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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2636 Session of  
2022

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INTRODUCED BY PARKER, BOBACK, HILL-EVANS, DRISCOLL, SANCHEZ,  
KINSEY, ROZZI, SAPPEY, MADDEN AND CIRESI, JUNE 1, 2022

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 1, 2022

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AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the  
2 Pennsylvania Consolidated Statutes, in incapacitated persons,  
3 further providing for petition and hearing and independent  
4 evaluation and for determination of incapacity and  
5 appointment of guardian.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Section 5511(a), (e) and (f) of Title 20 of the  
9 Pennsylvania Consolidated Statutes are amended and the section  
10 is amended by adding a subsection to read:

11 § 5511. Petition and hearing; independent evaluation.

12 (a) Resident.--The court, upon petition and hearing and upon  
13 the presentation of clear and convincing evidence, may find a  
14 person domiciled in the Commonwealth to be incapacitated and  
15 appoint a guardian or guardians of his person or estate. The  
16 petitioner may be any person interested in the alleged  
17 incapacitated person's welfare. The court may dismiss a  
18 proceeding where it determines that the proceeding has not been  
19 instituted to aid or benefit the alleged incapacitated person or

1 that the petition is incomplete or fails to provide sufficient  
2 facts to proceed. Written notice of the petition and hearing  
3 shall be given in large type and in simple language to the  
4 alleged incapacitated person. The notice shall indicate the  
5 purpose and seriousness of the proceeding and the rights that  
6 can be lost as a result of the proceeding. It shall include the  
7 date, time and place of the hearing and an explanation of all  
8 rights[, including the right to request the appointment of  
9 counsel and to have counsel appointed if the court deems it  
10 appropriate and the right to have such counsel paid for if it  
11 cannot be afforded]. The Supreme Court shall establish a uniform  
12 citation for this purpose. A copy of the petition shall be  
13 attached. Personal service shall be made on the alleged  
14 incapacitated person, and the contents and terms of the petition  
15 shall be explained to the maximum extent possible in language  
16 and terms the individual is most likely to understand. Service  
17 shall be no less than 20 days in advance of the hearing. In  
18 addition, notice of the petition and hearing shall be given in  
19 such manner as the court shall direct to all persons residing  
20 within the Commonwealth who are sui juris and would be entitled  
21 to share in the estate of the alleged incapacitated person if he  
22 died intestate at that time, to the person or institution  
23 providing residential services to the alleged incapacitated  
24 person and to such other parties as the court may direct,  
25 including other service providers. The hearing may be closed to  
26 the public and without a jury unless the alleged incapacitated  
27 person or his counsel objects. The hearing shall be closed and  
28 with or without a jury if the person alleged to be incapacitated  
29 or his counsel so requests. The hearing may be held at the  
30 residence of the alleged incapacitated person. The alleged

1 incapacitated person shall be present at the hearing unless:

2 (1) the court is satisfied, upon the deposition or  
3 testimony of or sworn statement by a physician or licensed  
4 psychologist, that his physical or mental condition would be  
5 harmed by his presence; or

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

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

16 (a.1) Appointment of counsel.--The following shall apply:

17 (1) If the petitioner under subsection (a) is aware that  
18 the alleged incapacitated person is represented by counsel,  
19 the petitioner shall advise the court that the alleged  
20 incapacitated person is represented by counsel at the time of  
21 filing the petition or as soon as the petitioner becomes  
22 aware of the representation.

23 (2) The court shall appoint counsel to represent the  
24 alleged incapacitated person in any matter for which counsel  
25 has not been retained by the alleged incapacitated person,  
26 including in each proceeding under subsection (a) and in each  
27 subsequent proceeding to modify or terminate the  
28 guardianship.

29 (3) Counsel for an alleged incapacitated person shall,  
30 as far as reasonably possible, maintain a normal client-

attorney relationship with the client. Counsel shall advocate  
for the client's expressed wishes and consistent with the  
client's instructions, to the extent the client is able to  
express wishes and provide instructions. Counsel shall comply  
with the Rules of Professional Conduct governing the  
attorney-client relationship. Retained or appointed counsel  
may not act as guardian ad litem for the alleged  
incapacitated person. If the court determines that a guardian  
ad litem is necessary, the court shall make a separate  
appointment.

\* \* \*

(e) Petition contents.--The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. Petitions must allege specific facts for each lesser restrictive alternative demonstrating that the alternative was considered or tried and why the alternative is insufficient. If a limited or

1 plenary guardian of the estate is sought, the petition shall  
2 also include the gross value of the estate and net income from  
3 all sources to the extent known.

4 (f) Who may be appointed guardian.--

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

21 (2) An individual seeking guardianship of three or more  
22 incapacitated persons shall provide certification to the  
23 court by the Department of Human Services or a qualified  
24 entity as determined by the Department of Human Services  
25 prior to a third guardianship appointment. The following  
26 apply:

27 (i) The Department of Human Services shall create  
28 forms and relevant educational documents to implement  
29 certification.

30 (ii) The Department of Human Services shall meet

1 with relevant stakeholders to select the certification  
2 criteria and to develop forms and educational documents  
3 related to this section.

4 (iii) Certification shall include the following:

5 (A) Work history and training.

6 (B) A review of Federal and State criminal  
7 history record information.

8 (C) A core competency examination.

9 Section 2. Section 5512.1(a) of Title 20 is amended to read:

10 § 5512.1. Determination of incapacity and appointment of  
11 guardian.

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

14 (1) The nature of any condition or disability which  
15 impairs the individual's capacity to make and communicate  
16 decisions.

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

19 (3) The need for guardianship services, if any, in light  
20 of such factors as the availability of family, friends and  
21 other supports to assist the individual in making decisions  
22 and in light of the existence, if any, of [advance directives

23 such as durable powers of attorney or trusts.] less  
24 restrictive alternatives. The court shall make specific  
25 findings of fact based on the evidentiary record of the  
26 absence of sufficient family, friends or other supports and  
27 of the insufficiency of each less restrictive alternative  
28 before ordering guardianship. Less restrictive alternatives  
29 include, but are not limited to:

30 (i) Advance directives such as durable power of

1           attorney or trusts.

2               (ii) Living wills.

3               (iii) Health care powers of attorney.

4               (iv) Health care representatives.

5               (v) Financial powers of attorney.

6               (vi) Trusts, including special needs trusts.

7               (vii) Representative payees for individuals  
8 receiving Social Security benefits.

9               (viii) Pennsylvania Achieving a Better Life  
10 Experience accounts.

11              (ix) Mental health advance directives.

12              (x) Availability of family, friends and other  
13 supports to assist the individual in making decisions.

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 less restrictive alternatives  
20 to guardianship and, if no less restrictive alternatives are  
21 available and sufficient, limited guardianship. The following  
22 apply:

23               (i) A determination of incapacity is separate from a  
24 determination of whether a guardian should be appointed.

25               (ii) The court may not use a determination of  
26 incapacity alone to justify a guardianship.

27               (iii) The court may not appoint a guardian if a  
28 lesser restrictive alternative exists to support the  
29 needs of an incapacitated person or if no lesser  
30 restrictive alternatives were considered.

1           (iv) The court shall allow opportunity for an  
2           alleged incapacitated person to enter into less  
3           restrictive alternatives if the alternatives would render  
4           guardianship unnecessary.

5           (v) When entering an order denying a petition for  
6           guardianship in whole or in part, the court shall  
7           identify the less restrictive alternatives that are in  
8           place to enable the respondent to manage personal  
9           financial resources or to meet essential requirements of  
10          personal physical health and safety. An order may assist  
11          the respondent and any supportive and substitute decision  
12          makers involved to effectuate the respondent's decisions  
13          with third parties.

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15          Section 3. This act shall take effect in 60 days.