

BY THE HEALTH, EDUCATION AND SOCIAL
SERVICES COMMITTEE BY REQUEST OF THE
LEGISLATIVE COUNCIL MENTAL RETARDA-
TION AND MENTAL HEALTH CODE REVISION
TASK FORCE

1 IN THE HOUSE

2 HOUSE BILL NO. 734

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to treatment services for develop-
7 mentally disabled persons, guardianship procedures, and
8 rights of developmentally disabled persons; and pro-
9 viding for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 47 is amended by adding a new chapter to read:

12 CHAPTER 70. DEVELOPMENTAL DISABILITIES ACT.

13 Sec. 47.70.010. LEGISLATIVE PURPOSE AND INTENT. The state accepts
14 a responsibility for its developmentally disabled citizens and an obli-
15 gation to them which it must discharge. The complexities of develop-
16 mental disabilities require the services of many state departments as
17 well as the community. Frequently there are gaps beyond the present
18 duties and powers of departments in the development of state and com-
19 munity services. Services should be planned and provided as a part of a
20 continuum. A pattern of facilities and eligibility should be estab-
21 lished which is so complete as to meet the needs of each developmentally
22 disabled person, regardless of age or degree of handicap, and at each
23 stage of this life's development. In order to discharge its responsi-
24 bilities to the developmentally disabled of the state, the legislature
25 makes the following provisions to facilitate the development and growth
26 of a continuum of local services to meet the needs of the developmentally
27 disabled.

28 Sec. 47.70.020. DIVISION OF DEVELOPMENTAL DISABILITIES. There is
29 the division of developmental disabilities within the department which

1 shall assist local communities in planning, organizing and financing
2 community services through regionally developed and administered develop-
3 mentally disabled programs. The department shall act as the coordinator
4 of these regional services in order to

(1) develop and implement plans for initiating maximum
developmentally disabled services based on demonstrated need for ser-
7 vices in each geographical planning area, as well as regionalized
8 developmentally disabled services;

9 (2) improve the effectiveness of existing developmentally
10 disabled services;

11 (3) integrate state-operated and community developmentally
12 disabled programs into a unified developmentally disabled system;

13 (4) provide a means for participation by local communities in
14 the determination of the need for and the allocation of developmentally
15 disabled resources;

16 (5) establish a uniform ratio of local and state government
17 responsibility for financing developmentally disabled services;

18 (6) provide a means of allocating state developmentally
19 disabled funds according to community needs;

20 (7) encourage the full use of all existing public or private
21 agencies, facilities, personnel, and funds to accomplish these objec-
22 tives; and

23 (8) prevent unnecessary duplication and fragmentation of
24 services and expenditures.

25 Sec. 47.70.030. DUTIES OF THE DEPARTMENT. The department shall
26 provide services to the developmentally disabled in accordance with
27 secs. 10 - 210 of this chapter. In order to provide these services on a
28 continuing basis which will better utilize existing resources at both
29 state and local levels, the department shall

1 (1) define and develop standards for various levels and
2 qualities of developmentally disabled care;

3 (2) provide fiscal and professional technical assistance in
4 planning, organizing, developing, implementing, and administering local
5 developmentally disabled services;

6 (3) develop budgets, receive and distribute state appropri-
7 ations and funds in accordance with the provisions in this chapter;

8 (4) establish standards of education and experience for
9 professional, technical and administrative personnel employed in com-
10 munity developmentally disabled services;

11 (5) assist the community in establishing the organization and
12 operation of community developmentally disabled services;

13 (6) develop a standardized system for measuring and reporting
14 to the department the types, quantities and quality of services; and a
15 cost accounting system which will demonstrate the actual cost of various
16 levels and qualities of care;

17 (7) provide each local community planning and services de-
18 livery entity with statistics, reports, and other data relevant to
19 development of indices indicating the need for developmentally disabled
20 services, or relevant to evaluating the effectiveness of existing
21 services;

22 (8) review each local community plan and require each plan to
23 include

24 (A) an affirmative showing that the most effective and
25 economic use will be made of all available public and private re-
26 sources in the community including careful consideration of the
27 most effective and economic alternative forms and patterns of
28 services;

29 (B) a five-year projection of needs, services and

resources; and

(C) adequate provision for review and evaluation of services provided in the local community;

(9) adopt regulations and establish priorities, after consultation with local communities affected and in conjunction with the state Developmental Disabilities Advisory Council, which are necessary to carry out the purposes of this chapter; and

(10) take necessary action to obtain available federal funds for the planning, providing of services, and construction and operation of facilities for the developmentally disabled.

Sec. 47.70.040. DELIVERY OF SERVICES. The department shall establish regional coordination centers where persons desiring services shall apply for those services. To the extent feasible, these centers shall correspond to present health planning regions established under the Community Mental Health Services Act (AS 47.30.520 - 47.30.620). The purpose of the regional coordination centers is to

(1) establish ongoing points of contact with the developmentally disabled and their families so that they may have a place of entry for services and return as the need may appear; and

(2) provide a link between the developmentally disabled and services in the geographical area, including state-operated and state-funded services, to the end that the developmentally disabled and their families may have access to the available facilities best suited to their needs.

Sec. 47.70.050. ELIGIBLE FOR SERVICES. All persons shall be eligible for initial intake and for diagnostic and counseling services in the regional centers.

Sec. 47.70.060. APPLICATION FOR SERVICES. (a) Upon receipt of an application for services by an individual who meets the requirements of

1 of sec. 50 of this chapter or by the individual's parent, guardian,
2 spouse, or adult next of kin, the regional coordination center shall
3 arrange for diagnosis and evaluation of the individual to determine the
4 existence of the disability and the appropriate services needed by the
5 individual.

6 (b) A plan for services shall be developed on the basis of the
7 diagnosis and evaluation. In developing the plan of services, the
8 regional coordination center shall investigate every appropriate and
9 feasible alternative for care of a developmentally disabled person
10 available within the region. If suitable care cannot be found within
11 the region, care may be obtained outside the region.

12 (c) The plan shall be developed with maximum participation by the
13 individual and his parents, guardian, spouse, or adult next of kin in
14 the decision-making process.

15 Sec. 47.70.070. TREATMENT PLAN. A plan of services shall include,
16 but is not limited to, the following:

- 17 (1) diagnosis and evaluation;
- 18 (2) counseling on a continuing basis; counseling shall in-
19 clude advice and guidance to any developmentally disabled person and his
20 family, to assist them in locating and using suitable facilities, in-
21 cluding, but not limited to special medical services, nursery and pre-
22 school training, public education, recreation, vocational rehabilita-
23 tion, suitable residential facilities, state hospital facilities, and
24 eligibility for federal aid; and
- 25 (3) when necessary, referrals to state or private facilities
26 for inpatient or outpatient treatment.

27 Sec. 47.70.080. REGIONAL CENTERS. Regional coordination centers
28 shall

- 29 (1) provide a systematic followup of the developmentally

1 disabled and reactivate cases as the need is indicated;

2 (2) call public attention to unmet needs in community care
3 and services, defining and interpreting standards of community care and
4 services as used by the regional center and stimulating the community to
5 develop services as needed;

6 (3) maintain a staff according to standards set by the
7 director;

8 (4) report as required to the division head and the commis-
9 sioner on services provided and unmet needs in the region;

10 (5) develop a plan for developmental disabilities services in
11 the region to be submitted to the department as required by the commis-
12 sion and the division head; and

13 (6) maintain individual case records.

14 Sec. 47.70.090. PERIODIC REVIEW. (a) Upon completion of a
15 specified phase of a plan of treatment for which a facility is respon-
16 sible or when a time period specified in the plan of treatment has
17 elapsed, the director of the facility shall contact the regional co-
18 ordination center, shall give written notice at least two weeks before
19 the completion of the specified phase or the termination of a time
20 period to the parent, guardian, spouse or adult next of kin so that a
21 new plan of services may be arranged.

22 (b) Notwithstanding the provisions in (a) of this section, the
23 regional coordination center must review at least twice a year the plan
24 for services and the individual's progress under that plan.

25 (c) A copy of the review and report shall be submitted to the
26 division head, the individual and his parent, guardian, spouse or adult
27 next of kin.

28 (d) The individual, his parent, guardian, spouse or adult next of
29 kin may request that the regional coordination center change either a

1 placement in a facility or a plan of alternate care. The department
2 shall adopt regulations specifying procedures to resolve conflicts in an
3 individual's placement or treatment plan.

4 Sec. 47.70.100. JUDICIAL COMMITMENT. No developmental disability
5 constitutes sufficient justification for judicial commitment. Develop-
6 mentally disabled persons shall receive services under this chapter.
7 Developmentally disabled persons who constitute a danger to themselves
8 or to others may be judicially committed under the provisions of AS
9 47.30.011 - 47.30.321. The provisions of this section shall not be
10 construed to apply retroactively to terminate court commitments of
11 developmentally disabled persons.

12 Sec. 47.70.110. CONTRACTS. The department, within the limitations
13 of funds appropriated, may contract with appropriate public or private
14 agencies, to provide diagnostic, counseling, inpatient and outpatient
15 health services.

16 Sec. 47.70.120. DEVELOPMENTAL DISABILITIES ADVISORY COUNCIL. (a)
17 There is created the Developmental Disabilities Advisory Council ap-
18 pointed by the governor to advise and assist the department in initiat-
19 ing and implementing community developmentally disabled services. The
20 council consists of 12 appointed voting members who have demonstrated an
21 interest and knowledge in developmental disabilities. No more than four
22 members shall be providers of direct developmental disabilities services
23 and at least six members shall represent consumers of services for
24 persons with developmental disabilities including, but not limited to,
25 parents of children with developmental disabilities.

26 (b) The council shall

27 (1) advise the division on the state developmental disability
28 plans before implementation of these plans;

29 (2) periodically review all developmental disabilities ser-

1 vices in the state, reports of which shall be prepared and submitted to
2 the governor, the legislature, the department and the Comprehensive
3 Health Advisory Council;

4 (3) conduct independent investigations and studies as may be
5 necessary;

6 (4) recommend regulations and standards for the administra-
7 tion of community developmental disability services; and

8 (5) encourage coordination on a regional basis of community
9 developmental disability services to insure nonduplication and non-
10 fragmentation of services.

11 (c) The council shall meet at the call of the chairman but shall
12 meet at least once quarterly.

13 (d) Members of the council are not entitled to a salary, but are
14 entitled to per diem, reimbursement for travel, and other expenses
15 authorized by law for other boards.

16 Sec. 47.70.130. ADULT PROTECTIVE SERVICE. (a) A physician, in-
17 cluding a hospital intern or resident, dentist, hospital administrator,
18 registered nurse, visiting nurse, school teacher or school authority,
19 social worker, personal advocate, or person who renders spiritual treat-
20 ment through prayer in accordance with the tenets of a well-recognized
21 religion acting in his official or professional capacity having reason
22 to believe that a mentally retarded adult has suffered a wound, injury,
23 disability, or condition of such a nature as to reasonably indicate
24 abuse or neglect of the mentally retarded adult, shall immediately
25 report or cause reports to be made of information to the municipal
26 police, state troopers, or the department. The reports shall be made
27 immediately by telephone or in person and shall be followed by a written
28 report. The reports shall contain

29 (1) the name and address of the mentally retarded adult and

1 person having custody of the mentally retarded adult, if known;

2 (2) the mentally retarded adult's age and the nature and ex-
3 tent of his injuries or physical neglect, including any evidence of
4 previous injuries or physical neglect;

5 (3) any other information which might be helpful in estab-
6 lishing the cause of the injury or physical neglect.

7 (b) When a physician performing services as a member of the staff
8 of a hospital or similar institution has reason to believe that a
9 mentally retarded adult has suffered injury or physical neglect, he
10 shall notify the person in charge of the institution or his designated
11 delegate who shall make the necessary reports.

12 (c) Upon the receipt of a report concerning the possible non-
13 accidental infliction of a physical injury upon a mentally retarded
14 adult, the municipal police or state troopers shall inform the commis-
15 sioner or his designee.

16 (d) No mentally retarded adult for whom a report is made may be
17 removed from the person or institution having custody of him by the
18 municipal police or state troopers without consultation with the depart-
19 ment unless, in the judgment of the reporting physician and the officer,
20 immediate removal is considered essential to protect the adult from
21 further injury or abuse.

22 (e) The department shall investigate each report referred to it to
23 determine the circumstances surrounding the injury or injuries, the
24 cause of the injury, and the person responsible. Investigations shall
25 be made in cooperation with any reporting law enforcement agency. The
26 department shall determine, with the registry office of the department,
27 whether prior reports have been made concerning the mentally retarded
28 adult or other principals in the case. The department shall submit a
29 report of its investigation, in writing, to the law enforcement agency

1 and shall provide protective services necessary to protect the mentally
2 retarded adult.

3 (f) The department shall make recommendations to the city attorney
4 or prosecutor as it considers necessary to protect those mentally re-
5 tarded adults who are brought to its attention.

6 (g) A person or hospital, institution, school, health department,
7 or agency participating in the making of reports, or a person partici-
8 pating, as a witness in a judicial proceeding resulting from the reports
9 is immune from civil or criminal liability that might otherwise be
10 incurred or imposed as a result of the actions.

11 Sec. 47.70.140. RIGHTS. An individual receiving services from a
12 treatment facility licensed under AS 18.20.020 has the following rights:

13 (1) the right not to be subjected to experimental research
14 without his express and informed consent, and if the individual is not
15 able to give his consent, the consent of his guardian, spouse, or adult
16 next of kin, after opportunities for consultation with independent
17 specialists and with legal counsel; the proposed research shall comply
18 with the principles of the statement on the use of human subjects for
19 research of the American Association on Mental Deficiency and with the
20 principles for research involving human subjects required by the United
21 States Department of Health, Education and Welfare for projects sup-
22 ported by that agency; in the case of an emergency, the commissioner or
23 his designee, upon being notified of the pertinent medical facts, may
24 give the consent; in the case of a minor, consent shall also be obtained
25 from the parent or guardian;

26 (2) the right to refuse treatment procedures such as lobo-
27 tomy, electro-convulsive treatment, aversive reinforcement condition-
28 ing, or other unusual or hazardous treatment procedures;

29 (3) the right to dignity, privacy, and humane care; no in-

1 individual may be deprived of a civil right, or public or private employ-
2 ment, solely by reason of his having received services, voluntarily or
3 involuntarily, for mental illness or developmental disabilities; an
4 individual retains all rights not specifically denied him;

5 (4) the right to be free from physical restraint and seclu-
6 sion, except for an emergency situation in which it is likely that a
7 client could harm himself or others and in which less restrictive means
8 of restraint are not feasible; a client may be physically restrained or
9 placed in seclusion only on a physician's written order which explains
10 the rationale for the action, and which shall be maintained in the
11 client's medical records;

12 (5) the right to religious freedom and practice; no indivi-
13 dual may be coerced into or restricted from engaging in religious
14 activities;

15 (6) the right to the possession and use of his own clothing
16 and personal effects;

17 (7) the right to reasonable daily opportunities for physical
18 exercise and outdoor recreation;

19 (8) the right to prompt and appropriate medical treatment and
20 care for physical and mental ailments and for the prevention of illness
21 or disability;

22 (9) the right to be free from unnecessary or excessive medi-
23 cation; medication shall be administered only at the written order of a
24 physician and notation of each individual's medication shall be made in
25 his medical records; medication may not be used as punishment, for the
26 convenience of staff, or in quantities that interfere with the client's
27 treatment or rehabilitation program;

28 (10) the right to be free from performing labor which involves
29 the operation and maintenance of the treatment facility; a client may

1 voluntarily engage in labor if the labor is compensated in accordance
2 with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.
3 206 as amended, 1966;

4 (11) the right to receive education and training services
5 which will meet the needs of the individual and aid his early return to
6 the community;

7 (12) the right to communicate by sealed mail or other manner
8 with persons, including official agencies, inside or outside the treat-
9 ment facility;

10 (13) the right to receive visitors; and

11 (14) the right to exercise all civil rights, including the
12 right to dispose of property, execute instruments, make purchases, enter
13 contractual relationships, and vote, unless he has been adjudicated
14 incompetent and has not been restored to legal capacity.

15 Sec. 47.70.150. PENALTY FOR VIOLATION. A person who violates,
16 abuses, or deprives any person of a right or privilege provided in this
17 chapter is liable for damages as determined by law.

18 Sec. 47.70.160. DISCLOSURE OF INFORMATION. (a) All certificates,
19 applications, records, reports, and clinical information relating to the
20 patients of a treatment facility shall be kept confidential and may not
21 be disclosed by a person except insofar as

22 (1) the individual, or his legal guardian or, if he is a
23 minor, his parent or legal guardian consents in writing;

24 (2) disclosure is necessary to carry out a provision of this
25 chapter; or

26 (3) a court directs, upon its determination that disclosure
27 is necessary for the conduct of proceedings before it and that failure
28 to make the disclosure would be contrary to the public interest.

29 (b) A central record shall be maintained by the treatment facility

1 for each client. The record shall include data pertaining to his ad-
2 mission to the facility, medical diagnosis, and his individual treatment
3 program.

4 (c) The client, if competent, or the parent or legal guardian, if
5 the client is incompetent, shall be supplied with a copy of the client's
6 central record upon request.

7 (d) A person who violates this section is guilty of a misdemeanor,
8 and is punishable by a fine of not more than \$500, or by imprisonment
9 for not more than one year, or by both.

10 Sec. 47.70.170. JUDICIAL FINDING OF INCOMPETENCE. (a) The fact
11 that a person has had a guardian appointed for him, been admitted to a
12 mental health facility, or applied for or received rehabilitative
13 services for the developmentally disabled does not constitute a judicial
14 finding of legal incompetence.

15 (b) The fact that a person has received any of these services is
16 not competent evidence of a mental condition in an involuntary commit-
17 ment or guardianship proceeding or in a judicial or administrative
18 proceeding, except for the determination of an individual's competence
19 to stand trial on criminal charges.

20 Sec. 47.70.180. OFFICE OF MENTAL HEALTH ADVOCATE. There is
21 created in the Office of the Governor the office of mental health advo-
22 cate to assure the proper functioning of laws affecting the develop-
23 mentally disabled and to protect individual rights and freedoms by
24 guaranteeing that all persons shall have access to counsel with adequate
25 knowledge and appropriate resources to advise and represent them fully
26 in legal matters related to their handicaps.

27 Sec. 47.70.190. DUTIES OF OFFICE. (a) The office of mental
28 health advocate shall represent or provide information or advice to
29 persons concerning, but not limited to,

1 (1) respondents in any phase of involuntary treatment or
2 commitment proceedings;

3 (2) persons voluntarily in residence or about to begin
4 residence in a treatment facility, with respect to matters of coercion,
5 duress or undue influence involved in the application for or consent to
6 admission;

7 (3) persons who assert the denial of any of the patient's
8 rights set out in this chapter or the violation of a provision of this
9 chapter;

10 (4) persons seeking information and advocacy services on
11 available public and private services for the developmentally disabled.

12 (b) The office of mental health advocate shall also assist persons
13 residing in treatment facilities to obtain appropriate legal assistance
14 in matters including criminal commitment, civil commitment, or guardian-
15 ship procedures.

16 (c) There shall be at least one full-time attorney assigned to
17 the position of mental health advocate who shall administer the program
18 statewide. As needed to fulfill the requirements of this chapter and
19 the functions of (a) and (b) of this section, other attorneys shall be
20 retained, as necessary, practicable and most economical. The mental
21 health advocate and his designees may hire support staff, clerical or
22 professional, necessary to carry out the functions of the office.

23 (d) The services of the office shall be free to indigent clients.
24 The office shall promulgate regulations for determination of indigency
25 and reimbursement of costs on a sliding scale basis by those clients who
26 can afford to pay.

27 (e) The mental health advocate shall create a system of statewide
28 delivery of services by the office of mental health advocate to meet the
29 requirements of this chapter. This organizational plan shall be put

1 into effect by the effective date of this Act, and the plan shall be
2 disseminated to district offices, diagnostic, evaluation and treatment
3 facilities, regional coordination centers, the department, providers of
4 inpatient and outpatient care, and the public at large at the time of
5 its adoption.

6 Sec. 47.70.200. DEFINITIONS. In this chapter

7 (1) "client" means a person who is receiving services for the
8 developmentally disabled in treatment facilities licensed under AS 18.-
9 20.020;

10 (2) "commissioner" means the commissioner of the Department
11 of Health and Social Services;

12 (3) "department" means the Department of Health and Social
13 Services;

14 (4) "developmental disability" means a disability attribut-
15 able to mental retardation, cerebral palsy, epilepsy, or other neuro-
16 logical handicapping condition found to be closely related to mental
17 retardation or to require treatment similar to that required for
18 mentally retarded individuals; the disability originates before an in-
19 dividual attains age 18, continues, or can be expected to continue,
20 indefinitely, and constitutes a substantial handicap for the individual;

21 (5) "division" means the division of developmental disabili-
22 ties of the Department of Health and Social Services;

23 (6) "division head" means the head of the division of
24 developmental disabilities of the Department of Health and Social
25 Services;

26 (7) "mentally ill individual" means an individual having a
27 psychosis or senile changes which substantially impair his mental
28 health to the degree that he is a danger to himself or others;

29 (8) "mentally retarded" means significantly subaverage

1 general intellectual functioning which originates during the develop-
2 mental period and results in an impairment in adaptive behavior;

3 (9) "treatment facility" means a facility which is operated
4 by or under contract with the department or is licensed by the state or
5 which receives any form of funding from or approval by the state and
6 serves developmentally disabled individuals.

7 Sec. 47.70.210. SHORT TITLE. This chapter may be cited as the
8 Developmental Disabilities Act.

9 * Sec. 2. AS 13.26.005(1) is amended to read:

10 (1) "incapacitated person" means any person who is develop-
11 mentally disabled, or who is impaired by reason of mental illness,
12 mental deficiency, physical illness or disability, advanced age, chronic
13 use of drugs, chronic intoxication, or other cause (except minority) to
14 the extent that he lacks sufficient understanding or capacity to make or
15 communicate responsible decisions concerning his person;

16 * Sec. 3. AS 13.26 is amended by adding a new section to art. 3 to read:

17 Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardianship
18 for incapacitated persons shall be utilized only as is necessary to
19 promote and protect the well-being of the individual, shall be designed
20 to encourage the development of maximum self-reliance and independence
21 in the individual, and shall be ordered only to the extent necessitated
22 by the individual's actual mental and adaptive limitations.

23 * Sec. 4. AS 13.26.005 is amended by adding new paragraphs to read:

24 (5) "full guardian" means a guardian who possesses the legal
25 rights and powers of a full guardian of the person;

26 (6) "partial guardian" means a guardian who possesses fewer
27 than all of the legal rights and powers of a plenary guardian, and whose
28 rights, powers, and duties have been specifically enumerated by court
29 order.

1 * Sec. 5. AS 13.26.095 is amended by adding a new subsection to read:

2 (e) The testamentary guardian shall possess the powers of the
3 initially appointed guardian, shall be furnished with a copy of any
4 court order creating or modifying the initial guardianship, and shall
5 serve subject to the power of the court's ability to reduce the scope of
6 guardianship authority or to remove a guardian as provided in sec. 125
7 of this chapter.

8 * Sec. 6. AS 13.26 is amended by adding a new section to read:

9 Sec. 13.26.102. PROCEDURE FOR COURT APPOINTMENT OF A PARTIAL
10 GUARDIAN OF AN INCAPACITATED PERSON. (a) The petition for the appoint-
11 ment of a partial guardian for an individual who is incapacitated shall
12 be accompanied by a report which contains:

13 (1) current evaluations of the individual's mental, physical,
14 social, and educational condition;

15 (2) a recommendaton proposing the type and scope of guardian-
16 ship services needed by the individual;

17 (3) a judgment as to the most appropriate living arrangement
18 for the individual;

19 (4) the signatures of all persons, one of whom must be a
20 physician or a psychologist, who performed the evaluations upon which
21 the report is based.

22 (b) If no report accompanies the petition, the court shall appoint
23 a qualified person who may but need not be an employee of the state, a
24 municipality or the court, to arrange for evaluations to be performed,
25 to prepare a report, and to file it with the court.

26 (c) Upon the filing of a petition, the court shall set a date for
27 a preliminary hearing for purposes of ascertaining whether the need for
28 a partial guardianship is clearly established. At this hearing the
29 court shall

1 (1) inquire into the nature and extent of the individual's
2 ability to safely and responsibly care for himself; and

3 (2) consider what guardianship services are appropriate to
4 meet the individual's needs.

5 (d) If the parties notified under sec. 135 of this chapter and who
6 are present at the hearing reach unanimous agreement that the individual
7 who is incapacitated possesses the capacity to care for himself, the
8 court may, in its discretion, dismiss the petition.

9 (e) If the attending parties are able to reach unanimous agreement
10 on a guardianship plan which identifies the needs of the individual,
11 specifies the review to be provided, and names the proposed guardian,
12 the court may, in its discretion, appoint a partial guardian to provide
13 guardianship services to the individual, specifying the duties and
14 responsibilities of the guardian.

15 (f) If the court does not appoint a partial guardian, it shall set
16 a date for the proceeding specified in sec. 105 of this chapter on the
17 issues of incapacity and the individual's need for a guardian to protect
18 his health and safety and to care for himself.

19 * Sec. 7. AS 13.26.105 is repealed and re-enacted to read:

20 Sec. 13.26.105. PROCEDURE FOR COURT APPOINTMENT OF A FULL GUARDIAN
21 OF AN INCAPACITATED PERSON. (a) If the allegedly incapacitated person
22 does not have counsel of his own choice, the court shall appoint an
23 appropriate official or attorney to represent him in the proceeding, who
24 shall have the powers and duties of a guardian ad litem.

25 (b) The person alleged to be incapacitated shall be examined by a
26 physician appointed by the court who shall submit his report in writing
27 to the court and be interviewed by a visitor sent by the court. The
28 visitor also shall interview the person seeking appointment as guardian,
29 and visit the present place of abode of the person alleged to be in-

1 capacitated and the place it is proposed that he will be detained or
2 reside if the requested appointment is made and submit his report in
3 writing to the court.

4 (c) The person alleged to be incapacitated is entitled to be
5 present at the hearing provided in sec. 102(f) of this chapter in
6 person, and to see or hear all evidence bearing upon his condition. He
7 is entitled to be represented by counsel, to present evidence, to cross-
8 examine witnesses, including the court-appointed physician and the
9 visitor, and to trial by jury. The issue may be determined at a closed
10 hearing without a jury if the person alleged to be incapacitated or his
11 counsel so requests.

12 * Sec. 8. AS 13.26.110 is amended to read:

13 Sec. 13.26.110. FINDINGS; ORDER OF APPOINTMENT. The court may
14 appoint a full guardian [AS REQUESTED] if it is satisfied that the
15 person for whom a guardian is sought is incapacitated and that the
16 appointment is appropriate [NECESSARY OR DESIRABLE] as a means of pro-
17 viding continuing care [AND SUPERVISION] of the person of the incapacitated
18 person. [ALTERNATIVELY, THE COURT MAY DISMISS THE PROCEEDING OR
19 ENTER ANY OTHER APPROPRIATE ORDER.]

20 * Sec. 9. AS 13.26 is amended by adding a new section to read:

21 Sec. 13.26.112. ORDER ESTABLISHING PARTIAL AND FULL GUARDIANSHIP.

22 (a) A court order establishing the partial guardianship shall

23 (1) contain findings of fact;

24 (2) define the powers and duties of the partial guardian to
25 permit the individual to care for himself and his property commensurate
26 with his ability to do so; and

27 (3) specify all legal disabilities to which the individual is
28 subject.

29 (b) An individual for whom a partial guardian has been appointed

1 retains all legal and civil rights except those which have by court
2 order been designated as legal disabilities or which have been specifi-
3 cally granted to the partial guardian by the court.

4 (c) The duration of the term of any guardianship shall be indi-
5 cated in any court order under this chapter.

6 * Sec. 10. AS 13.26.125 is amended to read:

7 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; TERMINATION OF
8 INCAPACITY. (a) On petition of the ward or any person interested in
9 his welfare, the court may remove a full or partial guardian and appoint
10 a successor or modify the existing guardianship order if it is in the
11 best interests of the ward to do so. On petition of the guardian, the
12 court may accept his resignation and make any other order which may be
13 appropriate.

14 (b) [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM
15 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-
16 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT
17 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE WARD OR ANY PERSON
18 INTERESTED IN HIS WELFARE MAY PETITION FOR AN ORDER THAT HE IS NO LONGER
19 INCAPACITATED, AND FOR REMOVAL OR RESIGNATION OF THE GUARDIAN.] A
20 request for this order as provided for in (a) of this section may be
21 made by informal letter to the court or judge and any person who know-
22 ingly interferes with transmission of this kind of request to the court
23 or judge may be adjudged guilty of contempt of court.

24 (c) Before removing a guardian, accepting the resignation of a
25 guardian, or ordering that a ward's incapacity has terminated, the court
26 shall follow [, FOLLOWING] the same procedures to safeguard the rights
27 of the ward as apply to a petition for appointment of a guardian.
28 The court [,] may send a visitor to the residence of the present guard-
29 ian and to the place where the ward resides or is detained, to observe

1 conditions and report in writing to the court.

2 * Sec. 11. AS 13.26.135(a) is amended to read:

3 (a) In a proceeding for the appointment or removal of a full or
4 partial guardian of an incapacitated person other than the appointment
5 of a temporary guardian or temporary suspension of a guardian, notice of
6 hearing shall be given to each of the following:

7 (1) the ward or the person alleged to be incapacitated and
8 his spouse, parents and adult children;

9 (2) any person who is serving as his guardian, conservator or
10 who has his care and custody; and

11 (3) in case no other person is notified under (1) of this
12 subsection, at least one of his closest adult relatives, if any can be
13 found;

14 (4) the petitioner;

15 (5) any person who performed an evaluation for the petition-
16 er's report;

17 (6) the director of the facility in which the individual is
18 residing; and

19 (7) the individual's guardian ad litem if one has been
20 appointed.

21 * Sec. 12. AS 13.26.140 is amended to read:

22 Sec. 13.26.140. TEMPORARY GUARDIANS. If an incapacitated person
23 has no guardian and an emergency exists, the court may exercise the power
24 of a guardian pending notice and hearing. If an appointed guardian is
25 not effectively performing his duties and the court further finds that
26 the welfare of the incapacitated person requires immediate action, it
27 may, with or without notice, appoint a temporary guardian for the
28 incapacitated person for a specified period not to exceed six months
29 whose powers and duties shall be specifically enumerated by court order.

1 The [A TEMPORARY GUARDIAN IS ENTITLED TO THE CARE AND CUSTODY OF THE
2 WARD AND THE] authority of any permanent guardian previously appointed
3 by the court is suspended [SO LONG AS A TEMPORARY GUARDIAN HAS AUTHORITY].
4 A temporary guardian may be removed at any time. A temporary guardian
5 shall make any report the court requires. In other respects the provi-
6 sions of this code concerning guardians apply to temporary guardians.

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

8 (a) Any competent person or a suitable institution may be appointed
9 guardian of an incapacitated person, but the court may not ordinarily or
10 customarily appoint as guardian an agency which is responsible for
11 rendering a direct service to the incapacitated person.

12 * Sec. 14. AS 13.26.170 is amended by adding a new subsection to read:

13 (b) When both guardianship and protective proceedings as to the
14 same person are commenced or pending in the same court, the proceedings
15 may be consolidated.

16 * Sec. 15. The office of mental health advocate created in AS 47.70.180
17 shall be the same office of mental health advocate created in "An Act relating
18 to services for mentally ill persons, commitment procedures; and providing
19 for an effective date." If a version of "An Act relating to services for
20 mentally ill persons, commitment procedures; and providing for an effective
21 date" is enacted creating the office of mental health advocate, the office
22 shall be created under AS 47.30.016 but shall additionally have the duties
23 set out in AS 47.70.190.

24 * Sec. 16. This Act takes effect October 1, 1976.
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