

CHAPTER 132

An Act concerning the appointment of a guardian for a person receiving services from the Division of Developmental Disabilities and amending P.L.1970, c.289.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to read as follows:

C.30:4-165.8 Necessary affidavits, documents relative to appointment of certain guardians; definitions.

2. a. The moving papers shall include: (1) a verified complaint; (2) an affidavit from a practicing physician or a psychologist licensed pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.) who has made a personal examination of the alleged incapacitated person not more than six months prior to the filing of the verified complaint; and (3) one of the following documents: (a) an affidavit from the chief executive officer, medical director, or other officer having administrative control over the program from which the individual is receiving functional or other services provided by the Division of Developmental Disabilities; (b) an affidavit from a designee of the Division of Developmental Disabilities having personal knowledge of the functional capacity of the individual who is the subject of the guardianship action; (c) a second affidavit from a practicing physician or psychologist licensed pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.); (d) a copy of the Individualized Education Program, including any medical or other reports, for the individual who is subject to the guardianship action, which shall have been prepared no more than two years prior to the filing of the verified complaint; or (e) an affidavit from a licensed care professional having personal knowledge of the functional capacity of the individual who is the subject of the guardianship action. The documents described in paragraphs (2) and (3) of this subsection shall set forth with particularity the facts supporting the belief that the alleged incapacitated person suffers from a significant chronic functional impairment to such a degree that the person either lacks the cognitive capacity to make decisions for himself or to communicate, in any way, decisions to others.

- b. As used in this section:

"Designee of the Division of Developmental Disabilities" means an evaluator, care manager, case manager, or other employee or contractor affiliated with the Division of Developmental Disabilities, whether or not such person has administrative control over the program from which the individual is receiving functional or other services.

"Individualized education program" means a written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals, and short-term objectives or benchmarks, and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives.

"Licensed care professional" means a duly certified or licensed advanced practice nurse, board certified assistant behavior analyst, board certified behavior analyst, clinical nurse practitioner, licensed practical nurse, family counselor, nurse, occupational therapist, physical therapist, physician assistant, professional counselor, registered nurse, social worker, or speech language pathologist.

"Significant chronic functional impairment" includes, but is not limited to, a lack of comprehension of concepts related to personal care, health care, or medical treatment.

2. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read as follows:

C.30:4-165.7 Filing of complaint for guardianship.

1. The commissioner or any parent, spouse, relative, or interested party, on behalf of an alleged incapacitated person who is receiving functional or other services and is over 18 years of age, may file a complaint upon notice to the alleged incapacitated person with the Superior Court in the county furnishing the services or in which such parent, spouse, relative, or interested party resides, for a judgment designating a guardian. The county of settlement shall be served with a copy of the moving papers, however, the county may waive service of the moving papers if it has no reason to oppose the action. If the county elects to oppose the action it shall do so within 30 days after being served with a copy of the moving papers. Unless filed by the commissioner, a complaint shall be served by the filing party upon the Division of Developmental Disabilities, to the attention of the Regional Director for the region in which the alleged incapacitated person is receiving functional or other services. The filing party shall likewise serve upon the Regional Director a copy of the Order Fixing Hearing Date and Appointing Attorney for Alleged Incapacitated Person, as well as a copy of any Judgment of Incapacity and Order Appointing Guardian.

3. This act shall take effect on the first day of the third month next following the date of enactment.

Approved November 9, 2015.