

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 683

Session of
1987

INTRODUCED BY KUKOVICH, STABACK, BOYES, VEON, JOHNSON, COHEN,
KOSINSKI, ITKIN, McHALE, PRESSMANN, TIGUE, GODSHALL, MAIALE,
HOWLETT, HALUSKA, RITTER, DAWIDA, ARTY, REBER, JOSEPHS,
NAHILL, PISTELLA, PRESTON, WIGGINS AND McVERRY, MARCH 4, 1987

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 21, 1988

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, adding provisions
3 relating to guardians of incapacitated persons.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. The headings of Chapter 55 and Subchapter A of
7 Chapter 55 of Title 20 of the Pennsylvania Consolidated Statutes
8 are amended to read:

CHAPTER 55

[INCOMPETENTS]

INCAPACITATED PERSONS

12 * * *

SUBCHAPTER A

[MEANING OF INCOMPETENT]

GENERAL PROVISIONS

16 * * *

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

<—

1 ~~§ 5501. Purpose of chapter.~~

2 ~~Recognizing that every individual has unique needs and~~
3 ~~differing abilities, it is the purpose of this chapter to~~
4 ~~promote the general welfare of all citizens by establishing a~~
5 ~~system which permits incapacitated persons to participate as~~
6 ~~fully as possible in all decisions which affect them; which~~
7 ~~assists these persons in meeting the essential requirements for~~
8 ~~their physical health and safety, protecting their rights,~~
9 ~~managing their financial resources and developing or regaining~~
10 ~~their abilities to the maximum extent possible; and which~~
11 ~~accomplishes these objectives through the use of the least~~
12 ~~restrictive alternative.~~

13 Section 3 2. Section 5501 of Title 20 is amended to read: <—

14 § ~~{5501}~~ ~~5502~~. Meaning of [incompetent] incapacitated person. <—

15 ["Incompetent" means a person who, because of infirmities of
16 old age, mental illness, mental deficiency or retardation, drug
17 addiction or inebriety:

18 (1) is unable to manage his property, or is liable to
19 dissipate it or become the victim of designing persons; or

20 (2) lacks sufficient capacity to make or communicate
21 responsible decisions concerning his person.]

22 ~~"Incapacitated person" means a person who is suffering from a~~ <—
23 ~~physical or mental dysfunction to the extent that the person is~~
24 ~~impaired in his ability to provide for his own care or~~
25 ~~protection, or to judge the adequacy of the care or protection~~
26 ~~being provided by another, and that the person is at imminent~~
27 ~~risk of abuse, neglect or exploitation.~~

28 Section 4. Title 20 is amended by adding a section to read:

29 ~~§ 5510. Definitions.~~

30 ~~The following words and phrases when used in this subchapter~~

~~shall have the meanings given to them in this section unless the context clearly indicates otherwise:~~

~~"Abuse." The occurrence of one or more of the following acts:~~

~~(1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.~~

~~(2) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.~~

~~(3) Sexual harassment, rape or abuse as defined in the act of October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act.~~

~~"Licensed practitioner." A physician, including a psychiatrist, a licensed psychologist or a registered nurse.~~

~~"Neglect." The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health.~~

~~THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:~~

~~"INCAPACITATED PERSON." A PERSON WHO, BECAUSE OF MENTAL ILLNESS, MENTAL DEFICIENCY OR RETARDATION, DRUG ADDICTION OR INEBRIETY, LACKS SUFFICIENT CAPACITY TO MAKE AND TO COMMUNICATE IN ANY WAY RESPONSIBLE DECISIONS CONCERNING HIS PERSON OR PROPERTY.~~

~~"PARTIALLY INCAPACITATED PERSON." A PERSON WHO, BECAUSE OF MENTAL ILLNESS, MENTAL DEFICIENCY OR RETARDATION, DRUG ADDICTION OR INEBRIETY, PARTIALLY LACKS SUFFICIENT CAPACITY TO MAKE AND TO COMMUNICATE SOME RESPONSIBLE DECISIONS CONCERNING HIS PERSON OR~~

1 PROPERTY.

2 SECTION 3. TITLE 20 IS AMENDED BY ADDING A SECTION TO READ:

3 § 5502. PURPOSE OF CHAPTER.

4 RECOGNIZING THAT EVERY INDIVIDUAL HAS UNIQUE NEEDS AND
5 DIFFERING ABILITIES, IT IS THE PURPOSE OF THIS CHAPTER TO
6 PROMOTE THE GENERAL WELFARE OF ALL CITIZENS BY ESTABLISHING A
7 SYSTEM WHICH PERMITS INCAPACITATED PERSONS TO PARTICIPATE AS
8 FULLY AS POSSIBLE IN ALL DECISIONS WHICH AFFECT THEM; WHICH
9 ASSISTS THESE PERSONS IN MEETING THE ESSENTIAL REQUIREMENTS FOR
10 THEIR PHYSICAL HEALTH AND SAFETY, PROTECTING THEIR RIGHTS,
11 MANAGING THEIR FINANCIAL RESOURCES AND DEVELOPING OR REGAINING
12 THEIR ABILITIES TO THE MAXIMUM EXTENT POSSIBLE; AND WHICH
13 ACCOMPLISHES THESE OBJECTIVES THROUGH THE USE OF THE LEAST
14 RESTRICTIVE ALTERNATIVE; AND RECOGNIZING FURTHER THAT WHEN
15 GUARDIANSHIP SERVICES ARE NECESSARY, IT IS IMPORTANT TO
16 FACILITATE THE FINDING OF SUITABLE INDIVIDUALS OR ENTITIES
17 WILLING TO SERVE AS GUARDIANS.

18 Section ~~5~~ 4. Sections 5511 and 5512 of Title 20 are amended <—
19 to read:

20 § 5511. Petition and hearing; examination by court-appointed
21 physician.

22 (a) Resident.--The court, upon petition [and a hearing at
23 which good cause is shown], hearing and clear and convincing
24 evidence, may find a person domiciled in the Commonwealth to be
25 [incompetent] incapacitated and appoint a guardian or guardians
26 of his person or estate. The petitioner may be any person
27 interested in the alleged [incompetent's] incapacitated person's
28 welfare. The court [may] SHALL dismiss a proceeding where it <—
29 finds as a fact that the proceeding has not been instituted to
30 aid or benefit the alleged [incompetent] incapacitated person, <—

1 OR THAT THE PERSON IS NOT INCAPACITATED. Notice of the petition
2 and hearing shall be given TO THE ALLEGED INCAPACITATED PERSON <—
3 IN SIMPLE LANGUAGE WHICH INCLUDES AN EXPLANATION OF ALL RIGHTS,
4 INCLUDING THE RIGHT TO COUNSEL, TO APPEAL AND TO PETITION TO
5 MODIFY OR TERMINATE GUARDIANSHIP. NOTICE OF THE PETITION AND
6 HEARING SHALL BE GIVEN in such manner as the court shall direct
7 [to the alleged {incompetent} ~~incapacitated person,~~] to all <—
8 persons residing within the Commonwealth who are sui juris and
9 would be entitled to share in the estate of the alleged
10 [incompetent] incapacitated person if he died intestate at that
11 time, TO THE PERSON OR INSTITUTION WHO HAS LEGAL OR PHYSICAL <—
12 CUSTODY OF OR IS PROVIDING SUPPORTIVE SERVICES TO THE ALLEGED
13 INCAPACITATED PERSON, and to such other parties as the court may
14 direct. The hearing may be closed to the public and without a
15 jury unless the alleged [incompetent] incapacitated person or
16 his counsel objects. The hearing shall be closed and with or
17 without a jury if the person alleged to be [incompetent]
18 incapacitated or his counsel so requests. THE HEARING MAY BE <—
19 HELD AT THE RESIDENCE OF THE ALLEGED INCAPACITATED PERSON. NO
20 PRESUMPTION OF INCAPACITY SHALL BE RAISED FROM THE ALLEGED
21 INCAPACITATED PERSON'S INSTITUTIONALIZATION. The alleged
22 [incompetent] incapacitated person shall be present at the
23 hearing unless:

24 [(i)] (1) the court is satisfied, upon the {presentation <—
25 of positive testimony} deposition or testimony AFFIDAVIT of a <—
26 licensed practitioner PHYSICIAN, INCLUDING A PSYCHIATRIST, OR <—
27 A LICENSED PSYCHOLOGIST, that because of his physical or
28 mental condition his welfare would [not] be [promoted] harmed
29 by his presence; [or] <—

30 [(ii)] (2) it is impossible for him to be present

1 because of his absence from the Commonwealth[. It shall not <—
2 be necessary for the alleged ~~incompetent~~ incapacitated <—
3 person to be represented by a guardian ad litem in the
4 proceeding.]; OR <—

5 (3) COUNSEL FOR THE ALLEGED INCAPACITATED PERSON
6 CERTIFIES THAT THE PERSON OBJECTS TO ATTENDING.

7 Counsel shall be appointed to represent the alleged
8 incapacitated person in any matter for which independent counsel
9 has not been retained by or on behalf of that individual. If the
10 alleged incapacitated person is unable to pay for counsel or if
11 payment would result in substantial financial hardship, the
12 county shall be responsible for the cost of counsel.

13 (b) Nonresident.--The court may find a person not domiciled
14 in the Commonwealth, having property in the Commonwealth, to be
15 [incompetent] incapacitated and may appoint a guardian of his
16 estate. The appointment may be made after petition, hearing and
17 notice, as in the case of a person domiciled in the
18 Commonwealth, or upon the submission of an exemplified copy of a
19 decree establishing his [incompetency] incapacity in another
20 jurisdiction. The court shall give preference in its appointment
21 to the foreign guardian of the nonresident [incompetent]
22 incapacitated person, unless it finds that such appointment will
23 not be for the best interests of the [incompetent] incapacitated
24 person.

25 (c) [Court-appointed physician.--Upon the filing of a <—
26 petition the alleged ~~incompetent~~ incapacitated person may be <—
27 examined by a physician appointed by the court who shall submit
28 his report in writing to the court and to the parties before the
29 hearing.] INDEPENDENT EVALUATION.--THE COURT, UPON ITS OWN <—
30 MOTION OR PETITION BY THE ALLEGED INCAPACITATED PERSON, FOR

1 CAUSE SHOWN, MAY ORDER AN EXAMINATION BY AN INDEPENDENT,
2 QUALIFIED PSYCHOLOGIST OR PHYSICIAN, INCLUDING A PSYCHIATRIST OR
3 OTHER PROFESSIONAL. WHEN APPROPRIATE, A THOROUGH FUNCTIONAL
4 ANALYSIS, INCLUDING SOCIAL, PSYCHOLOGICAL AND MEDICAL
5 ASSESSMENTS OF THE ALLEGED INCAPACITATED PERSON, SHALL BE
6 CONDUCTED. THE COURT SHALL GIVE DUE CONSIDERATION TO THE
7 INDEPENDENT PROFESSIONAL NOMINATED BY THE ALLEGED INCAPACITATED
8 PERSON IF THAT PROFESSIONAL IS OTHERWISE QUALIFIED. IF THE
9 ALLEGED INCAPACITATED PERSON IS UNABLE TO PAY FOR THE
10 INDEPENDENT EVALUATION OR IF PAYMENT WOULD RESULT IN SUBSTANTIAL
11 FINANCIAL HARDSHIP, THE COURT SHALL ASSIGN COSTS TO THE COUNTY,
12 OR IF THE PERSON IS IN A COMMONWEALTH FACILITY, TO THE
13 COMMONWEALTH.

14 (D) PETITION CONTENTS.--THE PETITION FOR THE GUARDIANSHIP
15 SHALL INCLUDE THE NAME, AGE, RESIDENCE AND POST OFFICE ADDRESS
16 OF THE ALLEGED INCAPACITATED PERSON; THE NATURE OF HIS ALLEGED
17 INCAPACITY; THE APPROXIMATE VALUE AND DESCRIPTION OF THE ALLEGED
18 INCAPACITATED PERSON'S FINANCIAL RESOURCES, INCLUDING ANY
19 COMPENSATION, PENSION, INSURANCE OR ALLOWANCE TO WHICH HE MAY BE
20 ENTITLED; WHETHER IN ANY STATE THERE IS A GUARDIAN FOR THE
21 PERSON OR THE FINANCIAL RESOURCES OF THE ALLEGED INCAPACITATED
22 PERSON; THE RESIDENCE AND POST OFFICE ADDRESS OF THE PERSON OR
23 ENTITY WHOM PETITIONER ASKS TO BE APPOINTED GUARDIAN; THE NAMES
24 AND ADDRESSES OF THE SPOUSE, PARENTS AND PRESUMPTIVE ADULT HEIRS
25 OF THE ALLEGED INCAPACITATED PERSON, IF ANY; THE NAME AND
26 ADDRESS OF THE PERSON OR INSTITUTION, IF ANY, WHO HAS LEGAL OR
27 PHYSICAL CUSTODY OF THE ALLEGED INCAPACITATED PERSON; THE NAMES
28 AND ADDRESSES OF ANY GOVERNMENT OR PRIVATE AGENCIES, CHARITIES,
29 FOUNDATIONS OR OTHER ENTITIES FROM WHICH THE ALLEGED
30 INCAPACITATED PERSON IS RECEIVING SERVICES; THE REASON WHY THE

1 APPOINTMENT OF A GUARDIAN IS SOUGHT; THE INTEREST OF THE
2 PETITIONER IN THE APPOINTMENT AND WHETHER THE APPOINTMENT OF A
3 GUARDIAN OF THE PERSON OR OF THE ESTATE IS SOUGHT; AND THE
4 REQUESTED, SPECIFIC AREAS OF INCAPACITY OVER WHICH THE GUARDIAN
5 IS TO BE ASSIGNED POWERS AND DUTIES.

6 § 5512. County of appointment.

7 (a) Resident [incompetent] incapacitated person.--A guardian
8 of the person or estate of an [incompetent] incapacitated person
9 may be appointed by the court of the county in which the
10 [incompetent] incapacitated person is domiciled, IS A RESIDENT, <—
11 IS RESIDING IN AN INSTITUTION OR, IN THE INTEREST OF JUSTICE, IN
12 ANY OTHER COUNTY.

13 (b) Nonresident [incompetent] incapacitated person.--A
14 guardian of the estate within the Commonwealth of an
15 [incompetent] incapacitated person domiciled outside of the
16 Commonwealth may be appointed by the court of the judicial
17 district having jurisdiction of a decedent's estate or of a
18 trust in which the [incompetent] incapacitated person has an
19 interest. When the nonresident [incompetent's] incapacitated
20 person's estate is derived otherwise than from a decedent's
21 estate or a trust within the Commonwealth, a guardian may be
22 appointed by the court of any county where an asset of the
23 [incompetent] incapacitated person is located.

24 (c) Exclusiveness of appointment.--When a court has
25 appointed a guardian of an [incompetent's] incapacitated person
26 or estate pursuant to subsection (a) or (b) [of this section],
27 no other court shall appoint a similar guardian for the
28 [incompetent] incapacitated person within the Commonwealth.

29 Section ~~6~~ 5. Title 20 is amended by adding ~~a section~~ <—

30 SECTIONS to read: <—

1 § 5512.1. Determination of incapacity AND APPOINTMENT OF <—
2 GUARDIAN.

3 ~~(a) Findings. If a person is determined to be~~ <—
4 ~~incapacitated, the court shall consider and make findings of~~
5 ~~fact or conclusions of law regarding the:~~

6 ~~(1) Nature and extent of the general intellectual~~
7 ~~functioning of the incapacitated person.~~

8 ~~(2) Nature and extent of the general physical~~
9 ~~functioning of the incapacitated person.~~

10 ~~(3) Nature of impairment in the adaptive behavior of the~~
11 ~~incapacitated person.~~

12 ~~(4) Ability of the incapacitated person to care for~~
13 ~~himself by making and communicating responsible decisions~~
14 ~~concerning himself.~~

15 ~~(5) Ability of the incapacitated person to care for his~~
16 ~~financial resources by making and communicating responsible~~
17 ~~decisions concerning his property.~~

18 ~~(b) Nature of the guardianship. The court order~~
19 ~~establishing the guardianship shall specify over which areas of~~
20 ~~legal disability the guardian is assigned powers and duties. The~~
21 ~~petition shall contain the specific recommendations of the~~
22 ~~petitioner with regard thereto. The areas may include, but are~~
23 ~~not limited to, the following:~~

24 (A) DETERMINATION OF INCAPACITY.--IN RESPONSE TO A PETITION <—
25 FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON OR ESTATE, THE
26 COURT SHALL CONSIDER AND MAKE SPECIFIC FINDINGS OF FACT
27 CONCERNING:

28 (1) THE NATURE OF ANY CONDITION OR DISABILITY WHICH
29 IMPAIRS THE INDIVIDUAL'S CAPACITY TO MAKE AND COMMUNICATE
30 DECISIONS;

1 (2) THE EXTENT OF THE INDIVIDUAL'S ABILITY TO MAKE AND
2 COMMUNICATE DECISIONS;

3 (3) THE NEED FOR GUARDIANSHIP SERVICES, IF ANY, IN LIGHT
4 OF THE NETWORK OF FAMILY, FRIENDS AND OTHER SUPPORTS
5 AVAILABLE TO ASSIST THE INDIVIDUAL IN MAKING DECISIONS; AND

6 (4) THE DURATION OF THE GUARDIANSHIP.

7 (B) LIMITED GUARDIAN OF THE PERSON.--UPON A FINDING THAT THE
8 PERSON IS PARTIALLY INCAPACITATED AND IN NEED OF GUARDIANSHIP
9 SERVICES, THE COURT SHALL ENTER AN ORDER APPOINTING A LIMITED
10 GUARDIAN OF THE PERSON WITH SPECIFIC AREAS OF POWERS AND DUTIES
11 WHICH MAY INCLUDE:

12 (1) General care, maintenance and custody of the
13 incapacitated person.

14 ~~(2) Establishing the place of abode for the~~ <—
15 ~~incapacitated person.~~

16 (2) DESIGNATING THE PLACE FOR THE INCAPACITATED PERSON <—
17 TO LIVE.

18 (3) Assuring that the incapacitated person receives
19 training, education, medical and psychological services, and
20 social and vocational opportunities, as appropriate, as well
21 as assisting the incapacitated person in the development of
22 maximum self-reliance and independence.

23 ~~(4) Fiscal management of the assets of the incapacitated~~ <—
24 ~~person.~~

25 ~~(5)~~ (4) Providing required consents or approvals on <—
26 behalf of the incompetent INCAPACITATED PERSON. <—

27 ~~(c) Legal rights retained. A person for whom a guardian has~~ <—
28 ~~been appointed shall retain all legal rights except those which~~
29 ~~have, by court order, been designated as areas of legal~~
30 ~~disability under subsection (b). The appointment of a guardian~~

~~under this chapter shall not constitute a finding of legal incapacity except in those areas specified by the court.~~

~~(d) Review hearing. The court, in its order establishing the guardianship, shall set the date of the initial review hearing. Such date shall be no later than six months after the date of the order establishing the guardianship. The court shall conduct a review hearing annually thereafter. At the review hearing the guardian shall present a report containing the following information:~~

~~(1) Significant changes in the capacity of the incapacitated person to meet the essential requirements for his physical health or safety.~~

~~(2) Services being provided to the incapacitated person.~~

~~(3) Significant actions taken for the incapacitated person by the guardian during the reporting period.~~

~~(4) Significant problems relating to the guardianship which have arisen during the reporting period.~~

~~(5) Whether the guardianship, in the opinion of the guardian, should continue, be modified or be terminated, and the reasons therefor.~~

~~(C) PLENARY GUARDIAN OF THE PERSON.--UPON A FINDING THAT THE PERSON IS INCAPACITATED AND IN NEED OF GUARDIANSHIP SERVICES, THE COURT MAY APPOINT A PLENARY GUARDIAN OF THE PERSON.~~

~~(D) LIMITED GUARDIAN OF THE ESTATE.--UPON A FINDING THAT THE PERSON IS PARTIALLY INCAPACITATED AND IN NEED OF GUARDIANSHIP SERVICES, THE COURT SHALL ENTER AN ORDER APPOINTING A LIMITED GUARDIAN OF THE ESTATE, WHICH SHALL SPECIFY THE PORTION OF ASSETS OR INCOME OVER WHICH THE GUARDIAN OF THE ESTATE IS ASSIGNED POWERS AND DUTIES.~~

~~(E) PLENARY GUARDIAN OF THE ESTATE.--UPON A FINDING THAT THE~~

PERSON IS INCAPACITATED AND IN NEED OF GUARDIANSHIP SERVICES,
THE COURT MAY APPOINT A PLENARY GUARDIAN OF THE ESTATE.

(F) LEGAL RIGHTS RETAINED.--A PERSON FOR WHOM A LIMITED
GUARDIAN OF THE PERSON OR ESTATE HAS BEEN APPOINTED, PURSUANT TO
THIS SECTION, SHALL RETAIN ALL LEGAL RIGHTS EXCEPT THOSE WHICH
HAVE, BY COURT ORDER, BEEN DESIGNATED AS AREAS OVER WHICH THE
LIMITED GUARDIAN HAS POWER.

§ 5512.2. REVIEW HEARING.

(A) TIME OF HEARING.--THE COURT MAY SET A DATE FOR A REVIEW
HEARING IN ITS ORDER ESTABLISHING THE GUARDIANSHIP, OR HOLD A
REVIEW HEARING AT ANY TIME IT SHALL DIRECT. THE COURT SHALL
CONDUCT A REVIEW HEARING PROMPTLY IF:

(1) THE INCAPACITATED PERSON OR ANY INTERESTED PARTY
PETITIONS THE COURT FOR A HEARING FOR REASON OF A SIGNIFICANT
CHANGE IN THE PERSON'S CAPACITY, A CHANGE IN THE NEED FOR
GUARDIANSHIP SERVICES, OR THE GUARDIAN'S FAILURE TO PERFORM
HIS DUTIES IN ACCORDANCE WITH THE LAW OR TO ACT IN THE BEST
INTEREST OF THE INCAPACITATED PERSON; OR

(2) THE GUARDIAN CERTIFIES A SIGNIFICANT CHANGE IN THE
PERSON'S CAPACITY, OR CHANGE IN THE NEED FOR GUARDIANSHIP
SERVICES.

A PETITION FROM THE INCAPACITATED PERSON MAY BE MADE BY INFORMAL
COMMUNICATION. THE COURT MAY DISMISS THE PETITION IF IT FINDS AS
A FACT THAT THE PROCEEDING HAS NOT BEEN INSTITUTED TO AID OR
BENEFIT THE INCAPACITATED PERSON.

(B) BURDEN OF PROOF AND RIGHTS.--THE INCAPACITATED PERSON
SHALL HAVE ALL OF THE RIGHTS ENUMERATED IN THIS CHAPTER. EXCEPT
WHEN THE HEARING IS HELD TO APPOINT A SUCCESSOR GUARDIAN, THE
BURDEN OF PROOF SHALL BE ON THE PARTY, IF ANY, ADVOCATING
CONTINUATION OF GUARDIANSHIP OR EXPANSION OF AREAS OF

1 INCAPACITY.

2 (C) COURT DETERMINATION.--IF THE COURT DETERMINES THAT A
3 PERSON IS NO LONGER AN INCAPACITATED PERSON OR IS NO LONGER IN
4 NEED OF GUARDIANSHIP, THE COURT SHALL DISSOLVE THE ORDER WHICH
5 ESTABLISHED THE GUARDIANSHIP. IF THE COURT FINDS THAT THE
6 GUARDIAN HAS FAILED TO PERFORM HIS DUTIES AND OBLIGATIONS IN
7 ACCORDANCE WITH LAW, OR A GUARDIAN HAS FAILED TO ACT IN THE BEST
8 INTEREST OF THE INCAPACITATED PERSON, THE COURT MAY DISCHARGE A
9 GUARDIAN AND APPOINT A SUCCESSOR. IF THE COURT DETERMINES THAT
10 THE INCAPACITATED PERSON HAS REGAINED OR LOST CAPACITY IN
11 CERTAIN AREAS, THE COURT MAY MODIFY THE DUTIES OF THE GUARDIAN.

12 § 5512.3. REPORTS.

13 (A) TIME AND CONTENT.--WHEN A REPORT IS REQUIRED THE COURT
14 ORDER SHALL SPECIFY THE DATE FOR THE INITIAL REPORT FROM THE
15 GUARDIAN. THE DATE SHALL BE NO LATER THAN SIX MONTHS AFTER THE
16 DATE OF THE ORDER ESTABLISHING THE GUARDIANSHIP. THE COURT SHALL
17 REQUIRE REPORTS AT LEAST EVERY 12 MONTHS THEREAFTER. THE COURT
18 SHALL REVIEW THE REPORTS OR ENSURE THEIR REVIEW. THE REPORT
19 SHALL INCLUDE THE FOLLOWING:

20 (1) A DESCRIPTION OF SIGNIFICANT ACTIONS, IF ANY, TAKEN
21 FOR THE INCAPACITATED PERSON BY THE GUARDIAN DURING THE
22 REPORTING PERIOD.

23 (2) A DESCRIPTION OF THE EXTENT OF PERSONAL CONTACT, IF
24 ANY, WITH THE INCAPACITATED PERSON.

25 (3) AN EXPLANATION OF SIGNIFICANT PROBLEMS, IF ANY,
26 RELATING TO THE GUARDIANSHIP WHICH HAVE ARISEN DURING THE
27 REPORTING PERIOD.

28 (4) THE OPINION OF THE GUARDIAN AS TO WHETHER THE
29 GUARDIANSHIP SHOULD CONTINUE OR BE TERMINATED OR MODIFIED,
30 AND THE REASONS THEREFORE.

1 (B) PERSONAL INCAPACITY.--WHEN THE ORDER INCLUDES AREAS OF
2 PERSONAL INCAPACITY, THE REPORT SHALL ALSO INCLUDE THE
3 FOLLOWING:

4 (1) A DESCRIPTION OF SIGNIFICANT CHANGES, IF ANY, IN THE
5 CAPACITY OF THE INCAPACITATED PERSON TO MAKE AND COMMUNICATE
6 RESPONSIBLE DECISIONS ABOUT HIS PERSON.

7 (2) A BRIEF DESCRIPTION OF THE INCAPACITATED PERSON'S
8 LIVING ARRANGEMENTS AND THE SOCIAL, MEDICAL, PSYCHOLOGICAL,
9 AND OTHER SUPPORT SERVICES HE IS RECEIVING.

10 (C) FINANCIAL INCAPACITY.--WHEN THE ORDER INCLUDES AREAS OF
11 FINANCIAL INCAPACITY, THE REPORT SHALL ALSO INCLUDE A FINANCIAL
12 STATEMENT OF RECEIPTS AND DISBURSEMENTS SINCE THE LAST REPORT.

13 Section 7 6. Sections 5513, 5514, 5515, 5516, 5517, 5518, <—
14 5521, 5522, 5524, 5525, 5534, 5535, 5536 and 5537 of Title 20
15 are amended to read:

16 § 5513. [Temporary] EMERGENCY guardian. <—

17 Notwithstanding the provisions of section 5511 (relating to
18 petition and hearing; examination by court-appointed physician),
19 the court, upon petition and a hearing at which good cause is
20 shown, may appoint [a temporary] AN EMERGENCY guardian or <—

21 guardians of the person or estate of a person alleged to be
22 [incompetent] incapacitated, when it appears that a failure to
23 make such appointment will result in irreparable harm to the
24 person or estate of the alleged [incompetent] incapacitated

25 person. The provisions of section 5511, INCLUDING COUNSEL, shall <—

26 be applicable to such proceedings, except [that only such notice <—

27 of the petition and hearing shall be required as shall appear to

28 the court to be] WHEN THE COURT HAS FOUND THAT IT IS NOT <—

29 feasible in the circumstances[, and need not be given at such <—

30 times or to such persons as would be required by the provisions

1 of section 5511 in a proceeding for the appointment of a
2 guardian. A temporary]. AN EMERGENCY guardian so appointed for <—
3 the person or estate of an alleged [incompetent] incapacitated
4 person shall only have and be subject to such powers, duties and
5 liabilities and serve for such time as the court shall direct in
6 its decree.

7 § 5514. To fill vacancy; co-guardian.

8 The court, after such notice to parties in interest as it
9 shall direct, may appoint a succeeding guardian to fill a
10 vacancy in the office of guardian or may appoint a co-guardian
11 of the estate of a person found to be [incompetent]
12 incapacitated without a hearing. WHERE THE VACATING GUARDIAN WAS <—
13 A PARENT WHO IS NOW DECEASED, ANY TESTAMENTARY NOMINEE OF THE
14 PARENT SHALL BE GIVEN PREFERENCE BY THE COURT.

15 § 5515. Provisions similar to other estates.

16 The provisions relating to a guardian of an [incompetent]
17 incapacitated person and his surety shall be the same as are set
18 forth in the following provisions of this title relating to a
19 personal representative or a guardian of a minor and their
20 sureties:

21 Section 3182 (relating to grounds for removal).

22 Section 3183 (relating to procedure for and effect of
23 removal).

24 Section 3184 (relating to discharge of personal
25 representative and surety).

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

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

29 Section 5122 (relating to when bond not required).

30 Section 5123 (relating to requiring or changing amount of

1 bond).

2 § 5516. Fiduciary estate.

3 The court, in its discretion, upon the application of any
4 party in interest, in addition to any bond required for the
5 [incompetent's] incapacitated person's individual estate, may
6 require a separate bond in the name of the Commonwealth, with
7 sufficient surety, in such amount as the court shall consider
8 necessary for the protection of the parties in interest in an
9 estate of which the [incompetent] incapacitated person is a
10 fiduciary and conditioned in the following form:

11 (1) When one guardian.--The condition of this obligation
12 is that, if the said guardian shall well and truly account
13 for property held by the [incompetent] incapacitated person
14 as fiduciary according to law, this obligation shall be void;
15 but otherwise it shall remain in force.

16 (2) When two or more guardians.--The condition of this
17 obligation is that, if the said guardians or any of them
18 shall well and truly account for property held by the
19 [incompetent] incapacitated person as fiduciary according to
20 law, this obligation shall be void as to the guardian or
21 guardians who shall so account; but otherwise it shall remain
22 in force.

23 [§ 5517. Adjudication of competency. <—

24 The court, upon petition and after such notice ~~s-it~~ AS IT <—
25 shall direct, may find, after a hearing at which good cause is
26 shown, that a person previously adjudged ~~incompetent~~ <—
27 incapacitated has become competent.] <—

28 § 5517. APPOINTMENT. <—

29 ANY QUALIFIED INDIVIDUAL OR CORPORATE FIDUCIARY, NONPROFIT
30 CORPORATION OR THE GUARDIAN OFFICE AT A STATE FACILITY MAY BE

1 APPOINTED GUARDIAN OF AN INCAPACITATED PERSON. THE COURT SHALL
2 MAKE EVERY EFFORT TO AVOID APPOINTING A PERSON OR ENTITY
3 PROVIDING RESIDENTIAL SERVICES TO THE INCAPACITATED PERSON OR
4 APPOINTING ANY OTHER PERSON WHOSE INTERESTS CONFLICT WITH THOSE
5 OF THE INCAPACITATED PERSON. WHEN APPROPRIATE, THE COURT SHALL
6 GIVE PREFERENCE TO A NOMINEE OF THE INCAPACITATED PERSON.

7 § 5518. Evidence of mental condition.

8 [In any hearing relating to the mental condition of a person
9 whose competency is in question, the deposition of, or sworn
10 statement by, a superintendent, manager, physician or
11 psychiatrist of any State-owned mental hospital or veterans'
12 administration hospital or a physician or psychiatrist at any
13 hospital or institution shall be admissible in evidence as to
14 the condition of an inmate of such hospital in lieu of his
15 appearance and testimony, unless by special order, the court
16 directs his appearance and testimony in person.] In any hearing
17 to establish a guardianship, a licensed practitioner WITNESSES <—
18 TESTIFYING TO THE CAPACITY OF THE ALLEGED INCAPACITATED PERSON
19 OR TESTIFYING FOR PURPOSES OF SECTION 5511(A)(1) (RELATING TO
20 PETITION AND HEARING; EXAMINATION BY COURT-APPOINTED PHYSICIAN)
21 TO THE PHYSICAL OR MENTAL CONDITION OF THE PERSON shall be
22 subject to cross-examination by counsel for the alleged
23 incapacitated person.

24 § 5521. Provisions concerning powers, duties and liabilities.

25 ~~(a) General rule. The provisions concerning the powers, (A)~~ <—
26 DUTY TO INCAPACITATED PERSON.--IT SHALL BE THE DUTY OF THE
27 GUARDIAN TO ASSERT THE RIGHTS AND BEST INTERESTS OF THE
28 INCAPACITATED PERSON AND TO TAKE THE WISHES AND PREFERENCES OF
29 THE INCAPACITATED PERSON INTO ACCOUNT EVEN IN AREAS OF
30 INCAPACITY. THE GUARDIAN SHALL ALSO ENCOURAGE THE INCAPACITATED

1 PERSON TO PARTICIPATE TO THE MAXIMUM EXTENT OF HIS ABILITIES IN
2 ALL DECISIONS WHICH AFFECT HIM, TO ACT ON HIS OWN BEHALF
3 WHENEVER HE IS ABLE TO DO SO, AND TO DEVELOP OR REGAIN, TO THE
4 MAXIMUM EXTENT POSSIBLE, HIS CAPACITY TO MANAGE HIS PERSONAL
5 AFFAIRS.

6 (B) PROVISIONS ENUMERATED.--THE PROVISIONS CONCERNING THE
7 POWERS, duties and liabilities of guardians of [incompetents']
8 incapacitated persons' estates shall be the same as those set
9 forth in the following provisions of this title relating to
10 personal representatives of decedents' estates and guardians of
11 minors' estates:

12 Section 3313 (relating to liability insurance).

13 Section 3314 (relating to continuation of business).

14 Section 3315 (relating to incorporation of estate's
15 business).

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

17 Section 3318 (relating to revival of judgments against
18 personal representative).

19 Section 3319 (relating to power of attorney; delegation
20 of power over subscription rights and fractional shares;
21 authorized delegations).

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

23 Section 3321 (relating to nominee registration; corporate
24 fiduciary as attorney-in-fact; deposit of securities in a
25 clearing corporation; book-entry securities).

26 Section 3322 (relating to acceptance of deed in lieu of
27 foreclosure).

28 Section 3323 (relating to compromise of controversies).

29 Section 3324 (relating to death or incompetency of
30 fiduciary).

1 Section 3327 (relating to surviving or remaining personal
2 representatives).

3 Section 3328 (relating to disagreement of personal
4 representatives).

5 Section 3331 (relating to liability of personal
6 representative on contracts).

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

8 Section 3355 (relating to restraint of sale).

9 Section 3356 (relating to purchase by personal
10 representative).

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

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

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

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

18 Section 3390 (relating to specific performance of
19 contracts).

20 Section 5141 (relating to possession of real and personal
21 property).

22 Section 5142 (relating to inventory).

23 Section 5143 (relating to abandonment of property).

24 Section 5145 (relating to investments).

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

26 Section 5147 (relating to proceedings against guardian).

27 Section 5151 (relating to power to sell personal
28 property).

29 Section 5154 (relating to title of purchaser).

30 Section 5155 (relating to order of court).

~~(b) Powers and duties not granted to guardian. Unless (C)~~ <—
POWERS AND DUTIES ONLY GRANTED BY COURT.--UNLESS otherwise
ordered by the court AFTER A HEARING WITH SPECIFIC FINDINGS OF <—
FACT AND WITH THE INCAPACITATED PERSON REPRESENTED BY COUNSEL, a
guardian shall not have the power and duty to:

~~(1) Admit the incapacitated person to any institution~~ <—
~~for the treatment of the mentally ill or to any facility for~~
~~the care and training of the mentally retarded.~~

~~(2) (1) Consent on behalf of the incapacitated person to~~ <—
~~an abortion, sterilization, psychosurgery, ELECTROCONVULSIVE~~ <—
~~THERAPY or removal of a body organ.~~

~~(3) (2) Prohibit the marriage or divorce of the~~ <—
~~incapacitated person.~~

~~(4) Consent on behalf of the incapacitated person to the~~ <—
~~termination of the person's parental rights.~~

~~(5) (3) Consent on behalf of the incapacitated person to~~ <—
~~the performance of any experimental biomedical or behavioral~~
~~medical procedure or participation in any biomedical or~~
~~behavioral experiment.~~

~~(6) (4) Consent on behalf of the incapacitated person to~~ <—
~~the withholding or withdrawal of life-sustaining medical or~~
~~other services.~~

~~(7) (5) Consent on behalf of the incapacitated person to~~ <—
~~placement in a nursing home.~~

(6) CONSENT ON BEHALF OF AN INCAPACITATED PERSON TO <—
INTRUSIVE OR POTENTIALLY IRREVERSIBLE PSYCHIATRIC TREATMENT.

(D) KNOWLEDGE OF OBJECTION.--IN A HEARING TO DETERMINE
WHETHER A GUARDIAN SHALL BE ORDERED TO CONSENT TO A SPECIFIC ACT
OR OMISSION, IF THE GUARDIAN KNOWS OR HAS REASON TO KNOW OF THE
INCAPACITATED PERSON'S OBJECTION TO THE ACTION OR OMISSION,

1 WHETHER SUCH OBJECTION HAD BEEN EXPRESSED PRIOR OR SUBSEQUENT TO
2 THE DETERMINATION OF INCAPACITY, THE GUARDIAN SHALL REPORT TO
3 THE COURT SUCH KNOWLEDGE OR INFORMATION.

4 (E) POWERS AND DUTIES NOT GRANTED TO GUARDIAN.--THE
5 FOLLOWING POWERS ARE NOT GRANTED TO THE GUARDIAN:

6 (1) TO ADMIT THE INCAPACITATED PERSON TO AN INPATIENT
7 PSYCHIATRIC FACILITY OR STATE CENTER FOR THE MENTALLY
8 RETARDED.

9 (2) TO CONSENT, ON BEHALF OF THE INCAPACITATED PERSON,
10 TO THE TERMINATION OF THE PERSON'S PARENTAL RIGHTS.

11 § 5522. Power to lease.

12 A guardian may lease any real or personal property of the
13 [incompetent] incapacitated person for a term not exceeding five
14 years after its execution.

15 § 5524. Effect of determination of [incompetency] incapacity.

16 [An ~~incompetent~~] AFTER HE IS ADJUDGED INCAPACITATED AND <—
17 BEFORE HE IS ADJUDGED TO HAVE REGAINED HIS CAPACITY, AN

18 incapacitated person shall be incapable of making any contract
19 or gift or any instrument in writing [after he is adjudged <—

20 ~~incompetent~~ ~~incapacitated~~ and before he is adjudged to have <—
21 regained his competency] IN THOSE SPECIFIC AREAS IN WHICH THE <—

22 PERSON HAS BEEN FOUND TO BE INCAPACITATED. This section shall
23 not impair the interest in real estate acquired by a bona fide
24 grantee of, or a bona fide holder of a lien on, real estate in a
25 county other than that in which the decree establishing the
26 [incompetency] incapacity is entered, unless the decree or a
27 duplicate original or certified copy thereof is recorded in the
28 office of the recorder of deeds in the county in which the real
29 estate lies before the recording or entering of the instrument
30 or lien under which the grantee or lienholder claims.

1 § 5525. Notice to Commonwealth and political subdivisions.

2 When the Commonwealth or a political subdivision thereof has
3 a claim for maintaining an [incompetent] incapacitated person in
4 an institution, the guardian within three months of his
5 appointment, shall give notice thereof to the Department of
6 Revenue or the proper officer of such political subdivision, as
7 the case may be.

8 § 5534. Recognition of claims.

9 Upon the audit of the account of the guardian of a person who
10 has died during [incompetency] incapacity, the auditing judge or
11 auditor passing on the account shall not pass upon any claims
12 against the estate of the [incompetent] incapacitated person
13 other than necessary administration expenses, including
14 compensation of the guardian and his attorney. All claims
15 remaining unpaid at the [incompetent's] incapacitated person's
16 death shall be presented to the personal representative.

17 § 5535. Disposition of trust income.

18 Except as otherwise provided by the trust instrument, the
19 trustee of an inter vivos or testamentary trust, with the
20 approval of the court having jurisdiction of the trust, may pay
21 income distributable to [an incompetent beneficiary] a
22 beneficiary who is an incapacitated person for whose estate no
23 guardian has been appointed directly to the [incompetent]
24 incapacitated person, or expend and apply it for his care and
25 maintenance or the care, maintenance and education of his
26 dependents.

27 § 5536. Distributions of income and principal during
28 [incompetency] incapacity.

29 (a) In general.--All income received by a guardian of the
30 estate of an [incompetent] incapacitated person, including

1 (subject to the requirements of Federal law relating thereto)
2 all funds received from the Veterans' Administration, Social
3 Security Administration and other periodic retirement or
4 disability payments under private or governmental plans, in the
5 exercise of a reasonable discretion, may be expended in the care
6 and maintenance of the [incompetent] incapacitated person,
7 without the necessity of court approval. The court, for cause
8 shown and with only such notice as it considers appropriate in
9 the circumstances, may authorize or direct the payment or
10 application of any or all of the income or principal of the
11 estate of an [incompetent] incapacitated person for the care,
12 maintenance or education of the [incompetent] incapacitated
13 person, his spouse, children or those for whom he was making
14 such provision before his [incompetency] incapacity, or for the
15 reasonable funeral expenses of the [incompetent's] incapacitated
16 person's spouse, child or indigent parent. In proper cases, the
17 court may order payment of amounts directly to the [incompetent]
18 incapacitated person for his maintenance or for incidental
19 expenses and may ratify payments made for these purposes.

20 (b) Estate plan.--The court, upon petition and with notice
21 to all parties in interest, shall have the power to substitute
22 its judgment for that of the [incompetent] incapacitated person
23 with respect to the estate and affairs of the [incompetent]
24 incapacitated person for the benefit of the [incompetent]
25 incapacitated person, his family, members of his household, his
26 friends and charities in which he was interested. This power
27 shall include, but is not limited to, the power to:

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

29 (2) Convey, release or disclaim his contingent and
30 expectant interests in property, including marital property

1 rights and any right of survivorship incident to joint
2 tenancy or tenancy by the entirety.

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

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

7 (5) Enter into contracts.

8 (6) Create for the benefit of the [incompetent]
9 incapacitated person or others, revocable or irrevocable
10 trusts of his property which may extend beyond his disability
11 or life.

12 (7) Exercise options of the [incompetent] incapacitated
13 person to purchase or exchange securities or other property.

14 (8) Exercise his rights to elect options and change
15 beneficiaries under insurance and annuity policies or
16 surrender the policies for their cash value.

17 (9) Exercise his right to claim or disclaim an elective
18 share in the estate of his deceased spouse and renounce any
19 interest by testate or intestate succession or by inter vivos
20 transfer.

21 (10) Change the [incompetent's] incapacitated person's
22 residence or domicile.

23 In the exercise of its judgment for that of the [incompetent]
24 incapacitated person, the court first being satisfied that
25 assets exist which are not required for the maintenance, support
26 and well-being of the [incompetent] incapacitated person, may
27 adopt a plan of gifts which results in minimizing current or
28 prospective income, estate or inheritance taxes, or which
29 carries out a lifetime giving pattern. The court in exercising
30 its judgment may consider the testamentary and inter vivos

1 intentions of the [incompetent] incapacitated person insofar as
2 they can be ascertained.

3 § 5537. Reserve for funeral.

4 (a) In general.--The court may authorize the guardian to
5 retain such assets [not exceeding \$1,200 in value] as are deemed <—
6 appropriate for the anticipated expense of the [incompetent's]
7 incapacitated person's funeral, including the cost of a burial
8 lot or other resting place, which shall be exempt from all
9 claims including claims of the Commonwealth. The court with
10 notice thereof to the institution or person having custody of
11 the [incompetent] incapacitated person may also authorize the
12 guardian or another person to set aside such assets in the form
13 of a savings account in a financial institution which account
14 shall not be subject to escheat during the lifetime of the
15 [incompetent] incapacitated person. Such assets may be disbursed
16 by the guardian or person who set aside such assets or by the
17 financial institution for such funeral expenses without further
18 authorization or accounting. Any part of such assets not so
19 disbursed shall constitute a part of the deceased
20 [incompetent's] incapacitated person's estate. Should the
21 [incompetent] incapacitated person become [competent]
22 capacitated or should such assets become excessive, the court,
23 upon petition of any party in interest, may make such order as
24 the circumstances shall require.

25 (b) Definition.--As used in this section "financial
26 institution" includes a bank, a bank and trust company, a trust
27 company, a savings and loan association, a building and loan
28 association, a savings bank, a private bank and a national bank.

29 ~~Section 8. This act shall apply to all proceedings begun <—~~
30 ~~after the effective date of this act and proceedings in progress~~

