

PENNSYLVANIA DEFINITION OF INCAPACITATION

Nobody knows the person better than their family, friends and their various doctors. What some people claim is dementia/alzheimers, may in fact be medical in some way. Only the person's medical doctor should be the one who evaluates the person based on what they have learned when dealing with the patient including maybe a medication is causing memory problems., not some quack psychologist who uses unproven paper and paper tests. The real test to determine incapacitation is questions that deal with does the person know right from wrong and do they common sense. The fact is, forgetfulness occurs to everyone, but in older people the claim is dementia of some form. That is age discrimination.

Who or What is an Incapacitated Person?

An Incapacitated Person is an adult of any age (18 or older) who cannot manage his or her own affairs, either his or her money or property, or daily life decisions or both. The legal definition of an Incapacitated Person is: "An adult whose ability to receive and evaluate information effectively and to make and communicate decisions in any way is impaired to such a significant extent that he or she is partially or totally unable to manage his or her financial resources or to meet essential requirements for his or her physical health and safety." An Incapacitated Person may be a developmentally disabled adult or an adult who has lost the capacity to make and communicate decisions due to illness or injury. When a Petition is filed with the Court, the Court will hold a hearing to determine whether or not the Court should issue a decree declaring that a person is an Incapacitated Person.

What is a Guardian?

A Guardian is someone who is appointed by the Court to manage the health or financial affairs of the Incapacitated Person. A Guardian may be appointed on an emergency basis, for a specified period of time, or for an indefinite basis. A Guardian may be appointed only to handle financial affairs or only to handle health and life decisions, or for both purposes.

What is a Guardian of the Person?

A Guardian of the Person is someone who is appointed by the Court to manage the life decisions, including health affairs, of the Incapacitated Person. A Guardian of the Person makes decisions to protect the health, safety, and welfare of the Incapacitated Person. For example, an Incapacitated Person might not be able to remember if she has eaten or taken medication, or might no longer be able to cook for himself. The Guardian of the Person may be authorized by the Court to make decisions about where an incapacitated person shall live, who shall prepare meals, and to make decisions about consenting to medical and surgical procedures. The Guardian of the Person does not manage the finances, property or income of the Incapacitated Person unless the same person is appointed as Guardian of the Estate.

You might be appointed as either a Limited or Plenary (full) Guardian of the Person. A Plenary Guardian is given the full authority to make all decisions for the Incapacitated Person. A Limited Guardian is given only those powers and responsibilities specifically identified by the Court in the Court's Final Decree. Either way your primary responsibility is to represent the rights and best interests of the Incapacitated Person. You should honor the expressed wishes and preferences of the Incapacitated Person to the greatest extent possible. If, however, those wishes conflict with what is in the best interests of the Incapacitated Person, you should follow your independent judgment to the extent necessary. For example, the Incapacitated Person might strongly wish to remain living alone at home, but this might not be safe living arrangement for him or her. In such a case, you have the responsibility to do what is in the best interests of the Incapacitated Person.

For a detailed explanation of what you must do as a Guardian of the Person, please see Pages 4-7.

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2025 Pennsylvania Consolidated & Unconsolidated Statutes

Title 20 - DECEDENTS, ESTATES AND FIDUCIARIES

Chapter 55 - Incapacitated Persons

Section 5518 - Evidence of incapacity

Universal Citation:

20 PA Cons Stat § 5518 (2025) ○

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§ 5518. Evidence of incapacity.

To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability

that the extent of the person's incapacities may significantly lessen or change.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5518 is referred to in section 5511 of this title.

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