_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO GUARDIANSHIP AND CONSERVATORSHIP; CREATING CERTIFICATION REQUIREMENTS FOR A PROFESSIONAL GUARDIAN OR CONSERVATOR; ESTABLISHING WHEN CERTIFICATION IS REQUIRED; REQUIRING A GUARDIAN OR CONSERVATOR TO REPORT OR ACCOUNT TO THE COURT AT LEAST ANNUALLY; CLARIFYING THAT ANY TYPE OF GUARDIAN MAY COMMIT THE CRIME OF EXPLOITATION OF AN INCAPACITATED PERSON OR A VULNERABLE ADULT; REQUIRING A COURT TO SEND PLAIN LANGUAGE INFORMATION TO A PERSON WHO IS THE SUBJECT OF A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING; REQUIRING TRAINING BEFORE AN APPOINTMENT AS A GUARDIAN OR CONSERVATOR; REQUIRING A BACKGROUND CHECK AND CREDIT CHECK OR AN AFFIDAVIT PRIOR TO AN APPOINTMENT AS A GUARDIAN OR CONSERVATOR; PROHIBITING A TEMPORARY GUARDIAN FROM SELLING A WARD'S PROPERTY WITHOUT PRIOR APPROVAL OF THE COURT; EXEMPTING TEMPORARY GUARDIANS FROM TRAINING REQUIREMENTS; SETTING SPENDING LIMITATIONS AND ESTABLISHING REPORTING REQUIREMENTS FOR TEMPORARY GUARDIANS; AMENDING SECTIONS 45-5-804, 72-5-101, 72-5-312, 72-5-314, 72-5-315, 72-5-316, 72-5-317, 72-5-321, 72-5-324, 72-5-410, 72-5-438, AND 72-5-445, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Professional guardian and professional conservator -- certification.** (1) A professional guardian or professional conservator must be certified by a guardianship or conservatorship organization that requires an applicant for certification to:

(a) be at least 21 years of age;

(b) submit proof of successful completion of 20 continuing education units on guardianship or

conservatorship within 2 years prior to the date of the application;

(c) submit proof of education for third-party verification;

(d) submit to a criminal background check;

(e) not have been civilly liable for, criminally convicted of, or relieved of responsibilities as a guardian or conservator by a court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, exploitation, abuse, or conversion;

(f) be bonded or obtain appropriate bonding insurance after certification in accordance with state statutes and local practice;

(g) not have been found liable in a subrogation action by an insurance agent or bonding agent;

(h) not have been disciplined by a state or national certification or licensing organization in any profession unless administrative in nature, such as failure to renew a license; and

(i) not have been convicted of or pled guilty or no contest to a felony, except as provided in subsection (2).

(2) Except as provided in subsection (1)(e), a person who has been convicted of or pled guilty or no contest to a felony may serve as a professional guardian or conservator if the person submits documentation to the certifying organization that proves:

(a) the conviction has been expunged; or

(b) a state agency or court has determined that the applicant may serve as a guardian and submits documentation to the certifying organization supporting this determination.

NEW SECTION. **Section 2. When certification required.** (1) A professional guardian or professional conservator must be involved in guardianship or conservatorship services provided by a business or nonprofit corporation.

(2) If a person provides guardianship or conservatorship services for a fee to three or more wards or protected people to whom the person is not related by blood, adoption, or marriage, the person must be certified as a professional guardian or professional conservator.

Section 3. Section 45-5-804, MCA, is amended to read:

"**45-5-804. Exploitation of incapacitated person or vulnerable adult -- penalties.** (1) A person commits the offense of exploitation of an incapacitated person or a vulnerable adult if the person:

(a) purposely or knowingly obtains or uses or attempts to obtain or use an incapacitated person's or a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the incapacitated person or the vulnerable adult of the use, benefit, or possession of funds, assets, or property or to benefit someone other than the incapacitated person or the vulnerable adult by means of deception, duress, menace, fraud, undue influence, or intimidation; and

(b) (i) stands in a position of trust or confidence with the incapacitated person or the vulnerable adult;

(ii) has a business relationship with the incapacitated person or the vulnerable adult; or

(iii) is an attorney in fact under a power of attorney, conservator, or any type of guardian appointed pursuant to Title 72, chapter 5, part 3, of an incapacitated person or a vulnerable adult.

(2) A person convicted of the offense of exploitation of an incapacitated person or a vulnerable adult shall be fined an amount not to exceed $10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both."

Section 4. Section 72-5-101, MCA, is amended to read:

"**72-5-101. Definitions.** Unless otherwise apparent from the context, in chapters 1 through 5 and chapter 16, part 6, the following definitions apply:

(1) "Background check" means a federal fingerprint background check completed by the department of justice at the cost of the person undergoing the background check. The results of the background check must be sent directly to the court by the department of justice.

(2) "Credit report" means a copy of a person's most recent credit report from any credit bureau.

~~(1)~~ (3) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person or which cause has so impaired the person's judgment that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment.

(4) "Plain language" means clear, understandable language at an 8th-grade reading level.

(5) "Professional conservator" or "professional guardian" means a person who is certified pursuant to [section 1].

~~(2)~~ (6) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.

~~(3)~~ (7) "Protective proceeding" means a proceeding under the provisions of 72-5-409 to determine that a person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.

~~(4)~~ (8) "Substituted judgment" means the judgment that an incapacitated person would make if restored to capacity based upon:

(a) the person's present preference or, if the person is incapable of indicating the person's preference, the person's prior expressed preference;

(b) the person's personal, moral, and religious convictions;

(c) the person's relationship with family members;

(d) the consequences if the action proposed is not taken;

(e) the consequences if the action proposed is taken; and

(f) other relevant factors.

~~(5)~~ (9) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

Section 5. Section 72-5-312, MCA, is amended to read:

"**72-5-312. Who may be guardian -- priorities.** (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person if

the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of the private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of the association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection ~~(5)~~ (11), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation that would be

disqualified under subsections (4)(a) through (4)(c).

(5) (a) Except as provided in 72-5-317, the court shall require a person to complete guardianship training recommended by the Montana supreme court prior to the person's appointment as a guardian.

(b) Upon the recommendation of a medical or mental health professional, visitor, attorney, or other person familiar with the facts of the case, or at its own discretion, the court may require a person to complete dementia-specific training prior to or after appointment as a guardian, including training on communication and de-escalation techniques.

(6) Before appointing a person who is not the parent, child, or spouse of an incapacitated person as guardian to that incapacitated person, the court shall require the proposed guardian to submit to the court a credit report and the results of a background check.

(7) (a) Before appointing a person who is the parent, child, or spouse of an incapacitated person as guardian to that incapacitated person, the court shall require the proposed guardian to:

(i) file with the court an affidavit stating whether the person has been investigated for, charged with, or convicted of offenses related to fraud or theft, or to the abuse, neglect, or exploitation of an adult or child, and submit a release authorizing the court access to related information maintained by a federal agency or an agency in this state or another state; or

(ii) submit to the court a credit report and the results of a background check.

(b) If the affidavit or related information in subsection (7)(a)(i) raises concerns for the court, the court may require the proposed guardian to submit to the court a credit report and the results of a background check prior to appointing the person as guardian.

(8) The court may decline to appoint a person as guardian if the credit report, the results of a background check, or the contents of an affidavit and affidavit-related information described in subsection (6) or (7) indicate the person is not suitable to serve the incapacitated person as a guardian.

(9) The court may require the person to complete a new background check as part of the guardianship proceeding, or it may accept the results of a background check conducted prior to the proceeding.

(10) A professional guardian shall affirm under penalty of perjury that the professional guardian's certification, as required by [section 1], is current. A professional guardian whose certification is current is considered to have completed the requirements of subsections (5) and (6).

~~(5)~~ (11) If the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency."

Section 6. Section 72-5-314, MCA, is amended to read:

"**72-5-314. Notices in guardianship proceedings -- plain-language information to person alleged to be incapacitated.** (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing must be given to each of the following:

(a) the ward or the person alleged to be incapacitated and the ward's or person's spouse, parents, and adult children;

(b) any person who is serving as the ward's or person's guardian or conservator or who has the ward's or person's care and custody; and

(c) in case no other person is notified under subsection (1)(a), at least one of the ward's or person's closest adult relatives, if any can be found.

(2) Notice must be served personally on the ~~alleged incapacitated~~ person alleged to be incapacitated and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ~~alleged incapacitated~~ person alleged to be incapacitated must be given as provided in 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor. Representation of the ~~alleged incapacitated~~ person alleged to be incapacitated by a guardian ad litem is not necessary.

(3) For a proceeding for the appointment of a guardian of an incapacitated person, the court shall

send to the person alleged to be incapacitated plain-language information that includes:

(a) the purpose and basis for guardianship established in 72-5-306;

(b) the procedure of the appointment of a guardian and the procedural rights of the person alleged to be incapacitated as provided in 72-5-315 and 72-5-316;

(c) the rights of a ward and how a person alleged to be incapacitated is distinct from a ward; and

(d) the powers and duties of a guardian as prescribed in 72-5-321."

Section 7. Section 72-5-315, MCA, is amended to read:

"**72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights.** (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, 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. The ~~allegedly incapacitated~~ person alleged to be incapacitated may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(b) If the person alleged to be incapacitated does not have counsel of the person's own choice and the court does not appoint an official or order the assignment of counsel to represent the person in the proceeding, the court shall make a specific finding as to why it is not in the interest of justice to appoint an official or order the assignment of counsel.

(3) (a) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and 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 and submit the visitor's report in writing to the court.

(i) As part of the report, the visitor shall include any information obtained during the interviews and visits that indicates the person alleged to be incapacitated will require an accommodation to fully participate in the proceedings.

(ii) The visitor shall also include in the report any information indicating whether the appointment of counsel would benefit the person's participation in the proceedings or if a guardian should complete dementia-specific training prior to or after appointment.

(b) Whenever possible without undue delay or expense beyond the ability to pay of the ~~alleged incapacitated~~ person alleged to be incapacitated, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the ~~allegedly incapacitated~~ person alleged to be incapacitated and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 8. Section 72-5-316, MCA, is amended to read:

"**72-5-316. Findings -- order of appointment.** (1) (a) If the court is satisfied that the person for whom a guardianship is sought is incapacitated, that the identified needs of the person cannot be met by a less restrictive alternative, and that judicial intervention in the person's personal freedom of action and decision is necessary to meet essential requirements for the person's physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the ~~allegedly incapacitated~~ person alleged to be incapacitated could handle the essential requirements for physical health or safety if the person's financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under Title 72, chapter 5, part 4, and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order, the court

shall make specific findings of fact.

(b) As part of its findings, the court shall set forth in writing:

(i) each less-restrictive alternative to guardianship it considered, and why the court determined each alternative could not sufficiently meet the needs of the incapacitated person; and

(ii) the specific facts it relied upon to determine that a limited guardianship or conservatorship could not sufficiently provide for the care and protection of the incapacitated person, and why it determined a full guardianship is necessary.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order must specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order must specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) An incapacitated person may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for the limitations. The order must state that all rights not specifically limited are retained by the incapacitated person.

(4) An incapacitated person may discuss the person's legal rights with any organization or person, including an attorney, without the knowledge or consent of the person's guardian.

(5) An incapacitated person may pursue a legal challenge to any aspect of the guardianship without the consent of the person's guardian."

Section 9. Section 72-5-317, MCA, is amended to read:

"**72-5-317. Temporary guardians.** (1) If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) (a) If an appointed guardian is not effectively performing the guardian's duties or if there is no appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian who has not completed guardianship

training for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment.

(b) The order of appointment of a temporary guardian must state the following:

(i) whether a full or limited temporary guardianship is being created;

(ii) the limitations set in subsection (5);

(iii) the spending limits set by the court in accordance with subsection (6);

(iv) the reporting requirements provided for in subsection (7); and~~,~~

(v) in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) If there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity who would otherwise be ineligible under that provision to act as guardian. This subsection does not permit the appointment of a person or entity who has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. A temporary guardian who is otherwise ineligible shall serve until a person or entity who is not ineligible to serve as guardian and who is otherwise qualified to be guardian is appointed by the court to act as temporary guardian, but the temporary guardian may not serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise powers that are specifically granted to the temporary guardian in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended so long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians.

(5) A temporary guardian may not sell the real property, as that term is defined in 70-1-106, or the personal property, as that term is defined in 70-1-108, of a ward without prior approval of the court.

(6) (a) The court shall set a monthly limit to the amount a temporary guardian may spend from the ward's estate. When setting the limit, the court shall consider the medical, emotional, social, and daily needs of the ward.

(b) Until the court sets the limit, the temporary guardian shall pay from the ward's estate only those expenses required to maintain the ward in their current standard of living and health.

(7) The temporary guardian shall report the condition of the ward and of the estate that has been subject to the temporary guardian's possession and control at the termination of the guardianship using forms published by the Montana supreme court. The court may require the temporary guardian to report to the court more frequently."

Section 10. Section 72-5-321, MCA, is amended to read:

"**72-5-321. Powers and duties of guardian of incapacitated person.** (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to the guardian's possession and control annually, ~~as~~ unless required by the court or by court rule to file a report more frequently. The limited guardian shall use the forms published by the Montana supreme court.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited 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, the full guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or outside of this state.

(b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's

clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A full 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. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to a do not resuscitate order. The court may not grant that authority if it conflicts with the ward's wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall determine by a preponderance of evidence if the ward's substituted judgment, as applied to the ward's current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

(d) If a conservator for the estate of the ward has not been appointed, a full 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 to perform that person's duty;

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

(e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the estate that has been subject to the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be

paid to the conservator for management as provided in this chapter, and the full guardian must account to the conservator for funds expended.

(3) (a) Within 60 days, a limited guardian, a temporary guardian, or a full guardian shall file a care plan with the court that describes how the guardian will manage the ward's housing and medical, social, and emotional needs, and how management will align with the ward's past wishes and current needs. If the ward does not also have a conservator, the care plan must include how the guardian will manage the ward's estate and financial needs.

(b) The care plan is a form published by the Montana supreme court.

(c) The court may require a guardian to file a new care plan at any time.

(4) (a) A full guardian is required to file an annual guardianship report with the court, unless required by the court to file a report more frequently. The guardianship report includes the ward's physical and mental health, housing situation, and how frequently the guardian and ward were in contact over the past 12 months. If the ward does not also have a conservator, the report must detail management of the ward's estate and financial needs.

(b) The annual guardianship report is a form published by the Montana supreme court. The court may require a guardian to file additional information not included in the form.

~~(3)~~ (5) Upon failure, as determined by the clerk of court, of the guardian to file ~~an annual report~~ a report required under subsection (1) or (4) or a care plan required under subsection (3), the court shall order the guardian to file the report or care plan and give good cause for the guardian's failure to file a timely report or care plan.

~~(4)~~ (6) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's

care and maintenance.

~~(5)~~ (7) Except as provided in subsection ~~(6)~~ (8), a full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

~~(6)~~ (8) (a) If the court has found that a ward has a primary diagnosis of a major neurocognitive disorder, as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by the American psychiatric association, and because of this disorder the ward is unwilling or unable to give informed consent to treatment, a full guardian or limited guardian may seek admission of the ward for stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other than the Montana state hospital.

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

~~(7)~~ (9) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 11. Section 72-5-324, MCA, is amended to read:

"**72-5-324. Termination of appointment -- how effected -- certain liabilities and obligations not affected.** (1) (a) Except as provided in subsection (1)(b), the authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an

informally probated will terminates if the will is later denied probate in a formal proceeding.

(b) The guardian's authority and responsibility for an incapacitated person who dies while the person is a ward of the guardian terminate when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects, as provided in ~~72-5-321(7)~~ 72-5-321(9).

(2) Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for funds and assets of the ward."

Section 12. Section 72-5-410, MCA, is amended to read:

"**72-5-410. Who may be appointed conservator -- priorities.** (1) The court may appoint an individual or a corporation with general power to serve as trustee as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if the person is 14 years of age or older and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom the protected person has resided for more than 6 months prior to the filing of the petition;

(g) a person nominated by the person who is caring for the person or paying benefits to the person;

(h) a conservator corporation organized under Title 35, chapter 2;

(i) the public administrator.

(2) A person in priorities listed in subsections (1)(a) and (1)(c) through (1)(f) may nominate in writing a person to serve in that person's stead.

(3) With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a

person having less priority or no priority.

(4) (a) To ensure a person is best qualified to serve as a conservator, the court shall require the person to complete conservatorship training recommended by the Montana supreme court prior to the person's appointment as a conservator.

(b) Upon the recommendation of a medical or mental health professional, visitor, attorney, or other person familiar with the facts of the case, or at its own discretion, the court may require a person to complete dementia-specific training prior to or after appointment as a conservator, including training on communication and de-escalation techniques.

(5) Before appointing a person who is not the parent, child, or spouse of a protected person as conservator to that protected person, the court shall require the person nominated as conservator to submit to the court a credit report and the results of a background check.

(6) (a) Before appointing a person who is the parent, child, or spouse of a protected person as conservator to that protected person, the court shall require the person nominated as conservator to:

(i) file with the court an affidavit stating whether the person has been investigated for, charged with, or convicted of offenses related to fraud or theft, or the abuse, neglect, or exploitation of an adult or child, and submit a release authorizing the court access to related information maintained by a federal agency or an agency in this state or another state; or

(ii) submit to the court a credit report and the results of a background check.

(b) If the affidavit or related information in subsection (6)(a)(i) raises concerns for the court, the court may require the person to submit to the court a credit report and the results of a background check prior to appointing the person as conservator.

(7) The court may decline to appoint a person as conservator if the credit report, the results of a background check, or the contents of an affidavit and affidavit-related information described in subsection (5) or (6) indicate the person is not suitable to serve the protected person as a conservator.

(8) The court may require a person to complete a new background check as part of the conservatorship proceeding, or it may accept the results of a background check conducted prior to the proceeding.

(9) A professional conservator shall affirm under penalty of perjury that the professional

conservator's certification, as required by [section 1], is current. A professional conservator whose certification is current is considered to have completed the requirements of subsections (4) and (5)."

Section 13. Section 72-5-438, MCA, is amended to read:

"**72-5-438. Accounts -- final and intermediate.** (1) (a) Each conservator shall account to the court for administration of the trust:

(i) ~~not less than~~ annually, unless ~~the court directs otherwise,~~ required by the court to account more frequently;

(ii) upon resignation or removal~~,~~; and

(iii) at other times as the court may direct.

(b) On termination of the protected person's minority or disability, a conservator shall account to the court or to the formerly protected person or the successors of that person.

(c) The conservator shall use the forms published by the Montana supreme court to account to the court for administration of the trust.

(2) Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the hearing; and an order, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate, to be made in any manner the court specifies."

Section 14. Section 72-5-445, MCA, is amended to read:

"**72-5-445. Notice of hearing.** (1) Notice of the hearing of the petition must be given, regardless of age, for the period and in the manner provided by 72-1-301 to all of the following:

~~(1)~~ (a) the persons required to be named in a petition for the appointment of a conservator;

~~(2)~~ (b) so far as is known to the petitioner, beneficiaries under any document executed by the protected person that may have testamentary effect unless the court for good cause dispenses with such

notice;

~~(3)~~ (c) if the proposed action involves a trust, to all persons entitled to receive notice with respect to such an action under Title 72, chapter 38;

~~(4)~~ (d) so far as is known to the petitioner, the persons who, if the protected person were to die immediately, would be the protected person's heirs under the laws of intestate succession unless the court for good cause dispenses with the notice; and

~~(5)~~ (e) other persons as the court may order.

(2) For a hearing regarding a petition for the appointment of a conservator for reasons other than minority, the court shall send to the person to be protected plain-language information that includes:

(a) a general overview of the proceeding, including the rights of the person to be protected and the requirements of 72-5-408(2);

(b) the rights of a protected person and how a protected person is distinct from a person to be protected; and

(c) the duties and requirements of a conservator as provided in 72-5-410, 72-5-428, and 72-5-438."

NEW SECTION. **Section 15. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 72, chapter 5, part 1, and the provisions of Title 72, chapter 5, part 1, apply to [sections 1 and 2].

NEW SECTION. **Section 16. Effective date.** [This act] is effective October 1, 2028.

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