

HB

427

ALASKA STATE LEGISLATURE

House of Representatives

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Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

MEMORANDUM

DATE: May 2, 2004

TO: Senator Ralph Seekins, Chair
Senate Judiciary Committee

FROM: Representative Tom Anderson 

RE: CSHB 427(JUD) Protection of Persons and Property

At your earliest convenience, please schedule CS for House Bill 427 Protection of Persons and Property for a hearing in the Senate 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. CSHB 427(JUD) 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.

Attached please find the completed bill packet, which includes:

- CSHB 427(JUD)
- Fiscal Notes
 - Alaska Court System
 - Department of Community and Economic Development
- Sponsor Statement
- Sectional Analysis
- Explanation of Changes

- Support letters from:
 - AARP Alaska
 - Office of Public Advocacy
 - Written testimony from Robert P. Penzenik
- Supporting documentation from the Alaska State Association for Guardianship and Advocacy.

Thank you for your time and consideration of this matter.

House Bill 427 Testifiers

- 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 Wells, Ak State Association for Guardianship and Advocacy – ANC LIO
- Sharon Wells, Private Professional Guardian – Anchorage LIO
- Edie Dukakis – Disability Law – Anchorage LIO

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR CSHB 427(JUD) **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.

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MEMORANDUM

April 21, 2004

SUBJECT: Sectional summary of CSHB 427(JUD) relating to guardianships and conservatorships (Work Order No. 23-LS1627AS)

TO: Representative Tom Anderson
Attn: Jim

FROM: *JB*
Theresa L. Bannister
Legislative Counsel

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

Section 1. Adds private professional guardians and private professional conservators to the list of boards and professions covered by the centralized licensing chapter.

Section 2. Adds a new chapter covering the licensing and regulation of private professional conservators and guardians.

Sec. 08.26.010. Requires a license to engage in the business of providing services as a guardian or a conservator.

Sec. 08.26.020. Directs the Department of Community and Economic Development to issue an individual private professional guardian license to an individual who satisfies the listed requirements.

Sec. 08.26.030. Directs the department to issue an individual private professional conservator license to an individual who satisfies the listed requirements.

Sec. 08.26.040. Directs the department to issue an organizational license to a person who is not an individual and who satisfies the listed requirements. The license may cover providing the services of a guardian and a conservator, a guardian, or a conservator.

Sec. 08.26.050. Directs the department to issue a temporary license to an individual who is not certified as required under secs. 08.26.020 or 08.26.030, but is likely to become certified within one year, and meets the other application requirements. Directs the department to issue a regular license if the individual does become certified within the year. Prohibits renewal of a temporary license.

Sec. 08.26.060. To obtain a license, requires a person to submit an application on the department's form and submit the listed items.

Sec. 08.26.070. Directs the department to obtain state and federal criminal history record information checks for each applicant.

Sec. 08.26.080. Requires a licensee to submit an annual report to the department containing the listed items.

Sec. 08.26.090. Requires a licensee to submit to the department a copy of the reports that the licensee is required to submit to a court under AS 13.26.

Sec. 08.26.100. Requires a person who engages in the business of providing services as a guardian or conservator to be licensed before the person may be appointed a guardian or a conservator in a court proceeding, unless the person is exempt under sec. 08.26.180.

Sec. 08.26.110. Prohibits a licensee from receiving payment for services without court approval of a proposed fee schedule. Requires a payment that exceeds the established monthly maximum amount to be approved by the court before being paid. Indicates what the request for court approval must include.

Sec. 08.26.120. Requires a licensee to notify the department immediately if any of the listed events occurs.

Sec. 08.26.130. Authorizes the department to take disciplinary action if the department determines that any of the listed events has occurred.

Sec. 08.26.140. Authorizes the department to petition a court to review the conduct of a licensee under certain conditions.

Sec. 08.26.180. Establishes an exemption for the described financial institutions.

Sec. 08.26.190. Defines terms for the chapter.

Section 3. Declares state policy that guardians and conservators are to abide by the highest ethical standards of decision-making and to consider the standards of practice adopted by the Department of Community and Economic Development. Requires the department to review certain standards of practice before adopting its standards.

Section 4. Defines additional terms.

Section 5. Allows the division to receive confidential information about a court proceeding under the chapter when a private professional guardian or a private professional conservator is involved.

Section 6. Adds a section relating to the appointment of a guardian ad litem in a proceeding under the article dealing with incapacitated persons.

Section 7. Makes a conforming change.

Section 8. Changes the event that triggers the time within which a guardian is to submit a report to the court. Deletes the requirement that the office of public guardian contact the guardian to offer assistance with the report.

Section 9. Deletes an option for a guardian to request that a visitor be appointed to prepare and submit a report. Requires a court to appoint a visitor every three years to file a report reviewing the guardianship. Changes (b) to cover just the guardian's report.

Section 10. Adds a new subsection describing what the visitor's report must include.

Section 11. Allows a guardian of a deceased ward to make funeral and burial arrangements and to apply for burial expense assistance under certain conditions.

Section 12. Allows a court on its own motion to review and amend guardian decisions or to make other orders relating to a guardianship.

Section 13. Makes a conforming change.

Section 14. Changes the persons from whom a court may appoint a guardian of an incapacitated person.

Section 15. Directs a court to require a relative or friend of an incapacitated person who is appointed guardian to complete certain training.

Section 16. Changes the persons identified in the priority list for appointment as guardian. Changes the qualifications for the persons who are first in priority.

Section 17. Requires the court to select the best qualified person when more than one person has equal priority for appointment as guardian.

Section 18. Allows a court to decline to appoint a person with priority as guardian when in the best interests of the incapacitated person. Allows the court to appoint instead a person with lower priority or no priority.

Section 19. States that a guardian has the powers and duties of a conservator under the chapter. If a conservator has also been appointed, directs the guardian to pay the ward's estate held by the guardian to the conservator for management.

Section 20. Removes language that gives a court-appointed lawyer for a person to be

protected the powers and duties of a guardian ad litem.

Section 21. Authorizes a court to appoint a competent person as the conservator of a protected person's estate. Prohibits the court from appointing certain persons to be conservators. Establishes the priority of persons for appointment. Directs the court to select the best qualified person when more than one person has equal priority under (d). Allows a court to decline to appoint a person who has priority under (d) when in the best interest of the protected person; allows the court to appoint instead a person with lower priority or no priority. Directs the court to require that certain persons complete training if they are appointed conservators.

Section 22. Requires a conservator to prepare and file with the court a conservator implementation report within 90 days after distribution of the order of appointment.

Section 23. Requires a conservator to submit a report to the court at least every year.

Section 24. Describes what an initial visitor's report must include. Allows a court to appoint a visitor to file a report every three years reviewing the conservatorship. Gives the court the discretion at any time to appoint a visitor to file a report reviewing a conservatorship. Describes what the three-year and discretionary reports must include.

Section 25. Prohibits a conservator from exercising authority over a protected person's affairs and estate once the conservator knows that the protected person has died. Makes exceptions for paying reasonable burial expenses and to preserve, account for, and transfer control of the assets to certain authorized persons.

Section 26. Adds language limiting the claims a conservator must pay.

Section 27. Requires the public guardian to include in its annual report under AS 13.26.118(a), information on the availability of a private guardian or conservator for a ward or protected person.

Section 28. Makes a conforming amendment.

Section 29. Prohibits the office of public advocacy from using improper pressure to influence the professional judgment of a person who is paid by the office to act as an attorney, a guardian ad litem, or a visitor for a guardianship or conservatorship.

Section 30. Adds the department to the list of agencies subject to the administrative adjudication portion of the state's Administrative Procedure Act when dealing with the licensing and regulation of private professional guardians and conservators under AS 08.26.

Section 31. Repeals certain statutes.

Representative Tom Anderson
April 21, 2004
Page 5

Section 32. Describes how certain provisions of the bill change court rules.

Section 33. Provides some transition provisions for the bill.

Section 34. Provides some transition provisions for the bill relating to the adoption of regulations.

Section 35. Conditions the court rule changes on the increased majority vote required by the state's constitution.

Section 36. Makes sec. 34 take effect immediately.

Section 37. Makes the rest of the Act effective on January 1, 2005.

If I may be of further assistance, please advise.

TLB:mdr
04-176.mdr

Changes to HB 427 in (H) HESS

Moved the licensing requirement from AS 13.26 (Boards) to AS 08.01 (Division of Occupational Licensing).

Changes to CSHB 427(HES) in (H) JUD

Page 2, line 30: Change current language "who is certified as a conservator by a nationally recognized organization in the field of conservatorships" to "who is certified as required in 08.26.020 (3)" The reason for this change is that the National Guardianship Foundation test is for guardians who also do estate management. They don't certify guardians or conservators separately.

Page 8, line 11: Change language "has not complied the standards of conduct" to "has not complied with the standards of conduct". Grammar change only

Page 10, line 22: Change "National Guardianship Foundation" to National Guardianship Association". The Standards of Practice come from the Association; the certification testing is done through the Foundation.

Page 11, line 21 Change several provisions of proposed A.S. 13.26.025, "Appointment of a guardian ad litem" Specifically, delete subsection (b), and renumber accordingly. A brief summary of the rationale of these changes follows:

Page 11, lines 26 through 27: Delete [CANNOT DETERMINE THE WARD'S, PROTECTED PERSON'S, OR RESPONDENT'S OWN INTERESTS WITHOUT ASSISTANCE], and insert new language to read **is incapable of determining their position regarding the issues involved in the pending proceeding.**

Page 12, lines 2 through 12: Delete subsection (b).

The attorney for the ward, protected person, or respondent may [ALSO BE THE] **be appointed as** the guardian ad litem for the ward, protected person, or respondent if there is no other party readily available and able to serve as a guardian ad litem **and the court determines that the appointment is appropriate under the standards set out in (a) of this section. When such appointment occurs the appointment as attorney ends and the person appointed as the guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected person, or respondent.**

Page 16. line 31,

Deleted the old language and inserted:

(e) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may

decline to appoint a person having priority and appoint a person having a lower priority or no priority.

This new language is taken from Section 5-310 of the 1998 version of the Uniform Probate Code and is intended to ensure that the court should not deviate from the priorities set forth in this statute unless such deviation is in the best interests of the respondent

Page 19, line 29:

Deleted the old language and inserted:

- (a) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

This new language is taken from Section 5-413 of the 1998 version of the Uniform Probate Code and is intended to ensure that the court should not deviate from the priorities set forth in this statute unless such deviation is in the best interests of the respondent

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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: 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

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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

THE
FOLLOWING
DOCUMENT(S)
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April 23, 2004

The Honorable John Harris, Co-Chair
House Finance Committee
Alaska State Capitol, Room 507
Juneau, Alaska 99801-1182

The Honorable Bill Williams, Co-Chair
House Finance Committee
Alaska State Capitol, Room 515
Juneau, Alaska 99801-1182

Dear Co-Chairs Harris and Williams: RE: HB 427 (Anderson) – Support

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Finance Committee to support HB 427, sponsored by Representative Tom Anderson.

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

Alaska should:

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

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

AARP recommends an "AYE" vote on HB 427.

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

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
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- cc: Vice-Chair Kevin Meyer
- Representative Mike Chenault
- Representative Bud Fate
- Representative Richard Foster
- Representative Mike Hawker
- Representative Bill Stoltze
- Representative Eric Croft
- Representative Reggie Joule
- Representative Carl Moses
- Representative Tom Anderson
- Marie Darlin
- Patrick Luby

TESTIMONY PRESENTED BEFORE THE
ALASKA STATE LEGISLATURE

HOUSE
HEALTH, EDUCATION AND SOCIAL SERVICES
COMMITTEE

In the matter of

HB 427

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

Testimony of
Robert P. Penzenik
Anchorage, Alaska

April 6, 2004

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

5

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

10

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

21

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

25

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

6 2

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

17

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

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

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

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

9

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

13

14 Thank you.

STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY

FRANK MURKOWSKI, GOVERNOR

900 W. 5TH AVE., SUITE 523
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-3500
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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.

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

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

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

The Honorable Peggy Wilson
April 6, 2004
Page 3

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

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

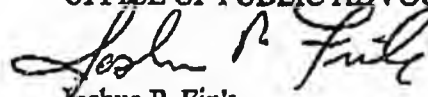
Finally, the private guardian from Fairbanks also made representations regarding the process by which this bill was drafted. While no doubt well-intentioned, her comments demonstrate a misunderstanding of that process. This legislation resulted from the collaborative participation from a number of individuals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

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

Thank you again for hearing this important legislation.

Sincerely,

OFFICE OF PUBLIC ADVOCACY


Joshua P. Fink
Public Advocate

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

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 respondent's 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.

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!"

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 427(HES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to guardianships and RDU Occupational Licensing (117)
conservatorships;... Component Occupational Licensing
 Sponsor Representative Anderson
 Requester House Judiciary 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						
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 ()	0.0	0.0	0.0	0.0	0.0	0.0
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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 1156 - Receipt Supported Services						
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	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 CSHB 427(HES) establishes a registration program for private professional guardians and private professional conservators under AS 08.01. The assumption is that approximately 12 individuals will qualify for registration under this bill. A similar registration program with approximately the same number of licensees currently in existence has shown that operating costs will be minimal. Additionally, registration fees from private professional guardians and private professional conservators will be expected to cover any associated costs from this program.

 No new funding is required to implement this program.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 4/20/04 4:24 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/20/2004
 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

STATE OF ALASKA
OFFICE OF PUBLIC ADVOCACY

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May 3, 2004

To: Senator Therriault
Representative Anderson
Doug Wooliver
From: Josh Fink, Public Advocate *JF*

Re: House Bill 427

In the hearing held on May 3 before the Senate Judiciary Committee Senator Therriault asked whether two provisions of House Bill 427 would have a fiscal impact upon the court system. Upon review, it is clear that there would not be a fiscal impact if these provisions were to become law. They do not increase the number of reports currently required by court rule or statute.

The first provision is contained in section 9 of the bill. This section would ensure that A.S. 13.26.118(a) is interpreted in a manner consistent with the Alaska Rules of Probate Procedure. A.S. 13.26.118(a) currently requires that a guardian "submit a report to the court or request that a visitor be appointed to prepare and submit a report at least annually. A court appointed visitor shall prepare the report at least once in each three-year period." The amendment would clarify the nature of the third year visitor's report, which is to review the guardianship and not to take the place of the guardian's annual report. It would do so by eliminating the language "or request that a visitor be appointed to prepare and submit a report" and insert the language requiring the appointment of a visitor to review the guardianship every third year. This statutory change is consistent with existing Probate Rule 16(e)(1)(B), which requires the guardian to file an annual report, and Probate Rule 16(e)(2), which states that "[e]very third year, the Court Visitor shall be appointed by the court to file a report reviewing the guardianship and any conservatorship during the period since the last visitor's report"

The other provision is contained in Section 23, which clarifies that conservators are also required to file an annual report. This is not a new requirement and would not have a fiscal impact, because Probate Rule 17(e) already requires conservators to file an annual report "on May 1st of each year or as otherwise directed by the court."

In summary, both of these statutory changes are consistent with existing (and unambiguous) court rule. There is no fiscal impact for the court system because these provisions are not creating new reporting requirements. Please contact me if you have any questions.