses incident to their duties as members of the Commission to the extent funds are available through the Office of the Public Guardian. Members may be removed at the discretion of their appointing authority.”

Section 3. Effective Date of Statute.

This Act is effective thirty days from its enactment into law. The incumbent Public Guardian serving at the time the Act becomes effective shall serve until the incumbent or a successor is appointed by the Governor and confirmed, pursuant to the terms of the Act.

Approved June 08, 2011