
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 389 Session of
2001

INTRODUCED BY GREENLEAF, COSTA, LEMMOND, EARLL, O'PAKE,
SCHWARTZ, M. WHITE, HOLL, KITCHEN, MURPHY AND TARTAGLIONE,
FEBRUARY 8, 2001

REFERRED TO JUDICIARY, FEBRUARY 8, 2001

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, providing for mandatory
3 jurisdiction of the court over guardianship support agencies;
4 further providing for incapacitated persons with regard to
5 notice of petition, hearings, appointment of guardians,
6 emergency guardians, evidence of incapacity, reports of
7 guardians, powers of guardians to enter into leases and
8 accountings; and making technical changes.

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

11 Section 1. Section 711 of Title 20 of the Pennsylvania
12 Consolidated Statutes is amended by adding a paragraph to read:

13 § 711. Mandatory exercise of jurisdiction through orphans'
14 court division in general.

15 Except as provided in section 712 (relating to nonmandatory
16 exercise of jurisdiction through orphans' court division) and
17 section 713 (relating to special provisions for Philadelphia
18 County), the jurisdiction of the court of common pleas over the
19 following shall be exercised through its orphans' court
20 division:

1 * * *

2 (23) Guardianship support agencies.--The administration
3 of a guardianship support agency formed under Subchapter F of
4 Chapter 55 (relating to guardianship support). In exercising
5 the jurisdiction of the court over the affairs of a
6 guardianship support agency, the venue shall be the same as
7 provided for nonprofit corporations in section 726 (relating
8 to venue of nonprofit corporations).

9 Section 2. Sections 5511(a) and (f), 5512.1(a), (c) and (e),
10 5513, 5518, 5518.1, 5521(c), 5522 and 5531 of Title 20 are
11 amended to read:

12 § 5511. Petition and hearing; independent evaluation.

13 (a) Resident.--The court, upon petition and hearing and upon
14 the presentation of clear and convincing evidence, may find a
15 person domiciled in the Commonwealth to be incapacitated and
16 appoint a guardian or guardians of his person or estate. The
17 petitioner may be any person interested in the alleged
18 incapacitated person's welfare. The court may dismiss a
19 proceeding where it determines that the proceeding has not been
20 instituted to aid or benefit the alleged incapacitated person or
21 that the petition is incomplete or fails to provide sufficient
22 facts to proceed. Written notice of the petition and hearing
23 shall be given in large type and in simple language to the
24 alleged incapacitated person. The notice shall indicate the
25 purpose and seriousness of the proceeding and the rights that
26 can be lost as a result of the proceeding. It shall include the
27 date, time and place of the hearing and an explanation of all
28 rights, including the right to request the appointment of
29 counsel and to have counsel appointed if the court deems it
30 appropriate and the right to have such counsel paid for if it

1 cannot be afforded. The Supreme Court shall establish a uniform
2 citation for this purpose. A copy of the petition shall be
3 attached. Personal service shall be made on the alleged
4 incapacitated person, and the contents and terms of the petition
5 shall be explained to the maximum extent possible in language
6 and terms the individual is most likely to understand. Service
7 shall be no less than 20 days in advance of the hearing. In
8 addition, notice of the petition and hearing shall be given in
9 such manner as the court shall direct to all persons [residing
10 within the Commonwealth] whose existence and whereabouts are
11 known and who are sui juris and would be entitled to share in
12 the estate of the alleged incapacitated person if he died
13 intestate at that time, to the person or institution providing
14 residential services to the alleged incapacitated person and to
15 such other parties as the court may direct, including other
16 service providers. The hearing may be closed to the public and
17 without a jury unless the alleged incapacitated person or his
18 counsel objects. The hearing shall be closed and with or without
19 a jury if the person alleged to be incapacitated or his counsel
20 so requests. The hearing may be held at the residence of the
21 alleged incapacitated person. The alleged incapacitated person
22 shall be present at the hearing unless:

23 (1) the court is satisfied, upon the deposition or
24 testimony of or sworn statement by a physician or licensed
25 psychologist, that his physical or mental condition would be
26 harmed by his presence or that he could not understand and
27 participate in the proceedings; or

28 (2) it is impossible for him to be present because of
29 his absence from the Commonwealth. It shall not be necessary
30 for the alleged incapacitated person to be represented by a

guardian ad litem in the proceeding.

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

* * *

(f) Who may be appointed guardian.--The court may appoint as guardian any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency under Subchapter F (relating to guardianship support) or a county agency. In the case of residents of State facilities, the court may also appoint, only as guardian of the estate, the guardian office at the appropriate State facility. The court shall not appoint a person or entity providing residential services for a fee to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no guardianship support agency or other alternative exists. Any family relationship to such individual shall not, by itself, be considered as an interest adverse to the alleged incapacitated person. If appropriate, the court shall give preference to a nominee of the incapacitated person[.] or to the nominee of a parent, living or deceased, of an unmarried incapacitated person. If the incapacitated person has nominated, by a durable power of attorney, a guardian of the estate or person, the court shall make its appointment in accordance with the nomination of the incapacitated person, except for good cause or disqualification.

§ 5512.1. Determination of incapacity and appointment of

1 guardian.

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

4 (1) The nature of any condition or disability which
5 impairs the individual's capacity to make and communicate
6 decisions.

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

9 (3) The need for guardianship services, if any, in light
10 of such factors as the availability of family, friends and
11 other supports to assist the individual in making decisions
12 and in light of the existence, if any, of advance directives
13 such as durable powers of attorney or trusts.

14 (4) The type of guardian, limited or plenary, of the
15 person or estate needed based on the nature of any condition
16 or disability and the capacity to make and communicate
17 decisions.

18 (5) The duration of the guardianship.

19 [(6) The court shall prefer limited guardianship.]

20 The court shall prefer limited guardianships.

21 * * *

22 (c) Plenary guardian of the person.--The court may appoint a
23 plenary guardian of the person [only] upon a finding that the
24 person is [totally] incapacitated and in need of plenary
25 guardianship services.

26 * * *

27 (e) Plenary guardian of the estate.--A court may appoint a
28 plenary guardian of the estate [only] upon a finding that the
29 person is [totally] incapacitated and in need of plenary
30 guardianship services.

1 * * *

2 § 5513. Emergency guardian.

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

1 alleged incapacitated person who is present in this Commonwealth
2 but is domiciled outside of this Commonwealth, regardless of
3 whether the alleged incapacitated person has property in this
4 Commonwealth. An emergency order appointing an emergency
5 guardian of the estate shall not exceed 30 days. [After 30 days,
6 a full guardianship proceeding must be initiated pursuant to
7 section 5511.] However, the court may continue the emergency
8 order beyond 30 days if a petition for the appointment of a
9 guardian of the estate is filed pursuant to section 5511 prior
10 to the expiration of the emergency order and if failure to
11 continue the emergency order will result in irreparable harm to
12 the estate of the incapacitated person.

13 § 5518. Evidence of incapacity.

14 To establish incapacity in a proceeding in which the capacity
15 of the alleged incapacitated person is contested, the petitioner
16 must present testimony, in person or by deposition from
17 individuals qualified by training and experience in evaluating
18 individuals with incapacities of the type alleged by the
19 petitioner, which establishes the nature and extent of the
20 alleged incapacities and disabilities and the person's mental,
21 emotional and physical condition, adaptive behavior and social
22 skills. In a proceeding in which the capacity of the alleged
23 incapacitated person is not contested, the petitioner may
24 establish incapacity by a sworn statement from such qualified
25 individuals. The [petition] petitioner must also present
26 evidence regarding the services being utilized to meet essential
27 requirements for the alleged incapacitated person's physical
28 health and safety, to manage the person's financial resources or
29 to develop or regain the person's abilities; evidence regarding
30 the types of assistance required by the person and as to why no

1 less restrictive alternatives would be appropriate; and evidence
2 regarding the probability that the extent of the person's
3 incapacities may significantly lessen or change.

4 § 5518.1. Cross-examination of witnesses.

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

9 § 5521. Provisions concerning powers, duties and liabilities.

10 * * *

11 (c) Reports of guardians.--

12 (1) [Each] The court may require a guardian of an
13 incapacitated person [shall] to file [with the court
14 appointing him] a report, at [least once within the first 12
15 months of his appointment and at least annually thereafter]
16 such times as the court shall direct, attesting to such of
17 the following as appropriate:

18 (i) Guardian of the estate:

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

20 (B) current income; and

21 (C) expenditures of principal and income since
22 the last report[; and

23 (D) needs of the incapacitated person for which
24 the guardian has provided since the last report].

25 (ii) Guardian of the person:

26 (A) current address and type of placement of the
27 incapacitated person;

28 (B) major medical or mental problems of the
29 incapacitated person;

30 (C) a brief description of the incapacitated

1 person's living arrangements and the social, medical,
2 psychological and other support services he is
3 receiving;

4 (D) the opinion of the guardian as to whether
5 the guardianship should continue or be terminated or
6 modified and the reasons therefor; and

7 (E) number and length of times the guardian
8 visited the incapacitated person in the past year.

9 (2) [Within 60 days of the death of the incapacitated
10 person or an adjudication of capacity and modification of
11 existing orders, the guardian shall file a final report with
12 the court.] The guardian shall notify the court, in writing,
13 within 60 days of the death of the incapacitated person.

14 * * *

15 § 5522. Power to lease.

16 A guardian may lease any real or personal property of the
17 incapacitated person for a term not exceeding five years after
18 its execution unless a longer term is approved by the court.

19 § 5531. When accounting filed.

20 A guardian shall file an account of his administration
21 whenever directed to do so by the court or may file an account
22 [at the termination of the guardianship, or at any other time or
23 times authorized by the court] at any other time.

24 Section 3. This act shall apply as follows:

25 (1) The amendment of the introductory paragraph of 20
26 Pa.C.S. § 5511(a) shall apply to petitions for the
27 appointment of a guardian filed on or after the effective
28 date of this act.

29 (2) The amendment of 20 Pa.C.S. §§ 5511(a)(1), 5518 and
30 5518.1 shall apply to proceedings commenced on or after the

1 effective date of this act irrespective of when the petition
2 for the appointment of a guardian is filed.

3 (3) The amendment of 20 Pa.C.S. §§ 5511(f) and 5512.1(c)
4 and (e) shall apply to proceedings where a guardian has not
5 yet been appointed irrespective of when the petition for the
6 appointment of a guardian is filed.

7 (4) The remainder of this act shall apply on and after
8 the effective date of this act.

9 Section 4. This act shall take effect in 60 days.