

932

HJ

HB

572

932

shall enter an order dismissing the petition or requiring the [state and/or county] to provide the necessary funds for any services to which the

ward has a right under subsection (a) of this section 15 and as to which there is at least a substantial probability of significant benefit to the ward.

§16. Persons Eligible for Appointment as Guardians; Priorities

(a) The court may appoint an individual or [a protective services or public guardianship agency]. No person providing substantial services to the proposed ward in a professional or business capacity and no creditor of the proposed ward may be appointed. Also, no person may be appointed who is in the employ of any person, agency or corporation providing service to the proposed ward in a professional or business capacity or likely to provide the same during the guardianship period, except that a person so employed may be appointed if he is the spouse, adult child, parent or sibling of the proposed ward and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The following priorities shall guide the court in the selection of a guardian:

(i) any person [or agency] nominated by the proposed ward prior to the filing of the guardianship petition if at the time of the nomination the proposed ward was sixteen or more years of age

and had the capacity to make a reasonably intelligent choice;

(ii) the spouse of the proposed ward;

(iii) an adult child or parent of the proposed ward;

(iv) any relative of the proposed ward with whom he has resided for more than six months during the year prior to the filing of the petition;

(v) any other relative or friend who has evidenced a sincere, long-standing interest in the welfare of the proposed ward;

(vi) a protective services or public guardianship agency.

(b) The foregoing priorities shall not be binding, and the court shall select that person [or agency] who is best qualified and willing to serve. The court shall also give due consideration to any nomination by persons in priorities (ii), and (iii) of this section 16 and to any nomination in the will of a deceased parent of the proposed ward.

ADMINISTRATIVE PROVISIONS

For guidance in the drafting of various administrative provisions, e.g., death, resignation or removal of the guardian, sureties and accounting, reference is made to the *Uniform Probate Code*. In adapting provisions of the *Code* for purposes of personal guardianship, however, care should be

taken to note that the personal guardian's authority over the estate and income of the ward is limited to include only that which is necessary to meet the care and treatment needs of the ward. See pp. 444-447, *supra*.

APPENDIX EIGHT

GUARDIANSHIP QUESTIONNAIRE
PROPOSED FEDERAL REGULATIONS

Appendix Eight. Guardianship Questionnaire
by Ray Funk
November 30, 1978

One of the difficulties that the legislature apparently had last year with the passage of HB 63 was the last minute addition of sections providing for public guardianship. The concern centered on the extent of the need for a public guardian. Those asked last year were unable to even begin to suggest to the legislature any accurate estimate of how many people are in need of a public guardian. All they could do was guess. In an effort to provide more accurate impression of the extent of this problem, an effort has been made to at least pinpoint a segment of those in need of a public guardian. This writer, with the assistance of Ron Rich of the Alaska State Hospital Association, surveyed long-term health care providers in the state to determine how many of them have or need public guardians. This is not to suggest that these are the only people who need public guardians. No doubt there are others who aren't in such facilities. However, that group was one on which data was readily accessible and allows a more accurate estimate of the entire population.

The actual questionnaires are all attached as are letters from A. Haige from Careage North and B. Tennant which further describe the problem in Alaska. Harborview is included in the survey although instead of filling out a questionnaire, the data was acquired through the attached list that gives the age and guardianship status of all patients at Harborview from which the names of the patients have been removed.

The results of the study reflect that at present there are 39 people in need of a public guardian and that at present 21 people are already under the care of some form of "public" guardian, primarily under the guardianship of Dolores Wilks, the Public Administrator in Anchorage. This suggests that the Office of Public Guardian might have an initial case load of at least 60 wards which, combined with its other responsibilities, should adequately justify state expenditure in this area.

The acuteness of the problem for long-term health care providers is suggested by recent proposed federal regulations that, if put into effect, will require that long-term health providers, in order to receive medicare and medicaid payments for patients in need of guardians, petition the court for appointment of a guardian. If this regulation is enacted, the courts will be flooded with petitions and forced to take action.

RESULTS OF GUARDIANSHIP QUESTIONNAIRE

Facility	# of patients	# with guardian	# of these with public or disinterested guardian	# without guardians	Of these, how many need guardians	And of these, how many need public guardians
Harborview	90	37	11	53	?	?
Carriage North	73	8	2	65	27	6
Hope Cottages	126	3	2	123	12	6
Home South Peninsula	1	1	0	0	0	0
Ketchikan Island View Manor	43	43	0	0	0	0
Valley	6	2	0	4	1	1
Wrangell General	14	4	4	10	7	5
Wesleyan	61	2	2	59	56	21
Kodiak	-	-	-	-	-	-
TOTALS	414	100	21	314	103	39

AGEGUARDIAN STATUS

15	Bertha Akitalinok-Legal Guardian
14	No Guardian
16	No Guardian
<u>24</u>	Parents to be appointed 2/17/78? Pettyjohn, Ad Litem
19	Michael Beck-Legal Guardian
<u>27</u>	Pettyjohn, Ad Litem
26	Martha Benzal-Legal Guardian
19	Wayne Bouwens-Legal Guardian (From Records)
22	Dolores Wilks-Legal Guardian
17	No Guardian
30	Marion McCoy-Legal Guardian
<u>(21)</u>	No Guardian
17	No Guardian
18	No Guardian
27	Anna Britta Flerchinger-Leg. Guard.
<u>26</u>	Pettyjohn, Ad Litem
<u>34</u>	Pettyjohn, Ad Litem?
17	No Guardian
16	No Guardian
18	No Guardian
18	No Guardian
43	Thomas Griese-Legal Guardian
<u>(19)</u>	No Guardian
22	Dolores Hawkins-Legal Guardian
<u>(21)</u>	No Guardian

AGEGUARDIAN STATUS

17	Custody F&C Services ?
28	Dolores Wilks, Guardian
18	No Guardian
<u>23</u>	Pettyjohn, Ad Litem
1 yr. 4 mos.	No Guardian
<u>25</u>	Pettyjohn-Guardian Ad Litem
28	Dolores Wilks, Guardian
(20)	No Guardian
27	Dolores Wilks-Guardian
17	?
(21)	No Guardian
17	No Guardian
22	Dolores Wilks-Guardian
13	No Guardian
22	Gil Johnson-Guardian
<u>25</u>	Pettyjohn, Ad Litem
12	No Guardian
25	Charles R. Linsacum-Guardian
(24)	No Guardian
26	Dolores Wilks-Guardian
16	No Guardian
<u>23</u>	Pettyjohn, Ad Litem
<u>30</u>	Pettyjohn, Ad Litem
<u>25</u>	Pettyjohn, Ad Litem
16	No Guardian
14	No Guardian

AGEGUARDIAN STATUS19

No Guardian

21

No Guardian

19

No Guardian

29

Pettyjohn, Ad Litem

19

No Guardian

8 mos.

No Guardian

16

No Guardian

18

No Guardian

15

No Guardian

11

No Guardian

20

No Guardian

30

Victor Paal-Guardian

17

No Guardian

20

No Guardian

24

Pettyjohn-Ad Litem

11

No Guardian

16

No Guardian

25

Dolores Wilks-Guardian

23

Dolores Wilks-Guardian

23

No Guardian

16

No Guardian

17

No Guardian

22

Cyril Barner-Guardian

17

No Guardian

17

No Guardian

22

Maeye Ryan-Guardian

AGEGUARDIAN STATUS10

No Guardian

27

Dolores Wilks-Guardian

16

No Guardian

19

No Guardian

24

Michael Swetzof-Guardian

17

No Guardian

16

No Guardian

23

John Tower-Guardian

15

No Guardian

13

No Guardian

22

Dolores Wilks-Guardian

25

Dolores Wilks-Guardian

33

Pettyjohn-Ad Litem

GUARDIANSHIP QUESTIONNAIRE

OCTOBER 1978

Facility Name: Care of North

1) Total patients in your facility: 11/1/78 - 73 patients

2) How many have guardians? 8
and/or conservators?

3) How many of those guardians are public bodies?, i.e., public administrator or court system or are by court appointment, disinterested attorneys: _____

1 - public administrator

1 - bank trust fund officer

the remaining patients have parents, sister, or close friend as guardian

4) How many are without guardians? 65

5) Of that group (#4), how many need guardians? 27

6) And of those needing guardians how many are without relatives or friends able to fill that role? _____

6 are without friends or relatives to fill that role.

In addition; please document the problems the LTC provider has had in finding guardians or getting assistance from the Attorney General's office in finding guardians. Please attach letters or reports, if possible.

① family or friends unwilling to take on the responsibility

② family or friends living out of state and thinking that they are too far away to make appropriate decisions

③ question has been raised about the appropriateness of utilizing the A. G.'s office vs. the "private bar."

④ In general, no definite guidelines as to proper procedure for obtaining a guardian. Please add your suggestions on what role a good guardian plays in regards to their residents and what role a public guardian could play in regards to your institution.

Guardian should check on a patient monthly to determine needs evaluate acceptance of placement in the facility.

Preferably the guardian should visit, not contact patient over the telephone. Guardian should become familiar with the facility

and the key staff members. Of course, the above would depend on the condition of the patient and the location of the guardian.

Return this questionnaire to Ron Rich, ASHA.

→ over

Guardian would need to be willing to ask questions! Often family members may notice that something is bothering the patient but unless they speak up and communicate with staff, the problem may go unresolved. A good guardian serves as a patient advocate.

A public guardian could be helpful in giving permission for surgery, assist in making decisions about transfer, assist in making decisions about necessary expenditures for clothes, equipment, personal items, etc. A public guardian would need to establish a good rapport with at least one staff member who could serve as the contact person. A public guardian should be located in the same city as the facility to allow easy access to the patient, staff, business records, medical records, physician, etc.

Angie Hage, Social Worker
Careage North
Fairbanks

11-6-10

GUARDIANSHIP QUESTIONNAIRE

OCTOBER 1978

Facility Name: Hopo Cottage

- 1) Total patients in your facility: 126
- 2) How many have guardians?: 3
- 3) How many of those guardians are public bodies?, i.e., public administrator or court system or are by court appointment, disinterested attorneys: 2
- 4) How many are without guardians? 123
- 5) Of that group (#4), how many need guardians? 13
- 6) And of those needing guardians how many are without relatives or friends able to fill that role? 6

In addition; please document the problems the LTC provider has had in finding guardians or getting assistance from the Attorney General's office in finding guardians. Please attach letters or reports if possible.

A. H. (Bruce Tenant) has informed us that if a relative is not available to serve as a guardian, then it is impossible to have one appointed.

Please add your suggestions on what role a good guardian plays in regards to their residents and what role a public guardian could play in regards to your institution.

- 1) advocate for resident needs
- 2) quality control of programs
- 3) assist in financial management
- 4) sign appropriate releases on clients behalf

Return this questionnaire to Ron Rich, ASHA.

Ron,

I hope this helps and if we can do
any thing else let know or I know

Ray

GUARDIANSHIP QUESTIONNAIRE

Honey

OCTOBER 1978

Facility Name: Shirch Penner
LTC

- 1) Total patients in your facility: 1
- 2) How many have guardians?: 1
- 3) How many of those guardians are public bodies?; i.e., public administrator or court system or are by court appointment, disinterested attorneys: None
- 4) How many are without guardians? 0
- 5) Of that group (#4), how many need guardians? _____
- 6) And of those needing guardians how many are without relatives or friends able to fill that role? 0

In addition; please document the problems the LTC provider has had in finding guardians or getting assistance from the Attorney General's office in finding guardians. Please attach letters or reports if possible.

Please add your suggestions on what role a good guardian plays in regards to their residents and what role a public guardian could play in regards to your institution.

- (1) To help meet the needs of the Patient.
- (2) To become enough involved they can anticipate needs.

Return this questionnaire to Ron Rich, ASHA.

Ketchikan

GUARDIANSHIP QUESTIONNAIRE

OCTOBER 1978

Facility Name: Island View Manor

- 1) Total patients in your facility: 43
- 2) How many have guardians?: 43
- 3) How many of those guardians are public bodies?, i.e., public administrator or court system or are by court appointment, disinterested attorneys: None
- 4) How many are without guardians? None
- 5) Of that group (#4), how many need guardians? _____
- 6) And of those needing guardians how many are without relatives or friends able to fill that role? _____

In addition; please document the problems the LTC provider has had in finding guardians or getting assistance from the Attorney General's office in finding guardians. Please attach letters or reports if possible.

N/A at this time

Please add your suggestions on what role a good guardian plays in regards to their residents and what role a public guardian could play in regards to your institution.

Good guardian has a general interest in her or his charge's welfare, both spiritually and materially; shows this by action. Public guardian could act as an ombudsman, only if needed.

Return this questionnaire to Ron Rich, ASHA.

GUARDIANSHIP QUESTIONNAIRE

OCTOBER 1978

Facility Name: Valley

- 1) Total patients in your facility: 6
- 2) How many have guardians?: ~~0~~ 2
- 3) How many of those guardians are public bodies?, i.e., public administrator or court system or are by court appointment, disinterested attorneys: None
- 4) How many are without guardians? None
- 5) Of that group (#4), how many need guardians? One
- 6) And of those needing guardians how many are without relatives or friends able to fill that role? One

In addition; please document the problems the LTC provider has had in finding guardians or getting assistance from the Attorney General's office in finding guardians. Please attach letters or reports if possible.

We have not had a problems yet.
Probably because our patient turnover has
been minimal.

Please add your suggestions on what role a good guardian plays in regards to their residents and what role a public guardian could play in regards to your institution.

Return this questionnaire to Ron Rich, ASHA.

GUARDIANSHIP QUESTIONNAIRE

OCTOBER 1978

Facility Name: WRANGELL GENERAL HOSPITAL AND LONG TERM CARE FACILITY

- 1) Total patients in your facility: 14
- 2) How many have guardians?: 4
- 3) How many of those guardians are public bodies?, i.e., public administrator or court system or are by court appointment, disinterested attorneys: _____
2 ARE DISINTERESTED ATTORNEYS
THE ADMINISTRATOR OF OUR FACILITY IS GUARDIAN FOR 2
- 4) How many are without guardians? 10
- 5) Of that group (#4), how many need guardians? 7
- 6) And of those needing guardians how many are without relatives or friends able to fill that role? 5

In addition; please document the problems the LTC provider has had in finding guardians or getting assistance from the Attorney General's office in finding guardians. Please attach letters or reports if possible.

THERE IS VIRTUALLY NO-ONE WILLING TO TAKE THE RESPONSIBILITY AND WE RECEIVE NO HELP FROM THE ATTORNEY GENERAL'S OFFICE IN FINDING GUARDIANS.

Please add your suggestions on what role a good guardian plays in regards to their residents and what role a public guardian could play in regards to your institution.

BASICALLY, THE KIND OF GUARDIANSHIP OUR RESIDENTS NEED IS SIMPLY SOMEONE WHO WILL TAKE CARE OF THEIR PERSONAL SPENDING MONEY. THE HOSPITAL HAS TAKEN ON THIS TASK FOR MOST OF THEM SIMPLY BECAUSE THERE'S NO-ONE ELSE TO DO IT. IT WOULD BE HELPFUL IF THEY

Return this questionnaire to Ron Rich, ASHA.

(OVER)

Memo:

To: Ron Rich

From: Ray Funk
5950 Margarido
Oakland, CA. 94618
(415) 653-3515

W. S. W. W.
10-17-78

Please inform the long term care providers that the Governors Council is now undertaking drafting of legislation in the area of guardianship for the incapacitated. Specifically, the areas to be considered are limited guardianship and public guardianship.

We realize that one of the areas of greatest need for public guardians is the large number of patients in long term care facilities who are incapacitated and without relatives or close friends.

I have been contracted to do initial drafting in this area and shall provide Ron Rich with copies of all proposals when written. Further, to be able to convince the legislature of the size of the problem, I need data on how many people are involved state-wide.

I'd like to request that each facility send to Ron Rich, and he send to me letters that provide the following information:

- 1) The number of patients: 61
- 2) How many have guardians: 2
- 3) How many of those guardians are public bodies, i.e., public administrator or court system or are by court appointment, disinterested attorneys:
1 - Public Administrator
1 - Court appointment
- 4) How many are without guardians: 59
- 5) Of that group (#4), how many need guardians: 56
and of those needing guardians how many are without relatives or friends able to fill that role: 21

In addition to this data, I need letters documenting the problems the care providers have had in finding guardians or getting assistance from the Attorney General's office in finding guardians.

Finally, I need suggestions from the providers on what role a good guardian plays in regards to their residents and thus, what optimal role a public guardian could play in regards to that institution.

MEASURE SIZES, DO THEIR ORDERING FOR THEM. SEVERAL HAVE
A HARD TIME SPENDING THEIR LONGEVITY BONUS CHECKS, AND WE
END UP WITH TOO MUCH MONEY AND IT HAS TO BE USED TO PAY PART OF
THEIR LTC BILLS.

FOR ANY FURTHER INFO NEEDED ON THIS, CONTACT ME -
TERRY RILATOS AND ILL TRY TO HELP.

Terry

CAREAGE NORTH HEALTH CARE CENTER

A Division Of HEALTH CARE SERVICES - ALASKA, INC.
P.O. BOX 847 • FAIRBANKS, ALASKA 99707 • (907) 452-1921

September 26, 1978

RECEIVED

OCT 04 1978

Patricia Senner, Health Planner
Governors Council for the Handicapped and Gifted
University Plaza Offices - West
600 University Avenue - Suite C
Fairbanks, Alaska 99701

ALASKA D. D. COUNCIL

Dear Patricia Senner,

Thank you for your letter of August 16, 1978 regarding the need for guardianship for patient's at Careage North. Guardianship has been a long neglected issue that needs to be addressed by the legislature.

Nursing homes such as Careage North, are often placed in a position of having to make decisions on behalf of the patient, especially when there are no relatives available. Yet, the nursing home has no legal power to do so. For example, in cases where surgery needs to be performed on an incompetent patient with no relatives, we have to turn to the attorney general's office and to the court system for a decision to be made. When issues of less important nature need to be resolved, for example, purchasing of needed items for patients, patient's transferring to another facility, etc., such decisions are made by the nursing home. It seems that a more appropriate method of dealing with these issues is needed. It appears to be a conflict of interest for the nursing home to be making decisions on such issues with no outside assistance or consultation.

Currently we have:

- 35 patients who appear capable of making their own decisions regarding personal and financial matters. Many of these patients request assistance from family and staff in making decisions.
- 25 patients who do not appear capable of making their own decisions regarding personal and financial matters. These patients have at least one relative who is at times available to assist in making decisions, however, no guardians have been appointed.
- 5 patients who are not capable of making decisions regarding their personal or financial matters; but have had guardians appointed. Four of these five patients have family members acting as guardians. The other guardian is Delores Wilkes, the Public Administrator in Anchorage.

6 patients who are not capable of making their own decisions regarding personal and financial matters. These six patients do not have any family members whatsoever. No guardians have been appointed for them.

The group of patients that I am most concerned with, are those who have no family, and no guardians appointed. Their disabilities range from mentally retarded to severe senility. Ages range from 38 to 94 years of age. The second group of patients most in need of guardians are the 25 patients who have at least one relative to assist them. Once again, the disabilities include mental retardation, severe senility, victims of brain damage in accidents, severe psychiatric disability, etc. Their ages range from 23 to 110.

In your letter you indicated that your group would be attempting to determine what type of mechanism would best meet these patients' guardianship needs, whether public guardians, or incentives for private guardians. It seems to me that both mechanisms would need to be utilized. In the cases where family members are available and are very concerned, it would not be appropriate for a public guardian to be appointed in charge of their relative. At Careage North many family members would possibly be interested in assuming guardianship but are held back by monetary problems, or be fear of assuming the responsibility for the relative. For those patients whose relatives are only minimally involved it would appear most appropriate for a public guardian to be appointed. I am concerned also that a public guardian should be limited in the number of guardianships he or she can assume. When one public guardian assumes responsibility for over 100 patients, the public guardian would become merely a rubber stamp for the nursing home, and would obviously not have sufficient time or energy to understand the needs of the patients.

Thank you for your interest in this important matter. Please keep me posted of any guardianship legislation introduced into the legislature.

Sincerely,



Angie Hage, Social Worker
Careage North

1-23-78

GUARDIANSHIP:

Bruce Tennant, Assistant AG
303 "K" Street
Room 224
274-8611 Ext. 133

The AG is handling 53 guardianship cases at the present time. Their role is to represent the department of Health and Social Services. They must comply with title 13, give notice and prepare the visitors reports. Complaint is that this is too cumbersome in most cases.

Biggest problem is that no guardian can be found or if a suited guardian is around the distance between the guardian and ward many times tender the relationship unsuitable. At the present time one person in Anchorage acts as guardian ad litem for all those needing the service and information guardian is available than the court system will take some and the public administration for the 3rd judicial district has taken on some.

The AG has stated that after they complete the people needing guardianship at the present time they plan to take a look at the situation and it is doubtful that any more will be done unless a guardian is found first.

If a willing guardian can be found the entire process takes about two months, but at the present it takes much longer.

Lack of guardians is the biggest problem. The suggestions were to have a public guardian. The AG does not feel it is their responsibility to find a guardian, but feel that it is appropriate that they handle the legal work.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
HEALTH CARE FINANCING ADMINISTRATION
WASHINGTON, D.C. 20201

PROPOSED REGULATION

ACTION TRANSMITTAL
HCFA-AT-78-87 (AMB)
September 1, 1978

TO: STATE AGENCIES ADMINISTERING MEDICAL ASSISTANCE PROGRAMS

SUBJECT: Title XIX, Social Security Act: Protection of Patients' Funds

REGULATION
REFERENCES: 42 CFR 449.12, 42 CFR 450.30

ATTACHMENT: Notice of proposed rule making to expand standards for protection of personal funds of Medicare and Medicaid patients in skilled nursing and intermediate care facilities.

COMMENT
PERIOD: Consideration will be given to written comments received by the Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2382, Washington, D.C. 20013 by October 31, 1978.

INQUIRIES TO: Regional Medicaid Directors

for Paul Wilhoj
Director
Medicaid Bureau

HCFA-AT-78-87
9/1/78

[4110-35]

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Parts 405 and 449]

FEDERAL HEALTH INSURANCE FOR THE AGED
AND DISABLED MEDICAL ASSISTANCE PRO-
GRAMS

Protection of Patients' Funds

AGENCY: Health Care Financing Ad-
ministration (HCFA), HEW.

ACTION: Notice of proposed rulemak-
ing.

SUMMARY: This proposal would
expand the standards for protection of
personal funds of medicare and medic-
aid patients in skilled nursing facilities
and intermediate care facilities. The
changes are required for skilled nurs-
ing facilities by section 21(a) of Pub. L.
95-142, the Medicare-Medicaid Anti-
Fraud and Abuse Amendments of 1977
and for intermediate care facilities by
section 8(a) of Pub. L. 95-292, the end
stage renal disease amendments of
1978. The intent is to curtail the re-
ported misuse of patient funds and
assure that personal funds are fully
accounted for and made available to
patients when they need them.

DATE: Consideration will be given to
written comments received by October
31, 1978.

ADDRESSEES: Please address com-
ments to: Administrator, Health Care
Financing Administration, Depart-
ment of Health, Education, and Wel-
fare, P.O. Box 2382, Washington, D.C.
20013. In commenting, please refer to
file code HSQ-45-P. Comments will be
available for public inspection, begin-
ning approximately two weeks after
publication, in Room 5231 of the De-
partment's offices at 330 C Street SW.,
Washington, D.C., on Monday through
Friday of each week from 8:30 a.m. to
5 p.m., 202-245-0950.

FOR FURTHER INFORMATION,
CONTACT:

Mr. Benjamin Latt, 301-443-3346.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A medicare or medicaid patient en-
tering a long term care facility nor-
mally turns his personal funds over to
the facility to hold and manage until
needed for personal use. Sometimes
these funds include a personal needs
allowance sent to the patient monthly
under the supplementary security
income (SSI) program (Title XVI of
the Social Security Act).

Current HCFA regulations have not
provided adequate protection of these
funds (see 42 CFR 449.12(a)(1)(iii) and
405.1121(k)(6).)

Investigations by the General Ac-
counting Office, the Senate Commit-
tee on Aging, and some States have re-
vealed serious cases in which patients'
funds were misused or not properly ac-
counted for. (See Sen. Report 95-453,
page 42.)

STATUTORY AMENDMENTS

In view of the problems noted above,
the Congress amended the medicare
statute to require SNF's to establish
and maintain a system of full and
complete accounting of their patients'
personal funds. (See section 21(a) of
the Medicare-Medicaid Anti-Fraud and
Abuse Amendments of 1977 (Pub. L.
95-142).) It also amended the medicaid
statute to place the same require-
ments on ICF's. (See section 8(a) of
the End Stage Renal Disease Program
Amendments (Pub. L. 95-292) enacted
June 13, 1978.) These amendments
also preclude commingling of patients'
funds with facility funds or with those
of any persons except other patients
in the facility.

In addition, sections 21(b) of Pub. L.
95-142 and 8(c) of Pub. L. 95-292 re-
quire that HEW define the costs that
may be charged to the personal funds
of the patients in long term care facili-
ties.

PROPOSED RULE

This proposal, which implements sections 21(a) and 8(a), would establish the requirements for protecting the personal funds of Medicare patients in SNF's and Medicaid patients in SNF's and ICF's. Since Medicare standards for SNF's are applicable to Medicaid (see sec. 1902(a)(28) of the act) the pertinent Medicare regulations would be incorporated by reference in Medicaid regulations. Since services provided by ICF's are covered under Medicaid but not under Medicare rules applicable to ICF's appear only in the Medicaid regulations.

The proposed rule would impose several requirements on SNF's and ICF's, designed to inform patients of their rights, to prevent misuse of patients' funds given to the facility for safekeeping or management, and to provide documentation that adequate measures have been taken to protect patients' funds.

A long-term care facility's initial obligation would be to provide an incoming patient with an explanation of the patient's rights regarding personal funds. The facility would also have to provide the patient with a list of the services which are included in the basic per diem rate, or otherwise provided by the facility, for which no charge may be assessed against the patient or his personal account.

A patient is not required to give his funds to a long-term care facility for safekeeping, but if he requested this of the facility, and provided a written authorization, the facility would be required to accept this responsibility. The facility would have to deposit all funds in excess of \$50 in an interest bearing account. Lesser amounts could be maintained in a noninterest bearing account, or in a petty cash fund, to keep them more readily available for the day-to-day use of the patient. The facility would be required to keep a written record of all financial arrangements and transactions involving the patient's funds and allow the patient access to that record. In addition, the facility would be required to provide the patient with an itemized statement of his account at least quarterly.

The proposed rule would require the facility to obtain a surety bond, in order to protect the patients from any misuse of their funds. It would also

preclude the facility from making any unauthorized use of any personal needs allowance which a patient might receive under the supplemental security income program or from any other source. It also contains measures to protect the account of a patient who dies or becomes incapable of managing his own affairs.

A facility would be required to notify the patient and the State Medicaid agency if the account of a Medicaid patient grows to the extent that it appears a question might be raised about the patient's continued eligibility for Medicaid. This provision is designed to deal with a problem that has frequently arisen when a patient's monthly needs allowance is routinely placed in his personal account and the accumulated savings eventually reaches the point at which the patient's eligibility for Medicaid is jeopardized. The regulation would not prescribe any further action to be taken by the patient, the facility, or the Medicaid agency. Although this provision is not directly related to protecting the patient's funds, it is an important matter that seems best dealt with in this regulation.

The proposed rule would also require that the State Medicaid plan provide for an audit to make sure that a long-term care facility is meeting its obligations for safekeeping and managing patient funds. This would be done simply by amending the existing audit provisions in § 450.30(a)(3)(ii) of the Medicaid regulations.

IMPLEMENTATION OF SECTIONS 21(b) AND 8(c)

In our view, our current regulations adequately implement the requirements of sections 21(b) and 8(c) that we define what costs can be charged to patient funds. The Medicare regulations specify the items that may not be charged to a SNF patient (42 CFR 405.607-405.612). The Medicaid regulations set forth the items that are covered by the Medicaid payment to an ICF and specify that the facility must accept the Medicaid payment as payment in full (42 CFR 450.30(a)(3) and (8)). Therefore, we are not proposing any regulation on this point. Under the proposed rule implementing sections 21(a) and 8(a), SNF's and ICF's would be required to inform patients what services may not be charged to their personal accounts. (See § 405.1121(m)(1) and § 449.12(1)(III)(A).)

APPENDIX NINE

MODEL GUARDIANSHIP AND CONSERVATORSHIP ACT

DRAFT - 9/10/78, AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION

DRAFT
MODEL GUARDIANSHIP AND CONSERVATORSHIP ACT

Draft - 9/10/78

Table of Contents

Chapter 1	Introductory Provisions	1
§1	Title	1
§2	Purpose	1
§3	Definitions	2
§4	Appointment of Disabilities Resources Officers	6
§5	Establishment of the <u>(state name) Evaluation</u> ^{Guardianship/Conservatorship} Oversight Board.	8
Chapter 2 ^{Intervention} Protective Proceedings for Partially Disabled and Disabled Persons		
§6	Initiation of Proceedings	9
→ Motion to Dismiss §7	Evaluation	11
§8	Prehearing Conference	12
§9	Hearing	13
§10	Dispositional Alternatives	14
§11	Dispositional Hearing and Dispositional Principles and Criteria	15
§12	Selection of a Limited Personal Guardian, Personal Guardian, Limited Conservator or Conservator	16
§13	Dispositional Order	17
§14	Review, Modification and Termination	18
§15	Duties and Powers of Limited Personal Guardian and Personal Guardians.	22
§16	Duties and Powers of Limited Conservators and Conservators	27
Chapter 3 ^{Intervention} Protective Proceedings for Minors.		
§17	Initiation of Protecting Proceedings	34
§18	Objections to Testamentary Designations.	36
§19	Hearing	37
§20	Dispositional Alternatives	37
§21	Review, Termination and Modification	40
§22	Duties and Powers of Limited Personal Guardians and Personal Guardians for Minors	43

\$23	Duties and Powers of Limited Conservators and Conservators for Minors	46
\$24	Payment or Delivery of Funds or Personal Property	49
Chapter 4 General Provisions		50
\$25	Time Limits	50
\$26	Rights of the Parties	54
\$27	Notice and Dissemination of Plans and Reports	56
\$28	Appointment and Compensation of Counsel	60
\$29	Appointment of Guardians <u>Ad Litem</u>	61
\$30	Emergency and Standby Appointments	64
\$31	Delegation of Powers	67
\$32	Effect of a Finding that a Person is Partially Disabled or Disabled and of a Guardianship or Conservatorship for a Minor	67
\$33	Compensation and Expenses	67
\$34	Records	68
\$35	Bonds	69
\$36	Liability of a Limited Conservator or Conservator and Penalties for Violations of the Act	70
\$37	Venue of Proceedings Subsequent to a Dispositiona1 Order or an Uncontested Acceptance of a Testamentary Designation	71
\$38	Burden of Proof	72
\$39	Rules of Procedure/Rules of Evidence	79
\$40	Effect on Existing Guardianships and Conservatorships	79
\$41	Severability of Sections	80
\$42	Effective Date	80

MODEL STATUTE

A BILL FOR

AN ACT TO REVISE THE METHODS, CRITERIA AND PROCEDURES FOR PROTECTING PARTIALLY DISABLED AND DISABLED PERSONS AND MINORS AND THE PROPERTY OF SUCH PERSONS AND MINORS; TO ESTABLISH THE CRITERIA FOR APPOINTING LIMITED PERSONAL GUARDIANS, PERSONAL GUARDIANS, LIMITED CONSERVATORS AND CONSERVATORS AND THE RESPONSIBILITIES, DUTIES AND POWERS OF THESE INDIVIDUALS; AND TO SPECIFY THE RIGHTS OF INDIVIDUALS SUBJECT TO PROTECTIVE PROCEEDINGS AND DISPOSITIONAL ORDERS.

CHAPTER INTRODUCTORY PROVISIONS

SECTION 1. TITLE

THIS ACT SHALL BE KNOWN AS THE GUARDIANSHIP AND CONSERVATORSHIP ACT.

SECTION 2. PURPOSE

THE (name of legislature) DECLARES THAT IT IS THE PURPOSE OF THIS ACT TO PROMOTE THE GENERAL WELFARE OF ALL CITIZENS BY ESTABLISHING A SYSTEM WHICH FOR ASSISTING AND PROTECTING PARTIALLY DISABLED AND DISABLED PERSONS AND MINORS, WHICH RECOGNIZES THAT EVERY INDIVIDUAL HAS UNIQUE NEEDS AND DIFFERING ABILITIES, WHICH WILL PERMIT PARTIALLY DISABLED AND DISABLED PERSONS AND MINORS TO PARTICIPATE AS FULLY AS POSSIBLE IN ALL DECISIONS WHICH AFFECT THEM; AND WHICH WILL ASSIST PARTIALLY DISABLED AND DISABLED PERSONS AND MINORS TO MEET THE ESSENTIAL REQUIREMENTS FOR THEIR PHYSICAL HEALTH AND SAFETY, PROTECT THEIR RIGHTS, MANAGE THEIR FINANCIAL RESOURCES, AND DEVELOP OR REGAIN THEIR ABILITIES TO THE GREATEST EXTENT POSSIBLE.

SECTION 3. DEFINITIONS

AS USED IN THIS ACT:

(1) "PARTIALLY DISABLED PERSONS" MEANS ADULTS WHOSE ABILITY TO RECEIVE AND EVALUATE INFORMATION EFFECTIVELY AND/OR COMMUNICATE DECISIONS IS IMPAIRED TO THE EXTENT THAT THEY ^{LACK THE ABILITY TO} ~~HAVE BEEN ADJUDGED TO REQUIRE~~ ASSISTANCE IN ^{MANAGING} AT LEAST SOME OF THEIR FINANCIAL RESOURCES, AND/OR IN MEETING AT LEAST SOME OF THE ESSENTIAL REQUIREMENTS FOR THEIR PHYSICAL HEALTH OR SAFETY, ^{WITHOUT COURT ORDERED ASSISTANCE.} ~~AND/OR IN PROTECTING SOME OF THEIR RIGHTS.~~

(2) "DISABLED PERSONS" MEANS ADULTS WHOSE ABILITY TO RECEIVE AND EVALUATE INFORMATION EFFECTIVELY AND/OR TO COMMUNICATE DECISIONS IS IMPAIRED TO SUCH AN EXTENT THAT THEY ~~HAVE BEEN ADJUDGED TO LACK THE CAPACITY TO MANAGE THEIR FINANCIAL RESOURCES/ AND/OR TO MEET ESSENTIAL REQUIREMENTS FOR THEIR PHYSICAL HEALTH OR SAFETY, AND/OR TO PROTECT~~ ^{EVEN WITH COURT ORDERED ASSISTANCE.} ~~THEIR RIGHTS.~~

URGENT

(3) "MANAGE FINANCIAL RESOURCES" MEANS THOSE ACTIONS NECESSARY TO OBTAIN, ADMINISTER, AND DISPOSE OF REAL AND PERSONAL PROPERTY, INTANGIBLE PROPERTY, BUSINESS PROPERTY, BENEFITS AND INCOME.

(4) "MEET ESSENTIAL REQUIREMENTS FOR PHYSICAL HEALTH OR SAFETY" MEANS THOSE ACTIONS NECESSARY TO PROVIDE THE HEALTH CARE, FOOD, SHELTER, CLOTHING, PERSONAL HYGIENE AND PROTECTION WITHOUT WHICH SERIOUS PHYSICAL INJURY OR ILLNESS IS MORE LIKELY THAN NOT TO OCCUR.

(5) "COURT ORDERED ASSISTANCE" MEANS DISPOSITIONAL ALTERNATIVES AVAILABLE UNDER SECTION ~~OF THIS ACT~~ OTHER THAN THE APPOINTMENT OF A PERSONAL GUARDIAN AND/OR CONSERVATOR.

(5) "PROTECT RIGHTS" MEANS THOSE ACTIONS NECESSARY TO SECURE AND DEFEND THE PERSONAL, CIVIL, AND HUMAN RIGHTS TO WHICH RESIDENTS AND CITIZENS OF THIS STATE ARE ENTITLED.

(6) "MINOR" MEANS AN INDIVIDUAL [AGE SEVENTEEN [17] OR LESS/UNDER THE AGE OF MAJORITY].

(7) "RESPONDENT" MEANS AN INDIVIDUAL ALLEGED TO BE PARTIALLY DISABLED OR DISABLED.

(8) "SUBJECT OF A ^{INTERVENTION} PROTECTIVE PROCEEDING" MEANS THE RESPONDENT, AN INDIVIDUAL FOUND TO BE A PARTIALLY DISABLED OR DISABLED PERSON, OR A MINOR FOR WHOM A PROCEEDING HAS BEEN INITIATED UNDER CHAPTER 3 OF THIS ACT OR WHO HAS A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR.

(9) "PARTIES" MEANS THE INDIVIDUAL FILING A PETITION, APPLICATION, ^{MOTION} OR OBJECTION, THE SUBJECT OF A PROTECTIVE PROCEEDING, AND THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR, IF ANY.

(10) "COURT" MEANS THE (name of the court(s) or divisions of a court of general jurisdiction which hear protective proceedings).

(11) "PROTECTIVE PROCEEDING" MEANS ANY PROCEEDING UNDER THIS ACT.

(12) "LIMITED CONSERVATOR" MEANS AN INDIVIDUAL, ^{OR} A CORPORATION WITH GENERAL POWER TO SERVE AS TRUSTEE, OR THE DIRECTOR OF THE PUBLIC GUARDIAN-SERVICE APPOINTED BY THE COURT TO ASSIST IN MANAGING THE FINANCIAL RESOURCES OF A PARTIALLY DISABLED PERSON OR OF A MINOR.

(13) "CONSERVATOR" MEANS AN INDIVIDUAL, ^{OR} A CORPORATION WITH GENERAL POWER TO SERVE AS TRUSTEE, OR THE DIRECTOR OF THE PUBLIC GUARDIAN SERVICE APPOINTED BY THE COURT TO MANAGE THE FINANCIAL RESOURCES OF A DISABLED PERSON OR ~~OF~~ A MINOR.

(14) "CONSERVATORSHIP" INCLUDES APPOINTMENT OF A LIMITED CONSERVATOR OR ~~OF~~ A CONSERVATOR.

(15) "LIMITED PERSONAL GUARDIAN" MEANS AN INDIVIDUAL ~~OR THE DIRECTOR~~
~~OF THE PUBLIC GUARDIAN SERVICE~~ APPOINTED BY THE COURT TO ASSIST A PAR-
TIALY DISABLED PERSON OR A MINOR IN MEETING THE ESSENTIAL REQUIREMENTS
FOR THE PARTIALLY DISABLED PERSON'S OR THE MINOR'S PHYSICAL HEALTH AND
SAFETY, ~~AND PROTECTING HIS OR HER RIGHTS.~~

(16) "PERSONAL GUARDIAN" MEANS AN INDIVIDUAL OR THE DIRECTOR OF
THE PUBLIC GUARDIAN SERVICE APPOINTED BY THE COURT TO ACT ON BEHALF
OF A DISABLED PERSON OR A MINOR TO ASSURE THAT THE ESSENTIAL REQUIREMENTS
FOR THE PHYSICAL HEALTH AND SAFETY OF THE DISABLED PERSON OR MINOR
ARE MET AND THAT THE RIGHTS OF THE DISABLED PERSON OR MINOR ARE PRO-
TECTED.

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(17) "GUARDIANSHIP" INCLUDES APPOINTMENT OF A LIMITED PERSONAL GUARD-
IAN OR OF A PERSONAL GUARDIAN.

(18) "~~PUBLIC GUARDIAN SERVICE~~" MEANS ~~THE AGENCY ESTABLISHED BY THE~~
~~PUBLIC GUARDIAN SERVICE ACT.~~

(19) "GUARDIANS AD LITEM" MEANS INDIVIDUALS APPOINTED BY THE COURT
TO ASSIST THE SUBJECT OF A PROTECTIVE PROCEEDING TO DETERMINE HIS OR HER
INTERESTS IN REGARD TO THE PROTECTIVE PROCEEDING, OR TO MAKE THAT DE-
TERMINATION IF THE SUBJECT OF THE PROTECTIVE PROCEEDING IS UNCONSCIOUS
OR OTHERWISE WHOLLY INCAPABLE OF DETERMINING HIS OR HER INTERESTS IN
THAT PROCEEDING EVEN WITH ASSISTANCE.

(20) "COUNSEL" MEANS AN ATTORNEY ADMITTED TO THE PRACTICE OF LAW
IN THIS STATE.

(21) "RESTRICTIONS ON THE LEGAL CAPACITY OF A PERSON TO ACT IN HIS
OR HER OWN BEHALF" MEANS POWERS OF A PARTIALLY DISABLED OR DISABLED
PERSON OR A MINOR WHICH ARE ASSIGNED TO A LIMITED PERSONAL GUARDIAN,

6

(27) "DEVELOPMENTAL DISABILITY" MEANS A DISABILITY OF A PERSON WHICH:

(a) (i) IS ATTRIBUTABLE TO AUTISM, CEREBRAL PALSY, EPILEPSY, OR MENTAL RETARDATION;

(ii) IS ATTRIBUTABLE TO ANY OTHER CONDITION FOUND TO BE CLOSELY RELATED TO AUTISM, CEREBRAL PALSY, EPILEPSY OR MENTAL RETARDATION OR REQUIRES TREATMENT AND SERVICES SIMILAR TO THOSE REQUIRED FOR SUCH PERSONS; OR

(iii) IS ATTRIBUTABLE TO DYSLEXIA RESULTING FROM A DISABILITY DESCRIBED IN CLAUSE (i) OR (ii) OF THIS PARAGRAPH; AND

(b) HAS CONTINUED OR CAN BE EXPECTED TO CONTINUE INDEFINITELY.

(28) "ADMINISTRATOR OF VETERAN'S AFFAIRS" MEANS THE HEAD OF THE VETERAN'S ADMINISTRATION OR HIS OR HER SUCCESSOR.

(29) "VETERAN'S ADMINISTRATION" MEANS THE VETERAN'S ADMINISTRATION OF THE UNITED STATES OF AMERICA, ITS PREDECESSORS AND SUCCESSORS.

(30) "IDENTIFIABLE INFORMATION" MEANS INFORMATION WHICH IS INDEXED OR ABLE TO BE RETRIEVED BY NAME, IDENTIFYING CODE OR NUMBER, ADDRESS OR OTHER PERSONAL CHARACTERISTIC.

SECTION 4. APPOINTMENT OF DISABILITIES RESOURCES OFFICERS

(1) THE HEAD OF THE ^{re} (State/local agency responsibility for providing services to partially disabled or disabled persons) SHALL EMPLOY INDIVIDUALS ON A FULL-TIME OR PART-TIME BASIS TO SERVE AS DISABILITIES RESOURCES OFFICERS IN ACCORDANCE WITH (citation to State Civil Service Act/or statute, if any, authorizing local jurisdictions to hire personnel). THE NUMBER OF INDIVIDUALS HIRED TO BE OR ASSIGNED THE DUTIES OF DISABILITIES RESOURCES OFFICERS SHALL BE COMMENSURATE WITH THE VOLUME OF ^{INTERVIEWING} PROTECTIVE PROCEEDINGS INITIATED AND THE NUMBER OF GUARDIANSHIPS AND CONSERVATORSHIPS FOR PARTIALLY DISABLED OR DISABLED PERSONS ESTABLISHED IN THE (State/county/parish/city), BUT SHALL BE SUFFICIENT TO PERMIT

PERSONAL GUARDIAN, LIMITED CONSERVATOR, CONSERVATOR OR TRUSTEE.

(22) "DISABILITIES RESOURCE OFFICERS" MEANS EMPLOYEES OF THE (name of state/local agency responsible for providing services to partially disabled and disabled persons) WHO HAVE CURRENT KNOWLEDGE OF THE FULL RANGE OF PUBLIC AND PRIVATE MEDICAL, MENTAL HEALTH, SOCIAL, ADVOCACY, EDUCATIONAL, REHABILITATIVE, COUNSELING, THERAPEUTIC, HOMEMAKING, RECREATIONAL AND FINANCIAL SERVICES AND PROGRAMS AVAILABLE TO ASSIST PARTIALLY DISABLED AND DISABLED PERSONS AND THEIR FAMILIES AND WHO ARE ASSIGNED THE DUTIES SET FORTH IN THIS ACT.

(23) "MULTI-DISCIPLINARY EVALUATION TEAM" MEANS A GROUP OF AT LEAST FOUR [4] INDIVIDUALS WHICH IS APPOINTED BY THE COURT FROM A PANEL OF EXPERTS APPROVED BY THE (state name) EVALUATION OVERSIGHT BOARD, TO EVALUATE AN INDIVIDUAL SUBJECT TO A ~~PROTECTIVE~~ ^{EVALUATION} PROCEEDING PURSUANT TO CHAPTER 2 OF THIS ACT. EACH MULTIDISCIPLINARY EVALUATION TEAM SHALL INCLUDE A PHYSICIAN, ~~A~~ ^A PSYCHIATRIST, ~~OR~~ ^{OR} LICENSED CLINICAL PSYCHOLOGIST, ~~A~~ ^A SOCIAL WORKER WITH A GRADUATE DEGREE IN SOCIAL WORK AND FIELD TRAINING OR EXPERIENCE IN WORKING WITH PARTIALLY DISABLED OR DISABLED PERSONS, ~~AND~~ ^{AND} ~~AT LEAST ONE ADDITIONAL~~ ^{AND/OR OTHER} EXPERT WITH KNOWLEDGE OF THE PARTICULAR DISABILITY WHICH AN INDIVIDUAL IS ALLEGED OR HAS BEEN FOUND TO HAVE.

(24) "EVALUATION" MEANS AN ASSESSMENT OF THE ABILITY OF AN INDIVIDUAL TO RECEIVE AND EVALUATE INFORMATION EFFECTIVELY AND/OR TO COMMUNICATE DECISIONS AND THE IMPACT OF ANY IMPAIRMENT OF THESE SKILLS ON THE INDIVIDUAL'S CAPACITY TO MANAGE HIS OR HER FINANCIAL RESOURCES, ^{AND} TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND TO PROTECT HIS OR HER RIGHTS.

^{GUARDIANSHIP/CONSERVATORSHIP}
(25) "(State name) EVALUATION OVERSIGHT BOARD" MEANS THE AGENCY ESTABLISHED BY SECTION 5 OF THIS ACT.

(26) "LEAST RESTRICTIVE DISPOSITIONAL ALTERNATIVE" MEANS THE FORM OF ASSISTANCE THAT LEAST INTERFERES WITH THE LEGAL CAPACITY OF A RESPONDENT TO ACT IN HIS OR HER ^{OWN} BEHALF.

EASY ACCESS FOR THOSE INDIVIDUALS REQUIRING THE SERVICES OF A DISABILITY RESOURCES OFFICER.

(2) DISABILITIES RESOURCES OFFICERS SHALL:

(a)(i) DEVELOP AND MAINTAIN A CURRENT KNOWLEDGE OF THE FULL RANGE OF PUBLIC AND PRIVATE MEDICAL, MENTAL HEALTH, SOCIAL ADVOCACY, EDUCATIONAL, REHABILITATIVE, COUNSELING, THERAPEUTIC, HOMEMAKING, RECREATIONAL AND FINANCIAL SERVICES AND PROGRAMS AVAILABLE TO ASSIST PARTIALLY DISABLED AND DISABLED PERSONS AND THEIR FAMILIES;

(b)(i) DISCUSS PERSONALLY WITH INDIVIDUALS SEEKING TO FILE A PETITION PURSUANT TO SECTION 6 OF THIS ACT;

(i) THE MATTERS WHICH THE INDIVIDUAL WISHES TO ALLEGE IN THE PETITION;

(ii) THE EFFECTS OF THE APPOINTMENT OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR AND/OR CONSERVATOR; AND

(iii) THE LESS RESTRICTIVE ALTERNATIVES WHICH ARE AVAILABLE; (c) ASSIST PARTIALLY DISABLED AND DISABLED PERSONS, AND INDIVIDUALS APPOINTED TO SERVE AS A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, AND/OR CONSERVATOR TO DEVELOP AND UPDATE INDIVIDUAL GUARDIANSHIP PLANS AND INDIVIDUAL CONSERVATORSHIP PLANS.

(d) PROVIDE INFORMATION, GUIDANCE, COUNSELING AND REFERRAL SERVICES TO INDIVIDUALS REGARDING THE ALTERNATIVES WHICH ARE AVAILABLE TO ASSIST PARTIALLY DISABLED AND DISABLED PERSONS TO MEET THE ESSENTIAL REQUIREMENTS FOR THEIR PHYSICAL HEALTH OR SAFETY, AND/OR MANAGE THEIR FINANCIAL RESOURCES, AND/OR PROTECT THEIR RIGHTS, AND DEVELOP OR REGAIN THEIR ABILITIES TO THE MAXIMUM EXTENT POSSIBLE. NO REFERRALS SHALL BE MADE UNLESS THE DISABILITIES RESOURCES OFFICER HAS CONTACTED THE INDIVIDUAL OR PUBLIC OR PRIVATE AGENCY TO WHICH THE REFERRAL IS BEING MADE, AND DETERMINED THAT THE INDIVIDUAL TO BE REFERRED MEETS THE ELIGIBILITY REQUIREMENTS AND THAT THE NECESSARY SERVICES ARE AVAILABLE.

(b) IN ADDITION, DISABILITIES RESOURCES OFFICERS MAY FILE A MOTION TO DISMISS A PETITION PURSUANT TO SECTION 7.

8

SECTION 5. ESTABLISHMENT OF THE (state name) EVALUATION OVERSIGHT BOARD

(1) THERE IS HEREBY ESTABLISHED THE (state name) EVALUATION OVERSIGHT BOARD (HEREINAFTER REFERRED TO AS THE BOARD).

(2) THE BOARD SHALL CONSIST OF THE DIRECTOR OF THE (name of the state developmental disabilities advocacy office) WHO SHALL SERVE AS CHAIRPERSON, THE (Director/Administrator/Secretary) OF THE (name of the department or agency responsible for providing services to partially disabled and disabled persons), AND THE DIRECTOR OF THE PUBLIC GUARDIANSHIP SERVICE.

(3) THE BOARD SHALL:

(a) ESTABLISH AND ANNUALLY PUBLISH THE PROCEDURES AND CRITERIA FOR IDENTIFYING INDIVIDUALS WHO ARE QUALIFIED TO SERVE ON MULTIDISCIPLINARY EVALUATION TEAMS;

(b) PREPARE AND PUBLISH, ANNUALLY, A LIST OF INDIVIDUALS FROM ALL SECTIONS OF THE STATE WHO ARE QUALIFIED TO SERVE ON MULTIDISCIPLINARY EVALUATION TEAMS, INCLUDING:

(i) PHYSICIANS;

(ii) PSYCHIATRISTS;

(iii) LICENSED CLINICAL PSYCHOLOGISTS;

(iv) SOCIAL WORKERS WITH A GRADUATE DEGREE AND FIELD TRAINING OR EXPERIENCE IN WORKING WITH PARTIALLY DISABLED OR DISABLED PERSONS; AND

(v) OTHER EXPERTS ON DISABILITIES WHICH CAN AFFECT AN INDIVIDUAL'S ABILITY TO RECEIVE AND EVALUATE INFORMATION EFFECTIVELY AND/OR TO COMMUNICATE DECISIONS TO SUCH AN EXTENT THAT THE INDIVIDUAL REQUIRES ASSISTANCE OR WHOLLY LACKS THE CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY, AND/OR PROTECT HIS OR HER RIGHTS, AND/OR MANAGE HIS OR HER FINANCIAL RESOURCES.

(c) ESTABLISH AND ANNUALLY PUBLISH THE PROCEDURES AND CRITERIA FOR REMOVING INDIVIDUALS FROM THE LIST OF THOSE QUALIFIED TO SERVE ON MULTIDISCIPLINARY EVALUATION TEAMS;

(d) EMPLOY, IN ACCORDANCE WITH THE (state civil service code), AN ADMINISTRATIVE DIRECTOR AND SUCH PROFESSIONAL, TECHNICAL, CLERICAL, AND ADMINISTRATIVE PERSONNEL AND MAKE THE NECESSARY EXPENDITURES THEREFOR WITHIN THE APPROPRIATIONS PROVIDED, AS MAY BE NECESSARY TO CARRY OUT THE RESPONSIBILITIES, DUTIES AND POWERS SET FORTH IN THIS ACT;

(e) DELEGATE TO THE ADMINISTRATIVE DIRECTOR SUCH POWERS AS ARE NECESSARY TO CARRY OUT THE DUTIES OF THE BOARD SET FORTH IN THIS ACT, INCLUDING THE POWER TO REDELEGATE AUTHORITY WHEN NECESSARY AND TO DESIGNATE A MEMBER OF THE STAFF TO SERVE AS ACTING ADMINISTRATIVE DIRECTOR DURING THE ABSENCE OR DISABILITY OF THE ADMINISTRATIVE DIRECTOR OR IN THE EVENT OF A VACANCY IN THE OFFICE OF ADMINISTRATIVE DIRECTOR;

(f) CONTRACT WITH INDIVIDUALS, BUSINESSES, WHETHER FOR PROFIT OR NOT FOR PROFIT, AND OTHER PUBLIC OR PRIVATE ORGANIZATIONS OR AGENCIES TO CARRY OUT THE RESPONSIBILITIES, DUTIES AND POWERS SET FORTH IN THIS ACT;

(g) PROMULGATE SUCH POLICIES, RULES, REGULATIONS AND PROCEDURES, IN ADDITION TO THOSE REQUIRED ABOVE, AS ARE NECESSARY FOR THE EFFECTIVE OPERATION OF THE BOARD.

INTERVENTION

CHAPTER 2 PROTECTIVE PROCEEDINGS FOR PARTIALLY DISABLED AND DISABLED PERSONS

INTERVENTION

SECTION 6. INITIATION OF PROTECTIVE PROCEEDINGS

INTERVENTION

(1) (a) A PROTECTIVE PROCEEDING SHALL BE INITIATED BY THE FILING OF A PETITION WITH THE COURT BY A PARTIALLY DISABLED PERSON, AN INDIVIDUAL INTERESTED IN THE WELFARE OF A PARTIALLY DISABLED OR DISABLED PERSON, BY A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR OF SUCH A PERSON, OR BY THE PUBLIC GUARDIAN SERVICE.

- (b) THE PETITION SHALL BE VERIFIED UNDER OATH AND SHALL SPECIFY:
 - (i) THE NAME, AGE, AND ADDRESS OF THE RESPONDENT;
 - (ii) THE NATURE AND DEGREE OF THE ALLEGED DISABILITY;

10

(iii) THE PARTICULAR TYPE OF APPOINTMENT, AND THE PROTECTION AND ASSISTANCE BEING SOUGHT;

(iv) THE DURATION OF THE APPOINTMENT, PROTECTION AND ASSISTANCE BEING SOUGHT;

(v) ANY EXISTING RESTRICTIONS ON THE LEGAL CAPACITY OF THE RESPONDENT TO ACT IN HIS OR HER OWN BEHALF;

(vi) THE NAMES AND ADDRESSES, UNLESS THEY ARE UNKNOWN AND CANNOT BE REASONABLY ASCERTAINED, OF THE INDIVIDUALS MOST CLOSELY RELATED TO THE RESPONDENT BY BLOOD OR MARRIAGE;

(vii) THE NAME AND ADDRESS OF THE INDIVIDUAL OR FACILITY, IF ANY, HAVING CUSTODY OF THE RESPONDENT;

(viii) THE NAME, ADDRESS, QUALIFICATIONS AND RELATIONSHIP TO THE RESPONDENT OF THE INDIVIDUAL, IF ANY, PROPOSED FOR APPOINTMENT AS LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, OR CONSERVATOR;

(ix) THE APPROXIMATE VALUE AND DESCRIPTION OF THE RESPONDENT'S FINANCIAL RESOURCES, IF THE PETITION REQUESTS APPOINTMENT OF A LIMITED CONSERVATOR OR A CONSERVATOR;

(x) THE BENEFITS, COMPENSATION, PENSION OR INSURANCE PAYABLE BY THE VETERAN'S ADMINISTRATION TO WHICH THE RESPONDENT IS ENTITLED;

(xi) THE REASONS WHY THE APPOINTMENT OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, OR LIMITED CONSERVATOR OR CONSERVATOR IS BEING SOUGHT;

(xii) THE FACTS SUPPORTING THE ALLEGATIONS;

(xiii) THE NAME, ADDRESS, AND INTEREST OF THE PETITIONER; AND

(xiv) THAT THE PETITIONER HAS DISCUSSED WITH THE DISABILITIES RESOURCES OFFICER THE FACTS ALLEGED IN THE PETITION, THE EFFECT OF THE APPOINTMENT OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR, AND THE ALTERNATIVE SERVICES AND PROCEDURES WHICH ARE AVAILABLE; AND THAT THE REQUESTED TYPE(S) OF APPOINTMENT AND THE PROTECTIONS AND ASSISTANCE ARE THE LEAST RESTRICTIVE DISPOSITIONAL ALTERNATIVE WHICH WILL MEET THE NEEDS OF THE RESPONDENT.

(c) NO MORE THAN FIVE [5] DAYS AFTER THE FILING OF A PETITION, THE COURT SHALL SET A DATE FOR A HEARING AND SHALL HAVE NOTICE SERVED ON THE INDIVIDUALS AND ENTITIES SPECIFIED IN SECTION 27(1)(a) OF THIS ACT ~~AS AMENDED~~ ~~AND~~ IN THE FORM AND MANNER PRESCRIBED IN SECTIONS 27(1)(a) AND 27(2).

(2) A PARENT, SPOUSE, OR CHILD OF A PARTIALLY DISABLED OR DISABLED PERSON WHO IS SERVING AS LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR OF THAT PERSON MAY, BY WILL, DESIGNATE AN INDIVIDUAL TO SERVE IN THAT CAPACITY UPON THE DEATH OF THE TESTATOR. SUCH A DESIGNATION SHALL NOT BECOME EFFECTIVE IF ANOTHER PERSON IS SERVING AS THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR AT THE TIME OF DEATH, NOR UNTIL THE WILL HAS BEEN FILED FOR PROBATE AND THE COURT HAS APPOINTED THE DESIGNEE FOLLOWING A HEARING PURSUANT TO SECTION 14(2) OF THIS ACT. PENDING SUCH APPOINTMENT, THE DESIGNEE MAY FILE FOR APPOINTMENT ON AN EMERGENCY BASIS PURSUANT TO SECTION 30(1) OF THIS ACT.

New Section on Motion to Dismiss by parties or disabilities resources officer

SECTION 7. EVALUATION

WITHIN THE TIME PRESCRIBED IN SECTION 25(1)(c) OF THIS ACT, THE COURT SHALL APPOINT A MULTIDISCIPLINARY EVALUATION TEAM TO EVALUATE THE RESPONDENT. THE MULTIDISCIPLINARY EVALUATION TEAM MAY, WITH THE APPROVAL OF THE COURT, EMPLOY SUCH ASSISTANTS AND INCUR SUCH EXPENSES AS ARE REASONABLE AND NECESSARY FOR CONDUCTING THE EVALUATION. HOWEVER, THE MEMBERS OF THE MULTIDISCIPLINARY TEAM SHALL BE RESPONSIBLE FOR THE CONTENTS OF AND CONCLUSIONS IN THE TEAM'S REPORT.

(2) THE EVALUATION SHALL BE CONDUCTED SO AS TO MINIMIZE INTERFERENCE WITH THE RESPONDENT'S ACTIVITIES AND INTRUSION INTO THE RESPONDENT'S PRIVACY.

(3) THE REPORT OF THE MULTIDISCIPLINARY EVALUATION TEAM SHALL INCLUDE:

12

(a) A DESCRIPTION OF THE NATURE AND EXTENT OF THE RESPONDENT'S DISABILITIES, IF ANY;

(b) A DESCRIPTION OF THE RESPONDENT'S MENTAL, EMOTIONAL, PHYSICAL, AND EDUCATIONAL CONDITION, ADAPTIVE BEHAVIOR AND SOCIAL SKILLS;

(c) AN OPINION REGARDING THE TYPE(S) AND EXTENT OF ASSISTANCE, IF ANY, REQUIRED BY THE RESPONDENT TO MANAGE HIS OR HER FINANCIAL RESOURCES, TO PROTECT HIS OR HER RIGHTS, AND/OR TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY, AND WHY NO LESS RESTRICTIVE ALTERNATE WOULD BE APPROPRIATE;

(d) AN OPINION REGARDING THE PROBABILITY THAT THE EXTENT OF THE RESPONDENT'S DISABILITIES, IF ANY, MAY SIGNIFICANTLY LESSEN, AND THE TYPE OF SERVICES OR TREATMENT WHICH WILL FACILITATE IMPROVEMENT IN THE RESPONDENT'S CONDITION OR SKILLS;

(e) THE NAMES AND ADDRESSES OF ALL INDIVIDUALS WHO EXAMINED, INTERVIEWED OR INVESTIGATED THE RESPONDENT IN CONJUNCTION WITH THE EVALUATION;

(f) THE SIGNATURES OF EACH MEMBER OF THE MULTIDISCIPLINARY EVALUATION TEAM TOGETHER WITH A STATEMENT OF CONCURRENCE OR NONCONCURRENCE WITH THE EVALUATION FINDINGS; AND

(g) ANY DISSENTING OPINIONS OR OTHER COMMENTS BY MEMBERS OF THE MULTI DISCIPLINARY EVALUATION TEAM.

(4) THE REPORT OF THE MULTIDISCIPLINARY EVALUATION TEAM SHALL BE SUBMITTED TO THE COURT WITHIN THE TIME PRESCRIBED IN SECTION 25(1)(d) OF THIS ACT AND SHALL BE DISTRIBUTED IN THE MANNER AND TO THE INDIVIDUALS SPECIFIED IN SECTION 27(3)(a).

SECTION 8. PREHEARING CONFERENCE

WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 25(1)(e) OF THIS ACT, THE PARTIES SHALL MEET, TOGETHER WITH THE DISABILITIES RESOURCES OFFICER, TO DISCUSS WHETHER IN LIGHT OF THE REPORT OF THE MULTIDISCIPLINARY EVALUATION TEAM, THE RESPONDENT IS IN NEED OF PROTECTION AND ASSISTANCE AND,

IF SO, WHETHER NON-CUSTODIAL TREATMENT OR SERVICES AVAILABLE ON A VOLUN-
TARY BASIS MAY OBTAIN THE NEED FOR REQUESTING THE APPOINTMENT OF A
LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR,
AND/OR CONSERVATOR. IF THERE IS AGREEMENT THAT THE APPOINTMENT OF
A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR
AND/OR CONSERVATOR ARE NOT REQUIRED, THE PETITION SHALL BE WITHDRAWN
IMMEDIATELY. IF THERE IS AGREEMENT THAT VOLUNTARY, NON-CUSTODIAL TREAT-
MENT OR SERVICES MAY BE AVAILABLE WHICH MAY OBTAIN THE NEED FOR SUBMIS-
SION OF THE MATTER TO THE COURT, THE PARTIES MAY STIPULATE TO A CONTINU-
ANCE OF UP TO NINETY [90] DAYS. IF THE PARTIES DO NOT AGREE TO WITHDRAW
THE PETITION OR STIPULATE TO A CONTINUANCE, THE MATTER SHALL PROCEED
TO HEARING.

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SECTION 9. HEARING

WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 25(1)(f) OF THIS ACT, THE COURT
SHALL HOLD A HEARING.

(1) IF THE PETITION REQUESTS APPOINTMENT OF A LIMITED PERSONAL GUARD-
IAN OR PERSONAL GUARDIAN, THE FOLLOWING MATTERS SHALL BE DETERMINED
AT THE HEARING:

- (a) THE RIGHTS NEEDING PROTECTION;
- (b) THE ESSENTIAL REQUIREMENTS FOR THE RESPONDENT'S PHYSICAL
HEALTH AND SAFETY;
- (c) THE NATURE AND EXTENT OF THE RESPONDENT'S DISABILITIES,
IF ANY; AND
- (d) WHETHER THE RESPONDENT IS A PARTIALLY DISABLED OR DISABLED
PERSON AS DEFINED IN SECTION ^{AND (2)} 3(1) OF THIS ACT.

(2) IF THE PETITION REQUESTS THE APPOINTMENT OF A ^{LIMITED} CONSERVATOR OR
~~A-LIMITED~~ CONSERVATOR, THE FOLLOWING MATTERS SHALL BE DETERMINED AT
THE HEARING:

- (a) THE TYPE AND AMOUNT OF THE RESPONDENT'S FINANCIAL RESOURCES;
- (b) THE SKILLS AND KNOWLEDGE NECESSARY TO MANAGE THOSE FINANCIAL
RESOURCES;

14

(c) THE NATURE AND EXTENT OF THE RESPONDENT'S DISABILITIES,
IF ANY; AND

(d) WHETHER THE RESPONDENT IS A PARTIALLY DISABLED OR DISABLED
PERSON, AS DEFINED IN SECTION 3(1)^S AND (2)^{AN} OF THIS ACT.

SECTION 10. DISPOSITIONAL ALTERNATIVES

(1) IF A RESPONDENT IS FOUND NOT TO BE A PARTIALLY DISABLED OR DIS-
ABLED PERSON THE PETITION SHALL BE DISMISSED.

(2) AMONG THE DISPOSITIONAL ALTERNATIVES AVAILABLE TO THE COURT
FOLLOWING A FINDING THAT THE RESPONDENT IS A PARTIALLY DISABLED OR DIS-
ABLED PERSON, ARE:

(a) DIRECTING THE PROVISION OF NECESSARY MEDICAL, MENTAL HEALTH,
COUNSELING, SOCIAL, ADVOCACY, EDUCATIONAL, THERAPEUTIC, REHABILITATIVE,
HOMEMAKING, RECREATIONAL, FINANCIAL OR OTHER SERVICES TO THE RESPONDENT
ON A NONCUSTODIAL BASIS;

(b) DIRECTING ESTABLISHMENT OF A TRUST OF WHICH THE RESPONDENT
AND ANY INDIVIDUALS LEGALLY DEPENDENT ON THE RESPONDENT ARE THE BENE-
FICIARIES;

(c) AUTHORIZING OR RATIFYING A CONTRACT OR TRANSACTION EN-
TERED INTO BY A PARTIALLY DISABLED OR DISABLED PERSON TO MEET HIS OR
HER ESSENTIAL REQUIREMENTS FOR PHYSICAL HEALTH OR SAFETY, TO PROTECT
HIS OR HER RIGHTS, TO MANAGE HIS OR HER FINANCIAL RESOURCES AND/OR TO
DEVELOP OR REGAIN HIS OR HER ABILITIES TO THE MAXIMUM EXTENT POSSIBLE.

(d) APPOINTING A LIMITED CONSERVATOR OR CONSERVATOR; AND

(e) APPOINTING A LIMITED PERSONAL GUARDIAN OR PERSONAL GUAR-
DIAN.

SECTION 11 DISPOSITIONAL HEARING, AND DISPOSITIONAL PRINCIPLES AND CRITERIA

(1) FOLLOWING A FINDING THAT THE RESPONDENT IS A PARTIALLY DISABLED
OR DISABLED PERSON, THE PARTIES SHALL HAVE AN OPPORTUNITY WITHIN THE

TIME LIMITS PRESCRIBED IN SECTION 25(1)⁹(b) OF THIS ACT TO PRESENT EVIDENCE AND TESTIMONY REGARDING THE TYPES OF ASSISTANCE AND PROTECTIONS REQUIRED, THE SERVICES AVAILABLE FOR CONSIDERATION BY THE COURT IN MAKING THE DISPOSITIONAL DECISION, AND THE SELECTION, IF ANY, OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR.

(2) THE COURT SHALL IMPOSE THE LEAST RESTRICTIVE DISPOSITIONAL ALTERNATIVE WHICH IN LIGHT OF THE DETERMINATIONS MADE AT THE HEARING HELD PURSUANT TO SECTION 9 OF THIS ACT AND THE EVIDENCE AND TESTIMONY PRESENTED AT THE DISPOSITIONAL HEARING WILL ASSIST THE RESPONDENT TO:

- (a) MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY; AND/OR
- (b) PROTECT HIS OR HER RIGHTS; AND/OR
- (c) MANAGE HIS OR HER FINANCIAL RESOURCES; AND
- (d) DEVELOP OR REGAIN TO THE MAXIMUM EXTENT POSSIBLE THE SKILLS NEEDED TO PERFORM THE FUNCTIONS LISTED IN SUB-PARAGRAPHS (2)(a)-(2)(c) OF THIS SECTION WITHOUT COURT-ORDERED ASSISTANCE.

DISPOSITIONS SHALL BE DESIGNED TO ENCOURAGE RESPONDENTS TO PARTICIPATE IN ALL DECISIONS WHICH AFFECT THEM AND TO ACT ON THEIR OWN BEHALF TO THE MAXIMUM EXTENT POSSIBLE.

(3) IN SELECTING AMONG THE AVAILABLE DISPOSITIONAL ALTERNATIVES IN ACCORDANCE WITH THE PRINCIPLES SET FORTH IN PARAGRAPH (2) OF THIS SECTION, THE COURT SHALL NOT:

- (a) ORDER THAT A SERVICE BE PROVIDED UNLESS THE RESPONDENT'S NEED FOR THAT PARTICULAR SERVICE HAS BEEN PROVEN;
- (b) AUTHORIZE OR RATIFY A CONTRACT OR TRANSACTION UNLESS THE NEED FOR AUTHORIZATION OR RATIFICATION HAS BEEN PROVEN;
- (c) ORDER THE ESTABLISHMENT OF A TRUST OR OF A GUARDIANSHIP OR CONSERVATORSHIP UNLESS THE NEED THEREFOR HAS BEEN PROVEN AND NO LESS RESTRICTIVE DISPOSITIONAL ALTERNATIVE OR COMBINATION OF ALTERNATIVES WILL BE SUFFICIENT TO SATISFY THAT NEED;
- (d) ASSIGN A DUTY OR POWER TO A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, OR CONSERVATOR APPOINTED IN

ACCORDANCE WITH SUBPARAGRAPH 3(c) OF THIS SECTION, UNLESS THE NEED THEREFOR HAS BEEN PROVEN AND NO LESS RESTRICTIVE DISPOSITIONAL ALTERNATIVE OR COMBINATION OF ALTERNATIVES WILL BE SUFFICIENT TO SATISFY THAT NEED;

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(e) APPOINT A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN IF THE RESPONDENT'S PARTIAL DISABILITY OR DISABILITY AFFECTS ONLY THE CAPACITY TO MANAGE HIS OR HER FINANCIAL RESOURCES; AND

(f) APPOINT A LIMITED CONSERVATOR OR CONSERVATOR IF THE RESPONDENT'S PARTIAL DISABILITY OR DISABILITY AFFECTS ONLY THE CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS OF HIS OR HER PHYSICAL HEALTH OR SAFETY OR TO PROTECT HIS OR HER RIGHTS.

SECTION 12. SELECTION OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR

(1) ELIGIBILITY

THE COURT MAY APPOINT ANY NON-DISABLED ADULT OR THE DIRECTOR OF THE PUBLIC GUARDIAN SERVICE TO SERVE AS A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN, AND ANY NON-DISABLED ADULT, ANY CORPORATION WITH GENERAL POWER TO SERVE AS TRUSTEE, OR THE DIRECTOR OF THE PUBLIC GUARDIAN SERVICE TO SERVE AS A LIMITED CONSERVATOR OR CONSERVATOR UNLESS THAT INDIVIDUAL, CORPORATION, OR THE PUBLIC GUARDIAN SERVICE:

(a) IS PERFORMING OR IS RESPONSIBLE FOR PERFORMING SOME SERVICE OTHER THAN A GUARDIANSHIP OR CONSERVATORSHIP SERVICE FOR THE RESPONDENT;

(b) IS PROVIDING SOME FORM OF TREATMENT OR IS RESPONSIBLE FOR PROVIDING SUCH TREATMENT TO THE RESPONDENT;

(c) IS ENTITLED TO RECEIVE FINANCIAL REIMBURSEMENT FOR THE CARE OF THE RESPONDENT;

(d) IS A CREDITOR OF THE RESPONDENT; OR

(e) HAS INTERESTS WHICH MAY OTHERWISE CONFLICT WITH THOSE OF THE RESPONDENT.

NOTHING IN THIS PROVISION SHALL EXCLUDE THE APPOINTMENT OF THE RESPONDENT'S PARENT, SPOUSE, CHILD OR SIBLING WHEN THE CONFLICT OF INTEREST

IS DETERMINED TO BE INSUBSTANTIAL AND SUCH AN APPOINTMENT WOULD CLEARLY BE THE MOST BENEFICIAL TO THE RESPONDENT.

(2) PRIORITY OF SELECTION

THE FOLLOWING PRIORITIES SHALL GUIDE THE COURT'S SELECTION OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, OR CONSERVATOR FROM AMONG THOSE ELIGIBLE:

- (a) THE INDIVIDUAL, CORPORATION OR ENTITY NOMINATED BY THE RESPONDENT;
- (b) THE CURRENT LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, OR CONSERVATOR APPOINTED OR RECOGNIZED BY THE APPROPRIATE COURT OF ANY OTHER JURISDICTION IN WHICH THE PROTECTED PERSON RESIDES;
- (c) THE RESPONDENT'S SPOUSE;
- (d) AN ADULT CHILD OF THE RESPONDENT;
- (e) A PARENT OF THE RESPONDENT;
- (f) A PERSON NOMINATED BY THE WILL OF A DECEASED PARENT;
- (g) ANY PERSON WITH WHOM THE RESPONDENT HAS BEEN LIVING FOR MORE THAN 6 MONTHS PRIOR TO THE FILING OF THE PETITION;
- (h) A SIBLING OF THE RESPONDENT;
- (i) ~~THE DIRECTOR OF THE PUBLIC GUARDIAN SERVICE.~~

THE COURT MAY SELECT THE INDIVIDUAL OR CORPORATION BEST QUALIFIED AND MOST WILLING TO SERVE FROM AMONG THOSE OF EQUAL PRIORITY. THE COURT MAY PASS OVER A PERSON OR CORPORATION HAVING PRIORITY AND APPOINT A PERSON HAVING LESS PRIORITY OR NO PRIORITY WHEN IT IS DEMONSTRATED THAT THE SELECTION WILL BE OF GREATER BENEFIT TO THE PARTIALLY DISABLED PERSON OR DISABLED PERSON.

Add provision re: selection of ~ volunteer public guardian or conservator

SECTION 13. DISPOSITIONAL ORDER

- (1) THE DISPOSITIONAL ORDER SHALL SET FORTH:
 - (a) THE SERVICES, IF ANY, TO BE PROVIDED TO THE RESPONDENT;
 - (b) THE TERMS OR CONDITIONS UNDER WHICH A CONTRACT OR TRANSACTION, IF ANY, IS AUTHORIZED OR RATIFIED;
 - (c) THE TERMS OF ANY TRUST TO BE ESTABLISHED;

(d) THE NAME AND ADDRESSES OF THE INDIVIDUAL, IF ANY, APPOINTED TO SERVE AS THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN AND/OR THE INDIVIDUAL OR CORPORATION, IF ANY, APPOINTED TO SERVE AS LIMITED CONSERVATOR OR CONSERVATOR;

(e) THE DUTIES AND POWERS OF THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN, IF ANY;

(f) THE DUTIES AND POWERS OF THE LIMITED CONSERVATOR OR CONSERVATOR, IF ANY, AND THE PARTICULAR FINANCIAL RESOURCES PLACED UNDER SUPERVISION OR CONTROL OF THE LIMITED CONSERVATOR OR CONSERVATOR; AND

(g) THE DATE OF THE INITIAL REVIEW HEARING.

(2) IN ISSUING THE DISPOSITIONAL ORDER, THE COURT SHALL EXPLAIN ON THE RECORD THE TERMS AND CONDITIONS CONTAINED THEREIN, THE FACTS AND REASONS WHICH SUPPORT THE DECISION NOT TO IMPOSE ANY LESS RESTRICTIVE ALTERNATIVE, IN ACCORDANCE WITH THE PRINCIPLES AND CRITERIA SET FORTH IN SECTION 11(2) AND (3) OF THIS ACT, AND IF A GUARDIANSHIP OR CONSERVATORSHIP HAS BEEN ESTABLISHED, THE FACTS AND REASONS SUPPORTING THE SELECTION OF THE INDIVIDUAL AND/OR CORPORATION APPOINTED. THE COURT SHALL ALSO EXPLAIN TO THE RESPONDENT THE PROCEDURES SET FORTH IN SECTION 14 FOR TERMINATING OR MODIFYING THE DISPOSITIONAL ORDER.

SECTION 14 REVIEW, MODIFICATION AND TERMINATION

(1) (a) THE COURT SHALL HOLD A REVIEW HEARING FOLLOWING THE APPOINTMENT OF A LIMITED PERSONAL GUARDIAN AND/OR LIMITED CONSERVATOR WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 25(1)(j) OF THIS ACT.

(b) THE COURT SHALL HOLD A REVIEW HEARING FOLLOWING THE APPOINTMENT OF A PERSONAL GUARDIAN AND/OR CONSERVATOR WITHIN THE TIME LIMITS PRESCRIBED IN SECTION 25(1)(k) OF THIS ACT.

(c) AT A REVIEW HEARING THE COURT SHALL:

(i) DETERMINE WHY THE APPOINTMENT SHOULD NOT BE TERMINATED OR WHY NO LESS RESTRICTIVE ALTERNATIVE WILL SATISFY THE DISPOSITIONAL PRINCIPLES AND CRITERIA SET FORTH IN SECTIONS 11(2) AND (3) OF THIS ACT;

(ii) APPROVE THE PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES, IF ANY, FROM THE FINANCIAL RESOURCES OF THE DISABLED PERSON TO THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR AND/OR CONSERVATOR, AND

(iii) RESOLVE ANY OTHER RELEVANT MATTERS WHICH THE PARTIES RAISE.

(d) IN CONJUNCTION WITH A REVIEW HEARING, THE COURT MAY ORDER AN EVALUTION OF THE PARTIALLY DISABLED OR DISABLED PERSON UPON A SHOWING THAT THERE HAS BEEN A SIGNIFICANT IMPROVEMENT OR DETERIORATION OF THAT PERSON'S ABILITY TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY, AND/OR TO PROTECT HIS OR HER RIGHTS, AND/OR TO MANAGE HIS OR HER FINANCIAL RESOURCES.

(e) ~~FAILURE TO HOLD A REVIEW HEARING FOR APPOINTMENTS MADE PRIOR TO THE EFFECTIVE DATE OF THIS ACT WITHIN TWO YEARS OF THAT DATE, AND FAILURE TO HOLD A REVIEW HEARING FOR APPOINTMENTS MADE PURSUANT TO THIS ACT WITHIN THE TIME PRESCRIBED IN SUBPARAGRAPHS 25(1)(j) AND 25(1)(k) OF THIS ACT, SHALL RESULT IN THE TERMINATION OF THE GUARDIANSHIP AND/OR CONSERVATORSHIP.~~

(2) (a) IN ADDITION TO THE REVIEW PROCEDURES PRESCRIBED UNDER PARAGRAPH (1) OF THIS SECTION, A PARTIALLY DISABLED OR DISABLED PERSON, THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, AND/OR CONSERVATOR OF THAT PERSON, OR ANY OTHER INTERESTED INDIVIDUAL MAY APPLY TO THE COURT FOR TERMINATION OR MODIFICATION OF A DISPOSITIONAL ORDER, APPROVAL OR DISAPPROVAL OF THE COMPENSATION FOR EXPENSES REQUESTED BY ~~OR THE~~ REPLACEMENT OF THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR, OR RESOLUTION OF A DISPUTE OVER THE INDIVIDUAL GUARDIANSHIP OR CONSERVATORSHIP PLAN. SUCH APPLICATIONS MAY BE FILED NO MORE THAN ONCE DURING ANY SIXTY [60] DAY PERIOD AND NO LESS THAN THIRTY [30] DAYS BEFORE OR SIXTY [60] DAYS AFTER A REVIEW HEARING HELD UNDER PARAGRAPH (1) OF THIS SECTION. EXCEPT WHEN THEY RESULT FROM THE DEATH OR RESIGNATION OF THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR, APPLI-

70

CATIONS WHICH DO NOT REQUEST THE IMPOSITION OF ADDITIONAL RESTRICTIONS ON THE LEGAL CAPACITY OF A PARTIALLY DISABLED OR DISABLED PERSON TO ACT IN HIS OR HER OWN BEHALF, OR OTHER MEASURES THAT DO NOT RAISE A SUBSTANTIAL QUESTION OR WOULD NOT ADVERSELY AFFECT THE PARTIALLY DISABLED OR DISABLED PERSON, MAY BE GRANTED BY THE COURT WITHOUT A HEARING UNLESS AN OBJECTION IS FILED.

(b) AN APPLICATION FROM A PARTIALLY DISABLED OR DISABLED PERSON MAY BE COMMUNICATED TO THE COURT BY ANY MEANS, INCLUDING BUT NOT LIMITED TO, ORAL COMMUNICATION OR INFORMAL LETTER. UPON RECEIPT OF SUCH AN INFORMAL REQUEST THE COURT SHALL CONTACT THE PARTIALLY DISABLED OR DISABLED PERSON'S ATTORNEY OF RECORD OR APPOINT NEW COUNSEL TO PREPARE A FORMAL APPLICATION.

(c) APPLICATIONS NOT FILED BY A PARTIALLY DISABLED OR DISABLED PERSON AND FORMAL APPLICATIONS FILED PURSUANT TO SUBPARAGRAPH (2)(b) OF THIS SECTION SHALL SET FORTH:

(i) THE NAME AND ADDRESS OF THE PARTIALLY DISABLED OR DISABLED PERSON;

(ii) THE NAME AND ADDRESS OF THAT PERSON'S ATTORNEY OF RECORD AND LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, CONSERVATOR, AND/OR GUARDIAN AD LITEM, IF ANY;

(iii) THE NAME AND ADDRESS OF THE INDIVIDUALS MOST CLOSELY RELATED TO THE PARTIALLY DISABLED OR DISABLED PERSON UNLESS THEY ARE UNKNOWN AND CANNOT BE REASONABLY ASCERTAINED;

(iv) THE NAME AND ADDRESS OF THE INDIVIDUAL OR FACILITY, IF ANY, HAVING CUSTODY OF THE PARTIALLY DISABLED OR DISABLED PERSON;

(v) THE NAME AND ADDRESS OF ^NAD INTEREST OF THE APPLICANT;

(vi) THE SURETY FOR THE BOND ON THE LIMITED CONSERVATOR OR CONSERVATOR, IF ANY.

(vii) THE RELIEF REQUESTED; AND

(viii) THE FACTS SUPPORTING THE REQUEST.

(d) UPON THE FILING OF AN APPLICATION, THE COURT SHALL SET A DATE FOR A HEARING AND SHALL HAVE NOTICE SERVED WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 25(1)(1).

(i) IF THE APPLICATION REQUESTS TERMINATION OF ANY OR ALL OF THE RESTRICTIONS ON THE CAPACITY OF A PARTIALLY DISABLED OR DISABLED PERSON TO ACT ON HIS OR HER OWN BEHALF, OR THE REPLACEMENT OF A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR, AND/OR CONSERVATOR, THEN THE NOTICE SHALL BE SERVED ON THE INDIVIDUALS AND ENTITIES ENUMERATED IN SECTION 27(1)(a) OF THIS ACT IN THE FORM AND MANNER PRESCRIBED IN SECTIONS 27(1)(b) AND 27(2).

(ii) IF THE APPLICATION REQUESTS IMPOSITION OF ADDITIONAL RESTRICTIONS UPON THE CAPACITY OF THE PARTIALLY DISABLED OR DISABLED PERSON TO ACT ON HIS OR HER OWN BEHALF, OR RESOLUTION OF A DISPUTE OVER THE INDIVIDUAL GUARDIANSHIP AND/OR CONSERVATORSHIP PLAN, THEN THE NOTICE SHALL BE SERVED ON THE PERSONS AND ENTITIES SPECIFIED IN SECTION 27(1)(a) IN THE FORM AND MANNER PRESCRIBED IN SECTIONS 27(1)(a) AND 27(2).

(e) AT THE REQUEST OF ANY PARTY OR ON ITS OWN INITIATIVE, THE COURT MAY ORDER AN EVALUATION OF THE PARTIALLY DISABLED OR DISABLED PERSON IDENTIFIED IN THE APPLICATION UPON A SHOWING THAT THERE HAS BEEN A SIGNIFICANT IMPROVEMENT OR DETERIORATION OF THAT PERSON'S ABILITY TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY, AND/OR TO PROTECT HIS OR HER RIGHTS, AND/OR TO MANAGE HIS OR HER FINANCIAL RESOURCES. IF THE APPLICATION REQUESTS IMPOSITION OF ADDITIONAL RESTRICTIONS ON THE AUTHORITY OF A PARTIALLY DISABLED OR DISABLED PERSON TO ACT ON HIS OR HER OWN BEHALF, THE COURT SHALL ORDER AN EVALUATION OF THAT PERSON.

(f) AFTER NOTICE TO THE INDIVIDUALS AND ENTITIES ENUMERATED IN SECTION 27(1)(a) OF THIS ACT, IN THE FORM AND MANNER PRESCRIBED IN SECTIONS 27(1)(c) AND 27(2), THE COURT MAY JOIN THE ISSUES RAISED IN SEPARATE APPLICATIONS AND/OR SEPARATE OBJECTIONS FOR DETERMINATION AT A SINGLE HEARING, UNLESS JOINDER WOULD BE PREJUDICIAL TO THE INTERESTS OF THE PARTIALLY DISABLED OR DISABLED PERSON.

(3) WHEN THE COURT ISSUES AN ORDER PURSUANT TO PARAGRAPHS (1) OR (2) OF THIS SECTION, IT MAY:

(a) TERMINATE A GUARDIANSHIP OR CONSERVATORSHIP

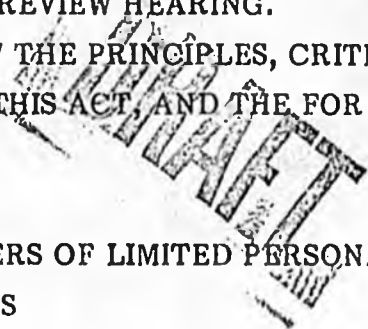
(b) MODIFY ANY OR ALL DUTIES AND POWERS ASSIGNED TO A LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR;

(c) DISCHARGE AND/OR APPOINT INDIVIDUALS TO SERVE AS LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR AND/OR CONSERVATOR;

(d) MODIFY THE INDIVIDUAL GUARDIANSHIP AND/OR CONSERVATORSHIP PLANS; AND

(e) CONTINUE THE CURRENT LIMITATIONS UPON CAPACITY AND/OR APPOINTMENTS UNTIL THE NEXT REVIEW HEARING.

ALL ORDERS SHALL FOLLOW THE PRINCIPLES, CRITERIA, AND PRIORITIES SET FORTH IN SECTIONS 11 AND 12 OF THIS ACT, AND THE FORM AND PROCEDURES PRESCRIBED BY SECTION 13.



SECTION 15. DUTIES AND POWERS OF LIMITED PERSONAL GUARDIANS AND PERSONAL GUARDIANS

(1) IT IS THE GENERAL DUTY OF INDIVIDUALS APPOINTED TO SERVE AS A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN TO CARRY OUT THE SPECIFIC DUTIES AND POWERS ASSIGNED BY THE COURT DILIGENTLY AND IN GOOD FAITH. IN CARRYING OUT THESE DUTIES AND POWERS, SUCH INDIVIDUALS SHALL ENCOURAGE THE PARTIALLY DISABLED OR DISABLED PERSONS WHOM THEY ARE SERVING TO PARTICIPATE TO THE MAXIMUM EXTENT OF THEIR CAPABILITIES IN ALL DECISIONS WHICH AFFECT THEM, TO ACT ON THEIR OWN BEHALF ON ALL MATTERS IN WHICH THEY ARE ABLE TO DO SO, AND TO DEVELOP OR REGAIN, TO THE MAXIMUM EXTENT POSSIBLE, THEIR CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS FOR THEIR PHYSICAL HEALTH OR SAFETY, AND/OR PROTECT THEIR RIGHTS AND, IF IMPAIRED, THEIR CAPACITY TO MANAGE THEIR FINANCIAL RESOURCES.

(2) (a) UPON APPOINTMENT, A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN SHALL DEVELOP AN INDIVIDUAL GUARDIANSHIP PLAN TOGETHER WITH THE DISABILITIES RESOURCES OFFICER AND, TO THE MAXIMUM EXTENT POSSIBLE, THE PARTIALLY DISABLED OR DISABLED PERSON. THE PLAN SHALL SPECIFY THE

SERVICES WHICH ARE NECESSARY TO MEET THE ESSENTIAL REQUIREMENTS FOR THE PARTIALLY DISABLED OR DISABLED PERSON'S PHYSICAL HEALTH OR SAFETY AND THE MEANS FOR OBTAINING THESE SERVICES. IT SHALL ALSO SPECIFY THE MANNER IN WHICH THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN AND THE PARTIALLY DISABLED OR DISABLED PERSON, AND THE LIMITED CONSERVATOR OR CONSERVATOR, IF A CORPORATION OR ANOTHER INDIVIDUAL HAS BEEN APPOINTED TO SERVE IN THAT CAPACITY, WILL EXERCISE AND SHARE DECISION-MAKING AUTHORITY, AND SUCH OTHER ITEMS AS WILL ASSIST IN FULFILLING THE NEEDS OF THE PARTIALLY DISABLED OR DISABLED PERSON, THE TERMS OF THE DISPOSITIONAL ORDER, AND THE DUTIES OF THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN.

(b) THE INDIVIDUAL GUARDIANSHIP PLAN SHALL BE SUBMITTED TO THE COURT BY THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN WITHIN THE TIME LIMIT PRESCRIBED BY SECTION 25(1)(h). THE COURT SHALL HAVE COPIES SENT TO THE INDIVIDUALS AND ENTITIES PRESCRIBED BY SECTION 27(3)(b).

(3) (a) THE COURT MAY ASSIGN TO A LIMITED PERSONAL GUARDIAN ANY PORTION OF THE DUTIES AND POWERS LISTED IN SUBPARAGRAPHS (4)(a)(ii)-(vii) OF THIS SECTION FOR THOSE PARTICULAR AREAS IN WHICH THE PARTIALLY DISABLED PERSON LACKS THE CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT HIS OR HER RIGHTS.

(b) A LIMITED PERSONAL GUARDIAN MAY ALSO BE ASSIGNED THE DUTY TO ASSIST THE PARTIALLY DISABLED PERSON IN THOSE PARTICULAR AREAS IN WHICH THAT PERSON'S CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT HIS OR HER RIGHTS, AND/OR TO OBTAIN NECESSARY SERVICES, AND/OR TO FULFILL HIS OR HER CIVIL DUTIES IS IMPAIRED, AS WELL AS IN OTHER WAYS NOT SPECIFICALLY PROHIBITED BY PARAGRAPH (5) OF THIS SECTION.

(c) IF A SEPARATE LIMITED CONSERVATOR OR CONSERVATOR HAS BEEN APPOINTED FOR THE PARTIALLY DISABLED PERSON, THE EXPENDITURE OF FUNDS BY THE LIMITED PERSONAL GUARDIAN SHALL BE CONSISTENT WITH THE PROCEDURES AND POLICIES ESTABLISHED BY THE LIMITED CONSERVATOR OR CONSERVATOR.

(4) (a) THE COURT SHALL ASSIGN TO A PERSONAL GUARDIAN THE DUTY AND/OR POWER TO:

(i) TAKE CUSTODY OF THE DISABLED PERSON;

(ii) ASSURE THAT THE DISABLED PERSON HAS A PLACE OF ABODE IN THE LEAST RESTRICTIVE, MOST NORMAL SETTING CONSISTENT WITH THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY;

(iii) ASSURE THE CARE, COMFORT AND MAINTENANCE OF THE DISABLED PERSON;

(iv) ASSURE THAT THE DISABLED PERSON RECEIVES THE SERVICES NECESSARY TO MEET THE ESSENTIAL REQUIREMENTS FOR THAT PERSON'S PHYSICAL HEALTH AND SAFETY AND TO DEVELOP OR REGAIN, TO THE MAXIMUM EXTENT POSSIBLE, THE CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT HIS OR HER RIGHTS;

(v) ASSURE THROUGH THE INITIATION OF COURT ACTIONS AND OTHER MEANS THAT THE DISABLED PERSON RECEIVES THE PERSONAL, CIVIL AND HUMAN RIGHTS TO WHICH THAT PERSON IS ENTITLED;

(vi) PROVIDE ANY REQUIRED CONSENTS OR APPROVALS ON BEHALF OF THE DISABLED PERSON; AND

(vii) EXPEND SUMS FROM THE FINANCIAL RESOURCES OF THE DISABLED PERSON TO COVER THE REASONABLE COSTS INCURRED ON BEHALF OF THAT PERSON. IF A SEPARATE LIMITED CONSERVATOR OR CONSERVATOR HAS BEEN APPOINTED FOR THE DISABLED PERSON, THE EXPENDITURE OF FUNDS BY THE PERSONAL GUARDIAN SHALL BE CONSISTENT WITH THE DUTIES ASSIGNED TO AND PROCEDURES AND POLICIES ESTABLISHED BY THE LIMITED CONSERVATOR OR CONSERVATOR.

(b) A PERSONAL GUARDIAN MAY ALSO BE ASSIGNED THE DUTY TO ASSIST THE DISABLED PERSON TO FULFILL THAT PERSON'S CIVIL DUTIES AND IN OTHER WAYS NOT SPECIFICALLY PROHIBITED BY PARAGRAPH (5) OF THIS SECTION.

(5) A LIMITED PERSONAL GUARDIAN OR A PERSONAL GUARDIAN SHALL NOT HAVE THE POWER:

(a) TO PLACE A PARTIALLY DISABLED OR DISABLED PERSON IN A FACILITY OR INSTITUTION TO WHICH AN INDIVIDUAL WITHOUT A GUARDIAN WOULD

HAVE TO BE COMMITTED UNDER (Citation to State Civil Commitment Law) OTHER THAN THROUGH A FORMAL COMMITMENT PROCEEDING IN WHICH THE PARTIALLY DISABLED OR DISABLED PERSON HAS INDEPENDENT COUNSEL AND A SEPARATE GUARDIAN AD LITEM.

(b) TO CONSENT ON BEHALF OF A PARTIALLY DISABLED OR DISABLED PERSON TO AN ABORTION, STERILIZATION, PSYCHOSURGERY, OR DONATION OF BODILY ORGANS, EXCEPT AS PROVIDED IN (Citation to Protective Services Statute) OR WHEN NECESSARY TO PRESERVE THE LIFE OR PREVENT SERIOUS IMPAIRMENT OF THE PHYSICAL HEALTH OF THAT PERSON.

(c) TO CONSENT ON BEHALF OF THE PARTIALLY DISABLED OR DISABLED PERSON TO THE WITHHOLDING OF NON-HEROIC LIFE-SAVING MEDICAL PROCEDURES;

(d) TO CONSENT ON BEHALF OF A PARTIALLY DISABLED OR DISABLED PERSON TO THE PERFORMANCE OF ANY EXPERIMENTAL MEDICAL PROCEDURE OR PARTICIPATION IN ANY MEDICAL EXPERIMENT NOT INTENDED TO PRESERVE THE LIFE OR PREVENT SERIOUS IMPAIRMENT OF THE PHYSICAL HEALTH OF THE PARTIALLY DISABLED OR DISABLED PERSON;

(e) TO PROHIBIT THE MARRIAGE OR DIVORCE OF A PARTIALLY DISABLED OR DISABLED PERSON;

(f) TO CONSENT ON BEHALF OF A PARTIALLY DISABLED OR DISABLED PERSON TO TERMINATION OF THAT PERSON'S PARENTAL RIGHTS; AND

(g) TO ASSIST IN MANAGING OR TO MANAGE THE FINANCIAL RESOURCES OF THE PARTIALLY DISABLED OR DISABLED PERSON UNLESS THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN HAS ALSO BEEN APPOINTED AS THE LIMITED CONSERVATOR OR CONSERVATOR FOR THAT PERSON.

(6) (a) A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN SHALL SUBMIT A REPORT TO THE COURT AT LEAST ANNUALLY AND WHEN:

(i) THE COURT ORDERS ADDITIONAL REPORTS TO BE FILED;

(ii) THERE IS A SIGNIFICANT CHANGE IN THE CAPACITY OF THE PARTIALLY DISABLED OR DISABLED PERSON TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT HIS OR HER RIGHTS;

(iii) THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN RESIGNS OR IS REMOVED; AND

(iv) THE GUARDIANSHIP IS TERMINATED.

(b) SUCH REPORTS SHALL SET FORTH:

(i) THE NAME AND ADDRESS OF THE PARTIALLY DISABLED OR DISABLED PERSON, AND OF THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN;

(ii) CHANGES IN THE CAPACITY OF A PARTIALLY DISABLED OR DISABLED PERSON TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT HIS OR HER RIGHTS;

(iii) THE SERVICES BEING PROVIDED TO THE PARTIALLY DISABLED OR DISABLED PERSON AND THE RELATIONSHIP OF THOSE SERVICES TO THE INDIVIDUAL GUARDIANSHIP PLAN;

(iv) THE SIGNIFICANT ACTIONS TAKEN BY THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN DURING THE REPORTING PERIOD;

(v) THE COMPENSATION REQUESTED AND REASONABLE AND NECESSARY EXPENSES INCURRED BY THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN;

(vi) ANY SIGNIFICANT PROBLEMS RELATING TO THE GUARDIANSHIP WHICH HAVE ARISEN DURING THE REPORTING PERIOD; AND

(vii) THE REASONS, IF ANY, WHY THE APPOINTMENT SHOULD NOT BE TERMINATED OR WHY NO LESS RESTRICTIVE ALTERNATIVE WILL PERMIT THE PARTIALLY DISABLED OR DISABLED PERSON TO MEET THE ESSENTIAL REQUIREMENTS FOR HIS OR HER PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT HIS OR HER RIGHTS.

ATTACHED TO THE REPORT SHALL BE AN ACCOUNTING OF ANY EXPENDITURES MADE BY THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN, AND AN UPDATE OF THE INDIVIDUAL GUARDIANSHIP PLAN DEVELOPED BY THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN, THE DISABILITIES RESOURCES OFFICER, AND TO THE MAXIMUM EXTENT POSSIBLE THE DISABLED OR PARTIALLY DISABLED PERSON.

(c) THE COURT SHALL HAVE COPIES SENT TO THE INDIVIDUALS AND ENTITIES SPECIFIED IN SECTION 27(3)(b).

SECTION 16. DUTIES, RESPONSIBILITIES, AND POWERS OF LIMITED CONSERVATORS AND CONSERVATORS

(1) IT IS THE GENERAL DUTY OF AN INDIVIDUAL OR CORPORATION APPOINTED TO SERVE AS A LIMITED CONSERVATOR OR CONSERVATOR FOR A PARTIALLY DISABLED OR DISABLED PERSON TO CARRY OUT THE SPECIFIC DUTIES AND POWERS ASSIGNED BY THE COURT DILIGENTLY AND IN GOOD FAITH. IN CARRYING OUT THESE DUTIES AND POWERS SUCH INDIVIDUALS OR CORPORATIONS SHALL MANAGE OR ASSIST IN MANAGING THOSE FINANCIAL RESOURCES PLACED UNDER THEIR SUPERVISION AND/OR CONTROL, AS WOULD A PRUDENT PERSON MANAGE HIS OR HER OWN FINANCIAL RESOURCES, AND SHALL ENCOURAGE THE DISABLED OR PARTIALLY DISABLED PERSONS WHOM THEY ARE SERVING TO PARTICIPATE, TO THE MAXIMUM EXTENT OF THEIR CAPABILITIES, IN ALL DECISIONS WHICH AFFECT THEM, TO ACT ON THEIR OWN BEHALF ON ALL MATTERS IN WHICH THEY ARE ABLE TO DO SO, AND TO DEVELOP OR REGAIN, TO THE MAXIMUM EXTENT POSSIBLE, THEIR CAPACITY TO MANAGE THEIR FINANCIAL RESOURCES AND, IF IMPAIRED, THEIR CAPACITY TO MEET THE ESSENTIAL REQUIREMENTS FOR THEIR PHYSICAL HEALTH OR SAFETY AND/OR TO PROTECT THEIR RIGHTS.

(2) (a) UPON APPOINTMENT, A LIMITED CONSERVATOR OR CONSERVATOR SHALL DEVELOP AN INDIVIDUAL CONSERVATORSHIP PLAN TOGETHER WITH THE DISABILITIES RESOURCES OFFICER AND, TO THE MAXIMUM EXTENT POSSIBLE, THE PARTIALLY DISABLED OR DISABLED PERSON. THE PLAN SHALL SPECIFY THE SERVICES WHICH ARE NECESSARY TO MANAGE THOSE FINANCIAL RESOURCES DESIGNATED BY THE COURT IN THE DISPOSITIONAL ORDER AND THE MEANS THROUGH WHICH THESE SERVICES WILL BE PROVIDED. THE PLAN SHALL ALSO SPECIFY THE MANNER IN WHICH THE LIMITED CONSERVATOR OR CONSERVATOR, THE PARTIALLY DISABLED OR DISABLED PERSON AND THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN, IF ANOTHER INDIVIDUAL HAS BEEN APPOINTED TO SERVE IN THAT CAPACITY, WILL EXERCISE AND SHARE THEIR DECISION-MAKING AUTHORITY, THE POLICIES AND PROCEDURES GOVERNING THE EXPENDITURE OF FUNDS, AND SUCH OTHER ITEMS AS WILL ASSIST IN THE MANAGEMENT OF THE DESIGNATED FINANCIAL RESOURCES, AND IN FULFILLING THE TERMS OF THE DISPOSITIONAL ORDER AND THE DUTIES OF THE LIMITED CONSERVATOR OR CONSERVATOR.

(b) THE INDIVIDUAL CONSERVATORSHIP PLAN SHALL BE SUBMITTED TO THE COURT WITHIN THE TIME LIMIT PRESCRIBED IN SECTION 25(1)(i), TOGETHER WITH A COMPLETE INVENTORY OF THE DESIGNATED FINANCIAL RESOURCES. THE INVENTORY SHALL INCLUDE AN OATH OR AFFIRMATION THAT, TO THE BEST OF THE LIMITED CONSERVATOR'S OR CONSERVATOR'S KNOWLEDGE, IT IS COMPLETE AND ACCURATE.

(c) THE COURT SHALL HAVE A COPY OF THE INDIVIDUAL CONSERVATORSHIP PLAN AND THE INVENTORY SENT TO THE INDIVIDUALS AND ENTITIES SPECIFIED IN SECTION 27(3)(b).

(3) (a) A LIMITED CONSERVATOR OR CONSERVATOR SHALL EXPEND OR DISTRIBUTE, AND/OR AUTHORIZE THE EXPENDITURE OR DISTRIBUTION OF, AND/OR ASSIST IN THE EXPENDITURE OR DISTRIBUTION OF THE PRINCIPLE OF OR INCOME FROM THOSE FINANCIAL RESOURCES PLACED UNDER HIS OR HER SUPERVISION AND CONTROL TO ASSURE THAT:

(i) THE ESSENTIAL REQUIREMENTS FOR THE PHYSICAL HEALTH OR SAFETY OF THE PARTIALLY DISABLED OR DISABLED PERSON, WHOM HE OR SHE IS SERVING, ARE MET;

(ii) THE RIGHTS OF THAT PERSON ARE PROTECTED;

(iii) THE FINANCIAL RESOURCES OF THAT PERSON WHICH HAVE BEEN PLACED UNDER THE CONTROL OF THE LIMITED CONSERVATOR OR CONSERVATOR ARE PRUDENTLY MANAGED;

(iv) THE PARTIALLY DISABLED OR DISABLED PERSON HAS THE OPPORTUNITY TO DEVELOP OR REGAIN THE CAPACITY TO PERFORM THE FUNCTIONS LISTED IN SUBPARAGRAPHS (3)(a)(i)-(iii) OF THIS SECTION, TO THE MAXIMUM EXTENT POSSIBLE; AND

(v) THE LIMITED PERSONAL GUARDIAN OR GUARDIAN, IF ANY, IS ABLE TO CARRY OUT DUTIES AND POWERS ASSIGNED BY THE COURT.

(b) IN SO DOING THE LIMITED CONSERVATOR OR CONSERVATOR SHALL CONSIDER IN ADDITION TO THE REQUESTS OF THE PARTIALLY DISABLED OR DISABLED PERSON AND THAT PERSON'S LIMITED PERSONAL GUARDIAN OR GUARDIAN, IF ANY:

(i) THE SIZE OF THE FINANCIAL RESOURCES;

(ii) THE PROBABLE DURATION OF THE CONSERVATORSHIP;

(iii) THE LIKELIHOOD THAT THE PARTIALLY DISABLED OR DISABLED PERSON MAY BE ABLE TO MANAGE THE FINANCIAL RESOURCES IN THE FUTURE; AND

(iv) THE ACCUSTOMED STANDARD OF LIVING OF THE PARTIALLY DISABLED OR DISABLED PERSON AND THE INDIVIDUALS LEGALLY DEPENDENT ON THAT PERSON.

IN ADDITION, LIMITED CONSERVATORS SHALL CONSIDER THE SIZE OF THE FINANCIAL RESOURCES OF A PARTIALLY DISABLED OR DISABLED PERSON WHICH HAVE NOT BEEN PLACED UNDER THEIR SUPERVISION OR CONTROL.

(c) FUNDS UNDER THIS PARAGRAPH MAY BE PAID BY THE CONSERVATOR TO ANY PERSON, INCLUDING THE PARTIALLY DISABLED OR DISABLED PERSON.

(d) LIMITED CONSERVATORS AND CONSERVATORS SHALL ESTABLISH POLICIES AND PROCEDURES FOR THE EXPENDITURE OF THE FUNDS UNDER THE LIMITED CONSERVATOR'S OR CONSERVATOR'S SUPERVISION AND CONTROL, BY THE PARTIALLY DISABLED OR DISABLED PERSON, OR BY A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN FOR THAT PERSON IF ANOTHER INDIVIDUAL HAS BEEN APPOINTED TO SERVE IN THAT CAPACITY.

(4) (a) THE COURT MAY ASSIGN TO A LIMITED CONSERVATOR THE DUTY OF ASSISTING A PARTIALLY DISABLED PERSON TO PERFORM ANY OF THE FUNCTIONS LISTED IN SUBPARAGRAPH (5)(a) OF THIS SECTION WITH REGARD TO ANY FINANCIAL RESOURCE OF THE PARTIALLY DISABLED PERSON.

(b) THE COURT MAY ASSIGN TO A LIMITED CONSERVATOR ANY, OF THE DUTIES AND POWERS LISTED IN SUBPARAGRAPH (5)(a) OF THIS SECTION WHICH THE PARTIALLY DISABLED PERSON LACKS THE CAPACITY TO PERFORM, AND/OR THE POWER TO VOID PARTICULAR TYPES OF CONTRACTS, CONVEYANCES OR DISPOSITIONS MADE BY THE PARTIALLY DISABLED PERSON NO MORE THAN FIFTEEN [15] DAYS AFTER THE TRANSACTION. SUCH ASSIGNMENTS SHALL SPECIFY THE FINANCIAL RESOURCES TO WHICH THEY APPLY.

(c) UPON THE DEATH OF A PARTIALLY DISABLED PERSON, THE LIMITED CONSERVATOR FOR THAT PERSON SHALL HAVE THE DUTIES AND POWERS PRESCRIBED IN SUB-PARAGRAPH (5)(b) OF THIS SECTION.

(5) (a) THE COURT SHALL ASSIGN TO A CONSERVATOR THE DUTY AND/OR POWER TO:

(i) ACQUIRE, COLLECT, HOLD, DEPOSIT, RETAIN, OPERATE, DEVELOP, REPAIR, IMPROVE, INSURE, SUBDIVIDE, EXCHANGE, PARTITION, ALTER, LEASE, CONVERT OR DISPOSE OF THE FINANCIAL RESOURCES OF THE DISABLED PERSON;

(ii) PAY, CONTEST, SETTLE OR RELEASE CLAIMS AGAINST THE DISABLED PERSON OR THE FINANCIAL RESOURCES OF THE DISABLED PERSON;

(iii) PAY TAXES, ASSESSMENTS, COMPENSATION AND OTHER REASONABLE EXPENSES INCURRED IN THE MANAGEMENT OF THE FINANCIAL RESOURCES OF THE DISABLED PERSON;

(iv) EMPLOY PERSONS TO PERFORM, ADVISE, OR ASSIST IN PARTICULAR ASPECTS OF THE MANAGEMENT OF THE FINANCIAL RESOURCES OF THE DISABLED PERSON;

(v) BORROW MONEY TO BE REPAYED FROM THE FINANCIAL RESOURCES OF THE DISABLED PERSON;

(vi) PROSECUTE OR DEFEND ACTIONS, CLAIMS, OR PROCEEDINGS IN ANY JURISDICTION FOR THE PROTECTION OF THE FINANCIAL RESOURCES OF THE DISABLED PERSON AND OF THE CONSERVATOR IN THE PERFORMANCE OF THE CONSERVATOR'S DUTIES;

(vii) ALLOCATE ITEMS OF INCOME OR EXPENSE TO EITHER PRINCIPAL OR INCOME AS PROVIDED BY LAW, INCLUDING THE CREATION OF RESERVES OUT OF INCOME FOR DEPRECIATION, OBSOLESCENCE, AMORTIZATION, OR DEPLETION OF MINERAL OR TIMBER RESOURCES;

(viii) VOTE A SECURITY IN PERSON, OR BY GENERAL OR LIMITED PROXY;

(ix) ESTABLISH REVOCABLE OR IRREVOCABLE TRUSTS;

(x) EXERCISE OPTIONS;

(xi) EXERCISE OR RELEASE POWERS OF APPOINTMENT OF WHICH THE DISABLED PERSON IS DONOR;

(xii) RENOUNCE INTERESTS AND MAKE GIFTS;

(xiii) CHANGE BENEFICIARIES UNDER INSURANCE AND ANNUITY POLICIES; AND

(xiv) ENTER INTO CONTRACTS AND EXECUTE AND DELIVER ALL INSTRUMENTS WHICH WILL ACCOMPLISH OR FACILITATE THE EXERCISE OF THE ASSIGNED DUTIES AND POWERS.

(b) UPON THE DEATH OF A DISABLED PERSON:

(i) THE CONSERVATOR SHALL DELIVER TO THE (name of court having probate jurisdiction) ANY WILL OF THE DECEASED OF WHICH THE CONSERVATOR HAS POSSESSION AND/OR ADVISE ^{AT} THE COURT OF THE WHEREABOUTS OF ANY OTHER WILL OF WHICH THE CONSERVATOR IS AWARE;

(ii) INFORM THE (executor/personal representative) OR A NAMED BENEFICIARY OF THE ACTIONS TAKEN; AND

(iii) RETAIN THOSE PORTIONS OF THE ESTATE OVER WHICH THE CONSERVATOR HAS CONTROL FOR DELIVERY TO A DULY APPOINTED (executor/personal representative) OF THE DECEASED OR THE INDIVIDUALS ENTITLED THERETO.

THE CONSERVATOR MAY SEEK APPOINTMENT AS (executor/personal representative) OF THE ESTATE OF THE DISABLED PERSON IN THE MANNER PRESCRIBED IN (citation to relevant sections of the probate code).

(6) SPECIFIC PROHIBITIONS

(a) A LIMITED CONSERVATOR OR CONSERVATOR SHALL NOT HAVE THE AUTHORITY TO EXERCISE OR RELEASE POWERS OF APPOINTMENT OF WHICH THE PARTIALLY DISABLED OR DISABLED PERSON IS DONEE, TO RENOUNCE INTERESTS OR TO MAKE GIFTS EXCEEDING TWENTY [20] PERCENT OF ANY YEAR'S INCOME FROM THE FINANCIAL RESOURCES PLACED UNDER THE CONTROL OF THE LIMITED CONSERVATOR OR CONSERVATOR, NOR TO CHANGE BENEFICIARIES UNDER INSURANCE OR ANNUITY POLICIES WITHOUT THE APPROVAL OF THE COURT. NO APPROVAL SHALL BE GRANTED UNLESS IT IS DEMONSTRATED AT A HEARING THAT THE PROPOSED ACTION IS CONSISTENT WITH THE GENERAL DUTY OF THE LIMITED CONSERVATOR OR CONSERVATOR SET FORTH UNDER PARAGRAPH (1) OF THIS SECTION, AND THAT THE PARTIALLY DISABLED OR DISABLED PERSON HAS CONSENTED OR IS UNABLE TO PROVIDE AN INFORMED, VOLUNTARY CONSENT. NOTICE OF THE HEARING SHALL BE SERVED ON THE INDIVIDUALS AND ENTITIES ENUMERATED IN SECTION 27(1)(a) OF THIS ACT IN THE FORM AND MANNER PRESCRIBED IN SECTIONS 27(1)(a) AND 27(2).

(b) TITLE TO ALL THE DESIGNATED FINANCIAL RESOURCES OF A PARTIALLY DISABLED PERSON OR DISABLED PERSON SHALL REMAIN IN THAT PERSON SUBJECT TO THE POSSESSION OF THE LIMITED CONSERVATOR OR CONSERVATOR AND TO THE CONTROL OF THE COURT, UNLESS THE COURT ORDERS OTHERWISE. THE PROVISION OF TITLE TO A CONSERVATOR OR (LIMITED) CONSERVATOR IS NOT A TRANSFER OR ALIENATION WITHIN THE MEANING OF GENERAL PROVISIONS OF ANY FEDERAL OR STATE STATUTE OR REGULATION, INSURANCE POLICY, PENSION PLAN CONTRACT, OR WILL OR TRUST INSTRUMENT, IMPOSING RESTRICTIONS UPON OR PENALTIES FOR TRANSFER OR ALIENATION BY THE PARTIALLY DISABLED OR DISABLED PERSON OF A RIGHT OR INTEREST. IF TITLE IS PROVIDED TO A ^{LIMITED} CONSERVATOR OR ~~LIMITED CONSERVATOR~~, LETTERS OF CONSERVATORSHIP SHALL BE EVIDENCE OF TRANSFER OF ALL DESIGNATED FINANCIAL RESOURCES ~~TO THE CONSERVATOR OR LIMITED CONSERVATOR~~. AN ORDER TERMINATING A CONSERVATORSHIP ~~OR THE SCOPE OR POWERS THEREOF~~, SHALL BE EVIDENCE OF TRANSFER OF THE DESIGNATED FINANCIAL RESOURCES TO THE PARTIALLY DISABLED OR DISABLED PERSON, THE SUCCESSOR OF THAT PERSON, OR TO A NEW ^{LIMITED CONSERVATOR OR} CONSERVATOR. SUBJECT TO (Citation to statute governing the filing or recording of documents to land or other property), LETTERS OF CONSERVATORSHIP AND ORDERS TERMINATING CONSERVATORSHIP SHALL BE FILED OR RECORDED TO GIVE RECORD NOTICE OF TITLE. ~~SUBJECT TO~~ [^]

(7) (a) A LIMITED CONSERVATOR OR CONSERVATOR SHALL SUBMIT A REPORT TO THE COURT AT LEAST ANNUALLY AND WHEN:

(i) THE COURT ORDERS ADDITIONAL REPORTS TO BE FILED;
(ii) THERE IS A SIGNIFICANT CHANGE IN THE CAPACITY OF THE PARTIALLY DISABLED OR DISABLED PERSON TO MANAGE HIS OR HER FINANCIAL RESOURCES;

(iii) THE LIMITED CONSERVATOR OR CONSERVATOR RESIGNS OR IS REMOVED; AND

(iv) THE CONSERVATORSHIP IS TERMINATED.

(b) SUCH REPORTS SHALL SET FORTH:

(i) THE NAME AND ADDRESS OF THE PARTIALLY DISABLED OR DISABLED PERSON AND OF THE LIMITED CONSERVATOR OR CONSERVATOR;

(ii) CHANGES IN THE CAPACITY OF THE PARTIALLY DISABLED OR DISABLED PERSON TO MANAGE HIS OR HER FINANCIAL RESOURCES;

(iii) A COMPLETE FINANCIAL STATEMENT OF THE FINANCIAL RESOURCES UNDER THE CONTROL AND/OR SUPERVISION OF THE LIMITED CONSERVATOR OR CONSERVATOR;

(iv) THE SERVICES BEING PROVIDED TO THE PARTIALLY DISABLED OR DISABLED PERSON AND THE RELATIONSHIP OF THOSE SERVICES TO THE INDIVIDUAL CONSERVATORSHIP PLAN;

(v) THE SIGNIFICANT ACTIONS TAKEN BY THE LIMITED CONSERVATOR OR CONSERVATOR DURING THE REPORTING PERIOD;

(vi) THE COMPENSATION REQUESTED AND THE REASONABLE AND NECESSARY EXPENSES INCURRED BY THE LIMITED CONSERVATOR OR CONSERVATOR;

(vii) ANY SIGNIFICANT PROBLEMS RELATING TO THE CONSERVATORSHIP WHICH HAVE ARISEN DURING THE REPORTING PERIOD; AND

(viii) THE REASONS, IF ANY, WHY THE CONSERVATORSHIP SHOULD NOT BE TERMINATED, OR WHY NO LESS RESTRICTIVE ALTERNATIVE WOULD PERMIT THE DISABLED OR PARTIALLY DISABLED PERSON TO MANAGE HIS OR HER FINANCIAL RESOURCES.

ATTACHED TO THE REPORT SHALL BE AN UPDATED INDIVIDUAL CONSERVATORSHIP PLAN DEVELOPED BY THE LIMITED CONSERVATOR OR CONSERVATOR, THE DISABILITIES RESOURCES OFFICER AND, TO THE MAXIMUM EXTENT POSSIBLE, THE PARTIALLY DISABLED OR DISABLED PERSON.

(c) THE COURT SHALL HAVE COPIES OF THE REPORT SENT TO THE INDIVIDUALS AND ENTITIES SPECIFIED IN SECTION 27(3)(b).

(d) FOLLOWING SUBMISSION OF A REPORT OR IN CONJUNCTION WITH A REVIEW HEARING PURSUANT TO SECTION 14(1) OR A PROCEEDING INITIATED UNDER SECTION 14(2), A CONSERVATOR SHALL SUBMIT TO A PHYSICAL INSPECTION OF THE FINANCIAL RESOURCES PLACED UNDER HIS OR HER CONTROL, IN THE MANNER SPECIFIED BY THE COURT.

SECTION 35. BONDS

(1) THE COURT MAY REQUIRE LIMITED CONSERVATORS¹ OR CONSERVATORS² TO HAVE A SURETY SATISFACTORY TO THE COURT, FURNISH A BOND CONDITIONED UPON THE FAITHFUL DISCHARGE OF ALL DUTIES AND POWERS ASSIGNED IN THE DISPOSITIONAL ORDER. UNLESS OTHERWISE DIRECTED, THE BOND SHALL BE IN THE AMOUNT OF THE AGGREGATE CAPITAL VALUE OF THE PROPERTY IN THEIR CONTROL PLUS ONE YEAR'S ESTIMATED INCOME MINUS THE VALUE OF SECURITIES DEPOSITED UNDER ARRANGEMENTS REQUIRING AN ORDER OF THE COURT FOR THEIR REMOVAL AND THE VALUE OF ANY LAND WHICH THE FIDUCIARY, BY EXPRESS LIMITATION OF POWER, LACKS POWER TO SELL OR CONVEY WITHOUT COURT AUTHORIZATION. THE COURT IN LIEU OF SURETIES ON A BOND, MAY ACCEPT OTHER SECURITY FOR THE PERFORMANCE OF THE BOND, INCLUDING A PLEDGE OF SECURITIES OR A MORTGAGE OF LAND.

(2) THE FOLLOWING REQUIREMENTS AND PROVISIONS APPLY TO ANY BOND REQUIRED UNDER THIS SECTION:

(a) UNLESS OTHERWISE PROVIDED BY THE TERMS OF THE APPROVED BOND, SURETIES ARE JOINTLY AND SEVERALLY LIABLE WITH THE LIMITED CONSERVATOR OR CONSERVATOR AND WITH EACH OTHER;

(b) BY EXECUTING AN APPROVED BOND ON A LIMITED CONSERVATOR OR CONSERVATOR, THE SURETY CONSENTS TO THE JURISDICTION OF THE COURT WHICH ISSUED LETTERS TO THE PRIMARY OBLIGOR IN ANY PROCEEDING PERTAINING TO THE FIDUCIARY DUTIES OF THE LIMITED CONSERVATOR OR CONSERVATOR AND THE NAMING OF THE SURETY AS A PART/DEFENDANT. NOTICE OF ANY PROCEEDING SHALL BE DELIVERED TO OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE SURETY AT THE ADDRESS OF THE SURETY LISTED WITH THE COURT WHERE THE BOND IS FILED AND TO THE ADDRESS OF THE SURETY THEN KNOWN TO THE PETITIONER;

(c) ON PETITION OF A SUCCESSOR LIMITED CONSERVATOR OR CONSERVATOR OR ANY INTERESTED PERSON, A PROCEEDING MAY BE INITIATED AGAINST A SURETY FOR BREACH OF THE OBLIGATION OF THE BOND OF THE LIMITED CONSERVATOR OR CONSERVATOR;

(d) THE BOND ON THE LIMITED CONSERVATOR OR CONSERVATOR IS NOT VOID AFTER THE FIRST RECOVERY BUT MAY BE PROCEEDED AGAINST AT SUBSEQUENT TIMES UNTIL THE WHOLE PENALTY IS EXHAUSTED.

NO PROCEEDING MAY BE COMMENCED AGAINST THE SURETY ON ANY MATTER AS TO WHICH AN ACTION OR PROCEEDING AGAINST THE PRIMARY OBLIGOR IS BARRED BY ADJUDICATION OR LIMITATION.

SECTION 36. LIABILITY OF A LIMITED CONSERVATOR OR CONSERVATOR AND PENALTIES FOR VIOLATIONS OF THE ACT

(1) (a) UNLESS OTHERWISE PROVIDED IN THE CONTRACT, LIMITED CONSERVATORS AND CONSERVATORS SHALL NOT BE INDIVIDUALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THEIR FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTRATION OF THE FINANCIAL RESOURCES OF A PARTIALLY DISABLED OR DISABLED PERSON OR A MINOR, UNLESS THEY FAIL TO REVEAL THEIR REPRESENTATIVE CAPACITY AND IDENTIFY THE PARTIALLY DISABLED OR DISABLED PERSON OR THE MINOR IN THE CONTRACT.

(b) LIMITED CONSERVATORS AND CONSERVATORS SHALL BE INDIVIDUALLY LIABLE FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF FINANCIAL RESOURCES OF A PARTIALLY DISABLED OR DISABLED PERSON OR A MINOR FOR TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF SUCH FINANCIAL RESOURCES ONLY IF THEY ARE PERSONALLY AT FAULT.

(c) CLAIMS BASED ON CONTRACTS ENTERED INTO BY LIMITED CONSERVATORS OR CONSERVATORS IN THEIR FIDUCIARY CAPACITY, ON OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE FINANCIAL RESOURCES OF PARTIALLY DISABLED OR DISABLED PERSONS OR MINORS, OR ON TORTS COMMITTED IN THE COURSE OF ADMINISTRATION OF THE FINANCIAL RESOURCES MAY BE ASSERTED BY PROCEEDING AGAINST CONSERVATORS IN THEIR FIDUCIARY CAPACITY, WHETHER OR NOT THE LIMITED CONSERVATORS OR CONSERVATORS ARE INDIVIDUALLY LIABLE THEREFOR.

(d) ANY QUESTION OF LIABILITY BETWEEN THE FINANCIAL RESOURCES OF PARTIALLY DISABLED OR DISABLED PERSONS OR MINORS AND THE LIMITED CONSERVATORS OR CONSERVATORS INDIVIDUALLY, MAY BE DETERMINED IN A PROCEEDING FOR ACCOUNTING, SURCHARGE, OR INDEMNIFICATION, OR OTHER APPROPRIATE PROCEEDING OR ACTION.

(2) ANY LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR WHO WILLFULLY VIOLATES THE DUTIES OR MISUSES THE POWERS ASSIGNED BY COURT AND THEREBY CAUSES HARM TO THE SUBJECT OF THE GUARDIANSHIP OR CONSERVATORSHIP OR TO THE FINANCIAL RESOURCES OF THAT INDIVIDUAL SHALL BE SUBJECT TO A FINE OF UP TO \$10,000 FOR EACH SUCH VIOLATION OF DUTY OR MISUSE OR POWER, IN ADDITION TO ANY CIVIL LIABILITY TO WHICH THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR MAY BE SUBJECT.

(3) (a) ANY INDIVIDUAL WHO WILLFULLY DISCLOSES IDENTIFIABLE INFORMATION OR WHO WILLFULLY GAINS ACCESS TO IDENTIFIABLE INFORMATION IN VIOLATION OF SECTION 34(4) OR SECTION 34(7)(b) OF THIS ACT OR WHO WILLFULLY FAILS TO DESTROY OR SEAL IDENTIFIABLE INFORMATION AFTER RECEIVING A COPY OF AN ORDER PURSUANT TO SECTION 34(6) OR SECTION 34(7)(a) SHALL BE SUBJECT TO A FINE OF UP TO \$5,000.

IF A PUBLIC OFFICIAL OR PUBLIC EMPLOYEE IS CONVICTED UNDER THIS PARAGRAPH, THE CONVICTION SHALL BE GROUNDS FOR REMOVAL FROM OFFICE.

(b) THE SUBJECT OF IDENTIFIABLE INFORMATION WHICH HAS NOT BEEN DESTROYED OR SEALED IN ACCORDANCE WITH SECTION 34(6) OR SECTION 34(7)(a) OF THIS ACT, MAY INITIATE A CIVIL ACTION FOR DAMAGES OR TO RESTRAIN FURTHER DISSEMINATION. ANY INDIVIDUAL, COURT OR AGENCY PROVEN TO HAVE VIOLATED THOSE SECTIONS SHALL BE LIABLE FOR ACTUAL DAMAGES AND EXEMPLARY DAMAGES FOR EACH VIOLATION AND SHALL BE LIABLE FOR COURT COSTS, EXPENSES AND REASONABLE ATTORNEY'S FEES INCURRED BY THE SUBJECT OF THE RECORD.

SECTION 37. VENUE OF PROCEEDINGS SUBSEQUENT TO A DISPOSITIONAL ORDER OR AN UNCONTESTED ACCEPTANCE OF A TESTAMENTARY APPOINTMENT

THE COURT IN THE JURISDICTION IN WHICH THE SUBJECT OF A PROTECTIVE PROCEEDING RESIDES FOLLOWING ISSUANCE OF A DISPOSITIONAL ORDER OR AN UNCONTESTED ACCEPTANCE OF A TESTAMENTARY DESIGNATION, HAS CONCURRENT JURISDICTION WITH THE COURT WHICH ISSUED THE ORDER OR IN WHICH THE ACCEPT-

ANCE WAS FILED OVER PROCEEDINGS UNDER SECTIONS 14, 21, 29, AND 34 OF THIS ACT AND OTHER PROCEEDINGS RELATED TO THE IMPOSITION OF RESTRICTIONS ON THE CAPACITY OF A PERSON TO ACT IN HIS OR HER OWN BEHALF.

IF THE COURT IN WHICH A SUBSEQUENT PROCEEDING IS COMMENCED IS NOT THE COURT WHICH ISSUED THE DISPOSITIONAL ORDER OR IN WHICH ACCEPTANCE OF TESTAMENTARY DESIGNATION WAS FILED, IT SHALL NOTIFY THAT COURT, AND AFTER CONSULTATION WITH THE PARTIES, DETERMINE WHETHER TO RETAIN OR TRANSFER CONTROL OF THE PROCEEDINGS. VENUE SHALL BE IN THE JURISDICTION WHICH IS THE MOST CONVENIENT FOR AND BEST SERVES THE INTERESTS OF THE SUBJECT OF THE PROTECTIVE PROCEEDING. THE COURT WHICH ISSUED THE DISPOSITIONAL ORDER OR IN WHICH ACCEPTANCE OF A TESTAMENTARY DESIGNATION IS FILED SHALL BE SENT A COPY OF ANY ORDER RESULTING FROM A SUBSEQUENT PROCEEDING IN ANOTHER JURISDICTION.

SECTION 38. BURDEN OF PROOF

When proceedings are initiated by a person who is not the person named in the petition, the burden must be beyond reasonable doubt.

(1) IN PROCEEDINGS INITIATED UNDER CHAPTER 2 OF THIS ACT BOTH THE BURDEN OF GOING FORWARD AND THE BURDEN OF PERSUASION BY CLEAR AND CONVINCING EVIDENCE SHALL BE ON THE INDIVIDUAL OR ENTITY FILING THE PETITION OR APPLICATION EXCEPT WHEN AN APPLICATION IS FILED PURSUANT TO SECTION 14(2)(a) BY A PARTIALLY DISABLED OR DISABLED PERSON. IN SUCH INSTANCES, THE BURDEN OF PERSUASION BY CLEAR AND CONVINCING EVIDENCE SHALL SHIFT TO THE PARTY OR PARTIES OPPOSING THE APPLICATION IF THE PARTIALLY DISABLED OR DISABLED PERSON PRESENTS TESTIMONY AND/OR EVIDENCE CONSTITUTING A PRIMA FACIE CASE SUPPORTING THE REQUESTED RELIEF.

(2) IN PROCEEDINGS INITIATED UNDER CHAPTER 3 OF THIS ACT, BOTH THE BURDEN OF GOING FORWARD AND THE BURDEN OF PERSUASION BY A PREPONDERANCE OF THE EVIDENCE SHALL BE ON THE INDIVIDUAL OR ENTITY FILING THE PETITION OR APPLICATION EXCEPT FOR APPLICATIONS FILED PURSUANT TO SECTIONS 21(3) AND 21(4) OF THIS ACT.

(a) FOLLOWING THE FILING OF AN APPLICATION UNDER SECTION 21(3), A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN FOR A MINOR SHALL NOT BE REMOVED AT THE REQUEST OF AN INDIVIDUAL OTHER THAN A MINOR AGE

78

TEN [10] OR OVER, NOR SHALL A LIMITED CONSERVATOR OR CONSERVATOR BE REMOVED UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE LIMITED PERSONAL GUARDIAN, PERSONAL GUARDIAN, LIMITED CONSERVATOR OR CONSERVATOR IS NOT EFFECTIVELY PERFORMING THE DUTIES AND POWERS ASSIGNED IN THE DISPOSITIONAL ORDER OR THAT THE APPOINTMENT OF ANOTHER INDIVIDUAL TO SERVE AS LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN FOR THE MINOR OR ANOTHER INDIVIDUAL OR CORPORATION TO SERVE AS LIMITED CONSERVATOR OR CONSERVATOR FOR THE MINOR WOULD BE BENEFICIAL TO THE MINOR. THE APPLICATION OF A MINOR AGE TEN [10] OR OVER TO REMOVE AND REPLACE THE INDIVIDUAL APPOINTED TO SERVE AS LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN SHALL NOT BE DENIED UNLESS THE REPLACEMENT PROPOSED BY THE MINOR IS INELIGIBLE UNDER SECTION 20 OF THIS ACT, OR THERE IS CLEAR AND CONVINCING EVIDENCE THAT REMOVAL AND REPLACEMENT OF THE LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN WOULD NOT BE BENEFICIAL TO THE MINOR.

(b) FOLLOWING THE FILING OF AN APPLICATION UNDER SECTION 21(4), MODIFICATIONS IN THE DISPOSITIONAL ORDER OTHER THAN TERMINATION OF THE GUARDIANSHIP OR CONSERVATORSHIP WHICH ARE REQUESTED OR SUPPORTED BY A MINOR AGE TEN [10] OR OVER SHALL NOT BE DENIED UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE REQUESTED MODIFICATIONS WILL NOT BE BENEFICIAL TO THE MINOR. MODIFICATIONS OTHER THAN TERMINATION OF THE GUARDIANSHIP OR CONSERVATORSHIP WHICH ARE REQUESTED BY OTHER INDIVIDUALS AND OPPOSED BY THE MINOR AGE TEN [10] OR OVER SHALL NOT BE APPROVED WITHOUT CLEAR AND CONVINCING EVIDENCE THAT THE REQUESTED MODIFICATIONS WILL BE BENEFICIAL TO THE MINOR.

(c) FOLLOWING THE FILING OF AN APPLICATION UNDER 21(4), A GUARDIANSHIP OR CONSERVATORSHIP FOR A MINOR SHALL NOT BE TERMINATED BY ORDER OF THE COURT UNLESS THERE IS A PREPONDERANCE OF EVIDENCE THAT THE SUSPENSION OF THE PARENTAL RIGHTS OF ONE OR BOTH OF THE MINOR'S PARENTS HAS BEEN REVOKED, THE MINOR HAS BEEN ADOPTED, OR THERE IS CLEAR AND CONVINCING EVIDENCE THAT TERMINATION WOULD BE BENEFICIAL TO THE MINOR.

(3) IN PROCEEDINGS FOR APPOINTMENT OF A GUARDIAN AD LITEM, BOTH THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION BY A PREPONDERANCE

OF THE EVIDENCE SHALL BE ON THE APPLICANT.

(4) IN PROCEEDINGS FOR APPOINTMENT OF A LIMITED PERSONAL GUARDIAN OR PERSONAL GUARDIAN PURSUANT TO SECTION 30(1)(e), BOTH THE BURDEN OF GOING FORWARD AND THE BURDEN OF PERSUASION BY A PREPONDERANCE OF THE EVIDENCE SHALL BE ON THE APPLICANT.

(5) IN PROCEEDINGS TO GAIN ACCESS TO RECORDS PURSUANT TO SECTION 34(4) OF THIS ACT, BOTH THE BURDEN OF GOING FORWARD AND THE BURDEN OF PERSUASION BY CLEAR AND CONVINCING EVIDENCE SHALL BE ON THE APPLICANT.

(6) IN PROCEEDINGS TO DESTROY OR LIMIT ACCESS TO RECORDS PURSUANT TO SECTION 34(7) OF THIS ACT, BOTH THE BURDEN OF GOING FORWARD AND THE BURDEN OF PERSUASION BY A PREPONDERANCE OF THE EVIDENCE SHALL BE ON THE APPLICANT.

SECTION 39. RULES OF PROCEDURE/RULES OF EVIDENCE

EXCEPT WHERE SPECIFIED OTHERWISE, THE RULES OF PROCEDURE AND RULES OF EVIDENCE APPLICABLE IN CIVIL MATTERS SHALL GOVERN ALL PROCEEDINGS UNDER THIS ACT.

SECTION 40. EFFECT ON EXISTING GUARDIANSHIPS AND CONSERVATORSHIPS

(1) ALL GUARDIANSHIPS AND CONSERVATORSHIPS ESTABLISHED FOR PARTIALLY DISABLED AND DISABLED PERSONS PRIOR TO THE EFFECTIVE DATE OF THIS ACT SHALL BE REVIEWED BY THE COURT PURSUANT TO SECTION 14(1) WITHIN TWO [2] YEARS. UNTIL THE REVIEW HEARING, ALL LIMITED PERSONAL GUARDIANS, PERSONAL GUARDIANS, LIMITED CONSERVATORS AND CONSERVATORS APPOINTED PRIOR TO THE EFFECTIVE DATE SHALL RETAIN THE POWERS ASSIGNED TO THEM, UNLESS AN APPLICATION HAS BEEN GRANTED UNDER SECTION 14(2) AND SHALL, PRIOR TO THE REVIEW HEARING, SUBMIT AT LEAST ONE REPORT IN THE FORM PRESCRIBED IN SECTION 15(6) AND/OR 16(7), AND AN INDIVIDUAL GUARDIANSHIP AND/OR CONSERVATORSHIP PLAN DEVELOPED IN THE MANNER SET FORTH IN SECTIONS 15(2) AND/OR 16(2). FAILURE TO HOLD A REVIEW HEARING FOR APPOINTMENTS MADE PRIOR TO THE EFFECTIVE DATE OF THIS ACT WITHIN TWO YEARS OF THAT DATE SHALL RESULT IN THE TERMINATION OF THE GUARDIANSHIP OR CONSERVATORSHIP.

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OR CONSERVATOR SHALL

FAILURE TO HOLD A REVIEW HEARING FOR APPOINTMENTS MADE PRIOR TO THE EFFECTIVE DATE OF THIS ACT WITHIN TWO YEARS OF THAT DATE SHALL RESULT IN THE TERMINATION OF THE GUARDIANSHIP OR CONSERVATORSHIP.

(2) ALL LIMITED PERSONAL GUARDIANS, PERSONAL GUARDIANS, LIMITED CONSERVATORS OR CONSERVATORS FOR MINORS APPOINTED BY COURT ORDER OR BEGINNING THEIR SERVICE FOLLOWING A TESTAMENTARY APPOINTMENT PRIOR TO THE EFFECTIVE DATE OF THIS ACT SHALL RETAIN THE POWERS ASSIGNED TO THEM BY THE COURT OR BY WILL UNLESS AN APPLICATION HAS BEEN GRANTED UNDER SECTION 21(3) OF THIS ACT, OR ONE OF THE EVENTS SPECIFIED IN SECTION 21(2) OCCURS TERMINATING THE GUARDIANSHIP OR CONSERVATORSHIP. ALL SUCH LIMITED PERSONAL GUARIANS AND PERSONAL GUARDIANS SHALL SUBMIT A REPORT IN THE FORM PRESCRIBED IN SECTION 22(6) NO MORE THAN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ACT AND ANNUALLY THEREAFTER DURING THE DURATION OF THE GUARDIANSHIP. ALL SUCH LIMITED CONSERVATORS AND CONSERVATORS SHALL SUBMIT AN INDIVIDUAL CONSERVATORSHIP PLAN IN THE FORM SPECIFIED IN SECTION 23(2) AND A REPORT IN THE FORM SPECIFIED IN SECTION 23(7) NO MORE THAN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ACT AND AT LEAST ANNUALLY THEREAFTER FOR THE DURATION OF THE CONSERVATORSHIP.

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SECTION 41. SEVERABILITY OF SECTIONS

IF ANY SECTION, SUBSECTION, PARAGRAPH, SENTENCE, OR ANY OTHER PART OF THIS ACT IS ADJUDGED UNCONSTITUTIONAL OR INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER OF THIS ACT, BUT SHALL BE CONFINED TO THE SECTION, SUBSECTION, PARAGRAPH, SENTENCE OR ANY OTHER PART OF THIS ACT DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SAID JUDGMENT SHALL HAVE BEEN RENDERED.

SECTION 42. EFFECTIVE DATE

THIS ACT TAKES EFFECT _____.

APPENDIX TEN

SUMMARY OF COMMENTS ON FIRST GUARDIANSHIP DRAFT, November 1978

SUMMARY OF COMMENTS ON FIRST GUARDIANSHIP DRAFT
November 29, 1978

PAGE 1

General Comments (Section 1 (1) - DEFINITIONS) Could this be improved as a type of functional definition? ABA definition too general. Think some disability groups should be listed, followed by functional qualities. Don't add "or other developmental disabilities" to list of specific disabilities. According to the latest federal definition, developmental disability covers most handicapping conditions. By specifically including d.d. may inadvertently be stating that persons with handicaps need guardians. (Senner)

The definition of the population is crucial. The "partially disabled" and "disabled" functional definitions are okay. (Bailey)

line 6 My first concern arose in the definition of "incapacitated person". All minors needing a surrogate parent under P.L. 94-142 are not necessarily incapacitated in terms of p.l. I think particularly of students who are learning disabled or emotionally disturbed. (Buck)

line 7 Exclude or define "mental deficiency". (Robison)

line 8 "other" - why is it necessary to add this? (Senner)

line 8-9 "physical illness or disability, advanced age" - delete from list of conditions which justify guardianship. Only in cases where an individual's judgmental abilities are impaired should a guardian (as substitute decision maker) be appointed. A physically disabled, but intellectually able person can exercise personal authority to seek necessary services, but make his or her own decisions about such services. (Lobosco)

line 10 "(except minority)" - does this mean that minors can be covered by this legislation even though they aren't incapacitated? (Buck)

line 11 Who decides whether an incapacitated person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person? What criterion is used? (Weed)

line 13 Add "and property", since there is no specific mention of private property. (Robison)

line 23 "age of 18" - Is this necessary in a guardianship context? (Van Duizend)

PAGE 2

line 15 (PURPOSE & BASIS FOR GUARDIANSHIP) Is "adaptive" enough? What about physical? (Van Duizend)

line 15-16 "mentally disabled" - why limit this? (Van Duizend)

line 19 "legal disabilities" - requires a definition. (Van Duizend)

line 24 What if parent or spouse was not appointed as guardian? (Van Duizend)

PAGE 3

line 3 (PETITION) "incapacitated person" - conflicts - not capable of making decisions according to p. 1. (Robison)

line 4 "private organization or agency" - does it modify just "organization" or "agency" as well? If it does modify both words, could a local education agency petition for appointment of a guardian? (Buck)

line 5 "his" - if begin using "his or her", it should be used throughout. (Van Duizend)

line 10 "agency status" - What does this mean? (Van Duizend)

General Comments (Subsection (5), (6)) Are there any guidelines established? (Weed)

General Comments (Subsection (6)) Question the advisability of requiring all persons with knowledge of the facts. (Tennant)

line 21 "The necessity for the appointment" - too vague (Van Duizend)

line 27 temporary guardian limited to "immediate, essential" needs of the proposed ward. If they create the risks subsequently mentioned, they must be immediate and essential. (Tennant)

PAGE 4

line 1-2 Do needs create risks, i.e. death? (Jacobs, Van Duizend)

line 11 (INITIAL COURT PROCEDURES) "issues of incapacity" - should be capacity. (Weed)

line 15 "guardian ad litem" - should be a separate guardian ad litem; otherwise it is equivalency of an attorney representing himself. (Van Duizend)

Counsel's role differs from the role of a guardian ad litem. Counsel represents an individual's wishes after consultation with that individual while a guardian ad litem works from his own perspective as to the best interests of the individual. Since I believe it is a necessity to be represented by counsel, I would object to equating counsel's powers and duties with that of a guardian ad litem. (Soskin)

line 16-17 "qualified person...visitor" - What are the specific qualifications? Maybe cross-reference "visitor" (Weed)

PAGE 4 (Continued)

General Comments (Subsection c) I am somewhat puzzled by the role of the visitor as set out in the statute; primarily whose interests is he representing? At times he appears to be acting as a master for the court (13.26.106 (c)); at times like a guardian ad litem (13.26.108 (b)); at times like a social worker (13.26.109). (Tennant)

Considering the apparent unavailability of present personnel to perform this service, I question the advisability of creating this position with extensive bureaucratic responsibilities unless you have some source of personnel and funding to carry out the procedures. If you do not have that, wouldn't it just about preclude the filing of petitions? Another factor in the viability of your bill is the potential reluctance of the legislature to enact any program for which large personnel and financial commitments must be made. (Tennant)

line 22-23 "examined by a physician...submit his report" - If person is mentally ill or developmentally disabled, most M.D.'s will not have expertise to render the opinions required. (Van Duizend)

line 24 "visitor" - need more details (Weed)

General Comments (Subsection d) Why is guardianship and residential placement linked? This tacit presumption that partially disabled or disabled persons require residential placement can easily lead to abuse. (Van Duizend)

PAGE 5

General Comment (Subsection e) For surrogate parent purposes, couldn't the interviews and examinations take place in the proposed ward's school or other educational institution rather than residence or medical facility? (Buck)

line 6 (PETITION) On what will the visitor base this judgment? Would a visitor ever say "no"? (Van Duizend)

line 11 (NOTICE OF RIGHTS) Insert "If possible" before "explain to the proposed ward". (Robison)

line 16-17 Time sequence of 108 and 106 mixed up and therefore confusing (i.e. interview prior to the evaluation of ward? If not, all these explanation may be too late). Should there not be a section simply spelling out duties of visitor? What is the rationale of having a "visitor" coordinate the evaluation? (Van Duizend)

line 19-20 "physician", "mental health professional" - at whose expense? (Weed)

Too much expense. Incapacitated person's family has to pay for two attorneys, their own and that of the incapacitated person. Perhaps the Oversight Commission mentioned in the ABA letter could provide protection under AS 13.26.115 (b)(iii) (Jacobs)

PAGE 6

line 8 (VISITOR'S REPORT) Should not ward get the petition prior to the evaluation? This is phrased awkwardly. (Van Duizend)

line 10 I believe you will find that 30 days will be too short a time generally for the visitor to file his report, especially if he has any other duties. (Tennant)

line 16 Why not describe tests for mental emotional conditions? (Van Duizend)

line 18 How will all this relate to appointment of a conservator? (Van Duizend)

line 22 "mental health treatment" - define; all Health/Social Services? Includes dd habilitation as well? (Aronson)

line 23 "probability that available treatment will significantly improve his mental condition" - spell out more aspects, may not improve. (Robison)

line 26 Why is the burden placed on the ward? The statute does not place an affirmative duty on anyone to locate alternative services. This leaves no room for negotiations or for input by the petitioner. (Van Duizend)

PAGE 7

line 3 "specify the financial resources" - add "if any". (Van Duizend)

line 9 Why link guardianship and hospitalization? (Van Duizend)

line 22 "least restrictive authorities needed by the guardian" - unclear. (Senner)

line 26 put brackets around (consider to what); maybe substitute "the" for "to what". Insert "to which" between "extent" and "the". (Van Duizend)

Awkward - delete "consider to". (Tennant)

PAGE 8

line 6-7 What about during the guardianship? (Van Duizend)

line 9 "five judicial days" - This doesn't seem to be an adequate amount of time. (Weed)

Five days from when - the filing with the court, receipt by petitioner and ward? (Tennant)

General Comments (Sec. 13.26.110 EVALUATIONS: RIGHT TO REMAIN SILENT....) This whole paragraph needs clarification. (Weed)

PAGE 8 Continued

line 18 In criminal proceedings this is already provided for or at least should be. In civil proceedings, why is it necessary and, if it is necessary, why punish the exercise of the right? (Van Duizend)

line 25 "Proposed ward...them" - Person should be informed of this at the very beginning in Sec. 12.26.108. (Weed)

General Comments (Subsection c)

I believe this section is too rigid. If there are language barriers or communication barriers of any type, an attorney or mental health professional accompanying the proposed ward could possibly assist in clarifying such problems. I would recommend less strict "straight jacket" approach and more flexibility. (Van Brocklin)

PAGE 9

line 1-2 If a person doesn't have the capacity to request/choose a support person, can arrangements be made on request of health professionals, etc. working with proposed ward? (Aronson)

line 3-4 "observers only" - attorney and/or medical persons can be in attendance and allowed to participate and/or intervene to protect the proposed ward's rights. (Endicott)

line 10 "psychologist" - vague term: licensed, clinical or PhD? (Robison)

line 13-15 "Reasonable fees and expenses for such expert examiner shall be borne by the ward or the state as determined by the court". How is this determined? (Weed)

line 15 If court must appoint, why should ward pay, since if ward could pay he/she could hire the expert without court assistance? (Van Duizend)

line 27 (EXPERT TESTIMONY) "Severe mental disorder" - Should be spelled out. Unknown meaning here! Try to follow Title 47 (brings out danger to self or others). (Robison)

How does (iii) relate to guardianship criteria? (Van Duizend)

PAGE 10

General Comments (line 1-6) - Is this necessary to include in a statute? (Van Duizend)

Need reference to expert opinion and witness. (Robison)

line 7 I don't understand this section. What "diagnostic categories" are you talking about? (Tennant)

PAGE 10 Continued

line 11 (DUTIES OF PROPOSED WARD'S COUNSEL) I don't believe this needs to be in the statute. It is adequately covered by the Code of Professional Responsibility. If an attorney doesn't know what he is to be doing, he shouldn't take the case. (Tennant)

General Comments (lines 20-27, PSYCHOTROPIC MEDICATION) Generally, I don't know whether this section is appropriate in view of treatment programs. The obvious intent is laudable, but I am unable to make the judgment whether it is too all-encompassing. (Tennant)

What about being an advocate? (Van Duizend)

line 20 define "Psychotropic" (Carey)

PAGE 11

line 5-6 Too constrictive. Add "or other major health reasons" after "bodily harm". (Robison)

line 17 I question the advisability of having a jury trial in incompetency hearings. This is my own philosophical position. (Tennant)

lines 17-19 Have medical examiner submit a report on the effects of the drug to the court. Should not have to be requested by the ward. (Weed)

line 21 (HEARING) "sixty days" - probably too short a time unless you presume that many of the preliminary steps will be accomplished prior to filing the petition. Even criminal cases have 120 days under Criminal Rule 45. (Tennant)

Does "60 days" mean the process should be completed within 60 days? Is it possible to have guardianship within that period of time? (Aronson)

line 23 Do these rights need to be enumerated? If they are, does the court in each proceeding have to make a finding that they were observed? Section - superfluous. (Tennant)

line 24 legal representation of proposed ward should be automatic. It is highly problematic to expect the ward to waive this right in an intelligent fashion if the very subject of the proceeding is his competence to make important decisions (Contrast Sec. 13.26.114 (b)(i) with automatic representation by counsel Sec. 13.26.140 (c), p.21) (Herr)

PAGE 12

line 2 "he" should be: "he/she". (Van Duizend)

This assumes capacity. (Robison)

PAGE 12 Continued

line 5 "him" should be "him or her". (Van Duizend)

line 9 insert "allows expert witness" after "and". Need expert witness to interpret. (Robison)

line 10 Waste of taxpayer's money. And most will be jury trials. If needed, the judge can call jury for case. (Robison)

If it is to be a jury trial, is it to be 6 or 12 persons? (Tennant)

line 11 "he" change to "he/she". (Van Duizend)

General Comments (Subsection c) Unneeded except the portion on burden of proof. (Tennant)

line 20 What does "impairment of behavior" mean? (Van Duizend)

line 22 What does "care for himself" mean? Should this not be linked in to protection from illness or injury language used earlier? (Van Duizend)

line 24 This mixes a dispositional issue with the substantive determinations. It presumes that an appointment is required. (Van Duizend)

PAGE 13

General Comments (Subsection f) What about non-guardianship alternatives? (Van Duizend)

PAGE 14

line 3 (GUARDIANSHIP ORDER) "as is necessary" - How is this determined? (Weed)

General Comments (Subsection (b)(iii)) Why isn't this under Sec. 26.116? (Senner)

Awkward construction. Expensive! Frequent placement changes are necessary in some cases. Each placement requires a hearing, a lawyer for the ward and one for the guardian. Guardians should realize that wards qualify for some land distribution benefits in Alaska. (Jacobs)

line 14-15 Shall have authority to allow admission; may authorize, but only staff may admit or place. (Robison)

line 15 "residential facility" - nursing home? (Van Duizend)

line 18 A right to a hearing is ok, but the 10 day period seems too short or perhaps the section should define, on a more restricted basis, the type of hospitalization which would trigger a hearing. It would, for instance, be a waste of a court's time to require a hearing when a ward was hospitalized on a doctor's order for more than 10 days for a broken hip. (Tennant)

PAGE 14 Continued

line 19 "hearing" - mechanics need to be established. (Senner)

line 20 Will ward still be represented? What is burden of proof? (Van Duizend)

line 21 "principles" change to "possible" (Jacobs)

PAGE 15

General Comments (Subsection vii) How does this relate to conservator? (Van Duizend)

line 11 "him" change to "him/her". (Van Duizend)

This paragraph addresses providing the ward with medical care and mental health treatment, but not with adequate educational programming and services. Shouldn't the guardianship plan address itself to educational as well as medical and mental health services? (Buck)

line 13 Can the term be extended? (Van Duizend)

Will this provision force guardians of wards who have developmental disabilities back into court unnecessarily through reluctance of judges to order guardians for indefinite periods as when there are no known cases of improvement in person with this ward's disability? (Jacobs)

line 19 (GUARDIANSHIP PLAN) What does the court do with the plan? If you are going to require it, it should be for a reason. (Tennant)

What about services to help ward become competent? This whole section seems not to take into account individuals with developmental or traumatically induced disabilities, who require more than non-mental health and medical services and who may be able to regain or develop their abilities. The link between their point in 116 and 115 needs to be stronger. (Van Duizend)

The parents aren't going to like this. Might require such a plan for only certain persons. (Senner)

line 27 "A guardian is required to report...once a year" - more often than once a year. (Garey)

PAGE 16

line 1 What about the significant actions of the guardian? (Van Duizend)

line 19 (TERMINATION OF GUARDIANSHIP) What about the ward regaining competency prior to expiration of the guardianship period? (Van Duizend)

line 23-24 Change "his" to "the guardian's". Cross out "the guardians" on following line. (Jacobs)

PAGE 17

General Comments (Subsection a & b) REMOVAL OR RESIGNATION OF GUARDIAN - Won't subsection (a) be used to circumvent the restrictions on subsection (b)? Why can't ward apply informally under (a)? Removal of a guardian is not the equivalent of terminating the guardianship. (Van Duizend)

line 6 Insert "if it" between "successor is". What about least drastic alternative - does it apply here or can the court impose all the restrictions here which it could under 115? (Van Duizend)

line 9-10 Does this mean within the 1st year no petition to re-evaluate "incapacity" can be filed? What does "special leave" refer to? (Aronson)

line 26 "rights of the ward as apply to a petition for appointment of a guardian" - more explicit, cross-reference is needed. (Van Duizend)

PAGE 18

General Comments (Subsection d) I am not convinced that this will be followed and, if it is, that it will have any effect. (Van Duizend)

line 9 (VISITOR) In the case of surrogate parents, perhaps the visitor should be a person trained in education rather than law, medical care, etc. (Buck)

PAGE 19

line 3-4 "person who performed on evaluation" - Should this person be notified forever or only for a set period (i.e. 2 yrs.)? (Van Duizend)

line 8 What about a non-appointed attorney? (Van Duizend)

line 17-19 (TEMPORARY GUARDIANS) Proof of need for services does not indicate why guardianship is necessary. Does there not have to be proof that the ward cannot or will not procure services for him/herself? (Van Duizend)

line 22 "proposed...attorney" - Will an attorney be appointed in these cases for the ward? Is there time for such an appointment? (Senner)

PAGE 20

line 6 Emergency services could also be necessary to protect a proposed ward from inappropriate or restrictive educational placement and services. (Buck)

line 13 When is visitor appointed? Why is access to visitor easier than to a judge? May there not be a need for consent to emergency services when no guardianship petition has been filed? (Van Duizend)

General Comments (Subsection f) Visitor is acting like a guardian ad litem. I see no need for a visitor to make these decisions when a guardian ad litem has been appointed. (Tennant)

PAGE 21

line 5-9 (EMERGENCY POWERS) This needs to be thought through. Don't see why this is necessary. Does this apply mostly to hospitalization for mental health care? If so it should be stated. (Senner)

Does this include a medical hospital when (for example) the ward has been hit by a car? (Van Duizend)

line 9 Why the seven day period in this section as opposed to the 10 day period in 13.26.115(b)(iii)? (Tennant)

General Comments (Sec. 13.26.142 STERILIZATION, ABORTION, DONATION OF ORGANS) - I do not believe authorizing sterilizations and abortions is appropriate in this statute but rather should be part of a general sterilization or abortion statute. If kept, there needs to be strict substantive standards governing who is to be sterilized or aborted and strict procedural safeguards. The ward's "best interest" and "medically necessary" are too vague to be proper standards. The burden of proof for an action depriving a person of such fundamental rights must be stronger than mere preponderous of evidence. (Soskin)

line 11 Insert parenthesis around "notwithstanding the provisions by law or court order". Capitalize "R" and replace "may" with "shall". (Van Duizend)

line 13-14 lumped together poorly. Would it be okay to donate organs for 3 days? (Robison)

General Comments (Subsection a) Again, a conflict between this and .115(b)(iii). (Tennant)

line 16-17 "If guardian believes such action is desirable in the best interests of his ward" - which one? (Van Duizend)

General Comments (Subsection b) This whole section could be dropped. Last hearing on these things was in 1954 in California. (Robison)

line 25 "court...authorize sterilization or abortion only if medically necessary" - needs strengthening. (Senner)

General Comments (Subsection e) Should require a higher standard of proof (perhaps "clear & convincing") for decisions as serious and irreversible as sterilization and abortion. (Lobosco)

The burden of proof level seems inappropriate. (Tennant)

PAGE 22

line 1 "any commitment to a hospital" - auto accident care too? (Van Duizend)

General Comments (Subsection f) Does this section apply to hearing mandated by 13.26.115(b)(iii) and 13.26.142(b)? (Tennant)

General Comments (Sec. 13.26.143 CONSENT FOR MEDICAL CARE) I believe this section, if adopted, should limit the necessity of this report to consent in excess of the authority granted by the court in 13.26.115(b)(i). Not clear. (Tennant)

line 7 Why is 3 day written notice needed? Why do you have to report? (Jacobs)

What is court to do? What about notice to guardian at litem or attorney? (Van Duizend)

line 10-11 (WHO MAY BE GUARDIAN) "a suitable agency or institution, public or private" - This would be conflict of interest of guardian who was employed by Health & Social Services and also served as an advocate (i.e. bringing action against poor treatment in an institution). I'm against Health & Social Services being guardian. They haven't proven their concern in the past. Maybe guardian from Attorney General's office. (Carey)

line 19 Will this preclude state hospital employees from being guardians for a patient? It should. (Van Duizend)

line 29 Retain "agency". (L. Bosco)

PAGE 23

line 2 Legal age in Alaska is 18. (Robison)

If child has sufficient capacity at age 10 criminal meno nea, why raise the age for proposing a guardian to age 16; 2 years over even the common law age? (Van Duizend)

line 6 In light of parents concern, might add "person nominated in will of deceased parent" after "ward". (Senner)

General Comment (Subsection c) Might state that priority should always be given to individuals over agencies. Think a restriction should be placed on how many wards an individual may have. Give priority to persons residing near the ward. (Senner)

PAGE 24

line 14 Insert "adequate" before "training" and "education". (Bailey)

line 21 including education? (Aronson)