

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2492 Session of
1998

INTRODUCED BY D. W. SNYDER, DALLY, COY, STERN, FICHTER, ORIE,
STABACK, VAN HORNE, ROSS, SATHER, GODSHALL, GRUITZA, TIGUE,
TRELLO, MASLAND, SERAFINI, SEMMEL, CIVERA, STEVENSON,
HENNESSEY, SEYFERT, E. Z. TAYLOR AND DeLUCA, APRIL 1, 1998

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 1, 1998

AN ACT

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

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

12 Section 1. Section 711 of Title 20 of the Pennsylvania
13 Consolidated Statutes is amended by adding paragraphs to read:

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

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

1 division:

2 * * *

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

10 (23) Attorney-in-fact.--All matters pertaining to the
11 exercise of powers by attorneys-in-fact or agents acting
12 under powers of attorney as provided in Chapter 56 (relating
13 to powers of attorney).

14 Section 2. Sections 712(4), 5511(a) and (f), 5512.1(a), (c)
15 and (e), 5513, 5518, 5518.1, 5521(c), 5522 and 5531 of Title 20
16 are amended to read:

17 § 712. Nonmandatory exercise of jurisdiction through orphans'
18 court division.

19 The jurisdiction of the court of common pleas over the
20 following may be exercised through either its orphans' court
21 division or other appropriate division:

22 * * *

23 [(4) Powers of attorney.--All matters pertaining to the
24 exercise of powers by attorneys in fact or agents acting
25 under powers of attorney as provided in Chapter 56 (relating
26 to powers of attorney).]

27 § 5511. Petition and hearing; independent evaluation.

28 (a) Resident.--The court, upon petition and hearing and upon
29 the presentation of clear and convincing evidence, may find a
30 person domiciled in the Commonwealth to be incapacitated and

1 appoint a guardian or guardians of his person or estate. The
2 petitioner may be any person interested in the alleged
3 incapacitated person's welfare. The court may dismiss a
4 proceeding where it determines that the proceeding has not been
5 instituted to aid or benefit the alleged incapacitated person or
6 that the petition is incomplete or fails to provide sufficient
7 facts to proceed. Written notice of the petition and hearing
8 shall be given in large type and in simple language to the
9 alleged incapacitated person. The notice shall indicate the
10 purpose and seriousness of the proceeding and the rights that
11 can be lost as a result of the proceeding. It shall include the
12 date, time and place of the hearing and an explanation of all
13 rights, including the right to request the appointment of
14 counsel and to have counsel appointed if the court deems it
15 appropriate and the right to have such counsel paid for if it
16 cannot be afforded. The Supreme Court shall establish a uniform
17 citation for this purpose. A copy of the petition shall be
18 attached. Personal service shall be made on the alleged
19 incapacitated person, and the contents and terms of the petition
20 shall be explained to the maximum extent possible in language
21 and terms the individual is most likely to understand. Service
22 shall be no less than 20 days in advance of the hearing. In
23 addition, notice of the petition and hearing shall be given in
24 such manner as the court shall direct to all persons [residing
25 within the Commonwealth] whose existence and whereabouts are
26 known and who are sui juris and would be entitled to share in
27 the estate of the alleged incapacitated person if he died
28 intestate at that time, to the person or institution providing
29 residential services to the alleged incapacitated person and to
30 such other parties as the court may direct, including other

1 service providers. The hearing may be closed to the public and
2 without a jury unless the alleged incapacitated person or his
3 counsel objects. The hearing shall be closed and with or without
4 a jury if the person alleged to be incapacitated or his counsel
5 so requests. The hearing may be held at the residence of the
6 alleged incapacitated person. The alleged incapacitated person
7 shall be present at the hearing unless:

8 (1) the court is satisfied, upon the deposition or
9 testimony of or sworn statement by a physician or licensed
10 psychologist, that his physical or mental condition would be
11 harmed by his presence or that he could not understand and
12 participate in the proceedings; or

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

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

23 * * *

24 (f) Who may be appointed guardian.--The court may appoint as
25 guardian any qualified individual, a corporate fiduciary, a
26 nonprofit corporation, a guardianship support agency under
27 Subchapter F (relating to guardianship support) or a county
28 agency. In the case of residents of State facilities, the court
29 may also appoint, only as guardian of the estate, the guardian
30 office at the appropriate State facility. The court shall not

1 appoint a person or entity providing residential services for a
2 fee to the incapacitated person or any other person whose
3 interests conflict with those of the incapacitated person except
4 where it is clearly demonstrated that no guardianship support
5 agency or other alternative exists. Any family relationship to
6 such individual shall not, by itself, be considered as an
7 interest adverse to the alleged incapacitated person. If
8 appropriate, the court shall give preference to a nominee of the
9 incapacitated person or to the nominee of a parent, living or
10 deceased, of an unmarried incapacitated person. If the
11 incapacitated person has nominated, by a durable power of
12 attorney, a guardian of the estate or person, the court shall
13 make its appointment in accordance with the nomination of the
14 incapacitated person, except for good cause or disqualification.

15 § 5512.1. Determination of incapacity and appointment of
16 guardian.

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

19 (1) The nature of any condition or disability which
20 impairs the individual's capacity to make and communicate
21 decisions.

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

24 (3) The need for guardianship services, if any, in light
25 of such factors as the availability of family, friends and
26 other supports to assist the individual in making decisions
27 and in light of the existence, if any, of advance directives
28 such as durable powers of attorney or trusts.

29 (4) The type of guardian, limited or plenary, of the
30 person or estate needed based on the nature of any condition

1 or disability and the capacity to make and communicate
2 decisions.

3 (5) The duration of the guardianship.

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

5 The court shall prefer limited guardianships.

6 * * *

7 (c) Plenary guardian of the person.--The court may appoint a
8 plenary guardian of the person [only] upon a finding that the
9 person is [totally] incapacitated and in need of plenary
10 guardianship services.

11 * * *

12 (e) Plenary guardian of the estate.--A court may appoint a
13 plenary guardian of the estate [only] upon a finding that the
14 person is [totally] incapacitated and in need of plenary
15 guardianship services.

16 * * *

17 § 5513. Emergency guardian.

18 Notwithstanding the provisions of section 5511 (relating to
19 petition and hearing; independent evaluation), the court, upon
20 petition and a hearing at which clear and convincing evidence is
21 shown, may appoint an emergency guardian or guardians of the
22 person or estate of a person alleged to be incapacitated, when
23 it appears that the person lacks capacity, is in need of a
24 guardian and a failure to make such appointment will result in
25 irreparable harm to the person or estate of the alleged
26 incapacitated person. The provisions of section 5511, including
27 those relating to counsel, shall be applicable to such
28 proceedings, except when the court has found that it is not
29 feasible in the circumstances. An emergency guardian so
30 appointed for the person or estate of an alleged incapacitated

1 person shall only have and be subject to such powers, duties and
2 liabilities and serve for such time as the court shall direct in
3 its decree. An emergency order appointing an emergency guardian
4 of the person may be in effect for up to 72 hours. If the
5 emergency continues, then the emergency order may be extended
6 for no more than 20 days from the expiration of the initial
7 emergency order. [After expiration of the emergency order or any
8 extension, a full guardianship proceeding must be initiated
9 pursuant to section 5511.] The court may further continue the
10 emergency order if a petition for the appointment of a guardian
11 of the person is filed pursuant to section 5511 prior to the
12 expiration of the emergency order extension and if the failure
13 to continue the emergency order will result in irreparable harm
14 to the incapacitated person. The court may also appoint an
15 emergency guardian of the person pursuant to this section for an
16 alleged incapacitated person who is present in this Commonwealth
17 but is domiciled outside of this Commonwealth, regardless of
18 whether the alleged incapacitated person has property in this
19 Commonwealth. An emergency order appointing an emergency
20 guardian of the estate shall not exceed 30 days. [After 30 days,
21 a full guardianship proceeding must be initiated pursuant to
22 section 5511.] However, the court may continue the emergency
23 order beyond 30 days if a petition for the appointment of a
24 guardian of the estate is filed pursuant to section 5511 prior
25 to the expiration of the emergency order and if failure to
26 continue the emergency order will result in irreparable harm to
27 the estate of the incapacitated person.

28 § 5518. Evidence of incapacity.

29 To establish incapacity in a proceeding in which the capacity
30 of the alleged incapacitated person is contested, the petitioner

1 must present testimony, in person or by deposition from
2 individuals qualified by training and experience in evaluating
3 individuals with incapacities of the type alleged by the
4 petitioner, which establishes the nature and extent of the
5 alleged incapacities and disabilities and the person's mental,
6 emotional and physical condition, adaptive behavior and social
7 skills. In a proceeding in which the capacity of the alleged
8 incapacitated person is not contested, the petitioner may
9 establish incapacity by a sworn statement from such qualified
10 individuals. The [petition] petitioner must also present
11 evidence regarding the services being utilized to meet essential
12 requirements for the alleged incapacitated person's physical
13 health and safety, to manage the person's financial resources or
14 to develop or regain the person's abilities; evidence regarding
15 the types of assistance required by the person and as to why no
16 less restrictive alternatives would be appropriate; and evidence
17 regarding the probability that the extent of the person's
18 incapacities may significantly lessen or change.

19 § 5518.1. Cross-examination of witnesses.

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

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

25 * * *

26 (c) Reports of guardians.--

27 (1) [Each] The court may require a guardian of an
28 incapacitated person [shall] to file [with the court
29 appointing him] a report, at [least once within the first 12
30 months of his appointment and at least annually thereafter]

1 such times as the court shall direct, attesting to such of
2 the following as appropriate:

3 (i) Guardian of the estate:

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

5 (B) current income; and

6 (C) expenditures of principal and income since
7 the last report[; and

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

10 (ii) Guardian of the person:

11 (A) current address and type of placement of the
12 incapacitated person;

13 (B) major medical or mental problems of the
14 incapacitated person;

15 (C) a brief description of the incapacitated
16 person's living arrangements and the social, medical,
17 psychological and other support services he is
18 receiving;

19 (D) the opinion of the guardian as to whether
20 the guardianship should continue or be terminated or
21 modified and the reasons therefor; and

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

24 (2) [Within 60 days of the death of the incapacitated
25 person or an adjudication of capacity and modification of
26 existing orders, the guardian shall file a final report with
27 the court.] The guardian shall notify the court, in writing,
28 within 60 days of the death of the incapacitated person.

29 * * *

30 § 5522. Power to lease.

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

4 § 5531. When accounting filed.

5 A guardian shall file an account of his administration
6 whenever directed to do so by the court or may file an account
7 [at the termination of the guardianship, or at any other time or
8 times authorized by the court] at any other time.

9 Section 3. This act shall apply as follows:

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

14 (2) The amendment of 20 Pa.C.S. §§ 5511(a)(1), 5518 and
15 5518.1 shall apply to proceedings commenced on or after the
16 effective date of this act irrespective of when the petition
17 for the appointment of a guardian is filed.

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

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

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