

SENATE BILL NO. 299

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 3/28/00

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to guardianships and conservatorships; relating to the actions of
2 the office of public advocacy concerning guardianships and conservatorships;
3 relating to the appointment and duties of a court visitor appointed for a patient
4 through the office of public advocacy; amending Rule 77, Alaska Rules of Civil
5 Procedure; and providing for an effective date."

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

7 * **Section 1.** AS 13.26.111(a) is amended to read:

8 (a) The principal duty of an attorney representing a ward or respondent is to
9 represent the ward or respondent zealously. Zealous representation includes at least

10 (1) personal interviews with the ward or respondent; unless good cause
11 exists, the first contact with the ward or respondent shall be at least two weeks before
12 the hearing;

13 (2) explaining, if possible, to the ward or respondent in terms that the

1 ward or respondent can understand, the nature and possible consequences of the
 2 proceeding, the alternatives that are available, and the rights to which the ward or
 3 respondent is entitled;

4 (3) securing and presenting evidence and testimony and offering
 5 arguments that would tend to protect the ward's or respondent's rights [AND THAT
 6 WOULD TEND TO FURTHER THE INTERESTS OF THE WARD OR
 7 RESPONDENT].

8 * **Sec. 2.** AS 13.26.112(a) is amended to read:

9 (a) Upon the request of a ward, a respondent, **the court visitor appointed in**
 10 **the case**, or the attorney of a ward or respondent, the court shall appoint a guardian
 11 ad litem to protect the rights of the ward or respondent in proceedings under
 12 AS 13.26.090 - 13.26.155 if the court is satisfied that, because of impaired ability
 13 effectively to receive and evaluate information regarding the proceedings or because
 14 of impaired ability to communicate decisions regarding the proceedings, the ward or
 15 respondent cannot determine the ward's or respondent's own interests without
 16 assistance, and

17 (1) a guardian has not been appointed;

18 (2) the interests of the ward or respondent conflict with those of the
 19 ward's or respondent's guardian; or

20 (3) the appointment is otherwise in the interests of justice.

21 * **Sec. 3.** AS 13.26.140(b) is amended to read:

22 (b) At **a** [THE] temporary **or interim** guardianship hearing, the respondent
 23 shall have the rights set out in AS 13.26.113(a).

24 * **Sec. 4.** AS 13.26.140(d) is amended to read:

25 (d) If the court determines that a temporary **or interim** guardian should be
 26 appointed, it shall make the appointment and grant to the guardian only the authority
 27 that is least restrictive upon the liberty of the respondent and that enables the
 28 temporary **or interim** guardian to provide the emergency services necessary to protect
 29 the respondent [FROM SERIOUS INJURY, ILLNESS, OR DISEASE].

30 * **Sec. 5.** AS 13.26.140(e) is amended to read:

31 (e) The temporary **or interim** guardianship shall expire at the time of the

1 appointment of a full or partial guardian or upon the dismissal of the petition for
2 guardianship.

3 * **Sec. 6.** AS 13.26.140 is amended by adding new subsections to read:

4 (g) The court, during the pendency of an initial petition for guardianship and
5 upon request, may appoint an interim guardian if a failure to appoint an interim
6 guardian would likely result in substantial harm to the respondent's health, safety, or
7 welfare. The interim guardian may exercise only the powers specified in the interim
8 guardianship order.

9 (h) A hearing on the appointment of an interim guardian under (g) of this
10 section shall be conducted by the court within 21 days after the filing of a motion.
11 Reasonable notice of the time and place of the hearing shall be given to the respondent
12 and any other persons as the court directs.

13 * **Sec. 7.** AS 13.26.145(d) is amended to read:

14 (d) Subject to (e) of this section, qualified persons have priority for
15 appointment as guardian in the following order:

16 (1) a person, **including an individual, an** association, **a tribal entity,**
17 **a for-profit corporation,** or **a** private nonprofit corporation nominated by the
18 incapacitated person, if at the time of the nomination the incapacitated person had the
19 capacity to make a reasonably intelligent choice;

20 (2) the spouse of the incapacitated person;

21 (3) an adult child or parent of the incapacitated person;

22 (4) a relative of the incapacitated person with whom the incapacitated
23 person has resided for more than six months during the year before the filing of the
24 petition;

25 (5) a relative or friend who has demonstrated a sincere, longstanding
26 interest in the welfare of the incapacitated person;

27 (6) **an** [A PRIVATE] association, **including a tribal entity, a for-**
28 **profit corporation,** or **a** nonprofit corporation with a guardianship program for
29 incapacitated persons;

30 (7) the public guardian.

31 * **Sec. 8.** AS 13.26.145(e) is amended to read:

1 (e) The priorities established in (d) of this section are not binding, and the
 2 court shall select the person, whether an individual, an association, a tribal entity,
 3 a for-profit corporation, or a nonprofit corporation that is best qualified and willing
 4 to serve. The court shall also give consideration to a nomination by a person
 5 described in (d) of this section and to a nomination in the will of a deceased parent
 6 or spouse of the incapacitated person.

7 * **Sec. 9.** AS 13.26.150(c) is amended to read:

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

14 (1) the guardian is entitled to custody of the person of the ward and
 15 shall assure that the ward has a place of abode in the least restrictive setting consistent
 16 with the essential requirements for the ward's physical health and safety;

17 (2) the guardian shall assure the care, comfort, and maintenance of the
 18 ward;

19 (3) the guardian shall assure that the ward receives the services
 20 necessary to meet the essential requirements for the ward's physical health and safety
 21 and to develop or regain, to the maximum extent possible, the capacity to meet the
 22 ward's needs for physical health and safety;

23 (4) the guardian shall assure through the initiation of court action and
 24 other means that the ward enjoys all personal, civil, and human rights to which the
 25 ward is entitled;

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

29 (6) the guardian has the powers and duties of a conservator under
 30 this chapter if a conservator for the estate of the ward has not been appointed [, THE
 31 GUARDIAN MAY RECEIVE MONEY AND PROPERTY DELIVERABLE TO THE

1 WARD AND APPLY THE MONEY AND PROPERTY FOR SUPPORT, CARE,
 2 AND EDUCATION OF THE WARD]; however, the guardian may not apply the
 3 ward's money or property for the services as guardian or for room and board that the
 4 guardian, or the guardian's spouse, parent, or child has furnished the ward unless,
 5 before payment, the court finds that the ward is financially able to pay and that the
 6 charge is reasonable; notice of a request for payment approval shall be provided to at
 7 least one relative of the ward if possible; the guardian shall exercise care to conserve
 8 any excess money or property for the ward's needs;

9 (7) if a conservator of the estate of the ward has **also** been appointed,
 10 the guardian shall pay all of the ward's estate received by the guardian in excess of the
 11 money expended to meet current expenses for support, care, and education of the ward,
 12 to the conservator for management as provided in AS 13.26.165 - 13.26.315, and the
 13 guardian shall account to the conservator for money expended.

14 * **Sec. 10.** AS 13.26.195(b) is amended to read:

15 (b) Upon receipt of a petition for appointment of a conservator or other
 16 protective order for reasons other than minority, the court shall set a date for hearing.
 17 Unless the person to be protected has counsel of the person's own choice, the court
 18 must appoint a lawyer to represent the person [WHO THEN HAS THE POWERS
 19 AND DUTIES OF A GUARDIAN AD LITEM]. If the alleged disability is mental
 20 illness, mental deficiency, physical illness or disability, advanced age, chronic use of
 21 drugs, or chronic intoxication, the court may direct that the person to be protected be
 22 examined by a physician designated by the court, preferably a physician who is not
 23 connected with any institution in which the person is a patient or is detained. The
 24 court may send a visitor to interview the person to be protected. [THE VISITOR
 25 MAY BE A GUARDIAN AD LITEM OR AN OFFICER OR EMPLOYEE OF THE
 26 COURT.]

27 * **Sec. 11.** AS 13.26.380(b) is amended to read:

28 (b) The public guardian, when appointed as guardian or conservator, shall
 29 endeavor, for as long as practical, to find a suitable private guardian or conservator for
 30 the public guardian's ward or protected person. For each ward and protected person,
 31 the public guardian shall **include in its annual** report **under AS 13.26.118** to the court

1 having jurisdiction of the ward or protected person **information on the availability**
2 **of a private guardian or conservator** [, AT LEAST ONCE EVERY SIX MONTHS,
3 EFFORTS TO FIND A PRIVATE GUARDIAN OR CONSERVATOR].

4 * **Sec. 12.** AS 44.21.440 is amended by adding a new subsection to read:

5 (b) The office of public advocacy may not use improper pressure to influence
6 the professional judgment of a person who is paid by the office of public advocacy to
7 act as an attorney, a guardian ad litem, or a visitor for a guardianship or
8 conservatorship under AS 13.26.

9 * **Sec. 13.** AS 47.30.839(d) is amended to read:

10 (d) Upon the filing of a petition under (b) of this section, the court **may**
11 [SHALL] direct the office of public advocacy to provide a visitor to assist the court
12 in investigating the issue of whether the patient has the capacity to give or withhold
13 informed consent to the administration of psychotropic medication. The visitor shall
14 gather pertinent information and present it to the court in written or oral form at the
15 hearing. The information **may** [MUST] include documentation of the following:

16 (1) the patient's responses to a capacity assessment instrument
17 administered at the request of the visitor;

18 (2) any expressed wishes of the patient regarding medication, including
19 wishes that may have been expressed in a power of attorney, a living will, or oral
20 statements of the patient, including conversations with relatives and friends **who**
21 [THAT] are significant persons in the patient's life as those conversations are
22 remembered by the relatives and friends; oral statements of the patient should be
23 accompanied by a description of the circumstances under which the patient made the
24 statements, when possible.

25 * **Sec. 14.** AS 13.26.112(c) is repealed.

26 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section
27 to read:

28 **INDIRECT COURT RULE CHANGE.** AS 15.26.140(h), added by sec. 6 of this Act,
29 has the effect of changing Rule 77, Alaska Rules of Civil Procedure, by requiring that a court
30 conduct a hearing on the appointment of an interim guardian, by establishing when the hearing
31 must be conducted, and by requiring that reasonable notice be given to the respondent and

1 certain other persons.

2 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section
3 to read:

4 APPLICABILITY. This Act applies to all proceedings and actions in a guardianship
5 or conservatorship that is begun under AS 13.26 on or after the effective date of this Act.

6 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 CONDITIONAL EFFECT. AS 15.26.140(h), added by sec. 6 of this Act, takes effect
9 only if sec. 15 of this Act receives the two-thirds majority vote required by art. IV, sec. 15,
10 Constitution of the State of Alaska.

11 * **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).