

§5-312. Emergency guardian

1. Basis for emergency guardianship. On petition by a person interested in an adult's welfare or on its own after a petition has been filed under section 5-302, the court may appoint an emergency guardian for the adult if the court finds:

A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare.

For purposes of this paragraph, the delay of discharge of a patient in a hospital until the appointment of a guardian constitutes substantial harm; [PL 2021, c. 463, §1 (AMD).]

B. No other person appears to have authority and willingness to act in the circumstances; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2021, c. 463, §1 (AMD).]

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

- (1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;
- (2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and
- (3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Notice under paragraph A must include the following information:

- (1) The temporary authority that the petitioner is requesting;
- (2) The location and telephone number of the court in which the petition is being filed; and
- (3) The name of the petitioner and the intended date of filing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-303 do not apply to this section. [PL 2019, c. 417, Pt. A, §37 (AMD).]

D. Notice is not required under this subsection in the following circumstances:

- (1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;
- (2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §37 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Appointment without notice and hearing. The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and any other person as the court determines of the appointment. If the respondent objects to the appointment, the court shall hold a hearing within 14 days of the appointment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4-A. Appointment without professional evaluation. A professional evaluation under section 5-306 is not required before the appointment of an emergency guardian if the court finds from the affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.

[PL 2019, c. 417, Pt. A, §38 (NEW).]

5. Not a determination. Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under section 5-301 have been satisfied.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Removal; report; application. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian appointed under this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§37, 38 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 463, §1 (AMD).

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