

HB

427

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 427

BY: Representative Tom Anderson

TITLE: "An act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date."

House Bill 427 will go a long way towards preventing exploitation and mistreatment of vulnerable and incapacitated adults receiving the services of a private guardian or conservator. It was drafted with input from the Alaska State Association for Guardianship and Advocacy, the Office of Public Advocacy, Adult Protective Services, the Long-term Care Ombudsman's office, the Disability Law Center, the Senior Advocacy Coalition, and the Judiciary.

Under current law, private guardians and conservators – individuals with the responsibility to make housing, legal and medical decisions for the disabled, infirm, mentally ill, and seniors – are completely unregulated by the State. This legislation would grant the State regulatory authority over private guardians and conservators, and establish minimum qualifications and standards. The State oversight and standards for such a sensitive and critical job will help ensure that vulnerable and incapacitated adults receive the care they deserve.

Often, vulnerable Alaskans – those with mental illnesses, developmental disabilities, Alzheimer's, dementia, or brain injuries -- need assistance managing their finances and making important decisions regarding their housing, medical, mental health and legal matters. In such situations, a guardian or conservator may be appointed by the court to assist those individuals. Under Alaska law, the court first looks to appoint guardians nominated by the incapacitated person if the choice is a reasonably intelligent one. Then the court looks to the incapacitated person's spouse, family, other relatives, private guardians, and, finally, the Public Guardian at the Office of Public Advocacy. In Alaska, professional guardians (both private and public) and family guardians provide services to approximately 2,500 disabled, vulnerable adults.

Today, private guardians and conservators are not regulated by any state administrative agency, and are not required to meet any minimum qualifications. Many other states regulate private guardians – and appropriately so. Vulnerable and incapacitated adults are easy prey for those wishing to exploit their resources. This was highlighted in Alaska in 2002 when a private agency filed for bankruptcy, causing financial loss and hardship to many of its clients. Moreover, while Alaska regulates Barbers and Hairdressers, Acupuncturists, Concert Promoters, Morticians, and Collection Agencies, those caring for the most vulnerable among us are not subjected to any State oversight.

HB 427 would ensure those individuals or organizations wishing to serve as private guardians or conservators meet certain criteria, and register with the State. Specifically, this legislation requires private guardians to be certified by the National Guardianship Foundation and have at least 2 years of professional experience working with clients, or a degree in human services, social work, psychology, sociology, gerontology, special education, or a closely related field. HB 427 will also require guardians to have experience in financial management or a degree in accounting. Critically, this legislation prohibits private guardians from registering with the State and practicing until a State and national criminal background check is performed.

Finally, HB 427 allows the Division of Occupational Licensing to revoke a private guardian's license if he or she has been found to have abandoned, exploited, abused, or neglected his or her ward, or has become unfit due to professional incompetence. In short, through regulatory oversight and the establishment of professional and academic standards, this legislation will help ensure disabled adults are not exploited by those entrusted to manage their affairs.

I urge your support of this important piece of legislation.

LEGAL SERVICES

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MEMORANDUM

February 23, 2004

SUBJECT: Sectional summary of HB 427 relating to guardianships and conservatorships (Work Order No. 23-LS1627A)

TO: Representative Tom Anderson
Attn: Jim

FROM: *TLB* Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Declares state policy that guardians and conservators are to abide by the highest ethical standards of decision-making and to consider the standards of practice adopted by the division of occupational licensing. Requires the division to review certain standards of practice before adopting its standards.

Section 2. Defines additional terms.

Section 3. Allows the division to receive confidential information about a court proceeding under the chapter when a private professional guardian or a private professional conservator is involved.

Section 4. Adds a section relating to the appointment of a guardian ad litem in a proceeding under the article dealing with incapacitated persons.

Section 5. Makes a conforming change.

Section 6. Changes the event that triggers the time within which a guardian is to submit a report to the court. Deletes the requirement that the office of public guardian contact the guardian to offer assistance with the report.

Section 7. Deletes an option for a guardian to request that a visitor be appointed to prepare and submit a report. Requires a court to appoint a visitor every three years to file a report reviewing the guardianship. Changes (b) to cover just the guardian's report.

Section 8. Adds a new subsection describing what the visitor's report must include.

Section 9. Allows a guardian of a deceased ward to make funeral and burial arrangements and to apply for burial expense assistance under certain conditions.

Section 10. Allows a court on its own motion to review and amend guardian decisions or to make other orders relating to a guardianship.

Section 11. Makes a conforming change.

Section 12. Changes the persons from whom a court may appoint a guardian of an incapacitated person.

Section 13. Directs a court to require a relative or friend of an incapacitated person who is appointed guardian to complete certain training.

Section 14. Changes the persons identified in the priority list for appointment as guardian. Changes the qualifications for the persons who are first in priority.

Section 15. Changes the persons from whom a court must select a guardian.

Section 16. States that a guardian has the powers and duties of a conservator under the chapter. If a conservator has also been appointed, directs the guardian to pay the ward's estate held by the guardian to the conservator.

Section 17. Removes language that give a court-appointed lawyer for a person to be protected the powers and duties of a guardian ad litem.

Section 18. Authorizes a court to appoint a competent person as the conservator of a protected person's estate. Prohibits the court from appointing certain persons to be conservators. Establishes the priority of persons for appointment. Requires the court to select the best qualified person notwithstanding the established priority. Directs the court to consider a nomination in a will and the nominations of certain other persons. Directs the court to require that certain persons complete training if they are appointed conservators.

Section 19. Requires a conservator to prepare and file with the court a conservator implementation report within 90 days after distribution of the order of appointment.

Section 20. Requires a conservator to submit a report to the court at least every year.

Section 21. Describes what an initial visitor's report must include. Allows a court to appoint a visitor to file a report every three years reviewing the conservatorship. Authorizes a court at any time to appoint a visitor to file a report reviewing a conservatorship. Describes what the three-year and discretionary reports must include.

Section 22. Prohibits a conservator from exercising authority over a protected person's affairs and estate once the conservator knows that the protected person has died. Makes exceptions for paying reasonable burial expenses and to preserve, account for, and transfer control of the assets to certain authorized persons.

Section 23. Adds language limiting the claims a conservator must pay.

Section 24. Requires the public guardian to include in its annual report under AS 213.26.118(a) information on the availability of a private guardian or conservator for a ward or protected person.

Section 25. Adds a new article that covers private professional guardians and conservators.

Sec. 13.26.500. Requires that a person be registered with the division before being appointed as a private professional guardian or a private professional conservator. Exempts federally-regulated and certain state-regulated financial institutions from this requirement.

Sec. 13.26.510. Describes what an application for registration must provide to the division.

Sec. 13.26.520. Prohibits the division from registering an applicant who fails to meet the division-established standards.

Sec. 13.26.530. Requires a private professional guardian or conservator to submit certain items to the division each year. Describes what items must be submitted.

Sec. 13.26.540. Requires a private professional guardian or conservator to submit to the division, at the division's request, a copy of the reports the guardian or conservator must submit to the court.

Sec. 13.26.550. Prohibits a private professional guardian or conservator from acting as a guardian or conservator in a court proceeding unless it is registered or exempt and meets certain listed requirements related to certification.

Sec. 13.26.560. Prohibits a private professional guardian or conservator from receiving a payment for services until the court approves its proposed fee schedule. Describes what the schedule must include. Prohibits paying a payment request that exceeds the established monthly maximum amount unless approved by the court. Lists what a request for court approval of a fee exceeding the maximum amount must include.

Sec. 13.26.570. Requires a private professional guardian or conservator to notify the division immediately if a listed event occurs.

Representative Tom Anderson
February 23, 2004
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Sec. 13.26.580. Authorizes the division to take certain listed disciplinary actions against a registered private professional guardian or conservator for a violation of this article. Allows the division to withdraw probationary status if deficiencies are remedied. Allows the division to reinstate a suspended or revoked registration after a hearing if the board finds that the applicant meets certain criteria. Makes the division's action under this section subject to the administrative adjudication portion of the state's Administrative Procedure Act.

Sec. 13.26.590. Authorizes the division to petition the court to review the conduct of a private professional guardian or conservator if the division determines that the guardian or conservator's conduct may not be in the best interests of the ward or protected person.

Section 26. Makes a conforming amendment.

Section 27. Prohibits the office of public advocacy from using improper pressure to influence the professional judgment of a person who is paid by the office to act as an attorney, a guardian ad litem, or a visitor for a guardianship or conservatorship.

Section 28. Adds the division of occupational licensing to the list of agencies subject to the administrative adjudication portion of the state's Administrative Procedure Act when dealing with disciplinary matters of private professional guardians and conservators.

Section 29. Repeals certain statutes.

Section 30. Describes how two provisions of the bill change court rules.

Section 31. Provides some transition provisions for the bill.

Section 32. States that the sections that change court rules take effect only if bill sec. 30 receives the increased majority vote required by the state's constitution.

Section 33. Makes the Act effective on January 1, 2005.

If I may be of further assistance, please advise.

TLB:med
04-221.med

OFFERED IN THE HOUSE HESS COMMITTEE
TO: CS HB427
DATE: APRIL 6, 2004

AMENDMENT #1 BY REP. WOLF (CONFORMING AMENDMENT)

- 1 Page 2, Line 13:
- 2 Delete entire line
- 3 Page 3, Line 1:
- 4 Delete entire line
- 5 Page 3, Line 14:
- 6 Delete entire line

AMENDMENT #2 BY REP. CISSNA

- 1 Page 6, Line 30
- 2 Delete "of"
- 3 Following "employees" insert "operating under"

AMENDMENT #3 BY REP. SEATON (CONCEPTUAL)

- 1 Page 2, Line 9
- 2 Delete "a"
- 3 Insert "at least an associate"

23-LS1627D
Bannister
4/1/04

CS FOR HOUSE BILL NO. 427()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE ANDERSON

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to guardianships and conservatorships, to the public guardian and the
2 office of public advocacy, to private professional guardians and private professional
3 conservators, to court visitors, court-appointed attorneys, guardians ad litem, and
4 fiduciaries, and to the protection of the person or property of certain individuals,
5 including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure;
6 and providing for an effective date."

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

8 * **Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

9 (38) regulation of private professional guardians and private
10 professional conservators (AS 08.26).

11 * **Sec. 2.** AS 08 is amended by adding a new chapter to read:

12 **Chapter 26. Private Professional Conservators and Guardians.**

13 **Article 1. Licensing.**

1 **Sec. 08.26.010. License required.** Except as provided by AS 08.26.180, a
2 person may not engage in the business of providing services as a guardian or a
3 conservator unless the person has a license issued under this chapter.

4 **Sec. 08.26.020. Requirements for individual private professional guardian**
5 **license.** The department shall issue an individual private professional guardian license
6 to an individual

7 (1) who is at least 21 years of age;

8 (2) who has two or more years of professional client casework
9 experience or a degree in human services, social work, psychology, sociology,
10 gerontology, special education, or a closely related field;

11 (3) who is certified as a guardian by a nationally recognized
12 organization in the field of guardianships;

13 (4) who is determined by the department to be a trustworthy person;

14 (5) who provides proof satisfactory to the department that the
15 individual is able to be bonded and insured;

16 (6) whose criminal history record checks under AS 08.26.070 show
17 that the individual has not been convicted of a crime within 10 years of the application
18 that would affect the individual's ability to provide the services of a guardian
19 competently and safely for the ward; and

20 (7) who satisfies the application requirements of AS 08.26.060.

21 **Sec. 08.26.030. Requirements for individual private professional**
22 **conservator license.** The department shall issue an individual private professional
23 conservator license to an individual

24 (1) who is at least 21 years of age;

25 (2) who has obtained a high school diploma, or a general education
26 development diploma or its equivalent;

27 (3) who has six months' employment experience in a position
28 involving financial management, or has a degree in accounting or a closely related
29 field;

30 (4) who is certified as a conservator by a nationally recognized
31 organization in the field of conservatorships;

1 (5) who is determined by the department to be a trustworthy person;

2 (6) who provides proof satisfactory to the department that the
3 individual is able to be bonded and insured;

4 (7) whose criminal history record checks under AS 08.26.070 show
5 that the person has not been convicted of a crime within 10 years before the
6 application that would affect the individual's ability to provide the services of a
7 conservator competently and safely for the protected person; and

8 (8) who satisfies the application requirements of AS 08.26.060.

9 **Sec. 08.26.040. Requirements for organizational license.** (a) The
10 department shall issue an organizational license to a person who is not an individual if

11 (1) the person maintains a place of business in this state;

12 (2) the person is in compliance with the state and federal requirements
13 that apply to the organization;

14 (3) the department determines the person to be trustworthy;

15 (4) the person submits proof satisfactory to the department that the
16 person is able to be bonded and insured;

17 (5) the results of the criminal history record checks of the person under
18 AS 08.26.070 show that the person or following individuals have not been convicted
19 of a felony within the 10 years before the application that would affect the person's or
20 individuals' ability to provide the services of a guardian or conservator, whichever is
21 applicable, competently and safely for the ward or protected person:

22 (A) the officers of the organization, if the organization is a for-
23 profit corporation or a nonprofit corporation;

24 (B) the members or manager of the organization, if the
25 organization is a limited liability company; or

26 (C) the partners of the organization, if the organization is a
27 partnership, limited partnership, or limited liability partnership;

28 (6) the person designates in writing one of the following individuals to
29 be responsible within the organization for monitoring the organization's compliance
30 with this chapter and the other laws of this state:

31 (A) an officer of the organization, if the organization is a for-

1 profit corporation or a nonprofit corporation;

2 (B) a member or manager of the organization, if the
3 organization is a limited liability company;

4 (C) a partner of the organization, if the organization is a
5 partnership, limited partnership, or limited liability partnership;

6 (7) all of the individuals employed by the person to provide the
7 services of a private professional guardian or private professional conservator for the
8 organization have licenses under this chapter; and

9 (8) the person satisfies the application requirements of AS 08.26.060.

10 (b) If the organization's employees have licenses under both AS 08.26.020 and
11 08.26.030, the license issued under (a) of this section shall cover providing the
12 services of a guardian and a conservator.

13 (c) If the organization's employees have licenses only under AS 08.26.020 but
14 not under AS 08.26.030, the license issued under (a) of this section is limited to
15 providing the services of a guardian.

16 (d) If the applicant's employees have licenses under AS 08.26.030 but not
17 under AS 08.26.020, the license issued under (a) of this section is limited to providing
18 the services of a conservator.

19 **Sec. 08.26.050. Temporary license.** (a) The department shall issue a
20 temporary license to an individual under AS 08.26.020 or 08.26.030 who

21 (1) is not certified by the National Guardianship Foundation at the time
22 of the application but is likely to become certified within one year from the date of the
23 license, and otherwise satisfies the licensing requirements of AS 08.26.020 or
24 08.26.030; and

25 (2) satisfies the application requirements of AS 08.26.060.

26 (b) If the individual with a temporary license under (a) of this section submits
27 proof of certification by the National Guardianship Foundation within one year from
28 the date of the issuance of the temporary license, the department shall issue the
29 individual a license under AS 08.26.020 or 08.26.030 without requiring a new
30 application.

31 (c) A temporary license issued under this section may not be renewed.

1 **Sec. 08.26.060. Application requirements.** To apply for a license under this
2 chapter, a person shall submit an application on a form provided by the department
3 and submit

4 (1) two complete fingerprint cards containing fingerprints and other
5 information required by the Department of Public Safety to obtain state and national
6 criminal history record information under AS 12.62 and AS 12.64; the fingerprints
7 must be the fingerprints of the applicant if the applicant is an individual, or, if the
8 applicant is an organization, fingerprints of the

9 (A) officers of the organization, if the applicant is a
10 corporation;

11 (B) members of the organization, if the applicant is a limited
12 liability company;

13 (C) partners of the organization, if the applicant is a
14 partnership;

15 (2) proof of the ability to be insured and bonded;

16 (3) a written waiver of confidentiality signed by the applicant allowing
17 the department to access at any time relevant complaint information made about the
18 applicant to adult protective services, the designated protection and advocacy agency,
19 the long-term care ombudsman, or an entity that certifies or licenses private
20 professional guardians or private professional conservators;

21 (4) a written statement signed by the applicant that the applicant will
22 allow immediate access at any time to the department to the file of a ward or protected
23 person and to financial information regarding the applicant, including corporate or
24 other business records;

25 (5) a detailed resume, including relevant experience, for each
26 employee and contractor of the applicant who may provide services to a ward or
27 protected person;

28 (6) payment of the application fee, any criminal history record
29 information checks fee charged under AS 12.62.160(d), and any other fees required by
30 the department; and

31 (7) if the applicant is not an individual, a copy of the documents under

1 which the applicant was formed, including articles of incorporation and bylaws if the
2 applicant is a corporation.

3 **Sec. 08.26.070. Criminal history record information checks.** (a) For each
4 applicant for a license under this chapter, the department shall submit the fingerprint
5 cards and other relevant information received with the application to the Department
6 of Public Safety and request the Department of Public Safety to

7 (1) submit the fingerprints to the Federal Bureau of Investigation for a
8 national criminal history record information check on the applicant;

9 (2) perform a state criminal history record information check on the
10 applicant; and

11 (3) provide the department with the results of the criminal history
12 record information checks made under (1) and (2) of this subsection.

13 (b) The department may not issue a license to a person under this section
14 unless the department receives the report required by (a)(3) of this section.

15 **Article 2. Reports.**

16 **Sec. 08.26.080. Annual report.** Within 30 days following the end of each
17 calendar year, a licensee shall submit to the department

18 (1) evidence of the initial and continuing existence of a bond and
19 professional liability insurance required by a court to be maintained by the guardian or
20 conservator;

21 (2) a list, including case numbers, of the wards and protected persons
22 for whom the licensee is acting as a private professional guardian or private
23 professional conservator;

24 (3) an accurate financial statement of the licensee;

25 (4) a letter stating that the licensee has filed all required court reports
26 in the previous calendar year;

27 (5) a copy of all of the licensee's federal tax documents filed with the
28 Internal Revenue Service and all of the licensee's correspondence with the Internal
29 Revenue Service; and

30 (6) a list of all current employees of the licensee.

31 **Sec. 08.26.090. Submission of court reports to department.** Upon request

1 of the department, a licensee shall submit to the department a copy of the reports that
2 the licensee is required to submit to a court under AS 13.26.

3 **Article 3. Practices.**

4 **Sec. 08.26.100. Court appointment.** A person who engages in the business
5 of providing services as a guardian or conservator may not be appointed a guardian or
6 a conservator in a court proceeding unless the person is licensed under this chapter or
7 exempt under AS 08.26.180.

8 **Sec. 08.26.110. Fees.** (a) A licensee may not receive a payment for services
9 rendered to a ward or a protected person until the licensee obtains court approval of a
10 proposed fee schedule. The fee schedule must include a statement of the hourly fee
11 for professional and administrative services and a monthly maximum amount that the
12 licensee can charge the ward or protected person.

13 (b) A payment requested by a licensee that exceeds the established monthly
14 maximum amount identified under (a) of this section may not be made unless the
15 payment is approved by the court. A request for court approval of a fee that exceeds
16 the established monthly maximum amount must include the following information for
17 the services covered by the fee:

- 18 (1) the name of the person who provided the service;
19 (2) the date when the service was provided;
20 (3) the hourly rate of compensation for the service;
21 (4) a description of the service; and
22 (5) the amount of time used to perform the service.

23 **Sec. 08.26.120. Required notification.** A licensee shall notify the department
24 immediately if

- 25 (1) the licensee fails to file a report to the court required by this
26 chapter;
27 (2) the licensee has been removed as a guardian or conservator for a
28 ward or protected person;
29 (3) the licensee has received a gift with a value of more than \$100
30 from a ward or protected person during the two years before the appointment;
31 (4) the licensee has an interest in an enterprise that provides services to

1 the ward or protected person;

2 (5) an employee or contractor of the licensee is arrested for any
3 offense; or

4 (6) the licensee has filed for bankruptcy.

5 **Article 4. Discipline.**

6 **Sec. 08.26.130. Grounds for disciplinary action.** The department may take
7 disciplinary action against a person under AS 08.01.075 if the department determines
8 that the person

9 (1) obtained or attempted to obtain a license under this chapter through
10 deceit, fraud, or intentional misrepresentation;

11 (2) has not complied the standards of conduct established by the
12 department under AS 13.26.001;

13 (3) forfeited a license in this or another jurisdiction as a result of
14 deceit, fraud, intentional misrepresentation, or professional incompetence;

15 (4) has been found by a court in this state to have engaged in
16 professional misconduct or incompetence;

17 (5) has advertised its services in a false or misleading manner;

18 (6) has been convicted, including a conviction based on a guilty plea or
19 plea of nolo contendere, of a felony or other crime that affects the person's ability to
20 provide the licensee's services competently and safely for the ward or protected
21 person;

22 (7) has been found to have abandoned, exploited, abused, or neglected
23 a vulnerable adult; in this paragraph, "vulnerable adult" has the meaning given in
24 AS 47.24.900;

25 (8) has failed to comply with this chapter or with a regulation adopted
26 under this chapter;

27 (9) has continued or attempted to practice after becoming unfit due to
28 professional incompetence;

29 (10) has failed to maintain certification by a nationally recognized
30 organization in the field of

31 (A) guardianships, if the person was issued an individual

1 private professional guardian license; or

2 (B) conservatorships, if the individual was issued an individual
3 private professional conservator license;

4 (11) the licensee is not able to be bonded and insured; or

5 (12) if the licensee has an organizational license,

6 (A) does not maintain a place of business in this state;

7 (B) is not in compliance with the state and federal requirements
8 that apply to the organization; or

9 (C) has an employee who provides the services of a private
10 professional guardian or private professional conservator for the organization
11 and is not licensed under this chapter.

12 **Sec. 08.26.140. Petition by department.** In addition to the disciplinary
13 actions allowed under AS 08.01.075, the department may petition a court to review the
14 conduct of a licensee if the department determines that the conduct of the licensee may
15 not be in the best interests of the ward or protected person.

16 **Article 5. General Provisions.**

17 **Sec. 08.26.180. Exemption.** A financial institution regulated by the federal
18 government or a financial institution regulated under AS 06 by the division in the
19 department that regulates banking, securities, and corporations, is not required to be
20 licensed under this chapter in order to engage in the business of providing services as a
21 guardian or a conservator or be appointed as a private professional guardian or a
22 private professional conservator by a court. In this subsection, "financial institution"
23 does not include a person who is exempt under AS 06.26.020 or who has received an
24 exemption under AS 06.26.200.

25 **Sec. 08.26.190. Definitions.** In this chapter,

26 (1) "conservator" has the meaning given in AS 13.06.050;

27 (2) "department" means the Department of Community and Economic
28 Development;

29 (3) "guardian" has the meaning given in AS 13.06.050;

30 (4) "licensee" means a person licensed under this chapter;

31 (5) "organizational license" means a license issued under

1 AS 08.26.040;

2 (6) "private professional conservator" means a person who acts as a
3 conservator under AS 13.26.165 - 13.26.320 and receives compensation for acting in
4 that capacity;

5 (7) "private professional conservator license" means a license issued
6 under AS 08.26.030;

7 (8) "private professional guardian" means a person who acts as a
8 guardian under AS 13.26.030 - 13.26.155 and receives compensation for acting in that
9 capacity;

10 (9) "private professional guardian license" means a license issued
11 under AS 08.26.040;

12 (10) "protected person" has the meaning given in AS 13.26.005;

13 (11) "ward" has the meaning given in AS 13.26.005.

14 * **Sec. 3.** AS 13.26 is amended by adding a new section to article 1 to read:

15 **Sec. 13.26.001. Adoption of standards of practice.** It is the policy of the
16 state that all guardians and conservators, when making decisions for their wards or
17 protected persons, shall abide by the highest ethical standards of decision making and
18 shall consider the standards of practice adopted by the department by regulation. The
19 department shall adopt standards of practice for guardians and conservators and,
20 before doing so, shall review the standards of practice adopted by a national
21 organization with expertise in the area of standards of practice for guardians and
22 conservators, such as the National Guardianship Foundation.

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

24 (11) "department" means the Department of Community and
25 Economic Development;

26 (12) "private professional conservator" means a person, other than the
27 public guardian, who is licensed under AS 08.26 or exempt under AS 08.26.180;

28 (13) "private professional guardian" means a person, other than the
29 public guardian, who is licensed under AS 08.26 or exempt under AS 08.26.180.

30 * **Sec. 5.** AS 13.26.013(a) is amended to read:

31 (a) A notice of the filing of a petition, a summary of all formal proceedings,

1 and a dispositional order or modification or termination of a dispositional order
 2 relating to a proceeding under this chapter shall be available for public inspection. All
 3 other information contained in the court records relating to a proceeding under this
 4 chapter is confidential and available only upon court order for good cause shown or to
 5 the following persons:

6 (1) the person who is the subject of the court record, the person's
 7 attorney, or the person's guardian ad litem;

8 (2) a person designated by the person who is the subject of the court
 9 record;

10 (3) the guardian of the person who is the subject of the court record or
 11 the attorney of the guardian;

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

14 (5) a party to the proceeding and the person's attorney;

15 (6) the judge or judges hearing or reviewing the matter; [AND]

16 (7) a member of the clerical or administrative staff of the court if
 17 access is essential for authorized internal administrative purposes; and

18 (8) the department when a private professional guardian or a
 19 private professional conservator is involved in the proceeding.

20 * Sec. 6. AS 13.26 is amended by adding a new section to article 1 to read:

21 **Sec. 13.26.025. Appointment of a guardian ad litem.** (a) Upon the request
 22 of a ward, protected person, or respondent, or the attorney of a ward, protected person,
 23 or respondent, the court shall appoint a guardian ad litem to protect the rights of the
 24 ward, protected person, or respondent in proceedings under AS 13.26.090 - 13.26.320.
 25 The court shall make the appointment if the court is satisfied that, because of impaired
 26 ability effectively to receive and evaluate information regarding the proceedings or
 27 because of impaired ability to communicate decisions regarding the proceedings, the
 28 ward, protected person, or respondent cannot determine the ward's, protected person's,
 29 or respondent's own interests without assistance, and

30 (1) a guardian or conservator has not been appointed;

31 (2) the interests of the ward, protected person, or respondent conflict

1 with those of the ward's, protected person's, or respondent's guardian or conservator;
2 or

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

4 (b) A person appointed may act as a guardian ad litem for a ward, protected
5 person, or respondent if the court determines that the appointment is appropriate under
6 the standards set out in (a) of this section and another party whose interests would not
7 conflict with those of the ward, protected person, or respondent is not readily available
8 and able to serve as the guardian ad litem. When a person who has been appointed by
9 the court as the attorney for the ward, protected person, or respondent is appointed to
10 act as the guardian ad litem for the ward, protected person, or respondent, the
11 appointment of the person as the attorney ends, and the person appointed as the
12 guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected
13 person, or respondent. Nothing in this subsection is intended to impinge on the right
14 of a ward, protected person, or respondent to have an attorney.

15 (c) The guardian ad litem shall assist the ward, protected person, or respondent
16 in determining the ward's, protected person's, or respondent's interests in regard to the
17 legal proceedings that involve the ward, protected person, or respondent. If the ward,
18 protected person, or respondent is entirely incapable of determining those interests, the
19 guardian ad litem shall make that determination and advise the court and counsel for
20 all parties accordingly. The guardian ad litem shall

21 (1) inquire thoroughly into all the circumstances that a prudent ward,
22 protected person, or respondent would consider in determining the ward's, protected
23 person's, or respondent's own interests in the proceedings; and

24 (2) encourage the ward, protected person, or respondent to participate,
25 to the maximum extent possible, in all decisions and to act on the ward's, protected
26 person's, or respondent's own behalf on all matters in which the ward, protected
27 person, or respondent is able.

28 (d) The attorney for the ward, protected person, or respondent may also be the
29 guardian ad litem for the ward, protected person, or respondent if there is no other
30 party readily available and able to serve as a guardian ad litem and whose interests
31 would not conflict with those of the ward, protected person, or respondent.

1 (e) The office of public advocacy shall provide guardian ad litem services to
2 persons who would suffer financial hardship or become dependent upon a government
3 agency or a private person or agency if the services were not to be provided at state
4 expense.

5 * Sec. 7. AS 13.26.111(b) is amended to read:

6 (b) To the maximum extent possible, the ward or respondent shall remain
7 responsible for determining the interests of the ward or respondent. However, the
8 attorney for the ward or respondent may seek appointment of a guardian ad litem if the
9 circumstances of AS 13.26.025 [AS 13.26.112] apply.

10 * Sec. 8. AS 13.26.117 is amended to read:

11 **Sec. 13.26.117. Guardianship implementation report.** Within 90 days after
12 distribution of the order of appointment as guardian, the guardian shall submit to the
13 court a report. The report must describe the guardian's program for implementing the
14 guardianship plan. The primary goal of the program described in the report must be,
15 to the maximum extent possible, to develop or regain the ward's abilities to handle the
16 ward's own affairs. The report must consider housing, medical care, and educational
17 and vocational needs and resources. In developing the report, the guardian shall
18 consult with the ward to the maximum extent possible. [THE OFFICE OF PUBLIC
19 GUARDIAN SHALL CONTACT THE GUARDIAN TO OFFER ASSISTANCE IN
20 PREPARING THE REPORT.] The report must specify the services that are necessary
21 to meet the essential requirements for the ward's physical health or safety and the
22 means for obtaining the services. The report must specify the manner in which the
23 guardian will exercise and share decision-making authority and other items that will
24 assist in fulfilling the needs of the ward, the terms of the guardianship order, and the
25 duties of the guardian.

26 * Sec. 9. AS 13.26.118 is amended to read:

27 (a) A guardian shall submit a report to the court [OR REQUEST THAT A
28 VISITOR BE APPOINTED TO PREPARE AND SUBMIT A REPORT] at least
29 annually. In addition, every third year, the court shall appoint a visitor to file a
30 report reviewing the guardianship during the period since the last visitor's
31 report, if any [A COURT-APPOINTED VISITOR SHALL PREPARE THE

1 REPORT AT LEAST ONCE IN EACH THREE-YEAR PERIOD]. The guardian
2 shall submit an additional report to the court when

- 3 (1) the court orders it;
- 4 (2) there is a significant change in the capacity of the ward to meet the
5 essential requirements for health and safety or to protect the ward's rights;
- 6 (3) the guardian resigns or is removed;
- 7 (4) the guardianship is terminated; or
- 8 (5) the ward requests it.

9 (b) The report of the guardian must contain, but is not limited to, the
10 following information:

- 11 (1) the name and address of the ward and the guardian;
- 12 (2) the ward's present mental, physical, and social conditions and
13 present living arrangements and the ward's opinion of these arrangements;
- 14 (3) changes in the capacity of the ward to meet essential requirements
15 for physical health and safety;
- 16 (4) the services being provided to the ward;
- 17 (5) the significant actions taken by the guardian during the reporting
18 period in regard to the ward;
- 19 (6) a financial accounting of the estate that has been subject to the
20 possession or control of the guardian;
- 21 (7) a list of the number and nature of the contacts between the guardian
22 and ward if the ward does not reside with the guardian;
- 23 (8) any other information requested by the court or necessary or
24 desirable in the opinion of the guardian [OR VISITOR].

25 * **Sec. 10.** AS 13.26.118 is amended by adding a new subsection to read:

- 26 (c) The visitor report required by (a) of this section must include
27 (1) the name and address of the ward and the guardian;
- 28 (2) the services being provided to the ward by or through the guardian;
- 29 (3) the significant actions taken by the guardian during the reporting
30 period in regard to the ward;
- 31 (4) a financial accounting of the estate that has been subject to the

1 possession or control of the guardian;

2 (5) a list of the number and nature of the contacts between the
3 conservator and the ward if the ward does not reside with the guardian;

4 (6) any other information requested by the court or necessary or
5 desirable in the opinion of the visitor.

6 * Sec. 11. AS 13.26.120 is amended by adding a new subsection to read:

7 (b) Notwithstanding (a) of this section, if a deceased ward does not have a
8 living family member or if an individual interested in the ward is not available, the
9 guardian of a ward who dies may arrange for the body of the ward to be transported to
10 a funeral home and may make funeral and burial arrangements for the deceased ward.
11 The guardian may also apply for assistance with burial expenses from the state or a
12 municipality if the estate of the ward does not have sufficient money to pay for burial.

13 * Sec. 12. AS 13.26.125(a) is amended to read:

14 (a) On petition of the ward, the guardian, or any person interested in the
15 ward's welfare, or on the court's own motion, the court may (1) review and amend a
16 decision of a guardian; or (2) if alternatives that are less restrictive than guardianship
17 or less restrictive than the existing guardianship plan would assist the ward in meeting
18 essential requirements for physical health and safety. modify the provisions of its
19 order to (A) amend the guardianship plan or the responsibilities of the guardian; (B)
20 remove a guardian and appoint a successor; or (C) terminate the guardianship. On
21 petition of the guardian, the court may accept a resignation and make any other order
22 that may be appropriate.

23 * Sec. 13. AS 13.26.131(b) is amended to read:

24 (b) Subject to (c) and (d) of this section, the respondent shall bear the costs of
25 the attorney appointed under AS 13.26.106(b), of the expert appointed under
26 AS 13.26.109(d), of the guardian ad litem appointed under AS 13.26.025
27 [AS 13.26.112], and of other court and guardianship costs incurred under this chapter.

28 * Sec. 14. AS 13.26.145(a) is amended to read:

29 (a) The court may appoint a competent person, including a private
30 professional guardian, or the public guardian, [OR A PRIVATE ASSOCIATION
31 OR NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR

1 INCAPACITATED PERSONS,] as the guardian of an incapacitated person.

2 * Sec. 15. AS 13.26.145(c) is amended to read:

3 (c) A person may be appointed as the guardian of an incapacitated person
4 notwithstanding the provisions of (b) of this section if the person is the spouse, adult
5 child, parent, or sibling of the incapacitated person and the court determines that the
6 potential conflict of interest is insubstantial and that the appointment would clearly be
7 in the best interests of the incapacitated person. When appointing a relative or
8 friend of the incapacitated person as the guardian of an incapacitated person, the
9 court shall require that the proposed guardian complete one hour of mandatory
10 education on the basics of guardianship before the appointment or within 30 days
11 after the appointment.

12 * Sec. 16. AS 13.26.145(d) is amended to read:

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

15 (1) an individual [A PERSON, ASSOCIATION,] or organization
16 [PRIVATE NONPROFIT CORPORATION] nominated by the incapacitated person
17 [,] if, at the time of the nomination, the incapacitated person has, in the opinion of the
18 court, sufficient mental [HAD THE] capacity to make an informed [A
19 REASONABLY INTELLIGENT] choice;

20 (2) the spouse of the incapacitated person;

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

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

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

27 (6) a private professional guardian [ASSOCIATION OR
28 NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
29 INCAPACITATED PERSONS];

30 (7) the public guardian.

31 * Sec. 17. AS 13.26.145(e) is amended to read:

1 (e) The priorities established in (d) of this section are not binding, and the
2 court shall select the individual [PERSON, ASSOCIATION,] or organization
3 [NONPROFIT CORPORATION] that is best qualified and willing to serve. The court
4 shall also consider [GIVE CONSIDERATION TO] a nomination by a person
5 described in (d) of this section and to a nomination in the will of a deceased parent or
6 spouse of the incapacitated person.

7 * **Sec. 18.** AS 13.26.150(c) is amended to read:

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

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

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

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

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

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

29 (6) the guardian has the powers [IF A CONSERVATOR FOR THE
30 ESTATE OF THE WARD HAS NOT BEEN APPOINTED, THE GUARDIAN MAY
31 RECEIVE MONEY] and duties of a conservator under this chapter [PROPERTY

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

9 (7) if a conservator of the estate of the ward has also been appointed,
10 the guardian shall pay all of the ward's estate received by the guardian [IN EXCESS
11 OF THE MONEY EXPENDED TO MEET CURRENT EXPENSES FOR SUPPORT,
12 CARE, AND EDUCATION OF THE WARD,] to the conservator for management as
13 provided in AS 13.26.165 - 13.26.315 [, AND THE GUARDIAN SHALL
14 ACCOUNT TO THE CONSERVATOR FOR MONEY EXPENDED].

15 * Sec. 19. AS 13.26.195(b) is amended to read:

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

27 * Sec. 20. AS 13.26.210 is repealed and reenacted to read:

28 **Sec. 13.26.210. Who may be appointed conservator; priorities.** (a) The
29 court may appoint a competent person, including a private professional guardian or the
30 public guardian, as the conservator of the estate of a protected person.

31 (b) The court may not appoint a person to be a conservator of a protected

1 person if the person

2 (1) provides, or is likely to provide during the conservatorship,
3 substantial services to the protected person in a professional or business capacity,
4 other than in the capacity of conservator;

5 (2) is or is likely to become, during the conservatorship, a creditor of
6 the protected person, other than in the capacity of conservator;

7 (3) is likely to have, during the conservatorship, interests that may
8 conflict with those of the protected person; or

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

11 (c) A person may be appointed as the conservator of a protected person even if
12 (b) of this section applies if the person is the spouse, adult child, parent, or sibling of
13 the protected person and if the court determines that the potential conflict of interest is
14 not substantial and that the appointment would clearly be in the best interests of the
15 protected person.

16 (d) Subject to (c) of this section, qualified persons have priority for
17 appointment in the following order:

18 (1) an individual or qualified conservator nominated by the protected
19 person if the protected person is 14 or more years of age and has, in the opinion of the
20 court, sufficient mental capacity to make an informed choice;

21 (2) the spouse of the protected person;

22 (3) an adult child or a parent of the protected person;

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

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

27 (6) a private professional conservator;

28 (7) the public guardian.

29 (e) Notwithstanding (d) of this section, the court shall select the person that is
30 the best qualified of those persons who are willing to serve as the conservator. The
31 court shall also consider a nomination by a person described in (d) of this section and

1 a nomination in the will of a deceased parent or spouse of the protected person.

2 (f) In addition to any other requirement of this section, when appointing a
3 relative or friend of the incapacitated person as the conservator of a protected person,
4 the court shall require that the proposed conservator complete one hour of mandatory
5 education on the basics of conservatorship before the appointment or within 30 days
6 after the appointment. If the person is appointed based on the person's agreement to
7 complete the mandatory education and the person fails to complete the mandatory
8 education within the 30 days, the court shall remove the conservator and appoint a
9 successor.

10 * Sec. 21. AS 13.26.250 is amended to read:

11 **Sec. 13.26.250. Inventory, implementation report, and records.** Within 90
12 days after **distribution of the order of** appointment, every conservator shall prepare
13 and file with the appointing court a **conservator implementation report and a**
14 complete inventory of the estate of the protected person together with an oath or
15 affirmation that it is complete and accurate so far as the conservator is informed. The
16 conservator shall provide a copy of it to the protected person if the protected person
17 can be located, has attained the age of 14 years, and has sufficient mental capacity to
18 understand these matters, and to any parent or guardian with whom the protected
19 person resides. The conservator shall keep suitable records of the administration and
20 exhibit them on request of any interested person.

21 * Sec. 22. AS 13.26.255 is amended to read:

22 **Sec. 13.26.255. Accounts. A conservator shall submit a report to the court**
23 **at least every year. In addition, a** [EVERY] conservator **shall** [MUST] account to
24 the court for administration of the trust upon resignation or removal [,] and at other
25 times as the court may direct. On termination of the protected person's minority or
26 disability, a conservator may account to the court or to the former protected person or
27 the protected person's personal representative. Subject to appeal or vacation within
28 the time permitted, an order, made upon notice and hearing, allowing an intermediate
29 account of a conservator, adjudicates as to the conservator's liabilities concerning the
30 matters considered in connection with it; and an order, made upon notice and hearing,
31 allowing a final account, adjudicates as to all previously unsettled liabilities of the

1 conservator to the protected person or the protected person's successors relating to the
2 conservatorship. In connection with any account, the court may require a conservator
3 to submit to a physical check of the estate in the conservator's control, to be made in
4 any manner the court may specify.

5 * **Sec. 23.** AS 13.26 is amended by adding a new section to read:

6 **Sec. 13.26.257. Visitor reports.** (a) The initial visitor report of a visitor
7 appointed under AS 13.26.195(b) must include

8 (1) the results and analyses of medical and other tests and
9 examinations performed that describe the proposed protected person's mental,
10 emotional, physical, and educational condition, adaptive behavior, and social skills,
11 and that specify the data on which the description is based;

12 (2) recommendations regarding the types and extent of assistance, if
13 any, necessary to meet the essential requirements for managing the property and
14 affairs of the proposed protected person;

15 (3) an evaluation of the proposed protected person's need for mental
16 health treatment and whether there is a substantial probability that available treatment
17 will significantly improve the proposed protected person's mental condition;

18 (4) an evaluation of the proposed protected person's need for
19 educational or vocational assistance and whether the assistance can be made available
20 to the protected person;

21 (5) an evaluation of the probability that the incapacity may
22 significantly lessen, and the type of services or treatment that will facilitate
23 improvement in the condition or skills of the proposed protected person;

24 (6) a list of the names and addresses of all individuals who examined,
25 interviewed, or investigated the proposed protected person, and the names and
26 addresses of all persons contacted in preparation of the visitor report;

27 (7) a summary of the information that

28 (A) was supplied by the person described in (6) of this
29 subsection; and

30 (B) supports the conclusions of the visitor report;

31 (8) a description of the alternatives to conservatorship that were

1 considered and not recommended and an explanation of why they are not feasible to
2 meet the needs of the proposed protected person;

3 (9) a specification of the financial resources of the proposed protected
4 person, the proposed protected person's entitlements to insurance benefits, and
5 publicly operated or sponsored health, mental health, and welfare assistance that might
6 be employed in the provision of services to the proposed protected person; and

7 (10) if conservatorship is recommended, a conservatorship outline that
8 identifies

9 (A) potential conservators;

10 (B) the specific services necessary and available to protect the
11 proposed protected person from serious damage to the proposed protected
12 person's property and affairs;

13 (C) the means by which the services described in (B) of this
14 paragraph may be financed;

15 (D) the specific, least restrictive authority needed by the
16 conservator to provide the services described in (B) of this paragraph.

17 (b) In addition to any initial visitor report provided under (a) of this section,
18 every third year, the court may appoint a visitor to file a report reviewing the
19 conservatorship during the period since the last visitor report, if any.

20 (c) In addition to the reports under (a) and (b) of this section, at any time
21 during a conservatorship, a court may appoint a visitor to file a report reviewing the
22 conservatorship during the period since the last visitor report, if any.

23 (d) A visitor report provided under (b) or (c) of this section must include

24 (1) the name and address of the protected person and the conservator;

25 (2) the services being provided to the protected person by or through
26 the conservator;

27 (3) the significant actions taken by the conservator during the reporting
28 period in regard to the protected person;

29 (4) a financial accounting of the estate that has been subject to the
30 possession or control of the conservator;

31 (5) a list of the number and nature of the contacts between the

1 conservator and the protected person if the protected person does not reside with the
2 conservator;

3 (6) any other information requested by the court or necessary or
4 desirable in the opinion of the visitor.

5 * Sec. 24. AS 13.26.285(e) is amended to read:

6 (e) If a protected person dies, the conservator shall deliver to the court for
7 safekeeping any will of the deceased protected person that [WHICH] may have come
8 into the conservator's possession and [,] inform the executor or a beneficiary named in
9 the will that the will has been so delivered. Once a conservator knows that the
10 protected person has died, the conservator may not exercise authority over the
11 protected person's affairs and estate except to pay reasonable burial expenses
12 and to preserve, account for, and transfer control of assets to a personal
13 representative, a temporary property custodian appointed by the court, or a
14 person authorized to take custody of personal property by affidavit under
15 AS 13.16.680 [, AND RETAIN THE ESTATE FOR DELIVERY TO A DULY
16 APPOINTED PERSONAL REPRESENTATIVE OF THE DECEDENT OR OTHER
17 PERSONS ENTITLED TO IT]. If, after 40 days from the death of the protected
18 person, no other person has been appointed personal representative and no application
19 or petition for appointment is before the court, the conservator may apply to exercise
20 the powers and duties of a personal representative in order to proceed with
21 administering and distributing the decedent's estate without additional or further
22 appointment. Upon application for an order granting the powers of a personal
23 representative to a conservator, after notice to any person demanding notice under
24 AS 13.16.070 and to any person nominated executor in any will of which the applicant
25 is aware, the court may order the conferral of the power upon determining that there is
26 no objection, and endorse the letters of the conservator to note that the formerly
27 protected person is deceased and that the conservator has acquired all of the powers
28 and duties of a personal representative. The making and entry of an order under this
29 section has the effect of an order of appointment of a personal representative as
30 provided in AS 13.16.115 and 13.16.245 - 13.16.655 [AS 13.16.245 - 13.16.655]
31 except that estate in the name of the conservator, after administration, may be

1 distributed to the decedent's successors without prior retransfer to the conservator as
2 personal representative.

3 * Sec. 25. AS 13.26.300(a) is amended to read:

4 (a) A conservator shall pay from the estate all just claims against the estate
5 and against the protected person arising before or after the conservatorship was
6 established but before the protected person dies, upon their presentation and
7 allowance. A claim is considered presented on the first to occur of receipt of the
8 written statement of claim by the conservator [,] or the filing of the claim with the
9 court. A presented claim is allowed if it is not disallowed by written statement mailed
10 by the conservator to the claimant within 60 days after its presentation. The
11 presentation of a claim tolls any statute of limitations relating to the claim until 30
12 days after its disallowance. A claim may be presented by either of the following
13 methods:

14 (1) the claimant may deliver or mail to the conservator a written
15 statement of the claim indicating its basis, the name and address of the claimant, and
16 the amount claimed;

17 (2) the claimant may file a written statement of the claim, in the form
18 prescribed by rule, with the clerk of the court and deliver or mail a copy of the
19 statement to the conservator.

20 * Sec. 26. AS 13.26.380(b) is amended to read:

21 (b) The public guardian, when appointed as guardian or conservator, shall
22 endeavor, for as long as practical, to find a suitable private guardian or conservator for
23 the public guardian's ward or protected person. For each ward and protected person,
24 the public guardian shall include in its annual report under AS 13.26.118(a) to the
25 court having jurisdiction of the ward or protected person information on the
26 availability of [, AT LEAST ONCE EVERY SIX MONTHS, EFFORTS TO FIND] a
27 private guardian or conservator.

28 * Sec. 27. AS 44.21.410(a) is amended to read:

29 (a) The office of public advocacy shall

30 (1) perform the duties of the public guardian under AS 13.26.360 -
31 13.26.410;

1 (2) provide visitors and experts in guardianship proceedings under
2 AS 13.26.131;

3 (3) provide guardian ad litem services to children in child protection
4 actions under AS 47.17.030(e) and to wards and respondents in guardianship
5 proceedings who will suffer financial hardship or become dependent upon a
6 government agency or a private person or agency if the services are not provided at
7 state expense under AS 13.26.025 [AS 13.26.112];

8 (4) provide legal representation in cases involving judicial bypass
9 procedures for minors seeking abortions under AS 18.16.030, in guardianship
10 proceedings to respondents who are financially unable to employ attorneys under
11 AS 13.26.106(b), to indigent parties in cases involving child custody in which the
12 opposing party is represented by counsel provided by a public agency, to indigent
13 parents or guardians of a minor respondent in a commitment proceeding concerning
14 the minor under AS 47.30.775;

15 (5) provide legal representation and guardian ad litem services under
16 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on
17 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or
18 petitions for the termination of parental rights on grounds set out in
19 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor
20 under AS 09.55.590; in children's proceedings under AS 47.10.050(a) or under
21 AS 47.12.090; in cases involving appointments under AS 18.66.100(a) in petitions for
22 protective orders on behalf of a minor; and in cases involving indigent persons who
23 are entitled to representation under AS 18.85.100 and who cannot be represented by
24 the public defender agency because of a conflict of interests;

25 (6) develop and coordinate a program to recruit, select, train, assign,
26 and supervise volunteer guardians ad litem from local communities to aid in delivering
27 services in cases in which the office of public advocacy is appointed as guardian ad
28 litem;

29 (7) provide guardian ad litem services in proceedings under
30 AS 12.45.046;

31 (8) establish a fee schedule and collect fees for services provided by

1 the office, except as provided in AS 18.85.120 or when imposition or collection of a
2 fee is not in the public interest as defined under regulations adopted by the
3 commissioner of administration;

4 (9) provide visitors and guardians ad litem in proceedings under
5 AS 47.30.839;

6 (10) provide legal representation to an indigent parent of a child with a
7 disability; in this paragraph, "child with a disability" has the meaning given in
8 AS 14.30.350.

9 * **Sec. 28.** AS 44.21.440 is amended by adding a new subsection to read:

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

14 * **Sec. 29.** AS 44.62.330(a) is amended by adding a new paragraph to read:

15 (61) the Department of Community and Economic Development as to
16 the licensing and regulation of private professional guardians and conservators under
17 AS 08.26.

18 * **Sec. 30.** AS 13.26.105(d), 13.26.112, and 13.26.135(a)(8) are repealed.

19 * **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 13.26.120(b), enacted by sec.
22 11 of this Act, has the effect of changing Rule 16(f), Alaska Rules of Probate Procedure, by
23 giving guardians additional authority to perform certain acts for a deceased ward.

24 (b) AS 13.26.250, as amended by sec. 21 of this Act, has the effect of changing Rule
25 17(e), Alaska Rules of Probate Procedure, by changing when a report is due and by adding
26 additional material to be included in the report.

27 * **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **TRANSITION.** (a) The court shall appoint a visitor under AS 13.26.118(a), amended
30 by sec. 9 of this Act, for a guardianship that was in existence on and before the effective date
31 of sec. 9 of this Act within 90 days after the effective date of sec. 9 of this Act if the

1 guardianship has been in existence for three or more years on the effective date of sec. 9 of
2 this Act.

3 (b) A person who, before the effective date of sec. 2 of this Act, has been appointed
4 by the court under AS 13.26 to be a guardian or a conservator, whose appointment is still in
5 effect on the effective date of sec. 2 of this Act, and who are required to be licensed under
6 AS 08.26, enacted by sec. 2 of this Act, shall comply with the licensing requirements of
7 AS 08.26 within 60 days after the date when the regulations for sec. 2 of this Act are adopted
8 under sec. 33 of this Act. If the person does not comply within the 60 days, the court may
9 remove the guardian or conservator and appoint a successor.

10 * Sec. 33. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITION: REGULATIONS. The Department of Community and Economic
13 Development may proceed to adopt regulations necessary to implement the changes made by
14 secs. 1 and 2 of this Act. The regulations take effect under AS 44.62 Administrative
15 Procedure Act), but not before the effective date of secs. 1 and 2 of this Act.

16 * Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 CONDITIONAL EFFECT. AS 13.26.120(b), as enacted by sec. 11 of this Act, and
19 AS 13.26.250, as amended by sec. 21 of this Act, take effect only if sec. 31 of this Act
20 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
21 of the State of Alaska.

22 * Sec. 35. Section 33 of this Act takes effect immediately under AS 01.10.070(c).

23 * Sec. 36. This Act takes effect January 1, 2005.



**THE ALASKA STATE ASSOCIATION
FOR GUARDIANSHIP AND ADVOCACY**

February 6, 2003

Representative Tom Anderson
State Capitol, Room 432
Juneau, Alaska 99801

Re: House Bill 427

Dear Mr. Anderson:

This letter is being written on behalf of the ASAGA (Alaska State Association for Guardianship and Advocacy) Taskforce on Guardianship Reform. The taskforce would like to thank you for sponsoring the bill and we pledge our support to do whatever it takes to move this bill along.

We were asked by Theresa Bannister, Legislative Counsel, to develop guidelines for registering private professional guardians. These were not developed in time for them to be incorporated into HB 427 and are attached here. The committee working on these guidelines relied on other regulating statutes of general applicability, but also tried to include provisions particularly appropriate for protecting vulnerable adult Alaskans. They would replace Section 25 AS 13.26.500 and Section 13.26.520 in HB 427 and are labeled accordingly. Incorporating these guidelines into HB 427 in this way does have an effect on several other sections. They are as follows:

Section 2, AS 13.26.005 should be amended to read;

(12) "private professional conservator" means a person *or organization*, other than the public guardian, *who is eligible to be appointed* as a conservator under AS 13.26.165-13.26.590 in more than two cases and who receives compensation for acting in that capacity.

(13) "private professional guardian" means a person *or organization*, other than the public guardian, *who is eligible to be appointed* as a guardian under AS 13.26.030-13.26.590 in more than two cases and who receives compensation for acting in that capacity.

Section 25, AS 13.26.500-590 requires to following modifications;

The old section AS 13.26.520 language should become AS 13.26.580. The previous language in 580 was incorporated into the new AS 13.26.520.

The following language should be added to AS13.26.530:

(6) a list of all current employees

Section 13.26.550 Limitation on Appointment can end at "unless the private professional guardian or private professional conservator is registered with the division." The rest of language in covered in Section 13.26.500 Registration and Exemptions.

Again thank you for your interest in this issue. Please forward these additions and changes to Ms. Bannister.

We eagerly await the bill being scheduled for a hearing.

Sincerely,

Betty L. Wells
Betty L. Wells
ASAGA Taskforce
(907) 333-9480

Sec. 13.26.500. Registration and exemptions. (a) Except as provided in (d) of this section, before being registered as a private professional guardian, the person shall have 2 years of professional client casework experience or a degree in human services, social work, psychology, sociology, gerontology, special education or closely related field.

(b) Before being registered as a private professional conservator, the person shall

(1) be 21 years of age or older with a high school or General Education Development diploma or equivalent; and

(2) have 6 months' experience, with compensation, in financial management, or a degree in accounting or closely related field.

(c) Before being registered as a private professional guardian or a private professional conservator, the person shall

(1) be certified or likely to become certified within one year with the National Guardianship Foundation;

(2) be a trustworthy person;

(3) if operating within an organization,

(A) maintain a lawfully established place of business in this state, except when licensed as a nonresident in AS 21.27.270;

(B) designate an officer or partner responsible for the organization's compliance with statutes and regulations of this state;

(C) require each individual in the organization to be registered if applicable.

(4) have submitted two complete fingerprint cards containing the person's fingerprints and other information required by the Department of Public Safety to obtain state and national criminal justice information under AS 12.62 and AS 12.64.

(A) The division shall submit the fingerprint cards received under this section to the Department of Public Safety, and request the Department of Public Safety to

- (1) submit the fingerprints to the Federal Bureau of Investigation for a report on national criminal justice information;
- (2) perform a check for state criminal justice information;
- (3) report to the division the results of the criminal justice information checks under (1) and (2) of this subsection.

(B) A person may not be registered until the division receives from the Department of Public Safety a report of state and national criminal justice information regarding the person. Reports that include criminal justice information shall be reviewed by the division.

(d) A financial institution regulated by the federal government or a financial institution regulated under AS 06 by the division of banking, securities, and corporation, Department of Community and Economic Development, is not required to be registered in order to be appointed as a private professional guardian or a private professional conservator. In this subsection, "financial institution" does not include a person who is exempt under AS 06.26.020 or who has received an exemption under AS 06.26.200.

Sec. 13.26.520. Disciplinary sanctions; refusal to issue or renew registration. (a) The division may impose a disciplinary sanction on a person registered under this chapter or refuse to issue or renew a registration under this chapter when the division finds that the person

- (1) secured or attempted to secure the registration through deceit, fraud, or intentional misrepresentation;
- (2) has forfeited a license in this or another jurisdiction as a result of deceit, fraud, intentional misrepresentation, or professional incompetence;
- (3) has been found by a court in this state to have engaged in professional misconduct or incompetence;
- (4) advertised professional services in a false or misleading manner;

(5) has been convicted, including a conviction based on a guilty plea or plea of nolo contendere, of a felony or other crime that affects the person's ability to practice competently and safely;

(6) has been found to have abandoned, exploited, abused, or neglected a vulnerable adult as defined at AS 47.24.900;

(7) failed to comply with this chapter or with a regulation adopted under this chapter;

(8) continued or attempted to practice after becoming unfit due to professional incompetence;

(9) failed to maintain certification with the National Guardianship Foundation.

(b) The division may take the following disciplinary actions, singly or in combination, against the person:

(1) revoke the person's registration;

(2) suspend the person's registration for a specified period;

(3) censure or reprimand the person;

(4) impose limitations or conditions on the person's practice as a private professional guardian or private professional conservator;

(5) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the person;

(6) impose probation requiring the person to report regularly to the division on matters related to the grounds for probation;

(b) The division may withdraw probationary status if the deficiencies that required the sanction are remedied.

(c) The division may reinstate a suspended or revoked registration if, after a hearing, the division finds that the applicant is able to practice as a private professional guardian or private professional conservator with skill and safety.

(d) The action of the division under this section is subject to AS 44.62.330 - 44.62.630.



National Guardianship Association

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520/881-6561 ★ 520/325-7925 FAX ★ 520/326-2467 TDD ★ [HTTP://WWW.GUARDIANSHIP.ORG](http://www.guardianship.org)

NATIONAL GUARDIANSHIP ASSOCIATION
1604 North Country Club Road • Tucson, AZ 85716-3102
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NATIONAL GUARDIANSHIP ASSOCIATION'S 2002 LEGISLATIVE PACKET

I. INTRODUCTION

NATIONAL GUARDIANSHIP ASSOCIATION ("NGA")

The National Guardianship Association ("NGA") was incorporated in 1988 as a non-profit national organization to strengthen guardianship and related services through networking, education, and tracking and commenting on legislation. NGA is comprised of approximately 700 members including guardians, attorneys, judges, conservators, bankers, representative payees, advocates, social workers, fiduciaries and physicians.

- NGA has an active 21-member board of directors and professional management.
- NGA has spent over 10 years developing and revising its Standards of Practice, and the revised version of these standards was adopted by the NGA Board of Directors and approved by the NGA full membership in July 2000.
- NGA is particularly concerned that guardians who serve for more than one ward for a fee (defined herein as "private professional guardian") are adequately trained, registered and certified before accepting guardianship appointments.

NATIONAL GUARDIANSHIP FOUNDATION ("NGF")

The National Guardianship Foundation (NGF) was incorporated in 1998 as a non-profit national foundation with the goal of testing, registering and certifying guardians across the United States. Established to support the mission of NGA, NGF has a separate 12-member board of trustees.

LEGISLATIVE PACKET IDEA

The NGA Board and members of NGA have expressed interest in a Legislative Packet to:

- implement mandatory registration and certification of private professional guardians by NGF; and
- adopt the Standards of Practice promulgated by the NGA as the suggested best practice standards for guardians in their States.

II. REGISTRATION AND CERTIFICATION OF PRIVATE PROFESSIONAL GUARDIANS

PURPOSE.

"Private professional guardian" refers to a guardian (or conservator) who serves in multiple guardianship appointments for a fee. Courts often appoint private professional guardians when no suitable family members or friends are willing to serve as guardians for their incapacitated relatives. Despite the lack of familial relationship, private professional guardians make many important decisions for their wards. They decide where their wards live. They decide what medical attention their wards receive. They decide how their wards' funds are used to pay for their wards' needs. Most importantly, in most states, if a ward is terminally ill, a guardian can decide whether life-sustaining procedures are used to prolong the ward's life. NGA believes that private professional guardians should be both registered (listed with contact information by a central authority) and certified (tested on guardianship standards by a central authority).

- Only Arizona and Washington require private professional guardians to be registered and certified prior to being appointed. In Arizona, the Supreme Court of Arizona acts as a central authority to register and certify "private fiduciaries" appointed by Arizona courts. California and Texas also require registration (but not certification) of private professional guardians.
- As of January 1, 2003, Florida will require all professional guardians to be registered and complete ongoing continuing education.
- Barbers and beauticians require stricter certification and registration than private professional guardians in almost every State.
- Currently, no national registration exists to prevent a private professional guardian, who has been removed in "State A" for financial exploitation of a ward, from moving to a "State B" and being appointed as guardian for a different ward in "State B."

PROCEDURE

The National Guardianship Foundation has established and monitors a registration and certification procedure that requires minimum experience and examination for two levels of guardianship certification. The basis for both levels of certification is the NGA Standards of Practice consisting of 23 standards to be applied in the day-to-day practice of a guardian.

Registered Guardian

- The basic level of certification is classified as "Registered Guardian" and is designed to assure competencies in basic management and ethical principles for practitioners in the day-to-day practice of guardianship or surrogate decision-making.
- To become a "Registered Guardian" an individual must complete the application procedure and pass a written examination.
- The NGA provides a training class prior to this examination.
 - More than 400 Registered Guardians have currently been registered and certified by the NGF. Their names are listed on the NGA website at www.guardianship.org.

Master Guardian

- The advanced level of certification is classified as "Master Guardian."
- To become a candidate for "Master Guardian" certification, an individual must have a combined number of years of experience in guardianship practice and education; must provide guardianship services to two or more incapacitated individuals; and must have spent an average of 16 hours per week practicing guardianship during three of the past five years (including the most recent year).
- A candidate must complete a lengthy application and submit multiple letters of reference detailing the individual's qualifications, character and professionalism.
- A candidate must submit an essay that demonstrates an advanced level of experience in varied and complex guardianship issues.
- A candidate must then sit for a four-hour multiple choice and essay examination that is graded by a committee of the NGF.

- The "Master Guardian" certification is designed to recognize guardians with comprehensive experience. There are currently only 20 Master Guardians. These names are also listed at www.guardianship.org.

Benefits to States

- Requiring private professional guardians to be registered and certified by the National Guardianship Foundation at the "Registered Guardian" level will result in guardians making better and more uniform decisions for their wards.
- Registration and certification of guardians will give local judges a listing of individuals to appoint as guardians when no family members or friends of proposed wards are willing, suitable or available to serve.
- The "Master Guardian" designation will also give local judges a list of those guardians with comprehensive experience to appoint to incapacitated individuals needing special attention.

STATE BY STATE CONSIDERATIONS

Definition of Private Professional Guardian:

A State wishing to adopt registration and certification requirements will need to consider the definition of "private professional guardian."

- In this context, "private professional guardian" refers to a guardian (or conservator) who serves in multiple guardianship appointments for a fee.
- The State should determine a specific number of "multiple" guardianship appointments and any appropriate exclusions from the registration or certification requirement, such as attorneys, corporate fiduciaries, and public guardianship agencies.
- The State should then include its term for "private professional guardians" in the [brackets] below either with or without any parties previously excluded by the definition of its term for "private professional guardians" as the State chooses.

Choice of Provisions

This packet includes a choice of two provisions that States may adopt.

- **Mandatory.** The first option provides that all "private professional guardians" must be certified and registered by NGF prior to being appointed as guardians of the person or estate by Courts.

- **Priority.** The second option provides that Courts must appoint Registered Guardians and Master Guardians as certified by NGF (if any exist in the State) prior to appointing any suitable person to serve as guardian. If a State wishes to adopt a statute based on this option, the State should locate the "guardianship priority" statute in its Code and add the language as provided in subsection (c) of Option 2 below.

**PROPOSED LANGUAGE
FOR REGISTRATION AND CERTIFICATION OF GUARDIANS**

OPTION 1: Mandatory Certification:

When appointing a [private professional guardian], a Court shall only appoint a [private professional guardian] who is currently registered and certified by the National Guardianship Foundation as either a Registered Guardian or a Master Guardian. For more complex guardianship appointments, a Court shall appoint a [private professional guardian] who is currently registered and certified by the National Guardianship Foundation as a Master Guardian.

OPTION 2: Guardianship Priority Statute:

Guardian of Persons Other Than Minors without Eligible or Suitable Nearest of Kin to Serve. The Court shall at all times consider the best interest of the person with diminished capacity when selecting the guardian. When the Court is faced with a situation in which neither the ward's spouse nor any person related to the ward is suitable, eligible or willing to serve as guardian for a person other than a minor, the Court shall appoint a guardian giving the following persons priority in such appointment:

- (a) a person named in a Declaration of Guardian, advanced directive, durable power of attorney, or other written statement of preference of the person with diminished capacity; or, if none;
- (b) a friend of the incapacitated individual; or, if none;
- (c) a [private professional guardian] who is currently registered and certified by the National Guardianship Foundation as either a Registered Guardian or a Master Guardian; or, if none;
- (d) any suitable person or corporate entity.

III. STANDARDS OF PRACTICE

PURPOSE:

Most States have guidance and restrictions for guardians of the estate or conservators with respect to inventories, allowances, annual accounts and final accounts for estates of incapacitated individuals. Very few States provide standards and guidance to guardians for the day to day decisions that guardians must make.

NGA has spent almost 10 years compiling and revising its recently adopted 23 "Standards of Practice" to guide guardians in their decision making processes and in their day to day practice of guardianship. NGA believes that:

- its "Standards of Practice" reflect, as realistically as possible the best or highest quality of guardianship practice; and
- every guardian should strive to comply with these "Standards of Practice."

The topics for these "Standards of Practice" are as follows:

1. Applicable Law
2. Guardian's Relationship to the Court
3. Self-Determination of Ward
4. Informed Consent
5. Process of Decision Making
6. Decision Making Regarding Medical Services and Treatment
7. Decision Making With Regard to Withholding or Withdrawing Medical Care or Treatment
8. Confidentiality
9. Least Restrictive Alternative
10. Quality Assurance
11. Management of Multiple Guardianship Cases
12. Guardian of the Person: Ongoing Responsibilities
13. Conflict of Interest: Ancillary and Support Services
14. Duty to Exercise Reasonable Care and Skill in Managing Ward's Estate
15. Property Management
16. Guardian of the Estate-Ongoing Responsibilities
17. Conflict of Interest: Estate, Financial and Business Services
18. Guardianship Service Fees
19. Guardian's Relationship with Family Members and Friends of the Ward

20. Guardian's Relationship with Other Professionals and Providers of Service to the Ward
21. Guardian's Duties and Responsibilities Regarding Diversity and Personal Preference of the Ward
22. Termination and Limitation of the Guardianship/Conservatorship
23. Guardian's Professional Relationship with the Ward

A copy of the Standards of Practice can be found at www.guardianship.org, or a written copy can be obtained by writing the National Guardianship Association at 1604 N. Country Club Road, Tucson, AZ 85716-3102 or calling at 520-881-6561.

PROPOSED LANGUAGE FOR ADOPTION OF NGA STANDARDS OF PRACTICE

Standards of Practice for Guardians:

It is the policy of this State that all Guardians, when making decisions for their wards, shall abide by the highest ethical standards of decision making and shall consider the National Guardianship Association's Standards of Practice to meet this end. Compliance with these standards depends primarily upon understanding, voluntary compliance, peer pressure and public opinion. These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation and arguments over whether such standards have or have not been observed.

Questions and Answers about Guardianship

What is a Guardian?

One who lawfully has the general care, control and custody of the person; the decision-maker of legal, medical, housing and services aspects of an incapacitated person's life.

What is a Ward?

A person who has had a guardian appointed by the court.

What is a Conservator?

One who is appointed to manage the business, assets, and financial affairs of a person unable to do so for themselves. A judicial finding of incapacity is not required for conservatorship to take effect.

What is a Protected Person?

A person who has had a conservator appointed by the court.

Who is an Incapacitated Person?

One whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that they lack the ability to provide the essential requirements for their own health and safety.

What is an Advocate?

One who supports, defends or requests on the behalf of another. The intervention may be with client consent or with legal authority to act.

What's the difference between a Family Guardian, a Guardian Service Provider, and a Public Guardian?

A private guardian is generally a family member or close friend who is appointed for one or two people.

A professional guardian is an individual, agency or organization that provides guardianship/conservatorship services to three or more individuals and receives compensation other than reimbursement for out of pocket expenses.

A public guardian is one employed by the state to act as guardian/conservator. Public guardians are employed by the Office of Public Advocacy and are used as last resort when no private person or non-profit organization is available or willing to act in this capacity.

What is the difference between Full, Temporary, Partial, Limited, or Testamentary Guardianship?

A full guardian is one appointed to have total decision-making responsibilities for medical, housing, services, legal, and if a separate conservator has not been appointed, financial areas.

A temporary guardian is one appointed in an emergency situation for an immediate or time-limited period. An example would be an emergency appointment for an immediate life threatening medical decision or a six-month period to assist with a specific decision. Generally a full hearing with court visitor and medical expert reports will be held soon.

A partial or limited guardian is one appointed whose rights, powers, and duties are less than full guardianship and are enumerated by court order.

A guardian by testamentary appointment is one whose appointment was by a will. An example would be when a parent / guardian of a developmentally disabled child indicate in his or her will which other person would be the child's successor guardian. The successor guardian needs to request a Probate Court hearing to get signed Orders.

What is the difference between an Attorney for the Respondent and a Guardian Ad Litem?

A respondent is the alleged incapacitated person for whom a petition has been filed and their attorney represents the wishes of the respondent as opposed to the best interest of the respondent.

The guardian ad litem (or GAL) is a special temporary guardian appointed by the court to represent the best interests and rights of the ward or respondent in the proceedings. A GAL, generally an attorney, is appointed if the court decides that the respondent cannot determine his own interests because of impaired ability. A GAL's duties end when guardianship proceedings are concluded.

What's the difference between a Court Expert and a Court Visitor?

The court expert or medical expert has expertise regarding the incapacity of the respondent, such as psychiatry.

The court visitor is a neutral person trained or experienced in law, medical care, mental health care, pastoral care, education, rehabilitation or social work who is appointed by the court to make a thorough investigation and evaluation of all information relevant to the respondent's case. The court visitor has no special interest in the proceedings and is completely unbiased.

Both an expert and visitor are appointed in guardianship cases. Both submit a report and testify or are available to testify at the hearing.

No finding of incapacity is required for a conservatorship but a visitor may still be appointed.

What is meant by Direct Services?

Medical and nursing care, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, recreational therapy, socialization, job training and other similar services are considered direct services.

What are Supportive Services?

A coordinated system of state or community supplied social or health devices designated to help maintain the independence of the individual. May include homemaker visits, psychiatric and medical evaluation with case management, visiting nurse, special transportation, house repair, home delivered meals, etc. Services do not

originate from a central agency, but are brought together by the individual or agency involved with the case.

What is Case Management?

A supervisory coordination usually originates in a care facility or health unit which closely monitors the physical and mental progress of a client and arranges for direct and support services.

What is a Care Coordinator?

An independent or agency person, who provides or arranges for services for the aged, adult physically disabled, developmentally disabled/mentally retarded, or children with medically complex conditions.

What are Protective Services?

A term commonly used to describe both support services provided to those in need with their consent, and legally enforced guardianship/conservatorship services that intervene in a person's life without their consent, in response to physical, emotional and financial abuse or neglect.

The State of Alaska, Adult Protective Services, investigates and attempts to resolve abuse or neglect. (Anchorage 907-269-3666).

What is Assisted Living?

Residential living that focuses on maximizing residents' quality of life by structuring care, services and environment to enhance autonomy, dignity and the right to age in place. Assisted living generally provides: three meals; 24 hour staff oversight and availability; housekeeping and laundry; assistance with eating, bathing, toileting, and walking; transportation or arranging transportation; medication management; social and recreational activities. The Division of Senior Services can provide a list of licensed homes in Alaska (907-269-3666) and out of state information is available from the National Eldercare Locator Service 1-800-677-1116.

What are Chore Services?

Chore services include housekeeping, and other necessary assistance to maintain the home in a clean, sanitary and safe condition.

What is Respite Care?

Respite care provides relief for the caregiver from caregiving duties.

Who can be a Petitioner?

Anybody can request the court for a guardian or conservator including the client. The Petition for Guardian/Conservator identifies the circumstances of the respondent's condition and set the guardianship process in motion. It can also be withdrawn.

Who is a Respondent?

A respondent is the person who has had a petition filled against them. In guardianship, this is the alleged incapacitated person.

What is Notice?

Notice is providing information to the parties in the case. This is done by mailing or delivering the documents, which are given to the court, to everyone. The legal system requires notice as may fairly and properly be expected or required.

Who are the Interested Parties in a Case?

Those include attorneys, court visitor, heirs, children, creditors, beneficiaries, devisees, and any other having a right in or claim against the estate of a ward.

What are Pro Bono and Pro Per?

Pro bono means "for good." A pro bono attorney works without charge. Pro per means legal work for oneself without benefit of counsel or attorney.

What does Stipulate Mean in Court?

It is an agreement; if all parties "stipulate" to a point or issue it becomes fact or actuality.

What is Aid to Disabled Adults?

The State's Division of Public Assistance provides funds to the elderly, blind or disabled meeting income, assets and Social Security requirements.

What is Interim Assistance?

When a guardian applies for SSI and the client has no other income, the guardian may apply for this aid from Alaska Division of Public Assistance while a decision is being made by Social Security. If eligible, they will receive \$280 (eff. 9/00) per month. This must be repaid if approved for social security benefits.

What is Social Security Annuities (SSA)?

SSA is a retirement and disability insurance for American workers. It may be available for spouse or children, if the employee is disabled or deceased.

What is Supplemental Security Income (SSI)?

Administered by the Social Security office, this benefit is based on disability, income, and resources. A person could be eligible for both SSA and SSI.

What is a Representative Payee?

The Social Security Administration can require a "rep payee" for many SSA and SSI clients. This is another person or agency that will receive the client's social security funds and is responsible for using them for the client's needs.

What is a Burial Trust Fund?

An account established for burial purposes, usually held by a bank or funeral home.

How does a Power of Attorney differ from a Guardianship?

A Power of Attorney is power granted to an attorney-in-fact to conduct any business which to client could do himself, such as banking, real estate, taxes, business transactions, or any other issue generally time-limited. The client must be capacitated and there is no court oversight. A guardianship occurs when the client can not make decision for himself and has the court reviewing the situation. The guardianship generally superseeds the POA.

What is a Durable Power of Attorney?

When a person executes a POA, which will become or remain effective in the event the client later becomes disabled. It may include conservator powers and authority to make medical decisions.

What is an Advance Directive?

A document that stating exactly which measures to be followed in the event of an incapacity or terminal illness.

What is a Living Will?

A document by which an individual, while competent, may specify that in the event there is no reasonable expectation that he/she will recover from a terminal illness or vegetative state, no extraordinary or heroic measures are to be used to prolong the act of dying; is only employed to prevent the use of life sustaining procedures.

These questions and answers came from a column in the Alaska State Association for Guardianship and Advocacy's newsletter The ASAGA Voice from 1993-1995 called "Ask Dorcas!"

The Guardian / Conservator Petitioning Process

11/20/01dj

Decide that the person may need a guardian or conservator

- Review Video, then
- Hire a Family Law Attorney, or
- Get Alaska Psychiatric Institute or Div of Senior Services to file through the AG's for their own clients, or
- Get packet and complete yourself.

Petition is filed

- \$50 filing fee, can be waived
- may sign at court

Then, Probate Court will

- Review petition
- Set a hearing date (within 120 days)
- Appoint a court visitor
- If a guardianship, appoint an attorney for respondent and
Appoint a medical expert to determine capacity or have court visitor designate

Before the hearing

- Court Visitor will investigate and prepare a report to the court
(visit respondent, talk with petitioner, family, professionals, and get the medical expert's report. Inform respondent of their rights, make a recommendation about alternatives, what is needed, and who should perform.)(file 10 days prior to court)
- Attorney will visit with respondent

Court Hearing

- Before a Probate Court Judge or Master
- Closed hearing (not open to general public)
- Persons present may include judge, court clerk, respondent, their attorney, petitioner, court visitor, proposed guardian/conservator, involved persons that the court or respondent allows.

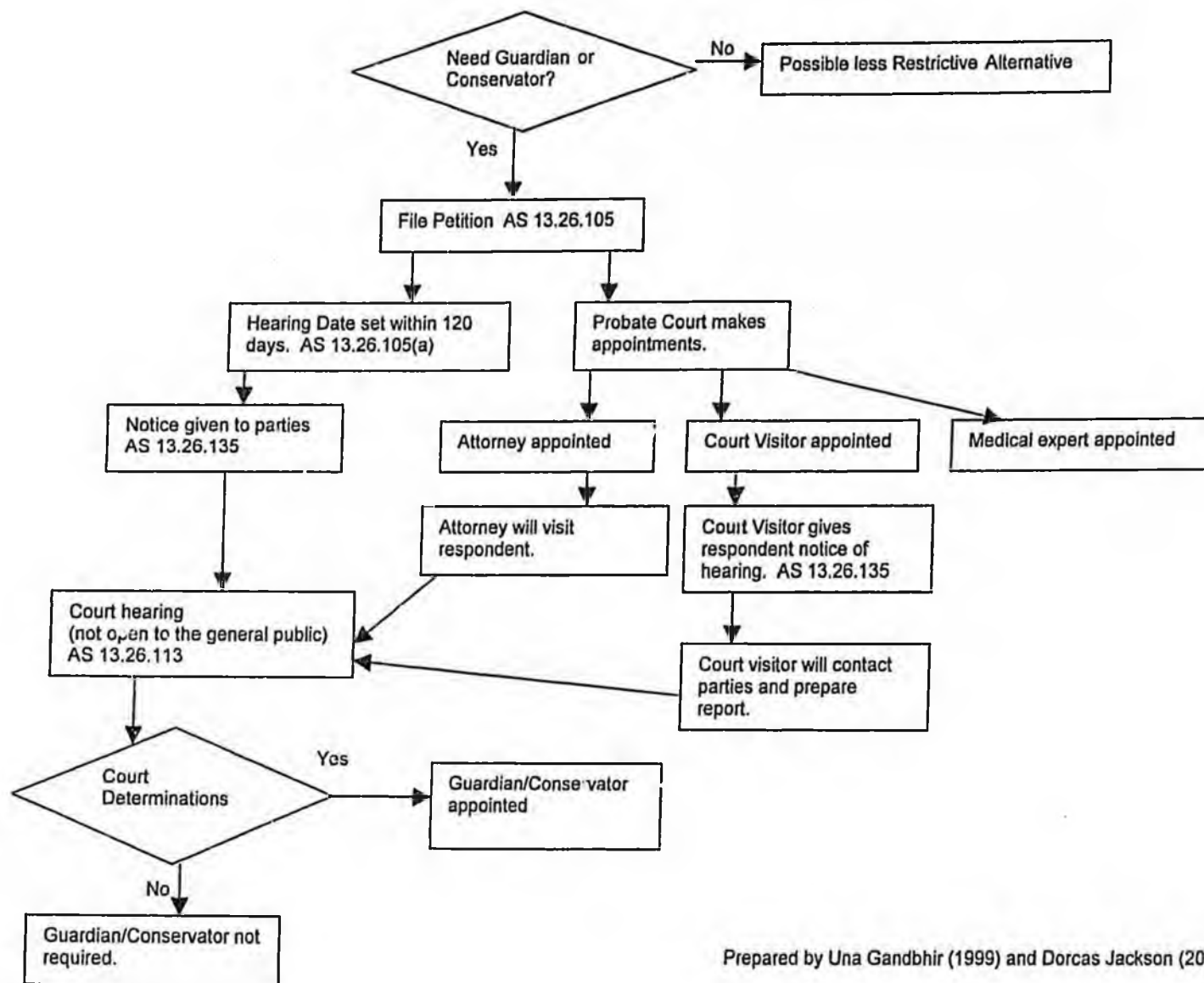
Generally at the end of the hearing the judge will determine

- Jurisdiction
- Incapacity
- What type of G/C the respondent needs
- Who should be the G/C
 1. Family / friend
 2. Private Guardian Service Provider
 3. Public Guardian (only last resort)

On-going Guardian/Conservator responsibilities

- Make decisions allowed in Court Order
- Complete 90 days report
- Complete annual reports

The Guardianship Process



Prepared by Una Gandhir (1999) and Dorcas Jackson (2001 & 2002)



THE ALASKA STATE ASSOCIATION FOR GUARDIANSHIP AND ADVOCACY

Enclosed you will find a draft bill for Guardianship Reform prepared by an ASAGA (Alaska State Association for Guardianship and Advocacy) with the assistance of Senator Gary Wilken. ASAGA is committed to preventing the exploitation and mistreatment of vulnerable adults. In addition to the bill, you will find a packet of educational information to help you understand adult guardianship issues and the reason for considering guardianship reform.

In 2003, at least 14 states passed a total of 19 adult guardianship bills, as compared to ten bills in ten states in 2002. In 2001, 16 states passed a total of 26 bills and in 2000, 15 states passed a total of 24 bills. ASAGA believes that Alaska's guardianship statutes are ripe for reform.

ASAGA's efforts with respect to guardianship reform began with two open forums at the annual conference in 1997. Several dedicated members worked on projects which later dovetailed with the recommendations from the McDowell Study. Following the incident in 2002 where a private agency filed bankruptcy, ASAGA has renewed its efforts for recommendations for statute reform. These along with the previous recommendations in the 2002 SB 190 should be introduced this session.

These are items that ASAGA hopes to have happen with its reform efforts.

- Clarify and improve current law AS 13.26.005 – 13.26.410
- Create a mechanism for regulating private agencies that offer guardianship services
- Develop regulations for governing private professional guardianship agencies
- Adopt National Guardianship Association Model Code of Ethics and Standards for professional guardians
- Assure that professional guardians in Alaska are certified and meet minimum established criteria

- Mandate training for both professional and family guardians

ASAGA believes that all professional guardians and their agencies should be both registered (approved to do business by the Division of Occupational Licensing) and certified (tested on guardianship standards by a central authority such as the National Guardianship Foundation).

In Alaska, professional guardians, both private and public, and family guardians provide services to approximately 2500 disabled, vulnerable adults. The Office of Public Advocacy accommodates the Public Guardian program and employs 14 public guardians in three locations across the state. They serve over 831 vulnerable adults. Twelve of the public guardians are certified with the National Guardianship Foundation and four are classified as Master Guardians.

There are six private professional agencies in the state that accept protective order appointments. Only two accept guardianship appointments at this time, however of the seven associates working for these two private agencies, six are certified guardians with the National Guardianship Foundation and one is classified as a Master Guardian.

Of the 21 professional guardians practicing in Alaska, 86% are certified with the National Guardianship Foundation. Several more have taken the test for registered guardian or master guardian and are awaiting the results. The Court Visitor Coordinator is also certified as a registered guardian.

While Alaska is fortunate to have a strong public agency to meet guardianship needs for indigent citizens, we do have needs in other areas. Many states have enacted measures to strengthen the monitoring capacity of the court. ASAGA believes that is ultimately up to the court to monitor the guardianships that they grant. Therefore, ASAGA believes that a two-prong approach is necessary. Not only do we need to have legislative changes, we need to have the courts embrace their duty to monitor the existing guardianships.

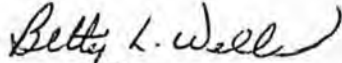
Alaska does very well with respect to due process and pre-investigation of guardianship cases. Respondents have a multitude of rights including a right to an attorney, the right to be present in court and the right to have a court visitor appointed to

do an independent investigation. As with other states, Alaska needs to address deficiencies in the monitoring and accountability.

We hope this packet assists you in understanding the guardianship process so that you can make informed choices when the reform efforts come your way.

For more information, you can reach me at the numbers below.

Sincerely,



Betty L. Wells
Court Visitor
Chair/ASAGA Legislative Committee
And Guardianship Reform Taskforce

Betty L. Wells
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(07) 337-0146 FAX
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DEFINITIONS OF TERMS USED IN GUARDIANSHIP/CONSERVATORSHIP PROCEEDINGS

PETITION: A document filed by an individual or agency who wishes the Court to appoint a guardian or conservator for an individual believed to be incapacitated. This document identifies the circumstances of the individual's condition and sets the guardianship and/or conservatorship process in motion.

RESPONDENT: The person for whom guardianship and/or conservatorship is being sought.

PETITIONER: The person or agency who petitions the Court for a finding of incapacity or the need for a protective order, and the appointment of a guardian and/or conservator for an individual.

RESPONDENT'S ATTORNEY: The attorney appointed by the Court to represent the respondent's wishes throughout the guardianship and/or conservatorship proceeding. An attorney for the respondent is automatically appointed in a guardianship proceeding. Alternatively, the respondent may elect to utilize an attorney of his/her own choosing. In conservatorship proceedings, a respondent may choose to represent himself or herself, or may request the Court to appoint one on his/her behalf. The visitor may also request an appointment of an attorney for a respondent in a conservatorship proceeding if he/she deems it appropriate.

PETITIONER'S ATTORNEY: The attorney retained by the petitioner to represent his/her interests in the guardianship and/or conservatorship proceeding. The petitioner may elect to retain an attorney, but is not required to do so.

GUARDIAN AD LITEM (GAL): A special temporary guardian appointed by the Court to represent the best interests and rights of the ward or respondent in the proceedings. A GAL is appointed if the Court decides the respondent cannot determine or express his or her own interests because of impaired ability. An attorney for the respondent may ask the Court to change his/her appointment to that of a GAL if he/she believes the respondent is unable to express his/her wishes.

COURT VISITOR: A neutral person trained or experienced in law, medicine or medical health care, education, rehabilitation or social work, etc. who is appointed by the Court to make a thorough investigation and evaluation of all information relevant to the respondent's case. The Court Visitor has no special interest in the proceedings. The Court Visitor's appointment is vacated after the appointment of a guardian and/or conservator, but is reappointed if there is an order to review the guardianship or conservatorship.

PROBATE MASTER: An officer of the Court who hears and recommends a ruling to the judge on guardianship and/or conservatorship proceedings.

EXPERT: A professional from the medical or psychological community who is aware of the respondent's physical and/or mental functioning and provides a report to the Court documenting the respondents capacity.

CONSERVATOR: One who is appointed to manage the business and financial affairs of a person unable to do so for themselves. A judicial finding of incompetence is not required for conservatorship to take effect.

GUARDIAN: One who lawfully has the general care and control of the person of the ward. Guardians make medical and placement decisions on behalf of their ward.

WARD: A person who has had a guardian appointed by the Court.

PROTECTED PERSON: A person who has had a conservator appointed by the Court.

PUBLIC GUARDIAN: One employed by the state to act as guardian and or conservator, used as last resort when no private person or agency is able or available to act in this capacity.

PROFESSIONAL GUARDIAN: An individual, agency or organization that provides guardian/conservatorship services to individuals, and receives compensation for this service.

FAMILY GUARDIAN: A family member or friend of the ward who provides guardian/conservator services to the ward.

REPRESENTATIVE PAYEE: a person or agency who receives federal funds on behalf of another if the recipient is unable to manage their own finances. The Social Security Administration makes this determination, and a court order is not required for the appointment of a representative payee.

CASE MANAGER OR CARE COORDINATOR: A person, usually, but not always, affiliated with an agency, who oversees, arranges and coordinates the care of an individual. The case manager does not provide direct care, but arranges for needed services and monitors those services.

CARE PROVIDER: An individual or institution that provides direct care or assistance to an individual. This may include meals, assistance with activities of daily living, transportation, monitoring of medications, recreation, etc.

SPECIAL ADVOCATE: An individual designated by the Court who is entitled to receive information about a ward's or protected person's financial, medical and housing arrangements, but retains no decision making responsibility or authority. This appointment is usually made when a guardian or conservator is appointed.

INTERESTED PARTIES: Individuals or institutions including heirs, children, spouses, creditors, beneficiaries and any others having a right to, or claim against the estate of a ward or protected person that may be affected by the proceedings.

REVIEW HEARING: This hearing is conducted when an established guardianship and/or conservatorship may need to be revised, changed or terminated. Any interested party may request such a hearing if they have concerns about the guardianship/conservatorship. In addition, any other person who has knowledge or contact with the ward or protected person, such as a case manager, physician, care provider or social worker, may request such a hearing.

90 DAY IMPLEMENTATION REPORT: A report submitted by the guardian and /or conservator to the Court 90 days after his/her appointment. Forms for this report are provided by the Court. It outlines the current health, residence and financial status of the ward or protected person.

ANNUAL REPORTS: A report submitted by the guardian and/or conservator to the Court on an annual basis. Forms for this report are provided by the Court, and include information pertaining to the ward or protected person's general state of health, residence and financial status.

THREE YEAR REVIEWS: A report prepared every three years by the court visitor outlining the status of the guardianship/conservatorship. This includes information about any changes in the capacity of the ward, his/her financial situation, and whether the existing orders need to be modified. Based on the findings of the visitor, a hearing on the guardianship and/or conservatorship may be scheduled.

| Comparison of Guardianship and Conservatorship | | |
|---|--|--|
| | Guardianship | Conservatorship |
| Basic Difference | Wellbeing of person | Conserve Finances |
| Who starts it | Petitioner | Petitioner |
| Venue (which court) | Where person lives | Where person or assets are |
| Person before the hearing is called a | Respondent | Respondent |
| Appointments | Court Visitor (always) Expert (Medical)(always) Attorney for respondent (always) | Court Visitor (generally appointed) No expert usually needed Attorney (may be appointed) |
| Findings | Incapacity | Assets wasted or dissipated |
| The person after hearing | Ward | Protected Person |
| Who is appointed | Guardian | Conservator |
| Responsibilities | Medical & Informed Consent Placement (housing) Services Things that affect well-being, quality of life | Receive Income Pay expenses Protect Assets Liabilities Taxes Benefit Applications |
| Reports Due | G Implementation (90 days) G Annual (every year) G Final | C Inventory (90 days) C Annual (every year) C Final |
| Documents | G Order Letters of Acceptance G Plan | C Order Letters of Acceptance |
| Bonding | May be required in Full G that includes the conservatorship | Required unless Judge/Master chooses not to require |
| Fees | Must be authorized by Judge/Master | Must be authorized by Judge/Master |
| Ends | At death or when changed by court | At death or when changed by court |

Professional Guardian Services Corporation

Northern Region Office
524 3rd Street, Ste2
PO Box 73686
Fairbanks, AK 99701

Office Phone: (907) 458-8850
Fax Phone: (907) 458-8860

FAX COVER / MESSAGE SHEET

Date: 4/5/04 Number of pages: 5 (including cover page)

Message From: "B" Jarvi
NAME TITLE

Professional Guardian Services Corporation
Fax No.: (907) 458-8860 Phone No.: (907) 458-8850

Message To: Peggy Wilson
NAME TITLE

COMPANY / AGENCY NAME DEPT/REGION

(907) 465-2646 ()
FAX NO. PHONE NO.

Message:

IF YOU DID NOT RECEIVE ALL PAGES, PLEASE CALL (907) 458-8850

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TO: Peggy Wilson

RE: Unfinished Testimony HB 427

BY: "B" Jarvi

With regard to HB 427 formulated by ASAGA (90% membership composed of OPA employees) OPA staff and directors, court visitors (OPA contractors) and a few others, I do affirm that I was not invited to join in the development of the draft of the bill. This is the second time they submitted a self-serving bill. Senator Gary Wilken was approached to sponsor the former bill; when he found that assurances had been made to him then too and the committee that were not based on fact, he refused to sponsor the bill.

I again affirm that I have no objection to stringent licensing and certification procedures that include criminal checks. However, I do object that only private professional guardians are singled out for these licensing requirements. I want to see that guardians hired by the Office of Public Advocacy be required to meet the same requirements and that they also have to absorb the cost of licensing and certification prior to their being hired by the state agency. These conditions and requirements for liability insurance and criminal checks should apply to OPA employees and contractors as well.

References were made to the fact that CAPA went bankrupt and that the OPA is still dealing with the fallout of that situation. CAPA's director reported the problems on her own when she discovered the irregularities which had occurred during the directorship of the former director. Somehow, the OPA which is charged with the oversight of private guardians had remained in the dark about the situation for some time. Court visitors did not recognize the problems until they were pointed out to them. It is my understanding that CAPA had sufficient insurance coverage to protect all of the clients but OPA attorneys failed to file the necessary claims despite being informed of the fact. The former director of CAPA was told in a recent case by the probate master that in all evidence submitted to the Master for review, the Master could find no evidence that the director had done anything wrong.

OPA's court visitors need to meet stringent requirements and the background and educational checks as well. There is no way they can review the work of a licensed guardian or conservator unless they meet the criteria themselves. It is my belief that all court visitors should be qualified to meet the requirements for the RG or MG exam. They should all serve an internship under the direction of a qualified guardian or in a guardianship agency. OPA should not intern its own court visitors.

Complaints about OPA case management, lost assets, making partial guardianships full when transferred to OPA, without petition or hearing or notification of spouses or family members, lack of sensitivity to cultural and ethnic norms and customs, failure to exercise the duties of a guardian or conservator are commonplace. OPA has been subjected to

four legislative audits and the conflict of interest it has with private agencies by virtue of being both a regulator and competitor were mentioned in all of them.

The conflict of interest issue and the lack of training exhibited by OPA's court visitors was also the subject of an Elders Issues Task Force forum to which Interior legislators were invited. The recommendations recommended that OPA's own work be reviewed on the same basis as that of private professional agencies and that could only be achieved by moving the court visitors away from the OPA. Other recommendations included a request that court appointed attorney contracts be abolished and that attorneys to represent respondents be drawn from a list of attorneys willing to handle the cases, or in the alternative, have a GAL other than the sole contractor attorney appointed in every case; that public guardians not be allowed to give Powers of Attorney on behalf of their wards to other private non-profit agencies who provide services to the ward; that OPA be required to account for all assets and their disposition. There were others.

Now, on to the unfinished testimony:

Article 3 Practices Sec. 08.26.110

How can the fee schedule of a private professional entity show a maximum amount that the ward or protected person? I would prefer that it be amended to read that "The fee schedule.....and will agree that the entity will not charge the ward in excess of an amount that represents OPA's costs to provide the necessary services" In court OPAs' attorneys represent that OPA charges \$40 per month, therefore, the contract attorney/GAL argues that it is in the ward's best interest to have OPA serve as guardian/conservator. What they do not represent to the court is that private entities have to pay their own overhead and benefits and other costs of doing business. For instance, I know of no other guardians who are paid \$35 per hour with a full benefit package other than at OPA. The last study made on the subject two years ago placed the cost to the state at \$1,742. Per month per ward to provide guardianship/conservatorship services. Price fixing becomes something that buries private entities. Another problem is that an OPA attorney will call for hearing after hearing just to get a private agency to cave in. We cannot appear in court without an attorney at our expense; OPA's court appointed attorneys are at state expense. In a recent case, where PGSC offered to do a case for free at no cost to the state, the court appointed attorney and the court visitor called for a number of hearings. Because PGSC was not being paid for its work due to a complete lack of funds above and beyond the cost of care, we could not afford to pay an attorney to fight for the case. We gave up...the state now had an additional \$1,742 to pay in OPA costs as opposed to having a vulnerable person in a nursing home being cared for at no cost to the state for the guardianship and conservatorship.

Page 10, Sec. 13.26.001 Adoption of standards of practice.

(8) Why is the "department" allowed to be present only when a private professional guardian or a private professional conservator is involved in the proceeding? Why does this not include OPA and private family guardians?

Page 11 Sec. 13.26.025 Appointment of a guardian ad litem.

Why this section? It appears to assure the court appointed OPA attorney a guarantee of being on the state payroll indefinitely. An attorney is appointed for the guardianship/conservatorship proceeding and his role ends with the appointment of a guardian or conservator as the case may be. He then is to take his direction from the appointed guardian or conservator rather than the incapacitated ward. Keeping him on as guardian ad litem will assure his continued control of the guardianship for OPA.

Further, if OPA competes with the private sector for appointments, it is a serious conflict of interest for them to also be allowed to serve as guardian ad litem for wards in the private sector. OPA should not be allowed to regulate and compete with the private sector. They need to either be a regulator and overseer or a service provider but not both.

Page 15 Sec 12 . Sec 13.26.12(a) amended to read or on the court's own motion, should not be allowed. If OPA is charged with oversight and regulation, then this is yet "one more threat without recourse" to professional guardians who are not affiliated with OPA. It sounds as though there is no recourse or due process here.

Page 23 Sec. 24 AS13.26.285(e)

Needs to be qualified. Many times families who do not live in Alaska and who have little or no contact with a ward or protected person will ask the conservator to take care of all burial arrangements and to close out the case without the family's involvement. I would like to see something in the statutes that families can authorize a conservator to proceed as a personal representative would as long as there is a stipulation or sort of power of attorney given to the conservator either prior to death of the ward or protected person or immediately after death by heirs and or family members.

Page 24 Sec. 26 AS13.26.380(b)

Should be left as is or modified to reflect that the public guardian must report on its efforts to find a suitable entity or person to serve as guardian and/or conservator. The proposed change asking only for information on the availability of a private guardian or conservator is dangerous. OPA should be required to report on such availability when they appear for the permanent hearing or when they file the guardianship implementation plan, 90 days after permanent appointment. IN a recent case OPA spent down a client from CAPA (whose case OPA was supposed to be looking over for irregularities before transferring the case to a private entity) in an alarming manner during OPA's temporary appointment. He went to OPA with \$110,000, less than 6 months later, OPA had spent him down to \$25,000 with a use for that, too. It is too long a time for OPA to have a client for one year before trying to find an alternate guardian or conservator. Besides at the current time, OPA's conservatorships are not being reviewed by court visitors

because "we have a conflict of interest because we contract with OPA and there are too many OPA cases."

In closing I would like to state that the Native groups and organizations were not asked for input. Furthermore, the Real Systems Task Force is working on changes that might impact Alaska's guardianship and conservatorship system.

There has been much attention focused on guardians and their ignorance of ADA and independent living advocacy and the issues involving that. . . Accountability of all guardians is a hot topic right now, not just the professional guardians; in fact the majority of complaints about guardians center around the state agencies that provide such services.

This is a self-serving bill that is designed to assure the perpetuity of a state agency that not at all regulated but is allowed to function both as competitor and regulator of private agencies that must bear their own costs of business. This bill amounts to unfair trade practices, discriminatory regulation and in some aspects denies due process to the agency's public sector competitors.



"B" Jarvi

PGSC

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April 5, 2004

The Honorable Peggy Wilson, Chair
House Health, Education and Social Services Committee
Alaska Capitol, Room 104
Juneau, Alaska 99801-1182

RE: HB 427 (Anderson)—Support

Dear Chair Wilson:

On behalf of the AARP members in Alaska, we recommend that you and your colleagues on the House Health, Education and Social Services Committee support HB 427, authored by Representative Tom Anderson.

AARP believes that all states should enact guardianship and conservatorship laws that incorporate procedural and legal due process safeguards for persons in need of protective measures.

Alaska should:

- require all guardians to receive adequate training and information about their responsibilities and requirements;
- mandate certification of guardians who serve multiple, unrelated incapacitated people (certification programs should include training, testing and accountability requirements);
- make guardians' financial exploitation of wards a criminal offense and hold guardians personally liable to wards for misappropriated funds or assets;
- address state courts' authority to make guardianship determinations when potential wards have ties to more than one state; and
- codify, simplify and clarify trust laws by modeling them on the Uniform Trusts Code promulgated by the National Conference of Commissioners on Uniform State Laws.

HB 427 represents the best current thinking of many organizations concerned with establishing the "best practices" of guardianship into state statute. It is a complex area that has long warranted attention by the Legislature.

AARP recommends an "AYE" vote on HB 427.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
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CC: Vice-Chair Carl Gatto
Representative John Coghill
Representative Paul Seaton
Representative Kelly Wolf
Representative Sharon Cissna
Representative Mary Kapsner
Representative Tom Anderson
Marie Darlin
Patrick Luby

STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY

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April 6, 2004

The Honorable Peggy Wilson, Chairwoman
House Committee on Health,
Education & Social Services
Alaska State Legislature

RE: House Bill 427, An Act relating to guardianships and conservatorships

Dear Representative Wilson,

Thank you for hearing House Bill 427 in the HESS committee. It is my firm belief that this legislation is critical to ensuring the safety and well being of vulnerable adults under the supervision of guardians and conservators. It is my further belief that this legislation is a prerequisite to the establishment of private guardians and conservators in Alaska to serve our State's growing population of vulnerable and incapacitated adults. Again, thank you for addressing this legislation.

Having said that, I need to address certain comments and testimony given at the last committee meeting that may have led to some misunderstandings.

First, this legislation would result in the regulation of professional guardians and conservators – those who are in the *business* of providing guardianship and conservatorship services. It would not impact family members who are performing this role for their disabled family members. It would also exempt financial institutions who are performing this role, since they are sufficiently regulated under current law. The only provision in this legislation that imposes a new requirement on family guardians is proposed AS 13.26.145(c), which states that when appointing a relative or friend as guardian the court shall require that the proposed guardian complete one hour of mandatory education on the basics of guardianship. OPA would provide this training at no cost to that individual.

There were also several comments made about the Public Guardian section of the Office of Public Advocacy (OPA) that must be corrected. OPA does not charge \$40 an hour for guardianship services as was represented by a witness from Fairbanks. OPA charges monthly fees for conservatorship and guardianship services which are set forth in regulation and are based upon the total value of a client's liquid assets. Forty dollars (\$40) per month is charged to clients who have liquid assets of less than \$10,000. Above that, a sliding scale is applied. In no case shall the monthly fee exceed \$145. The great majority of OPA's public guardian clients have

The Honorable Peggy Wilson
April 6, 2004
Page 2

extremely limited resources and are either charged \$40 per month for our services or receive fee deferrals and/or fee waivers as a result of financial hardship.

It was also suggested that OPA's public guardians should fall within the coverage of this legislation. This suggestion ignores the fact the OPA's public guardians are State employees and are regulated by the processes of State government. OPA's guardians are subject to oversight by the Public Advocate, who reports to the Commissioner of Administration. Both the commissioner and myself serve at the pleasure of the governor. We are also subject to oversight by the Legislature. Moreover, assuming for purposes of argument that a public guardian were to take financial advantage of a client, that client would be protected and the risk management function of the Department of Law would indemnify all client losses. Finally, and most importantly, OPA's guardians have demonstrated their proficiency and expertise in providing services to our clients. The legislation before the committee would require all private guardians to register with the National Guardianship Foundation which requires the passage of a written guardian exam. Currently, all public guardians have passed this exam and are registered with the National Guardianship Foundation. Four public guardians have achieved advanced certification by passing the National Guardianship Foundations' master guardian exam. In short, OPA's guardians currently meet the professional registration requirements called for in this legislation, and OPA's clients have the financial protections imposed by the bill on private guardians.

The witness from Fairbanks also stated that the court visitors should be included in the coverage of this legislation. This statement evidences a lack of understanding of the role of the court visitor. In short, the court visitor is an uninterested third-party who provides an objective analysis to the court on whether a guardianship should be approved. The court visitor is responsible for arranging evaluations of the person subjected to a guardianship petition (the respondent). In addition, the visitor is charged with interviewing the petitioner and the respondent, friends, family, care providers, and others who may have information on the abilities and or disabilities of the respondent. The court visitor then prepares a written report with recommendations to the court in advance of the scheduled court hearing. Most importantly, however, while the court visitor has access to the respondent's financial records as provided in the court order, they do not have access to the financial resources of the protected person. Therefore, there is no reason to impose a bonding requirement as was suggested by the witness from Fairbanks. Finally, while the Legislature chose to transfer the court visitor function from the court system to OPA, court visitors are independent contractors and are not employees of OPA or any other state agency. I would not object to this function being returned to the court system.

It was implied that the OPA is in league with the court visitors to steer cases towards the public Guardians. This is not the case. The public guardians at OPA have high caseloads and OPA has no incentive to increase the number of cases they are now carrying. Cases are regularly reviewed - as required by statute - to determine if there is a family member, friend, or private

OPA's guardians do not currently undergo criminal background checks as called for in the legislation. However, upon applying with the State, applicants must identify and explain any criminal history. OPA is currently considering imposing criminal background checks on its public guardians.

The Honorable Peggy Wilson
April 6, 2004
Page 3

organization who can assume the role of guardian or conservator. OPA is guardianship resource and appointment of last resort. To the extent our clients can be served by family or private entities, OPA aggressively seeks these alternatives.

It was also suggested that OPA regulates private guardians. This is not accurate. OPA provides public guardians where no alternative is available. We have no regulatory authority over private guardians. Having said that, OPA does have an obligation to ensure that persons of competence and training serve our clients and other vulnerable Alaskans.² This goal would be served by passage of House Bill 427.

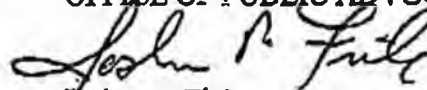
Finally, the private guardian from Fairbanks also made representations regarding the process by which this bill was drafted. While no doubt well-intentioned, her comments demonstrate a misunderstanding of that process. This legislation resulted from the collaborative participation from a number of individuals and agencies concerned about guardianship reform. They included Adult Protective Services, The Alaska Trust Company, the Alaska Court System, the Office of the Long Term Care Ombudsmen, the Office of Public Advocacy, the Disability Law Center, private attorneys, court visitors, and private professionals providing guardianship and conservatorship services. Mr. Dave Shady, the principal at FGSC, was also invited to participate.

In closing, I would only state that it is not possible to respond in this letter to all of the verbal and written comments made by the witness from Fairbanks. I am happy to make staff and myself available to address any concerns or issues committee members may have regarding her testimony, or any other concern with this legislation.

Thank you again for hearing this important legislation.

Sincerely,

OFFICE OF PUBLIC ADVOCACY



Joshua P. Fink
Public Advocate

² To this end it is also accurate to state that the former director at OPA had a hand in pointing out to the court concerns about suspected irregularities and mismanagement at CAPA, a private guardian, who is now the subject of ongoing litigation. As such, I would prefer not to comment. However, I will make myself available to legislators who may wish to discuss this matter, and would note that the case was covered extensively in both Anchorage and Fairbanks' newspapers.

STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY

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April 6, 2004

The Honorable Peggy Wilson, Chairwoman
House Committee on Health,
Education & Social Services
Alaska State Legislature

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Having said that, I need to address certain comments and testimony given at the last committee meeting that may have led to some misunderstandings.

First, this legislation would result in the regulation of professional guardians and conservators – those who are in the *business* of providing guardianship and conservatorship services. It would not impact family members who are performing this role for their disabled family members. It would also exempt financial institutions who are performing this role, since they are sufficiently regulated under current law. The only provision in this legislation that imposes a new requirement on family guardians is proposed AS 13.26.145(c), which states that when appointing a relative or friend as guardian the court shall require that the proposed guardian complete one hour of mandatory education on the basics of guardianship. OPA would provide this training at no cost to that individual.

There were also several comments made about the Public Guardian section of the Office of Public Advocacy (OPA) that must be corrected. OPA does not charge \$40 an hour for guardianship services as was represented by a witness from Fairbanks. OPA charges monthly fees for conservatorship and guardianship services which are set forth in regulation and are based upon the total value of a client's liquid assets. Forty dollars (\$40) per month is charged to clients who have liquid assets of less than \$10,000. Above that, a sliding scale is applied. In no case shall the monthly fee exceed \$145. The great majority of OPA's public guardian clients have

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extremely limited resources and are either charged \$40 per month for our services or receive fee deferrals and/or fee waivers as a result of financial hardship.

It was also suggested that OPA's public guardians should fall within the coverage of this legislation. This suggestion ignores the fact the OPA's public guardians are State employees and are regulated by the processes of State government. OPA's guardians are subject to oversight by the Public Advocate, who reports to the Commissioner of Administration. Both the commissioner and myself serve at the pleasure of the governor. We are also subject to oversight by the Legislature. Moreover, assuming for purposes of argument that a public guardian were to take financial advantage of a client, that client would be protected and the risk management function of the Department of Law would indemnify all client losses. Finally, and most importantly, OPA's guardians have demonstrated their proficiency and expertise in providing services to our clients. The legislation before the committee would require all private guardians to register with the National Guardianship Foundation which requires the passage of a written guardian exam. Currently, all public guardians have passed this exam and are registered with the National Guardianship Foundation. Four public guardians have achieved advanced certification by passing the National Guardianship Foundations' master guardian exam. In short, OPA's guardians currently meet the professional registration requirements called for in this legislation, and OPA's client's have the financial protections imposed by the bill on private guardians.

The witness from Fairbanks also stated that the court visitors should be included in the coverage of this legislation. This statement evidences a lack of understanding of the role of the court visitor. In short, the court visitor is an uninterested third-party who provides an objective analysis to the court on whether a guardianship should be approved. The court visitor is responsible for arranging evaluations of the person subjected to a guardianship petition (the respondent). In addition, the visitor is charged with interviewing the petitioner and the respondent, friends, family, care providers, and others who may have information on the abilities and or disabilities of the respondent. The court visitor then prepares a written report with recommendations to the court in advance of the scheduled court hearing. Most importantly, however, while the court visitor has access to the respondent's financial records as provided in the court order, they do not have access to the financial resources of the protected person. Therefore, there is no reason to impose a bonding requirement as was suggested by the witness from Fairbanks. Finally, while the Legislature chose to transfer the court visitor function from the court system to OPA, court visitors are independent contractors and are not employees of OPA or any other state agency. I would not object to this function being returned to the court system.

It was implied that the OPA is in league with the court visitors to steer cases towards the public Guardians. This is not the case. The public guardians at OPA have high caseloads and OPA has no incentive to increase the number of cases they are now carrying. Cases are regularly reviewed - as required by statute - to determine if there is a family member, friend, or private

OPA's guardians do not currently undergo criminal background checks as called for in the legislation. However, upon applying with the State, applicants must identify and explain any criminal history. OPA is currently considering imposing criminal background checks on its public guardians.

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organization who can assume the role of guardian or conservator. OPA is guardianship resource and appointment of last resort. To the extent our clients can be served by family or private entities, OPA aggressively seeks these alternatives.

It was also suggested that OPA regulates private guardians. This is not accurate. OPA provides public guardians where no alternative is available. We have no regulatory authority over private guardians. Having said that, OPA does have an obligation to ensure that persons of competence and training serve our clients and other vulnerable Alaskans.² This goal would be served by passage of House Bill 427.

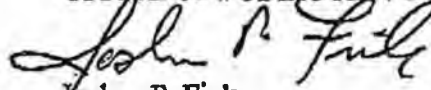
Finally, the private guardian from Fairbanks also made representations regarding the process by which this bill was drafted. While no doubt well-intentioned, her comments demonstrate a misunderstanding of that process. This legislation resulted from the collaborative participation from a number of individuals and agencies concerned about guardianship reform. They included Adult Protective Services, The Alaska Trust Company, the Alaska Court System, the Office of the Long Term Care Ombudsmen, the Office of Public Advocacy, the Disability Law Center, private attorneys, court visitors, and private professionals providing guardianship and conservatorship services. Mr. Dave Shady, the principal at PGSC, was also invited to participate.

In closing, I would only state that it is not possible to respond in this letter to all of the verbal and written comments made by the witness from Fairbanks. I am happy to make staff and myself available to address any concerns or issues committee members may have regarding her testimony, or any other concern with this legislation.

Thank you again for hearing this important legislation.

Sincerely,

OFFICE OF PUBLIC ADVOCACY


Joshua P. Fink
Public Advocate

² To this end it is also accurate to state that the former director at OPA had a hand in pointing out to the court concerns about suspected irregularities and mismanagement at CAPA, a private guardian, who is now the subject of ongoing litigation. As such, I would prefer not to comment. However, I will make myself available to legislators who may wish to discuss this matter, and would note that the case was covered extensively in both Anchorage and Fairbanks' newspapers.

TESTIMONY PRESENTED BEFORE THE
ALASKA STATE LEGISLATURE

HOUSE
HEALTH, EDUCATION AND SOCIAL SERVICES
COMMITTEE

In the matter of

HB 427

**"AN ACT RELATING TO GUARDIANSHIPS AND
CONSERVATORSHIPS..."**

Testimony of
Robert P. Penzenik
Anchorage, Alaska

April 6, 2004

1 Mr. Chairman, members of the Committee, my name is Robert Penzenik, and I
2 would like to express my appreciation for the opportunity to speak this
3 afternoon. I currently am a resident of Anchorage and have lived in Alaska since
4 1964.

5
6 I am speaking today in support of HB 427, a bill I believe to be vitally important
7 to a small but important group of Alaskan's that are, I'm afraid, least able to
8 represent themselves, minors and those adults that the courts have found to be in
9 need of protection, some without families in Alaska.

10
11 I have been involved with Alaska's system of guardians and conservators both as
12 a provider of services and a user of those services. My most recent experience in
13 this area has been with my daughter, when she was found to be in need of a
14 Guardian/Conservator. In order to allow a more comfortable family relationship
15 it was decided to utilize the services of a paid, professional guardian and
16 conservator rather than a family member. We could not be more pleased with
17 the outcome. However, it should be noted that, in our situation, my daughter still
18 has an active support system in Alaska that is involved on a regular basis with
19 the Guardian/Conservator and is able to track such things as safety, financial
20 planning and the appropriate use of finances.

21
22 My primary reason for taking part in today's hearing is concern for those
23 individual's requiring services that do not have an operating support system in
24 place.

25

1 Some years ago, as a conservator for a number of minors that had lost their father
2 in a plane accident, I became aware of how easy it would be for someone acting
3 as a Guardian/Conservator to inappropriately utilize funds belonging to others.
4 While my experience in this area goes back to the seventies, I don't believe the
5 situation has changed that much.

6 2

7 The more recent situation in Fairbanks with the Community Action Agency of
8 Alaska is a case in point. If HB 427 had been in place prior to CAPA's
9 bankruptcy, their clients would have been in a much better position. Under this
10 bill, the financial viability of a company operating as Guardian/Conservator
11 would be available to both the Court and the licensing authority. It should be
12 noted that since current practice requires that the Court look at each case
13 separately. Although CAPA had already been removed from seven cases they
14 were still allowed to operate. Under HB 427, the yearly financial report and the
15 first case of the Court removing CAPA from a position of Guardian/Conservator
16 would have alerted the state to a possible problem.

17

18 There are a number of weaknesses in the present system that would be
19 addressed by HB 427;

20 1 - Currently there is no requirement that prospective Guardians/
21 Conservators have any kind of criminal record check, the danger
22 here is obvious;

23 2 - No system currently exists that allows judges to determine if a
24 prospective Guardian/Conservator has been found by another
25 Alaskan judge to be unqualified or for some reason had been
26 removed from a case;

1 3 - There is no requirement under the current system that requires any
2 training or appropriate experience prior to being appointed to a
3 private professional Guardianship/Conservator ship.

4 One final point that in this time of financial turmoil takes on special significance,
5 cost to the tax payers of Alaska. It is expected that no more than 10 to 15 licenses
6 would be applied for under this bill and the legislation has been designed to
7 make implementation fully self supporting. All cost to the state under this bill
8 would be covered by the required application fee.

9

10 Once again let me thank the Chairman and the Committee for this opportunity to
11 speak this afternoon in support of HB 427. I believe this is necessary, responsible
12 legislation that will help to keep our most vulnerable individuals safe.

13

14 Thank you.