
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 384 Session of
2021

INTRODUCED BY A. DAVIS, SANCHEZ, HARRIS, DeLUCA, O'MARA AND
BURGOS, FEBRUARY 3, 2021

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 3, 2021

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, in incapacitated persons,
3 further providing for provisions concerning powers, duties
4 and liabilities.

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

7 Section 1. Section 5521(g) of Title 20 of the Pennsylvania
8 Consolidated Statutes is amended and the section is amended by
9 adding a subsection to read:

10 § 5521. Provisions concerning powers, duties and liabilities.

11 * * *

12 (d.1) Mental health care decisions.--

13 (1) Subject to the following, a guardian of the person
14 shall have the same authority to make mental health care
15 decisions on behalf of the incapacitated person as a mental
16 health care agent under Chapter 58 (relating to mental health
17 care), and a mental health care decision by the guardian of
18 the person shall be effective without court approval as with
19 a mental health care agent under section 5834(d) (relating to

1 operation):

2 (i) Any limitations and conditions provided in the
3 order of appointment.

4 (ii) The same mental health care decision-making
5 process as prescribed under section 5836(d) (relating to
6 authority of mental health care agent).

7 (iii) Section 5836(b).

8 (iv) Section 5836(c).

9 (v) The designation of a person other than the
10 guardian to act as mental health care agent by the
11 incapacitated person in a mental health power of
12 attorney.

13 (vi) A mental health declaration made by the
14 incapacitated person while of sound mind.

15 (vii) Any other provision regarding mental health
16 care agents provided under Chapter 58 Subch. C (relating
17 to mental health powers of attorney).

18 (2) To the extent practicable, a guardian of the person
19 shall consult with close family members of the incapacitated
20 person in making a mental health care decision.

21 (3) A petition that is filed for the appointment of a
22 guardian of the person under section 5511 (relating to
23 petition and hearing; independent evaluation) on or after the
24 effective date of this subsection shall state whether it is
25 proposed that the guardian of the person shall have the power
26 to make mental health care decisions and, if so, whether the
27 guardian shall have all the powers of a mental health care
28 agent to make mental health care decisions, including the
29 power to consent to electroconvulsive therapy or to
30 experimental procedures of research.

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

3 (5) An order of appointment of a guardian of the person
4 that is issued on or after the effective date of this
5 subsection shall specify whether the guardian of the person
6 shall have the power to make mental health care decisions
7 and, if so, whether the guardian shall have all the powers of
8 a mental health care agent to make mental health care
9 decisions and any limitation of those powers.

10 (6) A guardian of the person appointed before the
11 effective date of this subsection shall have the same powers
12 as a mental health care agent regarding mental health care
13 decisions unless:

14 (i) a prior court order has limited the power of the
15 guardian of the person to make mental health care
16 decisions; or

17 (ii) a mental health care agent is available and
18 assumes authority to act by agreement between the mental
19 health care agent and the guardian of the person, in
20 which case the guardian of the person shall thereafter
21 have no mental health care decision-making powers.

22 (7) The authority of a guardian to make mental health
23 care decisions on behalf of an incapacitated person under
24 this subsection shall apply when the incapacitated person is
25 subject to involuntary examination and treatment under
26 Article III of the act of July 9, 1976 (P.L.817, No.143),
27 known as the Mental Health Procedures Act.

28 (8) This subsection shall not apply to a guardian
29 granted limited guardianship.

30 * * *

1 (g) [Criminal and civil immunity] Liability of guardian of
2 person.--In the absence of gross negligence, recklessness or
3 intentional misconduct, a [unit of local government, nonprofit
4 corporation or guardianship support agency under Subchapter F
5 (relating to guardianship support) appointed as a] guardian of
6 the person shall not be criminally liable or civilly liable for
7 damages for performing duties as a guardian of the person, as
8 authorized under this chapter.

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