

ASSEMBLY, No. 693

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

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District 35 (Bergen and Passaic)

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District 37 (Bergen)

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District 26 (Essex, Morris and Passaic)

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SYNOPSIS

Expands role of temporary guardian to include arranging placement of alleged incapacitated person in appropriate, less restrictive environment.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/9/2021)

1 AN ACT concerning temporary guardianship and amending
2 P.L.2005, c.304.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 12 of P.L.2005, c.304 (C.3B:12-24.1) is amended to
8 read as follows:

9 12. Determination by the court of need for guardianship
10 services, specific services.

11 a. General Guardian. If the court finds that an individual is
12 incapacitated as defined in N.J.S.3B:1-2 and is without capacity to
13 govern himself or manage his affairs, the court may appoint a
14 general guardian who shall exercise all rights and powers of the
15 incapacitated person. The general guardian of the estate shall
16 furnish a bond conditioned as required by the provisions of
17 N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so
18 by the court.

19 b. Limited Guardian. If the court finds that an individual is
20 incapacitated and lacks the capacity to do some, but not all, of the
21 tasks necessary to care for himself, the court may appoint a limited
22 guardian of the person, limited guardian of the estate, or limited
23 guardian of both the person and estate. A court, when establishing
24 a limited guardianship shall make specific findings regarding the
25 individual's capacity, including, but not limited to which areas, such
26 as residential, educational, medical, legal, vocational and financial
27 decision making, the incapacitated person retains sufficient capacity
28 to manage. A judgment of limited guardianship may specify the
29 limitations upon the authority of the guardian or alternatively the
30 areas of decision making retained by the person. The limited
31 guardian of the estate shall furnish a bond in accordance with the
32 provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved
33 from doing so by the court.

34 c. Pendente lite; Temporary Guardian.

35 (1) Whenever a complaint is filed in the Superior Court to
36 declare a person incapacitated and appoint a guardian, the
37 complaint may also request the appointment of a temporary
38 guardian of the person or estate, or both, pendente lite. Notice of a
39 pendente lite temporary guardian application shall be given to the
40 alleged incapacitated person or alleged incapacitated person's
41 attorney or the attorney appointed by the court to represent the
42 alleged incapacitated person.

43 (2) Pending a hearing for the appointment of a guardian, the
44 court may for good cause shown and upon a finding that there is a
45 critical need or risk of substantial harm, including, but not limited
46 to:

47 (a) the physical or mental health, safety and well-being of the
48 person may be harmed or jeopardized;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (b) the property or business affairs of the person may be
2 repossessed, wasted, misappropriated, dissipated, lost, damaged or
3 diminished or not appropriately managed;

4 (c) it is in the best interest of the alleged incapacitated person to
5 have a temporary guardian appointed and such may be dealt with
6 before the hearing to determine incapacity can be held, after any
7 notice as the court shall direct, appoint a temporary guardian
8 pendente lite of the person or estate, or both, of the alleged
9 incapacitated person.

10 (3) A pendente lite temporary guardian appointed pursuant to
11 this section may be granted authority to:

12 (a) arrange interim financial, social, medical or mental health
13 services or temporary accommodations for the alleged incapacitated
14 person determined to be necessary to deal with critical needs of or
15 risk of substantial harm to the alleged incapacitated person or the
16 alleged incapacitated person's property or assets. The pendente
17 lite temporary guardian may be authorized to make arrangements
18 for payment for such services from the estate of the alleged
19 incapacitated person; and

20 (b) arrange temporary placement of the alleged incapacitated
21 person in a more appropriate, less restrictive and more cost-
22 effective environment than the person's current environment. The
23 temporary placement shall include, but not be limited to, a nursing
24 home, assisted living facility, group home or some other supervised
25 living arrangement that provides for access to care and services
26 necessary for the safety and continued well-being of the person.

27 The pendente lite temporary guardian may be authorized to make
28 arrangements for payment for the services provided pursuant to this
29 paragraph from the estate of the alleged incapacitated person.

30 (4) A pendente lite temporary guardian appointed hereunder
31 shall be limited to act for the alleged incapacitated person only for
32 those services determined by the court to be necessary to deal with
33 critical needs or risk of substantial harm to the alleged incapacitated
34 person.

35 (5) The alleged incapacitated person's attorney or attorney
36 appointed by the court to represent the alleged incapacitated person
37 shall be given notice of the appointment of the pendente lite
38 temporary guardian. The pendente lite temporary guardian shall
39 communicate all actions taken on behalf of the alleged incapacitated
40 individual to the alleged incapacitated person's attorney or attorney
41 appointed by the court to represent the alleged incapacitated person
42 who shall have the right to object to such actions.

43 (6) A pendente lite temporary guardian appointment shall not
44 have the effect of an adjudication of incapacity or effect of
45 limitation on the legal rights of the individual other than those
46 specified in the court order.

47 (7) If the court enters an order appointing a pendente lite
48 temporary guardian without notice, the alleged incapacitated person

1 may appear and move for its dissolution or modification on two
2 days' notice to the plaintiff and to the temporary guardian or on
3 such shorter notice as the court prescribes.

4 (8) Every order appointing a pendente lite temporary guardian
5 granted without notice expires as prescribed by the court, but within
6 a period of not more than 45 days, unless within that time the court
7 extends it for good cause shown for the same period.

8 (9) The pendente lite temporary guardian, upon application to
9 the court, shall be entitled to receive reasonable fees for his
10 services, as well as reimbursement of his reasonable expenses,
11 which shall be payable by the estate of the alleged incapacitated
12 person or minor.

13 (10) The pendente lite temporary guardian shall furnish a bond in
14 accordance with the provisions of N.J.S.3B:15-1 et seq., unless the
15 guardian is relieved from doing so by the court.

16 d. Disclosure of information. Physicians and psychologists
17 licensed by the State are authorized to disclose medical information,
18 including but not limited to medical, mental health and substance
19 abuse information as permitted by State and federal law, regarding
20 the alleged incapacitated person in affidavits filed pursuant to the
21 Rules Governing the Courts of the State of New Jersey.

22 e. Court appearance. The alleged incapacitated person shall
23 appear in court unless the plaintiff and the court-appointed attorney
24 certify that the alleged incapacitated person is unable to appear
25 because of physical or mental incapacity.

26 f. Communication. When a person who is allegedly in need of
27 guardianship services appears to have a receptive or expressive
28 communication deficit, all reasonable means of communication
29 with the person shall be attempted for the purposes of this section,
30 including written, spoken, sign or non-formal language, which
31 includes translation of the person's spoken or written word when the
32 person is unable to communicate in English, and the use of adaptive
33 equipment.

34 g. Additional subject areas. At the request of the limited
35 guardian, and if the incapacitated person is not represented, after
36 appointment of an attorney for the incapacitated person and with
37 notice to all interested parties, the court may determine that a
38 person is in need of guardian services regarding additional subject
39 areas and may enlarge the powers of the guardian to protect the
40 person from significant harm.

41 h. Limitations of guardian powers. At the request of the
42 guardian, the incapacitated person or another interested person, and
43 if the incapacitated person is not represented, after appointment of
44 an attorney for the incapacitated person and with notice to all
45 interested parties, the court may limit the powers conferred upon a
46 guardian.

47 (cf: P.L.2005, c.304, s.12)

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill amends the law governing temporary guardianship by
7 providing that a temporary guardian may be authorized to arrange
8 for temporary placement of an alleged incapacitated person in a
9 more appropriate, less restrictive and more cost-effective
10 environment than the person's current environment. The placement
11 would include, but not be limited to, a nursing home, assisted living
12 facility, group home or some other supervised living arrangement
13 that provides for access to care and services necessary for the safety
14 and continued well-being of the person.

15 Current law provides for a temporary guardian to be granted
16 authority to arrange for temporary accommodations determined to
17 be necessary to deal with critical needs of or risk of substantial
18 harm to the alleged incapacitated person or the alleged incapacitated
19 person's property or assets. This bill would add to that authority.