

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 506 Session of 2023

INTRODUCED BY BAKER, HAYWOOD, KEARNEY, COLLETT, KANE, SCHWANK, MILLER, BREWSTER, COSTA, COMMITTA, DILLON AND SANTARSIERO, MARCH 7, 2023

SENATOR BAKER, JUDICIARY, AS AMENDED, JUNE 6, 2023

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in incapacitated persons,
3 further providing for petition and hearing and independent
4 evaluation and, for determination of incapacity and <--
5 appointment of guardian AND FOR REVIEW HEARING. <--

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 5511(a), (e) and (f) of Title 20 of the
9 Pennsylvania Consolidated Statutes are amended and the section
10 is amended by adding a subsection to read:

11 § 5511. Petition and hearing; independent evaluation.

12 (a) Resident.--The court, upon petition and hearing and upon
13 the presentation of clear and convincing evidence, may find a
14 person domiciled in the Commonwealth to be incapacitated and
15 appoint a guardian or guardians of his person or estate. The
16 petitioner may be any person interested in the alleged
17 incapacitated person's welfare. The court may dismiss a
18 proceeding where it determines that the proceeding has not been
19 instituted to aid or benefit the alleged incapacitated person or

1 that the petition is incomplete or fails to provide sufficient
2 facts to proceed. Written notice of the petition and hearing
3 shall be given in large type and in simple language to the
4 alleged incapacitated person. The notice shall indicate the
5 purpose and seriousness of the proceeding and the rights that
6 can be lost as a result of the proceeding. It shall include the
7 date, time and place of the hearing and an explanation of all
8 rights[, including the right to request the appointment of
9 counsel and to have counsel appointed if the court deems it
10 appropriate and the right to have such counsel paid for if it
11 cannot be afforded]. The Supreme Court shall establish a uniform
12 citation for this purpose. A copy of the petition shall be
13 attached. Personal service shall be made on the alleged
14 incapacitated person, and the contents and terms of the petition
15 shall be explained to the maximum extent possible in language
16 and terms the individual is most likely to understand. Service
17 shall be no less than 20 days in advance of the hearing. In
18 addition, notice of the petition and hearing shall be given in
19 such manner as the court shall direct to all persons residing
20 within the Commonwealth who are sui juris and would be entitled
21 to share in the estate of the alleged incapacitated person if he
22 died intestate at that time, to the person or institution
23 providing residential services to the alleged incapacitated
24 person and to such other parties as the court may direct,
25 including other service providers. The hearing may be closed to
26 the public and without a jury unless the alleged incapacitated
27 person or his counsel objects. The hearing shall be closed and
28 with or without a jury if the person alleged to be incapacitated
29 or his counsel so requests. The hearing may be held at the
30 residence of the alleged incapacitated person. The alleged

1 incapacitated person shall be present at the hearing unless:

2 (1) the court is satisfied, upon the deposition or
3 testimony of or sworn statement by a physician or licensed
4 psychologist, that his physical or mental condition would be
5 harmed by his presence; or

6 (2) it is impossible for him to be present because of
7 his absence from the Commonwealth. It shall not be necessary
8 for the alleged incapacitated person to be represented by a
9 guardian ad litem in the proceeding.

10 [Petitioner shall be required to notify the court at least seven
11 days prior to the hearing if counsel has not been retained by or
12 on behalf of the alleged incapacitated person. In appropriate
13 cases, counsel shall be appointed to represent the alleged
14 incapacitated person in any matter for which counsel has not
15 been retained by or on behalf of that individual.]

16 (a.1) Appointment of counsel.--

17 (1) If the petitioner under subsection (a) is aware that
18 the alleged incapacitated person is represented by counsel,
19 the petitioner shall advise the court that the alleged
20 incapacitated person is represented by counsel at the time of
21 filing the petition or as soon as the petitioner becomes
22 aware of the representation.

23 (2) Regardless of the ability of the alleged
24 incapacitated person to pay, the court shall appoint counsel
25 to represent the alleged incapacitated person in any matter
26 for which counsel has not been retained by the alleged
27 incapacitated person, including in all proceedings under
28 subsection (a) and in any subsequent proceedings to consider,
29 modify or terminate a guardianship. Appointed counsel shall
30 be qualified by experience or training and shall act without

1 delay under the circumstances.

2 (3) Counsel for an alleged incapacitated person shall,
3 as far as reasonably possible, maintain a normal client-
4 attorney relationship with the client. Counsel shall advocate
5 for the client's expressed wishes and consistent with the
6 client's instructions, to the extent the client is able to
7 express wishes and provide instructions. Counsel shall comply
8 with the Rules of Professional Conduct governing the
9 attorney-client relationship. Retained or appointed counsel
10 may not act as guardian ad litem for the alleged
11 incapacitated person. If the court determines that a guardian
12 ad litem is necessary, the court shall make a separate
13 appointment. Appointed counsel shall meet with the alleged
14 incapacitated person as soon as reasonably possible after the
15 appointment. Within five days of the meeting, appointed
16 counsel shall file with the court a certification of the time
17 and place that the meeting occurred.

18 * * *

19 (e) Petition contents.--The petition, which shall be in
20 plain language, shall include the name, age, residence and post
21 office address of the alleged incapacitated person, the names
22 and addresses of the spouse, parents and presumptive adult heirs
23 of the alleged incapacitated person, the name and address of the
24 person or institution providing residential services to the
25 alleged incapacitated person, the names and addresses of other
26 service providers, the name and address of the person or entity
27 whom petitioner asks to be appointed guardian, an averment that
28 the proposed guardian has no interest adverse to the alleged
29 incapacitated person, the reasons why guardianship is sought, a
30 description of the functional limitations and physical and

1 mental condition of the alleged incapacitated person, the steps
2 taken to find less restrictive alternatives, the specific areas
3 of incapacity over which it is requested that the guardian be
4 assigned powers and the qualifications of the proposed guardian.
5 Petitions must allege specific facts demonstrating that less
6 restrictive alternatives were considered or tried and why the
7 alternatives are unavailable or insufficient. If a limited or
8 plenary guardian of the estate is sought, the petition shall
9 also include the gross value of the estate and net income from
10 all sources to the extent known.

11 (f) Who may be appointed guardian.--

12 (1) The court may appoint as guardian any qualified
13 individual, a corporate fiduciary, a nonprofit corporation, a
14 guardianship support agency under Subchapter F (relating to
15 guardianship support) or a county agency. In the case of
16 residents of State facilities, the court may also appoint,
17 only as guardian of the estate, the guardian office at the
18 appropriate State facility. The court shall not appoint a
19 person or entity providing residential services for a fee to
20 the incapacitated person or any other person whose interests
21 conflict with those of the incapacitated person except where
22 it is clearly demonstrated that no guardianship support
23 agency or other alternative exists. Any family relationship
24 to such individual shall not, by itself, be considered as an
25 interest adverse to the alleged incapacitated person. If
26 appropriate, the court shall give preference to a nominee of
27 the incapacitated person.

28 (2) An individual seeking guardianship of three or more
29 incapacitated persons must be certified as provided in this
30 paragraph and provide proof of the certification to the court

1 prior to a third guardianship appointment. The following
2 provisions shall apply:

3 (i) The Supreme Court shall prescribe rules and
4 forms necessary to effectuate the certification required
5 under this paragraph, including rules regarding the
6 expiration and renewal of certifications.

7 (ii) When the Supreme Court prescribes rules
8 relating to requirements for certification:

9 (A) The Supreme Court shall provide
10 opportunities for relevant stakeholders to provide
11 input.

12 (B) The certification shall, at a minimum,
13 require:

14 (I) Submission of education and employment
15 history.

16 (II) Submission of Federal and State
17 criminal history record information.

18 (III) Passage of a certification exam
19 administered by a national nonprofit guardianship
20 certification organization. The national
21 nonprofit organization must provide a
22 comprehensive certification program for
23 guardians, including supervising a national
24 certification process, developing certification
25 exam content and maintaining a decertification
26 process.

27 (3) The certification required under paragraph (2) may
28 be waived by a court upon a petition demonstrating that a
29 proposed guardian has such equivalent licenses or
30 certifications as are necessary to ensure that the proposed

1 guardian is capable of fully, faithfully and competently
2 performing the obligations of a guardian. FOR PURPOSES OF <--
3 THIS PARAGRAPH, A LICENSE TO PRACTICE LAW SHALL NOT
4 CONSTITUTE AN EQUIVALENT LICENSE OR CERTIFICATION.

5 ~~Section 2. Section 5512.1(a) of Title 20 is amended to read:~~ <--

6 SECTION 2. SECTIONS 5512.1(A) AND 5512.2 OF TITLE 20 ARE <--
7 AMENDED TO READ:

8 § 5512.1. Determination of incapacity and appointment of
9 guardian.

10 (a) Determination of incapacity.--In all cases, the court
11 shall consider and make specific findings of fact concerning:

12 (1) The nature of any condition or disability which
13 impairs the individual's capacity to make and communicate
14 decisions.

15 (2) The extent of the individual's capacity to make and
16 communicate decisions.

17 (3) The need for guardianship services, if any, in light
18 of such factors as the availability of family, friends and
19 other supports to assist the individual in making decisions
20 and in light of the existence, if any, of [advance directives
21 such as durable powers of attorney or trusts.] less

22 restrictive alternatives. The court shall make specific
23 findings of fact based on the evidentiary record of the
24 absence of sufficient family, friends or other supports and
25 of the insufficiency of each less restrictive alternative
26 before ordering guardianship. Less restrictive alternatives
27 include, but are not limited to:

28 (i) Advance directives such as durable power of
29 attorney or trusts.

30 (ii) Living wills.

1 (iii) Health care powers of attorney.

2 (iv) Health care representatives.

3 (v) Financial powers of attorney.

4 (vi) Trusts, including special needs trusts.

5 (vii) Representative payees for individuals
6 receiving Social Security benefits.

7 (viii) Pennsylvania Achieving a Better Life
8 Experience accounts.

9 (ix) Mental health advance directives.

10 (4) The type of guardian, limited or plenary, of the
11 person or estate needed based on the nature of any condition
12 or disability and the capacity to make and communicate
13 decisions.

14 (5) The duration of the guardianship.

15 (6) The court shall prefer less restrictive alternatives
16 to guardianship and, if no less restrictive alternatives are
17 available and sufficient, limited guardianship. The following
18 apply:

19 (i) A determination of incapacity is separate from a
20 determination of whether a guardian should be appointed.

21 (ii) The court may not use a determination of
22 incapacity alone to justify a guardianship.

23 (iii) The court may not appoint a guardian if a
24 lesser restrictive alternative exists that is sufficient
25 to support the needs of an incapacitated person.

26 (iv) When entering an order denying a petition for
27 guardianship in whole or in part, the court shall
28 identify the less restrictive alternatives that are
29 available and sufficient to enable the alleged
30 incapacitated person to manage personal financial

1 resources or to meet essential requirements of personal
2 physical health and safety. An order may assist the
3 respondent and any supportive and substitute decision
4 makers involved to effectuate the respondent's decisions
5 with third parties.

6 * * *

7 § 5512.2. REVIEW HEARING. <--

8 (A) [TIME OF HEARING.--THE COURT MAY SET A DATE FOR A REVIEW
9 HEARING IN ITS ORDER ESTABLISHING THE GUARDIANSHIP OR HOLD A
10 REVIEW HEARING AT ANY TIME IT SHALL DIRECT. THE COURT SHALL
11 CONDUCT A REVIEW HEARING PROMPTLY IF THE INCAPACITATED PERSON,
12 GUARDIAN OR ANY INTERESTED PARTY PETITIONS THE COURT FOR A
13 HEARING FOR REASON OF A SIGNIFICANT CHANGE IN THE PERSON'S
14 CAPACITY, A CHANGE IN THE NEED FOR GUARDIANSHIP SERVICES OR THE
15 GUARDIAN'S FAILURE TO PERFORM HIS DUTIES IN ACCORDANCE WITH THE
16 LAW OR TO ACT IN THE BEST INTEREST OF THE INCAPACITATED PERSON.
17 THE COURT MAY DISMISS A PETITION FOR REVIEW HEARING IF IT
18 DETERMINES THAT THE PETITION IS FRIVOLOUS.] AUTOMATIC REVIEW.--
19 IF THE EVIDENCE PRESENTED DURING THE GUARDIANSHIP PROCEEDING
20 INDICATES THAT THE CIRCUMSTANCES OF THE PERSON'S INCAPACITY MAY
21 CHANGE, THE COURT SHALL HOLD A REVIEW HEARING TO DETERMINE
22 WHETHER THE GUARDIANSHIP CONTINUES TO BE NECESSARY. THE COURT
23 SHALL SET THE DATE FOR A REVIEW HEARING UNDER THIS SUBSECTION IN
24 THE COURT'S ORDER ESTABLISHING GUARDIANSHIP. THE REVIEW HEARING
25 UNDER THIS SUBSECTION SHALL BE HELD NO LATER THAN ONE YEAR FROM
26 THE DATE OF THE ORDER ESTABLISHING THE GUARDIANSHIP. THE HEARING
27 SHALL BE CONDUCTED IN THE PRESENCE OF THE INCAPACITATED PERSON
28 AND THE PERSON'S ATTORNEY, AND THE COURT SHALL ADHERE TO THE
29 PROCEDURES AND STANDARDS AS OUTLINED IN SECTION 5512.1(A). IF,
30 FOLLOWING THE PRESENTATION OF EVIDENCE AND TESTIMONY FROM ALL

1 PARTIES, THE COURT FINDS THAT GUARDIANSHIP CONTINUES TO BE
2 NECESSARY AND THAT NO LESS RESTRICTIVE ALTERNATIVES EXIST, THE
3 COURT MAY ORDER THAT THE GUARDIANSHIP CONTINUE. IF THE COURT
4 FINDS THAT GUARDIANSHIP IS NO LONGER NECESSARY OR A LESS
5 RESTRICTIVE ALTERNATIVE EXISTS, THE COURT SHALL DISCHARGE THE
6 GUARDIANSHIP. IN DETERMINING WHETHER THE CIRCUMSTANCES OF THE
7 PERSON'S INCAPACITY MAY CHANGE, THE COURT MAY CONSIDER ANY OF
8 THE FOLLOWING:

9 (1) WHETHER THE INCAPACITY COULD BE ADEQUATELY MANAGED
10 BY MEDICATION, REHABILITATION OR OTHER MEANS;

11 (2) WHETHER THE POTENTIAL EXISTS FOR THE INCAPACITATED
12 PERSON TO REGAIN PHYSICAL OR COGNITIVE CAPACITY;

13 (3) THE OPINION OF A MEDICAL PROFESSIONAL OR OTHER
14 QUALIFIED EXPERT WHO HAS PERSONALLY EXAMINED THE
15 INCAPACITATED PERSON;

16 (4) THE CIRCUMSTANCES OF THE INCAPACITATED PERSON'S
17 DAILY LIVING, INCLUDING, BUT NOT LIMITED TO, SUPPORT FROM
18 OTHERS; AND

19 (5) ANY OTHER FACTOR INDICATING THAT THE INCAPACITATED
20 PERSON'S CONDITION COULD IMPROVE AT A FUTURE TIME.

21 (A.1) PETITION FOR REVIEW.--AT ANY TIME FOLLOWING THE
22 ISSUANCE OF THE ORDER ESTABLISHING GUARDIANSHIP, ANY INTERESTED
23 PERSON MAY FILE A PETITION WITH THE COURT TO TERMINATE OR MODIFY
24 THE GUARDIANSHIP. THE COURT SHALL PROMPTLY SCHEDULE A HEARING OR
25 HOLD A REVIEW HEARING AT ANY TIME IT SHALL DIRECT. THE HEARING
26 SHALL BE HELD IN THE PRESENCE OF THE INCAPACITATED PERSON AND
27 THE INCAPACITATED PERSON'S ATTORNEY, AND THE COURT SHALL ADHERE
28 TO THE PROCEDURES AND STANDARDS AS OUTLINED IN SECTION
29 5512.1(A). IF, FOLLOWING THE PRESENTATION OF EVIDENCE AND
30 TESTIMONY FROM ALL PARTIES, THE COURT FINDS THAT GUARDIANSHIP

1 CONTINUES TO BE NECESSARY AND THAT NO LESS RESTRICTIVE
2 ALTERNATIVES EXIST, THE COURT MAY ORDER THAT THE GUARDIANSHIP
3 CONTINUE. IF THE COURT FINDS THAT GUARDIANSHIP IS NO LONGER
4 NECESSARY OR A LESS RESTRICTIVE ALTERNATIVE EXISTS, THE COURT
5 SHALL DISCHARGE THE GUARDIANSHIP.

6 (B) BURDEN OF PROOF AND RIGHTS.--THE INCAPACITATED PERSON
7 SHALL HAVE ALL OF THE RIGHTS ENUMERATED IN THIS CHAPTER. EXCEPT
8 WHEN THE HEARING IS HELD TO APPOINT A SUCCESSOR GUARDIAN, THE
9 BURDEN OF PROOF, BY CLEAR AND CONVINCING EVIDENCE, SHALL BE ON
10 THE PARTY ADVOCATING CONTINUATION OF GUARDIANSHIP OR EXPANSION
11 OF AREAS OF INCAPACITY.

12 Section 3. This act shall take effect in 180 days.