

§5-314. Powers of guardian for adult

1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

A. Apply for or receive money, personal effects or benefits for the support of the adult and apply the money for support, care and education of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator, but the guardian may not use money from the adult's estate for room and board that the guardian or the guardian's spouse, parent or child has furnished to the adult unless a charge for the services is approved by order of the court; [PL 2019, c. 417, Pt. A, §40 (AMD).]

B. If otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Consent to medical or other care, treatment or service for the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. To the extent reasonable, delegate to the adult certain responsibility for decisions affecting the adult's well-being; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Receive personally identifiable health care information concerning the adult. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §40 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Adoption. The court may by specific order authorize a guardian for an adult to consent to the adoption of the adult.

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

3. Specific order of court required. The court may by specific order authorize a guardian for an adult to:

A. Consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed or made subject to conditions under section 5-310; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

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

4. Court's consideration. In determining whether to authorize a power under subsection 2 or 3, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether the underlying act would be in the best interest of the adult.

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

5. Duties with respect to dwelling. In exercising the guardian's power under subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship, a guardian shall:

A. Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in section 5-313, subsections 4 and 5. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with section 5-313, subsection 5 a residential setting that is consistent with the best interest of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. In selecting among residential settings, give priority to a residential setting that is in a location that will allow the adult subject to guardianship to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless doing so would be inconsistent with the decision-making standard in section 5-313, subsections 4 and 5; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the adult objected to the change; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors only if:

- (1) The establishment or move is generally set forth in the guardian's plan;
- (2) The court authorizes the establishment or move; or
- (3) Absent a compelling reason, notice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order. The notice must be given orally and in writing to the adult subject to guardianship, and in writing to all persons entitled to notice under section 5-310, subsection 5 and must include the address of the current place of dwelling, the address and type of new permanent place of dwelling, the reason for the establishment or move to the new permanent place of dwelling and the right to object to the new place of dwelling; [PL 2019, c. 417, Pt. A, §41 (AMD).]

E. Establish or move the place of dwelling of an adult subject to guardianship outside this State only if consistent with the guardian's plan and authorized by the court by specific order; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:

- (1) The action is generally set forth in the guardian's plan;
- (2) The court authorizes the action by specific order; or
- (3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship, orally and in writing, and in writing to all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order, and no objection has been filed within 14 days of the notice. [PL 2019, c. 417, Pt. A, §41 (AMD).]

[PL 2019, c. 417, Pt. A, §41 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Duties with respect to health care. In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:

A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Take into account:

(1) The risks and benefits of treatment options; and

(2) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

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

7. Application to existing guardianships. For guardianships established prior to September 1, 2019, the guardian is not subject to the duties of notice and restrictions of power set forth in subsection 5, paragraphs C, D and F until so ordered by the court.

[PL 2019, c. 417, Pt. A, §42 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§40-42 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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