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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 924 Session of  
2019

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INTRODUCED BY FARNESE, BAKER, FONTANA, SCHWANK, BREWSTER, COSTA,  
YUDICHAK, BROWNE, PITTMAN, MARTIN AND AUMENT,  
OCTOBER 24, 2019

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REFERRED TO JUDICIARY, OCTOBER 24, 2019

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AN ACT

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

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

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

9 SUBCHAPTER G

10 GUARDIANSHIP FOR MEDICALLY

11 DISABLED ADULT CHILDREN

12 Sec.

13 5561. Definitions.

14 5562. Procedure.

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

17 5564. Review of guardianship.

18 5565. Annual report.

1 5566. Powers, duties and liabilities.

2 5567. Effect of determination.

3 5568. Notice.

4 5569. Sample petitions and notices.

5 § 5561. Definitions.

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

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

15 (1) A medical condition.

16 (2) Treatment for a medical condition.

17 (3) Developmental delay.

18 (4) Physical or mental disability.

19 § 5562. Procedure.

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

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

1 disabled adult child.

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

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

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

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

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

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

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

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

21 (8) The reasons why guardianship is sought.

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

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

27 (11) The qualifications of the proposed guardian.

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

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

1 disabled adult child. The following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 § 5563. Determination of medical disability and appointment of

1           guardian.

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

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

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

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

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

22           (5) The requested duration of the guardianship.

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

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

1 limitations, which may include:

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

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

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

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

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

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

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

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

1 § 5564. Review of guardianship.

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

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

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

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

30 § 5565. Annual report.

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

5 § 5566. Powers, duties and liabilities.

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

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

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

1 including the power:

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

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

8 § 5567. Effect of determination.

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

20 § 5568. Notice.

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

27 § 5569. Sample petitions and notices.

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

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

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

7 Part 1

8 General information.

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

12 Name:

13 Address:

14 Relationship:

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

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

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

23 Name:

24 Date of birth:

25 Residence:

26 Post office address:

27 Maiden name:

28 Marital status:

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

1 petitioner.

2 Name:

3 Address:

4 Name:

5 Address:

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

8 Name:

9 Address:

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

13 Name:

14 Address:

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

19 Name:

20 Address:

21 Part 2

22 Request for appointment of guardian.

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

27 Condition:

28 Age at diagnosis:

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

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

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

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

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

11                  Unable to reside alone.

12                  Unable to provide for his or her personal safety.

13                  Unable to care for his or her residence.

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

16                  Unable to tend to his or her personal hygiene.

17                  Unable to clothe himself or herself.

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

23                  Other:

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

27                   Name:

28                   Address:

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

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

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

8           Consent of individual to appointment as guardian

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

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

14                   (2) I reside at:

15                   (3) My occupation is:

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

18          Date:

19          Signature:

20          Typed name:

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

23                                   IMPORTANT NOTICE

24   TO:

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

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

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

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

17 BY: Clerk of Orphans' Court Division.

18 Affidavit of Service

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

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

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

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

30 Date:

1 Signature:

2 Typed name:

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