

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1614 Session of
2012

INTRODUCED BY GREENLEAF, BROWNE, COSTA AND STACK,
OCTOBER 15, 2012

REFERRED TO JUDICIARY, OCTOBER 15, 2012

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in orphans' court
3 divisions, further providing for appointment and purpose and
4 for compensation; and, in incapacitated persons, providing
5 for venue and for confidentiality and disclosure of
6 information; further providing for petition and hearing and
7 independent evaluation; repealing provisions relating to
8 county of appointment and qualifications; further providing
9 for review hearing; providing for affidavit in uncontested
10 termination matters and for counsel; further providing for
11 emergency guardian; repealing provisions relating to
12 provisions similar to other estates; providing for removal
13 and discharge of guardian, for appointment of guardian in
14 conveyance and for bond; further providing for evidence of
15 incapacity, for cross-examination of witnesses and for
16 provisions concerning powers, duties and liabilities;
17 providing for protection of person dealing with guardian; and
18 further providing for when accounting filed, for
19 distributions of income and principal during incapacity and
20 for guardianship services.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Section 751 of Title 20 of the Pennsylvania
24 Consolidated Statutes is amended by adding paragraphs to read:
25 § 751. Appointment; purpose.

26 The orphans' court division may appoint:

27 * * *

1 (7) Examiners of actions of guardian of estate.--By
2 general rule or special order, an examiner to make periodic
3 or special examinations of expenditures, disbursements and
4 withdrawals of a guardian of the estate of an incapacitated
5 person and to require the guardian of the estate to present
6 financial records for examination.

7 (8) Mediators or arbitrators.--A mediator or arbitrator
8 if the parties desire mediation or arbitration but do not
9 mutually agree on an independent mediator or arbitrator. The
10 meeting place shall be in this Commonwealth in a location
11 selected by the mediator or arbitrator. The mediator or
12 arbitrator may extend the date of the meeting for good cause
13 shown by either party or upon stipulation of both parties.
14 All files, records, reports, documents or other papers
15 received or prepared by the mediator or arbitrator while
16 serving as such shall be classified as confidential. Payment
17 from an incapacitated person's estate for mediation or
18 arbitration shall be subject to approval by the court.

19 Section 2. Section 752 of Title 20 is amended to read:

20 § 752. Compensation.

21 [The compensation of any master, auditor, examiner, guardian
22 ad litem, or trustee ad litem, subject to any inconsistent
23 general rule shall be paid from such source as the court shall
24 direct.] Subject to any inconsistent general rule of court, the
25 compensation of any master, auditor, examiner, guardian ad litem
26 or trustee ad litem shall be paid from such source and in such
27 amounts as the court directs.

28 Section 3. Title 20 is amended by adding sections to read:

29 § 5503. Venue.

30 (a) Applicability.--This section is subject to Chapter 59

1 (relating to uniform adult guardianship and protective
2 proceedings jurisdiction).

3 (b) Guardian of person.--Venue for a guardianship proceeding
4 for an incapacitated person or an alleged incapacitated person
5 is in the judicial district of this Commonwealth in which the
6 person resides and, if the person has been admitted to an
7 institution by order of a court of competent jurisdiction, in
8 the judicial district in which the institution is located. Venue
9 for the appointment of an emergency guardian of an incapacitated
10 person or an alleged incapacitated person is also in the
11 judicial district in which the person is present.

12 (c) Guardian of estate.--Venue for a proceeding regarding a
13 guardianship of the estate of an incapacitated person or alleged
14 incapacitated person is in the judicial district of this
15 Commonwealth in which the incapacitated person or alleged
16 incapacitated person resides, whether or not a guardian of the
17 person has been appointed in another place or, if the person
18 does not reside in this Commonwealth, in any judicial district
19 of this Commonwealth in which property owned by the person is
20 located.

21 (d) Multiple judicial districts.--If a proceeding under this
22 chapter is brought in more than one judicial district in this
23 Commonwealth, the court of the judicial district in which the
24 proceeding is first brought has the exclusive right to proceed
25 unless that court determines that venue is properly in another
26 court or that the interests of justice otherwise require that
27 the proceeding be transferred.

28 § 5504. Confidentiality and disclosure of information.

29 Confidentiality and the disclosure of information under this
30 chapter shall be governed by applicable court rule or as the

court determines. The Supreme Court may prescribe uniform rules relating to confidentiality and the disclosure of information.

Section 4. Section 5511(a), (e) and (f) of Title 20 are amended and the section is amended by adding subsections to read:

§ 5511. Petition and hearing; independent evaluation.

[(a) Resident.--The court, upon petition and hearing and upon the presentation of clear and convincing evidence, may find a person domiciled in the Commonwealth to be incapacitated and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged incapacitated person's welfare. The court may dismiss a proceeding where it determines that the proceeding has not been instituted to aid or benefit the alleged incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded. The Supreme Court shall establish a uniform citation for this purpose. A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service

1 shall be no less than 20 days in advance of the hearing. In
2 addition, notice of the petition and hearing shall be given in
3 such manner as the court shall direct to all persons residing
4 within the Commonwealth who are sui juris and would be entitled
5 to share in the estate of the alleged incapacitated person if he
6 died intestate at that time, to the person or institution
7 providing residential services to the alleged incapacitated
8 person and to such other parties as the court may direct,
9 including other service providers. The hearing may be closed to
10 the public and without a jury unless the alleged incapacitated
11 person or his counsel objects. The hearing shall be closed and
12 with or without a jury if the person alleged to be incapacitated
13 or his counsel so requests. The hearing may be held at the
14 residence of the alleged incapacitated person. The alleged
15 incapacitated person shall be present at the hearing unless:

16 (1) the court is satisfied, upon the deposition or
17 testimony of or sworn statement by a physician or licensed
18 psychologist, that his physical or mental condition would be
19 harmful by his presence; or

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

24 Petitioner shall be required to notify the court at least seven
25 days prior to the hearing if counsel has not been retained by or
26 on behalf of the alleged incapacitated person. In appropriate
27 cases, counsel shall be appointed to represent the alleged
28 incapacitated person in any matter for which counsel has not
29 been retained by or on behalf of that individual.]

30 (a.1) Resident.--

1 (1) Upon petition and hearing and the presentation of
2 clear and convincing evidence, the court may find an
3 individual domiciled in this Commonwealth to be incapacitated
4 and appoint a guardian of the person or guardian of the
5 estate for the individual.

6 (2) The petitioner under this subsection may be any
7 person interested in the alleged incapacitated person's
8 welfare. If the petitioner is a guardianship support agency,
9 the petition shall disclose the agency's financial
10 information and a list of its current guardianships.

11 (3) The court may dismiss a proceeding if it determines
12 that:

13 (i) the proceeding has not been instituted to aid or
14 benefit the alleged incapacitated person; or

15 (ii) the petition is incomplete or fails to provide
16 sufficient facts to proceed.

17 (4) The Supreme Court shall establish a uniform citation
18 for the written notice of the petition and hearing, which
19 shall:

20 (i) Be given in large type and in simple language to
21 the alleged incapacitated person.

22 (ii) Indicate the purpose and seriousness of the
23 proceeding and the rights that can be lost as a result of
24 the proceeding.

25 (iii) Include the date, time and place of the
26 hearing and an explanation of all rights, including the
27 appointment of counsel as set forth in subsection (a.2).

28 (iv) Be attached to the petition.

29 (5) Service of the petition and notice shall be as
30 follows:

1 (i) Personal service of the petition and notice
2 shall be made on the alleged incapacitated person. The
3 contents and terms of the petition shall be explained to
4 the maximum extent possible in language and terms the
5 person is most likely to understand. Service shall be not
6 less than 20 days in advance of the hearing.

7 (ii) Notice of the petition and hearing shall be
8 given to the following in the manner as the court
9 directs:

10 (A) Any person:

11 (I) whose existence and whereabouts are
12 known or could be readily obtained;

13 (II) who is sui juris; and

14 (III) who would be entitled to share in the
15 estate of the alleged incapacitated person if the
16 person died intestate at that time.

17 (B) The person or institution providing
18 residential services to the alleged incapacitated
19 person.

20 (C) Another party as the court directs,
21 including another service provider.

22 (6) The hearing:

23 (i) may be closed to the public and without a jury,
24 unless the alleged incapacitated person or the person's
25 counsel objects;

26 (ii) shall be closed to the public and with or
27 without a jury, if the alleged incapacitated person or
28 the person's counsel so requests; or

29 (iii) may be held at the residence of the alleged
30 incapacitated person.

1 (7) The alleged incapacitated person shall be present at
2 the hearing unless:

3 (i) upon the deposition or testimony of or sworn
4 statement by a physician or licensed psychologist, the
5 court is satisfied that the person's physical or mental
6 condition would be harmed by being present, but the
7 inability of the person to comprehend the proceedings
8 does not, by itself, constitute harm; or

9 (ii) it is impossible for the person to be present
10 because of the person's absence from this Commonwealth.
11 It shall not be necessary for the person to be
12 represented by a guardian ad litem in the proceeding.

13 (8) The court may grant standing to any person on whom
14 the notice and petition are served under paragraph (5).

15 (a.2) Appointment of counsel.--

16 (1) If counsel has not been retained by or on behalf of
17 the alleged incapacitated person, the petitioner under
18 subsection (a) shall notify the court at least seven days
19 prior to the hearing.

20 (2) The court shall appoint counsel to represent the
21 alleged incapacitated person in any matter for which counsel
22 has not been retained by or on behalf of the alleged
23 incapacitated person:

24 (i) in appropriate cases as the court determines;
25 and

26 (ii) in all cases in which the court knows in
27 advance that the alleged incapacitated person is not
28 expected to be present at the hearing, either in person
29 or by videoconference.

30 * * *

1 (e) Petition contents.--

2 (1) The petition, which shall be in plain language,
3 shall include the name, age, residence and post office
4 address of the alleged incapacitated person, the names and
5 addresses of the spouse, parents and presumptive adult heirs
6 of the alleged incapacitated person, the name and address of
7 the person or institution providing residential services to
8 the alleged incapacitated person, the names and addresses of
9 other service providers, the name and address of the person
10 or entity whom petitioner asks to be appointed guardian, an
11 averment that the proposed guardian has no interest adverse
12 to the alleged incapacitated person, the reasons why
13 guardianship is sought, a description of the functional
14 limitations and physical and mental condition of the alleged
15 incapacitated person, the steps taken to find less
16 restrictive alternatives, the specific areas of incapacity
17 over which it is requested that the guardian be assigned
18 powers and the qualifications of the proposed guardian.

19 (2) If a limited or plenary guardian of the estate is
20 sought, the petition shall also include the gross value of
21 the estate and net income from all sources to the extent
22 known.

23 (3) A petition that is filed for the appointment of a
24 guardian of the person on or after (in preparing this act for
25 printing in the Laws of Pennsylvania and the Pennsylvania
26 Consolidated Statutes, the Legislative Reference Bureau shall
27 insert here, in lieu of this statement, the effective date of
28 this paragraph) shall state whether it is proposed that the
29 guardian of the person shall have the power to make health
30 care decisions and, if so, whether the guardian shall have

1 all the powers of a health care representative to make health
2 care decisions as defined under section 5422 (relating to
3 definitions), including decisions involving health care
4 necessary to preserve life if the incapacitated person were
5 to be in an end-stage medical condition or be permanently
6 unconscious, and any limitation of those powers.

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

23 (1) The court may appoint any one or more of the
24 following to be an alleged incapacitated person's guardian of
25 the person or guardian of the estate, or both:

26 (i) Any qualified individual.

27 (ii) A corporate fiduciary. If a person is a
28 corporate entity doing business in this Commonwealth and
29 serving as a guardian of the estate of an incapacitated
30 person, the person shall have an office in this

1 Commonwealth.

2 (iii) A nonprofit corporation.

3 (iv) A guardianship support agency under Subchapter
4 F (relating to guardianship support).

5 (v) A county agency.

6 (2) If the alleged incapacitated person is a resident of
7 a State facility, the court may appoint the guardian office
8 at the facility as the alleged incapacitated person's
9 guardian of the estate.

10 (g) Who may not be appointed guardian.--

11 (1) Subject to paragraph (2), unless it is clearly
12 demonstrated that no guardianship support agency or other
13 alternative exists, the court may not appoint the following
14 as the alleged incapacitated person's guardian of the person
15 or guardian of the estate:

16 (i) A person or entity providing residential
17 services for a fee to the alleged incapacitated person.

18 (ii) Any other person whose interests conflict with
19 those of the alleged incapacitated person.

20 (2) Any family relationship to the alleged incapacitated
21 person shall not, by itself, be considered in conflict with
22 the interest of the alleged incapacitated person.

23 (h) Preference in appointing guardian of person.--

24 (1) If a nomination regarding guardian of the person has
25 been made in a power of attorney, the court may determine
26 that an adjudication of incapacity is not necessary or that
27 an adjudication of incapacity is necessary but the
28 appointment of a guardian of the person is not necessary. If
29 the court makes an adjudication of incapacity and determines
30 that a guardian of the person shall be appointed, the court

1 shall appoint the nominated person in accordance with the
2 terms of the power of attorney or health care power of
3 attorney, except for good cause or disqualification.

4 (2) Subject to paragraph (1), in appointing a qualified
5 person to be guardian of the person, the court shall consider
6 the following order of preference:

7 (i) A guardian, other than a temporary or emergency
8 guardian, currently acting for the estate.

9 (ii) The spouse of the person.

10 (iii) An adult child of the person.

11 (iv) A parent of the person.

12 (v) The nominee of a deceased or living parent of an
13 unmarried alleged incapacitated person.

14 (vi) Another suitable and qualified person.

15 (3) With respect to persons having equal preference, the
16 court shall select the person or persons that it considers
17 best qualified in that class.

18 (4) Subject to paragraph (1), in acting in the best
19 interest of the alleged incapacitated person, the court may
20 decline to appoint a person having a higher preference and
21 appoint a person having a lower preference or no preference.

22 (i) Preference in appointing guardian of estate.--

23 (1) If a nomination regarding guardian of the estate has
24 been made in a power of attorney, the court may determine
25 that an adjudication of incapacity is not necessary or that
26 an adjudication of incapacity is necessary but the
27 appointment of a guardian of the estate is not necessary.
28 Subject to paragraph (5), if the court makes an adjudication
29 of incapacity and determines that a guardian of the estate
30 shall be appointed, the court shall appoint the nominated

1 person in accordance with the terms of the power of attorney,
2 except for good cause or disqualification.

3 (2) Subject to paragraphs (1) and (5), in appointing a
4 qualified person to be guardian of the estate, the court
5 shall consider the following order of preference:

6 (i) A guardian, other than a temporary or emergency
7 guardian, currently acting for the person.

8 (ii) The spouse of the person.

9 (iii) An adult child of the person.

10 (iv) A parent of the person.

11 (v) The nominee of a deceased or living parent of an
12 unmarried alleged incapacitated person.

13 (vi) Another suitable and qualified person,
14 including a corporate fiduciary, a nonprofit corporation,
15 a guardianship support agency under Subchapter F and a
16 county agency.

17 (3) With respect to persons having equal preference, the
18 court shall select the person or persons that it considers
19 best qualified in that class.

20 (4) Subject to paragraph (1), in acting in the best
21 interest of the alleged incapacitated person, the court may
22 decline to appoint a person having a higher preference and
23 appoint a person having a lower preference or no preference.

24 (5) The court may appoint a corporate fiduciary or other
25 appropriate person as a guardian of the estate of the
26 incapacitated person in appropriate cases, if the
27 incapacitated person's estate contains substantial assets or
28 involves complex financial matters.

29 Section 5. Section 5512 of Title 20 is repealed:

30 [§ 5512. County of appointment; qualifications.

1 (a) Resident incapacitated person.--A guardian of the person
2 or estate of an incapacitated person may be appointed by the
3 court of the county in which the incapacitated person is
4 domiciled, is a resident or is residing in a long-term care
5 facility.

6 (b) Nonresident incapacitated person.--A guardian of the
7 estate within the Commonwealth of an incapacitated person
8 domiciled outside of the Commonwealth may be appointed by the
9 court of the judicial district having jurisdiction of a
10 decedent's estate or of a trust in which the incapacitated
11 person has an interest. When the nonresident incapacitated
12 person's estate is derived otherwise than from a decedent's
13 estate or a trust within the Commonwealth, a guardian may be
14 appointed by the court of any county where an asset of the
15 incapacitated person is located.

16 (c) Exclusiveness of appointment.--When a court has
17 appointed a guardian of the person or estate of an incapacitated
18 person pursuant to subsection (a) or (b), no other court shall
19 appoint a similar guardian for the incapacitated person within
20 the Commonwealth.]

21 Section 6. Section 5512.2(a) of Title 20 is amended and the
22 section is amended by adding a subsection to read:

23 § 5512.2. Review hearing.

24 (a) Time of hearing.--The court may set a date for a review
25 hearing in its order establishing the guardianship or hold a
26 review hearing at any time it shall direct. The court shall
27 conduct a review hearing promptly if the incapacitated person,
28 guardian or any [interested party] person interested in the
29 incapacitated person's welfare petitions the court for a hearing
30 for reason of a significant change in the person's capacity, a

1 change in the need for guardianship services or the guardian's
2 failure to perform his duties in accordance with the law or to
3 act in the best interest of the incapacitated person. The court
4 may dismiss a petition for review hearing if it determines that
5 the petition is frivolous.

6 * * *

7 (c) Independent evaluation.--In a review hearing under this
8 section, the court may order an independent evaluation in
9 accordance with section 5511(d) (relating to petition and
10 hearing; independent evaluation).

11 Section 7. Title 20 is amended by adding sections to read:
12 § 5512.4. Affidavit in uncontested termination matters.

13 In an uncontested matter concerning the termination of a
14 guardianship, whether or not a hearing is held regarding the
15 termination, the court may terminate the guardianship based on
16 an affidavit of the incapacitated person's attending physician
17 stating that the guardianship is no longer necessary.

18 § 5512.5. Counsel.

19 Following an adjudication of incapacity, counsel for the
20 incapacitated person acting as such before the individual was
21 adjudicated incapacitated, or counsel subsequently engaged by or
22 on behalf of the incapacitated person, may act on behalf of the
23 incapacitated person for a matter or at any proceeding regarding
24 the interest of the incapacitated person under this chapter. For
25 cause shown, the court may terminate the services of counsel
26 acting for an incapacitated person and appoint new counsel or a
27 guardian ad litem for a proceeding for which the incapacitated
28 person's interest is involved.

29 Section 8. Section 5513 of Title 20 is amended to read:
30 § 5513. Emergency guardian.

1 [Notwithstanding the provisions of section 5511 (relating to
2 petition and hearing; independent evaluation), the court, upon
3 petition and a hearing at which clear and convincing evidence is
4 shown, may appoint an emergency guardian or guardians of the
5 person or estate of a person alleged to be incapacitated, when
6 it appears that the person lacks capacity, is in need of a
7 guardian and a failure to make such appointment will result in
8 irreparable harm to the person or estate of the alleged
9 incapacitated person. The provisions of section 5511, including
10 those relating to counsel, shall be applicable to such
11 proceedings, except when the court has found that it is not
12 feasible in the circumstances. An emergency guardian so
13 appointed for the person or estate of an alleged incapacitated
14 person shall only have and be subject to such powers, duties and
15 liabilities and serve for such time as the court shall direct in
16 its decree. An emergency order appointing an emergency guardian
17 of the person may be in effect for up to 72 hours. If the
18 emergency continues, then the emergency order may be extended
19 for no more than 20 days from the expiration of the initial
20 emergency order. After expiration of the emergency order or any
21 extension, a full guardianship proceeding must be initiated
22 pursuant to section 5511. The court may also appoint an
23 emergency guardian of the person pursuant to this section for an
24 alleged incapacitated person who is present in this Commonwealth
25 but is domiciled outside of this Commonwealth, regardless of
26 whether the alleged incapacitated person has property in this
27 Commonwealth. An emergency order appointing an emergency
28 guardian of the estate shall not exceed 30 days. After 30 days,
29 a full guardianship proceeding must be initiated pursuant to
30 section 5511.]

1 (a) Appointment.--

2 (1) Notwithstanding the provisions of section 5511
3 (relating to petition and hearing; independent evaluation),
4 upon petition and a hearing at which clear and convincing
5 evidence is shown, the court may appoint an emergency
6 guardian or guardians of the person or estate of a person
7 alleged to be incapacitated, when it appears that:

8 (i) the person lacks capacity and is in need of a
9 guardian; and

10 (ii) a failure to make such appointment will likely
11 result in irreparable harm to the person or estate of the
12 alleged incapacitated person.

13 (2) The court may appoint an emergency guardian of the
14 person under this section for an alleged incapacitated person
15 who is present in this Commonwealth but domiciled outside
16 this Commonwealth, regardless of whether the alleged
17 incapacitated person has property in this Commonwealth.

18 (b) Procedures and powers generally.--

19 (1) Each provision of section 5511 shall apply to
20 proceedings under subsection (a), except:

21 (i) when the court has found that the application of
22 the provision is not feasible under the circumstances; or

23 (ii) as otherwise provided in this section.

24 (2) An emergency guardian so appointed for the person or
25 estate of an alleged incapacitated person shall only have and
26 be subject to such powers, duties and liabilities and serve
27 for such time as the court shall direct in its decree.

28 (c) Duration of initial order.--An initial emergency order
29 appointing an emergency guardian of the person or guardian of
30 the estate may be in effect for up to 30 days.

1 (d) Appointment of counsel.--

2 (1) Prior to the expiration of the initial emergency
3 order, the court may appoint counsel for the alleged
4 incapacitated person.

5 (2) If an extension of the emergency order is sought
6 under subsection (e), the court shall appoint counsel for the
7 alleged incapacitated person.

8 (e) Extension of order.--An emergency order may be extended
9 for not more than an additional 60 days upon the consent of the
10 petitioner, emergency guardian and counsel for the incapacitated
11 person. At any time after the filing of the petition for
12 emergency guardianship, upon a determination that the duration
13 of incapacity of the alleged incapacitated person is likely to
14 extend longer than the period of emergency guardianship
15 permitted by this section, the court shall direct that the
16 petitioner file a petition for a permanent guardianship of the
17 person or a permanent guardianship of the estate, or both. In
18 such a case, the period of extension of the emergency order
19 shall be extended to the date of the order on the permanent
20 guardianship petition.

21 Section 9. Section 5515 of Title 20 is repealed:

22 [§ 5515. Provisions similar to other estates.

23 The provisions relating to a guardian of an incapacitated
24 person and his surety shall be the same as are set forth in the
25 following provisions of this title relating to a personal
26 representative or a guardian of a minor and their sureties:

27 Section 3182 (relating to grounds for removal).

28 Section 3183 (relating to procedure for and effect of
29 removal).

30 Section 3184 (relating to discharge of personal

representative and surety).

Section 5115 (relating to appointment of guardian in conveyance).

Section 5121 (relating to necessity, form and amount).

Section 5122 (relating to when bond not required).

Section 5123 (relating to requiring or changing amount of bond).]

Section 10. Title 20 is amended by adding sections to read:

§ 5515.1. Removal and discharge of guardian.

(a) Conditions.--The court has the exclusive power to remove a guardian of the person or guardian of the estate if either paragraph (1) or (2) applies:

(1) The guardian:

(i) is wasting or mismanaging the estate;

(ii) is or is likely to become insolvent;

(iii) has failed to perform any duty imposed by law;

(iv) has become incapacitated to discharge the duties as guardian because of sickness or physical or mental incapacity and the incapacity is likely to continue to the injury of the estate or the incapacitated person; or

(v) has removed from this Commonwealth or has ceased to have a known place of residence herein, without furnishing a security or additional security as the court directs.

(2) For any reason other than that set forth in paragraph (1), the interests of the estate or the incapacitated person are likely to be jeopardized by the guardian's continuance as guardian.

(b) Procedure.--

1 (1) On the court's own motion or on the petition of any
2 party in interest alleging adequate grounds for removal of a
3 guardian of the person or guardian of the estate, the court
4 shall:

5 (i) order the guardian to appear and show cause why
6 the guardian should not be removed; or

7 (ii) summarily remove the guardian when necessary to
8 protect the rights of creditors or parties in interest.

9 (2) Upon removal of a guardian of the person or guardian
10 of the estate, the court shall appoint a successor guardian
11 and may appoint a co-guardian under section 5514 (relating to
12 to fill vacancy; co-guardian) and, by summary attachment of
13 the guardian or other appropriate orders, provide for the
14 security and delivery of the assets of the estate, together
15 with all books, accounts and papers relating thereto.

16 (3) Any guardian of the person or guardian of the estate
17 summarily removed under this section may petition to have the
18 decree of removal vacated and to be reinstated. If the court
19 vacates the decree of removal and reinstates the guardian, it
20 shall thereupon make any appropriate orders to accomplish the
21 reinstatement.

22 (c) Discharge of guardian and surety.--After confirmation of
23 the final account and distribution to the parties entitled, a
24 guardian of the estate and the guardian's surety may be
25 discharged by the court from future liability. The court may
26 discharge only the surety from future liability, allowing the
27 guardian to continue without surety, upon condition that no
28 further assets shall come into the control of the guardian until
29 the guardian files another bond with sufficient surety, if
30 required.

1 § 5515.2. Appointment of guardian in conveyance.

2 A deed or instrument creating a gift or designating a
3 beneficiary in a life insurance policy, annuity contract,
4 retirement plan, including, but not limited to, any tax
5 qualified or nonqualified pension, profit sharing, stock bonus,
6 employee savings and retirement plan, deferred compensation plan
7 or individual retirement account, or another plan or contractual
8 arrangement providing for payments to the incapacitated person
9 or to others after the incapacitated person's death, may contain
10 an appointment of a guardian of the estate or interest of each
11 named beneficiary who is incapacitated. Payment by an insurance
12 or other financial services company to the beneficiary's
13 guardian so appointed discharges the paying company to the same
14 effect as payment to an otherwise duly appointed and qualified
15 guardian.

16 § 5515.3. Bond.

17 (a) General rule.--Except as provided in this section, every
18 guardian of the estate shall execute and file a bond in the name
19 of the Commonwealth, with sufficient surety, in an amount the
20 court considers necessary, having regard to the value of the
21 personal estate which will come into the control of the
22 guardian, and conditioned in the following form:

23 (1) If the guardian administers the estate well and
24 according to law, this obligation shall be void, but
25 otherwise it remains in force.

26 (2) If a co-guardian administers the estate well and
27 according to law, this obligation shall be void as to that
28 co-guardian who so administers the estate, but otherwise it
29 remains in force.

30 (b) Exceptions.--Unless deemed advisable by the court for

1 cause shown, no bond is required of the following:

2 (1) A guardian appointed by or in accordance with the
3 terms of a will, inter vivos instrument or insurance contract
4 as to the property acquired under the authority of the
5 appointment, unless it is required by the conveyance.

6 (2) A bank and trust company, a trust company
7 incorporated in this Commonwealth or a national bank having
8 its principal office in this Commonwealth.

9 (c) Court discretion.--The court has discretion to not
10 require a bond:

11 (1) from a nonresident corporation or a national bank
12 having its principal office outside this Commonwealth,
13 otherwise qualified to act as guardian; and

14 (2) in all other cases when, for cause shown, it finds
15 that no bond is necessary.

16 (d) Amount.--For cause shown and after such notice, if any,
17 as it directs, the court may require a surety bond or increase
18 or decrease the amount of an existing bond or require more or
19 less security.

20 Section 11. Sections 5518 and 5518.1 of Title 20 are amended
21 to read:

22 § 5518. Evidence of incapacity.

23 To establish incapacity in a proceeding in which the
24 incapacity of the alleged incapacitated person is contested, the
25 petitioner must present testimony, in person or by
26 teleconference, videoconference or deposition from individuals
27 qualified by training and experience in evaluating individuals
28 with incapacities of the type alleged by the petitioner, which
29 establishes the nature and extent of the alleged incapacities
30 and disabilities and the person's mental, emotional and physical

1 condition, adaptive behavior and social skills. In a proceeding
2 in which the capacity of the alleged incapacitated person is not
3 contested and at which the person or the person's counsel is
4 present, the petitioner may establish incapacity by a sworn
5 statement from the qualified individuals. The [petition]
6 petitioner must also present evidence regarding the services
7 being utilized to meet essential requirements for the alleged
8 incapacitated person's physical health and safety, to manage the
9 person's financial resources or to develop or regain the
10 person's abilities; evidence regarding the types of assistance
11 required by the person and as to why no less restrictive
12 alternatives would be appropriate; and evidence regarding the
13 probability that the extent of the person's incapacities may
14 significantly lessen or change.

15 § 5518.1. Cross-examination of witnesses.

16 [Testimony] Except as provided for in section 5518 (relating
17 to evidence of incapacity), testimony as to the capacity of the
18 alleged incapacitated person shall be subject to cross-
19 examination [by counsel for the alleged incapacitated person].

20 Section 12. Section 5521(b), (c) and (g) of Title 20 are
21 amended and the section is amended by adding subsections to
22 read:

23 § 5521. Provisions concerning powers, duties and liabilities.

24 * * *

25 (a.1) Death or removal of guardian.--

26 (1) An action or proceeding in which a guardian of the
27 person or guardian of the estate is a party is not abated by
28 the death or resignation of the guardian or by the
29 termination of the guardian's authority.

30 (2) The successor of the guardian may be substituted in

1 the action or proceeding in the manner provided by law.

2 [(b) Duty of guardian of the estate.--The provisions
3 concerning the powers, duties and liabilities of guardians of
4 incapacitated persons' estates shall be the same as those set
5 forth in the following provisions of this title relating to
6 personal representatives of decedents' estates and guardians of
7 minors' estates:

8 Section 3313 (relating to liability insurance).

9 Section 3314 (relating to continuation of business).

10 Section 3315 (relating to incorporation of estate's
11 business).

12 Section 3317 (relating to claims against co-fiduciary).

13 Section 3318 (relating to revival of judgments against
14 personal representative).

15 Section 3319 (relating to power of attorney; delegation
16 of power over subscription rights and fractional shares;
17 authorized delegations).

18 Section 3320 (relating to voting stock by proxy).

19 Section 3321 (relating to nominee registration; corporate
20 fiduciary as agent; deposit of securities in a clearing
21 corporation; book-entry securities).

22 Section 3322 (relating to acceptance of deed in lieu of
23 foreclosure).

24 Section 3323 (relating to compromise of controversies).

25 Section 3324 (relating to death or incapacity of
26 fiduciary).

27 Section 3327 (relating to surviving or remaining personal
28 representatives).

29 Section 3328 (relating to disagreement of personal
30 representatives).

1 Section 3331 (relating to liability of personal
2 representative on contracts).

3 Section 3332 (relating to inherent powers and duties).

4 Section 3355 (relating to restraint of sale).

5 Section 3356 (relating to purchase by personal
6 representative).

7 Section 3359 (relating to record of proceedings; county
8 where real estate lies).

9 Section 3360 (relating to contracts, inadequacy of
10 consideration or better offer; brokers' commissions).

11 Section 3372 (relating to substitution of personal
12 representative in pending action or proceedings).

13 Section 3374 (relating to death or removal of fiduciary).

14 Section 3390 (relating to specific performance of
15 contracts).

16 Section 5141 (relating to possession of real and personal
17 property).

18 Section 5142 (relating to inventory).

19 Section 5143 (relating to abandonment of property).

20 Section 5145 (relating to investments).

21 Section 5146 (relating to guardian named in conveyance).

22 Section 5147 (relating to proceedings against guardian).

23 Section 5151 (relating to power to sell personal
24 property).

25 Section 5154 (relating to title of purchaser).

26 Section 5155 (relating to order of court).]

27 (b.1) Powers of guardian of the estate without further court
28 approval.--Except as otherwise qualified, limited or directed by
29 the court in its order of appointment, a guardian of the estate
30 of an incapacitated person, without further court authorization

1 or confirmation, shall have the following powers:

2 (1) Insure the assets of the estate against damage or
3 loss and, at the expense of the estate, protect the
4 incapacitated person, the guardian of the estate, the
5 guardian of the person and any agent or employee of the
6 guardian from liability to a third person that arises from
7 the administration of the incapacitated person's estate. The
8 power to purchase insurance at the expense of the estate does
9 not include insurance to protect the guardian of the estate
10 from any action ultimately found to be subject to surcharge.

11 (2) Take any legal action against a co-guardian of the
12 estate to protect the estate of the incapacitated person, if
13 one of two or more guardians of the estate is individually
14 liable to the estate.

15 (3) Employ a custodian, hold property unregistered or in
16 the name of a nominee, including the nominee of any
17 institution employed as custodian, without disclosing the
18 fiduciary relationship and without retaining possession and
19 control of securities or other property so held or registered
20 and pay reasonable compensation to the custodian.

21 (4) Take for the estate from the owner of property
22 encumbered by a mortgage owned by the estate a deed in lieu
23 of foreclosure, in which event the real estate shall be
24 considered personalty to the same extent as though title were
25 acquired by foreclosure at sheriff's sale. Any deed
26 previously accepted is hereby valid in accordance with this
27 paragraph.

28 (5) With respect to the tangible or intangible personal
29 property of the estate and subject to section 5536 (relating
30 to distributions of income and principal during incapacity):

1 (i) Acquire, take possession of or dispose of the
2 personal property through the selling or exchanging of
3 the personal property:

4 (A) For cash or on credit.

5 (B) At public or private sale.

6 (C) Without obligation to repudiate an otherwise
7 binding agreement in favor of a better offer.

8 (ii) Wherever the personal property is located and
9 until the personal property is distributed or sold:

10 (A) Maintain and administer the personal
11 property.

12 (B) Make all reasonable expenditures necessary
13 to preserve the personal property.

14 (C) Maintain any action with respect to the
15 personal property.

16 (6) Accept, hold, invest in and retain investments as
17 provided by Chapter 72 (relating to prudent investor rule).

18 (7) Advance money for the protection of the estate and
19 for all expenses, losses and liability sustained in the
20 administration of the estate or because of the holding or
21 ownership of any estate asset. The guardian of the estate has
22 a lien on the estate assets for an advance under this
23 paragraph, including interest on the advance.

24 (8) With respect to an incapacitated person's service as
25 fiduciary, which may include, without limitation, as an
26 executor, administrator, trustee, guardian, agent or officer
27 or director of a corporation:

28 (i) Renounce any fiduciary position to which the
29 incapacitated person has been appointed.

30 (ii) Resign any fiduciary position in which the

incapacitated person is then serving and:

(A) file an accounting with a court of competent jurisdiction; or

(B) settle on receipt and release or other informal method as the guardian of the estate deems advisable.

(9) Vote a security, in person or by general or limited proxy, with or without power of substitution.

(10) With respect to the real property of the estate:

(i) Manage, repair, improve, maintain, restore, alter, build, protect or insure.

(ii) Demolish structures.

(iii) Collect rent, earnings and other proceeds.

(iv) Pay, contest, protest and compromise taxes and assessments.

(v) Grant and obtain easements.

(vi) Develop, dedicate, partition or subdivide.

(vii) File plans, applications or other documents.

(viii) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part and enforce any mortgage, encumbrance, lien or other claim to real property.

(ix) Subject to subsection (b.2)(3) and section 5536, generally exercise all powers that a person who is not incapacitated could exercise.

(b.2) Powers of guardian of the estate with further court approval.--A guardian of the estate of an incapacitated person may have the following powers only with further court authorization or confirmation:

(1) Continue any business in which the incapacitated

1 person has an ownership interest, for the benefit of the
2 incapacitated person's estate, after the court gives due
3 regard to the order of appointment and any other factor
4 deemed relevant, and aided by the report of a master if
5 necessary. An order by the court under this paragraph may be
6 with or without notice. If prior notice is not given to all
7 parties in interest, it shall be given within five days after
8 the order or within such extended time as the court, for
9 cause shown, shall allow. Any party in interest may, at any
10 time, petition the court to revoke or modify the order. The
11 order may provide:

12 (i) for the conduct of business by the guardian of
13 the estate alone or jointly with others, or as a
14 corporation, partnership, limited liability company or
15 other entity to be formed;

16 (ii) the extent of the liability of the estate or
17 any part thereof, or of the guardian of the estate, for
18 obligations incurred in the continuation of the business;

19 (iii) whether liabilities incurred in the conduct of
20 the business are to be chargeable solely to the part of
21 the estate set aside for use in the business or to the
22 estate as a whole;

23 (iv) the period of time the business may be
24 conducted;

25 (v) for the compensation of the guardian of the
26 estate actively managing, supervising or engaging in the
27 operation of an entity or business, from the estate's
28 assets or from the entity or business, as appropriate,
29 provided that the compensation is reasonably based upon
30 the actual responsibilities assumed and performed; and

1 (vi) other regulations, including accountings, as
2 the court shall deem advisable.

3 (2) After notice to all parties in interest and after
4 the court gives due regard to the order of appointment and
5 any other factor deemed relevant and aided by the report of a
6 master if necessary:

7 (i) Organize a corporation or form a partnership,
8 limited liability company or other entity to carry on the
9 business of the incapacitated person, whether the
10 business was owned solely or with others, with the
11 guardian of the estate exercising this power alone or
12 jointly with others.

13 (ii) Contribute for stock of the corporation, as
14 capital, or for an interest in a partnership, limited
15 liability company or other entity, all or part of the
16 property of the incapacitated person that was invested in
17 the business.

18 (3) With respect to the real property of the estate:

19 (i) Sell or buy any real property at public, private
20 or judicial sale, exchange any real property or grant or
21 obtain an option for the sale, purchase or exchange of
22 any real property. The court may direct:

23 (A) The terms and security for any of these
24 powers.

25 (B) The reasonable notice to the parties in
26 interest, including heirs of the incapacitated
27 person.

28 (ii) Join with the spouse of the incapacitated
29 person in the performance of any of the acts under
30 subparagraph (i) with respect to property held by the

entireties.

(iii) Release the right of the incapacitated person in the real property of the person's spouse and join in the deed of the spouse on behalf of the incapacitated person.

(iv) Abandon any real property.

(b.3) Revival of judgment.--When the estate holds a judgment that is a lien on the real estate of the guardian, any person interested in the incapacitated person's estate may bring an appropriate action to revive it and to continue its lien.

(b.4) Death or incapacity of guardian of estate.--The personal representative of the estate of a deceased guardian of the estate or the guardian of an incapacitated guardian of the estate by reason of the position so held shall not succeed to the administration of, or have the right to possess, any asset of the estate that was being administered by the deceased or incapacitated guardian of the estate, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incapacitated guardian of the estate may be filed by the fiduciary of the guardian's estate and shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or incapacitated guardian of the estate to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

(b.5) Surviving or remaining guardians.--Unless the order of appointment specifies otherwise, surviving or remaining guardians of the estate shall have all the powers of the original guardians of the estate.

(b.6) Disagreement of guardians of the estate.--If a dispute

arises among guardians of the estate, the decision of the majority shall control unless otherwise provided by the court. A dissenting guardian of the estate shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting guardian of the estate shall not be liable for the consequences of any majority decision even though the guardian joins in carrying it out, if the dissent is expressed promptly in writing to all the other guardians of the estate, but liability for failure to join in the further administration of the estate or to prevent a breach of fiduciary duty may not be thus avoided. If a dispute arises among guardians of the estate as to the exercise or nonexercise of any of their powers and there is no agreement of a majority of them, unless otherwise provided by the court, the court, upon petition filed by any of the guardians of the estate or by any party in interest, aided if necessary by the report of a master, in its discretion, may direct the exercise or nonexercise of the power as the court shall deem for the best interest of the estate.

(b.7) Filing of decree.--If a guardian of the estate has the power to engage in a transaction involving the real estate of an incapacitated person, a certified copy of the decree appointing the guardian of the estate may be recorded in the office for the recording of deeds in any county where the real estate, which is subject to that power, is located.

(b.8) Inadequacy of consideration.--

(1) Except as provided in paragraphs (2) and (3), when a guardian of the estate makes a contract, the inadequacy of consideration or the receipt of an offer to deal on other terms does not:

1 (i) relieve the guardian of the estate of the
2 obligation to perform the contract, except as otherwise
3 agreed by the parties; or

4 (ii) constitute a basis for any court to set aside
5 the contract or refuse to enforce it by specific
6 performance or otherwise.

7 (2) This subsection does not affect or change the
8 inherent right of the court to set aside a contract for
9 fraud, accident or mistake.

10 (3) Nothing in this subsection shall affect the
11 liability of a guardian of the estate for surcharge on the
12 ground of negligence or bad faith in making a contract.

13 (b.9) Substitution of party.--If a party to a pending action
14 or proceeding has a guardian of the estate appointed, the
15 guardian of the estate of the incapacitated person may be
16 substituted as a party as provided by law.

17 (b.10) Specific performance of contracts.--

18 (1) If a person enters into an agreement to purchase or
19 sell real or personal estate and a guardian of the estate is
20 appointed for the person before the consummation of the
21 agreement, the guardian of the estate may consummate the
22 agreement. If the guardian of the estate does not consummate
23 the agreement, the court may order specific performance of
24 the agreement:

25 (i) on the application of any party in interest;

26 (ii) after such notice and with such security, if
27 any, as the court may direct; and

28 (iii) if the agreement would have been enforced
29 specifically had the guardian of the estate not been
30 appointed.

1 (2) The guardian of the estate or other person as the
2 court directs shall execute any necessary deed or transfer
3 regarding the agreement under this subsection. The title of
4 any purchaser under an agreement in which the incapacitated
5 person was the vendor shall be the same as though the
6 incapacitated person had conveyed or transferred the property
7 prior to the appointment of the guardian of the estate.

8 (3) When any petition for specific performance of an
9 agreement to purchase or sell real estate is filed, the
10 prothonotary of the court of common pleas where the real
11 estate or any part of it lies, upon the receipt of a
12 certificate of such fact by the clerk of the court where the
13 petition was filed, shall enter the petition upon either the
14 judgment or ejectment and miscellaneous indexes against the
15 defendants as directed by local rules of court and shall
16 certify it as lis pendens in any certificate of search that
17 the prothonotary is required to make.

18 (b.11) Abandonment of property.--Subject to subsection (b.2)

19 (3):

20 (1) A guardian of the estate may abandon property of the
21 incapacitated person if the property is so burdensome or
22 encumbered or in such condition that it is of no value to the
23 estate.

24 (2) The court may authorize the guardian of the estate
25 to transfer, renounce or release property of the
26 incapacitated person without consideration if:

27 (i) the property cannot be abandoned without
28 transfer of title to another or without a formal
29 renunciation or release; and

30 (ii) the court finds that the transfer, renunciation

1 or release will be for the best interests of the estate.

2 (b.12) Title of purchaser.--If the guardian of the estate of
3 an incapacitated person has given a bond as required in
4 accordance with this title, any sale, pledge, mortgage or
5 exchange by the guardian of the estate, whether pursuant to a
6 decree or to the exercise of a power under this title, shall
7 pass the full title of the incapacitated person, free of any
8 right of the incapacitated person's spouse, unless otherwise
9 specified. Persons dealing with the guardian of the estate shall
10 have no obligation to see to the proper application of the cash
11 or other assets given in exchange for the property of the
12 incapacitated person. A sale or exchange by a guardian of the
13 estate pursuant to a decree under subsection (b.2)(3) shall have
14 the effect of a judicial sale as to the discharge of liens, but
15 the court may decree a sale or exchange freed and discharged
16 from the lien of any mortgage otherwise preserved from discharge
17 by existing law if the holder of the mortgage consents by
18 writing filed in the proceeding. No sale, mortgage, exchange or
19 conveyance shall be prejudiced by the subsequent dismissal of
20 the guardian of the estate if the person dealing with the
21 guardian did so in good faith.

22 (b.13) Compromise or settlement.--A guardian of the estate
23 may compromise or settle any claim by or against the estate,
24 through litigation or otherwise, without court approval. The
25 guardian may seek court approval of any such compromise or
26 settlement, subject to the following:

27 (1) The court may enter a decree authorizing the
28 compromise or settlement to be made:

29 (i) On petition by the guardian of the estate or any
30 party in interest setting forth all the facts and

circumstances.

(ii) After notice as the court directs.

(iii) Aided if necessary by the report of a master.

(2) For a compromise or settlement of an action in which damages are sought on behalf of the estate, the court that has jurisdiction and in which the action is pending may approve the compromise or settlement, including an agreement for the payment of counsel fees and other proper expenses incident to the action, upon:

(i) oral motion by plaintiff's counsel of record in the action; or

(ii) petition by the guardian of the estate.

(3) The order of the court approving the compromise or settlement or the agreement for the payment of counsel fees and other expenses shall not be subject to collateral attack in the orphans' court division.

(4) The guardian of the estate shall file a copy of the order of the court approving the compromise or settlement with the clerk of the court having jurisdiction of the estate. When the guardian of the estate has been required to give bond, the guardian may not receive the proceeds of the compromise or settlement until:

(i) the court of the county having jurisdiction of the estate has made an order excusing the guardian from entering additional security; or

(ii) the guardian has entered the additional security that is required by the court of the county having jurisdiction of the estate.

(c) Reports.--

(1) Each guardian of an incapacitated person shall file

1 with the court appointing [him] the guardian a report, [at
2 least once] within the first 12 months of [his] the
3 appointment and [at least] annually thereafter, attesting to
4 the following:

5 (i) Guardian of the estate:

6 (A) current principal and how it is invested;

7 (B) current income;

8 (C) expenditures of principal and income since
9 the last report; and

10 (D) needs of the incapacitated person for which
11 the guardian has provided since the last report.

12 (ii) Guardian of the person:

13 (A) current address and type of placement of the
14 incapacitated person;

15 (B) major medical or mental problems of the
16 incapacitated person;

17 (C) a brief description of the incapacitated
18 person's living arrangements and the social, medical,
19 psychological and other support services he is
20 receiving;

21 (D) the opinion of the guardian as to whether
22 the guardianship should continue or be terminated or
23 modified and the reasons therefor; [and]

24 (E) number and length of times the guardian or
25 the guardian's representative personally visited the
26 incapacitated person in the past year; and

27 (F) plans for future care, where appropriate.

28 (2) Within 60 days of the death of the incapacitated
29 person or an adjudication of capacity and modification of
30 existing orders, the guardian shall file a final report with

1 the court.

2 (3) Failure of a guardian to file a timely report under
3 this subsection shall subject the guardian to appropriate
4 sanctions.

5 (c.1) Records of guardian.--Each guardian of an
6 incapacitated person shall keep records regarding the
7 guardianship and the incapacitated person. Failure of a guardian
8 to keep records under this subsection shall subject the guardian
9 to appropriate sanctions.

10 * * *

11 (d.1) Health care decisions.--

12 (1) Subject to the following, a guardian of the person
13 shall have the same authority to make health care decisions
14 on behalf of the incapacitated person as a health care
15 representative under section 5461(c) (relating to decisions
16 by health care representative), and a health care decision by
17 the guardian of the person shall be effective without court
18 approval as with a health care representative under section
19 5461(j):

20 (i) Any limitations and conditions set forth in the
21 order of appointment.

22 (ii) The same health care decision-making process as
23 prescribed in section 5456(c) (relating to authority of
24 health care agent).

25 (iii) The same limitations under sections 5429
26 (relating to pregnancy) and 5462(c) (relating to duties
27 of attending physician and health care provider),
28 including the requirement that health care necessary to
29 preserve life be given to an individual who has neither
30 an end-stage medical condition nor is permanently

1 unconscious.

2 (iv) Subsection (d).

3 (v) Subsection (f).

4 (vi) Any other provision regarding health care
5 representatives as set forth in Chapter 54 (relating to
6 health care), except section 5461(d) regarding who may
7 act as health care representative.

8 (2) To the extent practicable, a guardian of the person
9 shall consult with close family members of the incapacitated
10 person in making a health care decision, particularly one
11 involving end-of-life decision making.

12 (3) A petition that is filed for the appointment of a
13 guardian of the person under section 5511 (relating to
14 petition and hearing; independent evaluation) on or after (in
15 preparing this act for printing in the Laws of Pennsylvania
16 and the Pennsylvania Consolidated Statutes, the Legislative
17 Reference Bureau shall insert here, in lieu of this
18 statement, the effective date of this subsection) shall state
19 whether it is proposed that the guardian of the person shall
20 have the power to make health care decisions and, if so,
21 whether the guardian shall have all the powers of a health
22 care representative to make health care decisions as defined
23 in section 5422 (relating to definitions), including
24 decisions involving health care necessary to preserve life if
25 the incapacitated person were to be in an end-stage medical
26 condition or be permanently unconscious, and any limitation
27 of those powers.

28 (4) Notice of a petition or hearing under section 5511
29 shall contain the information under paragraph (3).

30 (5) An order of appointment of a guardian of the person

1 that is issued on or after (in preparing this act for
2 printing in the Laws of Pennsylvania and the Pennsylvania
3 Consolidated Statutes, the Legislative Reference Bureau shall
4 insert here, in lieu of this statement, the effective date of
5 this subsection) shall specify whether the guardian of the
6 person shall have the power to make health care decisions
7 and, if so, whether the guardian shall have all the powers of
8 a health care representative to make health care decisions as
9 defined in section 5422, including decisions involving health
10 care necessary to preserve life if the incapacitated person
11 were to be in an end-stage medical condition or be
12 permanently unconscious, and any limitation of those powers.

13 (6) A guardian of the person appointed before (in
14 preparing this act for printing in the Laws of Pennsylvania
15 and the Pennsylvania Consolidated Statutes, the Legislative
16 Reference Bureau shall insert here, in lieu of this
17 statement, the effective date of this subsection) shall have
18 the same powers as a health care representative unless:

19 (i) a prior court order has limited the power of the
20 guardian of the person to make health care decisions; or

21 (ii) a health care representative is available and
22 assumes authority to act by agreement between the health
23 care representative and the guardian of the person, in
24 which case, the guardian of the person shall thereafter
25 have no health care decision-making powers.

26 * * *

27 (g) [Criminal and civil immunity] Liability of guardian of
28 person.--

29 (1) In the absence of gross negligence, recklessness or
30 intentional misconduct, a [unit of local government,

1 nonprofit corporation or guardianship support agency under
2 Subchapter F (relating to guardianship support) appointed as
3 a) guardian of the person shall not be criminally liable or
4 civilly liable for damages for performing duties as a
5 guardian of the person, as authorized under this chapter.

6 (2) Except as otherwise agreed, a guardian of the person
7 is not personally liable on a contract properly entered into
8 by the guardian of the person in a fiduciary capacity.

9 (h) Liability of guardian of estate.--

10 (1) Except as otherwise agreed, a guardian of the estate
11 is not personally liable on a contract properly entered into
12 in a fiduciary capacity in the course of administration of
13 the estate unless the guardian fails to reveal in the
14 contract the representative capacity and identify the estate.

15 (2) If a guardian of the estate fails to exercise
16 reasonable care, skill and caution for obligations arising
17 from ownership or control of property of the estate or for
18 other acts or omissions occurring in the course of
19 administration of the estate, the guardian of the estate may
20 be personally liable to the estate. The court shall evaluate
21 the application of reasonable care, skill and caution in the
22 context of the identity, background and experience of the
23 guardian of the estate.

24 (3) A question of liability between the estate and the
25 guardian personally may be determined in a proceeding for
26 accounting, surcharge or indemnification or in another
27 appropriate proceeding.

28 (i) Delegation by guardian of estate.--A guardian of the
29 estate may delegate powers and duties, including discretionary
30 powers and duties, and an agent may accept the delegation of

1 powers and duties, subject to the following:

2 (1) A guardian of the estate shall exercise reasonable
3 care, skill and caution in:

4 (i) Selecting an agent.

5 (ii) Establishing the scope and specific terms of
6 the delegation, consistent with the purposes and terms of
7 the guardianship.

8 (iii) Reviewing periodically the agent's actions in
9 order to monitor the agent's performance and compliance
10 with the scope and specific terms of the delegation.

11 (2) The agent shall comply with the scope and terms of
12 the delegation, exercise the delegated duties and powers with
13 reasonable care, skill and caution and be liable to the
14 incapacitated person's estate for failure to do so. An agent
15 who represents having special skills or expertise shall use
16 those special skills or that expertise.

17 (3) A guardian of the estate who complies with paragraph
18 (1) is not liable to the incapacitated person or to the
19 incapacitated person's estate for an action of the agent to
20 whom the function was delegated.

21 (4) An agent who accepts the delegation of duties or
22 powers from a guardian of the estate who is subject to the
23 jurisdiction of a court of this Commonwealth shall be deemed
24 to have submitted to the jurisdiction of that court even if
25 the terms of the delegation provide for a different
26 jurisdiction or venue.

27 (5) A co-guardian of the estate may delegate duties and
28 powers to another co-guardian of the estate if the delegating
29 co-guardian reasonably believes that the other co-guardian
30 has greater skills than the delegating co-guardian with

1 respect to those duties and powers and the other co-guardian
2 accepts the delegation. The delegating co-guardian shall not
3 be responsible for the decisions, actions or inactions of the
4 co-guardian to whom those duties and powers have been
5 delegated if the delegating co-guardian has exercised
6 reasonable care, skill and caution in establishing the scope
7 and specific terms of the delegation and in reviewing
8 periodically the performance of the co-guardian to whom the
9 duties and powers have been delegated and that co-guardian's
10 compliance with the scope and specific terms of the
11 delegation.

12 (j) Inventory.--

13 (1) Within 90 days after the order of appointment of an
14 incapacitated person's guardian of the estate, the guardian
15 shall prepare and file with the appointing court a detailed
16 inventory of:

17 (i) The real and personal property of the estate.

18 (ii) Other assets in which the incapacitated person
19 has an interest, including, but not limited to,
20 information regarding life insurance, annuities and
21 retirement plans.

22 (iii) All income received by the guardian on behalf
23 of the incapacitated person and all funds received from
24 the United States Department of Veterans Affairs, Social
25 Security Administration, and other periodic retirement or
26 disability payments under private or governmental plans
27 and other periodic payments payable for the life or life
28 expectancy of the incapacitated person.

29 (2) The inventory under paragraph (1) shall be filed
30 with an oath or affirmation that the inventory is believed to

1 be complete and accurate as far as information permits.

2 Section 13. Title 20 is amended by adding a section to read:

3 § 5526. Protection of person dealing with guardian.

4 (a) Third-party liability.--Any person who is given
5 instructions by a guardian in accordance with the terms of a
6 guardianship order shall comply with the instructions. Any
7 person who without reasonable cause fails to comply with those
8 instructions shall be subject to civil liability for any damages
9 resulting from noncompliance. Reasonable cause under this
10 subsection includes, but is not limited to, a good faith report
11 having been made by the third party to the local protective
12 services agency regarding abuse, neglect, exploitation or
13 abandonment under section 302 of the act of November 6, 1987
14 (P.L.381, No.79), known as the Older Adults Protective Services
15 Act, or section 302 of the act of October 7, 2010 (P.L.484,
16 No.70), known as the Adult Protective Services Act.

17 (b) Third-party immunity.--Any person who acts in good faith
18 reliance on a guardianship order shall incur no liability as a
19 result of acting in accordance with the instructions of the
20 guardian.

21 (c) Information regarding guardianship.--Upon request, a
22 guardian shall:

23 (1) Give a copy of the guardianship order to the person
24 to whom the guardian gives instructions, along with an
25 affidavit of the guardian certifying that the guardianship
26 order remains effective as written.

27 (2) Inform the person of any restrictions or limitations
28 on the guardian's authority.

29 Section 14. Sections 5531, 5536 and 5553(a) of Title 20 are
30 amended to read:

1 § 5531. When [accounting] account filed.

2 A guardian shall file an account of his administration
3 whenever directed to do so by the court [or] and may file an
4 account [at the termination of the guardianship, or] at any
5 other time [or times authorized by the court].

6 § 5536. Distributions of income and principal during
7 incapacity.

8 (a) In general.--[All income received by a guardian of the
9 estate of an incapacitated person, including (subject to the
10 requirements of Federal law relating thereto) all funds received
11 from the Veterans' Administration, Social Security
12 Administration and other periodic retirement or disability
13 payments under private or governmental plans, in the exercise of
14 a reasonable discretion, may be expended in the care and
15 maintenance of the incapacitated person, without the necessity
16 of court approval.]

17 (1) In reasonably exercising discretion, a guardian of
18 the estate of an incapacitated person may expend without
19 court approval for the care and maintenance of the
20 incapacitated person all funds received from the United
21 States Department of Veterans Affairs, Social Security
22 Administration, other periodic retirement or disability
23 payments under private or governmental plans, and other
24 periodic payments payable for the life or life expectancy of
25 the incapacitated person. The court may limit discretionary
26 expenditures of income where the financial circumstances and
27 needs of the incapacitated person so require.

28 (2) The court, for cause shown and with only such notice
29 as it considers appropriate in the circumstances, may
30 authorize or direct the payment or application of any or all

1 of the income or principal of the estate of an incapacitated
2 person for the care, maintenance or education of the
3 incapacitated person, his spouse, children or those for whom
4 he was making such provision before his incapacity, or for
5 the reasonable funeral expenses of the incapacitated person's
6 spouse, child or indigent parent.

7 (3) In proper cases, the court may order payment of
8 amounts directly to the incapacitated person for his
9 maintenance or for incidental expenses and may ratify
10 payments made for these purposes.

11 (4) For purposes of this subsection, the term "income"
12 means income as determined in accordance with the rules set
13 forth in Chapter 81 (relating to principal and income),
14 [other than] but the power to adjust and the power to convert
15 to a unitrust shall not apply, and periodic payments that are
16 not payable for the life or life expectancy of the
17 incapacitated person are considered to be principal under
18 this subsection.

19 (5) Fees for an incapacitated person's guardian of the
20 person or guardian of the estate may not be paid from the
21 income or principal of the incapacitated person's estate
22 without court approval. However, the court may prospectively
23 authorize a guardian's fees and retain the right to adjust
24 and approve those fees upon review.

25 (b) Estate plan.--[The court, upon petition and with notice
26 to all parties in interest and for good cause shown,] Subject to
27 subsection (c), for good cause shown, the court shall have the
28 power to substitute its judgment for that of the incapacitated
29 person with respect to the estate and affairs of the
30 incapacitated person for the benefit of the incapacitated

1 person, his family, members of his household, his friends and
2 charities in which he was interested. This power shall include,
3 but is not limited to, the power to:

4 (1) Make gifts, outright or in trust.

5 (2) Convey, release or disclaim his contingent and
6 expectant interests in property, including marital property
7 rights and any right of survivorship incident to joint
8 tenancy or tenancy by the entirety.

9 (3) Release or disclaim his powers as trustee, personal
10 representative, custodian for minors, or guardian.

11 (4) Exercise, release or disclaim his powers as donee of
12 a power of appointment.

13 (5) Enter into contracts.

14 (6) Create for the benefit of the incapacitated person
15 or others, revocable or irrevocable trusts of his property
16 which may extend beyond his disability or life.

17 (7) Exercise options of the incapacitated person to
18 purchase or exchange securities or other property.

19 (8) Exercise all rights and privileges, including the
20 designation of a beneficiary, under life insurance policies,
21 annuity contracts, retirement plans, including, but not
22 limited to, any tax qualified or nonqualified pension, profit
23 sharing, stock bonus, employee savings and retirement plan,
24 deferred compensation plan or individual retirement account
25 or other plans or contractual arrangements providing for
26 payments to the incapacitated person or to others after his
27 death.

28 (9) Exercise his right to claim or disclaim an elective
29 share in the estate of his deceased spouse and renounce any
30 interest by testate or intestate succession or by inter vivos

1 transfer.

2 (10) Change the incapacitated person's residence or
3 domicile.

4 (11) Modify by means of codicil or trust amendment, as
5 the case may be, the terms of the incapacitated person's will
6 or of any revocable trust created by the incapacitated
7 person, as the court may deem advisable in light of changes
8 in applicable tax laws.

9 In the exercise of its judgment for that of the incapacitated
10 person, the court, first being satisfied that assets exist which
11 are not required for the maintenance, support and well-being of
12 the incapacitated person, may adopt a plan of gifts [which
13 results in minimizing] or authorize any other action, including,
14 but not limited to, an action set forth in this subsection that
15 minimizes current or prospective taxes, [or which] carries out a
16 lifetime giving pattern or creates or preserves the
17 incapacitated person's eligibility for a benefit, a program or
18 assistance under a statute or regulation. The court in
19 exercising its judgment shall consider the testamentary and
20 inter vivos intentions of the incapacitated person insofar as
21 they can be ascertained.

22 (c) Petition and notice.--The court may exercise its power
23 under subsection (b) upon petition and with notice to:

24 (1) All persons who are sui juris and would be entitled
25 to share in the incapacitated person's estate if the
26 incapacitated person died intestate at that time.

27 (2) Any person known to the guardian who would be
28 prejudiced by the proposed action.

29 (3) Other parties as the court may direct.

30 § 5553. Guardianship services.

1 (a) In general.--The guardianship support agency shall be
2 available to serve as guardian of the estate or of the person,
3 or both, of an incapacitated person when no less restrictive
4 alternative will meet the needs of the individual and when no
5 other person is willing and qualified to become guardian. The
6 agency itself may be appointed guardian and no individual need
7 be specified by the court. If appointed, the guardianship
8 support agency shall have all of the powers and duties of a
9 corporate fiduciary and [shall not] may be required to post bond
10 as the court directs.

11 * * *

12 Section 15. This act shall apply to all guardianship
13 petition petitions that are filed, proceedings that occur and
14 orders that are made on or after the effective date of this
15 section.

16 Section 16. This act shall take effect in 60 days.