

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in incapacitated persons,
3 providing for guardianship for medically disabled adult
4 children.

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

7 Section 1. Chapter 55 of Title 20 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter to read:

9 SUBCHAPTER G

10 GUARDIANSHIP FOR MEDICALLY

11 DISABLED ADULT CHILDREN

12 Sec.

13 5561. Definitions.

14 5562. Procedure.

15 5563. Determination of medical disability and appointment of
16 guardian.

17 5564. Review of guardianship.

18 5565. Annual report.

1 5566. Powers, duties and liabilities.

2 5567. Effect of determination.

3 5568. Notice.

4 5569. Sample petitions and notices.

5 § 5561. Definitions.

6 The following words and phrases when used in this subchapter
7 shall have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Medically disabled adult child." An adult whose ability to
10 receive and evaluate information effectively is or has been
11 impaired by any of the following occurring during childhood,
12 rendering the adult partially or totally unable to manage
13 financial resources or to meet essential requirements for
14 physical health and safety:

15 (1) A medical condition.

16 (2) Treatment for a medical condition.

17 (3) Developmental delay.

18 (4) Physical or mental disability.

19 § 5562. Procedure.

20 (a) Procedure.--The court, no less than 20 days after
21 receipt of the petition, affidavit of medical disability,
22 affidavit of accountability by the proposed guardian and notice
23 to the individual alleged to be a medically disabled adult child
24 and other party under this subchapter, may find by a clear and
25 convincing standard an individual to be a medically disabled
26 adult child and appoint a guardian or guardians of the medically
27 disabled adult's person or estate.

28 (b) Petitioner.--The petitioner may be any individual who
29 the court has determined is providing at least 50% financial
30 responsibility or 50% physical custody for the medically

1 disabled adult child.

2 (c) Petition contents.--The petition, which shall be in
3 plain language, shall include:

4 (1) The name, age, marital status, residence and post
5 office address of the medically disabled adult child.

6 (2) The names and addresses of parents or guardians of
7 the medically disabled adult child if they are not the
8 petitioner.

9 (3) The name and address of the spouse of the medically
10 disabled adult child, if any.

11 (4) The name and address of the person or institution
12 providing residential services to the medically disabled
13 adult child.

14 (5) The names and addresses of the medically disabled
15 adult child's service providers, including treating
16 physician, home care service and rehabilitative caregiver.

17 (6) The name and address of the individual or entity
18 whom the petitioner asks to be appointed guardian.

19 (7) An averment that the proposed guardian has no
20 interest adverse to the medically disabled adult child.

21 (8) The reasons why guardianship is sought.

22 (9) A description of the functional limitations and
23 physical and mental condition of the medically disabled adult
24 child.

25 (10) The specific areas of incapacity over which it is
26 requested that the guardian be assigned powers.

27 (11) The qualifications of the proposed guardian.

28 (d) Notice.--The following apply:

29 (1) Written notice of the petition shall be given in
30 large type and in simple language to the alleged medically

1 disabled adult child. The following apply:

2 (i) The notice shall indicate the purpose and
3 seriousness of the proceeding and the rights which can be
4 lost as a result of the proceeding.

5 (ii) The notice shall include an explanation of each
6 right, including the right to request the appointment of
7 counsel and to have counsel appointed, if the court deems
8 it appropriate, and the right to have counsel paid for if
9 it cannot be afforded.

10 (iii) The Supreme Court of Pennsylvania shall
11 establish a uniform citation for the purpose.

12 (iv) A copy of the petition shall be attached.

13 (v) Personal service shall be made on the medically
14 disabled adult child, and the contents and terms of the
15 petition shall be explained to the maximum extent
16 possible in language and terms the individual is most
17 likely to understand.

18 (vi) Service shall be no less than 20 days in
19 advance of the petition being granted.

20 (2) Written notice of the petition shall be made by
21 personal service to the following, except if the party is the
22 petitioner, no less than 20 days in advance of the petition
23 being granted:

24 (i) Biological parents of the alleged medically
25 disabled adult child.

26 (ii) Guardians of the alleged medically disabled
27 adult child, if any.

28 (iii) Spouse of the alleged medically disabled adult
29 child, if any.

30 (iv) A person who provides at least 50% of the

1 physical or financial support for the alleged medically
2 disabled adult child.

3 (v) An entity providing residential services for a
4 fee to the alleged medically disabled adult child.

5 (e) Guardian.--The court may appoint as guardian any person
6 who is providing for at least 50% of the physical or financial
7 support of the medically disabled adult child. The court shall
8 not appoint an individual or entity providing residential
9 services for a fee to the medically disabled adult child or any
10 other person whose interests conflict with those of the
11 medically disabled adult child. A family relationship to an
12 individual shall not, by itself, be considered as an interest
13 adverse to the medically disabled adult child.

14 (f) Dismissal of petition.--The court may dismiss a
15 proceeding if the court determines that the proceeding has not
16 been instituted to aid or benefit the medically disabled adult
17 child or if the petition is incomplete or fails to provide
18 sufficient facts to proceed. A dismissal shall not impact the
19 ability of petitioner to file a petition under any other
20 subchapter.

21 (g) Grant of petition.--If, upon review of the petition and
22 supporting evidence, the court finds that there is clear and
23 convincing evidence of the need for guardianship services, the
24 court may grant the petition for limited or plenary guardianship
25 without a hearing. If the alleged medically disabled adult child
26 or any other party provided notice under this subchapter objects
27 to the petition, a hearing shall be scheduled to permit those
28 parties to present evidence in support of the objection before
29 guardianship is granted.

30 § 5563. Determination of medical disability and appointment of

1 guardian.

2 (a) Determination of medical disability.--The petitioner
3 shall provide the court evidence of medical disability which
4 shall include the following:

5 (1) An affidavit from the treating physician, including
6 a description of the medical condition or disability that
7 impairs the medically disabled adult child's capacity to make
8 and communicate decisions.

9 (2) An affidavit from the treating physician or other
10 qualified professional who has been treating the medically
11 disabled adult child explaining the extent of the medically
12 disabled adult child's capacity to make and communicate
13 decisions.

14 (3) A statement from the petitioner of the need for
15 guardianship services, including reasonable limitations to
16 encourage a successful transition to adulthood and
17 independence.

18 (4) The type of guardian, limited or plenary, individual
19 needed based on the nature of a condition or disability of
20 the medically disabled adult child and the medically disabled
21 adult child's capacity to make and communicate decisions.

22 (5) The requested duration of the guardianship.

23 (b) Limited guardianship.--The court shall prefer limited
24 guardianship.

25 (c) Limited guardian of medically disabled adult child.--On
26 a finding that there is clear and convincing evidence of the
27 need for guardianship services after review of the petition and
28 supporting evidence or after a hearing, the court shall enter an
29 order appointing a limited guardian of the medically disabled
30 adult child with powers consistent with the court's findings of

1 limitations, which may include:

2 (1) General care, maintenance and custody of the
3 medically disabled adult child.

4 (2) Designating the place for the medically disabled
5 adult child to live.

6 (3) Ensuring that the medically disabled adult child
7 receives training, education, medical and psychological
8 services and social and vocational opportunities, as
9 appropriate.

10 (4) Assisting the medically disabled adult child in the
11 development of maximum self-reliance and independence.

12 (5) Providing required consents or approvals on behalf
13 of the medically disabled adult child.

14 (d) Plenary guardian of the medically disabled adult
15 child.--The court may appoint a plenary guardian of the
16 medically disabled adult child only upon a finding after review
17 of the petition and supporting evidence or a hearing that there
18 is clear and convincing evidence that the medically disabled
19 adult child is totally incapacitated and in need of plenary
20 guardianship services.

21 (e) Legal rights retained.--If a limited guardian is
22 appointed, the medically disabled adult child shall retain all
23 legal rights except in the areas designated by court order as
24 areas over which the limited guardian has power.

25 (f) Information as to rights.--At the conclusion of a
26 proceeding in which a medically disabled adult child has been
27 assigned a guardian, the court shall ensure that the medically
28 disabled adult child is informed of the medically disabled adult
29 child's right to appeal and to petition to modify or terminate
30 the guardianship.

1 § 5564. Review of guardianship.

2 (a) Review by affidavit.--If there has been no change in the
3 capacity of the medically disabled adult child, the court may
4 require an updated affidavit of medical disability in lieu of a
5 hearing if no change to the guardianship is sought.

6 (b) Review hearing.--The court may set a date for a review
7 hearing in the court's order establishing the guardianship or
8 hold a review hearing at any time. The court shall conduct a
9 review hearing promptly if the medically disabled adult child,
10 guardian or an interested party petitions the court for a
11 hearing for reason of a significant change in the medically
12 disabled adult child's capacity, a change in the need for
13 guardianship services or the guardian's failure to perform the
14 guardian's duties in accordance with the law or to act in the
15 best interest of the medically disabled adult child. The court
16 may dismiss a petition for review hearing if the court
17 determines that the petition is frivolous.

18 (c) To fill vacancy.--The court, after notice to parties in
19 interest as the court shall direct, may, without a hearing,
20 appoint a succeeding guardian to fill a vacancy in the office of
21 guardian or may appoint a coguardian of the medically disabled
22 adult child. If the vacating guardian was a parent who is now
23 deceased, a testamentary nominee of the parent shall be given
24 preference by the court.

25 (d) Burden of proof and rights.--The medically disabled
26 adult child shall have all of the rights enumerated under this
27 chapter. Except when the hearing is held to appoint a successor
28 guardian, the burden of proof, by clear and convincing evidence,
29 shall be on the party advocating modification of guardianship.

30 § 5565. Annual report.

1 The court shall annually file with the Administrative Office
2 of Pennsylvania Courts on forms furnished by the office a
3 statistical and descriptive report to assist in evaluating the
4 operation and costs of the guardianship system.

5 § 5566. Powers, duties and liabilities.

6 (a) Duty of guardian.--It shall be the duty of the guardian
7 of the medically disabled adult child to assert the rights and
8 best interests of the medically disabled adult child. Expressed
9 wishes and preferences of the medically disabled adult child be
10 respected to the greatest possible extent. If appropriate and to
11 meet the needs of the medically disabled adult child, the
12 guardian shall ensure and participate in the development of a
13 plan of supportive services which shall include an explanation
14 of how services may be obtained. The guardian shall also
15 encourage the medically disabled adult child to participate to
16 the maximum extent of the medically disabled adult child's
17 abilities in all decisions affecting the medically disabled
18 adult child, to act on the medically disabled adult child's own
19 behalf and to develop or regain, to the maximum extent possible,
20 the medically disabled adult child's capacity to manage personal
21 affairs.

22 (b) Powers and duties only granted by court.--Unless
23 specifically included in the guardianship order after specific
24 findings of fact or otherwise ordered after a subsequent hearing
25 with specific findings of fact, a guardian shall not have the
26 power and duty to consent on behalf of the medically disabled
27 adult child to an abortion, sterilization, psychosurgery,
28 electroconvulsive therapy or removal of a healthy body organ.

29 (c) Powers and duties not granted to guardian.--The court
30 may not grant to a guardian powers controlled by other statute,

1 including the power:

2 (1) To admit the medically disabled adult child to an
3 inpatient psychiatric facility or State facility that
4 provides mental health and intellectual disability services.

5 (2) To consent on behalf of the medically disabled adult
6 child to the relinquishment of the medically disabled adult
7 child's parental rights.

8 § 5567. Effect of determination.

9 A medically disabled adult child may not make a contract or
10 gift or an instrument in writing in the specific areas in which
11 medical disability has been determined to impact. This section
12 shall not impair the interest in real estate acquired by a bona
13 fide grantee of, or a bona fide holder of a lien on, real estate
14 in a county other than that in which the decree establishing
15 limited capacity is entered, unless the decree or a duplicate
16 original or certified copy thereof is recorded in the office of
17 the recorder of deeds in the county in which the real estate
18 lies before the recording or entering of the instrument or lien
19 under which the grantee or lienholder claims.

20 § 5568. Notice.

21 When the Commonwealth or a political subdivision of the
22 Commonwealth has a claim for maintaining a medically disabled
23 adult child in an institution, the guardian, within three months
24 of the guardian's appointment, shall give notice of the claim to
25 the Department of Human Services or the proper officer of a
26 political subdivision, as appropriate.

27 § 5569. Sample petitions and notices.

28 (a) Petition for adjudication.--The following is an example
29 of a petition for adjudication as medically disabled adult child
30 and appointment of guardian:

1 PETITION FOR ADJUDICATION AS MEDICALLY DISABLED ADULT CHILD AND
2 APPOINTMENT OF GUARDIAN

3 This petition is filed to request an adjudication of a
4 medically disabled adult child and the appointment of a guardian
5 for an alleged medically disabled adult child under 20 Pa.C.S. §
6 5563.

7 Part 1

8 General information.

9 (1) The name and address of the petitioner and the
10 petitioner's relationship to the alleged medically disabled
11 adult child.

12 Name:

13 Address:

14 Relationship:

15 Are you responsible for 50% or more of the financial
16 support of the alleged medically disabled adult child?

17 Are you responsible for 50% or more of the physical
18 custody of the alleged medically disabled adult child?

19 (2) The name, date of birth, residence and post office
20 address of the alleged medically disabled adult child, together
21 with other vital information relating to the alleged medically
22 disabled adult child are:

23 Name:

24 Date of birth:

25 Residence:

26 Post office address:

27 Maiden name:

28 Marital status:

29 (3) The names and addresses of each parent or guardian of
30 the alleged medically disabled adult child if different from

1 petitioner.

2 Name:

3 Address:

4 Name:

5 Address:

6 (4) The name and address of the spouse of the alleged
7 medically disabled adult child, if any.

8 Name:

9 Address:

10 (5) The name and address of the individual or institution
11 providing residential services to the alleged medically disabled
12 adult child.

13 Name:

14 Address:

15 (6) The names and addresses of the individuals or entities,
16 if any, providing other support services to the alleged
17 medically disabled adult child, for example, attending
18 physician, home care aide or rehabilitative caregiver.

19 Name:

20 Address:

21 Part 2

22 Request for appointment of guardian.

23 (7) List the medical diagnoses of the alleged medically
24 disabled adult child the effect of which or the treatment of
25 which are allegedly impacting the alleged medically disabled
26 adult child's ability to make effective decisions.

27 Condition:

28 Age at diagnosis:

29 (8) Describe the functional limitations and physical and
30 mental condition of the alleged medically disabled adult child.

1 An affidavit of the attending physician confirming
2 the diagnosis and the resulting disability is attached to
3 this petition.

4 (9) The petitioner requests that a guardian be appointed
5 because of the alleged medically disabled adult child's mental
6 or physical condition, he or she is:

7 Unable to make responsible decisions concerning his
8 or her person, health, welfare and safety.

9 Unable to communicate his or her needs concerning his
10 or her health, welfare and safety.

11 Unable to reside alone.

12 Unable to provide for his or her personal safety.

13 Unable to care for his or her residence.

14 Unable to keep himself or herself properly nourished
15 or hydrated.

16 Unable to tend to his or her personal hygiene.

17 Unable to clothe himself or herself.

18 Unable to make responsible decisions with regard to
19 his or her medical care, including, but not limited to,
20 obtaining health care services and entering himself or
21 herself into a hospital, convalescent home, skilled care
22 facility or similar institution.

23 Other:

24 (10) The petitioner requests that the following individual
25 be appointed guardian of the alleged medically disabled adult
26 child.

27 Name:

28 Address:

29 Qualifications of the proposed guardian, which may
30 include a history of ongoing care:

1 The proposed guardian has no interests adverse to
2 those of the alleged medically disabled adult child. The
3 consent of the proposed guardian is attached to this
4 petition.

5 Wherefore, the petitioner respectfully requests that the
6 Court appoint the above proposed guardian of the alleged
7 medically disabled adult child.

8 Consent of individual to appointment as guardian

9 I, _____,
10 consent to my appointment as guardian of the
11 of _____, an alleged
12 medically disabled adult child, and certify that:

13 (1) I am 18 years of age or older.

14 (2) I reside at:

15 (3) My occupation is:

16 (4) I do not have any interest adverse to the
17 alleged medically disabled adult child:

18 Date:

19 Signature:

20 Typed name:

21 (b) Notice.--The following is an example of a notice for
22 declaration as a mentally disabled adult child:

23 IMPORTANT NOTICE

24 TO:

25 A PETITION HAS BEEN FILED WITH THIS COURT TO HAVE YOU
26 DECLARED A MEDICALLY DISABLED ADULT CHILD. IF THE COURT FINDS
27 YOU TO BE A MEDICALLY DISABLED ADULT CHILD, YOUR RIGHTS WILL BE
28 AFFECTED, INCLUDING YOUR RIGHT TO MANAGE MONEY AND PROPERTY AND
29 TO MAKE DECISIONS. A COPY OF THE PETITION WHICH HAS BEEN FILED
30 BY _____ IS ATTACHED.

1 TO BE A MEDICALLY DISABLED ADULT CHILD MEANS THAT YOU ARE
2 CURRENTLY UNABLE TO RECEIVE AND EFFECTIVELY EVALUATE INFORMATION
3 AND/OR COMMUNICATE DECISIONS AND THAT YOU ARE UNABLE TO MANAGE
4 YOUR MONEY AND/OR OTHER PROPERTY OR TO MAKE NECESSARY DECISIONS
5 ABOUT WHERE YOU WILL LIVE, WHAT MEDICAL CARE YOU WILL GET OR HOW
6 YOUR MONEY WILL BE SPENT.

7 IF YOU OBJECT TO THIS PETITION, YOU HAVE THE RIGHT TO AN
8 ATTORNEY AND THE RIGHT TO REQUEST THE COURT TO APPOINT AN
9 ATTORNEY TO REPRESENT YOU AND TO HAVE THE ATTORNEY'S FEES PAID
10 FOR IF YOU CANNOT AFFORD THEM YOURSELF. YOU ALSO HAVE THE RIGHT
11 TO REQUEST THAT THE COURT ORDER THAT AN INDEPENDENT EVALUATION
12 BE CONDUCTED AS TO YOUR ALLEGED MEDICAL DISABILITY.

13 IF THE COURT DECIDES THAT YOU ARE A MEDICALLY DISABLED ADULT
14 CHILD, THE COURT MAY APPOINT A GUARDIAN FOR YOU, BASED ON THE
15 NATURE OF ANY CONDITION OR DISABILITY AND YOUR CAPACITY TO MAKE
16 AND COMMUNICATE DECISIONS.

17 BY: Clerk of Orphans' Court Division.

18 Affidavit of Service

19 The undersigned verifies that he or she made personal service
20 of the petition on the alleged medically disabled adult child.

21 The personal service was made on
22 at _____ M. at the following location:

23 The undersigned verifies that, at the time of service, he or
24 she explained the contents and terms of the petition to the
25 alleged medically disabled adult child to the maximum extent
26 possible in language and terms the alleged medically disabled
27 adult child was most likely to understand.

28 The above statements are made subject to the penalties of 18
29 Pa.C.S. § 4904.

30 Date:

1 Signature:

2 Typed name:

3 Section 2. This act shall take effect in 60 days.