

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS15123-LU-92A* (03/06)

Short Title: Public Guardianship/Training/Education.

(Public)

Sponsors: Senators Dorsett, and Malone.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE PUBLIC GUARDIANSHIP SERVICES IN NORTH CAROLINA.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 32A-10(b) reads as rewritten:

5 "(b) A principal may nominate, by a durable power of attorney, the conservator,
6 guardian of his estate, or guardian of his person for consideration by the court if protective
7 proceedings for the principal's person or estate are thereafter commenced. The court shall make
8 its appointment in accordance with ~~the principal's most recent nomination in a durable power of~~
9 ~~attorney except for good cause or disqualification.~~ G.S. 35A-1214."

10 SECTION 2. G.S. 32A-22(b) reads as rewritten:

11 "(b) A principal may nominate, by a health care power of attorney, the guardian of the
12 person of the principal if a guardianship proceeding is thereafter commenced. The court shall
13 make its appointment in accordance with ~~the principal's most recent nomination in an~~
14 ~~unrevoked health care power of attorney, except for good cause shown.~~ G.S. 35A-1214."

15 SECTION 3. G.S. 35A-1101(4) reads as rewritten:

16 "(4) "Designated agency" means the State or local human services agency
17 designated by the clerk in the clerk's order to prepare, cause to be prepared,
18 or assemble a multidisciplinary evaluation and to perform other functions as
19 the clerk may order. A designated agency includes, without limitation, State,
20 local, regional, or area mental health, mental retardation, vocational
21 rehabilitation, public health, social service, and developmental disabilities
22 agencies, and diagnostic evaluation centers. An agency may not be
23 designated as a designated agency in connection with any proceeding in
24 which the agency or an official or employee of the agency is a party or has
25 been appointed as an interim guardian, general guardian, or guardian of the
26 person."

27 SECTION 4. G.S. 35A-1202(3) reads as rewritten:

28 "(3) "Designated agency" means the State or local human services agency
29 designated by the clerk in an order to prepare, cause to be prepared, or
30 assemble a multidisciplinary evaluation and to perform other functions as the
31 clerk may order. A designated agency includes, without limitation, State,
32 local, regional or area mental health, mental retardation, vocational
33 rehabilitation, public health, social service, and developmental disabilities
34 agencies, and diagnostic evaluation centers. An agency may not be
35 designated as a designated agency in connection with any proceeding in



1 which an official or employee of the agency has been appointed as a general
2 guardian or guardian of the person."

3 **SECTION 5.** G.S. 35A-1202(4) reads as rewritten:

4 "(4) "Disinterested public agent" ~~means:~~means

5 a. ~~The~~the director or assistant ~~directors~~an employee of a ~~local human~~
6 ~~services agency, or county social services department, a consolidated~~
7 ~~county human services agency, or a State, regional, county, or~~
8 ~~municipal aging agency.~~

9 b. ~~An adult officer, agent, or employee of a State human services~~
10 ~~agency.~~

11 ~~The fact that a disinterested public agent is employed by a State or local~~
12 ~~human services agency that provides financial assistance, services, or~~
13 ~~treatment to a ward does not disqualify that person from being appointed as~~
14 ~~guardian."~~

15 **SECTION 6.** G.S. 35A-1210 reads as rewritten:

16 "**§ 35A-1210. Application before clerk.**

17 Any ~~individual, corporation, person,~~ including a corporation or disinterested public
18 ~~agent~~State or local human services agency, may file an application for the appointment of a
19 guardian for an incompetent person by filing the same with the clerk. The application may be
20 joined with or filed subsequent to a petition for the adjudication of incompetence under
21 Subchapter I of this Chapter. The application shall set forth, to the extent known and to the
22 extent such information is not already a matter of record in the case:

- 23 (1) The name, age, address, and county of residence of the ward or respondent;
- 24 (2) The name, address, and county of residence of the applicant, his relationship
25 if any to the respondent or ward, and his interest in the proceeding;
- 26 (3) The name, address, and county of residence of the respondent's next of kin
27 and other persons known to have an interest in the proceeding;
- 28 (4) A general statement of the ward's or respondent's assets and liabilities with
29 an estimate of the value of any property, including any income and
30 receivables to which he is entitled; and
- 31 (5) Whether the applicant seeks the appointment of a guardian of the person, a
32 guardian of the estate, or a general guardian, and whom the applicant
33 recommends or seeks to have appointed as such guardian or guardians."

34 **SECTION 7.** G.S. 35A-1213(a) reads as rewritten:

35 "(a) The clerk may appoint as guardian an adult individual, a corporation, a public
36 guardian, or a disinterested public agent. ~~The applicant may submit to the clerk the name or~~
37 ~~names of potential guardians, and the clerk may consider the recommendations of the next of~~
38 ~~kin or other persons."~~

39 **SECTION 8.** G.S. 35A-1213(d) reads as rewritten:

40 "(d) A disinterested public agent ~~who is appointed by the clerk to serve as guardian is~~
41 ~~authorized and required to do so; provided, if at the time of the appointment or any time~~
42 ~~subsequent thereto the disinterested public agent believes that his role or may not be appointed~~
43 ~~as guardian if the role of his the agent or the agent's agency in relation to the ward is such that~~
44 ~~his the agent's service as guardian would constitute~~constitutes a conflict of interest, ~~or if he~~
45 ~~knows of any other reason that his service as guardian may interest or is not be in the ward's~~
46 ~~best interest, he shall bring such matter to the attention of the clerk and seek the appointment of~~
47 ~~a different guardian.~~interest. A disinterested public agent who is appointed as guardian shall
48 serve in that capacity by virtue of ~~his the agent's~~ office or employment, which shall be
49 identified in the clerk's order and in the letters of appointment. When the disinterested public
50 agent's office or employment terminates, ~~his the agent's~~ successor in office or employment, or
51 ~~his the agent's~~ immediate supervisor if there is no successor, shall succeed ~~him the agent~~ as

1 guardian without further proceedings unless the clerk orders otherwise. A disinterested public
2 agent who is appointed as guardian may request the clerk to accept the agent's resignation
3 pursuant to G.S. 35A-1292 if the agent's continued service as guardian constitutes a conflict of
4 interest."

5 **SECTION 9.** G.S. 35A-1213(e) reads as rewritten:

6 "(e) ~~Notwithstanding any other provision of this section, an employee of a treatment~~
7 ~~facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an~~
8 ~~inpatient in or resident of the facility in which the employee works; provided, this subsection~~
9 ~~shall not apply to or affect the validity of any appointment of a guardian that occurred before~~
10 ~~October 1, 1987-owner, operator, or employee of a residential treatment facility or long-term~~
11 ~~care institution, including a group home, adult care home, or nursing home where the ward is~~
12 ~~receiving care may not be appointed as the ward's guardian unless related to the ward by blood,~~
13 ~~marriage, or adoption."~~

14 **SECTION 10.** G.S. 35A-1214 reads as rewritten:

15 **"§ 35A-1214. Priorities for appointment.**

16 (a) When appointing a guardian, the clerk shall consider the recommendations of the
17 applicant, the ward's next of kin, the ward, the guardian ad litem, and other interested persons,
18 including State or local human services agencies.

19 (b) The clerk shall ~~consider appointing~~appoint a guardian according to the following
20 order of priority: (i) a qualified individual nominated as guardian by the respondent, including
21 the respondent's most recent nomination made in a durable power of attorney, if at the time of
22 the nomination the respondent had sufficient capacity to express a preference; (ii) a qualified
23 individual who is an agent appointed by the respondent under a durable power of attorney or a
24 durable health care power of attorney; (iii) ~~an~~ a qualified individual recommended under
25 G.S. 35A-1212.1; (iv)~~an~~ a qualified individual; individual who is the respondent's next of kin,
26 who is related to the respondent, or with whom the respondent has lived for a period of at least
27 six months within the year preceding the appointment; (v) a qualified individual who is not an
28 individual specified in subparagraph (iv) and is not a public guardian or a disinterested public
29 agent; (vi) a qualified corporation; (vii) a public guardian; or (viii) a disinterested public agent.
30 ~~No public agent shall be appointed guardian until diligent efforts have been made to find an~~
31 ~~appropriate individual or corporation to serve as guardian, but in every instance the clerk shall~~
32 ~~base the appointment of a guardian or guardians on the best interest of the ward.~~

33 (c) A public guardian or disinterested public agent may not be appointed as guardian
34 unless the clerk determines that no other individual or corporation is qualified, suitable, and
35 willing to serve as guardian. A disinterested public agent who is appointed as guardian may
36 request the clerk to accept the agent's resignation pursuant to G.S. 35A-1292 if another
37 individual or corporation is qualified, suitable, and willing to serve as guardian.

38 (d) With respect to persons having equal priority, the clerk shall appoint the person who
39 is best qualified and suited to serve as guardian.

40 (e) Notwithstanding subsection (b) of this section, the clerk may decline to appoint a
41 qualified person having priority and appoint a qualified person having a lower priority when the
42 clerk determines that appointing a qualified person having a lower priority is in the ward's best
43 interest."

44 **SECTION 11.** G.S. 35A-1216 reads as rewritten:

45 **"§ 35A-1216. Rule-making power of Secretary of Health and Human Services.**

46 The Secretary of the Department of Health and Human Services shall adopt rules
47 concerning the guardianship responsibilities of disinterested public ~~agents~~agents and public
48 guardians. The rules shall provide, among other things, that disinterested public agents and
49 public guardians shall undertake or have received training concerning the powers and
50 responsibilities of guardians."

51 **SECTION 12.** G.S. 35A-1224(e) reads as rewritten:

1 "(e) Notwithstanding any other provision of this section, an ~~employee of a treatment~~
2 ~~facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an~~
3 ~~inpatient in or resident of the facility in which the employee works; provided, this subsection~~
4 ~~shall not apply to or affect the validity of any appointment of a guardian that occurred before~~
5 ~~October 1, 1987.~~ owner, operator, or employee of a residential treatment facility or long-term
6 care institution, including a group home, adult care home, or nursing home where the ward is
7 receiving care may not be appointed as the ward's guardian unless related to the ward by blood,
8 marriage, or adoption."

9 **SECTION 13.** G.S. 35A-1230 reads as rewritten:

10 "**§ 35A-1230. Bond required before receiving property required.**

11 (a) Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no public
12 guardian, general guardian or guardian of the estate shall be permitted to receive the ward's
13 property until he the guardian has given sufficient surety, approved by the clerk, to account for
14 and apply the same under the direction of the court, court, provided that if the guardian is a
15 nonresident of this State and the value of the property received exceeds one thousand dollars
16 (\$1,000) the surety shall be a bond under G.S. 35A-1231(a) executed by a duly authorized
17 surety company, or secured by cash in an amount equal to the amount of the bond or by a
18 mortgage executed under Chapter 109 of the General Statutes on real estate located in the
19 county, the value of which, excluding all prior liens and encumbrances, shall be at least one and
20 one-fourth times the amount of the ~~bond; bond, and further provided that the~~ A nonresident
21 guardian shall appoint a resident agent to accept service of process in all actions and
22 proceedings with respect to the guardianship. The clerk shall not require a guardian of the
23 person who is a resident of North Carolina to post a bond; the clerk may require a nonresident
24 guardian of the person to post a bond or other security for the faithful performance of the
25 guardian's duties.

26 (b) Before issuing letters of appointment or at any time thereafter, the clerk may require
27 a public guardian, disinterested public agent, or nonresident who is a guardian of the person to
28 post and maintain a bond or other security, in an amount the clerk deems reasonable and
29 necessary, for the faithful performance of the guardian's powers and duties.

30 (c) Notwithstanding any other provision of this Article, the clerk shall accept a blanket
31 bond purchased by the Department of Health and Human Services for a public guardian or
32 disinterested public agent in lieu of a bond required under subsection (a) or (b) of this section
33 or under G.S. 35A-1231, unless the clerk determines that the amount of the bond is insufficient
34 to protect the ward or the ward's estate."

35 **SECTION 14.** G.S. 35A-1239 reads as rewritten:

36 "**§ 35A-1239. Health and Human Services bond.**

37 The Secretary of the Department of Health and Human Services shall require or purchase
38 individual or blanket bonds for all public guardians and all disinterested public agents
39 appointed to be guardians, whether they serve as guardians of the estate, guardians of the
40 person, or general guardians, or one blanket bond covering all public guardians and
41 disinterested public agents, the bond or bonds to be conditioned upon faithful performance of
42 their duties as guardians and made payable to the State. The premiums shall be paid by the
43 State."

44 **SECTION 15.** G.S. 35A-1242(a) reads as rewritten:

45 "(a) Any ~~corporation~~ corporation, public guardian, or disinterested public agent that is
46 guardian of the person for an incompetent person, within six months after being appointed,
47 shall file an initial status report with the clerk, and, if ordered by the clerk, with a designated
48 agency, if there is one, or with the clerk, agency. Such The guardian shall file a second status
49 report with the clerk, and, if required, the designated agency or the clerk, agency, one year after
50 being appointed, and subsequent reports annually thereafter. The clerk may order any other
51 guardian of the person to file status reports. If a guardian required by this section to file a status

1 ~~report is employed by the designated agency, the guardian shall file any required status report~~
2 ~~with both the designated agency and the clerk."~~

3 **SECTION 16.** G.S. 35A-1271, 108A-15, and 122C-122 are repealed.

4 **SECTION 17.(a)** The University of North Carolina Institute on Aging shall
5 conduct a study regarding public guardianship services. In conducting the study, the Institute
6 on Aging shall consult with agencies and organizations that are involved or interested in the
7 provision of public guardianship services, including the Division of Aging and Adult Services,
8 the ARC of North Carolina, the Corporation for Guardianship Services, the North Carolina
9 Guardianship Association, the North Carolina Association of County Directors of Social
10 Services, Carolina Legal Assistance, and the Elder Law Section of the North Carolina Bar
11 Association. The Institute on Aging shall consider the recommendations regarding public
12 guardianship services made by the Wingspread National Guardianship Conference, the
13 Wingspan National Guardianship Conference, and the National Study of Public Guardianship
14 conducted by the American Bar Association's Commission on Legal Problems of the Elderly,
15 as well as the structure, administration, funding, and performance of the public guardianship
16 programs in Florida, Georgia, Illinois, Indiana, Kentucky, and Virginia.

17 **SECTION 17.(b)** The study shall address the following:

- 18 (1) The provision of public guardianship services through "disinterested public
19 agent" guardians appointed under Chapter 35A of the General Statutes.
- 20 (2) The provisions of public guardianship services through "public guardians"
21 under Article 11 of Chapter 35A of the General Statutes.
- 22 (3) The advantages and disadvantages of providing public guardianship services
23 through each of the four models of public guardianship (court, social
24 services, independent agency, and county) identified in the National Study of
25 Public Guardianship.
- 26 (4) The cost and feasibility of providing public guardianship services through
27 government-funded nonprofit corporations.
- 28 (5) The potential for conflicts of interest in the provision of public guardianship
29 services and ways to avoid or minimize potential conflicts of interest in
30 providing public guardianship services.
- 31 (6) The amount of funding needed to provide high quality public guardianship
32 services.
- 33 (7) Potential sources of revenue to fund public guardianship services.
- 34 (8) Eligibility to receive public guardianship services.
- 35 (9) Monitoring and evaluation of public guardianship programs.
- 36 (10) Maximum staff-ward ratios for public guardianship programs.
- 37 (11) Training of public guardians.
- 38 (12) Certification of public guardianship programs.
- 39 (13) Ethical and practice standards for public guardianship programs.

40 **SECTION 17.(c)** The Institute on Aging shall submit a report of its findings and
41 recommendations to the North Carolina Study Commission on Aging, Department of Health
42 and Human Services, the Division of Aging and Adult Services, and the Fiscal Research
43 Division on or before October 1, 2011.

44 **SECTION 17.(d)** There is appropriated from the General Fund to the Board of
45 Governors of The University of North Carolina the sum of thirty thousand dollars (\$30,000) for
46 the 2009-2010 fiscal year to conduct the study required by Section 17 of this act.

47 **SECTION 18.** Sections 1 through 16 of this act shall not affect the validity of any
48 appointment of a guardian that occurred before January 1, 2010.

49 **SECTION 19.** There is appropriated from the General Fund to the Department of
50 Health and Human Services, Division of Aging and Adult Services, the sum of thirty thousand
51 dollars (\$30,000) for the 2009-2010 fiscal year to be used to develop educational and training

1 resources for nonprofit corporations and individuals who are appointed as general guardians,
2 guardians of the person, or guardians of the estate.

3 **SECTION 20.** There is appropriated from the General Fund to the Department of
4 Health and Human Services, Division of Aging and Adult Services, the sum of five hundred
5 thousand dollars (\$500,000) for the 2009-2010 fiscal year and the sum of five hundred
6 thousand dollars (\$500,000) for the 2010-2011 fiscal year to be allocated to public guardians
7 and disinterested public agents for public guardianship services.

8 **SECTION 21.** Section 17(a) through (c) is effective when it becomes law. Sections
9 17(d), 19, and 20 of this act become effective July 1, 2009. Sections 1 through 16 of this act
10 become effective January 1, 2010, and apply to incompetency and guardianship proceedings
11 pending or filed on or after that date.