

§5-315. Special limitations on guardian's power

1. Limitations; health care; finances. Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

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

2. Commitment to mental health facility. A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the State's procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3.

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

3. Restrictions on contact. A guardian for an adult may not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless:

A. Authorized by the court by specific order; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the adult. The guardian shall provide a notice, orally and in writing, of the restriction to the adult subject to guardianship immediately upon imposition of the restriction and shall provide written notice of the restriction to all other persons entitled to notice under section 5-310, subsection 5 within 7 days of imposition of the restriction. Notice must include a description of the restriction, contact information of the court and the right to object to the restriction. [PL 2019, c. 417, Pt. A, §43 (AMD).]

[PL 2019, c. 417, Pt. A, §43 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. 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 3 until so ordered by the court.

[PL 2019, c. 417, Pt. A, §44 (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, §§43, 44 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 129th Maine Legislature and is current through October 1, 2020. The

text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.