

HOUSE BILL NO. 777

INTRODUCED BY B. CLOSE, J. REAVIS, A. GRIFFITH, T. FRANCE, B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GUARDIANSHIP AND CONSERVATORSHIP LAWS; REQUIRING A PROSPECTIVE GUARDIAN OR CONSERVATOR TO DISCLOSE WHETHER THE PERSON HAS BEEN A DEBTOR IN A BANKRUPTCY PROCEEDING OR HAS BEEN CONVICTED OF CERTAIN CRIMES; REQUIRING CERTIFICATION OF PROFESSIONAL GUARDIANS OR CONSERVATORS AND CERTAIN DISCLOSURES; CLARIFYING THE DUTIES OF A GUARDIAN OF AN ADULT IN REGARD TO VISITATION AND COMMUNICATION WITH OTHERS; REQUIRING THAT A GUARDIAN OF AN ADULT SUBMIT A GUARDIANSHIP PLAN; PROVIDING A DEFINITION; AND AMENDING SECTIONS 72-5-321 AND 72-5-324, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Disclosure of bankruptcy or criminal history.** (1) Before accepting appointment as a guardian or conservator under this chapter, 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) has been convicted of:
 - (i) a felony;
 - (ii) a crime involving dishonesty, neglect, violence, or use of physical force; or
 - (iii) a crime relevant to the functions the person would assume as guardian or conservator.

(2) A guardian or conservator who engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a crime described in subsection (1)(b) shall promptly disclose that knowledge to the court.

(3) A conservator who engages or anticipates engaging an agent to manage the finances of a protected person and who knows the agent is or has been a debtor in a proceeding described in subsection (1)(a) shall promptly disclose that knowledge to the court.

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NEW SECTION. Section 2. Certification of professional guardian or conservator -- disclosure.

(1) If a petition seeks the appointment of a professional guardian or conservator, the petition must contain the following information in addition to information required under part 2, 3, or 4 of this chapter:

(a) proof that the professional guardian or conservator or an individual making decisions for clients or managing client assets for the professional guardian or conservator is certified by the center for guardianship certification or its successor organization as a national certified guardian or a national master guardian;

(b) a description of the events that led to the involvement of the professional guardian or conservator in the proceeding;

(c) the educational background, professional experience, investment credentials, and licensing of an individual responsible as or acting on behalf of the professional guardian or conservator;

(d) a description of fees charged by the professional guardian or conservator, including whether:

(i) the fees are on an hourly basis or are based on charges for individual services rendered and how the fees will be assessed or charged, whether by commission, monthly charges, or another method; and

(ii) there is any revenue sharing arrangement between the professional guardian or conservator and any other person;

(e) the names of providers of direct services to wards or protected persons that are repeatedly used by the professional guardian or conservator under contract;

(f) a disclosure of any conflict of interest if a person nominated to act as a professional guardian or conservator will employ a person in which the professional guardian or conservator has a pecuniary or financial interest;

(g) the number of wards or protected persons for whom the professional guardian or conservator performs services at the time of the petition;

(h) whether the professional guardian or conservator has ever had a claim against the bond of the professional guardian or conservator and a description of the circumstances causing the claim;

(i) whether the professional guardian or conservator or any staff with responsibility for making decisions for wards or protected persons or for management of the assets of a ward or protected person has ever been denied a professional license that is directly related to responsibilities of the professional guardian or

1 conservator or has ever held a professional license that is directly related to responsibilities of the professional
2 guardian or conservator that was revoked or canceled. If a license has been denied, revoked, or canceled, the
3 petition must reflect the date of the denial, revocation, or cancellation and the name of the regulatory body that
4 denied, revoked, or canceled the license. A professional license under this subsection (1)(i) includes a
5 certificate described in subsection (1)(a).

6 (j) whether the professional guardian or conservator and any staff responsible for making
7 decisions for wards or protected persons or for management of the assets of a ward or protected person is or
8 has been certified by a national or state association of professional guardians or conservators, the name of the
9 association, and whether the professional guardian or conservator or other staff person has ever been
10 disciplined by the association and, if so, the result of the disciplinary action;

11 (k) the name, address, and telephone number of the individual who is to act as primary
12 decisionmaker for the ward or protected person and the name of the person with whom the ward or protected
13 person will have contact if that person is not the person who will act as primary decisionmaker for the ward or
14 protected person; and

15 (l) an acknowledgment by the professional guardian or conservator that the professional guardian
16 or conservator will make all investment of the assets of a ward or protected person in accordance with the
17 standards established for a fiduciary.

18 (2) (a) If a petition seeks the appointment of a professional guardian or conservator, the
19 professional guardian or conservator is subject to the disclosure requirements under [section 1].

20 (b) A professional guardian or conservator shall disclose to the court any criminal conviction of the
21 professional guardian or conservator that occurs after the disclosure was made.

22 (3) If a petition seeks the appointment of an employee of a state agency or the public
23 administrator:

24 (a) the petition is not required to contain the information required under subsection (1)(e) or (1)(k);
25 and

26 (b) if the petition is granted and the state employee or the public administrator is appointed, the
27 state employee or the public administrator shall file with the court within 3 days of receiving notice of
28 appointment a statement containing the name, address, and telephone number of the individual who will act as

1 primary decisionmaker for the ward or protected person and the name of the person with whom the ward or
2 protected person will have personal contact if the person named as primary decisionmaker will not have
3 personal contact with the ward or protected person.

4 (4) If the court appoints a professional guardian or conservator under this chapter, the professional
5 guardian or conservator shall:

6 (a) update all information required to be disclosed under subsection (1) and provide a copy of the
7 updated disclosure on the request of a ward or protected person or a person who has requested notice under
8 72-5-318 or 72-5-404; and

9 (b) provide an updated statement to the court, ward or protected person, or a person who has
10 requested notice any time there is a change in the information provided under subsection (1)(k) or (3)(b).

11 (5) As used in this section, "professional guardian or conservator" means a person nominated as a
12 guardian or conservator or serving as a guardian or conservator who is acting at the same time as a guardian
13 or conservator for three or more wards or protected persons who are not related to the guardian or conservator.

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15 **NEW SECTION. Section 3. Guardian's plan.** (1) A guardian shall file with the court a plan for the
16 care of the ward no later than 60 days after appointment and when there is a significant change in
17 circumstances or when the guardian seeks to deviate significantly from the plan. The plan must be based on
18 the needs of the ward and take into account the best interest of the ward and the ward's preferences, values,
19 and prior directions to the extent known to or reasonably ascertainable by the guardian. The guardian shall
20 include in the plan:

21 (a) the living arrangement, services, and support the guardian expects to arrange, facilitate, or
22 continue for the ward;

23 (b) social and educational activities the guardian expects to facilitate on behalf of the ward;

24 (c) any person with whom the ward has a close personal relationship or relationship involving
25 regular visitation and any plan the guardian has for facilitating visits with the person;

26 (d) the anticipated nature and frequency of the guardian's visits and communication with the adult;

27 (e) goals for the ward, including any goal related to the restoration of the ward's rights and how the
28 guardian anticipates achieving the goals;

1 (f) whether the ward has an existing plan and, if so, whether the guardian's plan is consistent with
2 the ward's plan; and

3 (g) a statement or list of the amount the guardian proposes to charge for each service the guardian
4 anticipates providing to the adult.

5 (2) A guardian shall give notice of the filing of the guardian's plan under subsection (1), together
6 with a copy of the plan, to the ward, a person entitled to notice under this part, and to any person the court
7 orders. The notice must include a statement of the right to object to the plan and must be given no later than 14
8 days after the filing.

9 (3) A ward and a person entitled to notice and a copy of the guardian's plan under subsection (2)
10 may object to the plan.

11 (4) The court shall review the guardian's plan filed under subsection (1) and determine whether to
12 approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an
13 objection under subsection (3) and whether the plan is consistent with the guardian's duties and powers. The
14 court may not approve the plan until 30 days after the plan's filing.

15 (5) After the guardian's plan filed under this section is approved by the court, the guardian shall
16 provide a copy of the plan to the ward, a person entitled to notice under this part, and to any person the court
17 orders.

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19 **Section 4.** Section 72-5-321, MCA, is amended to read:

20 **"72-5-321. Powers and duties of guardian of incapacitated person.** (1) The powers and duties of
21 a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to
22 report the condition of the incapacitated person and of the estate that has been subject to the guardian's
23 possession and control, as required by the court or by court rule.

24 (2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting
25 the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third
26 persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the
27 foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

28 (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction

1 relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward
2 and may establish the ward's place of residence within or outside of this state.

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

8 (c) A full guardian may give any consents or approvals that may be necessary to enable the ward
9 to receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not
10 authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not
11 resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the
12 Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full
13 guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining
14 treatment or to a do not resuscitate order. The court may not grant that authority if it conflicts with the ward's
15 wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall
16 determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current
17 circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate
18 order.

19 (d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

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

22 (ii) receive money and tangible property deliverable to the ward and apply the money and property
23 for support, care, and education of the ward. However, the full guardian may not use funds from the ward's
24 estate for room and board that the full guardian or the full guardian's spouse, parent, or child has furnished the
25 ward unless a charge for the service is approved by order of the court made upon notice to at least one of the
26 next of kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any
27 excess for the ward's needs.

28 (e) Unless waived by the court, a full guardian is required to report the condition of the ward and of

1 the estate that has been subject to the full guardian's possession or control annually for the preceding year. A
2 copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective
3 request under 72-5-318.

4 (f) If a conservator has been appointed, all of the ward's estate received by the full guardian in
5 excess of those funds expended to meet current expenses for support, care, and education of the ward must be
6 paid to the conservator for management as provided in this chapter, and the full guardian must account to the
7 conservator for funds expended.

8 (3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the
9 court shall order the guardian to file the report and give good cause for the guardian's failure to file a timely
10 report.

11 (4) Any full guardian of one for whom a conservator also has been appointed shall control the
12 custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall
13 control those aspects of the custody and care of the ward over which the limited guardian is given authority by
14 the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive
15 reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon
16 between the guardian and the conservator, provided the amounts agreed upon are reasonable under the
17 circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may
18 request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's
19 care and maintenance.

20 (5) Except as provided in subsection (6), a full guardian or limited guardian may not involuntarily
21 commit for mental health treatment or for treatment of a developmental disability or for observation or
22 evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-
23 5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed.
24 This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters
25 20 and 21.

26 (6) (a) If the court has found that a ward has a primary diagnosis of a major neurocognitive
27 disorder, as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by
28 the American psychiatric association, and because of this disorder the ward is unwilling or unable to give

1 informed consent to treatment, a full guardian or limited guardian may seek admission of the ward for
2 stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other
3 than the Montana state hospital.

4 (b) If the ward is admitted to the Montana mental health nursing care center, the court shall review
5 every 90 days whether the Montana mental health nursing care center is the appropriate placement for the
6 ward or whether a less restrictive placement exists.

7 (7) A full guardian or limited guardian may not restrict a ward's ability to communicate, visit, or
8 interact with others, including receiving visitors and making or receiving telephone calls, personal mail, or
9 electronic communications, including through social media, unless:

10 (a) the guardian has been authorized by the court by specific order to restrict communications,
11 visits, or interactions;

12 (b) a protective order or protective arrangement instead of guardianship is in effect that limits
13 contact between the ward and a person; or

14 (c) the guardian has good cause to believe restriction is necessary because interaction with a
15 specified person poses a risk of significant physical, psychological, or financial harm to the ward, and the
16 restriction is:

17 (i) for a period of not more than 7 business days if the person has a family or preexisting social
18 relationship with the ward; or

19 (ii) for a period of not more than 60 days if the person does not have a family or preexisting social
20 relationship with the ward.

21 ~~(7)~~(8) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited
22 guardian, upon an order of the court and if there is no personal representative authorized to do so, may make
23 necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains,
24 including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture,
25 and other personal effects that may be in the possession of the person in charge of the ward's care, comfort,
26 and maintenance at the time of the ward's death."

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28 **Section 5.** Section 72-5-324, MCA, is amended to read:

1 **"72-5-324. Termination of appointment -- how effected -- certain liabilities and obligations not**
 2 **affected.** (1) (a) Except as provided in subsection (1)(b), the authority and responsibility of a guardian for an
 3 incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the
 4 guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an
 5 informally probated will terminates if the will is later denied probate in a formal proceeding.

6 (b) The guardian's authority and responsibility for an incapacitated person who dies while the
 7 person is a ward of the guardian terminate when the guardian has completed arrangements for the final
 8 disposition of the ward's physical remains and personal effects, as provided in 72-5-321~~(7)~~(8).

9 (2) Termination does not affect the guardian's liability for prior acts or the guardian's obligation to
 10 account for funds and assets of the ward."
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12 NEW SECTION. Section 6. Transition -- existing guardians or conservators. A guardian or
 13 conservator appointed prior to [the effective date of this act] shall comply with [this act] by October 1, 2028.
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15 NEW SECTION. Section 7. Codification instruction. (1) [Sections 1 and 2] are intended to be
 16 codified as an integral part of Title 72, chapter 5, part 1, and the provisions of Title 72, chapter 5, part 1, apply
 17 to [sections 1 and 2].

18 (2) [Section 3] is intended to be codified as an integral part of Title 72, chapter 5, part 3, and the
 19 provisions of Title 72, chapter 5, part 3, apply to [section 3].
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