



The State of Guardianship in Pennsylvania:

Results from the 2012 CARIE Study of Guardianship in the Commonwealth of Pennsylvania

Commissioned by:

The Pennsylvania Department of Aging

555 Walnut Street – 5th Floor

Harrisburg, PA 17100

November 2013

Presented by:
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The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) is a non-profit organization, based in Philadelphia that has been dedicated to improving the quality of life for vulnerable older adults since 1977.

CARIE fulfills its core mission to improve the well-being, rights and autonomy of older persons through advocacy, education, and action through a "case to cause" model of advocacy that serves to promote equal access to justice and addresses problems and issues on both the individual and the systemic levels.

*Please refer to Appendix L for biographical information.

Disclosure Statement: The views expressed in this report reflect the professional views of CARIE. By reading this report, you understand that the opinions expressed within do not necessarily reflect the views and/or recommendations of the Pennsylvania Department of Aging, but are solely those of the CARIE research team. This report does not provide individually tailored guardianship advice. It has been prepared without regard to the circumstances and objectives of those who receive it.

Acknowledgements

We would like to thank the staff of the Pennsylvania Department of Aging for their support and assistance with this project:

Secretary Brian Duke, MHA, MBE
David Gingerich, Deputy Secretary
Wilmarie González, MSM
Harriet Withstandley, Esq.
Karen Sheriff, MSW
Denise Getgen, RN

So many others provided assistance through key informant interviews, focus groups, survey review – we are very grateful to the following for the gift of their time and expertise.

Jamilla Allen	Steve Feldman, Esq.
Nicole Altieri	Richard Ferraro
Lora Lee Anderson	Elaine Foguth
Kerri Anzulewicz	Amy Foster
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Jenn Weitkam
Priscilla Whitman
Jeraldine Wilson
Kate Wilson
Debbie Woo
Erica Wood, Esq.
Matthew Wooten

And many others who contributed but
wished to remain anonymous or could
not be reached for permission to
publish their name

FOREWORD FROM

THE HONORABLE BRIAN M. DUKE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF AGING

The Department of Aging's mission is dedicated to enhancing the quality of life for older Pennsylvanians by empowering diverse communities, the family, and the individual. At its foundation are prevention and protection:

- Prevention from instability in health and well-being that may result in institutional care and dependence on government aid.
- Protection from abuse, neglect, abandonment, and exploitation.

To help us fulfill this mission, in January, 2012, the Pennsylvania Department of Aging (PDA) awarded a grant to the Center for Advocacy for the Rights and Interests of the Elderly (CARIE), a non-profit advocacy organization, to conduct a statewide review of guardianship practices in Pennsylvania.

On behalf of Governor Tom Corbett, PDA and, most importantly, older Pennsylvanians, I thank CARIE, in particular, the study team, Diane A. Menio, Alissa Halperin, Jennifer Campbell and Karen Reeve for a thoughtful and comprehensive examination of the guardianship process in Pennsylvania, focusing, in particular on the Aging Network consisting of PDA and its county partners.

The goals of the project were to determine the current practices employed by Area Agencies on Aging (AAAs), to review legal processes that impact guardianship, to provide information on national guardianship practices, and, to make recommendations for improvements. The study also focused on the work of the AAAs insofar as the counties differ in their approaches to guardianship, and it attempted to identify best practices, both locally and nationally.

This unique, project included: analysis of existing literature; interviews and surveys of key individuals and groups, including protective services workers, court personnel, administrative staff, third party guardians, attorneys, legal services providers, wards and their family members and Ombudsman staff; and analysis of AAA and Orphans Courts' data. CARIE diligently synthesized this information.

Significantly, shortly after CARIE's study began, the Pennsylvania Supreme Court created an Elder Law and Guardianship Task Force, under the leadership of Chief Justice Ron Castille and Justice Debra Todd. PDA has already begun to implement initiatives that were identified as necessary by CARIE such as the Care Program which is an on-line tracking system of AAA guardianship activities, community education and outreach materials and statewide standard policies and procedures, and revisions of existing training curriculum for Protective Services personnel and ombudsman staff.

In closing, I offer my thanks for the dedication and diligence of the research team for making such progress possible.

With Gratitude,

Brian M. Duke, Secretary
Pennsylvania Department of Aging

EXECUTIVE SUMMARY

The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) is a private nonprofit organization based in Philadelphia, Pennsylvania. CARIE has been actively advocating for the rights of vulnerable older adults since 1977. The mission of CARIE is to improve the well-being, rights and autonomy of older persons through advocacy, education, and action. CARIE's model of advocacy entails seeking solutions to individual concerns through personal advocacy, and seeking larger systemic solutions to these same problems through public policy advocacy, education and training with the goal of improving the systems that serve older adults, and safeguarding the rights of all.

Thus, when the Pennsylvania Department of Aging approached CARIE about undertaking a study of guardianship issues in the state of Pennsylvania, CARIE was eager to engage in a comprehensive study about guardianship in Pennsylvania by reviewing the rich literature of recommendations about improving guardianship processes. CARIE was also interested in researching the current practices in Pennsylvania through surveying lawyers and members of Area Agencies on Aging that are steeped in this important and demanding work.

In Pennsylvania, the Department of Aging is responsible for oversight and implementation of the Older Adult Protective Services Act (OAPSA) for individuals over the age of 60. It works closely with the 52 Area Agencies on Aging (AAAs) serving older adults by implementing the protective services program at the local level. Abuse reports can be made on behalf of an older adult whether the person lives in the community or in a care facility such as a nursing home, personal care home, domiciliary care home, assisted living facility or hospital long term care units. Reporters may remain anonymous and they have legal protection against retaliation, discrimination and civil or criminal prosecution. Any person who believes that an older adult is being abused in any way may file a report 24 hours a day, 7-days a week by calling their local AAA or by calling the statewide elder abuse hotline number at (800) 490-8505.

As defined under OAPSA, an older adult in need of protective services is defined as "an incapacitated person in the commonwealth over the age of 60 who is unable to obtain or perform services necessary to maintain physical or mental health, for whom there is no responsible caretaker and who is at imminent risk of his person or property." Additionally, an incapacitated older adult refers to an individual who, because of one or more functional limitations, needs the assistance of another person to perform or obtain services necessary to maintain physical or mental health. Incapacity in this context has no direct reference to the term "incapacitated person" as defined in the Incapacitated Persons Act (P.L. 508, No. 164) (20 P.S. §5501-5537) as amended.

The Bureau of Advocacy, Protection and Education, is responsible for monitoring and conducting compliance reviews of protective services programs and providing ongoing technical

assistance to the local agencies. The department strives to improve the delivery of services to abused and neglected older adults by developing strong working relationships with other community agencies and care providers.

In 1987, with the passage of the Older Adults Protective Services (OAPS) Act, PDA became more involved with guardianship issues. PDA's agencies – the 52 Area Agencies on Aging (AAA) – were now responsible for implementing the law that would protect older persons who were subject to abuse and neglect including self-neglect, something that often arises when a person begins to lose capacity to make decisions or to care for themselves. Since 1987, AAAs have become more involved in court proceedings through accessing emergency orders for intervention, petitioning for guardianship, and actually taking on guardianship when there are no other options. Since the implementation of the Act, guardianship work has become a large part of the work of OAPS units across the Commonwealth. The network has taken its responsibilities very seriously. AAAs have been involved in discussions for many years, establishing a committee on guardianship in 1992 to discuss the challenges and issues. Pennsylvania Department of Aging has worked diligently to provide directives, technical assistance and training for AAA staff. Numerous studies have been conducted by the state and by the Pennsylvania Association of Area Agencies on Aging (P4A). No less than five studies on guardianship and older adults have been conducted in Pennsylvania and we hope this study will further provide a look into the current system the aging network is facing.

Pennsylvania's elderly population is large and growing. Nationally, Pennsylvania ranks fourth in the percentage of persons 65 and over. According to estimates by the U.S. Census Bureau, the population aged 65 and over in Pennsylvania reached 1,981,565 in 2011, accounting for 15.6 percent of the state's total population. More than 25% of households in the state have one or more persons age 65 and over. The 2010 Census also found that Pennsylvania is home to more than 3.3 million "Baby Boomers," accounting for 26.6% of the total population, and just beginning to reach the age of 65.

The sheer number of older Pennsylvanians makes improving the mechanism to protect the most vulnerable a priority. While we cannot predict with certainty how many older Pennsylvanians will require some form of surrogate decision-making, there is data that suggest the scope of the need. An estimated 280,000 older Pennsylvanians have Alzheimer's disease or a related disorder, according to the Alzheimer's Association (2012 Pennsylvania Fact Sheet). And the US Census Bureau's 2008-2010 American Community Survey estimated that among non-institutionalized persons age 65 and over in Pennsylvania, 675,229 (36.2%) have some form of disability, with 157,028 (8.4%) experiencing a cognitive difficulty. While cognitive difficulties and Alzheimer's disease alone do not necessarily spell incapacity, incompetence is considered universal among persons with severe dementia. As the population ages, we expect to see more guardianship cases in court; as one Orphan's Court judge with a long tenure on the court noted, guardianship has grown over the past 18 years from 15% of his time to 40-50%.

He predicts, and the data supports, that growth will continue with the aging of the population and mobility of family support.

We know that each year more than 2,400 Pennsylvanians are provided with a guardian to handle some, or all, of their affairs. These individuals lose all of their legal rights while efforts are made to safeguard them from financial or other harm. There is no question that Pennsylvania needs guardianship as a way to support and protect people who have lost capacity. Guardianship is an important legal process addressing instances in which an individual lacks capacity but has not prepared legal documents, such as a Power of Attorney (POA). Guardianship is also a vital service for individuals who are subject to abuse, neglect and/or exploitation and need someone to assume legal authority to act on the individual's behalf. However, due to the life-changing impact of guardianship and the historical tendency for the permanency of guardianships, it is imperative that we regularly examine our guardianship system. It is essential that we regularly reform our guardianship system to ensure it is the best it can be. This study endeavors to bring forth the many challenges the system is facing, identify research, and provide ideas to be considered to improve guardianship in Pennsylvania.

This study strives to answer several questions in relation to guardianship, the work of AAAs and the over 60 population. 1) What is the current practice of guardianship in Pennsylvania today? 2) What are the significant differences between counties regarding guardianship practices? 3) What are established national best practices in guardianship? 4) What are the recommendations for improving Pennsylvania's guardianship practices?

To answer these questions, the CARIE Guardianship Study employed a multi-faceted research design. We looked at the findings and recommendations of prior state studies, national reports and conferences on guardianship reforms. We developed, distributed and analyzed surveys conducted with 144 attorneys who practice in guardianship in the Commonwealth and all 52 Area Agencies on Aging. We conducted and analyzed results from 8 focus groups containing 81 OAPS workers and long-term care ombudsman program workers from 37 counties. We also conducted interviews with 47 key informants (including attorneys, law professors, Orphans' Court judges, staff of the Administrative Office of Pennsylvania Courts, OAPS workers, guardians, guardian support agency staff, national experts on guardianship and the elderly. Finally, we reviewed and analyzed Pennsylvania data on guardianship.

Those who helped us with this study shared their work, their impressions, their experience and their ideas and concerns. The study team was genuinely impressed by the commitment and concern expressed by professionals working with the different aspects of guardianship. Clearly there is deep concern about the gravity of guardianship, and a need to reexamine practices to ensure protection of rights.

The findings, some referenced here, are extensive, and are outlined in the full report. They force us to ask hard questions about guardianship process and our current system:

- How well is the Alleged Incompetent Person (AIP) able to represent him/herself when the AIP was present at the hearing only 31% of the time, despite the fact that most lawyers and judges felt strongly the AIP should be present?
- How thoroughly are the rights of the Alleged Incompetent Person upheld when AIPs do not have legal representation 25% of the time, and judges are inconsistent in appointing counsel or insisting that AIP have counsel?
- How responsive is our guardianship system to ensuring the AIP's right to due process when in only 1% of the cases was the hearing for guardianship held at the AIP's location?
- How thorough is the guardianship hearing when the average hearing is only 34 minutes for uncontested hearings?
- How much do we truly invest in our guardianship systems when the majority of AAA staff that work with guardianship receive very little training specifically focusing on guardianship?
- How transparent is the guardianship process when only 57% of lawyers indicated that the entire guardianship hearing was held on the record?
- Are all avenues to alternative guardianship explored when 42% of lawyers indicated they had not been asked by the court to demonstrate they had explored alternatives to guardianship?
- Has guardianship become a defacto way to move someone into a nursing home when 42% of consumers are living in a nursing home 90 days after a guardianship appointment when the AAA is involved?

This extensive study identified a number of recommendations for the Pennsylvania Department of Aging's consideration. From the key informant interviews with experts from many disciplines – judges, attorneys, professional guardians, PS staff, AAA staff, volunteers, Ombudsman staff, and national authorities – to focus group sessions and surveys and extensive state and national research to numerous other conversations including spending a day in court, we learned a great deal about guardianship. The national and state studies supported the need for more attention to reforming the system. The research leads us to conclude that implementation of suggested changes would significantly improve the Commonwealth's guardianship system and protect the rights of these most vulnerable Pennsylvanians.

Diane Menio
Executive Director
CARIE, August 2013

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**The State of Guardianship in Pennsylvania:
Results from the 2012 CARIE Study of Guardianship in the Commonwealth of Pennsylvania**

I. Overview of the 2012 CARIE Guardianship Study

In December 2011, the Pennsylvania Department of Aging (PDA) provided funding to the Center for Advocacy for the Rights and Interests of the Elderly (CARIE) to conduct an in-depth study of the guardianship processes and practices in Pennsylvania. PDA requested specific attention be paid to the role of the aging service system with regard to guardianship. The goal of the study was to make policy recommendations to PDA that would improve the aging network's guardianship process. This paper 1) describes the methodology and research activities that comprised this study, 2) provides background on guardianship law and practice in Pennsylvania as well as around the nation, 3) presents the findings of this study alongside research and findings from other national and state-level guardianship studies, and 4) offers recommendations for systems reforms that can be implemented through a mixture of legislation, regulation, policy, and practice action steps. Acronyms that are used in this report can be found in Appendix A.

Guardianship law and practice are subject to continuous analysis and evaluation on the national level due to ongoing findings of problems with how guardianship is initiated, how guardians are selected, how guardians are educated and overseen, and how wards are protected during and following the appointment of a guardian. The findings of state and national studies strongly support the need for change to existing processes and policies. Although many states have embarked on efforts to reform their guardianship systems, no state has undergone guardianship reform and been "once-and-done". Guardianship reform appears to be a complicated, but ongoing, process everywhere.

Pennsylvania's guardianship system is governed by a 1992 statute. As this study demonstrates, much has been revealed in state and national studies that support the need for changes and updates to Pennsylvania's guardianship law, how it is implemented, and how its requirements are overseen. The CARIE Guardianship Study is not the first study of guardianship performed in Pennsylvania. As described in Section V, there have been 2 studies and 2 informal Aging Network surveys around guardianship completed in the Commonwealth since 2000. These studies and informal surveys have looked at several similar elements of the Commonwealth's guardianship system.

This Guardianship Study is the most comprehensive statewide study conducted to date. It incorporates:

- the findings and recommendations of the prior state studies,
- the findings and recommendations of national reports and conferences on guardianship reforms,
- the findings and recommendations from surveys conducted with 144 attorneys who practice in guardianship in the Commonwealth,
- the findings and recommendations of all 52 Area Agencies on Aging,

- the findings and recommendations from 4 focus groups containing 45 Older Adult Protective Services workers,
- the findings and recommendations from 4 focus groups containing 36 long-term care ombudsman program workers,
- the insight of 47 key informants (including attorneys, law professors, Orphans' Court judges, staff of the Administrative Office of Pennsylvania Courts, protective service workers, guardians, guardian support agency staff, national experts on guardianship and the elderly), and
- review and analysis of state data on guardianship.

II. Methodology

A. *Organization of report*

After a review of the literature and legal framework of guardianship, this report will organize the discussion of the CARIE Guardianship Study findings in a guardianship process chronological order, beginning with a discussion of the issues related to the pre-guardianship phase, guardianship hearing phase, and finally the post-appointment phase.

In the pre-guardianship phase, we include all the elements leading up to the hearing – including advanced planning, consideration of alternatives to guardianship, evaluation of capacity, the interests, knowledge, and understanding of the individual who is petitioning, notice of hearing provided to the alleged incapacitated person, appointment of counsel, and notice of hearing provided to the interested persons.

In the guardianship hearing phase, we include all the elements of the hearing – including evidence presented about incapacity, determination of whether the proposed guardian is an appropriate choice, presence of the AIP at the hearing, presence of counsel for the AIP, length of time allowed for the hearing, and privacy provided by the nature of the court proceedings.

In the post-appointment phase, we include all the elements surrounding the guardian carrying out his/her duties in the interests of the ward and in line with the requirements - including whether: the guardian is trained or counseled on responsibilities, the guardian fulfills responsibilities, the ward's needs are met, and, finally, whether there is anyone monitoring the guardian's fulfillment of responsibilities.

B. *Statement of the key research questions*

Four key research questions guided the CARIE Guardianship Study:

- What is the current practice of guardianship in Pennsylvania today?
- What are the significant differences between counties regarding guardianship practices?
- What are established national best practices in guardianship?
- What are the recommendations for improving Pennsylvania's guardianship practices?

C. *Methods utilized*

i. **Review of the literature**

The CARIE Guardianship Study included an extensive review of articles and reports from previous studies about guardianship in Pennsylvania as well as nationally. References are included in Appendix M. CARIE has a long history of advocacy in the field of guardianship and has kept a comprehensive library of resources. Additionally, CARIE has contacts with many national and state experts on guardianship. As described further in this report, the American Bar Association provides a wealth of knowledge going back decades with links to studies and programs of other national organizations and states. Much of the reports and information were found on-line through organizational websites, state and federal governmental websites, and general browser searches – each source proving a wealth of information leading to other sources. In addition, the study's key informants often led us to other resources of value in researching the topic of guardianship. A legal search was conducted using Westlaw for any significant state or federal cases around as well as legal journal articles about guardianship with specific attention to trying to identify publications related to the issues described in this report.

ii. **Review of Court Dockets**

The CARIE Guardianship Study had planned to do a random sampling of court case files in guardianship matters to gain a first-hand understanding of guardianship practices. The intention was to be able to measure such things as the frequency of AIP presence in court, the nature of AIP harm that prompted the AIP's excusal from court, the frequency of attorney representation, timeliness of report filings, and the nature of reports filed. A review of online dockets for more than a dozen Orphans' courts was conducted. It quickly became apparent, however, that it would not be possible to obtain a random sampling of guardianship cases as the only way to access the online dockets for guardianship required entering the name of a party to the proceedings or the name of an attorney who had entered an appearance in a guardianship matter. Consequently, this task could not be completed. Because this task could

not be completed as initially planned, the CARIE Study proceeded with developing and implementing the lawyer survey and speaking with additional attorneys as key informants.

iii. Review of historical efforts to understand guardianship – state and national

The CARIE Guardianship Study included a comprehensive review of prior surveys, workgroups, and recommendations issued within Pennsylvania and nationally. These are referenced throughout this report. A 2000 survey was designed to collect data to describe the scope of guardianship services for older adults and get providers' feedback on three models of public guardianship. In 2004, the Pennsylvania AAA Association (P4A) conducted an informal survey of its members to describe the extent of AAAs' involvement in guardianship. A 2006-2007 Joint State Government Commission study sought to look at the practice of guardianship law for older adults in PA to find areas for improvements in the law. A 2009 P4A informal survey of AAAs was designed to describe the practices of guardianship monitoring and mediation known or used by AAAs. Data in each of these surveys was used for comparison purposes and recommendations were examined to support the data from this study.

iv. Surveys

The CARIE Guardianship Study included the creation of two written survey instruments. One was a survey of Area Agency on Aging (AAA) Directors and the other was a survey of attorneys who handle guardianship matters involving older adult AIPs. Copies of both surveys can be found in Appendix B.

Dissemination and Response Rate of Surveys: The AAA Executive Director survey was sent to all 52 AAA executive directors by email, and contained a link for Survey Monkey, an on-line survey tool. The email included instructions from Pennsylvania Department of Aging Secretary, Brian Duke to complete the survey. All 52 responded in full, giving a response rate of 100%. A majority of respondents completed the survey on Survey Monkey. A few AAAs encountered technical problems and printed out the survey and Faxed or emailed it to the CARIE Study Team, who then inputted the data.

Since there is no known list of attorneys who handle guardianship matters involving older adult AIPs, the decision was made to broadcast the attorney survey widely using multiple list serves. The email to the respondents contained a link to Survey Monkey. The attorney survey was disseminated through the Pennsylvania Bar Association, several local bar associations, Pennsylvania Legal Aid Network, and solicitor email lists (or list-serves) to what is estimated to be at least 2,500 attorneys. Of the 2,500 surveys sent, 183 individuals responded by completing the Survey Monkey instrument. The response rate was 7.3 %. Only 144 were usable surveys, plus three surveys which – because of their high volume of guardianship cases were analyzed separately. From these 147 surveys, however, we appear to have reached the

lawyers who were responsible for 87% (1,786) (including the outliers, as described in section XI. “Study Findings: Guardianship in AAAs and PA counties”) of all guardianship petitions filed in Pennsylvania for people over the age of 60 during the last calendar year. The total petitions filed for adults over 60 according to AOPC (Administrative Office of Pennsylvania Courts) Act 24 data was 1,917.ⁱ In addition, we used SAMS data, provided by PDA.

Statistical Programs Used: The surveys were collected via Survey Monkey, with results saved in an Advanced Statistical Analysis form, and then analyzed using Excel 2007. Details about the specific components of Excel used to analyze the data are included in Appendix C.

v. Key Informant Interviews

Key informant interviews were used initially to help shape the questions utilized for focus groups and asked in surveys. These key informant interviews were held over the phone by two members of the CARIE Study Team, Alissa Halpern, Esq., and Karen Reeve. Later in the study, the same team conducted phone interviews with key informants that were used to gather more in-depth information on issues that were raised during the surveys and within the focus groups.

All key informants were selected through a purposive sample of people who are known to have an important viewpoint on the guardianship process. This list of potential key informants was initially generated by the CARIE Study Team, and was added to with our initial focus groups, and each key stakeholder interview. Key informants used include people representing the following groups: attorneys, Orphans’ Court judges, protective services supervisors, guardians, guardian support agency directors, law professors, and national experts on guardianship and the elderly. The key informant interview protocol is included as Appendix D. However, it should be noted that, depending on the expertise area of the key informant, the interview protocol was adjusted accordingly. Follow-up questions with key informants were sent over e-mail, and many follow-ups required numerous e-mail exchanges with the Study Team to clarify points, or gather additional information.

After the total of 47 key informant interviews were conducted by the Study Team, the team found that themes were repeating and the amount of new information was diminishing. The decision was made to move to analysis and synthesis rather than continue with more key informant interviews.

vi. **Focus Groups:**

A series of focus groups were held: four focus groups with protective services workers and four focus groups with ombudsmen, one each in Northeast, Southeast, Southwest and Central Pennsylvania. Thirty-six (out of 67) counties were represented by 45 protective service workers and 36 ombudsmen. Although these focus groups were designed to solicit opinions from workers who had direct contact with clients, and not management staff, several management staff attended the focus groups. Many of these managers who attended the focus groups served two roles at the agency: management and direct service worker.

Focus group participants were recruited through an email sent by PDA. The four members of the study team conducted the focus groups, using the protocol (see Appendix E). All participants were asked questions to elaborate on their role in three phases of the guardianship process: 1) prior to the guardianship hearing, 2) during the hearing and court decision, and 3) after a guardian has been appointed. Each focus group concluded with an open discussion of recommendations to improve the guardianship process. The focus group discussion guides are attached as Appendix E. Both the AAA staff and the Ombudsman were asked similar questions – with some differences due to the different roles they serve. All participants of the focus groups signed release forms, and the sessions were audio taped, and notes taken. The material from the focus groups was transcribed, and key themes identified.

Confidentiality: Participants of this study were not offered confidentiality, although everyone was assured that comments used with attribution would include a formal request for permission. In the final writing of the report, no specific quotes were attributed to participants in the study. The goal of the study, the exploratory nature of the study, and the intended study audience were also discussed. Written release forms (see Appendix F) were discussed in each focus group, and were provided for stakeholders, with a copy of the form available for them to take with them. Written expectations of confidentiality were also developed for key informants, who were provided release forms (see Appendix G) to return to the study team.

III. **Introduction to Guardianship**

Guardianship is a process through which an individual is found to be incapacitated to such an extent that the court finds it appropriate to give individual and legal rights over to a guardian, appointed but not selected by the court, to exercise them in the incapacitated person's stead. In Pennsylvania, the process begins upon the filing of a **petition for guardianship** with the Orphans' Court for the county in which the individual resides. Once filed, the individual is referred to as the **Alleged Incapacitated Person (AIP)** and the person who files the petition is referred to as the **Petitioner**. The **guardian** is the individual who is appointed by the court upon a hearing as to the merits of the petition for guardianship. A

proposed guardian is named in the petition. A petitioner may be requesting to be named as guardian or may be requesting that a third party be named as guardian over the AIP. A petition may seek court appointment of a **guardian of the estate** (financial matters relating to the AIP), **guardian of the person** (personal matters relation to the AIP), or **guardian of both the estate and the person**; and a petition may request that the court grant a **plenary guardianship** (control over all elements of the estate) or a **limited guardianship** (control over those elements for which the court finds the AIP needs to have someone else be in control). Once the court has appointed a guardian, the AIP is typically referred to as the guardian's **ward**, although there are recommendations aimed at moving away from this terminology.

A. Guardianship and the Impact of Having a Guardian Appointed

Guardianship is a serious and, usually, permanent institution. The appointment of a guardian fundamentally changes the incapacitated person's everyday life, and liberty. Once a guardian is in place, that guardian is empowered to make most of the decisions relating to the ward's financial and/or personal life. The ward depends upon the guardian to ensure that the ward's housing remains available, food is provided, utilities are paid, clothing is adequate, care needs are met, transportation is arranged, and the financial house is generally kept in order.

One overarching theme that resonated throughout the CARIE Guardianship Study's activities is the notion that guardianship is extremely serious business. Many CARIE Guardianship Study participants echoed the seminal 1987 Associated Press series and the 1987 U.S. House Subcommittee on Health and Long-Term Care to the Select Committee on Aging, referring to guardianship as "legal death". "Guardianship in many ways is the most severe form of civil deprivation which can be imposed on a citizen of the United States. An individual under guardianship typically is stripped of his or her basic personal rights such as the right to vote, the right to marry, the right to handle money, and so forth." (Bayles & McCartney, 1987, p. 4)

B. The Number of Guardianships and the Nature of Wards

The 1987 Associated Press (AP) series used computer analyzed standardized reports on more than 2,200 court cases from across the country dating back to 1980 to estimate the number of guardianships in the nation. The AP determined that there were approximately 400,000 to 500,000 guardianships in the United States at the time, although the AP acknowledged that court records were incomplete and an accurate accounting would likely reveal a higher number (Bayles & McCartney, 1987). A 2011 study by Brenda K. Uekert and Richard Van Duizend for the National Center for States Courts estimated that there were 1.5 million people under guardianship in the United States.

The lack of information about the number of active guardians may be a reflection of state laws that place greater emphasis on the elements leading up to a guardian's appointment

than on the activities of following the appointment of a guardian. One would assume that the absence of specific figures on how many guardianships are active and in place hampers a state's ability to accurately estimate the cost of making improvements in their monitoring and oversight activities (such as data collection) following appointment.

According to information provided by county Orphans' Courts to the Pennsylvania Department of Public Welfare annually under the requirements of Act 24, more than 2,800 guardianship petitions were filed in each of the past three years.ⁱⁱ There is no available data on how many cases are active at the end of each year.

Many researchers have focused on the problems resulting from the absence of accurate national information regarding the numbers of people under guardianship, the conditions under which a guardianship is imposed, the services and alternatives being offered, the frequency and nature of misfeasance by guardians, and the possible warning signs of abuse. ([Uekert & Van Duizend](#), 2011) They agree that the absence of national information on this data hampers the ability of the courts, service agencies, policy makers, advocates, and others to address the issues. Accurate information, they believe, could be used to advance national guardianship standards, develop court improvement programs, and develop court performance measures that enable state courts to use evidence-based practices to improve processes.

In 2007 Senators Gordon Smith and Herb Kohl, chairs of the U.S. Senate Special Committee on Aging, issued a report on "Guardianship for the Elderly" that encouraged the collection and review of electronic case data (Smith and Kohl, 2007). In 2009, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) passed Resolution 14, "Encouraging Collection of Data on Adult Guardianship, Adult Conservatorship, and Elder Abuse Cases by All States." In 2010 the CCJ-COSCA Joint Task Force on Elders and the Courts issued a report recommending that "each state court system should collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluded each year" (Uekert, 2010). Each conference endorsed the recommendation. In 2010 COSCA adopted a policy paper urging funding for a National Guardianship Survey and support for the development of local data systems (COSCA, 2010). CCJ also endorsed this paper. ([Uekert & Van Duizend](#), 2011) The lack of meaningful information is clearly viewed as a significant systemic issue to resolve.

C. The Need for Changes in Guardianship

While every state has adopted some legislative framework for addressing guardianships of incapacitated individuals, the frameworks differ and are ever-evolving. States differ in how they address key elements of the guardianship system such as, but not limited to: what showing must be made before a court will appoint a guardian, how guardians are selected, and how guardians are monitored. At the state and federal levels, guardianship law, process, and

practice are subject to regular study, evaluation and consideration. Certainly, the gravity of guardianship prompts researchers, advocates, and others to want to know more about how and how often guardianship is being used, by whom, and under what circumstances. Likewise researchers want to understand best practices in guardianship to ensure that individual rights are protected. Not only has guardianship been the subject of numerous national and state-based reports and research studies, it has been the topic of multiple conferences and summits.

In Pennsylvania, the topic has been studied by groups including the Joint State Government Commission, the Pennsylvania Department of Aging, and the Pennsylvania Association of Area Agencies on Aging. Nationally, a broad assortment of national groups has weighed in on the current state of guardianship and on changes that could improve the guardianship system. AARP, the American Bar Association Commission on Law and Aging, and the Government Accountability Office (GAO) are among the most active entities in compiling, studying, and disseminating information on guardianship. The National Center on State Courts' Center for Elders and the Courts, the Conference of Chief Justices, and the Conference of State Court Administrators have, likewise, published reports and made recommendations for reform. There is an astonishing breadth of issues surrounding guardianship and the number of potential areas for reform is quite large.

Not only is guardianship the subject of much study and evaluation by researchers and advocates but, lawmakers, likewise, share concerns with ensuring that their guardianship systems best protect the individuals involved. Consequently, state legislatures revisit their guardianship statutes with some regularity.ⁱⁱⁱ Twenty-seven states made legislative changes to guardianship statutes in 2011 and twenty-one made legislative changes in 2010. (ABA, 2011)

Pennsylvania's current guardianship statute was drafted in 1992. This version was an amendment to the 1975 statute. A major change in the 1992 statute was the institution of the legal preference for limiting guardianships to only as much as was necessary to address the individual circumstances of the incapacitated person. The statute also changed the terminology referring to an "incapacitated person" (no longer using "incompetent person") and the standard for who can be subjected to guardianship.

Most recently, the Pennsylvania legislature revisited its guardianship statute with the July 2012 adoption of Act 108 of 2012 (what was House Bill 1720), a law that will significantly improve the transferability of guardianship orders between jurisdictions and states.

IV. Guardianship Law in Pennsylvania

The Pennsylvania Guardianship Statute was last updated in 1992. It addresses many important requirements around the prehearing, hearing, and post-appointment phases of guardianship. Appendix H includes the full requirements of the law.

A. Pre-Hearing

Pennsylvania's Guardianship statute states that any person interested in the welfare of an alleged incapacitated person may petition the court to have a guardian appointed for that alleged incapacitated person (20 Pa.C.S. § 5511(a)). The court may appoint as guardian "any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency ... or a county agency" (20 Pa.C.S. § 5511(f)).

Guardianship is a tool of last resort and the statute expressly dictates that guardianship **not be** instituted unless less restrictive alternatives have been explored and ruled out (20 Pa.C.S. § 5502). In the event that less restrictive alternatives are not possible and guardianship must be implemented, there is a statutory preference for the least restrictive form of guardianship, a limited guardianship, to be used (20 PA.C.S. § 5502). This is largely because guardianship results in either a complete or partial stripping of rights of the incapacitated individual.

There are numerous alternatives to guardianship. A full list of these is included in Appendix J – Alternatives to Guardianship. Most must be undertaken before an individual has lost capacity. Pennsylvania law allows for numerous mechanisms for an individual with capacity to designate decision makers such as healthcare proxies and powers of attorney. Thus, it might be possible to avoid the appointment of a guardian for an incapacitated person where that person executes one or more of these documents (reflecting their choices) prior to becoming incapacitated. Additionally, in some instances, it is possible that someone might lack the capacity to handle all of their day to day life decisions but still have the legal capacity to determine who they want to assume decision-making for them.

Under the law, the court must find that the person is incapacitated, and then the court must find that guardianship is necessary because alternatives are unavailable or impossible. Reaching a conclusion on capacity is not easy, as an individual's capacity is a complex medical-legal conclusion that cannot be reached quickly. It is, by its nature, on best made in degrees, so that the nature of the guardianship appointment is responsive to the areas of need and enables the individual to retain as much autonomy and self-control as possible. For this reason, there are limited guardianships and plenary guardianships (related to the breadth of the guardian's powers) and there are guardianships of the person and guardianships of the estate (related to the scope of the powers). These can be imposed separately or in combination.

The guardianship process begins when the petitioner files a petition for guardianship with the court and serves the AIP with notice of the petition having been filed. The law articulates requirements for the petition. According to 20 Pa.C.S. § 5511,

“The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.”

The petition is required to include the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, and the qualifications of the proposed guardian (20 Pa.C.S. § 5511). The statute does not define qualifications for guardians.

The written notice of the petition and hearing must be provided to the alleged incapacitated person at least 20 days in advance of the hearing (20 Pa.C.S. § 5511). The notice and petition must be provided in large type and in simple language, must indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding, and must include the date, time and place of the hearing and an explanation of all rights. (20 Pa.C.S. § 5511). The AIP has the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate. (20 Pa.C.S. § 5511). AIPs also have the right to have such counsel paid for if it cannot be afforded. (20 Pa.C.S. § 5511).

The notice of the petition and hearing must be personally served (meaning in person and handed to the individual) on the alleged incapacitated person and the process server must explain “the contents and terms of the petition ... to the maximum extent possible in language and terms the individual is most likely to understand” (20 Pa.C.S. § 5511). There are no requirements around who can make service and how to ensure the requirements for explaining the petition in language and terms the individual is most likely to understand are met.

Notice of the petition and hearing is required to be given to all interested persons “that reside in the Commonwealth who are themselves competent to handle their own affairs and who would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers” (20 Pa.C.S. § 5511). Many key informants indicated that this is interpreted broadly to mean all interested persons, regardless of whether they reside in the Commonwealth.

In order to pursue a guardianship, a petitioner must be prepared to establish incapacity in accordance with the requirements set by the local Orphans’ court. The petitioner must conduct an evaluation of the AIPs capacity. The law does not address who must conduct the evaluation or how an evaluation should be done to arrive at a conclusion of capacity or incapacity.

B. Hearing

Pennsylvania’s guardianship law requires the petitioner to demonstrate incapacity and the need for guardianship through clear and convincing evidence presented at the hearing (20 PA.C.S. § 5511).

In the hearing, a court must make specific findings of fact concerning:

- 1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.
- 2) The extent of the individual's capacity to make and communicate decisions.
- 3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.
- 4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.
- 5) The duration of the guardianship.
- 6) The court shall prefer limited guardianship (20 PA.C.S. § 5512.1).

The hearing itself may be closed to the public and with only a judge, unless the alleged incapacitated person or his/her attorney requests a jury (20 Pa.C.S. § 5511). The law permits the hearing to be held at the residence of the alleged incapacitated person and require that the alleged incapacitated person be present at the hearing unless: “(1) the court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that

his physical or mental condition would be harmed [the term “harmed” is not defined and several key informants raised that this is a matter often in dispute in cases before the courts] by his presence; or (2) it is impossible for him to be present because of his absence from the Commonwealth” (20 Pa.C.S. § 5511).

The alleged incapacitated person has the right to be represented by counsel as well as to cross-examine any witness testifying as to his or her capacity (20 Pa.C.S. 5518). The Petitioner (the person who is seeking to have a guardian appointed for the alleged incapacitated person) has to notify the court at least seven days prior to the hearing if the AIP does not have an attorney for the pending hearing (20 Pa.C.S. § 5511). “In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual” (20 Pa.C.S. § 5511). If the AIP cannot afford the attorney appointed, the court requires the county to pay these costs and the costs are reimbursed by the Department of Public Welfare. The forms that each county submits to DPW seeking reimbursement for the costs associated with providing counsel or capacity evaluations are the Act 24 forms described later in this report. These forms include information on the number and nature of guardianships as well as about the costs associated with court-appointed counsel and court-ordered evaluations.

The petition must aver incapacity and the petitioner will need to provide evidence of incapacity during the hearing (20 PA.C.S. § 5518). This is generally done through the testimony of an expert, however, the law is not explicit as to who qualifies as an expert to testify as to the AIPs capacity and it is not explicit as to how the testimony of the expert must be provided. In practice, expert testimony may take the form of live, telephonic or in-person testimony subject to cross-examination during the hearing or of written deposition transcript or deposition form. In addition to reviewing evidence from the evaluation that the petitioner has obtained, a court can choose to order an independent evaluation of the alleged incapacitated person (20 Pa.C.S. § 5511). The alleged incapacitated person (or the attorney on his/her behalf) can also request an independent evaluation (20 Pa.C.S. § 5511). The court is required to give due consideration to appointing an evaluator chosen by the alleged incapacitated person (20 Pa.C.S. § 5511). If the AIP cannot afford the capacity evaluation arranged, the court requires the county to pay these costs and the costs are reimbursed by the Department of Public Welfare. This too is done through the Act 24 forms described herein.

It is the expert evaluation of capacity that is supposed to guide the determination of whether the court should grant a plenary or limited guardianship. The court is not supposed to appoint a plenary guardian of the person or of the estate unless it finds that the individual is totally incapacitated and in need of plenary guardianship services. In fact, Pennsylvania law explicitly establishes a preference for limited guardianships over plenary guardianships (20 PA.C.S. § 5512.1). When a court finds that a person is partially incapacitated and in need of guardianship services with regard to personal decision-making, the court is supposed to appoint

a limited guardian of the person and appoint the limited guardian with powers that are consistent with the specific limitations the court has found the incapacitated person to have (20 PA.C.S. § 5512.1). For example, an individual who is unable to make complex decisions about managing their investments may be able to handle spending money or even paying routine bills. This may be a limited guardianship solely over the person with specified powers that may include:

- 1) General care, maintenance and custody of the incapacitated person;
- 2) Designating the place for the incapacitated person to live;
- 3) Assuring that the incapacitated person receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the incapacitated person in the development of maximum self-reliance and independence; and
- 4) Providing required consents or approvals on behalf of the incapacitated person (20 PA.C.S. § 5512.1).

Or, the court may find that a partially incapacitated person who is in need of guardianship services requires the appointment of a limited guardianship only over their estate with specified powers (consistent with the court's finding of limitations) that clearly indicate the portion of assets or income over which the guardian of the estate is assigned powers and duties. A partially incapacitated person retains all of his or her legal rights that are not expressly granted to the limited guardian.

At the end of the hearing, the court reaches a decision about the need for the guardianship as well as about whether to appoint the proposed guardian that was identified in the petition. The guardianship statute has no provisions related to how a proposed guardian is selected, whether they must satisfy any prerequisite requirements or qualifications, or whether the proposed guardian must attend the hearing and give testimony.

At the conclusion of a proceeding in which the person has been adjudicated incapacitated, the court must ensure that the ward is informed of his right to appeal and to petition to modify or terminate the guardianship (20 PA.C.S. § 5512.1).

C. Post-Appointment

When the court issues a guardianship order, the guardianship is official. The court is the only place where the guardianship is recorded, as there is no central registry through which to confirm whether a person is the appointed guardian for another person. The statute does not specify any distinct training or educational information that guardians are to be given, nor any specific standards that guide the guardian's conduct. The statute does not specify how often a guardian must visit or have contact with a ward, nor any penalties for failure to fulfill the guardians' duties to the ward or to the court. The law does not provide for any entity to

provide support to guardians in fulfilling their duties, although it appears that most courts provide this upon request.

The guardianship is typically viewed as being permanent; the court may, at some point, order that capacity be reevaluated and that the matter come back to the court for a review hearing but there is no requirement for any regular review.

Under 20 Pa.C.S. 5521(c), there are set required activities the guardian must undertake following appointment. Within three months after real or personal estate of his ward comes into his possession, each guardian is required to verify by oath and file with the clerk an inventory and appraisal of such personal estate, a statement of such real estate, and a statement of any real or personal estate which he expects to acquire thereafter (20 PA.C.S. § 5521). Each guardian of the estate of an incapacitated person is required to file with the court appointing him, a report at least once within the first 12 months of his appointment and at least annually thereafter, attesting to: current principal and how it is invested; current income; expenditures of principal and income since the last report; and needs of the incapacitated person for which the guardian has provided since the last report (20 PA.C.S. § 5521).

Each guardian of the person of an incapacitated person is required to file with the court a report, at least once within the first 12 months of his appointment and at least annually thereafter, attesting to the following: current address and type of placement of the incapacitated person; major medical or mental problems of 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 or be terminated or modified and the reasons therefore; and the number and length of times the guardian visited the incapacitated person in the past year (20 PA.C.S. § 5521).

Lastly, within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian is required to file a final report with the court (20 PA.C.S. § 5521).

V. Best Practices in Guardianship through Model or Uniform Laws

Over the years, several model laws devoted to or touching upon guardianship laws have been developed. Model laws are uniform approaches drafted by a group of experts, reflecting the best thinking and best practice on the topic. Drafters encourage states to adopt these model laws, in whole or in part, but states are under no obligation to do so. When considering guardianship law in Pennsylvania, there are three important developments in model or uniform laws: the National Probate Court Standards (updated in 1999); The Uniform Guardianship and

Protective Proceedings Act of 1997 (UGPPA); and Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act of 2007 (UPGPPJA). The UGPPJA has already been adopted in Pennsylvania. A chart comparing Pennsylvania's Guardianship Statute with the UGPPA and the National Probate Court Standards is provided in Appendix K.

In 1994, the National College of Probate Judges and the National Center for State Courts produced national standards for courts exercising probate jurisdiction, including guardianship standards. These were updated in 1999. The *National Probate Court Standards* (NCPJ & NCSC, 1993) are a set of model provisions addressing probate court practice. They were drafted in 1993 by the Commission on National Probate Court Standards and Advisory Committee on Interstate Guardianships. This includes standards for how the courts should proceed with guardianships. The current Pennsylvania Guardianship Statute incorporates many of the elements that are reflected in the National Probate Court Standards. However, the National Probate Court Standards include quite a number of recommended provisions that are not contained in Pennsylvania's Guardianship statute, a few of which are highlighted below. (Note that some of these recommended provisions may occur in practice, however, the NPCJ would have them included in state statute.) According to the NPCJ, state statutes should require that:

- Courts should, in all guardianship cases, appoint a court visitor to visit with the AIP to explain his/her rights, to investigate the facts of the petition, to explain the circumstances and consequences of guardianship, to investigate the need for additional court appointments (such as appointment of counsel), and to file a written report with the court on the visitor's findings.
- At the hearing, the proposed guardian should always be present, the entire hearing should always be on the record, and the court should hear testimony and make a finding upon clear and convincing evidence that there are no less intrusive alternatives.
- The guardianship order should specify all the duties and powers of the guardian (including any limitations and rights retained by the ward) and all the guardians' responsibilities to the ward and to the court. And, the court should develop and implement orientation and training programs for guardians.
- The court should have written policies and procedures to ensure the prompt review of reports and requests by guardians and the court should have procedures to periodically review the necessity for continuing guardianship.

The Uniform Guardianship and Protective Proceedings Act of 1997 (UGPPA) is a comprehensive model law addressing guardianship. It was drafted by the National Conference of Commissioners on Uniform State Laws to replace a 1982 draft from the same group. The UGPPA has been adopted in Alabama, Colorado, District of Columbia, Hawaii, Massachusetts, Minnesota, and the U.S. Virgin Islands.^{iv} Pennsylvania has not adopted the UGPPA of 1997, as Pennsylvania's Guardianship Statute has not been revised since 1992 with the exception of the recently enacted Act 108 mentioned previously. The Pennsylvania Guardianship Statute

incorporates many of the elements that were included in the UGPPA of 1997. Elements of the UGPPA that are not included in PA's law are:

- That there should be a court visitor in every case that explains the guardianship that is proposed, interviews the AIP and proposed guardian, visits the AIPs dwelling, obtains information from physicians and anyone else known to have treated, advised, or assessed the AIP's relevant physical or mental condition and make any other investigation directed by the court. The visitor should file a report with the court that includes such things as a recommendation as to whether counsel should be appointed, a summary of the daily functions the AIP can manage without assistance, could manage with supportive services (including technology), and cannot manage; recommendations regarding the appropriateness of the guardianship, a statement about the qualifications of the proposed guardian as well as whether the AIP approves or disapproves of the proposed guardian, and a recommendation as to whether professional evaluation or further evaluation is necessary.
- That states should either adopt a requirement that counsel be appointed in all cases where the AIP is not represented or that statutes should better specify when counsel should be appointed, including when requested by the AIP, when recommended by the visitor, and when determined appropriate by the court.
- There should be a statutory priority ordering of who can be appointed as guardian.
- That guardians of the person's annual reports should include (in addition to what PA requires annual reports to include) the guardian's opinion as to the adequacy of the ward's care, a summary of the guardian's visits with the ward and the guardian's activities on the ward's behalf and the extent to which the ward has participated in decision making, if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest; and plans for future care.
- Courts should establish monitoring systems, including monitoring of the filing and review of annual reports, that allows for the appointment of a visitor to review a report, interview the ward or guardian, and make any other investigation the court directs. Pennsylvania statute requires that annual reports be filed with the court and prescribes what is to be included in report. However, the statute does not specify requirements for the courts once they receive reports.
- Guardians of the estate should be required to keep records of the administration of the estate and to make them available for examination on reasonable request of an interested person and should report on the assets under control and a list of receipts, disbursements, and distributions during the reporting period (PA Statute only requires this for income).

In 2007, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act of 2007 (UGPPJA) that, if adopted by a state, would allow guardianships to be formally recognized by another

state or transferred to another state. The UAGPPJA was not drafted to replace the UGPPA. Instead, it addresses significant issues around transfer of guardianship powers in the event of transfer of the ward between jurisdictions. Thirty states have adopted the UAGPPJA (ABA, 2011). Act 108 of 2012, signed on July 5, 2012 adopted the UAGPPJA for Pennsylvania.^v

VI. National Guardianship Law and Practice Studies

The modern guardianship reform efforts are believed to have begun as a consequence of a pivotal expose published by the Associated Press in 1987. In the 25 years since, national experts have been reporting on guardianship practices and issuing calls for system reform. These calls have consistent, recurrent themes, despite the diverse backgrounds and perspectives of the authors. In the past 25 years, concerns about guardianship practices and procedures as well as the need for reforms have been addressed by many national organizations and associations. Some of the groups focusing attention in this area include the Associated Press news service, the House Select Committee on Aging, the Senate Special Committee on Aging, the American Bar Association Commission on Law and Aging, AARP, the Government Accountability Office (GAO), the National Center for State Courts and its Center for Elders and the Courts, the Conference of State Court Administrators, the National Guardianship Association, the National Center on Elder Abuse, and the National Conference of Commissioners on Uniform State Laws, and the Pennsylvania Joint State Government Commission. Many helpful studies and reports containing valuable findings and recommendations have been produced by these groups. There have been empirical studies, surveys, conferences, and workgroups with broad-ranging expertise collaborating on developing recommendations for improving the guardianship system.

Although it is not unusual to see many groups from varied backgrounds and interests weigh in on the need for reform in a system, it is remarkable that these groups are wholly unanimous that there are problems with guardianship laws and practices and that system reforms are needed. What is unusual in the many reports outlined below is that there is no substantive disagreement amongst these groups. There are, however, some differing recommendations about how best to remediate a problem identified, some differing emphases in how to prioritize the problems to remediate, and, even, some different foci on which features of the system are worthy to be studied or addressed. However, there is no disagreement about the problems that are identified. Not one group takes issue with the ideas of any other. Not one group denies the existence of problems identified by any other.

A. Collaboration and Education Around Guardianship

i. ABA and APA Collaborative Work on Assessing Capacity

In 2003, an interdisciplinary taskforce of individuals from the American Bar Association (ABA) and the American Psychological Association (APA) set up the ABA-APA Assessment of Capacity in Older Adults Project Working Group to address the issue of how to determine capacity in older adults. Determination of a person's capacity is the core consideration in evaluating whether guardianship is an appropriate approach to pursue. The most basic rights of the person hinge on getting this assessment correct. Defining what should be involved in a "correct assessment" of an older adult's capacity has been, at best, a gray area. The ABA-APA group and additional legal and clinical experts made great strides in bringing clarity to determining capacity for older adults by putting forth a conceptual model and assessment template (Jennifer Moye, et al, 2007). This team of legal and clinical experts integrated legal provisions for guardianship and best clinical practices for assessing capacity to form this conceptual model. They identified six assessment domains:

- 1) medical condition
- 2) cognition
- 3) functional abilities
- 4) values
- 5) risk of harm and level of supervision needed and
- 6) means to enhance capacity

The resulting assessment template provides a structure for determining capacity in guardianship proceedings and for evaluating these proceedings.

Clinical Evidence in Guardianship of Older Adults Is Inadequate: Findings from a Tri-State Study (Moye, J., et al, 2007) used the 6-domain template for assessment of capacity to evaluate clinical evidence in guardianship proceedings in three states. The states were selected to represent high (Colorado), medium (Pennsylvania), and low (Massachusetts) degrees of activity around statutory reform in guardianship. Evaluation of court records of 298 guardianship cases supported the hypothesis that a state with higher statutory reform has more comprehensive reports and more frequent use of limited guardianship orders. While the study's unrepresentative sample does not allow the results to be generalized to the state; it is interesting to see that the 74 cases from two courts examined in Pennsylvania reflect that 45% of the AIPs lived in the community, petitioners were usually family or friends (58%), methods of clinical testing and prognosis were not usually stated, functional capacity was infrequently defined in terms of the AIP's ability to do Activities of Daily Living (ADLs) (19%) or Instrumental Activities of Daily Living (IADLs) (21%), there was no mention of the AIP's values or preferences, and that 96% of the cases resulted in guardianship of the person and estate. The study recommends consistent use of a shared conceptual model (i.e. across legal, medical and

psychosocial professions) and related tools to assess and define capacity to support the least restrictive arrangement for the older adult.

The ABA-APA Assessment of Capacity in Older Adults Project Working Group (ABA-APA Working Group) went on in 2005 to apply the conceptual framework to the practical work of those involved in guardianship. The ABA-APA Working Group prepared three extensive handbooks – one for lawyers, for psychologists and for judges – for assessment of older adults with diminished capacity.

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers (ABA & APA, 2005) is the ABA-APA Working Group's 71 page handbook for lawyers that provide guidelines, tools and ideas for lawyers in providing counsel to older adults with diminished capacity. The handbook is organized around 16 key questions such as "what are legal standards of diminished capacity?" and "what techniques can lawyers use to enhance client capacity?" Appendix K contains a complete list of the questions answered in the lawyers' handbook.

Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists (ABA & APA, 2005) provides a theoretical framework and practical tools for clinicians to assess six civil capacities for older adults, i.e. medical consent, sexual consent, financial, testamentary, driving and living independently. It addresses the topics of undue influence, the capacity to mediate, the capacity to participate in research, and the capacity to vote. An assessment worksheet is provided that guides the clinician through nine elements of evaluating capacity: (1) legal standards, (2) functional elements, (3) medical and psychiatric diagnoses, (4) cognitive functioning, (5) psychiatric and/or emotional factors, (6) individual's values, (7) risks related to the individual and situation, (8) means to enhance the individual's capacity, and (9) clinical judgment of capacity. The handbook offers psychologists advice for working with attorneys and the courts on capacity cases, including advice on giving expert testimony. The handbook also provides assessment tools and useful websites.

Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: Handbook for Judges (ABA & APA, 2006) is the third in the series developed by the ABA-APA Working Group. This handbook was reviewed by the National College of Probate Judges. The Working Group applied the same conceptual framework of six domains of capacity – medical condition, cognition, everyday functioning, values and preferences, risk and level of supervision, and means to enhance capacity – and the state of the art in assessing each pillar. Five steps in judicial determination are reviewed: (1) screen the case, (2) gather information, (3) conduct the hearing, (4) make the determination, and (5) ensure oversight. The goal of the handbook is to provide practical tools to assist judges in crafting the type of guardianship that is best tailored to each individual's capacity, capabilities, and risk situation. Limited guardianship is highlighted as an option to preserve whatever capacities the individual retains. Seven model forms are included for use in the determination process.

ii. The National Guardianship Association

The National Guardianship Association (NGA) was formed in 1989 by professional guardians to develop and encourage the use of standards of excellence in guardianship. There are currently more than 1,000 NGA members nationwide, including 43 from Pennsylvania. Twenty-four states, not including PA, have state guardianship association affiliates. The National Guardianship Association developed its first set of guardianship standards in 1991 and continues to revise these standards as research and best practices develop across the industry. The NGA endeavors to strike a balance between standards that represent an ideal and recognize practical limitations which family guardian or professional guardians are likely to face. NGA developed agency standards for acceptable business practice and program design for programs providing professional guardianship services. NGA draws on many sources including its members and state associations, the U.S. Administration on Aging, AARP, Michigan Offices of Services for the Aging, and the researchers and experts at Wingspan conferences and the National Conference on Guardianship Reform. The NGA provides training and ongoing support for guardians who are members. The most recent iteration of the NGA's professional and agency standards are available on line.^{vi} NGA is currently incorporating the standards and recommendations from the 2011 Guardianship Summit into what will be the next version of its guardianship standards.

iii. The Center for Guardianship Certification

In 1997, the NGA created a separate Center for Guardianship Certification to create certification requirements and to train and make available certification to people who want to serve as guardian. The Center for Guardianship Certification has the mission to enhance the quality of guardianship services by providing examination and certification of guardians and fiduciaries. It has more than 2,000 certified guardians throughout the US with state-specific testing in California, Florida, Texas and Oregon. The Center maintains a summary of the guardian certification requirement in ten states.^{vii} The Center continues to be an allied foundation of the National Guardianship Association, and upgrades its exam as NGA revises its professional standards. Thirteen states offer guardianship certification, including 11 states that require certain professional guardians to undergo certification before they can be appointed but generally exempt family members from such directives. In two other states, certification is optional for all guardians (GAO, 2010). Certification programs in five states require applicants to complete guardianship training, while nine others order them to pass a national guardianship exam, a state exam, or both. Three states require applicants to complete both guardianship training and pass a competency exam before they can obtain certification. Certification is not required in Pennsylvania. Notwithstanding, 46 Pennsylvania guardians are certified by the Center for Guardianship Certification, including several AAA staff.^{viii}

iv. The ABA Commission on Law and Aging Clearinghouse

In addition to authoring numerous reports on guardianship and recommendations around systems change, the American Bar Association's Commission on Law and Aging regularly generates educational information and resources on guardianship. The ABA-CLA provides a directory of state guardianship handbooks.^{ix} It has produced resources such as the "Alternatives to Guardianship: Substantive Training Materials and Module for Professionals Working with the Aging and Persons with Disabilities".^x

In 2011, the ABA-CLA published a series of handbooks to guide the development and implementation of guardianship monitoring programs. These were based on the work that came from the 1988 AARP funded National Guardianship Monitoring Program. AARP initiated this program in response to court concerns about the lack of staff resources to follow up on guardianships despite concerns about the well-being of incapacitated persons under the court aegis. The two-year demonstration program sought to evaluate whether trained volunteers could serve effectively as monitors, acting as the "eyes and ears of the court." The project developed three volunteer jobs: "court visitors" to interview individuals and their guardians to ensure they were receiving proper care, "court auditors" to review annual financial returns from guardians, and "records researchers" to work with court records to prepare cases for assignment to volunteer visitors. Judges, court staff, and an evaluation team found that the project created a much stronger capability for cost-effective monitoring, as the volunteers made helpful recommendations to the court and as a result of their monitoring activities brought to the courts' attention issues requiring action.

In 1991, AARP expanded the project by providing a manual and technical assistance resulting in 53 courts starting volunteer monitoring programs, most using AARP volunteers. Although AARP ended its technical assistance in 1997, many programs continued including two in Pennsylvania (several new monitoring programs have recently been established). In 2010 the ABA Commission on Law and Aging—in collaboration with the National College of Probate Judges, and using a copyright license to revise the AARP manuals—surveyed probate courts on volunteer monitoring to update the AARP materials, test them in two pilot sites, and disseminate them in electronic form to courts nationally. The resulting ABA handbooks for Volunteer Guardianship Monitoring and Assistance^{xi}, published in 2011, include an introduction, program coordinator, trainer and volunteer handbooks.

VII. Promising National Practices in Guardianship through State and Local Programming

A. Court Monitoring of Guardians

The ABA has done extensive research on guardianship practices across the country. One area of investigation is that of monitoring guardians promoted by Naomi Karp and Erica Wood in their report “Guarding the Guardians: Promising Practices for Court Monitoring” (2007). Based on a two year study of leaders in the field, four courts were identified with exemplary practices in monitoring guardians. Maricopa County, Arizona Superior Court’s Probate and Mental Health Department^{xii} uses case management, investigators, volunteer monitors, accountants, bonding and restricted accounts, and a monitoring database. Ada County’s Idaho Probate Court has a volunteer monitor program, created by a pilot project funded by the state using filing fees, which provides feedback used to improve guardianship. In 2005 Suffolk County New York Guardian and Fiduciary Services^{xiii} started a model program of monitoring and accountability that coordinates education, training and one-on-one assistance for professional and lay guardians. Tarrant County, Texas Probate Court Guardianship Services^{xiv} was created in 1993 using volunteers, including social work internships, to help the court oversee its 1,000 cases.

The study lists a host of best practice ideas from its survey of model programs. Recommendations focus on ways to make reporting easier and timely, to use report data effectively to protect wards, and realistic strategies to implement court monitoring efforts.

B. Aging Network Collaboration with Courts

Guardians and courts frequently do not have enough information on aging services, elder abuse, and long-term care. Across the country AAAs are working with courts to enhance the courts’ and guardians’ knowledge of community-based aging services that can enable the incapacitated older adult to continue to live at home and receive supports there. AAAs’ strategies range from simply including information about aging services as part of a guardian’s appointment order, to working jointly with the court to develop a volunteer guardianship monitoring program, or convening an interdisciplinary community coordinating group on guardianship to improve its practice in the best interest of the older adult. Some of the projects work with ombudsman programs that notify the courts if facilities are closing and others help secure counsel and assist in testifying in court. Others are involved in cross training and many provide volunteers. An excellent brochure published by the ABA gives tips and examples of how the aging network can work with the courts to inform them of the resources available for at risk older adults.^{xv}

C. Guardianship Agencies

A two-phase study was conducted of statewide guardianship programs across the United States, “Public Guardianship After 25 Years: In the Best Interest of Incapacitated People?” (Teaster, et al 2007). It categorized all but one state as providing public guardianship in one of four models. In the Court Model, used in five states, the public guardian is the official of the court that has jurisdiction over guardianship and is appointed by the chief judge of this court, with the chief administrative judge of the state having the rule making power to promote statewide uniformity. The Independent State Office Model, used in four states, is in the executive branch, and the public guardian is appointed by the governor. The County Model, used in 13 states, has a public guardian within each county appointed by county government, and is regulated by the state attorney general. In the Pre-existing Social Service Agency Model, used in more than half of the states, a public guardian is appointed by the governor. Questions have arisen about this model with concern that there may be a conflict since the agency is providing services to the same clients for whom they are guardian. Interestingly Pennsylvania is included as a state that uses this model. Presumably, even though there is not a “public guardian” in Pennsylvania, the fact that in some cases public entities i.e. AAAs, DPW do serve as guardian may have triggered this classification.

Findings from this national study revealed that most of the wards are in institutions. While all states but one fit into one of the four models, some government entities providing public guardianship do not consider themselves as doing so. Even though it is a public service, court costs and filing fees are a barrier to using the public guardian. From the sparse cost data the study estimated that the average cost per case is \$1,850 in significantly understaffed programs. The study developed recommendations that cover individuals to be served, structure and functions of the programs, funding, its role in the state guardianship system, and areas for research on public guardianship.

The Kansas Guardianship Program^{xvi}, started in 1977, is funded by state government costing \$1.16M in FY11. Its staff of a director and seven regional coordinators recruit, train, monitor and support 800 volunteers, who serve as court appointed guardians for low income adults who have no one else to serve, across the state. It serves 1,400 wards of which 44% are 60 years of age and older. The director observes that the keys to replication of this model are using paid staff to recruit and oversee the volunteers, managing risk by having legal counsel and volunteer liability insurance/bonding, and recognizing that growth will be slow.

VIII. State Guardianship Law and Practice Studies

A local article written to accompany the 1987 Associated Press series on the problems with guardianship around the country found^{xvii} Pennsylvania's guardianship law to be outdated, largely unmonitored and ripe for abuse. "Guardianship is the worst. [Pennsylvania's] law is archaic."^{xviii} At the time, it was noted that while the courts supervise wards, only one of the state's 67 counties knows how many guardianships it had open. Only one county demanded periodic financial accountings. Only one county required that all alleged incompetents have lawyers. Only one county had investigators that would follow up on wards. The provisions of the 1992 amendments to the PA Guardianship statute aimed to address many of these concerns raised in the 1987 Associated Press series, however, questions and concerns about other guardianship practices and provisions continued.

A. Research Studies and Surveys

In the years since the 1992 adoption of the current Pennsylvania Guardianship Statute, there have been several Pennsylvania-specific studies of guardianship practices and procedures in the Commonwealth. In fact, since 2000, four statewide studies have been conducted and the results have prompted an array of recommendations for reform.

A 2000 study was completed to collect data to describe the scope of guardianship services for older adults and get providers' feedback on 3 models of public guardianship. In 2004, the Pennsylvania AAA Association (P4A) informally surveyed its members to describe the extent of AAAs' involvement in guardianship. A 2006-2007 Joint State Government Commission study sought to look at the practice of guardianship law for older adults in PA to find areas for improvements in the law. A 2009 P4A informal survey of AAAs was designed to describe the practices of guardianship monitoring and mediation known or used by AAAs.

i. The Pennsylvania Guardianship Services Study - 2000

The Guardianship Services Study was conducted in 2000 by Joyce Miller Iutcorich and Donald Pratt of the Keystone University Research Corporation. It was funded by the Pennsylvania Department of Aging. Its objectives were to assess availability of guardianship at the state and county/AAA level, to describe issues in guardianship, solicit preferences for a model of public guardianship, and to identify policy implications of the study's findings. The researchers analyzed AOPC (Act 24) data which each county Orphans' court provides to the Department of Public Welfare to get reimbursed for court-appointed attorneys and capacity evaluations in guardianship matters, conducted two focus groups with a cross-section of professionals involved in the guardianship process, and surveyed providers of guardianship, attorneys and judges (N=93).

The AOPC data for 1999 reflected that 1,375 petitions were filed for people who were 60 years and older, which accounted for 75% of the total petitions. The average rate of elderly guardianship was 0.88 per 100 residents. Most elderly guardianships (90%) were plenary rather than limited. Non-relative guardians were appointed in 42% of the older adult cases. The study assumed that AOPC cases were low income. By combining this number of new cases per year with the number of ongoing guardianship cases, derived from surveys of service providers, the study estimated that there were about 1,000 low income elderly receiving guardianship services in PA at any one time.

Through data on the approximate amount of time each guardianship requires each month and on the range of hourly rates charged when guardianship services are purchased, this study estimated the total annual cost of providing guardianship services to low income elderly to be between \$1.2 million and \$6 million, with the range in cost reflecting the variation in time spent on each guardianship case and in the hourly rates. Funding for guardianship services came from PDA block grant (54%) and client fees – client fees ranged from \$0-\$160/hour

From two focus groups the researchers of the 2000 study generated a list of 22 issues. Survey respondents were asked to rank the seriousness of each of the 22 issues. Issues ranked most serious were: the need for funding for indigent clients, the need for better coordination among the courts, public agencies, and medical institutions around the hearing, and the need for standards and monitoring of guardians.

When asked to rate three models of public guardianship – public, corporate and volunteer – respondents considered the public and corporate model feasible but not the volunteer model. Social service providers had a slight preference for a non-profit corporate guardianship model while judges and lawyers preferred a public model to be housed in the Pennsylvania Department of Aging.

ii. Guardianship Law in Pennsylvania: Report of the Working Group on Guardianships – 2007

In 2006, Pennsylvania's Joint State Government Commission formed a workgroup on guardianship law. The workgroup undertook a study of guardianship law primarily for the purpose of understanding the landscape of guardianship cases of older adults in Pennsylvania. The study included a written survey of Area Agencies on Aging (AAAs) and one of County Nursing Homes. Research, personal experience, and the opinions of the workgroup formed the basis of the recommendations. The workgroup published a report with recommendations for guardianship reform in 2007.

Of the 52 AAAs, 44 (85%) completed the survey. Survey results for AAAs found:

- 90% petition for guardianship,
- 64% either act as guardian or contract for guardianship for 721 individuals,
- 65% are willing to serve as guardian of last resort, and
- 32% serve as POA for a total of 107 individuals.

The most common guardianship-related services provided by AAAs were reported as:

1. Legal services (assisting potential/current guardians through petitioning process, completing annual guardianship form, helping older adult enroll in services)
2. Representative payee
3. Power of attorney
4. Providing community support services for person receiving guardianship

When asked if the current statutes, programs, and services are effectively meeting current demand for guardianship 61% disagreed. Similarly 84% of AAA respondents thought that current programs and services cannot meet the needs of a potentially growing number of long term care residents needing guardianship services. Their comments reflect these themes:

- Dependable funding is needed, e.g. a state budget line item for AAAs, and it should include the cost of a thorough petitioning process and monitoring as well as guardianship services.
- There is a need for an adequate number of trained guardians.
- There is a need for system changes to support the growth of guardianship, e.g. a statewide entity for guardianship and ethical issues, more facilities that accept Medicaid eligible wards, and monitoring of alternatives such as Powers of Attorney.

The report supported the adoption of many provisions of the Unified Guardian and Protective Proceedings Act. It also made many specific recommendations for changes to Pennsylvania's guardianship law including recommendations concerning AIPs presence at the hearing, guardian selection, capacity assessments, reporting by guardians and the establishment of an Office of Guardian Support.

To date, none of the JSGC's recommendations have been implemented. The Joint State Government Commission's Advisory Committee on Decedents' Estate Laws has a subcommittee, the Subcommittee on Guardianships and Powers of Attorney, which has continued to work on the recommendations arising from the 2007 workgroup. A report with recommendations and proposed statutory revisions was released after this study was completed in October 2012.

ii. Pennsylvania Association of Area Agencies on Aging 2004 & 2009 Informal Surveys

In 2004 and 2009, the Pennsylvania Association of Area Agencies on Aging (P4A) conducted informal surveys of its members' roles in guardianship for each AAA in the state.

The first survey in 2004 was conducted by P4A's Working Group on Protective Services and Guardianship concerning AAAs role in guardianship. The one-page survey was completed by 48 (92%) of the 52 AAAs. At that time 30 (63%) served as guardian, most of those only for protective service cases; 18 do not serve as guardian because the AAA is not authorized by its governing board, 12 do not serve due to a lack of funding, 16 see serving as a conflict of interest, 8 have a guardianship agency available and do not have a need (multiple answers were allowed).

The 2009 survey consisted of five questions about specific aspects: petitioning, acting as guardian, subcontracting for guardianship services, monitoring of guardians, and use of mediation. Each question asks for elaboration in narrative form for each question, and to detail any other guardianship issues they wanted to mention. Of the 52 AAAs in PA, 46 (89%) responded to the survey.

Most AAAs (91%) reported that they petition for guardianship and, of these, most (83%) have a limitation to petitioning. The most common limitation is that the AAA only petition for guardianship as a last resort, e.g. there is no able caregiver or viable community service support plan. Fifty-nine percent of the AAA's stated that they serve as guardians, and most did so with limitations. The most common limitation is that the AAA must be the guardian of last resort. A significant number (19) of the AAAs reported monitoring of guardians being done by their agency or by their county court system. Only a few AAAs (4) reported that they use mediation in the guardianship process, usually in resolving family conflicts either as an alternative to guardianship or to establish the role of family guardians.

B. Recommendations of Prior Pennsylvania Studies

While the intent of the Pennsylvania studies/informal surveys varied, all collected feedback on how the practice of guardianship in PA can be improved. There is inferred

consensus that the need for guardianship for the elderly is going to grow and Pennsylvania needs to be prepared to accommodate this growth. Funding was the number one area that all agree needs improvement. In the 2000 study, the issue that ranked most serious was “funding for area agencies on aging earmarked for services to low-income and indigent clients to assist with the guardianship process.” The 2004 survey found overwhelming support (96%) for the availability of funding for local guardianship service in Pennsylvania. Most respondents in the 2007 study thought that current statutes, programs and services were not sufficient; adding comments about the need to fund guardianship for indigent younger adults, as well as the elderly, whether living in the community or a facility. In the 2009 study, when asked for “other comments on guardianship you’d like to share?” the most frequent response was the need for a dedicated funding stream to AAAs to provide and/or assist with guardianship.

The second most common area cited as needing improvement was the quantity and quality of those who provide guardianship services. This issue was articulated in the 2000 study as: establishment of ethical standards for guardianship; monitoring and oversight of guardians; need for a support system for guardians; screening and evaluation of potential guardians; and training and certification of guardians. In the 2007 study, AAA respondents noted the need for: guardians for adults who are 18-59 years of age; better monitoring by the courts; more local guardianship agencies; support for families to become guardians; and qualification requirements for guardians.

The third common theme for improvements was the need for a statewide strategy to respond to the growing demand for guardianship services. The 2000 study issue ranked second in seriousness was the need for “systems for coordination among public agencies, the courts, and medical institutions to manage the guardianship process.” Other systemic issues were “statewide uniform rules, procedures and protocols related to guardianship” and “standardized medical and psychological assessment tools for determining incapacitation.” Several respondents in the 2007 study highlighted the need for a statewide entity for guardianship and ethical issues, and for an agency to support the AAAs in the provision of guardianship.

IX. The Role of Area Agencies on Aging in Guardianship

Pennsylvania’s Area Agencies on Aging (AAAs) come into regular contact with the guardianship system. All are involved in guardianship matters or with individuals who have guardians. In talking with AAA staff during the CARIE Study activities, it was clear that there is a

great commitment to serving the needs of a very vulnerable population albeit with varying methods. The passion and concern for these individuals is evident in their work and in their concern for doing the very best they can with difficult and often challenging work.

The extent to which each AAA is involved with guardians, wards, guardianship proceedings, or serving as guardian differs by AAA. AAAs derive authority and direction from a mixture of state and federal laws. Federal law, however, does not require AAAs to be involved with guardianship matters. The Older Americans Act (OAA) (42 U.S.C. 3001 et seq), which directs much of the work conducted by Area Agencies on Aging, does not specifically address guardianship in its mandate of services to be provided by the aging network. The 1992 amendments to the OAA (including Title VII Vulnerable Elder Rights Protection and Title II Elder Abuse Prevention and Services) have prompted AAAs to become more involved with guardianship, as these provisions created multi-disciplinary elder abuse prevention and services, the ombudsman program, and legal services for the elderly. Additionally, guardianship is stated in the cooperative agreements between PDA and the AAAs. It is through these services that many guardianship-related AAA interactions occur.

Another service area that prompts AAA involvement in guardianship matters is protective services. There is no federal adult protective services law. State laws govern and define each state's provision of protective services to older adults. The National Association of State Units on Aging and Disability (NASUAD), in its 2011 Survey of State Units on Aging, found that 20 states, including Pennsylvania, provide guardianship services, whether through their protective services programs or otherwise.

Pennsylvania's Older Adult Protective Services Act of 1988 (35 P.S. § 10211 et seq.) established a uniform Statewide reporting and investigation system for suspected abuse, neglect, exploitation or abandonment of the elderly; providing for funding and making repeats. An older adult in need of protective services is defined by the Act as "An incapacitated older adult who is unable to perform or obtain services that are necessary to maintain physical or mental health, for whom there is no responsible caretaker and who is at imminent risk of danger to his person or property" (35. P.S. § 10211 et seq.) Pennsylvania is one of the states that provide guardianship services as a service on the menu of available adult protective services. Petitioning for guardianship has been one of the possible protective service interventions for an older adult who fits this definition.

For the fiscal year ended June 30, 2011, the Pennsylvania Department of Aging reported that its Area Agencies on Aging received a total of 18,129 reports of need for protective services of which 12,499 (69%) were appropriate for investigation. Of the investigations conducted, 4,344 (35%) were substantiated as needing protective services. (PDA, 2010) The top three forms of abuse investigated were: 1) self-neglect; 2) caretaker neglect; and 3) financial exploitation. The top three services provided, by numbers, were: 1) personal care; 2) guardianship; and 3) assessment/ competence evaluation and physician consult.

X. Promising Practices in Guardianship in Pennsylvania

The Pennsylvania AAA network has made inroads into improving guardianship for older adults from staff training to building coalitions to effect system change.

C. Pennsylvania Protective Services Institute

The PDA established the Institute on Protective Services at Temple University to develop and provide training curricula for protective service workers statewide. The four-day training for new OAPS workers includes a review of tools to help assess a client's capacity. The Institute also offers specialized training on topics including guardianship and its alternatives.

D. Pennsylvania Area Agency on Aging Association (P4A)

P4A and PDA have a joint working group on Protective Services and Guardianship. It was originally established in 1988 to help implement the OAPS Act within the AAAs. In 1992, the committee began addressing guardianship in response to the Guardianship Reform Act of that year. The Committee is a vehicle to communicate best practices, ongoing compliance, develop and ensure consistency of practice in OAPS. It has good representation from the AAA network.

P4A has done two informal surveys, in 2004 and 2009, of AAAs on guardianship. Both surveys confirmed that AAAs have differing views on involvement in various aspects of guardianship, ranging from declining to petition to serving as guardian for the community. Many AAA's see guardianship as a tool to resolve many protective services cases, and that it should continue to be a local decision for each AAA to provide guardianship services.

E. PA Elder Abuse Task Forces

The AAA network is in the process of developing an elder abuse task force in each AAA area to provide protective services investigators with access to and credibility with law enforcement. The Pennsylvania Protective Services Institute provides technical assistance for existing and forming task forces.

The Department of Aging's Annual Protective Services Report for FY 2011 identified eleven fully operational elder abuse task forces, six that are effective but have different goals and objectives, six that were in development; and another six that were in the process of establishing relationships. Typically the AAA OAPS convenes the task force members from the police department, the district attorney, and any other community partners with an interest in convicting those who abuse the elderly. Cases may involve an abusive guardian. Some task forces see their role more broadly, i.e. to work toward prevention of elder abuse, which can include improving the guardianship system to better protect incapacitated older adults. The Elder Abuse Task of Schuylkill County is an example of a task force with an active membership and an endowment to support its mission of preventing the many forms of elder abuse.

F. Volunteer Guardianship Monitoring Programs in Pennsylvania

Pennsylvania currently has four volunteer guardianship monitoring programs in Chester, Dauphin, York and Westmoreland Counties. The judges in those counties are very committed to protecting the rights of this most vulnerable population. We heard from judges that they would prefer to see guardians educated, credentialed and monitored. We also heard from one judge who said that all courts should have these monitoring programs.

Chester County

The longest running volunteer monitoring program was formed in Chester County in 1995. It was one of several Pennsylvania sites for AARP's pilot project to recruit and train volunteer guardianship monitors. The program is run by a court staff person (.5FTE) who oversees 30 volunteers monitoring 300 cases. The staff person attends all of guardianship hearings. The majority of wards are older adults. The AAA refers about 50 cases annually.

Volunteers come from all backgrounds and most are over 50 years of age. It follows the AARP/ABA model of volunteer monitoring with three volunteer roles of researcher, visitor, and auditor. Researchers compile reports and court documents for the visitors. The visitor meets

with the ward and the guardian annually and does follow up work. Auditors review guardians' financial reports. Problems are reported to the coordinator who can resolve about half, referring the remaining issues to the court.

The impact of the program is felt at several levels. As intended, the ward is protected. For example, one visitor found a guardian, who was the ward's grandson, on drugs and helped negotiate getting guardianship changed to the niece who was actually providing care. Surprisingly or perhaps not, guardian caregivers express how much they appreciate having a visitor to talk to about the challenges of being a caregiver. The Orphan's court judge does not know how the court could stay on top of its cases without these volunteers even though this court actually has more staff than most counties with a court administrator and two assistants.

Dauphin County

Dauphin County has had a volunteer monitoring program for a number of years. It is run by court administration with no additional funding. Its 53 volunteer monitors work with 250 active open cases. The court sends letters to guardians explaining that a volunteer will be visiting.

The most common problems that volunteer monitors find are with guardians not knowing their responsibilities or how to fulfill them, even though the court gives guardians a packet of information at the time of appointment. Guardians often file reports late. This year the court started sending a 60-day order to guardians who filed late or no reports with copies of the forms included.

Westmoreland County

Until this year Westmoreland County had only one person in the court administrator's office whose job included reviewing more than 300 active guardianship cases. Early in 2012 the court started a volunteer monitoring program using pro bono members of the bar.

York County

York County started its volunteer monitoring program early this year, 2012. So far it has 35 pro bono lawyers who are visiting wards and guardians using standard monitoring forms. A training video is used with each volunteer to help assure consistency in the training content. The judge thinks that this program will create a sense that the court is out there, staying on top of cases which will make guardians more attentive.

G. A Sampling of Guardianship Agencies in Pennsylvania

As part of key informant interviews, staff talked with the directors of six guardianship agencies in the Commonwealth, several of which are within AAAs. While these agencies represent a convenience sample and are not necessarily representative, each agency has unique features in its practice of guardianship.

Serving Seniors Inc. uses friendly visitors

Serving Seniors Inc., in Scranton, started 1981 with the mission to improve quality of life for older adults in the community and facilities. Its services include ombudsman and PEER, volunteers (200) who visit nursing home residents and guardianship clients, transportation, and guardianship. The agency serves 4,000 annually. Currently 86 clients are in guardianship, 56 of whom are AAA clients. Most live in personal care homes, with only two living in the community.

Its guardianship service has had a program-funded contract with Lackawanna County AAA since 1994. It also has fee-for-service clients. The agency supplements funding for its guardianship program from three fundraisers done annually to support all of its programs. It is a member of the National Guardianship Association, and its Executive Director has NGA certification.

The guardianship process starts with notification by the referral source of the need for a guardian. Serving Seniors Inc. does an assessment with the AIP before going to court, and then attends the hearing. Once appointed as guardian, Serving Seniors Inc. visits the ward at least monthly, attends care plan meetings, and works with staff and family. Its guardianship service is available 24 hours a day, 7 days a week. Serving Seniors Inc. matches wards without family or friends, with its volunteer friendly visitors who are trained to work with guardianship clients. These volunteers do not take the place of the monthly visitation provided by the guardian.

Ursuline Guardianship Services serves 15 counties

Started in 1985, Ursuline Senior Services has been providing guardianship services, care management, protective services, money management and service coordination in Allegheny County. It now has guardianship clients in 15 counties, serving about 200 cases at any given time, most in long term care facilities. Its guardianship staff of 16 is composed of 5 guardians of the estate, 5.5 guardians of person, 3 of both. Seven of their guardians hold certification.

Ursuline has a private and a public guardianship program for indigent clients, is contracted by four county nursing homes (Kane Regional Centers), and serves as a fiduciary for VA clients. Additionally, the agency serves as representative payee. It has a program-funded contract with the Allegheny AAA, currently serving 164 clients. Allegheny AAA subcontracts its care management and protective services to three agencies, including Ursuline which separates its protective services staff in a different department from its guardianship program.

The process of guardianship begins with a referral from AAA Protective Services or care management. Prior to the hearing, Ursuline visits the AIP, and talks to next of kin and other collaterals. As the proposed guardian, Ursuline attends the hearing and often testifies. Once appointed as guardian, Ursuline immediately notifies concerned parties as to who can act on behalf of the client, gets bonding, and does an inventory of the client's assets. Ursuline follows the guardianship practice standards established by the National Guardianship Association of which Ursuline is an active member. For prompt service, Ursuline has a rotating "guardian of the day" during office hours who responds to calls. The AAA monitors Ursuline monthly, reviewing records and sometimes visiting clients.

Senior Care of PA (Guardian Services of PA) does geriatric care management

Senior Care of PA began in 2003 as a private geriatric care management company with a specialty in guardianship known as Guardian Services of PA. Currently Senior Care of PA has 300 clients; most are guardianship clients, 30 are POA, and 20 are private geriatric care management clients. Senior Care of PA has clients in the five county area of Greater Philadelphia and is looking to expand to other counties. Most referrals are from nursing homes and hospitals to get approval to receive Medicaid, and 25% of referrals come from AAAs.

Many of the guardianship clients live in nursing homes. The agency has private guardianship clients and has a small contract with Chester County AAA to act as guardian when there is no family or the alleged abuser is family.

Senior Care of PA is a member of the National Guardianship Association (NGA) and has certified guardians on staff. They visit at least bi-monthly, participate in care conferences, and encourage client participation in decisions. Senior Care follows the standards of the NGA, and its 12 professional staff man on-call services 24 hours/day 7 days a week for emergencies and medical decision-making.

Good News Consulting Inc. specializes in dementia care

From its founding in 1998, the mission of Good News Consulting has been to advance excellence in person-centered care, especially to all of those who help others live with dementia. It offers, throughout the mid-Atlantic region, a variety of education and support services for families and professionals caring for people with dementia, manages an adult day center and a senior center, and provides geriatric care management. In 2001 it added Professional Guardianship Services. Good News Consulting currently serves 56 guardianship clients in 14 counties. Almost all guardianship clients live in nursing homes. It has contracts with AAAs in York, Lancaster and Dauphin counties and is in discussion with Schuylkill and Berks AAA.

Before accepting a referral, Good News Consulting uses a case weighting system to determine if they can provide the needed services with the available resources and to help assign the case to the best matched staff. This referral weighting system and staffing practices follow best practices established by the National Guardianship Association, of which Good News Consulting is an active member. When a referral is accepted, Good News Consulting stays in touch with the petitioner and attends the hearing. After appointed guardian, Good News Consulting staff visit at least monthly, attend at least two care conferences annually, and complete monthly reports. Good News Consulting incorporates the client and their families in its process, striving to resolve issues to unite families, and partners with community services involved in the case. The contracting AAAs perform annual monitoring visits.

Clearfield AAA Guardianship Services is integrated with protective services

The Clearfield AAA has been serving as guardianship for 25 years, accepting clients only as a last resort. Its OAPS staff works hard to find and support family to be the primary caregiver for an older adult who appears incapacitated; and to use alternatives for medical, property, or financial management. While most referrals come from Protective Services there are a variety of other referrals from the court and service community. Clearfield AAA provides guardianship for 2-6 older adults at any one time. The AAA primarily serves indigent clients; if a ward does have sufficient resources, the AAA asks a financial institution to handle the guardianship of the estate.

The AAA secures an attorney for the AIP, usually pro bono. The AAA, not an individual, is named as guardian. The OAPS staff continues to visit at least once each month as the care manager for guardianship. The agency is a member of the National Guardianship Association.

Its staff is NGA certified to elevate the quality of their work and to encourage others involved in guardianship to work to the standards of the profession.

Westmoreland AAA Guardianship Program is a separate unit

The Westmoreland AAA started its Guardianship Program in 1984 in response to the need in its community. Its staff of nine is composed of a supervisor, four care managers, two case aides, a nurse and an accountant. It serves an average of 75 cases of which 70% are plenary guardianship and 30% are POA and/or representative payee. Most clients (90%) live in a long term care facility or group home, and 10% live in the community most of whom are under 60 years of age. About 10% of the clients have significant assets.

The agency provides private guardianship for those with resources, being careful to make sure there are sufficient funds set aside to cover burial, and personal needs, and services for those on Medicaid.

Referrals to Westmoreland AAA Guardianship Program come from Protective Services and other AAA departments, hospitals, the VA, and the Social Security office. The supervisor of the Guardianship Program decides to accept the case or refer the case to the few attorneys in the area who handle guardianship. A care manager from the Guardianship Program is assigned to attend the hearing.

Once appointed as guardian, the Guardianship Program follows its manual of standard procedures. The care manager does a home visit and full assessment within 72 hours and develops a care plan. If the client is not living at home, the care manager immediately secures the house. The client is visited at least once every three months by the care manager. The nurse does a home visit nursing assessment, visits every three months and post hospital stay, and attends nursing home care plan meetings. Case aides visit at least once per month for socialization, escort to routine medical visits and errands, and reports problems to the care manager. The Guardianship Program has a documented process of checks and balances for secure management of clients' finances. Close teamwork is important for the success of this program as is good relations with the community.

XI. Study Findings: Guardianship in AAAs and PA counties

This section presents the findings from all portions of the CARIE Study research. This section includes the information obtained through:

- the findings and recommendations of national reports and conferences on guardianship reforms;
- the findings and recommendations from surveys conducted on 144 attorneys who practice in guardianship in the Commonwealth;
- the findings and recommendations of all 52 directors of Area Agencies on Aging;
- the findings and recommendations from 4 focus groups containing more than 40 Older Adult Protective Services workers;
- the findings and recommendations from 4 focus groups containing more than 30 long-term care ombudsmen program workers;
- the insight of 47 key informants (including attorneys, law professors, Orphans' Court judges, staff of the Administrative Office of Pennsylvania Courts, protective service workers, guardians, guardian support agency staff, national experts on guardianship and the elderly; and
- review and analysis of state data on guardianship.

The findings are organized as follows:

Section A:	Who participated in the study?
Section B:	Guardianship in Pennsylvania
Section C:	Pre-Hearing
Section D:	Hearing
Section E:	Post-Hearing
Section F:	Costs

Section A: Who participated in the surveys, focus groups and key informant interviews?

This section describes the survey response rates, the level of involvement of survey respondents in guardianship matters, and the geographic breadth of responses. The key informants were all individuals that had self-identified or that had been identified to us as have some experience or being involved in some aspect of guardianship. The Protective Services and Ombudsman staff was invited to the four regional focus groups. They either self-identified or were assigned to participate by more senior AAA staff. They were not required to have involvement with the guardianship system. Some had no involvement with guardianship. Those that did have involvement in guardianship matters had varying experiences with guardianship.

A.1. WHAT WAS THE RESPONSE RATE FROM AAAs?

Every one of the 52 AAAs in Pennsylvania responded to the survey for AAA directors. It should be noted that there was some AAA representation in the lawyer survey results as several AAA solicitors replied to that survey. Accordingly, the response on the AAA survey was 100%.

A.2. WHAT WAS THE RESPONSE RATE FOR THE LAWYERS TO THE GUARDIANSHIP SURVEY?

The names and total number of lawyers who handle guardianship cases in the Commonwealth is unknown. Since no specific list exists of Pennsylvania attorneys who handle guardianships, the link to the lawyer survey and an open invitation to complete the survey was broadcast widely to more than 2,500 lawyers who have chosen to be part of Pennsylvania Bar Association sections on Elder Law and Real Property Probate and Trusts.

There were 183 total lawyer survey respondents, 144 of whom submitted surveys that were complete and able to be analyzed. These 144 were the only ones used to report on the findings of this survey, with the exception of three “outliers”. These three lawyers had very high numbers of guardianship (78, 80, 100/year) and their numbers were removed from the general analysis to avoid skewing the results (see Appendix C). Their responses, however, are occasionally shared throughout this report as indicated. As shown in A.5., it appears that the lawyer survey was completed by only 7.3% of the attorneys to whom it was sent, however, these attorneys were responsible for filing 73% of all guardianship petitions filed in the Commonwealth in 2011.

A.3. HOW MANY COUNTIES ARE REPRESENTED BY SURVEY PARTICIPANTS?

All 67 counties are represented in the AAA survey results while 59 counties are represented in the Lawyer Survey results. The 144 lawyers responding to the survey have handled guardianship matters in Orphans' courts in all but eight of Pennsylvania's 67 counties, and each handles guardianship matters in an average of 2.6 counties. There was no lawyer in the survey who reported having handled a guardianship matter in any of the following counties:

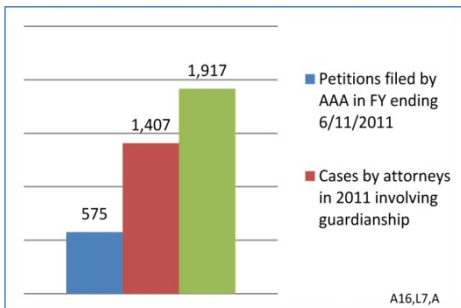
- Cameron
- Forest
- Juniata
- Montour
- Pike
- Potter
- Warren
- Wayne

A.4. WHAT IS THE EXPERIENCE OF AAAs WITH GUARDIANSHIP?

In an effort to understand the extent of AAA involvement in guardianship, we analyzed our survey results in conjunction with state data on total guardianships. The AAAs report, through their survey responses, that they filed 575 guardianship petitions in FY 2011. When the AAA survey data is analyzed in conjunction with the annual Act 24/AOPC data for total petitions filed in 2011, it appears that Pennsylvania AAAs filed 30% (575) of all petitions that were filed for people over 60 years of age during this time. In 2011, approximately 1,917 total guardianship petitions were filed in the Commonwealth for individuals age 60 and older.

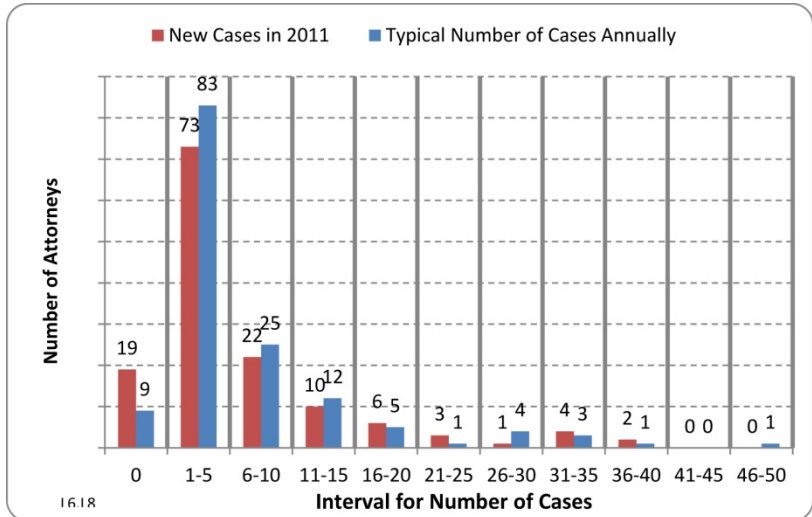
A.5. HOW MANY LAWYERS HANDLE GUARDIANSHIP CASES INVOLVING OLDER ADULTS IN PENNSYLVANIA?

The total petitions filed for adults over 60 according to APOC Act 24 data was 1,917. The 144 attorneys who responded to the survey indicated that had filed 1,407 petitions for persons age 60 and older during 2011. Thus, the attorneys who responded to the survey filed approximately 73% of all guardianship petitions filed in 2011. If the three Outliers (with cases of 78, 80, 100) are included in the figure, then the survey drew the response of Pennsylvania lawyers who were responsible for filing approximately 87% of all guardianship petitions filed in 2011.

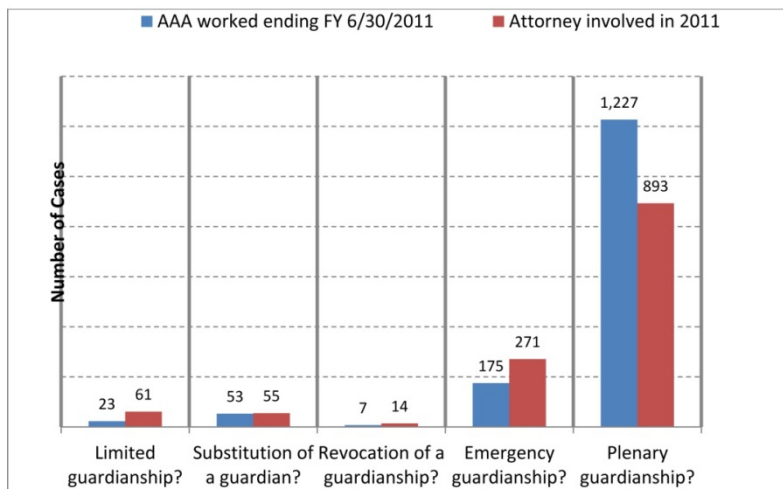


A.6. HOW MANY GUARDIANSHIP CASES DO THE SURVEY PARTICIPANT LAWYERS HANDLE IN A YEAR?

While the attorneys that responded to the survey were responsible for filing most of the guardianship petitions filed in 2011, the attorneys do not all handle a similar number of guardianship matters each year. Almost half (73) of the 144 lawyers that responded handle 7 guardianship cases a year, however, the majority of lawyers that responded handle between 3 and 4.5 cases each year. [L6, L8]. The bar chart at right illustrates the range of



numbers for new guardianship cases in 2011. The number of new cases is shown in intervals of 5. The height of a bar depicts the number of lawyers in the survey for a particular interval.



The chart at left shows the number of guardianship cases by AAAs and Lawyers that involved the range of guardianship options [A15, L7]. AAAs in Pennsylvania are currently serving as emergency guardian for 15 older adults and permanent guardian for 539 older adults [A23, A24]

A.7. DO LAWYER SURVEY RESPONDENTS HAVE EXPERIENCE WORKING WITH INDIGENT CLIENTS?

Sixty percent of lawyers indicated that they represent clients in guardianship matters of limited means: Eighty-seven lawyers indicated they handled a total of 521 guardianship cases for individuals with annual income less than \$20,000. Eighty-five lawyers indicated they handled a total of 495 guardianship cases for individuals with assets less than \$100,000. [L7]

A.8. HOW MANY OF THE LAWYER SURVEY RESPONDENTS HAVE SERVED AS A GUARDIAN?

The lawyers that responded to the survey have served in many roles; they have served as counsel for the AIP, for the petitioner, for an interested party, or for guardians. Additionally, a number of attorneys that responded to the survey have also served as guardian. Approximately 26% of the attorneys who replied to the survey report ever having served as a guardian [L9]. Only 15.3% of the attorneys who replied to the survey report having served as a guardian in the year 2011. Most of the 15.3% had been appointed as guardian between one and five times in 2011 [L10, L11].

Section B: Guardianship in Pennsylvania

This section presents the findings about the guardianship system in Pennsylvania: how many people are affected by guardianship, what is the role of the AAA, the role of attorneys, the availability of training, and variations by county.

B.1. HOW MANY PEOPLE ARE AFFECTED BY GUARDIANSHIP IN PA?

According to the Act 24/AOPC forms filed with the Department of Public Welfare, there are on average more than 2,800 new guardianship petitions filed in the Commonwealth each year.^{xix} There were 2,835 petitions filed in 2011. The Act 24/AOPC data does not include an age breakdown for each reporting topic. The total number of petitions for guardianship that were filed in the year is the only number that is broken down by age group. From this information, it is possible to determine that 1,917 (67.7%) of the 2,835 filed in 2011 were for individuals age 60 and older. For all other Act 24/AOPC data, it is possible to estimate how many of each reported figure might be for adults age 60 and older (such as how many petitioners were approved for this age group) but it is not possible to provide precise numbers for these measures.

Of the approximately 2,800 guardianship petitions filed each year, between 15% and 20% were emergency petitions for guardianship, with 80-85% being regular petitions for guardianship. The emergency to regular breakdown for the three years in reporting counties was:

Guardianship Cases in Pennsylvania - All Ages									
	Emergency Petitions			Regular Petitions			Statewide Total		
Year	Filed	Approved	Approval Rate	Filed	Approved	Approval Rate	Filed	Approved	Approval Rate
2009	503	413	82.1%	2,385	2,182	91.5%	2,861	2,591	90.6%
2010	588	519	88.3%	2,300	1,990	86.5%	2,792	2,388	85.5%
2011	486	399	82.1%	2,389	2,109	88.3%	2,835	2,428	85.6%

B.2. IS AN OLDER ADULT MORE OR LESS LIKELY TO BE FOUND INCAPACITATED THAN A YOUNGER PERSON?

Guardianship is primarily an issue for older adults. In fiscal year 2011, petitions filed by Area

GUARDIANSHIP CASES IN PENNSYLVANIA 60 YEARS OF AGE AND OLDER			
Year	Filed	Estimated Approved	Approval Rate %
2009	1,821	1,649	90.6
2010	1,910	1,635	85.6
2011	1,917	1,642	85.6
TOTAL 2009-2011	5,648	4,926	87.2
FY 2011 AAA Cases	575	568	98.8

Agencies on Aging to obtain guardianship for an older adult had a 98.8% chance of being approved by the courts. In FY 2011, nearly 99% (or 568 of 575) of the guardianship petitions filed by AAAs were approved [A25. A16c]. By contrast, in Calendar Year 2011, only 85.6% of the guardianship petitions filed from all sources **for individuals of all ages** across the entire state were approved. The approval rate for guardianships requested by AAAs in

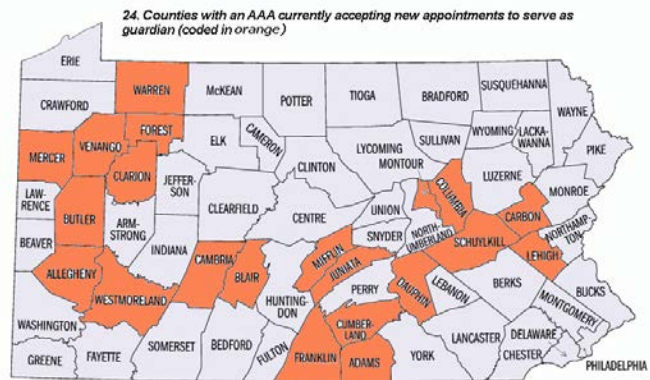
2011 was approximately 98.8%, 13.2% higher than for younger adults and older adults not subject to AAA involvement.

B.3. WHAT IS THE ROLE OF AAAs IN GUARDIANSHIP?

As noted in A.4., the AAAs report filing 575 guardianship petitions (filed by only 39 of the 52 AAAs) in the last fiscal year. These 575 petitions represent 30% of the total number of guardianship petitions filed last year.^{xx}

And, 67 additional cases were referred to a third party to file a guardianship petition for guardianship [A16].^{xxi} Thirty-two (62%) AAAs report that they **are not** currently accepting new appointments to serve as guardian. Twenty (38%) AAAs report that they **are** currently accepting new appointments to serve as guardian.

Twenty-five of the 32 AAAs that are not accepting new appointments still serve as guardian for individuals for whom they were appointed before changing their policy. In total, the AAAs currently serve as guardian for 554 individuals (15 appointments as emergency guardian and 539 as permanent guardian) [A23].



B.4. IS THERE A CONFLICT OF INTEREST WITH AAAs ROLE AND GUARDIANSHIP?

There is no consistent way that AAAs are staffed to handle their many broad responsibilities and often AAA staff hold more than one position within the AAA. Expert Key informants expressed concern that there can be conflicts of interest. AAAs, they say, tend not to recognize or understand how others might perceive conflicts of interest within their agencies, conflicts such as one full-time staff person who is both a part-time protective services worker that serves as guardian and also the part-time ombudsman who is supposed to visit the facility where the ward resides and be available as an advocate for that ward. However, some focus group participants and key informants understood these concerns and indicated there are no standards for preventing against conflicts. Focus group participants noted that there is little guidance provided by the PA Department of Aging on the AAAs role in guardianship and protecting against conflicts of interest but this would be helpful.

B.5 WHEN DO AAAs BECOME INVOLVED WITH GUARDIANSHIP?

There are many reasons why AAA staff may find themselves involved with situations that involve or lead to guardianship. We heard from focus group participants and key informants that Protective Services workers get involved in guardianship matters in the event of:

- Breakdown of a caregiving support system that puts an older adult at risk;
- An older adult who has no responsible caregiver and is unable to manage;
- A caregiver who is neglectful or exploitive (due to burnout, stress, or otherwise); or
- Caregiver who is Power of Attorney, but is not currently acting in best interest of the older adult.

Guardianship cases are at times referred from health care providers trying to obtain payment for services, get consent for a procedure, or arrange a discharge of an older adult without capacity.

In addition to the above reasons a guardianship case might land at the AAA, the Ombudsman note that they may become involved with guardianship:

- When a family cannot afford the costs associated with applying for guardianship, or hesitates to take that step;
- Family members are fighting over control of the older adult's care, or resources;

- A ward asks to have a guardian removed;
- When a family member objects to a third party guardian or learns of a guardianship after a petition has been granted;
- Facilities need payment from a resident who appears to lack capacity;
- Facilities want guidance on a resident who is incapacitated and does not have a caregiver; or
- Protective Service workers refer to Ombudsman when a report of need is unsubstantiated for an older resident of a facility.

Ombudsman focus group participants reported that they see nursing facilities increasingly pursuing guardianship when there are payment issues – not as often for treatment decisions. They have concerns about whether this is appropriate, whether the guardians that get appointed are focusing on the ward’s interests and needs. Ombudsman participants expressed that this is not the right remedy – there should be a way to get at the income without having to take the persons rights away. And, they see that in many of these instances the facility just goes after guardianship of the estate and of the person because it is faster and easier than having to go back in the future.

Attorney key informants indicated that guardianships sometimes transpire as the result of physicians instructing the family to pursue guardianship, when the family only needs to obtain legal authority on behalf of the older adult.

B.6. WHAT INFLUENCES AN AAA TO PETITION FOR GUARDIANSHIP?

While there are many similarities across the matters that result in guardianship, there is no singular set of circumstances that appear to prompt guardianship. When asked “under what circumstances does your AAA directly petition for the AAA to be named guardian,” 50% of the AAAs chose from the response options listed, choosing from the survey choices as many “circumstances” as were applicable. The remainder offered answers in the comments section. Of those that chose from the response options provided, 24 (46%) said they would if the client came in through Protective Services. Fifteen (29%) indicated that they would only petition if there was no family who could petition. Thirteen (25%) indicated that they do not petition for guardianship. Of those that wrote their own responses in the comments section, 8 (28%) AAAs indicated that they would consider petitioning for guardianship for another person to be appointed as guardian. Five (17%) indicated that they only petitioned as a last resort [A11].

B.7 WHAT IS THE RELATIONSHIP BETWEEN ATTORNEYS AND AAAs?

An attorney is generally necessary for filing the petition for guardianship. The arrangements between attorneys and the AAAs differ across the state. When AAAs were asked about what kind of counsel advises them on guardianship matters, 31 (60%) said they used an outside/contract attorney, and 16 (31%) used the County Solicitor. Only four (8%) used an in-house attorney, and one answered “none.” [A12]

When the lawyers were asked about contracts or arrangements they have with AAAs, 45 (31%) of the attorneys indicated that they have a contract with an AAA to represent the AIPs in guardianship cases. Seventeen (38%) of these attorneys indicated that, through these contracts, they represent a petitioner other than the AAA. Thirteen (29%) serve as Solicitor to represent the AAA as petitioner; 11 (24%) are not solicitor but have a contract to represent the AAA as a petitioner, and 11 (24%) have a contract to represent AIPs in defending the guardianship petition. Six (13%) have contracts with an AAA to serve as guardian. [L43]

When asked an open-ended survey question about their opinions for their local AAAs’ guardianship related services for the counties in which the attorneys practice, 78 lawyers responded to the question; 34% indicated that the AAAs’ involvement in guardianship matters was positive, 25% said it was neutral, and 13% said it was negative. Twenty-nine percent said something other from which we were not able to determine a value (such as: I work with Sue.) [L42].

B.8. WHAT KIND OF TRAINING DO LAWYERS GET ABOUT GUARDIANSHIP?

There is no specific training required for lawyers who wish to practice in guardianship. Sixty-one percent of lawyers that responded to the survey indicate that they have no specialized training in guardianship law or in handling guardianship cases [L15]. Thirty-nine percent of lawyers reported having had specialized training in handling guardianship matters; the majority of these individuals indicated Continuing Legal Education (CLE) seminars as the source of their specialized training [L40]. (Each lawyer must complete a certain number of CLE credits to remain in good standing with their license.)

Several attorneys who were key informants noted that there is no single, uniform training program or set of training materials to which lawyers wanting to handle a guardianship can turn for information and guidance.

B.9. WHAT KIND OF TRAINING DO STAFF AT AAAs GET?

There is no fixed, uniform, initial or ongoing training for all AAA staff on guardianship and related issues. According to the survey of AAA directors, protective services workers at AAAs average 6 hours of total training a year, care management staff average about 2.5 hours of total training a year, and ombudsman staff average about 2.7 hours of total training a year [A31]. According to the focus group participants, the content of these training hours varies widely and may or may not cover the topics of capacity and guardianship.

Key informants from within the PA AAA network report that the initial training of protective service workers covers a review of assessment tools that help determine an older adult's capacity. However, training does not go into great detail on any topic because of the volume of material that needs to be covered in this time. Focus group participants indicated the training of staff varies widely between AAAs. Some expert key informants suggested training for protective services workers on assessment of capacity. The National Adult Protective Services Association has established competencies^{xxii} for APS workers and training for each of the competencies is under development. These would include assessment of capacity. It has been suggested that a variation on one of the ABA's Handbooks on Assessment of Capacity might be a good basis for an AAA worker training tool.

Ombudsmen who participated in three of the four Ombudsman Focus Groups stated that they do not feel that they are adequately trained for working with incapacitated elderly around guardianship issues. Further, they indicated that they do not have resources through which to find information or to obtain answers to questions that arise in their work in relation to residents who are under guardianship and they wish these were available. Additionally, some of the key informants who are judges felt that more education is needed about the guardianship process, consequences and alternatives. Training should include hospitals, doctors, long term care facilities in addition to older adults and their families.

B.10 ARE THERE DIFFERENCES IN GUARDIANSHIP PRACTICES THAT VARY AMONG COUNTIES?

The guardianship statute specifies the overarching requirements for how cases should be handled but does not address all elements of guardianship practice. Typically local court rules address more day-to-day issues such as how to assemble documents for filing or whether to file electronically. When the AAAs were asked if there are differences in guardianship practices from county to county, many said yes. Thirteen AAAs responded that there were variations in the AAAs level of involvement in guardianship. Six noted variations in aspects of the courts' processes, e.g. petitioning, judges' willingness to hear cases/appoint guardians, the degree to which the judges follow the law etc. Less frequently discussed, but still salient points, were mention of: a wide range of differences regarding how AAAs pay for guardianship services, that some AAAs only accept guardianship for nursing home wards, and that some AAAs are "quick" to turn to guardianship [A60]. The attorney survey suggested that there are local court practices that impact their practice but the survey did not collect detail on this question. These themes were echoed in the key informant interviews and in the AAA staff focus groups.

All key informant guardians noted that each county operates very differently, and the guardian must learn the procedures for each. Attorney key informants report that procedures vary from county to county with each court having its own processes. One example of a difference that was raised by multiple study participants was inconsistent practices around whether the hearings take place in open court, with strangers present, or whether they are conducted privately, in chambers, in closed court, or at the AIP's location.

Section C: Pre-Hearing Findings

This section describes findings related to the pre-hearing phase, during which a decision is made to file for guardianship, AIPs are notified, interested parties are notified, experts conduct their evaluations, and arrangements are made for the guardianship hearing.

C.1. HOW DO AAAs AND LAWYERS HANDLE THE INITIAL QUESTIONS OF CAPACITY?

The petition for guardianship must allege that the individual lacks capacity. Whether an individual lacks capacity is a decision made by a medical professional. It is always preceded, however, by some initial impression or informal assessment of the individual's capacity that prompts the petitioner to think that capacity is diminished, that his/her needs cannot be met, and that guardianship should be pursued. Both AAA workers and lawyers find themselves in the position of trying to make some sort of initial determination of an individual's capacity which may or may not warrant the pursuit of an official determination of capacity and a petition for guardianship.

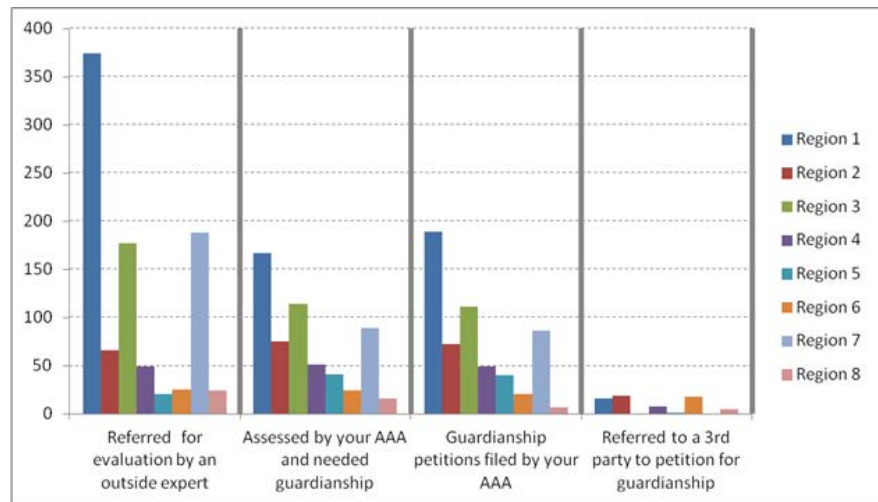
As described in Section VI there are standardized tools that can be used to determine capacity. There does not appear to be one consistent way that AAAs conduct this initial evaluation, nor does there appear to be one consistent way that attorneys make this initial determination. When asked about how capacity is initially, informally determined, survey respondents at the AAA reported that 88% used the SPMSQ (Short Portable Mental Status Questionnaire), which is an optional portion of the AAA assessment tool. The mini-mental status exam was used by 50%, and the SLUMS and MoCA were used by 10% and 8% [A6]. In addition, reports from the primary doctor, and psychiatric evaluations, as well as personal experience were reported, almost uniformly, as additional elements that contributed to the initial assessment of capacity [A7].

Focus group participants from Protective Services indicated that home assessments played an important role in determining capacity, with some workers reporting that they supplement the state assessment form with questions to determine the consumer's executive functioning, for example, "How do you spend your day?", or favor using a more detailed assessment of cognitive functioning (e.g. SLUMS). Several noted the value of considering capacity and the consumer's prior care (or refusal of care) choices in the context of their historical lifestyle, education and culture.

Only 6% (9) lawyer respondents used the ABA-APA Capacity Questions for Lawyers, attached in Appendix L. Another 6% (8) use a different written instrument or tool other than the ABA-APA Capacity Worksheet for Lawyers. Eleven percent (16) of attorneys answered that they use something “other” to assess capacity. This includes the determination of the AAA, medical records, the reports of a doctor or family members, or some combination of all of these factors [L12, L13]. As reported below, most lawyers relied on an outside expert for the evaluation of capacity.

C.2. HOW ARE EXPERTS USED TO FORMALLY EVALUATE CAPACITY?

Medical expert opinions about capacity are essential for the guardianship hearing. And, consequently, it is essential to obtain an expert opinion prior to the hearing, in the pre-hearing phase. The law is not overly proscriptive about who can serve as the expert on capacity, just that they must be “qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner”



(20 PA.C.S. § 5518s) Several key informants raised concerns about the lack of standards regarding who qualifies to give the medical opinion and suggested that standards and qualifications should be established.

[A16, a-d]

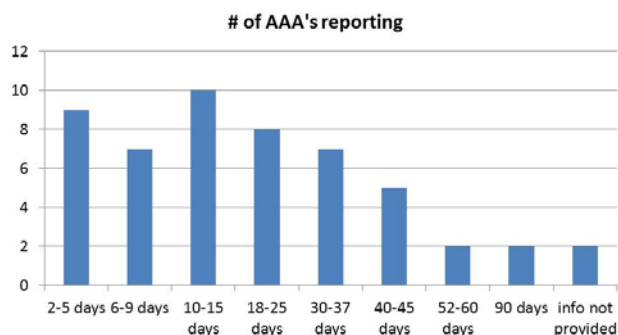
There were several findings related to the availability of professional evaluations and access to professional evaluators. For FY 2011, the AAAs report having referred 924 individuals for a professional evaluation of capacity. Sixty-two percent (577) of these individuals who were referred for a professional evaluation were found to lack capacity and were recommended for a petition for guardianship [A16a, A16b]. The average per agency was approximately 18 evaluations a year, with a maximum value of 300 (see chart). Note: 12 respondents reported zero value to the question.

The Protective Services workers who participated in the Focus Groups said that their agencies all used “specialists” to complete capacity assessments. There was no consistency, they said, as to who could qualify as a specialist. Instead, this included the consumer’s primary care physician, a contracted physician, psychiatrist, psychologist, or RN. Some Protective Services workers from more rural areas reported that specialists were hard to find. AAA key informants echoed this, saying that capacity evaluations can be difficult to get. Others noted that the evaluations do not always meet all their needs. They also note that the evaluations that are conducted can sometimes lack sufficient detail to support consideration of limited rather than plenary guardianship.

C.3. HOW LONG DOES IT TAKE TO GET AN EXPERT EVALUATION OF CAPACITY?

When asked how long it typically takes to get an evaluation of capacity (in number of days), there was a wide range of answers. The average was 23.6 days. Two rural counties took the longest (90 days), while other counties waited only a few days. Two Counties had missing values [A8]. Key informants from within the AAA network shared that capacity evaluations can be difficult to get and noted that assessments can sometimes lack sufficient detail to support consideration of limited rather than plenary guardianship. Some focus group participants noted the lack of experts in their area willing to do capacity assessments.

If a client appears to lack capacity, how long does it typically take to get a professional evaluation?



C.4. WHAT ARE THE ALTERNATIVES TO GUARDIANSHIP?

The PA Guardianship statute requires the petition to specify whether there are alternatives. Study participants were asked about useful alternatives. Thirty-eight AAAs responded to a survey question about alternatives that they find most useful [A54], including:

- Power of Attorney 19.35% (18),
- Family-facilitated involvement 15.05% (14),
- Representative Payee 13.98% (13),
- Placement in a NH 5.38% (5) , and
- Provision of in-home services 5.38% (4).

Protective Service (PS) Worker focus group participants echoed these options saying that alternatives that involve using family caregivers as surrogate decision makers were always the first choice, although family members may need education and support in taking on the role of POA or representative payee. PS Workers saw it as their role to link the family with sources of education and in-home support. The worker also assesses if the older adult is capable of selecting someone to be a reliable POA or representative payee. While a POA is a popular alternative to guardianship, PS Workers expressed concern that with a POA there is little to no oversight to catch an exploitive or neglectful agent. In addition, they noted that a consumer who was experiencing anger or upset can repeatedly overturn the POA even if it is an effective arrangement. Some focus group participants thought that placement in a nursing home or personal care home might be a viable alternative to guardianship for some “at risk” elderly with diminished capacity. If the older adult is of sufficient capacity to make this decision, the Protective Services Worker can facilitate the move to a facility.

Key informants from the PA AAA network said they think AAA performance varies widely in the thoroughness of locating family of the AIP and in exploring alternatives to guardianship. They also say it is important that AAAs work with existing agents under a POA because this person was chosen by the AIP. Some note that AAAs could do more to identify and, if need be, support agents with POA so they are better equipped to meet older adults’ needs and avoid guardianship. Other key informants see guardian petitions filed when the older person has threatened to revoke a POA.

When asked to describe useful alternatives to guardianship, lawyers who responded to the survey indicated that Home and Community Based Services 18% (16), family options 13% (12), legal agents 11% (10), and POA 9% (8) were avenues exploring least restrictive options [L19].

Attorneys key informants opined that some AAAs seem quick to pursue guardianship without sufficient investigation into family caregivers or consideration for all alternatives. Some speculated that AAAs experience quick staff turnover in the protective services department which may account for this seeming lack of thoroughness.

When asked what the AAA does when there is no alternative to guardianship, 75% (39) of AAA Director Survey respondents reported that they petition for guardianship; 69% (36) said they recommend that the primary caregiver seek guardianship, and 46% (24) refer the matter to an attorney under contract. A smaller percentage, 38% (20) of AAAs refer the matter to a guardianship support agency [A9].

Attorneys responding to the lawyer survey reported, however, that not all courts require the petitioner to make a showing in court that least restrictive options have been considered and are not able to be pursued in lieu of a guardianship. In fact, when asked has any court required a showing that least restrictive options have been considered, of those attorneys that responded, 58% said yes and 42% said no [L16] indicating that pleading that there are no alternatives to guardianship in the petition is sufficient.

C.5. WHO MAKES THE DECISION TO FILE FOR GUARDIANSHIP?

AAAs that do file petitions for guardianship do not employ a single process for arriving at the decision to file. During the PS Workers Focus Groups, PS workers reported that the decision to file a petition for guardianship is sometimes made by a team that always includes the AAA administrator and may include the PS worker, sometimes made by only AAA management without the worker involved, or made by the AAA attorney or county solicitor without the PS worker involved. Some PS workers noted that information from their assessment is used in the petition regardless of whether the worker is involved in deciding to move forward.

The focus group findings differed from the AAA survey findings. According to the AAA survey findings, when making a determination to pursue guardianship, 67% (35) relied on the supervisor for the final decision; 50% (26) relied on the Executive Director, and 33% (17) relied on the OAPS worker, 25% (13) relied on an attorney. Seven comments from respondents specifically addressed the team work involved in the determination to pursue guardianship.

Section D: The Hearing

This section describes the findings related to the hearing including whether the AIP participates in the hearing, whether the AIP has counsel, whether the interested parties are notified, where the hearings are held, what evidence of incapacity is provided, how long the hearings are, whether it is on or off the record, and how a guardian is selected and screened.

D.1. DOES THE AIP GET COUNSEL?

The guardianship statute grants each AIP the right to have an attorney if they want one. According to the lawyers surveyed, AIPs did not have legal representation in 25% (341) of the guardianship cases that were attended by lawyers who responded to a series of questions on the lawyers survey about the AIPs' involvement in the hearing (1,388) and 1% (11) of AIPs were represented by counsel, **but** the counsel was not present at the hearing. [L7d-20d] This lawyer survey finding was reaffirmed during focus groups and through multiple key informant interviews. Representatives of the Aging Network reported in focus groups and key informants report that some courts neither appoint attorneys for the unrepresented AIPs, nor do they encourage attorney representation. One key informant indicated that a judge might find a need for counsel in the middle of the hearing and postpone the hearing until an attorney is appointed.

Attorney key informants also reported that often AIPs are not represented, indicating the problem may happen more than 25% of the time as indicated in the survey. Most but not all judges who were asked favor having an attorney to represent the AIP. Indeed, it appears that appointing counsel is not the consistent practice with some courts.

D.2. HOW ARE INTERESTED PARTIES NOTIFIED ABOUT THE HEARING?

The law requires interested parties to be notified if the interested parties reside within the Commonwealth. Universally, attorneys reported notifying all interested parties, regardless of where they live. Focus group participants indicated they did not feel certain that family members were informed of the guardianship proceedings. The ombudsman focus group participants reported cases where they would get involved after a guardian had been appointed and a family member learned about it later. AAA staff indicated on the AAA director survey that they tried to locate family through asking collaterals, contacting the family directly, or asking the AIP, asking the doctor, doing an internet search or using an attorney to notify the

family [A14]. One focus group participant reported searching hundreds of names on-line. One judge expressed that family involvement is important, even if family members have been negligent, and, thus, it is preferable for all interested parties to be notified of the proceedings. Finding families can require "good old fashioned investigation", i.e. talking with neighbors and other collaterals, said one key informant.

D.3. WHAT IS THE LOCATION OF THE HEARING?

The guardianship statute allows for the guardianship hearing to be held in the AIP's location. Of the 1,388 cases handled in 2011 by the attorneys who responded to this series of questions on the lawyers survey about the AIPs' involvement in the hearing, in just 1% of the cases (12) were the hearings held at the AIPs location [L7d-20d].

Protective Service Workers that participated in the focus groups report that they have rarely participated in a hearing at the AIP's home or bedside. Most were not aware that this was a possibility.

D.4. DO AAAs HELP THE AIP ATTEND HEARINGS

On the AAA survey, AAAs report that they facilitate AIP participation at hearings by arranging, paying for, or providing transportation (for those AIPs who attend) to hearings in 44% (40) of the cases, coordinate with AIP's attorney 9% (8), and arrange care for AIPs 7% (6) [A22]. During the focus groups, Workers also stated that they may help find an attorney if the older adult requests counsel.

Some PS workers say that they attend the hearing, and several have testified at a hearing. Key informants from within the PA AAA network said that AAA caseworkers and ombudsman can provide the perspective of an advocate for the older adult throughout the guardianship process to support AIPs and to facilitate their participation.

Experts consulted indicated that the courts, and guardians, are often uninformed about the resources available through the AAA and the aging network.

D.5. HOW OFTEN DO AIPs ATTEND HEARINGS?

Pennsylvania law requires the AIP to appear unless the court finds that so doing would be harmful to the AIP. Key informants relayed their understanding that AIPs who are contesting a proposed guardianship may feel embarrassed, angry, or uncomfortable having to appear and argue for their “freedom” and AIPs who are not contesting their guardianships may feel confused, disoriented, or agitated by the experience. That said, attorney key informants feel that the AIP should be part of the hearing. If coming in person is a challenge, one attorney even suggested using Skype or something similar to allow the AIP to participate even if the AIP cannot be physically present.

Judges who were key informants reported that they believe the presence of the AIP is important as it helps the judge both observe and elicit testimony to determine what the AIP does or does not understand. All judges interviewed as key informants agreed that having the AIP at the hearing is vital, even if it means moving the court hearing to the AIPs location. Judges were adamant that reports of the AIP being unable to understand the hearing or feeling upset by the hearing do not give rise to a sufficient excuse. However, the parameters for “harm” are not defined in the statute and there is no consistency in interpretation.

Of the 1,388 cases handled in 2011 by the attorneys who responded to a series of questions about the AIPs’ involvement in the hearing on the lawyer survey, in just 31% of the cases (434) the AIPs were present at their guardianship hearings [L7d-20d].

The focus group participants had varied experiences with AIPs being in court. In the experience of those Protective Service Workers that participated in the focus groups, the AIPs are not in court. These focus group participants said that although some judges are adamant about having the AIP present and grill the petitioner for a reason if the AIP is not present, other judges easily accept a statement that the AIP is too sick to attend or that being present at the hearing would be injurious to them. There was agreement that it is important to facilitate AIP attendance at their hearing in court and being provided the opportunity to speak.

One PS worker noted that one judge makes an effort to ease the AIPs nervousness in court. The judge often will speak with the AIP in court, even coming to AIP’s seat, if necessary, to hold a conversation. Attorneys and Judges agree that having the AIP in court is important.

D.6. HOW IS INCAPACITY PROVEN?

As discussed in Section IV, a medical expert is necessary to provide an official capacity determination. The guardianship statute, however, does not specify precisely how the determination must be made nor who is able to make the determination. The findings reveal that there is no consistent practice in how capacity is demonstrated in court. The lawyer survey asked the question: “In a guardianship case, how do you most frequently demonstrate incapacity in court?” Of those responding [L13], the attorneys said:

- Written Deposition Forms 50% (61)
- Live Expert Testimony 34% (42)
- Transcript from Live Deposition 16% (19)
- Of those that responded “other” for the way they most frequently demonstrate incapacity
 - 44% indicated they used phone testimony
 - 33% indicated they used a written report or affidavit

According to key informant interviews, judges are satisfied with written testimony of incapacity if made by a medical expert.

Several attorney key informants said that if the case is contested it is important to have experts testify, not just send in a deposition. When uncontested, it is less critical. Attorney key informants note, however, that the cost for physicians to testify in person can be prohibitive. The law requires clear and convincing evidence of incapacity and the need for guardianship.

This applies in a hearing to put a guardian in place as well as in a hearing to revoke a guardianship. This means that the medical expert testimony must be clear and convincing as to why a guardian is needed in the first place and for why a guardian should remain in place in the later revocation hearing. (This is because the burden of proof in both cases rests with the petitioner or the party contesting the revocation of the guardianship.) Of 20 attorneys who answered a question regarding the standard of proof applied in a hearing concerning whether a ward has regained capacity, six said the courts have required only prima facie evidence (a lower level of proof than clear and convincing) while 14 reported that the courts have required clear and convincing evidence [L15c-e).

D.7. WHAT IS THE DURATION OF THE HEARING?

There are no rules regarding how long a guardianship hearing should last. There are no consistent practices either. One would imagine that uncontested hearings would take less time than contested hearings. However, there is no defined minimum amount of time for either. One judge expressed concern that the percent of contested guardianships is increasing and these are more time consuming.

Aging Network key informants indicated that hearings are generally quick, averaging 15-60 minutes. Focus group participants stated that the hearings are really short and that they have even seen group hearings in which multiple AIPs are adjudicated at once.

The findings from the lawyer survey were not consistent with these reports. In the Lawyers Survey, we found that, based on the attorneys that responded to a question about the average amount of time for hearings, uncontested guardianship hearings in Orphan's Court average 34 minutes, whereas the average amount of time of contested hearings in Orphan's Court is 172 minutes [L24].

This is confirmed by the Aging Network key informants who indicated that hearings are generally quick, averaging 15-60 minutes. One judge expressed concern that the percent of contested guardianships is increasing and these are more time consuming.

D.8. IS THE HEARING HELD ON OR OFF THE RECORD?

There is no consistent practice regarding whether or not the entire proceeding is on the record. Key informants stressed that it is always preferable to have a record of a legal proceeding. Of the 1,388 cases handled in 2011 by the attorneys who responded to this series of questions on the Lawyers Survey about the AIPs' involvement in the hearing, in only 57% of the cases (792) was the entire hearing put on the official court record [L7d-20d]. Additionally, a few key informants reported instances of hearings that are both off the record and conducted in the judge's chambers without all interested parties present.

D.9. WHAT IS THE ROLE OF THE AAA IN THE HEARING?

Protective Services workers who participated in the focus groups reported that they continue to work on behalf of the older adult during the petitioning process and through the court hearing. Respondents in three of the four focus groups said that they, the protective services workers, actually serve the notice of petition for guardianship papers to the older adult, explaining the implications of guardianship and the hearing process.

D.10. WHAT DO AAAs CONSIDER IN EVALUATING POTENTIAL GUARDIANS?

When an AAA petitions for guardianship, it recommends someone specific as the proposed guardian. There are no consistent criteria for how the AAA evaluates and chooses to recommend a potential guardian. When asked, on the AAA Director Survey, what criteria they use to evaluate whether a potential guardian is a good candidate to serve as the AIP's guardian, the AAAs reported that they consider the years of related experience before suggesting someone serve as guardian 19% (10). They also stated that they prefer to suggest someone who was certified by the Center for Guardianship Certification 13% (7), or someone who had additional training 13% (7). Seven AAAs (13%) indicated they had no minimum credentials for someone to be appointed guardian [A28].

Judges report that selection of guardians should be based on interviewing them in court for fitness to the task. Guardians should be bonded, have a criminal background check, and be educated about the role and requirements of a guardian. Professional guardians should have professional standards, certification and liability insurance. Ideally, a few judges said, proposed lay guardians (not professional guardians) should be provided with information and materials, or even training opportunities, prior to the hearing so that they can be thoroughly questioned as to their understanding of the requirements.

Several Protective Services Workers who participated in the focus groups noted that they solicit the older adult's preferences for recommendations about who should serve as guardian. The Ombudsmen Focus Group participants report that it has been their observation that family discord or family living far away often prompted the appointment of a professional guardian. Attorney key informants indicated that credit checks, judgment checks, and criminal background checks can all be helpful. Additionally, several described a set of questions they ask either in writing or on the stand to confirm that the proposed guardian has a complete understanding of what his/her responsibilities will be.

D.11. WHAT ARE THE QUALIFICATIONS FOR SOMEONE TO BECOME GUARDIAN?

There are no fixed qualifications established for guardians through the law or in practice. When asked in the Lawyers Survey whether the attorneys had ever had a case in which a proposed guardian was subject to a court’s evaluation of his/her specific qualifications to serve as guardian, 57% (82) did not answer. Of the 43% (79) who answered, 79% indicated that there were questions about the capacity to serve, 68% indicated that proposed guardians were asked about awareness of rules/requirements, and 48% indicated that proposed guardians were questioned about their ability to make decisions; 34% indicated that the proposed guardian was subject to an evaluation of his/her personal legal record (i.e. criminal background check, judgment check, etc.) and 31% indicated that the proposed guardian was subject to an evaluation of his/her personal financial affairs (i.e. underwent a credit check) [L27].

Question 27: Have you ever been involved in a case in which a proposed guardian has been subject to an evaluation of his/her: (Select all that apply):				
	Frequency	Percent	Valid Percent	
<i>n</i>	144			
Missing (no option answered)	82	57%		
Capability to handle the affairs of the AIP	49	34%	79%	
Awareness of the rules and requirements imposed on guardians	42	29%	68%	
Capacity to make decisions	30	21%	48%	
Personal legal record (i.e. criminal background check)	21	15%	34%	
Personal financial affairs (i.e. a credit check)	19	13%	31%	
Valid Total	161			

Section E: Post Appointment Phase of Guardianship

This section describes the findings related to the post-appointment phase of guardianship, including such things as: what training is offered to a newly appointed guardian, the role of the AAA post-appointment, how guardians are supported post-appointment, how guardians are monitored, whether there are standards for guardians to follow, what happens when the ward has a change of capacity, and how responsive guardians are to the needs of their wards.

E.1. WHAT KIND OF TRAINING IS PROVIDED TO THE GUARDIANS?

A significant number of guardians are lay people who have agreed to take responsibility for making decisions on behalf of a friend or family member. They are not, typically, experienced in serving as guardian. There is no fixed, standardized training or written materials provided to guardians system-wide. Many study participants felt that more information and education is needed for guardians. Further, they felt that training materials need to be developed and need to be made available for all levels of literacy.

Some courts have handbooks or other written information on guardianship and the guardian's responsibilities that are provided to guardians, although courts differed in the breadth of this material and the timing in which it is distributed. Some distribute the information prior to the hearing, some upon appointment, and others only upon request.

There are no statewide, standardized written materials used to educate guardians nor are there any standardized live or recorded training sessions/programs for guardians. Several key informants and survey respondents felt these would be invaluable.

E.2. WHAT ROLE DOES THE AAA HAVE POST-APPOINTMENT?

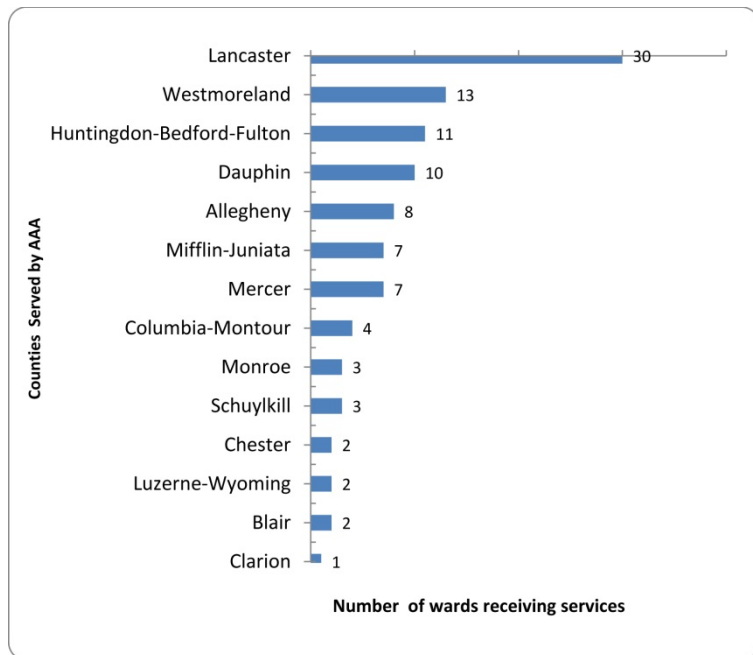
There is no defined role that the AAA plays once a guardian has been appointed. The role depends on the circumstances and the AAA. For some AAAs, the role is that of guardian. The aging network key informants stated that those AAAs that are providing guardianship services need to be funded to do so and need to be provided with support and the necessary tools to do this well.

For some AAAs, the role is that of direct service provider. Fourteen of the AAAs reported that 103 or 19% of their 539 wards are receiving services through the AAA [A42, A23b].

For some AAAs, the role is one of guardian support (see E.3).

For cases in which the AAA petitioned for guardianship, AAAs reported varying practices regarding when a case is closed following a hearing in which a guardian is appointed [A34].

- 46% (24) closed the case upon appointment of guardian
- 25% (13) had no standard policy regarding closing cases when a guardian is involved
- 12% (6) closed the case 30 days after guardian is appointed
- 10% (5) closed when ward is placed in a facility
- 8% (4) closed the case on the day of the hearing
- 8% (4) closed the case when the guardian developed a care plan
- 2% (1) closed the case 90 days after appointment of guardian



In the PS Worker Focus Groups, about half of the PS workers report that the AAA closes the PS case upon appointment of a guardian. Other PS workers keep the case open for a month, until services are in place, until they do a reassessment, or to provide guidance to the new guardian. In a minority of cases the ward continues to get AAA in-home support and care management.

No worker mentioned that they or the AAA had a role in monitoring the guardian, unless the AAA also provides guardianship services – in those cases there is supervisory and fiscal oversight. It is rare that a PS worker has seen a case of a guardianship being reversed, i.e. the ward establishes that they are not incapacitated, and it usually occurs when an acute illness is treated or the ward detoxes from drugs or alcohol.

E.3. WHAT ARE THE WAYS AAAs SUPPORT GUARDIANS?

Several attorneys who were key informants raised the concern about whether guardians receive sufficient support to do a good job as a guardian. There is no uniform guardian support system available to educate guardians, help guardians fulfill their responsibilities, or answer their questions.

When asked how the AAA supports family members that are appointed as guardian, AAAs reported the following key activities [A57]:12% (10) provide care management

- 8% (7) assist with reports for the court
- 8% (7) provide information and referrals
- 7% (6) provide in-home services
- 12% (10) provide care management
- 8% (7) assist with reports for the court
- 8% (7) provide information and referrals
- 7% (6) provide in-home services

E.4. WHAT ROLE DOES THE OMBUDSMAN HAVE IN GUARDIANSHIP?

Except for the few cases wherein the Ombudsman sees residents who become wards after residing in a nursing home, the Ombudsman report that most guardianship-related cases involved residents in the post-appointment phase. In the Ombudsman Focus Groups, the most comments were made about the positive role of the ombudsman in guardianship with at least 10 participants across all four groups giving examples. Ombudsmen advocate for the point of view of the ward/resident to be heard. Ombudsmen can mediate or facilitate collaboration between the guardian and resident. They educate guardians, facility staff, the ward, and the ward's family about the rights of the resident despite lack of capacity. They help families and the older resident access support for the guardianship process from service agencies, legal counsel, specialists, or orphans court.

Other issues reported by Ombudsman focus group participants include: residents who rarely or never get to see their guardian; and wards who have a guardian appointed and want to get the guardianship reversed. Additionally, Ombudsmen are often uncertain about how to proceed on behalf of a resident who has a guardian. They believe there is still room to advocate for the

ward but that they must get the consent of the guardian to even speak with the ward (once they know the resident has a guardian). Some describe instances of taking consent from the resident as well. They are supposed to take their consent from the guardian when a plenary guardian has been appointed – technically the ward no longer has the rights and they are supposed to take consent from the guardian. However, Ombudsmen report being unclear how this meshes with their responsibility under the Older American’s Act to take direction from the resident and advocate with the resident for their rights.

E. 5. WHAT ARE THE CHALLENGES OF SERVING AS A GUARDIAN?

The major challenges for guardians that resonated throughout the study findings were the lack of education for the guardian, the lack of money to pay the guardian for doing the job of guardian, and the lack of support for guardians who need help or guidance. Several key informant attorneys spoke of concerns about the exposure to liability for court-appointed guardians who are attorneys. While others are shielded, attorneys who are court-appointed have broader exposure and these key informants were concerned about how this would impact the willingness to serve.

Although several judges indicated that guardians should be held in contempt for not submitting timely reports, attorney key informants noted that there are no fixed penalties for guardians who do not submit reports.

E.6. DO AAAs MONITOR THE GUARDIANS – EITHER AAA STAFF GUARDIANS OR LAWYER GUARDIANS APPOINTED THROUGH THE AAAs’ PETITIONS?

There is no system-wide process within the courts for monitoring of all guardians. There is also no system-wide process within the AAA for monitoring guardians, regardless of whether the guardians are AAA staff serving as guardian or whether the guardians are lay people proposed by the AAAs in their guardianship petitions. All AAAs report that they monitor staff appointed to serve as guardian through an AAA petition. When asked about who in the AAA monitors the staff that serve as guardian [A36] they reported the following:

- 14% (7) are monitored by Protective Services staff
- 8% (4) are monitored by care management staff
- 6% (3) are monitored by a separate guardianship unit within the AAA

- 63% (31) are monitored by someone other than an OAPS worker, Care Manager, or Guardianship Unit within the AAA.

The results are distributed differently when separated between those AAAs that currently accept new guardianship cases and those that do not [A36].

Only 46.2% (24) of AAAs have a policy to monitor guardians' expenses; 38.5% do not and 15.4% said the question is not applicable [A48]. Seventy-nine percent (41) said they do not monitor guardian cases when an outside guardian has been appointed, regardless of payment for the guardian's services while 21% (11) indicated that they did monitor guardianship cases [A35]. Thirty-nine percent (21) of AAAs that say they pay for outside guardians and report that they monitor those outside guardians [A44]. Only 18% (9) of AAAs indicated that they reviewed the files from guardians being paid for by the AAA; 2.86% (1) said the AAA files the report; and 2.86% (1) said they review even when they do not pay for the guardianship [A47].

E.7. WHAT DO THE COURTS DO IN REGARD TO MONITORING GUARDIANS?

There is no uniform monitoring system implemented across all courts. There are also no consistent monitoring practices across the courts. Many study participants spoke to the need for standardized procedures for monitoring guardians and funding to support this. They described problems such as reports that never get filed or that might get filed but never get substantively reviewed.

Several study participants believe that monitoring is about more than just a paper report, as the paper report may show how well the guardian can present the circumstances on paper but does not give a full picture of how well or poorly the ward is doing under the guardian's performance.

Key informants cited the Dauphin and Chester County volunteer monitoring programs as good models. Study participants see a face-to-face visit to the ward – one feature of some of the monitoring programs – as a good way to confirm that annual reports, filed with the court, are accurate. In fact, several of the judges have volunteer guardianship monitoring programs, one of which is just starting and one begun earlier this year. They feel responsible for the ward and having the monitoring program is helpful in assuring the safety of the ward. In these monitoring programs, volunteers are either visitors to wards and guardians, researchers who summarize court documents, or auditors who review fiscal reporting. The judges believe fewer

issues evolve into serious problems as a result of the monitoring. In general, it is felt that the guardians appreciate having the volunteers to talk with about caregiving challenges. A few of the judges that do not have monitoring programs in their courts, report having paid staff who review reports and flag problems for the court. The key informants who serve as guardian in counties that have volunteer monitoring programs are pleased to have these programs operate in their counties and see them as contributing to the quality of the guardianship profession.

E.8. WHEN AN AAA IS GUARDIAN, WHO MAKES CRITICAL DECISIONS FOR THE WARD?

Guardians are charged with making many critical decisions for their ward, some of which can even be life or death decisions. While guardians cannot make certain decisions – such as a decision to withdraw life-sustaining care – without court approval, there are many healthcare decisions that are serious and guardians need to make these for their wards. There is no consistent policy about who at the AAA, where the AAA is serving as guardian, makes these decisions for the AAA’s wards. Of 26 AAAs that responded to a question about who makes decisions about life-sustaining care for wards, for which the AAA serves as guardian [A49] reported that it is:

- 39% (10) the AAA executive director;
- 15% (4) a medical doctor;
- 12% (3) made with input from the ward and family;
- 8% (2) two medical doctors;
- 8% (2) the court;
- 8% (2) a care manager; and/or
- 8% (2) made by a prior living will.

E.9. ARE THERE STANDARDS FOR GUARDIANS TO FOLLOW?

There are some required action steps outlined in the guardianship statute that specify what the guardian must do including filing reports, but there are no standards of ethics or conduct outlined for guardians. While there are some national groups, described in Section VI, that offer membership and require their guardian-members to abide by a code of conduct and ethical standards, there are no required standards that all of PA's guardians must follow.

When asked whether a court has ever contacted the AAA-guardian about reports filed or due to be filed on behalf of a ward, 25 or 48% indicated that the AAA has been contacted by the Court, or an interested party, about the required initial, annual or final guardianship reports, 23 or 44% said they have not been contacted, and the question did not apply to 4 or 8% [A37].

Several key informants who are judges felt that there should be a code of ethics and practice standards for guardian performance, once appointed. Attorney key informants described how courts differ even in how and whether they notify guardians of reports that are overdue, noting that the most efficient systems seem to be the ones in which courts use a computerized system for tracking annual report submission and generating notices about non-compliance.

E.10. WHAT HAPPENS WHEN A WARD HAS A CHANGE IN CAPACITY?

The study findings support the notion that capacity can change significantly and rapidly. This is not always reflected in the initial evaluation. Indeed, there were a marked number of instances in which attorneys had clients who regained capacity. Several focus group attendees and key informants interviewed suggest that capacity should not be an open and shut matter never to be revisited again but, instead, should be revisited at a regularly scheduled interval (preferably annually) to account for the potential of either improvement, decline, or change and how this impacts the scope of the guardianship and the needs of the ward.

Seventy-three percent (103) of the lawyers surveyed indicated they had **not** been involved in a case where capacity was regained [L14]. Twenty-eight percent (39) indicated they had encountered one or more situation in which the ward regained capacity. Although we do not have a total number of cases in which the ward regained capacity, lawyers report that fifty-three percent of these were brought to the attention of the court by the guardian, 39% (15) were brought to the court's attention by the ward, and 11% (4) were brought to the court's attention by a third party. Attorneys reported that guardianships have been terminated 74% (28) of the time and modified from plenary guardianships to limited guardianships 29% (11) of the time [L15].

E.11. HOW OFTEN ARE THERE PROBLEMS THAT REQUIRE RETURNING TO COURT?

There is no statewide data collected on how often the court is called upon to address a problem with a guardian. AAAs report having had to return to court a total of 35 times out of 539 or 6.5% in fiscal year 2011 due to problems with the guardian [A30, A23b]. Although this is a relatively small percent, these cases can be extremely time-consuming and critical to protecting the rights of vulnerable elders.

E.12. WHAT ARE THE RIGHTS OF LONG-TERM CARE CONSUMERS WHO HAVE A GUARDIAN?

There is no clear articulation of whether the ward who has lost all legal rights retains their residents' rights. Aging network key informants state that the powers of the guardian and the rights of the older ward generally need to be better defined. This was particularly concerning to the LTC Ombudsmen who believe the nursing home, assisted living, and personal care home rights do or should still inure to the resident who is a ward, regardless of the fact that the resident has a guardian. In the Ombudsmen Focus Groups, a number of concerns were raised about the role of the guardian. The lack of clarity about the rights of a resident who has a guardian and when the ombudsman must consult the guardian when working with the resident who is a ward were of particular concern. A number of examples were given of a guardian ignoring or not soliciting the preferences of the ward. In one of these examples provided at a focus group, the guardian purportedly sought a DNR (Do Not Resuscitate) order for the resident without a clear indication that it was what the resident would have wanted.

E.13. HOW RESPONSIVE ARE GUARDIANS TO THE NEEDS OF WARDS?

There are no fixed requirements for how guardians should interact with their wards or how frequently they should interact with their wards. In the Ombudsmen Focus Groups, a very common concern reported was the unresponsiveness of the guardian to requests from the resident/ward or to calls from the ombudsman. Once the guardian had financial powers and could sign for the ward, the ombudsmen often felt they were less responsive to the needs of the ward.

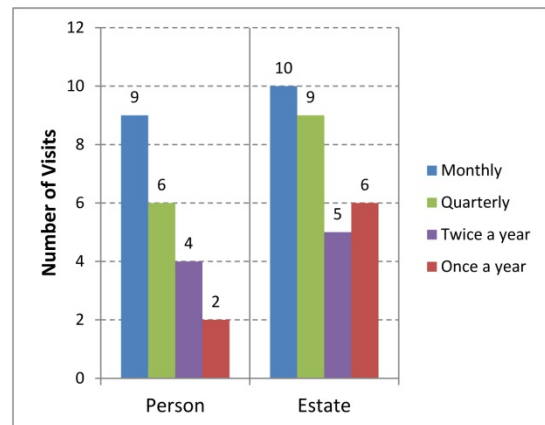
E.14. HOW OFTEN DO GUARDIANS VISIT THEIR WARDS?

There is no statewide policy that governs how often guardians within the AAAs should visit their wards. Practices differ across the AAAs. Fifty-two percent (25) of AAAs indicated they had a policy for visiting wards; 6% (3) said they had no policy. The rest were missing information 6% (3), or non-applicable 19% (40%) and one answer was ambiguous [A50].

When asked how often wards are visited by attorneys who serve as guardian of the person, 11% of respondents to this question on the Lawyers Survey report that they visit monthly, 9% visit quarterly, 5% visit twice a year, and 2% visit annually [L33].

By comparison, of attorneys who serve as guardian of the estate, 12% visit monthly, 12% visit quarterly, 6% visit twice a year, and 7% visit annually.

We did not come across consistent visitation policies across guardianship agencies either. One guardian who was a key informant and works with a guardianship support agency stated that, in addition to the guardian's visits, the agency enhances its service by recruiting volunteers to be friendly visitors to wards who do not have family.



E.15. WHAT DO STUDY PARTICIPANTS KNOW ABOUT GUARDIANSHIP AGENCIES, VOLUNTEER GUARDIANSHIP MONITORING PROGRAMS AND GUARDIAN CERTIFICATION PROGRAMS?

There was broad disparity in the study participants' awareness about guardianship agencies, volunteer guardianship monitoring programs, and guardian certification programs.

Guardianship agencies are playing a significant role in older adult guardianship. Forty-one or 79% of all AAAs surveyed indicated that there were guardianship agencies practicing in their area [A32]. Forty-one percent (57) of lawyers surveyed indicated that a guardian support agency had been appointed guardian in at least one of their cases [L29].

As described in Section X there are volunteer guardianship monitoring programs in several counties and more appear to be developing. A few of the judges that do not have monitoring programs in their courts, report having paid staff who review reports and flag problems for the

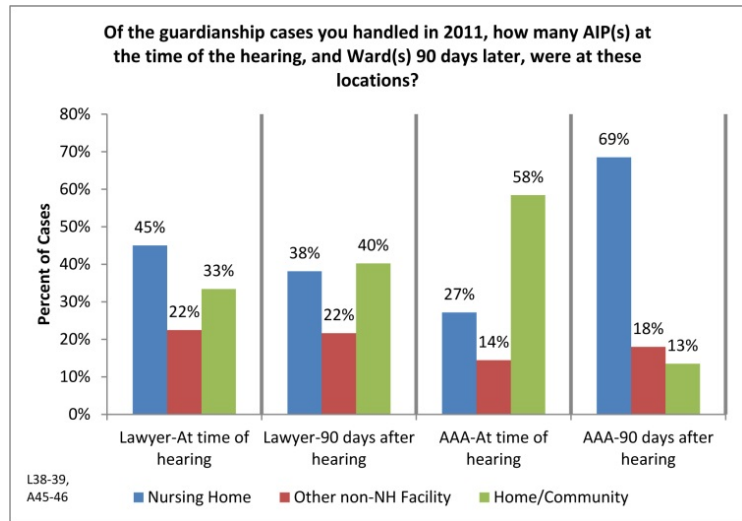
court. The key informants who serve as guardian in counties that have volunteer monitoring programs are pleased to have these programs operate in their counties and see them as contributing to the quality of the guardianship profession.

Our research found that (as of October 17, 2012) there are currently 43 Pennsylvanians who are NGA members and 46 nationally certified guardians.

On the Lawyers Survey, 95 out of 118 lawyers (81%) responding said they were never involved in cases during the past three years in which the guardian appointed was a certified guardian by the Center for Guardianship Certification [L26].

E.16. WHAT BECOMES OF OLDER ADULTS WHO ARE FOUND IN NEED OF A GUARDIAN?

Both key informant and focus group participants expressed concern that incentives exist for guardians to move wards to nursing homes prematurely. Guardians are eligible to receive a \$100/month payment if the ward has Medicaid and lives in a nursing home. No payments are available if the ward lives in the community. Both lawyers and AAA directors were asked about the location of the AIP at the guardianship hearing, and 90 days later after the appointment of a guardian. Although lawyers appear to have more stable cases that do not change locations as a result of guardianship, AAAs show a significant increase in the number of people living in nursing homes at the time of guardianship vs. the number of people living in a nursing home 90 days later—a change of 42%.



Section F: Cost Findings

This section describes the study findings that relate to costs to the Aging Network related to guardianship, including but not limited to: who pays for guardianship costs, the total amount spent by the AAAs on guardianship, the total amount spent on expert evaluations, the payer for expert evaluations, the total amount spent on attorneys in guardianship matters, the amounts spent serving as guardian, and the amounts spent monitoring guardians.

F.1. WHO PAYS FOR GUARDIANSHIP COSTS FOR THE WARD?

When asked on the AAA Director Survey about whether they have a fee schedule to charge wards for guardianship services, 25% (13) of AAAs said they have a fee structure to charge individuals for the cost of guardianship services the AAAs provide. Fifty-two percent said it was not applicable to them [A43].

For low-income wards who qualify for Medicaid and reside in a nursing home, the guardian may be paid \$100 per month, as a deduction from the Medicaid recipient's personal payment to the nursing home. For low-income wards who do not qualify for Medicaid or who do qualify for Medicaid but live at home and receive home and community based services, there may or may not be dollars available from the individual's income and resources to pay for guardian services.

F.2. WHAT IS THE TOTAL AMOUNT AAAs SPEND ON GUARDIANSHIP?

When asked about the total amount the AAA spent on guardianship services in the fiscal year 6/30/11, 48 agencies responded with a total of \$4,158,684 with a mean of \$86,639, and a standard deviation of \$160,331 (note the mean and standard deviation include zeros but not missing values) [A52]. The breakdown of component parts of guardianship from the survey data includes the following:

Area of Expense	Cost	Source
Expert evaluation for competency	\$399,916	A18
Attorneys to represent AIP	\$361,322	A20
Serving as Guardian	\$1,285,865	A39
Monitoring	\$21,697	A40
Paid to Guardianship Agencies	\$1,531,619	A41
Unspecified	\$558,265	
TOTAL	\$4,158,684	A52

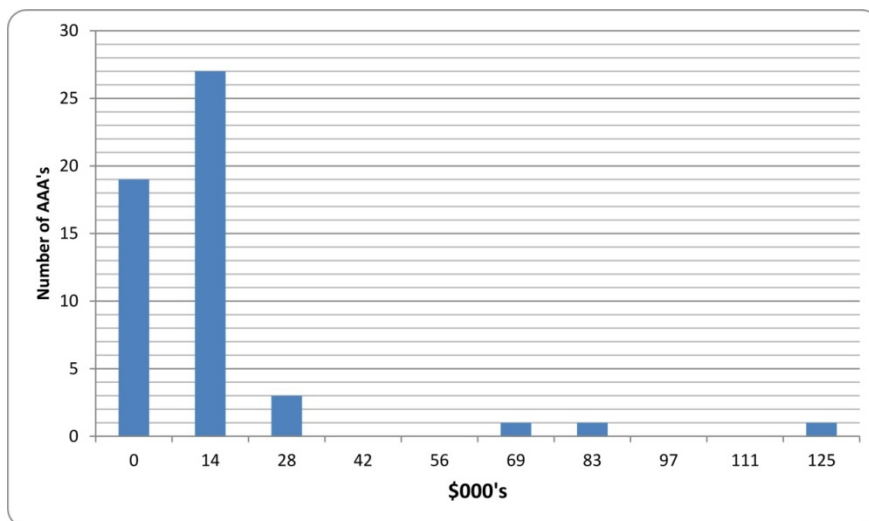
The more limited SAMS data from the Department of Aging indicates a far smaller total dollar amount of \$625,269, spent in FY2011, paid to 49 providers during FY 2011. The difference between the SAMS data and the reported data from the AAAs (according to the AAA Director Survey) is more than \$3.5 million dollars – a figure 6.65 times higher than the SAMS data.

According to SAMS:

- 640 consumers were served for guardianship services, involving 35 providers and expenses of \$433,596;
- Competency evaluations were completed on 157 consumers, and \$64,873 was paid to 11 providers;
- There was one physician consult at the cost of \$1,500;
- Power of Attorney (PAO) was obtained for 96 consumers using 8 providers at the cost of \$103,901; and
- Representative Payee was obtained for 91 consumers at the cost of \$21,697 for 49 providers.

F.3. HOW MUCH DO AAAs SPEND ON EXPERT EVALUATIONS FOR CAPACITY?

When individual AAAs were asked how much they spent on expert evaluations of capacity, the combined figure (\$399,916) was much higher than the \$64,873 figure contained in the SAMS reporting system.



The average spread over all agencies was \$7,691,

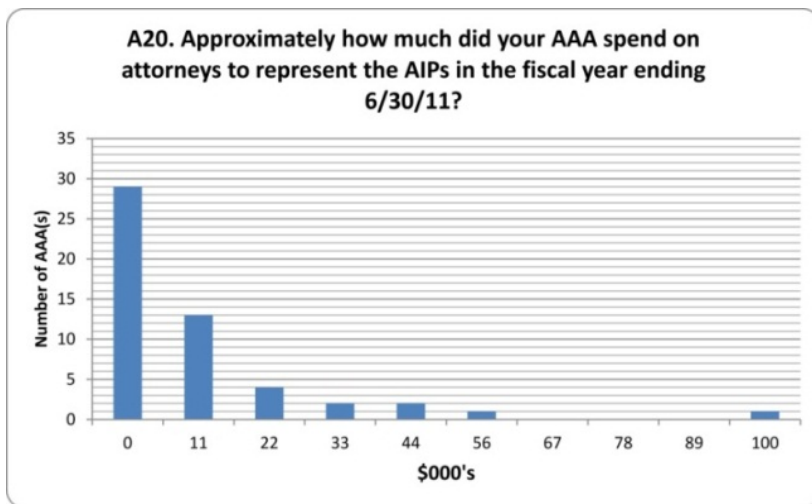
with a high of \$125,000 and a low of 0. The standard deviation was \$21,983 – which gives an indication of a wide range.

Nineteen agencies did not spend anything on evaluations, and 33 spent to a high of \$125,000 with the average cost \$7,691 [A18].

F.4. FOR THE AAAs, WHO PAYS FOR THE EVALUATION OF CAPACITY?

When asked who paid for evaluation of capacity in fiscal year 2011, the AAA Directors said the majority of evaluations of capacity were paid for by the AAA (827), by Medicare (105) with very few covered by “other insurance” (13) and DPW-Medicaid (3). No AAA indicated that the court had paid for an evaluation of capacity during the fiscal year ending 6/30/11. These numbers are based on the total number of evaluations reported, 959 [A17].

F.5. HOW MUCH DO AAAs SPEND ON ATTORNEYS FOR GUARDIANSHIP?



The total amount paid by AAAs to attorneys to represent the AIP was \$361,322 in fiscal year 2011. The average was \$6,949. With Outliers removed, the average goes from \$6,949 up to \$12,444.

F.6. HOW MUCH DID AAAs SPEND SERVING AS GUARDIAN LAST YEAR?

When asked how much money the AAAs spent on SERVING as guardian in fiscal year 2011, the total was \$1,285,864 a high of \$563,864 with a mean of \$26,789 and standard deviation of \$86,349. After removing the 27 respondents who responded with zero, the mean = \$61,232 Standard Deviation = \$123,723.

F.7. HOW MUCH DID THE AAAS SPEND ON MONITORING?

When asked how much their AAA spent on monitoring guardians in the prior fiscal year, only 5 AAAs spent anything on this activity. Five AAAs spent a combined total of \$21,697 monitoring outside guardians in fiscal year 2011 with 47 answering “\$0”. Averaged across the entire system, AAAs spend \$425 each in monitoring outside guardians. However, when using the data from only the five AAAs that responded, they spend an average of \$4,339/year monitoring guardians [A40].

F.8. HOW MUCH DID THE AAA PAY TO GUARDIANSHIP AGENCIES LAST YEAR?

Of 50 AAAs reporting, the TOTAL paid to guardianship agencies in fiscal year 2011 was reported at \$1,531,619 with a high of \$687,000, a mean of \$30,632 and standard deviation of \$110,337. After removing the 42 respondents who responded with zero, the mean = \$153,162. Standard Deviation = \$213,142 [A41].

F.9. WHAT ARE THE FUNDING SOURCES FOR AAA’S ON GUARDIANSHIP?

When asked what are the funding sources for AAAs to spend on guardianship services, 49 AAAs responded and all answered “block grant” (49 respondents or 100%). Funds from the ward (9 or 18%) and DPW/Medicaid (6 respondents, or 12%) and funds from the County (5 respondents or 10%) [A53].

F.10. HOW MANY AAAS WILL BE PAID BY THE COURT FOR BECOMING GUARDIAN?

When asked if the AAA will be paid by the court if the AAA becomes the guardian, 31 AAAs answered with 30 AAAs reporting no, and with 26 comments indicating that the AAA does not serve as guardian. Only Clearfield County answered “yes” saying it would petition the court for funding to serve as guardian [A29].

F.11. HOW MUCH DID AAAS SPEND ON SERVING AS GUARDIAN?

Of 48 reporting how much the AAA spent serving as guardian, the result was \$1,285,865, with a mean of \$26,789, and a standard deviation of \$86,349 [A39].

xii. Recommendations For Change

With concern for comprehensiveness to learn about the issue of guardianship and practice in Pennsylvania, this study was extensive. From the key informant interviews with experts from many disciplines—judges, attorneys, professional guardians, PS staff, AAA staff, volunteers, Ombudsman staff, and national authorities—to focus group sessions and surveys and extensive state and national research to numerous other conversations including spending a day in court, we learned a great deal about guardianship. We know that in some cases it is a truly necessary last resort for some. We also learned that there are many who care very deeply about this issue and take it very seriously with a commitment to protect the rights of the vulnerable whom they come into contact with. The following recommendations have been organized in a similar style to the report and are organized as follows:

1. Systems Change Recommendations
2. Pre-hearing Recommendations
3. Hearing Recommendations
4. Post-appointment Recommendations

The recommendations for improving guardianship practice and procedures in the Commonwealth of Pennsylvania that follow are based on the findings of our study activities. In most cases, these recommendations echo or elaborate recommendations that have come before, whether made at the state or national level. For additional detail on these recommendations and sources, please refer to Appendix M.

A. SYSTEMS CHANGE RECOMMENDATIONS

Recommendation 1.1

A centralized Office of Guardianship Support should be established in Pennsylvania. This should be a conflict-free entity that supports guardians and protects the rights of all citizens under guardianship. This entity should be responsible to:

- Train guardians
- Oversee a guardian registry
- Monitor guardian compliance with reporting requirements
- Develop and implement a statewide guardianship certification system and requirements
- Conduct education and develop training materials
- Provide education and support about resources and alternatives to guardianship

- Support judges in their work and their understanding about alternatives through publications of desk reference materials on available alternatives.

Recommendation 1.2

AAAs should receive guidance that articulates expectations and be provided with written policy on all aspects of guardianship. The guidance should include:

- Expectations about the role of the AAA in the guardianship process,
- Recommendations around the investigation and research AAAs will be expected to do prior to and during the process of seeking guardianship,
- Requirements around how to prevent conflicts of interest - specifically addressing shared or combined job responsibilities i.e. serving as Ombudsman and Guardian or Protective Services Worker and Ombudsman,
- Requirement to include in AAA policies clear processes and procedures for how decisions are made to file for guardianship and by whom (lines of authority), and
- Requirement to specify how guardians will fulfill their obligations and be monitored by the AAA in service to ward(s).

Recommendation 1.3

The Long-Term Care Ombudsman staff and volunteers should be thoroughly trained in guardianship matters and provided guidance in their role as resident advocate for persons who have a guardian. Ombudsman should be empowered to report to courts instances of guardian misuse of power or neglect and should be advised to alert the court when a nursing facility closes or is unstable to help guardians and the court with relocation of residents.

Recommendation 1.4

Develop and provide a required training on the Guardianship process for Nursing Home, Personal Care Home, Assisted Living, and LIFE administrators as part of initial licensure and/or as a continuing education topic.

B. PRE-HEARING RECOMMENDATIONS

Training and Public Education

Recommendation 2.1

A curriculum should be developed and required for all Protective Services workers and supervisors. The training should include: formalized, standardized training in how to do

capacity assessments, how to understand changes in capacity, and how to evaluate causes of incapacity. Existing guardianship training should be broadened so that more than just a basic overview is offered; the range of offerings should include more advanced practice guardianship discussions and guidance.

Recommendation 2.2

The Commonwealth should partner with statewide healthcare associations to develop and implement a strategy to educate healthcare providers about the importance of and how to conduct early and routine cognitive function screenings for older patients.

Recommendation 2.3

The new Office of Guardianship Support should partner with appropriate state agencies to launch a statewide, public education campaign to educate older adults, family members, lawyers, judges, providers and the general public about what guardianship is and about what alternatives exist to pursuing guardianship. Education should stress the importance of incapacity planning.

Diversion to Mediation

Recommendation 2.4

Petitioners and Respondents should be offered an opportunity for mediation in all cases but particularly when the guardianship petition arises within a context of family conflict and non-guardianship resolution would be adequate.

Preliminary (Non-Expert) Capacity Assessments

Recommendation 2.5

A standardized, evidence-based, required capacity assessment tool should be developed and implemented for use by PS staff. The PS staff should then be trained in accordance with Recommendation #1. The assessment tool should include a person-centered functional capacity assessment that incorporates the context of the personal and cultural background of the individual being assessed.

Recommendation 2.6

Attorneys should be educated about and encouraged to use the ABA – APA Tool for Attorneys in Determining Capacity.

Expert Evaluations

Recommendation 2.7

Additional funds to enable to AAAs to pay for timely expert evaluations should be sought through the appropriate channels.

Recommendation 2.8

Circumstances in which Medicaid and/or Medicare will pay for evaluations for older adults should be understood and implemented. Training should then be developed and training conducted for AAA staff on how to obtain Medicaid and Medicare covered evaluations for older adults who have Medicaid and/or Medicare.

Recommendation 2.9

The APA-ABA Tool for Expert Evaluations should be endorsed and encouraged to be used consistently in evaluating AIPs. This may be best implemented through partnering with appropriate professional membership organizations.

Recommendation 2.10

Expert evaluations should be required to be submitted to the court prior to the hearing.

Recommendation 2.11

Expert evaluations should be accepted only from a licensed professional who knows the AIP and, if not, by someone who has taken sufficient time to meet the individual, get familiar with their family and circumstances, and reach a conclusion in the context of the individual's medical history, records of which the professional has reviewed.

Petition

Recommendation 2.12

All petitions should specify whether there is an actual or anticipated conflict such that adequate time, resources, and advanced preparation can be allocated for the hearing. Additionally, petitions should include a statement of what steps were taken to identify interested persons.

Guardian Selection

Recommendation 2.13

AAA petitions for guardianship should only recommend a proposed guardian that the AAA has fully screened and has determined to be qualified to serve as guardian. Further, the Petition should recommend a guardian that is in line with the AIPs understood preferences about who

would serve as guardian or serve as decision-maker through prior executed estate planning or decision making documents.

Guardian Screening – Pre-Hearing

Recommendation 2.14

Professional guardians should be required to have guardian certification and a State Board of Guardianship should be created to oversee the certification and ongoing compliance of guardians. Additionally, all professional and lay guardians should be subject to background check requirements that include such things as a credit check, judgment check, criminal background check, and child abuse clearance check. These items should be required to be attached to the petition for guardianship.

Less Restrictive Alternatives

Recommendation 2.15

Attorneys and judges should have access to complete information, including continuing legal education and continuing judicial education sessions, about less restrictive alternatives.

Recommendation 2.16

Further study should be conducted to evaluate whether sufficient funds are provided to local AAAs to provide the services that serve as alternatives to guardianship. To do this may require an evaluation of whether AAAs have sufficient funds and infrastructure to provide supports for families in crisis who need a temporary solution but end up in guardianship because of the absence of supports during the crisis.

Recommendation 2.17

The Pennsylvania Legislature should enact a requirement for registration of Powers of Attorney. A model form for Powers of Attorney should be developed and implemented that incorporates necessary provisions for succession.

Recommendation 2.18

A process or forum (mediation) within which to resolve problems with a POA so as to help avoid those guardianships that are filed as a consequence of problems with an agent under POA or with a POA instrument should be explored and implemented.

Recommendation 2.19

Options should be explored that address how to ensure that Nursing Facilities are completely evaluating all avenues to facilitate getting paid before they involve the AAA to pursue guardianship as a means of accessing the funds to pay for care.

Recommendation 2.20

OPTIONS counseling should incorporate questions and information about incapacity planning. Likewise, these questions and information should be incorporated into the Aging Waiver and other LTSS programs' service coordination and an annual responsibility to visit the topic of incapacity planning to prevent the need for guardianship.

Court-Appointed Visitor

Recommendation 2.21

A requirement that there be appointed a court visitor in every case should be enacted and funded. The court-appointed visitor's role is to explain to the AIP the guardianship that is proposed, interview the AIP and proposed guardian, visit the AIPs' dwelling, obtain information from physicians and anyone else known to have treated, advised, or assessed the AIPs relevant physical or mental condition, and make any other investigation necessary or directed. The visitor should file a report with the court that includes such things as a summary of the daily functions the AIP can manage without assistance, could manage with supportive services (including technology), and cannot manage; recommendations regarding the appropriateness of the guardianship, a statement about the qualifications of the proposed guardian as well as whether the AIP approves or disapproves of the proposed guardian, and a recommendation as to whether professional evaluation or further evaluation is necessary.

Appointment of Counsel

Recommendation 2.22

A requirement that attorneys be appointed for AIPs in all cases, similar to how there is a right to counsel under the Mental Health Procedures Act should be enacted and funded. The AIP should not have to ask for an attorney nor should the Petitioner be relied upon to inform the court whether the AIP should have an attorney appointed.

Whether AIP should be in court

Recommendation 2.23

A requirement for the AIPs to participate in the guardianship hearing should be enacted and enforced. The statute should state that this requirement should be honored by either the AIPs'

physical presence in court, the Court's conducting the hearing at the AIP's location, or (with the agreement of the AIP and/or the AIP's attorney) the AIPs participation through technology such as video-conference. Participation should only be excused by harm that cannot be mitigated by conducting the hearing at the AIP's location or through electronic participation of the AIP. Parties should be required to address these issues through motions prior to the hearing.

Notice

Recommendation 2.24

An independent officer of the court dressed in plain clothes and trained to communicate and interact with elderly and disabled persons should serve the respondent personally and present the information to the respondent in the mode of communication that the respondent is most likely to understand.

Recommendation 2.25

The Pennsylvania Guardianship Statute should be amended to require that the Petitioner notify all family members of the guardianship petition being filed, and not just those that reside in the Commonwealth.

C. HEARING

Facilitating AIP Presence in Court

Recommendation 3.1

For cases in which the AIP is a AAA client (through PS, Waiver, or other program), AAAs should be required to provide supports (transportation or supportive services) to facilitate participation of AIP in person at the hearing if it is held at the courthouse or in the AIP's location and to provide the technology for electronic participation, if the AIP will not be physically attending the hearing.

Evidence of No Less Restrictive Alternatives

Recommendation 3.2

During the hearing, a finding should be made on less restrictive alternatives; a conclusion should be reached that either less restrictive alternatives have been attempted and unsuccessful and/or there is clear and convincing evidence that no less restrictive alternatives to guardianship that can be pursued. This should be an issue that is proven and not simply plead.

Expert Witness Testimony of Incapacity

Recommendation 3.3

Live testimony of the Expert Witness should be required at all hearings in which the AIP's capacity is contested.

Recommendation 3.4

Video technology should be utilized to facilitate live participation of Expert Witnesses in a manner that may minimize the cost of participation.

Public v. Private Hearings

Recommendation 3.5

Consistent policies should be adopted to ensure that guardianship hearings are private and respectful of the AIP and that they not take place in a courtroom with strangers present.

On or off the record

Recommendation 3.6

The Courts should ensure that the entire guardianship hearing is on the record.

Confidentiality of Records

Recommendation 3.7

Confidentiality of records related to guardianship should be studied.

Guardian Selection

Recommendation 3.8

A guardian in line with the ward's preferences should be appointed whenever possible.

Guardians' Qualifications

Recommendation 3.9

The proposed guardian should be required to be present at the guardianship hearing and should be subject to questioning by both parties and the Court as to the qualifications presented in the Petition and as to the proposed guardian's understanding of all the duties and responsibilities to the ward and to the Court.

Training and Information for Guardians

Recommendation 3.10

The new Office of Guardianship Support should facilitate a collaboration of the Courts, the PDA, the PA Bar Association, and the other interested stakeholders in developing a model orientation and training programs for guardians, following appointment, which must be completed within a fixed number of days (e.g. 30 days) from appointment. The Model guardian training and orientation can include handbooks, online interactive materials, and videos.

Training for Attorneys and Judges

Recommendation 3.11

The Courts should instruct respondents' attorneys as to their roles and responsibilities. The Office of Guardianship Support should collaborate with the PDA, the PA Bar Association, and the Courts to develop substantive training for attorneys and judges around guardianship issues and the ABA-APA Handbooks available to aid in determining capacity.

Order

Recommendation 3.12

Template orders should be utilized that address a menu of functional areas, with each area requiring specific proof to establish lack of capacity, all of which would have to be sufficiently proven in the hearing in order for a plenary guardianship to be granted.

Bonds

Recommendation 3.13

A requirement should be established that all guardians of the estate, including professional and lay guardians, should be subject to bonding requirements. Written requirements for setting the size of each bond should be developed and enacted. In accordance with the UGPPA model law requirement, the bond should "be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. In place of sureties on a bond, the court may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property."

D. POST-APPOINTMENT

Capacity Re-evaluations and Review Hearings

Recommendation 4.1

A requirement that capacity be reevaluated annually and at any time the needs change prior to the annual renewal date should be established. Such re-evaluation should be filed with the court and guardians should request a review hearing if the reevaluation indicates an improvement in capacity.

Recommendation 4.2

Further study should explore whether there should be fixed review hearings or whether they should be triggered only upon a capacity re-evaluation finding a need for Court review. Specifically, the study could evaluate whether courts would be more inclined to grant limited guardianships if they know the matter will be returning annually for review and possible adjustment to the guardianship order.

Standards for Guardians' Performance

Recommendation 4.3

The new Office of Guardian Support should facilitate collaboration between the Courts, the PDA, the PA Bar Association, the PA Legislature, and other interested stakeholders in developing and implementing written standards or rules of practice and procedure for guardians. These should:

- include ethical obligations and should be applicable to all professional and lay guardians; and
- specify that a guardian should “exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.”

Additionally:

- a guardian should become and/or remain personally acquainted with the ward;
- maintain sufficient contact with the ward to know of the ward’s capacities, limitations, needs, opportunities, desires, personal values, and physical and mental health; and
- the guardian should be required to consider the expressed desires and personal values of the ward to the extent known to the guardian and to, at all time, act in the ward's best interest and exercise reasonable care, diligence, and prudence.

Recommendation 4.4

A prohibition on conflicts of interest such that guardians and guardianship agencies not directly provide services such as housing, medical care, and social services to their own wards, absent court approval and monitoring should be enacted and enforced.

Guardian Duties and Responsibilities**Recommendation 4.5**

Guardians should be required to submit, along with the inventory, a written plan that identifies the ward's needs and how they will be met. The plan should be created through a person-centered process and should identify short-term and long-term needs and goals. For guardians of the person, this will include personal needs. For guardians of the estate, this will include the guardians plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan(s) should be based on the actual needs and take into consideration the best interest of the person. The guardian of the estate's plan for the ward should include steps to develop or restore the person's ability to manage his/her property. These plans should be updated annually.

Recommendation 4.6

Requirements should be enacted that annual reports include the guardian's opinion as to the adequacy of the ward's care, a summary of the guardian's visits with the ward and the guardian's activities on the ward's behalf and the extent to which the ward has participated in decision making, if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest; and plans for future care.

Recommendation 4.7

The court order appointing the guardian should detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the respondent. The court order should inform the guardian what the guardian's responsibilities are, what requirements are to be applied in making decisions and caring for the ward, and what forms the guardian must file with the court and when.

Recommendation 4.8

The court order should require guardians to cooperate with other surrogate decision-makers (such as any other guardian, conservator, agent under a power of attorney, health care proxy, trustee, VA fiduciary and representative payee) for the ward.

Recommendation 4.9

The Courts should require guardians of the estate to keep records of the administration of the estate and to make them available for examination on reasonable request of an interested person and should report on the assets under control and a list of receipts, disbursements, and distributions during the reporting period (PA Statute only requires this for income).

Guardian Support**Recommendation 4.10**

The new Office of Guardianship Support should develop programs for ongoing training and assistance of guardians in meeting their duties to their wards and to the Court.

Guardians' Fees**Recommendation 4.11**

The Guardianship Statute should be revised to indicate that guardians' fees may not be paid from income *or* principal unless approved by the Court and to establish parameters for what is reasonable compensation based on elements such as those recommended by the Third National Guardianship Summit (2011).

Involvement of the LTC Ombudsman**Recommendation 4.12**

The Long-Term Care Ombudsman program should include training and materials on the proper role of the ombudsman in advocating for residents with guardians in conformance with Federal law.

Recommendation 4.13

The AAA should ensure that the Ombudsman is conflict-free and is able to advocate on behalf of long term care consumers regardless of whether they have a guardian.

Monitoring**Recommendation 4.14**

All due dates for the guardian to file required reports should be monitored and enforced. As in several Pennsylvania counties, courts should have electronic tickler systems that dispatch notices as soon as a guardian is late. The notices should inform the guardian that failure to file the required reports may lead to actions by the court such as, but not limited to: an order to

show cause, a review hearing, sanctions (including financial penalties), a finding of contempt, or termination of appointment as guardian.

Recommendation 4.15

The frequency and quality of report reviews should be increased and supplemental means such as volunteers, review boards and investigators to verify the contents of the report and the circumstances of the ward should be employed. The Office of Guardianship Support should be charged with helping to identify and train volunteers to assist with report reviews.

Recommendation 4.16

A standardized guardian, ward, and report monitoring system should be enacted and funded. This should be built upon the best practices in staff-run monitoring in Orphans' courts and the successful elements of the volunteer monitoring programs run by the Orphans' Courts in Chester, Dauphin, York, and Westmoreland counties such as annual or more frequent visits to wards and guardians, pro-bono accountant reviews of financial reports, and volunteer/monitor reporting forms that get filed with the court.

Recommendation 4.17

Data collection requirements (similar to Act 24 requirements) should be required and funded that will enable the AOPC to provide a clearinghouse for the number and nature of active guardianships.

Penalties for Guardians

Recommendation 4.18

The Guardianship Statute should be amended to adopt language that makes failure of a guardian to file a timely report or fulfill other requirements a breach of duty and that imposes and authorizes penalties for a breach of duty.

XIII. Conclusion

We (CARIE's study team) have presented the findings of this study based on data collected from survey respondents, focus group participants, key informants, and extensive Pennsylvania and national research. We also include in our discussion assumptions about guardianship and its impact that we learned from many of these encounters. Thus, the impact of policy decisions related to guardianship is woven into the discussion throughout this paper.

The Pennsylvania Department of Aging asked that we closely examine the issue of guardianship particularly as it relates to the work of Pennsylvania's Aging Network. This study provides a wealth of data about AAA, OAPS, and Ombudsman practices around guardianship, the views of attorneys and their work with AAAs, expert key informant input about guardianship practices, and views and information provided by those who work "on the ground" to help consumers who are at risk of, in the process of guardianship or have been declared incapacitated.

We looked at and compared our findings to that of previous PA studies and informal surveys and have learned about the trends in guardianship at least over the past 15 years or more. We are hopeful that this study will provide a framework for future decision-making regarding guardianship practice and reform. The study can help decision-makers by providing information to help design programs and establish funding to ensure that the system works for all but especially for vulnerable older adults.

We hope this study will generate continued discussion about how to improve guardianship practice and procedures in the Commonwealth of Pennsylvania. During this study, we identified a number of recommendations for the Pennsylvania Department of Aging to consider in providing guardianship support to the aging network. We strongly suggest that there be greater oversight of guardianship, and enhanced training and support for organizations and individuals who provide guardianship services. We favor providing as much training as possible for all involved in the process from judges and court staff to AAA staff including Ombudsman to attorneys and families and others.

An appropriate guardianship system must ensure that guardianship is never imposed unless the requisite time, attention, due process, alternative consideration, and judicial scrutiny have been allocated to the evaluation of the AIP's capacity, of the need for guardianship over alternatives, and the qualifications of the proposed guardian. The research contained in this report supports the need to improve the Commonwealth's guardianship system and protect the rights of these most vulnerable Pennsylvanians.

It is time to move these issues from study to action. Differences that exist among counties suggest that citizens of Pennsylvania have varying access to guardian support services depending upon where they live. For some individuals to wait 90 days just for an evaluation is a terrible burden. The support the older adults and their families receive also varies. For too long, the issue has been studied, but the energy and commitment to seeing change through and taking on the more complex problems has not met the charge.

The Pennsylvania Department of Aging is in a position to meet this charge by providing advocacy in partnership with legislators, the judicial system, elder law attorneys, community organizations, and guardianship organizations. At the same time the Department can take action by developing stronger initial training and advanced training for protective services personnel, ombudsman, and other aging network professionals in support of increasing understanding and use of guardianship. The number of older adults—and older adults in need of assistance due to issues of capacity—is growing exponentially, and yet many of the problems they encounter are literally decades old have long been known to be problems that need to be addressed. The time is now.

Endnotes:

ⁱ The 144 attorneys who responded to the survey indicated that they had filed 1,407 petitions during 2011. Thus the attorneys who responded to the survey accounted for approximately 73% of all guardianship cases. If the three outliers (with cases of 78, 80, 100) are included in the figure, then the survey respondents accounted for approximately 87% of all lawyers who file for guardianship for older adults in Pennsylvania.

ⁱⁱ Data compiled from Act 24 forms submitted by county Orphans' Courts to DPW annually, copies of which are submitted to PDA and copies of which were provided to the CARIE Study Team.

ⁱⁱⁱ "State Adult Guardianship Legislation: Directions of Reform – 2011", Commission on Law and Aging American Bar Association, available at

http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html (last visited 8/17/12). Each year, the American Bar Association Commission on Elderly and the Law publishes a summary of the state actions on guardianship reform.

^{iv} Uniform Law Commission Legislative Fact Sheet, available at

<http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=GuardianshipandProtectiveProceedingsAct> (last visited 8/18/12).

^v Act of Jul. 5, 2012, P.L. 975, No. 108, available at <http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2012/0/0108..HTM> (last visited 8/18/12).

^{vi} http://guardianship.org/guardianship_standards.htm

^{vii} Guardian Certification Tool Kit for Public Policy Makers, available at http://www.guardianshipcert.org/tool_kit.cfm (last visited 8/18/12).

^{viii} Last checked on www.guardianshipcert.org on October 17, 2012.

^{ix} ADULT GUARDIANSHIP HANDBOOKS BY STATE, available at

http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_gship_st_hbks_2011.authcheckdam.pdf (last visited 8/18/12).

^x Alternatives to Guardianship: Substantive Training Materials and Module for Professionals Working with the Aging and Persons with Disabilities (1992), available at http://www.americanbar.org/groups/law_aging/publications/gship_pubs.html (last visited 8/18/12).

^{xi} American Bar Association Commission on Law and Aging Webpage, available at

http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/court_volunteer_guardianshipmonitoring.html (last visited 8/18/12).

^{xii} <http://www.superiorcourt.maricopa.gov/SuperiorCourt/ProbateAndMentalHealth/index.asp>

^{xiii} <http://www.nycourts.gov/ip/gfs/index.shtml>

^{xiv} <http://www.tarrantcounty.com/eprobatecourts/cwp/browse.asp?a=766&bc=0&c=43869&eprobatecourtsNav=1>

^{xv}

<http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/brochure1.authcheckdam.pdf>

^{xvi} <http://www.ksgprog.org/>

^{xvii} "PENNSYLVANIA GUARDIANSHIP LAW OUTDATED AND RIPE FOR ABUSE", Bob Dvorchak, Associated Press Writer, September 19, 1987, available at <http://www.apnewsarchive.com/1987/Brief-Looks-at-Guardianship-in-Some-States-With-Guardians-of-Elderly-I-Bit/id-4c1eedcb2002530127118972b3f7c05c> (last visited 8/18/12).

^{xviii} Ibid. Said Richard Levine, a Pittsburgh attorney and founder of the Elderly Citizens Resource Center.

^{xix} <http://www.pacourts.us/NR/rdonlyres/506E317A-0A57-498C-9F44-2F6B738E3F08/0/2010Report.pdf>

^{xx} It must be noted that the AAAs report having filed 575 guardianship petitions in FY 10-11 (which ran from July 1, 2010 through June 30, 2011) and the statewide AOPC figure is for the Calendar Year 2011 (which ran from January 1, 2011 through December 31, 2011).

^{xxi} In addition to these 575, 67 cases were referred to a third party to file for guardianship.

^{xxii} Adult Protective Services Core Competencies -

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CFEQFjAA&url=http%3A%2F%2Fwww.apsnetwork.org%2FResources%2Fdocs%2FCoreCompetencies71005.ppt&ei=7i4DUMixDKW06wGdk4HoBg&usg=AFQjCNFAsvP_X1A5pt5ovQ3ZdKYINLbm3w&sig2=lm8d7c6s1tYM-X5yWe1jkA

Acronyms/Abbreviations

A + # – AAA Survey Question
AAA – Area Agency on Aging
ABA – American Bar Association
ABA-CLA – American Bar Association Commission on Law and Aging
AIP – Alleged Incapacitated Person
AOPC – Administrative Office of Pennsylvania Courts
AP – Associated Press
APA – American Psychiatric Association
CARIE – Center for Advocacy for the Rights and Interests of the Elderly
CCJ – Conference of Chief Justices
COSCA – Conference of State Court Administrators
GAO – Government Accountability Office
JSGC – Joint State Government Commission
L + # – Lawyer Survey Question
MoCA – Montreal Cognitive Assessment
NCCCUSL – National Conference of Commissioners on Uniform State Laws
NGA – National Guardianship Association
NPCS – National Probate Court Standards
OAPS – Older Adult Protective Services
P4A – Pennsylvania Association of Area Agencies on Aging
PDA – Pennsylvania Department of Aging
POA – Power of Attorney
PS – Protective Services
SAS – Statistical Analysis System
**SLUMS – The Saint Louis University Mental Status (SLUMS) Examination for Detecting Mild
Cognitive Impairment and Dementia**
SPMSQ – Short Portable Mental Status Questionnaire
SPSS – Statistical Package for the Social Sciences
SSA – Social Security Administration
UGPPA – Uniform Guardianship Productive Proceedings Act of 1997
UGPPJA – Uniform Adult Protective Proceedings Jurisdiction Act of 2007
VA – Veterans Administration



GUARDIANSHIP LAW PRACTICE SURVEY

Introduction and Demographics:

This Guardianship Law Practice survey has been developed by the Center for Advocacy for the Rights and Interests of the Elderly (CARIE) as part of a larger study being funded by the Pennsylvania Department of Aging to collect important information about guardianship as it relates to the Commonwealth's 60 and older population. The findings of this study will be considered as the Department of Aging sets its policy and legislative agendas in the years ahead. There is little survey data about guardianship practices, so your participation is important and appreciated.

In this survey "AAA" is used to mean Area Agency on Aging and "AIP" is used to mean Alleged Incapacitated Person or Incapacitated Person.

This survey is to be completed by attorneys about their guardianship practice. If you are a member of a firm, please answer based on your individual practice. Please answer only with respect to your practice as it relates to the 60 and older population. Please estimate your answers to the best of your ability. We are not asking you to pull files or spend time searching for precise answers to these questions. This survey will close on April 27, 2012.

Participation in this survey is voluntary. We will not publish any identifying information about you in any reports or other documents that result from the study unless we contact you to obtain your express consent to quotation and attribution. We ask for contact information in the event that we need to follow-up to clarify a response or to obtain your permission to use a quote based on your response. All identifying information will be destroyed upon completion of data analysis.

This survey consists of 46 questions. We anticipate it will take you 20-30 minutes to complete depending on the nature of your practice and how many suggestions for changes to the guardianship system you wish to recommend. If you prefer to print

and complete a hard copy of the survey, you may download it by clicking [here](#) and may e-mail your completed survey to menio@carie.org or fax your completed survey to 215.545.5372 (Attn: Guardianship Survey).

CARIE and Pennsylvania Department of Aging thank you in advance for donating your time to our effort. If you have any questions about the survey or the overall study, you can contact Alissa Halperin, Esq. at aehalperin@yahoo.com.

1. I understand that participation in this survey is voluntary. I understand that my information will be used in the aggregate. I understand that my name will not be associated with the information I provide unless the CARIE research team contacts me and obtains my express consent to any attribution.

(REQUIRED QUESTION)

- I agree to participate in the study and understand my rights as a research participant.
- I do not wish to participate at this time.

2. Your name:

3. Phone number:

4. Your e-mail address:

**5. In which counties/county orphan courts have you had guardianship cases?
(Check all that apply)**

- | | | | | | |
|--------------------------|------------|--------------------------|------------|--------------------------|----------------|
| <input type="checkbox"/> | Adams | <input type="checkbox"/> | Elk Erie | <input type="checkbox"/> | Montour |
| <input type="checkbox"/> | Allegheny | <input type="checkbox"/> | Fayette | <input type="checkbox"/> | Northampton |
| <input type="checkbox"/> | Armstrong | <input type="checkbox"/> | Forest | <input type="checkbox"/> | Northumberland |
| <input type="checkbox"/> | Beaver | <input type="checkbox"/> | Franklin | <input type="checkbox"/> | Perry |
| <input type="checkbox"/> | Bedford | <input type="checkbox"/> | Fulton | <input type="checkbox"/> | Philadelphia |
| <input type="checkbox"/> | Berks | <input type="checkbox"/> | Greene | <input type="checkbox"/> | Pike |
| <input type="checkbox"/> | Blair | <input type="checkbox"/> | Huntingdon | <input type="checkbox"/> | Potter |
| <input type="checkbox"/> | Bradford | <input type="checkbox"/> | Indiana | <input type="checkbox"/> | Schuylkill |
| <input type="checkbox"/> | Bucks | <input type="checkbox"/> | Jefferson | <input type="checkbox"/> | Snyder |
| <input type="checkbox"/> | Butler | <input type="checkbox"/> | Juniata | <input type="checkbox"/> | Somerset |
| <input type="checkbox"/> | Cambria | <input type="checkbox"/> | Lackawanna | <input type="checkbox"/> | Sullivan |
| <input type="checkbox"/> | Cameron | <input type="checkbox"/> | Lancaster | <input type="checkbox"/> | Susquehanna |
| <input type="checkbox"/> | Carbon | <input type="checkbox"/> | Lawrence | <input type="checkbox"/> | Tioga |
| <input type="checkbox"/> | Centre | <input type="checkbox"/> | Lebanon | <input type="checkbox"/> | Union |
| <input type="checkbox"/> | Chester | <input type="checkbox"/> | Lehigh | <input type="checkbox"/> | Venango |
| <input type="checkbox"/> | Clarion | <input type="checkbox"/> | Luzerne | <input type="checkbox"/> | Warren |
| <input type="checkbox"/> | Clearfield | <input type="checkbox"/> | Lycoming | <input type="checkbox"/> | Washington |
| <input type="checkbox"/> | Clinton | <input type="checkbox"/> | McKean | <input type="checkbox"/> | Wayne |
| <input type="checkbox"/> | Columbia | <input type="checkbox"/> | Mercer | <input type="checkbox"/> | Westmoreland |
| <input type="checkbox"/> | Crawford | <input type="checkbox"/> | Mifflin | <input type="checkbox"/> | Wyoming |
| <input type="checkbox"/> | Cumberland | <input type="checkbox"/> | Monroe | <input type="checkbox"/> | York |
| <input type="checkbox"/> | Dauphin | <input type="checkbox"/> | Montgomery | | |
| <input type="checkbox"/> | Delaware | | | | |

Your Role in Guardianship Cases:

6. Approximately how many new guardianship cases were you involved with in 2011? (Enter number/best estimate)

7. In all the guardianship cases with which you were involved in 2011, approximately how many involved: (Enter number/best estimate)

Plenary guardianship?

Limited guardianship?

Granting only guardianship of the estate?

Granting only guardianship of the person?

Substitution of a guardian?

Revocation of a guardianship?

Emergency guardianship?

Guardianship for an individual with annual income less than \$20,000?

Guardianship for an individual with assets less than \$100,000 (excluding their home)?

8. Approximately how many new guardianship cases do you typically get in a year? (Enter number/best estimate)

9. In your guardianship practice have you: (check all that apply)

- Represented Petitioners?
- Represented Interested Parties?
- Represented Alleged Incapacitated Persons?
- Represented Guardians (Once Appointed)?
- Served as Guardian?

Other (please specify)

Cases where you serve as guardian:

**10. In 2011, approximately how many times were you appointed as guardian?
(Enter number/best estimate)**

**11. How many of those 2011 appointments were court initiated appointments?
(Enter number/best estimate)**

Assessment and Capacity:

12. How do you (in your practice) evaluate an individual's capacity with respect to deciding whether to initiate a guardianship proceeding? (Check all that apply)

- ABA-APA Capacity Worksheet for Lawyers?
- Written instrument or tool other than ABA-APA Capacity Worksheet for Lawyers?
- Assessment by outside professional?
- Personal experience/judgment?
- N/A
- Other (please specify)

13. In a guardianship case, how do you most frequently demonstrate

incapacity in court?

- Live expert testimony Written
- deposition forms Transcripts
- from live depositions Other
- (Please specify):

14. Have you ever been involved in a case in which the ward regained capacity?

- Yes
- No

15. If so, did: (Select all that apply)

- the court terminate the guardianship
- the court modify the guardianship from a plenary to a limited guardianship
- the court require clear and convincing evidence
- the court require prima facie evidence
- the guardian bring the change in capacity to the attention of the court
- the ward bring the change in capacity to the attention of the court
- a third party bring the change in capacity to the attention of the court
- the guardian object to a change in the guardianship
- Other (Please specify):

Least Restrictive Approach:

16. Has any court required a showing that least restrictive options have been considered?

- Yes
- No

17. If a court has required a showing that least restrictive options have been considered, which court was it?

18. If a court has required a showing that least restrictive options have been considered, how do petitioners typically establish for the court that they have considered other avenues or less restrictive options?

19. Please describe some of the avenues you have found useful in exploring less restrictive options:

Court Proceedings:

20. In approximately how many of your guardianship cases in 2011, was the: (Enter number/best estimate)

- | | |
|---|----------------------|
| AIP present in court at the hearing? | <input type="text"/> |
| Hearing held in the AIP's location (home, hospital, nursing home, etc.)? | <input type="text"/> |
| AIP not represented by counsel? | <input type="text"/> |
| AIP represented by counsel but that counsel was not present at the hearing? | <input type="text"/> |
| AIP given an opportunity to speak? | <input type="text"/> |
| Testimony of others (on behalf of the AIP) allowed? | <input type="text"/> |
| Entire hearing held on the record? | <input type="text"/> |

21. Please describe any local court rules that impact your guardianship practice?

22. Does any court in which you practice provide any written information to guardians about their responsibility?

- Yes
- No
- Don't know

23. Does any court in which you practice provide training for guardians?

- Yes
- No
- Don't know

If yes, please specify:

24. Indicate the amount of time the courts in which you practice typically allow for: (Indicate time in minutes)

an uncontested hearing

a contested hearing

25. If the courts in which you practice differ significantly in the amount of time they allow for hearings, please describe these differences:

Guardian Qualifications:

26. In how many of the guardianship cases that you have had in the past three years, has the guardian been certified by the Center for Guardianship Certification? (Enter number/best estimate)

27. Have you ever been involved in a case in which a proposed guardian has been subject to evaluation of his/her:

- Awareness of the rules and requirements imposed on guardians
- Capacity to make decisions
- Capability to handle the affairs of the AIP
- Personal financial affairs (i.e, a credit check)
- Personal legal record (i.e. criminal background check)

28. If yes to any of the above, please indicate in which court(s) this has occurred and what the evaluations have entailed:

29. Have you ever had a case in which a guardianship support agency has been appointed guardian?

- Yes No
- Unknown
- Yes, please list:

Monitoring Guardianships:

30. In 2011, how many times was a guardian (in a case in which you were involved) required by the court to post a bond or some other form of insurance to protect the assets/interests of the incapacitated person/ward? (Enter number/best estimate)

31. Following the appointment of a guardian, do you

	Always	Sometimes	Never
Advise guardians on requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advise guardians in decision-making?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monitor guardians' actions and/or decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monitor guardians' reports and/or reporting?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Assist in preparation of inventory or required reports?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If "other" (please specify)

32. If you serve as guardian of the person, how often do you visit a typical ward in a given year?

- Weekly
- Monthly
- Quarterly
- Twice a year
- Once a year
- Every 2 years
- Not applicable

Comments:

33. If you serve as guardian of the estate, how often do you visit a typical ward in a given year?

- | | |
|---------------------------------------|---|
| <input type="checkbox"/> Weekly | <input type="checkbox"/> Once a year |
| <input type="checkbox"/> Monthly | <input type="checkbox"/> Every 2 years |
| <input type="checkbox"/> Quarterly | <input type="checkbox"/> Not applicable |
| <input type="checkbox"/> Twice a year | |

Comments:

34. If you serve as guardian, what do you use to help ensure timely filing of required reports with the court?

35. Has a court ever contacted you about any forms or content of a report that you filed?

- Yes
- No
- N/A

36. Has a court ever contacted you about any forms or content of a report that your client filed?

- Yes
- No
- N/A

37. What guardianship monitoring programs are you aware of in Pennsylvania?

Residential Setting for the AIP:

38. Of the guardianship cases you handled in 2011, at the time of the hearing, how many of the AIPs were:

In a nursing home at the time of the hearing?

In an assisted living facility or other non-nursing home facility at the time of the hearing?

Living at home at the time of the hearing?

39. Of the guardianship cases you handled in 2011, how many wards were:

Placed in a nursing home within 90 days of the appointment of a guardian?

Placed in an assisted living or other non-nursing home facility within 90 days of the appointment of a guardian?

Still living at home 90 days after the appointment of a guardian?

NA

40. What specialized training about guardianship have you received?

I have not received any specialized training

I have received the following specialized training

Specify Training:

General Views

41. What elements of the guardianship process/system should be changed to:

- Better meet the needs and protect the rights of the AIPs or wards?**
- Support the effective administration of guardianship by guardians?**
- Support the guardianship practice of attorneys involved?**
- Improve how guardians are selected? (Attached additional pages if need be)**

42. What is your assessment of the AAA involvement in guardianship cases in each of the counties in which you practice? (Attached additional pages if need be)

43. For 2011, please list the counties in which you had a contract with the AAA to represent the AIPs in guardianship cases

- Represent the AAA as a petitioner
- Serve as Solicitor to represent the AAA as a petitioner
- Represent the AIPs in defending the guardianship petition
- Represent the petitioners (other than the AAA)
- Serve as guardian

Please list the counties and describe the contracts: **(Attached additional pages if need be)**

44. For 2011, please list the counties in which you did not have a contract with the AAA for handling guardianship cases, but you DID have a formal or informal referral relationship with the AAA? (Attached additional pages if need be)

Follow-up contact?

45. May we call you for more information?

- Yes
- No

If yes, please indicate if there is a preferred time of day for us to reach you:

46. What is the preferred method of contact?

- E-mail
- Phone

Thank you for completing this survey. Our final report about guardianship in Pennsylvania will be published in late 2012 and will be available on the CARIE website, www.CARIE.org.

AAA Survey for Guardianship

Demographics

***1. Name of Person Completing Survey Form:**

2. Title:

3. Name of Area Agency on Aging (AAA):

4. Phone Number

5. E-mail Address:

AAA Survey for Guardianship

Determining Capacity

6. What tool(s) does staff at your AAA use to evaluate the mental capacity of a person in need of protective services? (check all that apply)

- The MMSE (Mini-Mental State Exam)
- SLUMS (Saint Louis University Mental Status Examination)
- MoCA (Montreal Cognitive Assessment)
- SPMSQ (Short Portable Mental Status Questionnaire)
- Other (please specify)

7. In addition to the tool(s) you noted above, what else does your AAA staff use to evaluate the mental capacity of a person in need of protective services? (Check all that apply)

- Reports from the primary care doctor
- Psychiatric evaluations
- Personal Experience/Judgment of Case Manager/OAPS worker
- Other (list)

8. If a client appears to lack capacity, how long does it typically take to get a professional evaluation? (answer in # of days)

9. When a consumer appears to lack capacity, and no alternatives to guardianship are possible, does your AAA (check all that apply):

- Recommend to primary caregiver to seek guardianship
- Petition for guardianship
- Refer to a private attorney
- Refer the matter to an attorney under contract to petition for guardianship
- Refer the matter to a guardianship support agency to petition for guardianship
- Other (specify who)

AAA Survey for Guardianship

10. In your AAA, who makes the final determination that a consumer who appears to lack capacity needs to have a guardian appointed? (Check all that apply)

- OAPS worker
- Care Manager
- Supervisor
- RN
- Attorney
- Executive Director of AAA
- Other (please specify)

AAA Survey for Guardianship

Filing for Guardianship

11. Under what circumstances does your AAA directly petition for the AAA to be named guardian? (check all that apply)

- If the consumer comes in through Protective Services
- If there is no family member who can petition
- If the Alleged Incapacitated Person (AIP) is currently a AAA consumer
- If the AIP was previously a AAA consumer
- We take all cases -- no limitations
- Our AAA does not petition for guardianship
- Other

12. Typically, what kind of legal counsel advises your AAA in guardianship matters? (check all that apply):

- An in-house attorney
- An outside contracted attorney
- The County Solicitor
- None

Other (please specify)

13. Do the courts in your area put limits on who they will allow to testify about an individual's capacity?

- No, the court is receptive to testimony about capacity from all sources
- Yes, the court will only accept testimony about capacity from the following professionals

AAA Survey for Guardianship

14. Before your AAA petitions for guardianship, what steps does your AAA take to identify all the interested parties so the interested parties can be notified about the proceeding?

- My AAA does not petition for guardianship
- My AAA takes the following steps: (Please describe in detail)

15. During the fiscal year ending 6/30/11, indicate how many guardianship cases your AAA worked with: (Please enter a number for each kind of guardianship)

Pursuing plenary guardianship over the person	<input type="text"/>
Pursuing plenary guardianship over the estate	<input type="text"/>
Pursuing limited guardianship over the person	<input type="text"/>
Pursuing limited guardianship over the estate	<input type="text"/>
Substitution of a guardian	<input type="text"/>
Revocation of a guardianship	<input type="text"/>
Emergency guardianship	<input type="text"/>

16. For the fiscal year ending 6/30/11:

How many consumers were referred by your AAA for evaluation of capacity to be done by an outside expert?	<input type="text"/>
How many consumers were assessed by your AAA who were found to need guardianship?	<input type="text"/>
How many guardianship petitions were filed by your AAA?	<input type="text"/>
How many consumers were referred by your AAA to a third party to petition for guardianship? (skip if don't know)	<input type="text"/>

17. In the fiscal year ending 6/30/11, how many of the capacity evaluations your AAA requested by outside experts were paid for by:

Medicare	<input type="text"/>
Other Insurance	<input type="text"/>
DPW – Medicaid	<input type="text"/>
The Court	<input type="text"/>
Your AAA	<input type="text"/>
Other	<input type="text"/>

18. Approximately how much did your AAA spend on expert evaluations of consumers' capacity in the fiscal year ending 6/30/11?

\$

AAA Survey for Guardianship

19. In the fiscal year ending 6/30/11, please indicate how many attorneys were paid from the following sources to represent AIPs in guardianship cases in which your AAA was involved:

DPW	<input type="text"/>
The Court	<input type="text"/>
Local Legal Services	<input type="text"/>
Your AAA	<input type="text"/>
AIP	<input type="text"/>
AIP family/friends	<input type="text"/>

20. Approximately how much did your AAA spend on attorneys to represent the AIPs in the fiscal year ending 6/30/11?

\$

21. How does your AAA ensure that the AIP has legal representation for the guardianship hearing?

22. How does your AAA ensure that the AIP is present at the guardianship hearing?

AAA Survey for Guardianship

Outcome of Hearing

23. As of today, in how many guardianship cases is your AAA currently serving as:

an emergency guardian (enter 0 if none)

permanent guardian (enter 0 if none)

24. Is your AAA currently accepting new appointments to serve as guardian?

Yes

No

25. How many of the petitions for guardianship that were filed by or on behalf of your AAA during the fiscal year that ended 6/30/11 were granted?

#

26. When your AAA is appointed guardian, who is typically appointed? Check all that apply:

The AAA is appointed guardian

A Title (not a named individual) within the AAA is appointed guardian

A named individual within the AAA is appointed guardian

Other (please specify)

27. What department in your AAA fulfills the guardianship responsibilities?

OAPS

Care management

Separate guardianship unit

Other (please specify)

AAA Survey for Guardianship

28. What are your AAA's minimum requirements or credentials for a person to be selected to serve as guardian (internal or external) (check all that apply)

- Center for Guardianship Certification
- Additional training
- Years of related experience
- None
- Other (please describe)

29. When a court asks your AAA to serve as guardian, does the court reimburse your AAA?

- Yes
- No

Other (please specify)

30. In the last fiscal year, how many times did your AAA need to go back to court because of a problem with a guardian?

(#)

31. How many hours of training does your AAA staff receive annually to specifically address issues of capacity and guardianship?

Hours for Protective Services Workers

Hours for Case Management Staff

Hours for Ombudsman workers

32. In addition to whatever guardianship services your AAA provides, are there other organizations in your community that serve as guardian?

- No
- Yes (please name agency or agencies)

AAA Survey for Guardianship

33. List who your AAA pays to provide guardianship services and approximate monthly costs:

Name

Type of agency

Average amount paid per month(\$)

AAA Survey for Guardianship

Monitoring

34. What is your AAA's standard practice regarding when it closes the OAPS case of a consumer who has had a guardian appointed? The OAPS case gets closed: (check all that apply)

- Date of referral to petitioner
- Date of hearing
- When a guardian is appointed
- 30 days after appointment of guardian
- Date that guardian establishes care plan
- Date of placement in a facility
- 90 days after the appointment of guardian
- Our AAA has no standard policy regarding closing cases when a guardian is involved.
- Other (please describe)

35. After an outside guardian has been appointed, does your AAA monitor the guardian?

- No
- Yes (please describe how)

36. When someone in your AAA is serving as a guardian, what part of your AAA monitors the guardianship activity?

- OAPS
- Care Management
- Guardianship Unit
- Legal Department
- AAA does not monitor
- Other (please describe)

AAA Survey for Guardianship

37. Has – to your knowledge -- your AAA ever been contacted by the Court or an interested party about the required initial, annual or final guardianship reports?

Yes

No

N/A

38. If the guardianship case stays open to AAA care management, how is the AAA care manager's role different as a result of the guardianship? (Check all that apply)

Visit more frequently

Guardian monitoring becomes a part of care plan

Case moves to Intensive Case Management

Other (please describe)

39. How much money did your AAA spend SERVING as guardian in the fiscal year 6/30/11?

\$

40. How much money did your AAA spend MONITORING outside guardians in the fiscal year 6/30/11?

\$

41. What is the TOTAL amount paid by your AAA to guardianship agencies for the fiscal year ending 6/30/11?

\$

42. How many of your AAA's wards (individuals for whom your AAA is the appointed guardian) receive additional/other services through your AAA?

#

AAA Survey for Guardianship

43. If your AAA serves as guardian, does your AAA have a fee structure through which it charges the consumers for the guardianship services your AAA provides? If yes, please describe

- n/a
- no
- yes (please explain)

44. If an outside individual or agency (not your AAA) serves as guardian, under what circumstance does your AAA pay for the guardian's services?

45. Of the Emergency and Plenary cases your AAA handled in the fiscal year ending 6/30/11, at the time of the hearing, how many AIPs were:

In a nursing home at the time of the hearing?

In an assisted living facility or other non-nursing home facility at the time of the hearing?

Living in community (in home or apartment)?

don't know

n/a

46. Of the guardianship cases your AAA handled in fiscal year that ended 6/30/11, how many AIPs were:

placed in a nursing home within 90 days of the appointment of a guardian?

placed in an assisted living or other non-nursing home facility within 90 days of the appointment of guardian?

still living at home 90 days after the appointment of a guardian?

did not handle any guardians cases

47. Does your AAA review the annual reports that are filed with the courts for guardians your AAA is paying?

yes

no

Other (please specify)

AAA Survey for Guardianship

48. Does your AAA have an internal policy to monitor guardianship expenditures?

yes

no

Other (please specify)

49. Who makes life saving/sustaining decisions for wards of your AAA?

50. For cases in which your AAA serves as guardian, does your AAA have a policy as to how often wards are visited?

yes

no

If yes, please explain

51. When your AAA is functioning as a guardian, indicate the most frequent activities performed for wards as a result of being their guardian (check all that apply):

Care Plans

Bill paying

Medical Appointments

Transportation

Other (please specify)

AAA Survey for Guardianship

Opinion/Other

52. What is the total amount your AAA spent on guardianship services for the fiscal year ending 6/30/11?

53. What are the funding sources for monies spent on guardianship? (check all that apply)

- Block Grant
- County funds
- Funds from the ward
- DPW/Medical Assistance

Other (please specify)

54. What are some successful alternatives to guardianship your AAA has used?

55. In your opinion, what would improve the guardianship system?

56. How does your AAA work to avoid guardianship/promote alternatives to guardianship throughout its service area?

57. How does your AAA support families who are selected as guardian for an older adult?

AAA Survey for Guardianship

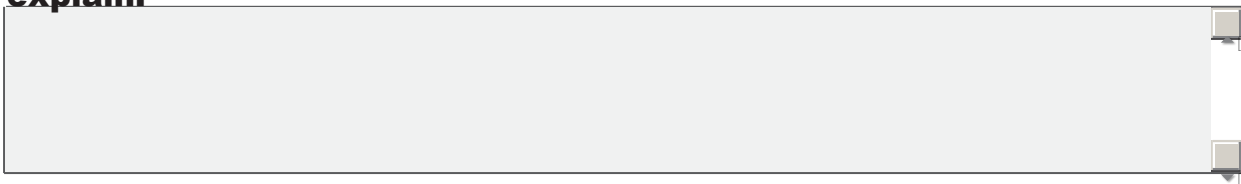
58. In what ways does your AAA educate judges about alternatives to guardianship that are available in your service area?

A large, empty rectangular text input field with a light gray background and a thin black border. On the right side, there are small upward and downward arrow icons for scrolling.

59. What does your AAA see as the THREE biggest challenges for AAA in working with incapacitated older adults?

A large, empty rectangular text input field with a light gray background and a thin black border. On the right side, there are small upward and downward arrow icons for scrolling.

60. Are you aware of any guardianship practices that vary from county to county? Please explain:

A large, empty rectangular text input field with a light gray background and a thin black border. On the right side, there are small upward and downward arrow icons for scrolling.

Statistical Programs Used: The surveys were collected using “Survey Monkey,” an on-line commercial tool that includes saved results in the Advanced Statistical Analysis format. The data analysis process was completed using Excel 2007. Since the primary purpose of the survey was to collect descriptive data, more powerful statistical programs such as SAS and SPSS were not needed. Components were added to Excel to improve its usability and speed the analysis process. These include:

1. Analysis Tool Pack and Analysis Tool Pack VBA, from Microsoft Corporation: Provided basic statistical techniques in Excel. The add-ins used are built into Excel and only simply needed to be implemented.
2. EZAnalyze Version 3.0 (2007); from Poynton, T.A.: This macro add-in was particularly helpful in summarizing alpha numeric responses, and computing Z-scores. It was retrieved from: <http://www.ezanalyze.com>.
3. SSC-Stat Version 2.18 (2007); from Statistical Services Centre, The University of Reading, United Kingdom: This macro add-in was essential to compute stratified statistics, and useful in manipulating the data for analysis. It was retrieved from <http://www.reading.ac.uk/ssc>.
4. Peltier Tech Box and Whisker Chart Utility (2012); from Peltier Technical Services, Inc.: This macro add-in allowed provided charts that summarized data and illustrated the dispersion of the numeric data. It was purchased from: <http://www.peltiertech.com/Utility/BoxPlotUtility.html>

Missing Data: In this analysis, “missing data” refers to a response that was left blank. The missing data figure was used to compute overall percentages but not statistics or valid percentages. For numeric data, when the value entered is zero, the result is interpreted as a response and not missing data.

For data where there are blanks, there are two possibilities: the respondent simply skipped the question, or the question was not relevant to the respondent, and so the question was skipped. Since there is no way to know the respondents intent without further exploration, these blanks were considered missing values.

Some questions offered the option of “not applicable/NA” – when this was checked, the analysis treated that information as not applicable.

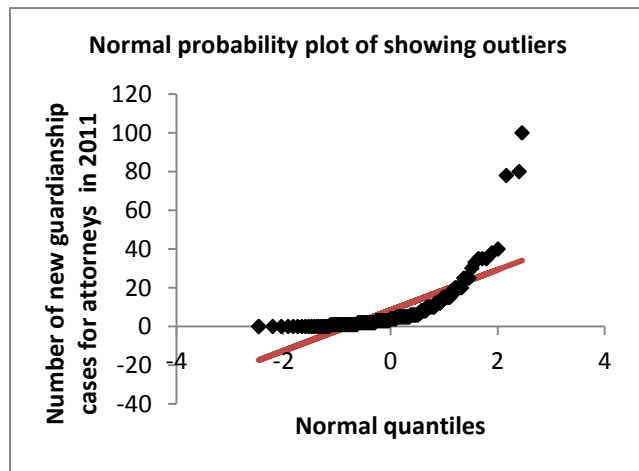
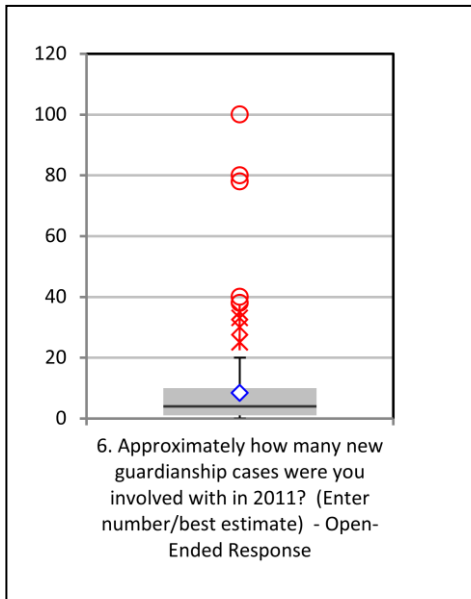
The surveys also asked complex questions in which respondents selected an answer from an array of choices. In this case, if the respondent selected any option in the section, the options not answered were considered not answered on purpose, and not missing values.

Thus the sample size used throughout the survey was consistent (144 for lawyers and 52 for AAAs). However the number missing was computed for each question in order to calculate valid percentages.

Data Cleaning and Correction: Obvious errors in data were corrected as part of data cleaning. An example of data cleaning includes one response where the question required the response in hours, and Survey Monkey converted it to a date. For example, when a two part question first asked “How many cases...?” then “How many of those cases...?” and the respondent entered 0 to the first question

and 12 to the second, an obvious mistake occurred. Time constraints did not permit us to follow up with each respondent to clarify, and so the response to this question was removed from the analysis.

Outliers: Outliers that appeared to be inconsistent with the other data have the potential to skew data results. Indeed an Outlier has a low probability that it originates from the same statistical distribution as the other observations in the data set. In this study, the answer submitted by three lawyers to question number six, “How many new guardianship cases were you involved with in 2011?” stood out from the rest of the answers. Therefore, a box plot and normal probability plot were run to view the normality of the sample for this question:



Three answers in the data set on the lawyer data were markedly different than the other values. Computing Z-scores for the values, they had a probability of less than 0.0% of occurring in the normal distribution (from the website <http://www.measuringusability.com/pcalcz.php>). These were identified as Outliers.

VALUE	Z-Score	Percentile
78	4.854	0.000125
80	4.993	0.0000622
100	6.388	0.000000248

It was clear that the volume of guardianship cases these lawyers worked with were outside of the normal distribution of our sample. This was true for all their other responses as well. The three were removed from the analysis and handled separately.

The survey was distributed to approximately 2,500 lawyers. 183 responses were received, of which 8 were removed because they stated they did not want to participate. Twenty-eight were

removed because their survey was grossly uncompleted. Removing the Outliers further reduced out sample size from 147 to 144.

Outliers can provide useful information. In the case of identifying lawyers in PA who practice guardianship law for older adults, it is not known how many lawyers make up this general population. A survey, of 183 likely candidates, reveals that most who responded follow a central tendency. The three Outliers may represent another modal group. It would be interesting to pursue this in another study.

Although we have three observations, the sample size is neither large enough to statistically analyze and make inferences from, nor to contrast with the sample responses included from the survey. We can however report on how much the Outliers differ on some of the questions. We can also include any comments they submitted that may be of value.

In order to compare the included observations with the outliers, we computed the mean for each group. The mean from the included observations, our sample, may be considered statistically correct. However, it should be stressed that the mean from the outliers does not represent a statistic about another group of lawyers who have extremely busy practices. The mean for the outliers was simply computed to help convey and report on the magnitude of the outliers in comparison with the sample.

The following table shows ten questions from the survey where there is a numeric open response. Also reported are the sample's mean and the Outliers' mean.

Question	Option	Sample's Mean	Outliers' Mean
6. Approximately how many new guardianship cases were you involved with in 2011?	(none)	6.7	86.0
7. In all the guardianship cases with which you were involved in 2011, approximately how many involved:	Plenary guardianship?	7.5	74.0
	Limited guardianship?	0.9	13.0
	Granting only guardianship of the estate?	1.0	11.3
	Granting only guardianship of the person?	1.0	2.0
	Substitution of a guardian?	0.9	5.7
	Revocation of a guardianship?	0.3	1.5
	Emergency guardianship?	3.6	37.5
	Guardianship for an individual with annual income less than \$20	6.0	68.3
	Guardianship for an individual with assets less than \$100	5.8	55.7
8. Approximately how many new guardianship cases do you typically get in a year?	(none)	7.2	85.0
10. In 2011, approximately how many times were you appointed as guardian?	(none)	0.8	0.0
11. How many of those 2011 appointments were court initiated appointments?	(none)	0.8	6.3
20. In approximately how many of your guardianship cases in 2011, was the:	AIP present in court at the hearing?	4.3	47.7
	Hearing held in the AIP's location?	0.1	5.3
	AIP not represented by counsel?	3.6	55.0
	AIP represented by counsel but that counsel was not present at the hearing?	0.1	0.0
	AIP given an opportunity to speak?	4.5	79.3
	Testimony of others (on behalf of the AIP) allowed?	4.6	82.7
	Entire hearing held on the record?	8.3	86.0
24. Indicate the amount of time the courts in which you practice typically allow for:	an uncontested hearing.	34.2	21.7
	a contested hearing.	171.7	240.0

30. In 2011, how many times was a guardian (in a case in which you were involved) required by the court to post a bond or some other form of insurance to protect the assets/interests of the incapacitated person/ward?	(none)	1.1	15.3
38. Of the guardianship cases you handled in 2011, at the time of the hearing, how many of the AIPs were	In a nursing home at the time of the hearing?	4.3	67.3
	In an assisted living facility or other non-nursing home facility at the time of the hearing?	2.5	21.0
	Living at home at the time of the hearing?	3.2	27.0
39. Of the guardianship cases you handled in 2011, how many wards were	Placed in a nursing home within 90 days of the appointment of a guardian?	2.8	50.0
	Placed in an assisted living or other non-nursing home facility within 90 days of the appointment of a guardian?	1.8	25.5
	Still living at home 90 days after the appointment of a guardian?	2.7	21.5
	NA	2.4	100.0

(The following is a basic outline for questioning key informants – as conversations evolve, discussion may veer in various directions. Notes were kept on each interview to capture the views of each interviewee.)

Tell me briefly about your/your agency's role in the guardianship process for older adults in PA.

Considering the 3 stages of the guardianship process (Pre-guardianship, Hearing, Post Appointment, what has been your experience of the process, role of the Area Agency on Aging, issues and best practices?

1. Pre-guardianship – alternatives, determination of capacity, risk, etc.

Process

Role of AAA

Issues

Best Practices

2. Guardianship hearing – required notices, appointment of counsel, AIP in court, guardianship selection, etc.

Process

Role of AAA

Issues

Best Practices

3. Post-appointment of guardian – required reporting, monitoring by courts/petitioner/AAA

Process

Role of AAA

Issues

Best Practices

Appendix E - Focus Group Discussion Guides (2) – PS Workers and LTC Ombudsman

For Protective Service Workers:

Introduction: (paraphrase to whatever works for you)

We are from CARIE, an advocacy organization for older adults based in Philadelphia. CARIE has a grant from PDA to study the guardianship process for older adults in PA and the role of the AAAs. A report will be published in the summer of 2012 of the findings and recommendations that result from this study. The report will be considered as the Department and the Legislature set their policy and legislative agendas in the years ahead.

CARIE is collecting information from national best practices, interviews with key informants, written surveys sent to elder law attorneys and one soon to be sent to AAA directors, review of court case documents, and focus groups. We are very pleased for this opportunity to talk with you, the staff who are on the front line working with older adults, hear your insights into the guardianship system.

In reading the FY09-10 report for PA's Older Adult Protective Services we learned that there were 156 petitions filed by AAA OAPS that were granted for guardianship. Whether your agency is rarely or frequently involved with guardianship cases, this study is interested in better understanding the wide variety of cases and processes in which our AAAs have a role.

We'd like to hear your perspective on guardianship.

1. How do you come to be involved in a guardianship case?
2. What is your role in assessing the older adult's capacity?
 - a. Who else is involved in assessing capacity?
3. What alternatives to guardianship are considered?
 - a. When do they work/not work?
4. How do you involve the older adult throughout the process?
 - a. How do you involve the older adult's family throughout the process?
5. Who else at the AAA is involved in deciding if guardianship is needed? Who makes the final decision?
6. How is this process different for an emergency guardianship?
7. What is your role in the guardianship hearing?
8. What is your role after a guardian is appointed for the older adult?
9. How can the guardianship process be improved?
- 10.** What else would you like to tell us about guardianship?

Appendix E - Focus Group Discussion Guides (2) – PS Workers and LTC Ombudsman

For Ombudsman:

Introduction: (paraphrase to whatever works for you)

We are from CARIE, an advocacy organization for older adults based in Philadelphia. CARIE has a grant from PDA to study the guardianship process for older adults in PA and the role of the AAAs. A report will be published in the summer of 2012 of the findings and recommendations that result from this study. The report will be considered as the Department and the Legislature set their policy and legislative agendas in the years ahead.

CARIE is collecting information from national best practices, interviews with key informants, written surveys sent to elder law attorneys and one soon to be sent to AAA directors, review of court case documents, and focus groups. We are very pleased for this opportunity to talk with you, the staff who are on the front line working with older adults, hear your insights into the guardianship system.

The National Association of State Units on Aging held several national dialogues with ombudsman to get their perspective on guardianship issues. One doesn't often think of ombudsman as being involved in guardianship issues, but the dialogues and CARIE's experience as an ombudsman in Philadelphia tells us otherwise. We are here today to hear your perspective on guardianship in PA.

First:

1. Do you work directly for the AAA or subcontractor?
2. Is this your sole job?

Now let's consider guardianship issues:

3. What is your experience with guardianship or in dealing guardians of the residents you see as ombudsman?
4. What kinds of issues do you experience with guardians? With residents who have guardians? With residents who may need guardians?
5. What challenges have you experienced in trying to help residents who have guardians?
6. What's your involvement with PS or other AAA staff related to guardianship?
7. What effective roles can ombudsman have in guardianship?
8. What improvements would you recommend in and around guardianship cases, generally and as they relate to ombudsmen trying to deal with residents who have guardians?

1 | Appendix F – Focus Group Consent Form

Consent to Participate in a Focus Group at CARIE re: Pennsylvania Guardianship

[Date]

Invitation to participate in a research study:

CARIE has been funded by the Pennsylvania Department of Aging to explore guardianship practices, including the role of Pennsylvania’s Area Agencies on Aging (AAAs), and to recommend improvements. Components of this study will include:

- Surveying Pennsylvania’s AAAs and elder law attorneys about guardianship process and providing guardianship services;
- Reviewing court processes by which guardians of older adults are appointed and monitored;
- Learning about best practices regarding guardianship of older adults; and
- Making recommendations for improving the role of Pennsylvania’s AAAs within the guardianship process to more fully protect the rights, interests and well-being of vulnerable older adults.

We are now holding focus groups to help in the design of the survey tools and interview protocols. Because of your role and knowledge of the guardianship process you have been asked to participate in a focus group.

Description of your involvement

You are being asked to take part in a 120 minute focus group meeting, where you will be asked a series of questions related to guardianship. We are interested in your views and experience on this topic. There are no right or wrong answers to our questions. We are seeking your opinions and impressions.

The focus group will be held at [place] on [date, time]. We anticipate approximately [#] people attending. The discussion will focus on the guardianship practices in Pennsylvania. [Insert name of team leader] will lead the discussion, with other team members assisting. The focus group may be audio recorded. Additionally, members of the study team will be taking notes during the discussion.

Benefits

We hope that results of this study will contribute to improving the lives of older adults in Pennsylvania. While you may not receive a direct benefit from participating in this focus group, some people find sharing their perspectives to be a valuable experience. Some people will also find it rewarding to help establish best practice recommendations that may lead to changes in the way guardianship is handled in Pennsylvania.

Risks and discomforts

You may choose not to answer any question. You can also stop your participation in the focus group at any time. While unlikely, there is a chance that another member of the focus group

2 | Appendix F – Focus Group Consent Form

could reveal something about you, or your opinions about guardianship, that they learned in the discussion. All focus group members are asked to respect the privacy of other group members. You may tell others that you were in a focus group and the general topic of the discussion, but actual names and stories of other participants should not be repeated.

Compensation

There is no compensation for participating in this focus group.

Confidentiality

We will produce a report that summarizes our findings of this study. If the report contains a quote that is attributed to your comments during this focus group, you will be contacted first for your explicit permission for its inclusion. General information learned during the focus group will be included in the study report.

Voluntary nature of the study

Participating in this study is completely voluntary. You may choose not to answer any focus group question for any reason. Even if you decide to participate now, you may ask that any information offered by you not be used in the study.

Contact information

If you have questions about this focus group, please contact Diane Menio, Executive Director of CARIE at: menio@CARIE.org or at 215-545-5728. You can also contact Joan K. Davitt, Ph.D. Vice-Chair of the CARIE board at: jdavitt@sp2.upenn.edu or 215-898-1592.

Consent

By signing this document, you are agreeing to be in the study. You will be given a copy of this document for your records and one copy will be kept with the study records. Be sure that questions you have about the study have been answered and that you understand what you are being asked to do. You may contact Diane Menio if you think of a question later.

I _____ (print) agree to participate in the study.

Signature

Date

Interviewer

Date

1 | Appendix G – Key Informant Consent Form

Consent to Participate as Key Informant for CARIE Study on Pennsylvania Guardianship

(Revised 02/14/2012)

Invitation to participate in a research study:

CARIE has been funded by the Pennsylvania Department of Aging to explore guardianship practices, including the role of Pennsylvania's Area Agencies on Aging (AAAs), and to recommend improvements. Components of this study will include:

- Surveying Pennsylvania's AAAs and elder law attorneys about guardianship process and providing guardianship services;
- Reviewing court processes by which guardians of older adults are appointed and monitored;
- Learning about best practices regarding guardianship of older adults; and
- Making recommendations for improving the role of Pennsylvania's AAAs within the guardianship process to more fully protect the rights, interests and well-being of vulnerable older adults.

We are now holding meetings with Key Informants. Because of your role and knowledge of the guardianship process you have been asked to participate as a Key Informant. We are interested in your views and experiences as one professional among a group of professionals who have knowledge regarding guardianship processes in Pennsylvania as well as the rest of the country.

Description of your involvement

As a Key Informant you will be asked a series of questions related to guardianship. We are interested in your views and experience on this topic. There are no right or wrong answers to our questions. We are seeking your opinions and impressions. The Key Informant interviews will occur at a mutually agreed time and place and may be held over the phone, or in person. The interviews will last between 20 – 75 minutes. The discussion will focus on guardianship practices in Pennsylvania. If the interview is to be recorded, you will be asked to give your permission to record it. The interviewer may take notes during the interview.

Benefits

We hope that the results of this study will contribute to improving the lives of older adults in Pennsylvania. While you may not receive a direct benefit from participating as a Key Informant, some people find sharing their perspectives to be a valuable experience. Some people will also find it rewarding to help establish best practice recommendations that may lead to changes in the way guardianship is handled in Pennsylvania.

Risks and discomforts

The risks of participating in this study include the disclosure of your opinions and observations in the written materials that will result from the study. There is also a risk of distress in relation to thinking about challenges related to the guardianship system.

2 | Appendix G – Key Informant Consent Form

Confidentiality

Because the numbers of people involved in guardianship in Pennsylvania are relatively small, we are not able to guarantee your anonymity. Anything you tell us should be considered “on the record.” No individual names will be utilized in any internal reports or publications based on this study. However, since the number of people involved with guardianship in Pennsylvania is so small, there is a chance that your comments or identity may be discernable.

The results of these interviews will be reported in a final report to be submitted to the Pennsylvania Department of Aging and also published on CARIE’s website. If we want to use a quote excerpted from your responses during the interview, you will be contacted first for your explicit permission for its inclusion. If you do not give permission to the quotes inclusion, the quote will not be used.

The tapes, transcripts and interview notes from your interview will be held in a secure place and will be destroyed upon completion of the study

Voluntary:

Your participation in this study is completely voluntary. You are not being required to participate. There is no penalty if you choose not to join the research study or if you choose to withdraw before the interview is finished. You are not obligated to answer any of the questions that are asked during the interview and you are free to withdraw from participation at any point. If you choose to withdraw from the study, you can verbally inform the interviewer or contact: Jennifer Campbell, Ph.D. at (610) 642-1196, Jennifer.W.Campbell@verizon.net or FAX: 610-903-4224. You may withdraw at any point in the process: prior to the interview, during the interview or after the interview. If you chose to withdraw from the study, all information gathered from you will be removed from the study and destroyed and will not be used in any reports that are produced.

Compensation

There is no compensation for participating in this Key Informant interview.

Contact information

If you have questions about this Key Informant interview, please contact one of the people listed below:

- Jennifer Campbell, Ph.D. Guardianship Study Team Member, (610) 642-1196, FAX: 610-903-4224 Jennifer.W.Campbell@verizon.net
- Diane Menio, Executive Director of CARIE at: Menio@CARIE.org or at 215-545-5728.
- Joan K. Davitt, Ph.D. Vice-Chair of the CARIE board at: jdavitt@sp2.upenn.edu or 215-898-1592.

Consent

By signing this document, you are agreeing to be in the study. There is a separate line for giving permission to have the interview audio-taped. You will be given a copy of this document for your records and one copy will be kept by the Study Team. Be sure that you understand

Key Informant Consent form, revised 02/14/12

3 | Appendix G – Key Informant Consent Form

what you are being asked to do, and that all of your questions have been answered. You may contact Jennifer Campbell, Ph.D. (phone number and contact information is listed above) if you think of a question later.

Key Informant -- Print Name

I _____ agree to participate in the study.
Key Informant Signature

I _____ agree to be audio taped.
Key Informant Signature

Date: _____

Interviewer Signature

CHAPTER 55
INCAPACITATED PERSONS
SUBCHAPTER A
GENERAL PROVISIONS

With all Cross-Referenced Provisions Included in Full

5501. Meaning of incapacitated person.

"Incapacitated person" means an 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.

5502. Purpose of chapter.

Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative; and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.

SUBCHAPTER B
SMALL ESTATES

5505. Provisions similar to small estates of minors.

The provisions concerning small estates of incapacitated persons shall be the same as are set forth in the following provisions of this title relating to minors' estates:

Section 5101 (relating to when guardian unnecessary).

Section 5102 (relating to power of natural guardian).

Section 5103 (relating to sequestered deposit).

(5101. When guardian unnecessary.

When the entire real and personal estate, wherever located of a resident or nonresident minor has a net value of \$25,000 or less, all or any part of it may be received and held or disposed of by the minor, or by the parent or other person maintaining the minor, without the appointment of a guardian or the entry of security, in any of the following circumstances:

(1) Award from decedent's estate or trust.--*When the court having jurisdiction of a decedent's estate or of a trust in awarding the interest of the minor shall so direct.*

(2) Interest in real estate.--*When the court having jurisdiction to direct the sale or mortgage of real estate in which the minor has an interest shall so direct as to the minor's interest in the real estate.*

(3) Other circumstances.--*In all other circumstances, when the court which would have had jurisdiction to appoint a guardian of the estate of the minor shall so direct.*

5102. Power of natural guardian.

The court may authorize or direct the parent, person, or institution maintaining the minor to execute as natural guardian, any receipt, deed, mortgage, or other appropriate instrument necessary to carry out a decree entered under section 5101 (relating to when guardian unnecessary) and, in such event, may require the deposit of money in a savings account or the care of securities in any manner considered by the court to be for the best interests of the minor. The decree so made, except as the court shall expressly provide otherwise, shall constitute sufficient authority to all transfer agents, registrars and others dealing with property of the minor to recognize the

persons named therein as entitled to receive the property, and shall in all respects have the same force and effect as an instrument executed by a duly appointed guardian under court decree.

5103. Sequestered deposit.

Without the appointment of a guardian, any amount in cash of a resident or nonresident minor may be ordered by the court to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations or savings and loan associations insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains his majority, except as authorized by a prior order of the court.)

SUBCHAPTER C
APPOINTMENT OF GUARDIAN; BONDS; REMOVAL
AND DISCHARGE

§ 5511. Petition and hearing; independent evaluation.

(a) Resident.--The court, upon petition and hearing and upon the presentation of clear and convincing evidence, may find a person domiciled in the Commonwealth to be incapacitated and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged incapacitated person's welfare. The court may dismiss a proceeding where it determines that the proceeding has not been instituted to aid or benefit the alleged incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded. The Supreme Court shall establish a uniform citation for this purpose. A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers. The hearing may be closed to the public and without a jury unless the alleged incapacitated person or his counsel objects. The hearing shall be closed and with or without a jury if the person alleged to be incapacitated or his counsel so requests. The hearing may be held at the residence of the alleged incapacitated person. The alleged incapacitated person shall be present at the hearing unless:

(1) the court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or

(2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged incapacitated person to be represented by a guardian ad litem in the proceeding. Petitioner shall be required to notify the court at least seven days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person. In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual.

(b) Nonresident.--The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be incapacitated and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his incapacity in another jurisdiction. The court shall

give preference in its appointment to the foreign guardian of the nonresident incapacitated person, unless it finds that such appointment will not be for the best interests of the incapacitated person.

(c) Payment of certain costs.--If the alleged incapacitated person is unable to pay for counsel or for the evaluation, the court shall order the county to pay these costs. These costs shall be reimbursed by the Commonwealth in the following fiscal year.

(d) Independent evaluation.--The court, upon its own motion or upon petition by the alleged incapacitated person for cause shown, shall order an independent evaluation which shall meet the requirements of section 5518 (relating to evidence of incapacity). The court shall give due consideration to the appointment of an evaluator nominated by the alleged incapacitated person.

(e) Petition contents.--The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.

(f) Who may be appointed guardian.--The court may appoint as guardian any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency under Subchapter F (relating to guardianship support) or a county agency. In the case of residents of State facilities, the court may also appoint, only as guardian of the estate, the guardian office at the appropriate State facility. The court shall not appoint a person or entity providing residential services for a fee to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no guardianship support agency or other alternative exists. Any family relationship to such individual shall not, by itself, be considered as an interest adverse to the alleged incapacitated person. If appropriate, the court shall give preference to a nominee of the incapacitated person.

§ 5512. County of appointment; qualifications.

(a) Resident incapacitated person.--A guardian of the person or estate of an incapacitated person may be appointed by the court of the county in which the incapacitated person is domiciled, is a resident or is residing in a long-term care facility.

(b) Nonresident incapacitated person.--A guardian of the estate within the Commonwealth of an incapacitated person domiciled outside of the Commonwealth may be appointed by the court of the judicial district having jurisdiction of a decedent's estate or of a trust in which the incapacitated person has an interest. When the nonresident incapacitated person's estate is derived otherwise than from a decedent's estate or a trust within the Commonwealth, a guardian may be appointed by the court of any county where an asset of the incapacitated person is located.

(c) Exclusiveness of appointment.--When a court has appointed a guardian of the person or estate of an incapacitated person pursuant to subsection (a) or (b), no other court shall appoint a similar guardian for the incapacitated person within the Commonwealth.

§ 5512.1. Determination of incapacity and appointment of guardian.

(a) Determination of incapacity.--In all cases, the court shall consider and make specific findings of fact concerning:

- (1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.
- (2) The extent of the individual's capacity to make and communicate decisions.

(3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.

(4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.

(5) The duration of the guardianship.

(6) The court shall prefer limited guardianship.

(b) Limited guardian of the person.--Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the person with powers consistent with the court's findings of limitations, which may include:

(1) General care, maintenance and custody of the incapacitated person.

(2) Designating the place for the incapacitated person to live.

(3) Assuring that the incapacitated person receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the incapacitated person in the development of maximum self-reliance and independence.

(4) Providing required consents or approvals on behalf of the incapacitated person.

(c) Plenary guardian of the person.--The court may appoint a plenary guardian of the person only upon a finding that the person is totally incapacitated and in need of plenary guardianship services.

(d) Limited guardian of the estate.--Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the estate with powers consistent with the court's finding of limitations, which shall specify the portion of assets or income over which the guardian of the estate is assigned powers and duties.

(e) Plenary guardian of the estate.--A court may appoint a plenary guardian of the estate only upon a finding that the person is totally incapacitated and in need of plenary guardianship services.

(f) No presumption.--No presumption of incapacity shall be raised from the alleged incapacitated person's institutionalization.

(g) Legal rights retained.--Except in those areas designated by court order as areas over which the limited guardian has power, a partially incapacitated person shall retain all legal rights.

(h) Information as to rights.--At the conclusion of a proceeding in which the person has been adjudicated incapacitated, the court shall assure that the person is informed of his right to appeal and to petition to modify or terminate the guardianship.

§ 5512.2. Review hearing.

(a) Time of hearing.--The court may set a date for a review hearing in its order establishing the guardianship or hold a review hearing at any time it shall direct. The court shall conduct a review hearing promptly if the incapacitated person, guardian or any interested party petitions the court for a hearing for reason of a significant change in the person's capacity, a change in the need for guardianship services or the guardian's failure to perform his duties in accordance with the law or to act in the best interest of the incapacitated person. The court may dismiss a petition for review hearing if it determines that the petition is frivolous.

(b) Burden of proof and rights.--The incapacitated person shall have all of the rights enumerated in this chapter. Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on the party advocating continuation of guardianship or expansion of areas of incapacity.

§ 5512.3. Annual report.

The court shall annually file with the Supreme Court Administrator's Office on forms furnished by the office a statistical and descriptive report to assist in evaluating the operation and costs of the guardianship system.

§ 5513. Emergency guardian.

Notwithstanding the provisions of section 5511 (relating to petition and hearing; independent evaluation), the court, upon petition and a hearing at which clear and convincing evidence is shown, may appoint an

emergency guardian or guardians of the person or estate of a person alleged to be incapacitated, when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person. The provisions of section 5511, including those relating to counsel, shall be applicable to such proceedings, except when the court has found that it is not feasible in the circumstances. An emergency guardian so appointed for the person or estate of an alleged incapacitated person shall only have and be subject to such powers, duties and liabilities and serve for such time as the court shall direct in its decree. An emergency order appointing an emergency guardian of the person may be in effect for up to 72 hours. If the emergency continues, then the emergency order may be extended for no more than 20 days from the expiration of the initial emergency order. After expiration of the emergency order or any extension, a full guardianship proceeding must be initiated pursuant to section 5511. The court may also appoint an emergency guardian of the person pursuant to this section for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside of this Commonwealth, regardless of whether the alleged incapacitated person has property in this Commonwealth. An emergency order appointing an emergency guardian of the estate shall not exceed 30 days. After 30 days, a full guardianship proceeding must be initiated pursuant to section 5511.

§ 5514. To fill vacancy; co-guardian.

The court, after such notice to parties in interest as it shall direct, may without a hearing appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of an incapacitated person. Where the vacating guardian was a parent who is now deceased, any testamentary nominee of the parent shall be given preference by the court.

§ 5515. Provisions similar to other estates.

The provisions relating to a guardian of an incapacitated person and his surety shall be the same as are set forth in the following provisions of this title relating to a personal representative or a guardian of a minor and their sureties:

Section 3182 (relating to grounds for removal).

§ 3182. Grounds for removal.

The court shall have exclusive power to remove a personal representative when he:

- (1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or*
- (2) (Deleted by amendment).*
- (3) has become incapacitated to discharge the duties of his office because of sickness or physical or mental incapacity and his incapacity is likely to continue to the injury of the estate; or*
- (4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or*
 - (4.1) has been charged with voluntary manslaughter or homicide, except homicide by vehicle, as set forth in sections 3155 (relating to persons entitled) and 3156 (relating to persons not qualified), provided that the removal shall not occur on these grounds if the charge has been dismissed, withdrawn or terminated by a verdict of not guilty; or*
 - (5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.*

Section 3183 (relating to procedure for and effect of removal).

§ 3183. Procedure for and effect of removal.

The court on its own motion may, and on the petition of any party in interest alleging adequate grounds for removal shall, order the personal representative to appear and show cause why he should not be removed, or, when necessary to protect the rights of creditors or parties in interest, may summarily remove him. Upon removal, the court may direct the grant of new letters testamentary or of administration by the register to the person entitled and may, by summary attachment of the person or other appropriate orders, provide for the security and delivery of the assets of the estate, together with all books, accounts and papers relating thereto. Any personal

representative summarily removed under the provisions of this section may apply, by petition, to have the decree of removal vacated and to be reinstated, and, if the court shall vacate the decree of removal and reinstate him, it shall thereupon make any orders which may be appropriate to accomplish the reinstatement.

Section 3184 (relating to discharge of personal representative and surety).

§ 3184. Discharge of personal representative and surety.

After confirmation of his final account and distribution to the parties entitled, a personal representative and his surety may be discharged by the court from future liability. The court may discharge only the surety from future liability, allowing the personal representative to continue without surety, upon condition that no further assets shall come into the control of the personal representative until he files another bond with sufficient surety, as required by the register.

Section 5115 (relating to appointment of guardian in conveyance).

§ 5115. Appointment of guardian in conveyance.

Any person, who makes a deed or gift inter vivos or exercises a right under an insurance or annuity policy to designate the beneficiary to receive the proceeds of such policy, may in such deed or in the instrument creating such gift or designating such beneficiary, appoint a guardian of the estate or interest of each beneficiary named therein who shall be a minor or otherwise incapacitated. Payment by an insurance company to the guardian of such beneficiary so appointed shall discharge the insurance company to the extent of such payment to the same effect as payment to an otherwise duly appointed and qualified guardian.

Section 5121 (relating to necessity, form and amount).

§ 5121. Necessity, form and amount.

Except as hereinafter provided, every guardian of the estate of a minor shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary, having regard to the value of the personal estate which will come into the control of the guardian, and conditioned in the following form:

(1) When one guardian.--*The condition of this obligation is, that if the said guardian shall well and truly administer the estate according to law, this obligation shall be void; but otherwise, it shall remain in force.*

(2) When two or more guardians.--*The condition of this obligation is, that if the said guardians or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the guardian or guardians who shall so administer the estate; but otherwise, it shall remain in force.*

Section 5122 (relating to when bond not required).

§ 5122. When bond not required.

(a) Guardian named in conveyance.--*No bond shall be required of a guardian appointed by or in accordance with the terms of a will, inter vivos instrument, or insurance contract as to the property acquired under the authority of such appointment, unless it is required by the conveyance, or unless the court, for cause shown, deems it advisable.*

(b) Corporate guardian.--*No bond shall be required of a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court, for cause shown, deems it advisable.*

(c) Nonresident corporation.--*A nonresident corporation or a national bank having its principal office out of the Commonwealth, otherwise qualified to act as guardian, in the discretion of the court, may be excused from giving bond.*

(d) Other cases.--*In all other cases, the court may dispense with the requirement of a bond when, for cause shown, it finds that no bond is necessary.*

Section 5123 (relating to requiring or changing amount of bond).

§ 5123. Requiring or changing amount of bond.

The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.

§ 5516. Fiduciary estate.

The court, in its discretion, upon the application of any party in interest, in addition to any bond required for the incapacitated person's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the court shall consider necessary for the protection of the parties in interest in an estate of which the incapacitated person is serving in the capacity as a fiduciary and conditioned in the following form:

(1) When one guardian.--The condition of this obligation is that, if the said guardian shall well and truly account for property held by the incapacitated person as fiduciary according to law, this obligation shall be void; but otherwise it shall remain in force.

(2) When two or more guardians.--The condition of this obligation is that, if the said guardians or any of them shall well and truly account for property held by the incapacitated person as fiduciary according to law, this obligation shall be void as to the guardian or guardians who shall so account; but otherwise it shall remain in force.

§ 5517. Adjudication of capacity and modification of existing orders.

The court, after a hearing under section 5512.2 (relating to review hearing), may order that a person previously adjudged incapacitated is no longer incapacitated or the court may find that the incapacitated person has regained or lost capacity in certain areas in which case the court shall modify the existing guardianship order.

§ 5518. Evidence of incapacity.

To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.

§ 5518.1. Cross-examination of witnesses.

Testimony as to the capacity of the alleged incapacitated person shall be subject to cross-examination by counsel for the alleged incapacitated person.

SUBCHAPTER D

POWERS, DUTIES AND LIABILITIES OF GUARDIANS

§ 5521. Provisions concerning powers, duties and liabilities.

(a) Duty of guardian of the person.--It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated person shall be respected to the greatest possible extent. Where appropriate, the guardian shall assure and participate in the development of a plan of supportive services to meet the person's needs which explains how services will be obtained. The guardian shall also encourage the incapacitated person to participate to the maximum extent of his abilities in all decisions which affect him, to act on his own behalf whenever he is able to do so and to develop or regain, to the maximum extent possible, his capacity to manage his personal affairs.

(b) Duty of guardian of the estate.--The provisions concerning the powers, duties and liabilities of guardians of incapacitated persons' estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

Section 3313 (relating to liability insurance).

§ 3313. Liability insurance.

The personal representative, at the expense of the estate, may protect himself, his employees and the beneficiaries by insurance from liability to third persons arising from the administration of the estate.

Section 3314 (relating to continuation of business).

§ 3314. Continuation of business.

The court, aided by the report of a master if necessary, may authorize the personal representative to continue any business of the estate for the benefit of the estate and in doing so the court, for cause shown, may disregard the provisions of the governing instrument, if any. The order may be with or without notice. If prior notice is not given to all parties in interest, it shall be given within five days after the order or within such extended time as the court, for cause shown, shall allow. Any party in interest may, at any time, petition the court to revoke or modify the order. The order may provide:

- (1) for the conduct of business, by the personal representative alone or jointly with others, or, unless restricted by the terms of the governing instrument, as a corporation to be formed;*
- (2) the extent of the liability of the estate or any part thereof, or of the personal representative, for obligations incurred in the continuation of the business;*
- (3) whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole;*
- (4) the period of time the business may be conducted; and*
- (5) such other regulations, including accountings, as the court shall deem advisable.*

Section 3315 (relating to incorporation of estate's business).

§ 3315. Incorporation of estate's business.

After notice to all parties in interest, aided by the report of a master if necessary, the court, unless restricted by the terms of the governing instrument, may authorize the personal representative alone or jointly with others, to organize a corporation to carry on the business of the estate, whether the business was owned solely or with others, and may contribute for stock of the corporation, as capital, all or part of the property of the estate which was invested in the business.

Section 3317 (relating to claims against co-fiduciary).

§ 3317. Claims against co-fiduciary.

When one of two or more personal representatives shall be individually liable to the estate, the other or others shall take any legal action against him necessary to protect the estate.

Section 3318 (relating to revival of judgments against personal representative).

§ 3318. Revival of judgments against personal representative.

When the estate holds a judgment which is a lien on the real estate of the personal representative, any party in interest may suggest his interest in the judgment upon the record thereof and bring an appropriate action to revive it and to continue its lien. Any judgment so revived shall remain for the use of all parties in interest.

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

§ 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.

(a) Power of attorney.--*A personal representative may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or agent under a power of attorney. Nothing in this subsection authorizes the delegation of any discretionary power.*

(b) Delegation of power over subscription rights and fractional shares.--*Where there is more than one personal representative, one or more may delegate to another the power to decide whether rights to subscribe to stock*

should be sold or should be exercised, and also the power to decide whether a fractional share of stock should be sold or should be rounded out to a whole share through the purchase of an additional fraction, and also the power to carry out any such decision. Any delegation may extend to all subscription rights and fractional shares from time to time received by the personal representatives on account of stock held by them, or may be limited to any extent specified in the delegation. No exercise of any delegated power shall be valid, unless:

(1) the stock on which the subscription rights or fractional shares are issued are listed or traded on the New York Stock Exchange or any other exchange approved by the Department of Banking; and

(2) the shares held by the personal representatives on which the subscription rights or fractional shares are issued constitute less than 5% of the total outstanding shares of the same class of the same corporation.

(c) Delegation authorized by governing instrument.--Nothing in this section precludes a delegation authorized by the governing instrument.

Section 3320 (relating to voting stock by proxy).

§ 3320. Voting stock by proxy.

The personal representatives or a majority of them, either in person or by proxy, may vote stock owned by the estate.

Section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

§ 3321. Nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities.

(a) Corporate personal representative.--A bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, may keep investments or fractional interests in investments held by it, either as sole personal representative or jointly with other personal representatives, in the name or names of the personal representatives or in the name of the nominee of the corporate personal representative: Provided, That the consent thereto of all the personal representatives is obtained: And provided further, That all such investments shall be so designated upon the records of the corporate personal representative that the estate to which they belong shall appear clearly at all times.

(b) Individual personal representative.--A personal representative serving jointly with a bank and trust company or a trust company incorporated in the Commonwealth, or with a national bank having its principal office in the Commonwealth, may authorize or consent to the corporate personal representative having exclusive custody of the assets of the estate and to the holding of such investments in the name of a nominee of such corporate personal representative, to the same extent and subject to the same requirements that the corporate personal representative, if it were the sole personal representative, would be authorized to hold such investments in the name of its nominee.

(c) Corporate fiduciary as agent.--An individual personal representative may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as his agent under a power of attorney in the performance of ministerial duties, including the safekeeping of estate assets, and such agent, when so acting, may be authorized to hold such investments in the name of its nominee to the same extent and subject to the same requirements that such agent, if it were the personal representative, would be authorized to hold such investments in the name of the nominee.

(d) Deposit of securities in a clearing corporation.--A personal representative holding securities in its fiduciary capacity, any bank and trust company, trust company or National bank holding securities as an agent pursuant to subsection (c) of this section, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in Division 8 of Title 13 (relating to investment securities)). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank and trust company, trust company or National bank acting as an agent under a power of attorney for a personal representative shall at all times show the name of the party for whose account the securities are so

deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank and trust company, trust company or National bank so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State chartered institutions, the Department of Banking and, in the case of National banking associations, the comptroller of the currency may from time to time issue including, without limitation, standards for, or the method of making a determination of, the financial responsibility of any clearing corporation in which securities are deposited. A bank and trust company, trust company or National bank acting as custodian for a personal representative shall, on demand by the personal representative, certify in writing to the personal representative the securities so deposited by such bank and trust company, trust company or National bank in such clearing corporation for the account of such personal representative. A personal representative shall, on demand by any party to a judicial proceeding for the settlement of such personal representative's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such personal representative in such clearing corporation for its account as such personal representative.

(e) Accounting for book-entry securities.--With respect to securities which are available in book-entry form as an alternative to securities in definitive form, the receipt, holding or transfer of such securities in book-entry form by a bank and trust company, trust company or National bank acting as a sole or joint personal representative, or as an attorney-in-fact for a personal representative, is for all purposes equivalent to the receipt, holding or transfer of such securities in definitive form and no segregation of such book-entry securities shall be required other than by appropriate accounting records to identify the accounts for which such securities are held.

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

§ 3322. Acceptance of deed in lieu of foreclosure.

The personal representative may take for the estate from the owner of property encumbered by a mortgage owned by the estate, a deed in lieu of foreclosure, in which event the real estate shall be considered personalty to the same extent as though title were acquired by foreclosure at sheriff's sale. Any deed or deeds heretofore so accepted are hereby made valid in accordance with the provisions hereof.

Section 3323 (relating to compromise of controversies).

§ 3323. Compromise of controversies.

(a) In general.--Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against an estate, or to compromise or settle any question or dispute concerning the validity or construction of any governing instrument, or the distribution of all or any part of any estate, or any other controversy affecting any estate, the court, on petition by the personal representative or by any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary by the report of a master, may enter a decree authorizing the compromise or settlement to be made.

(b) Pending court action.--

(1) Court order.--Whenever it is desired to compromise or settle an action in which damages are sought to be recovered on behalf of an estate, any court or division thereof in which such action is pending and which has jurisdiction thereof may, upon oral motion by plaintiff's counsel of record in such action, or upon petition by the personal representative of such decedent, make an order approving such compromise or settlement. Such order may approve an agreement for the payment of counsel fees and other proper expenses incident to such action.

(2) Order not subject to collateral attack.--The order of the court approving such compromise or settlement or an agreement for the payment of counsel fees and other expenses shall not be subject to collateral attack in the orphans' court division in the settlement of an estate.

(3) Filing copy of order; additional security.--The personal representative shall file a copy of the order of the court approving such compromise or settlement in the office of the register of wills or clerk of the court having jurisdiction of the estate. When the personal representative has been required to give bond, he shall not receive the proceeds of any such compromise or settlement until the court of the county having jurisdiction of his estate has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Section 3324 (relating to death or incapacity of fiduciary).

§ 3324. Death or incapacity of fiduciary.

The personal representative of the estate of a deceased fiduciary or the guardian of an adjudged incapacitated fiduciary by reason of his position shall not succeed to the administration of, or have the right to possess, any asset of an estate which was being administered by the deceased or incapacitated fiduciary, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incapacitated fiduciary may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or incapacitated fiduciary to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

Section 3327 (relating to surviving or remaining personal representatives).

§ 3327. Surviving or remaining personal representatives.

Surviving or remaining personal representatives shall have all the powers of the original personal representatives, unless otherwise provided by the governing instrument.

Section 3328 (relating to disagreement of personal representatives).

§ 3328. Disagreement of personal representatives.

(a) Decision of majority.--*If a dispute shall arise among personal representatives, the decision of the majority shall control unless otherwise provided by the governing instrument, if any. A dissenting personal representative shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting personal representative shall not be liable for the consequences of any majority decision even though he joins in carrying it out, if his dissent is expressed promptly to all the other personal representatives: Provided, That liability for failure to join in administering the estate or to prevent a breach of trust may not be thus avoided.*

(b) When no majority.--*When a dispute shall arise among personal representatives as to the exercise or nonexercise of any of their powers and there shall be no agreement of a majority of them, unless otherwise provided by the governing instrument, the court, upon petition filed by any of the personal representatives or by any party in interest, aided if necessary by the report of a master, in its discretion, may direct the exercise or nonexercise of the power as the court shall deem for the best interest of the estate.*

Section 3331 (relating to liability of personal representative on contracts).

§ 3331. Liability of personal representative on contracts.

Unless he expressly contracts otherwise, in writing, a personal representative shall not be personally liable on any written contract which is within his authority as personal representative and discloses that he is contracting as personal representative of a named estate. Any action on such a contract shall be brought against the personal representative in his fiduciary capacity only, or against his successor in such capacity, and execution upon any judgment obtained therein shall be had only against property of the estate.

Section 3332 (relating to inherent powers and duties).

§ 3332. Inherent powers and duties.

Except as otherwise provided in this title, nothing in this title shall be construed to limit the inherent powers and duties of a personal representative.

Section 3355 (relating to restraint of sale).

§ 3355. Restraint of sale.

The court, on its own motion or upon application of any party in interest, in its discretion, may restrain a personal representative from making any sale under an authority not given by the governing instrument or from carrying out any contract of sale made by him under an authority not so given. The order may be conditioned upon the applicant giving bond for the protection of parties in interest who may be prejudiced thereby. The order shall be void as against a bona fide grantee of, or holder of a lien on, real estate unless the decree restraining the sale, or a duplicate original or certified copy thereof, is recorded in the deed book in the office of the recorder of deeds in the

county in which such real estate lies, before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

Section 3356 (relating to purchase by personal representative).

§ 3356. Purchase by personal representative.

In addition to any right conferred by a governing instrument, if any, the personal representative, in his individual capacity, may bid for, purchase, take a mortgage on, lease, or take by exchange, real or personal property belonging to the estate, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to parties in interest as it shall direct. The court may make an order directing a co-fiduciary, if any, or the court's clerk to execute a deed or other appropriate instrument to the purchasing personal representative.

Section 3359 (relating to record of proceedings; county where real estate lies).

§ 3359. Record of proceedings; county where real estate lies.

Certified copies of proceedings of any court of the Commonwealth relating to or affecting real estate may be recorded in the office for the recording of deeds in any county in which the real estate lies.

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

§ 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions.

(a) Inadequacy of consideration or better offer.—*When a personal representative shall make a contract not requiring approval of court, or when the court shall approve a contract of a personal representative requiring approval of the court, neither inadequacy of consideration, nor the receipt of an offer to deal on other terms shall, except as otherwise agreed by the parties, relieve the personal representative of the obligation to perform his contract or shall constitute ground for any court to set aside the contract, or to refuse to enforce it by specific performance or otherwise: Provided, That this subsection shall not affect or change the inherent right of the court to set aside a contract for fraud, accident or mistake. Nothing in this subsection shall affect the liability of a personal representative for surcharge on the ground of negligence or bad faith in making a contract.*

(b) Brokers' commissions.—*When a personal representative shall enter into an agreement of sale of real estate in good faith, which is not binding under subsection (a) of this section and which is set aside upon receipt of a higher offer for such real estate, he shall not be relieved from the payment of real estate broker or broker's commissions to the broker who had procured such agreement of sale, and in the event that more than one real estate broker is entitled to commissions for said agreements of sale, then such commissions shall be equally divided between or among such real estate brokers: Provided further, That the total aggregate commission paid as a percentage of the gross consideration of the final sale shall in no event exceed a fair commission for a single sale of the property involved.*

Section 3372 (relating to substitution of personal representative in pending action or proceedings).

§ 3372. Substitution of personal representative in pending action or proceedings.

Substitution of the personal representative of a deceased party to a pending action or proceeding shall be as provided by law.

Section 3374 (relating to death or removal of fiduciary).

§ 3374. Death or removal of fiduciary.

An action or proceeding to which a fiduciary is a party is not abated by his death or resignation or by the termination of his authority. The successor of the fiduciary may be substituted in the action or proceeding in the manner provided by law.

Section 3390 (relating to specific performance of contracts).

§ 3390. Specific performance of contracts.

(a) Application to court.—*If any person makes a legally binding agreement to purchase or sell real or personal estate and dies before its consummation, his personal representative shall have power to consummate it, but if he*

does not do so, the court, on the application of any party in interest and after such notice and with such security, if any, as it may direct, in its discretion, may order specific performance of the agreement if it would have been enforced specifically had the decedent not died.

(b) Execution and effect of deed or transfer.--Any necessary deed or transfer shall be executed by the personal representative or by such other person as the court shall direct. The title of any purchaser under an agreement in which the decedent was the vendor shall be the same as though the decedent had conveyed or transferred such property in his lifetime.

(c) Indexing in judgment or ejectment and miscellaneous indexes.--When any petition for specific performance of an agreement to purchase or sell real estate is filed, the prothonotary of the court of common pleas where the real estate or any part of it lies, upon the receipt of a certificate of such fact by the clerk of the court where the petition was filed, shall enter the petition upon either the judgment or ejectment and miscellaneous indexes against the defendants as directed by local rules of court and shall certify it as *lis pendens* in any certificate of search which he is required to make by virtue of his office.

Section 5141 (relating to possession of real and personal property).

§ 5141. Possession of real and personal property.

The guardian of the estate of a minor appointed by the court until it is distributed or sold shall have the right to, and shall take possession of, maintain and administer, each real and personal asset of the minor to which his appointment extends, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain any action with respect to such real or personal property of the minor.

Section 5142 (relating to inventory).

§ 5142. Inventory.

Every guardian, within three months after real or personal estate of his ward comes into his possession, shall verify by oath and file with the clerk an inventory and appraisal of such personal estate, a statement of such real estate, and a statement of any real or personal estate which he expects to acquire thereafter.

Section 5143 (relating to abandonment of property).

§ 5143. Abandonment of property.

When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the estate, the guardian may abandon it. When such property cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the guardian to transfer or renounce it without consideration if it shall find that this will be for the best interests of the estate.

Section 5145 (relating to investments).

§ 5145. Investments.

Subject only to the provisions of a governing instrument, if any, a guardian may accept, hold, invest in and retain investments as provided by Chapter 72 (relating to prudent investor rule).

Section 5146 (relating to guardian named in conveyance).

§ 5146. Guardian named in conveyance.

(a) In general.--The powers, duties and liabilities of a guardian not appointed by the court as to property of the minor to which his appointment lawfully extends shall be the same as the powers, duties and liabilities of a court appointed guardian, except as the instrument making the appointment shall provide otherwise.

(b) Substituted or succeeding guardian.--A substituted or succeeding guardian, except as otherwise provided by the instrument, if any, appointing the original guardian, in addition to the powers of a guardian appointed by the court, shall have all the powers, duties and liabilities of the original guardian. He shall have the power to recover the assets of the minor from his predecessor in administration or from the fiduciary of such predecessor and, except as otherwise provided in an applicable instrument, shall stand in the predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor.

(c) Effect of removal, or of probate of later will or codicil.--No act of administration performed by a testamentary guardian in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the guardian: Provided, That regardless of the good or bad faith of the testamentary guardian, no person who deals in good faith with a testamentary guardian shall be prejudiced by the subsequent occurrence of any of these contingencies.

Section 5147 (relating to proceedings against guardian).

§ 5147. Proceedings against guardian.

Any proceeding may be brought against a guardian or the surety on his bond in the court having jurisdiction of the estate, and if he does not reside in the county, process may be served on him personally, or as follows:

(1) When resident of another county.--By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found.

(2) When a nonresident of the Commonwealth.--By the sheriff of the county of the court having jurisdiction of the estate.

Section 5151 (relating to power to sell personal property).

§ 5151. Power to sell personal property.

A guardian appointed by the court may sell, at public or private sale, any personal property of the minor.

Section 5154 (relating to title of purchaser).

§ 5154. Title of purchaser.

If the guardian has given the bond, if any, required in accordance with this title, any sale, pledge, mortgage, or exchange by him, whether pursuant to a decree or to a power under this title, shall pass the full title of the minor therein, free of any right of his spouse, unless otherwise specified. Persons dealing with the guardian shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the minor. Any sale or exchange by a guardian pursuant to a decree under section 5155 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the subsequent dismissal of the guardian, nor shall any such sale, mortgage, exchange, or conveyance by a testamentary guardian be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the guardian did so in good faith.

Section 5155 (relating to order of court).

§ 5155. Order of court.

Whenever the court finds it to be for the best interests of the minor, a guardian may, for any purpose of administration or distribution, and on the terms, with the security and after the notice directed by the court:

- (1) sell at public or private sale, pledge, mortgage, lease or exchange any real or personal property of the minor;
- (2) grant an option for the sale, lease or exchange of any such property;
- (3) join with the spouse of the minor in the performance of any of the foregoing acts with respect to property held by the entireties; or
- (4) release the right of the minor in the property of his spouse and join in the deed of the spouse in behalf of the minor.

(c) Reports.--

(1) Each guardian of an incapacitated person shall file with the court appointing him a report, at least once within the first 12 months of his appointment and at least annually thereafter, attesting to the following:

- (i) Guardian of the estate:
 - (A) current principal and how it is invested;
 - (B) current income;

(C) expenditures of principal and income since the last report; and

(D) needs of the incapacitated person for which the guardian has provided since the last report.

(ii) Guardian of the person:

(A) current address and type of placement of the incapacitated person;

(B) major medical or mental problems of the incapacitated person;

(C) a brief description of the incapacitated person's living arrangements and the social, medical, psychological and other support services he is receiving;

(D) the opinion of the guardian as to whether the guardianship should continue or be terminated or modified and the reasons therefor; and

(E) number and length of times the guardian visited the incapacitated person in the past year.

(2) Within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian shall file a final report with the court.

(d) Powers and duties only granted by court.--Unless specifically included in the guardianship order after specific findings of fact or otherwise ordered after a subsequent hearing with specific findings of fact, a guardian or emergency guardian shall not have the power and duty to:

(1) 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.

(3) Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

(e) Knowledge of objection.--In a hearing to determine whether a guardian shall be ordered to consent to a specific act or omission, if the guardian knows or has reason to know of the incapacitated person's objection to the action or omission, whether such objection had been expressed prior or subsequent to the determination of incapacity, the guardian shall report to the court such knowledge or information.

(f) Powers and duties not granted to guardian.--The court may not grant to a guardian powers controlled by other statute, including, but not limited to, the power:

(1) To admit the incapacitated person to an inpatient psychiatric facility or State center for the mentally retarded.

(2) To consent, on behalf of the incapacitated person, to the relinquishment of the person's parental rights.

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

§ 5522. Power to lease.

A guardian may lease any real or personal property of the incapacitated person for a term not exceeding five years after its execution.

§ 5523. Collateral attack.

No decree entered pursuant to this chapter shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

§ 5524. Effect of determination of incapacity.

A partially incapacitated person shall be incapable of making any contract or gift or any instrument in writing in those specific areas in which the person has been found to be incapacitated. A totally incapacitated person shall be incapable of making any contract or gift or any instrument in writing. This section shall not impair the interest in real estate acquired by a bona fide grantee of, or a bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the incapacity is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims.

§ 5525. Notice to Commonwealth and political subdivisions.

When the Commonwealth or a political subdivision thereof has a claim for maintaining an incapacitated person in an institution, the guardian, within three months of his appointment, shall give notice thereof to the Department of Public Welfare or the proper officer of such political subdivision, as the case may be.

SUBCHAPTER E**ACCOUNTS, AUDITS, REVIEWS AND DISTRIBUTION****§ 5531. When accounting filed.**

A guardian shall file an account of his administration whenever directed to do so by the court or may file an account at the termination of the guardianship, or at any other time or times authorized by the court.

§ 5532. Where accounts filed.

All accounts of guardians shall be filed in the office of the clerk.

§ 5533. Notice, audits, reviews and distribution.

The provisions concerning accounts, audits, reviews, distribution and rights of distributees in an incapacitated person's estate shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or minor's estate:

Section 3503 (relating to notice to parties in interest).

§ 3503. Notice to parties in interest.

The personal representative shall give written notice of the filing of his account and of its call for audit or confirmation to every person known to the personal representative to have or assert an interest in the estate as beneficiary, heir, next of kin or claimant, unless the interest of such person has been satisfied or unless such person fails to respond to a demand under section 3532(b.1) (relating to at risk of personal representative).

Section 3504 (relating to representation of parties in interest).

References in Text. *Section 3504, referred to in this section, is repealed. The subject matter is now contained in section 751(6).*

§ 751. Appointment; purpose.

The orphans' court division may appoint:

(6) Representation of parties in interest. — *Persons interested in an estate as beneficiary or heir, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, may be represented in a judicial proceeding by a guardian or trustee ad litem if the court deems necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person who is a minor or otherwise legally incapacitated, unborn or unascertained if there is a living person sui juris having a similar interest or if such person is or would be issue of a living ancestor sui juris and interested in the estate whose interest is not adverse to his. If the whereabouts of any beneficiary or heir is unknown or if there is doubt as to his existence, the court shall provide for service of notice and representation in the judicial proceeding as it deems proper.*

Section 3511 (relating to audits in counties having separate orphans' court division).

§ 3511. Audits in counties having separate orphans' court division.

In any county having a separate orphans' court division, the account of a personal representative shall be examined and audited by the court without expense to the parties, except when all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

Section 3512 (relating to audits in counties having no separate orphans' court division).

§ 3512. Audits in counties having no separate orphans' court division.

In any county having no separate orphans' court division, the account of a personal representative shall be confirmed by the court or by the clerk, as local rules shall prescribe, if no objections are presented within a time fixed by general rule of court. If any party in interest shall object to the account, or shall request its reference to an auditor, the court, in its discretion, may appoint an auditor.

Section 3513 (relating to statement of proposed distribution).

§ 3513. Statement of proposed distribution.

A personal representative filing an account shall file a statement of proposed distribution or a request that distribution be determined by the court or by an auditor, as local rules may prescribe. The statement of proposed distribution shall be in such form, and such notice thereof shall be given by advertisement or otherwise, and objections thereto may be made, as local rules prescribe.

Section 3514 (relating to confirmation of account and approval of proposed distribution).

§ 3514. Confirmation of account and approval of proposed distribution.

No account shall be confirmed, or statement of proposed distribution approved, until an adjudication or a decree of distribution is filed in conformity with local rules by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying or indicating by reference to the statement of proposed distribution the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each.

Section 3521 (relating to rehearing; relief granted).

§ 3521. Rehearing; relief granted.

If any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require: Provided, That no such review shall impose liability on the personal representative as to any property which was distributed by him in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report, findings of fact and of law as to the entire controversy, in pursuance of which a final order may be made.

Section 3532(c) (relating to record of risk distributions).

§ 3532. At risk of personal representative.

(c) Record of risk distributions.--The personal representative may file with the clerk receipts, releases and refunding agreements which he may have received from persons to whom he has made a risk distribution, or from other parties in interest. Receipts, releases and refunding agreements so filed shall be indexed under the name of the estate. Their acceptance shall not be construed as court approval of any act of administration or distribution therein reflected.

Section 3533 (relating to award upon final confirmation of account).

§ 3533. Award upon final confirmation of account.

A personal representative shall be relieved of liability with respect to all real and personal estate distributed in conformity with a decree of court or in accordance with rule of court after confirmation of an account. In making any such distribution, the personal representative shall not be entitled to demand refunding bonds from the distributees, except as provided by this title or as directed by the court.

Section 3534 (relating to distribution in kind).

§ 3534. Distribution in kind.

The court, for cause shown, may order the estate to be distributed in kind to the parties in interest, including fiduciaries. In such case, when there are two or more distributees, distribution may be made of undivided interests in real or personal estate or the personal representative or a distributee may request the court to divide, partition and allot the property, or to direct the sale of the property. If such a request is made, the court, after such notice as

it shall direct, shall fairly divide, partition and allot the property among the distributees in proportion to their respective interests, or the court may direct the personal representative to sell at a sale confined to the distributees, or at a private or public sale not so confined, any property which cannot be so divided, partitioned or allotted.

Section 3536 (relating to recording and registering decrees awarding real estate).

§ 3536. Recording and registering decrees awarding real estate.

A certified copy of every adjudication or decree awarding real estate or an appropriate excerpt from either of them shall be recorded, at the expense of the estate, in the deed book in the office of the recorder of deeds of each county where the real estate so awarded lies, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of the distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no adjudication or decree awarding real estate subject to the payment of any sum by the distributee shall be recorded or registered unless there is offered for recording, concurrently therewith, written evidence of the payment of such sum.

Section 3544 (relating to liability of personal representative for interest).

§ 3544. Liability of personal representative for interest.

A personal representative who has committed a breach of duty with respect to estate assets shall, in the discretion of the court, be liable for interest, not exceeding the legal rate on such assets.

Section 3545 (relating to transcripts of balances due by personal representative).

§ 3545. Transcripts of balances due by personal representative.

(a) Filing in common pleas.--*The prothonotary of any court of common pleas shall, on demand of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court division has adjudged an amount to be due by a personal representative, and such transcript or extract shall constitute a judgment against the personal representative from the time of its filing with the same effect as if it had been obtained in an action in the trial or civil division of the court of common pleas. If the amount adjudged to be due by the personal representative shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly, and if the appellate court has increased the amount, the excess shall constitute a judgment against the personal representative from the time when the records are so changed.*

(b) Satisfaction and discharge.--*If the orphans' court division shall order the personal representative to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.*

Section 5167 (relating to failure to present claim at audit).

§ 5167. Failure to present claim at audit.

(a) In general.--*Any person who at the audit of a guardian's account has a claim which arose out of the administration of the estate of a minor or arises out of the distribution of a minor's estate or upon an accounting of the guardian of the estate of a minor, whether the minor is still a minor or has attained his majority, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against:*

(1) any property of the minor distributed pursuant to such audit or confirmation;

(2) the minor, if then of full age; and

(3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), any property of the minor awarded back to a continuing or succeeding guardian pursuant to such audit or confirmation.

(b) Effect on lien or charge.--*Nothing in subsection (a) of this section shall be construed as impairing any lien or charge on real or personal estate of the minor existing at the time of audit.*

§ 5533.1. Account of personal representative of deceased incompetent (Repealed).

1984 Repeal. Section 5533.1 was repealed October 12, 1984, P.L.929, No.182, effective immediately.

§ 5534. Recognition of claims.

Upon the audit of the account of the guardian of a person who has died during incapacity, the auditing judge or auditor passing on the account shall not pass upon any claims against the estate of the incapacitated person other than necessary administration expenses, including compensation of the guardian and his attorney. All claims remaining unpaid at the incapacitated person's death shall be presented to the personal representative.

§ 5535. Disposition of trust income.

Except as otherwise provided by the trust instrument, the trustee of an inter vivos or testamentary trust, with the approval of the court having jurisdiction of the trust, may pay income distributable to a beneficiary who is an incapacitated person for whose estate no guardian has been appointed directly to the incapacitated person, or expend and apply it for his care and maintenance or the care, maintenance and education of his dependents.

§ 5536. Distributions of income and principal during incapacity.

(a) In general.--All income received by a guardian of the estate of an incapacitated person, including (subject to the requirements of Federal law relating thereto) all funds received from the Veterans' Administration, Social Security Administration and other periodic retirement or disability payments under private or governmental plans, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incapacitated person, without the necessity of court approval. The court, for cause shown and with only such notice as it considers appropriate in the circumstances, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incapacitated person for the care, maintenance or education of the incapacitated person, his spouse, children or those for whom he was making such provision before his incapacity, or for the reasonable funeral expenses of the incapacitated person's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incapacitated person for his maintenance or for incidental expenses and may ratify payments made for these purposes. For purposes of this subsection, the term "income" means income as determined in accordance with the rules set forth in Chapter 81 (relating to principal and income), other than the power to adjust and the power to convert to a unitrust.

(b) Estate plan.--The court, upon petition and with notice to all parties in interest and for good cause shown, shall have the power to substitute its judgment for that of the incapacitated person with respect to the estate and affairs of the incapacitated person for the benefit of the incapacitated person, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:

- (1) Make gifts, outright or in trust.
- (2) Convey, release or disclaim his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.
- (3) Release or disclaim his powers as trustee, personal representative, custodian for minors, or guardian.
- (4) Exercise, release or disclaim his powers as donee of a power of appointment.
- (5) Enter into contracts.
- (6) Create for the benefit of the incapacitated person or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.
- (7) Exercise options of the incapacitated person to purchase or exchange securities or other property.
- (8) Exercise all rights and privileges under life insurance policies, annuity contracts or other plans or contractual arrangements providing for payments to the incapacitated person or to others after his death.
- (9) Exercise his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.
- (10) Change the incapacitated person's residence or domicile.
- (11) Modify by means of codicil or trust amendment, as the case may be, the terms of the incapacitated person's will or of any revocable trust created by the incapacitated person, as the court may deem advisable in light of changes in applicable tax laws.

In the exercise of its judgment for that of the incapacitated person, the court, first being satisfied that assets exist which are not required for the maintenance, support and well-being of the incapacitated person, may adopt a plan

of gifts which results in minimizing current or prospective taxes, or which carries out a lifetime giving pattern. The court in exercising its judgment shall consider the testamentary and inter vivos intentions of the incapacitated person insofar as they can be ascertained.

§ 5537. Reserve for funeral.

(a) In general.--The court may authorize the guardian to retain such assets as are deemed appropriate for the anticipated expense of the incapacitated person's funeral, including the cost of a burial lot or other resting place, which shall be exempt from all claims including claims of the Commonwealth. The court with notice thereof to the institution or person having custody of the incapacitated person may also authorize the guardian or another person to set aside such assets in the form of a savings account in a financial institution which account shall not be subject to escheat during the lifetime of the incapacitated person. Such assets may be disbursed by the guardian or person who set aside such assets or by the financial institution for such funeral expenses without further authorization or accounting. Any part of such assets not so disbursed shall constitute a part of the deceased incapacitated person's estate. Should the incapacitated person become capacitated or should such assets become excessive, the court, upon petition of any party in interest, may make such order as the circumstances shall require.

(b) Definition.--As used in this section, "financial institution" includes a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a savings bank, a private bank and a national bank.

SUBCHAPTER F
GUARDIANSHIP SUPPORT

§ 5551. Guardianship support agencies; legislative intent.

The General Assembly finds that there is a need for agencies to provide services, as an alternative to guardianship, to individuals whose decision-making ability is impaired, to serve as guardian when an individual is found to need a guardian and no other person is willing and qualified to serve and to provide services to courts, guardians and others.

§ 5552. Services to individuals whose decision-making ability is impaired.

Guardianship support agencies shall provide guardianship services under this chapter. Such services shall include, but not be limited to:

- (1) Assistance to individuals in decision making, including financial management training.
- (2) Assistance to individuals in securing and maintaining benefits and services.
- (3) Recruiting, training and maintaining a group of individuals to serve as representative payees or similar fiduciaries established by benefit-issuing agencies, agents pursuant to a power of attorney, and trustees.

§ 5553. Guardianship services.

(a) In general.--The guardianship support agency shall be available to serve as guardian of the estate or of the person, or both, of an incapacitated person when no less restrictive alternative will meet the needs of the individual and when no other person is willing and qualified to become guardian. The agency itself may be appointed guardian and no individual need be specified by the court. If appointed, the guardianship support agency shall have all of the powers and duties of a corporate fiduciary and shall not be required to post bond.

(b) Powers and duties.--The guardianship support agency shall be treated the same as all other guardians in regard to appointment as guardian or successor or co-guardian, reporting, powers and duties, compensation and in all other respects. In addition to section 5521 (relating to provisions concerning powers, duties, and liabilities), a guardianship support agency shall have the power and duty to:

- (1) Invest the principal and income of incapacitated persons for whom it is the guardian of the estate. For this purpose, it may pool the principal and income, but shall maintain an individual account for each incapacitated person reflecting the person's participation therein.

(2) Expend and, if necessary, advance costs necessary to administer guardianships for which it has been appointed guardian.

(3) Apply for letters or otherwise administer the estate of any incapacitated person for whom it has been appointed guardian who dies during the guardianship when no one else is willing and qualified to serve.

§ 5554. Services to courts, guardians and others.

(a) Services to courts.--Guardianship support agencies may be available to assist courts on request with reviewing petitions for appointment of a guardian, recommending alternatives to guardianship, investigating petitions, explaining petitions to respondents or reviewing reports and monitoring guardianship arrangements.

(b) Services to guardians.--Guardianship support agencies may be available to assist guardians in filing reports, monitoring incapacitated persons and otherwise fulfilling their duties.

(c) Services to petitioners and others.--Guardianship support agencies may be available to assist in the filing of petitions for guardianship, to provide information on available alternatives to potential petitioners, to locate and train individuals skilled in providing functional evaluations of alleged incapacitated persons and to perform such other duties as required.

§ 5555. Costs and compensation.

Recipients of service shall be charged for services based on their ability to pay. Guardianship support agencies shall make every effort to minimize costs, including minimizing personnel costs through the use of volunteers.

1 | Appendix I – Comparison of Statutory Language for Guardianship including PA Statute

Topic	National Probate Court Standards	UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997)	PA Statute
Purpose of Guardianship			<p>5502. Purpose of chapter. Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative; and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.</p>
Terminology			<p>5501. Meaning of incapacitated person. "Incapacitated person" means an 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.</p>
Provisions similar to small estates of minors.			<p>5505. Provisions similar to small estates of minors. The provisions concerning small estates of incapacitated persons shall be the same as are set forth in the following provisions of this title relating to minors' estates: Section 5101 (relating to when guardian unnecessary). Section 5102 (relating to power of natural guardian). Section 5103 (relating to sequestered deposit).</p> <p>5101. When guardian unnecessary. When the entire real and personal estate, wherever located of a resident or nonresident minor has a net value of \$25,000 or less, all or any part of it may be received and held or disposed of by the minor, or by the parent or other person maintaining the minor, without the appointment of a guardian or the entry of security, in any of the following circumstances: (1) Award from decedent's estate or trust.--When the court having jurisdiction of a decedent's estate or of a trust in awarding the interest of the minor shall so direct. (2) Interest in real estate.--When the court having jurisdiction to direct the sale or mortgage of real estate in which the minor has an interest shall so direct as to the minor's interest in the real estate. (3) Other circumstances.--In all other circumstances, when the court which would have had jurisdiction to appoint a guardian of the estate of the minor shall so direct.</p> <p>5102. Power of natural guardian. The court may authorize or direct the parent, person, or institution maintaining the minor to execute as natural guardian, any receipt, deed, mortgage, or other appropriate instrument necessary to carry out a decree entered under section 5101 (relating to when guardian unnecessary) and, in such event, may require the deposit of money in a savings account or the care of securities in any manner considered by the court to be for the best interests of the minor. The decree so made, except as the court shall expressly provide otherwise, shall constitute sufficient authority to all transfer agents, registrars and others dealing with property of the minor to recognize the persons named therein as entitled to receive the property, and shall in all respects have the same force and effect as an instrument executed by a duly appointed guardian under court decree.</p> <p>§ 5103. Sequestered deposit. Without the appointment of a guardian, any amount in cash of a resident or nonresident minor may be ordered by the court to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations or savings and loan associations insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured. Every</p>

Petition	<p>STANDARD 3.3.1 PETITION - for Guardianship of the Persons</p> <p>(a) A petition for guardianship should be as simple as possible to obtain, complete, and process. It should be verified and require at least the following information:(1) a description of the nature and extent of the functional limitations in the respondent's ability to care for him- or her-self;(2) representations that less intrusive alternatives to guardianship have been examined; and(3) the guardianship powers being requested.(b) The petition should be reviewed by the probate court or its designee to ensure that all of the information required to initiate the guardianship is complete.</p>	<p>SECTION 304. JUDICIAL APPOINTMENT OF GUARDIAN: PETITION.</p> <p>(a) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.(b) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:(1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;(2) the name and address of the respondent's:(A) spouse, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;(3) the name and address of any person responsible for care or custody of the respondent;(4) the name and address of any legal representative of the respondent;(5) the name and address of any person nominated as guardian by the respondent;(6) the name and address of any proposed guardian and the reason why the proposed guardian should be selected;(7) the reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;(8) if an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and(9) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.</p>	<p>such order shall contain a provision that no withdrawal can be made from any such account until the minor attains his majority, except as authorized by a prior order of the court.</p> <p>§ 5511. Petition and hearing; independent evaluation.</p> <p>(a) Resident.--The court, upon petition and hearing and upon the presentation of clear and convincing evidence, may find a person domiciled in the Commonwealth to be incapacitated and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged incapacitated person's welfare. The court may dismiss a proceeding where it determines that the proceeding has not been instituted to aid or benefit the alleged incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded. The Supreme Court shall establish a uniform citation for this purpose. A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers. The hearing may be closed to the public and without a jury unless the alleged incapacitated person or his counsel objects. The hearing shall be closed and with or without a jury if the person alleged to be incapacitated or his counsel so requests. The hearing may be held at the residence of the alleged incapacitated person. The alleged incapacitated person shall be present at the hearing unless:(1) the court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or(2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged incapacitated person to be represented by a guardian ad litem in the proceeding. Petitioner shall be required to notify the court at least seven days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person. In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual.</p> <p>(b) Nonresident.--The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be incapacitated and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his incapacity in another jurisdiction. The court shall give preference in its appointment to the foreign guardian of the nonresident incapacitated person, unless it finds that such appointment will not be for the best interests of the incapacitated person.</p> <p>(c) Payment of certain costs.--If the alleged incapacitated person is unable to pay for counsel or for the evaluation, the court shall order the county to pay these costs. These costs shall be reimbursed by the Commonwealth in the following fiscal year.</p> <p>(d) Independent evaluation.--The court, upon its own motion or upon petition by the alleged incapacitated person for cause shown, shall order an independent evaluation which shall meet the requirements of section 5518 (relating to evidence of incapacity). The court shall give due consideration to the appointment of an evaluator nominated by the alleged incapacitated person.</p> <p>(e) Petition contents.--The petition, which shall be in plain language, shall include the name, age, residence and post</p>
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<p>STANDARD 3.4.1 PETITION - for guardianship of the estate/conservatorship</p> <p>(a) A petition for conservatorship should be as simple as possible to obtain, complete, and process. It should be verified and require at least the following information:(1) a description of the nature and extent of the functional limitations of the respondent regarding asset management or other needs for protection;(2) representations that less intrusive alternatives to conservatorship have been examined;(3) the conservatorship powers being requested; and(4) the nature and estimated value of assets, distinguishing real and personal property, and estimated annual income.(b) The petition should be reviewed by the probate court or its designee to ensure that all of the information required to initiate the conservatorship is complete.</p>	<p>SECTION 401. PROTECTIVE PROCEEDING.</p> <p>Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this [article] in relation to the estate and affairs of: (1) a minor, if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be put at risk or prevented because of the minor's age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or (2) any individual, including a minor, if the court determines that, for reasons other than age: (A) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States; and (B) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.</p> <p>SECTION 402. JURISDICTION OVER BUSINESS AFFAIRS OF PROTECTED PERSON.</p> <p>After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has: (1) exclusive jurisdiction to determine the need for a conservatorship or other protective order; (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected</p>	

person, individuals who are in fact dependent upon the protected person, or other claimants; and (3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

SECTION 403. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.(a)

The following may petition for the appointment of a conservator or for any other appropriate protective order:(1) the person to be protected; (2) an individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or (3) a person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.(b) A petition under subsection (a) must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:(1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made; (2) if the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment; (3) if the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts; and (4) the name and address of the respondent's: (A) spouse or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and (B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found; (5) the name and address of the person responsible for care or custody of the respondent; (6) the name and address of any legal representative of the respondent; (7) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and (8) the reason why a conservatorship or other protective order is in the best interest of the respondent.(c) If a conservatorship is requested, the petition must also set forth to the extent known: (1) the name and address of any proposed conservator and the reason why the proposed conservator should be selected;(2) the name and address of any person nominated as conservator by the respondent if the respondent has attained 14 years of age; and (3) the type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

Screening **STANDARD 3.3.2 SCREENING**
 (a) The probate court should establish a process for

	<p>screening all guardianship petitions and diverting inappropriate petitions. (b) The screening process should encourage the appropriate use of less intrusive alternatives to formal guardianship proceedings.</p>	
	<p>STANDARD 3.4.2 SCREENING - for guardianships of the estate/conservatorships (a) The probate court should establish a process for screening all conservatorship petitions and diverting inappropriate petitions.(b) The screening process should encourage the appropriate use of less intrusive alternatives to formal conservatorship proceedings.</p>	
Early Control and Expeditious Processing	<p>STANDARD 3.3.3 EARLY CONTROL AND EXPEDITIOUS PROCESSING The probate court should establish and adhere to procedures designed to: (1) identify guardianship cases immediately upon their filing with the court; (2) supervise and control the flow of guardianship cases on the docket from filing through final disposition; and (3) when appropriate, make available to guardianship cases pretrial procedures to narrow the issues and facilitate their prompt and fair resolution.</p>	
	<p>STANDARD 3.4.3 EARLY CONTROL AND EXPEDITIOUS PROCESSING - for guardianships of the estate/conservatorships. The probate court should establish and adhere to procedures designed to: (1) identify conservatorship cases immediately upon their filing with the court; (2) supervise and control the flow of conservatorship cases on the docket from filing through final disposition; and (3) when appropriate, make available to conservatorship cases pretrial procedures to narrow the issues and facilitate their prompt and fair resolution.</p>	
Court Visitor/Investigator	<p>STANDARD 3.3.4 COURT VISITOR The probate court should require a court appointee to visit with the respondent in a guardianship petition to (1) explain the rights of the respondent; (2) investigate the facts of the petition; and (3) explain the circumstances and consequences of the action. The visitor should investigate the need for additional court appointments and should file a written report with the</p>	<p>SECTION 305. JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING. (a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a [visitor]. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual having training or experience in the type of incapacity alleged. (c) The [visitor] shall interview the respondent in person and, to the extent that the</p>

<p>court promptly after the visit.</p>	<p>respondent is able to understand: (1) explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian; (2) determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship; (3) inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and (4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.</p> <p>(d) In addition to the duties imposed by subsection (c), the [visitor] shall: (1) interview the petitioner and the proposed guardian; (2) visit the respondent's present dwelling and any dwelling in which the respondent will live if the appointment is made; (3) obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and (4) make any other investigation the court directs.</p> <p>(e) The [visitor] shall promptly file a report in writing with the court, which must include: (1) a recommendation as to whether a lawyer should be appointed to represent the respondent; (2) a summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage; (3) recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian; (4) a statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship; (5) a statement as to whether the proposed dwelling meets the respondent's individual needs; (6) a recommendation as to whether a professional evaluation or further evaluation is necessary; and (7) any other matters the court directs.</p> <p>Legislative Note: Those states that enact Alternative 2 of subsection (b) which requires appointment of counsel for the respondent in all proceedings for appointment of a guardian should not enact subsection (e)(1).</p>
<p>STANDARD 3.4.4 COURT VISITOR The probate court should require a court appointee to visit with the respondent in a conservatorship petition to (1) explain the rights of the respondent; (2) investigate the facts of the petition; and (3) explain the circumstances and consequences of the action. The visitor should investigate the need for additional court appointments and should file a written report with the court promptly after the visit.</p>	<p>SECTION 406. ORIGINAL PETITION: PRELIMINARIES TO HEARING.</p> <p>(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court shall appoint a [visitor] unless the petition does not request the appointment of a conservator and the respondent is represented by a lawyer. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual having training or experience in the type of incapacity alleged.</p> <p>(c) The [visitor] shall interview the respondent in person and, to the extent that the</p>

respondent is able to understand:

- (1) explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;
- (2) if the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;
- (3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and
- (4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.

(d) In addition to the duties imposed by subsection (c), the [visitor] shall:

- (1) interview the petitioner and the proposed conservator, if any; and
- (2) make any other investigation the court directs.

(e) The [visitor] shall promptly file a report with the court, which must include:

- (1) a recommendation as to whether a lawyer should be appointed to represent the respondent;
- (2) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;
- (3) a statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of the proposed conservator, and a statement of the powers and duties proposed or the scope of the conservatorship;
- (4) a recommendation as to whether a professional evaluation or further evaluation is necessary; and
- (5) any other matters the court directs.

(f) The court may also appoint a physician, psychologist, or other individual qualified to evaluate the alleged impairment to conduct an examination of the respondent.

(g) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a [master] to assist in that task.

Legislative Note: Those states that enact Alternative 2 of subsection (b) which requires appointment of counsel for the respondent in all protective proceedings should not enact subsection (e)(1).

SECTION 115. GUARDIAN AD LITEM.

At any stage of a proceeding, a court may appoint a guardian ad litem if the court

Guardian Ad Litem

		determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.	
Appointment of Counsel	<p>STANDARD 3.3.5 APPOINTMENT OF COUNSEL</p> <p>(a) Counsel should be appointed by the probate court to represent the respondent when:</p> <p>(1) requested by an unrepresented respondent;</p> <p>(2) recommended by a court visitor;</p> <p>(3) the court, in the exercise of its discretion, determines that the respondent is in need of representation; or</p> <p>(4) otherwise required by law.</p> <p>(b) The role of counsel should be that of an advocate for the respondent.</p>	<p>GUARDIAN - ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER</p> <p>[ALTERNATIVE 1]</p> <p>[(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:</p> <p>(1) requested by the respondent;</p> <p>(2) recommended by the [visitor]; or</p> <p>(3) the court determines that the respondent needs representation.]</p> <p>[ALTERNATIVE 2]</p> <p>[(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding.]</p>	
	<p>STANDARD 3.4.5 APPOINTMENT OF COUNSEL - for guardianships of the estate/conservatorships</p> <p>(a) Counsel should be appointed by the probate court to represent the respondent when:</p> <p>(1) requested by an unrepresented respondent;</p> <p>(2) recommended by a court visitor;</p> <p>(3) the court, in the exercise of its discretion, determines that the respondent is in need of representation; or</p> <p>(4) otherwise required by law.</p> <p>(b) The role of counsel should be that of an advocate for the respondent.</p>	<p>CONSERVATOR - SECTION 406. ORIGINAL PETITION: PRELIMINARIES TO HEARING. ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER</p> <p>[ALTERNATIVE 1]</p> <p>[(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:</p> <p>(1) requested by the respondent;</p> <p>(2) recommended by the [visitor]; or</p> <p>(3) the court determines that the respondent needs representation.]</p> <p>[ALTERNATIVE 2]</p> <p>[(b) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent in the proceeding.]</p>	
Emergency Appointment of Temporary Guardian	<p>STANDARD 3.3.6 EMERGENCY APPOINTMENT OF A TEMPORARY GUARDIAN</p> <p>(a) Ex parte appointment of a temporary guardian by the probate court should occur only:</p> <p>(1) upon the showing of an emergency;</p> <p>(2) in connection with the filing of a petition for a permanent guardianship;</p> <p>(3) where the petition is set for hearing on the proposed permanent guardianship on an expedited basis; and</p> <p>(4) when notice of the temporary appointment is promptly provided to the respondent.</p> <p>(b) The respondent should be entitled to an expeditious hearing upon a motion by the respondent seeking to revoke the temporary guardianship.</p> <p>(c) Where appropriate, the court should consider issuing a protective order (or orders) in lieu of appointing a temporary guardian.</p>	<p>SECTION 312. EMERGENCY GUARDIAN.</p> <p>(a) If the court finds that compliance with the procedures of this [article] will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed [60] days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a lawyer to represent the respondent in the proceeding. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.</p> <p>(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent must be given notice of the appointment within 48</p>	<p>§ 5513. Emergency guardian.</p> <p>Notwithstanding the provisions of section 5511 (relating to petition and hearing; independent evaluation), the court, upon petition and a hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person or estate of a person alleged to be incapacitated, when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person. The provisions of section 5511, including those relating to counsel, shall be applicable to such proceedings, except when the court has found that it is not feasible in the circumstances. An emergency guardian so appointed for the person or estate of an alleged incapacitated person shall only have and be subject to such powers, duties and liabilities and serve for such time as the court shall direct in its decree. An emergency order appointing an emergency guardian of the person may be in effect for up to 72 hours. If the emergency continues, then the emergency order may be extended for no more than 20 days from the expiration of the initial emergency order. After expiration of the emergency order or any extension, a full guardianship proceeding must be initiated pursuant to section 5511. The court may also appoint an emergency guardian of the person pursuant to this section for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside of this Commonwealth, regardless of whether the alleged incapacitated person has property in this Commonwealth. An emergency order appointing an emergency guardian of the estate shall not exceed 30 days. After 30 days, a full guardianship proceeding must be initiated pursuant to section 5511.</p>

	<p>(d) The powers of a temporary guardian should be carefully limited and delineated in the order of appointment.</p>	<p>hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within [five] days after the appointment.</p> <p>(c) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.</p> <p>(d) The court may remove an emergency guardian at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of this [Act] concerning guardians apply to an emergency guardian.</p>
	<p>STANDARD 3.4.6 EMERGENCY APPOINTMENT OF A TEMPORARY CONSERVATOR - for guardianships of the estate/conservatorships</p> <p>(a) Ex parte appointment of a temporary conservator by the probate court should occur only:</p> <p>(1) upon the showing of an emergency;</p> <p>(2) in connection with the filing of a petition for a permanent conservatorship;</p> <p>(3) where the petition is set for hearing on the proposed permanent conservatorship on an expedited basis; and</p> <p>(4) when notice of the temporary appointment is promptly provided to the respondent.</p> <p>(b) The respondent should be entitled to an expeditious hearing upon a motion by the respondent seeking to revoke the temporary conservatorship.</p> <p>(c) Where appropriate, the court should consider issuing a protective order (or orders) in lieu of appointing a temporary conservator.</p> <p>(d) The powers of a temporary conservator should be carefully limited and delineated in the order of appointment.</p>	
<p>Notice</p>	<p>STANDARD 3.3.7 NOTICE</p> <p>(a) The respondent should receive timely written notice of the guardianship proceedings before a scheduled hearing. Any written notice should be in plain language and in large type. At the minimum, it should indicate the time and place of judicial hearings, the nature and possible consequences of the proceedings, and set forth the respondent's rights. A copy of the petition should be attached to the written notice.</p> <p>(b) Notice of guardianship proceedings also should be given to family members, persons having care and custody of the respondent, and others entitled to notice regarding the proceedings.</p> <p>(c) The probate court should implement a procedure whereby any interested person can file a request for notice.</p>	<p>SECTION 113. NOTICE.</p> <p>(a) Except as otherwise ordered by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice must be given in compliance with [insert the applicable rule of civil procedure], at least 14 days before the hearing.</p> <p>(b) Proof of notice must be made before or at the hearing and filed in the proceeding.</p> <p>(c) A notice under this [Act] must be given in plain language.</p> <p>SECTION 114. WAIVER OF NOTICE.</p> <p>A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.</p> <p>SECTION 116. REQUEST FOR NOTICE; INTERESTED PERSONS.</p> <p>An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after</p>

	<p>the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits to the respondent or protected person is an interested person in a protective proceeding.</p> <p>SECTION 309. NOTICE.</p> <p>(a) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.</p> <p>(b) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a guardian or the making of a protective order.</p> <p>(c) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court directs.</p> <p>(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the report.</p>
<p>STANDARD 3.4.7 NOTICE - for guardianships of the estate/conservatorships</p> <p>(a) The respondent should receive timely written notice of the conservatorship proceedings before a scheduled hearing. Any written notice should be in plain language and in large type. At the minimum, it should indicate the time and place of judicial hearings, state the nature and possible consequences of the proceedings, and set forth the respondent's rights. A copy of the petition should be attached to the written notice.</p> <p>(b) Notice of conservatorship proceedings also should be given to family members and others entitled to notice regarding the proceedings.</p> <p>(c) The probate court should implement a procedure whereby any interested person can file a request for notice.</p>	<p>SECTION 404. NOTICE.</p> <p>(a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent must be made by [substituted service] [or] [publication]. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.</p> <p>b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a conservator or the making of another protective order.</p> <p>(c) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the</p>

	<p>petition, must be given to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.</p> <p>(d) A conservator shall give notice of the filing of the conservator's inventory, report, or plan of conservatorship, together with a copy of the inventory, report, or plan of conservatorship to the protected person and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the inventory, report, or plan of conservatorship.</p>	
<p>Hearing</p>	<p>STANDARD 3.3.8 HEARING</p> <p>(a) The probate court should promptly set a hearing for the earliest date possible.</p> <p>(b) The respondent should have the right to be present at the hearing and all other stages of the proceeding. The hearing should be conducted in a manner that respects and preserves all of the respondent's rights.</p> <p>(c) The court should require the proposed guardian to attend the hearing except upon a showing of good cause.</p> <p>(d) The court should make a complete record of the hearing.</p>	<p>SECTION 305. JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.</p> <p>(a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a [visitor]. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual having training or experience in the type of incapacity alleged.</p> <p>SECTION 308. JUDICIAL APPOINTMENT OF GUARDIAN: PRESENCE AND RIGHTS AT HEARING.</p> <p>(a) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the [visitor]; and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.</p> <p>(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.</p>
	<p>STANDARD 3.4.8 HEARING</p> <p>(a) The probate court should promptly set a hearing for the earliest date possible.</p> <p>(b) The respondent should have the right to be present at the hearing and all other stages of the proceeding. The hearing should be conducted in a manner that respects and preserves all of the respondent's rights.</p> <p>(c) The court should require the proposed conservator to attend the hearing except upon a showing of good cause.</p> <p>(d) The court should make a complete record of the hearing.</p>	<p>§ 5512.2. Review hearing.</p> <p>(a) Time of hearing.--The court may set a date for a review hearing in its order establishing the guardianship or hold a review hearing at any time it shall direct. The court shall conduct a review hearing promptly if the incapacitated person, guardian or any interested party petitions the court for a hearing for reason of a significant change in the person's capacity, a change in the need for guardianship services or the guardian's failure to perform his duties in accordance with the law or to act in the best interest of the incapacitated person. The court may dismiss a petition for review hearing if it determines that the petition is frivolous.</p> <p>(b) Burden of proof and rights.--The incapacitated person shall have all of the rights enumerated in this chapter. Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on the party advocating continuation of guardianship or expansion of areas of incapacity.</p> <p>SECTION 406. ORIGINAL PETITION: PRELIMINARIES TO HEARING.</p> <p>(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing.</p> <p>SECTION 408. ORIGINAL PETITION: PROCEDURE AT HEARING.</p> <p>(a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the [visitor], and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon request of the respondent and a showing of good cause.</p> <p>(b) Any person may request permission to participate in the proceeding. The court</p>

		<p>may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.</p>	
<p>Evaluation/Determination of Incapacity</p>	<p>STANDARD 3.3.9 DETERMINATION OF INCAPACITY (a) The imposition of a guardianship by the probate court should be based on competent evidence of the incapacity of the respondent. (b) The court may require evidence from professionals or experts whose training and expertise may assist in the assessment of the physical and mental condition of the respondent. (c) No determination of incapacity should be required in voluntary guardianship cases.</p>	<p>SECTION 306. JUDICIAL APPOINTMENT OF GUARDIAN: PROFESSIONAL EVALUATION. At or before a hearing under this [article], the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain: (1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations; (2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills; (3) a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and (4) the date of any assessment or examination upon which the report is based.</p>	<p>§ 5518. Evidence of incapacity. To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.</p>
	<p>STANDARD 3.4.9 DETERMINATION OF INCAPACITY (a) The imposition of a conservatorship by the probate court should be based on competent evidence of the incapacity of the respondent. (b) The court may require evidence from professionals or experts whose training and expertise may assist in the assessment of the physical and mental condition of the respondent. (c) No determination of incapacity should be required in voluntary conservatorship cases.</p>		
<p>Less Intrusive/Less Restrictive Alternatives</p>	<p>STANDARD 3.3.10 LESS INTRUSIVE ALTERNATIVES (a) The probate court should find that no less intrusive alternatives exist before the appointment of a guardian. (b) The court should always consider, and utilize, where appropriate, limited guardianships. (c) In the absence of governing statutes, the court, taking into account the wishes of the respondent, should use its inherent or equity powers to limit the scope of and tailor the guardianship order to the particular needs, functional capabilities, and limitations of the respondent. (d) The court should maximize coordination and cooperation with social service agencies in order to find alternatives to guardianships or to support limited guardianships.</p>		<p>5511(e) Petition contents.--The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.</p>
	<p>STANDARD 3.4.10 LESS INTRUSIVE ALTERNATIVES</p>		

	<p>(a) The probate court should find that no less intrusive alternatives exist before the appointment of a conservator.</p> <p>(b) The court should always consider, and utilize, where appropriate, limited conservatorships, or custodial or revocable trusts.</p> <p>(c) In the absence of governing statutes, the court, taking into account the wishes of the respondent, should use its inherent or equity powers to limit the scope of and tailor the conservatorship order to the particular needs, functional capabilities, and limitations of the respondent.</p> <p>(d) The court should maximize coordination and cooperation with social service agencies in order to find alternatives to conservatorships or to support limited conservatorships.</p>		
<p>Qualifications and Appointments of Guardians - including priority of appointments</p>	<p>STANDARD 3.3.11 QUALIFICATIONS AND APPOINTMENTS OF GUARDIANS The probate court should appoint a guardian suitable and willing to serve as a guardian. Where possible, the court should appoint a person requested by the respondent or related to or known by the respondent.</p>	<p>SECTION 310. WHO MAY BE GUARDIAN: PRIORITIES. (a) Subject to subsection (c), the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority: (1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in this State or elsewhere; (2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if at the time of the nomination the respondent had sufficient capacity to express a preference; (3) an agent appointed by the respondent under [a durable power of attorney for health care] [the Uniform Health-Care Decisions Act]; (4) the spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse; (5) an adult child of the respondent; (6) a parent of the respondent, or an individual nominated by will or other signed writing of a deceased parent; and (7) an adult with whom the respondent has resided for more than six months before the filing of the petition. (b) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority. (c) An owner, operator, or employee of [a long-term-care institution] at which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.</p>	<p>§ 5512. County of appointment; qualifications. (a) Resident incapacitated person.--A guardian of the person or estate of an incapacitated person may be appointed by the court of the county in which the incapacitated person is domiciled, is a resident or is residing in a long-term care facility. (b) Nonresident incapacitated person.--A guardian of the estate within the Commonwealth of an incapacitated person domiciled outside of the Commonwealth may be appointed by the court of the judicial district having jurisdiction of a decedent's estate or of a trust in which the incapacitated person has an interest. When the nonresident incapacitated person's estate is derived otherwise than from a decedent's estate or a trust within the Commonwealth, a guardian may be appointed by the court of any county where an asset of the incapacitated person is located. (c) Exclusiveness of appointment.--When a court has appointed a guardian of the person or estate of an incapacitated person pursuant to subsection (a) or (b), no other court shall appoint a similar guardian for the incapacitated person within the Commonwealth.</p>
	<p>STANDARD 3.4.11 QUALIFICATIONS AND APPOINTMENTS OF CONSERVATORS The probate court should appoint a conservator suitable and willing to manage the respondent's property and</p>	<p>SECTION 413. WHO MAY BE CONSERVATOR: PRIORITIES. (a) Except as otherwise provided in subsection (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:</p>	

<p>finances to the degree required by the respondent's incapacity and nature of assets. Where possible, the court should appoint a person requested by the respondent or related to or known by the respondent.</p>	<p>(1) a conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides; (2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained 14 years of age and at the time of the nomination had sufficient capacity to express a preference; (3) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney; (4) the spouse of the respondent; (5) an adult child of the respondent; (6) a parent of the respondent; and (7) an adult with whom the respondent has resided for more than six months before the filing of the petition. (b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute. (c) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority. (d) An owner, operator, or employee of [a long-term care institution] at which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.</p>	
<p>Cross-Examination of Witnesses</p>		<p>§ 5518.1. Cross-examination of witnesses. Testimony as to the capacity of the alleged incapacitated person shall be subject to cross-examination by counsel for the alleged incapacitated person.</p>
<p>Order/Appointment</p> <p>STANDARD 3.3.12 ORDER (a) The order issued by the probate court should detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the respondent. (b) The court should make known to the guardian what the guardian's responsibilities are, what requirements are to be applied in making decisions and caring for the respondent, and that the guardian must file with the court periodic reports on the respondent's personal status. (c) Following appointment, a guardian should be ordered to mail a copy of the order of appointment to the respondent and to others who received notice of the petition for guardianship. Proof of service should be filed with the court.</p>	<p>SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN. A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward. SECTION 311. FINDINGS; ORDER OF APPOINTMENT. (a) The court may: (1) appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that: (A) the respondent is an incapacitated person; and (B) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance; or (2) with appropriate findings, treat the petition as one for a protective order under Section 401, enter any other appropriate order, or dismiss the proceeding. (b) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.</p>	<p>§ 5512.1. Determination of incapacity and appointment of guardian. (a) Determination of incapacity.--In all cases, the court shall consider and make specific findings of fact concerning:(1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.(2) The extent of the individual's capacity to make and communicate decisions.(3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.(4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.(5) The duration of the guardianship.(6) The court shall prefer limited guardianship. (b) Limited guardian of the person.--Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the person with powers consistent with the court's findings of limitations, which may include:(1) General care, maintenance and custody of the incapacitated person.(2) Designating the place for the incapacitated person to live.(3) Assuring that the incapacitated person receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the incapacitated person in the development of maximum self-reliance and independence.(4) Providing required consents or approvals on behalf of the incapacitated person. (c) Plenary guardian of the person.--The court may appoint a plenary guardian of the person only upon a finding that</p>

	<p>(c) Within 14 days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.</p>	<p>the person is totally incapacitated and in need of plenary guardianship services. (d) Limited guardian of the estate.--Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the estate with powers consistent with the court's finding of limitations, which shall specify the portion of assets or income over which the guardian of the estate is assigned powers and duties. (e) Plenary guardian of the estate.--A court may appoint a plenary guardian of the estate only upon a finding that the person is totally incapacitated and in need of plenary guardianship services. (f) No presumption.--No presumption of incapacity shall be raised from the alleged incapacitated person's institutionalization. (g) Legal rights retained.--Except in those areas designated by court order as areas over which the limited guardian has power, a partially incapacitated person shall retain all legal rights. (h) Information as to rights.--At the conclusion of a proceeding in which the person has been adjudicated incapacitated, the court shall assure that the person is informed of his right to appeal and to petition to modify or terminate the guardianship.</p>
<p>STANDARD 3.4.12 ORDER (a) The order issued by the probate court should detail the duties and powers of the conservator, including any limitations on the duties and powers, and the rights retained by the respondent. (b) The court should make known to the conservator what the conservator's responsibilities are, what requirements are to be applied in managing the respondent's estate, and that the conservator must file a plan with the court that addresses how the assets of the respondent will be protected and how investments and expenditures made on behalf of the respondent will be carried out. (c) Following appointment, a conservator should be ordered to mail a copy of the order of appointment to the respondent and to others who received notice of the petition for conservatorship. Proof of service should be filed with the court.</p>	<p>SECTION 409. ORIGINAL PETITION: ORDERS. (a) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order. (b) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person. (c) Within 14 days after an appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition. (d) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person. SECTION 410. POWERS OF COURT. (a) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator: (1) with respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and (2) with respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person which the person could exercise if the person were an adult,</p>	

	present, and not under conservatorship or other protective order. (b) Subject to Section 110 requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.		
Letters of Office	<p>SECTION 110. LETTERS OF OFFICE. Upon the guardian's filing of an acceptance of office, the court shall issue appropriate letters of guardianship. Upon the conservator's filing of an acceptance of office and any required bond, the court shall issue appropriate letters of conservatorship. Letters of guardianship must indicate whether the guardian was appointed by the court, a parent, or the spouse. Any limitation on the powers of a guardian or conservator or of the assets subject to a conservatorship must be endorsed on the guardian's or conservator's letters.</p> <p>SECTION 111. EFFECT OF ACCEPTANCE OF APPOINTMENT. By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.</p>		
Multiple Appointments	<p>SECTION 117. MULTIPLE APPOINTMENTS OR NOMINATIONS. If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.</p>		
Guardian Training and Orientation	<p>STANDARD 3.3.13 TRAINING AND ORIENTATION The probate court should develop and implement programs for the orientation and training of guardians.</p> <p>STANDARD 3.4.13 TRAINING AND ORIENTATION The probate court should develop and implement programs for the orientation and training of conservators.</p>		
Bonds	<p>STANDARD 3.4.14 BOND The requirement of a bond should be discretionary with the probate court. Should a bond be required, unless the amount of bond is prescribed by statute, the court should establish written guidelines for setting the size of such bonds.</p> <p>SECTION 415. BOND. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. Unless otherwise directed by the court, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.</p> <p>SECTION 416. TERMS AND REQUIREMENTS OF BOND. (a) The following rules apply to any bond required: (1) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable. (2) By executing the bond of a conservator, a surety submits to the jurisdiction of</p>	<p>§ 5516. Fiduciary estate. The court, in its discretion, upon the application of any party in interest, in addition to any bond required for the incapacitated person's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the court shall consider necessary for the protection of the parties in interest in an estate of which the incapacitated person is serving in the capacity as a fiduciary and conditioned in the following form: (1) When one guardian.--The condition of this obligation is that, if the said guardian shall well and truly account for property held by the incapacitated person as fiduciary according to law, this obligation shall be void; but otherwise it shall remain in force. (2) When two or more guardians.--The condition of this obligation is that, if the said guardians or any of them shall well and truly account for property held by the incapacitated person as fiduciary according to law, this obligation shall be void as to the guardian or guardians who shall so account; but otherwise it shall remain in force.</p>	

		<p>the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.</p> <p>(3) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator.</p> <p>(4) The bond of the conservator may be proceeded against until liability under the bond is exhausted.</p> <p>(b) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.</p>	
Needs Planning		<p>SECTION 418. GENERAL DUTIES OF CONSERVATOR; PLAN.</p> <p>(a) A conservator, in relation to powers conferred by this [article] or implicit in the title acquired by virtue of the proceeding, is a fiduciary and shall observe the standards of care applicable to a trustee.</p> <p>(b) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.</p> <p>(c) Within 60 days after appointment, a conservator shall file with the appointing court a plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan must be based on the actual needs of the person and take into consideration the best interest of the person. The conservator shall include in the plan steps to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections of expenses and resources.</p> <p>(d) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the person.</p>	
Guardians Fees		<p>SECTION 417. COMPENSATION AND EXPENSES.</p> <p>If not otherwise compensated for services rendered, a guardian, conservator, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to a protected person's estate, or any other person appointed by the court is entitled to reasonable compensation from the estate. Compensation may be paid and expenses reimbursed without court order. If the court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate.</p>	
Reports by the Guardian	<p>STANDARD 3.3.14 REPORTS BY THE GUARDIAN</p> <p>A guardian should be required to file with the probate court a guardianship plan and a report on the</p>	<p>SECTION 317. REPORTS; MONITORING OF GUARDIANSHIP.</p> <p>(a) Within 30 days after appointment, a guardian shall report to the court in writing on the condition of the ward and account for money and other assets in the</p>	<p>§ 5512.3. Annual report.</p> <p>The court shall annually file with the Supreme Court Administrator's Office on forms furnished by the office a statistical and descriptive report to assist in evaluating the operation and costs of the guardianship system.</p>

respondent's condition, with annual updates provided by the guardian thereafter. A guardian should also provide the court with advance notice of any intended absence of the respondent from the court's jurisdiction in excess of thirty calendar days, or any major anticipated change in the respondent's physical presence (e.g., a change in residence, place of abode).

guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. A report must state or contain:

- (1) the current mental, physical, and social condition of the ward;
- (2) the living arrangements for all addresses of the ward during the reporting period;
- (3) the medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;
- (4) a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
- (5) if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;
- (6) plans for future care; and
- (7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(b) The court may appoint a [visitor] to review a report, interview the ward or guardian, and make any other investigation the court directs.

(c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

5521(c) Reports.—(1) Each guardian of an incapacitated person shall file with the court appointing him a report, at least once within the first 12 months of his appointment and at least annually thereafter, attesting to the following: (i) Guardian of the estate: (A) current principal and how it is invested; (B) current income; (C) expenditures of principal and income since the last report; and (D) needs of the incapacitated person for which the guardian has provided since the last report. (ii) Guardian of the person: (A) current address and type of placement of the incapacitated person; (B) major medical or mental problems of the incapacitated person; (C) a brief description of the incapacitated person's living arrangements and the social, medical, psychological and other support services he is receiving; (D) the opinion of the guardian as to whether the guardianship should continue or be terminated or modified and the reasons therefor; and (E) number and length of times the guardian visited the incapacitated person in the past year. (2) Within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian shall file a final report with the court.

(d) Powers and duties only granted by court.—Unless specifically included in the guardianship order after specific findings of fact or otherwise ordered after a subsequent hearing with specific findings of fact, a guardian or emergency guardian shall not have the power and duty to: (1) 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. (3) Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

(e) Knowledge of objection.—In a hearing to determine whether a guardian shall be ordered to consent to a specific act or omission, if the guardian knows or has reason to know of the incapacitated person's objection to the action or omission, whether such objection had been expressed prior or subsequent to the determination of incapacity, the guardian shall report to the court such knowledge or information.

(f) Powers and duties not granted to guardian.—The court may not grant to a guardian powers controlled by other statute, including, but not limited to, the power: (1) To admit the incapacitated person to an inpatient psychiatric facility or State center for the mentally retarded. (2) To consent, on behalf of the incapacitated person, to the relinquishment of the person's parental rights.

(g) Criminal and civil immunity.—In the absence of gross negligence, recklessness or intentional misconduct, a unit of local government, nonprofit corporation or guardianship support agency under Subchapter F (relating to guardianship support) appointed as a guardian shall not be criminally liable or civilly liable for damages for performing duties as a guardian of the person, as authorized under this chapter.

STANDARD 3.4.15 REPORTS BY THE CONSERVATOR

(a) A conservator should be required to file with the probate court an inventory of the respondent's assets and a statement setting forth a plan to meet the respondent's needs and to allocate resources for those needs, with annual accountings or updates provided by the conservator thereafter.

(b) A conservator should seek initial approval from the court for any significant distributions for the respondent's maintenance and support, and obtain the court's permission before making any significant deviations from the initially approved plan.

When considering such applications, the court should

SECTION 419. INVENTORY; RECORDS.

(a) Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(b) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person.

SECTION 420. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.

(a) A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order,

<p>balance the immediate benefit of permitting the requested disbursement against the prudence of conserving the respondent's assets for future use.</p>	<p>after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship. (b) A report must state or contain: (1) a list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made; (2) a list of the services provided to the protected person; and (3) any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.</p>	
<p>Powers and Duties of the Guardian</p>	<p>SECTION 314. DUTIES OF GUARDIAN. (a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence. (b) A guardian shall: (1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health; (2) take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward; (3) expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare; (4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs; (5) immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and (6) inform the court of any change in the ward's custodial dwelling or address. SECTION 315. POWERS OF GUARDIAN. (a) Except as otherwise limited by the court, a guardian may: (1) apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship; (2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's</p>	<p>§ 5522. Power to lease. A guardian may lease any real or personal property of the incapacitated person for a term not exceeding five years after its execution.</p> <p>§ 5534. Recognition of claims. Upon the audit of the account of the guardian of a person who has died during incapacity, the auditing judge or auditor passing on the account shall not pass upon any claims against the estate of the incapacitated person other than necessary administration expenses, including compensation of the guardian and his attorney. All claims remaining unpaid at the incapacitated person's death shall be presented to the personal representative.</p> <p>§ 5535. Disposition of trust income. Except as otherwise provided by the trust instrument, the trustee of an inter vivos or testamentary trust, with the approval of the court having jurisdiction of the trust, may pay income distributable to a beneficiary who is an incapacitated person for whose estate no guardian has been appointed directly to the incapacitated person, or expend and apply it for his care and maintenance or the care, maintenance and education of his dependents.</p> <p>§ 5536. Distributions of income and principal during incapacity. (a) In general.--All income received by a guardian of the estate of an incapacitated person, including (subject to the requirements of Federal law relating thereto) all funds received from the Veterans' Administration, Social Security Administration and other periodic retirement or disability payments under private or governmental plans, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incapacitated person, without the necessity of court approval. The court, for cause shown and with only such notice as it considers appropriate in the circumstances, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incapacitated person for the care, maintenance or education of the incapacitated person, his spouse, children or those for whom he was making such provision before his incapacity, or for the reasonable funeral expenses of the incapacitated person's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incapacitated person for his maintenance or for incidental expenses and may ratify payments made for these purposes. For purposes of this subsection, the term "income" means income as determined in accordance with the rules set forth in Chapter 81 (relating to principal and income), other than the power to adjust and the power to convert to a unitrust. (b) Estate plan.--The court, upon petition and with notice to all parties in interest and for good cause shown, shall have the power to substitute its judgment for that of the incapacitated person with respect to the estate and affairs of the incapacitated person for the benefit of the incapacitated person, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:(1) Make gifts, outright or in trust.(2) Convey, release or disclaim his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.(3) Release or</p>

place of dwelling outside this State upon express authorization of the court;

(3) if a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or service for the ward;

(5) consent to the marriage [or divorce] of the ward; and

(6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(b) The court may specifically authorize the guardian to consent to the adoption of the ward.

SECTION 425. POWERS OF CONSERVATOR IN ADMINISTRATION.

(a) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this State.

(b) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:

(1) collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another State, until the conservator considers that disposition of an asset should be made;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest assets of the estate as though the conservator were a trustee;

(6) deposit money of the estate in a financial institution, including one operated by the conservator;

(7) acquire or dispose of an asset of the estate, including real property in another State, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an asset of the estate and take an

disclaim his powers as trustee, personal representative, custodian for minors, or guardian.(4) Exercise, release or disclaim his powers as donee of a power of appointment.(5) Enter into contracts.(6) Create for the benefit of the incapacitated person or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.(7) Exercise options of the incapacitated person to purchase or exchange securities or other property.(8) Exercise all rights and privileges under life insurance policies, annuity contracts or other plans or contractual arrangements providing for payments to the incapacitated person or to others after his death.(9) Exercise his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.(10) Change the incapacitated person's residence or domicile.(11) Modify by means of codicil or trust amendment, as the case may be, the terms of the incapacitated person's will or of any revocable trust created by the incapacitated person, as the court may deem advisable in light of changes in applicable tax laws.In the exercise of its judgment for that of the incapacitated person, the court, first being satisfied that assets exist which are not required for the maintenance, support and well-being of the incapacitated person, may adopt a plan of gifts which results in minimizing current or prospective taxes, or which carries out a lifetime giving pattern. The court in exercising its judgment shall consider the testamentary and inter vivos intentions of the incapacitated person insofar as they can be ascertained.

§ 5521. Provisions concerning powers, duties and liabilities.

Duty of guardian of the person.--It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated person shall be respected to the greatest possible extent. Where appropriate, the guardian shall assure and participate in the development of a plan of supportive services to meet the person's needs which explains how services will be obtained. The guardian shall also encourage the incapacitated person to participate to the maximum extent of his abilities in all decisions which affect him, to act on his own behalf whenever he is able to do so and to develop or regain, to the maximum extent possible, his capacity to manage his personal affairs.(b) Duty of guardian of the estate.--The provisions concerning the powers, duties and liabilities of guardians of incapacitated persons' estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

- Section 3313 (relating to liability insurance),
- Section 3314 (relating to continuation of business),
- Section 3315 (relating to incorporation of estate's business),
- Section 3317 (relating to claims against co-fiduciary),
- Section 3318 (relating to revival of judgments against personal representative),
- Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations),
- Section 3320 (relating to voting stock by proxy),
- Section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities),
- Section 3322 (relating to acceptance of deed in lieu of foreclosure),
- Section 3323 (relating to compromise of controversies),
- Section 3324 (relating to death or incapacity of fiduciary),
- Section 3327 (relating to surviving or remaining personal representatives),
- Section 3328 (relating to disagreement of personal representatives),
- Section 3331 (relating to liability of personal representative on contracts),
- Section 3332 (relating to inherent powers and duties),

option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) sell or exercise stock subscription or conversion rights;

(16) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(18) insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

(19) borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(20) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(21) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(22) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(23) pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:

(A) to the guardian of the distributee;

(B) to a distributee's custodian under [the Uniform Transfers to Minors Act] or custodial trustee under [the Uniform Custodial Trust Act]; or

(C) if there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(24) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and

(25) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

SECTION 427. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.

(a) Unless otherwise specified in the order of appointment and endorsed on the

- Section 3355 (relating to restraint of sale).
- Section 3356 (relating to purchase by personal representative),
- Section 3359 (relating to record of proceedings; county where real estate lies),
- Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions),
- Section 3372 (relating to substitution of personal representative in pending action or proceedings),
- Section 3374 (relating to death or removal of fiduciary),
- Section 3390 (relating to specific performance of contracts),
- Section 5141 (relating to possession of real and personal property),
- Section 5142 (relating to inventory),
- Section 5143 (relating to abandonment of property),
- Section 5145 (relating to investments),
- Section 5146 (relating to guardian named in conveyance),
- Section 5147 (relating to proceedings against guardian),
- Section 5151 (relating to power to sell personal property),
- Section 5154 (relating to title of purchaser),
- Section 5155 (relating to order of court).

§ 3313. Liability insurance. The personal representative, at the expense of the estate, may protect himself, his employees and the beneficiaries by insurance from liability to third persons arising from the administration of the estate.

§ 3314. Continuation of business.

The court, aided by the report of a master if necessary, may authorize the personal representative to continue any business of the estate for the benefit of the estate and in doing so the court, for cause shown, may disregard the provisions of the governing instrument, if any. The order may be with or without notice. If prior notice is not given to all parties in interest, it shall be given within five days after the order or within such extended time as the court, for cause shown, shall allow. Any party in interest may, at any time, petition the court to revoke or modify the order. The order may provide: (1) for the conduct of business, by the personal representative alone or jointly with others, or, unless restricted by the terms of the governing instrument, as a corporation to be formed; (2) the extent of the liability of the estate or any part thereof, or of the personal representative, for obligations incurred in the continuation of the business; (3) whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole; (4) the period of time the business may be conducted; and (5) such other regulations, including accountings, as the court shall deem advisable.

§ 3315. Incorporation of estate's business.

After notice to all parties in interest, aided by the report of a master if necessary, the court, unless restricted by the terms of the governing instrument, may authorize the personal representative alone or jointly with others, to organize a corporation to carry on the business of the estate, whether the business was owned solely or with others, and may contribute for stock of the corporation, as capital, all or part of the property of the estate which was invested in the business.

§ 3317. Claims against co-fiduciary.

When one of two or more personal representatives shall be individually liable to the estate, the other or others shall take any legal action against him necessary to protect the estate.

§ 3318. Revival of judgments against personal representative.

When the estate holds a judgment which is a lien on the real estate of the personal representative, any party in interest may suggest his interest in the judgment upon the record thereof and bring an appropriate action to revive it

letters of appointment or contrary to the plan filed pursuant to Section 418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:

(1) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.

(2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(3) In making distributions under this subsection, the conservator shall consider:

- (A) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;
- B) the accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and
- (C) other money or sources used for the support of the protected person.

(4) Money expended under this subsection may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(b) If an estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year 20 percent of the income of the estate in that year.

SECTION 429. PRESENTATION AND ALLOWANCE OF CLAIMS.

(a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (d). A claimant may present a claim by:

- (1) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

and to continue its lien. Any judgment so revived shall remain for the use of all parties in interest.

§ 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.

(a) Power of attorney.--A personal representative may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or agent under a power of attorney. Nothing in this subsection authorizes the delegation of any discretionary power.(b) Delegation of power over subscription rights and fractional shares.--Where there is more than one personal representative, one or more may delegate to another the power to decide whether rights to subscribe to stock should be sold or should be exercised, and also the power to decide whether a fractional share of stock should be sold or should be rounded out to a whole share through the purchase of an additional fraction, and also the power to carry out any such decision. Any delegation may extend to all subscription rights and fractional shares from time to time received by the personal representatives on account of stock held by them, or may be limited to any extent specified in the delegation. No exercise of any delegated power shall be valid, unless:(1) the stock on which the subscription rights or fractional shares are issued are listed or traded on the New York Stock Exchange or any other exchange approved by the Department of Banking; and(2) the shares held by the personal representatives on which the subscription rights or fractional shares are issued constitute less than 5% of the total outstanding shares of the same class of the same corporation.(c) Delegation authorized by governing instrument.--Nothing in this section precludes a delegation authorized by the governing instrument.

§ 3320. Voting stock by proxy.

The personal representatives or a majority of them, either in person or by proxy, may vote stock owned by the estate.

§ 3321. Nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities.

(a) Corporate personal representative.--A bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, may keep investments or fractional interests in investments held by it, either as sole personal representative or jointly with other personal representatives, in the name or names of the personal representatives or in the name of the nominee of the corporate personal representative: Provided, That the consent thereto of all the personal representatives is obtained: And provided further, That all such investments shall be so designated upon the records of the corporate personal representative that the estate to which they belong shall appear clearly at all times.(b) Individual personal representative.--A personal representative serving jointly with a bank and trust company or a trust company incorporated in the Commonwealth, or with a national bank having its principal office in the Commonwealth, may authorize or consent to the corporate personal representative having exclusive custody of the assets of the estate and to the holding of such investments in the name of a nominee of such corporate personal representative, to the same extent and subject to the same requirements that the corporate personal representative, if it were the sole personal representative, would be authorized to hold such investments in the name of its nominee.(c) Corporate fiduciary as agent.--An individual personal representative may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as his agent under a power of attorney in the performance of ministerial duties, including the safekeeping of estate assets, and such agent, when so acting, may be authorized to hold such investments in the name of its nominee to the same extent and subject to the same requirements that such agent, if it were the personal representative, would be authorized to hold such investments in the name of the nominee.(d) Deposit of securities in a clearing corporation.--A personal representative holding securities in its fiduciary capacity, any bank and trust company, trust company or National bank holding securities as an agent pursuant to subsection (c) of this section, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in Division 8 of Title 13 (relating to investment securities)). When such securities are so deposited, certificates

(2) filing a written statement of the claim, in a form acceptable to the court, with the clerk of court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. The conservator before payment may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(d) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

- (1) costs and expenses of administration;
- (2) claims of the federal or state government having priority under other law;
- (3) claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person;
- (4) claims arising before the conservatorship; and
- (5) all other claims.

(e) Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.

(f) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for the payment of any or all claims at a future date.

SECTION 411. REQUIRED COURT APPROVAL.

(a) After notice to interested persons and upon express authorization of the court, a conservator may: (1) make gifts, except as otherwise provided in Section 427(b); (2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties; (3) exercise or release a power of appointment; (4) create a revocable or irrevocable trust of property of the estate,

representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank and trust company, trust company or National bank acting as an agent under a power of attorney for a personal representative shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank and trust company, trust company or National bank so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State chartered institutions, the Department of Banking and, in the case of National banking associations, the comptroller of the currency may from time to time issue including, without limitation, standards for, or the method of making a determination of, the financial responsibility of any clearing corporation in which securities are deposited. A bank and trust company, trust company or National bank acting as custodian for a personal representative shall, on demand by the personal representative, certify in writing to the personal representative the securities so deposited by such bank and trust company, trust company or National bank in such clearing corporation for the account of such personal representative. A personal representative shall, on demand by any party to a judicial proceeding for the settlement of such personal representative's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such personal representative in such clearing corporation for its account as such personal representative. (e) Accounting for book-entry securities.--With respect to securities which are available in book-entry form as an alternative to securities in definitive form, the receipt, holding or transfer of such securities in book-entry form by a bank and trust company, trust company or National bank acting as a sole or joint personal representative, or as an attorney-in-fact for a personal representative, is for all purposes equivalent to the receipt, holding or transfer of such securities in definitive form and no segregation of such book-entry securities shall be required other than by appropriate accounting records to identify the accounts for which such securities are held.

§ 3322. Acceptance of deed in lieu of foreclosure.

The personal representative may take for the estate from the owner of property encumbered by a mortgage owned by the estate, a deed in lieu of foreclosure, in which event the real estate shall be considered personalty to the same extent as though title were acquired by foreclosure at sheriff's sale. Any deed or deeds heretofore so accepted are hereby made valid in accordance with the provisions hereof.

§ 3323. Compromise of controversies.

(a) In general.--Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against an estate, or to compromise or settle any question or dispute concerning the validity or construction of any governing instrument, or the distribution of all or any part of any estate, or any other controversy affecting any estate, the court, on petition by the personal representative or by any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary by the report of a master, may enter a decree authorizing the compromise or settlement to be made. (b) Pending court action.--(1) Court order.--Whenever it is desired to compromise or settle an action in which damages are sought to be recovered on behalf of an estate, any court or division thereof in which such action is pending and which has jurisdiction thereof may, upon oral motion by plaintiff's counsel of record in such action, or upon petition by the personal representative of such decedent, make an order approving such compromise or settlement. Such order may approve an agreement for the payment of counsel fees and other proper expenses incident to such action. (2) Order not subject to collateral attack.--The order of the court approving such compromise or settlement or an agreement for the payment of counsel fees and other expenses shall not be subject to collateral attack in the orphans' court division in the settlement of an estate. (3) Filing copy of order; additional security.--The personal representative shall file a copy of the order of the court approving

whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person; (5) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value; (6) exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and (7) make, amend, or revoke the protected person's will.

(b) A conservator, in making, amending, or revoking the protected person's will, shall comply with [the State's statute for executing wills].

(c) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider: (1) the financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors; (2) possible reduction of income, estate, inheritance, or other tax liabilities; (3) eligibility for governmental assistance; (4) the protected person's previous pattern of giving or level of support; (5) the existing estate plan; (6) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and (7) any other factors the court considers relevant.

(d) Without authorization of the court, a conservator may not revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, absent a court order to the contrary, a decision of the agent takes precedence over that of a conservator.

SECTION 412. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.

(a) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may: (1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including: (A) payment, delivery, deposit, or retention of funds or property; (B) sale, mortgage, lease, or other transfer of property; (C) purchase of an annuity; (D) making a contract for life care, deposit contract, or contract for training and education; or (E) addition to or establishment of a suitable trust[, including a trust created under the Uniform Custodial Trust Act]; and (2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Section 411(c).

(c) The court may appoint a [master] to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The [master] has the authority conferred by the order and shall serve until discharged by order after report to the court.

SECTION 421. TITLE BY APPOINTMENT.

such compromise or settlement in the office of the register of wills or clerk of the court having jurisdiction of the estate. When the personal representative has been required to give bond, he shall not receive the proceeds of any such compromise or settlement until the court of the county having jurisdiction of his estate has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

§ 3324. Death or incapacity of fiduciary.

The personal representative of the estate of a deceased fiduciary or the guardian of an adjudged incapacitated fiduciary by reason of his position shall not succeed to the administration of, or have the right to possess, any asset of an estate which was being administered by the deceased or incapacitated fiduciary, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incapacitated fiduciary may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or incapacitated fiduciary to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

§ 3327. Surviving or remaining personal representatives.

Surviving or remaining personal representatives shall have all the powers of the original personal representatives, unless otherwise provided by the governing instrument.

§ 3328. Disagreement of personal representatives.

(a) Decision of majority.--If a dispute shall arise among personal representatives, the decision of the majority shall control unless otherwise provided by the governing instrument, if any. A dissenting personal representative shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting personal representative shall not be liable for the consequences of any majority decision even though he joins in carrying it out, if his dissent is expressed promptly to all the other personal representatives: Provided, That liability for failure to join in administering the estate or to prevent a breach of trust may not be thus avoided.(b) When no majority.--When a dispute shall arise among personal representatives as to the exercise or nonexercise of any of their powers and there shall be no agreement of a majority of them, unless otherwise provided by the governing instrument, the court, upon petition filed by any of the personal representatives or by any party in interest, aided if necessary by the report of a master, in its discretion, may direct the exercise or nonexercise of the power as the court shall deem for the best interest of the estate.

§ 3331. Liability of personal representative on contracts.

Unless he expressly contracts otherwise, in writing, a personal representative shall not be personally liable on any written contract which is within his authority as personal representative and discloses that he is contracting as personal representative of a named estate. Any action on such a contract shall be brought against the personal representative in his fiduciary capacity only, or against his successor in such capacity, and execution upon any judgment obtained therein shall be had only against property of the estate.

§ 3332. Inherent powers and duties.

Except as otherwise provided in this title, nothing in this title shall be construed to limit the inherent powers and duties of a personal representative.

§ 3355. Restraint of sale.

The court, on its own motion or upon application of any party in interest, in its discretion, may restrain a personal representative from making any sale under an authority not given by the governing instrument or from carrying out any contract of sale made by him under an authority not so given. The order may be conditioned upon the applicant giving bond for the protection of parties in interest who may be prejudiced thereby. The order shall be void as against a bona fide grantee of, or holder of a lien on, real estate unless the decree restraining the sale, or a duplicate original or certified copy thereof, is recorded in the deed book in the office of the recorder of deeds in the county in which

(a) The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.

(b) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person or the person's successors.

(c) Subject to the requirements of other statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.

such real estate lies, before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

§ 3356. Purchase by personal representative.

In addition to any right conferred by a governing instrument, if any, the personal representative, in his individual capacity, may bid for, purchase, take a mortgage on, lease, or take by exchange, real or personal property belonging to the estate, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to parties in interest as it shall direct. The court may make an order directing a co-fiduciary, if any, or the court's clerk to execute a deed or other appropriate instrument to the purchasing personal representative.

§ 3359. Record of proceedings; county where real estate lies.

Certified copies of proceedings of any court of the Commonwealth relating to or affecting real estate may be recorded in the office for the recording of deeds in any county in which the real estate lies.

§ 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions.

(a) Inadequacy of consideration or better offer.--When a personal representative shall make a contract not requiring approval of court, or when the court shall approve a contract of a personal representative requiring approval of the court, neither inadequacy of consideration, nor the receipt of an offer to deal on other terms shall, except as otherwise agreed by the parties, relieve the personal representative of the obligation to perform his contract or shall constitute ground for any court to set aside the contract, or to refuse to enforce it by specific performance or otherwise: Provided, That this subsection shall not affect or change the inherent right of the court to set aside a contract for fraud, accident or mistake. Nothing in this subsection shall affect the liability of a personal representative for surcharge on the ground of negligence or bad faith in making a contract.(b) Brokers' commissions.--When a personal representative shall enter into an agreement of sale of real estate in good faith, which is not binding under subsection (a) of this section and which is set aside upon receipt of a higher offer for such real estate, he shall not be relieved from the payment of real estate broker or broker's commissions to the broker who had procured such agreement of sale, and in the event that more than one real estate broker is entitled to commissions for said agreements of sale, then such commissions shall be equally divided between or among such real estate brokers: Provided further, That the total aggregate commission paid as a percentage of the gross consideration of the final sale shall in no event exceed a fair commission for a single sale of the property involved.

§ 3372. Substitution of personal representative in pending action or proceedings.

Substitution of the personal representative of a deceased party to a pending action or proceeding shall be as provided by law.

§ 3374. Death or removal of fiduciary.

An action or proceeding to which a fiduciary is a party is not abated by his death or resignation or by the termination of his authority. The successor of the fiduciary may be substituted in the action or proceeding in the manner provided by law.

§ 3390. Specific performance of contracts.

(a) Application to court.--If any person makes a legally binding agreement to purchase or sell real or personal estate and dies before its consummation, his personal representative shall have power to consummate it, but if he does not do so, the court, on the application of any party in interest and after such notice and with such security, if any, as it may direct, in its discretion, may order specific performance of the agreement if it would have been enforced specifically had the decedent not died.(b) Execution and effect of deed or transfer.--Any necessary deed or transfer shall be executed by the personal representative or by such other person as the court shall direct. The title of any purchaser under an agreement in which the decedent was the vendor shall be the same as though the decedent had conveyed or transferred such property in his lifetime.(c) Indexing in judgment or ejectment and miscellaneous indexes.--When any petition for specific performance of an agreement to purchase or sell real estate is filed, the

prothonotary of the court of common pleas where the real estate or any part of it lies, upon the receipt of a certificate of such fact by the clerk of the court where the petition was filed, shall enter the petition upon either the judgment or ejectment and miscellaneous indexes against the defendants as directed by local rules of court and shall certify it as lis pendens in any certificate of search which he is required to make by virtue of his office.

§ 5141. Possession of real and personal property.

The guardian of the estate of a minor appointed by the court until it is distributed or sold shall have the right to, and shall take possession of, maintain and administer, each real and personal asset of the minor to which his appointment extends, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain any action with respect to such real or personal property of the minor.

§ 5142. Inventory.

Every guardian, within three months after real or personal estate of his ward comes into his possession, shall verify by oath and file with the clerk an inventory and appraisal of such personal estate, a statement of such real estate, and a statement of any real or personal estate which he expects to acquire thereafter.

§ 5143. Abandonment of property.

When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the estate, the guardian may abandon it. When such property cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the guardian to transfer or renounce it without consideration if it shall find that this will be for the best interests of the estate.

§ 5145. Investments.

Subject only to the provisions of a governing instrument, if any, a guardian may accept, hold, invest in and retain investments as provided by Chapter 72 (relating to prudent investor rule).

§ 5146. Guardian named in conveyance.

(a) In general.--The powers, duties and liabilities of a guardian not appointed by the court as to property of the minor to which his appointment lawfully extends shall be the same as the powers, duties and liabilities of a court appointed guardian, except as the instrument making the appointment shall provide otherwise. (b) Substituted or succeeding guardian.--A substituted or succeeding guardian, except as otherwise provided by the instrument, if any, appointing the original guardian, in addition to the powers of a guardian appointed by the court, shall have all the powers, duties and liabilities of the original guardian. He shall have the power to recover the assets of the minor from his predecessor in administration or from the fiduciary of such predecessor and, except as otherwise provided in an applicable instrument, shall stand in the predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor. (c) Effect of removal, or of probate of later will or codicil.--No act of administration performed by a testamentary guardian in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the guardian: Provided, That regardless of the good or bad faith of the testamentary guardian, no person who deals in good faith with a testamentary guardian shall be prejudiced by the subsequent occurrence of any of these contingencies.

§ 5147. Proceedings against guardian.

Any proceeding may be brought against a guardian or the surety on his bond in the court having jurisdiction of the estate, and if he does not reside in the county, process may be served on him personally, or as follows: (1) When resident of another county.--By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found. (2) When a nonresident of the Commonwealth.--By the sheriff of the county of the court having jurisdiction of the estate.

§ 5151. Power to sell personal property.

A guardian appointed by the court may sell, at public or private sale, any personal property of the minor.

		<p>§ 5154. Title of purchaser. If the guardian has given the bond, if any, required in accordance with this title, any sale, pledge, mortgage, or exchange by him, whether pursuant to a decree or to a power under this title, shall pass the full title of the minor therein, free of any right of his spouse, unless otherwise specified. Persons dealing with the guardian shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the minor. Any sale or exchange by a guardian pursuant to a decree under section 5155 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the subsequent dismissal of the guardian, nor shall any such sale, mortgage, exchange, or conveyance by a testamentary guardian be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the guardian did so in good faith.</p> <p>§ 5155. Order of court. Whenever the court finds it to be for the best interests of the minor, a guardian may, for any purpose of administration or distribution, and on the terms, with the security and after the notice directed by the court: (1) sell at public or private sale, pledge, mortgage, lease or exchange any real or personal property of the minor; (2) grant an option for the sale, lease or exchange of any such property; (3) join with the spouse of the minor in the performance of any of the foregoing acts with respect to property held by the entireties; or (4) release the right of the minor in the property of his spouse and join in the deed of the spouse in behalf of the minor.</p> <p>§ 5525. Notice to Commonwealth and political subdivisions. When the Commonwealth or a political subdivision thereof has a claim for maintaining an incapacitated person in an institution, the guardian, within three months of his appointment, shall give notice thereof to the Department of Public Welfare or the proper officer of such political subdivision, as the case may be.</p>
<p>Rights of Ward</p>	<p>SECTION 422. PROTECTED PERSON'S INTEREST INALIENABLE. (a) Except as otherwise provided in subsections (c) and (d), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in Section 429. (b) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under Section 429. (c) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title. (d) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.</p>	<p>§ 5524. Effect of determination of incapacity. A partially incapacitated person shall be incapable of making any contract or gift or any instrument in writing in those specific areas in which the person has been found to be incapacitated. A totally incapacitated person shall be incapable of making any contract or gift or any instrument in writing. This section shall not impair the interest in real estate acquired by a bona fide grantee of, or a bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the incapacity is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims.</p>
<p>Liability/Protections of those dealing with Guardian</p>	<p>SECTION 424. PROTECTION OF PERSON DEALING WITH CONSERVATOR. (a) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under Section 410 or 411 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire</p>	<p>§ 5523. Collateral attack. No decree entered pursuant to this chapter shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.</p>

	<p>into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in Section 110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.</p> <p>(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.</p>
<p>Relief of Court</p>	<p>SECTION 414. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.</p> <p>(a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:</p> <ol style="list-style-type: none"> (1) requiring bond or collateral or additional bond or collateral, or reducing bond; (2) requiring an accounting for the administration of the protected person's estate; (3) directing distribution; (4) removing the conservator and appointing a temporary or successor conservator; (5) modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or (6) granting other appropriate relief. <p>(b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.</p> <p>(c) Upon notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.</p>
<p>Monitoring the Guardian</p>	<p>STANDARD 3.3.15 MONITORING OF THE GUARDIAN The probate court should have written policies and procedures to ensure the prompt review of reports and requests filed by guardians</p> <p>SECTION 317. REPORTS; MONITORING OF GUARDIANSHIP. (c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.</p>
<p>STANDARD 3.4.16 MONITORING OF THE CONSERVATOR The probate court should have written policies and procedures to ensure the prompt review of reports and requests filed by conservators.</p>	<p>SECTION 420. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.</p> <p>(a) A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.</p> <p>(b) A report must state or contain:</p> <ol style="list-style-type: none"> (1) a list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made; (2) a list of the services provided to the protected person; and (3) any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any

	<p>recommended changes in the scope of the conservatorship.</p> <p>(c) The court may appoint a [visitor] to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.</p> <p>(d) The court shall establish a system for monitoring conservatorships, including the filing and review of conservators' reports and plans.</p>	
<p>Penalties for Guardians</p>	<p>SECTION 316. RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.</p> <p>(a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided to the ward, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.</p> <p>(b) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third party.</p> <p>(c) A guardian, without authorization of the court, may not revoke a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act] of which the ward is the principal. If a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act] is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.</p> <p>(d) A guardian may not initiate the commitment of a ward to a [mental health-care] institution except in accordance with the State's procedure for involuntary civil commitment.</p>	
<p>Termination or Substitution of Guardian</p>	<p>SECTION 112. TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.</p> <p>(a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. [A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding.] Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.</p> <p>(b) A ward, protected person, or person interested in the welfare of a ward or protected person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for</p>	<p>§ 5514. To fill vacancy; co-guardian. The court, after such notice to parties in interest as it shall direct, may without a hearing appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of an incapacitated person. Where the vacating guardian was a parent who is now deceased, any testamentary nominee of the parent shall be given preference by the court.</p> <p>§ 5515. Provisions similar to other estates. The provisions relating to a guardian of an incapacitated person and his surety shall be the same as are set forth in the following provisions of this title relating to a personal representative or a guardian of a minor and their sureties:</p> <ul style="list-style-type: none"> • Section 3182 (relating to grounds for removal). • Section 3183 (relating to procedure for and effect of removal). • Section 3184 (relating to discharge of personal representative and surety). • Section 5115 (relating to appointment of guardian in conveyance). • Section 5121 (relating to necessity, form and amount). • Section 5122 (relating to when bond not required). • Section 5123 (relating to requiring or changing amount of bond).

appointment of a successor guardian or conservator.

(c) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

SECTION 313. TEMPORARY SUBSTITUTE GUARDIAN.

(a) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian, the court, within five days after the appointment, shall inform the ward or guardian of the appointment.

(b) The court may remove a temporary substitute guardian at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of this [Act] concerning guardians apply to a temporary substitute guardian.

§ 3182. Grounds for removal.

The court shall have exclusive power to remove a personal representative when he: (1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or (2) (Deleted by amendment). (3) has become incapacitated to discharge the duties of his office because of sickness or physical or mental incapacity and his incapacity is likely to continue to the injury of the estate; or (4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or (4.1) has been charged with voluntary manslaughter or homicide, except homicide by vehicle, as set forth in sections 3155 (relating to persons entitled) and 3156 (relating to persons not qualified), provided that the removal shall not occur on these grounds if the charge has been dismissed, withdrawn or terminated by a verdict of not guilty; or (5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

§ 3183. Procedure for and effect of removal.

The court on its own motion may, and on the petition of any party in interest alleging adequate grounds for removal shall, order the personal representative to appear and show cause why he should not be removed, or, when necessary to protect the rights of creditors or parties in interest, may summarily remove him. Upon removal, the court may direct the grant of new letters testamentary or of administration by the register to the person entitled and may, by summary attachment of the person or other appropriate orders, provide for the security and delivery of the assets of the estate, together with all books, accounts and papers relating thereto. Any personal representative summarily removed under the provisions of this section may apply, by petition, to have the decree of removal vacated and to be reinstated, and, if the court shall vacate the decree of removal and reinstate him, it shall thereupon make any orders which may be appropriate to accomplish the reinstatement.

§ 3184. Discharge of personal representative and surety.

After confirmation of his final account and distribution to the parties entitled, a personal representative and his surety may be discharged by the court from future liability. The court may discharge only the surety from future liability, allowing the personal representative to continue without surety, upon condition that no further assets shall come into the control of the personal representative until he files another bond with sufficient surety, as required by the register.

§ 5115. Appointment of guardian in conveyance.

Any person, who makes a deed or gift inter vivos or exercises a right under an insurance or annuity policy to designate the beneficiary to receive the proceeds of such policy, may in such deed or in the instrument creating such gift or designating such beneficiary, appoint a guardian of the estate or interest of each beneficiary named therein who shall be a minor or otherwise incapacitated. Payment by an insurance company to the guardian of such beneficiary so appointed shall discharge the insurance company to the extent of such payment to the same effect as payment to an otherwise duly appointed and qualified guardian.

§ 5121. Necessity, form and amount.

Except as hereinafter provided, every guardian of the estate of a minor shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary, having regard to the value of the personal estate which will come into the control of the guardian, and conditioned in the following form: (1) When one guardian.--The condition of this obligation is, that if the said guardian shall well and truly administer the estate according to law, this obligation shall be void; but otherwise, it shall remain in force. (2) When two or more guardians.--The condition of this obligation is, that if the said guardians or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the guardian or guardians who shall so administer the estate; but otherwise, it shall remain in force.

§ 5122. When bond not required.

		<p>(a) Guardian named in conveyance.--No bond shall be required of a guardian appointed by or in accordance with the terms of a will, inter vivos instrument, or insurance contract as to the property acquired under the authority of such appointment, unless it is required by the conveyance, or unless the court, for cause shown, deems it advisable. (b) Corporate guardian.--No bond shall be required of a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court, for cause shown, deems it advisable. (c) Nonresident corporation.--A nonresident corporation or a national bank having its principal office out of the Commonwealth, otherwise qualified to act as guardian, in the discretion of the court, may be excused from giving bond. (d) Other cases.--In all other cases, the court may dispense with the requirement of a bond when, for cause shown, it finds that no bond is necessary.</p> <p>§ 5123. Requiring or changing amount of bond. The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.</p>
Reevaluating of Necessity of Guardian for Person	<p>STANDARD 3.3.16 REEVALUATION OF NECESSITY FOR GUARDIANSHIP. The probate court should adopt procedures for the periodic review of the necessity for continuing a guardianship. A request by the respondent for a review of the necessity for continuing a guardianship should be addressed promptly.</p>	<p>§ 5517. Adjudication of capacity and modification of existing orders. The court, after a hearing under section 5512.2 (relating to review hearing), may order that a person previously adjudged incapacitated is no longer incapacitated or the court may find that the incapacitated person has regained or lost capacity in certain areas in which case the court shall modify the existing guardianship order.</p>
Reevaluating of Necessity of Guardian for the Estate	<p>STANDARD 3.4.17 REEVALUATION OF NECESSITY FOR CONSERVATORSHIP. The probate court should adopt procedures for the periodic review of the necessity for continuing a conservatorship. A request by the respondent for a review of the necessity for continuing a conservatorship should be addressed promptly.</p>	
Enforcement	<p>STANDARD 3.3.17 ENFORCEMENT (a) The probate court should enforce its orders by appropriate means, including the imposition of sanctions. These may include suspension, contempt, removal, and appointment of a successor. (b) Where the court learns of a missing, neglected, or abused respondent, it should take immediate action to ensure the safety and welfare of that respondent.</p> <p>STANDARD 3.4.18 ENFORCEMENT (a) The probate court should enforce its orders by appropriate means, including the imposition of sanctions. These may include suspension, contempt, surcharge, removal, and appointment of a successor. (b) Where the respondent's assets are endangered, the court should consider suspending the conservator and appointing a special fiduciary to immediately take control over the respondent's assets.</p>	
Accounting		<p>§ 5531. When accounting filed.</p>

	<p>A guardian shall file an account of his administration whenever directed to do so by the court or may file an account at the termination of the guardianship, or at any other time or times authorized by the court.</p> <p>§ 5532. Where accounts filed. All accounts of guardians shall be filed in the office of the clerk.</p>
	<p>§ 5533. Notice, audits, reviews and distribution.The provisions concerning accounts, audits, reviews, distribution and rights of distributees in an incapacitated person's estate shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or minor's estate:Section 3503 (relating to notice to parties in interest).Section 3504 (relating to representation of parties in interest).References in Text. Section 3504, referred to in this section, is repealed. The subject matter is now contained in section 751(6).Section 3511 (relating to audits in counties having separate orphans' court division). Section 3512 (relating to audits in counties having no separate orphans' court division). Section 3513 (relating to statement of proposed distribution). Section 3514 (relating to confirmation of account and approval of proposed distribution). Section 3521 (relating to rehearing; relief granted). Section 3532(c) (relating to record of risk distributions). Section 3533 (relating to award upon final confirmation of account). Section 3534 (relating to distribution in kind). Section 3536 (relating to recording and registering decrees awarding real estate). Section 3544 (relating to liability of personal representative for interest). Section 3545 (relating to transcripts of balances due by personal representative). Section 5167 (relating to failure to present claim at audit).</p> <p>§ 3503. Notice to parties in interest. The personal representative shall give written notice of the filing of his account and of its call for audit or confirmation to every person known to the personal representative to have or assert an interest in the estate as beneficiary, heir, next of kin or claimant, unless the interest of such person has been satisfied or unless such person fails to respond to a demand under section 3532(b.1) (relating to at risk of personal representative).</p> <p>Section 3504 (relating to representation of parties in interest). References in Text. Section 3504, referred to in this section, is repealed. The subject matter is now contained in section 751(6). § 751. Appointment; purpose. The orphans' court division may appoint: (6) Representation of parties in interest.—Persons interested in an estate as beneficiary or heir, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, may be represented in a judicial proceeding by a guardian or trustee ad litem if the court deems necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person who is a minor or otherwise legally incapacitated, unborn or unascertained if there is a living person sui juris having a similar interest or if such person is or would be issue of a living ancestor sui juris and interested in the estate whose interest is not adverse to his. If the whereabouts of any beneficiary or heir is unknown or if there is doubt as to his existence, the court shall provide for service of notice and representation in the judicial proceeding as it deems proper.</p> <p>§ 3511. Audits in counties having separate orphans' court division. In any county having a separate orphans' court division, the account of a personal representative shall be examined and audited by the court without expense to the parties, except when all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.</p> <p>§ 3512. Audits in counties having no separate orphans' court division. In any county having no separate orphans' court division, the account of a personal representative shall be confirmed by the court or by the clerk, as local rules shall prescribe, if no objections are presented within a time fixed by general rule of court. If any party in interest shall object to the account, or shall request its reference to an auditor, the court, in its discretion, may appoint an auditor.</p> <p>§ 3513. Statement of proposed distribution. A personal representative filing an account shall file a statement of proposed distribution or a request that distribution be determined by the court or by an auditor, as local rules may prescribe. The statement of proposed</p>

distribution shall be in such form, and such notice thereof shall be given by advertisement or otherwise, and objections thereto may be made, as local rules prescribe.

§ 3514. Confirmation of account and approval of proposed distribution.

No account shall be confirmed, or statement of proposed distribution approved, until an adjudication or a decree of distribution is filed in conformity with local rules by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying or indicating by reference to the statement of proposed distribution the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each.

§ 3521. Rehearing; relief granted.

If any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require: Provided, That no such review shall impose liability on the personal representative as to any property which was distributed by him in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report, findings of fact and of law as to the entire controversy, in pursuance of which a final order may be made.

§ 3532. At risk of personal representative.

(c) Record of risk distributions.--The personal representative may file with the clerk receipts, releases and refunding agreements which he may have received from persons to whom he has made a risk distribution, or from other parties in interest. Receipts, releases and refunding agreements so filed shall be indexed under the name of the estate. Their acceptance shall not be construed as court approval of any act of administration or distribution therein reflected.

§ 3533. Award upon final confirmation of account.

A personal representative shall be relieved of liability with respect to all real and personal estate distributed in conformity with a decree of court or in accordance with rule of court after confirmation of an account. In making any such distribution, the personal representative shall not be entitled to demand refunding bonds from the distributees, except as provided by this title or as directed by the court.

§ 3534. Distribution in kind.

The court, for cause shown, may order the estate to be distributed in kind to the parties in interest, including fiduciaries. In such case, when there are two or more distributees, distribution may be made of undivided interests in real or personal estate or the personal representative or a distributee may request the court to divide, partition and allot the property, or to direct the sale of the property. If such a request is made, the court, after such notice as it shall direct, shall fairly divide, partition and allot the property among the distributees in proportion to their respective interests, or the court may direct the personal representative to sell at a sale confined to the distributees, or at a private or public sale not so confined, any property which cannot be so divided, partitioned or allotted.

§ 3536. Recording and registering decrees awarding real estate.

A certified copy of every adjudication or decree awarding real estate or an appropriate excerpt from either of them shall be recorded, at the expense of the estate, in the deed book in the office of the recorder of deeds of each county where the real estate so awarded lies, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of the distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no adjudication or decree awarding real estate subject to the payment of any sum by the distributee shall be recorded or registered unless there is offered for recording, concurrently therewith, written evidence of the payment of such sum.

§ 3544. Liability of personal representative for interest.

		<p>A personal representative who has committed a breach of duty with respect to estate assets shall, in the discretion of the court, be liable for interest, not exceeding the legal rate on such assets.</p> <p>§ 3545. Transcripts of balances due by personal representative.</p> <p>(a) Filing in common pleas.--The prothonotary of any court of common pleas shall, on demand of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court division has adjudged an amount to be due by a personal representative, and such transcript or extract shall constitute a judgment against the personal representative from the time of its filing with the same effect as if it had been obtained in an action in the trial or civil division of the court of common pleas. If the amount adjudged to be due by the personal representative shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly, and if the appellate court has increased the amount, the excess shall constitute a judgment against the personal representative from the time when the records are so changed.(b) Satisfaction and discharge.--If the orphans' court division shall order the personal representative to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.</p> <p>§ 5167. Failure to present claim at audit.</p> <p>(a) In general.--Any person who at the audit of a guardian's account has a claim which arose out of the administration of the estate of a minor or arises out of the distribution of a minor's estate or upon an accounting of the guardian of the estate of a minor, whether the minor is still a minor or has attained his majority, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against: (1) any property of the minor distributed pursuant to such audit or confirmation; (2) the minor, if then of full age; and (3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), any property of the minor awarded back to a continuing or succeeding guardian pursuant to such audit or confirmation.</p> <p>(b) Effect on lien or charge.--Nothing in subsection (a) of this section shall be construed as impairing any lien or charge on real or personal estate of the minor existing at the time of audit.</p>
<p>Final Accounting and Discharge</p>	<p>STANDARD 3.3.18 FINAL REPORT AND DISCHARGE</p> <p>Unless waived, a final report regarding the respondent's status should be promptly submitted to the probate court by the guardian. This report should be approved before the guardian is discharged.</p>	<p>§ 5533.1. Account of personal representative of deceased incompetent (Repealed).</p> <p>1984 Repeal. Section 5533.1 was repealed October 12, 1984, P.L.929, No.182, effective immediately.</p>
	<p>STANDARD 3.4.19 FINAL ACCOUNTING AND DISCHARGE</p> <p>Unless waived, a final accounting of the respondent's assets should be promptly submitted to the probate court by the conservator. This accounting should be approved before the conservator is discharged. In lieu of a final accounting, a conservator may close the conservatorship and be discharged upon filing a receipt for unexpended funds and a waiver and consent of interested persons.</p>	<p>SECTION 428. DEATH OF PROTECTED PERSON.</p> <p>[(a)] If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.</p> <p>[(b)] If a personal representative has not been appointed within 40 days after the death of a protected person and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to administer and distribute the decedent's estate. Upon application for an order conferring upon the conservator the powers of a personal representative, after notice given by the conservator to any person nominated as personal representative by any will of which the applicant is aware, the court may grant the application upon determining that there is no objection and endorse the letters of conservatorship to note that the formerly protected</p>

	<p>person is deceased and that the conservator has acquired all of the powers and duties of a personal representative.</p> <p>(c) The issuance of an order under this section has the effect of an order of appointment of a personal representative [as provided in Section 3-308 and Parts 6 through 10 of Article III of the Uniform Probate Code]. However, the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without retransfer to the conservator as personal representative.]</p>	
<p>Termination of Guardianship</p>	<p>SECTION 318. TERMINATION OR MODIFICATION OF GUARDIANSHIP.</p> <p>(a) A guardianship terminates upon the death of the ward or upon order of the court.</p> <p>(b) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.</p> <p>(c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the ward.</p>	
<p>Funeral Payment</p>		<p>§ 5537. Reserve for funeral.</p> <p>(a) In general.--The court may authorize the guardian to retain such assets as are deemed appropriate for the anticipated expense of the incapacitated person's funeral, including the cost of a burial lot or other resting place, which shall be exempt from all claims including claims of the Commonwealth. The court with notice thereof to the institution or person having custody of the incapacitated person may also authorize the guardian or another person to set aside such assets in the form of a savings account in a financial institution which account shall not be subject to escheat during the lifetime of the incapacitated person. Such assets may be disbursed by the guardian or person who set aside such assets or by the financial institution for such funeral expenses without further authorization or accounting. Any part of such assets not so disbursed shall constitute a part of the deceased incapacitated person's estate. Should the incapacitated person become capacitated or should such assets become excessive, the court, upon petition of any party in interest, may make such order as the circumstances shall require.</p> <p>(b) Definition.--As used in this section, "financial institution" includes a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a savings bank, a private bank and a national bank.</p>
<p>Confidentiality of Records</p>	<p>SECTION 307. CONFIDENTIALITY OF RECORDS.</p> <p>The written report of a [visitor] and any professional evaluation are confidential and must be sealed upon filing, but are available to:</p> <p>(1) the court;</p> <p>(2) the respondent without limitation as to use;</p>	

	<p>(3) the petitioner, the [visitor], and the petitioner's and respondent's lawyers, for purposes of the proceeding; and (4) other persons for such purposes as the court may order for good cause.</p> <p>SECTION 407. CONFIDENTIALITY OF RECORDS. The written report of a [visitor] and any professional evaluation are confidential and must be sealed upon filing, but are available to:</p> <p>(1) the court; (2) the respondent without limitation as to use; (3) the petitioner, the [visitor], and the petitioner's and respondent's lawyers, for purposes of the proceeding; and (4) other persons for such purposes as the court may order for good cause.</p>
<p>Transfers between courts/jurisdictions</p>	<p>STANDARD 3.5.1 COMMUNICATION AND COOPERATION BETWEEN COURTS Probate courts in different jurisdictions and states should communicate and cooperate to resolve guardianship disputes and related matters. Working in consultation with appropriate groups and organizations, probate courts should develop and implement rules, codes and standards of ethics, and administrative procedures that encourage communication and cooperation between and among courts.</p> <p>STANDARD 3.5.2 SCREENING AND REVIEW OF PETITION (a) As part of its review and screening of a petition for guardianship (see Standard 3.3.2), the probate court should determine that: (1) the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction or state; and, (2) for cases in which multiple states may have jurisdiction, the petition for guardianship has been filed in the court best suited to consider the matter. (b) When competing guardianship petitions are filed in two or more different courts with jurisdiction, the probate court in which the earliest petition is filed should, upon review of the petition, determine the proper venue for hearing the case.</p> <p>STANDARD 3.5.3 TRANSFER OF GUARDIANSHIP (a) Upon receipt of proper notice of an intended transfer of a guardianship, and a satisfactory final report of the guardian, and in the absence of meritorious objections by interested persons, the probate court should transfer the guardianship to a foreign jurisdiction within a reasonable amount of time. (b) The ward and all interested persons should be</p>

served with proper notice of the intended transfer and be informed of their right to file objections and to request a hearing on the petition.

(c) The final report of the guardian should contain sufficient information for the court to determine that the general plans for the ward and his or her assets in the foreign jurisdiction are reasonable and sufficient.

STANDARD 3.5.4 RECEIPT AND ACCEPTANCE OF A TRANSFERRED GUARDIANSHIP

Upon receipt of a properly executed request for a transfer of a guardianship certified by a foreign jurisdiction, subject to the provisions of Standard 3.5.5, the probate court should recognize the appointment and powers of the guardian and accept the guardianship under the terms as specified in the transferred guardianship order. Acceptance of the transferred guardianship can be made without a formal hearing unless one is requested by the court sua sponte or by motion of the ward or by any interested person named in the transfer documents. The court should notify the foreign court of its receipt and acceptance of the transfer.

STANDARD 3.5.5 INITIAL HEARING IN THE COURT ACCEPTING THE TRANSFERRED GUARDIANSHIP

(a) No later than ninety (90) days after acceptance of a transfer of guardianship, the probate court should conduct a review hearing of the guardianship during which it may modify the administrative procedures or requirements of the guardianship in accordance with local and state laws and procedures.

(b) Unless a change in the ward's circumstances warrants otherwise, the probate court should give effect to the determination of incapacity and recognize the appointment of the guardian and his or her duties, powers and responsibilities as specified in the transferred guardianship.

Guardianship Support Agencies

§ 5551. Guardianship support agencies; legislative intent.

The General Assembly finds that there is a need for agencies to provide services, as an alternative to guardianship, to individuals whose decision-making ability is impaired, to serve as guardian when an individual is found to need a guardian and no other person is willing and qualified to serve and to provide services to courts, guardians and others.

§ 5552. Services to individuals whose decision-making ability is impaired.

Guardianship support agencies shall provide guardianship services under this chapter. Such services shall include, but not be limited to:

- (1) Assistance to individuals in decision making, including financial management training.

	<p>(2) Assistance to individuals in securing and maintaining benefits and services. (3) Recruiting, training and maintaining a group of individuals to serve as representative payees or similar fiduciaries established by benefit-issuing agencies, agents pursuant to a power of attorney, and trustees.</p>
	<p>§ 5553. Guardianship services. (a) In general.--The guardianship support agency shall be available to serve as guardian of the estate or of the person, or both, of an incapacitated person when no less restrictive alternative will meet the needs of the individual and when no other person is willing and qualified to become guardian. The agency itself may be appointed guardian and no individual need be specified by the court. If appointed, the guardianship support agency shall have all of the powers and duties of a corporate fiduciary and shall not be required to post bond. (b) Powers and duties.--The guardianship support agency shall be treated the same as all other guardians in regard to appointment as guardian or successor or co-guardian, reporting, powers and duties, compensation and in all other respects. In addition to section 5521 (relating to provisions concerning powers, duties, and liabilities), a guardianship support agency shall have the power and duty to: (1) Invest the principal and income of incapacitated persons for whom it is the guardian of the estate. For this purpose, it may pool the principal and income, but shall maintain an individual account for each incapacitated person reflecting the person's participation therein. (2) Expend and, if necessary, advance costs necessary to administer guardianships for which it has been appointed guardian. (3) Apply for letters or otherwise administer the estate of any incapacitated person for whom it has been appointed guardian who dies during the guardianship when no one else is willing and qualified to serve.</p>
	<p>§ 5554. Services to courts, guardians and others.(a) Services to courts.-- Guardianship support agencies may be available to assist courts on request with reviewing petitions for appointment of a guardian, recommending alternatives to guardianship, investigating petitions, explaining petitions to respondents or reviewing reports and monitoring guardianship arrangements.(b) Services to guardians.--Guardianship support agencies may be available to assist guardians in filing reports, monitoring incapacitated persons and otherwise fulfilling their duties.(c) Services to petitioners and others.--Guardianship support agencies may be available to assist in the filing of petitions for guardianship, to provide information on available alternatives to potential petitioners, to locate and train individuals skilled in providing functional evaluations of alleged incapacitated persons and to perform such other duties as required.</p>
	<p>§ 5555. Costs and compensation. Recipients of service shall be charged for services based on their ability to pay. Guardianship support agencies shall make every effort to minimize costs, including minimizing personnel costs through the use of volunteers.</p>

1 | Appendix J – Alternatives to Guardianship

Ideally an individual has planned for the possibility of losing capacity and prepared a power of attorney or living will to clarify their preferences. Below is a list of alternatives to guardianship, some of which must be prepared when the individual is competent; others can be created after the person has diminished capacity¹.

Alternative	Effect of Alternative
Durable Power of Attorney (DPA)	A durable power of attorney allows a capable person to grant another person authority to act for him or her if incapacity occurs. DPAs usually affect property decision-making, but may also relate to health care.
Trust	A trust enables a person (“grantor”) to transfer ownership of property into a trust that is managed by a trustee for the benefit of the grantor. Trusts allow a trustee to manage property in the event of the grantor’s later incapacity.
Joint Ownership	Joint ownership of land or bank accounts may allow a co-owner to manage an incapacitated co-owner’s property.
Voluntary Guardianship Over Property	Allowed by only a few states, this enables a person who is worried about losing capacity to plan for property management with court oversight.
Daily Money Management (DMM)	Daily money management services help people with their financial affairs, including check depositing and writing, checkbook balancing, bill paying, insurance claim preparation, tax preparation and counseling, and public benefit applications and counseling. DMM is voluntary; a person must be capable of asking for or accepting services.
Representative Payee	A representative payee is appointed by a government agency to receive, manage and spend government benefits for a beneficiary. A beneficiary may request a representative payee, but usually the agency requires one when a beneficiary is incapable of managing benefits. The representative payee’s authority is limited to the government funds for which he or she is the payee.
Living Will	A living will gives directions about treatment desired if a person is terminally ill and near death or in a “persistent vegetative state,” and cannot make or communicate health care decision. Generally, laws limit the directions to those about the use, withdrawal or withholding of life-sustaining or life prolonging procedures.
Health Care Power of Attorney	A health care power of attorney enables a person to name an agent or proxy to make health care decisions if he or she becomes unable to do so. It may address any type of health care decision, and may include guidance to the agent about the type and extent of health care desires.
Health Care Advance Directive	A health care advance directive combines the health care power of attorney and living will into one document.
Health Care Surrogate or Family Consent Laws	Health care surrogate or family consent laws provide legal authority for certain groups of persons (e.g., spouses, children or parents) to make health care decisions for an adult who cannot make or communicate such decision due to disability, illness or injury, and who has not authorized someone else to do so.

¹ From: *Facts about Law and the Elderly*, DC: American Bar Association, copyright 1998.

**Capacity Questions included in
*Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers***

Sixteen Key Questions from the ABA-APA Handbook for Lawyers on assessing capacity

1. What are legal standards of diminished capacity?
2. What are clinical models of capacity?
3. What signs of diminished capacity should a lawyer be observing?
4. What mitigating factors should a lawyer take into account?
5. What legal elements should a lawyer consider?
6. What factors from ethical rules should a lawyer consider?
7. How might a lawyer categorize judgments about client capacity?
8. Should a lawyer use formal clinical assessment instruments?
9. What techniques can lawyers use to enhance client capacity?
10. What are the pros and cons of seeking an opinion of a clinician?
11. What if the client's ability to consent to a referral is unclear?
12. What are the benefits for the lawyer of a private consultation with a clinician?
13. How can a lawyer identify an appropriate clinician to make a capacity assessment?
14. What information should a lawyer provide to a clinician in making a referral?
15. What information should the lawyer look for in an assessment report?
16. How does a clinical capacity evaluation relate to the lawyer's judgment of capacity?

1 | Chart of Recommendations with key sources and responsibility

Recommendation #	Recommendation	Sources	Responsibility
SYSTEMS CHANGE RECOMMENDATIONS			
1.1	<p>A centralized Office of Guardianship Support should be established in Pennsylvania. This should be a conflict-free entity that supports guardians and protects the rights of all citizens under guardianship. This entity should be responsible to:</p> <ul style="list-style-type: none"> • Train guardians • Oversee a guardian registry • Monitor guardian compliance with reporting requirements • Develop and implement a statewide guardianship certification system and requirements • Conduct education and develop training materials • Provide education and support about resources and alternatives to guardianship • Support judges in their work and their understanding about alternatives through publications of desk reference materials on available alternatives. 	<p>JSGC 2007, CCJ/COSC 2010, PA Legislature Focus Groups, A40, A48, A55, A59, A60, L37, L41</p>	PA Legislature
1.2	<p>AAAs should receive guidance that articulates expectations and be provided with written policy on all aspects of guardianship. The guidance should include:</p> <ul style="list-style-type: none"> • Expectations about the role of the AAA in the guardianship process, • Recommendations around the investigation and research AAAs will be expected to do prior to and during the process of seeking guardianship, • Requirements around how to prevent conflicts of interest - specifically addressing shared or combined job responsibilities i.e. serving as Ombudsman and Guardian or Protective Services Worker and Ombudsman, • Requirement to include in AAA policies clear processes and procedures for how decisions are made to file for guardianship and by whom (lines of authority), and 	<p>Focus Groups, Key Informant Interviews, A21-22, A28, A34-37, A43-44, A47-50, L42</p>	PDA

2 | Chart of Recommendations with key sources and responsibility

Recommendation #	Recommendation	Sources	Responsibility
1.3	<ul style="list-style-type: none"> Requirement to specify how guardians will fulfill their obligations and be monitored by the AAA in service to ward(s). <p>The Long-Term Care Ombudsman staff and volunteers should be thoroughly trained in guardianship matters and provided guidance in their role as resident advocate for persons who have a guardian. Ombudsman should be empowered to report to courts instances of guardian misuse of power or neglect and should be advised to alert the court when a nursing facility closes or is unstable to help guardians and the court with relocation of residents.</p>	Focus Groups, Key Informant Interviews, A31	PDA
1.4	Develop and provide a required training on the Guardianship process for Nursing Home, Personal Care Home, Assisted Living, and LIFE administrators as part of initial licensure and/or as a continuing education topic.	Focus Groups, Key Informant Interviews	PDA in partnership with Dept. of Education and representative Associations
PRE-HEARING RECOMMENDATIONS			
<u>Training and Public Education</u>			
2.1	A curriculum should be developed and required for all Protective Services workers and supervisors. The training should include: formalized, standardized training in how to do capacity assessments, how to understand changes in capacity, and how to evaluate causes of incapacity. Existing guardianship training should be broadened so that more than just a basic overview is offered; the range of offerings should include more advanced practice guardianship discussions and guidance.	Focus Groups, Key Informant Interviews, A6, A10, L22-23, L31	PDA
2.2	The Commonwealth should partner with statewide healthcare associations to develop and implement a strategy to educate healthcare providers about the importance of and how to conduct early and routine cognitive function screenings for older patients.	Focus Groups	PDA, DOH, OLTL/DPW, PA Dept. of Education, PA Medical Society, Nursing Home/PCH/Assisted Living/Home Care Associations
2.3	The new Office of Guardianship Support should partner with appropriate state agencies to launch a statewide, public education campaign to educate older adults, family members, lawyers, judges, providers and the general public about what guardianship is and about what alternatives	WINGSPREAD 1988 – Recommendation II-D, WINGSPAN 2001 – 10, 11, and 57, JSGC 2007, A58	Office of Guardian Support in partnership with other state agencies/stakeholders

3 | Chart of Recommendations with key sources and responsibility

Recommendation #	Recommendation	Sources	Responsibility
2.4	<p>exist to pursuing guardianship. Education should stress the importance of incapacity planning.</p> <p>Petitioners and Respondents should be offered an opportunity for mediation in all cases but particularly when the guardianship petition arises within a context of family conflict and non-guardianship resolution would be adequate.</p>	WINGSPREAD 1988, L24a-b	Courts
<u>Diversion to Mediation</u>			
2.5	<p>A standardized, evidence-based, required capacity assessment tool should be developed and implemented for use by PS staff. The PS staff should then be trained in accordance with Recommendation #1. The assessment tool should include a person-centered functional capacity assessment that incorporates the context of the personal and cultural background of the individual being assessed.</p>	Focus Groups, Key Informant Interviews, A6	PDA
<u>Preliminary (Non-Expert) Capacity Assessments</u>			
2.6	<p>Attorneys should be educated about and encouraged to use the ABA – APA Tool for Attorneys in Determining Capacity.</p>	Key Informants, Focus Groups, L12	
<u>Expert Evaluations</u>			
2.7	<p>Additional funds to enable to AAAs to pay for timely expert evaluations should be sought through the appropriate channels.</p>	WINGSPAN 2001, Key Informants, A8, A18	PDA in coordination with DPW-OMHSAS
2.8	<p>Circumstances in which Medicaid and/or Medicare will pay for evaluations for older adults should be understood and implemented. Training should then be developed and training conducted for AAA staff on how to obtain Medicaid and Medicare covered evaluations for older adults who have Medicaid and/or Medicare.</p>	WINGSPAN 2001, A17	PDA in consultation with DPW, CMS
2.9	<p>The APA-ABA Tool for Expert Evaluations should be endorsed and encouraged to be used consistently in evaluating AIPs. This may be best implemented through partnering with appropriate professional membership organizations.</p>	WINGSPAN 2001, L12	PDA, Courts, PA Psychiatric/Medical Societies
2.10	<p>Expert evaluations should be required to be submitted to the court prior to the hearing.</p>	Key Informants, L13, L21	Courts

2.11	Expert evaluations should be accepted only from a licensed professional who knows the AIP and, if not, by someone who has taken sufficient time to meet the individual, get familiar with their family and circumstances, and reach a conclusion in the context of the individual's medical history, records of which the professional has reviewed.	Key Informants, Focus Groups	Courts
<u>Petition</u>			
2.12	All petitions should specify whether there is an actual or anticipated conflict such that adequate time, resources, and advanced preparation can be allocated for the hearing. Additionally, petitions should include a statement of what steps were taken to identify interested persons.	Key Informants, Lawyer Survey, A14, L24	Courts
<u>Guardian Selection</u>			
2.13	AAA petitions for guardianship should only recommend a proposed guardian that the AAA has fully screened and has determined to be qualified to serve as guardian. Further, the Petition should recommend a guardian that is in line with the AIP's understood preferences about who would serve as guardian or serve as decision-maker through prior executed estate planning or decision making documents.	WINGSPREAD 1988, III-E, A27-28, A31	PDA
<u>Guardian Screening – Pre-Hearing</u>			
2.14	Professional guardians should be required to have guardian certification and a State Board of Guardianship should be created to oversee the certification and ongoing compliance of guardians. Additionally, all professional and lay guardians should be subject to background check requirements that include such things as a credit check, judgment check, criminal background check, and child abuse clearance check. These items should be required to be attached to the petition for guardianship.	1987 House Select Committee Report, JSGC 2007, Key Informants, A26-28, A31, L22-23, L26	PA Legislature
<u>Less Restrictive Alternatives</u>			
2.15	Attorneys and judges should have access to complete information, including continuing legal education and continuing judicial education sessions, about less restrictive alternatives.	WINGSPREAD 1988 – Recommendation I-A, JSGC 2007, A58, L40	Courts in partnership with PBA

2.16	Further study should be conducted to evaluate whether sufficient funds are provided to local AAAs to provide the services that serve as alternatives to guardianship. To do this may require an evaluation of whether AAAs have sufficient funds and infrastructure to provide supports for families in crisis who need a temporary solution but end up in guardianship because of the absence of supports during the crisis.	Key Informants, Focus Groups, A41-42, A51-52, A54, L16, L19	PDA
2.17	The Pennsylvania Legislature should enact a requirement for registration of Powers of Attorney. A standard form for Powers of Attorney should be developed and implemented that incorporates necessary provisions for succession and success in the event of conflict.	Key Informants, Focus Groups, A54, L18-19	PA Legislature
2.18	A process or forum (mediation) within which to resolve problems with a POA so as to help avoid those guardianships that are filed as a consequence of problems with an agent under POA or with a POA instrument should be explored and implemented.	Key Informants, Focus Groups, L18, L19	PDA in partnership with PBA and other stakeholders
2.19	Options should be explored that address how to ensure that Nursing Facilities are completely evaluating all avenues to facilitate getting paid before they involve the AAA to pursue guardianship as a means of accessing the funds to pay for care.	Focus Groups, A45-46	PDA, OLTL/DPW
2.20	OPTIONS counseling should incorporate questions and information about incapacity planning. Likewise, these questions and information should be incorporated into the Aging Waiver and other LTSS programs' service coordination and an annual responsibility to visit the topic of incapacity planning to prevent the need for guardianship.	Key Informants, Focus Groups	PDA, OLTL/DPW

Court-Appointed Visitor

2.21 A requirement that there be appointed a court visitor in every case should be enacted and funded. The court-appointed visitor's role is to explain to the AIP the guardianship that is proposed, interview the AIP and proposed guardian, visit the AIP's dwelling, obtain information from physicians and anyone else known to have treated, advised, or assessed the AIP's relevant physical or mental condition, and make any other investigation necessary or directed. The visitor should file a report with the court that includes such things as a summary of the daily functions the AIP can manage without assistance, could manage with supportive services (including technology), and cannot manage; recommendations regarding the appropriateness of the guardianship, a statement about the qualifications of the proposed guardian as well as whether the AIP approves or disapproves of the proposed guardian, and a recommendation as to whether professional evaluation or further evaluation is necessary.

UGPPA 1997, A21

PA Legislature

Appointment of Counsel

2.22 A requirement that attorneys be appointed for AIPs in all cases, similar to how there is a right to counsel under the Mental Health Procedures Act should be enacted and funded. The AIP should not have to ask for an attorney nor should the Petitioner be relied upon to inform the court whether the AIP should have an attorney appointed.

WINGSPREAD 1988,
WINGSPAN 2001, UGPPA
1997, A21-22, L20

PA Legislature

Whether AIP should be in court

2.23 A requirement for the AIPs to participate in the guardianship hearing should be enacted and enforced. The statute should state that this requirement should be honored by either the AIPs' physical presence in court, the Court's conducting the hearing at the AIP's location, or (with the agreement of the AIP and/or the AIP's attorney) the AIPs participation through technology such as video-conference. Participation should only be excused by harm that cannot be mitigated by conducting the hearing at the AIP's location or through electronic participation of the AIP. Parties should be required to address these issues through motions prior to the hearing.

Key Informants, Focus
Groups, A22, L20

PA Legislature

Notice

2.24	An independent officer of the court dressed in plain clothes and trained to communicate and interact with elderly and disabled persons should serve the respondent personally and present the information to the respondent in the mode of communication that the respondent is most likely to understand.	WINGSPREAD 1988	Courts
2.25	The Pennsylvania Guardianship Statute should be amended to require that the Petitioner notify all family members of the guardianship petition being filed, and not just those that reside in the Commonwealth.	JSGC 2007, Key Informants, Focus Groups, A14	PA Legislature

HEARINGFacilitating AIP Presence in Court

3.1	For cases in which the AIP is a AAA client (through PS, Waiver, or other program), AAAs should be required to provide supports (transportation or supportive services) to facilitate participation of AIP in person at the hearing if it is held at the courthouse or in the AIP's location and to provide the technology for electronic participation, if the AIP will not be physically attending the hearing.	CARIE/statewide Practice in work with Senior Victims, A22	PDA
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Evidence of No Less Restrictive Alternatives

3.2	During the hearing, a finding should be made on less restrictive alternatives; a conclusion should be reached that either less restrictive alternatives have been attempted and unsuccessful and/or there is clear and convincing evidence that no less restrictive alternatives to guardianship that can be pursued. This should not be an issue that is plead but not proven.	NPCS 1999, WINGSPREAD 1988, A54, A56, L16, L18	Courts
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Expert Witness Testimony of Incapacity

3.3	Live testimony of the Expert Witness should be required at all hearings in which the AIP's capacity is contested.	Key Informants, A13, A55, L13	Courts
3.4	Video technology should be utilized to facilitate live participation of Expert Witnesses in a manner that may minimize the cost of participation.	Key Informants	Courts

Public v. Private Hearings

3.5 Consistent policies should be adopted to ensure that guardianship hearings are private and respectful of the AIP and that they not take place in a courtroom with strangers present. Key Informants AOPC, Courts

On or off the record

3.6 The Courts should ensure that the entire guardianship hearing is on the record. Key Informants, L20 Courts

Confidentiality of Records

3.7 Confidentiality of records related to guardianship should be studied Key Informants, focus groups PA legislature, Courts

Guardian Selection

3.8 A guardian in line with the ward's preferences should be appointed whenever possible. WINGSPREAD 1988 Recommendation III-E Courts

Guardians' Qualifications

3.9 The proposed guardian should be required to be present at the guardianship hearing and should be subject to questioning by both parties and the Court as to the qualifications presented in the Petition and as to the proposed guardian's understanding of all the duties and responsibilities to the ward and to the Court. Key Informants, A28, A30, L22, L27 Courts

Training and Information for Guardians

3.10 The new Office of Guardianship Support should facilitate a collaboration of the Courts, the PDA, the PA Bar Association, and the other interested stakeholders in developing a model orientation and training programs for guardians, following appointment, which must be completed within a fixed number of days (e.g. 30 days) from appointment. The Model guardian training and orientation can include handbooks, online interactive materials, and videos. JSGC 2007, NPCS 3.3.13, CCI/COSC 2010, A31, L23 Office Guardian Support in collaboration with PDA, PBA and other stakeholders

Training for Attorneys and Judges

3.11 The Courts should instruct respondents' attorneys as to their roles and responsibilities. The Office of Guardianship Support should collaborate with the PDA, the PA Bar Association, and the Courts to develop substantive training for attorneys and judges around guardianship issues and the ABA-APA Handbooks available to aid in determining capacity.

WINGSPREAD 1988,
CCJ/COSC 2010

Office Guardian Support in collaboration with PDA, PBA and other stakeholders

Order

3.12 Template orders should be utilized that address a menu of functional areas, with each area requiring specific proof to establish lack of capacity, all of which would have to be sufficiently proven in the hearing in order for a plenary guardianship to be granted.

2004 WINGSPAN
Implementation
Conference, Action Step
39¹-1, A6-8, L-12

Courts

Bonds

3.13 A requirement should be established that all guardians of the estate, including professional and lay guardians, should be subject to bonding requirements. Written requirements for setting the size of each bond should be developed and enacted. In accordance with the UGPPA model law requirement, the bond should "be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. In place of sureties on a bond, the court may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property."

WINGSPAN 2001 #60, NPCS
3.4.14, UPGGA 1997
(Section 415), L30, L41

PA Legislature, Courts

POST-APPOINTMENT

Capacity Re-evaluations and Review Hearings

4.1 A requirement that capacity be reevaluated annually and at any time the needs change prior to the annual renewal date should be established. Such re-evaluation should be filed with the court and guardians should request a review hearing if the reevaluation indicates an improvement in capacity.

Focus Groups, L14-15

PA Legislature

<p>4.2</p> <p>Further study should explore whether there should be fixed review hearings or whether they should be triggered only upon a capacity re-evaluation finding a need for Court review. Specifically, the study could evaluate whether courts would be more inclined to grant limited guardianships if they know the matter will be returning annually for review and possible adjustment to the guardianship order.</p>	<p>NPCS 3.3.16 (recommending period review by the court), 1987 House Select Committee (recommending time limited guardianships)</p>	<p>AOPC, Courts in collaboration with key stakeholders</p>
<p style="text-align: center;"><u>Standards for Guardians' Performance</u></p>		
<p>4.3</p> <p>The new Office of Guardian Support should facilitate collaboration between the Courts, the PDA, the PA Bar Association, the PA Legislature, and other interested stakeholders in developing and implementing written standards or rules of practice and procedure for guardians. These should:</p> <ul style="list-style-type: none"> • include ethical obligations and should be applicable to all professional and lay guardians; and • specify that a guardian should “exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.” 	<p>WINGSPREAD 1988 – Recommendation I-B, IV-C, and V-D, WINGSPAN 2001 – Recommendation #45, National WINGSPAN Implementation Session 2004, Third National Guardianship Summit 2011, Conference of State Court Administrators 2010, UGPPA 314, A28, A31, A48, A57, L26, L31-33, L40</p>	<p>Office of Guardian Support in collaboration with the courts, PDA, PBA, PA Legislature and other stakeholders</p>
<p>Additionally:</p> <ul style="list-style-type: none"> • a guardian should become and/or remain personally acquainted with the ward; • maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, desires, personal values, and physical and mental health; and • the guardian should be required to consider the expressed desires and personal values of the ward to the extent known to the guardian and to, at all time, act in the ward's best interest and exercise reasonable care, diligence, and prudence. 		
<p>4.4</p> <p>A prohibition on conflicts of interest such that guardians and guardianship agencies not directly provide services such as housing, medical care, and social services to their own wards, absent court approval and monitoring should be enacted and enforced.</p>	<p>WINGSPREAD 1988 – Recommendation VI-A, WINGSPAN 2001</p>	<p>PA Legislature</p>

Guardian Duties and Responsibilities

<p>4.5 Guardians should be required to submit, along with the inventory, a written plan that identifies the ward's needs and how they will be met. The plan should be created through a person-centered process and should identify short-term and long-term needs and goals. For guardians of the person, this will include personal needs. For guardians of the estate, this will include the guardians plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan(s) should be based on the actual needs and take into consideration the best interest of the person. The guardian of the estate's plan for the ward should include steps to develop or restore the person's ability to manage his/her property. These plans should be updated annually.</p>	<p>Third National Guardianship Summit 2011, UGPPA 1997 (Section 418), National WINGSPAN Implementation Session 2004, A47-48, L31, L40-41</p>	<p>Courts</p>
<p>4.6 Requirements should be enacted that annual reports include the guardian's opinion as to the adequacy of the ward's care, a summary of the guardian's visits with the ward and the guardian's activities on the ward's behalf and the extent to which the ward has participated in decision making, if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest; and plans for future care.</p>	<p>UGPPA 1997 (Section 317), A47-48, A50-51, L32-33, L40-41</p>	<p>PA Legislature, Courts</p>
<p>4.7 The court order appointing the guardian should detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the respondent. The court order should inform the guardian what the guardian's responsibilities are, what requirements are to be applied in making decisions and caring for the ward, and what forms the guardian must file with the court and when.</p>	<p>NPCS 3.3.12, Key Informants, A26-28, A32, A51, L22-23, L27, L31-33, L40-41</p>	<p>Courts</p>

4.8	The court order should require guardians to cooperate with other surrogate decision-makers (such as any other guardian, conservator, agent under a power of attorney, health care proxy, trustee, VA fiduciary and representative payee for the ward.	Third National Guardianship Summit 2011, A32, A54, A57, L31	Courts
4.9	The Courts should require guardians of the estate to keep records of the administration of the estate and to make them available for examination on reasonable request of an interested person and should report on the assets under control and a list of receipts, disbursements, and distributions during the reporting period (PA Statute only requires this for income).	UGPPA 1997, A35, A40, A47-48, L22-23, L27, L35-36, L41	Courts
<u>Guardian Support</u>			
4.10	The new Office of Guardianship Support should develop programs for ongoing training and assistance of guardians in meeting their duties to their wards and to the Court.	WINGSPREAD 1988 – Recommendation V-A, WINGSPAN 2001, A27-28, A31, A51, L22-23, L40-41	Office of Guardian Support in collaboration with stakeholders
<u>Guardians' Fees</u>			
4.11	The Guardianship Statute should be revised to indicate that guardians' fees may not be paid from income or principal unless approved by the Court and to establish parameters for what is reasonable compensation based on elements such as those recommended by the Third National Guardianship Summit (2011).	JSGC 2007, Third National Guardianship Summit 2011	PA Legislature
<u>Involvement of the LTC Ombudsman</u>			
4.12	The Long-Term Care Ombudsman program should include training and materials on the proper role of the ombudsman in advocating for residents with guardians in conformance with Federal law.	Key Informants, Focus Groups, A31	PDA
4.13	The AAA should ensure that the Ombudsman is conflict-free and is able to advocate on behalf of long term care consumers regardless of whether they have a guardian.	Focus Groups, A31	PDA

Monitoring

4.14 All due dates for the guardian to file required reports should be monitored and enforced. As in several Pennsylvania counties, courts should have electronic tickler systems that dispatch notices as soon as a guardian is late. The notices should inform the guardian that failure to file the required reports may lead to actions by the court such as, but not limited to: an order to show cause, a review hearing, sanctions (including financial penalties), a finding of contempt, or termination of appointment as guardian.

WINGSPREAD 1988 –
Recommendation V-B,
NPCS 1999 3.3.17,
CCJ/COSC 2010, A35-37,
A55, L34-36

Courts

4.15 The frequency and quality of report reviews should be increased and supplemental means such as volunteers, review boards and investigators to verify the contents of the report and the circumstances of the ward should be employed. The Office of Guardianship Support should be charged with helping to identify and train volunteers to assist with report reviews.

WINGSPREAD 1988 –
Recommendation V-B, A37,
A47, L34-36

Courts

4.16 A standardized guardian, ward, and report monitoring system should be enacted and funded. This should be built upon the best practices in staff-run monitoring in Orphans' courts and the successful elements of the volunteer monitoring programs run by the Orphans' Courts in Chester, Dauphin, York, and Westmoreland counties such as annual or more frequent visits to wards and guardians, pro-bono accountant reviews of financial reports, and volunteer/monitor reporting forms that get filed with the court.

Key Informants, A35-37,
A47, A50-51, L37, L41

PA Legislature in consultation
with AOPC, Courts, PBA, PDA

4.17 Data collection requirements (similar to Act 24 requirements) should be required and funded that will enable the AOPC to provide a clearinghouse for the number and nature of active guardianships.

JSGC 2007, CCJ/COSC 2010

PA Legislature

Penalties for Guardians

4.18 The Guardianship Statute should be amended to adopt language that makes failure of a guardian to file a timely report or fulfill other requirements a breach of duty and that imposes and authorizes penalties for a breach of duty.

JSGC 2007, A37, L22

PA Legislature

**CARIE Study Team
Biographical Information**

**Diane A. Menio
Co-Principal Investigator**

Diane Menio is the Executive Director of the Center for Advocacy for the Rights and Interests of the Elderly (CARIE) where she has worked since 1989. Ms. Menio has trained extensively in the detection and prevention of abuse in the home as well as in institutional settings and other issues effecting older adults. In addition, she has consulted with the PA Department of Education and the Health Care Financing Administration to develop abuse prevention training for practitioners. She has co-authored several articles on elder abuse and neglect and is a co-author of the book, "Abuse Proofing Your Facility." She received a Master of Science in Gerontology from St. Joseph's University in Philadelphia. Ms. Menio serves on numerous boards and workgroups. In 2007 she received the Advocate of the Year Award from the SeniorLAW Center and in 2009, the United Way of Southeastern PA's Impact in Health Award. She has been an adjunct professor at St. Joseph's University Gerontology program and at the School of Social Policy and Practice at the University of Pennsylvania.

**Alissa Halperin, Esq.
Co-Principal Investigator**

Ms. Halperin received her B.A. from the University of Washington in Seattle and her J.D. from Villanova University School of Law. Ms. Halperin is principal consultant at Halperin Butera. She has most recently consulted for the Centers for Medicare and Medicaid Services in the development of guidance to states on MLTSS; the New York State Department of Health in the development of its proposal to CMS to integrate care for dual eligibles; the Pennsylvania Office of Long Term Living on integrated care, PACE, and other LTSS program policy development; and the Pennsylvania Department of Aging on outreach to low income Medicare beneficiaries. Ms. Halperin has also done work for the Pennsylvania Homecare Association, the Center for Medicare Advocacy, and a handful of other state and national non-profit organizations and associations. From 1999 to 2009, Ms. Halperin worked at the Pennsylvania Health Law Project, a non-profit public interest law firm that provides free legal assistance to Pennsylvania elderly, persons with disabilities, and lower income individuals regarding access to and eligibility for publicly funded healthcare and long term care. Ms. Halperin began at PHLP as a public interest fellow funded by the Independence Foundation, then served as Managing Attorney, and finally as Senior Attorney and Deputy Director of Policy Advocacy. Ms. Halperin's work has focused on healthcare and long-term care access and coverage issues for lower-income seniors and adults with disabilities. While at PHLP, Ms. Halperin successfully spearheaded major benefits enrollment outreach and policy advocacy campaigns, engaging stakeholders as partners throughout.

Jennifer W. Campbell, Ph.D.

Jennifer Campbell holds a Ph.D. in Social Work and Social Research from Bryn Mawr College, as well as a Master's degree in Social Work from the State University of New York at Stony Brook and a Master's in Education and Gerontology from the University of Michigan at Ann Arbor. She graduated from Sarah Lawrence College. A 30-year professional advocate for senior citizens, Campbell has led the evaluation of numerous aging-demonstration programs, including ones funded by Robert Wood Johnson Foundation, Pew Charitable Trusts and the Administration on Aging. She is currently the national evaluator on the Grantmakers In Aging (GIA) EngAGEMENT initiative and has been the evaluative researcher on a number of policy research initiatives. In addition to her evaluation work, her areas of interest include: exploring new service delivery models to support older adults remaining in their communities; utilizing nurse practitioners to deliver primary care for homebound seniors; training long term care staff to detect and respond to issues of elder abuse; guardianship and building coalitions to address the needs of seniors. Dr. Campbell divides her time between consulting for non-profit organizations and teaching at Bryn Mawr College's Graduate School of Social Work and Social Research.

Karen Reeve, MSG, MPA

Karen Reeve began her work in aging as nurses' aide. She earned masters degrees in gerontology and public administration from the University of Southern California. For 10 years she worked to support dementia caregivers, including starting the Los Angeles Chapter of the Alzheimer's Association, directing caregiver support demonstration projects at the Philadelphia Geriatric Center and Philadelphia Corporation for Aging, and helping to start PA's Family Caregiver Support Program. From 1991-2004 Ms. Reeve was CEO of Mid County Senior Services and in 1997 she merged Mid County Senior Services with Main Line Health System. She was principal investigator of an AoA-funded project which demonstrated the benefits of care management to family caregivers using adult day services. From 2004-2007 Ms. Reeve was director of Better Jobs Better Care – PA (BJBC-PA), a project funded by The Robert Wood Johnson Foundation and Atlantic Philanthropies to strengthen the direct care workforce. As director of Senior Services at Jewish Family and Children's Service from 2008-2011, Ms. Reeve led the social work staff to serve 2,500 frail elderly with in-home care management and home support services, special services for Holocaust survivors, and NORC support programs in 10 communities. She is currently providing consulting to aging services.

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