

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 113 Session of 2017

INTRODUCED BY EICHELBERGER, SABATINA, BARTOLOTTA, RESCHENTHALER, VULAKOVICH, COSTA, MENSCH, RAFFERTY AND BREWSTER, JANUARY 13, 2017

AS AMENDED ON SECOND CONSIDERATION, JUNE 20, 2017

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in incapacitated persons,
3 providing for communication, visitation and interaction with
4 other persons and for notice to ~~closest relatives~~ IMMEDIATE <--
5 FAMILY of certain events.

6 This act shall be referred to as the "Peter Falk's Law."

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

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

SUBCHAPTER G

RIGHTS OF INCAPACITATED PERSONS

13 Sec.

14 5561. Communication, visitation and interaction with other
15 persons.

16 5562. Notice to ~~closest relatives~~ IMMEDIATE FAMILY of certain <--
17 events.

18 § 5561. Communication, visitation and interaction with other
19 persons.

1 (a) Limitation on guardian.--

2 (1) Unless specifically authorized by court order, no  
3 guardian may restrict an incapacitated person's right of  
4 communication, visitation or interaction with other persons,  
5 including the right to receive visitors, telephone calls or  
6 personal mail.

7 (2) If an incapacitated person is unable to express  
8 consent to communication, visitation or interaction with a  
9 person due to a physical or mental condition, then consent of  
10 the incapacitated person may be presumed based on the  
11 incapacitated person's prior relationship history with the  
12 person.

13 (3) A GUARDIAN SHALL COMPLY WITH A PROTECTIVE ORDER THAT <--  
14 REMAINS IN EFFECT TO PROTECT THE INCAPACITATED PERSON FROM  
15 OTHER PERSONS, EVEN IF ISSUED PRIOR TO THE APPOINTMENT OF THE  
16 GUARDIAN.

17 (b) Petition by guardian for restrictions.--A guardian may,  
18 for good cause shown, petition the court to place restrictions  
19 on a person's ability to communicate, visit or interact with an  
20 incapacitated person in accordance with subsection (c). Good  
21 cause includes:

22 (1) THE EXISTENCE OF A PRIOR PROTECTIVE ORDER OR WHETHER <--  
23 A PROTECTIVE ORDER IS BEING SOUGHT TO PROTECT THE  
24 INCAPACITATED PERSON FROM THE PERSON SEEKING ACCESS TO THE  
25 INCAPACITATED PERSON;

26 ~~(1)~~ (2) whether a protective order has been issued to <--  
27 protect the incapacitated person from the person seeking  
28 access to the incapacitated person;

29 ~~(2)~~ (3) whether abuse, neglect or financial exploitation <--  
30 of the incapacitated person by the person seeking access to

1 the incapacitated person has occurred or is likely to occur;

2 ~~(3)~~ (4) documented intention of the incapacitated person <--  
3 to reject communication, visitation or interaction with  
4 specific persons; or

5 ~~(4)~~ (5) any other factors deemed relevant by the court. <--

6 (c) Court order for restrictions.--

7 (1) A court may order restrictions placed on the  
8 communications, visitations or interactions a person may have  
9 with an incapacitated person upon a showing of good cause by  
10 the guardian.

11 (2) In determining whether to issue an order in  
12 accordance with paragraph (1), the following factors shall be  
13 considered by the court:

14 (i) Whether a protective order has been issued to  
15 protect the incapacitated person from the person seeking  
16 access to the incapacitated person.

17 (ii) Whether the person has been charged with abuse,  
18 neglect or financial exploitation of the incapacitated  
19 person.

20 (iii) Whether the incapacitated person has expressed  
21 an intention to reject communication, visitation or  
22 interaction with the person.

23 (iv) If the incapacitated person is unable to  
24 communicate, whether a properly executed living will,  
25 durable power of attorney or advance directive contains a  
26 preference by the incapacitated person with regard to the  
27 person's communication, visitation or interaction with  
28 the incapacitated person.

29 (v) Any other factors deemed relevant by the court.

30 (3) Prior to issuing an order under this subsection, the

1 court shall consider the following:

2 (i) requiring reasonable time, manner or place  
3 restrictions on communication, visitation or interaction  
4 between the incapacitated person and the other person  
5 based on the history between the incapacitated person and  
6 the person or the incapacitated person's expressed  
7 intention, or both;

8 (ii) requiring that communication, visitation or  
9 interaction between the incapacitated person and the  
10 other person be supervised; or

11 (iii) denying communication, visitation or  
12 interaction between the incapacitated person and the  
13 other person, provided that, unless the court finds that  
14 the person poses a threat to the incapacitated person,  
15 supervised communication, visitation or interaction shall  
16 be ordered prior to the denial of any communication,  
17 visitation or interaction.

18 (d) Other relief by court.--

19 (1) If an interested person, including the incapacitated  
20 person, reasonably believes that subsection (a) or an order  
21 issued under subsection (c)(1) has been violated, the  
22 interested person may petition the court to:

23 (i) require the guardian to grant a person access to  
24 the incapacitated person;

25 (ii) restrict or further restrict a person's access  
26 to the incapacitated person;

27 (iii) modify the guardian's duties; or

28 (iv) discharge and replace the guardian as provided  
29 by law.

30 (2) Notwithstanding actions available to the court under

1 paragraph (1), a guardian who is found to be knowingly  
2 isolating an incapacitated person and who has violated  
3 subsection (a) or an order issued under subsection (c) shall  
4 be subject to discharge and replacement as provided by law.

5 (e) Hearing.--

6 (1) Except as provided in paragraph (2), the court shall  
7 schedule a hearing on a petition filed under subsection (b)  
8 or (d) no later than 60 days after the date that the petition  
9 is filed. The court, in its discretion, may order mediation  
10 to be conducted between the parties and the incapacitated  
11 person prior to the hearing. If mediation results in  
12 agreement of the parties and the incapacitated person with  
13 regard to communication, visitation or interaction with the  
14 incapacitated person, the agreement shall be approved and  
15 incorporated in an order by the court.

16 (2) If the petition states that the incapacitated  
17 person's health is in significant decline or that the  
18 incapacitated person's death may be imminent, the court shall  
19 conduct an emergency hearing as soon as practicable, but no  
20 later than 10 days after the petition is filed.

21 (3) When a scheduling order is issued for a petition  
22 filed under paragraph (2), the court shall also order that  
23 supervised communication, visitation or interaction with the  
24 incapacitated person be granted during the period prior to  
25 the hearing.

26 (4) Notice of the hearing, a copy of the petition and a  
27 copy of any order issued under paragraph (3), if applicable,  
28 shall be personally served on the incapacitated person and  
29 any person against whom the petition is filed.

30 (5) Nothing in this subsection may be construed to

1 affect the incapacitated person's right to appear and be  
2 heard in the proceedings.

3 ~~(f) Costs and reasonable attorney fees.~~ <--

4 ~~(1) The court, in its discretion, may award the~~  
5 ~~prevailing party in an action brought under this section~~  
6 ~~court costs and reasonable attorney fees, provided that an~~  
7 ~~award of court costs and reasonable attorney fees may not be~~  
8 ~~paid out of the incapacitated person's estate.~~

9 ~~(2) The court, upon petition or upon its own initiative,~~  
10 ~~may impose upon a guardian who is found to be knowingly~~  
11 ~~isolating an incapacitated person and who has violated~~  
12 ~~subsection (a) or an order issued under subsection (c) an~~  
13 ~~appropriate sanction, including an order to pay court costs~~  
14 ~~and reasonable attorney fees of the other party or parties,~~  
15 ~~provided that no sanction may be paid out of the~~  
16 ~~incapacitated person's estate.~~

17 (F) SANCTIONS.--IF A GUARDIAN HAS VIOLATED A COURT ORDER <--  
18 ISSUED UNDER THIS SUBCHAPTER, THE COURT MAY:

19 (1) REQUIRE THE GUARDIAN TO GRANT A PERSON ACCESS OR  
20 PROVIDE NOTICE;

21 (2) RESTRICT OR REDUCE A GUARDIAN'S RIGHT TO  
22 COMPENSATION, IF ANY;

23 (3) MODIFY THE GUARDIAN'S DUTIES; OR

24 (4) REMOVE THE GUARDIAN.

25 § 5562. Notice to ~~closest relatives~~ IMMEDIATE FAMILY of certain <--  
26 events.

27 (a) General rule.--A guardian shall promptly notify an  
28 incapacitated person's ~~closest relatives~~ IMMEDIATE FAMILY and <--  
29 any person designated by the incapacitated person to be  
30 notified, along with the appropriate contact information, upon

1 the guardian's knowledge that:

2 (1) the incapacitated person's PERMANENT residence has <--  
3 changed;

4 (2) the incapacitated person is staying at a location  
5 other than the incapacitated person's residence for more than  
6 seven consecutive days;

7 (3) the incapacitated person is admitted to or  
8 discharged from a nursing home or assisted-care living  
9 facility;

10 (4) the incapacitated person has been admitted to a  
11 medical facility for:

12 (i) emergency care in response to a life-threatening  
13 injury or medical condition; or

14 (ii) acute care; or

15 (5) the incapacitated person has died, provided that  
16 notification of the incapacitated person's death shall be  
17 made in person or by telephone.

18 (b) Exception.--

19 (1) A guardian shall not be required to provide notice  
20 in accordance with subsection (a) if:

21 (i) a person who is entitled to notice under  
22 subsection (a) informs the guardian in writing that the  
23 person does not wish to receive the notice; or

24 (ii) the incapacitated person or a court order has  
25 expressly prohibited the guardian from providing notice  
26 to the person.

27 (2) A guardian may not provide contact information in  
28 accordance with subsection (a) if an order of protection or  
29 restraining order has been issued pursuant to law against the  
30 person on behalf of the incapacitated person.

1 (C) NOTIFICATIONS.--

2 (1) THE REQUIREMENT TO PROVIDE NOTICE UNDER SUBSECTION  
3 (A) MAY BE SATISFIED BY PROVIDING NOTICE TO ALL PERSONS  
4 DESIGNATED BY THE INCAPACITATED PERSON TO BE NOTIFIED AND TO  
5 THE INCAPACITATED PERSON'S SPOUSE, IF THE SPOUSE IS NOT THE  
6 GUARDIAN.

7 (2) IF THE INCAPACITATED PERSON HAS NO SPOUSE, OR THE  
8 SPOUSE IS ACTING AS GUARDIAN, NOTICE SHALL BE SENT TO EACH OF  
9 THE INCAPACITATED PERSON'S CHILDREN, IF ANY.

10 (3) IF THE INCAPACITATED PERSON HAS NO SPOUSE OR  
11 SURVIVING CHILDREN, NOTIFICATION MAY BE SENT TO A BROTHER,  
12 SISTER, GRANDCHILD OR OTHER PERSON DESIGNATED BY THE  
13 INCAPACITATED PERSON TO BE NOTIFIED, IF ANY.

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