

Original sponsors: Ziegler and Fahrenkamp

Offered: 5/22/81
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 3 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to guardians and conservators; and
7 providing for an effective date."

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8

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

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* Section 1. AS 13.26.005(1) is repealed and reenacted to read:

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(1) "incapacitated person" means a person whose ability to

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receive and evaluate information or to communicate decisions is im-

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paired for reasons other than minority to the extent that he lacks the

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ability to provide for himself the essential requirements for his phy-

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sical health or safety without court-ordered assistance;

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* Sec. 2. AS 13.26.005 is amended by adding new paragraphs to read:

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(5) "essential requirements for physical health or safety"

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means the health care, food, shelter, clothing, personal hygiene, and

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protection without which serious physical injury or illness is more

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likely than not to occur;

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(6) "partial guardian" means a guardian who possesses fewer

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than all of the legal duties and powers of a full guardian, and whose

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rights, powers, and duties have been specifically enumerated by court

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order;

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(7) "full guardian" means a guardian who possesses the legal

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duties and powers enumerated in AS 13.26.150(c);

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(8) "visitor" means a person trained or experienced in law,

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medical care, mental health care, pastoral care, education, rehabilita-

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tion, or social work, who is an officer, employee, or special appointee

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of the court with no personal interest in the proceedings;

1 (9) "guardian" includes full guardian and partial guardian;

2 (10) "respondent" means a person who, in a guardianship pro-
3 ceeding under this chapter, is alleged to be incapacitated and for whom
4 the appointment of a guardian or alternative assistance is sought;
5 "respondent" includes a person seeking the appointment of a guardian or
6 alternative assistance for himself.

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

8 Sec. 13.26.013. COURT RECORDS OF PROCEEDINGS; ACCESS; SEALING.

9 (a) A notice of the filing of a petition, a summary of all formal
10 proceedings, and a dispositional order or modification or termination
11 of a dispositional order relating to a proceeding under this chapter
12 shall be available for public inspection. All other information con-
13 tained in the court records relating to a proceeding under this chapter
14 is confidential and available only upon court order for good cause
15 shown or to the following persons:

16 (1) the person who is the subject of the court record, his
17 attorney, or his guardian ad litem;

18 (2) a person designated by the person who is the subject of
19 the court record;

20 (3) the guardian of the person who is the subject of the
21 court record or the attorney of the guardian;

22 (4) the conservator of the estate of the person who is the
23 subject of the court record or the attorney of the conservator;

24 (5) a party to the proceeding and his attorney;

25 (6) the judge or judges hearing or reviewing the matter; and

26 (7) a member of the clerical or administrative staff of the
27 court if access is essential for authorized internal administrative
28 purposes.

29 (b) Upon finding that a petition under this chapter was mali-

1 cious, frivolous, or without just cause, the court may order that all
2 information contained in the court records relating to the proceeding
3 be sealed and that the information be disclosed only upon court order
4 for good cause shown.

5 * Sec. 4. AS 13.26 is amended by adding a new section to article 3 to
6 read:

7 Sec. 13.26.090. PURPOSE AND BASIS FOR GUARDIANSHIP. Guardianship
8 for an incapacitated person shall be used only as is necessary to pro-
9 mote and protect the well-being of the person, shall be designed to
10 encourage the development of maximum self-reliance and independence of
11 the person, and shall be ordered only to the extent necessitated by the
12 person's actual mental and physical limitations. An incapacitated
13 person for whom a guardian has been appointed is not presumed to be
14 incompetent and retains all legal and civil rights except those which
15 have been expressly limited by court order or have been specifically
16 granted to the guardian by the court.

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

18 (e) A testamentary appointment of a guardian by the parent of an
19 incapacitated person, or by the spouse of a married incapacitated
20 person, may grant all guardianship powers and duties which the deceased
21 parent or spouse held, subject to modification by the court under
22 AS 13.26.125.

23 * Sec. 6. AS 13.26.105 is repealed and reenacted to read:

24 Sec. 13.26.105. PETITION. (a) Any person may petition the court
25 for a finding of incapacity and the appointment of a guardian for
26 himself or for another person.

27 (b) The petition for appointment of a guardian shall state

28 (1) the name, age, and address of the petitioner and his
29 relationship to the respondent;

1 (2) the name, age, and present address of the respondent;

2 (3) the name and address of the person or facility presently
3 having care, custody, guardianship, or conservatorship of the respon-
4 dent, if any, and the existence of any other restrictions on the legal
5 capacity of the respondent to act in his own behalf;

6 (4) the nature and degree of the alleged incapacity;

7 (5) the particular type and duration of appointment and the
8 protection and assistance being sought;

9 (6) the names and addresses, unless they are unknown and
10 cannot reasonably be ascertained, of the individuals most closely re-
11 lated to the respondent by blood or marriage;

12 (7) the facts supporting the allegations of incapacity and
13 the need for appointment of a guardian;

14 (8) the names and addresses of persons known to the peti-
15 tioner who have knowledge that might prove helpful in determining the
16 capacity and needs of the respondent.

17 (c) The petition may also nominate a guardian and include a re-
18 quest for temporary guardianship as provided in AS 13.26.140 if the
19 petitioner believes there is an imminent danger that the physical
20 health or safety of the respondent will be seriously impaired during
21 the pendency of the guardianship proceeding. A request for temporary
22 guardianship shall specify facts which cause the petitioner to believe
23 that a temporary guardian is necessary.

24 (d) If the petition seeks the appointment of a guardian for an
25 incapacitated person who is a veteran or a minor entitled to the
26 payment of money from the federal Veterans' Administration, the peti-
27 tioner shall give notice of the petition to the administrator of the
28 federal Veterans' Administration.

29 * Sec. 7. AS 13.26 is amended by adding new sections to read:

1 Sec. 13.26.106. INITIAL COURT PROCEDURES. (a) Upon the filing
2 of a petition, the court shall schedule a hearing on the issue of
3 incapacity. The hearing shall be conducted within 120 days from the
4 filing of the petition unless the court postpones the hearing for
5 cause.

6 (b) The respondent is entitled to be represented by an attorney
7 in the proceedings. If the respondent is financially unable to employ
8 an attorney to assist him, the court shall appoint an attorney to
9 represent the respondent in the proceedings.

10 (c) The court shall appoint a visitor as defined in AS 13.26.-
11 005(8). The visitor shall arrange for evaluations to be performed and
12 prepare a written report to be filed with the court. The court shall
13 also appoint an expert who has expertise in regard to the alleged or
14 admitted incapacity to investigate the issue of incapacity.

15 (d) The visitor shall interview the respondent and the person
16 seeking appointment as guardian, if any. The visitor shall conduct the
17 interviews and investigations necessary to prepare his report and shall
18 arrange for the respondent to be examined by the expert appointed under
19 (c) of this section. The expert's written report shall be attached to
20 the visitor's report.

21 (e) Interviews and examinations shall take place in the respon-
22 dent's usual residence unless

23 (1) the respondent consents to being examined or interviewed
24 in a medical or mental health facility; or

25 (2) the visitor considers it necessary to conduct interviews
26 or examinations in a medical or mental health facility.

27 Sec. 13.26.107. NOTICE OF RIGHTS. (a) Upon appointment, the
28 visitor shall promptly

29 (1) explain to the respondent, in a language or communica-

1 tion system he can understand, the purpose of the interview and pos-
2 sible consequences of the proceedings;

3 (2) serve a copy of the petition on the respondent in accor-
4 dance with the procedure described in AS 13.06.110;

5 (3) explain and provide to the respondent a written state-
6 ment of the following rights:

7 (A) he may communicate with an attorney or an expert in
8 the field of the alleged incapacity before proceeding with the
9 interview;

10 (B) if he does not have an attorney, an attorney, whose
11 name, address, and telephone number shall be included in the
12 statement, will be designated to advise and represent him before
13 and at any judicial hearings, and the attorney may arrange for an
14 examination and consultation with an expert; and

15 (C) he may, instead, employ an attorney or expert of
16 his own choice; and

17 (4) offer assistance to the respondent in contacting an
18 attorney.

19 (b) A substantive interview of the respondent or other investi-
20 gation may not be conducted until the provisions of (a) of this section
21 have been satisfied.

22 Sec. 13.26.108. VISITOR'S REPORT. (a) The visitor shall file
23 with the court his evaluation report, proof of service of the petition
24 upon the respondent, and proof of service of his report upon the
25 respondent, his attorney, and the petitioner, within 90 days after the
26 date on which the petition was filed.

27 (b) The visitor shall, as part of the evaluation report, explain
28 alternatives to guardianship and recommend any which will safeguard the
29 respondent's essential requirements for physical health and safety.

1 The evaluation report may recommend personal guardianship only if the
2 visitor determines that the needs of the respondent cannot be met by
3 other alternatives.

4 (c) The evaluation report shall include

5 (1) the results and analyses of medical and other tests and
6 examinations performed which describe the respondent's mental, emo-
7 tional, physical, and educational condition, adaptive behavior and
8 social skills, and which specify the data on which the description is
9 based;

10 (2) recommendations regarding the types and extent of assis-
11 tance, if any, necessary to meet the essential requirements for the
12 physical health and safety of the respondent;

13 (3) an evaluation of the respondent's need for mental health
14 treatment and whether there is a substantial probability that available
15 treatment will significantly improve his mental condition;

16 (4) an evaluation of the respondent's need for educational
17 or vocational assistance or personal care and whether these can be made
18 available to the respondent;

19 (5) an evaluation of the probability that the incapacity may
20 significantly lessen, and the type of services or treatment which will
21 facilitate improvement in the respondent's condition or skills;

22 (6) a list of the names and addresses of all individuals who
23 examined, interviewed, or investigated the respondent and of the names
24 and addresses of all persons contacted in preparation of the report;

25 (7) a summary of the information which

26 (A) was supplied by the persons described in (6) of
27 this subsection; and

28 (B) supports the conclusions of the report;

29 (8) a description of the alternatives to guardianship which

1 were considered and not recommended and an explanation of why they are
2 not feasible to meet the respondent's needs;

3 (9) a description of the present home and living arrangement
4 of the respondent and of any other proposed placement and a recommenda-
5 tion for the respondent's living arrangement that provides the least
6 restrictive setting necessary to protect the respondent from serious
7 illness, injury, or disease; and

8 (10) a specification of the financial resources of the
9 respondent, his entitlements to insurance benefits, and publicly oper-
10 ated or sponsored health, mental health, and welfare assistance which
11 might be employed in the provision of services to him.

12 (d) If personal guardianship is recommended, the evaluation
13 report required under (c) of this section shall include a guardianship
14 outline which identifies

15 (1) potential guardians;

16 (2) the specific services necessary and available to protect
17 the respondent from serious injury, illness, or disease and, to the
18 extent possible, to return the respondent to full capacity in handling
19 his own affairs;

20 (3) the means by which the services described in (2) of this
21 subsection may be financed;

22 (4) the specific, least restrictive authority needed by the
23 guardian to provide the services described in (2) of this subsection.

24 (e) The petitioner and the respondent may file responses to the
25 evaluation report within 10 days of receiving it. The court may grant
26 additional time if requested for cause.

27 Sec. 13.26.109. EVALUATIONS: RIGHT TO REMAIN SILENT; RESPON-
28 DENT'S ATTORNEY OR EXPERT. (a) A ward or respondent has the right to
29 refuse to respond to questions in the course of examinations and eval-

1 uations. However, he may be required to submit to interviews for the
2 purpose of ascertaining whether he lacks the capacity to make informed
3 decisions about care and treatment services.

4 (b) Statements of a ward or respondent in the course of evalua-
5 tions, examinations, and treatment under AS 13.26.090 - 13.26.155 are
6 privileged, confidential, and not admissible without the ward's or
7 respondent's consent in any civil or criminal proceeding other than
8 proceedings under AS 13.26.090 - 13.26.155. A ward or respondent at
9 all times has the right to refuse to answer questions if the answers
10 may tend to incriminate him.

11 (c) During any interview or testing conducted under AS 13.26.-
12 090 - 13.26.155, a ward or respondent has the right to be accompanied
13 by an attorney or expert of his own choosing.

14 (d) The court, if requested by a ward or respondent in prepara-
15 tion for and in connection with a hearing held under AS 13.26.090 -
16 13.26.155, shall appoint an expert having expertise in regard to the
17 alleged or admitted incapacity to examine the respondent and testify on
18 his behalf. The request shall be filed in court at least five days
19 before the hearing. An expert appointed under this subsection may be
20 the same expert appointed under AS 13.26.106(c).

21 Sec. 13.26.111. DUTIES AND POWERS OF RESPONDENT'S ATTORNEY. (a)
22 The principal duty of an attorney representing a ward or respondent is
23 to represent the ward or respondent zealously. Zealous representation
24 includes at least

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

28 (2) explaining, if possible, to the ward or respondent in
29 terms which the ward or respondent can understand, the nature and

1 possible consequences of the proceeding, the alternatives which are
2 available, and the rights to which he is entitled;

3 (3) securing and presenting evidence and testimony and
4 offering arguments which would tend to protect the ward's or respon-
5 dent's rights and which would tend to further his interests.

6 (b) To the maximum extent possible, the ward or respondent shall
7 remain responsible for determining his interests. However, his attor-
8 ney may seek appointment of a guardian ad litem if the circumstances of
9 AS 13.26.112 apply.

10 Sec. 13.26.112. APPOINTMENT OF A GUARDIAN AD LITEM. (a) Upon
11 the request of a ward, a respondent, or the attorney of a ward or
12 respondent, the court shall appoint a guardian ad litem to protect the
13 rights of the ward or respondent in proceedings under AS 13.26.090 -
14 13.26.155 if the court is satisfied that because of impaired ability
15 effectively to receive and evaluate information regarding the proceed-
16 ings or because of impaired ability to communicate decisions regarding
17 the proceedings, the ward or respondent cannot determine his own inter-
18 ests without assistance, and

19 (1) a guardian has not been appointed;
20 (2) his interests and those of his guardian conflict; or
21 (3) the appointment is otherwise in the interests of
22 justice.

23 (b) The guardian ad litem shall assist the ward or respondent in
24 determining his interests in regard to the legal proceedings in which
25 he is involved. If the ward or respondent is entirely incapable of
26 determining his own interests, the guardian ad litem shall make that
27 determination and advise the court and counsel for all parties accord-
28 ingly. The guardian ad litem shall

29 (1) inquire thoroughly into all the circumstances that a

1 prudent individual in the position of the ward or respondent would
2 consider in determining his own interests in the proceedings; and

3 (2) encourage the ward or respondent to participate, to the
4 maximum extent of his capability, in all decisions and to act on his
5 own behalf on all matters in which he is able.

6 (c) The attorney may also be the guardian ad litem for the ward
7 or respondent if there is no other party readily available and able to
8 serve as a guardian ad litem and whose interests would not conflict
9 with those of the ward or respondent.

10 Sec. 13.26.113. HEARING. (a) At the hearing scheduled under
11 AS 13.26.106, the respondent has the right to

- 12 (1) present evidence on his own behalf;
13 (2) cross-examine witnesses who testify against him;
14 (3) remain silent;
15 (4) have the hearing open or closed to the public as he
16 elects;
17 (5) be present unless the court determines that his conduct
18 in the courtroom is so disruptive that the proceedings cannot reason-
19 ably continue with him present;

20 (6) be tried by jury on the issue of incapacity.

21 (b) The burden of proof by clear and convincing evidence is upon
22 the petitioner, and a determination of incapacity shall be made before
23 consideration of proper disposition.

24 (c) If the respondent is found to be incapacitated, the court
25 shall determine the extent of the incapacity and the feasibility of
26 alternatives to guardianship to meet the needs of the respondent.

27 (d) If it is found that alternatives to guardianship are feasible
28 and adequate to meet the needs of the respondent, the court may dismiss
29 the action and order an alternative form of protection.

1 (e) If it is found that the respondent is able to perform some,
2 but not all, of the functions necessary to care for himself, and al-
3 ternatives to guardianship are not feasible or adequate to provide for
4 the needs of the respondent, the court may appoint a partial guardian,
5 but may not appoint a full guardian.

6 (f) If it is found that the respondent is totally without capa-
7 city to care for himself and that a combination of alternatives to
8 guardianship and the appointment of a partial guardian is not feasible
9 or adequate to meet the needs of the respondent, the court may appoint
10 a full guardian.

11 (g) If it is necessary to appoint a guardian, the court shall
12 consider the ward's preference.

13 (h) At the time a guardian is appointed, the court shall make a
14 reasonable effort to acquaint the ward with his right to request, at a
15 later time, his guardian's dismissal or a modification of the guardian-
16 ship order. The court shall provide a written statement to the ward,
17 explaining his rights and specifying the procedures to be followed in
18 petitioning the court.

19 Sec. 13.26.114. PSYCHOTROPIC MEDICATION INFLUENCING WARDS OR
20 RESPONDENTS AT JUDICIAL HEARINGS. (a) A ward or respondent has a
21 right to participate to the maximum extent possible in all judicial
22 proceedings concerning him and to be free from the influence of psycho-
23 tropic medication during the proceedings.

24 (b) It is the responsibility of the attorney for the ward or
25 respondent to determine if the ward or respondent is being treated with
26 psychotropic medication the effects of which would continue during the
27 judicial proceedings and, if so, to inform the court in writing a
28 reasonable time before the hearing.

29 (c) The court, upon receipt of the information provided under (b)

1 of this section, shall require a medical examination of the ward or
2 respondent, if the court determines that the medical examination is
3 necessary, and shall determine the advisability of continuation or
4 suspension of the treatment for the duration of the judicial proceed-
5 ings. The court may make any appropriate order it considers necessary.
6 The court in making its determination shall balance the interest of
7 maximum participation of the ward or respondent in the hearings against
8 the medical and rehabilitative needs of the ward or respondent.

9 (d) If the ward or respondent is under the influence of psycho-
10 tropic medication during the judicial proceeding determining capacity,
11 the trier of fact shall take that fact into consideration in making its
12 determination.

13 Sec. 13.26.116. GUARDIANSHIP ORDER. (a) If the court or jury
14 determines that a person is incapacitated and the services of a guard-
15 ian are necessary, the court shall enter an order which

16 (1) names the guardian and establishes a guardian-ward rela-
17 tionship;

18 (2) includes findings of fact which support each grant of
19 authority to the guardian;

20 (3) adopts a guardianship plan.

21 (b) The guardianship plan shall specify the authority which the
22 guardian has with regard to

23 (1) medical care for the ward's physical condition;

24 (2) mental health treatment which the guardian considers to
25 be in the ward's best interests;

26 (3) housing for the ward with consideration of the follow-
27 ing:

28 (A) the wishes of the ward;

29 (B) the preferability of allowing the ward to retain

1 local community ties; and

2 (C) the requirement for services to be provided in the
3 least restrictive setting;

4 (4) personal care, educational and vocational services
5 necessary for the physical and mental welfare of the ward and to return
6 the ward to full capacity;

7 (5) application for health and accident insurance and any
8 other private or governmental benefits to which the ward may be
9 entitled to meet any part of the costs of medical, mental health, or
10 related services provided to the ward;

11 (6) physical and mental examinations necessary to determine
12 the ward's medical and mental health treatment needs; and

13 (7) control of the estate and income of the ward to pay for
14 the cost of services which the guardian is authorized to obtain on
15 behalf of the ward.

16 (c) The guardianship plan may not be more restrictive of the
17 liberty of the ward than is reasonably necessary to protect the ward
18 from serious physical injury, illness or disease and to provide him
19 with medical care and mental health treatment for his physical and
20 mental health. The guardianship plan shall be designed to encourage a
21 ward to participate in all decisions which affect him and to act on his
22 own behalf to the maximum extent possible. The court may not assign a
23 duty or power to a guardian unless the need for it has been proven to
24 the satisfaction of the court and no less restrictive alternative or
25 combination of alternatives is sufficient to satisfy the need.

26 (d) The duration of the term of guardianship shall be determined
27 by the court order. Upon receipt of a report or other information that
28 requires further consideration, the court may order a review hearing if
29 it determines that the hearing is in the best interests of the ward.

1 Sec. 13.26.117. GUARDIANSHIP IMPLEMENTATION REPORT. Within 90
2 days after appointment as guardian, the guardian shall submit to the
3 court a report. The report shall describe the guardian's program for
4 implementing the guardianship plan. The primary goal of the program
5 described in the report shall be, to the maximum extent possible, to
6 develop or regain the ward's abilities to handle his own affairs. The
7 report shall consider housing, medical care, and educational and voca-
8 tional needs and resources. In developing the report, the guardian
9 shall consult with his ward to the maximum extent possible. The office
10 of public guardian shall contact the guardian to offer assistance in
11 preparing the report. The report shall specify the services which are
12 necessary to meet the essential requirements for the ward's physical
13 health or safety and the means for obtaining the services. The report
14 shall specify the manner in which the guardian will exercise and share
15 decision-making authority and other items which will assist in fulfill-
16 ing the needs of the ward, the terms of the guardianship order, and the
17 duties of the guardian.

18 Sec. 13.26.118. REPORTING. (a) A guardian shall submit a report
19 to the court or request that a visitor be appointed to prepare and
20 submit a report at least annually. A court-appointed visitor shall
21 prepare the report at least once in each three-year period. The guard-
22 ian shall submit an additional report to the court when

23 (1) the court orders it;

24 (2) there is a significant change in the capacity of the
25 ward to meet the essential requirements for his health and safety or to
26 protect his rights;

27 (3) the guardian resigns or is removed;

28 (4) the guardianship is terminated; or

29 (5) the ward requests it.

1 (b) The report shall contain, but is not limited to, the follow-
2 ing information:

- 3 (1) the name and address of the ward and the guardian;
4 (2) the ward's present mental, physical, and social condi-
5 tions and present living arrangements and the ward's opinion of these
6 arrangements;
7 (3) changes in the capacity of the ward to meet essential
8 requirements for his physical health and safety;
9 (4) the services being provided to the ward;
10 (5) the significant actions taken by the guardian during the
11 reporting period in regard to his ward;
12 (6) a financial accounting of the estate which has been
13 subject to the possession or control of the guardian;
14 (7) a list of the number and nature of the contacts between
15 the guardian and ward if the ward does not reside with the guardian;
16 (8) any other information requested by the court or neces-
17 sary or desirable in the opinion of the guardian or visitor.

18 Sec. 13.26.131. COSTS IN GUARDIANSHIP PROCEEDINGS. (a) Subject
19 to (d) of this section, the state shall bear the costs of the visitor
20 and expert appointed under AS 13.26.106(c).

21 (b) Subject to (c) and (d) of this section, the respondent shall
22 bear the costs of the attorney appointed under AS 13.26.106(b), of the
23 expert appointed under AS 13.26.109(d), of the guardian ad litem ap-
24 pointed under AS 13.26.112, and of other court and guardianship costs
25 incurred under this chapter.

26 (c) The state shall pay all or part of the costs described in (b)
27 of this section if the court finds that the payment is necessary to
28 prevent the respondent from suffering financial hardship or from becom-
29 ing dependent upon a government agency or a private person or agency.

1 (d) The court may require the petitioner to pay all or some of
2 the costs described in (a) and (b) of this section if the court finds
3 that the petitioner initiated a proceeding under this chapter that was
4 malicious, frivolous, or without just cause.

5 * Sec. 8. AS 13.26.120 is amended to read:

6 Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED
7 PERSON. The authority and responsibility of a guardian for an incapa-
8 cited person terminates upon the death of the guardian or ward, the
9 determination of incapacity of the guardian, the [OR UPON] removal or
10 resignation of the guardian as provided in AS 13.26.125, or upon the
11 expiration of the period specified by court order as the duration
12 of the guardianship. Testamentary appointment under an informally
13 probated will terminates if the will is later denied probate in a
14 formal proceeding. Termination does not affect a guardian's [HIS]
15 liability for prior acts nor his obligation to account for [FUNDS AND]
16 assets of the [HIS] ward over which he exercised control.

17 * Sec. 9. AS 13.26.125 is amended to read:

18 Sec. 13.26.125. REMOVAL OR RESIGNATION OF GUARDIAN; CHANGE IN OR
19 TERMINATION OF GUARDIANSHIP [INCAPACITY]. (a) On petition of the
20 ward, the guardian, or any person interested in the ward's [HIS] wel-
21 fare, the court may (1) review and amend a decision of a guardian;
22 or (2) if alternatives which are less restrictive than guardianship
23 or less restrictive than the existing guardianship plan would assist
24 the ward in meeting his essential requirements for physical health
25 and safety, modify the provisions of its order to (A) amend the
26 guardianship plan or the responsibilities of the guardian; (B) remove a
27 guardian and appoint a successor; or (C) terminate the guardianship [IF
28 IN THE BEST INTERESTS OF THE WARD]. On petition of the guardian, the
29 court may accept his resignation and make any other order which may be

1 appropriate.

2 (b) The [AN ORDER ADJUDICATING INCAPACITY MAY SPECIFY A MINIMUM
3 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION FOR AN ADJUDI-
4 CATION THAT THE WARD IS NO LONGER INCAPACITATED MAY BE FILED WITHOUT
5 SPECIAL LEAVE. SUBJECT TO THIS RESTRICTION, THE] ward, the guardian,
6 or any person interested in the ward's [HIS] welfare may petition for
7 an order that the ward [HE] is no longer incapacitated or no longer
8 incapacitated to the same extent as he was when the original guardian-
9 ship order was made or when the court last amended the guardianship
10 order, and for removal or resignation of the guardian, termination
11 of the guardianship, or a change in the responsibilities of the
12 guardian. A request for this order may be made by informal letter to
13 the court or judge and any person who knowingly interferes with trans-
14 mission of this kind of request to the court or judge may be held in
15 [ADJUDGED GUILTY OF] contempt of court.

16 (c) Before removing a guardian, changing his responsibilities,
17 accepting the resignation of a guardian, or ordering that a ward's
18 guardianship be changed or [INCAPACITY HAS] terminated, the court,
19 following the same procedures to safeguard the rights of the ward as
20 apply to a petition for appointment of a guardian and applying the
21 least restrictive alternative necessary to meet the needs of the ward
22 after consideration of alternatives to guardianship services, may send
23 a visitor to the residence of the present guardian and to the place
24 where the ward resides or is detained, to observe conditions and report
25 in writing to the court.

26 (d) If at any time the ward requests or indicates to his guardian
27 or to the agency responsible for his care or its employee that he
28 desires a change in guardianship, the guardian or the agency providing
29 care shall inform the court of the request or indication.

1 (e) If the guardian dies, or if on the basis of a petition filed
2 under this section or a report or other information, there is probable
3 cause to believe a guardian is not performing his responsibilities
4 effectively and there is an imminent danger that the physical health
5 or safety of the ward will be seriously impaired, the court shall
6 take whatever action is necessary to protect the ward, including the
7 dismissal of the guardian and appointment of a temporary guardian
8 without a hearing.

9 * Sec. 10. AS 13.26.135 is amended to read:

10 Sec. 13.26.135. NOTICES IN GUARDIANSHIP PROCEEDINGS. (a) In a
11 proceeding for the appointment, change in responsibilities, [OR]
12 removal of a guardian, or termination of guardianship, [OF AN INCAPA-
13 CITED PERSON] other than the appointment of a temporary guardian or
14 temporary suspension of a guardian, notice of hearing shall be given to
15 each of the following:

16 (1) the ward or respondent by the visitor as provided in
17 AS 13.26.107 [THE PERSON ALLEGED TO BE INCAPACITATED AND HIS SPOUSE,
18 PARENTS AND ADULT CHILDREN];

19 (2) any person who is serving as his guardian, conservator
20 or who has his care and custody; [AND]

21 (3) in case no other person is notified under (4) [(1)] of
22 this subsection, at least one of his closest adult relatives, if any
23 can be found;

24 (4) the spouse, parents, and adult children of the ward or
25 respondent;

26 (5) any person who performed an evaluation for the visitor's
27 report within the previous two years;

28 (6) the ward's or respondent's attorney;

29 (7) the ward's or respondent's guardian ad litem if one

1 has been appointed; and

2 (8) the administrator of the federal Veterans' Administra-
3 tion if the administrator was given notice under AS 13.26.105(d).

4 (b) Notice shall be served personally on the ward's or respon-
5 dent's [ALLEGED INCAPACITATED PERSON, AND HIS] spouse and parents if
6 they can be found within the state. Except as provided in (a)(1) of
7 this section, notice [NOTICE] to the spouse and parents, if they cannot
8 be found within the state, and to all other persons [EXCEPT THE ALLEGED
9 INCAPACITATED PERSON] shall be given as provided in AS 13.06.110.
10 [WAIVER OF NOTICE BY THE PERSON ALLEGED TO BE INCAPACITATED IS NOT
11 EFFECTIVE UNLESS HE ATTENDS THE HEARING OR HIS WAIVER OF NOTICE IS
12 CONFIRMED IN AN INTERVIEW WITH THE VISITOR. REPRESENTATION OF THE
13 ALLEGED INCAPACITATED PERSON BY A GUARDIAN AD LITEM IS NOT NECESSARY.]

14 (c) The notice shall set out the date, time, place, purpose and
15 possible consequences of the hearing and the rights of the ward or
16 respondent and any other parties to the proceedings.

17 * Sec. 11. AS 13.26.140 is repealed and reenacted to read:

18 Sec. 13.26.140. TEMPORARY GUARDIANS. (a) If during the pendency
19 of an initial petition for guardianship it appears that the respondent
20 is in need of immediate services to protect him against serious injury,
21 illness, or disease and the respondent is not capable of procuring the
22 necessary services, the petitioner may request the appointment of a
23 temporary guardian to authorize the services. The request shall state
24 the reasons and factual basis for the request. The petitioner shall
25 immediately file the request with the court and serve copies on the
26 respondent and his attorney. The court shall conduct a hearing within
27 72 hours after the filing.

28 (b) At the temporary guardianship hearing, the respondent shall
29 have the rights set out in AS 13.26.113(a).

1 (c) The burden of proof at the hearing shall be by clear and con-
2 vincing evidence and shall be upon the petitioner.

3 (d) If the court determines that a temporary guardian should be
4 appointed, it shall make the appointment and grant to the guardian only
5 the authority that is least restrictive upon the liberty of the respon-
6 dent and which enables the temporary guardian to provide the emergency
7 services necessary to protect the respondent from serious injury, ill-
8 ness, or disease.

9 (e) The temporary guardianship shall expire at the time of the
10 appointment of a full or partial guardian or upon the dismissal of the
11 petition for guardianship.

12 (f) If no guardianship petition is pending but the court is in-
13 formed of a person who is apparently incapacitated and in need of emer-
14 gency life-saving services, the court may authorize the services upon
15 determining that delay until a guardianship hearing can be held would
16 entail a life-threatening risk to the person.

17 * Sec. 12. AS 13.26 is amended by adding a new section to read:

18 Sec. 13.26.141. EMERGENCY POWERS. Notwithstanding the limits of
19 a temporary guardianship or guardianship order, a temporary guardian
20 and guardian at all times have the right to authorize the provision of
21 emergency life-saving services. This right includes the power to
22 authorize hospitalization without advance court approval.

23 * Sec. 13. AS 13.26.145 is repealed and reenacted to read:

24 Sec. 13.26.145. WHO MAY BE GUARDIAN; PRIORITIES. (a) The court
25 may appoint a competent person, the public guardian, or a private asso-
26 ciation or nonprofit corporation with a guardianship program for inca-
27 pacitated persons, as guardian of an incapacitated person.

28 (b) The court may not appoint a person to be a guardian of an
29 incapacitated person if the person

1 (1) provides, or is likely to provide during the guardian-
2 ship period, substantial services to the incapacitated person in a
3 professional or business capacity, other than in his capacity as
4 guardian;

5 (2) is, or is likely to become during the guardianship
6 period, a creditor of the incapacitated person, other than in his
7 capacity as guardian;

8 (3) has, or is likely to have during the guardianship
9 period, interests which may conflict with those of the incapacitated
10 person; or

11 (4) is employed by a person who would be disqualified under
12 (1) - (3) of this subsection.

13 (c) A person may be appointed as the guardian of an incapacitated
14 person notwithstanding the provisions of (b) of this section if he is
15 the spouse, adult child, parent, or sibling of the incapacitated person
16 and the court determines that the potential conflict of interest is
17 insubstantial and that the appointment would clearly be in the best
18 interests of the incapacitated person.

19 (d) Subject to (e) of this section, qualified persons have prior-
20 ity for appointment as guardian in the following order:

21 (1) a person, association, or private nonprofit corporation
22 nominated by the incapacitated person, if at the time of the nomination
23 the incapacitated person had the capacity to make a reasonably intel-
24 ligent choice;

25 (2) the spouse of the incapacitated person;

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

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

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

3 (6) a private association or nonprofit corporation with a
4 guardianship program for incapacitated persons;

5 (7) the public guardian.

6 (e) The priorities established in (d) of this section are not
7 binding, and the court shall select the person, association, or non-
8 profit corporation that is best qualified and willing to serve. The
9 court shall also give consideration to a nomination by a person
10 described in (d) of this section and to a nomination in the will of a
11 deceased parent or spouse of the incapacitated person.

12 * Sec. 14. AS 13.26.150 is repealed and reenacted to read:

13 Sec. 13.26.150. GENERAL POWERS AND DUTIES OF GUARDIAN. (a) A
14 guardian shall diligently and in good faith carry out the specific
15 duties and powers assigned by the court. In carrying out his duties
16 and powers, the guardian shall encourage the ward to participate to the
17 maximum extent of his capacity in all decisions which affect him, to
18 act on his own behalf in all matters in which he is able, and to
19 develop or regain, to the maximum extent possible, his capacity to meet
20 the essential requirements for his physical health or safety, to
21 protect his rights, and to manage his financial resources.

22 (b) A partial guardian of an incapacitated person has only the
23 powers and duties respecting his ward enumerated in the court order.

24 (c) A full guardian of an incapacitated person has the same
25 powers and duties respecting his ward that a parent has respecting his
26 unemancipated minor child except that the guardian is not liable for
27 the care and maintenance of the ward and is not liable, solely by
28 reason of the guardianship, to a person who is harmed by acts of the
29 ward. Except as modified by order of the court, a full guardian's

1 powers and duties include, but are not limited to, the following:

2 (1) he is entitled to custody of the person of his ward and
3 shall assure that the ward has a place of abode in the least restric-
4 tive setting consistent with the essential requirements for the ward's
5 physical health and safety;

6 (2) he shall assure the care, comfort, and maintenance of
7 the ward;

8 (3) he shall assure that the ward receives the services
9 necessary to meet the essential requirements for the ward's physical
10 health and safety and to develop or regain, to the maximum extent pos-
11 sible, the capacity to meet his needs for physical health and safety;

12 (4) he shall assure through the initiation of court action
13 and other means that the ward enjoys all personal, civil, and human
14 rights to which the ward is entitled;

15 (5) he may give consents or approvals necessary to enable
16 the ward to receive medical or other professional care, counsel, treat-
17 ment, or services except as otherwise limited by (e) of this section;

18 (6) if a conservator for the estate of the ward has not been
19 appointed, the guardian may receive money and property deliverable to
20 the ward and apply the money and property for support, care, and educa-
21 tion of the ward; however, the guardian may not apply the ward's money
22 or property for his services as guardian or for room and board which
23 he, his spouse, parent, or child have furnished the ward unless, before
24 payment, the court finds that the ward is financially able to pay and
25 that the charge is reasonable; notice of a request for payment approval
26 shall be provided to at least one relative of the ward if possible; the
27 guardian shall exercise care to conserve any excess money or property
28 for the ward's needs;

29 (7) if a conservator of the estate of the ward has been

1 appointed, the guardian shall pay all of the ward's estate received by
2 the guardian in excess of the money expended to meet current expenses
3 for support, care, and education of the ward, to the conservator for
4 management as provided in AS 13.26.165 - 13.26.315, and the guardian
5 shall account to the conservator for money expended.

6 (d) A guardian of a ward, for whom a conservator has also been
7 appointed, shall have the custody and care of the ward and is entitled
8 to receive reasonable sums for his services and for room and board
9 furnished to the ward as agreed upon between the guardian and the con-
10 servator. The guardian may request the conservator to expend the
11 ward's estate for the ward's care and maintenance.

12 (e) A guardian may not

13 (1) place the ward in a facility or institution for the
14 mentally ill other than through a formal commitment proceeding under
15 AS 47.30.070 in which the ward has a separate guardian ad litem;

16 (2) consent on behalf of the ward to an abortion, steriliza-
17 tion, psychosurgery, or removal of bodily organs except when necessary
18 to preserve the life or prevent serious impairment of the physical
19 health of the ward;

20 (3) consent on behalf of the ward to the withholding of
21 life-saving medical procedures;

22 (4) consent on behalf of the ward to the performance of an
23 experimental medical procedure or to participation in a medical experi-
24 ment not intended to preserve the life or prevent serious impairment of
25 the physical health of the ward;

26 (5) consent on behalf of the ward to termination of the
27 ward's parental rights;

28 (6) prohibit the ward from registering to vote or from
29 casting a ballot at public election;

1 (7) prohibit the ward from applying for and obtaining a
2 driver's license;

3 (8) prohibit the marriage or divorce of the ward.

4 * Sec. 15. AS 13.26.195 is amended by adding a new subsection to read:

5 (d) The court shall investigate alternatives to a conservator and
6 the use of a special conservator as provided in AS 13.26.205(c). A
7 conservator may be appointed only if a less restrictive protective
8 order or the services of a special conservator are not adequate to
9 protect the estate of the protected person. The court shall, to the
10 extent possible, consult with the protected person in determining what
11 action should be taken.

12 * Sec. 16. AS 13.26.205(c) is amended to read:

13 (c) Before approving a protective arrangement or other trans-
14 action under this section, the court shall consider the interests of
15 creditors and dependents of the protected person and, in view of his
16 disability, whether the protected person needs the continuing protec-
17 tion of a conservator. If only certain powers need be given to the
18 conservator or the services of a conservator are needed only for a
19 limited number of transactions, a special conservator may be appointed.

20 The court may appoint a special conservator to assist in the accomp-
21 lishment of any protective arrangement or other transaction authorized
22 under this section who shall have the authority conferred by the order
23 and serve until discharged by order after report to the court of all
24 matters carried out under [DONE PURSUANT TO] the order of appointment.

25 * Sec. 17. AS 13.26 is amended by adding a new section to read:

26 Sec. 13.26.218. PUBLIC BOND. (a) If the public guardian is
27 appointed as a conservator, the court may not require a bond under
28 AS 13.26.215.

29 (b) If the court requires a conservator to provide a bond under

1 AS 13.26.215 and the conservator is financially unable to provide the
2 bond, the court may order the cost of the bond to be paid from court
3 funds.

4 * Sec. 18. AS 13.26 is amended by adding new sections to read:

5 ARTICLE 6. PUBLIC GUARDIANS.

6 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
7 Alaskans, for reasons of incapacity or minority, are in need of a
8 guardian or conservator. Often these persons cannot find a person able
9 and willing to serve as guardian or conservator. The legislature in-
10 tends through AS 13.26.360 - 13.26.410 to establish the office of
11 public guardian for the purpose of furnishing guardianship and conser-
12 vatorship services. It further intends by establishing this office to
13 provide assistance to guardians throughout the state in securing neces-
14 sary services for their wards and to assist the courts, attorneys,
15 visitors, respondents, and proposed guardians in the orderly and
16 expeditious handling of guardianship proceedings.

17 Sec. 13.26.370. PUBLIC GUARDIAN. (a) The public administrator
18 (AS 22.15.310) shall also act as the public guardian for the judicial
19 district for which he is appointed.

20 (b) A court may order the public guardian to act as full
21 guardian, partial guardian, conservator, or special conservator for a
22 person who is determined under this chapter to be in need of guardian-
23 ship or conservatorship service if no person or private guardianship
24 association is willing and qualified to perform the function.

25 Sec. 13.26.380. POWERS AND DUTIES OF PUBLIC GUARDIAN. (a) The
26 public guardian has the same powers and duties with respect to his
27 wards and protected persons as a private guardian or conservator.

28 (b) The public guardian, when appointed as guardian or conserva-
29 tor, shall endeavor, for as long as practical, to find a suitable pri-

1 vate guardian or conservator for his ward or protected person. For
2 each ward and protected person, the public guardian shall report to the
3 court having jurisdiction of the ward or protected person, at least
4 once every six months, his efforts to find a private guardian or con-
5 servator.

6 (c) The public guardian shall

7 (1) establish and maintain relationships with governmental,
8 public, and private agencies, institutions, and organizations to assure
9 the most effective guardianship or conservatorship program for each
10 ward and protected person;

11 (2) visit each of his wards and protected persons at least
12 once every quarter to monitor their welfare;

13 (3) keep and maintain financial and statistical records of
14 all cases in which the public guardian provides guardianship or conser-
15 vatorship services;

16 (4) provide information and referrals to the public regard-
17 ing guardianship and conservatorship proceedings, but not information
18 which would identify a particular case;

19 (5) assist guardians and court-appointed visitors of wards
20 and respondents in the preparation and revision of guardianship plans
21 and reports;

22 (6) assist guardians to understand the disabilities of wards
23 and to foster the increased independence of wards;

24 (7) assist guardians in securing the rights, benefits, and
25 services to which their wards are entitled;

26 (8) develop and maintain a current listing of public and
27 private medical, mental health, social advocacy, educational, rehabili-
28 tative, counseling, therapeutic, homemaking, recreational, and finan-
29 cial services and programs available to assist wards and protected

1 persons and their families.

2 (d) The public guardian may

3 (1) contract for services necessary to carry out the duties
4 of his office;

5 (2) accept the services of volunteer workers or consultants
6 and reimburse them for their necessary expenses.

7 Sec. 13.26.390. INTERVENTION. The public guardian may, on his
8 own motion or at the request of the court, intervene in a guardianship
9 or conservatorship proceeding if he or the court considers the inter-
10 vention to be justified because

11 (1) an appointed guardian or conservator is not fulfilling
12 his duties;

13 (2) the estate is subject to waste as a result of the costs
14 of the guardianship or conservatorship;

15 (3) a willing and qualified guardian or conservator is not
16 available; or

17 (4) the best interests of the ward, respondent, protected
18 person, or person who is the subject of a conservatorship proceeding
19 require the intervention.

20 Sec. 13.26.400. DELEGATION OF POWERS AND DUTIES. The public
21 guardian may employ staff and delegate to members of his staff or to
22 volunteers his powers and duties as guardian or conservator and other
23 powers and duties under this chapter. However, the public guardian
24 retains responsibility for the proper performance of the delegated
25 powers and duties. All delegations shall be to persons who meet the
26 eligibility requirements of AS 13.26.145.

27 Sec. 13.26.410. ALLOCATION OF COSTS. (a) If a public guardian
28 is appointed guardian or conservator, the administrative costs of his
29 services and the costs incurred in the appointment procedure may not be

1 charged against the income or the estate of the ward or protected
2 person unless the court determines that the ward or protected person is
3 financially able to pay all or part of the costs.

4 (b) The court shall determine the ability of the ward or pro-
5 tected person to pay for administrative costs of a public guardian or
6 costs incurred in the appointment procedure by determining the finan-
7 cial ability of the ward or protected person to pay a private guardian
8 or conservator, considering the nature, extent, and liquidity of assets
9 of the ward or protected person, the disposable net income of the ward
10 or protected person, the nature of the guardianship or conservatorship,
11 the type, duration and complexity of the services required, and any
12 other foreseeable expenses.

13 (c) The public guardian shall investigate the financial status of
14 (1) a person who requests the appointment of the public guardian as his
15 guardian or conservator; and (2) a ward for whom a court has appointed
16 the public guardian.

17 (d) The public guardian may require a person described in (c) of
18 this section to execute and deliver written requests or authorizations
19 necessary under law to provide the public guardian with access to
20 records of public or private sources, otherwise confidential, needed to
21 evaluate the person's financial eligibility. The public guardian may,
22 upon request and without payment of fees otherwise required by law,
23 obtain information from any office of the state or of a political sub-
24 division or agency of the state which possesses public records.

25 (e) The reasonable value of the services rendered without cost to
26 the ward or protected person shall be allowed as a claim against the
27 estate upon the death of the ward or protected person.

28 * Sec. 19. AS 22.15.310 is amended to read:

29 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme

1 court, the presiding judge in each judicial district shall appoint a
2 person to act as public administrator of the estates of deceased per-
3 sons, [AND] as coroner, and as public guardian.

4 * Sec. 20. AS 22.15.350 is amended to read:

5 Sec. 22.15.350. DUTIES [AS CORONER]. In addition to his other
6 duties, a public administrator shall perform the duties set out in
7 AS 22.15.110 and shall perform the duties of public guardian as set out
8 in AS 13.26.360 - 13.26.410.

9 * Sec. 21. AS 13.26.110 and 13.26.130 are repealed.

10 * Sec. 22. TRANSITION. No later than July 1, 1984, all guardianships
11 for incapacitated persons established before January 1, 1982, and in effect
12 on January 1, 1982, shall be reviewed by the court. Until the review, a
13 guardian appointed before January 1, 1982, whose guardianship is still in
14 effect on January 1, 1982, shall retain the powers assigned to him, unless a
15 petition for modification under AS 13.26.125 amended by sec. 9 of this Act
16 is granted. Before the review, the guardian shall submit one report in the
17 form prescribed in AS 13.26.118 added by sec. 7 of this Act.

18 * Sec. 23. This Act takes effect January 1, 1982.
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