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February 25, 2020

SENATE BILL NO. 1809

By: Rosino of the Senate

and

McEntire of the House

An Act relating to the Oklahoma Guardianship and Conservatorship Act; amending 30 O.S. 2011, Sections 1-111, as amended by Section 28, Chapter 475, O.S.L. 2019 and 3-111 (30 O.S. Supp. 2019, Section 1-111), which relate to definitions and court order appointing guardian; modifying definitions; requiring court to make certain determinations; authorizing dismissal of action under certain circumstances; requiring court order to include specified finding; establishing requirements for certain guardianships; making gender neutral; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 30 O.S. 2011, Section 1-111, as amended by Section 28, Chapter 475, O.S.L. 2019 (30 O.S. Supp. 2019, Section 1-111), is amended to read as follows:

Section 1-111. A. As used in the Oklahoma Guardianship and Conservatorship Act:

1. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an incapacitated person, partially

1 incapacitated person, or a minor by a guardian or other person
2 responsible for providing these services;

3 2. "Confidential information" means medical records, physical,
4 psychological or other evaluations of a ward or subject of the
5 proceeding, initial and subsequent guardianship plans, reports of
6 guardians, limited guardians and conservators submitted to the court
7 in connection with a proceeding pursuant to the provisions of the
8 Oklahoma Guardianship and Conservatorship Act;

9 3. "Court" means a judge of the district court assigned to hear
10 probate matters or assigned to the division of the district court
11 designated to exercise probate jurisdiction;

12 4. "Estate" means the property of the person whose affairs are
13 subject to a guardianship proceeding;

14 5. "Evaluation" means a professional assessment of:

- 15 a. the ability of an adult to receive and evaluate
16 information effectively or communicate decisions,
- 17 b. the impact of any impairment of these skills on the
18 capacity of the individual to meet the essential
19 requirements for ~~his~~ the individual's physical health
20 or safety, or to manage ~~his~~ the individual's financial
21 resources, and
- 22 c. the services necessary to provide for the ward;

23 6. "Exploitation" means an unjust or improper use of the
24 resources of an incapacitated person, a partially incapacitated

1 person, or a minor for the profit or advantage, pecuniary or
2 otherwise, of a person other than an incapacitated person, a
3 partially incapacitated person, or a minor through the use of undue
4 influence, coercion, harassment, duress, deception, false
5 representation, or false pretense;

6 7. A "guardian of an incapacitated person" means a person who
7 has been appointed by a court to serve as the guardian of an
8 incapacitated person to assure that the essential requirements for
9 the health and safety of the person are met, to manage the estate or
10 financial resources of the person, or both;

11 8. "Guardian ad litem" means, with respect to a guardianship
12 proceeding, a person appointed by the court to assist the subject of
13 the proceeding in making decisions with regard to the guardianship
14 proceeding, or to make the decisions when the subject of the
15 proceeding is wholly incapable of making the decisions even with
16 assistance;

17 9. "Guardianship plan" means the plan for the care and
18 treatment of a ward, the plan for the management of the financial
19 resources of a ward, or both;

20 10. "Guardianship proceeding" means a proceeding for the
21 appointment of a guardian, or for other orders regarding the
22 condition, care or treatment or for the management of the financial
23 resources of a ward;

1 11. "Guardianship report" means any report required by the
2 provisions of Sections 4-305 and 4-306 of this title;

3 12. "Incapacitated person" means a person eighteen (18) years
4 of age or older:

5 a. who is impaired by reason of:

6 (1) mental illness as defined by Section 1-103 of
7 Title 43A of the Oklahoma Statutes,

8 (2) intellectual or developmental disability as
9 defined by Section 1430.2 of Title 10 of the
10 Oklahoma Statutes,

11 (3) physical illness or disability,

12 (4) drug or alcohol dependency as defined by Section
13 3-403 of Title 43A of the Oklahoma Statutes, or

14 (5) such other similar cause, and

15 b. whose ability to receive and evaluate information
16 effectively or to make and to communicate responsible
17 decisions is impaired to such an extent that the
18 person:

19 (1) lacks the capacity to meet essential requirements
20 for ~~his~~ physical health or safety, or

21 (2) is unable to manage ~~his~~ financial resources.

22 Whenever in the Oklahoma Statutes the term "incompetent person"
23 appears and refers to a person who has been found by a district
24 court to be an incompetent person because of an impairment or

1 condition described in this paragraph it shall have the same meaning
2 as "incapacitated person" but shall not include a person who is a
3 partially incapacitated person;

4 13. "Least restrictive ~~dispositional~~ alternative" means ~~the~~
5 ~~form of assistance that least interferes with the legal ability of~~
6 ~~an incapacitated or partially incapacitated person to act in his own~~
7 ~~behalf~~ an approach to meeting the needs of an individual that
8 restricts fewer rights of the individual than would the appointment
9 of a guardian or conservator including, but not limited to,
10 supported decision making, appropriate technological assistance,
11 appointment of a representative payee and appointment of an agent by
12 the individual, including under a power of attorney for health care
13 or finances;

14 14. "Intangible personal property" means cash, stocks and
15 bonds, mutual funds, money market accounts, certificates of deposit,
16 insurance contracts, commodity accounts, and other assets of a
17 similar nature;

18 15. "Letters" means a document issued by the court subsequent
19 to the appointment of a guardian which designates the name of the
20 guardian and specifies the authority and powers of the guardian.
21 Such document shall be endorsed thereon with the oath of the
22 guardian that he or she will perform the duties of his or her office
23 as guardian according to law;

1 16. A "limited guardian" means a person appointed by the court
2 to serve as the guardian of a partially incapacitated person and who
3 is authorized by the court to exercise only:

4 a. some of the powers of a guardian of the person or
5 whose power as guardian of the person extends only to
6 certain matters pertaining to the care or control of
7 the ward as specified by the court, or

8 b. certain powers as guardian of the property over the
9 estate or financial resources of the ward, or whose
10 powers as guardian of the property extend only to some
11 portion of the estate or financial resources of the
12 ward;

13 17. "Manage financial resources" or "manage the estate" means
14 those actions necessary to obtain, administer, and dispose of real
15 property, business property, benefits and income, and to otherwise
16 manage personal financial or business affairs;

17 18. "Meet the essential requirements for physical health or
18 safety" means those actions necessary to provide the health care,
19 food, shelter, clothing, personal hygiene and other care without
20 which serious physical injury is more likely than not to occur;

21 19. "Minor" means a person under eighteen (18) years of age;

22 20. "Neglect" means the failure to provide protection for an
23 incapacitated person, a partially incapacitated person, or a minor
24 who is unable to protect the person's own interest; or the failure

1 to provide adequate shelter or clothing; or the harming or
2 threatening with harm through action or inaction by either another
3 individual or through the person's own action or inaction because of
4 a lack of awareness, incompetence, or incapacity, which has resulted
5 or may result in physical or mental injury;

6 21. "Organization" means a corporation, trust, business trust,
7 partnership, association, or other legal entity;

8 22. "Partially incapacitated person" means an incapacitated
9 person whose impairment is only to the extent that without the
10 assistance of a limited guardian the person is unable to:

11 a. meet the essential requirements for ~~his~~ physical
12 health or safety, or

13 b. manage all of ~~his~~ the person's financial resources or
14 to engage in all of the activities necessary for the
15 effective management of ~~his~~ the person's financial
16 resources.

17 A finding that an individual is a partially incapacitated person
18 shall not constitute a finding of legal incompetence. A partially
19 incapacitated person shall be legally competent in all areas other
20 than the area or areas specified by the court in its dispositional
21 or subsequent orders. Such person shall retain all legal rights and
22 abilities other than those expressly limited or curtailed in the
23 orders;

1 23. "Party" means the person or entity filing a petition,
2 application, motion, acceptance of a testamentary nomination, or
3 objection; the subject of a guardianship proceeding; and the
4 guardian, the guardian ad litem and the conservator, if any such
5 persons have been appointed;

6 24. "Person" means an individual;

7 25. "Property" means real property, personal property, income,
8 any interest in such real or personal property and includes anything
9 that may be the subject of ownership;

10 26. "Restrictions on the legal capacity of a person to act in
11 ~~his~~ the person's own behalf" means powers of an incapacitated or
12 partially incapacitated person which are assigned to a guardian;

13 27. "Subject of the proceeding" means a minor or an adult:

- 14 a. who is the subject of a petition requesting the
15 appointment of a guardian, limited guardian or special
16 guardian,
17 b. for whom a guardian or limited guardian has been
18 appointed by the court, or
19 c. an adult for whom a conservator is requested or
20 appointed; ~~and~~

21 28. "Supported decision making" means assistance from one or
22 more persons chosen by an individual in understanding the nature and
23 consequences of potential personal and financial decisions to enable
24

1 the individual to make such decisions, and in communicating such
2 decisions if consistent with the wishes of the individual; and

3 29. "Surcharge" means the imposition of personal liability by a
4 court on a guardian or limited guardian for willful or negligent
5 misconduct in the administration of the estate or other financial
6 resources of a ward.

7 B. 1. Nothing in this section shall be construed to mean an
8 incapacitated person, a partially incapacitated person, or a minor
9 is abused or neglected for the sole reason that a guardian or other
10 person responsible, in good faith, selects and depends upon
11 spiritual means alone through prayer, in accordance with the tenets
12 and practices of a recognized church or religious denomination, for
13 the treatment or cure of disease or remedial care of the person or
14 minor in their trust, and, in the case of an adult, in accordance
15 with the practices of or the express consent of the incapacitated or
16 partially incapacitated person.

17 2. Nothing contained in this subsection shall prevent a court
18 from immediately assuming custody of a minor, pursuant to the
19 Oklahoma Children's Code, and ordering whatever action may be
20 necessary, including medical treatment, to protect the minor's
21 health or welfare.

22 SECTION 2. AMENDATORY 30 O.S. 2011, Section 3-111, is
23 amended to read as follows:
24

1 Section 3-111. A. At the hearing on the petition the court
2 shall determine whether or not it is necessary to appoint a guardian
3 of the person, property or both. If a guardian is needed, the court
4 shall determine:

5 1. When a general or limited guardian of the person of the
6 subject of the proceeding is requested, the essential requirements
7 for the health and safety of the subject of the proceeding and the
8 skills and knowledge necessary to meet those requirements;

9 2. When a general or limited guardian of the property of the
10 subject of the proceeding is requested, the type and amount of the
11 financial resources of the subject of the proceeding, the essential
12 requirements for managing the financial resources, and the skills
13 and knowledge necessary to manage the financial resources;

14 3. The nature and extent of the incapacity of the subject of
15 the proceeding, if any; and

16 4. Whether by clear and convincing evidence the subject of the
17 proceeding is an incapacitated or partially incapacitated person.

18 B. If after a full hearing and examination upon such petition,
19 the court finds by clear and convincing evidence that the subject of
20 the proceeding is an incapacitated or partially incapacitated
21 person, the court shall ~~appoint a guardian or limited guardian and~~
22 ~~shall issue an order appointing a guardian. The court shall explain~~
23 ~~on the record the facts and reasons supporting the decision not to~~
24 ~~impose any~~ determine the extent of the incapacity and the

1 feasibility of less restrictive alternatives to guardianship to meet
2 the needs of the subject of the proceeding. If the court finds that
3 alternatives to guardianship are feasible and adequate to meet the
4 needs of the subject of the proceeding, the court may dismiss the
5 action.

6 C. A court order appointing a guardian for a person shall
7 include a specific finding that it was established by clear and
8 convincing evidence that the identified needs of the subject of the
9 proceeding cannot be met by a protective arrangement instead of
10 guardianship or other less restrictive alternatives.

11 D. Guardianship for an incapacitated person shall be:

12 1. Used only as is necessary to promote and protect the well-
13 being of the person and his or her property;

14 2. Designed to encourage the development of maximum self-
15 reliance and independence of the person; and

16 3. Ordered only to the extent required by the actual mental,
17 physical and adoptive limitations of the person.

18 SECTION 3. This act shall become effective November 1, 2020.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
20 February 25, 2020 - DO PASS
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