

OFFICE OF PUBLIC GUARDIAN

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO HUMAN SERVICES; CREATING THE OFFICE OF PUBLIC GUARDIAN AND THE BOARD OF PUBLIC GUARDIAN SERVICES; ESTABLISHING THE POWERS AND DUTIES OF THE OFFICE AND THE FUNCTION AND MAKE UP OF THE BOARD; AUTHORIZING THE OFFICE TO SEEK COURT APPOINTMENT AS GUARDIAN AND CONSERVATOR OF AN INCAPACITATED PERSON WHEN NO OTHER PERSON IS WILLING AND ABLE TO DO SO; PERMITTING THE OFFICE TO ENTER INTO PRIVATE CONTRACTS AND TO USE VOLUNTEERS TO PROVIDE GUARDIAN AND CONSERVATOR SERVICES; REQUIRING THE WARD OR HIS ESTATE TO PAY FOR OFFICE SERVICES UNLESS INDIGENT; REQUIRING THE ATTORNEY GENERAL TO REPRESENT THE OFFICE AND AUTHORIZING THE ATTORNEY GENERAL TO REQUEST THE ASSISTANCE OF COUNTY ATTORNEYS; REQUIRING THE OFFICE TO SUBMIT AN IMPLEMENTATION PLAN; MAKING CONFORMING AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-1-105, as last amended by Chapters 240 and 318, Laws of Utah 1996

62A-1-107, as last amended by Chapter 243, Laws of Utah 1996

ENACTS:

62A-14-101, Utah Code Annotated 1953

62A-14-102, Utah Code Annotated 1953

62A-14-103, Utah Code Annotated 1953

62A-14-104, Utah Code Annotated 1953

62A-14-105, Utah Code Annotated 1953

62A-14-106, Utah Code Annotated 1953

62A-14-107, Utah Code Annotated 1953

62A-14-108, Utah Code Annotated 1953

62A-14-109, Utah Code Annotated 1953

62A-14-110, Utah Code Annotated 1953

62A-14-111, Utah Code Annotated 1953

62A-14-112, Utah Code Annotated 1953

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

Section 1. Section **62A-1-105** is amended to read:

62A-1-105. Creation of boards, divisions, and offices.

(1) The following policymaking boards are created within the Department of Human Services:

- (a) the Board of Aging and Adult Services;
- (b) the Board of Child and Family Services;
- (c) the Board of Mental Health;
- (d) the Board of Public Guardian Services;
- ~~[(d)]~~ (e) the Board of Services for People with Disabilities;
- ~~[(e)]~~ (f) the Board of Substance Abuse; and
- ~~[(f)]~~ (g) the Board of Youth Corrections.

(2) The following divisions are created within the Department of Human Services:

- (a) the Division of Aging and Adult Services;
- (b) the Division of Child and Family Services;
- (c) the Division of Mental Health;
- (d) the Division of Services for People with Disabilities;
- (e) the Division of Substance Abuse; and
- (f) the Division of Youth Corrections.

(3) The following offices are created within the Department of Human Services:

- (a) the Office of Licensing; ~~[and]~~
- (b) the Office of Public Guardian; and
- ~~[(b)]~~ (c) the Office of Recovery Services.

Section 2. Section **62A-1-107** is amended to read:

62A-1-107. Boards within department -- Members, appointment, terms, vacancies, chairperson, compensation, meetings, quorum.

(1) Except as specifically provided in Section 62A-4a-102 and 62A-14-106 regarding the Board of Child and Family Services and the Board of Public Guardian Services, each board described in Section 62A-1-105 shall have seven members who are appointed by the governor, with the advice and consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), each member shall be appointed for a term of four years, and is eligible for one reappointment.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Board members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 90 days after the formal expiration of a term.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(3) No more than four members of any board may be from the same political party. Each board shall have diversity of gender, ethnicity, and culture; and members shall be chosen on the basis of their active interest, experience, and demonstrated ability to deal with issues related to their specific boards.

(4) Each board shall annually elect a chairperson from its membership. Each board shall hold meetings at least once every three months. Meetings shall be held from time to time on the call of the chairperson or of the majority of the members of any board. Four members of a board are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.

(5) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(6) Each board shall adopt bylaws governing its activities. Bylaws shall include procedures for removal of a board member who is unable or unwilling to fulfill the requirements of his appointment.

(7) Each board has program policymaking authority for the division over which it presides.

Section 3. Section **62A-14-101** is enacted to read:

CHAPTER 14. OFFICE OF PUBLIC GUARDIAN ACT

62A-14-101. Title.

This chapter is known as the "Office of Public Guardian Act."

Section 4. Section **62A-14-102** is enacted to read:

62A-14-102. Definitions.

As used in this chapter:

(1) "Board" means the Board of Public Guardian Services.

(2) "Conservator" is as defined in Section 75-1-201.

(3) "Court" is as defined in Section 75-1-201.

(4) "Estate" is as defined in Section 75-1-201.

(5) "Guardian" is as defined in Section 75-1-201.

(6) "Incapacitated person" means a person who has been determined by a court, pursuant to Section 75-5-303, to be incapacitated after the office has determined that the person is 18 years of age or older and suffers from a mental or physical impairment as part of the prepetition assessment in Section 62A-14-107.

(7) "Office" means the Office of Public Guardian.

(8) "Property" is as defined in Section 75-1-201.

(9) "Ward" means an incapacitated person for whom the office has been appointed as guardian or conservator.

Section 5. Section **62A-14-103** is enacted to read:

62A-14-103. Office of Public Guardian -- Creation.

(1) There is created within the department the Office of Public Guardian which has the

powers and duties provided in this chapter.

(2) The office is under the administrative and general supervision of the executive director.

Section 6. Section **62A-14-104** is enacted to read:

62A-14-104. Director of the office -- Appointment -- Qualifications.

(1) The director of the office shall be appointed by the executive director with the concurrence of the board.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning guardianship and conservatorship.

(3) The director is the administrative head of the office.

Section 7. Section **62A-14-105** is enacted to read:

62A-14-105. Powers and duties of the office.

(1) The office shall:

(a) before January 1, 2000, develop and operate a statewide program to:

(i) educate the public about the role and function of guardians and conservators; and

(ii) serve as a guardian, conservator, or both for a ward upon appointment by a court when no other person is able and willing to do so and the office petitioned for or agreed in advance to the appointment;

(b) possess and exercise all the powers and duties specifically given to the office by virtue of being appointed as guardian or conservator of a ward, including the power to access a ward's records;

(c) review and monitor the personal and, if appropriate, financial status of each ward for whom the office has been appointed to serve as guardian or conservator;

(d) train and monitor each employee and volunteer, and monitor each contract provider to whom the office has delegated a responsibility for a ward;

(e) retain all court-delegated powers and duties for a ward;

(f) report on the personal and financial status of a ward as required by a court in accordance with Title 75, Chapter 5, Protection of Persons under Disability and their Property;

(g) handle a ward's funds in accordance with the department's trust account system;
(h) request that the department's audit plan, established pursuant to Section 63-91-401, include the requirement of an annual audit of all funds and property held by the office on behalf of wards;

(i) maintain accurate records concerning each ward, his property, and office services provided to him;

(j) make reasonable and continuous efforts to find a family member, friend, or other person to serve as a ward's guardian or conservator;

(k) after termination as guardian or conservator, distribute a ward's property in accordance with Title 75, Chapter 5, Protection of Persons under Disability and their Property;

(l) submit recommendations for changes in state law and funding to the governor and the Legislature and report to the governor and Legislature, upon request; and

(m) implement and enforce policies established by the board.

(2) The office may:

(a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons under Disability and their Property, to be appointed an incapacitated person's guardian, conservator, or both after conducting a prepetition assessment under Section 62A-14-107;

(b) develop and operate a statewide program to recruit, train, supervise, and monitor volunteers to assist the office in providing guardian and conservator services;

(c) delegate one or more responsibilities for a ward to an employee, volunteer, or contract provider, except as provided in Subsection 62A-14-107(1);

(d) solicit and receive private donations to provide guardian and conservator services under this chapter; and

(e) adopt rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:

(i) effectuate board policy; and

(ii) carry out the office's role as guardian and conservator of wards as provided in this chapter.

Section 8. Section **62A-14-106** is enacted to read:

62A-14-106. Board of Public Guardian Services.

(1) The Board of Public Guardian Services, created in accordance with this section and Section 62A-1-105, is responsible for establishing the policy of the office in accordance with this chapter and seeing that the legislative purposes for the office are carried out.

(2) The executive director shall appoint nine members to the Board of Public Guardian Services, as follows:

(a) a member of the Board of Aging and Adult Services;

(b) a member of the Board of Services for Persons with Disabilities;

(c) a member of the Board of Mental Health;

(d) a representative of the long-term care industry;

(e) a representative of the hospital industry;

(f) a representative of persons with disabilities;

(g) a representative of senior citizens;

(h) a physician; and

(i) an attorney with experience in guardianship and conservatorship law.

(3) (a) Except as provided in Subsection (3)(b), each member shall be appointed for a four-year term and eligible for one reappointment.

(b) Notwithstanding Subsection (3)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years, taking into account the remaining term of board members who serve on other department boards.

(c) A board member shall continue in office until the expiration of the member's term and until a successor is appointed, which may not exceed 90 days after the formal expiration of the term.

(d) When a vacancy occurs in membership for any reason, the replacement shall be appointed for the unexpired term.

(e) The make up of the board should reflect political and geographic diversity.

(4) The board shall annually elect a chairperson from its membership. The board shall hold

meetings at least once every three months. Meetings shall be held from time to time on the call of the chairperson or a majority of the board members. Five board members are necessary to constitute a quorum at any meeting and, if a quorum exists, the action of a majority of members present shall be the action of the board.

(5) (a) Board members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of their official duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members of the board may decline to receive per diem expenses for their services.

(6) The board shall:

(a) establish program policy for the office;

(b) establish a mechanism for systematic and regular review of existing policy and for consideration of policy changes; and

(c) set fees for the office, excluding attorneys fees, in accordance with Section 63-38-3.2.

Section 9. Section **62A-14-107** is enacted to read:

62A-14-107. Prepetition assessment and plan.

(1) Before the office may file a petition in court to be appointed guardian or conservator of a person, the office shall:

(a) conduct a face-to-face needs assessment, by someone other than a volunteer, to determine whether the person suffers from a mental or physical impairment that renders the person substantially incapable of:

(i) caring for his personal safety;

(ii) managing his financial affairs; or

(iii) attending to and providing for such necessities as food, shelter, clothing, and medical care, to the extent that physical injury or illness may result;

(b) assess the financial resources of the person based on information supplied to the office at the time of assessment;

(c) inquire and, if appropriate, search to determine whether any other person may be willing

and able to serve as the person's guardian or conservator; and

(d) determine the form of guardianship or conservatorship to request of a court, if any, giving preference to the least intensive form of guardianship or conservatorship, consistent with the best interests of the person.

(2) The office shall prepare an individualized guardianship or conservator plan for each ward within 60 days of appointment.

Section 10. Section **62A-14-108** is enacted to read:

62A-14-108. Office volunteers.

(1) A person who desires to be an office volunteer shall:

(a) possess demonstrated personal characteristics of honesty, integrity, compassion, and concern for incapacitated persons; and

(b) upon request, submit information for a background check pursuant to Section 62A-1-118.

(2) An office volunteer may not receive compensation or benefits, but may be reimbursed by the office for expenses actually and reasonably incurred, consistent with Title 67, Chapter 20, Volunteer Government Workers Act.

(3) An office volunteer is immune from civil liability pursuant to Title 63, Chapter 30b, Immunity for Persons Performing Voluntary Services.

Section 11. Section **62A-14-109** is enacted to read:

62A-14-109. Contract for services.

(1) In accordance with Title 63, Chapter 56, Utah Procurement Code, the office may contract with one or more providers to perform guardian and conservator duties.

(2) The office shall review and monitor the services provided by a contract provider to a ward for whom the office has been appointed guardian or conservator.

Section 12. Section **62A-14-110** is enacted to read:

62A-14-110. Court, legal, and other costs.

(1) The office may not be appointed as the guardian or conservator of a person unless the office petitioned for or agreed in advance to the appointment.

(2) Except as provided in Subsection (4), the court shall order the ward or the ward's estate

to pay for the cost of services rendered under this chapter, including court costs and reasonable attorneys' fees.

(3) If the office recovers attorneys' fees under Subsection (2), the office shall transmit those fees to the attorneys who represented the ward or the office in connection with the ward's case.

(4) If a ward is indigent, the office shall provide guardian and conservator services free of charge and shall make reasonable efforts to secure pro bono legal services for the ward.

(5) Under no circumstances may court costs or attorneys' fees be assessed to the office.

Section 13. Section **62A-14-111** is enacted to read:

62A-14-111. Duty of the county attorney or district attorney.

(1) The attorney general shall advise the office on legal matters and represent the office in legal proceedings.

(2) Upon the request of the attorney general, a county attorney may represent the office in connection with the filing of a petition for appointment as guardian or conservator of an incapacitated person and with routine, subsequent appearances.

Section 14. Section **62A-14-112** is enacted to read:

62A-14-112. Implementation plan and independent evaluation.

(1) By September 15, 1999, the department, in consultation with the board, shall prepare a comprehensive implementation plan for the services to be provided by the office under this chapter. The implementation plan shall focus on maximizing the independence of potential and adjudicated wards and address such issues as case management standards, client rights, the delivery of services to home-based and institutionalized clients, geographic distribution of services, statewide crisis response, funding, and target dates. Prior to finalizing the implementation plan, the department shall seek public comment on the proposed implementation plan. The department shall submit a copy of the plan to the Health and Human Services Interim Committee within five days of finalizing the plan.

(2) By July 1, 2001, the office shall obtain an independent evaluation of its programs and services. The office shall provide a copy of the evaluation to the board, the executive director, and the Health and Human Services Interim Committee no later than September 15, 2001.

Section 15. **Effective date.**

This act takes effect on July 1, 1999.