SENATE, No. 2316

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)

Co-Sponsored by:
Senator Codey

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/21/2021)

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

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

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

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

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

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

c. Pendente lite; Temporary Guardian.

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

(2) Pending a hearing for the appointment of a guardian, the court may for good cause shown and upon a finding that there is a

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 <u>thus</u> is new matter.

critical need or risk of substantial harm, including, but not limited to:

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

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

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

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

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

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

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

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

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

(6) A pendente lite temporary guardian appointment shall not have the effect of an adjudication of incapacity or effect of

limitation on the legal rights of the individual other than those specified in the court order.

(7) If the court enters an order appointing a pendente lite temporary guardian without notice, the alleged incapacitated person may appear and move for its dissolution or modification on two days' notice to the plaintiff and to the temporary guardian or on such shorter notice as the court prescribes.

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

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

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

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

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

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

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

h. Limitations of guardian powers. At the request of the guardian, the incapacitated person or another interested person, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all

interested parties, the court may limit the powers conferred upon a guardian.
(cf: P.L.2005, c.304, s.12)

2. This act shall take effect immediately.

STATEMENT

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

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