

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10755 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

PRINCIPLE 1. A single statewide Accountability System applied to all public schools and LEAs.

CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
<p>1.1 How does the State Accountability System include every public school and LEA in the State?</p>	<p>Every public school and LEA is required to make adequate yearly progress and is included in the State Accountability System.</p> <p>State has a definition of "public school" and "LEA" for AYP accountability purposes.</p> <ul style="list-style-type: none"> The State Accountability System produces AYP decisions for all public schools, including public schools with variant grade configurations (e.g., K-12), public schools that serve special populations (e.g., alternative public schools, juvenile institutions, state public schools for the blind) and public charter schools. It also holds accountable public schools with no grades assessed (e.g., K-2). 	<p>A public school or LEA is not required to make adequate yearly progress and is not included in the State Accountability System.</p> <p>State policy systematically excludes certain public schools and/or LEAs.</p>
<p>STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS</p>		

1.1- The State of Alaska defines a school in Alaska Administrative Code AAC 05.900(5). A school is also being defined under the revised regulations governing Report Cards to the Public. Charter schools, correspondence schools, alternative and special mission schools are included as public schools. Alaska's accountability system treats all these types of schools the same way in determining Adequate Yearly Progress (AYP).

The accountability system produces an AYP decision for each public school in the state. Schools with any and all combinations of grade configurations are included in calculating AYP and making an AYP decision in the same manner.

The standards-based student assessment system in Alaska consists of testing all students in grades 3 to 10 annually. The AYP calculation will aggregate test data across grade levels within each school. The Performance Score (overall percent of students enrolled for the full academic year who are proficient across grades) will be compared to the Annual Measurable Objective (AMO) for each year. More details on determining AYP are presented in later parts of this plan.

All schools in Alaska participate in the assessment system with the exception of a few schools who only serve students in grades K-2. The AYP decision made on the school that receives students from the K-2 schools will be applied to the K-2 school, so that all schools (including the K-2 schools) will receive an annual AYP determination.

Charter schools are considered public schools in Alaska and are required to participate in the state's assessment system and will receive an annual AYP determination. Alternative, Special Mission, Correspondence, Boarding schools, and schools located in youth correctional facilities also participate in state assessments and will receive an annual AYP determination using the same procedures as for all other schools.

During the 2003/2004 and 2004/2005 school years Alaska will study the validity of the statewide accountability system when applied to Alternative and Special Mission Schools. If the results of this study indicate that the accountability system is not valid for these types of schools Alaska will propose an alternate system to the US Department of Education. Until that occurs, these schools will receive an annual AYP determination using the same system as other schools.

This section describes the statutory and regulatory requirements concerning AYP, as well as ED's less formal interpretations that became apparent through the peer review process.

A. Single Statewide Accountability System

Every state must demonstrate in its state plan that it has developed and is implementing a single, statewide accountability system that will be effective in ensuring that all LEAs, public elementary schools and public secondary schools make AYP. The regulations clarify that this single system must be in place for the 2002-03 school year.

This single system must be the same accountability system the state uses for all public elementary schools and secondary schools and for all LEAs in the state, and must take into account the achievement of all public school students. It must be based on the state's standards, assessments, and "other academic indicators," as explained in this chapter. In its attempt to hold LEAs and public schools accountable for student achievement and for ensuring AYP, the accountability system must include both sanctions and rewards (such as teacher bonuses and school recognition).

This statutory and regulatory language suggests that states cannot continue the dual systems of accountability that often arose under IASA. However, states with well-established accountability systems vehemently objected to having to dismantle state systems that worked seemingly well. After considering formal comments submitted on the proposed regulations and negotiating informally with states, ED agreed that a state may continue to use its current state accountability system, consistent with earlier Dear Colleague letters released by ED, if that system integrates the federally-mandated AYP into its system. States were required to submit evidence through the peer review process that thoroughly described the state's accountability system and demonstrated how it integrated the AYP provisions required under Title I.

(Note that while all public schools must be included in AYP determinations, only public schools receiving Title I allocations are subject to sanctions under §1116 for school improvement, corrective action and restructuring. See Chapter 2.)

B. Defining the Measure of Adequate Yearly Progress

1) General requirements

Under NCLB, AYP is measured separately at the level of school, district, and state performance. (The requirement to set AYP for the *state* as a whole is new under NCLB.) The measures must be designed to narrow the achievement gaps among groups of students in the schools, LEAs and the entire state. A state must craft its AYP measure so that the same high standards of academic achievement apply to *all* public elementary school and secondary school students in the state, not just Title I students. The measure must be statistically valid and reliable, and result in continuous and substantial academic improvement for all students.

The state assessments must be the primary factor in the state's measure of AYP, as under IASA. Among many other topics, peer reviewers had to report whether the state's definition of AYP was based primarily on the academic assessments. Although

through other entities such as school support teams or educational service agencies.

"(8) ADMINISTRATIVE COSTS.—A State educational agency that receives a grant award under this subsection may reserve not more than 5 percent of such grant funds for administration, evaluation, and technical assistance expenses.

"(9) LOCAL AWARDS.—Each local educational agency that applies for assistance under this subsection shall describe how it will provide the lowest-achieving schools the resources necessary to meet goals under school and local educational agency improvement, corrective action, and restructuring plans under section 1116.

20 USC 6304. "SEC. 1004. STATE ADMINISTRATION.

"(a) IN GENERAL.—Except as provided in subsection (b), to carry out administrative duties assigned under parts A, C, and D of this title, each State may reserve the greater of—

"(1) 1 percent of the amounts received under such parts;

or

"(2) \$400,000 (\$50,000 in the case of each outlying area).

"(b) EXCEPTION.—If the sum of the amounts appropriated for parts A, C, and D of this title is equal to or greater than \$14,000,000,000, then the reservation described in subsection (a)(1) shall not exceed 1 percent of the amount the State would receive, if \$14,000,000,000 were allocated among the States for parts A, C, and D of this title.

"PART A—IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

"Subpart 1—Basic Program Requirements

20 USC 6311. "SEC. 1111. STATE PLANS.

"(a) PLANS REQUIRED.—

"(1) IN GENERAL.—For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan, developed by the State educational agency, in consultation with local educational agencies, teachers, principals, pupil services personnel, administrators (including administrators of programs described in other parts of this title), other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this Act, the Individuals with Disabilities Education Act, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Head Start Act, the Adult Education and Family Literacy Act, and the McKinney-Vento Homeless Assistance Act.

"(2) CONSOLIDATED PLAN.—A State plan submitted under paragraph (1) may be submitted as part of a consolidated plan under section 9302.

"(b) ACADEMIC STANDARDS, ACADEMIC ASSESSMENTS, AND ACCOUNTABILITY.—

"(1) CHALLENGING ACADEMIC STANDARDS.—

"(A) IN GENERAL.—Each State plan shall demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement

standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

"(B) SAME STANDARDS.—The academic standards required by subparagraph (A) shall be the same academic standards that the State applies to all schools and children in the State.

"(C) SUBJECTS.—The State shall have such academic standards for all public elementary school and secondary school children, including children served under this part, in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children.

"(D) CHALLENGING ACADEMIC STANDARDS.—Standards under this paragraph shall include—

"(i) challenging academic content standards in academic subjects that—

"(I) specify what children are expected to know and be able to do;

"(II) contain coherent and rigorous content; and

"(III) encourage the teaching of advanced skills; and

"(ii) challenging student academic achievement standards that—

"(I) are aligned with the State's academic content standards;

"(II) describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the State academic content standards; and

"(III) describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving children toward mastering the proficient and advanced levels of achievement.

"(E) INFORMATION.—For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed, such academic standards, the State plan shall describe a strategy for ensuring that students are taught the same knowledge and skills in such subjects and held to the same expectations as are all children.

"(F) EXISTING STANDARDS.—Nothing in this part shall prohibit a State from revising, consistent with this section, any standard adopted under this part before or after the date of enactment of the No Child Left Behind Act of 2001.

"(2) ACCOUNTABILITY.—

"(A) IN GENERAL.—Each State plan shall demonstrate that the State has developed and is implementing a single, statewide State accountability system that will be effective in ensuring that all local educational agencies,

Standard
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elementary schools, and public secondary schools make adequate yearly progress as defined under this paragraph. Each State accountability system shall—

"(i) be based on the academic standards and academic assessments adopted under paragraphs (1) and (3), and other academic indicators consistent with subparagraph (C)(vi) and (vii), and shall take into account the achievement of all public elementary school and secondary school students;

"(ii) be the same accountability system the State uses for all public elementary schools and secondary schools or all local educational agencies in the State, except that public elementary schools, secondary schools, and local educational agencies not participating under this part are not subject to the requirements of section 1116; and

"(iii) include sanctions and rewards, such as bonuses and recognition, the State will use to hold local educational agencies and public elementary schools and secondary schools accountable for student achievement and for ensuring that they make adequate yearly progress in accordance with the State's definition under subparagraphs (B) and (C).

"(B) ADEQUATE YEARLY PROGRESS.—Each State plan shall demonstrate, based on academic assessments described in paragraph (3), and in accordance with this paragraph, what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, toward enabling all public elementary school and secondary school students to meet the State's student academic achievement standards, while working toward the goal of narrowing the achievement gaps in the State, local educational agencies, and schools.

"(C) DEFINITION.—'Adequate yearly progress' shall be defined by the State in a manner that—

"(i) applies the same high standards of academic achievement to all public elementary school and secondary school students in the State;

"(ii) is statistically valid and reliable;

"(iii) results in continuous and substantial academic improvement for all students;

"(iv) measures the progress of public elementary schools, secondary schools and local educational agencies and the State based primarily on the academic assessments described in paragraph (3);

"(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following:

"(I) The achievement of all public elementary school and secondary school students.

"(II) The achievement of—

"(aa) economically disadvantaged students;

"(bb) students from major racial and ethnic groups;

"(cc) students with disabilities; and

"(dd) students with limited English proficiency;

except that disaggregation of data under subclause (II) shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student;

"(vi) in accordance with subparagraph (D), includes graduation rates for public secondary school students (defined as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years) and at least one other academic indicator, as determined by the State for all public elementary school students; and

"(vii) in accordance with subparagraph (D), at the State's discretion, may also include other academic indicators, as determined by the State for all public school students, measured separately for each group described in clause (v), such as achievement on additional State or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

"(D) REQUIREMENTS FOR OTHER INDICATORS.—In carrying out subparagraph (C)(vi) and (vii), the State—

"(i) shall ensure that the indicators described in those provisions are valid and reliable, and are consistent with relevant, nationally recognized professional and technical standards, if any; and

"(ii) except as provided in subparagraph (I)(i), may not use those indicators to reduce the number of, or change, the schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 if those additional indicators were not used, but may use them to identify additional schools for school improvement or in need of corrective action or restructuring.

"(E) STARTING POINT.—Each State, using data for the 2001-2002 school year, shall establish the starting point for measuring, under subparagraphs (G) and (H), the percentage of students meeting or exceeding the State's proficient level of academic achievement on the State assessments under paragraph (3) and pursuant to the timeline described in subparagraph (F). The starting point shall be, at a minimum, based on the higher of the percentage of students at the proficient level who are in—

"(i) the State's lowest achieving group of students described in subparagraph (C)(v)(II); or

"(ii) the school at the 20th percentile in the State, based on enrollment, among all schools ranked by the percentage of students at the proficient level.

"(F) TIMELINE.—Each State shall establish a timeline for adequate yearly progress. The timeline shall ensure that not later than 12 years after the end of the 2002 school year, all students in each group described

HB

425

ALASKA STATE HOUSE OF REPRESENTATIVES



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Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

SECONDARY BOARDING SCHOOLS

HB 425 puts into statute DOE's current practice. This legislation supports existing programs that are successful. Under this bill a student would not have to pass the current entrance standards. The bill would give students a choice of going to a school that something different to offer than may be available in their hometown.

This legislation by statute reimburses to full school year secondary boarding schools costs incurred by the district operating the program.

The legislation limits the program to schools already operating boarding schools on January 1, 2004.

There are five boarding schools that would qualify for reimbursement for a per-pupil stipend and one round trip between the student's community of residence and the school during the school year if the district expends money for the trip.

These schools will participate in a five-year pilot project that the Department of Education will evaluate for the legislature.

The hold harmless section of this bill allows a student's district of residence to count a student for the ADM count even though the student is attending a secondary boarding school. This avoids the possibility of paying the base allocation twice for the same student.

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SPONSOR STATEMENT

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REPRESENTATIVE JOHN COGHILL

Sectional For Committee Substitute for House Bill 425(EDU)

Section 1.

(a) Provides that a school district that was operating a secondary boarding school prior to January 1, 2004 could be reimbursed for the cost of operating the boarding school providing they have a suitable student dormitory and provide daily access to a public school offering the grades 9-12 classes.

(b) The district can be reimbursed for a per-pupil stipend determined by the Department of Education and for one round trip per student that travels from their community.

(c) Defines district as "a city or borough school district or a regional educational attendance area.

Also defines district secondary school boarding program as " a public school operated for a full school year by a district in which the domiciliary services are provided for students in grades nine through 12. The full school year was added to the language in the Special Committee on Education and this resulted in a reduction in the fiscal note of \$227,700.

Section 2.

Provides a hold harmless clause for school districts that have children move out of the district to attend a secondary boarding school. The students moving from the district would be counted in the average daily membership of the home district.

Section 3.

This is a sunset clause that repeals the substance of this bill on July 1, 2009.

Section 4.

Puts into place an effective date of July 1, 2004.

RECEIVED

FEB 26 2004



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Senator Gary Wilken
State Capitol, Room 518
Juneau, AK 99801-1182

February 19, 2004

Dear Senator Wilken,

Thank you for allowing students from the NSLC and myself the opportunity to meet with you and your staff last month. I do appreciate the cordial way that you greeted us and received our request for your support of House Bill 425.

During the course of our discussion you mentioned an apparent discrepancy in figures that we used to show state savings of ADM monies that resulted from students attending the Nenana City Public School system. Thank you for providing the report entitled K-12 Public Education School Operating Fund. I have re-worked those figures using the table on tab 15 (State revenue per student) in your publication. I included only those monies that come from the state general fund. I have included the original table that included all monies received from the state and a revised table including only those monies coming from the general fund.

I was pleased to note that both tables show a substantial saving to the state. I am hoping that you consider these savings when considering the elements of House Bill 425. I am available to provide any additional information and data that you may require in considering this proposal.

Thanks again for your interest and hospitality. Your efforts are appreciated!

Sincerely,

A handwritten signature in black ink, appearing to read 'Ralph Lindquist', written in a cursive style.

R. Lindquist
Dean of Students

Enclosures

Cc: John Coghill, Nenana City School Board, Interested parties

School Year 2003-04

TABLE "B" LISTING ONLY THOSE MONIES TAKEN FROM STATE GENERAL FUND

NAME	COMMUNITY	SCHOOL DISTRICT	STATE REVENUE	SAVINGS
Agwiak, Arielle	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Agwiak, Lois	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Alexie, Carlie	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Alexie, Caroline	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Alexie, Kristie	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Alexie, Matthew	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Allen, Roberta	Arctic Village	Yukon-Flats School District	\$13,269.00	\$9,321.00
Anelon, Myrtle	Levelock	Lake & Peninsula Borough SD	\$13,990.00	\$10,042.00
Attie, Michael	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Benjamin, Anna	Shageluk	Iditarod Area School District	\$9,380.00	\$5,432.00
Benjamin, Devin	Shageluk	Iditarod Area School District	\$9,380.00	\$5,432.00
Berg, Kelly	Eagle River	Home School	n/a	\$0.00
Blatchford, Alma	Unalakleet	Bering Straits Schools	\$8,092.00	\$4,144.00
Brinkham, Afton	Eagle	Alaska Gateway School District	\$10,042.00	\$6,094.00
Brooks, Erin	Fort Yukon	Yukon-Flats School District	\$13,269.00	\$9,321.00
Brooks, Leah	Fort Yukon	Yukon-Flats School District	\$13,269.00	\$9,321.00
Brook, Molly	Fort Yukon	Yukon-Flats School District	\$13,269.00	\$9,321.00
Burnham, Heather	Kaltag	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Busch, Arthur	Russian Mission	Lower Yukon School District	\$7,720.00	\$3,772.00
Busk, Friedrich	Alexander Creek	Mat-Su Borough School District	\$5,071.00	\$1,123.00
Christiansen, Heidi	Old Harbor	Kodiak Island Borough Schools	\$5,412.00	\$1,464.00
David, Christopher	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
David, Elizabeth	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
David, Lucy	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Dayton, Elizabeth	Koyukuk	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Dayton, Susan	Koyukuk	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Demientieff, Arvin	Holy Cross	Iditarod School District	\$9,380.00	\$5,432.00
Demientieff, Chasity	Holy Cross	Iditarod School District	\$9,380.00	\$5,432.00
Demientieff, Clinton	Holy Cross	Iditarod School District	\$9,380.00	\$5,432.00
Esmailka, Danielle	Kaltag	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Esmailka, Derrick	Kaltag	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Esmailka, Megan	Kaltag	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
George, Kendra	St. Mary's	St. Mary's School District	\$11,439.00	\$7,491.00
Gochenauer, Harry	Wasilla	Mat-Su School District	\$5,071.00	\$1,123.00
Gochenauer, Tyler	Wasilla	Mat-Su School District	\$5,071.00	\$1,123.00
Ignatin, Jonyssa	Old Harbor	Kodiak Island Borough Schools	\$5,412.00	\$1,464.00
Igkurak, Lance	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Igkurak, Laura	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Igkurak, Letha	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Ivon, Isiah	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
John, Kacey	Arctic Village	Yukon-Flats School District	\$13,269.00	\$9,321.00
Jone., Maggie	Washington State	n/a	n/a	\$0.00
Kriska, Julie	Koyukuk	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Lindquist, Abigail	Palmer	Matanuska Christian School	n/a	\$0.00

Moon, Amy		Anchorage School District	\$4,197.00	\$249.00
Nicholas, Shaylene	Kaltag	Yukon-Koyukuk School District	\$11,769.00	\$7,821.00
Otto, Rachael	Kongiganak	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Peters, Kimberly	Holy Cross	Iditarod School District	\$9,380.00	\$5,432.00
Peters, Madeline	Holy Cross	Iditarod School District	\$9,380.00	\$5,432.00
Phillip, Emilda	Alakanuk	Lower Yukon School District	\$7,720.00	\$3,772.00
Phillip, Emmilda	Alakanuk	Lower Yukon School District	\$7,720.00	\$3,772.00
Rawls, Savannah	Kokhanok	Lake & Peninsula Borough SD	\$13,990.00	\$10,042.00
Rychnosky, Kimberly	Newhalen	Lake & Peninsula Borough SD	\$13,990.00	\$10,042.00
Shewfelt, Russell	Fort Yukon	Yukon-Flats School District	\$13,269.00	\$9,321.00
Solari, Roberta	Beaver	Yukon-Flats School District	\$13,269.00	\$9,321.00
Sorensen, Daniel	Alexander Creek	Home School	n/a	\$0.00
Standifer, Mary Jane	Tyonek	Kenai Peninsula Borough School	\$4,485.00	\$537.00
Stephan, Robert Jr.	Tyonek	Kenai Peninsula Borough School	\$4,485.00	\$537.00
Stephan, Sally	Tyonek	Kenai Peninsula Borough School	\$4,485.00	\$537.00
Tickett, Andrew	Shungnak	Northwest Arctic Borough S. D.	\$9,142.00	\$5,194.00
Tritt, Donetta	Lower Kalskag	Kuspuk School District	\$9,887.00	\$5,939.00
Tritt, Sheena	Lower Kalskag	Kuspuk School District	\$9,887.00	\$5,939.00
Tunohun, Ronnie	Old Harbor	Kodiak Island Borough Schools	\$5,412.00	\$1,464.00
Tweto, Jessica	St. Mary's	St. Mary's School District	\$11,439.00	\$7,491.00
Waskey, Eusebius	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Waskey, Marie-Jean	Mtn. Village	Lower Yukon Schools	\$7,720.00	\$3,772.00
Wassillie, Laura	Kokhanok	Lake & Peninsula Borough SD	\$13,990.00	\$10,042.00
Wassillie, Sally	Kasigluk	Lower Kuskokwim Schools	\$9,762.00	\$5,814.00
Wisecarver, Ian	Wasilla	Mat-Su Borough School District	\$5,071.00	\$1,123.00
Witt, Georgia	Galena	Galena City School District	\$4,222.00	\$274.00

TOTAL ADM MONIES SAVED 2003-04 (*)

\$358,939.00

NENANA CITY SCHOOLS, ADM = \$3948.00

(*) The source for the data used in the above chart, was compiled from information contained in the following publication "K-12 PUBLIC EDUCATION SCHOOL OPERATING FUND" (A per student Analysis of Revenue Sources -- Based on FY02 Audited School District Reports) Published by Gary Wilken -- October 3, 2003 (Tab 16) This reflects General Fund revenue monies (only) contributed to local ADM's.

Fairbanks Daily News-Miner

Coghill bill looks at boarding stipends

By TOM MORAN

Saturday, February 14, 2004 - News-Miner Juneau Bureau

JUNEAU--House Majority Leader John Coghill, R-North Pole, has introduced a bill that would offer additional state money to school districts that operate boarding schools.

House Bill 425, which Coghill introduced on Feb. 4, would let such school districts claim a stipend for each pupil in their respective boarding schools in order to help pay boarding expenses and also to pay for students' transport to and from the school at the beginning and end of the school year. The bill would add to a more limited stipend system in place today.

Coghill said he introduced the bill based on discussions with the Nenana school. He said he doesn't know whether there would be support for the bill in a state Legislature focused on a tight budget.

"I'm still going around looking for support, because it does have a cost to it," he said. "Before I begin the discussion of where we get the money from, I want to find out if there's support for looking for that money."

According to Eddy Jeans, school finance manager for the state Department of Education, the state already provides stipends ranging from \$460 to \$562 per student per month, plus the plane fare, to districts that operate boarding schools. But those only apply to students who do not have public high schools in their own districts. Coghill's proposal would apply those stipends to all students who attend boarding schools, even those who have the option of attending school at home.

"The proposal mirrors the current system," Jeans said. "The big thing here is that distinction of whether or not the kids have a secondary program in their home community."

Jeans said the purpose of the money would go to help the districts pay the additional costs of housing students.

"We don't have a program that provides school districts with (money to support) the residential side of a boarding school environment," he said.

Coghill's bill would apply to boarding schools in Nenana, Galena, Takotna, Bethel, Nome and Kotzebue, but not to Mount Edgecumbe in Sitka, which is run by the state.

The stipend received by the schools would vary regionally and be determined by the Department of Education. The measure doesn't have any specific numbers attached to it, but according to department estimates, the added stipends would cost about \$1.79 million per year, including \$445,000 for Nenana and \$586,000 for Galena. The current stipend program costs \$185,000 a year, so the whole program would run almost \$2 million.

In addition, the bill would allow school districts and schools to stay open if their student counts drop below state minimums solely because a student or students leave to attend state boarding schools.

Coghill said more work needs to be done on the bill, but said he wanted to drop it in it before this year's Feb. 15 deadline for introducing personal legislation.

"Really, all I'm looking for is trying to figure out what are all their needs, because I've only talked to the Nenana one," he said.

Jeans said the Department of Education has not taken a position on the bill at this point and said he expected legislators' reaction to it would depend on whether they could come up with the money while still meeting Gov. Frank Murkowski's budget goals.

The bill has been referred to the House Education, Finance, and Health, Education and Social Services committees.

Reporter Tom Moran can be reached at tmoran@newsminer.com or (907) 463-4893.

City of Nenana

PO Box 70
Nenana, Alaska 99760
Phone number
907-832-5441
Fax number
907-832-5503

Send to: State Capitol	From: Jason P. Mayrand Mayor, City of Nenana
Attention: Rep. John Coghill	Date: 4 Mar 04
Office Location:	Office Location: Nenana City Office
Fax Number: 907-465-3258	Phone Number: 907-832-5501

Total pages, including cover: 1

Comments:

Rep. John Coghill

Mr. Coghill,

The results are in regarding participating facilities in the residential boarding home program.

Below is the estimated cost for the program as the State Statues read. If the Bill was to pass, this amount would be a best guess for annual cost. This directly affects 190 students (Nenana and Galena).

Nome-Beltz	No program	\$0	
Kotzebue	No Program	\$0	
Bethel	No Program	\$0	
Galena	Yes	\$585,800	
Nenana	Yes	\$445,440	
	Total	\$1,031,240	-about \$5,428 per student

The other programs that were in existence were contacted and they said that they were not interested in opening again.

Nenana currently saves the State \$383,000 in reduced ADM per year on average.

Galena is preparing similar statistics to determine the savings their facility generates.

I will send them as soon as we get them.

Jason

Alaska Department of Education
 Residential Programs
 Prepared 11/17/03

District	Community	Capacity	Monthly Stipend	Yearly Cost	Estimated Round trip	Annual Airfair	Estimated Grant
1 / X Galena	Galena	100	562	505,800	800	80,000	585,800
2 / X Iditarod	Takotna	40	477	171,720	500	20,000	191,720
3 / X Lower Kuskokwim	Bethel	25	477	107,325	500	12,500	119,825
X Nenana	Nenana	96	460	397,440	500	48,000	445,440
Nome - Beltz HS.	Nome	40	562	202,320	500	20,000	222,320
Northwest Arctic	Kotzebue	40	562	202,320	500	20,000	222,320
Totals		341		1,586,925		200,500	1,787,425

STATE OF ALASKA
DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT

BOARDING HOME PROGRAM

Application Instructions and Payment Rates Effective
July 1, 2003 Through June 30, 2004

- I. Legal References: AS 14.07.030(2) and 4 AAC 09.050.
- II. Eligibility:
 - A. Secondary school students who do not have daily access to a school of the appropriate grade level by being transported a reasonable distance are eligible for the program. Such students qualify for state assistance under the provisions of 4 AAC 09.050.
 - B. The school district receiving a student is responsible for providing the following:
 1. Housing, meals and out-of-school supervision.
 2. Round-trip transportation.
 3. Daily access to a school offering the appropriate grade level program.
 - C. Placement of secondary students outside their district of residence requires a Memorandum of Agreement, form 05-96-022, signed by both districts, and a Resolution passed by the school board of the sending district explaining why such students cannot be educated at a school within their district of residence.
- III. Applications for State Reimbursement:
 - A. The district in which the student resides will prepare the basic application, which consists of the following two forms, submitted together, and completed as indicated:
 1. Boarding Home Program Report, Form 05-96-021.
 - a. Enter school district name and fiscal year at the top.
 - b. Complete column A using the budget instructions in paragraph V.
 - c. Sign line A in the block titled "Program Application". (This must be signed by the school district official authorized to sign financial documents.)
 2. Individual attendance - Boarding Home Program Reports, Form 05-96-023.
 - a. Enter receiving district at top left.
 - b. Enter reporting period.
 - c. Enter student data in column 1 and 2. In column 1 be sure to enter both student name and village of residence.

B. For students placed in another school district, the application must also include:

1. The school board resolution specified in section II C above; and,
2. Memorandum of Agreement, request for Non-Resident Student Placement, Form 05-96-022.
 - a. The sending school district completes and signs the form, and forwards the total application package to the receiving district.
 - b. The receiving school district signs the memo of agreement and sends all originals to the Department of Education & Early Development.
 - c. The Department of Education & Early Development will return copies of the entire packet when all required signatures are obtained.

C. Applications for students entering for first semester must be received in the Department of Education no later than October 15. New applications for students entering at second semester (third quarter) must be received within 30 calendar days of the starting date specified in the school calendar. Applications received after these dates may be rejected.

D. State funding of students is based upon the approved application. Changes in participating students require submission of an amended Individual Attendance Report. No payments will be made for students who are unreported, or who are ineligible for the basic program. The State will reduce the allowable budget when numbers of students decrease.

E. Payments for out-of-district students will be made to the district administering the program. Boarding Home students are the primary responsibility of the sending district in all matters involving the care and education of students in placement.

IV. Payment Rates:

A. Payment rates for food and housing were updated for FY90 using the following survey data. Food costs were adjusted using December 1987 University of Alaska Cooperative Extension service survey data. Housing costs were updated using the State Dept. of Administration's Alaska Geographic Differential Study survey data on an urban family budget for Anchorage in April 1985, then adjusting costs from the CPI's to 1988, then determining the proportional cost of housing per person. Payment rates have been adjusted by the 2002 Consumer Price Index for Anchorage. School districts were grouped by region considering climatic and transportation characteristic, relating them to the communities for which cost-of-living data was available.

B. Regional Rates

Total Stipend
Month/Day

Region 1 - Southeast

\$390 / \$13.00

Annette, Chatham, Craig, Haines,
Hoonah, Hydaburg, Juneau, Kake,
Ketchikan, Klawock, Pelican,
Petersburg, Sitka, Southeast Island
Skagway, Wrangell, Yakutat

Region 2 - Southcentral

\$380 / \$12.67

Anchorage, Chugach, Cordova,
Kenai, Kodiak, Mat-Su, Valdez

Region 3 - Interior

\$460 / \$15.33

Alaska Gateway, Copper River,
Delta/Grady, Denali, Fairbanks,
Nenana

Region 4 - Southwest

\$477 / \$15.90

Adak, Aleutian Region, Aleutians East,
Bristol Bay, Dillingham, Iditarod,
Kuspuk, Lake & Peninsula, Lower
Kuskokwim, Lower Yukon, Pribilof,
Southwest Region, St. Mary's
Unalaska

Region 5 - Northern (Remote)

\$562 / \$18.73

Bering Strait, Galena, Nome,
NW Arctic, North Slope, Tanana
Yukon Flats, Yukon-Koyukuk

V. Budgets and Allowable Costs:

- A. WITHIN DISTRICT: State reimbursement will be for monthly/daily food and housing costs based on the rates established above. The days a student arrives and departs the boarding home are reimbursable. The daily rate is 1/30th of the monthly rate. Round trip travel to and from the home of residence and the community in which the student attends school is paid at cost for one trip per school year. Clothing, personal care costs and allowances are a parental responsibility. (Such costs for students who may be legal wards of the State are normally provided by the Department of Health and Social Services.) For students attending school within their home district, costs (including indirect costs) of placement supervision, counseling and program administration are the responsibility of the school district.

B. OUT-OF-DISTRICT: State reimbursement includes the approved rate for food and housing, one round trip per student at cost, and funding for placement supervision and indirect administrative costs of the administrating school district as follows:

1. Placement Supervision: Up to 30% of the stipend amounts for out-of-district students may be approved.
2. Administrative costs are limited to the Department-approved indirect cost rate computed against actual expenditures for the out-of-district students.
3. For budgeting purposes, the applicable indirect cost rate is that for the district administrating the program.

VI. Reporting and Reimbursements:

A. Forms

05-96-021	Boarding Home Program Report
05-96-023	Individual Attendance Report

B. Reporting Periods and Due Dates:

<u>Period</u>	<u>Months</u>	<u>Due</u>
First Quarter	July 1 - September 30	October 15
Second Quarter	October 1 - December 31	January 15
Third Quarter	January 1 - March 31	April 15
Final Quarter	April 1 - end of school	June 15

C. Financial Procedures:

1. An initial budget is the school district's estimate of students participating and related costs. Department of Education & Early Development will acknowledge receipt, and use estimates only for state budget planning.
2. First quarter reports must include revision of the initial budget to reflect actual student participation. School districts not providing first quarter reports may be subjected to prorated payments if the state appropriation is insufficient for full funding of the program.
3. For simplified reporting:
 - a. Enter reimbursement amounts on the original approved Boarding Home Program Report.
 - b. Copy the original prior to the signature on line B.
 - c. Sign and submit the copy. Retain the unsigned original for the next report.

- d. On the individual attendance report, enter the termination dates for students dropped during the prior quarter and add new students at the bottom. Copy the report and use the copy to enter information in columns 3 through 8. Retain the original with columns 3 through 9 blank as a master copy for future quarterly reports.
- e. Both reports must be submitted together for payment. The BHP report must be signed on line B.

VIII. Licensing of Boarding Homes:

State law requires that homes providing care for unrelated children under 16 years of age must be licensed by the Department of Health and Social Services (DHSS). The school district receiving and placing students is responsible for assuring that any student under age 16 is placed in a licensed home. (7 AAC 50.030)

VIII. Health and Medical Care:

Routine health care costs are a parental responsibility. For out-of-district boarding home students, the sending district is responsible for assuring that emergency medical care costs are met.

MEMORANDUM OF AGREEMENT

REQUEST FOR BOARDING STUDENT PLACEMENT

BETWEEN

Sending School District

AND

Receiving School District

1. The Department of Education & Early Development shall pay to the administrating district the boarding cost for the students listed on the attached Form 05-96-023.
2. This memorandum is effective when signed by the Department of Education & Early Development, Superintendent of the Sending School District, and the Superintendent of the Receiving School District.

Date

Department of Education & Early Development

Date

Superintendent of Sending District

Date

Superintendent of Receiving District

**CERTIFICATION OF INFORMATION SUBMITTED ON
BOARDING HOME REPORTS**

By signing below, I certify that the students listed on the district's Boarding Home Program reports meet the current eligibility requirements of 4 AAC 09.050. Primarily, those requirements are that:

1. students are of secondary school age, and
2. students do not have daily access to a school of the appropriate grade level by being transported a reasonable distance.

Signature of Certifying Official: _____
Superintendent or their Designee

GALENA CITY SCHOOL DISTRICT: POSITION STATEMENT

"Project Education Residential School" (PERS)

Program Goals:

- I. Provide Vocational Educational Options for the Interior
- II. Provide H.S. program for educational or personal needy students
- III. Provide Economic Development for the Galena Community
- IV. Provide Practical use of existing Air Force un-used facilities
- V. Provide educational services choice to Alaska families

This grade 9-12 residential school program serves 85-100 students from thirty-plus communities in Alaska in it's eighth year of operation

- * 72 % of graduating seniors passed all three parts of the AHSQE
- * 94 % of the graduating seniors are native Alaskans
- * Post-Secondary approved programs: Aviation, cosmetology, computers, culinary arts, auto mechanics, airport maintenance, hospitality
- * Student Return rate 97 % for 03-04 school term
- * Current education partners; UAA, UAF, AVTEC, Mt. Edgecumbe, Nenana
- * Business partnerships with General Motors, Suzuki, Air Force, Lincoln Welding, Louden Tribal Council, Frontier Flying, and City of Galena
- * Supports twenty-seven local jobs for the community of Galena

Estimated Program Budgeted Costs 2003-2004.....\$2,247,552

Instructional Program: \$1,091,350
Dormitory Life; Staff & Facilities: \$691,896
Food Services; Staff & Facilities: \$465,306

Current Revenues to Support the Program:\$ 908,375

ADM from 85 students: \$577,059
Alaska Natives Resiliency Grant: \$ 331,316
Projected Deficit- \$1,339,177

GCSD has operated this program to date with grant funding following the reduction of impact aide dollars. The district has depleted all reserve providing these educational services to predominately Alaska native students. Galena thus becomes one of several public boarding schools requesting board and room support similar to the \$7,260 per student support afforded to the state school at Mt. Edgecumbe.

As "No Child Left Behind" grows to greater prominence in all states, Galena's residential facility becomes even more effective support toward student/family choice!

Galena Residential School Dorm and Food Services

Budgets 260 days 85 Students/ Staff

Residential School Dorm Costs 93-04

310 Certified	
Dorm Director (1)	42,000
320 Non-Certified Salaries	
Resident Advisors(8)	172864
Floor Managers (2)	53750
Hall Managers (3)	83000
350 Employee Benefits	
20% of Salaries	70782
420 Staff Travel for Training	4000
425 Student Travel	143000
433 Communications	25000
434 Utilities Services	67500
453 Janitorial Supplies	9000
457 Small tools/Equipment	11000
479 Other Supplies materials media	10000
Total Dorm and Staff Budget	691896

Food Services at Residential School

310 Chef and Services Director	63700
326 Food Services Staff	156906
350 Benefits (20%)	41200
420 Staff Travel	2000
430 Utilities	25000
457 Small Tools /Equip	2500
459 Food	162500
460 Milk	5500
510 Equipment / other	6000
Total Residential School Food Services	465306

TO: Committee of Health, Education, and Social Services
Chair, Representative Peggy Wilson
Fax: 907-465-3175 or 907 465-2646

FROM: Sandra Eggleston *SE*
(907) 832-2000 #222
FAX: (907) 832-5277

DATE: 4/1/04

RE: Statement read in support of House Bill 425

It was requested that I send a copy of the statement which I read in support of HB 425 to put on file. I am faxing a copy of that statement. Thank you for your time spent listening to testimony in support of this bill this afternoon.

My name is Sandra Eggleston. I am calling in support of HB 425 which would provide funding for districts operating secondary school boarding programs. I was hired by the Nenana School District as a counselor for the NSLC when it opened in the fall of 2001. Prior to 2001 the district recognized a need in the state to offer school alternatives to rural students. The community also was concerned about the dwindling number of local students. Since Nenana had (and has) a large school facility, as well as a dedicated and professional staff, the school board with the community's support made the decision to build a dorm and fill their classrooms with students from around the state—which is exactly what has happened for the past three years.

This year the students of NSLC represent 27 different villages. The first year there was some advertisement about the opening of the new facility; since then the only advertisement has been by word of mouth. Yet each fall there have been some good applicants who have had to be denied acceptance because of lack of space. The NSLC is running at full capacity while there is an ever-growing waiting list of student applicants. I think this fact indicates the need of boarding school programs in the state.

Recently I happened to tune into NPR's Talk of Alaska radio show which that day was titled, "A Mt. Edgecumbe Reunion". Several generations of Edgecumbe's graduates called in to talk about their experiences at the boarding school. I was amazed to listen to the similarities of these people's comments and what I have witnessed at NSLC the past three years. The callers' varied reasons for going to Edgecumbe paralleled what has been written in NSLC student applications: Students and families want the safety, structure and stability which dorm living offers; they seek a quality education with qualified teachers and a variety of class offerings; they hope for opportunities to participate in extra-curricular activities; families want for their children a foundation of accepting responsibility and developing coping skills as they live away from home; dorm living offers a transition from village life to the 'bigger world'; it is a step to further prepare those students with ambitions to go on to college or vocational school. The Edgecumbe graduates spoke about the many positive aspects they appreciated: the strong positive influence they felt in their lives as teenagers; the sense of family and community felt within the boarding school; how conflicts were resolved and friendships prevailed over any initial tribal friction. Again, these comments are very similar to what is heard from NSLC parents and students. One caller spoke of the sense of urgency she and other students as well as staff members felt in '82 when they were writing letters to legislators and testifying in an attempt to keep the doors of Edgecumbe open. And here we are calling you today. She spoke of the great sense of loss and defeat when the Edgecumbe doors closed in '83 for those several years. And that is something that I am hoping can be averted here at NSLC.

The Nenana Student Living Center has had three years to prove itself as an asset to the state. Just as Mt. Edgecumbe is fulfilling a need in the state, the NSLC is fulfilling a need in the state. Families from all around the state are seeking educational alternatives for their children. The NSLC, as well as Galena, offers an option in the interior part of Alaska. For the first two years the school district fully funded the NSLC. Now, in order to continue to keep the NSLC doors open, financial support is needed from the state. HB 425, if passed, would provide that funding. Thank you for taking time to hear testimony today.

HB

427

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 427

BY: Representative Tom Anderson

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

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

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

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

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

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

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

I urge your support of this important piece of legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 23, 2004

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

TO: Representative Tom Anderson
Attn: Jim

FROM:  Theresa L. Bannister
Legislative Counsel

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

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

Section 2. Defines additional terms.

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

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

Section 5. Makes a conforming change.

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

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

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

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

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

Section 11. Makes a conforming change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 26. Makes a conforming amendment.

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

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

Section 29. Repeals certain statutes.

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

Section 31. Provides some transition provisions for the bill.

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

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

If I may be of further assistance, please advise.

TLB:med
04-221.med

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

AMENDMENT #1 BY REP. WOLF (CONFORMING AMENDMENT)

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

AMENDMENT #2 BY REP. CISSNA

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

AMENDMENT #3 BY REP. SEATON (CONCEPTUAL)

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

23-LS1627D
Bannister
4/1/04

CS FOR HOUSE BILL NO. 427()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE ANDERSON

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

13 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 profit corporation or a nonprofit corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Article 2. Reports.**

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

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

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

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

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

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

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

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

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

3 **Article 3. Practices.**

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

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

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

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

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

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

1 the ward or protected person;

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

4 (6) the licensee has filed for bankruptcy.

5 **Article 4. Discipline.**

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

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

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

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

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

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

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

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

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

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

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

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

1 private professional guardian license; or

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

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

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

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

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

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

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

16 **Article 5. General Provisions.**

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

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

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

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

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

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

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

1 AS 08.26.040;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) the court orders it;

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

6 (3) the guardian resigns or is removed;

7 (4) the guardianship is terminated; or

8 (5) the ward requests it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (4) a financial accounting of the estate that has been subject to the

1 possession or control of the guardian;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) the spouse of the incapacitated person;

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

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

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

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

30 (7) the public guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 person if the person

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

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

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

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

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

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

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

21 (2) the spouse of the protected person;

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

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

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

27 (6) a private professional conservator;

28 (7) the public guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (7) a summary of the information that

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

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

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

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

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

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

9 (A) potential conservators;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) The office of public advocacy shall

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

February 6, 2003

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

Re: House Bill 427

Dear Mr. Anderson:

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

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

Section 2, AS 13.26.005 should be amended to read;

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

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

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

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

The following language should be added to AS13.26.530:

(6) a list of all current employees

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

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

We eagerly await the bill being scheduled for a hearing.

Sincerely,

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

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

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

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

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

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

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

(2) be a trustworthy person;

(3) if operating within an organization,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) revoke the person's registration;

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

(3) censure or reprimand the person;

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

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

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

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

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

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



National Guardianship Association

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NATIONAL GUARDIANSHIP ASSOCIATION'S 2002 LEGISLATIVE PACKET

I. INTRODUCTION

NATIONAL GUARDIANSHIP ASSOCIATION ("NGA")

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

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

NATIONAL GUARDIANSHIP FOUNDATION ("NGF")

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

LEGISLATIVE PACKET IDEA

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

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

II. REGISTRATION AND CERTIFICATION OF PRIVATE PROFESSIONAL GUARDIANS

PURPOSE.

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

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

PROCEDURE

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

Registered Guardian

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

Master Guardian

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

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

Benefits to States

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

STATE BY STATE CONSIDERATIONS

Definition of Private Professional Guardian:

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

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

Choice of Provisions

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

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

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

PROPOSED LANGUAGE FOR REGISTRATION AND CERTIFICATION OF GUARDIANS

OPTION 1: Mandatory Certification:

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

OPTION 2: Guardianship Priority Statute:

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

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

III. STANDARDS OF PRACTICE

PURPOSE:

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

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

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

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

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

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

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

PROPOSED LANGUAGE FOR ADOPTION OF NGA STANDARDS OF PRACTICE

Standards of Practice for Guardians:

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

Questions and Answers about Guardianship

What is a Guardian?

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

What is a Ward?

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

What is a Conservator?

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

What is a Protected Person?

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

Who is an Incapacitated Person?

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

What is an Advocate?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What is meant by Direct Services?

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

What are Supportive Services?

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

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

What is Case Management?

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

What is a Care Coordinator?

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

What are Protective Services?

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

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

What is Assisted Living?

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

What are Chore Services?

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

What is Respite Care?

Respite care provides relief for the caregiver from caregiving duties.

Who can be a Petitioner?

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

Who is a Respondent?

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

What is Notice?

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

Who are the Interested Parties in a Case?

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

What are Pro Bono and Pro Per?

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

What does Stipulate Mean in Court?

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

What is Aid to Disabled Adults?

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

What is Interim Assistance?

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

What is Social Security Annuities (SSA)?

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

What is Supplemental Security Income (SSI)?

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

What is a Representative Payee?

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

What is a Burial Trust Fund?

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