

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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SENATE BILL 573

Short Title: MHDDSA Providers/Guardianship Issues. (Public)

Sponsors: Senators Randleman, Barringer, and Robinson (Primary Sponsors).

Referred to: Health Care.

April 2, 2013

A BILL TO BE ENTITLED
AN ACT ADDRESSING PERMISSIBLE GUARDIANSHIP ROLES FOR CORPORATIONS
AND INDIVIDUALS THAT PROVIDE MENTAL HEALTH, DEVELOPMENTAL
DISABILITIES, OR SUBSTANCE ABUSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1213 reads as rewritten:

"§ 35A-1213. Qualifications of guardians.

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

(b) A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties.

(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written copy of its charter to the clerk of superior court. A corporation contracting with a public agency to serve as guardian is required to attend guardianship training and provide verification of attendance to the contracting agency. A corporation shall not be appointed as guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contractual or other arrangement with a local management entity (LME), including an LME that has been approved to operate the 1915(b)/(c) Medicaid Waiver.

(d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best



1 interest, he shall bring such matter to the attention of the clerk and seek the appointment of a
2 different guardian. A disinterested public agent who is appointed as guardian shall serve in that
3 capacity by virtue of his office or employment, which shall be identified in the clerk's order and
4 in the letters of appointment. When the disinterested public agent's office or employment
5 terminates, his successor in office or employment, or his immediate supervisor if there is no
6 successor, shall succeed him as guardian without further proceedings unless the clerk orders
7 otherwise.

8 (e) Notwithstanding any other provision of this section, an employee of a treatment
9 facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an
10 inpatient in or resident of the facility in which the employee works; provided, this subsection
11 shall not apply to or affect the validity of any appointment of a guardian that occurred before
12 October 1, 1987.

13 (f) An individual who contracts with or is employed by an entity that contracts with a
14 local management entity (LME) for the delivery of mental health, developmental disabilities,
15 and substance abuse services may not serve as a guardian for a ward for whom the individual or
16 entity is providing these services, unless the individual is a parent of that ward. ~~The prohibition
17 provided in this subsection shall not apply to a member of the ward's immediate family who is
18 under contract with a local management entity (LME) for the delivery of mental health,
19 developmental disabilities, and substance abuse services and is serving as a guardian as of
20 January 1, 2013. For the purposes of this subsection, the term "immediate family" is defined as
21 a spouse, child, sibling, parent, grandparent, or grandchild. The term also includes stepparents,
22 stepchildren, stepsiblings, and adoptive relationships.~~one of the following:

- 23 (1) A parent or adoptive parent of that ward. As used in this subdivision, the
24 term "adoptive parent" means a parent who adopts a child from foster care
25 through the Division of Social Services.
26 (2) A family member of the ward.
27 (3) A licensed family foster care provider.
28 (4) A licensed therapeutic foster care provider."

29 **SECTION 2.** This act is effective when it becomes law.