

HOUSE BILL NO. 139

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HANNAN

Introduced: 3/17/21

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to guardians, guardianships, successor guardians, incapacitated
2 guardians, incapacitated individuals, and testamentary appointments of guardians; and
3 relating to withholding or withdrawing life-sustaining procedures."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 13.26.211 is amended by adding a new subsection to read:

6 (f) The guardian of an incapacitated person may by will appoint a person to
7 act as the guardian for the incapacitated person after the guardian dies. A testamentary
8 appointment by the guardian becomes effective when the appointed person has given
9 notice under AS 13.26.296 and files an acceptance of the appointment in the court in
10 which the will is informally or formally probated.

11 * **Sec. 2.** AS 13.26.281(a) is amended to read:

12 (a) **Subject to (c) of this section, the** [THE] authority and responsibility of a
13 guardian for an incapacitated person terminates upon the death of the guardian or
14 ward, the determination of incapacity of the guardian, the removal or resignation of

the guardian as provided in AS 13.26.286, or upon the expiration of the period specified by court order as the duration of the guardianship. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect a guardian's liability for prior acts nor an obligation to account for assets of the ward over which the guardian exercised control.

* **Sec. 3.** AS 13.26.281 is amended by adding a new subsection to read:

(c) The guardian of an incapacitated person, while having capacity, may name a person to be the successor guardian for the incapacitated person if the guardian becomes incapacitated. Notwithstanding AS 13.26.311, the person named by the guardian has priority to be the successor guardian of the incapacitated person. The appointment of the person named as the successor guardian under this subsection becomes effective when the guardian becomes incapacitated and the named person has given notice under AS 13.26.296 and accepted the appointment.

* **Sec. 4.** AS 13.26.316(c) is amended to read:

(c) A full guardian of an incapacitated person has the same powers and duties respecting the ward that a parent has respecting an unemancipated minor child except that the guardian is not liable for the care and maintenance of the ward and is not liable, solely by reason of the guardianship, to a person who is harmed by acts of the ward. Except as modified by order of the court, a full guardian's powers and duties include, but are not limited to, the following:

(1) the guardian is entitled to custody of the person of the ward and shall **ensure** [ASSURE] that the ward has a place of abode in the least restrictive setting consistent with the essential requirements for the ward's physical health and safety;

(2) the guardian shall **ensure** [ASSURE] the care, comfort, and maintenance of the ward;

(3) the guardian shall **ensure** [ASSURE] that the ward receives the services necessary to meet the essential requirements for the ward's physical health and safety and to develop or regain, to the maximum extent possible, the capacity to meet the ward's needs for physical health and safety;

(4) the guardian shall **ensure** [ASSURE] through the initiation of court action and other means that the ward enjoys all personal, civil, and human rights to which the ward is entitled;

(5) the guardian may give consents or approvals necessary to enable the ward to receive medical or other professional care, counsel, treatment, or services except as otherwise limited by (e) of this section;

(6) the guardian has the powers and duties of a conservator under this chapter; however, the guardian may not apply the ward's money or property for the services as guardian or for room and board that the guardian or the guardian's spouse, parent, or child has furnished the ward unless, before payment, the court finds that the ward is financially able to pay and that the charge is reasonable; notice of a request for payment approval shall be provided to at least one relative of the ward if possible; the guardian shall exercise care to conserve any excess money or property for the ward's needs;

(7) if a conservator of the estate of the ward has also been appointed, the guardian shall pay all of the ward's estate received by the guardian to the conservator for management as provided in AS 13.26.401 - 13.26.575;

(8) the guardian may determine under AS 13.52.045 that life-sustaining procedures may be withheld or withdrawn from the ward if in the best interest of the ward.

* Sec. 5. AS 13.52.045 is amended to read:

Sec. 13.52.045. Withholding or withdrawing [OF] life-sustaining procedures. Notwithstanding any other provision of this chapter, an agent, **a guardian of an incapacitated person under AS 13.26,** or a surrogate may determine that life-sustaining procedures may be withheld or withdrawn from a patient with a qualifying condition when there is

(1) a durable power of attorney for health care or other writing that clearly expresses the patient's intent that the procedures be withheld or withdrawn; or

(2) no durable power of attorney for health care or other writing that clearly expresses the patient's intent to the contrary, the patient has a qualifying condition as determined under AS 13.52.160, and withholding or withdrawing the

1 procedures would be consistent with the patient's best interest.