

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 ENGROSSED SENATE
5 BILL NO. 1751

 By: Dossett of the Senate

 and

 Provenzano of the House

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9 An Act relating to guardianship; amending 30 O.S.
10 2021, Section 1-114, which relates to powers of
11 court; authorizing court to require certain training;
12 amending 30 O.S. 2021, Sections 3-104, 3-111, and 3-
13 112, which relate to appointment of guardian or
14 limited guardian; requiring verification of
15 completion of certain training to be submitted to
16 court; requiring completion of certain training prior
17 to appointment as guardian for certain persons;
18 authorizing certain waiver by court; requiring
19 Department of Human Services to maintain certain
20 list; updating statutory language; updating statutory
21 references; and providing an effective date.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. AMENDATORY 30 O.S. 2021, Section 1-114, is
24 amended to read as follows:

 Section 1-114. A. In all cases the court making the
 appointment of a guardian has exclusive jurisdiction to control such
 guardian in the management and disposition of the person and
 property of the ward.

1 B. The court has jurisdiction over guardianship proceedings,
2 and has the following powers, which must be exercised in the manner
3 prescribed by statute, to:

4 1. Appoint and remove guardians for minors and for
5 incapacitated and partially incapacitated persons;

6 2. Compel any applicant for guardian for a proposed ward
7 diagnosed with a neurological condition such as Alzheimer's disease,
8 dementia, or other similar developmental disability to complete
9 prerequisite training;

10 3. Issue and revoke letters of guardianship;

11 ~~3.~~ 4. Control the conduct of guardians with regard to the care
12 and treatment provided to their wards;

13 ~~4.~~ 5. Control the conduct of guardians with regard to the
14 management of the financial resources of their wards, including but
15 not limited to the power to:

16 a. compel guardians to submit plans, reports, inventories
17 and accountings to the court,

18 b. compel payment and delivery by guardians of property
19 belonging to their wards,

20 c. order the payment of debts, the sale of property, and
21 order and regulate the distribution of property which
22 has been placed under the control or management of a
23 guardian, and

24 d. settle the accounts of guardians;

1 ~~5.~~ 6. Appoint appraisers of the property of wards;

2 ~~6.~~ 7. Compel the attendance of witnesses and the production of
3 documents and property;

4 ~~7.~~ 8. After a petition has been filed for appointment of a
5 guardian for a minor, make or modify any temporary order of
6 guardianship during the progress of the proceedings that would be in
7 the best interest of the ward. Any such temporary order may be
8 entered ex parte with written notice sent to all parties directing
9 them to appear before the court, at a time and place therein
10 specified, not more than twenty (20) days from the time of making
11 such order, to show cause why the order should not be granted for
12 temporary guardianship; and

13 ~~8.~~ 9. Exercise all powers conferred by the Oklahoma
14 Guardianship and Conservatorship Act, Section 1-101 et seq. of this
15 title, and to make such orders as may be necessary for the exercise
16 of ~~said~~ such powers.

17 C. The chief judge of each district court shall establish by
18 court rule a system for:

19 1. The filing of guardianship and conservatorship cases and
20 records which distinguish them from probate cases; and

21 2. Monitoring the filing of annual reports and inventories
22 required by this title for the purpose of assuring that the court
23 will be notified of annual reports as they fall due and whether or
24 not ~~said~~ such reports are filed.

1 SECTION 2. AMENDATORY 30 O.S. 2021, Section 3-104, is
2 amended to read as follows:

3 Section 3-104. A. The following priorities shall guide the
4 selection by the court of a guardian or limited guardian of an
5 incapacitated or partially incapacitated person from among those
6 eligible:

7 1. The individual or individuals nominated by the subject of
8 the proceeding pursuant to Section 3-102 of this title;

9 2. The current guardian or limited guardian appointed or
10 recognized by the appropriate court of any other jurisdiction in
11 which the incapacitated or partially incapacitated person resides;

12 3. An individual nominated by the will or by other writing of a
13 deceased parent, spouse, or an adult child who was serving as the
14 guardian or limited guardian of the subject of the proceeding;

15 4. The spouse of the subject of the proceeding;

16 5. An adult child of the subject of the proceeding;

17 6. A parent of the subject of the proceeding;

18 7. A sibling of the subject of the proceeding;

19 8. Any individual approved by the court with whom the subject
20 of the proceeding has been living for more than six (6) months prior
21 to the filing of the petition. Provided, that any owner, operator,
22 administrator or employee of a facility subject to the provisions of
23 the Nursing Home Care Act, the Residential Home Care Act or the
24 Group Homes for ~~the Developmentally Disabled or Physically~~

1 ~~Handicapped Persons Act~~ Persons with Developmental or Physical
2 Disabilities Act shall not be appointed guardian or limited guardian
3 of a resident of such facility unless the owner, operator,
4 administrator or employee is the spouse of the resident, or a
5 relative of the resident within the second degree of consanguinity
6 and is otherwise eligible for appointment; or

7 9. If applicable, an individual volunteer qualified for
8 appointment as a guardian of a veteran pursuant to the Veterans
9 Volunteer Guardianship Act.

10 B. When the guardian or limited guardian of an incapacitated or
11 partially incapacitated person is the guardian of property only, the
12 court may appoint an organization which is eligible to manage the
13 financial resources of an individual and has fiduciary powers, or
14 its successor in interest, when:

15 1. Such organization is nominated by the subject of the
16 proceeding pursuant to Section 3-102 of this title;

17 2. Such organization is nominated by a person eligible to make
18 such nomination pursuant to Section 3-103 of this title; or

19 3. The appointment of such organization is in the best interest
20 of the subject of the proceeding.

21 C. The court shall make reasonable inquiry to determine whether
22 the person or organization proposed to serve as the guardian or
23 limited guardian of an incapacitated or partially incapacitated
24 person is suitable and will exercise the powers and carry out the

1 duties and responsibilities of guardian or limited guardian in the
2 best interest of the ward. For any guardianship for which the court
3 orders completion of training pursuant to paragraph 2 of subsection
4 B of Section 1-114 of this title, the court shall require
5 verification or attestation of completion of prerequisite training
6 specific to the needs of the ward to be filed in the case or
7 submitted to the court prior to appointment of the guardian, unless
8 waived by the court. The court shall also inquire of the proposed
9 guardian of the person of the ward as to how the guardian proposes
10 to provide for the care of the ward, and of the proposed guardian of
11 the estate of the ward as to how the guardian proposes to manage the
12 property of the ward and to provide for the ward's financial care.
13 The court shall make such orders with respect thereto as the court
14 deems to be for the best interest of the ward.

15 D. A public agency shall not be appointed to serve as guardian
16 for an adult except as provided in Section 1415 of Title 10 and
17 Section 10-108 of Title 43A of the Oklahoma Statutes.

18 SECTION 3. AMENDATORY 30 O.S. 2021, Section 3-111, is
19 amended to read as follows:

20 Section 3-111. A. At the hearing on the petition the court
21 shall determine whether or not it is necessary to appoint a guardian
22 of the person, property or both. If a guardian is needed, the court
23 shall determine:
24

1 1. When a general or limited guardian of the person of the
2 subject of the proceeding is requested, the essential requirements
3 for the health and safety of the subject of the proceeding and the
4 skills and knowledge necessary to meet those requirements;

5 2. When a general or limited guardian of the property of the
6 subject of the proceeding is requested, the type and amount of the
7 financial resources of the subject of the proceeding, the essential
8 requirements for managing the financial resources and the skills and
9 knowledge necessary to manage the financial resources;

10 3. The nature and extent of the incapacity of the subject of
11 the proceeding, if any; and

12 4. Whether by clear and convincing evidence the subject of the
13 proceeding is an incapacitated or partially incapacitated person.

14 B. If after a full hearing and examination upon such petition,
15 the court finds by clear and convincing evidence that the subject of
16 the proceeding is an incapacitated or partially incapacitated
17 person, the court shall determine the extent of the incapacity and
18 the feasibility of less restrictive alternatives to guardianship to
19 meet the needs of the subject of the proceeding. Upon such
20 determination, the court may:

21 1. Dismiss the action if the court finds that less restrictive
22 alternatives to guardianship are feasible and adequate to meet the
23 needs of the subject of the proceeding; or

1 2. Appoint a guardian or limited guardian who has completed any
2 prerequisite training specific to the needs of the ward ordered
3 pursuant to paragraph 2 of subsection B of Section 1-114 of this
4 title, unless waived by the court. An order making such an
5 appointment shall include a specific finding that it was established
6 by clear and convincing evidence that the identified needs of the
7 subject of the proceeding require a guardianship instead of less
8 restrictive alternatives.

9 C. Guardianship for an incapacitated person shall be:

10 1. Used only as is necessary to promote and protect the well-
11 being of the person and his or her property;

12 2. Designed to encourage the development of maximum self-
13 reliance and independence of the person; and

14 3. Ordered only to the extent required by the actual mental,
15 physical and adaptive limitations of the person.

16 SECTION 4. AMENDATORY 30 O.S. 2021, Section 3-112, is
17 amended to read as follows:

18 Section 3-112. A. Whenever the court finds the subject of the
19 proceeding to be an incapacitated person the court shall appoint:

20 1. A general guardian of the person; and

21 2. As the court determines to be necessary and appropriate, a
22 guardian of the property of the ward.

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1 B. Whenever the court finds the subject of the proceeding to be
2 a partially incapacitated person the court shall appoint, as
3 necessary and appropriate for ~~said~~ the person:

4 1. A limited guardian of the person; ~~or~~

5 2. A general or a limited guardian of the property of ~~said~~ the
6 person; or

7 3. A limited guardian of the person and a general or limited
8 guardian of the property of ~~said~~ the person.

9 C. The court may appoint the same or separate persons to serve
10 as guardian or limited guardian of the person and guardian or
11 limited guardian of the property of a ward.

12 D. Unless waived by the court, any person who is to serve as a
13 guardian or limited guardian of the person or the property of a ward
14 whom the court finds to be an incapacitated or partially
15 incapacitated adult due to a diagnosed neurological condition such
16 as Alzheimer's disease, dementia, or other similar developmental
17 disability shall submit verification or attestation of completion of
18 prerequisite training. Such training shall be specific to assisting
19 persons with Alzheimer's disease, dementia, or similar neurological
20 conditions including but not limited to understanding Alzheimer's
21 disease, communication techniques, and resources available for care
22 if the ward is over sixty (60) years of age, or earlier if the
23 person is diagnosed with such a condition.

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1 E. A list of approved training programs shall be maintained by
2 the Department of Human Services. Programs not included on the list
3 must be submitted for approval to the Department prior to
4 guardianship determination.

5 SECTION 5. This act shall become effective November 1, 2024.

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7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
8 04/04/2024 - DO PASS.
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