

# GUARDIANSHIP IN PENNSYLVANIA



Figure 1 Gray lighthouse and blue sky.

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## **GUARDIANSHIP IN PENNSYLVANIA**

### **I. INTRODUCTION**

When an individual reaches the age of 18, regardless of any functional limitations or disabilities, s/he has the legal right to make decisions on his or her own behalf. Only a court, after a legal proceeding, may judge an individual to be incapacitated and appoint a guardian to make decisions for him or her. The purpose of this booklet is to describe Pennsylvania's guardianship procedures to persons with disabilities, their families, service providers, advocates, and friends. This booklet also attempts to address frequently asked questions and provide guidance to families and others who are considering filing a petition for guardianship in Pennsylvania.

While the appointment of a guardian for a person with limited or impaired intellectual functioning may in some cases be unavoidable in order to protect the individual's well-being, guardianship proceedings can be costly legal procedures that may be inconsistent with the habilitative goal of maximizing a person's independence. Alternatives to guardianship may prove equally effective at a substantially lower emotional and financial cost. Before initiating guardianship proceedings, it is advisable to fully explore the alternatives. The majority of persons with disabilities live in the community with the assistance of their families or a system of support services without the need for guardians.

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## **II. WHAT ARE THE ALTERNATIVES TO GUARDIANSHIP?**

Many people who cannot independently manage their finances seek the assistance of family or friends for money management. These voluntary relationships can often avoid the need for formal guardians. Additionally, habilitation programs can increase the degree to which people with disabilities can manage their finances, either independently or with assistance of others. Public benefits, such as Social Security Disability and Supplemental Security Income (SSI), can be managed without a guardian through the appointment of a representative payee. Advance planning by families can often avoid the need for a guardian to manage gifts, inheritances, or other assets.<sup>1</sup>

Many people with disabilities are able to make decisions concerning some or all of the non-monetary aspects of their lives without the assistance of a guardian. For example, many people with disabilities are competent to consent to their own medical treatment and to issue advance health care directives through the creation of a living will and/or a health care power of attorney. In other cases, family, friends, and mental health or

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<sup>1</sup> For more information, see *Estate Planning for Families of Persons with Disabilities*, available free of charge by contacting the Disability Rights Network of Pennsylvania at the telephone numbers listed on the cover and at the end of this booklet or on its web site at [www.drnpa.org](http://www.drnpa.org).

mental retardation service providers can assist in the decision-making process if an individual with a disability is unable to make a decision on his or her own behalf without help. Guardianship may be unnecessary even if a person is unable to make decisions with the assistance of others. Often existing laws and practices aid in substitute decision-making. For example, medical providers routinely provide medical treatment at the request of families on behalf of persons with disabilities, even when there exists a question of whether the individual understands the medical procedure to be undertaken. Act 169 of 2006, 20 Pa.C.S.A. Ch. 54, establishes the comprehensive framework for substitute health care decision-making for individuals who are “incompetent” to make their own health care decisions and authorizes family members and other individuals who know the incompetent person to act as “health care representatives” to make certain health care decisions when the person did not create an advance health care directive and does not have a guardian. 20 Pa.C.S.A. § 5461.<sup>2</sup> If no next-of-kin is available, the Mental Health and Mental Retardation Act of 1966 permits service providers to consent to certain medical treatment on behalf of persons in group homes or other residential facilities. 50 Pa. Cons. Stat. Ann. § 4417(c).<sup>3</sup>

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<sup>2</sup> For more information about medical decision-making involving persons with disabilities, see “Medical Treatment for Individuals with Disabilities: Consent, Health Care Advance Directives, and Surrogate Decision Makers”. This publication is available on the Disability Rights Network of Pennsylvania’s website at [www.drnpa.org](http://www.drnpa.org) and by calling 800-692-7443.

<sup>3</sup> This provision states: “The director of any facility may in his discretion and with the advice of two physicians not employed by the facility, determine when elective surgery should be performed upon any mentally disabled person admitted or committed to such facility where such person does not have a living parent, spouse, issue, next of kin, or legal guardian as fully and to the same effect as if said director had been appointed guardian and had applied to and received the approval of an appropriate court therefor.” 50 Pa. Cons. Stat. Ann. § 4417(c). This statute, however, does not permit substituted

There are circumstances when the appointment of a guardian is unavoidable. However, you should initiate guardianship proceedings only *after* a problem has been identified for which there is no alternative solution. It is generally not advisable to initiate guardianship proceedings simply because a service provider or other professional recommends guardianship or suggests that guardianship is routinely needed for persons with disabilities or persons living in mental health or mental retardation facilities.<sup>4</sup>

### **III. GUARDIANSHIP**

#### **UNDER WHAT CIRCUMSTANCES MAY A GUARDIAN BE APPOINTED?**

A Pennsylvania court may appoint a guardian of the person and/or of the estate for an individual who lives in Pennsylvania and a guardian of the estate for a person who has property in Pennsylvania if it determines after a hearing that the individual is “incapacitated” (previously referred to as “incompetent”). An incapacitated person is:

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consent to medical treatment in all cases. For example, it would *not* permit consent to psychiatric treatment (which is governed by the Mental Health Procedures Act, 50 Pa. Cons. Stat. Ann. § 7101 *et seq.*), to AIDS/HIV testing (which is governed by 35 Pa. Cons. Stat. Ann. § 7605), or to medical treatment when an individual is refusing treatment.

<sup>4</sup> As a result of the decision in *Vecchione v. Wohlgemuth*, 377 F. Supp. 1361 (E.D. Pa. 1974), 426 F. Supp. 1297 (E.D. Pa. 1977), *aff'd*, 558 F.2d 150 (3d Cir. 1977), *cert. denied*, 434 U.S. 943 (1977), it is the routine practice of the Commonwealth to seek guardianship over the finances of many people living in state-operated facilities in order to assure that the Commonwealth receives payment for its services. This process can be avoided if an alternate representative payee, such as a family member, can be identified.

[A]n adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.

20 Pa. Cons. Stat. Ann. § 5501.<sup>5</sup>

### **WHO MAY BE APPOINTED A GUARDIAN?**

Any qualified individual, corporate fiduciary, non-profit corporation, or county agency may serve as guardian. 20 Pa. Cons. Stat. Ann. § 5511(f). If no other person is willing or qualified to serve, a guardianship support agency may be appointed by the court. 20 Pa. Cons. Stat. Ann. § 5553(a). If appropriate, the court shall give preference to a person suggested by the incapacitated person. *Id.*; *Estate of Haertsch*, 649 A.2d 719, 720 (Pa. Super. Ct. 1994). The guardian must not have interests that conflict with those of the incapacitated person unless no alternative exists. 20 Pa. Cons. Stat. Ann. § 5511(f); see also *Wilhelm v. Wilhelm*, 657 A.2d 34, 49 (Pa. Super. Ct. 1995) (son of incapacitated person may be inappropriate guardian where son stands to benefit from money remaining in bank account upon father's death and where there is history of hostile relationship between children and parents). For persons residing in state facilities, the guardianship office may be appointed guardian of the estate. 20 Pa. Cons. Stat. Ann. § 5511(f). In addition, unless no alternative exists, residential service providers and their employees will not be appointed as guardian. *Id.*

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<sup>5</sup> The fact that a person is institutionalized does not create a presumption of incapacity. 20 Pa. Cons. Stat. Ann. § 5512.1(f).

## **HOW IS A GUARDIANSHIP PROCEEDING INITIATED?**

An interested person may file a petition in the Court of Common Pleas, Orphans Court Division for the appointment of a guardian for a person or the person's estate. The person who files the petition (the "petitioner") must personally serve the person for whom a guardian is sought (the "respondent") with a copy of the petition and written notice of the time, date, and place of the proposed hearing at least 20 days prior to the hearing. The notice must be in large type and simple language. The notice must explain the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. The notice also must inform the respondent of his or her right to request the appointment of counsel and to have paid counsel appointed, if appropriate. The petition also must give notice to other interested parties, such as family members. 20 Pa. Cons. Stat. Ann. § 5511(a).

A petitioner may be the person seeking to be the guardian or may nominate another willing party to be appointed as the guardian. A petitioner may be able to file the petition for guardianship on his own behalf without an attorney ("pro se"), but some local Orphans' Courts may refuse to let the petition be filed unless the petitioner is an attorney or hires an attorney to represent him in the guardianship proceeding. It is advisable for a petitioner to contact the Orphans' Court Clerk in the county where the petition will be filed ahead of time to find out about any filing requirements, including filing fees.<sup>6</sup>

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<sup>6</sup> A list of the Orphans' Court Clerks and their contact information in each of Pennsylvania's counties is available at [www.pacourts.us/T/CommonPleas/OrphansCourtClerks.htm](http://www.pacourts.us/T/CommonPleas/OrphansCourtClerks.htm).

In addition to filing fees, there are other financial costs that should be considered before a person files a petition for guardianship. For example, a petitioner must present testimony at the guardianship hearing from an expert (*i.e.*, an individual qualified by training and experience in evaluating individuals with incapacities of the type alleged by petitioner) that establishes the nature and extent of the alleged incapacities and disabilities of the person who is the subject of the guardianship petition. 20 Pa. Cons. Stat. Ann. § 5518. Most qualified experts will charge a fee for their time testifying at and preparing for the hearing, including fees for related testing and evaluations to determine capacity. Additionally, if the petitioner plans to hire an attorney to file the petition and represent him in the guardianship proceeding, there will be resulting legal fees.

### **WHAT MUST THE PETITION INCLUDE?**

All guardianship petitions must be written in plain language and must include the following information:

- the name, age, residence, and post office address of the respondent;
- the names and addresses of the respondent's spouse, parent(s), and presumptive adult heirs;
- the name and address of the person or institution providing residential services to the respondent;
- the names and addresses of other persons or entities that provide services to the respondent;



- the name and address of the person or entity whom the petitioner asks to be appointed as the guardian;
- an averment that the proposed guardian has no interest that is adverse to the respondent;
- the qualifications of the proposed guardian;
- the reasons why guardianship is sought;
- a description of the functional limitations and physical and mental condition of the respondent;
- the steps taken to find less restrictive alternatives to guardianship; and
- the specific areas of incapacity over which the petitioner requests that the guardian be assigned powers.

20 Pa. Cons. Stat. Ann. § 5511(e).

If the petitioner seeks appointment of a guardian of the estate, the petitioner must include (in addition to the information listed above), the gross value of the respondent's estate and net income from all sources to the extent known. 20 Pa. Cons. Stat. Ann. § 5511(e).

### **MUST THE RESPONDENT BE PRESENT AT THE HEARING?**

A respondent must be present at the hearing unless either:

(a) a physician or psychologist states (under oath) that the person would be harmed by being present, or (b) it is impossible for him or her to be present due to his absence from the Commonwealth. At the request of the respondent or his or her counsel, the hearing may be held at the respondent's residence. 20 Pa. Cons. Stat. Ann. § 5511(a).

## **DOES THE RESPONDENT HAVE A RIGHT TO COUNSEL?**

A respondent may hire or retain counsel to represent him or her in a guardianship proceeding. The petitioner has an obligation to determine whether counsel has been retained by or for the respondent and must notify the court at least 7 days prior to the hearing if the respondent does not have counsel. The court, “in appropriate cases,” may appoint counsel at no cost to the respondent if counsel has not otherwise been retained to represent the respondent. 20 Pa. Cons. Stat. Ann. § 5511(a). Residents of state psychiatric hospitals and state mental retardation facilities *must* have counsel appointed to represent them in guardianship proceedings. 204 Pa. Code §§ 29.41-29.42 (provides, in accordance with Pennsylvania Supreme Court orders, that special masters will be appointed to hear guardianship petitions for persons in state psychiatric hospitals and state mental retardation facilities; that such hearings will be held at the institutions; and that the respondent shall be represented by counsel).

## **DOES THE RESPONDENT HAVE A RIGHT TO AN INDEPENDENT EVALUATION?**

The respondent may petition the court for the appointment of an expert to perform an independent evaluation as to his or her capacity. The court will order such an evaluation for “cause.” If the court chooses to order an independent evaluation, it must give due consideration to the evaluator nominated by the respondent. 20 Pa. Cons. Stat. Ann. § 5511(d); *see also In re Hyman*, 811 A.2d 605, 609 (Pa. Super. Ct. 2002) (holding that the court did not err in refusing the petitioner’s request to appoint an independent

evaluator when after the testimony of the petitioner and the respondent the court found that there was no need for guardianship).

## **WHAT DOES A COURT CONSIDER IN DETERMINING WHETHER TO APPOINT A GUARDIAN?**

Under the guardianship statute, “[t]he court has the power to place total control of a person’s affairs in the hands of another. This great power creates the opportunity for great abuse.” *In re Hyman*, 811 A.2d 605, 608 (Pa. Super. Ct. 2002) (quoting *Estate of Haertsch*, 609 A.2d 1384, 1386 (1992)). As such, the petitioner must establish by clear and convincing evidence that the respondent is incapacitated. 20 Pa. Cons. Stat. Ann. § 5511(a). In determining whether the respondent is incapacitated, the court must consider, among other things, the nature of the respondent’s disability and the extent of the person’s capacity to make or communicate decisions. 20 Pa. Cons. Stat. Ann. § 5512.1(a). To prove incapacity, the petitioner must present testimony from an individual qualified by training and experience in evaluating individuals with the respondent’s alleged incapacities that establishes the nature and extent of the respondent’s incapacities and disabilities; the respondent’s mental, emotional, and physical condition; the respondent’s adaptive behavior; and the respondent’s social skills. 20 Pa. Cons. Stat. Ann. § 5518. In addition, the petitioner must present evidence regarding:

- the services being utilized to meet the essential requirements for the respondent’s physical health and safety;
- the services being utilized to manage the respondent’s financial resources;
- the services being utilized to develop or regain the respondent’s abilities;
- the types of assistance required by the respondent;

- why no less restrictive alternatives would be appropriate; and
- the probability that the extent of the person’s incapacities may significantly lessen or change.

20 Pa. Cons. Stat. Ann. § 5518. In determining whether a person is incapacitated, the court must also make specific findings concerning the respondent’s need for guardianship services in light of existing alternatives, such as the availability of family, friends, and other supports to assist the individual in making decisions, and in light of the existence of any advance directives such as durable powers of attorney or trusts. 20 Pa. Cons. Stat. Ann. § 5512.1(a)(3); *see also In re Peery*, 727 A.2d 539, 541 (Pa. 1999) (a person cannot be incapacitated and in need of guardianship services if his impairment is counterbalanced by friends or family or other supports).

If the court determines that the respondent is incapacitated and needs guardianship services, it must then determine:

- whether the guardianship should be “limited” based upon the nature of the respondent’s disability and his capacity to make and communicate decisions; and
- the duration of the guardianship.

20 Pa. Cons. Stat. Ann. § 5512.1(a)(4)-(5).

The court will prefer to appoint a limited guardian if the respondent is partially incapacitated, but needs guardianship services. 20 Pa. Cons. Stat. Ann. § 5512.1(a)(6).

The court may appoint a plenary guardian of the person and/or estate only upon specific

findings that the person is totally incapacitated and in need of plenary guardianship services. 20 Pa. Cons. Stat. Ann. §§ 5512.1(c), 5512.1(e).

### **WHAT ARE THE POWERS OF A LIMITED GUARDIAN?**

If the court appoints a limited guardian, it must identify the powers of the guardian, and those powers must be consistent with the court's finding of the respondent's limitations. 20 Pa. Cons. Stat. Ann. §§ 5512.1(b) 5512.1(d). The partially incapacitated person retains all legal rights other than those designated by the court's order as areas over which the limited guardian has power. 20 Pa. Cons. Stat. Ann. § 5512.1(g).

The powers of a limited guardian of the person may include:

- providing general care, maintenance, and custody of the partially incapacitated person;
- designating the partially incapacitated person's place of residence;
- assuring, as appropriate, that the partially incapacitated person receives appropriate training, education, medical and psychological services, and social and vocational opportunities;
- assisting the partially incapacitated person in the development of maximum self-reliance and independence; and
- providing the required consents or approvals on behalf of the partially incapacitated person.

20 Pa. Cons. Stat. Ann. § 5512.1(b).

In appointing a limited guardian of the estate, the court (in addition to outlining the guardian's specific powers and authority) must specify the portion of assets or income over which the limited guardian of the estate has assigned powers or duties. 20 Pa. Cons. Stat. Ann. § 5512.1(d).

### **WHAT ARE THE DUTIES OF A GUARDIAN OF THE PERSON?**

The duties of a guardian of the person include: (1) assertion of the rights and interests of the incapacitated person; (2) respect for the wishes and preferences of the incapacitated person to the greatest extent possible; (3) participation, where appropriate, in the development of a plan of supportive services to meet the person's needs; and (4) encouragement of the incapacitated person to participate to the maximum extent of his or her abilities in all decisions that affect him or her, to act on his or her behalf when he or she is able to do so, and to develop or regain his or her capacity to manage his or her personal affairs to the maximum extent feasible. 20 Pa. Cons. Stat. Ann. § 5521(a); *see also Estate of Rosengarten*, 871 A.2d 1249, 1254-55 (Pa. Super. Ct. 2005) (holding that the guardian violated her duties by disregarding the expressed wishes of incapacitated person).

### **ARE THERE THINGS THAT A GUARDIAN OF THE PERSON CANNOT DO?**

Unless expressly included in the court's order based upon specific findings, a guardian (or emergency guardian) does *not* have the power (1) to consent on behalf of the incapacitated person to an abortion, sterilization, psychosurgery, electroconvulsive therapy, or removal of a healthy body organ; (2) prohibit the marriage or consent to the

divorce of the incapacitated person; and (3) consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or to the participation in any biomedical or behavioral medical experiment. 20 Pa. Cons. Stat. Ann. § 5521(d). In addition, the court may not grant to a guardian any powers that are controlled by another statute, including the power to admit the incapacitated person to an inpatient psychiatric facility or state center for persons with mental retardation or to consent to the termination of the incapacitated person's parental rights. 20 Pa. Cons. Stat. Ann. § 5521(f).

A guardian's power to make some health care decisions for the incapacitated person may also be limited by an advance health care directive and/or by law. For example, if a person executed a health care power of attorney (POA) or a living will before a court determined that she was incapacitated, the guardian may not revoke or amend instructions in that health care POA or living will without judicial authorization. 20 Pa. Cons. Stat. Ann. § 5460(a). Moreover, if an incapacitated person did not execute an advance health care directive and does not have an end-stage medical condition or is not permanently unconscious, a guardian may not direct a doctor or other health care provider to withhold life-preserving treatment. 20 Pa. Cons. Stat. Ann. § 5462(c).<sup>7</sup> A guardian would also not be able to request an out-of-hospital do-not-resuscitate (DNR)

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<sup>7</sup> In 2009, the Pennsylvania Superior Court held that guardians do not have the authority to prevent the administration of life-preserving treatment to a person who does not have an end-stage medical condition or is not permanently unconscious. *In re D.L.H.*, 984 A.2d 935 (Pa. Super. 2009). As of the writing of this booklet, the Pennsylvania Supreme Court is considering a further appeal in this case. You should consult with an attorney or contact the Disability Rights Network for updated information if you have questions in this regard.

order unless the incapacitated person has an end-stage medical condition or is permanently unconscious and has issued a living will directing that no cardiopulmonary resuscitation (CPR) be provided in the event of her cardiac or respiratory arrest. 20 Pa. Cons. Stat. Ann. § 5484(b).<sup>8</sup>

### **WHAT ARE THE DUTIES OF A GUARDIAN OF THE ESTATE?**

The Pennsylvania guardianship statute details a number of matters that may be handled by an appointed guardian of the estate, including insurance, continuation of a business, investments, and sale of personal property. 20 Pa. Cons. Stat. Ann. § 5521(b). In exercising those duties, a guardian of the estate must use the standard of care that a person of ordinary prudence would practice in the care of his own estate. *Estate of Rosengarten*, 871 A.2d at 1256 (indicating that a guardian who charged for services that could have been performed by others free of charge probably violated her duty). A guardian must manage the estate exclusively for the benefit of the incapacitated person and is not permitted to obtain any undue profit or advantage from his position and may not place himself in a position in which his personal interests are in conflict with those of the incapacitated person. *In re Adler*, No. 1144IC, 2003 WL 22053309 at \*3 (Pa. Com. Pl. - Philadelphia County).

### **WHAT INFORMATION MUST THE COURT PROVIDE IF IT APPOINTS A GUARDIAN?**

If the court determines that the respondent is incapacitated and appoints a guardian, it must assure that the respondent is informed of his or her right to appeal and his or her

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<sup>8</sup> See foot note 2 for more information about medical decision-making.



right to petition to modify or terminate the guardianship. 20 Pa. Cons. Stat. Ann. § 5512.1(h).

### **WHAT ARE THE PROCEDURES FOR THE APPOINTMENT OF AN EMERGENCY GUARDIAN?**

A person may file a petition for appointment of an “emergency guardian” for persons who are present in Pennsylvania and who need the immediate appointment of a guardian. 20 Pa. Cons. Stat. Ann. § 5513. The court will appoint an emergency guardian if, after a hearing, it finds by clear and convincing evidence that (1) the respondent is incapacitated; (2) the respondent needs a guardian; and (3) failure to appoint a guardian will result in irreparable harm to the respondent’s person or estate. *Id.* The court must specify the powers, duties, and liabilities of that guardian in its order. *Id.*

The appointment of an emergency guardian of the person can be in effect no longer than 72 hours. 20 Pa. Cons. Stat. Ann. § 5513. If the emergency continues, the order may be extended for 20 days from the date of the expiration of the initial emergency order. *Id.* After the expiration of the extension, the petitioner must institute a full guardianship proceeding in order to continue the guardianship. *Id.* An emergency guardianship of the estate may not exceed 30 days, at which time the petitioner must initiate a full guardianship proceeding. *Id.*

The court must, to the extent feasible under the circumstances, adhere to all of the procedures outlined above -- including those relating to the appointment of counsel for

the respondent -- in a proceeding for the appointment of an emergency guardian. 20 Pa. Cons. Stat. Ann. § 5513.

### **CAN A GUARDIAN TRANSFER GUARDIANSHIP TO ANOTHER PERSON WITHOUT COURT INTERVENTION?**

No. A guardian cannot “transfer” guardianship for a person or an estate through a will or other self-directed document. Only the court, after a hearing to appoint a successor guardian, can approve a new guardian to take over guardianship of a person and estate if the existing guardian is no longer able or willing to serve in that capacity. 20 Pa. Cons. Stat. Ann. § 5512.2.

### **WHAT REPORTS MUST A GUARDIAN FILE?**

Within one year of the appointment and at least once annually thereafter, a guardian of the person must file with the court a report attesting to the following:

- the current address and type of placement of the incapacitated person;
- any major medical or cognitive problems experienced by the incapacitated person;
- a brief description of the incapacitated person’s living arrangements and the social, medical, psychological and other support services he is receiving;
- the opinion of the guardian as to whether the guardianship should continue, be terminated or modified, and the reasons for that opinion;
- the number and length of times the guardian visited the incapacitated person during the past year.

20 Pa. Cons. Stat. Ann. § 5521(c)(1)(ii).

A guardian appointed for an incapacitated person's estate must file with the court within one year of his appointment and on an annual basis thereafter a report attesting to the following:

- the incapacitated person's current principal and how it is invested;
- the incapacitated person's current income;
- the expenditures of principal and income since the prior report; and
- the needs of the incapacitated person for which the guardian has provided since the last report.

20 Pa. Cons. Stat. Ann. § 5521(c)(1)(I).

### **CAN A GUARDIAN BE PAID TO SERVE AS A GUARDIAN?**

An individual serving as a guardian for an incapacitated person may be financially compensated from the incapacitated person's assets if the guardian obtains court approval. When no person is willing and qualified serve as a guardian, a guardianship support agency may provide the needed guardianship services. The guardianship support agency is permitted to charge the incapacitated person for these services based upon his or her ability to pay and must make every effort to minimize costs, including minimizing personnel costs through the use of volunteers. 20 Pa. Cons. Stat. Ann. § 5555.

## HOW CAN A GUARDIANSHIP ORDER BE TERMINATED OR A GUARDIAN REMOVED?

An incapacitated person, the guardian, or any interested person may petition the court for a review hearing or a court on its own may decide to hold a review hearing. 20 Pa. Cons. Stat. Ann. § 5512.2(a). A review hearing may be used to: (1) assert that there has been a significant change in the person's capacity so that guardianship is no longer necessary (or a more limited guardianship order is appropriate); (2) assert the guardian's failure to perform his duties; or (3) assert that the guardian has failed to act in the incapacitated person's best interests, including a failure to honor his or her preferences to the fullest extent possible. *Id.*; *Estate of Rosengarten*, 871 A.2d at 1254-56.

In a review hearing, the incapacitated person has all of the rights he would have at an initial guardianship hearing (including the right to be present and to seek appointed counsel). 20 Pa. Cons. Stat. Ann. § 5512.2(b). The incapacitated person may also be represented by counsel of his or her choosing at any review hearing. *Estate of Rosengarten*, 871 A.2d at 1257. A person need only prove by a preponderance of the evidence that he or she has regained capacity so as to no longer need guardianship while the party advocating continued guardianship has the heavier burden of showing by clear and convincing evidence that the person remains incapacitated. 20 Pa. Cons. Stat. Ann. § 5512.2(b); *Estate of Rosengarten*, 871 A.2d at 1255.

## **CAN I FIND OUT IF SOMEONE HAS A GUARDIAN?**

You may be able to search for guardianship petitions and the resulting court orders/decrees in the local Orphans' Court where they were filed. However, county procedures differ regarding whether guardianship reports are accessible to the public and, in some counties, the only part of the guardianship case that is public information is the court decree. Moreover, a guardianship hearing will be closed to the public at the request of the person subject to the guardianship proceeding or his counsel. 20 Pa. Cons. Stat. Ann. § 5511(a). It is advisable for a petitioner to contact the local Orphans' Court Clerk to find out what information is accessible to the public.<sup>9</sup>

## **IV. CONCLUSION**

Pennsylvania's guardianship law was designed to (1) permit incapacitated persons to participate as fully as possible in all decisions that affect them; (2) assist such individuals to meet the essential requirements for their physical health and safety, to protect their rights, to manage their financial resources, and to develop or regain their abilities to the maximum extent possible; and (3) to accomplish these objectives through the use of the least restrictive alternative. 20 Pa. Cons. Stat. Ann. § 5502. The two most important features of the Pennsylvania guardianship law are: (1) that it permits the appointment of limited guardians to ensure that only those restrictions necessary in the particular circumstances are imposed, and (2) that it provides for certain procedural safeguards to prevent the unwarranted appointments of guardians. Despite these

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<sup>9</sup> See foot note number 6 for a link to contact information for Orphans' Court Clerks.

*features, guardianship should be viewed as the option of last resort and used only if other alternatives do not provide an adequate solution.*

## **V. CONTACT INFORMATION**

If you need more information or help, please contact the Intake Unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD). Our email address is: [intake@drnpa.org](mailto:intake@drnpa.org).

The mission of the Disability Rights Network of Pennsylvania (DRN) is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, DRN cannot provide individual services to every person with advocacy and legal issues. DRN prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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