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of **ALASKA**
GOVERNOR MIKE DUNLEAVY

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March 15, 2022

The Honorable David Wilson
Chairman, Senate Health and Social Services Committee
Alaska State Senate
Alaska State Capitol Room 121
Juneau, AK 99801

Dear Senator Wilson:

This letter presents responses to the Senate Health and Social Services Committee member questions received by the Department of Health and Social Services (DHSS) at the Tuesday, March 8, 2022 hearing on SB 124 Mental Health Facilities & Meds.

Question:

Senator Hughes asked what is the difference between public and private guardians?

DHSS Response:

A public guardian is one who works for the state through the Office of Public Advocacy (OPA). Public guardians are appointed when there is no appropriate individual, such as a family member, who has higher priority. The powers and duties of a public guardian are the same as a private guardian and are described in AS 13.26.720. The court can appoint a private guardian as well, including a family member or someone who has a connection to the respondent and who is willing to take on this role. There are also private guardian companies in Alaska who will take on this role for a fee. A guardian's authority is limited by the provisions of AS 13.26.316, but generally a guardian (whether private or public) has the same duties and roles of a parent of a minor or child. That authority is limited and prescribed with special language in state law that the ward should be provided as much independence as necessary, and that the guardian only steps in when absolutely necessary to ensure the health and safety needs of the ward. A guardian can be full (all powers and duties) or limited (some powers and duties).

Guardians can only be appointed by the superior court. The process that outlines how a guardianship is granted by the court is set forth in AS 13.26.201 - 316. For example (and this list is not exhaustive).

Upon receipt of a petition for a guardianship -

1. The court must appoint a visitor to investigate whether the individual is incapacitated, whether there is a less restrictive alternative, and who should be appointed as the guardian. (AS 13.26.226 & 13.26.236)
2. The court appointed visitor must notify the respondent of their rights (AS 13.26.231)
3. Hold a hearing where the court must find by clear and convincing evidence that the respondent is incapacitated and there is no less restrictive means to protect the individual. (AS 23.26.251); at this hearing the respondent has a right to an attorney and is represented by court-appointed counsel if they cannot afford their own (AS 13.26.246).
4. Once a finding of incapacity is made under AS 13.26.005(5), the guardian is appointed (AS 13.26.266). The guardian must agree to accept the appointment (AS 13.26. 261). By taking this appointment, the guardian agrees to provide an implementation plan (AS 26.13.271), and to submit other reports on their activities related to being a guardian (AS 13.26.276).
5. The general powers and duties of a guardian are set forth in in AS 13.26.316.
6. Once appointed a guardian can only be terminated by the court (AS 13.26.281) or upon death of the respondent/ward. If a guardian wishes to stop being the guardian, they must notify the court and the court will hold a new hearing to appoint a new guardian.

Question:

Senator Hughes asked what percentage of people covered by this bill will have guardians?

DHSS Response:

The Alaska Court System would be the best entity to give you comprehensive data about which individuals on a Title 47 *ex parte* hold have a public or private guardian. One daily snapshot of patients at the Alaska Psychiatric Institute shows us that out of 42 adult civil patients, 26 have guardians, either through the Office of Public Advocacy (14) or family guardians (12). All 10 youth patients participate in their care and treatment along with their parents, or through court appointed guardians, or are in the legal custody of the Office of Children Services. While DHSS cannot be sure of how many of the patients who will be served through civil involuntary commitment process at a crisis stabilization centers and crisis residential centers will have guardians, we believe a substantial percentage will have guardians.

Question:

Senator Hughes asked if guardians would need to grant permission before psychotropic medications are administered to their ward?

DHSS Response:

State law does allow guardians to make some medical decisions on behalf of a ward. However, those same powers and duties at AS 13.26.316(e) expressly state that a guardian cannot commit a ward to a mental institution or facility without going through the involuntary process outlined in AS 47.30. By extension, with that limitation, the same provisions would apply to crisis psychotropic mediations. Since a guardian cannot commit someone to a mental institution or facility, they cannot consent on behalf of a ward for treatment that is covered under the same statutory scheme (AS 47.30). This means a guardian cannot consent for a facility to administer medication without the wards informed consent or a court order. *See e.g.*, AS 47.30. 817, AS 47.30.825, AS 47.30.836 AS 47.30.837, and AS 47.30.839.

March 15, 2022

If you have other questions about state appointment guardians, DHSS recommends you reach out to the Office of Public Advocacy in the Department of Administration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Adam Crum', with a stylized, flowing script.

Adam Crum

Commissioner

CC: The Honorable Shelley Hughes, Alaska State Senate
The Honorable Mia Costello, Alaska State Senate
The Honorable Lora Reinbold, Alaska State Senate
The Honorable Tom Begich, Alaska State Senate
Mr. Al Wall, Deputy Commissioner, DHSS
Ms. Gennifer Moreau-Johnson, Division of Behavioral Health, DHSS
Mr. Vasilios Gialopsos, Legislative Director, Office of Governor Mike Dunleavy