

GUARDIANSHIP LAW IN PENNSYLVANIA

**REPORT OF THE
WORKING GROUP ON GUARDIANSHIPS**

MAY 2007



General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
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The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations and conclusions contained in this report.

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TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Working Group on Guardianships, which has been completed pursuant to House Resolution 131 of 2005, sponsored by Representative Glen R. Grell. This report contains proposed amendments and official comments to the Probate, Estates and Fiduciaries Code (Title 20 of the Pennsylvania Consolidated Statutes), along with background material on guardianship law, data collection regarding guardianships and policy considerations. The recommendations and information contained in this report represent the consensus of the working group gained after extensive analysis and deliberation.

On behalf of the General Assembly, I thank the members of the working group for contributing their valuable time and expertise in the considerable effort to improve guardianship law and practices in Pennsylvania. I commend the working group for its commitment to develop legislation and assist in the legislative process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger A. Madigan".

Roger A. Madigan
Chair

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INTRODUCTION

House Resolution 131 of 2005 (Printer's No. 1861)¹ directed the Joint State Government Commission (JSGC) to review current guardianship statutes and programs and make findings and recommendations on their effectiveness in meeting the needs of vulnerable incapacitated persons. The JSGC formed the Working Group on Guardianships, and Representative Glen R. Grell, the prime sponsor of House Resolution 131, became the Chair. The working group consisted of professionals with expertise in guardianship law, including attorneys, judges, representatives of the court system, guardianship providers, advocates for disabled and older individuals, law professors and representatives from Area Agencies on Aging (AAAs), the Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA), the Pennsylvania Association of County Affiliated Homes (PACAH), and the Pennsylvania Departments of Aging, Health and Public Welfare.

On January 26, 2006, the working group held its organizational meeting to discuss the scope of the study and the issues for consideration. The working group then held six subsequent meetings, on April 27, 2006; July 20, 2006; September 28, 2006; November 16, 2006; January 19, 2007 and March 28, 2007. Throughout its deliberations, the working group reviewed and discussed data and other background information, statutory law,² bills before the General Assembly,³ case law, the JSGC report of May 1996,⁴ the Uniform Guardianship and Protective Proceedings Act,⁵ and guardianship and court practices across the Commonwealth. In addition, the working group members shared their expertise and personal experiences regarding guardianship practices and procedures.

¹ *Infra*, Appendix (pages 99-101) for House Resolution 131 of 2005.

² The working group focused on Chapter 55 (incapacitated persons) of Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) as a basis for discussion of guardianship law. However, special attention was also given to 20 Pa.C.S. Chapter 56 (powers of attorney) and other 20 Pa.C.S. provisions.

³ The working group focused on two pieces of legislation: House Bill 1647 of 2001 and House Bill 2269 of 2005. House Bill 1647, on which no legislative action was taken, set forth the Commonwealth Guardianship Office Act and created a guardianship office to serve as guardian for certain incapacitated persons (i.e., a public guardian). House Bill 2269, which passed the House on October 24, 2006 but was not acted upon by the Senate, set forth the Adult Protective Services Act and provided for the protection of abused, neglected, exploited or abandoned adults, through a statutory framework for protective services and a uniform statewide reporting and investigative system for such adults.

⁴ Report of the Subcommittee on Guardianships and Powers of Attorney of the Task Force and Advisory Committee on Decedents' Estates Laws (JSGC, May 1996), which recommended amendments to 20 Pa.C.S. Chapter 55.

⁵ The Uniform Guardianship and Protective Proceedings Act (1997) was approved and recommended by the National Conference of Commissioners on Uniform State Laws.

This report reflects the findings and recommendations of the working group, along with proposed legislation and official comments.⁶ The official comments may be used in determining the intent of the General Assembly.⁷ This report also contains background information on the AAAs and PACAH, including the surveys distributed by the JSGC.⁸ Finally, this report contains working group policy considerations regarding data collection, the monitoring of guardians, funding, education and training, government oversight, access to records and reporting requirements.⁹

⁶ *Infra*, “Summary of Statutory Recommendations” (pages 19-21) and “Proposed Amendments to 20 Pa.C.S. Chapter 55” (pages 23-47). Transitional language for the proposed legislation follows on page 49.

⁷ 1 Pa.C.S. § 1939.

⁸ *Infra*, pages 51-77 for information regarding the AAAs and pages 79-98 for information regarding PACAH.

⁹ *Infra*, pages 5-17.

GUARDIANSHIP LAW IN PENNSYLVANIA

Plenary and Limited Guardianships

Chapter 55 (incapacitated persons) of Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) governs guardianship procedures in Pennsylvania. Under § 5512.1(a) (determination of incapacity and appointment of guardian), the court shall consider the nature of any condition or disability that impairs an individual's capacity to make and communicate decisions, the extent of the individual's incapacity, the individual's need for guardianship services, the type of guardianship needed and the duration of the guardianship. The court may appoint a limited guardian of the person, a limited guardian of the estate, a plenary guardian of the person or a plenary guardian of the estate.¹⁰ According to § 5512.1(a)(6), the court shall prefer limited guardianship, consistent with the principle that the court should order the least restrictive alternative available.

Act 24 of 1992,¹¹ which amended 20 Pa.C.S. Chapter 55 to authorize both guardianship support agencies and limited guardianships, was intended to make greater use of limited guardianships and reduce the number of plenary guardianships. At the time, the concept of the limited guardianship was viewed as a significant reform.

Limited guardianships serve several useful purposes. They are appropriate in cases involving individuals under the age of 60 who have a stable disability. In addition, a person may be more willing to serve as a limited guardian, knowing that he or she does not need to make all the decisions for an incapacitated individual.

Although Act 24's provisions regarding limited guardianships were well-intentioned for public policy reasons, they have had minimal practical effect. The vast majority of all guardianships are still plenary guardianships.¹²

¹⁰ Upon a finding that the person is partially incapacitated and in need of guardianship services, the court may appoint (1) a limited guardian of the person, with powers consistent with the court's finding of limitations, which may include, among other things, the general care, maintenance and custody of the person; or (2) 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 is assigned powers and duties. 20 Pa.C.S. § 5512.1(b) and (d). Only upon a finding that the person is totally incapacitated and in need of plenary guardianship services may the court appoint a plenary guardian of the person or plenary guardian of the estate. 20 Pa.C.S. § 5512.1(c) and (e).

¹¹ Act of April 16, 1992 (P.L.108, No.24).

¹² According to data provided by the Administrative Office of Pennsylvania Courts in May 2005, 92.4 percent of approved guardianship petitions were plenary while 7.6 percent were limited for the years 2000 through 2004.

Several reasons exist why the courts favor plenary guardianships over limited guardianships. First, limited guardianships may lead to confusion over who makes what decisions for the incapacitated individual. Second, it is very difficult, if not impossible, for a court to precisely draft an order that includes every possible circumstance that may occur and decide whether or not the guardian has the authority to act in each circumstance. Third, many guardianship cases brought before the court involve alleged incapacitated individuals with ongoing or progressive dementia, where the individual's medical condition that is causing the incapacity will worsen in the future (such as in the case of Alzheimer's Disease). If the court orders a limited guardianship for these cases, it is very likely that a subsequent guardianship hearing will be necessary to convert the limited guardianship into a plenary guardianship. This is another time-consuming and costly process.

The Need for Guardianships

Pennsylvania has the third highest state percentage of residents who are age 65 and older.¹³ In addition, it is projected that this percentage will increase by the year 2015.¹⁴

Consequently, there is a growing need for individuals to execute, while they are competent to do so, legal documents that provide for their future care and name alternate decision-makers if they become incapacitated.¹⁵ In the absence of these types of documents, guardianships for the individuals may become necessary. With guardianships, the costs of caring for such individuals necessarily increase, and the individuals lose the ability to select whom they want to act on their behalf.¹⁶

In addition to the aging population, guardianship issues also affect individuals with disabilities. First, because of improvements in health care, these individuals are living longer and may outlive the relatives who are taking care of them. Second, this segment of the population may not possess the requisite capacity to execute legal documents that serve as an alternative to guardianship.

¹³ U.S. Census Bureau, *Statistical Abstract of the United States: 2007*. See <http://www.census.gov/prod/2006pubs/07statab/pop.pdf> (last visited April 24, 2007), Section 1 (Population), Table 21 (Resident Population by Age and State: 2005). Approximately 15.2 percent of Pennsylvania's 12.4 million residents are age 65 and older. Only Florida (16.8 percent) and West Virginia (15.3 percent) exceed Pennsylvania's percentage.

¹⁴ *Id.*, Table 22 (Resident Population by Age and State -- Projections: 2010 and 2015). The percentage of Pennsylvania residents who are age 65 and older is projected to increase to 16.9 percent.

¹⁵ Examples of such documents include a power of attorney, health care power of attorney, revocable or living trust, and living will.

¹⁶ There is no prohibition against a guardianship support agency under 20 Pa.C.S. Chapter 55 Subchapter F becoming an agent for an individual under a power of attorney.

Unfortunately, the guardianship statute can be misused. For example, some individuals may seek a guardianship for an alleged incapacitated individual in order to solve a problem that a guardian cannot solve, such as requiring the individual to take his or her medication. These cases expend limited judicial resources.

One of the most important considerations is how Pennsylvania can reduce the number of individuals needing guardianships. Guardianships are a last resort, when all other options have been employed. To that end, public and private organizations offer services that may become an important alternative to limited or plenary guardianships. If the AAAs, for example, did not help certain individuals with decision-making, guardianship cases would likely increase. If an organization, with necessary human and financial resources, is available to assist these individuals, guardianship services will likely not be required.¹⁷

AAAs serve as a guardian or contract out for guardianship services for approximately 721 individuals in Pennsylvania.¹⁸ However, the assumption that Pennsylvania is currently meeting all guardianship needs is not necessarily correct. For example, some courts will not consider a guardianship petition unless an individual or agency is designated as guardian in the petition. Therefore, the full extent of the need for guardianships is not immediately evident. In addition, there are occasions where there is a shortage of individuals or organizations willing to petition the court for a guardianship, rather than a shortage of people willing to serve as guardian.

Data Collection and Guardianship Reports

Because of the potentially rising need for guardianships, it is important to determine the number of current guardianships as a predictor of future needs and future costs for the Commonwealth. The JSGC attempted to gather data on the total number of guardianships in Pennsylvania and began by contacting the Administrative Office of Pennsylvania Courts (AOPC). According to 20 Pa.C.S. § 5512.3, courts across the Commonwealth are required to annually file with the AOPC “a statistical and descriptive report to assist in evaluating the operation and costs of the guardianship system.”

At the time that the JSGC contacted the AOPC, however, the JSGC learned that the AOPC only collected the number of guardianship petitions filed and the number of guardianship petitions approved every year; it could not determine the total number of

¹⁷ See, e.g., *In re Peery*, 727 A.2d 539 (Pa. 1999). It should also be noted that individuals under the care of the Department of Public Welfare in state facilities or group homes receive decision-making assistance from the directors of those facilities, if no one else is available to make those decisions.

¹⁸ JSGC surveys of the AAAs (August - October 2005).

active guardianships in any given year. The AOPC forms, which the courts completed pursuant to § 5512.3, required the courts to supply total numbers of guardianship petitions filed and petitions approved in their respective judicial district for each of the following categories:

- (1) The age of the alleged incapacitated person.
- (2) The type of petitioner for the guardianship case (institution, agency, relative, other organization or other individual).
- (3) The relief requested (limited or plenary guardianship, and whether the case involves guardianship of the estate, of the person or of the estate and person and whether it is regular or emergency).
- (4) The approved petitions for the categories under paragraphs (2) and (3).
- (5) Reimbursement for evaluation costs and counsel fees paid by the county.

The JSGC determined that the data currently collected through the AOPC was not specific enough for purposes of analysis under House Resolution 131 (for example, the data do not specify whether the guardianship is terminated or whether multiple petitions were filed regarding the same individual). Therefore, the JSGC surveyed court administrators in the judicial districts across the Commonwealth to determine the total number of current guardianships based on annual reports filed by guardians pursuant to 20 Pa.C.S. § 5521 (provisions concerning powers, duties and liabilities).

Section 5521(c)(1) requires each guardian of an incapacitated person to file with the court an annual report attesting to the following:

- (1) For a guardian of the estate:
 - (i) Current principal and how it is invested.
 - (ii) Current income.
 - (iii) Expenditures of principal and income since the last guardianship report.
 - (iv) The needs of the incapacitated person for which the guardian has provided since the last report.
- (2) For a guardian of the person:
 - (i) The current address and type of placement of the incapacitated person.
 - (ii) Major medical or mental problems of the incapacitated person.
 - (iii) A brief description of the incapacitated person's living arrangements and the social, medical, psychological and other support services that the incapacitated person is receiving.

- (iv) The opinion of the guardian as to whether the guardianship should continue or be terminated or modified, along with reasons for the opinion.
- (v) The number and length of times the guardian visited the incapacitated person in the past year.

In addition, § 5521(c)(2) requires the guardian to file a final report with the court within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders.

The JSGC learned that § 5521(c) is not uniformly enforced across Pennsylvania, and many of the court administrators were unable to provide the JSGC with an accurate number of open guardianship cases in their judicial district. For example, the court administrators generally only collect the total number of guardianship petitions and the total number of guardians appointed. Several court administrators commented that they do not have adequate resources or personnel to fulfill additional data requests by the JSGC. In addition, the percentage of guardians actually filing the annual guardianship report or the death notice is unknown. Therefore, the number of open guardianship cases cannot accurately be determined. There is currently no specific statutory fine or punishment for failing to file a guardianship report under § 5521(c), although the court can *sua sponte* order a guardian to comply with 20 Pa.C.S. § 5521(c).

Working Group Policy Considerations

The working group agreed that there should be a uniform process of collecting data through the annual report. It discussed several possible solutions within the present system regarding how courts can provide more detailed information on the number of open guardianship cases. First, the courts could cross-reference the active guardianship lists with a death index or other information from the Division of Vital Records of the Department of Health. Second, the courts could hire temporary workers on an ad hoc basis to review the annual guardianship reports and compile data. Third, the courts could make a change in their computer software to generate more detailed information from their computerized filing system. However, the working group acknowledged that some counties may not use sophisticated computer systems.

Working Group Statutory Recommendations

- (1) The working group considered an amendment to § 5512.3, requiring courts to report more detailed data on the total number of open guardianship cases.

- (2) The working group agreed that § 5521(c) should be amended to add a new paragraph explicitly stating that the failure of a guardian to file a timely report is considered a breach of duty.

Data Collection and JSGC Surveys

The JSGC also surveyed both the local AAAs and members of PACAH in order to gain practical statistical information and input regarding the current guardianship system.¹⁹

AAA Survey

The AAAs were asked the following:

- (1) The number of incapacitated individuals for whom they serve as guardian.
- (2) Whether or not they routinely petition for guardianship.
- (3) The guardianship services they provide.
- (4) Whether they serve under a power of attorney.
- (5) Their general observations on the effectiveness of current statutes, programs and services in meeting the current demands for guardianships in their area.
- (6) Their recommendations to improve the current guardianship system.

Although the AAAs are under tremendous pressure to serve as guardians, only 33 of the 52 AAAs (63.5 percent) serve as guardian or contract out guardianship responsibilities for approximately 721 incapacitated individuals. The AAAs that do not serve as guardian cite inadequate funding and staffing as reasons. However, most, if not all, of the AAAs provide guardianship-related services to some extent. Over 90 percent of AAAs either petition the court to serve as a guardian or assist others in petitioning the court.

A local AAA often becomes involved in a guardianship case as a result of its involvement in a protective services case. Sometimes a local AAA files a petition to have a current guardian or agent under a power of attorney removed because the agent or individual has neglected his or her duties or has misappropriated funds. The AAA then sometimes will become the new guardian or agent. The only funding that AAAs receive purely for guardianship services (other than the \$100/month for eligible individuals from

¹⁹ *Infra*, pages 75-77 for the AAA survey and pages 97-98 for the PACAH survey.

Medical Assistance) comes from the “Legal Advocacy for Older Pennsylvanians” line item in the Commonwealth’s Annual Budget for the Department of Aging, which totaled \$600,000 in 2006-07. The remainder of the cost to the AAAs for guardianship services is taken from the AAAs’ annual operating budget, which is also used to fund all the AAAs’ other programs and services.

AAAs also are involved in managing matters concerning an individual’s power of attorney. Of the responding AAAs, 14 serve 107 individuals as an agent under a power of attorney, and three other AAAs serve 27 individuals by arranging for another organization or individual to be named as the agent, with the AAA supporting the agents with funding. Approximately two-thirds of the respondents indicated that powers of attorney are an effective alternative to guardianship, while at the same time acknowledging the limitations of a power of attorney.

A substantial majority of AAA respondents (61.4 percent) indicated that the current statutes, programs and services are not effective in meeting the current demand for guardianship. An even greater percentage (84.1 percent) responded that current programs and services will not be able to meet the need for guardianship services in the future.

AAA responses to the JSGC clearly indicated that funding is a crucial consideration. Many of the responding AAAs stated that they would be willing to increase their guardianship services if more resources (both monetary and staff support) become available. In addition, other private organizations and individuals may be willing to become guardians if additional resources are provided. Many residents of nursing homes could benefit from having a guardian, but they do not have one due to the lack of funding and/or the lack of available guardians.

AAAs also indicated that few resources are available for incapacitated individuals under the age of 60, and if they are available, they are difficult to locate.

The results of the JSCG survey also revealed that private organizations and individuals need to be more closely monitored to make certain that they are following legal and ethical standards and are not taking advantage of incapacitated individuals.

Some AAAs thought there should be a statewide program established to fund and coordinate guardianship programs. Several AAAs stated that it should have clear local focus (possibly having the AAAs serve as the local body providing the services with funding coming from the state). Others stated that a state-run program is more appropriate. One AAA suggested the creation of a regional office to provide guardianship services. In nearly all cases, survey respondents mentioned that the funding for guardianship services should come from the state (particularly for those consumers living in poverty).

Finally, several AAAs mentioned the need for a clearer understanding of how end-of-life decisions are made for those with guardians, including who should make health care decisions (the guardian or medical staff).

PACAH Survey

PACAH members were also asked on their survey how many of their residents have guardians and what recommendations they have regarding guardianship-related issues. Many of the county nursing homes stated on surveys that guardianship issues are generally not a major problem for them because they have a working relationship with the court and can get an emergency guardianship order when necessary. Most of the nursing homes have also found creative ways of dealing with guardianship-related issues. However, the cost of guardianship is a problem. The nursing homes often must pay for guardianship-related costs from their general operating budget.

Of the 11,164 adult residents in county homes and county affiliated homes, only 653 have a guardian (5.8 percent). Of these adults, 81.9 percent are age 60 and older, and 18.1 percent are between the ages of 18 and 59. In addition, guardians for these adults include a relative or friend (40.6 percent of such guardians), a guardianship support agency other than an AAA (34.4 percent), an AAA (10.4 percent), an attorney or law firm (7.4 percent) and a facility administrator (1.8 percent).

Thirteen respondents that incur annual guardianship-related expenses collectively spent \$159,700 on them, each ranging from \$1,200 to \$36,000. Of this amount, over 60 percent was reimbursed by Medicaid or other means, and \$63,400 (39.7 percent) was not reimbursed.

A plurality of PACAH respondents (41.7 percent) indicated that the current statutes, programs and services are effective in meeting the current demand for guardianship. However, a solid majority (58.3 percent) responded that current programs and services will not be able to meet the need for guardianship services in the future.

Monitoring Guardians: Standards, Qualifications and Certification

Because of a lack of resources, most courts contend that they are not able to monitor guardians through a review of the guardianship reports that *are* filed. In light of the possibility of dishonest people preying on incapacitated individuals and the need to protect these incapacitated individuals, there remains the need to monitor the

effectiveness of the guardianship through the orphans' court that appointed the guardian in the first place. The AOPC is examining ways to improve the monitoring of guardians.²⁰

A judge often must decide whether or not a family member or other guardian is trustworthy enough not to require that a bond be posted. Some courts require that bonds be posted only in a small percentage of guardianship cases. It is sometimes impractical to require a bond because the cost is paid from the incapacitated person's assets, and courts may determine that there are better uses for those assets.

Currently, there are no mandated qualifications to be a guardian (except being 18 years old, not convicted of a felony and not adjudicated disabled).²¹ In addition, there is no limitation on the number of incapacitated individuals who may be assigned to one guardian. The National Guardianship Association recommends that each full-time individual guardian serve no more than 15 incapacitated individuals at the same time.²²

Of note is the Dauphin County Guardianship Monitoring Program. The program, modeled after the Chester County program, was initiated by the Dauphin County Orphans' Court to assist with the 283 guardianship cases in the county. Under the program, a pro bono monitor, who must be an attorney, becomes the "eyes and ears" of the court to assure that the incapacitated persons under the jurisdiction of the court are not being personally or financially mistreated. A monitor must visit an incapacitated person and his or her guardian at least once annually, review records and complete all appropriate reporting forms for the court.

Working Group Policy Considerations

- (1) The working group determined that the first step in monitoring guardians is to focus on the potentially "bad" guardians and determine what type of individual is most likely to be a dishonest guardian. It is cost prohibitive to monitor every guardian with a caseworker, but the state can try to determine which guardians are most likely to abuse their role as a guardian and randomly select these guardians to have caseworkers review their files.

²⁰ See generally *In re Estate of Rosengarten*, 871 A.2d 1249 (Pa. Super. 2005), in which the Superior Court held that Sheri Rosengarten, an incapacitated person, had the right to be represented by counsel of her choice and that the Orphans' Court of Bucks County erred by ordering the sale of her real estate without first conducting a hearing on her allegations that she was no longer incapacitated and that her guardian was not acting in her best interest and on her related request that her father be appointed guardian.

²¹ Questions and Answers on Guardianship Issues, <http://www.guardianship.org/pdf/question.pdf> (last visited April 12, 2007).

²² Under NGA Standard 23, a guardian should limit each caseload to a size that allows the guardian to accurately and adequately support and protect the ward, that allows a minimum of one visit per month with each ward, and that allows regular contact with all service providers. The size of any caseload must be based on an objective evaluation of the activities expected, the time that may be involved in each case, other demands made on the guardian, and the ancillary support available to the guardian. NGA Standards of Practice, <http://www.guardianship.org/pdg/standards.pdf> (last visited April 12, 2007).

Caseworkers, however, should not be seen as solely checking up on the guardians; instead, they should be seen as assistants to the guardians, helping them resolve the various guardianship difficulties or issues that the guardians encounter. The working group reasoned that many elderly individuals and individuals with disabilities already have case managers, and perhaps there is some way that they could assist in monitoring the activities of the individuals' guardian. However, this suggestion would become unworkable in cases where the guardian believes that the care that the incapacitated person is receiving is substandard or conflict results between the guardian and the agency providing services to the incapacitated person.

- (2) The working group considered whether guardians should be bonded and whether there should be objective criteria for whether a bond is required in a particular case.
- (3) The working group considered the course of action taken by Chester County, where the courts use volunteers from the local senior activities center to monitor annual reports and visit the incapacitated individuals who have guardians.
- (4) The working group acknowledged that there is no monitoring of the billing hours and hourly rate of guardians for incapacitated individuals who are financially able to afford a guardian, thereby providing avoidable opportunities for guardians to financially exploit those individuals.
- (5) The working group stated that the Commonwealth could consider giving oversight responsibilities of the administration of guardianship support agencies to the orphans' courts. The local AAA, for example, could be designated to provide the oversight of guardianship services within a local area.
- (6) Licensing and performance standards should be developed and implemented for professional guardians. These guardians should be required to have liability insurance.
- (7) Security clearances or background checks should be required before a professional guardian is appointed guardian. In this context, the term "professional guardians" would need to be defined (possibly as a person that serves as the guardian for three or more incapacitated individuals who are not related by blood, adoption or marriage to the guardian).

- (8) An independent entity should certify guardianship support agencies and create standards that these guardianship support agencies must meet. Although the certification of guardians does not need to be extensive, there must be some sort of guardianship certification, perhaps through a national, nonprofit guardianship organization that offers guardianship certification (such as the National Guardianship Association). That organization would then be responsible for certifying and educating guardians in Pennsylvania.

Funding

The working group considered the issues of whether (1) there are enough guardianship support agencies (such as the AAAs) to serve as guardians of last resort under the current system if someone needs a guardian and has no family members or close friends willing and able to serve as guardian, (2) the present system can support a potentially growing population of individuals in need of guardianship and (3) the AAAs are able to fill the need for both plenary and limited guardianships.

Some counties, especially those that rely on nonprofit organizations for guardianship services, need additional funds to make certain that adequate numbers of guardians are available. Additionally, some courts are reluctant to use an individual's assets to pay for a guardianship until the guardian has been a guardian for one year and has filed the annual guardianship report. This lack of funding causes many problems for nonprofit guardianship agencies, and many simply cannot afford to accept guardianship cases. Although the number of public and private guardianship support agencies is on the rise to fill the guardianship needs, some AAAs are declining to accept guardianships, given scarce financial resources. AAAs fulfill an important function in serving as guardian, but receive little funding for it and generally must cut other programs to pay for guardianship services. Often, an agency receives many more requests for guardianship services than it is able to handle.

If an individual has assets, it is generally easier to find an individual or agency willing to serve as the individual's guardian. However, the vast majority of situations involve an individual without substantial resources. In Beaver County, for example, only 16 percent of incapacitated individuals have the ability to pay for a guardian.²³

If individuals in need of a guardian have few or no assets, they often will qualify for medical assistance and become eligible to receive \$100/month for guardianship services if they reside in a state facility. In these situations, some private agencies may be willing to become an individual's guardian for this \$100/month. However, if an

²³ Drew Grivna of Pennsylvania Guardianship Services (and also a working group member) at a meeting of the working group (April 27, 2006).

individual resides in a group home or in the community, he or she is not eligible for the \$100/month and will not be able to avail himself or herself of the services of these private agencies.

In addition, the petitioner requesting the guardianship must pay the filing fees and attorney fees. In many cases, the institution (for example, the nursing home) where the individual resides pay these fees; once the guardian is appointed, Medicaid's payment of \$100/month may begin.

Working Group Policy Considerations

- (1) The working group believed strongly that everyone in need of a guardian should receive a guardian, including both individuals with disabilities and elderly individuals. Any reform measure must meet this goal.
- (2) The working group agreed that if adequate resources were available to guardianship support agencies, they would be able to provide better and expanded services for those individuals in need.
- (3) The working group considered whether guardianship support agencies should either be government agencies or nonprofit agencies.
- (4) The working group recognized that if the statute mandates that AAAs serve as guardians, the Commonwealth must finance the mandate.

Education and Training

With technology today, educational material regarding guardianship issues, requirements and procedures should be relatively easy to produce and obtain. Family members, for example, would benefit the most from this type of material, since they would be less likely to be able or willing to serve as a guardian if they do not fully understand what they are expected to do.

Working Group Policy Considerations

- (1) The working group stated that there should be education for judges, lawyers, family members (especially those who have children with disabilities), guardians and others on guardianship issues, requirements and procedures.
- (2) The working group stated that there must be more emphasis placed on the training of guardians; guardians need to know what is expected of them.
- (3) The working group agreed that public policy should encourage the general education of individuals on the benefit of executing legal documents that eliminate the future need for guardianships for the individuals. To that end, the working group encouraged AAAs to take a more active role in this education and supported amending Pennsylvania law to expand the role of guardianship support agencies accordingly.

Governmental Oversight

California recently considered proposed legislation that would have created a guardianship ombudsman in the Department of Consumer Affairs. The ombudsman would have taken complaints by individuals about guardians and would have had statutory access to otherwise confidential records in investigating those complaints. If the ombudsman would have determined that there was a problem, he or she would have been obligated to report his or her findings to the proper authorities (the court or district attorney). Additionally, the proposed legislation would have also required a court investigator to follow up with the guardian six months after the appointment of the guardian, and annually thereafter (unless the court would have determined that every other year would have been sufficient). The court investigator's primary responsibilities would have been to determine if the guardianship was still necessary and to make certain there was no abuse of the ward by the guardian. However, this proposed legislation failed.

Although a comparable proposal in Pennsylvania would raise the issue of funding for the ombudsman office, an ombudsman may prove to be less expensive than the current system of court investigations, as the ombudsman would only be reacting to complaints and other information from concerned individuals regarding potential abuse.

Working Group Policy Consideration

The working group favored the implementation of a process by which people could file a complaint against a guardianship support agency.

Working Group Statutory Recommendation

The working group reached consensus on the establishment of an Office of Guardianship Support with prescribed powers and duties. Accordingly, it agreed that the guardianship law be amended to charge the Departments of Aging and Public Welfare with the responsibility of creating and maintaining offices for the benefit of discrete populations.²⁴

Public Records, Access and Guardian Registry

County procedures differ regarding whether guardianship reports are public. Guardianship reports are considered public records in some counties unless the judge seals the record. In other counties, there is public access to the annual reports, although the individual names are replaced by a number. In some counties, the only part of the guardianship case that is public information is the decree itself. It should be noted that by making the annual reports public, it allows creditors to selectively pursue incapacitated individuals who do have assets. Additionally, because there is no statewide data collection system for guardianships, an individual could potentially be assigned more than one guardian by different courts throughout Pennsylvania.

Working Group Policy Consideration

The working group discussed whether a central registry of guardianship information would be beneficial. The registry would maintain and review guardianship reports and could also help in the compilation of statistical information regarding the number of guardians. The registry could also disseminate forms to be sent annually to all guardians asking them to update their guardianship information. However, the working group acknowledged that a central registry may raise privacy and confidentiality concerns.

²⁴ See proposed § 5556 on pages 45-47.

Reporting Requirements

Working Group Policy Consideration

The working group agreed that different standards and reporting requirements should exist for guardians of incapacitated individuals with considerable assets and those with few or no assets. More thorough reporting requirements should exist for guardians in the first instance.

General Observations and Policy Considerations on Reforming the Guardianship System

The working group acknowledged that any reform of the current guardianship system must take into account the different needs of elderly and disabled individuals who require guardianship services, as well as the demographic differences across the Commonwealth. The working group was also mindful to avoid an unintended consequence of actually increasing the number of guardianships granted in Pennsylvania. A goal of any reform must be to implement the least restrictive alternative available. Guardianship may not be the only available option; for example, a disabled individual may not really need a guardian, because assistance with decision-making may suffice.

Issues that should be analyzed in terms of guardianship are cost, privacy, self-determination, protection of the individuals and guidance for the lawyers representing the various parties. In addition to plenary guardianship, there should be assistance available for those who simply need a little help in making some decisions but do not need a guardian for all decisions. While the limited guardianship concept does address some of these issues, there needs to be a less formal approach available so that an individual can retain as much personal choice as possible.

It was recognized that co-guardianships generally do not work well. In addition, successor guardianship needs to be examined. When the guardian passes away, there needs to be a process to deal with this immediately before there is an opportunity for others to financially take advantage of the incapacitated individual.

While it may be less expensive to care for Medicaid recipients in the community than in state-run facilities, it is very difficult to determine who will be managing Medicaid recipients' funds. The community group homes are hesitant to assume the role of Social Security representative payee in light of new federal regulations. Therefore, someone else must be found to manage the recipients' money.

The process to obtain a guardianship should not be easy; guardianship should be reserved for those in absolute need. However, in numerous cases, guardianship has been an important tool in protecting an individual.

Both structure and procedure should be addressed in the guardianship system, such as how to expand protective services and guardianship services to disabled individuals between the ages of 18 and 59 and those individuals that simply need assistance but not a guardian. Under the current system, few agencies provide guardianship services for individuals under the age of 60. Although some private organizations get involved in some counties, the need far exceeds the number of available organizations willing to provide guardianship services. Problems generally begin when a mentally challenged individual's family structure has broken down and there is no one available to help the individual. Some agencies simply advise families to become the representative payee and use other tools instead of guardianship.

Consequently, the working group discussed the option of having individuals under the age of 60 in need of a guardianship covered by non-AAA organizations and individuals age 60 and older covered by the AAAs. The problem with this approach is that someone with a non-AAA guardian must have the guardianship transferred to an AAA upon turning age 60, thereby disrupting the established guardianship relationship. It was expressed that if a qualified organization exists to handle the guardianship, it should be able to remain as the guardian regardless of the incapacitated individual's age.

Regardless of the county in which an individual lives, the individual should receive the same high-quality services as in other parts of the state. This equality across county lines can be accomplished by licensing guardians across the state. Currently, there are great differences between rural and urban areas across the Commonwealth in the use and effectiveness of guardianships.

It is difficult to be a guardian in multiple counties because each county views guardianship differently. Procedural issues are raised because there is a lack of consistency across the Commonwealth. The judicial districts across the Commonwealth should follow uniform guardianship procedures, such as how guardianship cases are heard, representation of the individual, bonding of guardians and monitoring of guardians. Guardianship procedures remain a topic of great discussion among orphans' court judges.

SUMMARY OF STATUTORY RECOMMENDATIONS

To address some of the concerns raised in the previous section of this report²⁵ and provide further clarification and improvements to guardianship law, the working group reached consensus on the following amendments to 20 Pa.C.S. Chapter 55. These amendments are set forth in their entirety in the next section of this report.²⁶ Transitional language follows the amendments.²⁷

- (1) Add a section regarding the transfer of jurisdiction. (§ 5503)
- (2) Add a section regarding venue to replace § 5512 (county of appointment; qualifications). (§ 5504)
- (3) Specify that notice of the petition and hearing shall be given to all persons whose existence and whereabouts are known or should be known, regardless of whether they reside in Pennsylvania. (§ 5511(a))
- (4) Clarify that the inability of the alleged incapacitated person to comprehend the guardianship proceeding does not, by itself, constitute harm, whereby the court could excuse the person's presence from the proceeding. (§ 5511(a)(1))
- (5) Specify that the court shall appoint counsel to represent the alleged incapacitated person in any matter for which counsel has not been retained, if the alleged incapacitated person will not be present at the guardianship hearing. (§ 5511(a.1)(2)(ii))
- (6) Clarify who may not be appointed guardian. (§ 5511(g))
- (7) Provide an order of priority for persons who may be appointed guardian. (§ 5511(h))
- (8) Change the term "interested party" to "person interested in the alleged incapacitated person's welfare." (§ 5512.2(a))

²⁵ *Supra*, pages 3-18.

²⁶ *Infra*, pages 23-47.

²⁷ *Infra*, page 49.

- (9) Clarify that the burden of proof standard does not apply in an uncontested matter concerning the termination of a guardianship. (§ 5512.2(b))
- (10) Provide that the court may order an independent evaluation in a review hearing. (§ 5512.2(c))
- (11) Change the duration of an initial emergency order appointing an emergency guardian of the person or estate from 72 hours to 30 days. (§ 5513(c))
- (12) Provide for the appointment of counsel regarding emergency orders. (§ 5513(d))
- (13) Provide that an emergency order may be extended for no more than an additional 60 days without a full guardianship proceeding upon the consent of the petitioner, emergency guardian and counsel for the alleged incapacitated person. (§ 5513(e))
- (14) Provide that a petitioner must present evidence of incapacity or disability in person or by deposition from qualified professionals, in a proceeding in which incapacity is contested; in uncontested proceedings where the alleged incapacitated person or counsel for the alleged incapacitated person is present, the petitioner may establish incapacity by a sworn statement from qualified professionals. (§ 5518)
- (15) Clarify that a guardianship report include the number and length of times the guardian or the guardian's agent personally visited the incapacitated person in the past year. (§ 5521(c)(1)(ii)(E))
- (16) Specify that the report of the guardian of the person include plans for future care of the incapacitated person. (§ 5521(c)(1)(ii)(F))
- (17) Add provisions concerning the confidentiality of a guardianship report and to whom the report may be released. (§ 5521(c)(3) and (4))
- (18) Provide that the failure of a guardian to file a timely report shall be considered a breach of duty. (§ 5521(c)(5))
- (19) Supplement the provisions regarding liability. (§ 5521(g))
- (20) Provide for the delegation of powers and duties by the guardian of the estate to an agent. (§ 5521(h))
- (21) Provide more fully for the inventory of the estate and for records. (§ 5521(i))

- (22) Modify the guardian of the estate's power to lease. (§ 5522)
- (23) Provide for the protection of persons dealing with the guardian of the estate. (§ 5526)
- (24) Clarify when an accounting must be filed. (§ 5531)
- (25) Specify that fees for an incapacitated person's guardian of the estate or person may not be paid from the income or principal of the estate without court approval. (§ 5536(a)(4))
- (26) Create a statutory framework for an Office of Guardianship Support, in the Departments of Aging and Public Welfare, with specified powers and duties and criteria for reimbursement. (§ 5556)
- (27) Reorganize sections for clarification purposes. (§§ 5511 and 5513)

PROPOSED AMENDMENTS TO 20 Pa.C.S. CHAPTER 55

The following are proposed amendments to the Probate, Estates and Fiduciaries Code (Title 20 of the Pennsylvania Consolidated Statutes) on which the working group reached consensus. Proposed deletions are in **[bold]**, and proposed additions are underlined; “UGPPA” refers to the Uniform Guardianship and Protective Proceedings Act.

§ 5503. Transfer of jurisdiction.

(a) Transfer permissible.--After the appointment of an incapacitated person’s guardian of the estate or guardian of the person, the court may transfer the proceeding to another judicial district in the Commonwealth or to another state if the court is satisfied that the transfer will serve the best interest of the incapacitated person.

(b) Notice to other court.--If a guardianship or protective proceeding is pending in another state or a foreign country and a petition under this chapter is filed in a court in the Commonwealth, the court in the Commonwealth shall notify the original court and, after consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the incapacitated person.

(c) Guardian appointed in another state.--

(1) A foreign guardian may petition the court for appointment as the incapacitated person’s guardian of the estate or guardian of the person in the Commonwealth if venue in the Commonwealth is or will be established.

(2) The appointment under paragraph (1) may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court of the Commonwealth.

(3) Written notice of the hearing required under section 5511 (relating to petition and hearing; independent evaluation), together with a copy of the petition, shall be given to the incapacitated person and to other persons interested in the alleged incapacitated person's welfare who would be entitled to notice if the regular procedures for appointment of a guardian under this chapter were applicable.

(4) The court shall make the appointment under this subsection unless it concludes that the appointment would not be in the best interest of the incapacitated person.

(5) Except as otherwise noted in this subsection, the provisions of this chapter shall govern all matters regarding the guardianship.

Note

This section is based on UGPPA § 107. See § 102 for the definition of "foreign guardian."

§ 5504. Venue.

(a) Guardian of the person.--Venue for a guardianship proceeding for an incapacitated person or an alleged incapacitated person is in the judicial district of the Commonwealth in which the person resides and, if the person has been admitted to an institution by order of a court of competent jurisdiction, in the judicial district in which

the institution is located. Venue for the appointment of an emergency guardian of an incapacitated person or an alleged incapacitated person is also in the judicial district in which the person is present.

(b) Guardian of the estate.--Venue for a proceeding regarding a guardianship of the estate of an incapacitated person or alleged incapacitated person is in the judicial district of the Commonwealth in which the incapacitated person or alleged incapacitated person resides, whether or not a guardian of the person has been appointed in another place or, if the person does not reside in the Commonwealth, in any judicial district of the Commonwealth in which the person’s property is located.

(c) Multiple judicial districts.--If a proceeding under this chapter is brought in more than one judicial district in the Commonwealth, the court of the judicial district in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

Note

This section is based on UGPPA § 108(b), (c) and (d) and replaces § 5512. 20 Pa.C.S. § 721(2) also provides for venue for incapacitated persons’ estates. To the extent there is a conflict between this section and § 721(2), this section controls.

Comment

This section refers to “residence” instead of “domicile.” The term “domicile” is distinguishable from residence in that “domicile” is the true, fixed, principal and permanent home to which the individual intends to return and remain even though currently residing elsewhere.

§ 5511. Petition and hearing; independent evaluation.

(a) Resident.--The court exercising proper venue under section 5504 (relating to venue), 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**] whose existence and whereabouts are known or should be known and 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, but the inability of the alleged incapacitated person to comprehend the proceedings does not, by itself, constitute harm; 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.]

(a.1) Appointment of counsel.--

(1) If counsel has not been retained by or on behalf of the alleged incapacitated person, the petitioner under subsection (a) shall notify the court at least seven days prior to the hearing.

(2) The court shall appoint counsel to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of the alleged incapacitated person:

(i) in appropriate cases as the court determines; and

(ii) in all cases if the alleged incapacitated person will not be present at the hearing.

* * *

(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.]

(1) The court may appoint any of the following to be an alleged incapacitated person's guardian of the estate or guardian of the person, or both:

(i) Any qualified individual.

(ii) A corporate fiduciary.

(iii) A nonprofit corporation.

(iv) A guardianship support agency under Subchapter F (relating to guardianship support).

(v) A county agency.

(2) If the alleged incapacitated person is a resident of a State facility, the court may appoint the guardian office at the facility as the alleged incapacitated person's guardian of the estate.

(g) Who may not be appointed guardian.--

(1) Subject to paragraph (2), unless it is clearly demonstrated that no guardianship support agency or other alternative exists, the court may not appoint the following as the alleged incapacitated person's guardian of the estate or guardian of the person:

(i) A person or employee of the person providing residential services for a fee to the alleged incapacitated person.

(ii) A person whose interests conflict with those of the alleged incapacitated person.

(2) A person who is related to the alleged incapacitated person by blood, marriage or adoption:

(i) is not deemed to have a conflicting interest under paragraph (1)(ii) simply because of that relationship; and

(ii) may be appointed the alleged incapacitated person's guardian of the estate or guardian of the person, or both, even though the person provides residential services for a fee to the alleged incapacitated person.

(h) Priority in appointing guardian.--

(1) In appointing a guardian for an alleged incapacitated person, the court shall consider the following order of priority:

(i) The nominee of the person, including an agent named in the person's operative power of attorney.

(ii) A guardian, other than a temporary or emergency guardian, currently acting for the person.

(iii) The spouse of the person.

(iv) An adult child of the person.

(v) A parent of the person.

(vi) The nominee of a deceased or living parent of an unmarried alleged incapacitated person.

(2) With respect to persons having equal priority, the court shall select the person that it considers best qualified.

(3) Subject to paragraph (4), in acting in the best interest of the alleged incapacitated person, the court may decline to appoint a person having a higher priority and appoint a person having a lower priority or no priority.

(4) If a nomination has been made in an operative power of attorney, the court shall appoint the nominated person in accordance with the terms of the power of attorney, except for good cause or disqualification.

[§ 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.]

Note

This section is repealed in light of the addition of § 5504.

§ 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] person interested in the alleged incapacitated person's welfare 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 in an uncontested matter concerning the termination of a guardianship or 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.

(c) Independent evaluation.--In a review hearing under this section, the court may order an independent evaluation in accordance with section 5511(d) (relating to petition and hearing; independent evaluation).

§ 5513. Emergency guardian.

(a) Appointment.--

(1) 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:

(i) the person lacks capacity[,] and is in need of a guardian; and

(ii) a failure to make such appointment will likely result in irreparable harm to the person or estate of the alleged incapacitated person.

(2) The court may appoint an emergency guardian of the person under this section for an alleged incapacitated person who is present in the Commonwealth but domiciled outside the Commonwealth, regardless of whether the alleged incapacitated person has property in the Commonwealth.

(b) Procedures and powers generally.--

(1) The provisions of section 5511[, **including those relating to counsel,**] shall be applicable to [**such**] proceedings under subsection (a), except:

(i) when the court has found that it is not feasible [**in**] under the circumstances; or

(ii) as otherwise provided in this section.

(2) 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.

(c) Duration of initial order.--An initial emergency order appointing an emergency guardian of the person or guardian of the estate may be in effect for up to [72 hours] 30 days.

(d) Appointment of counsel.--

(1) Prior to the expiration of the initial emergency order, the court may appoint counsel for the alleged incapacitated person.

(2) If an extension of the emergency order is sought under subsection (e), the court shall appoint counsel for the alleged incapacitated person.

(e) Extension of order.--An emergency order may be extended for no more than an additional 60 days without a full guardianship proceeding under section 5511 upon the consent of petitioner, emergency guardian and counsel for the alleged incapacitated person. **[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.]**

(f) Procedure upon expiration of 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.]**

Note

Subsection (a)(2) is based on the third to the last sentence of current § 5513. The last two sentences of current § 5513 are deleted because of the restructuring of the section and the proposed amendments.

§ 5518. Evidence of incapacity.

To establish incapacity in a proceeding in which the incapacity of the alleged incapacitated person is contested, 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. In a proceeding in which the capacity of the alleged incapacitated person is not contested and at which the person or the person's counsel is present, the petitioner may establish incapacity by a sworn statement from such qualified individuals. The **[petition]** petitioner 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] Except as provided for in section 5518 (relating to evidence of incapacity), testimony as to the capacity of the alleged incapacitated person shall be subject to cross-examination by counsel for the alleged incapacitated person.

§ 5521. Provisions concerning powers, duties and liabilities.

(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).

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).

(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 or the guardian's agent personally visited the incapacitated person in the past year; and

(F) plans for future care.

(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.

(3) Except as provided in paragraph (4), a report under this subsection shall be confidential and made available only to the following:

(i) Each party.

(ii) Upon request, each person that has been given notice of the petition or that has appeared in the guardianship proceeding.

(iii) Counsel for the persons under subparagraphs (i) and (ii).

(iv) The court.

(v) An agency as defined in section 103 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

(4) The court may release a report under this subsection at any time if it serves the interests of the incapacitated person.

(5) Failure of a guardian to file a timely report under this subsection shall be considered a breach of duty.

* * *

(g) **[Criminal and civil immunity]** Liability.--

(1) 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.

(2) Except as otherwise agreed, a guardian of the estate is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the guardian fails to reveal in the contract the representative capacity and identify the estate.

(3) A guardian of the estate is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate if the guardian failed to exercise reasonable care, skill and caution.

(4) Claims based on contracts entered into by a guardian in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the guardian in a fiduciary capacity, whether or not the guardian is personally liable.

(5) A question of liability between the estate and the guardian personally may be determined in a proceeding for accounting, surcharge or indemnification, or in another appropriate proceeding or action.

(h) Delegation.--A guardian of the estate may delegate powers and duties, and an agent may accept the delegation, subject to the following:

(1) A guardian may not delegate to an agent or another guardian the entire administration of the estate, but a guardian may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(2) A guardian shall exercise reasonable care, skill and caution in the following:

(i) Selecting an agent, including the verification of the agent's financial accountability if the agent will be handling financial matters for the incapacitated person.

(ii) Establishing the scope and terms of a delegation, consistent with the purposes and terms of the guardianship.

(iii) Periodically reviewing an agent's overall performance and compliance with the terms of the delegation.

(iv) Redressing an action or decision of an agent which would constitute a breach of trust if performed by the guardian.

(3) A guardian who complies with paragraphs (1) and (2) is not personally liable to the incapacitated person or to the estate for the decisions or actions of the agent to whom a function was delegated.

(4) An agent shall:

(i) comply with the scope and terms of the delegation;

(ii) exercise reasonable care, skill and caution in performing a delegated function; and

(iii) be liable to the estate for the failure to comply with subparagraph (i) or (ii).

(5) An agent who represents having special skills or expertise shall use those special skills or that expertise.

(6) By accepting a delegation from a guardian subject to the law of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth.

(i) Inventory and records.--

(1) Within 90 days after the order of appointment of an incapacitated person's guardian of the estate, the guardian shall prepare and file with the appointing court a detailed inventory of the estate subject to the guardianship, including an inventory and appraisal of the personal estate, a statement of the real estate and a statement of any real or personal estate that the guardian expects to thereafter acquire.

(2) The inventory under paragraph (1) shall be filed with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(3) A guardian shall keep records of the administration of the estate and, subject to the other provisions of this chapter, make them available for examination on reasonable request of a person interested in the incapacitated person's welfare.

Note

Subsection (g)(2) through (5) is based on UGPPA § 430(a) through (d) and replaces the reference to § 3331 in subsection (b). Subsection (h) is generally based on UGPPA § 426, and paragraphs (4) and (5) are specifically based on 20 Pa.C.S. § 7777(b). Subsection (i), based on UGPPA § 419 and on § 5142, replaces the reference to § 5142 in subsection (b). Some of the statutory language under § 5142 is retained. The time period of “three months” is changed to “90 days.”

Comment

Examples of plans for future care under subsection (c)(1)(ii)(F) include a plan for supportive services, an individualized education plan, a behavioral supports plan and a formalized treatment plan. An annual plan could be based on a functional assessment of abilities and limitations of the individual with diminished capacity.

§ 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] enter for any purpose into a lease as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the guardianship.

Note

The amended language is based on UGPPA § 425(b)(10). There is no statutory maximum term for a lease under this section.

§ 5526. Protection of person dealing with guardian.

(a) General rule.--A person who assists or deals with a guardian under this chapter in good faith and for value in any transaction is protected as though the guardian properly exercised the power. That a person knowingly deals with a guardian does not alone

require the person to inquire into the existence of a power or the propriety of its exercise, but any restriction on the power of the guardian as set forth in the guardianship order shall be effective as to third persons. A person who pays or delivers assets to a guardian is not responsible for their proper application.

(b) Additional protection.--Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the guardianship order and is not a substitute for protection provided to persons assisting or dealing with a guardian by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

Note

This section is based on UGPPA § 424.

§ 5531. When accounting filed.

A guardian shall file an account of his administration whenever directed to do so by the court **[or] and** may file an account **[at the termination of the guardianship, or]** at any other time **[or times authorized by the court]**.

§ 5536. Distributions of income and principal during incapacity.

(a) In general.--

(1) 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,]** U.S. Department of Veterans Affairs, U.S. 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.

(2) 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.

(3) 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.

(4) Fees for an incapacitated person's guardian of the estate or guardian of the person may not be paid from the income or principal of the incapacitated person's estate without court approval.

* * *

Comment

Under subsection (a)(4), the court may prospectively approve a guardian's fees and reserve the right to adjust those fees upon review.

§ 5556. Guardianship support office.

(a) Establishment.--The Department of Aging and the Department of Public Welfare shall each establish an Office of Guardianship Support, with adequate budget, staff and technical support for its effective administration.

(b) Applicability.--This section applies to services provided through the Office of Guardianship Support:

(1) By the Department of Aging, for individuals who are 60 years of age or older.

(2) By the Department of Public Welfare, for individuals who are at least 18 years of age and less than 60 years of age.

(c) Powers and duties.--The Office of Guardianship Support shall have the following powers and duties:

(1) Provide resources to a guardianship support agency, including an area agency on aging, for services provided under sections 5553 (relating to guardianship services) and 5554 (relating to services to courts, guardians and others).

(2) Collaborate with the Pennsylvania Supreme Court to develop uniform guardianship procedures and data collection practices among courts of common pleas under this chapter.

(3) Provide technical assistance to guardianship support agencies to develop and implement services under this subchapter.

(4) Periodically review and evaluate the effectiveness of services and programs under this subchapter.

(5) Promulgate eligibility criteria based on the economic status of the alleged incapacitated person.

(6) Assist non-guardianship support agencies to develop more community resources for incapacitated persons.

(7) Promulgate regulations necessary to implement this section.

(d) Reimbursement.--

(1) Subject to paragraph (3), an alleged incapacitated person is eligible for services provided through the Office of Guardianship Support without the need to reimburse the Office of Guardianship Support if:

(i) the economic status of the alleged incapacitated party cannot be determined; or

(ii) the alleged incapacitated person is a resident of a State facility and there is no:

(A) other person willing and qualified to become guardian of the estate for the alleged incapacitated person; or

(B) funding for petitioning for, or providing guardianship services to, the alleged incapacitated person under this section.

(2) If an incapacitated person has received services provided through the Office of Guardianship Support and paragraph (1)(i) applied at the time the services were provided, the Office of Guardianship Support shall require the guardian of the estate to submit a report of the economic status of the incapacitated person as soon as the incapacitated person's economic status can be determined.

(3) If the report under paragraph (2) reveals that the incapacitated person has sufficient assets to reimburse the Office of Guardianship Support for services provided, the guardian of the estate shall reimburse the Office of Guardianship Support for the cost of services provided under this section.

Comment

The intent of this section is to encourage the two Offices of Guardianship Support to engage in interdepartmental cooperation and share activities as appropriate. This is especially important for individuals who must transition from one office to the other when they reach age 60.

TRANSITIONAL LANGUAGE

APPLICABILITY

The amendment of 20 Pa.C.S. shall apply to all guardianship proceedings in which petitions for the appointment of a guardian are filed subsequent to the effective date of this section. Where a petition has been filed prior to the effective date of this section but where a guardian has not yet been appointed, the procedures of the amendment of 20 Pa.C.S. shall apply. Existing guardianship may be modified by the court in accordance with the amendment of 20 Pa.C.S., upon petition of any person interested in the welfare of the incapacitated person.

EFFECTIVE DATE

The amendment of 20 Pa.C.S. and the foregoing applicability provisions shall take effect in 60 days.

AREA AGENCIES ON AGING

When the JSGC began to examine the current guardianship services offered in Pennsylvania, it confirmed that many AAAs are actively involved in guardianship and guardianship-related services for older Pennsylvanians. However, it discovered that the level of involvement by the AAAs in guardianship activities is not uniform across the Commonwealth. Therefore, the JSGC decided to survey the AAAs individually to determine the specific guardianship programs and services offered at the local level.

Background on the AAAs

For more than thirty years, Pennsylvania's Aging Network has served as a focal point of services to the aging population in the Commonwealth.²⁸ Fifty-two AAAs serve the Commonwealth's 67 counties, and county and non-profit AAAs are responsible for providing, developing and monitoring information, cost-effective care and services and advocacy service to Pennsylvania's older population. AAAs are community designers and builders of support systems that enable older individuals to remain active and vital in their community. AAAs also serve as a gatekeeper, providing assessment and options as alternatives to costly institutionalization. Accordingly, they provide a wide variety of non-medical, social services and support that make it possible for individuals to remain in their homes and communities by providing the following:

- (1) Single point of entry into the "Aging Network" and its comprehensive service system that provides unbiased access to resources and assistance.
- (2) Working knowledge of community resources for consumers and their families that provide proven and demonstrated community integration of care that is cost efficient and effective.
- (3) Information and assistance to a growing public demand for information and referral services.

²⁸ The Pennsylvania Department of Aging designates an area agency to serve as a focal point in the community for the coordination of services for older people and for the issues and concerns of aging. A designated area agency must be, for example, a county office or a public or nonprofit private agency under the supervision or direction of the department. The act of April 9, 1929 (P.L.177, No.175), § 2206-A; 71 Pa. Stat. Ann. § 581-6 (West 1990) (the Administrative Code of 1929).

- (4) Assistance to consumers and caregivers that enable older people to remain in their homes with dignity and maximum independence.
- (5) Development, support and integration of vast reserves of volunteer resources and community dollars.

Unlike many other government services, AAAs have developed from a local, community service delivery system with providers and working relationships predating the Pennsylvania Department of Aging. This historical perspective of the AAAs ensures the ability to focus programming and spending on the community and the consumer.²⁹

AAA Funding

The AAAs serve Pennsylvanians age 60 and older and receive a large portion of their funding by a block grant through the Department of Aging. The block grant is composed of both federal and state tax dollars. While there are some restrictions on how each AAA can spend their block grant dollars, for the most part the individual AAAs and their governing boards determine how the money is spent.³⁰

Despite the general flexibility of the block grant dollars, local AAAs are required to submit to the Department of Aging a breakdown of how they spend those monies and of their funding from other sources. One of the expense categories that the AAAs are asked to specify is a cost center called “guardianship.” According to the department, the guardianship cost center includes those activities involved in evaluating consumers regarding the appropriateness and degree of guardianship needed, securing such guardianships and managing established guardianships as appropriate. Costs chargeable to this cost center are the following:

- (1) Costs of intake, screening for determination of appropriateness and need for guardianship, securing such guardianships and managing established guardianships.
- (2) Legal fees to represent the AAA and court costs associated with securing and managing guardianships.³¹

²⁹ “Area Agencies on Aging: PA’s Keystone for Older Adults,” Pennsylvania Association of Area Agencies on Aging, <http://www.p4a.org/Transition%20Doc.htm> (last visited October 26, 2005).

³⁰ Interview with Robert Hussar, Chief of the Consumer Protection Division, Pennsylvania Department of Aging (June 14, 2005).

³¹ Memorandum from the Pennsylvania Department of Aging (June 2005), on file with the JSGC.

Using this cost center definition, in the 2005-06 fiscal year, the AAAs collectively spent \$2,752,240 on guardianship-related services. Approximately 98 percent of these funds (\$2,692,762) were block grant dollars, and the remaining \$59,478 were from other sources.³² Table 1 provides a brief history of how much the AAAs have spent on guardianship expenses over the past few years.

Table 1

DOLLARS SPENT BY THE AAAs ON
GUARDIANSHIP-RELATED EXPENSES
FISCAL YEARS 1997-98 THROUGH 2005-06

Fiscal year	Dollars spent by AAAs on guardianship expenses ¹		
	Block grant (\$)	Other sources (\$)	Total (\$)
1997-98	\$1,249,561	\$65,719	\$1,315,280
1998-99	1,261,390	156,761	1,418,151
1999-00	1,512,105	186,133	1,698,238
2000-01	1,696,825	194,585	1,891,410
2001-02	1,877,309	135,770	2,013,079
2002-03	1,943,786	308,354	2,252,140
2003-04	2,158,359	231,168	2,389,547
2004-05	2,372,703	162,978	2,535,681
2005-06	2,692,762	59,478	2,752,240

1. Includes all funds recorded by the AAAs under the Pennsylvania Department of Aging Cost Center of "Guardianship."

SOURCE: Pennsylvania Department of Aging (June 2005 and April 2007).

Because the AAAs individually determine how block grant dollars should be spent to most effectively provide services that are most important to older Pennsylvanians in their service area, there is an unequal distribution of funds spent by AAAs for guardianship-related services. For example, in fiscal year 2005-06, while the average AAA spent approximately \$52,928 on guardianship-related services, ten AAAs reported spending less than \$1,000 each on guardianship-related services, with six of them

³² *Id.* The figures were subsequently updated in April 2007.

reporting that they did not spend any money on guardianship. On the other end of the spectrum, 12 AAAs reported spending more than \$50,000 each on guardianship-related services, with six of them each spending more than \$100,000 on guardianship.³³

Survey Methodology

Since each AAA bases its services on its resources and what it believes are the most important services needed by older adults in the AAAs service area, some AAAs provide many more guardianship-related services than other AAAs. The primary goal of the JSGC in surveying all the AAAs was to gather information on the following:

- (1) Guardianship services that each AAA provides and potential reasons why an AAA may not provide certain services.
- (2) Names of other organizations or agencies in the local area that provide guardianship.
- (3) Thoughts on how a power of attorney can potentially be used as an alternative in some guardianship cases.
- (4) Opinions on whether or not statutes and local programs and services are adequate for present and future needs and how current statutes, programs and services can be improved.

The JSGC enlisted Alan Smith³⁴ to provide assistance in creating the survey and increasing the survey response rate. Mr. Smith also provided the JSGC with raw data of a similar survey that the PAAAA Protective Services Guardianship Committee released in approximately September 2004 (PAAAA survey). On August 24, 2005, the JSGC distributed the finalized survey to the AAAs.³⁵ By October 19, 2005, a total of 44 AAAs (85 percent) responded to the survey.

Although the JSGC was pleased with an 85 percent response rate, where possible, it wanted to estimate several of the responses from the eight non-responding AAAs. Fortunately, seven of the eight non-responding AAAs responded to the PAAAA survey. Therefore, when questions from the PAAAA survey were similar to the JSGC survey questions, responses from the PAAAA survey were used when they were available to

³³ It should be noted that even AAAs that spend very little on guardianship-related services may indeed still believe that guardianship-related services are important; however, those AAAs may just feel that their given resources are better spent on other services also important to their local consumers.

³⁴ Mr. Smith, a working group member, is the Chair of the Pennsylvania Association of Area Agencies on Aging (PAAAA) Protective Services Guardianship Committee.

³⁵ *Infra*, pages 75-77 for the final version of the survey distributed to the AAAs.

supplement the JSGC survey results. Although the PAAAA survey questions were slightly different from the JSGC survey questions, the JSGC was satisfied that the PAAAA survey response provided the best estimation of the missing information sought.

Survey Results

The following summarizes the results from the JSGC survey to the AAAs.

Survey Question 2

The purpose of Question 2 of the survey was to determine whether, and to what extent, the responding AAA serves as guardian or contracts out guardianship responsibilities to other agencies or organizations.³⁶

Of the 44 responses to Question 2, 22 AAAs stated that they currently serve as guardian, and 8 stated that they contract out guardianship services to other organizations.³⁷ Based on the survey results, it was determined that 351 incapacitated individuals have an AAA as their guardian and another 327 incapacitated individuals have a non-AAA agency or organization as their guardian, contracted through their local AAA.

The PAAAA survey asked each AAA to approximate the number of guardianships. Four of the seven AAAs that did not respond to the JSGC survey reported in the PAAAA survey that they serve as guardian for 43 incapacitated individuals, while the remaining three stated they do not serve as a guardian. Assuming that these seven AAAs still have a similar number of guardianships as they did in 2004, and the remaining AAA that did not respond to either the JSGC or the PAAAA survey is not currently a guardian for any incapacitated individuals, 26 AAAs are currently guardians for 394 individuals, and another 327 incapacitated individuals have a non-AAA agency or organization serving as guardian through a contract with one of eight AAAs.³⁸

Using the JSGC survey data along with the PAAAA survey data, 33 AAAs (63.5 percent of all AAAs) are either guardian or contract out guardianship responsibilities for 721 incapacitated individuals.³⁹

³⁶ If the responding AAA does not serve as guardian or contract out guardianship services, it was asked to specify the reasons for not doing so.

³⁷ One AAA stated that it does both and is included in both figures.

³⁸ This includes one that is also included in the 26 AAAs.

³⁹ However, as discussed in the results from Question 3, it should be noted that many of the AAAs, including those that stated that they do not act as a guardian, assist persons in petitioning for guardianships.

Of the 15 AAAs that responded to the survey and stated they do not serve as guardian or contract out guardianship services, five stated that a shortage in resources (either in staffing or monetary support) is one of the primary reasons that they do not serve as guardian.⁴⁰ Another four stated that there is another organization or individual who is willing to serve as guardian in their service area.⁴¹ In nearly all these cases, the AAAs indicated that they have a non-contractual agreement with the organization or individual. Two of the AAAs that do not currently serve as guardian or contract out guardianship services stated that they would and have in the past either served as guardian or contracted out the services. Another two AAAs stated that one of the reasons they do not serve a guardian is the perceived conflict of interest in petitioning for guardianship and serving as guardian. Other reasons given by AAAs for why they do not serve as a guardian or contract out guardianship services include liability exposure, policy considerations, the lack of need for the AAA to serve as guardian, and their role in finding others to serve as guardian.

Survey Question 3

Question 3 of the survey asked whether, and the circumstances under which, the responding AAA petitions the court (or assists others to petition the court) to appoint a guardian for an individual.⁴² Of the 44 AAAs that responded to the survey, 42 stated that they either petition the court or assist others in petitioning the court. In order to estimate how many of the eight AAAs that did not respond to this question petition the court or assist others in doing so, it was again necessary to use data from the PAAAA survey. On this survey, the AAAs were asked if the agency petitions the court to serve as guardian, and of the seven that did not respond to the JSGC survey but responded to the PAAAA survey, three stated that they petition the court, two volunteered that they assist in petitioning the court, and the remaining two stated that they do not petition the court.⁴³ Therefore, combining information from the JSGC survey and the PAAAA survey revealed that at least 47 AAAs (90.4 percent of all AAAs) and perhaps as many as 50 AAAs (96.1 percent of all AAAs) either petition the court to serve as guardian or assist others in petitioning the court to serve as guardian.

Of the 42 AAAs responding to the JSGC survey and stating that they either petition the court to serve as guardian or assist others in petitioning to serve as guardian, 23 of them stated that they only or primarily do so in protective services cases.

⁴⁰ In addition to these five AAAs, two other AAAs that did not respond to the JSGC survey responded to the PAAAA survey and stated that a shortage of resources is the primary reason that they do not serve as guardian.

⁴¹ In addition to these four AAAs, one other AAA that did not respond to the JSGC survey responded to the PAAAA survey and stated that a local agency that it supports annually with \$10,000 provided guardianship services.

⁴² If the responding AAA does not so petition or assist in petitioning, it was asked to specify the reasons for not doing so.

⁴³ It should be noted that the PAAAA survey did not ask if the agency assists in petitioning the court to serve as guardian. Therefore, the two that indicated that they do not petition the court to serve as guardian could potentially assist others in doing so.

Additionally, of the five AAAs that did not respond to the JSGC survey but responded to the PAAAA survey and stated that they either petition or assist others in petitioning, three indicated that they do so only in protective services cases. AAAs also indicated that they determine whether to petition or assist others in petitioning based on the consumer or consumer's family financial ability to petition, whether the consumer is already an AAA consumer and whether someone else is able to petition on behalf of a consumer.

The vast majority of the AAAs that stated that they assist others in petitioning indicated that such assistance comes in the form of legal assistance such as providing help in preparing the petition, representation at the guardianship hearing, and guidance and technical assistance on the requirements of serving as a guardian. Some of the AAAs also stated that they also help petitioners by paying for the cost of the petition, court fees, psychological evaluations and expert testimony.

Survey Question 4

Question 4 of the JSGC survey asked whether the responding AAA provides guardianship services to those who have no other individual willing or able to serve as guardian and, if not, whether another local agency or organization exists that provides such services.

Of the 44 AAAs that responded to the JSGC survey, 29 stated that they either provide guardianship services to those who have no other individual willing or able to serve as guardian or serve as a guardian of last resort.⁴⁴ In addition, of the seven AAAs that did not respond to the JSGC survey but responded to the PAAAA survey, five indicated that they serve as guardian. Assuming that these five also serve as a guardian of last resort, there are a total of at least 34 AAAs (65.4 percent of all AAAs) that are willing to serve as a guardian of last resort

Of the 15 respondents to the JSGC survey that stated that they do not serve as a guardian of last resort, only two stated that there is not another agency in their service area serving as a guardian of last resort. Additionally, at least one of the other AAAs stated that although there is another agency in its county that is willing to serve as a guardian of last resort, this agency only does so for consumers able to pay for guardianship services.⁴⁵ Several other AAAs mentioned that the "other organizations" are private attorneys, financial institutions, clergy, family members, or friends.

⁴⁴ Of these 29 AAAs, several indicated that they would only serve as a guardian of last resort if certain criteria were met: six will do so if the consumer is involved in a protective services case; one will only do so if the consumer is already an AAA consumer; one will only do so if the consumer is either involved in a protective services case or is a previous AAA consumer; and one will only do so if the consumer is in a long-term care facility.

⁴⁵ However, this AAA also indicated that many of their consumers are unable to pay for these services.

In addition to the 15 respondents to the JSGC survey that stated they do not serve as a guardian of last resort, there were also two other AAAs that did not complete the JSGC survey but completed the PAAAA survey. These AAAs stated that they do not serve as a guardian (presumably they do not serve as a guardian of last resort). Of those two AAAs, one indicated on the PAAAA survey that there is not another agency or organization within the county that provides guardianship services.

Survey Question 5

The purpose of Question 5 of the JSGC survey was to determine what specific guardianship-related services that the responding AAA offers incapacitated individuals and their guardians.⁴⁶

Several AAAs provided detailed responses to Question 5, and it was apparent that most, if not all, of the AAAs provide guardianship-related services to some extent, even if the services involve simply providing consumers with information regarding how to receive guardianship-related services. Among the most commonly listed guardianship-related services that the AAAs provide are the following:

- (1) Legal services (including assisting potential and current guardians through the petitioning process, completing the annual guardianship form, helping incapacitated individuals enroll in PACE and other programs for which they qualify, and sorting through financial paperwork).
- (2) Representative payee services.
- (3) Power of attorney services.
- (4) Transportation and meals for incapacitated individuals.
- (5) Operating senior centers and adult day care centers.
- (6) Domiciliary care and case management services.

Some less frequently stated guardianship-related services of interest include the following:

- (1) Community education on surrogate decision making.
- (2) Professional education to members of the legal, medical, human services, and long-term care communities on guardianship-related issues.
- (3) Annual training for contracted guardianship agencies.

⁴⁶ If the responding AAA does not offer any other guardianship-related services, it was asked to specify the reasons for not doing so.

Survey Question 6

Question 6 of the JSGC survey asked whether, and the extent to which, the responding AAA acts as an agent under a power of attorney. It also asked for an opinion as to the use of a power of attorney as an effective alternative to guardianship.

Of the 44 AAAs that responded to the JSGC survey, 14 stated that they currently serve 107 individuals as an agent under a power of attorney.⁴⁷ Three other AAAs indicated that they serve 27 individuals by arranging for another organization or individual to be named as the agent with the AAA supporting the agents with funding.⁴⁸

Of the 17 AAAs that indicated on the JSGC survey that they either serve as an agent under a power of attorney or contract out these services to other organizations, seven perceived that the number of powers of attorney has been increasing, two believed the number of powers of attorney is about the same, and one thought the number of powers of attorney has been decreasing in recent years. The remaining seven failed to respond to this inquiry.

When survey respondents were asked if powers of attorney are an effective alternative to guardianship, 29 (65.9 percent of all respondents) agreed, five (11.4 percent of all respondents) disagreed, two (4.5 percent of all respondents) could not decide, and eight (18.2 percent of all respondents) did not respond. Regardless of how survey respondents answered Question 6, many AAAs indicated that powers of attorney have their limitations, including the following:

- (1) An individual cannot legally name an agent once he or she is incapacitated. Therefore, powers of attorney are only useful in cases where the individual had the foresight to execute a power of attorney while still competent.
- (2) Powers of attorney are only effective when the agent is trustworthy. Powers of attorney are not really monitored by anyone; therefore, abuses in the system can easily take place.

⁴⁷ Of the seven other AAAs that did not respond to the JSGC survey but responded to the PAAAA survey, only one stated that it serves as an agent under a power of attorney, and it only serves as an agent for one individual. Therefore, at least 15 AAAs (28.8 percent of all AAAs) currently serve 108 individuals as an agent under a power of attorney.

⁴⁸ These three AAAs stated that they contract out power of attorney services to other organizations or individuals. The JSGC interpreted this response to mean that the AAA funds, but does not actually serve as, the agent under a power of attorney.

Survey Question 7

Question 7 of the JSGC survey requested the names and contact information of other organizations or agencies in the responding AAA's service area that either provide guardianship services or serve as a guardian.

Of the 15 responding AAAs that indicated they do not serve as guardian either directly or through a contracted agency, only one stated that there is no other organization willing to serve as guardian.⁴⁹ Of the remaining 14 AAAs, eight stated that they are aware of only one other organization within the AAAs coverage area that provides guardianship services. The remaining six AAAs within this group stated that they are aware of two to five organizations that provide guardianship services within the AAA's service area.

Of the 29 AAAs that indicated that they serve as a guardian either directly or through a contracted agency, seven stated that they are the only organization that provides guardianship services within their service area.⁵⁰ One additional AAA also indicated that all other guardianship agencies that provide guardianship services within their service area are from outside the immediate service area. Five AAAs within the group of AAAs that serve as a guardian (or contract guardianship services out) stated that there is only one other organization within the AAA's service area to provide guardianship services. The remaining 16 AAAs within that same group stated that they are aware of two to eight organizations that provide guardianship services within the AAA's service area.

In addition to the JSGC survey to the AAAs, the JSGC also surveyed court administrators of the Pennsylvania Courts of Common Pleas and members of PACAH regarding guardianship issues in the Commonwealth.⁵¹ All survey respondents were asked a question similar to Question 7 of the AAA survey. In many cases, the court administrators and PACAH members listed the same organizations as the AAAs did within a given county. However, in some cases, the court administrators and PACAH members knew of additional organizations or individuals⁵² that provided guardianship

⁴⁹ The solitary AAA indicated in Question 5 that "solutions have always been found." In addition to the 15 AAAs that responded to the survey and indicated they do not serve as a guardian, two additional AAAs that responded to the PAAAA survey stated that they also do not serve as a guardian. Of these two, one indicated that there is not another agency or organization within the AAA's service area that provides guardianship services.

⁵⁰ In addition to the 29 AAAs that responded to the survey and indicated they served as a guardian, five additional AAAs that responded to a PAAAA survey stated that they serve as a guardian. Of those five, one indicated that there is not another agency or organization within the AAA's service area that provides guardianship services.

⁵¹ *Infra*, pages 97-98 for the final version of the survey distributed to the PACAH members.

⁵² Although the question did not ask respondents to list individuals who are willing to serve as guardians when no family members or friends of the individual can be found, some survey respondents answered this question by listing individuals in their area (such as attorneys) who will provide guardianship services. These individuals are included as "guardianship organizations" in the survey results.

services within a particular county. Table 2 includes a breakdown by county as to whether or not the AAA serving a particular county indicated it would serve as a guardian and how many other organizations or individuals within the county were mentioned as also being willing to serve as guardian.⁵³

Survey Question 8

The purpose of Question 8 of the JSGC survey was to determine whether the AAAs believed that the current statutes and local programs and services are effective in meeting the current demand for guardianship. Question 8 also asked what improvements could be made to the current statutes, programs and services to improve the system.

In response to Question 8, 27 AAAs (61.4 percent of responding AAAs) responded that the current statutes, programs and services are not effective in meeting the current demand for guardianship, 13 AAAs (29.5 percent of responding AAAs) responded that they are effective, and four AAAs (9.1 percent of responding AAAs) responded that some of the current statutes, programs and services are adequate and some are inadequate.

The following is a summary of comments from the survey respondents regarding Question 8.

- (1) “The current statutes and programs/services are effective in meeting the current demand. However, additional funding sources will be needed given the current trends. We would recommend that the current Medical Assistance allowance of \$100.00 per month be increased to \$200.00 per month for Medical Assistance guardianship ward placed in Nursing Facilities. This funding mechanism would not impact costs to the state medical assistance program.”

⁵³ Although a brief look at Table 2 may cause one to believe that there are adequate guardianship agencies within many of the counties, strong caution should be used when examining the table. First, in some counties, the AAAs are included as a group that provides guardianship services. However, the AAAs only serve individuals who are age 60 and older. Therefore, in counties where the AAAs are the only organizations about which survey respondents knew that provide guardianship services, there may be inadequate numbers of guardians for incapacitated individuals under the age of 60. Second, although organizations or individuals are able to serve as guardians, they may not necessarily be willing to do so for little or no compensation. Some survey respondents indicated that while guardianship organizations exist within their service area, the organizational fees are too high for the poorest individuals in need of a guardian.

Table 2

DO AAAs PROVIDE GUARDIANSHIP AND HOW MANY OTHER ORGANIZATIONS OR INDIVIDUALS PROVIDE GUARDIANSHIP TO INDIVIDUALS WHO DO NOT HAVE A FRIEND OR FAMILY MEMBER WILLING AND ABLE TO SERVE AS GUARDIAN BY COUNTY IN PENNSYLVANIA FALL 2005

County	Does AAA in area provide guardianship (either directly or contracted through another agency)?	Total number of other organizations or individuals (in addition to AAAs) providing guardianship services ¹	County	Does AAA in area provide guardianship (either directly or contracted through another agency)?	Total number of other organizations or individuals (in addition to AAAs) providing guardianship services ¹
Adams	Yes	0	Lackawanna	Yes	4
Allegheny	Yes	4	Lancaster	Yes	3
Armstrong	No	3	Lawrence	Yes	0
Beaver	No ²	1	Lebanon	Yes ²	2
Bedford	Yes	1	Lehigh	Yes	5
Berks	Yes	2	Luzerne	Yes	2
Blair	Yes	2	Lycoming	No	2
Bradford	Yes	0	McKean	No	3
Bucks	No	4	Mercer	Yes	0
Butler	Unknown	0	Mifflin	Yes	1
Cambria	Yes ²	2	Monroe	Yes	1
Cameron	No	3	Montgomery	Yes ²	2
Carbon	Yes	0	Montour	Yes	2
Centre	No	1	Northampton	Yes	4
Chester	Yes ²	3	Northumberland	No ²	0
Clarion	Yes	1	Perry	No	1
Clearfield	Yes	2	Philadelphia	Yes	12
Clinton	No	1	Pike	No	2
Columbia	Yes	2	Potter	No	1
Crawford	Yes, but none currently	1	Schuylkill	Yes	2
Cumberland	Yes	4	Snyder	No	1
Dauphin	Yes	5	Somerset	No	3
Delaware	No	1	Sullivan	Yes	0
Elk	No	4	Susquehanna	Yes	0
Erie	Yes	2	Tioga	Yes	0
Fayette	Yes	0	Union	No	1
Forest	No	1	Venango	Yes	0
Franklin	Yes ²	0	Warren	No	1
Fulton	Yes	4	Washington	Yes	0
Greene	Yes	0	Wayne	No	2
Huntington	Yes	2	Westmoreland	Yes	4
Indiana	No	3	Wyoming	Yes	2
Jefferson	No	0	York	Yes	8
Juniata	Yes	1			

1. These figures exclude organizations or individuals the survey respondents (AAAs, PACAH members, and court administrators) were not aware of when they completed their survey. Therefore, tallies may be much lower than the actual number of organizations or individuals willing to become a guardian. Additionally, many of the organizations or individuals mentioned by survey respondents are accounted for more than once within this table as they serve more than one county.

2. Information taken from a 2004 survey by the PAAAA Protective Service/Guardianship Committee.

SOURCE: JSGC surveys of the AAAs, court administrators of Pa. Courts of Common Pleas and PACAH members (August-October 2005).

- (2) “The services mentioned are small and are managed by, basically, one individual. If they decide they want to close, there is no entity to assume their responsibilities. Additionally, at some point, it is likely that they will be at capacity and will no longer accept appointments. Another concern is that there is nothing to require them to accept ‘difficult’ cases. We feel that a separate entity should provide guardianship services -- separate from those which petition.”
- (3) “At this point, the Area Agency on Aging is very close to reaching its capacity to serve as guardian for any additional individuals and this is in recognition to the complexities and time involved in several recent cases. In regard to current statutes, it is our position that they are adequate, but clearly sufficient funding is needed to insure legal representation, accounting, [and] dealing with real estate and assets. Again the Agency is at a point where we will not be able to effectively manage any additional guardianships without resources, including staff.... It is recommended that where AAA’s are willing to serve as guardian funding be provided through the County to support this work. It is also felt that a local office of public guardianship could be established as an adjunct to an Area Agency on Aging with the emphasis that it be a local guardianship service and not a statewide office of public guardianship. It has been our experience that close contact is needed and again it is essential that guardianships be managed at the local level. Another issue that should be addressed by the General Assembly is a guardian’s authority to make end of life decisions with it being recommended that it follow the practice that the decisions would be predicated around medical opinion, [and] implementations of a person’s previous position on the use of heroic measures to sustain life and family input but with emphasis on professional medical opinion.”
- (4) “Programs and services do not exist. There needs to be money for guardianship support workers, resources to petition and defray the cost of court fees and evaluations, etc. Family members need a formal provider for support and information on what their duties and responsibilities are. There needs to be dollars for a financial guardian program, in general. Area Agencies on Aging need funding to provide guardianship support services and all financial and care management activities associated with servicing as a consumer’s guardian. Lack of funding limits the number of consumers served by an AAA, and creates waiting lists. Also, there is a need for guardianship services for those aged 18-59 who may need an emergency guardian. The creation of protective services for these under 60 may resolve this problem. Further, funding is needed to engage the services of a psychiatrist/psychologist to assist with capacity determination of the geriatric consumer. There also needs to be a better monitoring system by the courts of those organizations in the Commonwealth that provide guardianship services.”

- (5) The state is currently “lacking an establishment of agencies to serve as guardian. The need exceeds available financial resources for guardianship.”
- (6) “Any mandate to serve as guardian should be accompanied by adequate funding if the person is indigent.”
- (7) “Demand is [currently] met by family, friends, clergy, Helpmates, [and] others. Statutes: Reporting requirement/responsibility of a guardian makes it harder to obtain a guardian, as requirements increase. Programs and Services: [There needs to be h]elp with costs associated with obtaining a guardianship, especially legal costs.”
- (8) “Guardianships through a public source are only available to the over 60 age group.”
- (9) “Adequate funding is necessary to hire staff necessary to manage/maintain the program. Our AAA places a high priority on these consumers and families, but it can become a drain on agency resources.”
- (10) “At present, it is extremely difficult to find a guardian for those individuals who have low income and limited assets.”
- (11) “Funding is needed to employ competent guardians and support services.”
- (12) [Our service area does] “not have a guardianship agency locally to assist incapacitated persons in our communities. The closest guardianship agencies are located in ... [neighboring areas]. It is this agency’s hope that a guardianship agency will be established locally to assist the community.”
- (13) “I’m sure provider agencies of LTC [long-term care] or health care would be helped if there were a guardianship agency. [However, i]t should not be viewed by them as the automatic fix to every situation when there is family or friends who would be enlisted to help first.”
- (14) Some people “cannot afford private agencies fees (\$200-\$250) [and] ... do not have a relative or close friend that could be named POA or appointed guardian.”
- (15) “Current programs are effective but do not meet the needs of the community. The mental health and mental retardation systems in our communities do not offer these services that are necessary to meet those populations’ needs. The disabled community’s needs regarding guardianship and POA are not being met (ages 18 through 59). Funding to provide guardianship and POA services is an issue for all populations.”

- (16) “There is a severe shortage of affordable guardians or POAs for consumers who remain in the community. The AAA might consider subcontracting these services.”
- (17) “Current statutes in Pennsylvania do not provide the resources necessary for [our] ... AAA to meet the needs of individuals, especially those over the age of sixty, who lack capacity and are in need of guardianship services in ... [our service area]. [Our] ... AAA frequently receives requests from local hospitals, lawyers, ... County Orphans’ Court, family members, nursing homes, personal care homes and community agencies to act as guardian for those individuals who have no family to act in this capacity. Funding needs to be made available to provide these services and to meet the needs of this growing population as we are only serving those incapacitated older adults directly involved in a Protective Services investigation.”
- (18) “The current statutes are effective in meeting the current demand for guardianship; however, funding to expand guardianship services to individuals less than 60 years of age is needed. The current statutes are sufficient, but they do not provide funding for the appropriate monitoring of all Guardians. The statute provides for guardianship agencies to be established in order to make available guardians, but it does not establish a vehicle for funding such programs. In order to provide continuity in services, the AAA should be funded as the entity to provide these services. In ... [our] service area, the AAA has the capability to provide not only support and advice to guardians, but also a complete legal assistance service.”
- (19) “On several occasions we have been disappointed with the performance of one or more of the ... [private] agencies [that serve our area]. They are not always as reliable as we feel they should be. When family members petition for guardianship it can be a lengthy and costly process which can be a deterrent.”
- (20) “Current statutes as well as cost deter families from filing and there seems to be no choice other than the AAA.”
- (21) “While the current statute reflects the need for guardianship services, this is an unfunded mandate. The programs/services are available, but due to limited resources, often we must look to the local hospitals and nursing homes to file the petition. Not allowing the physician/psychiatrist to charge for a deposition would be very helpful. Currently, the deposition charge ranges from \$300 to \$800 dollars and if the doctor doesn’t get paid,

the doctor won't provide the statement of capacity. Without the statement of capacity, the Judge won't appoint a guardian. Consistency in carrying out the provision of the statute across county lines would be very helpful."

- (22) "In our area, there is no need for additional programs/services. However, our agency pays the guardianship provider for most of the ward's fees which often exceed \$300.00 per person monthly. DPW only pays \$100 a month, which is inadequate."
- (23) "The current programs/services are lacking. This county needs someone to manage guardianship for those in NF/PCH's [personal care homes]. This could be built into the county government in some format."
- (24) "Lack of specific funding for guardianship services necessitates utilization of current (and limited) funding streams."
- (25) "There is an increased demand for guardianship services for incapacitated older adults who are residing in nursing home facilities, which Area Agencies on Aging programs and services cannot sufficiently meet. Request for guardians are often made prior to the older adult entering the nursing home or after admission just in case a problem might arise. It appears that nursing home administrators view guardianship as a mechanism to assure nursing home payment."
- (26) "Current statutes are effective for guardianship activities, but not for powers of attorney, which need much more intense monitoring."
- (27) "The situations involved are usually very complex and extremely time consuming. We are not equipped to handle real estate, investments, past exploitations, and court demands to recover lost assets and find missing relatives. Sometimes [we] need to see the individuals weekly or more often."
- (28) "There is virtually no guardianship service available for persons under age 60. We frequently receive referrals/inquiries for service to persons under the age of 60 with health concerns, mental health issues, and have no statutory/financial base to serve them, and no referrals to suggest. The number of guardianships also is both a human resource and financial issue - the current system struggles to meet the need. Also, there is little provision for monitoring the activities of guardians."
- (29) "At the current rate of need, there seems be an adequate number of attorneys willing to take on cases. If the incidences were to increase there would not be enough guardians."

- (30) “There needs to be an agency to handle guardianships for all ages, at no cost if the person is low income. There are many long-term care residents in need of a guardian.”
- (31) “At the current time the reporting and visitation requirements for guardianship consumers involves a great deal of staff time. Even with the limited number [of guardianships], the paperwork, casework, and decisions involve a great deal of time. The reimbursement is minimal and does not cover the costs.”
- (32) “For the most part, services in our county for guardianship is sufficient due to the extreme generosity of [a local] attorney.... However, there are still cases where famil[ies] wish to bring a guardianship action, but do not have the money to do so and there is no need for involvement on the part of our agency (i.e., No elder abuse issues).”
- (33) “Services are not available for those who have no assets or are low income; [We recommend providing] funding to private organizations so they can afford to serve the low income.”
- (34) “It would be very beneficial if guardian support agencies were active in our county and we could contract with them to provide services AND if there was a separate funding arrangement for this service statewide.”
- (35) “We have had no problem in our county to date, but realize that the demand for such services may increase. A regional guardianship agency, or financial assistance to provide such services, would be helpful.”
- (36) “At this time it appears that some of the services offered in our area are effective in meeting the current demand for guardianship at a basic level. [Our AAA’s] ... Guardianship Unit is a full-service unit providing professional care for all aspects [of] the wards’ lives. The Aging Care Managers are specially trained in the responsibilities of guardianship case management. The Community Health Nurse is well qualified by her career in nursing to address the medical needs of the consumers and to act in a supporting role in health care decision making processes. The accountant has had a long career in private sector accounting and is familiar with the various government benefits programs and insurances. The Aging Case Aides provide considerable socialization and linkage to meeting the spiritual needs of the consumers. None of the other programs operating in [our service area] have this full service available to wards. Banks and other financial institutions deal only with fiduciary aspects of guardianship and are unable to address medical issues. The private guardianship practices do not have the support resources available to them for making investment and medical decisions in the consumer’s best interest. They also do not accept the most financially needy consumers as

this would not be economically viable for them. The Guardianship and POA statutes are adequate to address the role of those serving in those capacities. However, they do not address the issues of qualifications of public guardians and funding. It would seem that there is a need to establish baseline qualifications for guardians which would allow for basic education of guardianship responsibilities. This duty and cost could be born by the legal community representing the appointed guardian. This is not always done by these attorneys. The Court provides little if any education or assistance to guardians. It would seem that both of these entities should be encouraged to provide at least a minimum of instruction and guidance to prospective and actual guardians. The issue of funding needs to be addressed legislatively with regard to financially needy persons.”

- (37) “There are no provisions for MH/MR under age 60 individuals to have an entity petition for and serve on behalf of them for guardianship services. There are many who need this [service]. There are also no resources for our agency to expand our services to consumers aged 60 and older who do not meet criteria for protective services. This is a budgetary and personnel issue.”

Survey Question 9

Question 9 of the JSGC survey asked whether the responding AAA believed that the current programs and services will be able to respond to the potentially growing incidence of incapacitated long-term care residents in need of guardianship services in the future.

In response to Question 9, 37 AAAs (84.1 percent of responding AAAs) responded that current programs and services will not be able to meet such future needs, four AAAs (9.1 percent of responding AAAs) responded that they will be able to meet such future needs, one AAA responded that some of the current programs and services will be able to respond to the demand while other programs will not be able to respond, one AAA was uncertain if current programs and service will be able to meet the future demand for guardians, and one did not answer the question.

The following is a summary of comments from the survey respondents regarding Question 9.

- (1) “There aren’t enough staff persons to handle guardianships done under current parameters if our agency was to be made responsible for all. If guardians were appointed regardless of whether there were imminent-risk circumstances for residents of facilities, we would be faced with an overwhelming amount of cases. We get frequent calls from facilities who have residents for whom they feel a guardian is needed--no imminent-risk

circumstance--the facility just wants a 'decision-maker' in place in case needed. We feel that guardianships should continue to be done only within parameters that a separate guardianship agency is needed."

- (2) "It is evident that there is a substantial unmet need in regard to this issue and with it being noted that nursing facilities are expected to make decisions for residents without any statutory authority in regard to accessing medical care, end of life decisions and the disposition of assets. It is noted that over the past few years it appears that nursing facilities and, in turn, AAAs are receiving pressure from hospitals, family members, [and] physicians and home health organizations to admit individuals who urgently need the level of care of a nursing home and this places an unfair burden on the long-term care facility. At the same time it is not the responsibility of an Area Agency on Aging to serve as a local office of public guardianship for these types of cases without the resources to insure that fiduciary responsibility can be met. Again it is emphasized that many guardianship cases are contentious and are initially contested by family or another interested party who disagree on the matter related to medical and long-term care, disposition of property and finances. It is recommended that there be legislative action to fund local guardianship services and that guardians would have a clear directive to use an individual's resources to support their guardianship service."
- (3) "We do not have any programs to deal with this issue at this time. We are quickly approaching a situation where there will not be anyone willing to be guardian without supports and money. Nursing facilities do not want consumers without a responsible party. There needs to be funding for an agency of last resort to act on an individual's behalf. We all know the population is aging and the number of elderly is increasing. We need to address these issues now. We need a funding source!"
- (4) "[F]unding is needed to support guardianship support agencies in an effort to serve more consumers. There also needs to be increased statewide education for the benefits of obtaining powers of attorney[,] advance directives, etc."
- (5) "[N]ursing home residents most often do not have a surrogate decision maker. More guardianship agencies are needed across the state and especially in rural areas."
- (6) Current programs and services "will not be adequate in the future. Area Agencies on Aging should receive line-item funding to provide this service."

- (7) The “[t]wo major areas of concern pertaining to growth in need for guardianship are as follows:
 - (i) Cost of providing information ... [and] legal representation, as number of cases grows.
 - (ii) Difficulty in finding individual/group that is willing to be a guardian, should families, friends, and clergy come to expect government to ‘usurp’ their role.”
- (8) “Guardianships involve such time and legal detail, legal expense and care management support. [There needs to be] more funding to support those efforts through [the] AAA or another resource for those services.”
- (9) “More guardians are needed - perhaps other attorneys or an attorney with a care management staff.”
- (10) “Our AAA has serious concerns in meeting this [guardianship] need in the future. We believe the decision to act as guardian or subcontract should be made by the individual AAA and its governing body. However, no matter which entity provides guardianship services, there must be adequate funding for this intense service.”
- (11) “The few guardianships we have petitioned and maintained over the years have been expensive initially and have consumed considerable staff time over the life of the cases. With no designated additional funds for such activities for many years, and only nominal funds in recent years, we have had to use funds from our fixed allocation from the PA Dept of Aging and divert staff already overloaded. Adequate funding is needed for current activities as well as for any future growth.”
- (12) “Funding is needed to employ competent guardians and support services.”
- (13) “The current available programs and services will not be able to respond effectively to the future need of guardianship. With the baby-boomer generation turning 60 years of age, more and more older adults will be needing assistance. While some families continue to assist loved ones with chronic mental health concerns, mental retardation, or aging issues, the majority of the population does not have the time or resources to assist loved ones full time. The demand for formal assistance will increase tremendously during the next few years.”
- (14) “It is natural for area agencies on aging to do this work for seniors. If that were desired, legal and financial immunity for non-profits would be an essential piece of the legislation to make it acceptable for non-profit AAAs.”

- (15) “There may be a population in nursing homes that will ultimately need to have guardianship established. Nursing homes, however, are beginning to require POAs up front. Another problem is lack of AAA funding. Currently the AAAs receive no funding for the time and effort guardianships take.”
- (16) “The current programs are not meeting the current needs and demands for guardianship and POA in this community whether or not they are in a long-term care facility or in the community. Increase funding and adequate staffing are needed to meet the needs of this community. Similar programs need to exist for other populations besides the elderly.”
- (17) “[There is a need for] affordable guardians for those who continue to live in their own home (not institutional facilities).”
- (18) “Unless substantial funding is made available in the future, guardianship services will continue to be provided on a very limited and emergency basis, clearly not meeting the needs of this population.”
- (19) “The current programs and services will be able to respond to the potentially growing incidence of incapacitated long-term care residents in need of guardianship services provided funding is sufficient. A well established network that provides service from 18 years of age until death is needed in order to simplify the system and in order to provide well-coordinated services. This system could best be established with the AAA. The AAA has staff sufficiently experienced and qualified to provide continuity for consumers and can provide expeditious services. Expanding upon currently available services rather than establishing a parallel system would reduce costs and would make available to consumers a qualified and complete service system.”
- (20) “It would be beneficial to have several guardianship agencies to choose from that would be reliable.”
- (21) “Agencies need to be available to take on guardianships.”
- (22) “The AAA does not petition routinely for LTC [long-term care] residents because we are too small of an agency. We usually refer facilities to family or suggest that the facility petition.”
- (23) “It is so easy to say, more funding – but the reality is, our Commonwealth doesn’t have the funding to respond to this growing need. Some things that we can do now include: ensuring that individuals are informed/educated as to why a Power of Attorney is important; if a guardian is needed due to neglect or financial exploitation, impose a fine on the perpetrator that would help off-set the costs associated with the

guardianship process; provide an incentive to hospitals that enable them to afford to petition the court for guardianship; increase the amount that can be paid for guardianship fee when an incapacitated person is in a licensed facility on Medical Assistance; impose a fee on every guardian who fails to file a guardianship report with the court on time and the fees collected can help off-set the costs of the program; require that the local clerk of courts and register of wills office give a certain percentage of the amount charged to file the guardianship papers to the county AAA to provide guardianship services.”

- (24) “There is no lack of organizations willing to fill this need, only the funds to pay them.”
- (25) “The current programs/services are lacking. This county needs someone to manage guardianship for those in NF/PCH’s [personal care homes]. This could be built into the county government in some format.”
- (26) There is a need for increased funding and staff.
- (27) “The increased demand for guardianship services for incapacitated older adults cannot be sufficiently met by the current programs and services without adequate funding.”
- (28) Current programs and services will be sufficient in the future “if the legislative process insures continuing review of the guardianship statutes and programs in meeting the needs of incapacitated persons, and proper funding is allocated for local programs.”
- (29) “Public Guardianship seems inevitable.”
- (30) Provide “[f]unding for guardianship support agencies - organizations that could serve persons of age 18 on up who require surrogate services. Provision[s] should include services as agent under a POA, guardianship, frequent visitation to incapacitated persons, bill paying and financial record keeping, legal consultation and provision for independent evaluations. A separate guardian monitoring system should be developed and funded.”
- (31) “In ... [our] opinion the likely future need for guardianship and guardianship service augers for the creation of a public guardian, but only if it is properly funded. Additionally, legislation should be explored pertaining to alternatives to guardianship for incapacitated institutionalized individuals including but not limited to surrogate decision-making statutes.”

- (32) There is a “lack of MA-funded LTC [long-term care] facilities, especially personal care facilities.... When emergency placement takes place, the family and people involved in the case must travel 1 - 1.5 hours out of county to visit the individual.”
- (33) “There needs to be an agency to handle guardianships for all ages, at no cost if the person is low income. There are many long-term care residents in need of a guardian.”
- (34) “I believe we need additional funding to cover the costs of guardianship services. We also need a statewide entity to assist in guardianship issues and the ethical issues. A durable Power of Attorney has almost the same powers as guardian but not the accountability, like invasion of principal court orders.”
- (35) “Additional resources/organizations are needed in many areas of the state to accept appointment of a guardian. Also, resources for families who wish to apply for guardianship when no money is available are a need. However, there must be some screening tool or agency to determine the appropriateness of those applying to be guardian. Also, guardians should be paid reasonable for their services.”
- (36) “Many residents in LTC [long-term care] facilities are unable to make responsible care decisions and do not have family to assist. They would probably benefit from a guardian to oversee their care and make medical decisions but there is not a program available to provide that assistance. It is our experience that the Nursing Facilities are reluctant to take on that role and responsibility. The AAA will not pursue Guardianship in those cases. AAAs may be able to respond to the growing need if there is appropriate, adequate funding identified and maintained, AND guardianship support agencies are somehow encouraged to serve all areas of the state. It is much more appropriate for a contracted guardianship support agency to serve as guardian than it is for a local governmental agency (County).”
- (37) “I believe that additional services will be necessary to address the needs of persons in placement, elderly persons who are recipients of long-term care services, or incapacitated persons under the age of 60. Additional agencies who specialize in adoption services - shared by the smaller rural counties - would be very helpful.”
- (38) “It does not appear to us that the current programs and services will be able to respond to the potentially growing incidence of incapacitated long-term care residents in need of guardianship services in the future. There will need to be lines of responsibility for ethical decision making

established as well [as] adequate training for the professionals making those decisions. There will also need to be funding to provide these services.”

- (39) “I believe that facilities have the primary responsibility and ability to petition for a guardian to be appointed. In our county, [the] ... AAA has taken the lead on identifying and training resources to serve as guardian, and these resources are utilized by the petitioners and the court system. Issues do arise, however, for those individuals who have no resources to pay for guardianship services, and are not eligible for deduction of costs up to \$100.00 under medical assistance provisions. Our current cost for contracted services is \$500.00 for the start-up month and \$150.00 per month thereafter. If eligible under medical assistance regulations, \$100.00 of that comes from DPW and the additional \$50.00 is paid by our agency. If not eligible and the consumer has no resources, lives in a PCBH, etc., we bear the entire cost. We currently pay \$50.00 per month for the limited number of individuals receiving services under a power of attorney.”

SURVEY SENT TO THE AREA AGENCIES ON AGING



GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION
ROOM 108 – FINANCE BUILDING
HARRISBURG, PA 17120
717-787-4397
FAX 717-787-7020

August 24, 2005

SUBJECT: House Resolution 131 (Guardianship Services)

TO: Area Agencies on Aging

FROM: David L. Hostetter
Executive Director

House Resolution 131 of 2005 (see enclosed) directs the Joint State Government Commission (a bipartisan, bicameral research agency for the General Assembly) “to review the current guardianship statutes and programs in this Commonwealth and their effectiveness in meeting current demand for guardianships; and ... include in its review specific findings and recommendations relating to the ability of current programs and services to respond to the growing incidence of incapacitated long-term care residents in need of guardianship services.” In response to this request, Commission staff have begun to research guardianship services within Pennsylvania and found that many of the guardianship services in Pennsylvania are provided at the local level.

In discussions with the Pennsylvania Department of Aging, Pennsylvania Department of Public Welfare, and Alan Smith, the Chair of the AAA Protective Service/Guardianship Committee, it has become quite clear that many of the local AAA’s are instrumental in providing guardianship services to individuals age 60 and above. Therefore, the Joint State Government Commission is asking each AAA in Pennsylvania to complete the enclosed survey.

Since the resolution provides a deadline of November 11, 2005 to complete this study, we would greatly appreciate your response within three weeks (if possible). Responses may be returned in the enclosed postage-paid envelope, by e-mail (jntst02@legis.state.pa.us), or by fax (717-787-7020).

If you have any questions about the survey or this study, please feel free to call (717) 787-4397 or e-mail jntst02@legis.state.pa.us. Thank you for your anticipated cooperation.

Enclosure

Area Agencies on Aging Guardianship Survey

Please answer the following questions about your AAA. You may attach additional sheets of paper if necessary. If you have any questions about this survey or study, please feel free to contact the Joint State Government Commission using the contact information at the end of this survey.

1. What is the full name of your AAA?

2. Does your AAA serve as guardian or contract guardianship services out to other agencies or organizations? Please specify which. Also indicate how many incapacitated individuals your agency currently serves as the guardian and how many guardianships are currently contracted out to other organizations. (If you do not serve as guardian or contract these services out to other organizations, please explain why you do not.)

3. Does your AAA petition the court (or assist others petitioning the court) to appoint a guardian for an individual? If your AAA does petition the court or assist others petitioning the court in guardianship cases, please explain the circumstances in which your AAA assists the petitioner or acts as the petitioner. If your AAA assists in petitioning the court, what assistance is provided? (If your AAA does not provide these services, please explain why it does not.)

4. Does your AAA provide guardianship services to those who have no other individual willing or able to serve as guardian? If not, is there another agency or organization within your AAA's coverage area that provides this service?

5. What other guardianship-related services (in addition to acting as guardian) does your AAA offer individuals who are incapacitated or who are serving as guardians? Please briefly describe each service offered. (If your AAA does not offer any other services, please specify why your AAA does not offer other guardianship services.)

6. Does your AAA act as an agent under any powers of attorney? If so, how many individuals are you currently serving as agent for and have you seen this figure increase, decrease, or remain about the same in recent years? Do you believe the use of the power of attorney is an effective alternative to guardianships?

7. What are the names and contact information of other organizations or agencies in your AAA's service area that either provide guardianship services or serve as the guardian of record? (Please include all organizations that you know of that provide guardianship services, including those who service individuals under the age 60.) Please provide as much contact information as possible so that we will be able to ask those organizations similar questions to the ones included in this survey.

8. In your opinion, are the current statutes and programs/services offered in your area (either by your AAA or other organizations or agencies) effective in meeting the current demand for guardianship? If not, what are the current statutes or programs/services lacking and do you have any recommendations on how these current statutes or programs/services could be expanded or changed to meet these shortcomings?

9. Do you believe that the current programs and services will be able to respond to the potentially growing incidence of incapacitated long-term care residents in the need of guardianship services in the future? If not, what is needed?

RETURN TO:
JOINT STATE GOVERNMENT COMMISSION
108 FINANCE BUILDING
HARRISBURG, PA 17120
PHONE: 717-787-4397
FAX: 717-787-7020
E-MAIL: jntst02@legis.state.pa.us

PENNSYLVANIA ASSOCIATION OF COUNTY AFFILIATED HOMES

Background on the PACAH

The Pennsylvania Association of County Affiliated Homes (PACAH) was formed in March 1951 by the administrators of county affiliated health care facilities located throughout the Commonwealth. In 1983, PACAH affiliated with the County Commissioners Association of Pennsylvania and acquired staff and lobbying services.⁵⁴ PACAH currently represents 54 county homes and 34 county affiliated homes.⁵⁵ The mission of PACAH includes the following:

- (1) To aid members of the association and county owned and affiliated health care facilities in the delivery of the best possible comprehensive medical care for the ill and aging.
- (2) To promote and coordinate educational activities for county administrators and other health care personnel related to the care of the long-term chronically ill patient.
- (3) To participate in activities designed and to promote the general welfare and health of residents.⁵⁶

Survey Methodology

On August 23, 2005, the JSGC met with a Michael Wilt, the Executive Director of PACAH; Steven McShane, PACAH President and Administrator of the Green Acres Adams County Nursing and Rehabilitation Center; and Marlin Peck, PACAH President-Elect and Administrator of the York County Nursing Home. After discussions with them, the JSGC decided that it would be helpful to survey the PACAH members to

⁵⁴ “Pennsylvania Association of County Affiliated Homes: Our Mission...,” PACAH, <http://www.pacounties.org/pacah/cwp/view.asp?a=1493&q=467351&pacahNav=|> (last visited November 15, 2005).

⁵⁵ County homes are full voting members of PACAH; county affiliated homes are associate members and do not have full voting rights.

⁵⁶ PACAH, *supra* note 54.

gather more information on guardianship-related issues. On September 6, 2005, after consultation between the PACAH and the JSGC, a survey was distributed to the PACAH members.⁵⁷ The PACAH also assisted the JSGC in increasing the number of members responding to the survey.

In total, 54 surveys were sent to County Homes, and 34 surveys were sent to county affiliated homes. As of October 31, 2005, 41 out of the 54 county homes (75.9 percent), and 7 of the 34 county affiliated homes (20.6 percent) responded to the survey. The overall response rate was 54.5 percent.⁵⁸

Survey Results

The following summarizes the results from the JSGC survey sent to the members of PACAH.

Survey Question 3

This purpose of Question 3 of the survey was to determine what counties each of the nursing homes covered. Of Pennsylvania's 67 counties, 52 of them (77.6 percent) were either mentioned by a county home or a county affiliated home survey respondent.⁵⁹

Survey Question 4

Question 4 of the survey asked the number of residents in each responding facility, broken down by age category (under 18, 18-59 and 60+). Table 3 is a summary of the results from Question 4. As the table illustrates, the vast majority (88.0 percent) of residents in nursing homes are older individuals age 60 and above.

⁵⁷ *Infra*, pages 97-98 for the final version of the survey distributed to the PACAH members.

⁵⁸ Due to a rather low response rate of the county affiliated homes, survey results of these affiliated homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual opinions or data of the 27 county affiliated homes that did not respond to the survey. In addition, after consultation with the executive director of PACAH, the JSGC made one correction to one of the surveys regarding whether the respondent was a full voting member of PACAH.

⁵⁹ The 15 counties that were not mentioned still could be covered by either a county home or a county affiliated home that did not respond to the survey.

Table 3

NUMBER AND PERCENTAGE OF RESIDENTS
IN COUNTY HOMES AND COUNTY AFFILIATED HOMES
RESPONDING TO THE SURVEY BY AGE GROUP
FALL 2005

Age group	County homes		County affiliated homes ¹		All responses	
	Number of residents	Percentage of residents	Number of residents	Percentage of residents	Number of residents	Percentage of residents
Under 18	6	0.1%	0	0.0%	6	0.1%
18-59	1,024	9.9	13	1.5	1,037	9.3
60+	8,973	87.1	857	98.5	9,830	88.0
Unknown ²	297	2.9	0	0.0	297	2.7
Total	10,300	100.0	870	100.0	11,170	100.0

1. Since only seven of the 34 county affiliated homes responded to this survey, survey results of these affiliated homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual data of the 27 county affiliated homes that did not respond to the survey.

2. The unknown ages resulted from two county homes not answering this question (or giving a non-responsive answer). Staff estimated the number of residents in each of these two nursing homes by using the “total number of beds” on the *Pennsylvania Department of Health Nursing Care Facility Locator* [Web] Page at <http://app2.health.state.pa.us/commonpoc/nhLocator.asp> on November 2, 2005.

SOURCE: JSGC survey of PACAH members completed in October 2005.

Survey Question 5

Question 5 of the survey asked the number of residents in each responding facility who are over the age of 17 and currently have a guardian. Among the 10,294 adult residents in county homes that responded to the survey,⁶⁰ 636 of them (6.2 percent of all adult residents) have a guardian. Among the 870 adult residents in county affiliated

⁶⁰ Six residents of the total 10,300 shown in Table 3 are excluded from the total figure since they were under the age of 18.

homes who responded to the survey, 17 of them (2.0 percent of all residents) have a guardian.⁶¹ In all survey respondents' facilities, 653 of 11,164 adult residents (5.8 percent) have a guardian.

Survey Question 6

Question 6 of the survey asked the number of residents in each responding facility, broken down by age (18-59 and 60+). Table 4 is a summary of the results from Question 6. As the table illustrates, the vast majority of adult residents in county homes and county affiliated homes with guardians are older individuals age 60 and above (81.9 percent).

Table 4

NUMBER AND PERCENTAGE OF ADULT RESIDENTS WITH A GUARDIAN
IN COUNTY HOMES AND COUNTY AFFILIATED HOMES
RESPONDING TO THE SURVEY BY AGE GROUP
FALL 2005

Age group	County homes		County affiliated homes ¹		All responses	
	Number of adult residents with a guardian	Percentage of adult residents with a guardian	Number of adult residents with a guardian	Percentage of adult residents with a guardian	Number of adult residents with a guardian	Percentage of adult residents with a guardian
18-59	117	18.4%	1	5.9%	118	18.1%
60+	519	81.6	16	94.1	535	81.9
Total	636	100.0	17	100.0	653	100.0

1. Since only seven of the 34 county affiliated homes responded to this survey, survey results of these homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual data of the 27 county affiliated homes that did not respond to the survey.

SOURCE: JSGC survey of PACAH members completed in October 2005.

⁶¹ These data were based on only 7 of the 34 county affiliated homes responding to the survey. Caution should be use when examining these data. For more information, *see generally supra* note 58.

Table 5 takes the results of Question 6 and compares them to the results of Question 4. Table 5 shows the percentage of adult residents (living in homes responding to the survey) that had a guardian as of the completion of the survey. Interestingly, although residents age 18-59 only comprise 9.3 percent of nursing home residents in responding homes, a much larger percentage of those residents currently have a guardian compared to residents who are age 60 and older.

Table 5

PERCENTAGE OF TOTAL ADULT RESIDENTS WITHIN
VARIOUS AGE GROUPS WITH A GUARDIAN IN
COUNTY HOMES AND COUNTY AFFILIATED HOMES
RESPONDING TO THE SURVEY
FALL 2005

Age group	County homes	County affiliated homes ¹	All responses
18-59 ^a	11.4%	7.7%	11.4%
60+ ^a	5.8	1.9	5.4
Total	6.2	2.0	5.8

1. Since only seven of the 34 county affiliated homes responded to this survey, survey results of these homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual data of the 27 county affiliated homes that did not respond to the survey.

a. The percentages in these rows may be slightly higher than the actual survey data because the age groups of 297 residents was unknown; therefore, these 297 residents were not included in the age group data, but were included in the total line's data. Of these 297 residents, survey data disclosed the age breakdowns of the seven residents who had guardians, so these few individuals are included in the individual age group lines (i.e., two in the 18-59 category and five in the 60+ category).

SOURCE: JSGC survey of PACAH members completed in October 2005.

Survey Question 7

Question 7 of the survey asked the type of guardian serving the adult residents. Table 6 is a summary of the results from Question 7. As the table results show, “relatives and friends” comprise the largest group of individuals serving as guardians in both county homes and county affiliated homes that responded to the survey (40.6 percent). Guardianship support agencies are the second largest type of guardians for residents of all survey respondents (34.4 percent), followed by AAAs (10.4 percent), attorneys and law firms (7.4 percent) and facility administrators (1.8 percent).

Table 6

NUMBER AND PERCENTAGE OF RESIDENTS
IN COUNTY HOMES AND COUNTY AFFILIATED HOMES
RESPONDING TO THE SURVEY BY AGE GROUP
FALL 2005

Guardian category	County homes		County affiliated homes ¹		All responses	
	Number of residents with guardians	Percentage of residents with guardians	Number of residents with guardians	Percentage of residents with guardians	Number of residents with guardians	Percentage of residents with guardians
Relative or friend	259	40.7%	6	35.3%	265	40.6%
Guardianship support agency	221	34.7	4	23.5	225	34.4
Area agency on aging	68	10.7	0	0.0	68	10.4
Attorney/law firm	41	6.4	7	41.1	48	7.4
Facility administrator	12	1.9	0	0.0	12	1.8
Other	35	5.5	0	0.0	35	5.4
Unknown	0	0.0	0	0.0	0	0.0
Total ²	636	100.0	17	100.0	653	100.0

1. Since only seven of the 34 county affiliated homes responded to this survey, survey results of these affiliated homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual data of the 27 county affiliated homes that did not respond to the survey.

2. Because of rounding, detail may not sum to total.

SOURCE: JSGC survey of PACAH members completed in October 2005.

Survey Question 8

The purpose of Question 8 of the survey was to determine the organizations or agencies within the respondent's area that offer guardianship services. Of the 48 survey respondents who answered the survey question:

- (1) Seven (14.6 percent) did not know of any organization or agency within their area that provides guardianship services.
- (2) Twenty-four (50.0 percent) only knew of one organization or agency within their area that provides guardianship services.
- (3) Twelve (25.0 percent) knew of two organizations or agencies within their area that provide guardianship services.
- (4) Five (10.4 percent) knew of three or more organizations or agencies within their area that provide guardianship services.

In addition to asking this question to the PACAH members, this question (or a very similarly worded question) was also asked in other JSGC surveys, which were sent to the court administrators of Pennsylvania's Courts of Common Pleas and the AAAs (August - October 2005). In many cases, the court administrators and the AAAs listed the same organizations as the PACAH members did within a given county. However, in some cases, the court administrators and AAAs knew of additional organizations or individuals⁶² providing guardianship services within a particular county. Table 7 includes a breakdown by county of the total number of organizations or individuals within the county that were mentioned by the PACAH members, AAAs and/or court administrators that are willing to become a guardian for an individual who does not have a friend or family member willing and able to serve a his or her guardian.⁶³

⁶² Although the question did not ask respondents to list individuals who are willing to serve as guardians when no family members or friends of the individual could be found, some survey respondents answered this question by listing individuals in their area (such as attorneys) who will take on guardianship services. These individuals were included as "guardianship organizations" in the results.

⁶³ Although a brief look at Table 7 may cause one to believe that there are adequate guardianship agencies within many of the counties, strong caution should be used when examining the table. First, in some counties, the AAAs are included as a group that provides guardianship services. However, the AAAs only serve individuals who are age 60 and older. Therefore, in counties where the AAAs are the only organizations about which survey respondents knew that provide guardianship services, there may be inadequate numbers of guardians for incapacitated individuals under the age of 60. Second, although organizations or individuals are able to serve as guardians, they may not necessarily be willing to do so for little or no compensation. Some survey respondents indicated that while guardianship organizations exist within their service area, the organizational fees are too high for the poorest individuals in need of a guardian.

Table 7

**NUMBER OF ORGANIZATIONS OR INDIVIDUALS SURVEY RESPONDENTS
MENTIONED THAT PROVIDE GUARDIANSHIP TO INDIVIDUALS
WHO DO NOT HAVE A FRIEND OR FAMILY MEMBER ABLE AND WILLING
TO SERVE AS GUARDIAN
BY COUNTY IN PENNSYLVANIA
FALL 2005**

County	Number of other organizations or individuals providing guardianship services	County	Number of other organizations or individuals providing guardianship services
Adams	1	Lackawanna	5
Allegheny	5	Lancaster	4
Armstrong	3	Lawrence	1
Beaver	1	Lebanon	3
Bedford	2	Lehigh	6
Berks	3	Luzerne	3
Blair	3	Lycoming	2
Bradford	1	McKean	3
Bucks	4	Mercer	1
Butler	0	Mifflin	2
Cambria	3	Monroe	2
Cameron	3	Montgomery	3
Carbon	1	Montour	3
Centre	1	Northampton	5
Chester	4	Northumberland	0
Clarion	2	Perry	1
Clearfield	3	Philadelphia	13
Clinton	1	Pike	2
Columbia	3	Potter	1
Crawford	2	Schuylkill	3
Cumberland	5	Snyder	1
Dauphin	6	Somerset	3
Delaware	1	Sullivan	1
Elk	4	Susquehanna	1
Erie	3	Tioga	1
Fayette	1	Union	1
Forest	1	Venango	1
Franklin	1	Warren	1
Fulton	5	Washington	1
Greene	1	Wayne	2
Huntington	3	Westmoreland	5
Indiana	3	Wyoming	3
Jefferson	0	York	9
Juniata	2		

1. These figures exclude organizations or individuals the survey respondents (AAAs, PACAH members, and court administrators of Pa. Courts of Common Pleas) were not aware of when they completed their survey. Therefore, tallies may be much lower than the actual number of organizations or individuals willing to become a guardian. Additionally, many of the organizations or individuals mentioned by survey respondents are accounted for more than once within this table if they serve more than one county.

2. Information taken from a 2004 survey conducted by the PAAAA Protective Services Guardianship Committee.

SOURCE: JSGC surveys of the AAAs, court administrators of Pa. Courts of Common Pleas and PACAH members (August-October 2005).

Survey Question 9

The purpose of Question 9 of the survey was to determine the amount of money spent annually by the responding facility on guardianship-related expenses for residents of the facility who are over the age of 17. The question specifically asked how much of this amount was reimbursed by Medicaid or through other means, and how much was not reimbursed.⁶⁴

In response to Question 9, 25 of the 41 county homes (61.0 percent) stated that do not have any annual guardianship-related expenses. Thirteen of the county homes (31.7 percent) stated that they have annual guardianship-related expenses ranging from \$1,200 to \$36,000 and averaging approximately \$12,285 each.⁶⁵ The remaining three county homes did not answer this question with specific dollar figures; however, two stated that the costs that they incur are legal expenses and that these costs are not reimbursed, and one stated that the guardianship “[f]ee is \$100.00 per month, per resident.”⁶⁶ The 13 county homes responding that they incur annual guardianship-related expenses collectively spent \$159,700 on them. Of this amount, \$75,900 (47.5 percent) was reimbursed by Medicaid, \$20,400 (12.8 percent) was reimbursed by other means, and \$63,400 (39.7 percent) was not reimbursed.⁶⁷

The county affiliated homes also responded to this question. However, of the seven county affiliated homes’ responses, six stated that they do not incur any guardianship-related costs, and the remaining home was uncertain of the costs.⁶⁸

Survey Question 10

Question 10 called for the responding facilities to comment on the effectiveness of the current statutes and local programs and services in meeting the demand for guardianships. It also asked for suggestions to meet any shortcomings of the current system. Table 8 summarizes the results of part of Question 10. As the table illustrates, 41.7 percent of all survey respondents believed that current statutes and local programs

⁶⁴ Question 9 also asked: “If your facility incurs non-reimbursed guardianship related expenses, please describe what these expenses are and indicate what percent of your facility’s total annual budget is spent on non-reimbursed guardianship-related expenses.” Very few facilities responded to this part of the question. Of those that did, most stated that legal costs to obtain guardianships and monthly guardianship fees are the primary non-reimbursable costs. Only one respondent specified the percentage of its annual budget spent on non-reimbursed guardianship-related expenses (it is only 0.00005 percent).

⁶⁵ One of these county homes also mentioned that it also incurs an unknown amount of non-reimbursable legal fees in addition to the \$1,200 that it spends on guardianship services.

⁶⁶ This particular response may be referring to the \$100/month that Medical Assistance (MA) pays for guardianship services.

⁶⁷ The \$63,400 figure does not include the unspecified, non-reimbursed annual legal fees for guardianship-related expenses cited by several of the other county homes. Therefore, the total non-reimbursed costs are more than \$63,400.

⁶⁸ One of the six county affiliated homes stating that it does not incur any annual guardianship-related costs noted that there is a cost of \$3,000 for each new guardianship, but that it has not had a guardianship case in the last several years.

and services were effective, while 37.5 percent believed otherwise. The remaining 20.8 percent of respondents either did not clearly answer yes or no or failed to answer the question.

Table 8

COUNTY HOMES AND COUNTY AFFILIATED HOMES'
SURVEY RESPONSES TO THE FOLLOWING QUESTION:
*In your opinion, are the current statutes and programs/services
offered in your area effective in meeting the current demand for guardianship?*
BY HOME CATEGORY AND SURVEY RESPONSE
FALL 2005

Survey response	County homes		County affiliated homes ¹		All responses	
	Number of survey responses in each category	Percentage of survey responses in each category	Number of survey responses in each category	Percentage of survey responses in each category	Number of survey responses in each category	Percentage of survey responses in each category
Yes	16	39.0%	4	57.1%	20	41.7%
No	16	39.0	2	28.6	18	37.5
Unsure/unclear ²	5	12.2	1	14.3	6	12.5
No response	4	9.8	0	0.0	4	8.3
Total	41	100.0	7	100.0	48	100.0

1. Since only seven of the 34 county affiliated homes responded to this survey, survey results of these affiliated homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual data of the 27 county affiliated homes who did not respond to the survey.

2. The survey respondent either did not give a clear yes or no response or stated they were uncertain if the current statutes and programs/services offered are effective in meeting the current demand.

SOURCE: JSGC survey of PACAH members completed in October 2005.

The following are responses to the second part of Question 10, which requested specific shortcomings of the system and recommendations for improvements.

- (1) "When there is a co-guardianship between an agency and family member, the agency representative tends to overlook the co-guardian family member and does not seem to understand co-guardianship. This has led to hostile feelings on the part of [the] family member. Also, if [an] agency is

guardian and denies [the] facility [the] ability to give family information, there are weekends and nights where family does not get informed about loved one in a timely fashion, causing distress to resident, family and staff. Number of cases needing a guardian and availability of guardians are disproportionate. [There is a l]ack of understanding of professional hospital staff on need for guardian vs. power of attorney, [and] living will.”

- (2) “I have ... contacted local attorneys to see if they are interested - none so far have agreed. Also if attorneys have guardianship it seems they are concerned and also try to give assistance to the facility as needed.”
- (3) It is “[d]ifficult to get courts to cooperate. Residents are receiving ‘all treatments’ because no one can speak for them in end stages of life.”
- (4) “There are not enough [guardianship] alternatives in the area. It would be great if the AAA or some agency would accept this responsibility. Things would be consistent for us and the residents. We do sometimes have family members that would be willing to accept guardianship but it is cost prohibitive so they won’t pursue it.”
- (5) There is only “minimal provider availability and no funding/reimbursement for [the] facility.”
- (6) “There has not been a demand in excess of resources; however, if demand were to notably increase then resources of County Aging services would not be adequate to meet need.”
- (7) “[C]urrent programs are not adequate to meet our needs. Ninety-nine percent of our residents requiring guardianship are indigent. The Nursing Facility or referring hospital has to assume 100 percent of the cost of guardianship proceedings. We rarely have the need for guardians of the estate since our residents are indigent. We primarily need guardians of the person for the purpose of medical decision making. Additionally, since there are no public guardians in PA, in cases where there are no family/friends available to serve as guardians we must search for someone (staff or volunteer) to assume this responsibility. Philadelphia Courts have become increasingly reluctant to allow facility staff to act as a guardian due to a potential conflict of interest. Neither our AAA or Adult Protective Services (<60 yrs.) will assist in any way with guardianship for people who reside in Nursing Homes.”
- (8) The way guardianships are handled in our area is “[c]urrently not [a] good system. [There n]eeds to be [an] outside agency that handles all guardianships for [the] county.”

- (9) “At present, we are fortunate due to our relationship with ... [our local AAA. H]owever, their increased work load may very well prevent them from accommodating this need in the not too distant future. I believe if the statutes were more clearly defined as to the responsibility and accountability of the guardian it would better serve those who are intended to be.”
- (10) “The issues relating to the care of those under 60 years of age at times cannot be addressed. Obtaining guardianship for these individuals is difficult due to the lack of funding to cover guardianship costs incurred by outside agencies. Due to their other agency responsibilities, the personnel in these agencies have little time to devote to addressing the needs of someone within a LTC [long-term care] facility.”
- (11) “Referrals to guardianship agencies for court processing are time consuming.”
- (12) “Meeting the cost is an issue. Services provided are fine.”
- (13) Survey stated to see the County’s AAA survey response ...
“There is virtually no guardianship service available for persons under age 60. We [the area AAA] frequently receive referrals/inquires for service to persons under the age of 60 with health concerns, mental health issues, and have no statutory/financial base to serve them, and no referrals to suggest. The number of guardianships also is both a human resource and financial issue – the current system struggles to meet the need. Also, there is little provision for monitoring the activities of guardians.”
- (14) “I believe there should be standards for all individuals who are appointed guardians in PA. Families do not understand [and] do not have adequate funds and the whole process is too lengthy.”
- (15) “The nursing facility is constantly asked by hospitals to admit individuals who have been deemed unable to make medical decisions, yet have no legal guardian. There are no known programs locally to help individuals with this specific issue. When families are willing to pursue guardianship, they often find the process too financially costly to continue.”
- (16) “Many of our residents are on medical assistance - presently medical assistance will likely reimburse most guardianship fees but such is not a certainty, thus financial issues could be a concern.”
- (17) [The county’s] “Office of Senior Services will seek guardianship for certain individuals or under certain circumstances. They make the determination of whom they will seek guardianship for. It would be helpful, if they would broaden their scope.”

- (18) “Current programs/services are inadequate to meet the needs. [There is a need to find organizations and/or elder law firms to accept guardianship thru PA Dept. of Aging or local AAA.”
- (19) There are “[n]o programs at all.... [O]ur AAA won’t do ... [guardianships] anymore.”
- (20) “Current situation is inadequate. There needs to be a system/agency who can assume guardianship for those residents with no family/friends.”
- (21) “The current program/services are adequate if the resident is over the age of 60 since AAA will represent them. Although AAA also represented those under 60 years of age in the past, they are increasingly reluctant to do so.”
- (22) “We could use more guardians - it’s all about money to process it. Having a guardianship fund for indigent folks would be helpful - just enough to cover attorney fees.”
- (23) “The information about programs/services which provide guardianship services is not readily available. Guardianship service is much needed in long-term care. More advertising is needed for advocates that coordinate these services.”

Survey Question 11

Question 11 of the survey asked whether the respondents believed that the current programs and services will be able to respond to the potentially growing incidence of incapacitated long-term care residents in need of guardianship services in the future. Table 9 summarizes the results of part of Question 11. As the table illustrates, 25.0 percent of all survey respondents believed that current programs and services will be able to respond to future needs, while 58.3 percent of respondents believed otherwise. The remaining 16.7 percent of respondents either did not clearly answer yes or no or failed to answer the question.

Table 9

**COUNTY HOMES AND COUNTY AFFILIATED HOMES'
SURVEY RESPONSES TO THE FOLLOWING QUESTION:**

*Do you believe that the current programs and services
will be able to respond to the potentially growing incidence
of incapacitated long-term care residents in the need of
guardianship services in the future?*

**BY HOME CATEGORY AND SURVEY RESPONSE
FALL 2005**

Survey response	County homes		County affiliated homes ¹		All responses	
	Number of survey responses in each category	Percentage of survey responses in each category	Number of survey responses in each category	Percentage of survey responses in each category	Number of survey responses in each category	Percentage of survey responses in each category
Yes	8	19.5%	4	57.1%	12	25.0%
No	25	61.0	3	42.9	28	58.3
Unsure/unclear ²	4	9.8	0	0.0	4	8.3
No response	4	9.8	0	0.0	4	8.3
Total ³	41	100.0	7	100.0	48	100.0

1. Since only seven of the 34 county affiliated homes responded to this survey, survey results of these affiliated homes should be viewed with extreme caution. The responses of the seven county affiliated homes that responded to the survey may or may not accurately reflect the actual data of the 27 county affiliated homes that did not respond to the survey.

2. The survey respondent either did not clearly answer yes or no or stated they were uncertain if the current programs and services will be able to respond to the future demand of incapacitated long-term care residents in need of guardianship services.

3. Detail may not sum to total due to rounding.

SOURCE: JSGC survey of PACAH members completed in October 2005.

The following are responses to the second part of Question 11, which requested specific shortcomings of the system and recommendations for improvements.

- (1) There is a “need for more professional staff to act as guardians and some accountability entity that governs and checks on the job guardians are doing or agency such as ombudsman that complaints can be registered re: guardians.”
- (2) “Even now some residents who have the need [for a guardian] can’t have ... [their need] met. Perhaps more social work based agencies with an attorney to over see [the agencies would be helpful.]”
- (3) There needs to be a “... service which is responsive to long-term care at an affordable price. [It] must be reliable, dependable, and ethical.”
- (4) “There are not enough [guardianship] alternatives in the area. It would be great if the AAA or some agency would accept this responsibility. Things would be consistent for us and the residents. We do sometimes have family members that would be willing to accept guardianship but it is cost prohibitive so they won’t pursue it.”
- (5) There needs to be “more providers and [a] reimbursement system for facilities.”
- (6) “Any notable increase in need [for guardians] would create difficulties. The primary need in our situation will center around health care issues rather than financial ones. One solution would be to use volunteer ombudsman who would have health care resource personnel to provide medical information.”
- (7) “Needs include:
 - (i) Funding to cover legal costs associated with guardianship proceedings.
 - (ii) Program/mechanism for recruiting, training and monitoring of volunteers who are willing to act as guardians. Currently, there is no way of monitoring whether appointed guardians are acting in the best interest of our most vulnerable citizens.

[Also,] in the past, I believe that both New York and California had grant funded model guardianship programs. I cannot recall if they were spearheaded by a gov’t agency or a local non-profit. They included participation/cooperation for the local Bar and Medical Associations. Volunteer and training was a large component of the program.”

- (8) The way guardianships are handled in our area is “[c]urrently not [a] good system. [There needs to be an] ... outside agency that handles all guardianships for county.”
- (9) “At present, we are fortunate due to our relationship with ... [our area AAA. H]owever, their increased work load may very well prevent them from accommodating this need in the not too distant future. I believe if the statutes were more clearly defined as to the responsibility and accountability of the guardian it would better serve those who are intended to be.”
- (10) “There needs to be an acceptance of the need for guardians for those under 60 and those who have no one else to be responsible for these individuals. An outside person is often needed to make important decisions for them.”
- (11) “[M]ore staff at all levels of guardianship services [are needed].”
- (12) “It is likely that guardianship agencies will need to hire additional staff to meet the growing need. As important is the lack of agencies who provide power of attorney services. Indigent clients who are still capable of naming a power of attorney often have no one to name and there no longer seems to be public/government agencies to this purpose. This is unfortunate as it would seem that it would be most cost effective and expeditious than having to pursue a guardianship after incapacity has occurred.”
- (13) “Legislation [is needed] to cover the cost or portion [of the cost] thereof.”
- (14) Survey stated to see [area’s] AAA survey response ...
“Funding for guardianship support agencies[,] organizations that could serve persons of age 18 on up who require surrogate service[, is needed]. [A p]rovision should include services as agent under a POA, guardianship, frequent visitation to incapacitated persons, bill paying and financial record keeping, legal consultation and provision for independent evaluations. A separate guardian monitoring system should be developed and funded.”
- (15) The “[c]ounty needs to provide a service that can protect incapacitated long-term residents so that their rights are not violated, yet can still access needed medical services which are sometimes denied because they have no one who can legally consent on their behalf.”
- (16) “Very difficult to predict, but again many services and associations will only provide such guardianship services if they are financially reimbursed.”

- (17) “[There should be m]ore involvement by [the county’s] Office of Senior Services or having a local agency or association assist with the process.”
- (18) “Current programs/services are inadequate to meet the needs. [There is a n]eed to find organizations and/or elder law firms to accept guardianship thru PA Dept. of Aging or local ... AAA.”
- (19) “[T]here are currently only 2 service providers in the area. More may become necessary.”
- (20) “More receptive relatives of LTC [long-term care] residents [is needed;] ... AAA needs to set up some types of programs[; and] ... [s]tate budget money [needs] to pay for costs (legal & maintenances [guardianship fees]).”
- (21) “Current situation is inadequate. There needs to be a system/agency who can assume guardianship for those residents with no family/friends.”
- (22) “While we currently do not have great need, I do see this changing as we are seeing more referrals from retired people moving to our county - many of whom have no next of kin.”
- (23) “What is needed is a guardian support agency whose costs are reasonable and who are accessible.”
- (24) “The facility struggles to find guardians that do no have purely financial interest.”
- (25) “We could use more guardians - it’s all about money to process it. Having a guardianship fund for indigent folks would be helpful - just enough to cover att[orne]y fees.”
- (26) “There [is] a group of residents who are outliving their relatives in the community - a new population requiring legal guardianship. May be one service can provide services to each ... area ... [of the county].”
- (27) “[A] structured volunteer program is needed - training is necessary.”

SURVEY SENT TO THE MEMBERS OF THE PENNSYLVANIA ASSOCIATION OF COUNTY AFFILIATED HOMES

Pennsylvania Association of County Affiliated Homes Guardianship Survey

Please answer the following questions about your facility. If you need more space than the space provided, please feel free to add additional space (if you are filing your responses electronically) or attach additional sheets of paper (if you're filing your responses via fax).

1. What is the full name of your facility?

2. Is your facility one of the 54 PACAH Full Voting Members? (yes or no)

3. What county (or counties) does your facility service?

4. How many residents does your facility have within the following age categories?
(Your answers should sum up to the total number of residents you currently have.)
Under 18 _____
18-59 _____
60+ _____

5. How many of your facility's residents over the age of 17 currently have a guardian? _____

6. How many of your facility's residents with a guardian are within the following age categories? (Your answers should sum up to the answer in question #5.)
18-59 _____
60+ _____

7. For the residents over the age of 17 who have a guardian, what type of guardian do they have? (Your answers should sum up to the answer in question #5.)
- Relative or friend _____
 - Attorney/Law Firm _____
 - Area Agency on Aging _____
 - Guardianship Support Agency _____
 - Facility Administrator _____
 - Other _____
 - Unknown _____

8. What organizations (or agencies) within your area offer guardianship services? Please list all organizations within your area including address and phone number.

9. If your facility has residents over the age of 17 who currently have a guardian, how much does your facility spend on guardianship related expenses annually? _____ (The sum of a, b, and c below should equal this dollar amount.)

- a. How much of this annual cost is reimbursed by Medicaid? _____
- b. How much of this annual cost is reimbursed through other means? _____
- c. How much of this annual cost is not reimbursed? _____

(If your facility incurs non-reimbursed guardianship related expenses, please describe what these expenses are and indicate what percent of your facility's total annual budget is spent on non-reimbursed guardianship related expenses?)

10. In your opinion, are the current statutes and programs/services offered in your area effective in meeting the current demand for guardianship? If not, what are the current statutes or programs/services lacking and do you have any recommendations on how these current statutes or programs/services could be expanded or changed to meet these shortcomings?

11. Do you believe that the current programs and services will be able to respond to the potentially growing incidence of incapacitated long-term care residents in the need of guardianship services in the future? If not, what is needed?

12. If we should have any questions about the responses in this survey, who should we contact?

Name: _____ Position/title: _____
 Phone: _____ E-mail: _____

**House Resolution 131 of 2005
(Printer's No. 1861)**

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 131 Session of 2005

INTRODUCED BY GRELL, PAYNE, CALTAGIRONE, CAPPELLI, CREIGHTON, DALLY, DeWEESE, FRANKEL, GEIST, GINGRICH, GOOD, HARPER, HENNESSEY, JAMES, NAILOR, PISTELLA, QUIGLEY, READSHAW, ROBERTS, ROSS, SCAVELLO, SEMMEL, STERN, WALKO, M. KELLER, CRAHALLA, HERSHEY, TIGUE, FICHTER, CLYMER, RAPP, PALLONE AND GABIG, MARCH 14, 2005

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 3, 2005

A RESOLUTION

1 Directing the Joint State Government Commission to review
2 current guardianship statutes and programs and make findings
3 and recommendations on the effectiveness of these statutes
4 and programs in meeting the needs of vulnerable incapacitated
5 persons.

6 WHEREAS, Pennsylvania's guardianship law has not changed in
7 more than a decade; and

8 WHEREAS, Pennsylvania has a growing population of elderly
9 persons, many of whom are not capable of caring for themselves;

10 PERSONS REQUIRING LONG-TERM CARE SERVICES; and

11 WHEREAS, Long-term care facilities in this Commonwealth are
12 increasingly faced with providing care for individuals who lack
13 the capacity to make decisions about their financial and
14 personal affairs and who do not have anyone willing and able to
15 make personal and health care decisions for them; therefore be
16 it

17 RESOLVED, That the House of Representatives direct the Joint

1 State Government Commission to review the current guardianship
2 statutes and programs in this Commonwealth and their
3 effectiveness in meeting current demand for guardianships; and
4 be it further

5 RESOLVED, That the Joint State Government Commission include
6 in its review specific findings and recommendations relating to
7 the ability of current programs and services to respond to the
8 growing incidence of incapacitated long-term care residents in
9 need of guardianship services; and be it further

10 RESOLVED, That the Joint State Government Commission report
11 to the Aging and Older Adult Services Committee and Judiciary
12 Committee of the House of Representatives with the results of
13 their findings and recommendations within six months of the
14 adoption of this resolution.

