

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 506

PRINTER NO. 843

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

March 7, 2023

PRIME SPONSOR

Senator Baker

DESCRIPTION

Senate Bill 506 amends Section 5511 of Title 20 (Probate, Estates and Fiduciaries) to require that counsel be appointed to represent an unrepresented alleged incapacitated person and to provide for the certification of any guardian that represents three or more incapacitated persons. In addition, the bill amends Section 5512.1 of Title 20 to require certain findings regarding less restrictive alternatives to guardianship and section 5512.2 to update review hearing procedures.

The bill amends Section 5511 of Title 20 to provide that a petitioner must notify the court if the petitioner learns that the alleged incapacitated person is represented.

The bill also provides that if counsel has not been retained in a hearing to determine if an individual is incapacitated, or in any subsequent hearing to consider, modify or terminate a guardianship, the court shall appoint counsel regardless of the alleged incapacitated person's ability to pay. Appointed counsel must be qualified by experience or training and must act without delay. Counsel must meet with the alleged incapacitated person as soon as possible and must notify the court of the meeting within five days after the meeting.

The bill requires that counsel for an alleged incapacitated person shall:

- As far as reasonably possible maintain a client-attorney relationship;
- Advocate for the client's expressed wishes to the extent the client is able to express wishes and provide instructions;
- Comply with the Rules of Professional Conduct; and
- Not act as guardian ad litem for the alleged incapacitated person.

In addition to existing requirements for a petition seeking to have an individual declared incompetent and to appoint a guardian of the person or estate, the petition must also allege specific facts indicating that less restrictive alternatives to guardianship were considered but that those alternatives were unavailable or insufficient.

Senate Bill 506 also amends Section 5511 by adding provisions relating to guardians that seek to be appointed for three or more incapacitated persons. Such guardians must provide certification by the Pennsylvania Supreme Court or another qualified

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entity as determined by the Supreme Court prior to the third appointment. The Supreme Court will prescribe rules and forms necessary to effectuate certification and must provide opportunities for stakeholders to provide input. Certification must include:

- Submission of education and employment history;
- Submission of federal and state criminal history record information; and
- Passage of a certification examination administered by a national non-profit organization.

Certification may be waived if an individual has equivalent licenses or certifications sufficient to ensure that they can perform the duties as a guardian fully, fairly and competently. For purposes of this paragraph, a license to practice law shall not constitute an equivalent license or certification.

Senate Bill 506 amends Section 5512.1 to provide that a court must consider less restrictive alternatives in determining the appointment of a guardian. In doing so, the court shall make specific findings of fact on the record of the absence of sufficient family, friends or other supports and of each less restrictive alternative before ordering guardianship. Less restrictive alternatives include:

- Advance directives;
- Living wills;
- Health care powers of attorney;
- Health care representatives;
- Financial powers of attorney;
- Trusts, including special needs trusts;
- Representative payees for individuals receiving Social Security benefits;
- Pennsylvania Achieving a Better Life Experience accounts; and
- Mental health directives.

Courts are specifically directed to prefer less restrictive alternatives and limited guardianships.

In addition, the following shall apply:

- A determination of incapacity is specifically stated to be separate from a determination of whether a guardian should be appointed;
- The court may not use a determination of incapacity alone to justify a guardianship;
- The court may not appoint a guardian if a sufficient lesser alternative exists; and
- When entering an order denying a petition for guardianship, the court shall identify the less restrictive alternatives that are available and sufficient. An order may assist the alleged incapacitated person and any supportive and

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- substitute decision makers involved to effectuate the alleged incapacitated person's decisions with third parties.

Section 5512.2 (relating to review hearing) is amended to update review hearing procedures as follows:

- Provides if evidence is presented during the guardianship proceedings that the person's incapacity may change, the court shall hold a review hearing to determine if the guardianship continues to be necessary;
- The court shall set the date for a review hearing no later than one year from the date of establishing the guardianship;
- The hearing shall be conducted in the presence of the incapacitated person and their attorney;
- If the court finds that guardianship continues to be necessary, the court may order the guardianship to continue;
- If the court finds that guardianship is no longer necessary, the court shall discharge the guardianship;
- In determining whether the circumstances of the person's incapacity may change, the court may consider any of the following:
 - 1) Whether the incapacity could be adequately managed by medication, rehabilitation or other means;
 - 2) Whether the potential exists for the incapacitated person to regain physical or cognitive capacity;
 - 3) Opinion of a medical professional or other qualified expert who has personally examined the incapacitated person;
 - 4) Circumstances of the incapacitated person's daily living, including support from others; and
 - 5) Any other factor indicating that the incapacitated person's condition could improve at a future time.
- Any interested person may file a petition with the court to terminate or modify the guardianship;
- The court shall promptly schedule a hearing or hold a review hearing;
- The hearing shall be conducted in the presence of the incapacitated person and their attorney;
- If the court finds that guardianship continues to be necessary, the court may order the guardianship to continue;
- If the court finds that guardianship is no longer necessary, the court shall discharge the guardianship;
- The incapacitated person shall have all the rights enumerated in Chapter 55 of Title 21; and

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- Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on the party advocating continuation of guardianship or expansion of areas of incapacity.

This act shall take effect in 180 days.

FISCAL IMPACT:

According to the Administrative Office of Pennsylvania Courts, Senate Bill 560 will have no fiscal impact to the Commonwealth.