

AMENDMENTS TO SENATE BILL NO. 506

Sponsor: SENATOR BAKER

Printer's No. 398

1 Amend Bill, page 1, line 4, by striking out "and" where it
2 occurs the first time and inserting a comma

3 Amend Bill, page 1, line 5, by inserting after "guardian"
4 and for review hearing

5 Amend Bill, page 7, line 3, by striking out all of said line
6 and inserting

7 Section 2. Sections 5512.1(a) and 5512.2 of Title 20 are
8 amended to read:

9 Amend Bill, page 9, by inserting between lines 2 and 3

10 § 5512.2. Review hearing.

11 (a) [Time of hearing.--The court may set a date for a review
12 hearing in its order establishing the guardianship or hold a
13 review hearing at any time it shall direct. The court shall
14 conduct a review hearing promptly if the incapacitated person,
15 guardian or any interested party petitions the court for a
16 hearing for reason of a significant change in the person's
17 capacity, a change in the need for guardianship services or the
18 guardian's failure to perform his duties in accordance with the
19 law or to act in the best interest of the incapacitated person.
20 The court may dismiss a petition for review hearing if it
21 determines that the petition is frivolous.] Automatic review.--
22 If the evidence presented during the guardianship proceeding
23 indicates that the circumstances of the person's incapacity may
24 change, the court shall hold a review hearing to determine
25 whether the guardianship continues to be necessary. The court
26 shall set the date for a review hearing under this subsection in
27 the court's order establishing guardianship. The review hearing
28 under this subsection shall be held no later than one year from
29 the date of the order establishing the guardianship. The hearing
30 shall be conducted in the presence of the incapacitated person
31 and the person's attorney, and the court shall adhere to the
32 procedures and standards as outlined in section 5512.1(a). If,
33 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
31 continues to be necessary and that no less restrictive
32 alternatives exist, the court may order that the guardianship
33 continue. If the court finds that guardianship is no longer
34 necessary or a less restrictive alternative exists, the court
35 shall discharge the guardianship.

36 (b) Burden of proof and rights.--The incapacitated person
37 shall have all of the rights enumerated in this chapter. Except
38 when the hearing is held to appoint a successor guardian, the
39 burden of proof, by clear and convincing evidence, shall be on
40 the party advocating continuation of guardianship or expansion
41 of areas of incapacity.