

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 797

Short Title: Public Guardianship/Training/Education. (Public)

Sponsors: Representatives Bordsen, Goodwin (Primary Sponsors); Alexander, Parmon, and Weiss.

Referred to: Judiciary II.

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO IMPROVE PUBLIC GUARDIANSHIP SERVICES IN NORTH CAROLINA AS RECOMMENDED BY THE HOUSE STUDY COMMITTEE ON STATE GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

1 employee of the agency is a party or has been appointed as an interim
 2 guardian, general guardian, or guardian of the person."

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

4 "(3) "Designated agency" means the State or local human services agency
 5 designated by the clerk in an order to prepare, cause to be prepared, or
 6 assemble a multidisciplinary evaluation and to perform other functions
 7 as the clerk may order. A designated agency includes, without
 8 limitation, State, local, regional or area mental health, mental
 9 retardation, vocational rehabilitation, public health, social service, and
 10 developmental disabilities agencies, and diagnostic evaluation centers.
 11 An agency may not be designated as a designated agency in
 12 connection with any proceeding in which an official or employee of
 13 the agency has been appointed as a general guardian or guardian of the
 14 person."

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

16 "(4) "Disinterested public agent" ~~means;~~means

17 a. ~~The~~the director or ~~assistant directors~~an employee of a ~~local~~
 18 ~~human services agency, or county social services department, a~~
 19 ~~consolidated county human services agency, or a State,~~
 20 ~~regional, county, or municipal aging agency.~~

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

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

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

28 "**§ 35A-1210. Application before clerk.**

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

- 36 (1) The name, age, address, and county of residence of the ward or
 37 respondent;
 38 (2) The name, address, and county of residence of the applicant, his
 39 relationship if any to the respondent or ward, and his interest in the
 40 proceeding;
 41 (3) The name, address, and county of residence of the respondent's next of
 42 kin and other persons known to have an interest in the proceeding;

- 1 (4) A general statement of the ward's or respondent's assets and liabilities
2 with an estimate of the value of any property, including any income
3 and receivables to which he is entitled; and
4 (5) Whether the applicant seeks the appointment of a guardian of the
5 person, a guardian of the estate, or a general guardian, and whom the
6 applicant recommends or seeks to have appointed as such guardian or
7 guardians."

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

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

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

14 "(d) A disinterested public agent ~~who is appointed by the clerk to serve as~~
15 ~~guardian is authorized and required to do so; provided, if at the time of the appointment~~
16 ~~or any time subsequent thereto the disinterested public agent believes that his role~~
17 ~~or may not be appointed as guardian if the role of his the agent or the agent's agency in~~
18 ~~relation to the ward is such that his the agent's service as guardian would~~
19 ~~constitute~~constitutes a conflict of interest, or if he knows of any other reason that his
20 ~~service as guardian may~~interest or is not be in the ward's best interest, ~~he shall bring~~
21 ~~such matter to the attention of the clerk and seek the appointment of a different~~
22 ~~guardian.~~interest. A disinterested public agent who is appointed as guardian shall serve
23 in that capacity by virtue of ~~his the agent's~~ office or employment, which shall be
24 identified in the clerk's order and in the letters of appointment. When the disinterested
25 public agent's office or employment terminates, ~~his the agent's~~ successor in office or
26 employment, or ~~his the agent's~~ immediate supervisor if there is no successor, shall
27 succeed ~~him the agent~~ as guardian without further proceedings unless the clerk orders
28 otherwise. A disinterested public agent who is appointed as guardian may request the
29 clerk to accept the agent's resignation pursuant to G.S. 35A-1292 if the agent's
30 continued service as guardian constitutes a conflict of interest."

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

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

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

41 "**§ 35A-1214. Priorities for appointment.**

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

1 (b) ~~The clerk shall consider appointing~~ appoint a guardian according to the
2 following order of priority: (i) a qualified individual nominated as guardian by the
3 respondent, including the respondent's most recent nomination made in a durable power
4 of attorney, if at the time of the nomination the respondent had sufficient capacity to
5 express a preference; (ii) a qualified individual who is an agent appointed by the
6 respondent under a durable power of attorney or a durable health care power of
7 attorney; (iii) ~~an~~ a qualified individual recommended under G.S. 35A-1212.1; (iv) ~~an~~ a
8 qualified individual; individual who is the respondent's next of kin, who is related to the
9 respondent, or with whom the respondent has lived for a period of at least six months
10 within the year preceding the appointment; (v) a qualified individual who is not an
11 individual specified in subparagraph (iv) and is not a public guardian or a disinterested
12 public agent; (vi) a qualified corporation; (vii) a public guardian; or (viii) a disinterested
13 public agent. No public agent shall be appointed guardian until diligent efforts have
14 been made to find an appropriate individual or corporation to serve as guardian, but in
15 every instance the clerk shall base the appointment of a guardian or guardians on the
16 best interest of the ward.

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

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

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

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

30 "**§ 35A-1216. Rule-making power of Secretary of Health and Human Services.**

31 The Secretary of the Department of Health and Human Services shall adopt rules
32 concerning the guardianship responsibilities of disinterested public ~~agents~~ agents and
33 public guardians. The rules shall provide, among other things, that disinterested public
34 agents and public guardians shall undertake or have received training concerning the
35 powers and responsibilities of guardians."

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

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

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

2 "**§ 35A-1230. Bond ~~required before receiving property~~ required.**

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

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

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

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

30 "**§ 35A-1239. Health and Human Services bond.**

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

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

39 "(a) Any ~~corporation~~ corporation, public guardian, or disinterested public agent
40 that is guardian of the person for an incompetent person, within six months after being
41 appointed, shall file an initial status report with the clerk, and, if ordered by the clerk,
42 with a designated agency, if there is one, or with the clerk agency. Such ~~The~~ guardian
43 shall file a second status report with the clerk, and, if required, the designated agency or
44 the clerk agency, one year after being appointed, and subsequent reports annually

1 thereafter. The clerk may order any other guardian of the person to file status reports. If
2 a guardian required by this section to file a status report is employed by the designated
3 agency, the guardian shall file any required status report with both the designated
4 agency and the clerk."

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

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

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

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

1 **SECTION 17.(c)** The Institute on Aging shall submit a report of its findings
2 and recommendations to the North Carolina Study Commission on Aging, Department
3 of Health and Human Services, the Division of Aging and Adult Services, and the Fiscal
4 Research Division on or before October 1, 2009.

5 **SECTION 17.(d)** There is appropriated from the General Fund to the Board
6 of Governors of The University of North Carolina the sum of thirty thousand dollars
7 (\$30,000) for the 2007-2008 fiscal year to conduct the study required by Section 17 of
8 this act.

9 **SECTION 18.** Sections 1 through 16 of this act shall not affect the validity
10 of any appointment of a guardian that occurred before January 1, 2008.

11 **SECTION 19.** There is appropriated from the General Fund to the
12 Department of Health and Human Services, Division of Aging and Adult Services, the
13 sum of thirty thousand dollars (\$30,000) for the 2007-2008 fiscal year to be used to
14 develop educational and training resources for nonprofit corporations and individuals
15 who are appointed as general guardians, guardians of the person, or guardians of the
16 estate.

17 **SECTION 20.** There is appropriated from the General Fund to the
18 Department of Health and Human Services, Division of Aging and Adult Services, the
19 sum of five hundred thousand dollars (\$500,000) for the 2007-2008 fiscal year and the
20 sum of five hundred thousand dollars (\$500,000) for the 2008-2009 fiscal year to be
21 allocated to public guardians and disinterested public agents for public guardianship
22 services.

23 **SECTION 21.** Section 17(a) through (c) is effective when it becomes law.
24 Sections 17(d), 19, and 20 of this act become effective July 1, 2007. Sections 1 through
25 16 of this act become effective January 1, 2008, and apply to incompetency and
26 guardianship proceedings pending or filed on or after that date.