
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 23 Session of
2020

INTRODUCED BY HAYWOOD, FONTANA, SCHWANK, COSTA, BROWNE,
TARTAGLIONE, BREWSTER AND COLLETT, APRIL 3, 2020

REFERRED TO JUDICIARY, APRIL 3, 2020

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in orphans' court
3 divisions, further providing for appointment and purpose and
4 for compensation; and, in incapacitated persons, providing
5 for venue and for confidentiality and disclosure of
6 information, further providing for petition and hearing and
7 independent evaluation, repealing provisions relating to
8 county of appointment and qualifications, further providing
9 for review hearing, providing for affidavit in uncontested
10 termination matters and for counsel, further providing for
11 emergency guardian, repealing provisions relating to
12 provisions similar to other estates, providing for removal
13 and discharge of guardian, for appointment of guardian in
14 conveyance and for bond, further providing for evidence of
15 incapacity, for cross-examination of witnesses and for
16 provisions concerning powers, duties and liabilities,
17 providing for protection of person dealing with guardian and
18 further providing for when accounting filed, for
19 distributions of income and principal during incapacity and
20 for guardianship services.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Section 751 of Title 20 of the Pennsylvania
24 Consolidated Statutes is amended by adding paragraphs to read:

25 § 751. Appointment; purpose.

26 The orphans' court division may appoint:

27 * * *

1 (7) Examiners of actions of guardian of estate.--By
2 general rule or special order, an examiner to make periodic
3 or special examinations of expenditures, disbursements and
4 withdrawals of a guardian of the estate of an incapacitated
5 person and to require the guardian of the estate to present
6 financial records for examination.

7 (8) Mediators or arbitrators.--A mediator or arbitrator
8 if the parties desire mediation or arbitration but do not
9 mutually agree on an independent mediator or arbitrator. The
10 meeting place shall be in this Commonwealth in a location
11 selected by the mediator or arbitrator. The mediator or
12 arbitrator may extend the date of the meeting for good cause
13 shown by either party or upon stipulation of both parties.
14 All files, records, reports, documents or other papers
15 received or prepared by the mediator or arbitrator while
16 serving as such shall be classified as confidential. Payment
17 from an incapacitated person's estate for mediation or
18 arbitration shall be subject to approval by the court.

19 Section 2. Section 752 of Title 20 is amended to read:

20 § 752. Compensation.

21 [The compensation of any master, auditor, examiner, guardian
22 ad litem, or trustee ad litem, subject to any inconsistent
23 general rule shall be paid from such source as the court shall
24 direct.] Subject to any inconsistent general rule of court, the
25 compensation of any master, auditor, examiner, guardian ad litem
26 or trustee ad litem shall be paid from such source and in such
27 amounts as the court directs.

28 Section 3. Title 20 is amended by adding sections to read:

29 § 5503. Venue.

30 (a) Applicability.--This section is subject to Chapter 59

1 (relating to uniform adult guardianship and protective
2 proceedings jurisdiction).

3 (b) Guardian of person.--Venue for a guardianship proceeding
4 for an incapacitated person or an alleged incapacitated person
5 is in the judicial district of this Commonwealth in which the
6 person resides and, if the person has been admitted to an
7 institution by order of a court of competent jurisdiction, in
8 the judicial district in which the institution is located. Venue
9 for the appointment of an emergency guardian of an incapacitated
10 person or an alleged incapacitated person is also in the
11 judicial district in which the person is present.

12 (c) Guardian of estate.--Venue for a proceeding regarding a
13 guardianship of the estate of an incapacitated person or alleged
14 incapacitated person is in the judicial district of this
15 Commonwealth in which the incapacitated person or alleged
16 incapacitated person resides, whether or not a guardian of the
17 person has been appointed in another place or, if the person
18 does not reside in this Commonwealth, in any judicial district
19 of this Commonwealth in which property owned by the person is
20 located.

21 (d) Multiple judicial districts.--If a proceeding under this
22 chapter is brought in more than one judicial district in this
23 Commonwealth, the court of the judicial district in which the
24 proceeding is first brought has the exclusive right to proceed
25 unless that court determines that venue is properly in another
26 court or that the interests of justice otherwise require that
27 the proceeding be transferred.

28 § 5504. Confidentiality and disclosure of information.

29 Confidentiality and the disclosure of information under this
30 chapter shall be governed by applicable court rule or as the

1 court determines. The Supreme Court may prescribe uniform rules
2 relating to confidentiality and the disclosure of information.

3 Section 4. Section 5511(a), (e) and (f) of Title 20 are
4 amended and the section is amended by adding subsections to
5 read:

6 § 5511. Petition and hearing; independent evaluation.

7 [(a) Resident.--The court, upon petition and hearing and
8 upon the presentation of clear and convincing evidence, may find
9 a person domiciled in the Commonwealth to be incapacitated and
10 appoint a guardian or guardians of his person or estate. The
11 petitioner may be any person interested in the alleged
12 incapacitated person's welfare. The court may dismiss a
13 proceeding where it determines that the proceeding has not been
14 instituted to aid or benefit the alleged incapacitated person or
15 that the petition is incomplete or fails to provide sufficient
16 facts to proceed. Written notice of the petition and hearing
17 shall be given in large type and in simple language to the
18 alleged incapacitated person. The notice shall indicate the
19 purpose and seriousness of the proceeding and the rights that
20 can be lost as a result of the proceeding. It shall include the
21 date, time and place of the hearing and an explanation of all
22 rights, including the right to request the appointment of
23 counsel and to have counsel appointed if the court deems it
24 appropriate and the right to have such counsel paid for if it
25 cannot be afforded. The Supreme Court shall establish a uniform
26 citation for this purpose. A copy of the petition shall be
27 attached. Personal service shall be made on the alleged
28 incapacitated person, and the contents and terms of the petition
29 shall be explained to the maximum extent possible in language
30 and terms the individual is most likely to understand. Service

1 shall be no less than 20 days in advance of the hearing. In
2 addition, notice of the petition and hearing shall be given in
3 such manner as the court shall direct to all persons residing
4 within the Commonwealth who are sui juris and would be entitled
5 to share in the estate of the alleged incapacitated person if he
6 died intestate at that time, to the person or institution
7 providing residential services to the alleged incapacitated
8 person and to such other parties as the court may direct,
9 including other service providers. The hearing may be closed to
10 the public and without a jury unless the alleged incapacitated
11 person or his counsel objects. The hearing shall be closed and
12 with or without a jury if the person alleged to be incapacitated
13 or his counsel so requests. The hearing may be held at the
14 residence of the alleged incapacitated person. The alleged
15 incapacitated person shall be present at the hearing unless:

16 (1) the court is satisfied, upon the deposition or
17 testimony of or sworn statement by a physician or licensed
18 psychologist, that his physical or mental condition would be
19 harmed by his presence; or

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

24 Petitioner shall be required to notify the court at least seven
25 days prior to the hearing if counsel has not been retained by or
26 on behalf of the alleged incapacitated person. In appropriate
27 cases, counsel shall be appointed to represent the alleged
28 incapacitated person in any matter for which counsel has not
29 been retained by or on behalf of that individual.]

30 (a.1) Resident.--

1 (1) Upon petition and hearing and the presentation of
2 clear and convincing evidence, the court may find an
3 individual domiciled in this Commonwealth to be incapacitated
4 and appoint a guardian of the person or guardian of the
5 estate for the individual.

6 (2) The petitioner under this subsection may be any
7 person interested in the alleged incapacitated person's
8 welfare. If the petitioner is a guardianship support agency,
9 the petition shall disclose the agency's financial
10 information and a list of its current guardianships.

11 (3) The court may dismiss a proceeding if it determines
12 that:

13 (i) the proceeding has not been instituted to aid or
14 benefit the alleged incapacitated person; or

15 (ii) the petition is incomplete or fails to provide
16 sufficient facts to proceed.

17 (4) The Supreme Court shall establish a uniform citation
18 for the written notice of the petition and hearing, which
19 shall:

20 (i) Be given in large type and in simple language to
21 the alleged incapacitated person.

22 (ii) Indicate the purpose and seriousness of the
23 proceeding and the rights that can be lost as a result of
24 the proceeding.

25 (iii) Include the date, time and place of the
26 hearing and an explanation of all rights, including the
27 appointment of counsel as set forth in subsection (a.2).

28 (iv) Be attached to the petition.

29 (5) Service of the petition and notice shall be as
30 follows:

1 (i) Personal service of the petition and notice
2 shall be made on the alleged incapacitated person. The
3 contents and terms of the petition shall be explained to
4 the maximum extent possible in language and terms the
5 person is most likely to understand. Service shall be not
6 less than 20 days in advance of the hearing.

7 (ii) Notice of the petition and hearing shall be
8 given to the following in the manner as the court
9 directs:

10 (A) Any person:

11 (I) whose existence and whereabouts are
12 known or could be readily obtained;

13 (II) who is sui juris; and

14 (III) who would be entitled to share in the
15 estate of the alleged incapacitated person if the
16 person died intestate at that time.

17 (B) The person or institution providing
18 residential services to the alleged incapacitated
19 person.

20 (C) Another party as the court directs,
21 including another service provider.

22 (6) The hearing:

23 (i) may be closed to the public and without a jury,
24 unless the alleged incapacitated person or the person's
25 counsel objects;

26 (ii) shall be closed to the public and with or
27 without a jury, if the alleged incapacitated person or
28 the person's counsel so requests; or

29 (iii) may be held at the residence of the alleged
30 incapacitated person.

1 (7) The alleged incapacitated person shall be present at
2 the hearing unless:

3 (i) upon the deposition or testimony of or sworn
4 statement by a physician or licensed psychologist, the
5 court is satisfied that the person's physical or mental
6 condition would be harmed by being present, but the
7 inability of the person to comprehend the proceedings
8 does not, by itself, constitute harm; or

9 (ii) it is impossible for the person to be present
10 because of the person's absence from this Commonwealth.
11 It shall not be necessary for the person to be
12 represented by a guardian ad litem in the proceeding.

13 (8) The court may grant standing to any person on whom
14 the notice and petition are served under paragraph (5).

15 (a.2) Appointment of counsel.--

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

21 (2) The court shall appoint counsel to represent the
22 alleged incapacitated person in any matter for which counsel
23 has not been retained by the alleged incapacitated person.

24 (3) Counsel for an alleged incapacitated person shall,
25 as far as reasonably possible, maintain a normal client-
26 attorney relationship with the client. Counsel shall advocate
27 for the client's expressed wishes and consistent with the
28 client's instructions, to the extent the client is able to
29 express wishes and provide instructions. Counsel shall comply
30 with the Rules of Professional Conduct governing the

1 attorney-client relationship.

2 * * *

3 (e) Petition contents.--

4 (1) The petition, which shall be in plain language,
5 shall include the name, age, residence and post office
6 address of the alleged incapacitated person, the names and
7 addresses of the spouse, parents and presumptive adult heirs
8 of the alleged incapacitated person, the name and address of
9 the person or institution providing residential services to
10 the alleged incapacitated person, the names and addresses of
11 other service providers, the name and address of the person
12 or entity whom petitioner asks to be appointed guardian, an
13 averment that the proposed guardian has no interest adverse
14 to the alleged incapacitated person, the reasons why
15 guardianship is sought, a description of the functional
16 limitations and physical and mental condition of the alleged
17 incapacitated person, the steps taken to find less
18 restrictive alternatives, the specific areas of incapacity
19 over which it is requested that the guardian be assigned
20 powers and the qualifications of the proposed guardian.

21 (2) If a limited or plenary guardian of the estate is
22 sought, the petition shall also include the gross value of
23 the estate and net income from all sources to the extent
24 known.

25 (3) A petition that is filed for the appointment of a
26 guardian of the person on or after (in preparing this act for
27 printing in the Laws of Pennsylvania and the Pennsylvania
28 Consolidated Statutes, the Legislative Reference Bureau shall
29 insert here, in lieu of this statement, the effective date of
30 this paragraph) shall state whether it is proposed that the

1 guardian of the person shall have the power to make health
2 care decisions and, if so, whether the guardian shall have
3 all the powers of a health care representative to make health
4 care decisions as defined under section 5422 (relating to
5 definitions), including decisions involving health care
6 necessary to preserve life if the incapacitated person were
7 to be in an end-stage medical condition or be permanently
8 unconscious, and any limitation of those powers.

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

25 (1) The court may appoint any one or more of the
26 following to be an alleged incapacitated person's guardian of
27 the person or guardian of the estate, or both:

28 (i) Any qualified individual.

29 (ii) A corporate fiduciary. If a person is a
30 corporate entity doing business in this Commonwealth and

1 serving as a guardian of the estate of an incapacitated
2 person, the person shall have an office in this
3 Commonwealth.

4 (iii) A nonprofit corporation.

5 (iv) A guardianship support agency under Subchapter
6 F (relating to guardianship support).

7 (v) A county agency.

8 (2) If the alleged incapacitated person is a resident of
9 a State facility, the court may appoint the guardian office
10 at the facility as the alleged incapacitated person's
11 guardian of the estate.

12 (3) The Department of Human Services shall require a
13 professional guardian seeking to become a guardian of the
14 person or guardian of the estate of an incapacitated person
15 to submit to a criminal history background check to be
16 conducted by the Pennsylvania State Police prior to
17 appointment as guardian. The following shall apply:

18 (i) The individual shall submit fingerprints and
19 other identifying information to the Pennsylvania State
20 Police.

21 (ii) When a criminal history background check is
22 requested under this paragraph, the Pennsylvania State
23 Police or its designee shall do all of the following:

24 (A) Provide a report of the individual's
25 criminal history record information as defined by 18
26 Pa.C.S. § 9102 (relating to definitions) or a
27 statement that the Pennsylvania State Police central
28 repository contains no information relating to the
29 individual. The criminal history record information
30 shall be limited to that which is disseminated under

1 18 Pa.C.S. § 9121(b)(2) (relating to general
2 regulations).

3 (B) Submit the individual's fingerprints to the
4 Federal Bureau of Investigation for a national
5 criminal history records check.

6 (C) Provide the Department of Human Services
7 with the national criminal history record check
8 information of the individual. The information
9 provided under this section shall not be limited by
10 18 Pa.C.S. § 9121(b)(2).

11 (iii) The Department of Human Services shall provide
12 a statement to the individual on a form it may prescribe
13 that attests to one of the following regarding the
14 individual's national criminal history record check:

15 (A) No national criminal history record.

16 (B) A national criminal history record that does
17 not prohibit the individual from becoming a guardian
18 of the person or guardian of the estate of the
19 incapacitated person.

20 (C) A national criminal history record that does
21 prohibit the individual from becoming a guardian of
22 the person or guardian of the estate of the
23 incapacitated person.

24 (4) A professional guardian shall be certified as
25 directed by the Department of Human Services and shall submit
26 proof of certification to the court prior to appointment as
27 guardian of the person or guardian of the estate of an
28 incapacitated person. Certification shall include a
29 disclosure of potential adverse interests regarding the
30 relationship between the professional guardian and the

1 incapacitated person.

2 (5) If the criminal history record information under
3 paragraph (3) reveals any information that could affect the
4 individual's appointment or continued service as guardian of
5 the person or guardian of the estate, the individual shall be
6 given the opportunity to provide a response to the court to
7 assist the court in determining whether the individual should
8 serve as guardian.

9 (g) Who may not be appointed guardian.--

10 (1) Subject to paragraph (2), unless it is clearly
11 demonstrated that no guardianship support agency or other
12 alternative exists, the court may not appoint the following
13 as the alleged incapacitated person's guardian of the person
14 or guardian of the estate:

15 (i) A person or entity providing residential
16 services for a fee to the alleged incapacitated person.

17 (ii) Any other person whose interests conflict with
18 those of the alleged incapacitated person.

19 (2) Any family relationship to the alleged incapacitated
20 person shall not, by itself, be considered in conflict with
21 the interest of the alleged incapacitated person.

22 (h) Preference in appointing guardian of person.--

23 (1) If a nomination regarding guardian of the person has
24 been made in a power of attorney, the court may determine
25 that an adjudication of incapacity is not necessary or that
26 an adjudication of incapacity is necessary but the
27 appointment of a guardian of the person is not necessary. If
28 the court makes an adjudication of incapacity and determines
29 that a guardian of the person shall be appointed, the court
30 shall appoint the nominated person in accordance with the

1 terms of the power of attorney or health care power of
2 attorney, except for good cause or disqualification.

3 (2) Subject to paragraph (1), in appointing a qualified
4 person to be guardian of the person, the court shall consider
5 the following order of preference:

6 (i) A guardian, other than a temporary or emergency
7 guardian, currently acting for the estate.

8 (ii) The spouse of the person.

9 (iii) An adult child of the person.

10 (iv) A parent of the person.

11 (v) The nominee of a deceased or living parent of an
12 unmarried alleged incapacitated person.

13 (vi) Another suitable and qualified person.

14 (3) With respect to persons having equal preference, the
15 court shall select the person or persons that it considers
16 best qualified in that class.

17 (4) Subject to paragraph (1), in acting in the best
18 interest of the alleged incapacitated person, the court may
19 decline to appoint a person having a higher preference and
20 appoint a person having a lower preference or no preference.

21 (i) Preference in appointing guardian of estate.--

22 (1) If a nomination regarding guardian of the estate has
23 been made in a power of attorney, the court may determine
24 that an adjudication of incapacity is not necessary or that
25 an adjudication of incapacity is necessary but the
26 appointment of a guardian of the estate is not necessary.
27 Subject to paragraph (5), if the court makes an adjudication
28 of incapacity and determines that a guardian of the estate
29 shall be appointed, the court shall appoint the nominated
30 person in accordance with the terms of the power of attorney,

1 except for good cause or disqualification.

2 (2) Subject to paragraphs (1) and (5), in appointing a
3 qualified person to be guardian of the estate, the court
4 shall consider the following order of preference:

5 (i) A guardian, other than a temporary or emergency
6 guardian, currently acting for the person.

7 (ii) The spouse of the person.

8 (iii) An adult child of the person.

9 (iv) A parent of the person.

10 (v) The nominee of a deceased or living parent of an
11 unmarried alleged incapacitated person.

12 (vi) Another suitable and qualified person,
13 including a corporate fiduciary, a nonprofit corporation,
14 a guardianship support agency under Subchapter F and a
15 county agency.

16 (3) With respect to persons having equal preference, the
17 court shall select the person or persons that it considers
18 best qualified in that class.

19 (4) Subject to paragraph (1), in acting in the best
20 interest of the alleged incapacitated person, the court may
21 decline to appoint a person having a higher preference and
22 appoint a person having a lower preference or no preference.

23 (5) The court may appoint a corporate fiduciary or other
24 appropriate person as a guardian of the estate of the
25 incapacitated person in appropriate cases, if the
26 incapacitated person's estate contains substantial assets or
27 involves complex financial matters.

28 (j) Required criminal background checks and certification of
29 guardians.--

30 (1) After December 31, 2018, an individual or entity

1 seeking to become a guardian of the person or guardian of the
2 estate of an incapacitated person shall provide the following
3 information to the court during or prior to a guardianship
4 hearing for the incapacitated person:

5 (i) The relationship of the individual or entity to
6 to the alleged incapacitated person.

7 (ii) Whether the individual or entity knows or has
8 reason to know any adverse interest to the alleged
9 incapacitated person.

10 (iii) A description of any guardianship training
11 which the individual or entity has completed, including
12 the name of the training program, the length of the
13 training and the date of completion.

14 (iv) Whether the individual or entity is or was a
15 guardian in any other matters and, if so, the number of
16 active matters before the court or a court of any other
17 jurisdiction, along with identifying case captions and
18 docket numbers.

19 (v) For a professional guardian, if not attached as
20 an exhibit to the petition for adjudication of
21 incapacity:

22 (A) The criminal history record information
23 specified under subsection (f) (3) (ii), which must be
24 issued within six months prior to submission to the
25 court.

26 (B) The statement by the Department of Human
27 Services specified under subsection (f) (3) (iii),
28 which must be issued within six months prior to
29 submission to the court.

30 (vi) If the individual or entity is a professional

1 guardian, proof of current certification, which may
2 include, but is not be limited to, information required
3 of all guardians under this section.

4 (2) After December 31, 2018, the Department of Human
5 Services shall certify a professional guardian to have
6 certain minimum qualifications as determined by the
7 Department of Human Services. Evidence of this certification
8 shall be provided to the court during or prior to a
9 guardianship hearing for the incapacitated person. The
10 following shall apply:

11 (i) Certification requirements shall include, at a
12 minimum:

13 (A) Proof of work experience.

14 (B) Proof of educational experience.

15 (C) Any other certification requirements as
16 determined by the Department of Human Services.

17 (ii) To remain certified, a professional guardian
18 shall recertify the minimum qualifications specified
19 under subparagraph (i) to the court every two years.

20 (iii) Unless otherwise directed by the court, an
21 applicant for certification as a professional guardian
22 shall be responsible for fees associated with obtaining
23 certification.

24 (k) Other considerations.--

25 (1) Subject to paragraph (2) and notwithstanding section
26 5515.1 (relating to removal and discharge of guardian), the
27 court shall disqualify a professional guardian or prospective
28 professional guardian of an incapacitated person or an
29 alleged incapacitated person if the professional guardian or
30 prospective professional guardian has been found guilty of or

1 entered a plea of guilty or nolo contendere to:

2 (i) an offense under the laws of this Commonwealth
3 involving abuse, neglect, fraud, misappropriation, theft
4 or conversion; or

5 (ii) an offense under the laws of another
6 jurisdiction which is substantially similar to an offense
7 under subparagraph (i).

8 (2) A professional guardian or prospective professional
9 guardian shall not be disqualified under paragraph (1) if the
10 court determines that the appointment as guardian is in the
11 best interests of the incapacitated person or alleged
12 incapacitated person, after considering the nature of the
13 offense, the date of the offense and the relationship between
14 the guardian or prospective guardian and the incapacitated
15 person or alleged incapacitated person.

16 (1) Definitions.--As used in this section, the following
17 words and phrases shall have the meanings given to them in this
18 subsection unless the context clearly indicates otherwise:

19 "Professional guardian." Any of the following:

20 (1) An individual or entity that has been appointed by
21 one or more courts as a guardian of the person or guardian of
22 the estate of three or more incapacitated or partially
23 incapacitated persons.

24 (2) The principal of an entity that has been appointed
25 by one or more courts as a guardian of the person or guardian
26 of the estate for three or more incapacitated or partially
27 incapacitated persons.

28 (3) An employee of an entity described by paragraph (1)
29 or (2) who has direct responsibility for providing
30 guardianship services to an incapacitated or partially

1 incapacitated person.

2 Section 5. Section 5512 of Title 20 is repealed:

3 [§ 5512. County of appointment; qualifications.

4 (a) Resident incapacitated person.--A guardian of the person
5 or estate of an incapacitated person may be appointed by the
6 court of the county in which the incapacitated person is
7 domiciled, is a resident or is residing in a long-term care
8 facility.

9 (b) Nonresident incapacitated person.--A guardian of the
10 estate within the Commonwealth of an incapacitated person
11 domiciled outside of the Commonwealth may be appointed by the
12 court of the judicial district having jurisdiction of a
13 decedent's estate or of a trust in which the incapacitated
14 person has an interest. When the nonresident incapacitated
15 person's estate is derived otherwise than from a decedent's
16 estate or a trust within the Commonwealth, a guardian may be
17 appointed by the court of any county where an asset of the
18 incapacitated person is located.

19 (c) Exclusiveness of appointment.--When a court has
20 appointed a guardian of the person or estate of an incapacitated
21 person pursuant to subsection (a) or (b), no other court shall
22 appoint a similar guardian for the incapacitated person within
23 the Commonwealth.]

24 Section 6. Section 5512.2(a) of Title 20 is amended and the
25 section is amended by adding a subsection to read:

26 § 5512.2. Review hearing.

27 (a) Time of hearing.--The court may set a date for a review
28 hearing in its order establishing the guardianship or hold a
29 review hearing at any time it shall direct. The court shall
30 conduct a review hearing promptly if the incapacitated person,

1 guardian or any [interested party] person interested in the
2 incapacitated person's welfare petitions the court for a hearing
3 for reason of a significant change in the person's capacity, a
4 change in the need for guardianship services or the guardian's
5 failure to perform his duties in accordance with the law or to
6 act in the best interest of the incapacitated person. The court
7 may dismiss a petition for review hearing if it determines that
8 the petition is frivolous.

9 * * *

10 (c) Independent evaluation.--In a review hearing under this
11 section, the court may order an independent evaluation in
12 accordance with section 5511(d) (relating to petition and
13 hearing; independent evaluation).

14 Section 7. Title 20 is amended by adding sections to read:
15 § 5512.4. Affidavit in uncontested termination matters.

16 In an uncontested matter concerning the termination of a
17 guardianship, whether or not a hearing is held regarding the
18 termination, the court may terminate the guardianship based on
19 an affidavit of the incapacitated person's attending physician
20 stating that the guardianship is no longer necessary.

21 § 5512.5. Counsel.

22 Following an adjudication of incapacity, counsel for the
23 incapacitated person acting as such before the individual was
24 adjudicated incapacitated, or counsel subsequently engaged by or
25 on behalf of the incapacitated person, may act on behalf of the
26 incapacitated person for a matter or at any proceeding regarding
27 the interest of the incapacitated person under this chapter. For
28 cause shown, the court may terminate the services of counsel
29 acting for an incapacitated person and appoint new counsel or a
30 guardian ad litem for a proceeding for which the incapacitated

1 person's interest is involved.

2 Section 8. Section 5513 of Title 20 is amended to read:

3 § 5513. Emergency guardian.

4 [Notwithstanding the provisions of section 5511 (relating to
5 petition and hearing; independent evaluation), the court, upon
6 petition and a hearing at which clear and convincing evidence is
7 shown, may appoint an emergency guardian or guardians of the
8 person or estate of a person alleged to be incapacitated, when
9 it appears that the person lacks capacity, is in need of a
10 guardian and a failure to make such appointment will result in
11 irreparable harm to the person or estate of the alleged
12 incapacitated person. The provisions of section 5511, including
13 those relating to counsel, shall be applicable to such
14 proceedings, except when the court has found that it is not
15 feasible in the circumstances. An emergency guardian so
16 appointed for the person or estate of an alleged incapacitated
17 person shall only have and be subject to such powers, duties and
18 liabilities and serve for such time as the court shall direct in
19 its decree. An emergency order appointing an emergency guardian
20 of the person may be in effect for up to 72 hours. If the
21 emergency continues, then the emergency order may be extended
22 for no more than 20 days from the expiration of the initial
23 emergency order. After expiration of the emergency order or any
24 extension, a full guardianship proceeding must be initiated
25 pursuant to section 5511. The court may also appoint an
26 emergency guardian of the person pursuant to this section for an
27 alleged incapacitated person who is present in this Commonwealth
28 but is domiciled outside of this Commonwealth, regardless of
29 whether the alleged incapacitated person has property in this
30 Commonwealth. An emergency order appointing an emergency

1 guardian of the estate shall not exceed 30 days. After 30 days,
2 a full guardianship proceeding must be initiated pursuant to
3 section 5511.]

4 (a) Appointment.--

5 (1) Notwithstanding the provisions of section 5511
6 (relating to petition and hearing; independent evaluation),
7 upon petition and a hearing at which clear and convincing
8 evidence is shown, the court may appoint an emergency
9 guardian or guardians of the person or estate of a person
10 alleged to be incapacitated, when it appears that:

11 (i) the person lacks capacity and is in need of a
12 guardian; and

13 (ii) a failure to make such appointment will likely
14 result in irreparable harm to the person or estate of the
15 alleged incapacitated person.

16 (2) The court may appoint an emergency guardian of the
17 person under this section for an alleged incapacitated person
18 who is present in this Commonwealth but domiciled outside
19 this Commonwealth, regardless of whether the alleged
20 incapacitated person has property in this Commonwealth.

21 (b) Procedures and powers generally.--

22 (1) Each provision of section 5511 shall apply to
23 proceedings under subsection (a), except:

24 (i) when the court has found that the application of
25 the provision is not feasible under the circumstances; or

26 (ii) as otherwise provided in this section.

27 (2) An emergency guardian so appointed for the person or
28 estate of an alleged incapacitated person shall only have and
29 be subject to such powers, duties and liabilities and serve
30 for such time as the court shall direct in its decree.

1 (c) Duration of initial order.--An initial emergency order
2 appointing an emergency guardian of the person or guardian of
3 the estate may be in effect for up to 30 days.

4 (d) Appointment of counsel.--

5 (1) Prior to the expiration of the initial emergency
6 order, the court may appoint counsel for the alleged
7 incapacitated person.

8 (2) If an extension of the emergency order is sought
9 under subsection (e), the court shall appoint counsel for the
10 alleged incapacitated person.

11 (e) Extension of order.--An emergency order may be extended
12 for not more than an additional 60 days upon the consent of the
13 petitioner, emergency guardian and counsel for the incapacitated
14 person. At any time after the filing of the petition for
15 emergency guardianship, upon a determination that the duration
16 of incapacity of the alleged incapacitated person is likely to
17 extend longer than the period of emergency guardianship
18 permitted by this section, the court shall direct that the
19 petitioner file a petition for a permanent guardianship of the
20 person or a permanent guardianship of the estate, or both. In
21 such a case, the period of extension of the emergency order
22 shall be extended to the date of the order on the permanent
23 guardianship petition.

24 Section 9. Section 5515 of Title 20 is repealed:

25 [§ 5515. Provisions similar to other estates.]

26 The provisions relating to a guardian of an incapacitated
27 person and his surety shall be the same as are set forth in the
28 following provisions of this title relating to a personal
29 representative or a guardian of a minor and their sureties:

30 Section 3182 (relating to grounds for removal).

1 Section 3183 (relating to procedure for and effect of
2 removal).

3 Section 3184 (relating to discharge of personal
4 representative and surety).

5 Section 5115 (relating to appointment of guardian in
6 conveyance).

7 Section 5121 (relating to necessity, form and amount).

8 Section 5122 (relating to when bond not required).

9 Section 5123 (relating to requiring or changing amount of
10 bond).]

11 Section 10. Title 20 is amended by adding sections to read:

12 § 5515.1. Removal and discharge of guardian.

13 (a) Conditions.--Subject to section 5511(k) (relating to
14 petition and hearing; independent evaluation), the court has the
15 exclusive power to remove a guardian of the person or guardian
16 of the estate if either paragraph (1) or (2) applies:

17 (1) The guardian:

18 (i) is wasting or mismanaging the estate;

19 (ii) is or is likely to become insolvent;

20 (iii) has failed to perform any duty imposed by law;

21 (iv) has become incapacitated to discharge the
22 duties as guardian because of sickness or physical or
23 mental incapacity and the incapacity is likely to
24 continue to the injury of the estate or the incapacitated
25 person; or

26 (v) has removed from this Commonwealth or has ceased
27 to have a known place of residence herein, without
28 furnishing a security or additional security as the court
29 directs.

30 (2) For any reason other than that set forth in

1 paragraph (1), the interests of the estate or the
2 incapacitated person are likely to be jeopardized by the
3 guardian's continuance as guardian.

4 (b) Procedure.--

5 (1) On the court's own motion or on the petition of any
6 party in interest alleging adequate grounds for removal of a
7 guardian of the person or guardian of the estate, the court
8 shall:

9 (i) order the guardian to appear and show cause why
10 the guardian should not be removed; or

11 (ii) summarily remove the guardian when necessary to
12 protect the rights of creditors or parties in interest.

13 (2) Upon removal of a guardian of the person or guardian
14 of the estate, the court shall appoint a successor guardian
15 and may appoint a co-guardian under section 5514 (relating to
16 to fill vacancy; co-guardian) and, by summary attachment of
17 the guardian or other appropriate orders, provide for the
18 security and delivery of the assets of the estate, together
19 with all books, accounts and papers relating to assets of the
20 estate.

21 (3) Any guardian of the person or guardian of the estate
22 summarily removed under this section may petition to have the
23 decree of removal vacated and to be reinstated. If the court
24 vacates the decree of removal and reinstates the guardian, it
25 shall thereupon make any appropriate orders to accomplish the
26 reinstatement.

27 (c) Discharge of guardian and surety.--After confirmation of
28 the final account and distribution to the parties entitled, a
29 guardian of the estate and the guardian's surety may be
30 discharged by the court from future liability. The court may

1 discharge only the surety from future liability, allowing the
2 guardian to continue without surety, upon condition that no
3 further assets shall come into the control of the guardian until
4 the guardian files another bond with sufficient surety, if
5 required.

6 § 5515.2. Appointment of guardian in conveyance.

7 A deed or instrument creating a gift or designating a
8 beneficiary in a life insurance policy, annuity contract,
9 retirement plan, including, but not limited to, any tax
10 qualified or nonqualified pension, profit sharing, stock bonus,
11 employee savings and retirement plan, deferred compensation plan
12 or individual retirement account, or another plan or contractual
13 arrangement providing for payments to the incapacitated person
14 or to others after the incapacitated person's death, may contain
15 an appointment of a guardian of the estate or interest of each
16 named beneficiary who is incapacitated. Payment by an insurance
17 or other financial services company to the beneficiary's
18 guardian so appointed discharges the paying company to the same
19 effect as payment to an otherwise duly appointed and qualified
20 guardian.

21 § 5515.3. Bond.

22 (a) General rule.--Except as provided in this section, every
23 guardian of the estate shall execute and file a bond in the name
24 of the Commonwealth, with sufficient surety, in an amount the
25 court considers necessary, having regard to the value of the
26 personal estate which will come into the control of the
27 guardian, and conditioned in the following form:

28 (1) If the guardian administers the estate well and
29 according to law, this obligation shall be void, but
30 otherwise it remains in force.

1 (2) If a co-guardian administers the estate well and
2 according to law, this obligation shall be void as to that
3 co-guardian who so administers the estate, but otherwise it
4 remains in force.

5 (b) Exceptions.--Unless deemed advisable by the court for
6 cause shown, no bond is required of the following:

7 (1) A guardian appointed by or in accordance with the
8 terms of a will, inter vivos instrument or insurance contract
9 as to the property acquired under the authority of the
10 appointment, unless it is required by the conveyance.

11 (2) A bank and trust company, a trust company
12 incorporated in this Commonwealth or a national bank having
13 its principal office in this Commonwealth.

14 (c) Court discretion.--The court has discretion to not
15 require a bond:

16 (1) from a nonresident corporation or a national bank
17 having its principal office outside this Commonwealth,
18 otherwise qualified to act as guardian; and

19 (2) in all other cases when, for cause shown, it finds
20 that no bond is necessary.

21 (d) Amount.--For cause shown and after such notice, if any,
22 as it directs, the court may require a surety bond or increase
23 or decrease the amount of an existing bond or require more or
24 less security.

25 Section 11. Sections 5518 and 5518.1 of Title 20 are amended
26 to read:

27 § 5518. Evidence of incapacity.

28 To establish incapacity in a proceeding in which the
29 incapacity of the alleged incapacitated person is contested, the
30 petitioner must present testimony, in person or by

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

20 § 5518.1. Cross-examination of witnesses.

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

25 Section 12. Section 5521(b), (c) and (g) of Title 20,
26 amended October 24, 2018 (P.L.724, No.114), are amended and the
27 section is amended by adding subsections to read:

28 § 5521. Provisions concerning powers, duties and liabilities.

29 * * *

30 (a.1) Death or removal of guardian.--

1 (1) An action or proceeding in which a guardian of the
2 person or guardian of the estate is a party is not abated by
3 the death or resignation of the guardian or by the
4 termination of the guardian's authority.

5 (2) The successor of the guardian may be substituted in
6 the action or proceeding in the manner provided by law.

7 [(b) Duty of guardian of the estate.--The provisions
8 concerning the powers, duties and liabilities of guardians of
9 incapacitated persons' estates shall be the same as those set
10 forth in the following provisions of this title relating to
11 personal representatives of decedents' estates and guardians of
12 minors' estates:

13 Section 3313 (relating to liability insurance).

14 Section 3314 (relating to continuation of business).

15 Section 3315 (relating to incorporation of estate's
16 business).

17 Section 3317 (relating to claims against co-fiduciary).

18 Section 3318 (relating to revival of judgments against
19 personal representative).

20 Section 3319 (relating to power of attorney; delegation
21 of power over subscription rights and fractional shares;
22 authorized delegations).

23 Section 3320 (relating to voting stock by proxy).

24 Section 3321 (relating to nominee registration; corporate
25 fiduciary as agent; deposit of securities in a clearing
26 corporation; book-entry securities).

27 Section 3322 (relating to acceptance of deed in lieu of
28 foreclosure).

29 Section 3323 (relating to compromise of controversies).

30 Section 3324 (relating to death or incapacity of

1 fiduciary).

2 Section 3327 (relating to surviving or remaining personal
3 representatives).

4 Section 3328 (relating to disagreement of personal
5 representatives).

6 Section 3331 (relating to liability of personal
7 representative on contracts).

8 Section 3332 (relating to inherent powers and duties).

9 Section 3355 (relating to restraint of sale).

10 Section 3356 (relating to purchase by personal
11 representative).

12 Section 3359 (relating to record of proceedings; county
13 where real estate lies).

14 Section 3360 (relating to contracts, inadequacy of
15 consideration or better offer; brokers' commissions).

16 Section 3372 (relating to substitution of personal
17 representative in pending action or proceedings).

18 Section 3374 (relating to death or removal of fiduciary).

19 Section 3390 (relating to specific performance of
20 contracts).

21 Section 5141 (relating to possession of real and personal
22 property).

23 Section 5142 (relating to inventory).

24 Section 5143 (relating to abandonment of property).

25 Section 5145 (relating to investments).

26 Section 5146 (relating to guardian named in conveyance).

27 Section 5147 (relating to proceedings against guardian).

28 Section 5151 (relating to power to sell personal
29 property).

30 Section 5154 (relating to title of purchaser).

1 Section 5155 (relating to order of court).]

2 (b.1) Powers of guardian of the estate without further court
3 approval.--Except as otherwise qualified, limited or directed by
4 the court in its order of appointment, a guardian of the estate
5 of an incapacitated person, without further court authorization
6 or confirmation, shall have the following powers:

7 (1) Insure the assets of the estate against damage or
8 loss and, at the expense of the estate, protect the
9 incapacitated person, the guardian of the estate, the
10 guardian of the person and any agent or employee of the
11 guardian from liability to a third person that arises from
12 the administration of the incapacitated person's estate. The
13 power to purchase insurance at the expense of the estate does
14 not include insurance to protect the guardian of the estate
15 from any action ultimately found to be subject to surcharge.

16 (2) Take any legal action against a co-guardian of the
17 estate to protect the estate of the incapacitated person, if
18 one of two or more guardians of the estate is individually
19 liable to the estate.

20 (3) Employ a custodian, hold property unregistered or in
21 the name of a nominee, including the nominee of any
22 institution employed as custodian, without disclosing the
23 fiduciary relationship and without retaining possession and
24 control of securities or other property so held or registered
25 and pay reasonable compensation to the custodian.

26 (4) Take for the estate from the owner of property
27 encumbered by a mortgage owned by the estate a deed in lieu
28 of foreclosure, in which event the real estate shall be
29 considered personalty to the same extent as though title were
30 acquired by foreclosure at sheriff's sale. Any deed

1 previously accepted is hereby valid in accordance with this
2 paragraph.

3 (5) With respect to the tangible or intangible personal
4 property of the estate and subject to section 5536 (relating
5 to distributions of income and principal during incapacity):

6 (i) Acquire, take possession of or dispose of the
7 personal property through the selling or exchanging of
8 the personal property:

9 (A) For cash or on credit.

10 (B) At public or private sale.

11 (C) Without obligation to repudiate an otherwise
12 binding agreement in favor of a better offer.

13 (ii) Wherever the personal property is located and
14 until the personal property is distributed or sold:

15 (A) Maintain and administer the personal
16 property.

17 (B) Make all reasonable expenditures necessary
18 to preserve the personal property.

19 (C) Maintain any action with respect to the
20 personal property.

21 (6) Accept, hold, invest in and retain investments as
22 provided by Chapter 72 (relating to prudent investor rule).

23 (7) Advance money for the protection of the estate and
24 for all expenses, losses and liability sustained in the
25 administration of the estate or because of the holding or
26 ownership of any estate asset. The guardian of the estate has
27 a lien on the estate assets for an advance under this
28 paragraph, including interest on the advance.

29 (8) With respect to an incapacitated person's service as
30 fiduciary, which may include, without limitation, as an

1 executor, administrator, trustee, guardian, agent or officer
2 or director of a corporation:

3 (i) Renounce any fiduciary position to which the
4 incapacitated person has been appointed.

5 (ii) Resign any fiduciary position in which the
6 incapacitated person is then serving and:

7 (A) file an accounting with a court of competent
8 jurisdiction; or

9 (B) settle on receipt and release or other
10 informal method as the guardian of the estate deems
11 advisable.

12 (9) Vote a security, in person or by general or limited
13 proxy, with or without power of substitution.

14 (10) With respect to the real property of the estate:

15 (i) Manage, repair, improve, maintain, restore,
16 alter, build, protect or insure.

17 (ii) Demolish structures.

18 (iii) Collect rent, earnings and other proceeds.

19 (iv) Pay, contest, protest and compromise taxes and
20 assessments.

21 (v) Grant and obtain easements.

22 (vi) Develop, dedicate, partition or subdivide.

23 (vii) File plans, applications or other documents.

24 (viii) Release in whole or in part, assign the whole
25 or a part of, satisfy in whole or in part and enforce any
26 mortgage, encumbrance, lien or other claim to real
27 property.

28 (ix) Subject to subsection (b.2)(3) and section
29 5536, generally exercise all powers that a person who is
30 not incapacitated could exercise.

1 (b.2) Powers of guardian of the estate with further court
2 approval.--A guardian of the estate of an incapacitated person
3 may have the following powers only with further court
4 authorization or confirmation:

5 (1) Continue any business in which the incapacitated
6 person has an ownership interest, for the benefit of the
7 incapacitated person's estate, after the court gives due
8 regard to the order of appointment and any other factor
9 deemed relevant, and aided by the report of a master if
10 necessary. An order by the court under this paragraph may be
11 with or without notice. If prior notice is not given to all
12 parties in interest, it shall be given within five days after
13 the order or within such extended time as the court, for
14 cause shown, shall allow. Any party in interest may, at any
15 time, petition the court to revoke or modify the order. The
16 order may provide:

17 (i) for the conduct of business by the guardian of
18 the estate alone or jointly with others, or as a
19 corporation, partnership, limited liability company or
20 other entity to be formed;

21 (ii) the extent of the liability of the estate or
22 any part thereof, or of the guardian of the estate, for
23 obligations incurred in the continuation of the business;

24 (iii) whether liabilities incurred in the conduct of
25 the business are to be chargeable solely to the part of
26 the estate set aside for use in the business or to the
27 estate as a whole;

28 (iv) the period of time the business may be
29 conducted;

30 (v) for the compensation of the guardian of the

1 estate actively managing, supervising or engaging in the
2 operation of an entity or business, from the estate's
3 assets or from the entity or business, as appropriate,
4 provided that the compensation is reasonably based upon
5 the actual responsibilities assumed and performed; and
6 (vi) other regulations, including accountings, as
7 the court shall deem advisable.

8 (2) After notice to all parties in interest and after
9 the court gives due regard to the order of appointment and
10 any other factor deemed relevant and aided by the report of a
11 master if necessary:

12 (i) Organize a corporation or form a partnership,
13 limited liability company or other entity to carry on the
14 business of the incapacitated person, whether the
15 business was owned solely or with others, with the
16 guardian of the estate exercising this power alone or
17 jointly with others.

18 (ii) Contribute for stock of the corporation, as
19 capital, or for an interest in a partnership, limited
20 liability company or other entity, all or part of the
21 property of the incapacitated person that was invested in
22 the business.

23 (3) With respect to the real property of the estate:

24 (i) Sell or buy any real property at public, private
25 or judicial sale, exchange any real property or grant or
26 obtain an option for the sale, purchase or exchange of
27 any real property. The court may direct:

28 (A) The terms and security for any of these
29 powers.

30 (B) The reasonable notice to the parties in

1 interest, including heirs of the incapacitated
2 person.

3 (ii) Join with the spouse of the incapacitated
4 person in the performance of any of the acts under
5 subparagraph (i) with respect to property held by the
6 entireties.

7 (iii) Release the right of the incapacitated person
8 in the real property of the person's spouse and join in
9 the deed of the spouse on behalf of the incapacitated
10 person.

11 (iv) Abandon any real property.

12 (4) A guardian of the estate may compromise or settle a
13 claim by or against the estate, through litigation or
14 otherwise. The guardian shall seek approval of the orphans'
15 court division having jurisdiction of the guardianship of any
16 such compromise or settlement, subject to the following:

17 (i) The court may enter a decree authorizing the
18 compromise or settlement to be made:

19 (A) On petition by the guardian of the estate or
20 any party in interest setting forth all the facts and
21 circumstances.

22 (B) After notice as the court directs.

23 (C) Aided, if necessary, by the report of a
24 master.

25 (ii) For a compromise or settlement of an action in
26 which damages are sought on behalf of the estate, the
27 court that has jurisdiction and in which the action is
28 pending may approve the compromise or settlement,
29 including an agreement for the payment of counsel fees
30 and other proper expenses incident to the action, upon:

1 (A) oral motion by plaintiff's counsel of record
2 in the action; or

3 (B) petition by the guardian of the estate.

4 (iii) The order of the court approving the
5 compromise or settlement or the agreement for the payment
6 of counsel fees and other expenses shall be subject to
7 approval of the orphans' court division having
8 jurisdiction of the guardianship.

9 (iv) The guardian of the estate shall file a copy of
10 the order of the court approving the compromise or
11 settlement with the clerk of the court having
12 jurisdiction of the estate. When the guardian of the
13 estate has been required to give bond, the guardian may
14 not receive the proceeds of the compromise or settlement
15 until:

16 (A) the court of the county having jurisdiction
17 of the estate has made an order excusing the guardian
18 from entering additional security; or

19 (B) the guardian has entered the additional
20 security that is required by the court of the county
21 having jurisdiction of the estate.

22 (b.3) Revival of judgment.--When the estate holds a judgment
23 that is a lien on the real estate of the guardian, any person
24 interested in the incapacitated person's estate may bring an
25 appropriate action to revive it and to continue its lien.

26 (b.4) Death or incapacity of guardian of estate.--The
27 personal representative of the estate of a deceased guardian of
28 the estate or the guardian of an incapacitated guardian of the
29 estate by reason of the position so held shall not succeed to
30 the administration of, or have the right to possess, any asset

1 of the estate that was being administered by the deceased or
2 incapacitated guardian of the estate, except to protect it
3 pending its delivery to the person entitled to it. The account
4 of the deceased or incapacitated guardian of the estate may be
5 filed by the fiduciary of the guardian's estate and shall be
6 filed if the court shall so direct. The court may direct the
7 fiduciary of a deceased or incapacitated guardian of the estate
8 to make the distribution and to make the transfers and
9 assignments necessary to carry into effect a decree of
10 distribution.

11 (b.5) Surviving or remaining guardians.--Unless the order of
12 appointment specifies otherwise, surviving or remaining
13 guardians of the estate shall have all the powers of the
14 original guardians of the estate.

15 (b.6) Disagreement of guardians of the estate.--If a dispute
16 arises among guardians of the estate, the decision of the
17 majority shall control unless otherwise provided by the court. A
18 dissenting guardian of the estate shall join with the majority
19 to carry out a majority decision requiring affirmative action
20 and may be ordered to do so by the court. A dissenting guardian
21 of the estate shall not be liable for the consequences of any
22 majority decision even though the guardian joins in carrying it
23 out, if the dissent is expressed promptly in writing to all the
24 other guardians of the estate, but liability for failure to join
25 in the further administration of the estate or to prevent a
26 breach of fiduciary duty may not be thus avoided. If a dispute
27 arises among guardians of the estate as to the exercise or
28 nonexercise of any of their powers and there is no agreement of
29 a majority of them, unless otherwise provided by the court, the
30 court, upon petition filed by any of the guardians of the estate

1 or by any party in interest, aided if necessary by the report of
2 a master, in its discretion, may direct the exercise or
3 nonexercise of the power as the court shall deem for the best
4 interest of the estate.

5 (b.7) Filing of decree.--If a guardian of the estate has the
6 power to engage in a transaction involving the real estate of an
7 incapacitated person, a certified copy of the decree appointing
8 the guardian of the estate may be recorded in the office for the
9 recording of deeds in any county where the real estate, which is
10 subject to that power, is located.

11 (b.8) Inadequacy of consideration.--

12 (1) Except as provided in paragraphs (2) and (3), when a
13 guardian of the estate makes a contract, the inadequacy of
14 consideration or the receipt of an offer to deal on other
15 terms does not:

16 (i) relieve the guardian of the estate of the
17 obligation to perform the contract, except as otherwise
18 agreed by the parties; or

19 (ii) constitute a basis for any court to set aside
20 the contract or refuse to enforce it by specific
21 performance or otherwise.

22 (2) This subsection does not affect or change the
23 inherent right of the court to set aside a contract for
24 fraud, accident or mistake.

25 (3) Nothing in this subsection shall affect the
26 liability of a guardian of the estate for surcharge on the
27 ground of negligence or bad faith in making a contract.

28 (b.9) Substitution of party.--If a party to a pending action
29 or proceeding has a guardian of the estate appointed, the
30 guardian of the estate of the incapacitated person may be

1 substituted as a party as provided by law.

2 (b.10) Specific performance of contracts.--

3 (1) If a person enters into an agreement to purchase or
4 sell real estate or personal estate and a guardian of the
5 estate is appointed for the person before the consummation of
6 the agreement, the guardian of the estate may consummate the
7 agreement. If the guardian of the estate does not consummate
8 the agreement, the court may order specific performance of
9 the agreement:

10 (i) on the application of any party in interest;

11 (ii) after such notice and with such security, if
12 any, as the court may direct; and

13 (iii) if the agreement would have been enforced
14 specifically had the guardian of the estate not been
15 appointed.

16 (2) The guardian of the estate or other person as the
17 court directs shall execute any necessary deed or transfer
18 regarding the agreement under this subsection. The title of
19 any purchaser under an agreement in which the incapacitated
20 person was the vendor shall be the same as though the
21 incapacitated person had conveyed or transferred the property
22 prior to the appointment of the guardian of the estate.

23 (3) When any petition for specific performance of an
24 agreement to purchase or sell real estate is filed, the
25 prothonotary of the court of common pleas where the real
26 estate or any part of it lies, upon the receipt of a
27 certificate of such fact by the clerk of the court where the
28 petition was filed, shall enter the petition upon either the
29 judgment or ejectment and miscellaneous indexes against the
30 defendants as directed by local rules of court and shall

1 certify it as lis pendens in any certificate of search that
2 the prothonotary is required to make.

3 (b.11) Abandonment of property.--Subject to subsection (b.2)
4 (3):

5 (1) A guardian of the estate may abandon property of the
6 incapacitated person if the property is so burdensome or
7 encumbered or in such condition that it is of no value to the
8 estate.

9 (2) The court may authorize the guardian of the estate
10 to transfer, renounce or release property of the
11 incapacitated person without consideration if:

12 (i) the property cannot be abandoned without
13 transfer of title to another or without a formal
14 renunciation or release; and

15 (ii) the court finds that the transfer, renunciation
16 or release will be for the best interests of the estate.

17 (b.12) Title of purchaser.--If the guardian of the estate of
18 an incapacitated person has given a bond as required in
19 accordance with this title, any sale, pledge, mortgage or
20 exchange by the guardian of the estate, whether pursuant to a
21 decree or to the exercise of a power under this title, shall
22 pass the full title of the incapacitated person, free of any
23 right of the incapacitated person's spouse, unless otherwise
24 specified. Persons dealing with the guardian of the estate shall
25 have no obligation to see to the proper application of the cash
26 or other assets given in exchange for the property of the
27 incapacitated person. A sale or exchange by a guardian of the
28 estate pursuant to a decree under subsection (b.2) (3) shall have
29 the effect of a judicial sale as to the discharge of liens, but
30 the court may decree a sale or exchange freed and discharged

1 from the lien of any mortgage otherwise preserved from discharge
2 by existing law if the holder of the mortgage consents by
3 writing filed in the proceeding. No sale, mortgage, exchange or
4 conveyance shall be prejudiced by the subsequent dismissal of
5 the guardian of the estate if the person dealing with the
6 guardian did so in good faith.

7 (c) Reports.--

8 (1) Each guardian of an incapacitated person shall file
9 with the court appointing [him] the guardian a report, [at
10 least once] within the first 12 months of [his] the
11 appointment and [at least] annually thereafter, attesting to
12 the following:

13 (i) Guardian of the estate:

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

15 (B) current income;

16 (C) expenditures of principal and income since
17 the last report; and

18 (D) needs of the incapacitated person for which
19 the guardian has provided since the last report.

20 (ii) Guardian of the person:

21 (A) current address and type of placement of the
22 incapacitated person;

23 (B) major medical or mental problems of the
24 incapacitated person;

25 (C) a brief description of the incapacitated
26 person's living arrangements and the social, medical,
27 psychological and other support services he is
28 receiving;

29 (D) the opinion of the guardian as to whether
30 the guardianship should continue or be terminated or

1 modified and the reasons therefor; [and]

2 (E) number and length of times the guardian or
3 the guardian's representative personally visited the
4 incapacitated person in the past year; and

5 (F) plans for future care, where appropriate.

6 (2) Within 60 days of the death of the incapacitated
7 person or an adjudication of capacity and modification of
8 existing orders, the guardian shall file a final report with
9 the court.

10 (3) No less than quarterly, the clerk of the orphans'
11 court shall transmit to the court a list of guardians who are
12 delinquent at least 30 days in filing the reports required
13 under this section. The court shall take appropriate
14 enforcement action against such guardians.

15 (4) The court shall develop a procedure for the
16 examination of the annual reports to ensure that the
17 guardians are acting in the best interests of the
18 incapacitated persons.

19 (5) Failure of a guardian to file a timely report under
20 this subsection shall subject the guardian to appropriate
21 sanctions.

22 (c.1) Records of guardian.--Each guardian of an
23 incapacitated person shall keep records regarding the
24 guardianship and the incapacitated person. Failure of a guardian
25 to keep records under this subsection shall subject the guardian
26 to appropriate sanctions.

27 * * *

28 (d.1) Health care decisions.--

29 (1) Subject to the following, a guardian of the person
30 shall have the same authority to make health care decisions

1 on behalf of the incapacitated person as a health care
2 representative under section 5461(c) (relating to decisions
3 by health care representative), and a health care decision by
4 the guardian of the person shall be effective without court
5 approval as with a health care representative under section
6 5461(j):

7 (i) Any limitations and conditions set forth in the
8 order of appointment.

9 (ii) The same health care decision-making process as
10 prescribed in section 5456(c) (relating to authority of
11 health care agent).

12 (iii) The same limitations under sections 5429
13 (relating to pregnancy) and 5462(c) (relating to duties
14 of attending physician and health care provider),
15 including the requirement that health care necessary to
16 preserve life be given to an individual who has neither
17 an end-stage medical condition nor is permanently
18 unconscious.

19 (iv) Subsection (d).

20 (v) Subsection (f).

21 (vi) Any other provision regarding health care
22 representatives as set forth in Chapter 54 (relating to
23 health care), except section 5461(d) regarding who may
24 act as health care representative.

25 (2) To the extent practicable, a guardian of the person
26 shall consult with close family members of the incapacitated
27 person in making a health care decision, particularly one
28 involving end-of-life decision making.

29 (3) A petition that is filed for the appointment of a
30 guardian of the person under section 5511 (relating to

1 petition and hearing; independent evaluation) on or after (in
2 preparing this act for printing in the Laws of Pennsylvania
3 and the Pennsylvania Consolidated Statutes, the Legislative
4 Reference Bureau shall insert here, in lieu of this
5 statement, the effective date of this subsection) shall state
6 whether it is proposed that the guardian of the person shall
7 have the power to make health care decisions and, if so,
8 whether the guardian shall have all the powers of a health
9 care representative to make health care decisions as defined
10 in section 5422 (relating to definitions), including
11 decisions involving health care necessary to preserve life if
12 the incapacitated person were to be in an end-stage medical
13 condition or be permanently unconscious, and any limitation
14 of those powers.

15 (4) Notice of a petition or hearing under section 5511
16 shall contain the information under paragraph (3).

17 (5) An order of appointment of a guardian of the person
18 that is issued on or after (in preparing this act for
19 printing in the Laws of Pennsylvania and the Pennsylvania
20 Consolidated Statutes, the Legislative Reference Bureau shall
21 insert here, in lieu of this statement, the effective date of
22 this subsection) shall specify whether the guardian of the
23 person shall have the power to make health care decisions
24 and, if so, whether the guardian shall have all the powers of
25 a health care representative to make health care decisions as
26 defined in section 5422, including decisions involving health
27 care necessary to preserve life if the incapacitated person
28 were to be in an end-stage medical condition or be
29 permanently unconscious, and any limitation of those powers.

30 (6) A guardian of the person appointed before (in

1 preparing this act for printing in the Laws of Pennsylvania
2 and the Pennsylvania Consolidated Statutes, the Legislative
3 Reference Bureau shall insert here, in lieu of this
4 statement, the effective date of this subsection) shall have
5 the same powers as a health care representative unless:

6 (i) a prior court order has limited the power of the
7 guardian of the person to make health care decisions; or

8 (ii) a health care representative is available and
9 assumes authority to act by agreement between the health
10 care representative and the guardian of the person, in
11 which case, the guardian of the person shall thereafter
12 have no health care decision-making powers.

13 * * *

14 (g) [**Criminal and civil immunity**] Liability of guardian of
15 person.--

16 (1) In the absence of gross negligence, recklessness or
17 intentional misconduct, a [**unit of local government,**
18 **nonprofit corporation or guardianship support agency under**
19 **Subchapter F (relating to guardianship support) appointed as**
20 **a] guardian of the person shall not be criminally liable or**
21 civilly liable for damages for performing duties as a
22 guardian of the person, as authorized under this chapter.

23 (2) Except as otherwise agreed, a guardian of the person
24 is not personally liable on a contract properly entered into
25 by the guardian of the person in a fiduciary capacity.

26 (h) Liability of guardian of estate.--

27 (1) Except as otherwise agreed, a guardian of the estate
28 is not personally liable on a contract properly entered into
29 in a fiduciary capacity in the course of administration of
30 the estate unless the guardian fails to reveal in the

1 contract the representative capacity and identify the estate.

2 (2) If a guardian of the estate fails to exercise
3 reasonable care, skill and caution for obligations arising
4 from ownership or control of property of the estate or for
5 other acts or omissions occurring in the course of
6 administration of the estate, the guardian of the estate may
7 be personally liable to the estate. The court shall evaluate
8 the application of reasonable care, skill and caution in the
9 context of the identity, background and experience of the
10 guardian of the estate.

11 (3) A question of liability between the estate and the
12 guardian personally may be determined in a proceeding for
13 accounting, surcharge or indemnification or in another
14 appropriate proceeding.

15 (i) Delegation by guardian of estate.--A guardian of the
16 estate may delegate powers and duties, including discretionary
17 powers and duties, and an agent may accept the delegation of
18 powers and duties, subject to the following:

19 (1) A guardian of the estate shall exercise reasonable
20 care, skill and caution in:

21 (i) Selecting an agent.

22 (ii) Establishing the scope and specific terms of
23 the delegation, consistent with the purposes and terms of
24 the guardianship.

25 (iii) Reviewing periodically the agent's actions in
26 order to monitor the agent's performance and compliance
27 with the scope and specific terms of the delegation.

28 (2) The agent shall comply with the scope and terms of
29 the delegation, exercise the delegated duties and powers with
30 reasonable care, skill and caution and be liable to the

1 incapacitated person's estate for failure to do so. An agent
2 who represents having special skills or expertise shall use
3 those special skills or that expertise.

4 (3) A guardian of the estate who complies with paragraph
5 (1) is not liable to the incapacitated person or to the
6 incapacitated person's estate for an action of the agent to
7 whom the function was delegated.

8 (4) An agent who accepts the delegation of duties or
9 powers from a guardian of the estate who is subject to the
10 jurisdiction of a court of this Commonwealth shall be deemed
11 to have submitted to the jurisdiction of that court even if
12 the terms of the delegation provide for a different
13 jurisdiction or venue.

14 (5) A co-guardian of the estate may delegate duties and
15 powers to another co-guardian of the estate if the delegating
16 co-guardian reasonably believes that the other co-guardian
17 has greater skills than the delegating co-guardian with
18 respect to those duties and powers and the other co-guardian
19 accepts the delegation. The delegating co-guardian shall not
20 be responsible for the decisions, actions or inactions of the
21 co-guardian to whom those duties and powers have been
22 delegated if the delegating co-guardian has exercised
23 reasonable care, skill and caution in establishing the scope
24 and specific terms of the delegation and in reviewing
25 periodically the performance of the co-guardian to whom the
26 duties and powers have been delegated and that co-guardian's
27 compliance with the scope and specific terms of the
28 delegation.

29 (j) Inventory.--

30 (1) Within 90 days after the order of appointment of an

1 incapacitated person's guardian of the estate, the guardian
2 shall prepare and file with the appointing court a detailed
3 inventory of:

4 (i) The real and personal property of the estate.

5 (ii) Other assets in which the incapacitated person
6 has an interest, including, but not limited to,
7 information regarding life insurance, annuities and
8 retirement plans.

9 (iii) All income received by the guardian on behalf
10 of the incapacitated person and all funds received from
11 the United States Department of Veterans Affairs, Social
12 Security Administration and other periodic retirement or
13 disability payments under private or governmental plans
14 and other periodic payments payable for the life or life
15 expectancy of the incapacitated person.

16 (2) The inventory under paragraph (1) shall be filed
17 with an oath or affirmation that the inventory is believed to
18 be complete and accurate as far as information permits.

19 Section 13. Title 20 is amended by adding a section to read:

20 § 5526. Protection of person dealing with guardian.

21 (a) Third-party liability.--Any person who is given
22 instructions by a guardian in accordance with the terms of a
23 guardianship order shall comply with the instructions. Any
24 person who without reasonable cause fails to comply with those
25 instructions shall be subject to civil liability for any damages
26 resulting from noncompliance. Reasonable cause under this
27 subsection includes, but is not limited to, a good faith report
28 having been made by the third party to the local protective
29 services agency regarding abuse, neglect, exploitation or
30 abandonment under section 302 of the act of November 6, 1987

1 (P.L.381, No.79), known as the Older Adults Protective Services
2 Act, or section 302 of the act of October 7, 2010 (P.L.484,
3 No.70), known as the Adult Protective Services Act.

4 (b) Third-party immunity.--Any person who acts in good faith
5 reliance on a guardianship order shall incur no liability as a
6 result of acting in accordance with the instructions of the
7 guardian.

8 (c) Information regarding guardianship.--Upon request, a
9 guardian shall:

10 (1) Give a copy of the guardianship order to the person
11 to whom the guardian gives instructions, along with an
12 affidavit of the guardian certifying that the guardianship
13 order remains effective as written.

14 (2) Inform the person of any restrictions or limitations
15 on the guardian's authority.

16 Section 14. Sections 5531, 5536 and 5553(a) of Title 20 are
17 amended to read:

18 § 5531. When [accounting] account filed.

19 A guardian shall file an account of his administration
20 whenever directed to do so by the court [or] and may file an
21 account [at the termination of the guardianship, or] at any
22 other time [or times authorized by the court].

23 § 5536. Distributions of income and principal during
24 incapacity.

25 (a) In general.--[All income received by a guardian of the
26 estate of an incapacitated person, including (subject to the
27 requirements of Federal law relating thereto) all funds received
28 from the Veterans' Administration, Social Security
29 Administration and other periodic retirement or disability
30 payments under private or governmental plans, in the exercise of

1 a reasonable discretion, may be expended in the care and
2 maintenance of the incapacitated person, without the necessity
3 of court approval.]

4 (1) In reasonably exercising discretion, a guardian of
5 the estate of an incapacitated person may expend without
6 court approval for the care and maintenance of the
7 incapacitated person all funds received from the United
8 States Department of Veterans Affairs, Social Security
9 Administration, other periodic retirement or disability
10 payments under private or governmental plans and other
11 periodic payments payable for the life or life expectancy of
12 the incapacitated person. The court may limit discretionary
13 expenditures of income where the financial circumstances and
14 needs of the incapacitated person so require.

15 (2) The court, for cause shown and with only such notice
16 as it considers appropriate in the circumstances, may
17 authorize or direct the payment or application of any or all
18 of the income or principal of the estate of an incapacitated
19 person for the care, maintenance or education of the
20 incapacitated person, his spouse, children or those for whom
21 he was making such provision before his incapacity, or for
22 the reasonable funeral expenses of the incapacitated person's
23 spouse, child or indigent parent.

24 (3) In proper cases, the court may order payment of
25 amounts directly to the incapacitated person for his
26 maintenance or for incidental expenses and may ratify
27 payments made for these purposes.

28 (4) For purposes of this subsection, the term "income"
29 means income as determined in accordance with the rules set
30 forth in Chapter 81 (relating to principal and income),

1 [other than] but the power to adjust and the power to convert
2 to a unitrust[.] shall not apply, and periodic payments that
3 are not payable for the life or life expectancy of the
4 incapacitated person are considered to be principal under
5 this subsection.

6 (5) Fees for an incapacitated person's guardian of the
7 person or guardian of the estate may not be paid from the
8 income or principal of the incapacitated person's estate
9 without court approval. However, the court may prospectively
10 authorize a guardian's fees and retain the right to adjust
11 and approve those fees upon review.

12 (b) Estate plan.--[The court, upon petition and with notice
13 to all parties in interest and for good cause shown,] Subject to
14 subsection (c), for good cause shown, the court shall have the
15 power to substitute its judgment for that of the incapacitated
16 person with respect to the estate and affairs of the
17 incapacitated person for the benefit of the incapacitated
18 person, his family, members of his household, his friends and
19 charities in which he was interested. This power shall include,
20 but is not limited to, the power to:

21 (1) Make gifts, outright or in trust.

22 (2) Convey, release or disclaim his contingent and
23 expectant interests in property, including marital property
24 rights and any right of survivorship incident to joint
25 tenancy or tenancy by the entirety.

26 (3) Release or disclaim his powers as trustee, personal
27 representative, custodian for minors, or guardian.

28 (4) Exercise, release or disclaim his powers as donee of
29 a power of appointment.

30 (5) Enter into contracts.

1 (6) Create for the benefit of the incapacitated person
2 or others, revocable or irrevocable trusts of his property
3 which may extend beyond his disability or life.

4 (7) Exercise options of the incapacitated person to
5 purchase or exchange securities or other property.

6 (8) Exercise all rights and privileges, including the
7 designation of a beneficiary, under life insurance policies,
8 annuity contracts, retirement plans, including, but not
9 limited to, any tax qualified or nonqualified pension, profit
10 sharing, stock bonus, employee savings and retirement plan,
11 deferred compensation plan or individual retirement account
12 or other plans or contractual arrangements providing for
13 payments to the incapacitated person or to others after his
14 death.

15 (9) Exercise his right to claim or disclaim an elective
16 share in the estate of his deceased spouse and renounce any
17 interest by testate or intestate succession or by inter vivos
18 transfer.

19 (10) Change the incapacitated person's residence or
20 domicile.

21 (11) Modify by means of codicil or trust amendment, as
22 the case may be, the terms of the incapacitated person's will
23 or of any revocable trust created by the incapacitated
24 person, as the court may deem advisable in light of changes
25 in applicable tax laws.

26 In the exercise of its judgment for that of the incapacitated
27 person, the court, first being satisfied that assets exist which
28 are not required for the maintenance, support and well-being of
29 the incapacitated person, may adopt a plan of gifts [which
30 results in minimizing] or authorize any other action, including,

1 but not limited to, an action set forth in this subsection that
2 minimizes current or prospective taxes, [or which] carries out a
3 lifetime giving pattern or creates or preserves the
4 incapacitated person's eligibility for a benefit, a program or
5 assistance under a statute or regulation. The court in
6 exercising its judgment shall consider the testamentary and
7 inter vivos intentions of the incapacitated person insofar as
8 they can be ascertained.

9 (c) Petition and notice.--The court may exercise its power
10 under subsection (b) upon petition and with notice to:

11 (1) All persons who are sui juris and would be entitled
12 to share in the incapacitated person's estate if the
13 incapacitated person died intestate at that time.

14 (2) Any person known to the guardian who would be
15 prejudiced by the proposed action.

16 (3) Other parties as the court may direct.

17 § 5553. Guardianship services.

18 (a) In general.--The guardianship support agency shall be
19 available to serve as guardian of the estate or of the person,
20 or both, of an incapacitated person when no less restrictive
21 alternative will meet the needs of the individual and when no
22 other person is willing and qualified to become guardian. The
23 agency itself may be appointed guardian and no individual need
24 be specified by the court. If appointed, the guardianship
25 support agency shall have all of the powers and duties of a
26 corporate fiduciary and [shall not] may be required to post bond
27 as the court directs.

28 * * *

29 Section 15. This act shall apply to all guardianship
30 petitions that are filed, proceedings that occur and orders that

1 are made on or after the effective date of this section.

2 Section 16. This act shall take effect in 60 days.