



# SB0161 compared with SB0161S01

base the health care provider's {~~report of the~~} assessment solely or predominately on that individual's opinion; and

20       ▶ makes technical and conforming changes.

## 21 Money Appropriated in this Bill:

22       None

## 23 Other Special Clauses:

24       None

## 25 Utah Code Sections Affected:

26 AMENDS:

27       **75-5-301.5** , as last amended by Laws of Utah 2025, Chapter 533

28       **75-5-303** , as last amended by Laws of Utah 2025, Chapters 310, 338 and 533

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30 *Be it enacted by the Legislature of the state of Utah:*

31       Section 1. Section **75-5-301.5** is amended to read:

32       **75-5-301.5. Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.**

34 (1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:

36 (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding, except as provided in Subsection 75-5-303(6)(e);

39 (b) receive a copy of all documents filed in a guardianship proceeding;

40 (c) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;

43 (d) receive information about guardianships from the court; and

44 (e) be treated with respect and dignity.

45 (2) For a guardianship granted before May 7, 2025, the rights of an incapacitated person for whom a guardian is appointed are in accordance with the statutory provisions in effect as of the date that the guardianship was granted, including, as applicable, Subsection 75-5-312(1)(c)(i) unless expressly limited by a court in the order of appointment.

49 (3) Except as otherwise provided by this chapter or any other law, for a guardianship granted on or after May 7, 2025, an incapacitated person for whom a guardian is appointed has the right to:

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- 52 (a) have counsel represent the incapacitated person at any time after the guardian is appointed;
- 54 (b) have a relative, physician, physician assistant, or any interested person speak about or raise any  
issue of concern on behalf of the person in any court hearing about the guardianship;
- 57 (c) receive a copy of all documents filed in court regarding the guardianship;
- 58 (d) receive information about guardianships from the court;
- 59 (e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to  
the court;
- 61 (f) be granted the greatest degree of freedom possible that is consistent with the reasons for the  
guardianship;
- 63 (g) be treated with respect and dignity;
- 64 (h) be treated fairly by the incapacitated person's guardian;
- 65 (i) have all services provided by a guardian at a reasonable rate of compensation;
- 66 (j) have a court review any request for payment by a guardian to avoid excessive or unnecessary fees or  
duplicative billing;
- 68 (k) receive prudent financial management of the incapacitated person's property;
- 69 (l) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), and subject to the exception provided in  
Subsection 75-5-312(7)(d), receive a copy of an accounting report regarding the incapacitated  
person's estate that is submitted to the court by the guardian under Section 75-5-312 or the  
conservator under Section 75-5-417 if a conservator is appointed for the incapacitated person; and
- 74 (m) ask the court to:
- 75 (i) review the management activity of a guardian if a dispute cannot be resolved regarding the  
guardian's management;
- 77 (ii) continue to review the need for a guardianship or to modify or terminate a guardianship [~~pursuant~~  
~~to~~] in accordance with Section 75-5-306 and Section 75-5-307; and
- 80 (iii) enter an order restoring the incapacitated person's capacity at the earliest possible time [~~pursuant~~  
~~to~~] in accordance with Section 75-5-306 and Section 75-5-307.
- 82 (4) The court may not waive, suspend, or limit a right described in Subsection (3).
- 83 (5) Except as otherwise provided by this chapter or any other law, and subject to Subsection (6), for  
a guardianship granted on or after May 7, 2025, an incapacitated person for whom a guardian is  
appointed has the right, to the extent practicable, to:
- 86 (a) participate in developing an individualized plan for the incapacitated person's care, including:

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- 88 (i) managing the incapacitated person's assets and property;
- 89 (ii) determining the incapacitated person's residence; and
- 90 (iii) determining the services to be received by the incapacitated person;
- 91 (b) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;
- 94 (c) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:
- 96 (i) as expressed or demonstrated before a determination of capacity was made; or
- 97 (ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;
- 99 (d) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in an order of appointment of a limited guardianship;
- 101 (e) maintain privacy and confidentiality in personal matters, to the extent that privacy and confidentiality does not inhibit the ability of the incapacitated person's guardian to fulfill the guardian's responsibilities or perform the guardian's duties;
- 104 (f) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;
- 107 (g) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;
- 109 (h) receive an allowance or control a reasonable amount of the incapacitated person's earnings or other income; and
- 111 (i) collaborate with the incapacitated person's guardian to use appropriate financial tools to maintain a bank account and manage the incapacitated person's personal money.
- 113 (6) The court may waive or limit a right described in Subsection (5) if:
- 114 (a) an interested party requests the waiver or limitation; and
- 115 (b) the court finds, by clear and convincing evidence, that there is a compelling reason for the waiver or limitation.
- 117 (7)
- (a) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.

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- 119 (b) This section may not be interpreted in a way that would permit or justify any action that violates a  
126 provision in Sections 76-5-111 through 76-5-111.4 or Section 76-5-112.5.
- 122 (c) Nothing in this section shall be construed to alter or preempt the requirements for protecting health  
information under the Health Insurance Portability and Accountability Act of 1996, 50 Pub. L. No.  
104-191, 110 Stat. 1936, as amended.
- 125 (8) Any right described in this section may be:
- 126 (a) addressed in a guardianship proceeding; or
- 127 (b) enforced through a private cause of action.
- 128 Section 2. Section **75-5-303** is amended to read:
- 129 **75-5-303. Procedure for court appointment of a guardian of an incapacitated person.**
- 131 (1) An allegedly incapacitated person or any person interested in an allegedly incapacitated person's  
welfare may petition for a finding of incapacity and appointment of a guardian.
- 133 (2)
- (a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.
- 135 (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall  
appoint an attorney to represent the person in the proceeding the cost of which shall be paid by  
the allegedly incapacitated person, unless the allegedly incapacitated person and the allegedly  
incapacitated person's parents are indigent.
- 139 (c) If the court determines that the petition is without merit, the attorney fees and court costs shall be  
paid by the person filing the petition.
- 141 (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated  
person, regardless of whether the nominee is specified in the moving petition or nominated during  
the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable  
attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.
- 146 (3) The legal representation of an allegedly incapacitated person by an attorney shall terminate upon the  
appointment of a guardian, unless:
- 148 (a) there are separate conservatorship proceedings still pending before the court subsequent to the  
appointment of a guardian;
- 150 (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity;  
or
- 152 (c) upon an express finding of good cause, the court orders otherwise.

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- 153 (4)
- (a) The court may appoint a health care provider, as that term is defined in Section 75A-3-101, who is qualified by training, education, and experience to examine the functional capabilities and limitations of the allegedly incapacitated person.
- 156 (b) An appointed health care provider shall [~~submit to~~] file with the court a report assessing, within the scope of the health care provider's license and experience, using evidence-based screening tools appropriate for the assessment, the functional capabilities and limitations of the allegedly incapacitated person to, with or without appropriate technological assistance:
- 161 (i) receive and evaluate information;
- 162 (ii) make and communicate decisions; and
- 163 (iii) provide for necessities such as food, shelter, clothing, health care, or safety.
- 164 {~~(e) {An appointed health care provider may not:}~~}
- 164 (c)
- 165 (i) An appointed health care provider may interview the person seeking appointment as guardian {as part of the health care provider's assessment described in Subsection (4)(b); or} .
- 167 (ii) ~~{incorporate into}~~ The appointed health care provider may not base the appointed health care provider's ~~{report}~~ assessment described in Subsection (4)(b) solely or predominately on the opinion of the person seeking appointment as guardian ~~{regarding the allegedly incapacitated person's functional capabilities and limitations described in Subsection (4)(b)}~~ .
- 170 (5)
- (a) The court may appoint a court visitor to:
- 171 (i) interview the person seeking appointment as guardian;
- 172 (ii) visit the present place of abode of the allegedly incapacitated person and the place it is proposed that the allegedly incapacitated person will be detained or reside if the requested appointment is made; or
- 175 (iii) conduct other investigations or observations as directed by the court.
- 176 (b) The court visitor shall [~~submit~~] file a written report [~~to~~] with the court.
- 177 (6)
- (a) The allegedly incapacitated person shall be present at the hearing and see or hear all evidence bearing upon the person's condition.

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- (b) The court may only waive the presence of the allegedly incapacitated person if all of the following criteria are met:
- 181 (i) the person is represented by an attorney;
- 182 (ii) a court visitor is appointed to investigate, the costs of which shall be paid by the person seeking the guardianship; and
- 184 (iii) following the investigation, the court finds that there is no reasonable accommodation that will enable the allegedly incapacitated person to be present for or participate in the hearing.
- 187 (c) A court visitor is not required to investigate under Subsection (6)(b)(ii) if there is clear and convincing evidence from a physician that the person alleged to be incapacitated is experiencing a state of extended comatosis that is likely to persist through the time of the hearing.
- 191 (d) In addition to the rights described in Section 75-5-301.5, an allegedly incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed health care provider and the court visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the allegedly incapacitated person or the person's counsel so requests.
- 196 (e) Counsel for the allegedly incapacitated person is not required if all of the following criteria are met:
- 198 (i) the allegedly incapacitated person is the biological or adopted child of the petitioner;
- 200 (ii) the value of the allegedly incapacitated person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
- 203 (iii) the allegedly incapacitated person's appearance at the hearing has not been waived and the person appears in court with the petitioner, as described in Subsection (6)(a);
- 206 (iv) the allegedly incapacitated person is given the opportunity to communicate, to the extent possible, the person's acceptance of or objection to the appointment of the proposed guardian, including the opportunity to communicate that acceptance or objection to the court and, as applicable, to the person's supporters, health care providers, and attorney;
- 211 (v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the hearing, as described in Subsection (2)(b);
- 215 (vi) the court is satisfied that counsel is not necessary to protect the interests of the allegedly incapacitated person; and
- 217 (vii) the court appoints a court visitor and receives a report from the court visitor under Subsection (5).

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Section 3. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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