WEST VIRGINIA CODE CHAPTER 44 ARTICLE 15

WV Legislature

§44-15-1. Scope of article.

Whenever, pursuant to any law of the United States or regulation of any bureau or agency thereof, the appointment of a guardian or committee to act in a fiduciary capacity for any person is required prior to payment of benefits, pensions, compensation for service or for any other reason for which payments are due to such person from the government of the United States or any bureau or agency thereof, the United States, or the chief officer of any such bureau or agency of the government, shall be a party in interest in any proceeding for the appointment or removal of a committee or of a guardian or for the removal of the disability of minority or mental incapacity of a ward, or in any suit or other proceeding affecting in any manner the administration by the committee or the guardian of the estate of any ward whose estate includes assets derived, in whole or in part, from benefits heretofore or hereafter paid by the United States, or any bureau or agency thereof. Not less than fifteen days prior to the hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the United States, or any bureau or agency thereof having jurisdiction in such matters over the area in which any such suit or proceeding is pending.

Whenever, pursuant to any law of the United States or regulation of any bureau or agency thereof, it is necessary, prior to the payment of benefits, that a committee or guardian be appointed, the appointment may be made in the manner hereinafter provided.

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§44-15-2. When unlawful for person to accept appointment as guardian; removal.

Except as hereinafter provided, it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. In any case, upon presentation of a petition alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in such case, upon his delivering to a successor, properly qualified, the property with which he was chargeable: Provided, That the limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only: Provided further, That an individual may be guardian of more than five wards if they are all members of the same family.

WV Legislature

§44-15-3. Petition for appointment.

A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled, or if the person so entitled, shall neglect or refuse to file such petition within thirty days after mailing of notice by the bureau or other agency of the government of the United States directly interested in the payment of the sums due the person or persons to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

The petition for appointment shall set forth the name, age and place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable from the government of the United States, and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by an examining board employed or convened by the government of the United States in accordance with the laws and regulations governing the bureau or agency of the government from which payments are to be made.

WV Legislature

§44-15-4. Evidence of necessity for appointment of guardian of minor ward.

Where a petition is filed for the appointment of a guardian of a minor ward, a certificate setting forth the age of such minor as shown by the records and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the government of the United States shall be prima facie evidence of the necessity for such appointment.

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§44-15-5. Evidence of necessity for appointment of guardian or committee of mentally incompetent ward.

Where a petition is filed for the appointment of a guardian or committee of a mentally incompetent ward, a certificate setting forth the fact that such person has been rated incompetent by an examining board employed or convened by the government of the United States, on examination in accordance with the laws and regulations governing such bureau or agency of government from which payments are to be made, and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person, shall be prima facie evidence of the necessity for such appointment.

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§44-15-6. Notice.

Upon the filing of a petition for the appointment of a guardian or committee under the provisions of this article, the court shall cause such notice to be given as provided by law.

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§44-15-7. Qualifications and bond of guardian.

Before making an appointment under the provisions of this article the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. Such bond shall be in the form and be conditioned as required of a guardian appointed under the guardianship laws of this state. The court shall have power from time to time to require additional bond. No such bond tendered by a guardian or committee appointed under the provisions of this article shall be valid unless the surety thereon shall be a solvent surety or bonding company authorized to and legally doing business in this state. The premiums on such bond shall be properly payable out of the estate in the hands of such guardian or committee: Provided, however, That where the total estate coming into the hands of such guardian or committee shall at no time exceed the sum of $500, then a bond with at least three personal sureties thereon may be accepted if such personal sureties are solvent and are worth, respectively, the amount named as the penalty of the bond.

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§44-15-8. Settlement of accounts.

Every guardian, who shall receive on account of his ward any moneys from the government of the United States or any agency thereof, shall file with a fiduciary commissioner annually, on the anniversary date of the appointment, or within thirty days thereafter, in addition to such other accounts as may be required, a full, true and accurate account under oath of all moneys so received by him of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested: Provided, That in cases where the income received by the committee or guardian does not average annually more than $800, the committee or guardian may make his report of account to the commissioner once in every three years. The fiduciary commissioner shall send a true copy of each such account to the office of the bureau or other agency of the government having jurisdiction over the area in which the court is located and from which payments are made. The fiduciary commissioner shall fix a time and place for the hearing on such account not less than fifteen nor more than thirty days from the date of filing the same, and notice thereof shall be given by the fiduciary commissioner to the aforesaid bureau or other agency of the government not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.

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§44-15-9. Failure to make settlement.

If any guardian shall fail to file any account of the money received by him from the bureau or other agency of the government on account of his ward within thirty days after such account is required by either the fiduciary commissioner or the bureau or other agency of the government, or shall fail to furnish the bureau or other agency of the government a copy of his accounts as required by this article, such failure shall be grounds for a removal.

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§44-15-10. Compensation.

Compensation payable to the guardian shall not exceed five percent of the income of the ward during any year. In the event of extraordinary services rendered by such guardian the circuit court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau or other agency of the government in the manner provided in section eight. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.

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§44-15-11. Investment of funds.

Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by law or approved by the court.

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§44-15-12. Disbursements for support of persons other than ward.

A committee shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, the spouse and the minor children of the ward, and a guardian of an infant shall not apply any portion of the income of the estate for the support or maintenance of any person other than the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of such petition shall be furnished the proper office of the United States or any bureau or agency thereof and notice of hearing thereon shall be given such office, bureau, or agency, as provided in the case of a hearing on a committee's account or other pleading: Provided, however, That all periodic payments which have been heretofore or shall be hereafter made pursuant to any law of the United States or regulation of any bureau or agency thereof shall constitute income and may be expended in accordance with the provisions of this section without authority of the court.

WV Legislature

§44-15-13. Certified copies of necessary public records furnished without cost.

Whenever a copy of any public record is required by the bureau or other agency of the government to be used in determining the eligibility of any person to participate in benefits made available to such agency, the official charged with the custody of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the representative of such agency, with a certified copy of such record.

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§44-15-14. Commitment to veterans administration or other agency of United States government.

Whenever it appears that a veteran of any war, military occupation or expedition is eligible for care or treatment by the veterans administration or other agency of the United States government, and commitment thereto is necessary for the proper treatment and care of such veteran, the county court, the county mental hygiene commission, or other tribunal or commission in lieu of either thereof, of the county in which such person is found, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to the veterans administration or other agency of the United States government for care or treatment. Thereafter, such person, upon admission to any such facility, shall be subject to the rules and regulations of the veterans administration or other agency of the United States government. The chief officer of any such facility or institution to which such person is committed under the provisions of this section shall be vested with the same powers now exercised by officials of state hospitals for mental diseases within this state with respect to the retention, transfer, parole or discharge of persons so committed. Notice of such pending commitment proceedings shall be furnished the person whose commitment is sought, and his right to appear and defend shall not be denied. The judgment or order of commitment by a court of competent jurisdiction of another state committing a person to the veterans administration or other agency of the United States government for care or treatment, shall have the same force and effect as to such person while in this state as in the state in which is situated the court entering such judgment or making such order.

Upon receipt of a certificate of the veterans administration or other agency of the United States government that facilities are available for the care or treatment of any person heretofore or hereafter committed to any hospital for the insane or other institution in this state for the care of persons similarly afflicted; and that such person is eligible for care or treatment by the veterans administration or other agency of the United States, the superintendent of any such hospital or institution in this state is hereby authorized to cause the transfer of any such person to the veterans administration or other agency of the United States government for care or treatment. Upon effecting any such transfer, the committing court, commission or tribunal shall be notified thereof by the transferring agency: Provided, however, That no person shall be transferred if he be confined pursuant to conviction of any crime or misdemeanor, or if he shall have been acquitted of any such charge solely on the ground of insanity, unless prior to such transfer the court originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States government pursuant to the original commitment the same as if he had been originally so committed.

WV Legislature

§44-15-15. Discharge of guardian.

When a ward for whom a guardian has been appointed under the provisions of this article or other laws of this state shall have attained his or her majority, and, if incompetent, shall be declared competent by the examining board employed or convened by the bureau or other agency of the government of the United States and the court, and when any incompetent ward, not a minor, shall be declared competent by such examining board employed or convened by the bureau or other agency of the government of the United States and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

WV Legislature

§44-15-16. Construction of article.

This article shall be construed liberally to secure the beneficial intents and purposes thereof, and shall apply only to beneficiaries of the government of the United States. It shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enacted it.

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§44-15-17. How cited.

This article may be cited as the “Uniform Veterans’ Guardianship Act”.

WV Legislature

§44-15-18. Invalidity of part of article.

The invalidity of any portion of this article shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

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