

**GUARDIANSHIP, CONSERVATORSHIP, AND OTHER
PROTECTIVE ORDER AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to guardianships, conservatorships, and other protective orders.

Highlighted Provisions:

This bill:

- ▶ creates definitions;
- ▶ provides notice requirements for guardianship proceedings, conservatorship proceedings, and other protective proceedings under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property;
- ▶ requires the disclosure of certain financial and criminal history for a guardian or conservator;
- ▶ provides requirements for the compensation or reimbursement of a conservator or guardian;
- ▶ amends the persons who can examine an individual for whom a guardianship or conservatorship is sought;
- ▶ repeals language regarding the types of individuals that a court visitor may investigate;
- ▶ provides notice requirements for guardianship and conservatorship proceedings for adults and minors, including the contents of the notice and the persons that shall



- 28 receive the notice;
- 29 ▶ allows the court to modify the powers of a guardian to meet the specific needs of a
- 30 person subject to the guardianship;
- 31 ▶ provides the persons that can be appointed a guardian or conservator for certain
- 32 persons and the order of priority for an appointment of a guardian and conservator;
- 33 ▶ amends requirements that allow the mailing of conservatorship reports to the court
- 34 and require the reports be filed with the court;
- 35 ▶ repeals certain notice requirements for guardianship and conservatorship
- 36 proceedings; and
- 37 ▶ makes technical and conforming changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

- 44 **63I-2-275**, as last amended by Laws of Utah 2018, Chapter 455
- 45 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156
- 46 **75-5-208**, as last amended by Laws of Utah 1985, Chapter 41
- 47 **75-5-303**, as last amended by Laws of Utah 2018, Chapter 455
- 48 **75-5-304**, as last amended by Laws of Utah 2017, Chapter 403
- 49 **75-5-305**, as last amended by Laws of Utah 1977, Chapter 194
- 50 **75-5-310.5**, as enacted by Laws of Utah 2014, Chapter 142
- 51 **75-5-312**, as last amended by Laws of Utah 2018, Chapters 244 and 294
- 52 **75-5-316**, as last amended by Laws of Utah 2011, Chapter 366
- 53 **75-5-402**, as last amended by Laws of Utah 1992, Chapter 30
- 54 **75-5-406**, as enacted by Laws of Utah 1975, Chapter 150
- 55 **75-5-407**, as last amended by Laws of Utah 2013, Chapter 364
- 56 **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150
- 57 **75-5-413**, as enacted by Laws of Utah 1975, Chapter 150
- 58 **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89

59 **75-5-428**, as last amended by Laws of Utah 2007, Chapter 306

60 ENACTS:

61 **75-5-101.5**, Utah Code Annotated 1953

62 **75-5-106**, Utah Code Annotated 1953

63 **75-5-107**, Utah Code Annotated 1953

64 **75-5-108**, Utah Code Annotated 1953

65 **75-5-207.5**, Utah Code Annotated 1953

66 **75-5-303.5**, Utah Code Annotated 1953

67 **75-5-311.5**, Utah Code Annotated 1953

68 **75-5-405.5**, Utah Code Annotated 1953

69 **75-5-410.5**, Utah Code Annotated 1953

70 REPEALS:

71 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150

72 **75-5-309**, as last amended by Laws of Utah 2018, Chapter 455

73 **75-5-311**, as last amended by Laws of Utah 2018, Chapter 455

74 **75-5-405**, as enacted by Laws of Utah 1975, Chapter 150

75 **75-5-410**, as last amended by Laws of Utah 2010, Chapter 324



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

78 Section 1. Section **63I-2-275** is amended to read:

79 **63I-2-275. Repeal dates -- Title 75.**

80 Subsection **75-5-303**~~(5)(d)~~(6)(e), regarding when counsel is not required for a person
81 who is alleged to be incapacitated, is repealed on July 1, 2028.

82 Section 2. Section **75-5-101.5** is enacted to read:

83 **75-5-101.5. Definitions.**

84 As used in this chapter:

85 (1) "Protected person" means a person for whom a conservator or other protective
86 order is sought or appointed.

87 (2) "Visitor" means an individual who:

88 (a) is appointed by the court in accordance with this chapter;

89 (b) has no personal interest in the guardianship or conservatorship proceeding; and

90 (c) has training or experience in guardianship and conservatorship arrangements.

91 Section 3. Section **75-5-106** is enacted to read:

92 **75-5-106. Notice of a hearing.**

93 (1) Except as provided in Sections 75-5-207.5, 75-5-303.5, and 75-5-405.5, if a notice
94 of a hearing under this chapter is required, the movant shall give notice of the date, time, and
95 place of the hearing to the person to be notified unless otherwise ordered by the court for good
96 cause.

97 (2) Except as otherwise provided in this chapter, notice shall be given, in compliance
98 with the Utah Rules of Civil Procedure, at least 14 days before the hearing.

99 (3) Proof of notice of a hearing under this chapter shall be made before or at the
100 hearing and filed in the proceeding.

101 (4) Notice of a hearing under this chapter shall be in at least 16-point font, in plain
102 language, and to the extent feasible, in a language in which the person to be notified is
103 proficient.

104 Section 4. Section **75-5-107** is enacted to read:

105 **75-5-107. Disclosure of bankruptcy or criminal history.**

106 (1) Before accepting appointment as a guardian or conservator, a person shall disclose
107 to the court whether the person:

108 (a) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

109 (b) been convicted of:

110 (i) a felony;

111 (ii) a crime involving dishonesty, neglect, violence, or use of physical force; or

112 (iii) a crime relevant to the functions that the person would assume as guardian or
113 conservator.

114 (2) A guardian or conservator shall promptly disclose to the court whether the guardian
115 or conservator engages or anticipates in engaging an agent that the guardian or conservator
116 knows has been convicted of:

117 (a) a felony;

118 (b) a crime involving dishonesty, neglect, violence, or use of physical force; or

119 (c) a crime relevant to the functions that the agent is being engaged to perform.

120 (3) If a conservator engages or anticipates engaging an agent to manage finances of the

121 person subject to a conservatorship and knows the agent is or has been a debtor in a
122 bankruptcy, insolvency, or receivership proceeding, the conservator shall disclose that
123 knowledge to the court.

124 Section 5. Section **75-5-108** is enacted to read:

125 **75-5-108. Compensation of guardian or conservator.**

126 (1) Subject to court approval, a guardian is entitled to:

127 (a) reasonable compensation for services as a guardian; and

128 (b) reimbursement for room, board, clothing, and other appropriate expenses advanced

129 for the benefit of the person subject to the guardianship.

130 (2) If a conservator, other than the guardian or a person affiliated with the guardian, is

131 appointed for a protected person, reasonable compensation and reimbursement to the guardian

132 may be approved and paid by the conservator without court approval.

133 (3) Subject to court approval, a conservator is entitled to:

134 (a) reasonable compensation for services; and

135 (b) reimbursement for appropriate expenses from the property of the protected person.

136 (4) In determining reasonable compensation for a guardian or conservator, the court, or

137 a conservator, shall consider:

138 (a) the necessity and quality of the services provided;

139 (b) the experience, training, professional standing, and skills of the guardian or

140 conservator;

141 (c) the difficulty of the services performed, including the degree of skill and care

142 required;

143 (d) the conditions and circumstances under which a service was performed, including

144 whether the service was provided outside regular business hours or under dangerous or

145 extraordinary conditions;

146 (e) the effect of the services on the person subject to the guardianship or

147 conservatorship;

148 (f) the extent to which the services provided were or were not consistent with an

149 individualized plan created by a guardian or conservator; and

150 (g) the fees customarily paid to a person that performs a like service in the community.

151 (5) A guardian or conservator need not use personal funds of the guardian or

152 conservator for the expenses of the person subject to the guardianship or conservatorship.

153 (6) If a person subject to a guardianship or conservatorship seeks to modify or
154 terminate the guardianship or conservatorship or remove the guardian or conservator, the court
155 may order compensation to the guardian or conservator for time spent opposing modification,
156 termination, or removal only to the extent the court determines the opposition was reasonably
157 necessary to protect the interest of the person subject to the guardianship or conservatorship.

158 Section 6. Section **75-5-207** is amended to read:

159 **75-5-207. Court appointment of guardian of minor -- Procedure.**

160 [~~(1) Notice of the time and place of hearing of a petition for the appointment of a~~
161 ~~guardian of a minor is to be given by the petitioner in the manner prescribed by Section~~
162 ~~75-1-401 to:]~~

163 [~~(a) the minor, if the minor is 14 years of age or older;]~~

164 [~~(b) the person who has had the principal care and custody of the minor during the 60~~
165 ~~days preceding the date of the petition;]~~

166 [~~(c) any living parent of the minor;]~~

167 [~~(d) any guardian appointed by the will or written instrument of the parent of the minor~~
168 ~~who died last; and]~~

169 [~~(e) the school district in which the petitioner resides and a representative of the school~~
170 ~~district may participate in the hearing;]~~

171 [~~(2) (a) Upon hearing, if the court finds that a qualified person seeks appointment,~~
172 ~~venue is proper, the required notices have been given, the requirements of Sections 75-5-204~~
173 ~~and 75-5-206 have been met, and the welfare and best interests of the minor will be served by~~
174 ~~the requested appointment, it may make the appointment.]~~

175 (1) A petitioner shall give notice of the time and place of a hearing on a petition for the
176 appointment of a guardian of a minor in accordance with Sections 75-5-106 and 75-5-207.5.

177 (2) (a) After a hearing, the court may appoint a guardian of a minor if:

178 (i) a qualified person seeks appointment;

179 (ii) venue is proper;

180 (iii) notice has been given in accordance with Sections 75-5-106 and 75-5-207.5;

181 (iv) the requirements of Sections 75-5-204 and 75-5-206 have been met; and

182 (v) the welfare and best interest of the minor will be served by the requested

183 appointment.

184 (b) In other cases, the court may dismiss the proceedings or make any other disposition
185 of the matter that will best serve the interest of the minor.

186 (3) (a) If necessary, the court may appoint a temporary guardian[;] with the status of an
187 ordinary guardian of a minor.

188 (b) The authority of a temporary guardian may not last longer than six months.

189 (4) If, at any time in the proceeding, the court determines that the [~~interests~~] interest of
190 the minor are or may be inadequately represented, [~~it~~] the court may appoint an attorney to
191 represent the minor, giving consideration to the preference of the minor if the minor is 14 years
192 [~~of age~~] old or older.

193 Section 7. Section **75-5-207.5** is enacted to read:

194 **75-5-207.5. Notice of a hearing for appointment of a guardian for a minor.**

195 (1) Upon the filing of a petition for an appointment of a guardian for a minor under this
196 part:

197 (a) the court shall schedule a hearing; and

198 (b) the petitioner shall:

199 (i) serve notice in accordance with Section [75-5-106](#), together with a copy of the
200 petition, personally served on each of the following that is not the petitioner:

201 (A) the minor if the minor will be 12 years old or older at the time of the hearing;

202 (B) each parent of the minor, or if there is none, the adult nearest in kinship who can be
203 found with reasonable diligence;

204 (C) any adult with whom the minor resides;

205 (D) each person that had primary care or custody of the minor for at least 60 days

206 during the two years immediately before the filing of the petition or for at least 730 days during
207 the five years immediately before the filing of the petition; and

208 (E) any other person the court determines should receive personal service of notice;

209 and

210 (ii) give notice in accordance with Section [75-5-106](#), together with a copy of the
211 petition, to:

212 (A) any person nominated as guardian by the minor if the minor is 12 years old or
213 older;

- 214 (B) any person nominated as guardian by a parent of the minor;
- 215 (C) each grandparent and adult sibling of the minor;
- 216 (D) any guardian or conservator acting for the minor in any jurisdiction; and
- 217 (E) any other person the court determines.

218 (2) Notice under Subsection (1) shall include:
 219 (a) a statement of the right to request appointment of an attorney and to object to
 220 appointment of a guardian; and

221 (b) a description of the nature, purpose, and consequences of appointment of a
 222 guardian.

223 (3) The court may not grant a petition for guardianship of a minor if notice
 224 substantially complying with Subsection (1)(b) is not served on:

- 225 (a) the minor if the minor is 12 years old or older; and
- 226 (b) each parent of the minor, unless the court finds by clear and convincing evidence
 227 that the parent cannot with due diligence be located and served or the parent waived, in a
 228 record, the right to notice.

229 (4) If a petitioner is unable to serve notice under Subsection (1)(b) on a parent of a
 230 minor or alleges that the parent waived, in a record, the right to notice under this section, the
 231 court may appoint a visitor to:

- 232 (a) interview the petitioner and the minor;
- 233 (b) if the petitioner alleges the parent cannot be located, ascertain whether the parent
 234 cannot be located with due diligence; and
- 235 (c) investigate any other matter relating to the petition the court directs.

236 Section 8. Section **75-5-208** is amended to read:

237 **75-5-208. Consent to service by acceptance of appointment -- Notice.**

238 (1) By accepting a testamentary, instrumental, or court appointment as guardian, a
 239 guardian submits personally to the jurisdiction of the court in any proceeding relating to the
 240 guardianship that may be instituted by any interested person or any person interested in the
 241 welfare of the minor.

242 (2) Notice of any proceeding under this part shall be [delivered to the guardian or
 243 mailed to him by ordinary mail at his address as listed in the court records and to his address as
 244 then known to the petitioner.] given in accordance with Sections [75-5-106](#) and [75-5-207.5](#).

245 (3) Letters of guardianship shall indicate whether the guardian was appointed by will,
246 written instrument, or by court order.

247 Section 9. Section **75-5-303** is amended to read:

248 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**
249 **person.**

250 (1) ~~[An incapacitated person]~~ A person alleged to be incapacitated or any person
251 interested in the ~~[incapacitated]~~ person's welfare may petition for a finding of incapacity and
252 appointment of a guardian.

253 (2) (a) Upon the filing of a petition, the court shall set a date for hearing on the issues
254 of incapacity.

255 ~~[(b) Unless the allegedly incapacitated person has counsel of the person's own choice,~~
256 ~~the court shall appoint an attorney to represent the person in the proceeding the cost of which~~
257 ~~shall be paid by the person alleged to be incapacitated, unless the allegedly incapacitated~~
258 ~~person and the allegedly incapacitated person's parents are indigent.]~~

259 (b) (i) Except as provided in Subsection (6)(d), if the person alleged to be incapacitated
260 in a proceeding for an appointment of a guardian is not represented by an attorney, the court
261 shall appoint an attorney to represent the person.

262 (ii) The cost of the allegedly incapacitated person's attorney under Subsection (2)(b)(i)
263 shall be paid by the person alleged to be incapacitated, unless the person and the person's
264 parents are indigent.

265 (c) If the court determines that the petition is without merit, the attorney fees and court
266 costs shall be paid by the person filing the petition.

267 (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the
268 incapacitated person, regardless of whether the nominee is specified in the moving petition or
269 nominated during the proceedings, the petitioner ~~[shall be]~~ is entitled to receive from the
270 incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting,
271 or defending the petition.

272 (3) The legal representation of the incapacitated person by an attorney shall terminate
273 upon the appointment of a guardian, unless:

274 (a) there ~~[are separate conservatorship proceedings still]~~ is a separate conservatorship
275 proceeding pending before the court subsequent to the appointment of a guardian;

276 (b) there is a timely filed appeal of the appointment of the guardian or the
277 determination of incapacity; or

278 (c) upon an express finding of good cause, the court orders otherwise.

279 ~~[(4) The person alleged to be incapacitated may be examined by a physician appointed~~
280 ~~by the court who shall submit a report in writing to the court and may be interviewed by a~~
281 ~~visitor sent by the court. The visitor also may interview the person seeking appointment as~~
282 ~~guardian, visit the present place of abode of the person alleged to be incapacitated and the place~~
283 ~~it is proposed that the person will be detained or reside if the requested appointment is made,~~
284 ~~conduct other investigations or observations as directed by the court, and submit a report in~~
285 ~~writing to the court.]~~

286 (4) (a) A person who is alleged to be incapacitated may be examined by:

287 (i) a licensed physician;

288 (ii) a psychologist;

289 (iii) a social worker;

290 (iv) an individual who:

291 (A) is qualified to evaluate the incapacitated person's alleged cognitive and functional
292 abilities and limitations; and

293 (B) will not be advantaged or disadvantaged by a decision to grant the petition or
294 otherwise have a conflict of interest.

295 (b) An individual who provides an examination in Subsection (4)(a) shall promptly file
296 the report with the court.

297 (5) (a) A person who is alleged to be incapacitated may be interviewed by a visitor sent
298 by the court.

299 (b) A visitor may:

300 (i) interview an individual seeking to be appointed as a guardian;

301 (ii) (A) visit the present place of abode of the person alleged to be incapacitated; or

302 (B) visit the place that the person will be detained or reside if the requested
303 appointment is made;

304 (iii) conduct other investigations or observations as directed by the court; and

305 (iv) submit a report in writing to the court.

306 ~~[(5)]~~ (6) (a) [The] A person alleged to be incapacitated shall:

307 (i) be present at the hearing in person; and

308 (ii) see or hear all evidence bearing upon the person's condition.

309 (b) (i) If the person seeking the guardianship requests a waiver of presence of the
310 person alleged to be incapacitated, the court shall order an investigation by a [court] visitor[;
311 ~~the costs of which~~].

312 (ii) The costs of a visitor under Subsection (5)(b)(i) shall be paid by the person seeking
313 the guardianship.

314 ~~[(b) The]~~ (c) An investigation by a [court] visitor under Subsection (5)(b) is not
315 required if there is clear and convincing evidence from a licensed physician that the person
316 alleged to be incapacitated has:

317 ~~[(i) fourth stage Alzheimer's Disease;]~~

318 ~~[(ii)]~~ (i) extended comatosis; or

319 ~~[(iii)]~~ (ii) (A) an intellectual disability; and

320 (B) an intelligence quotient score under 25.

321 ~~[(c) The person]~~

322 (d) (i) A person alleged to be incapacitated is entitled to:

323 (A) be represented by counsel[~~, to~~];

324 (B) present evidence[~~, to~~];

325 (C) cross-examine witnesses, including the court-appointed physician and the visitor[;
326 ~~and to~~]; and

327 (D) a trial by jury.

328 (ii) The issue may be determined at a closed hearing without a jury if the person
329 alleged to be incapacitated or the person's counsel so requests.

330 ~~[(d)]~~ (e) Counsel for the person alleged to be incapacitated[~~, as defined in Subsection~~
331 ~~75-1-201(22);~~] is not required if:

332 (i) the person is the biological or adopted child of the petitioner;

333 (ii) the value of the person's entire estate does not exceed \$20,000 as established by an
334 affidavit of the petitioner in accordance with Section 75-3-1201;

335 (iii) the person appears in court with the petitioner;

336 (iv) the person is given the opportunity to communicate, to the extent possible, the
337 person's acceptance of the appointment of petitioner;

338 (v) no attorney from the state court's list of attorneys who have volunteered to represent
339 respondents in guardianship proceedings is able to provide counsel to the person within 60
340 days [~~of the date of the appointment described in Subsection (2)] from the day on which
341 counsel is appointed under Subsection (2)(b);~~

342 (vi) the court is satisfied that counsel is not necessary in order to protect the interests of
343 the person; and

344 (vii) the court appoints a visitor under Subsection [~~(4)~~] (5).

345 Section 10. Section **75-5-303.5** is enacted to read:

346 **75-5-303.5. Notice of a hearing for appointment of a guardian for an allegedly**
347 **incapacitated person.**

348 (1) Upon the filing of a petition for an appointment of a guardian for a person alleged
349 to be incapacitated under Section 75-5-303, the court shall schedule a hearing on the petition.

350 (2) (a) A copy of a petition under Section 75-5-303 and notice of a hearing on the
351 petition in accordance with Section 75-5-106 shall be served personally on the person for
352 whom the guardianship is sought.

353 (b) The notice shall:

354 (i) inform the person alleged to be incapacitated of the person's rights at the hearing,
355 including the right to an attorney and to attend the hearing; and

356 (ii) include a description of the nature, purpose, and consequences of granting the
357 petition.

358 (c) The court may not grant the petition if notice substantially complying with this
359 Subsection (2) is not served on the person alleged to be incapacitated.

360 (3) In a proceeding on a petition under Section 75-5-303, the notice required under
361 Subsection (2)(b) shall be given to:

362 (a) the person alleged to be incapacitated;

363 (b) (i) the allegedly incapacitated person's spouse; or

364 (ii) if the allegedly incapacitated person has no spouse, any adult with whom the
365 allegedly incapacitated person shared household responsibilities for more than six months in
366 the 12-month period immediately before the filing of the petition;

367 (c) (i) the allegedly incapacitated person's adult children;

368 (ii) if the allegedly incapacitated person has no adult children, each parent and adult

369 sibling of the allegedly incapacitated person; or
370 (iii) if the allegedly incapacitated person has no adult children and no living parent or
371 adult sibling, at least one adult nearest in kinship to the allegedly incapacitated person who can
372 be found with reasonable diligence;
373 (d) any adult stepchildren whom the allegedly incapacitated person actively parented
374 during the stepchildren's minor years and with whom the allegedly incapacitated person had an
375 ongoing relationship in the two-year period immediately before the filing of the petition;
376 (e) if applicable:
377 (i) a person responsible for the care of the allegedly incapacitated person;
378 (ii) any attorney currently representing the allegedly incapacitated person;
379 (iii) any representative payee appointed by the Social Security Administration for the
380 allegedly incapacitated person;
381 (iv) a guardian or conservator acting for the allegedly incapacitated person in this state
382 or in another jurisdiction;
383 (v) a trustee or custodian of a trust or custodianship of which the allegedly
384 incapacitated person is a beneficiary;
385 (vi) any fiduciary for the allegedly incapacitated person appointed by the United States
386 Department of Veterans Affairs;
387 (vii) an agent designated under a power of attorney for health care in which the
388 allegedly incapacitated person is identified as the principal;
389 (viii) an agent designated under a power of attorney for finances in which the allegedly
390 incapacitated person is identified as the principal;
391 (ix) a person nominated as guardian by the allegedly incapacitated person;
392 (x) a person nominated as guardian by the allegedly incapacitated person's parent or
393 spouse in a will or other signed record;
394 (xi) a proposed guardian; and
395 (xiii) a person known by the petitioner to have routinely assisted the allegedly
396 incapacitated person with decision making during the six months immediately before the filing
397 of the petition; and
398 (f) any other person interested in the respondent's welfare the court determines.
399 (4) Failure to give notice under Subsection (2) does not preclude the court from

400 appointing a guardian.

401 (5) After the appointment of a guardian, notice of a hearing on any other petition for an
402 order under this part, together with a copy of the petition or order, shall be given to:

403 (a) the incapacitated person subject to the guardianship;

404 (b) the guardian; and

405 (c) any other person the court determines.

406 Section 11. Section **75-5-304** is amended to read:

407 **75-5-304. Findings -- Limited guardianship preferred -- Order of appointment.**

408 (1) ~~[The]~~ A court may appoint a guardian as requested if ~~[it]~~ the court is satisfied that
409 the person for whom a guardian is sought is incapacitated and that the appointment is necessary
410 or desirable as a means of providing continuing care and supervision of the incapacitated
411 person.

412 (2) (a) (i) The court shall prefer a limited guardianship and may only grant a full
413 guardianship if no other alternative exists.

414 (ii) If the court does not grant a limited guardianship, a specific finding shall be made
415 that nothing less than a full guardianship is adequate.

416 (b) (i) An order of appointment of a limited guardianship shall state the limitations of
417 the guardianship.

418 (ii) Letters of guardianship for a limited guardianship shall state the limitations of the
419 guardianship unless the court determines for good cause shown that a limitation should not be
420 listed in the letters.

421 (c) The court may modify the powers of the guardian to the specific needs of the
422 incapacitated person subject to the guardianship upon clear and convincing evidence that
423 modification is necessary to address the needs of the incapacitated person.

424 (3) (a) A guardian appointed by will or written instrument, under Section **75-5-301**,
425 whose appointment has not been prevented or nullified under Subsection **75-5-301(4)**, has
426 priority over any guardian who may be appointed by the court~~[, but the]~~.

427 (b) The court may:

428 (i) proceed with an appointment upon a finding that the testamentary or instrumental
429 guardian has failed to accept the appointment within 30 days after the testamentary or

430 instrumental guardian received notice of the guardianship proceeding~~[. Alternatively, the court~~

431 ~~may~~; or

432 (ii) dismiss the proceeding or enter any other appropriate order.

433 Section 12. Section **75-5-305** is amended to read:

434 **75-5-305. Acceptance of appointment -- Consent to jurisdiction.**

435 (1) (a) By accepting appointment, a guardian submits personally to the jurisdiction of
436 the court in any proceeding relating to the guardianship ~~[that]~~.

437 (b) A guardianship proceeding may be instituted by any interested person or any person
438 interested in the welfare of the ~~[ward]~~ person for whom the guardianship is sought.

439 (2) Notice of any proceeding shall be ~~[delivered to the guardian or mailed to him by~~
440 ~~ordinary mail at his address as listed in the court records and to his address as then known to~~
441 ~~the petitioner]~~ given to the guardian in accordance with Section 75-5-106 and Section
442 75-5-303.5.

443 Section 13. Section **75-5-310.5** is amended to read:

444 **75-5-310.5. Temporary guardians.**

445 ~~[(1) If, after notice and hearing as required by Section 75-5-303;~~

446 (1) (a) If a person files a petition for the appointment of a temporary guardian for a
447 person alleged to be incapacitated, the person shall give notice in accordance with Sections
448 75-5-106 and 75-5-303.5.

449 (b) If the court finds good cause, the court may:

450 ~~[(a)]~~ (i) appoint a temporary guardian;

451 ~~[(b)]~~ (ii) convert an emergency guardian to a temporary guardian if an emergency
452 guardian has been appointed under Section 75-5-310; or

453 ~~[(c)]~~ (iii) appoint a different person as temporary guardian to replace an emergency
454 guardian appointed under Section 75-5-310.

455 (2) Unless the allegedly incapacitated person has already obtained counsel in this
456 proceeding or an attorney has been already appointed for the person, the court shall appoint an
457 attorney to represent the person in the proceeding.

458 (3) (a) Until a full hearing and further order of the court, the temporary guardian shall
459 be charged with the care and custody of the ~~[ward]~~ allegedly incapacitated person and may not
460 permit the ~~[ward]~~ allegedly incapacitated person to be removed from the state.

461 (b) The authority of any permanent guardian previously appointed by the court is

462 suspended so long as a temporary guardian has authority.

463 (4) A temporary guardian:

464 (a) may be removed at any time[;]; and

465 (b) shall obey all orders and make any reports required by the court.

466 (5) A temporary guardian has all of the powers and duties of a permanent guardian as
467 set forth in Section [75-5-312](#).

468 Section 14. Section [75-5-311.5](#) is enacted to read:

469 **[75-5-311.5](#). Who may be a guardian for an incapacitated person -- Order of**
470 **priority.**

471 (1) Except as provided in Subsection (3), the court in appointing a guardian for a
472 person alleged to be incapacitated shall consider persons qualified to be guardian in the
473 following order of priority:

474 (a) a guardian, other than a temporary or emergency guardian, currently acting for the
475 incapacitated person in another jurisdiction;

476 (b) a person nominated as guardian by the incapacitated person, including the
477 incapacitated person's most recent nomination made in a power of attorney if:

478 (i) the incapacitated person was 14 years old or older when the nomination was
479 executed; and

480 (ii) the incapacitated person acted with sufficient mental capacity to make the
481 nomination;

482 (c) a person nominated as guardian by the incapacitated person, including the
483 incapacitated person's most recent nomination made in a power of attorney;

484 (d) an agent appointed by the incapacitated person under a power of attorney for health
485 care;

486 (e) a spouse of the incapacitated person;

487 (f) a family member or other individual who has shown special care and concern for
488 the incapacitated person; and

489 (g) the Office of Public Guardian created in Title 62A, Chapter 14, Office of Public
490 Guardian Act.

491 (2) (a) If two or more persons have equal priority under Subsection (1), the court shall
492 select as guardian the person the court considers best qualified.

493 (b) In determining the best qualified person, the court shall consider:
494 (i) the person's relationship with the incapacitated person;
495 (ii) the person's skills;
496 (iii) the expressed wishes of the incapacitated person;
497 (iv) the extent to which the person and the incapacitated person have similar values and
498 preferences; and
499 (v) the likelihood the person will be able to perform the duties of a guardian
500 successfully.

501 (3) The court, acting in the best interest of the incapacitated person, may decline to
502 appoint as guardian a person having priority under Subsection (1) and appoint a person having
503 a lower priority or no priority.

504 (4) A person that provides paid services to an incapacitated person, or an individual
505 who is employed by a person that provides paid services to the incapacitated person or is the
506 spouse, parent, or child of an individual who provides or is employed to provide paid services
507 to the incapacitated person, may not be appointed as guardian unless:

508 (a) the individual is related to the incapacitated person by blood, marriage, or adoption;
509 or

510 (b) the court finds by clear and convincing evidence that the person is the best qualified
511 person available for appointment and the appointment is in the best interest of the incapacitated
512 person.

513 (5) An owner, operator, or employee of a long-term care institution at which an
514 incapacitated person is receiving care may not be appointed as guardian for the incapacitated
515 person unless the owner, operator, or employee is related to the incapacitated person by blood,
516 marriage, or adoption.

517 Section 15. Section **75-5-312** is amended to read:

518 **75-5-312. General powers and duties of guardian -- Penalties.**

519 (1) A guardian of [~~an incapacitated person~~] a ward has only the powers, rights, and
520 duties respecting the ward granted in the order of appointment under Section **75-5-304**.

521 (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and
522 duties respecting the ward that a parent has respecting the parent's unemancipated minor child.

523 (3) In particular, and without qualifying Subsections (1) and (2), a guardian has the

524 following powers and duties, except as modified by order of the court:

525 (a) To the extent that it is consistent with the terms of any order by a court of
526 competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled
527 to custody of the person of the ward and may establish the ward's place of abode within or
528 without this state.

529 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort,
530 and maintenance of the ward and, whenever appropriate, arrange for the ward's training and
531 education. Without regard to custodial rights of the ward's person, the guardian shall take
532 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
533 commence protective proceedings if other property of the ward is in need of protection.

534 (c) A guardian may give any consents or approvals that may be necessary to enable the
535 ward to receive medical or other professional care, counsel, treatment, or service.

536 (d) A guardian may not unreasonably restrict visitation with the ward by family,
537 relatives, or friends.

538 (e) If no conservator for the estate of the ward has been appointed, the guardian may:

539 (i) institute proceedings to compel any person under a duty to support the ward or to
540 pay sums for the welfare of the ward to perform that duty;

541 (ii) compel the production of the ward's estate documents, including the ward's will,
542 trust, power of attorney, and any advance health care directive; and

543 (iii) receive money and tangible property deliverable to the ward and apply the money
544 and property for support, care, and education of the ward:

545 (A) except that the guardian may not use funds from the ward's estate for room and
546 board that the guardian, the guardian's spouse, parent, or child have furnished the ward unless a
547 charge for the service is approved by order of the court made upon notice to at least one adult
548 relative in the nearest degree of kinship to the ward in which there is an adult; and

549 (B) the guardian shall exercise care to conserve any excess for the ward's needs.

550 (f) (i) A guardian is required to report the condition of the ward and of the estate that
551 has been subject to the guardian's possession or control, as required by the court or court rule.

552 (ii) A guardian is required to immediately notify all interested persons if the guardian
553 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

554 (A) the guardian's own observations; or

555 (B) information from the ward's physician or other medical care providers.

556 (iii) A guardian is required to immediately notify persons ~~[who]~~ that request
557 notification and are not restricted in associating with the ward ~~[pursuant to]~~ under Section
558 [75-5-312.5](#) of:

559 (A) the ward's admission to a hospital for three or more days or to a hospice program;

560 (B) the ward's death; and

561 (C) the arrangements for the disposition of the ward's remains.

562 (iv) (A) Unless emergency conditions exist, a guardian is required to file with the court
563 a notice of the guardian's intent to move the ward and to serve ~~[the notice on all interested~~
564 ~~persons at least 10 days before the move.]~~ notice to all interested persons in accordance with
565 Section [75-5-106](#).

566 (B) The guardian shall take reasonable steps to notify all interested persons and to file
567 the notice with the court as soon as practicable following the earlier of the move or the date
568 when the guardian's intention to move the ward is made known to the ward, the ward's care
569 giver, or any other third party.

570 (v) (A) If no conservator for the estate of the ward has been appointed, the guardian
571 shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, ~~[send]~~
572 file a report with a full accounting to the court on an annual basis.

573 (B) For estates less than \$50,000, excluding the residence owned by the ward, the
574 guardian shall fill out an informal annual report and ~~[mail]~~ file the report ~~[to]~~ with the court.

575 (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at
576 the beginning and end of the reporting year, income received during the year, disbursements for
577 the support of the ward, and other expenses incurred by the estate. The guardian shall also
578 report the physical conditions of the ward, the place of residence, and a list of others living in
579 the same household. The court may require additional information.

580 (D) The forms for both the informal report for estates under \$50,000, excluding the
581 residence owned by the ward, and the full accounting report for larger estates shall be approved
582 by the Judicial Council.

583 (E) An annual report shall be examined and approved by the court.

584 (F) If the ward's income is limited to a federal or state program requiring an annual
585 accounting report, a copy of that report may be submitted to the court in lieu of the required

586 annual report.

587 (vi) Corporate fiduciaries are not required to petition the court, but shall submit their
588 internal report annually to the court. The report shall be examined and approved by the court.

589 (vii) The guardian shall also render an annual accounting of the status of the person to
590 the court that shall be included in the petition or the informal annual report as required under
591 this Subsection (3)(f). If a fee is paid for an accounting of an estate, a fee may not be charged
592 for an accounting of the status of a person.

593 (viii) If a guardian:

594 (A) makes a substantial misstatement on filings of annual reports;

595 (B) is guilty of gross impropriety in handling the property of the ward; or

596 (C) willfully fails to file the report required by this Subsection (3)(f), after receiving
597 written notice from the court of the failure to file and after a grace period of two months has
598 elapsed, the court may impose a penalty in an amount not to exceed \$5,000.

599 (ix) The court may also order restitution of funds misappropriated from the estate of a
600 ward. The penalty shall be paid by the guardian and may not be paid by the estate.

601 (x) The provisions and penalties in this Subsection (3)(f) governing annual reports do
602 not apply if the guardian or a coguardian is the parent of the ward.

603 (xi) For the purposes of Subsections (3)(f)[(f);] (ii), (iii), and (iv), "interested persons"
604 means [~~those persons~~] any person required to receive notice in guardianship proceedings as set
605 forth in Section [~~75-5-309~~] 75-5-303.5.

606 (g) If a conservator has been appointed:

607 (i) all of the ward's estate received by the guardian in excess of those funds expended
608 to meet current expenses for support, care, and education of the ward shall be paid to the
609 conservator for management as provided in this code; and

610 (ii) the guardian shall account to the conservator for funds expended.

611 (4) (a) A court may, in the order of appointment, place specific limitations on the
612 guardian's power.

613 (b) A guardian may not prohibit or place restrictions on association with a relative or
614 qualified acquaintance of an adult ward, unless permitted by court order under Section
615 75-5-312.5.

616 (c) A guardian is not liable to a third person for acts of the guardian's ward solely by

617 reason of the relationship described in Subsection (2).

618 (5) Any guardian of ~~[one]~~ a ward for whom a conservator also has been appointed shall
 619 control the custody and care of the ward and is entitled to receive reasonable sums for services
 620 and for room and board furnished to the ward as agreed upon between the guardian and the
 621 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian
 622 may request the conservator to expend the ward's estate by payment to third persons or
 623 institutions for the ward's care and maintenance.

624 (6) A person ~~[who]~~ that refuses to accept the authority of a guardian with authority
 625 over financial decisions to transact business with the assets of the protected person after
 626 receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees,
 627 and damages if the court determines that the person did not act in good faith in refusing to
 628 accept the authority of the guardian.

629 (7) A guardian shall, to the extent practicable, encourage the ward to participate in
 630 decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the
 631 capacity to manage the ward's personal affairs. To the extent known, a guardian, in making
 632 decisions, shall consider the expressed desires and personal values of the ward.

633 Section 16. Section **75-5-316** is amended to read:

634 **75-5-316. Expedited guardianship proceedings.**

635 (1) (a) With regard to persons who are residents of the Utah State Developmental
 636 Center, the expedited process provided by this section may be applied to obtain a limited
 637 guardianship.

638 (b) ~~[For purposes of this section]~~ As used in this section:

639 (i) "Limited guardianship" means a guardianship solely for the purpose of granting
 640 consent for medical care and for participation in approval of the ward's individualized program
 641 plan.

642 (ii) "Ward" means a resident of the Utah State Developmental Center who is the
 643 subject of guardianship proceedings under this section.

644 (2) (a) Any person interested in the ~~[incapacitated person's welfare]~~ the welfare of a
 645 person alleged to be incapacitated may file a petition for a finding of incapacity and
 646 appointment of a guardian. ~~[That]~~

647 (b) A person may seek the limited guardianship ~~[pro se]~~ without an attorney, using the

648 forms described in this section.

649 (c) Any fee for filing a petition for a limited guardianship shall be waived if the
650 guardian is proceeding under this section.

651 (3) Upon filing a petition for limited guardianship under this section, the court shall set
652 a date for hearing.

653 (4) The ward has the right to be present at the hearing and to see and hear all evidence
654 relating to ~~[his]~~ the ward's condition.

655 (5) At that hearing the court shall review the affidavit of the superintendent of the Utah
656 State Developmental Center, described in Subsection (11), and determine whether notice has
657 been given to the appropriate persons described in Subsection (6).

658 ~~[(6) If the proposed guardian is not a parent or relative of the ward, personal notice
659 shall be given to the ward's spouse, parents, and any adult children of the ward. Personal
660 notice shall also be given to other persons as the court may direct.]~~

661 (6) A person filing a petition under this section shall give notice in accordance with
662 Sections [75-5-106](#) and [75-5-303.5](#).

663 (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in
664 the hearing, and may request independent evaluation by a physician appointed by the court.
665 The physician shall submit his findings to the court in writing.

666 (8) The court may grant the petition for a limited guardianship and sign the Order of
667 Appointment if the court finds that:

668 (a) the appropriate parties have been ~~[given notice]~~ properly served;

669 (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah
670 State Developmental Center and any affidavit or testimony of persons entitled to receive notice
671 or requested to present evidence under this section; and

672 (c) it is necessary and desirable to establish the guardianship.

673 (9) Venue for these expedited guardianship proceedings shall be the same as that
674 described in Section [75-5-302](#).

675 (10) A petition for a limited guardianship shall include the following information:

676 (a) the interest of the petitioner;

677 (b) the name, age, residence, and address of the ward;

678 (c) verification that the ward is a resident of the Utah State Developmental Center;

679 (d) the name and address of the nearest relative of the ward; and

680 (e) the reason for appointment of guardianship.

681 (11) The petitioner shall also provide the court with an affidavit of the superintendent
682 of the Utah State Developmental Center that includes the following information:

683 (a) that the ward is a resident of the Utah State Developmental Center;

684 (b) the date the ward was originally admitted to the Utah State Developmental Center;

685 (c) the diagnosis of the ward, including a description of the ward's disabling condition,
686 the level of the ward's intellectual disability, and any medical or physical conditions of the
687 ward;

688 (d) that the Utah State Developmental Center is certified as an intermediate care
689 facility for people with an intellectual disability;

690 (e) that because of that certification, the Utah State Developmental Center receives
691 financial participation from the United States Government for its operation and maintenance
692 costs; and

693 (f) that federal regulations under Title XIX require the ward to have a guardian
694 appointed for the sole purpose of giving consent for medical and dental care and of
695 participation in and approval of the ward's individual program plan.

696 (12) If the court finds that, under the requirements of this section the proposed limited
697 guardian should be appointed for a ward, [it] the court shall enter an order establishing that
698 [~~limited guardianship in substantially the following form~~]:

699 [~~The court finds that:~~]

700 (a) an appointment of a limited guardianship for [~~(named ward)~~] the ward is necessary
701 and desirable as a means of providing continuing care and supervision and to ensure [~~his~~] the
702 ward's welfare;

703 (b) the ward is incapacitated;

704 (c) [~~(named guardian)~~] the limited guardian is appointed as the limited guardian of
705 [~~(named ward)~~] the ward; and

706 (d) the guardianship is a limited guardianship solely for the purpose of:

707 (i) granting permission for medical and dental care on behalf of the ward; and

708 (ii) participation in the development and approval of the ward's individual program
709 plan.

710 (13) (a) Appointment of guardianship under this section places no additional
711 responsibility or liability on the guardian with regard to the ward.

712 (b) The limited guardianship is solely for consent for medical care and approval of the
713 ward's individualized program plan~~[, and shall not]~~.

714 (c) A limited guardianship may not be construed to increase or create liability or
715 responsibility for the guardian.

716 Section 17. Section **75-5-402** is amended to read:

717 **75-5-402. Protective proceedings -- Jurisdiction of affairs of protected persons.**

718 After the service of notice in a proceeding seeking the appointment of a conservator or
719 other protective order under Sections 75-5-106 and 75-5-405.5 and until termination of the
720 proceeding, the court in which the petition is filed has:

721 (1) [~~Exclusive~~] exclusive jurisdiction to determine the need for a conservator or other
722 protective order until the proceedings are terminated;

723 (2) [~~Exclusive~~] exclusive jurisdiction to determine how the estate of the protected
724 person [~~which~~] that is subject to the laws of this state shall be managed, expended, or
725 distributed to or for the use of the protected person or any of [~~his~~] the protected person's
726 dependents; and

727 (3) [~~Concurrent~~] concurrent jurisdiction to determine the validity of claims against the
728 person or estate of the protected person and [~~his~~] the protected person's title to any property or
729 claim.

730 Section 18. Section **75-5-405.5** is enacted to read:

731 **75-5-405.5. Notice and hearing for appointment of a conservator.**

732 (1) Upon the filing of a petition under Section 75-5-404 for appointment of a
733 conservator, the court shall schedule a hearing on the petition.

734 (2) (a) A copy of a petition under Section 75-5-404 and notice of a hearing on the
735 petition in accordance with Section 75-5-106 shall be served personally on the protected
736 person.

737 (b) If the protected person's whereabouts are unknown or personal service cannot be
738 made, service on the protected person shall be made in accordance with the Utah Rules of Civil
739 Procedure, Rule 4.

740 (c) The notice shall:

- 741 (i) inform the protected person of the person's rights at the hearing, including the right
742 to an attorney and to attend the hearing; and
- 743 (ii) include a description of the nature, purpose, and consequences of granting the
744 petition.
- 745 (d) The court may not grant a petition for appointment of a conservator or other
746 protective order under this part if notice substantially complying with this Subsection (2) is not
747 served on the protected person.
- 748 (3) In a proceeding on a petition under Section [75-5-404](#), the notice required under
749 Subsection (2) shall be given to:
- 750 (a) the protected person;
- 751 (b) (i) the protected person's spouse; or
752 (ii) if the protected person has no spouse, any adult with whom the protected person
753 has shared household responsibilities for more than six months in the 12-month period before
754 the filing of the petition;
- 755 (c) (i) the protected person's adult children;
756 (ii) if the protected person has no adult children, each parent and adult sibling of the
757 person; or
- 758 (iii) if the protected person has no adult children or no living parent or adult sibling, at
759 least one adult nearest in kinship to the protected person who can be found with reasonable
760 diligence;
- 761 (d) any adult stepchildren whom the protected person actively parented during the
762 stepchildren's minor years and with whom the protected person had an ongoing relationship
763 during the two years immediately before the filing of the petition;
- 764 (e) if applicable:
- 765 (i) a person responsible for the care or custody of the protected person;
766 (ii) any attorney currently representing the protected person;
767 (iii) the representative payee appointed by the Social Security Administration for the
768 protected person;
- 769 (iv) a guardian or conservator acting for the protected person in this state or another
770 jurisdiction;
- 771 (v) a trustee or custodian of a trust or custodianship of which the protected person is a

772 beneficiary;

773 (vi) the fiduciary appointed for the protected person by the United States Department
774 of Veterans Affairs;

775 (vii) an agent designated under a power of attorney for health care in which the
776 protected person is identified as the principal;

777 (viii) an agent designated under a power of attorney for finances in which the protected
778 person is identified as the principal;

779 (ix) a person known to have routinely assisted the protected person with decision
780 making in the six-month period immediately before the filing of the petition;

781 (x) any proposed conservator, including a person nominated by the protected person if
782 the protected person is 12 years old or older; and

783 (xi) if the protected person is a minor, an adult not otherwise listed with whom the
784 minor resides and each person not otherwise listed that had primary care or custody of the
785 minor for at least 60 days during the two years immediately before the filing of the petition or
786 for at least 730 days during the five years immediately before the filing of the petition; and

787 (f) any other person interested in the protected person's welfare that the court
788 determines.

789 (4) Failure to give notice under Subsection (2) does not preclude the court from
790 appointing a conservator.

791 (5) After the appointment of a conservator, notice of a hearing on any other petition for
792 an order under this part, together with a copy of the petition, shall be given to:

793 (a) the protected person if the protected person is 12 years old or older and not missing,
794 detained, or unable to return to the United States;

795 (b) the conservator; and

796 (c) any other person the court determines.

797 Section 19. Section **75-5-406** is amended to read:

798 **75-5-406. Protective proceedings -- Request for notice -- Interested person.**

799 (1) Any interested person [who] that desires to be notified before any order is made in
800 a protective proceeding may file with the [registrar] clerk of the court a request for notice
801 subsequent to payment of any fee required by statute or court rule. [The]

802 (2) In accordance with the Utah Rules of Civil Procedure, Rule 5, the clerk shall [mail

803 a copy of the demand] give notice of the request to the conservator if one has been appointed.

804 (3) A request is not effective unless [it] the request contains a statement showing the
805 interest of the person making [~~it and his address, or that of his attorney~~] the request and the
806 person's or the person's attorney's address, and is effective only as to matters occurring after the
807 filing.

808 (4) Any governmental agency paying or planning to pay benefits to the person to be
809 protected is an interested person in protective proceedings.

810 Section 20. Section ~~75-5-407~~ is amended to read:

811 **75-5-407. Procedure concerning hearing and order on original petition.**

812 (1) (a) Upon receipt of a petition for appointment of a conservator or other protective
813 order because of minority, the court shall set a date for the hearing on the matters alleged in the
814 petition.

815 (b) If, at any time in the proceeding, the court determines that the [~~interests~~] interest of
816 the minor [~~are~~] is or may be inadequately represented, [it] the court may appoint an attorney to
817 represent the minor, giving consideration to the choice of the minor if 14 years [~~of age~~] old or
818 older.

819 (c) An attorney appointed by the court to represent a minor has the powers and duties
820 of a guardian ad litem.

821 (2) (a) Upon receipt of a petition for appointment of a conservator or other protective
822 order for reasons other than minority, the court shall set a date for hearing.

823 (b) Unless the person to be protected has already retained counsel, the court may
824 appoint an attorney to represent the person to be protected who then has the powers and duties
825 of a guardian ad litem.

826 (3) The legal representation of the protected person by an attorney shall terminate upon
827 the appointment of a conservator, unless:

828 (a) there are separate guardianship proceedings still pending before the court
829 subsequent to the appointment of a conservator;

830 (b) there is a timely filed appeal of the appointment of the conservator; or

831 (c) upon an express finding of good cause, the court orders otherwise.

832 (4) If the alleged disability is mental illness, mental deficiency, physical illness or
833 disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that

834 the ~~[person to be protected be examined by a physician designated by the court, preferably a~~
835 ~~physician who is not connected with any institution in which the person is a patient or is~~
836 ~~detained.]~~ protected person is examined by:

837 (a) a licensed physician;

838 (b) a psychologist;

839 (c) a social worker; or

840 (d) an individual who:

841 (i) is qualified to evaluate the person's alleged cognitive and functional abilities and
842 limitations; and

843 (ii) will not be advantaged or disadvantaged by a decision to grant the petition or
844 otherwise have a conflict of interest.

845 (5) The court may [send] appoint a visitor to interview the protected person. ~~[to be~~
846 ~~protected. The visitor may be a guardian ad litem or an officer or employee of the court]~~

847 ~~[(5)]~~ (6) After hearing, upon finding that a basis for the appointment of a conservator
848 or other protective order has been established, the court shall make an appointment or other
849 appropriate protective order.

850 Section 21. Section **75-5-410.5** is enacted to read:

851 **75-5-410.5. Who may be a conservator -- Order of priority.**

852 (1) Except as otherwise provided in Subsection (3), the court in appointing a
853 conservator shall consider persons qualified to be a conservator in the following order of
854 priority:

855 (a) a conservator, other than a temporary or emergency conservator, currently acting for
856 the protected person in another jurisdiction;

857 (b) a person nominated as conservator by the protected person, including the protected
858 person's most recent nomination made in a power of attorney for finances if:

859 (i) the protected person was 14 years old or older when the nomination was executed;

860 and

861 (ii) the protected person acted with sufficient mental capacity to make the nomination;

862 (c) an agent appointed by the protected person to manage the protected person's
863 property under a power of attorney for finances;

864 (d) a spouse of the protected person; and

865 (e) a family member or other individual who has shown special care and concern for
866 the protected person.

867 (2) If two or more persons have equal priority under Subsection (1), the court shall
868 select as conservator the person the court considers best qualified.

869 (3) In determining the best qualified person, the court shall consider:

870 (a) the person's relationship with the protected person;

871 (b) the person's skills;

872 (c) the expressed wishes of the protected person;

873 (d) the extent to which the person and the protected person have similar values and
874 preference; and

875 (e) the likelihood the person will be able to perform the duties of a conservator
876 successfully.

877 (4) The court, acting in the best interest of the protected person, may decline to appoint
878 as conservator a person having priority under Subsection (1) and appoint a person having a
879 lower priority or no priority.

880 (5) A person that provides paid services to the protected person, or an individual who
881 is employed by a person that provides paid services to the protected person or is the spouse,
882 parent, or child of an individual who provides or is employed to provide paid services to the
883 protected person may not be appointed as conservator unless:

884 (a) the individual is related to the protected person by blood, marriage, or adoption; or

885 (b) the court finds by clear and convincing evidence that the person is the best qualified
886 person available for appointment and the appointment is in the best interest of the protected
887 person.

888 (6) An owner, operator, or employee of a long-term care institution at which the
889 protected person is receiving care may not be appointed as conservator unless the owner,
890 operator, or employee is related to the protected person by blood, marriage, or adoption.

891 Section 22. Section **75-5-412** is amended to read:

892 **75-5-412. Terms and requirements of bonds.**

893 (1) The following requirements and provisions apply to any bond required under
894 Section **75-5-411**:

895 (a) Unless otherwise provided by the terms of the approved bond, sureties are jointly

896 and severally liable with the conservator and with each other[;].

897 (b) (i) By executing an approved bond of a conservator, the surety consents to the
898 jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining
899 to the fiduciary duties of the conservator and naming the surety as a party defendant.

900 (ii) Notice of the proceeding shall be [~~delivered~~] given to the surety [~~or mailed to him~~
901 ~~by registered or certified mail at his address as listed with the court where the bond is filed and~~
902 ~~to his address as then known to the petitioner;]~~ in accordance with Section 75-5-106.

903 (c) On petition of a successor, conservator, or any interested person, a proceeding may
904 be initiated against a surety for breach of the obligation of the bond of the conservator[;].

905 (d) The bond of the conservator is not void after the first recovery but may be
906 proceeded against from time to time until the whole penalty is exhausted.

907 (2) No proceeding may be commenced against the surety on any matter as to which an
908 action or proceeding against the primary obligor is barred by adjudication or limitation under
909 this code.

910 Section 23. Section **75-5-413** is amended to read:

911 **75-5-413. Acceptance of appointment -- Consent to jurisdiction.**

912 (1) By accepting appointment, a conservator submits personally to the jurisdiction of
913 the court in any proceeding relating to the estate that may be instituted by any interested person.

914 (2) Notice of any proceeding shall be [~~delivered to the conservator or mailed to him by~~
915 ~~registered or certified mail at his address as listed in the petition for appointment, or as~~
916 ~~thereafter reported to the court, and to his address as then known to the petitioner;]~~ given to the
917 conservator in accordance with Sections 75-5-106 and 75-4-405.5.

918 Section 24. Section **75-5-417** is amended to read:

919 **75-5-417. General duty of conservator.**

920 (1) A conservator shall:

921 (a) act as a fiduciary; and [~~shall~~]

922 (b) observe the standards of care as set forth in Section 75-7-902.

923 (2) (a) The conservator shall, for all estates in excess of \$50,000, excluding the
924 residence owned by the ward, [~~send~~] file a report with a full accounting to the court on an
925 annual basis.

926 (b) For estates less than \$50,000, excluding the residence owned by the ward, the

927 conservator shall fill out an informal annual report and [~~must~~] file the report to the court.

928 (c) The report shall include the following:

929 (i) a statement of assets at the beginning and end of the reporting year[;];

930 (ii) income received during the year[;];

931 (iii) disbursements for the support of the ward[;]; and

932 (iv) other expenses incurred by the estate.

933 (d) The court may require additional information for a report filed under Subsections
934 (2)(a) and (b).

935 (e) The forms for both the informal report for estates under \$50,000, excluding the
936 residence owned by the ward, and the full accounting report for larger estates shall be approved
937 by the judicial council.

938 (f) This annual report shall be examined and approved by the court.

939 (3) (a) Corporate fiduciaries are not required to fully petition the court, but shall submit
940 their internal report annually to the court.

941 (b) The report shall be examined and approved by the court.

942 (4) (a) The court may impose a fine in an amount not to exceed \$5,000, if, after
943 receiving written notice of the failure to file and after a grace period of two months have
944 elapsed, a conservator or corporate fiduciary:

945 (i) makes a substantial misstatement on filings of any required annual reports;

946 (ii) is guilty of gross impropriety in handling the property of the ward; or

947 (iii) willfully fails to file the report required by this section.

948 (b) The court may also order restitution of funds misappropriated from the estate of a
949 ward.

950 (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be
951 paid by the estate.

952 (5) These provisions and penalties governing annual reports do not apply if the
953 conservator is the parent of the ward.

954 Section 25. Section ~~75-5-428~~ is amended to read:

955 **75-5-428. Claims against protected person -- Enforcement.**

956 (1) (a) A conservator [~~must~~] shall pay from the estate all just claims against the estate
957 and against the protected person arising before or after the conservatorship upon their

958 presentation and allowance.

959 (b) A claim may be presented by ~~[either of the following methods]:~~

960 ~~[(a) The claimant may deliver]~~

961 (i) a claimant delivering or ~~[mail]~~ mailing to the conservator a written statement of the
962 claim indicating ~~[its]~~ the claim's basis, the name and address of the claimant, and the amount
963 claimed~~[-]; or~~

964 ~~[(b) The claimant may file]~~

965 (ii) a claimant files a written statement of the claim, in the form prescribed by rule,
966 with the clerk of the court and ~~[deliver or mail]~~ delivers or mails a copy of the statement to the
967 conservator.

968 (c) A claim is considered presented on the first to occur of receipt of the written
969 statement of claim by the conservator, or the filing of the claim with the court.

970 (2) (a) A presented claim is allowed if ~~[it]~~ the claim is not disallowed by written
971 statement mailed by the conservator to the claimant within 60 days after ~~[its]~~ the claim's
972 presentation.

973 (b) The presentation of a claim tolls any statute of limitation relating to the claim until
974 30 days after ~~[its]~~ the claim's disallowance.

975 (3) (a) A claimant whose claim has not been paid may petition the court for
976 determination of ~~[his]~~ the claimant's claim at any time before ~~[it]~~ the claim is barred by the
977 applicable statute of limitation, and, upon due proof, procure an order for its allowance and
978 payment from the estate.

979 (b) If a proceeding is pending against a protected person at the time of appointment of
980 a conservator or is initiated against the protected person thereafter, the moving party ~~[must]~~
981 shall give notice of the proceeding to the conservator in accordance with Section 75-5-106 if
982 the outcome is to constitute a claim against the estate.

983 (4) If it appears that the estate in conservatorship is likely to be exhausted before all
984 existing claims are paid, preference is to be given to prior claims for the care, maintenance, and
985 education of the protected person or ~~[his]~~ the protected person's dependents and existing claims
986 for expenses of administration.

987 Section 26. **Repealer.**

988 This bill repeals:

- 989 Section [75-5-308](#), **Visitor in guardianship proceeding.**
- 990 Section [75-5-309](#), **Notices in guardianship proceedings.**
- 991 Section [75-5-311](#), **Who may be guardian -- Priorities.**
- 992 Section [75-5-405](#), **Notice.**
- 993 Section [75-5-410](#), **Who may be appointed conservator -- Priorities.**