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~~text~~ shows text that was in SB0189 but was deleted in SB0189S01.

text shows text that was not in SB0189 but was inserted into SB0189S01.

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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: _____

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

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

Money Appropriated in this Bill:

None

Other Special Clauses:

~~None~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63I-2-275, as last amended by Laws of Utah 2018, Chapter 455

75-5-207, as last amended by Laws of Utah 1995, Chapter 156

75-5-208, as last amended by Laws of Utah 1985, Chapter 41

75-5-303, as last amended by Laws of Utah 2018, Chapter 455

75-5-304, as last amended by Laws of Utah 2017, Chapter 403

75-5-305, as last amended by Laws of Utah 1977, Chapter 194

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75-5-310.5, as enacted by Laws of Utah 2014, Chapter 142

75-5-312, as last amended by Laws of Utah 2018, Chapters 244 and 294

75-5-316, as last amended by Laws of Utah 2011, Chapter 366

75-5-402, as last amended by Laws of Utah 1992, Chapter 30

75-5-406, as enacted by Laws of Utah 1975, Chapter 150

75-5-407, as last amended by Laws of Utah 2013, Chapter 364

75-5-412, as enacted by Laws of Utah 1975, Chapter 150

75-5-413, as enacted by Laws of Utah 1975, Chapter 150

75-5-417, as last amended by Laws of Utah 2004, Chapter 89

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

ENACTS:

75-5-101.5, Utah Code Annotated 1953

75-5-106, Utah Code Annotated 1953

75-5-107, Utah Code Annotated 1953

75-5-108, Utah Code Annotated 1953

75-5-207.5, Utah Code Annotated 1953

75-5-303.5, Utah Code Annotated 1953

75-5-311.5, Utah Code Annotated 1953

75-5-405.5, Utah Code Annotated 1953

75-5-410.5, Utah Code Annotated 1953

REPEALS:

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

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

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

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

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

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

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

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

Subsection 75-5-303[~~(5)(d)~~](6)(e), regarding when counsel is not required for a person

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who is alleged to be incapacitated, is repealed on July 1, 2028.

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

75-5-101.5. Definitions.

As used in this chapter:

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

(2) "Visitor" means an individual who:

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

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

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

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

75-5-106. Notice of a hearing.

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

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

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

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

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

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

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

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

(b) been convicted of:

(i) a felony;

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

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

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

(a) a felony;

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

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

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

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

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

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

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

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

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

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

(a) reasonable compensation for services; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~the requested appointment, it may make the appointment.]~~

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

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

(i) a qualified person seeks appointment;

(ii) venue is proper;

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

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

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

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

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

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

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

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

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

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

~~(a) :~~ (a) : the court shall:

(a) schedule a hearing; and

~~(b) the petitioner shall:~~

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

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

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

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(C) any adult with whom the minor resides;

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

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

and

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

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

(B) any person nominated as guardian by a parent of the minor;

(C) each grandparent and adult sibling of the minor;

(D) any guardian or conservator acting for the minor in any jurisdiction; and

(E) any other person the court determines.

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

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

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

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

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

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

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

~~— (a) interview the petitioner and the minor;~~

~~— (b) if the petitioner alleges the parent cannot be located, ascertain whether the parent cannot be located with due diligence; and~~

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~~(c) investigate any other matter relating to the petition the court directs.~~

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the court determines that the petition is without merit, the attorney fees and court

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costs shall be paid by the person filing the petition.

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

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

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

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

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

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

(4) A court may:

(a) ~~{A}~~ order a person who is alleged to be incapacitated ~~{may}~~ be examined ~~{by~~ }; and

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

(i) a licensed physician;

(ii) a psychologist;

(iii) a social worker;

(iv) an individual who:

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

(B) will not be advantaged or disadvantaged by a decision to grant the petition or

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otherwise have a conflict of interest.

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

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

(b) A visitor may:

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

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

(B) visit the place that the person will be detained or reside if the requested

appointment is made;

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

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

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

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

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

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

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

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

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

~~[(i)]~~ (i) severe dementia due to Alzheimer's Disease;

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

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

(B) an intelligence quotient score under 25.

~~[(c) The person]~~

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

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

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(B) present evidence~~[-to]~~;

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

(D) a trial by jury.

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

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

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

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

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

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

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

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

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

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

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

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

(a) schedule a hearing on the petition~~[-]~~; and

~~[(2) (a) b]~~ ~~[-A copy of a petition under Section 75-5-303 and]~~ ~~serve~~ notice of ~~fa~~ the hearing on the petition in accordance with Section 75-5-106~~[- shall be served]~~, together with a copy of the petition, personally on the person for whom the guardianship is sought.

~~[(b) c]~~ The notice shall:

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

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

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

(~~f~~~~3~~~~2~~) In a proceeding on a petition under Section 75-5-303, the notice required under Subsection (~~f~~~~2~~~~1~~)(b) shall be given to:

~~(a) the person alleged to be incapacitated;~~

~~(b) the following persons if the person may be found through reasonable diligence:~~

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

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

(~~f~~~~c~~~~b~~) (i) the allegedly incapacitated person's adult children;

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

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

(~~f~~~~d~~~~c~~) any adult stepchildren whom the allegedly incapacitated person actively parented during the stepchildren's minor years and with whom the allegedly incapacitated person had an ongoing relationship in the two-year period immediately before the filing of the petition;

(~~f~~~~e~~~~d~~) if applicable:

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

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

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

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

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

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

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

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

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

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

(xi) a proposed guardian; and

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

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

~~(4)~~3 (a) Failure to give notice under Subsection ~~(2)~~1 does not preclude the court from appointing a guardian.

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

~~(5)~~4 After the appointment of a guardian, ~~the court shall provide~~ notice of a hearing on any other petition for an order under this part, together with a copy of the petition or order. ~~f shall be given~~ to:

(a) the incapacitated person subject to the guardianship;

(b) the guardian; and

(c) any other person the court determines.

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

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

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

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person.

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

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

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

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

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

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

(b) The court may:

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

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

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

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

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

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

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

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75-5-303.5.

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

75-5-310.5. Temporary guardians.

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

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

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

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

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

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

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

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

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

(4) A temporary guardian:

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

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

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

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

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

(1) Except as provided in Subsection (3), the court in appointing a guardian for a person alleged to be incapacitated shall consider persons qualified to be guardian in the

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following order of priority:

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

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

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

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

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

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

(e) a spouse of the incapacitated person;

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

(g) the Office of Public Guardian created in Title 62A, Chapter 14, Office of Public Guardian Act ~~f.;~~ and

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

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

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

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

(ii) the person's skills;

(iii) the expressed wishes of the incapacitated person;

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

(v) the likelihood the person will be able to perform the duties of a guardian

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successfully.

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A guardian is required to immediately notify all interested persons if the guardian

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reasonably believes that the [ward's] incapacitated person's death is likely to occur within the next 30 days, based on:

(A) the guardian's own observations; or

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

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

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

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

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

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

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

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

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

(C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the [ward] incapacitated person, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the [ward] incapacitated person, the place

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of residence, and a list of others living in the same household. The court may require additional information.

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

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

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

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

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

(viii) If a guardian:

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

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

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

(ix) The court may also order restitution of funds misappropriated from the estate of [a ward] an incapacitated person. The penalty shall be paid by the guardian and may not be paid by the estate.

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

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

(g) If a conservator has been appointed:

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

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

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

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

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

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

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

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

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

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75-5-316. Expedited guardianship proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the interest of the petitioner;

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

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

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

(e) the reason for appointment of guardianship.

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

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

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

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

(d) that the Utah State Developmental Center is certified as an intermediate care

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facility for people with an intellectual disability;

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

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

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

~~[The court finds that:]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) (a) ii~~ serve notice of a hearing on the petition in accordance with Section 75-5-106 ~~;~~ together with a copy of the petition, personally on the protected person.

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

~~(c) d~~ The notice shall:

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

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

~~(d) e~~ The court may not grant a petition for appointment of a conservator or other protective order under this part if notice substantially complying with this Subsection ~~(2) 1~~ is not served on the protected person.

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(f3)2) In a proceeding on a petition under Section 75-5-404, the notice required under Subsection (f2)1) shall be given to:

~~(a)~~ the protected person;

~~(b)~~ the following persons if the person may be found through reasonable diligence:

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

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

~~(f)c~~ (b) (i) the protected person's adult children;

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

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

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

~~(f)e~~ (d) if applicable:

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

(ii) any attorney currently representing the protected person;

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

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

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

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

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

(viii) an agent designated under a power of attorney for finances in which the protected

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person is identified as the principal:

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

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

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

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

(~~4~~3) (a) Failure to give notice under Subsection (~~2~~1) does not preclude the court from appointing a conservator.

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

(~~5~~4) After the appointment of a conservator, notice of a hearing on any other petition for an order under this part, together with a copy of the petition, shall be given to:

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

(b) the conservator; and

(c) any other person the court determines.

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

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

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

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

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

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filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a); and~~

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

(i) a licensed physician;

(~~fb~~ii) a psychologist;

(~~fc~~iii) a social worker; or

(~~fd~~iv) an individual who:

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

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

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

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

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

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

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

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

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

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

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

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

(d) a spouse of the protected person; and

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

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

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

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

(b) the person's skills;

(c) the expressed wishes of the protected person;

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

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

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

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

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

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

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

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

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

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

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

(b) (i) By executing an approved bond of a conservator, the surety consents to the

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jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant.

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

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

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

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

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

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

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

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

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

75-5-417. General duty of conservator.

(1) A conservator shall:

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

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

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

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

(c) The report shall include the following:

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

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

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

(iv) other expenses incurred by the estate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 26. **Repealer.**

This bill repeals:

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

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

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

Section 75-5-405, Notice.

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

Section 27. Effective date.

This bill takes effect on January 1, 2021.