Illinois Health and Hospital Association

Overview

This memorandum provides an overview of key provisions of the new state law regulating private professional guardians (PPG) under the Probate Act (HB 3811/PA 104-0547).

The original bill sought to restrict, delay, or prohibit the use of all private guardians and increase services costs. IHA worked with stakeholders and the bill sponsor to significantly amend the bill, ensuring the inclusion of guardrails focused on patient rights, the preservation of timely medical decision making, and avoiding additional patient boarding pressures for hospitals.

Beginning Jan. 1, 2027, hospital staff pursuing the service of a PPG to aid patient decision making will be required to file a new affidavit and notice alongside the petition for guardianship, while other requirements apply directly to PPGs.

Background

When a healthcare power of attorney or surrogate decision maker is not an option, a hospital may pursue guardianship as a last resort to support a patient's decision making. Although the Office of the State Guardian may be appointed for respondents with $25,000 or less, or a public guardian for other respondents, IHA preserved a hospital's option to pursue a PPG to expedite the medical decision-making process. In these cases, hospitals should follow best practice by working with the proposed guardian to seek the least restrictive guardianship appropriate for the patient's needs, which is often temporary guardianship.

Following significant media attention that focused on hospitals' use of PPGs beginning in late 2025, IHA and the larger hospital community devoted considerable time to successfully amending or blocking bills that would have delayed or obstructed the use of PPGs for timely, critical decision making for patients that cannot make or communicate responsible decisions. Out of over 20 bills introduced on these issues, all legislation that advanced preserved key patient safety needs and other hospital priorities. Summaries of other legislation impacting patient decision making and guardianship that IHA successfully amended or blocked during the 2026 legislative session will be included in IHA's forthcoming End of Session memo.

The initial proposal (HB 4308) would have outright prohibited PPG use. Later proposals under HB 3811 still delayed decision making and increased costs significantly through duplicative filing requirements despite a key goal of legislators to protect individuals under guardianship from increased costs.

A significant proportion of the initially proposed requirements were streamlined or eliminated in negotiations, and we ended with an agreement on administrative requirements primarily for PPGs (including notices, affidavits, certification, and annual audits for larger operations), several guardrails designed to protect a person's rights and assets, and key hospital exemptions.

New Hospital Compliance Requirements

Hospital staff that act as a petitioner and nominate a PPG for temporary, limited, or plenary guardian must:

- Attach an affidavit to the petition for guardianship stating efforts to contact the respondent's nearest relatives, agent under power of attorney, or other fiduciaries on the need for a PPG, if known or reasonably ascertainable.
- Provide notice of the petition to the public guardian in the hospital's jurisdiction.

New Parameters for Private Professional Guardian Appointment and Enforcement

In addition to existing standards under the Probate Act, the court is permitted to appoint a PPG only upon finding that appointment is in best interest of person with a disability, taking into consideration the respondent's immediate need for timely

medical decision making including, but not limited to, discharge planning and costs to the estate in appointing a PPG as compared to other available and appropriate options. The court also has the authority to remove a PPG that fails to comply with requirements under the law.

New Private Professional Guardian Requirements

Although IHA significantly streamlined the proposed requirements, the following mandates could affect the cost of PPG services when hospitals are paying for those services:

- Meet with and assess the respondent before or as soon as feasible after appointment.
- Evaluate options regard respondent's living arrangements.
- Mandatory filings with the court:
    - A fee schedule, prior to appointment.
    - A budget, upon presentation of its initial inventory and annually thereafter, with estimated length of time the ward can afford services before the estate is depleted.
    - An annual sworn statement affirming compliance with prohibitions on direct or indirect conflicts of interest with the ward, financial or otherwise, excluding fixed salary from an employer.
    - An affidavit, upon appointment and annually thereafter, that PPG employees have had a background check in the last five years.
    - A notification and guardianship transition plan when a ward's estate is estimated to no longer afford the PPG or if a sale of the ward's residence would be required within 36 months or less to continue PPG services.
    - A notice to court and Office of State Guardian (OSG) or the public guardian (PG) at least 60 days before hearing for successor to PPG for limited or plenary guardians, exempting:
        - Persons under guardianship with estimated funding of less than 60 days or guardianship services paid for by a hospital.
        - Temporary guardians.
- Share with court, as requested:
    - Certification of the guardian by the Center for Guardianship Certification, beginning Jan. 1, 2029.
    - Annual audit of financial records for PPGs managing assets of more than $1 million.

If you have questions related to this memo, please contact us.

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