

Subpart B. RIGHTS

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**CHAPTER 10. GENERAL PROVISIONS
[Reserved]**

CHAPTER 11. FISCAL ADVOCACY

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Authority

The provisions of this Chapter 11 issued under the Mental Health and Mental Retardation Act of 1966 (50 P.S. § 4201), unless otherwise noted.

Source

The provisions of this Chapter 11 amended through April 25, 1980, effective April 1, 1980, 10 Pa.B. 1677, unless otherwise noted.

Subchapter A. GENERAL PROVISIONS

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LEGAL BASE**§ 11.1. Legal base of regulations.**

The legal base of this chapter is section 201 and following of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4201) and an Order of Court in the case of *Vecchione v. Wohlgemuth*, C.A. No. 73-162 (E.D. Pa.), entered June 30, 1978.

GENERAL**§ 11.11. Guardian Office.**

Each mental health hospital and state center shall have an autonomous office known as the Guardian Office with the authority to implement and administer a system of patient money management. The Guardian Officer shall serve as a court-appointed guardian and representative payee for incompetent patients and residents and shall, with their consent, assist competent clients in managing their funds.

§ 11.12. Guardian Office responsibilities.

It is the Guardian Office's responsibility to insure that the financial affairs of clients for whom the officer has been appointed guardian or is serving as representative payee are managed in the client's best interests.

§ 11.13. Fiscal management.

Fiscal management on behalf of clients shall view the total of the client's financial needs and obligations, both immediate and long-range, including the need for assets and income with regard to and after discharge from the facility. The Guardian Office at all times has the obligation to preserve the clients' funds by attempting to reduce or eliminate the amount of the clients' liability. The Guardian Officer is, however, authorized and required to pay debts and obligations determined in accordance with the law.

§ 11.14. Conflicting interests.

The interests or concerns of other entities is not permitted to influence the discharge of these duties.

§ 11.15. Duties.

It is the Guardian Office's responsibility to act as fiscal advocate on behalf of the client and to act to protect the legal rights of the client in fiscal matters. When reasonable grounds exist, the Guardian Office shall request abatement, modification or discharge of the client's assessed liability on the grounds specified in this chapter.

§ 11.16. Prohibited activities.

The Guardian Officer may neither seek nor accept appointment as guardian of the person and may not make treatment decisions or be involved with them other than to determine whether the expenditure of funds in accordance with the treatment plan is in the patient's best interest.

STAFFING AND GENERAL RESPONSIBILITY**§ 11.31. Staffing.**

Each institution shall be staffed with a Guardian Officer and such other personnel as may be required to assist the Guardian Officer in carrying out the responsibilities outlined in this chapter. The staff of the office are employees of the Department of Public Welfare, subject to this chapter, and are administratively placed under the Director of the Bureau of Guardianship Programs who reports to the Deputy Secretary for Social Programs.

§ 11.32. Director.

There shall be created under the Deputy Secretary for Social Programs an autonomous Bureau of Guardianship Programs. The Bureau will be staffed by a Director and other appropriate staff as necessary and will have access to various support staff within the Department. The Director will provide both policy and operational supervision over the operations of the various Guardian Officers.

§ 11.33. Personnel decisions.

Personnel decisions regarding the Bureau of Guardianship Programs will be made by the Director, subject to review by his supervisor. A personnel action is subject to applicable provisions of the existing collective bargaining agreement.

§ 11.34. Suspension or dismissal.

No director, officer or staff may be suspended or dismissed solely for exercising authority granted under this chapter.

§ 11.35. General responsibilities.

The Guardian Officer and employes responsible for maintaining client funds shall be familiar with their responsibilities and duties as a guardian/representative payee, with provisions relating to abatement, modification and discharge of liability as well as all procedures, regulations and information relating to the handling and maintenance of client funds. The Director shall provide uniform interpretation of procedures and policies concerning the operation of the Bureau as needed.

§ 11.36. Guardian Officer duties.

The Guardian Officer is solely responsible for any misuse or mismanagement of funds for which he is responsible. The Guardian Officer shall insure, establish and verify that funds are discharged in accordance with this chapter, and in the best interests of the client.

§ 11.37. Guardian Officer bond.

Each Guardian Officer shall have on file with the Secretary of the Commonwealth a bond at least equal to the total amount of client money and personal property for which he serves as guardian or payee.

§ 11.38. Office hours.

The Guardian Offices shall be open to clients during regular working hours on a basis sufficient to accommodate clients' needs. Provisions shall be made to accommodate emergency situations.

§ 11.39. Cooperation of institutional staff.

The institutional staff shall provide full cooperation and assistance to the Guardian Officer in all matters related to the discharge of the responsibilities outlined in these regulations.

§ 11.40. Advocacy.

The Guardian Officer has and shall exercise advocacy responsibility in the conduct of any activity undertaken on behalf of the client which involves the expenditure of client funds.

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APPLICATION FOR BENEFITS**§ 11.51. Patient assistance.**

Unless the person knowingly objects, the Guardian Officer shall assist patient/residents in applying for any benefits to which they may be entitled, and may make protective applications for benefits when necessary.

§ 11.52. Transmission of information.

The Guardian Officer shall, if requested by the benefit-issuing agency, arrange for appropriate staff at the institution to provide information to the agency regarding the patient's/resident's ability to manage funds to which he or she may be entitled. The information to be submitted shall be specified by the agency, but shall not be formulated within the first 30 days of institutionalization. The Guardian Officer shall submit this information to the agency.

Cross References

This section cited in 55 Pa. Code § 11.53 (relating to preliminary determination of competency).

§ 11.53. Preliminary determination of competency.

If patient/resident is receiving benefits from a benefit-issuing agency or entity upon admission to the institution, a preliminary determination of competency shall be formulated not sooner than 30 days after admission. If the person is preliminarily determined to be incompetent, the Guardian Officer may indicate to the agency or entity the possibility that a payee may be appropriate, and shall indicate his availability to serve as payee. If requested by the agency or entity, the Guardian Officer shall proceed as in § 11.52 (relating to transmission of information).

ACCEPTANCE OF PAYEE APPOINTMENT**§ 11.61. Deprivation of property.**

The Director, Revenue Agent, and other officials and employees of such State mental hospital, State center or any annex of such facilities, may not deprive any

patient/resident of custody of his personal property or interfere with such custody, unless and until such person is determined to be incompetent under the Probates, Estates and Fiduciary Code of 1972 and these facilities or persons are so authorized by the appropriate court.

Cross References

This section cited in 55 Pa. Code § 11.62 (relating to SSI benefits); 55 Pa. Code § 11.63 (relating to appointment as payee); and 55 Pa. Code § 11.65 (relating to denial of guardianship petition).

§ 11.62. SSI benefits.

Nothing in § 11.61 (relating to deprivation of property) shall be applicable to recipients of Supplemental Security Income (SSI) whose benefits shall be handled by the Guardian Officer appointed as representative payee under Federal law. SSI benefits shall not be considered available assets or income for the purpose of assessing liability for care and maintenance, and shall not be expended for care and maintenance.

Cross References

This section cited in 55 Pa. Code § 11.64 (relating to certification from agency).

§ 11.63. Appointment as payee.

Notwithstanding the provisions of § 11.61 (relating to deprivation of property), the Guardian Officer shall be authorized to accept from a benefit-issuing agency, appointment as representative payee for a period not to exceed 6 months, provided the petition required by § 11.61 is promptly filed. No disbursements shall be made for care and maintenance pending full compliance with § 11.61.

Cross References

This section cited in 55 Pa. Code § 11.64 (relating to certification from agency); and 55 Pa. Code § 11.65 (relating to denial of guardianship petition).

§ 11.64. Certification from agency.

The Guardian Officer shall accept payee appointments as described in §§ 11.62 and 11.63 (relating to SSI benefits; and appointment as payee) upon certification from the benefit-issuing agency that acceptable noninstitutional payees, such as family, friends, and interested associations (such as, Pennsylvania Association for Retarded Citizens and mental health associations) are not available, and that payment will not be made to the beneficiary directly.

§ 11.65. Denial of guardianship petition.

If a guardianship petition filed under § 11.61 (relating to deprivation of property) is denied by the Court of Common Pleas or not acted upon within 6 months as required by § 11.63 (relating to appointment of payee), the Guardian Officer shall promptly contact the benefit-issuing agency or entity concerning the dispo-

sition of conserved funds. The Guardian Officer shall also notify the agency or entity that subsequent benefit checks cannot be accepted and will be returned if received. If no direction to the contrary is received from the agency or entity within 30 days after the date of the decision denying the petitions or the expiration of the 6-month period, conserved funds shall be returned to the client.

§ 11.66. Noninstitutional appointments.

Nothing in this subchapter is intended to prohibit a person not connected with the institution from applying to a court for appointment as a guardian, or from seeking to terminate the Guardian Officer's appointment as guardian.

§ 11.67. Information regarding hearings.

Upon a reasonable request for information on the scheduling of guardianship hearings, the time, date, and location of scheduled hearings, but not the name of the patient/resident involved, will be provided by the responsible attorneys in the Department of Public Welfare's Office of Legal Counsel and the Justice Department's Philadelphia and Pittsburgh Offices.

POWERS AND DUTIES AS A COURT-APPOINTED GUARDIAN

§ 11.81. Powers of Guardian Officer.

As a court-appointed guardian, the Guardian Officer shall act fully in accordance with the Probate, Estates and Fiduciary Code, exercising full powers as a guardian specified therein, and shall also comply with the orders of the Orphans Court having jurisdiction over the patient/resident.

§ 11.82. Expenditure of funds.

The Guardian Officer shall have the sole authority to expend a patient's/resident's funds in his best interest in accordance with State and Federal law. The Guardian Officer shall consult with the client to the extent feasible and may also consult with appropriate staff and others to ascertain the patient's/resident's needs. The Guardian Officer shall encourage these persons to bring to his attention appropriate purchases to be made for the patient/resident.

§ 11.83. Outside counsel.

The Guardian Officer may seek and retain outside counsel to represent the interests of the patient/resident on any matters. Free legal services shall be obtained whenever the patient/resident is eligible, such services are available, and the attorney is sufficiently acquainted with the legal questions involved.

§ 11.84. Bills.

The Guardian Officer shall receive all bills relating to persons for whom he serves as guardian or payee.

§ 11.85. Payment of bills.

Payment of bills for client insurance premiums, union dues, noninstitutional medical expenses, and all other personal needs may be made if in the client's best interest, and if the client has sufficient monies in his account. If the request for payment is greater than the balance in the client's account, a payment plan may be established in accordance with the client's monthly benefits and the client's needs.

§ 11.86. Payment restrictions.

The Guardian Officer shall have the authority to pay bills for care and maintenance determined due in accordance with applicable law. No payments for care and maintenance may be made during the first 6 months following the appointment of Guardian Officer as guardian. Bills accruing during that period may be paid thereafter, after all available defenses have been raised and adjudicated.

§ 11.87. Abatement, modification or discharge of liability.

The Guardian Officer shall have the authority to seek and shall, when reasonable grounds exist, seek abatement, modification or discharge of assessed liability under 50 P. S. §§ 4501 and 4504 and regulations promulgated thereunder, on the basis of grounds in §§ 11.88—11.90 (relating to legal counsel for abatement; direct patient billing; and form and content of bill).

§ 11.88. Legal counsel for abatement.

In pursuing abatement, modification, or discharge, the Guardian Officer may seek outside legal assistance to represent the interests of the patient/resident. The Guardian Officer shall obtain such assistance whenever a court hearing on liability is to be requested or held. Free legal services shall be obtained whenever the patient/resident is eligible, such legal services are available, and the attorney is sufficiently acquainted with the legal questions involved.

Cross References

This section cited in 55 Pa. Code § 11.87 (relating to abatement, modification or discharge of liability).

§ 11.89. Direct patient billing.

Patients and residents who have not been declared incompetent by a court of appropriate jurisdiction receiving care and maintenance in state institutions shall be billed for the costs of such care and maintenance chargeable to them under section 501 of the Mental Health and Mental Retardation Act of 1966, 50 P. S. § 4501, as assessed by the Revenue Agent of each state institution; such billing to be in the same manner as any patient not suffering mental disability, in any public or private hospital, would be billed for the costs thereof.

Cross References

This section cited in 55 Pa. Code § 11.87 (relating to abatement, modification, or discharge of liability).

§ 11.90. Form and content of bill.

The bill and all correspondence relating thereto must be accompanied by an easily comprehensible notice, in English and Spanish when appropriate, advising the patient of his right to seek counsel from an attorney or lay person of his choice; provided, however, that such counselor not also be an employe of the Commonwealth. The bill and all correspondence related thereto must advise him of the right to the presence of counsel in any conferences with the Revenue Agent or any other Commonwealth employe with respect to settlement of the bill, and advise him of the right to confer with the Revenue Agent and to petition the Secretary under 50 P. S. § 4606 and to obtain a hearing regarding abatement, modification, or discharge of assessed liability on the basis that:

- (1) Imposition of liability would result in loss of financial payments of benefits from any public or private source of which he might be entitled, 50 P. S. § 4504(a)(1)(i).
- (2) Imposition of liability would result in a substantial financial hardship upon him or a person owing a legal duty of support to him, 50 P. S. § 4504(a)(1)(ii).
- (3) Imposition of liability would result in greater financial burden upon the people of the Commonwealth, 50 P. S. § 4504(a)(1)(iii).
- (4) Imposition of liability would result in financial burden upon him that would nullify the results of care and treatment for mental disability, 50 P. S. § 4504(a)(1)(iv).
- (5) Social Security OASDI benefits are, and other Federal or State benefits may be insulated from claims of the Commonwealth for care and maintenance by statute, 42 U.S.C.A. § 407.
- (6) The resident is entitled to the reasonable value of unpaid work benefitting the Commonwealth in reduced costs of maintenance and operation of the facility to which he was admitted, performed by him, by way of offset.
- (7) The care and maintenance is less than assessed by the Commonwealth.
- (8) Any other defenses or offsetting claims in law and equity.

Cross References

This section cited in 55 Pa. Code § 11.87 (relating to abatement, modification, or discharge of liability).

ACCOUNTING**§ 11.101. Current accounting of funds.**

The Guardian Officer shall at all times maintain current accounting of funds received and disbursed sufficient to meet the requirements of the benefit-issuing agency, Orphans Court and Commonwealth of Pennsylvania. The Guardian Officer shall annually submit to the Orphans Court an accounting of income received and disbursements made during the preceding year on behalf of the patient/resident for whom he serves as guardian. The filing shall also include an affidavit by the Guardian Officer that he has personally investigated and that either no grounds for abatement, modification, or discharge of liability exist, or that grounds exist and the relevant application and appeals have been pursued.

ACCOUNTS WITH A BANK**§ 11.111. FDIC coverage.**

The Guardian Officer shall maintain accounts at a bank covered by the Federal Deposit Insurance Corporation and approved by the State Treasurer. The accounts shall include a checking and savings account. Conserved funds shall, to the extent possible, be placed in a savings account, certificates of deposit, or other FDIC-insured accounts.

§ 11.112. Interest.

Interest earned on accounts shall be periodically allocated to each client's account balance at the time the interest is calculated.

**ASSISTANCE TO COMPETENT CLIENTS AND OTHERS
IN MONEY MANAGEMENT****§ 11.121. Assistance to competent patients.**

With the written approval of the patient/resident, the Guardian Officer shall assist competent patients/residents in managing their funds. Patients/residents shall be informed of the availability of this assistance.

§ 11.122. Services.

Among the services that shall be offered by the Guardian Officer, in conjunction with other institutional employees, are the following:

- (1) Providing access to, in person or by agent, and transportation to and from, local banks and savings institutions of each resident's choice. Banking by mail shall also be permitted and assisted.
- (2) Providing for secure interim safekeeping of patient/resident property if the patient/resident so desires.

CHANGE IN CLIENT STATUS**§ 11.131. Petition for removal of guardianship.**

Whenever a patient/resident for whom the Guardian Officer serves as a guardian is determined to be competent in accordance with §§ 11.151—11.154 (relating to redeterminations of competency), the Guardian Officer shall request the Office of Legal Counsel to petition for removal of the guardianship and shall inform the benefit-issuing agency of the patient's/resident's status.

§ 11.132. Transfer or discharge.

Whenever a patient/resident for whom a Guardian Officer serves as guardian transfers to another institution or is discharged, but remains incompetent, the Guardian Officer shall inform the benefit-issuing agency and request the assistance of the Office of Legal Counsel in securing a new guardian or payee as required. Pending formal transfer of the guardianship appointment, the Guardian Officer of the former institution shall cooperate with the Guardian Office of the new institution to insure that funds are available for the client's needs.

DEATH OF A PATIENT/RESIDENT**§ 11.141. Duties of Guardian Officer.**

Upon the death of a patient/resident for whom the Guardian Officer serves as guardian or payee, the Guardian Officer shall:

- (1) Comply with all applicable reimbursements of the Probates, Estates, and Fiduciary Code regarding termination of the guardianship.
- (2) Expend any death benefits in accordance with the rules and regulations of the benefit-issuing agency.
- (3) Return conserved funds to the benefit-issuing agency, if required by the statutes and regulations governing such funds.
- (4) Release all conserved funds (with the exception of those covered in paragraph (3)), together with all outstanding bills, to the executor or administrator of the patient's/resident's estate, if any. Funds may be released upon presentation of letters of administration, a short certificate, or other appropriate and reliable evidence indicating that one person is the legally authorized representative.
- (5) If, within 90 days of the date of death, documentation is not received that a legally authorized representative of the estate has been appointed, escheat proceedings shall be initiated.

§ 11.142. Summary report.

The Superintendent's Office, shall, individually within 3 days, inform the Guardian Officer of patients who have been discharged, transferred or died. A monthly report summarizing these actions should also be prepared and submitted.

REDETERMINATIONS OF COMPETENCY**§ 11.151. Procedure for redetermination.**

The Guardian Officer shall insure that competency redeterminations are made in accordance with these sections. These redeterminations shall consider whether the patient/resident for whom the Guardian Officer serves as guardian (or payee for SSI recipients) remains incompetent as defined in the Probates, Estates, and Fiduciary Code. The Guardian Office shall, in addition, act to continuously review the status of the client's competency and to seek competency reviews by all appropriate means, so as to terminate the guardian function as soon as the client is competent.

Cross References

This section cited in 55 Pa. Code § 11.131 (relating to petition for removal of guardianship).

§ 11.152. Psychiatric review.

For mentally ill patients, a psychiatrist shall review the patient's symptoms, diagnosis, medical records and history every 6 months to formulate an opinion regarding the patient's competence.

Cross References

This section cited in 55 Pa. Code § 11.131 (relating to petition for removal of guardianship); and 55 Pa. Code § 11.153 (relating to psychological review).

§ 11.153. Psychological review.

For mentally retarded persons, a review of competency as in § 11.152 (relating to psychiatric review) shall be conducted by a psychologist at the following intervals:

- (1) For those persons who are severely or profoundly impaired in adaptive behavior as well as intellectual functionings, as defined by the American Association for Mental Disability, reviews shall occur every 2 years.
- (2) For all other persons, 1 year.

Cross References

This section cited in 55 Pa. Code § 11.131 (relating to petition for removal of guardianship).

§ 11.154. Method of review.

These reviews shall be conducted in the manner of the initial determinations of competency.

Cross References

This section cited in 55 Pa. Code § 11.131 (relating to petition for removal of guardianship).

TRAINING**§ 11.161. Training for institutional staff.**

The Director of the Bureau of Guardianship Programs will seek to establish training programs for social services and other institutional staff regarding means for encouraging self-dependence and financial competency among patients/residents and, for those who have guardians appointed, programs to alert the staff to regained competency.

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