

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 924 Session of 2019

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

SENATOR BAKER, JUDICIARY, AS AMENDED, OCTOBER 29, 2019

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 EVIDENCE an individual to be a medically <--
26 disabled adult child and appoint a guardian or guardians of the
27 medically disabled adult's person or estate. THE COURT MAY MAKE <--
28 THE FINDING NO LESS THAN 20 DAYS AFTER RECEIPT OF:

29 (1) THE PETITION;

30 (2) THE AFFIDAVIT OF MEDICAL DISABILITY;

1 (3) THE AFFIDAVIT OF ACCOUNTABILITY BY THE PROPOSED
2 GUARDIAN;

3 (4) THE NOTICE TO THE INDIVIDUAL ALLEGED TO BE A
4 MEDICALLY DISABLED ADULT CHILD; AND

5 (5) ANY OTHER NOTICE REQUIRED BY THIS SUBCHAPTER TO BE
6 SENT TO A PARTY.

7 (b) Petitioner.--The petitioner may be any individual who
8 the court has determined is providing at least 50% financial
9 responsibility or 50% physical custody for the medically
10 disabled adult child.

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

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

15 (2) The names and addresses of parents or guardians of
16 the medically disabled adult child if they are not the
17 petitioner.

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

20 (4) The name and address of the person or institution
21 providing residential services to the medically disabled
22 adult child.

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

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

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

30 (8) The reasons why guardianship is sought.

1 (9) A description of the functional limitations and
2 physical and mental condition of the medically disabled adult
3 child.

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

6 (11) The qualifications of the proposed guardian.

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

8 (1) Written notice of the petition shall be given in
9 large type and in simple language to the alleged medically
10 disabled adult child. The following apply:

11 (i) The notice shall indicate the purpose and
12 seriousness of the proceeding and the rights which can be
13 lost as a result of the proceeding.

14 (ii) The notice shall include an explanation of each
15 right UNDER THIS SUBCHAPTER, including the right to <--
16 request the appointment of counsel and to have counsel
17 appointed, if the court deems it appropriate, and the
18 right to have counsel paid for if it cannot be afforded.

19 (iii) The Supreme Court of Pennsylvania shall
20 establish a uniform citation for the purpose FORM FOR THE <--
21 NOTICE.

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

23 (v) Personal service shall be made on the medically
24 disabled adult child, and the contents and terms of the
25 petition shall be explained to the maximum extent
26 possible in language and terms the individual is most
27 likely to understand.

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

30 (2) Written notice of the petition shall be made by

1 personal service to the following, except if the party is the
2 petitioner, no less than 20 days in advance of the petition
3 being granted:

4 (i) Biological parents of the alleged medically
5 disabled adult child.

6 (ii) Guardians of the alleged medically disabled
7 adult child, if any.

8 (iii) Spouse of the alleged medically disabled adult
9 child, if any.

10 (iv) A person who provides at least 50% of the
11 physical or financial support for the alleged medically
12 disabled adult child.

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

15 (e) Guardian.--The court may ONLY appoint as guardian UNDER <--
16 THIS SUBCHAPTER any person who is providing for at least 50% of
17 the physical or financial support of the medically disabled
18 adult child. The court shall not appoint an individual or entity
19 providing residential services for a fee to the medically
20 disabled adult child or any other person whose interests
21 conflict with those of the medically disabled adult child. A
22 family relationship to an individual shall not, by itself, be
23 considered as an interest adverse to the medically disabled
24 adult child.

25 (f) ~~Dismissal~~ DENIAL of petition.--The court may ~~dismiss~~ <--
26 DENY a ~~proceeding~~ PETITION if the court determines that the <--
27 ~~proceeding~~ PETITION has not been instituted to aid or benefit <--
28 the medically disabled adult child or if the petition is
29 incomplete or fails to provide sufficient facts to proceed. A
30 ~~dismissal~~ DENIAL shall not impact the ability of petitioner to <--

1 file a petition under any other subchapter.

2 (g) Grant of petition.--If, upon review of the petition and
3 supporting evidence, the court finds that there is clear and
4 convincing evidence of the need for guardianship services, the
5 court may grant the petition for limited or plenary guardianship
6 without a hearing. If the alleged medically disabled adult child
7 or any other party provided notice under this subchapter objects
8 to the petition, a hearing shall be scheduled to permit those
9 parties to present evidence in support of the objection before
10 guardianship is granted.

11 § 5563. Determination of medical disability and appointment of
12 guardian.

13 (a) Determination of medical disability.--The petitioner
14 shall provide the court evidence of medical disability which
15 shall include the following:

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

20 (2) An affidavit from the treating physician or other
21 qualified professional who has been treating the medically
22 disabled adult child explaining the extent of the medically
23 disabled adult child's capacity to make and communicate
24 decisions.

25 (3) A statement from the petitioner of the need for
26 guardianship services, including reasonable limitations to
27 encourage a successful transition to adulthood and
28 independence.

29 (4) The type of guardian, ~~limited or plenary, individual~~ <--
30 ~~needed~~ REQUIRED, based on the nature of a condition or <--

1 disability of the medically disabled adult child and the
2 medically disabled adult child's capacity to make and
3 communicate decisions.

4 (5) The requested duration of the guardianship.

5 (b) Limited guardianship.--The court shall prefer limited
6 guardianship.

7 (c) Limited guardian of medically disabled adult child.--On
8 a finding that there is clear and convincing evidence of the
9 need for guardianship services after review of the petition and
10 supporting evidence or after a hearing, the court shall enter an
11 order appointing a limited guardian of the medically disabled
12 adult child with powers consistent with the court's findings of
13 limitations, which may include:

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

16 (2) Designating the place for the medically disabled
17 adult child to live.

18 (3) Ensuring that the medically disabled adult child
19 receives training, education, medical and psychological
20 services and social and vocational opportunities, as
21 appropriate.

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

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

26 (d) Plenary guardian of the medically disabled adult
27 child.--The court may appoint a plenary guardian of the
28 medically disabled adult child only upon a finding after review
29 of the petition and supporting evidence or a hearing that there
30 is clear and convincing evidence that the medically disabled

1 adult child is totally incapacitated and in need of plenary
2 guardianship services.

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

7 (f) Information as to rights.--At the conclusion of a
8 proceeding in which a medically disabled adult child has been
9 assigned a guardian, the court shall ensure that the medically
10 disabled adult child is informed of the medically disabled adult
11 child's right to appeal and to petition to modify or terminate
12 the guardianship.

13 (G) DURATION OF GUARDIANSHIP.--THE COURT SHALL ESTABLISH THE <--
14 DURATION OF THE LIMITED OR PLENARY GUARDIANSHIP FOR A TIME NOT
15 TO EXCEED FIVE YEARS. AFTER THE DURATION, THE GUARDIANSHIP MUST
16 BE RENEWED BY AFFIDAVIT OR REVIEW HEARING, AS DETERMINED BY THE
17 COURT.

18 § 5564. Review of guardianship.

19 (a) Review by affidavit.--If there has been no change in the <--
20 capacity of the medically disabled adult child, the THE court <--
21 may require an updated affidavit of medical disability in lieu
22 of a hearing if no change to the guardianship is sought.

23 (b) Review hearing.--The court may set a date for a review
24 hearing in the court's order establishing the guardianship or
25 hold a review hearing at any time. The court shall conduct a
26 review hearing promptly if the medically disabled adult child,
27 guardian or an interested party petitions the court for a
28 hearing for reason of a significant change in the medically
29 disabled adult child's capacity, a change in the need for
30 guardianship services or the guardian's failure to perform the

1 guardian's duties in accordance with the law or to act in the
2 best interest of the medically disabled adult child. The court
3 may ~~dismiss~~ DENY a petition for review hearing if the court <--
4 determines that the petition is frivolous.

5 (c) To fill vacancy.--The court, after notice to parties in
6 interest as the court shall direct, may, without a hearing,
7 appoint a succeeding guardian to fill a vacancy in the office of
8 guardian or may appoint a coguardian of the medically disabled
9 adult child. If the vacating guardian was a parent who is now
10 deceased, a testamentary nominee of the parent shall be given
11 preference by the court.

12 (d) Burden of proof and rights.--The medically disabled
13 adult child shall have all of the rights enumerated under this
14 chapter. Except when the hearing is held to appoint a successor
15 guardian, the burden of proof, by clear and convincing evidence,
16 shall be on the party advocating modification of guardianship.
17 § 5565. Annual report.

18 The court shall annually file with the Administrative Office
19 of Pennsylvania Courts on forms furnished by the office a
20 statistical and descriptive report to assist in evaluating the
21 operation and costs of the guardianship system.

22 § 5566. Powers, duties and liabilities.

23 (a) Duty of guardian.--It shall be the duty of the guardian
24 of the medically disabled adult child to assert the rights and
25 best interests of the medically disabled adult child. Expressed
26 wishes and preferences of the medically disabled adult child be
27 respected to the greatest possible extent. If appropriate and to
28 meet the needs of the medically disabled adult child, the
29 guardian shall ensure and participate in the development of a
30 plan of supportive services which shall include an explanation

1 of how services may be obtained. The guardian shall also
2 encourage the medically disabled adult child to participate to
3 the maximum extent of the medically disabled adult child's
4 abilities in all decisions affecting the medically disabled
5 adult child, to act on the medically disabled adult child's own
6 behalf and to develop or regain, to the maximum extent possible,
7 the medically disabled adult child's capacity to manage personal
8 affairs.

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

16 (c) Powers and duties not granted to guardian.--The court
17 may not grant to a guardian powers controlled by other statute,
18 including the power:

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

22 (2) To consent on behalf of the medically disabled adult
23 child to the relinquishment of the medically disabled adult
24 child's parental rights.

25 § 5567. Effect of determination.

26 A medically disabled adult child may not make a contract or
27 gift or an instrument in writing in the specific areas in which
28 medical disability has been determined to impact. This section
29 shall not impair the interest in real estate acquired by a bona
30 fide grantee of, or a bona fide holder of a lien on, real estate

1 in a county other than that in which the decree establishing
2 limited capacity is entered, unless the decree or a duplicate
3 original or certified copy thereof is recorded in the office of
4 the recorder of deeds in the county in which the real estate
5 lies before the recording or entering of the instrument or lien
6 under which the grantee or lienholder claims.

7 § 5568. Notice.

8 When the Commonwealth or a political subdivision of the
9 Commonwealth has a claim for maintaining a medically disabled
10 adult child in an institution, the guardian, within three months
11 of the guardian's appointment, shall give notice of the claim to
12 the Department of Human Services or the proper officer of a
13 political subdivision, as appropriate.

14 § 5569. Sample petitions and notices.

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

18 PETITION FOR ADJUDICATION AS MEDICALLY DISABLED ADULT CHILD AND
19 APPOINTMENT OF GUARDIAN

20 This petition is filed to request an adjudication of a
21 medically disabled adult child and the appointment of a guardian
22 for an alleged medically disabled adult child under 20 Pa.C.S. §
23 5563.

24 Part 1

25 General information.

26 (1) The name and address of the petitioner and the
27 petitioner's relationship to the alleged medically disabled
28 adult child.

29 Name:

30 Address:

1 Relationship:

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

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

6 (2) The name, date of birth, residence and post office
7 address of the alleged medically disabled adult child, together
8 with other vital information relating to the alleged medically
9 disabled adult child are:

10 Name:

11 Date of birth:

12 Residence:

13 Post office address:

14 Maiden name:

15 Marital status:

16 (3) The names and addresses of each parent or guardian of
17 the alleged medically disabled adult child if different from
18 petitioner.

19 Name:

20 Address:

21 Name:

22 Address:

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

25 Name:

26 Address:

27 (5) The name and address of the individual or institution
28 providing residential services to the alleged medically disabled
29 adult child.

30 Name:

1 Unable to keep himself or herself properly nourished
2 or hydrated.

3 Unable to tend to his or her personal hygiene.

4 Unable to clothe himself or herself.

5 Unable to make responsible decisions with regard to
6 his or her medical care, including, but not limited to,
7 obtaining health care services and entering himself or
8 herself into a hospital, convalescent home, skilled care
9 facility or similar institution.

10 Other:

11 (10) The petitioner requests that the following individual
12 be appointed guardian of the alleged medically disabled adult
13 child.

14 Name:

15 Address:

16 Qualifications of the proposed guardian, which may
17 include a history of ongoing care:

18 The proposed guardian has no interests adverse to
19 those of the alleged medically disabled adult child. The
20 consent of the proposed guardian is attached to this
21 petition.

22 Wherefore, the petitioner respectfully requests that the
23 Court appoint the above proposed guardian of the alleged
24 medically disabled adult child.

25 Consent of individual to appointment as guardian

26 I, _____,
27 consent to my appointment as guardian of the
28 of _____, an alleged
29 medically disabled adult child, and certify that:

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

1 CHILD, THE COURT MAY APPOINT A GUARDIAN FOR YOU, BASED ON THE
2 NATURE OF ANY CONDITION OR DISABILITY AND YOUR CAPACITY TO MAKE
3 AND COMMUNICATE DECISIONS.

4 BY: Clerk of Orphans' Court Division.

5 Affidavit of Service

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

8 The personal service was made on _____

9 at _____ M. at the following location:

10 The undersigned verifies that, at the time of service, he or
11 she explained the contents and terms of the petition to the
12 alleged medically disabled adult child to the maximum extent
13 possible in language and terms the alleged medically disabled
14 adult child was most likely to understand.

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

17 Date:

18 Signature:

19 Typed name:

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