

Representative Nelson T. Abbott proposes the following substitute bill:

GUARDIANSHIP BILL OF RIGHTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill addresses the rights of a person with respect to a guardianship.

Highlighted Provisions:

This bill:

- ▶ addresses the rights of a person alleged to be incapacitated with respect to a guardianship;
- ▶ addresses the rights of an incapacitated person with respect to a guardianship;
- ▶ provides that the rights of an incapacitated person do not abrogate any remedy provided by law; and
- ▶ provides that the rights of an incapacitated person may be addressed in a guardianship proceeding or a private cause of action.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

75-5-301.5, Utah Code Annotated 1953



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

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

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

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

(a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding;

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

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

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

(e) be treated with respect and dignity.

(2) Except as otherwise provided by this chapter or any other law, an incapacitated person for whom a guardian is appointed has right to:

(a) have counsel represent the incapacitated person at any time after the guardian is appointed;

(b) have a relative, a physician, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;

(c) receive a copy of all documents filed in court regarding the guardianship;

(d) receive information about guardianships from the court;

(e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;

(f) participate in developing an individualized plan for the incapacitated person's care, including:

(i) managing the incapacitated person's assets and property;

(ii) determining the incapacitated person's residence; and

(iii) determining the services to be received by the incapacitated person;

(g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and

57 moral beliefs;

58 (h) remain as independent as possible, including giving deference to the incapacitated
59 person's preference for the incapacitated person's residence and standard of living;

60 (i) as expressed or demonstrated before a determination of capacity was made; or

61 (ii) as currently expressed or demonstrated by the incapacitated person if the preference
62 is reasonable under the circumstances;

63 (i) be granted the greatest degree of freedom possible that is consistent with the reasons
64 for the guardianship;

65 (j) be able to exercise control over all aspects of the incapacitated person's life that are
66 not granted to the guardian in the order of appointment;

67 (k) engage in any activity that the court has not expressly reserved for the guardian,
68 including marriage or domestic partnership, traveling, working, or having a driver license;

69 (l) be treated with respect and dignity;

70 (m) be treated fairly by the incapacitated person's guardian;

71 (n) maintain privacy and confidentiality in personal matters;

72 (o) receive telephone calls and personal mail and associate with relatives and
73 acquaintances unless the guardian and the court determine that the association should be
74 restricted or prohibited in accordance with Section [75-5-312.5](#);

75 (p) receive timely, effective, and appropriate health care and medical treatment that
76 does not violate the incapacitated person's rights;

77 (q) have all services provided by a guardian at a reasonable rate of compensation;

78 (r) have a court review any request for payment by a guardian to avoid excessive or
79 unnecessary fees or duplicative billing;

80 (s) receive prudent financial management of the incapacitated person's property and
81 regular detailed reports of financial accounting, including reports on:

82 (i) any investments or trusts that are held for the incapacitated person's benefit; and

83 (ii) any expenditures or fees charged to the incapacitated person's estate;

84 (t) receive and control the incapacitated person's salary;

85 (u) maintain a bank account and manage the incapacitated person's personal money;

86 and

87 (v) ask the court to:

88 (i) review the management activity of a guardian if a dispute cannot be resolved
89 regarding the guardian's management;

90 (ii) continue to review the need for a guardianship or to modify or terminate a
91 guardianship; and

92 (iii) enter an order restoring the incapacitated person's capacity at the earliest possible
93 time.

94 (3) The rights of an incapacitated person under this section do not abrogate any remedy
95 provided by law.

96 (4) Any right described in this section may be:

97 (a) addressed in a guardianship proceeding; or

98 (b) enforced through a private cause of action.