

**Senator Lyle W. Hillyard** proposes the following substitute bill:

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

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: V. Lowry Snow

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**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;
- ▶ amends language regarding the types of individuals that a court visitor may investigate;



- 26           ▶ provides notice requirements for guardianship and conservatorship proceedings for
- 27 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           This bill provides a special effective date.

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 court shall give notice of the date, time, and  
95 place of the hearing to the person to be notified.

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

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

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

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

104 **75-5-107. Disclosure of bankruptcy or criminal history.**

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

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

108 (b) been convicted of:

109 (i) a felony;

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

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

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

116 (a) a felony;

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

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

119 (3) If a conservator engages or anticipates engaging an agent to manage finances of the  
120 person subject to a conservatorship and knows the agent is or has been a debtor in a  
121 bankruptcy, insolvency, or receivership proceeding, the conservator shall disclose that  
122 knowledge to the court.

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

124 **75-5-108. Compensation of guardian or conservator.**

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

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

127 (b) reimbursement for room, board, clothing, and other appropriate expenses advanced  
128 for the benefit of the person subject to the guardianship.

129 (2) If a conservator, other than the guardian or a person affiliated with the guardian, is  
130 appointed for a protected person, reasonable compensation and reimbursement to the guardian  
131 may be approved and paid by the conservator without court approval.

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

133 (a) reasonable compensation for services; and

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

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

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

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

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

142 (d) the conditions and circumstances under which a service was performed, including  
143 whether the service was provided outside regular business hours or under dangerous or  
144 extraordinary conditions;

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

147 (f) the extent to which the services provided were or were not consistent with an  
148 individualized plan created by a guardian or conservator; and

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

150 (5) A guardian or conservator need not use personal funds of the guardian or  
151 conservator for the expenses of the person subject to the guardianship or conservatorship.

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

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

158 **75-5-207. Court appointment of guardian of minor -- Procedure.**

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

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

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

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

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

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

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

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

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

177 (i) a qualified person seeks appointment;

178 (ii) venue is proper;

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

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

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

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

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

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

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

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

193 **75-5-207.5. Notice of a hearing for appointment of a guardian for a minor.**

194 (1) Upon the filing of a petition for an appointment of a guardian for a minor under this  
195 part, the court shall:

196 (a) schedule a hearing; and

197 (b) (i) serve notice in accordance with Section 75-5-106, together with a copy of the  
198 petition, personally served on each of the following that is not the petitioner:

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

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

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

203 (D) each person that had primary care or custody of the minor for at least 60 days  
204 during the two years immediately before the filing of the petition or for at least 730 days during  
205 the five years immediately before the filing of the petition; and

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

207 and

208 (ii) give notice in accordance with Section 75-5-106, together with a copy of the  
209 petition, to:

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

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

216 (2) Notice under Subsection (1) shall include:

217 (a) a statement of the right to request appointment of an attorney and to object to  
218 appointment of a guardian; and

219 (b) a description of the nature, purpose, and consequences of appointment of a  
220 guardian.

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

223 (a) the minor if the minor is 12 years old or older; and

224 (b) each parent of the minor, unless the court finds by clear and convincing evidence  
225 that the parent cannot with due diligence be located and served or the parent waived, in a  
226 record, the right to notice.

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

228 **75-5-208. Consent to service by acceptance of appointment -- Notice.**

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

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

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

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

239 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**  
240 **person.**

241 (1) [An incapacitated person] A person alleged to be incapacitated or any person  
242 interested in the [incapacitated] person's welfare may petition for a finding of incapacity and



243 appointment of a guardian.

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

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

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

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

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

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

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

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

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

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

270 ~~[(4) The person alleged to be incapacitated may be examined by a physician appointed~~  
271 ~~by the court who shall submit a report in writing to the court and may be interviewed by a~~  
272 ~~visitor sent by the court. The visitor also may interview the person seeking appointment as~~  
273 ~~guardian, visit the present place of abode of the person alleged to be incapacitated and the place~~

274 ~~it is proposed that the person will be detained or reside if the requested appointment is made,~~  
275 ~~conduct other investigations or observations as directed by the court, and submit a report in~~  
276 ~~writing to the court.]~~

277 (4) A court may:

278 (a) order a person who is alleged to be incapacitated be examined; and

279 (b) appoint one of the following individuals to examine the person:

280 (i) a licensed physician;

281 (ii) a psychologist;

282 (iii) a social worker;

283 (iv) an individual who:

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

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

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

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

292 (b) A visitor may:

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

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

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

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

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

299 ~~[(5)]~~ (6) (a) [The] A person alleged to be incapacitated shall:

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

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

302 (b) If the person seeking the guardianship requests a waiver of presence of the person  
303 alleged to be incapacitated, the court shall order an investigation by a [court] visitor[, the costs  
304 of which shall be paid by the person seeking the guardianship].

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

- 308           ~~[(i) fourth stage Alzheimer's Disease;]~~  
309           (i) severe dementia due to Alzheimer's Disease;  
310           (ii) extended comatosis; or  
311           (iii) (A) an intellectual disability; and  
312           (B) an intelligence quotient score under 25.

313           ~~[(c) The person]~~  
314           (d) (i) A person alleged to be incapacitated is entitled to:  
315           (A) be represented by counsel~~[-to];~~  
316           (B) present evidence~~[-to];~~  
317           (C) cross-examine witnesses, including the court-appointed physician and the visitor~~[-~~  
318 and to]; and

319           (D) a trial by jury.  
320           (ii) The issue may be determined at a closed hearing without a jury if the person  
321 alleged to be incapacitated or the person's counsel so requests.

322           ~~[(d)]~~ (e) Counsel for the person alleged to be incapacitated~~[- as defined in Subsection~~  
323 75-1-201(22);] is not required if:

- 324           (i) the person is the biological or adopted child of the petitioner;  
325           (ii) the value of the person's entire estate does not exceed \$20,000 as established by an  
326 affidavit of the petitioner in accordance with Section 75-3-1201;

327           (iii) the person appears in court with the petitioner;  
328           (iv) the person is given the opportunity to communicate, to the extent possible, the  
329 person's acceptance of the appointment of petitioner;

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

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

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

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

338 **75-5-303.5. Notice of a hearing for appointment of a guardian for an allegedly**  
339 **incapacitated person.**

340 (1) Upon the filing of a petition for an appointment of a guardian for a person alleged  
341 to be incapacitated under Section 75-5-303, the court shall:

342 (a) schedule a hearing on the petition; and

343 (b) serve notice of the hearing on the petition in accordance with Section 75-5-106,  
344 together with a copy of the petition, personally on the person for whom the guardianship is  
345 sought.

346 (c) The notice shall:

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

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

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

353 (2) In a proceeding on a petition under Section 75-5-303, the notice required under  
354 Subsection (1)(b) shall be given to the following persons if the person may be found through  
355 reasonable diligence:

356 (a) (i) the allegedly incapacitated person's spouse; or

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

360 (b) (i) the allegedly incapacitated person's adult children;

361 (ii) if the allegedly incapacitated person has no adult children, each parent and adult  
362 sibling of the allegedly incapacitated person; or

363 (iii) if the allegedly incapacitated person has no adult children and no living parent or  
364 adult sibling, at least one adult nearest in kinship to the allegedly incapacitated person who can  
365 be found with reasonable diligence;

366 (c) any adult stepchildren whom the allegedly incapacitated person actively parented

367 during the stepchildren's minor years and with whom the allegedly incapacitated person had an  
368 ongoing relationship in the two-year period immediately before the filing of the petition;

369 (d) if applicable:

370 (i) a person responsible for the care of the allegedly incapacitated person;

371 (ii) any attorney currently representing the allegedly incapacitated person;

372 (iii) any representative payee appointed by the Social Security Administration for the  
373 allegedly incapacitated person;

374 (iv) a guardian or conservator acting for the allegedly incapacitated person in this state  
375 or in another jurisdiction;

376 (v) a trustee or custodian of a trust or custodianship of which the allegedly  
377 incapacitated person is a beneficiary;

378 (vi) any fiduciary for the allegedly incapacitated person appointed by the United States  
379 Department of Veterans Affairs;

380 (vii) an agent designated under a power of attorney for health care in which the  
381 allegedly incapacitated person is identified as the principal;

382 (viii) an agent designated under a power of attorney for finances in which the allegedly  
383 incapacitated person is identified as the principal;

384 (ix) a person nominated as guardian by the allegedly incapacitated person;

385 (x) a person nominated as guardian by the allegedly incapacitated person's parent or  
386 spouse in a will or other signed record;

387 (xii) a proposed guardian; and

388 (xiii) a person known by the petitioner to have routinely assisted the allegedly  
389 incapacitated person with decision making during the six months immediately before the filing  
390 of the petition; and

391 (e) any other person interested in the respondent's welfare the court determines.

392 (3) (a) Failure to give notice under Subsection (1) does not preclude the court from  
393 appointing a guardian.

394 (b) Notice shall be given to a person described in Subsection (2) even if the person is  
395 found after the filing of the petition.

396 (4) After the appointment of a guardian, the court shall provide notice of a hearing on  
397 any other petition for an order under this part, together with a copy of the petition or order, to:

- 398 (a) the incapacitated person subject to the guardianship;
- 399 (b) the guardian; and
- 400 (c) any other person the court determines.

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

402 **75-5-304. Findings -- Limited guardianship preferred -- Order of appointment.**

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

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

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

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

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

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

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

422 (b) The court may:

423 (i) proceed with an appointment upon a finding that the testamentary or instrumental  
424 guardian has failed to accept the appointment within 30 days after the testamentary or  
425 instrumental guardian received notice of the guardianship proceeding~~[. Alternatively, the court~~  
426 ~~may]; or~~

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

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

429 **75-5-305. Acceptance of appointment -- Consent to jurisdiction.**

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

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

434 (2) Notice of any proceeding shall be ~~[delivered to the guardian or mailed to him by~~  
435 ~~ordinary mail at his address as listed in the court records and to his address as then known to~~  
436 ~~the petitioner]~~ given to the guardian in accordance with Section 75-5-106 and Section  
437 75-5-303.5.

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

439 **75-5-310.5. Temporary guardians.**

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

441 (1) (a) If a person files a petition for the appointment of a temporary guardian for a  
442 person alleged to be incapacitated, the court shall give notice in accordance with Sections  
443 75-5-106 and 75-5-303.5.

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

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

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

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

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

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

456 (b) The authority of any permanent guardian previously appointed by the court is  
457 suspended so long as a temporary guardian has authority.

458 (4) A temporary guardian;

459 (a) may be removed at any time~~[-];~~ and

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

461 (5) A temporary guardian has all of the powers and duties of a permanent guardian as  
462 set forth in Section 75-5-312.

463 Section 14. Section 75-5-311.5 is enacted to read:

464 **75-5-311.5. Who may be a guardian for an incapacitated person -- Order of**  
465 **priority.**

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

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

471 (b) a person nominated as guardian by the incapacitated person, including the  
472 incapacitated person's most recent nomination made in a power of attorney or an advanced  
473 health care directive if:

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

476 (ii) the incapacitated person acted with sufficient mental capacity to make the  
477 nomination;

478 (c) a person nominated as guardian by the incapacitated person, including the  
479 incapacitated person's most recent nomination made in a power of attorney or an advanced  
480 health care directive;

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

483 (e) a spouse of the incapacitated person;

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

486 (g) the Office of Public Guardian created in Title 62A, Chapter 14, Office of Public  
487 Guardian Act; and

488 (h) a specialized care professional that is certified as a guardian or a master guardian by  
489 an organization that provides guardianship certification.

490 (2) (a) If two or more persons have equal priority under Subsection (1), the court shall



491 select as guardian the person the court considers best qualified.

492 (b) In determining the best qualified person, the court shall consider:

493 (i) the person's relationship with the incapacitated person;

494 (ii) the person's skills;

495 (iii) the expressed wishes of the incapacitated person;

496 (iv) the extent to which the person and the incapacitated person have similar values and  
497 preferences; and

498 (v) the likelihood the person will be able to perform the duties of a guardian  
499 successfully.

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

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

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

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

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

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

517 **75-5-312. General powers and duties of guardian -- Penalties.**

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

521 (2) Except as provided in Subsection (4), a guardian has the same powers, rights, and

522 duties respecting the [ward] incapacitated person that a parent has respecting the parent's  
523 unemancipated minor child.

524 (3) In particular, and without qualifying Subsections (1) and (2), a guardian has the  
525 following powers and duties, except as modified by order of the court:

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

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

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

539 (d) A guardian may not unreasonably restrict visitation with the [ward] incapacitated  
540 person by family, relatives, or friends.

541 (e) If no conservator for the estate of the [ward] incapacitated person has been  
542 appointed, the guardian may:

543 (i) institute proceedings to compel any person under a duty to support the ward or to  
544 pay sums for the welfare of the [ward] incapacitated person to perform that duty;

545 (ii) compel the production of the [ward's] incapacitated person's estate documents,  
546 including the [ward's] incapacitated person's will, trust, power of attorney, and any advance  
547 health care directive; and

548 (iii) receive money and tangible property deliverable to the [ward] incapacitated person  
549 and apply the money and property for support, care, and education of the ward:

550 (A) except that the guardian may not use funds from the [ward's] incapacitated person's  
551 estate for room and board that the guardian, the guardian's spouse, parent, or child have  
552 furnished the [ward] incapacitated person unless a charge for the service is approved by order

553 of the court made upon notice to at least one adult relative in the nearest degree of kinship to  
554 the [ward] incapacitated person in which there is an adult relative; and

555 (B) except that the guardian shall exercise care to conserve any excess for the [ward's]  
556 incapacitated person's needs.

557 (f) (i) A guardian is required to report the condition of the [ward] incapacitated person  
558 and of the estate that has been subject to the guardian's possession or control, as required by the  
559 court or court rule.

560 (ii) A guardian is required to immediately notify all interested persons if the guardian  
561 reasonably believes that the [ward's] incapacitated person's death is likely to occur within the  
562 next 30 days, based on:

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

564 (B) information from the [ward's] incapacitated person's physician or other medical  
565 care providers.

566 (iii) A guardian is required to immediately notify persons [who] that request  
567 notification and are not restricted in associating with the [ward pursuant to] incapacitated  
568 person under Section 75-5-312.5 of:

569 (A) the [ward's] incapacitated person's admission to a hospital for three or more days or  
570 to a hospice program;

571 (B) the [ward's] incapacitated person's death; and

572 (C) the arrangements for the disposition of the [ward's] incapacitated person's remains.

573 (iv) (A) Unless emergency conditions exist, a guardian is required to file with the court  
574 a notice of the guardian's intent to move the [ward] incapacitated person and to serve [the  
575 notice on all interested persons at least 10 days before the move.] notice to all interested  
576 persons in accordance with Section 75-5-106.

577 (B) The guardian shall take reasonable steps to notify all interested persons and to file  
578 the notice with the court as soon as practicable following the earlier of the move or the date  
579 when the guardian's intention to move the [ward] incapacitated person is made known to the  
580 ward, the ward's care giver, or any other third party.

581 (v) (A) If no conservator for the estate of the [ward] incapacitated person has been  
582 appointed, the guardian shall, for all estates in excess of \$50,000, excluding the residence  
583 owned by the [ward] incapacitated person, [send] file a report with a full accounting to the

584 court on an annual basis.

585 (B) For estates less than \$50,000, excluding the residence owned by the [ward]  
586 incapacitated person, the guardian shall fill out an informal annual report and [ma] file the  
587 report [~~to~~] with the court.

588 (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at  
589 the beginning and end of the reporting year, income received during the year, disbursements for  
590 the support of the [ward] incapacitated person, and other expenses incurred by the estate. The  
591 guardian shall also report the physical conditions of the [ward] incapacitated person, the place  
592 of residence, and a list of others living in the same household. The court may require  
593 additional information.

594 (D) The forms for both the informal report for estates under \$50,000, excluding the  
595 residence owned by the [ward] incapacitated person, and the full accounting report for larger  
596 estates shall be approved by the Judicial Council.

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

598 (F) If the [ward's] incapacitated person's income is limited to a federal or state program  
599 requiring an annual accounting report, a copy of that report may be submitted to the court in  
600 lieu of the required annual report.

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

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

607 (viii) If a guardian:

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

609 (B) is guilty of gross impropriety in handling the property of the [ward] incapacitated  
610 person; or

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

614 (ix) The court may also order restitution of funds misappropriated from the estate of [a

615 ~~ward]~~ an incapacitated person. The penalty shall be paid by the guardian and may not be paid  
616 by the estate.

617 (x) The provisions and penalties in this Subsection (3)(f) governing annual reports do  
618 not apply if the guardian or a coguardian is the parent of the ~~[ward]~~ incapacitated person.

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

622 (g) If a conservator has been appointed:

623 (i) all of the ~~[ward's]~~ incapacitated person's estate received by the guardian in excess of  
624 those funds expended to meet current expenses for support, care, and education of the ~~[ward]~~  
625 incapacitated person shall be paid to the conservator for management as provided in this code;  
626 and

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

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

630 (b) A guardian may not prohibit or place restrictions on association with a relative or  
631 qualified acquaintance of an adult ~~[ward]~~ incapacitated person, unless permitted by court order  
632 under Section 75-5-312.5.

633 (c) A guardian of an incapacitated person is not liable to a third person for acts of the  
634 ~~[guardian's ward]~~ incapacitated person solely by reason of the relationship described in  
635 Subsection (2).

636 (5) Any guardian of ~~[one]~~ an incapacitated person for whom a conservator also has  
637 been appointed shall control the custody and care of the ~~[ward]~~ incapacitated person and is  
638 entitled to receive reasonable sums for services and for room and board furnished to the ~~[ward]~~  
639 incapacitated person as agreed upon between the guardian and the conservator, if the amounts  
640 agreed upon are reasonable under the circumstances. The guardian may request the conservator  
641 to expend the ~~[ward's]~~ incapacitated person's estate by payment to third persons or institutions  
642 for the ~~[ward's]~~ incapacitated person's care and maintenance.

643 (6) A person ~~[who]~~ that refuses to accept the authority of a guardian with authority  
644 over financial decisions to transact business with the assets of the ~~[protected person]~~  
645 incapacitated person after receiving a certified copy of letters of guardianship is liable for costs,

646 expenses, attorney fees, and damages if the court determines that the person did not act in good  
647 faith in refusing to accept the authority of the guardian.

648 (7) A guardian shall, to the extent practicable, encourage the ~~[ward]~~ incapacitated  
649 person to participate in decisions, exercise self-determination, act on the ~~[ward's]~~ incapacitated  
650 person's own behalf, and develop or regain the capacity to manage the ~~[ward's]~~ incapacitated  
651 person's personal affairs. To the extent known, a guardian, in making decisions, shall consider  
652 the expressed desires and personal values of the ~~[ward]~~ incapacitated person.

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

654 **75-5-316. Expedited guardianship proceedings.**

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

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

659 (i) "Incapacitated person" means a resident of the Utah State Developmental Center  
660 who is the subject of guardianship proceedings under this section.

661 ~~[(i)]~~ (ii) "Limited guardianship" means a guardianship solely for the purpose of  
662 granting consent for medical care and for participation in approval of the ~~[ward's]~~ incapacitated  
663 person's individualized program plan.

664 ~~[(ii) "Ward" means a resident of the Utah State Developmental Center who is the~~  
665 ~~subject of guardianship proceedings under this section.]~~

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

669 (b) A person may seek the limited guardianship ~~[pro se]~~ without an attorney, using the  
670 forms described in this section.

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

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

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

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

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

683 (6) A person filing a petition under this section shall give notice in accordance with  
684 Sections 75-5-106 and 75-5-303.5.

685 (7) The court may, in ~~[its]~~ the court's discretion, appoint a guardian ad litem to  
686 represent the ~~[ward]~~ incapacitated person in the hearing, and may request independent  
687 evaluation by a physician appointed by the court. The physician shall submit his findings to the  
688 court in writing.

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

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

692 (b) the ~~[ward]~~ incapacitated person is incapacitated, based on the affidavit of the  
693 superintendent of the Utah State Developmental Center and any affidavit or testimony of  
694 persons entitled to receive notice or requested to present evidence under this section; and

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

696 (9) Venue for these expedited guardianship proceedings shall be the same as that  
697 described in Section 75-5-302.

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

699 (a) the interest of the petitioner;

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

701 (c) verification that the ~~[ward]~~ incapacitated person is a resident of the Utah State  
702 Developmental Center;

703 (d) the name and address of the nearest relative of the ~~[ward]~~ incapacitated person; and

704 (e) the reason for appointment of guardianship.

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

707 (a) that the ~~[ward]~~ incapacitated person is a resident of the Utah State Developmental

708 Center;

709 (b) the date the [~~ward~~] incapacitated person was originally admitted to the Utah State  
710 Developmental Center;

711 (c) the diagnosis of the [~~ward~~] incapacitated person, including a description of the  
712 [~~ward's~~] person's disabling condition, the level of the [~~ward's~~] incapacitated person's  
713 intellectual disability, and any medical or physical conditions of the [~~ward~~] incapacitated  
714 person;

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

717 (e) that because of that certification, the Utah State Developmental Center receives  
718 financial participation from the United States Government for [~~its~~] the Utah State  
719 Developmental Center's operation and maintenance costs; and

720 (f) that federal regulations under Title XIX require the [~~ward~~] incapacitated person to  
721 have a guardian appointed for the sole purpose of giving consent for medical and dental care  
722 and of participation in and approval of the [~~ward's~~] incapacitated person's individual program  
723 plan.

724 (12) If the court finds that, under the requirements of this section the proposed limited  
725 guardian should be appointed for an incapacitated person, [~~it~~] the court shall enter an order  
726 establishing that [~~limited guardianship in substantially the following form~~]:

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

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

731 (b) the [~~ward~~] incapacitated person is incapacitated;

732 (c) [~~(named guardian)~~] the limited guardian is appointed as the limited guardian of  
733 [~~(named ward)~~] the incapacitated person; and

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

735 (i) granting permission for medical and dental care on behalf of the [~~ward~~]  
736 incapacitated person; and

737 (ii) participation in the development and approval of the [~~ward's~~] incapacitated person's  
738 individual program plan.



739 (13) (a) Appointment of guardianship under this section places no additional  
740 responsibility or liability on the guardian with regard to the [~~ward~~] incapacitated person.

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

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

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

746 **75-5-402. Protective proceedings -- Jurisdiction of affairs of protected persons.**

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

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

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

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

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

760 **75-5-405.5. Notice and hearing for appointment of a conservator.**

761 (1) (a) Upon the filing of a petition under Section 75-5-404 for appointment of a  
762 conservator, the court shall:

763 (i) schedule a hearing on the petition; and

764 (ii) serve notice of a hearing on the petition in accordance with Section 75-5-106,  
765 together with a copy of the petition, personally on the protected person.

766 (c) If the protected person's whereabouts are unknown or personal service cannot be  
767 made, service on the protected person shall be made in accordance with the Utah Rules of Civil  
768 Procedure, Rule 4.

769 (d) The notice shall:

770 (i) inform the protected person of the person's rights at the hearing, including the right  
771 to an attorney and to attend the hearing; and

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

774 (e) The court may not grant a petition for appointment of a conservator or other  
775 protective order under this part if notice substantially complying with this Subsection (1) is not  
776 served on the protected person.

777 (2) In a proceeding on a petition under Section [75-5-404](#), the notice required under  
778 Subsection (1) shall be given to the following persons if the person may be found through  
779 reasonable diligence:

780 (a) (i) the protected person's spouse; or

781 (ii) if the protected person has no spouse, any adult with whom the protected person  
782 has shared household responsibilities for more than six months in the 12-month period before  
783 the filing of the petition;

784 (b) (i) the protected person's adult children;

785 (ii) if the protected person has no adult children, each parent and adult sibling of the  
786 person; or

787 (iii) if the protected person has no adult children or no living parent or adult sibling, at  
788 least one adult nearest in kinship to the protected person who can be found with reasonable  
789 diligence;

790 (c) any adult stepchildren whom the protected person actively parented during the  
791 stepchildren's minor years and with whom the protected person had an ongoing relationship  
792 during the two years immediately before the filing of the petition;

793 (d) if applicable:

794 (i) a person responsible for the care or custody of the protected person;

795 (ii) any attorney currently representing the protected person;

796 (iii) the representative payee appointed by the Social Security Administration for the  
797 protected person;

798 (iv) a guardian or conservator acting for the protected person in this state or another  
799 jurisdiction;

800 (v) a trustee or custodian of a trust or custodianship of which the protected person is a

801 beneficiary;

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

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

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

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

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

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

816 (e) any other person interested in the protected person's welfare that the court  
817 determines.

818 (3) (a) Failure to give notice under Subsection (1) does not preclude the court from  
819 appointing a conservator.

820 (b) Notice shall be given to a person described in Subsection (2) even if the person is  
821 found after the filing of the petition.

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

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

826 (b) the conservator; and

827 (c) any other person the court determines.

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

829 **75-5-406. Protective proceedings -- Request for notice -- Interested person.**

830 (1) Any interested person [who] that desires to be notified before any order is made in  
831 a protective proceeding may file with the [registrar] clerk of the court a request for notice

832 subsequent to payment of any fee required by statute or court rule. [The]

833 (2) In accordance with the Utah Rules of Civil Procedure, Rule 5, the clerk shall [mail  
834 a copy of the demand] give notice of the request to the conservator if one has been appointed.

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

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

841 Section 20. Section **75-5-407** is amended to read:

842 **75-5-407. Procedure concerning hearing and order on original petition.**

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

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

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

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

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

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

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

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

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

863 (4) If the alleged disability is mental illness, mental deficiency, physical illness or  
864 disability, advanced age, chronic use of drugs, or chronic intoxication, the court may:

865 (a) [direct] order that the [person to be protected be examined by a physician  
866 designated by the court, preferably a physician who is not connected with any institution in  
867 which the person is a patient or is detained.] protected person be examined; and

868 (b) appoint one of the following persons to examine the protected person:

869 (i) a licensed physician;

870 (ii) a psychologist;

871 (iii) a social worker; or

872 (iv) an individual who:

873 (A) is qualified to evaluate the person's alleged cognitive and functional abilities and  
874 limitations; and

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

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

879 ~~[(5)]~~ (6) After hearing, upon finding that a basis for the appointment of a conservator  
880 or other protective order has been established, the court shall make an appointment or other  
881 appropriate protective order.

882 Section 21. Section ~~75-5-410.5~~ is enacted to read:

883 **75-5-410.5. Who may be a conservator -- Order of priority.**

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

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

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

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

892 and

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

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

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

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

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

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

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

903 (b) the person's skills;

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

905 (d) the extent to which the person and the protected person have similar values and  
906 preference; and

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

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

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

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

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

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

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

924 **75-5-412. Terms and requirements of bonds.**

925 (1) The following requirements and provisions apply to any bond required under  
926 Section [75-5-411](#):

927 (a) Unless otherwise provided by the terms of the approved bond, sureties are jointly  
928 and severally liable with the conservator and with each other[;].

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

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

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

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

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

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

943 **75-5-413. Acceptance of appointment -- Consent to jurisdiction.**

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

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

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

951 **75-5-417. General duty of conservator.**

952 (1) A conservator shall:

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

954 (b) observe the standards of care as set forth in Section [75-7-902](#).

955 (2) (a) The conservator shall, for all estates in excess of \$50,000, excluding the

956 residence owned by the ward, ~~send~~ file a report with a full accounting to the court on an  
957 annual basis.

958 (b) For estates less than \$50,000, excluding the residence owned by the ward, the  
959 conservator shall fill out an informal annual report and ~~mail~~ file the report to the court.

960 (c) The report shall include the following:

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

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

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

964 (iv) other expenses incurred by the estate.

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

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

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

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

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

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

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

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

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

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

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

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

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



987 **75-5-428. Claims against protected person -- Enforcement.**

988 (1) (a) A conservator [~~must~~] shall pay from the estate all just claims against the estate  
989 and against the protected person arising before or after the conservatorship upon their  
990 presentation and allowance.

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

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

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

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

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

1000 (c) A claim is considered presented on the first to occur of receipt of the written  
1001 statement of claim by the conservator, or the filing of the claim with the court.

1002 (2) (a) A presented claim is allowed if [~~it~~] the claim is not disallowed by written  
1003 statement mailed by the conservator to the claimant within 60 days after [~~its~~] the claim's  
1004 presentation.

1005 (b) The presentation of a claim tolls any statute of limitation relating to the claim until  
1006 30 days after [~~its~~] the claim's disallowance.

1007 (3) (a) A claimant whose claim has not been paid may petition the court for  
1008 determination of [~~his~~] the claimant's claim at any time before [~~it~~] the claim is barred by the  
1009 applicable statute of limitation, and, upon due proof, procure an order for its allowance and  
1010 payment from the estate.

1011 (b) If a proceeding is pending against a protected person at the time of appointment of  
1012 a conservator or is initiated against the protected person thereafter, the moving party [~~must~~]  
1013 shall give notice of the proceeding to the conservator in accordance with Section [75-5-106](#) if  
1014 the outcome is to constitute a claim against the estate.

1015 (4) If it appears that the estate in conservatorship is likely to be exhausted before all  
1016 existing claims are paid, preference is to be given to prior claims for the care, maintenance, and  
1017 education of the protected person or [~~his~~] the protected person's dependents and existing claims

1018 for expenses of administration.

1019 Section 26. **Repealer.**

1020 This bill repeals:

1021 Section **75-5-308, Visitor in guardianship proceeding.**

1022 Section **75-5-309, Notices in guardianship proceedings.**

1023 Section **75-5-311, Who may be guardian -- Priorities.**

1024 Section **75-5-405, Notice.**

1025 Section **75-5-410, Who may be appointed conservator -- Priorities.**

1026 Section 27. **Effective date.**

1027 This bill takes effect on January 1, 2021.