

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 117

Printer's No.: 73

Sponsor: Senator Greenleaf

Prepared by: Gregg Warner

Synopsis: This legislation amends the Probate, Estates and Fiduciaries Code, Title 20 of the Pennsylvania Consolidated Statutes, relating to guardianships.

Summary: Chapter 55 of the Probate, Estates and Fiduciaries Code governs the appointment of and the powers and duties of guardians of incapacitated persons.

Generally

The bill makes extensive changes relating to venue for a guardianship proceeding, the petition and hearing for appointing a guardian, who may be appointed a guardian, and the removal and discharge of a guardian.

Section 5503 provides for the venue for proceedings relating to the appointment of a guardian of the person and a guardian of the estate. It provides the procedure for when guardianship proceedings are brought in more than one jurisdiction.

Section 5511 is reorganized and amended to provide for the notice of the petition for appointment of a guardian and the procedure for the hearing including the participation of the alleged incapacitated person. The section provides a statutory framework regarding the preference in appointing a guardian of the person or a guardian of the estate.

Section 5515.1 provides for the removal and discharge of the guardian of the person or guardian of the estate.

Powers and duties

The legislation also further defines the powers and duties of a guardian. Section 5521 lists the powers of a guardian distinguishing between those powers of the guardian of the estate that may be exercised without the need for further court authorization and those powers that may be exercised only with further court authorization.

Section 5521(d.1) addresses health care decisions. A guardian of the person shall have the power to make health care decisions, including those relating to the withholding or withdrawal of health care necessary to preserve life, without a specific court order granting that power to the guardian. The bill gives a guardian the equivalent health care decision-making powers that are held by a health care representative.

Effective date

This act takes effect in 60 days.

Background:

Joint State Government Commission

The Joint State Government Commission's Advisory Committee on Decedents' Estates Laws is a standing group of attorneys and judges from across the Commonwealth who assist the General Assembly by recommending improvements to the Probate, Estates and Fiduciaries Code and related statutes. The advisory committee has been in existence since 1945 and is credited with drafting most of the laws relating to trusts and estates. After reaching consensus on its legislative recommendations, the advisory committee presents its recommendations to the Task Force on Decedents' Estates Laws, which is a bicameral and bipartisan panel of legislators.

Over the years the advisory committee has formed various subcommittees to assist in reviewing specific topics and developing statutory recommendations. The Subcommittee on Guardianships and Powers of Attorney was instrumental in developing the two reports on which Senate Bill 117 is based.

Guardianship law

In October 2012 the Joint State Government Commission's Advisory Committee on Decedents' Estates Laws issued a report entitled "Guardianship Law: Proposed Amendments to the Probate, Estates and Fiduciaries Code." After a thorough review of Chapter 55 of the Probate, Estates and Fiduciaries Code and related uniform laws, the advisory committee recommended extensive changes in Pennsylvania's guardianship law.

D.L.H.

In June 2011 the same advisory committee issued a report entitled "Powers of Attorney and Health Care Decision-Making." This report, in part, discussed the case of In re D.L.H., 2 A.3d 505 (Pa. 2010). D.L.H. raised the issue of whether a guardian has the power to make decisions relating to the withholding or withdrawal of health care necessary to preserve life unless there is a specific court order granting that power to the guardian. The advisory committee recommended that the health care decision-making powers of a guardian should be equivalent to those of a health care representative. The appointment of a guardian already has significantly more safeguards than the statute requires of health care representatives so the incapacitated person should be well-protected.

Chapter 54 of the Probate, Estates and Fiduciaries Code governs health care decision making. Section 5461 discusses decision making by health care representatives. A health care representative may make a health care decision for an individual who does not have a health care power of attorney or the individual's health care agent is not reasonably available or has indicated an unwillingness to act and no alternate health care agent is reasonably available. Generally, health care representatives have the same powers as health care agents. Section 5461 lists in order who may be a health care representative: the spouse, an adult child, a parent, an adult brother or sister, an adult grandchild, or an adult who has knowledge of the principal's preferences and values.

Legislative history

This legislation was introduced last session as Senate Bill 1614 and included the advisory committee's recommendations from both reports discussed above.

Summary of proposed legislation

The summary of recommendations from the 2012 advisory committee report is attached.