

HB

427

FISCAL NOTE

CSHB427(Jud)

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: #2
 Bill Version: HB427CS-ACS-TC-4-14-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Protection of Persons and Property BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Anderson
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of CSHB 427(HES).

Prepared by: Doug Wooliver Administrative Attorney, Phone 463-4750
 Division: Alaska Court System Date/Time 4/14/04 10:26 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/14/2004
 Agency: Alaska Court System

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 21, 2004

SUBJECT: CSHB 427(JUD) relating to guardianships, conservatorships, and other matters (Work Order No. 23-LS1627/S)

TO: Representative Lesil McGuire
Chair, House Judiciary Committee
Attn: Vanessa

FROM: *TLB*
Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above. The draft includes the requested court rule change and small corrections, which are described below. Per your request, a copy of my 4-16-04 memo about the court rule change is attached for your reference.

1. Court rule change. The court rule change provisions have been added to the bill: in the title and at the end of the bill (bill sec. 32(a)). They are added for sec. 08.26.100 only because, upon rethinking, sec. 08.26.180 is an exemption and would, therefore, not affect the court rule. Sec. 35 has also been changed accordingly.
2. Sec. 08.26.050 conforming change. In sec. 08.26.050(a)(1) and (b), the two references to "National Guardianship Foundation" have been changed to conform to the governing language in sec. 08.26.020(3) and 08.26.030(3). The replacement language is "a nationally recognized organization in the field of guardianships."
3. Grammatical tense change. In AS 13.26.145(d)(1) and 13.26.210(d)(1), "has" is changed to "had" because it is meant to refer to an action in the past when the protected person nominated a guardian or conservator and may have had capacity.
4. Sec. 13.26.210(f) correction. Since this section deals with conservators, the reference to "guardian" in two places in sec. 13.26.210(f) has been changed to "conservator."
5. Effective date correction. Bill sec. 37 has been adjusted to reflect that bill sec. 34 has its own effective date.

If I may be of further assistance, please advise.

TLB:med
04-435.med

CC: Jim Shine

Enclosure

LEGAL SERVICES

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MEMORANDUM

April 16, 2004

SUBJECT: CSHB 427(JUD) relating to guardianships, conservatorships, guardians ad litem, and related matters
(Work Order No. 23-LS1627\Q)

TO: Representative Lesil McGuire
Chair, House Judiciary Committee
Attn: Vanessa

FROM: Theresa L. Bannister
Legislative Counsel

You have asked whether the bill described above has the effect of indirectly amending Rule 17(c), Alaska Rules of Civil Procedure. In my opinion, AS 08.26.100 and 08.26.180 may possibly be interpreted to indirectly amend Rule 17(c) because these sections are not limited to proceedings under AS 13.26. The Alaska Rules of Probate Procedure normally govern proceedings under AS 13.26 (see Rule 1, Alaska Rules of Probate Procedure). However, the prohibition in AS 08.26.100 (against appointing a guardian or conservator in a court proceeding unless the person is licensed) and the exemption in AS 08.26.180 are not limited to proceedings under AS 13.26. Rule 17(c) includes broad language that arguably could cover AS 08.26.100 and 08.26.180 by providing that the "court shall make such other order as it deems proper for the protection of the infant or incompetent person." Although the language in Rule 17(c) is not specifically changed, it is broad enough that I would recommend indicating this change in the bill (including in its title) or limiting the scope of the new provisions to proceedings brought under AS 13.26.

If I may be of further assistance, please advise.

TLB:med
04-415.med

23-LS1627\S
Bannister
4/21/04

CS FOR HOUSE BILL NO. 427(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

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 Rule 17(c), Alaska Rules of Civil Procedure, and Rules**
6 **16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective**
7 **date."**

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

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

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

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

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

1 **Article 1. Licensing.**

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

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

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

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

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

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

16 (5) 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 (6) 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 at least an associate degree in accounting or a
29 closely related field;

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

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

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

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

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

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

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

13 (3) the person submits proof satisfactory to the department that the
14 person is able to be bonded and insured;

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

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

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

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

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

29 (A) an officer of the organization, if the organization is a for-
30 profit corporation or a nonprofit corporation;

31 (B) a member or manager of the organization, if the

1 organization is a limited liability company;

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

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

7 (7) the person satisfies the application requirements of AS 08.26.060.

8 (b) If the organization's employees have licenses under both AS 08.26.020 and
9 08.26.030, the license issued under (a) of this section shall cover providing the
10 services of a guardian and a conservator.

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

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

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

19 (1) is not certified by a nationally recognized organization in the field
20 of guardianships at the time of the application but is likely to become certified within
21 one year from the date of the license, and otherwise satisfies the licensing
22 requirements of AS 08.26.020 or 08.26.030; and

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

24 (b) If the individual with a temporary license under (a) of this section submits
25 proof of certification by a nationally recognized organization in the field of
26 guardianships within one year from the date of the issuance of the temporary license,
27 the department shall issue the individual a license under AS 08.26.020 or 08.26.030
28 without requiring a new application.

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

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

1 and submit

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

7 (A) officers of the organization, if the applicant is a
8 corporation;

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

11 (C) partners of the organization, if the applicant is a
12 partnership;

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

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

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

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

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

29 (7) if the applicant is not an individual, a copy of the documents under
30 which the applicant was formed, including articles of incorporation and bylaws if the
31 applicant is a corporation.

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

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

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

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

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

13 **Article 2. Reports.**

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

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

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

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

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

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

28 (6) a list of all persons currently employed by the licensee in the
29 business for which the license was issued.

30 **Sec. 08.26.090. Submission of court reports to department.** Upon request
31 of the department, a licensee shall submit to the department a copy of the reports that

1 the licensee is required to submit to a court under AS 13.26.

2 **Article 3. Practices.**

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

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

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

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

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

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

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

(6) the licensee has filed for bankruptcy.

Article 4. Discipline.

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

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

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

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

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

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

(6) 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 provide the licensee's services competently and safely for the ward or protected person;

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

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

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

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

(A) guardianships, if the person was issued an individual private professional guardian license; or

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

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

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

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

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

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

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

15 **Article 5. General Provisions.**

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

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

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

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

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

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

30 (5) "organizational license" means a license issued under
31 AS 08.26.040;

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (a) A notice of the filing of a petition, a summary of all formal proceedings,
31 and a dispositional order or modification or termination of a dispositional order

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

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

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

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

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

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

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

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

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

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

20 **Sec. 13.26.025. Appointment of a guardian ad litem.** (a) Upon the request
 21 of a ward, protected person, or respondent, or the attorney of a ward, protected person,
 22 or respondent, the court shall appoint a guardian ad litem to protect the rights of the
 23 ward, protected person, or respondent in proceedings under AS 13.26.090 - 13.26.320.
 24 The court shall make the appointment if the court is satisfied that, because of impaired
 25 ability effectively to receive and evaluate information regarding the proceedings or
 26 because of impaired ability to communicate decisions regarding the proceedings, the
 27 ward, protected person, or respondent is incapable of determining the ward's, protected
 28 person's, or respondent's position regarding the issues involved in the pending
 29 proceedings, 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) The guardian ad litem shall assist the ward, protected person, or
5 respondent in determining the ward's, protected person's, or respondent's interests in
6 regard to the legal proceedings that involve the ward, protected person, or respondent.
7 If the ward, protected person, or respondent is entirely incapable of determining those
8 interests, the guardian ad litem shall make the determination of those interests and
9 advise the court and counsel for all parties accordingly. The guardian ad litem shall

10 (1) inquire thoroughly into all the circumstances that a prudent ward,
11 protected person, or respondent would consider in determining the ward's, protected
12 person's, or respondent's own interests in the proceedings, including any prior relevant
13 statements made or actions taken by the ward, protected person, or respondent; and

14 (2) encourage the ward, protected person, or respondent to participate,
15 to the maximum extent possible, in all decisions and to act on the ward's, protected
16 person's, or respondent's own behalf on all matters in which the ward, protected
17 person, or respondent is able.

18 (c) The attorney for the ward, protected person, or respondent may be
19 appointed as the guardian ad litem for the ward, protected person, or respondent if
20 there is no other party readily available and able to serve as a guardian ad litem and
21 the court determines that the appointment is appropriate under the standards set out in
22 (a) of this section. When a person who has been appointed by the court as the attorney
23 for the ward, protected person, or respondent is appointed to act as the guardian ad
24 litem for the ward, protected person, or respondent under this subsection, the
25 appointment of the person as the attorney ends, and the person appointed as the
26 guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected
27 person, or respondent.

28 (d) The office of public advocacy shall provide guardian ad litem services to
29 persons who would suffer financial hardship or become dependent upon a government
30 agency or a private person or agency if the services were not to be provided at state
31 expense.

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

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

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

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

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

23 (a) A guardian shall submit a report to the court [OR REQUEST THAT A
24 VISITOR BE APPOINTED TO PREPARE AND SUBMIT A REPORT] at least
25 annually. In addition, every third year, the court shall appoint a visitor to file a
26 report reviewing the guardianship during the period since the last visitor's
27 report, if any [A COURT-APPOINTED VISITOR SHALL PREPARE THE
28 REPORT AT LEAST ONCE IN EACH THREE-YEAR PERIOD]. The guardian
29 shall submit an additional report to the court when

30 (1) the court orders it;

31 (2) there is a significant change in the capacity of the ward to meet the

1 essential requirements for health and safety or to protect the ward's rights;

2 (3) the guardian resigns or is removed;

3 (4) the guardianship is terminated; or

4 (5) the ward requests it.

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

7 (1) the name and address of the ward and the guardian;

8 (2) the ward's present mental, physical, and social conditions and
9 present living arrangements and the ward's opinion of these arrangements;

10 (3) changes in the capacity of the ward to meet essential requirements
11 for physical health and safety;

12 (4) the services being provided to the ward;

13 (5) the significant actions taken by the guardian during the reporting
14 period in regard to the ward;

15 (6) a financial accounting of the estate that has been subject to the
16 possession or control of the guardian;

17 (7) a list of the number and nature of the contacts between the guardian
18 and ward if the ward does not reside with the guardian;

19 (8) any other information requested by the court or necessary or
20 desirable in the opinion of the guardian [OR VISITOR].

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

22 (c) The visitor report required by (a) of this section must include

23 (1) the name and address of the ward and the guardian;

24 (2) the services being provided to the ward by or through the guardian;

25 (3) the significant actions taken by the guardian during the reporting
26 period in regard to the ward;

27 (4) a financial accounting of the estate that has been subject to the
28 possession or control of the guardian;

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

31 (6) any other information requested by the court or necessary or

desirable in the opinion of the visitor.

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

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

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

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

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

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

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

25 (a) The court may appoint a competent person, including a private
26 professional guardian, or the public guardian, [OR A PRIVATE ASSOCIATION
27 OR NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
28 INCAPACITATED PERSONS,] as the guardian of an incapacitated person.

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

30 (c) A person may be appointed as the guardian of an incapacitated person
31 notwithstanding the provisions of (b) of this section if the person is the spouse, adult

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child, parent, or sibling of the incapacitated person and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated person. When appointing a relative or friend of the incapacitated person as the guardian of an incapacitated person, the court shall require that the proposed guardian complete one hour of mandatory education on the basics of guardianship before the appointment or within 30 days after the appointment.

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

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

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

(2) the spouse of the incapacitated person;

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

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

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

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

(7) the public guardian.

* Sec. 17. AS 13.26.145(e) is repealed and reenacted to read:

(e) When more than one person has equal priority under (d) of this section, the court shall select the person it considers to be the best qualified.

* Sec. 18. AS 13.26.145 is amended by adding a new subsection to read:

(f) When in the best interest of the incapacitated person, a court may decline

1 to appoint a person who has priority under (d) of this section as guardian of an
2 incapacitated person and may appoint as guardian a person who has a lower priority
3 than another person or who does not have a priority.

4 * Sec. 19. AS 13.26.150(c) is amended to read:

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

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

14 (2) the guardian shall assure the care, comfort, and maintenance of the
15 ward;

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

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

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

26 (6) the guardian has the powers [IF A CONSERVATOR FOR THE
27 ESTATE OF THE WARD HAS NOT BEEN APPOINTED, THE GUARDIAN MAY
28 RECEIVE MONEY] and duties of a conservator under this chapter [PROPERTY
29 DELIVERABLE TO THE WARD AND APPLY THE MONEY AND PROPERTY
30 FOR SUPPORT, CARE, AND EDUCATION OF THE WARD]; however, the
31 guardian may not apply the ward's money or property for the services as guardian or

1 for room and board that the guardian[,] or the guardian's spouse, parent, or child has
2 furnished the ward unless, before payment, the court finds that the ward is financially
3 able to pay and that the charge is reasonable; notice of a request for payment approval
4 shall be provided to at least one relative of the ward if possible; the guardian shall
5 exercise care to conserve any excess money or property for the ward's needs;

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

12 * Sec. 20. AS 13.26.195(b) is amended to read:

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

24 * Sec. 21. AS 13.26.210 is repealed and reenacted to read:

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

28 (b) The court may not appoint a person to be a conservator of a protected
29 person if the person

30 (1) provides, or is likely to provide during the conservatorship,
31 substantial services to the protected person in a professional or business capacity,

1 other than in the capacity of conservator;

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

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

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

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

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

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

18 (2) the spouse of the protected person;

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

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

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

24 (6) a private professional conservator;

25 (7) the public guardian.

26 (e) When more than one person has equal priority under (d) of this section, the
27 court shall select the person it considers to be the best qualified.

28 (f) When in the best interest of the protected person, a court may decline to
29 appoint a person who has priority under (d) of this section as conservator of the
30 protected person and may appoint as conservator a person who has a lower priority
31 than another person or who does not have a priority.

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

9 * Sec. 22. AS 13.26.250 is amended to read:

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

20 * Sec. 23. AS 13.26.255 is amended to read:

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

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

4 * Sec. 24. AS 13.26 is amended by adding a new section to read:

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

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

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

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

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

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

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

26 (7) a summary of the information that

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

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

30 (8) a description of the alternatives to conservatorship that were
31 considered and not recommended and an explanation of why they are not feasible to

1 meet the needs of the proposed protected person;

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

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

8 (A) potential conservators;

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

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

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

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

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

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

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

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

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

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

30 (5) a list of the number and nature of the contacts between the
31 conservator and the protected person if the protected person does not reside with the

1 conservator;

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

4 * Sec. 25. AS 13.26.285(e) is amended to read:

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

1 personal representative.

2 * Sec. 26. AS 13.26.300(a) is amended to read:

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

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

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

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

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

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

28 (a) The office of public advocacy shall

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

31 (2) provide visitors and experts in guardianship proceedings under

1 AS 13.26.131;

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

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

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

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

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

30 (8) establish a fee schedule and collect fees for services provided by
31 the office, except as provided in AS 18.85.120 or when imposition or collection of a

1 fee is not in the public interest as defined under regulations adopted by the
2 commissioner of administration;

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

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

8 * **Sec. 29.** AS 44.21.440 is amended by adding a new subsection to read:

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

13 * **Sec. 30.** AS 44.62.330(a) is amended by adding a new paragraph to read:

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

17 * **Sec. 31.** AS 13.26.105(d), 13.26.112, and 13.26.135(a)(8) are repealed.

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

20 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 08.26.100, enacted by sec. 2 of
21 this Act, has the effect of changing Rule 17(c), Alaska Rules of Civil Procedure, by restricting
22 the persons that the court may appoint as guardians or conservators in some situations and,
23 therefore, has the effect of limiting the orders that the court is authorized to make under Rule
24 17(c) with regard to the protection of infants or incompetent persons.

25 (b) AS 13.26.120(b), enacted by sec. 11 of this Act, has the effect of changing Rule
26 16(f), Alaska Rules of Probate Procedure, by giving guardians additional authority to perform
27 certain acts for a deceased ward.

28 (c) AS 13.26.250, as amended by sec. 22 of this Act, has the effect of changing Rule
29 17(e), Alaska Rules of Probate Procedure, by changing when a report is due and by adding
30 additional material to be included in the report.

31 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION. (a) The court shall appoint a visitor under AS 13.26.118(a), amended
3 by sec. 9 of this Act, for a guardianship that was in existence on and before the effective date
4 of sec. 9 of this Act within 90 days after the effective date of sec. 9 of this Act if the
5 guardianship has been in existence for three or more years on the effective date of sec. 9 of
6 this Act.

7 (b) A person who, before the effective date of sec. 2 of this Act, has been appointed
8 by the court under AS 13.26 to be a guardian or a conservator, whose appointment is still in
9 effect on the effective date of sec. 2 of this Act, and who are required to be licensed under
10 AS 08.26, enacted by sec. 2 of this Act, shall comply with the licensing requirements of
11 AS 08.26 within 60 days after the date when the regulations for sec. 2 of this Act are adopted
12 under sec. 34 of this Act. If the person does not comply within the 60 days, the court may
13 remove the guardian or conservator and appoint a successor.

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

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

20 * Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 CONDITIONAL EFFECT. Each of AS 08.26.100, as enacted by sec. 2 of this Act,
23 AS 13.26.120(b), as enacted by sec. 11 of this Act, and AS 13.26.250, as amended by sec. 22
24 of this Act, takes effect only if the applicable subsection of sec. 32 of this Act receives the
25 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
26 Alaska.

27 * Sec. 36. Section 34 of this Act takes effect immediately under AS 01.10.070(c).

28 * Sec. 37. Except for sec. 34 of this Act, this Act takes effect January 1, 2005.

House Bill 427 Testifiers
4/14/04 House Judiciary Committee

- Doug Wooliver, Alaska Courts

VIA TELECONFERENCE:

- Josh Fink, Office of Public Advocacy – OFFNET (on the same phone as Jim)
- Jim Parker, Office of Public Advocacy – OFFNET (on the same phone as Josh)
- Suzanne Armstrong, Long-term Care Ombudsman's Office – Anchorage LIO
- Betty Welis, Ak State Association for Guardianship and Advocacy – ANC LIO
- Sharon Wells, Private Professional Guardian – Anchorage LIO
- Edie Dukakis – Disability Law – Anchorage LIO

Subject: Constituant Testimony Regarding HB 427

Date: Tue, 13 Apr 2004 22:56:39 -0800

From: Bob Penzenik <rpenzenik@gci.net>

To: Representative_Lesil_McGuire@legis.state.ak.us

CC: Representative_Ralph_Samuels@legis.state.ak.us, Representative_Dan_Ogg@legis.state.ak.us,
Representative_Tom_Anderson@legis.state.ak.us,
Representative_Jim_Holm@legis.state.ak.us, Representative_Les_Gara@legis.state.ak.us,
Representative_Max_Gruenberg@legis.state.ak.us

Chairperson McGuire,

I had planned on presenting testimony regarding HB 427 at the House Judiciary meeting scheduled for tomorrow afternoon. However, I was called out of state and, therefor, will not be able to take part as I had planned. I would ask that you include the attached copy of my testimony during your committee's consideration of HB 427 and include it in the record as appropriate. I have a family member utilizing the services of a professional guardian and while I have complete confidence in this individual, partly because I had a role in her appointment, I am also familiar with the kind of problems that can develop if there is not appropriate supervision. I am very concerned for those wards that do not have a support system to oversee the activities of both guardians and conservators.

Respectfully,

Robert Penzenik
3835 Helvetia Drive
Anchorage, Alaska 99508-5015
voice: 907-563-2944
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rpenzenik@gci.net

 [HB 427 House HJUD Testimony.pdf](#)

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

4

5 I am here in support of HB 427, a bill I believe to be vitally important to a small
6 but important group of Alaskan's that are, I'm afraid, least able to represent
7 themselves, minors and those adults that the courts have found to be in need of
8 protection, some of whom have no families nor support systems in Alaska.

9

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

20

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

24

25 Some years ago, as a conservator for a number of minors that had lost their father
26 in a plane accident, I became aware of how easy it would be for someone acting

1 as a Guardian/Conservator to inappropriately utilize funds belonging to others.
2 While my experience in this area goes back to the seventies, I don't believe the
3 situation has changed that much.

4

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

15

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

- 18 1 - Currently there is no requirement that prospective Guardians/
19 Conservators have any kind of criminal record check, the danger
20 here is obvious;
- 21 2 - No system currently exists that allows judges to determine if a
22 prospective Guardian/Conservator has been found by another
23 Alaskan judge to be unqualified or for some reason had been
24 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.

15

Robert Penzenik
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April 5, 2004

The Honorable Lesil McGuire, Chair
House Judiciary Committee
Alaska Capitol, Room 118
Juneau, Alaska 99801-1182

RE: HB 427 (Anderson)—Support

Dear Chair McGuire:

On behalf of the AARP members in Alaska, we recommend that you and your colleagues on the House Judiciary Committee support HB 427, authored by your Committee Vice-Chair 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.

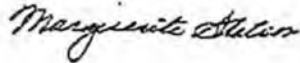
HB 427 represents the best current thinking of many organizations concerned with establishing the "best practices" of guardianship into state statute. It is a complex area that has long warranted attention by the Legislature.

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
AARP Alaska
State Coordinator for Advocacy
3009 Northwood Street
Anchorage, AK 99517-1871
907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

CC: Vice-Chair Anderson
Representative Holm
Representative Ogg
Representative Samuels
Representative Gara
Representative Gruenberg
Marie Darlin
Patrick Luby

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal

From: Vanessa Tondini, Committee Aide
House Judiciary Committee

Date: April 15, 2004

Re: Legal Opinion Request

The House Judiciary Committee is requesting a legal opinion on whether or not the House Judiciary Committee Substitute for work order # 23-LS1627\Q, HB 427, will also have the effect of indirectly amending AK R. of Civ. Pro. 17(c).

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
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House Judiciary Committee

Memorandum

To: Terri Bannister, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: April 14, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1627I, HB 427. The bill was passed out of committee today with no amendments.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

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 at least an associate degree in human services, social work, psychology,
10 sociology, 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 provides proof satisfactory to the department that the
14 individual is able to be bonded and insured;

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

19 (6) who satisfies the application requirements of AS 08.26.060.

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

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

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

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

29 (4) who is certified as a guardian by a nationally recognized
30 organization in the field of guardianships;

31 (5) who provides proof satisfactory to the department that the

1 individual is able to be bonded and insured;

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

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

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

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

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

12 (3) the person submits proof satisfactory to the department that the
13 person is able to be bonded and insured;

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

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

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

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

25 (5) the person designates in writing one of the following individuals to
26 be responsible within the organization for monitoring the organization's compliance
27 with this chapter and the other laws of this state:

28 (A) an officer of the organization, if the organization is a for-
29 profit corporation or a nonprofit corporation;

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

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

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

6 (7) the person satisfies the application requirements of AS 08.26.060.

7 (b) If the organization's employees have licenses under both AS 08.26.020 and
8 08.26.030, the license issued under (a) of this section shall cover providing the
9 services of a guardian and a conservator.

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

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

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

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

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

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

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

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

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

6 (A) officers of the organization, if the applicant is a
 7 corporation;

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

10 (C) partners of the organization, if the applicant is a
 11 partnership;

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

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

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

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

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

28 (7) if the applicant is not an individual, a copy of the documents under
 29 which the applicant was formed, including articles of incorporation and bylaws if the
 30 applicant is a corporation.

31 **Sec. 08.26.070. Criminal history record information checks.** (a) For each

1 applicant for a license under this chapter, the department shall submit the fingerprint
2 cards and other relevant information received with the application to the Department
3 of Public Safety and request the Department of Public Safety to

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

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

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

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

12 Article 2. Reports.

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

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

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

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

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

24 (5) a copy of all of the licensee's federal tax documents filed with the
25 Internal Revenue Service and all of the licensee's correspondence with the Internal
26 Revenue Service; and

27 (6) a list of all persons currently employed by the licensee in the
28 business for which the license was issued.

29 Sec. 08.26.090. Submission of court reports to department. Upon request
30 of the department, a licensee shall submit to the department a copy of the reports that
31 the licensee is required to submit to a court under AS 13.26.

1 **Article 3. Practices.**

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

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

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

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

21 **Sec. 08.26.120. Required notification.** A licensee shall notify the department
22 immediately if

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

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offense; or

(6) the licensee has filed for bankruptcy.

Article 4. Discipline.

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

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

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

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

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

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

(6) 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 provide the licensee's services competently and safely for the ward or protected person;

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

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

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

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

(A) guardianships, if the person was issued an individual private professional guardian license; or

(B) conservatorships, if the individual was issued an individual

1 private professional conservator license;

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

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

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

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

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

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

14 **Article 5. General Provisions.**

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

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

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

25 (2) "department" means the Department of Community and Economic
26 Development;

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

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

29 (5) "organizational license" means a license issued under
30 AS 08.26.040;

31 (6) "private professional conservator" means a person who acts as a

1 conservator under AS 13.26.165 - 13.26.320 and receives compensation for acting in
2 that capacity;

3 (7) "private professional conservator license" means a license issued
4 under AS 08.26.030;

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

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

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

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

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

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

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

22 (11) "department" means the Department of Community and
23 Economic Development;

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

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

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

29 (a) A notice of the filing of a petition, a summary of all formal proceedings,
30 and a dispositional order or modification or termination of a dispositional order
31 relating to a proceeding under this chapter shall be available for public inspection. All

1 other information contained in the court records relating to a proceeding under this
2 chapter is confidential and available only upon court order for good cause shown or to
3 the following persons:

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

6 (2) a person designated by the person who is the subject of the court
7 record;

8 (3) the guardian of the person who is the subject of the court record or
9 the attorney of the guardian;

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

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

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

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

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

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

19 Sec. 13.26.025. Appointment of a guardian ad litem. (a) Upon the request
20 of a ward, protected person, or respondent, or the attorney of a ward, protected person,
21 or respondent, the court shall appoint a guardian ad litem to protect the rights of the
22 ward, protected person, or respondent in proceedings under AS 13.26.090 - 13.26.320.
23 The court shall make the appointment if the court is satisfied that, because of impaired
24 ability effectively to receive and evaluate information regarding the proceedings or
25 because of impaired ability to communicate decisions regarding the proceedings, the
26 ward, protected person, or respondent is incapable of determining the ward's, protected
27 person's, or respondent's position regarding the issues involved in the pending
28 proceedings, and

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

30 (2) the interests of the ward, protected person, or respondent conflict
31 with those of the ward's, protected person's, or respondent's guardian or conservator;

1 or

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

3 (b) The guardian ad litem shall assist the ward, protected person, or
4 respondent in determining the ward's, protected person's, or respondent's interests in
5 regard to the legal proceedings that involve the ward, protected person, or respondent.
6 If the ward, protected person, or respondent is entirely incapable of determining those
7 interests, the guardian ad litem shall make the determination of those interests and
8 advise the court and counsel for all parties accordingly. The guardian ad litem shall

9 (1) inquire thoroughly into all the circumstances that a prudent ward,
10 protected person, or respondent would consider in determining the ward's, protected
11 person's, or respondent's own interests in the proceedings, including any prior relevant
12 statements made or actions taken by the ward, protected person, or respondent; and

13 (2) encourage the ward, protected person, or respondent to participate,
14 to the maximum extent possible, in all decisions and to act on the ward's, protected
15 person's, or respondent's own behalf on all matters in which the ward, protected
16 person, or respondent is able.

17 (c) The attorney for the ward, protected person, or respondent may be
18 appointed as the guardian ad litem for the ward, protected person, or respondent if
19 there is no other party readily available and able to serve as a guardian ad litem and
20 the court determines that the appointment is appropriate under the standards set out in
21 (a) of this section. When a person who has been appointed by the court as the attorney
22 for the ward, protected person, or respondent is appointed to act as the guardian ad
23 litem for the ward, protected person, or respondent under this subsection, the
24 appointment of the person as the attorney ends, and the person appointed as the
25 guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected
26 person, or respondent.

27 (d) The office of public advocacy shall provide guardian ad litem services to
28 persons who would suffer financial hardship or become dependent upon a government
29 agency or a private person or agency if the services were not to be provided at state
30 expense.

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

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

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

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

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

22 (a) A guardian shall submit a report to the court [OR REQUEST THAT A
23 VISITOR BE APPOINTED TO PREPARE AND SUBMIT A REPORT] at least
24 annually. In addition, every third year, the court shall appoint a visitor to file a
25 report reviewing the guardianship during the period since the last visitor's
26 report, if any [A COURT-APPOINTED VISITOR SHALL PREPARE THE
27 REPORT AT LEAST ONCE IN EACH THREE-YEAR PERIOD]. The guardian
28 shall submit an additional report to the court when

29 (1) the court orders it;

30 (2) there is a significant change in the capacity of the ward to meet the
31 essential requirements for health and safety or to protect the ward's rights;

- 1 (3) the guardian resigns or is removed;
2 (4) the guardianship is terminated; or
3 (5) the ward requests it.

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

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

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

- 21 (c) The visitor report required by (a) of this section must include
22 (1) the name and address of the ward and the guardian;
23 (2) the services being provided to the ward by or through the guardian;
24 (3) the significant actions taken by the guardian during the reporting
25 period in regard to the ward;
26 (4) a financial accounting of the estate that has been subject to the
27 possession or control of the guardian;
28 (5) a list of the number and nature of the contacts between the
29 conservator and the ward if the ward does not reside with the guardian;
30 (6) any other information requested by the court or necessary or
31 desirable in the opinion of the visitor.

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

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

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

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

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

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

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

24 (a) The court may appoint a competent person, including a private
25 professional guardian, or the public guardian, [OR A PRIVATE ASSOCIATION
26 OR NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
27 INCAPACITATED PERSONS,] as the guardian of an incapacitated person.

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

29 (c) A person may be appointed as the guardian of an incapacitated person
30 notwithstanding the provisions of (b) of this section if the person is the spouse, adult
31 child, parent, or sibling of the incapacitated person and the court determines that the

1 potential conflict of interest is insubstantial and that the appointment would clearly be
2 in the best interests of the incapacitated person. When appointing a relative or
3 friend of the incapacitated person as the guardian of an incapacitated person, the
4 court shall require that the proposed guardian complete one hour of mandatory
5 education on the basics of guardianship before the appointment or within 30 days
6 after the appointment.

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

8 (d) Subject to (e) and (f) of this section, qualified persons have priority for
9 appointment as guardian in the following order:

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

15 (2) the spouse of the incapacitated person;

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

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

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

22 (6) a private professional guardian [ASSOCIATION OR
23 NONPROFIT CORPORATION WITH A GUARDIANSHIP PROGRAM FOR
24 INCAPACITATED PERSONS];

25 (7) the public guardian.

26 * Sec. 17. AS 13.26.145(e) is repealed and reenacted to read:

27 (e) When more than one person has equal priority under (d) of this section, the
28 court shall select the person it considers to be the best qualified.

29 * Sec. 18. AS 13.26.145 is amended by adding a new subsection to read:

30 (f) When in the best interest of the incapacitated person, a court may decline
31 to appoint a person who has priority under (d) of this section as guardian of an

1 incapacitated person and may appoint as guardian a person who has a lower priority
2 than another person or who does not have a priority.

3 * Sec. 19. AS 13.26.150(c) is amended to read:

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

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

13 (2) the guardian shall assure the care, comfort, and maintenance of the
14 ward;

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

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

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

25 (6) the guardian has the powers [IF A CONSERVATOR FOR THE
26 ESTATE OF THE WARD HAS NOT BEEN APPOINTED, THE GUARDIAN MAY
27 RECEIVE MONEY] and duties of a conservator under this chapter [PROPERTY
28 DELIVERABLE TO THE WARD AND APPLY THE MONEY AND PROPERTY
29 FOR SUPPORT, CARE, AND EDUCATION OF THE WARD]; however, the
30 guardian may not apply the ward's money or property for the services as guardian or
31 for room and board that the guardian[,] or the guardian's spouse, parent, or child has

1 furnished the ward unless, before payment, the court finds that the ward is financially
2 able to pay and that the charge is reasonable; notice of a request for payment approval
3 shall be provided to at least one relative of the ward if possible; the guardian shall
4 exercise care to conserve any excess money or property for the ward's needs;

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

11 * Sec. 20. AS 13.26.195(b) is amended to read:

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

23 * Sec. 21. AS 13.26.210 is repealed and reenacted to read:

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

27 (b) The court may not appoint a person to be a conservator of a protected
28 person if the person

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

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

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

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

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

12 (d) Subject to (e) and (f) of this section, qualified persons have priority for
13 appointment in the following order:

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

17 (2) the spouse of the protected person;

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

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

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

23 (6) a private professional conservator;

24 (7) the public guardian.

25 (e) When more than one person has equal priority under (d) of this section, the
26 court shall select the person it considers to be the best qualified.

27 (f) When in the best interest of the protected person, a court may decline to
28 appoint a person who has priority under (d) of this section as guardian of the protected
29 person and may appoint as guardian a person who has a lower priority than another
30 person or who does not have a priority.

31 (g) In addition to any other requirement of this section, when appointing a

1 relative or friend of the incapacitated person as the conservator of a protected person,
2 the court shall require that the proposed conservator complete one hour of mandatory
3 education on the basics of conservatorship before the appointment or within 30 days
4 after the appointment. If the person is appointed based on the person's agreement to
5 complete the mandatory education and the person fails to complete the mandatory
6 education within the 30 days, the court shall remove the conservator and appoint a
7 successor.

8 * Sec. 22. AS 13.26.250 is amended to read:

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

19 * Sec. 23. AS 13.26.255 is amended to read:

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

1 to submit to a physical check of the estate in the conservator's control, to be made in
2 any manner the court may specify.

3 * Sec. 24. AS 13.26 is amended by adding a new section to read:

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

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

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

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

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

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

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

25 (7) a summary of the information that

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

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

29 (8) a description of the alternatives to conservatorship that were
30 considered and not recommended and an explanation of why they are not feasible to
31 meet the needs of the proposed protected person;

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

5 (10) if conservatorship is recommended, a conservatorship outline that
6 identifies

7 (A) potential conservators;

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

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

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

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

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

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

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

23 (2) the services being provided to the protected person by or through
24 the conservator;

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

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

29 (5) a list of the number and nature of the contacts between the
30 conservator and the protected person if the protected person does not reside with the
31 conservator;

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

3 * Sec. 25. AS 13.26.285(e) is amended to read:

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

1 * Sec. 26. AS 13.26.300(a) is amended to read:

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

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

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

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

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

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

27 (a) The office of public advocacy shall

28 (1) perform the duties of the public guardian under AS 13.26.360 -
29 13.26.410;

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

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

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

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

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

27 (7) provide guardian ad litem services in proceedings under
28 AS 12.45.046;

29 (8) establish a fee schedule and collect fees for services provided by
30 the office, except as provided in AS 18.85.120 or when imposition or collection of a
31 fee is not in the public interest as defined under regulations adopted by the

1 commissioner of administration;

2 (9) provide visitors and guardians ad litem in proceedings under
3 AS 47.30.839;

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

7 * Sec. 29. AS 44.21.440 is amended by adding a new subsection to read:

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

12 * Sec. 30. AS 44.62.330(a) is amended by adding a new paragraph to read:

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

16 * Sec. 31. AS 13.26.105(d), 13.26.112, and 13.26.135(a)(8) are repealed.

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

19 INDIRECT COURT RULE AMENDMENTS. (a) AS 13.26.120(b), enacted by sec.
20 11 of this Act, has the effect of changing Rule 16(f), Alaska Rules of Probate Procedure, by
21 giving guardians additional authority to perform certain acts for a deceased ward.

22 (b) AS 13.26.250, as amended by sec. 22 of this Act, has the effect of changing Rule
23 17(e), Alaska Rules of Probate Procedure, by changing when a report is due and by adding
24 additional material to be included in the report.

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

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

1 (b) A person who, before the effective date of sec. 2 of this Act, has been appointed
2 by the court under AS 13.26 to be a guardian or a conservator, whose appointment is still in
3 effect on the effective date of sec. 2 of this Act, and who are required to be licensed under
4 AS 08.26, enacted by sec. 2 of this Act, shall comply with the licensing requirements of
5 AS 08.26 within 60 days after the date when the regulations for sec. 2 of this Act are adopted
6 under sec. 34 of this Act. If the person does not comply within the 60 days, the court may
7 remove the guardian or conservator and appoint a successor.

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

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

14 * Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 CONDITIONAL EFFECT. AS 13.26.120(b), as enacted by sec. 11 of this Act, and
17 AS 13.26.250, as amended by sec. 22 of this Act, take effect only if sec. 32 of this Act
18 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
19 of the State of Alaska.

20 * Sec. 36. Section 34 of this Act takes effect immediately under AS 01.10.070(c).

21 * Sec. 37. This Act takes effect January 1, 2005.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 8, 2003

FURTHER REFERRALS: Finance

Date of Committee Action: April 14, 2004

The JUDICIARY Committee considered:

HB 427

HOUSE BILL NO. 427

PROTECTION OF PERSONS AND PROPERTY

"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."

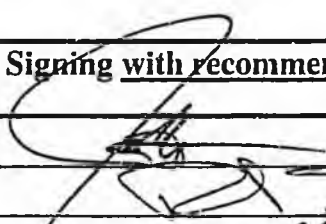
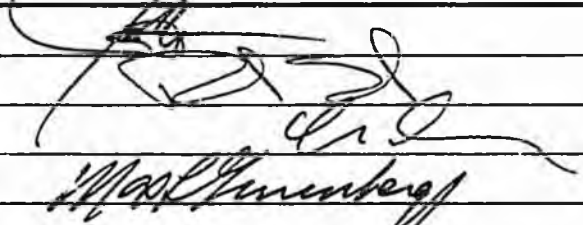
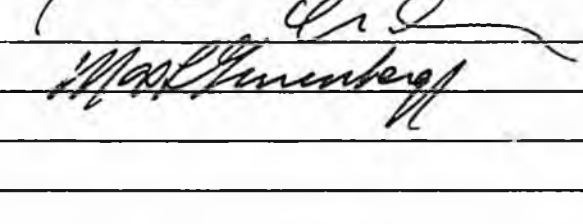
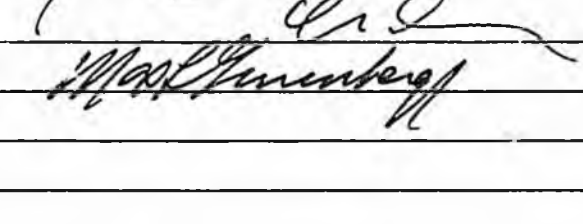
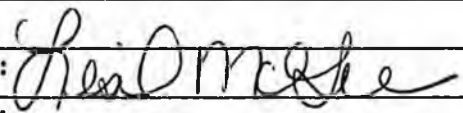
Recommends it be replaced with HCS or CS for HB 427 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 ISS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CRT</u>				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<u>CED</u>	1	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	<u>Adam</u>	✓			
	<u>SAMUELS</u>	X			
	<u>Gane</u>	✓			
	<u>Greenberg</u>	✓			
Chair: 	<u>McGuire</u>	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 427(HES)
 (H) Publish Date: 4/8/04

Revision Date/Time (Note if correction):
 Title Protection of Persons & Property
 Dept. Affected: DCED
 RDU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Representative Anderson
 Requester House Health, Education & Social Services
 Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.5	0.5	0.5	0.5	0.5	0.5
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	2.2	2.2	2.2	2.2	2.2	2.2
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.7	2.7	2.7	2.7	2.7	2.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	5.4	0.0	5.4	0.0	5.4	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.7	2.7	2.7	2.7	2.7	2.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	2.7	2.7	2.7	2.7	2.7	2.7

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 427 establishes a registration program for private professional guardians and private professional conservators under AS 13.26. The assumption is that approximately 12 individuals will qualify for registration under this bill. The costs are based on a similar registration program with approximately the same number of licensees currently in existence. The bill does not allow for the establishment of registration fees; therefore, the funding source is General Funds.

If the bill were amended to make the registration program self-sufficient through registration fees, registrants could expect to pay \$450.00 biennium license fees.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 3/2/04 9:48 AM
 Approved by: Edgar Blatchford, Commissioner Date 3/2/2004
 Agency: Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB427CS-ACS-TC-4-14-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Protection of Persons and Property BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Anderson
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of CSHB 427(HES).

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 4/14/04 10:26 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/14/2004
 Agency: Alaska Court System

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG. AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/Anderson.htm>



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ANCHORAGE, AK 99501
PHONE: (907) 269-0265
FAX: (907) 269-0264

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4939
1-800-465-4939
FAX: (907) 465-2418

Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

MEMORANDUM

DATE: April 7, 2004

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

FROM: Representative Tom Anderson *Tom*

RE: HB 427 Protection of Persons and Property

At your earliest convenience, please schedule House Bill 427 Protection of Persons and Property for a hearing in the House Judiciary Committee.

Currently in Alaska, 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. House Bill 427 will go a long way towards preventing exploitation and mistreatment of vulnerable and incapacitated adults by requiring guardians and conservators to meet certain criteria and register with the State.

I am still waiting for the CS version that was passed from the House Health, Education and Social Services Committee on Tuesday, April 6. A completed bill packet will follow when I receive the new CSHB 427(HES).

Thank you for your time and consideration of this matter.

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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 427(HES)
 (H) Publish Date: 4/8/04

Revision Date/Time (Note if correction): _____
 Title Protection of Persons & Property
 Sponsor Representative Anderson
 Requester House Health, Education & Social Services
 Dept. Affected: DCED
 RDU Occupational Licensing (117)
 Component Occupational Licensing
 Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.5	0.5	0.5	0.5	0.5	0.5
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	2.2	2.2	2.2	2.2	2.2	2.2
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.7	2.7	2.7	2.7	2.7	2.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	5.4	0.0	5.4	0.0	5.4	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.7	2.7	2.7	2.7	2.7	2.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	2.7	2.7	2.7	2.7	2.7	2.7

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 427 establishes a registration program for private professional guardians and private professional conservators under AS 13.26. The assumption is that approximately 12 individuals will qualify for registration under this bill. The costs are based on a similar registration program with approximately the same number of licensees currently in existence. The bill does not allow for the establishment of registration fees; therefore, the funding source is General Funds.

If the bill were amended to make the registration program self-sufficient through registration fees, registrants would expect to pay \$450.00 biennium license fees.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 3/2/04 9:48 AM
 Approved by: Edgar Blatchford, Commissioner Date 3/2/2004
 Agency Department of Community and Economic Development

Letter of Intent

Tuesday, April 6, 2004

CS for HB 427 Version D – Protection of Persons and Property

It is the intent of the House Health, Education and Social Services Committee for the following concerns to be addressed in the next committee of referral, the Judiciary Committee:

1. Page 3, Lines 24, 25, 25, 27

The HESS Committee discussed having these lines deleted.

2. Page 16, Lines 15 through 30

The HESS Committee would like to make binding the order of the individuals nominated to serve as guardian. It is the intent of the Committee to preserve and make binding a spouse's right to be the guardian unless otherwise proven to be unqualified or unable to serve as guardian.

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"



**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:

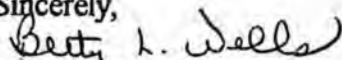
(6) a list of all current employees

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
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

1604 N. COUNTRY CLUB ROAD ★ TUCSON, ARIZONA 85716-3102
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
(520) 881-6561 ♦ (520) 325-7925 Fax

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.

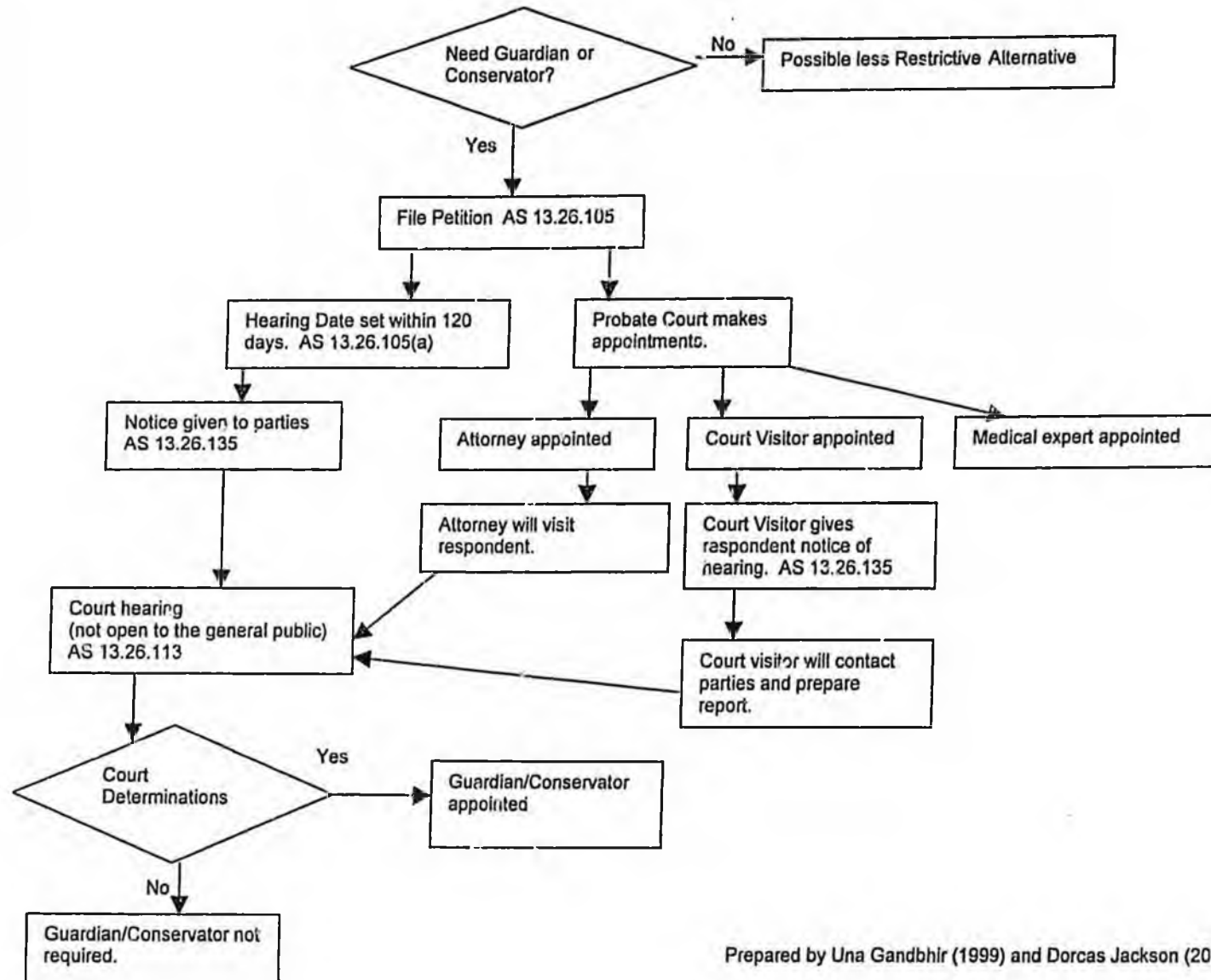
Generally at the end of the hearing the judge will determine

- 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.

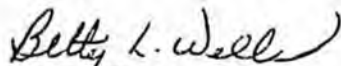
Alaska does very well with respect to due process and pre-investigation of guardianship cases. Respondents have a multitude of rights including a right to an attorney, the right to be present in court and the right to have a court visitor appointed to

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

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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

**STATE OF ALASKA
OFFICE OF PUBLIC ADVOCACY**

FRANK MURKOWSKI, GOVERNOR

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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 client's have the financial protections imposed by the bill on private guardians.

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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 proposing 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.

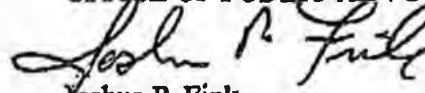
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In closing, I would only state that it is not possible to respond in this letter to all of the verbal and written comments made by the witness from Fairbanks. I am happy to make staff and myself available to address any concerns or issues committee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

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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

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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
AARP Alaska
State Coordinator for Advocacy
3009 Northwood Street
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907.245.5259 voice
907.245.5279 fax
ffmas@aurora.uaf.edu

CC: Vice-Chair Carl Gatto
Representative John Coghill
Representative Paul Seaton
Representative Kelly Wolf
Representative Sharon Clisna
Representative Mary Kapsner
Representative Tom Anderson
Marie Darlin
Patrick Luby

STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY

FRANK MUREOWSKI, GOVERNOR

908 W. 5TH AVE., SUITE 515
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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(e), 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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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 client's have the financial protections imposed by the bill on private guardians.

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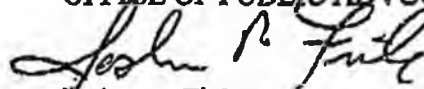
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Sincerely,

OFFICE OF PUBLIC ADVOCACY



Joshua P. Fink
Public Advocate

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House Bill 427 Testifiers

- Josh Fink, Office of Public Advocacy - OFFNET
- Jim Parker, Office of Public Advocacy – OFFNET
- Suzanne Armstrong, Long-term Care Ombudsman’s Office – Anchorage LIO
- Betty Wells, Ak State Association for Guardianship and Advocacy – ANC LIO
- Sharon Wells, Private Professional Guardian – Anchorage LIO
- Bob Tenzenik, Family Guardian – Anchorage LIO