
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1384 Session of
2015

INTRODUCED BY EICHELBERGER, VULAKOVICH, COSTA, RESCHENTHALER,
BARTOLOTTA AND RAFFERTY, OCTOBER 25, 2016

REFERRED TO JUDICIARY, OCTOBER 25, 2016

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in incapacitated persons,
3 providing for communication, visitation and interaction with
4 other persons and for notice to closest relatives of certain
5 events.

6 The General Assembly declares that this act shall be known
7 and may be cited as the "Peter Falk's Law."

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Chapter 55 of Title 20 of the Pennsylvania
11 Consolidated Statutes is amended by adding a subchapter to read:

12 SUBCHAPTER G

13 RIGHTS OF INCAPACITATED PERSONS

14 Sec.

15 5561. Communication, visitation and interaction with other
16 persons.

17 5562. Notice to closest relatives of certain events.

18 § 5561. Communication, visitation and interaction with other
19 persons.

1 (a) Limitation on guardian.--

2 (1) Unless specifically authorized by court order, no
3 guardian may restrict an incapacitated person's right of
4 communication, visitation or interaction with other persons,
5 including the right to receive visitors, telephone calls or
6 personal mail.

7 (2) If an incapacitated person is unable to express
8 consent to communication, visitation or interaction with a
9 person due to a physical or mental condition, then consent of
10 the incapacitated person may be presumed based on the
11 incapacitated person's prior relationship history with the
12 person.

13 (b) Petition by guardian for restrictions.--A guardian may,
14 for good cause shown, petition the court to place restrictions
15 on a person's ability to communicate, visit or interact with an
16 incapacitated person in accordance with subsection (c). Good
17 cause includes:

18 (1) whether a protective order has been issued to
19 protect the incapacitated person from the person seeking
20 access to the incapacitated person;

21 (2) whether abuse, neglect or financial exploitation of
22 the incapacitated person by the person seeking access to the
23 incapacitated person has occurred or is likely to occur;

24 (3) documented intention of the incapacitated person to
25 reject communication, visitation or interaction with specific
26 persons; or

27 (4) any other factors deemed relevant by the court.

28 (c) Court order for restrictions.--

29 (1) A court may order restrictions placed on the
30 communications, visitations or interactions a person may have

1 with an incapacitated person upon a showing of good cause by
2 the guardian.

3 (2) In determining whether to issue an order in
4 accordance with paragraph (1), the following factors shall be
5 considered by the court:

6 (i) Whether a protective order has been issued to
7 protect the incapacitated person from the person seeking
8 access to the incapacitated person.

9 (ii) Whether the person has been charged with abuse,
10 neglect or financial exploitation of the incapacitated
11 person.

12 (iii) Whether the incapacitated person has expressed
13 an intention to reject communication, visitation or
14 interaction with the person.

15 (iv) If the incapacitated person is unable to
16 communicate, whether a properly executed living will,
17 durable power of attorney or advance directive contains a
18 preference by the incapacitated person with regard to the
19 person's communication, visitation or interaction with
20 the incapacitated person.

21 (v) Any other factors deemed relevant by the court.

22 (3) Prior to issuing an order under this subsection, the
23 court shall consider the following:

24 (i) placing reasonable time, manner or place
25 restrictions on communication, visitation or interaction
26 between the incapacitated person and the other person
27 based on the history between the incapacitated person and
28 the person or the incapacitated person's expressed
29 intention, or both;

30 (ii) requiring that communication, visitation or

1 interaction between the incapacitated person and the
2 other person be supervised; or

3 (iii) denying communication, visitation or
4 interaction between the incapacitated person and the
5 other person, provided that, unless the court finds that
6 the person poses a threat to the incapacitated person,
7 supervised communication, visitation or interaction shall
8 be ordered prior to the denial of any communication,
9 visitation or interaction.

10 (d) Other relief by court.--

11 (1) If an interested person, including the incapacitated
12 person, reasonably believes that subsection (a) or an order
13 issued pursuant to subsection (c) (1) has been violated, the
14 interested person may petition the court to:

15 (i) require the guardian to grant a person access to
16 the incapacitated person;

17 (ii) restrict or further restrict a person's access
18 to the incapacitated person;

19 (iii) modify the guardian's duties; or

20 (iv) discharge and replace the guardian as provided
21 by law.

22 (2) Notwithstanding actions available to the court under
23 paragraph (1), a guardian who is found to be knowingly
24 isolating an incapacitated person and who has violated
25 subsection (a) or an order issued under subsection (c), shall
26 be subject to discharge and replacement as provided by law.

27 (e) Hearing.--

28 (1) Except as provided in paragraph (2), the court shall
29 schedule a hearing on a petition filed under subsection (b)
30 or (d) no later than 60 days after the date the petition is

1 filed. The court may, in its discretion, order mediation to
2 be conducted between the parties and the incapacitated person
3 prior to the hearing. If mediation results in agreement of
4 the parties and the incapacitated person with regard to
5 communication, visitation or interaction with the
6 incapacitated person, the agreement shall be approved and
7 incorporated in an order by the court.

8 (2) If the petition states that the incapacitated
9 person's health is in significant decline or that the
10 incapacitated person's death may be imminent, the court shall
11 conduct an emergency hearing as soon as practicable, but no
12 later than 10 days after the petition is filed.

13 (3) When a scheduling order is issued for a petition
14 filed under paragraph (2), the court shall also order that
15 supervised communication, visitation or interaction with the
16 incapacitated person be granted during the period prior to
17 the hearing.

18 (4) Notice of the hearing, a copy of the petition and a
19 copy of any order issued under paragraph (3), if applicable,
20 shall be personally served on the incapacitated person and
21 any person against whom the petition is filed.

22 (5) Nothing in this subsection shall be construed to
23 affect the incapacitated person's right to appear and be
24 heard in the proceedings.

25 (f) Costs and reasonable attorney fees.--

26 (1) The court in its discretion may award the prevailing
27 party in an action brought under this section court costs and
28 reasonable attorney fees, provided that an award of court
29 costs and reasonable attorney fees may not be paid out of the
30 incapacitated person's estate.

1 (2) The court, upon petition or upon its own initiative,
2 may impose upon a guardian who is found to be knowingly
3 isolating an incapacitated person and who has violated
4 subsection (a) or an order issued under subsection (c), an
5 appropriate sanction, including an order to pay court costs
6 and reasonable attorney fees of the other party or parties,
7 provided that no sanction may be paid out of the
8 incapacitated person's estate.

9 § 5562. Notice to closest relatives of certain events.

10 (a) General rule.--A guardian shall promptly notify an
11 incapacitated person's closest relatives and any person
12 designated by the incapacitated person to be notified, along
13 with the appropriate contact information and upon the guardian's
14 knowledge that:

15 (1) the incapacitated person's residence has changed;

16 (2) the incapacitated person is staying at a location
17 other than the incapacitated person's residence for more than
18 seven consecutive days;

19 (3) the incapacitated person is admitted to or
20 discharged from a nursing home or assisted-care living
21 facility;

22 (4) the incapacitated person has been admitted to a
23 medical facility for:

24 (i) emergency care in response to a life-threatening
25 injury or medical condition; or

26 (ii) acute care; or

27 (5) the incapacitated person has died, provided that
28 notification of the incapacitated person's death shall be
29 made in person or by telephone.

30 (b) Exception.--

1 (1) A guardian shall not be required to provide notice
2 in accordance with subsection (a) if:

3 (i) a person who is entitled to notice under
4 subsection (a) informs the guardian in writing that the
5 person does not wish to receive the notice; or

6 (ii) the incapacitated person or a court order has
7 expressly prohibited the guardian from providing notice
8 to the person.

9 (2) A guardian may not provide contact information in
10 accordance with subsection (a) if an order of protection or
11 restraining order has been issued pursuant to law against the
12 person on behalf of the incapacitated person.

13 Section 2. This act shall take effect in 60 days.