

Guardianship Law Update: Stricter Pennsylvania Guardianship Laws under Act 61 to Take Effect in June

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Guardianships are an important legal mechanism to ensure that individuals with cognitive impairment have a representative who can handle their affairs and make decisions in their best interests. Due to an increasingly aging population and other societal factors, the need for court-ordered guardians has increased in frequency. However, concerns have arisen as to whether there are sufficient safeguards to protect individuals going through the guardianship process. As a result, on December 14, 2023, Senate Bill 506 was signed into law as [Act 61](#) (the "Act") by Governor Josh Shapiro. It will take effect next month on June 11, 2024.

The Act has four major amendments to Title 20 of Decedents, Estates and Fiduciaries (the Pennsylvania "PEF Code") relating to incapacitated individuals including provisions: (1) requiring mandatory appointment of legal counsel for the alleged incapacitated individual; (2) consideration of less restrictive alternatives to guardianship; (3) certifications for court appointed guardians; and (4) required review hearings of the guardianship.

Mandatory Legal Representation of the Alleged Incapacitated Individual

The Act now mandates that all alleged incapacitated individuals must have legal representation throughout the guardianship proceedings, whether through their own counsel or court-appointed counsel. It requires that the petitioner inform the Court of any counsel the alleged incapacitated person may have at the time of the filing of the guardianship petition. If the alleged incapacitated individual hasn't retained counsel in any matter pertaining to the guardianship, the Court must appoint qualified counsel to represent them. The appointed counsel is required to file a certification with the Court indicating the time and place of meeting with the alleged incapacitated person. The Act requires appointed counsel be qualified by experience or training and should advocate for the individual's expressed wishes and instructions to the extent possible. This requirement of counsel extends through all stages of the guardianship proceedings including any review hearings. In addition, the Act provides if the Court deems a guardian *ad litem* necessary, a second attorney will be appointed for this role.

Exploration of Less Restrictive Alternatives

While it was always a consideration of the Courts, the Act now requires Courts to make specific findings of fact regarding whether there are less restrictive alternatives available. The less restrictive alternatives to be considered include advanced directives, living wills, powers of attorney, trusts/special need trusts, representative payees for individuals receiving Social Security benefits, Pennsylvania Achieving a Better Life Experience accounts, and mental health advanced directives. The Court is required to consider the less restrictive alternative first and if there are no less restrictive alternatives available and sufficient, then the

Court is to consider a limited guardianship if it is applicable in the guardianship matter.

Mandatory Certification of Guardians

Professional guardians and individuals seeking to become the guardian of three or more incapacitated individuals will be required to be certified and furnish evidence of compliance with certification requirements to the Court, prior to appointment in a third guardianship matter. The Court can waive this requirement upon demonstration that the proposed guardian has the equivalent license or certification necessary to ensure they can meet their obligations as guardian.

The Act puts the onus on the Supreme Court to develop the rules relating to the certification requirements of a guardian which will include a minimum of providing information and documentation regarding their education, employment history, and Federal and State criminal record and the passage of a certification exam administered by a national nonprofit guardianship certification organization.

Review Hearings

Prior to the Act, the PEF Code did provide that a review hearing could be requested at any time. Now the Act requires an automatic review hearing if the evidence presented during the guardianship proceeding indicates that the circumstances of the person's incapacity may change. If the Court believes this to be the case, it must schedule a review hearing in its court order establishing the guardianship. The review hearing must be scheduled within one year from the date of the initial guardianship appointment.

During the mandatory review hearing, the incapacitated individual is to be present with their counsel, and the Court may consider any evidence presented that the incapacitated person's condition could improve at a future time. This evidence may include, but is not limited to:

- Whether the incapacitated could be adequately managed by medication, rehabilitation or other means;
- Whether the potential exists for the incapacitated to regain physical or cognitive capacity;
- The opinion of medical professionals or other qualified experts who have personally examined the incapacitated individual; and
- The circumstances surrounding the incapacitated individuals daily living, including but not limited to, support from others.

If the Court finds the guardianship is necessary and there are no less restrictive alternatives available, the Court may order that the guardianship continue. However, the Court is required to discharge the guardianship if it finds that the guardianship is no longer necessary or the existence of less restrictive alternatives.

Act 61 represents a crucial step forward in safeguarding the rights and welfare of individuals involved in guardianship proceedings in Pennsylvania. These new provisions also introduce new complexities to the guardianship process and underscore the importance for experienced legal counsel in order to navigate these intricacies. If you have questions about Act 61 or navigating the guardianship process, please contact partner [Paul M. Minnich](#) of [Barley Snyder's Litigation Practice Group](#) or partner [Latisha Bernard Schuenemann](#) of [Barley Snyder's Trusts & Estates Practice Group](#).

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