

§5-301. Basis for appointment of guardian for adult

1. Appointment. On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent;

(2) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives that provide adequate protection for the respondent; and

(3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or [PL 2019, c. 417, Pt. A, §21 (AMD).]

B. With appropriate findings, and additional notice to persons the court determines are entitled to notice, treat the petition as one for a conservatorship under Part 4 or a protective arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding. [PL 2019, c. 417, Pt. A, §21 (AMD).]

In making a determination on a petition under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §21 (AMD).]

2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of and provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §21 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §21 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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