REPORT OF THE SUBCOMMITTEE ON GUARDIANSHIPS

Joint State Government Commission
Task Force and Advisory Committee
on Decedents' Estates Laws

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
108 Finance Building
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I. Introduction

At the May 13, 1983 meeting of the Joint State Government Commission's Task Force and Advisory Committee on Decedents' Estates Laws, George J. Hauptfuhrer Jr., Esq., chairman of the advisory committee, established the Subcommittee on Guardianships to review several proposals which had been presented to the advisory committee to amend various aspects of Pennsylvania guardianship law. This subcommittee report to the advisory committee summarizes the work and presents the recommendations of the subcommittee.

While this report will be formally submitted to the advisory committee at its next meeting, it is the intention of several members of the General Assembly to introduce the legislation recommended by the subcommittee in this report prior to review by the task force and advisory committee. This report is being distributed at this time to facilitate legislative consideration of the proposals.

During 1973-74, Mr. Hauptfuhrer served as chairman of the advisory committee's Subcommittee on Persons under Disability, which participated in the drafting of legislation incorporating the concepts of limited guardianship and public guardians into Pennsylvania law (see part II). While the Pennsylvania General Assembly after more than ten years of debate has not adopted either concept, the 43 states listed in the following table have enacted limited guardianship statutes and 39 states have made provision for public guardians. Appendix A contains a summary of the statutes of each of these states.

Mr. Hauptfuhrer appointed advisory committee vice chairman, William McC. Houston, Esq., as chairman of the Subcommittee on Guardianships and suggested that persons interested in the issues before the subcommittee who were not members of the advisory committee be invited to serve on the subcommittee. As a result, the subcommittee membership encompassed a wide range of views, with representatives of the judiciary, academia, social service and government agencies, legislative staff and the private bar.

The proposals before the subcommittee were divided by the subcommittee into two general categories: proposals to establish a public guardian as the guardian of last resort and proposals to incorporate the concept of limited

ENACTMENT OF PUBLIC GUARDIAN
AND LIMITED GUARDIANSHIP LEGISLATION BY STATES
(By year of original enactment)

State	Public guardian	Limited guardianship
Alabama	1867[a]	1982
Alaska	1981	1981
Arizona	1973	1973[e]
Arkansas	1983	1983
California	1967	1979
Colorado	1973	1975[e]
Connecticut	1949[b]	1982
Delaware	1959[c]	
Florida		1974
Georgia	1980	1980[e]
Hawaii		1976[e]
Idaho	1982	1982[e]
Illinois	1979	1979
Indiana	1973	1970
Iowa		1979
Kansas		1983
Kentucky	1909[a]	
Louisiana		
Maine	1979	1979
Maryland	1977	1977
Massachusetts	1974	1982
Michigan		1978
Minnesota	1975	1975[e]
Mississippi	1880[a]	
Missouri	1889[a]	1983
Montana	1947[b]	1981
Nebraska	1911[b]	1974[e]
Nevada	1977	1981
New Hampshire	1978	1979
New Jersey	1951[b]	1979[e]
New Mexico		1975[e]
New York		1969
North Carolina	1874[a]	1977
North Dakota	1903[a]	1983
Ohio	1971	
Oklahoma	1977	1977
Oregon	1969	1973[e]
Pennsylvania		
Rhode Island	1944[b]	
South Carolina	1880[a]	1970
South Dakota	1975	1979
Tennessee	1887[d]	1979
Texas	1977	1977
Utah	1977	1975[e]
Vermont	1977	1979
Virginia		1976
Washington		1975
West Virginia	1941[b]	1971
Wisconsin	1887[a]	1971
Wyoming	1925[b]	1981

[a]These states only provide that county and court officials may function as a public guardian if the need arises.

[b]These states simply permit public agencies to serve as the guardian of persons committed to their care, most of which are minor children.

[c]Delaware provided the first comprehensive, statewide public guardianship office.

[d]Tennessee was the first state to provide for a separate county office of public guardian.

[e]These states provide for the appointment of a plenary guardian, whose powers and duties may be modified by court order. In Idaho, this only applies to guardians of incapacitated persons.

guardianship as well as certain "due process" concepts into Pennsylvania law. Separate treatment of these proposals resulted in two drafts of legislation from the subcommittee. While presented as separate bills, both proposals amend Title 20 of the Pennsylvania Consolidated Statutes, known as the Probate, Estates and Fiduciaries Code.

Adding a subchapter to Chapter 55 of Title 20, the public guardian proposal provides for the creation of the Commonwealth guardianship office. The office, headed by a director appointed by the Governor, may be appointed by the court as guardian of the estate or of the person, or both, of an incompetent when no other person is willing and qualified to become guardian. In addition to the powers and duties held by any guardian, the office may pool the principal and income of incompetents' estates for investment purposes.

During the year following enactment of this legislation, the office will assume the duties of the presently existing guardian offices at State mental hospitals or centers; all appropriations, personnel, equipment, records and other material of the guardian offices will be transferred to the new office one year after enactment.

The limited guardianship and due process proposal amends Chapter 55, providing the court with guidelines for finding a person incompetent for specific areas of legal disability. The person remains legally competent for all purposes except those specified in the court's order. The proposal also includes a list of powers and duties which are expressly not granted to the guardian unless otherwise ordered by the court.

While the court may always appoint at its discretion counsel for an alleged incompetent, counsel is required for such a person when he does not appear at the competency hearing and the reason is not presented to the court in person by a licensed medical practitioner.

Part II of this report summarizes the past ten years of guardianship legislation and various model acts studied by the subcommittee in preparing its proposals. Part III provides the text of the two bills along with an explanatory comment.

II. Guardianship Proposals: 1973 to 1983

Representative Charlotte D. Fawcett introduced House Bill 1516 on October 23, 1973. This began over ten years of legislative consideration of proposals to amend Pennsylvania guardianship law. Representative Fawcett's proposal, based on a report by the Yale Legislative Services, grew out of her concern about the lack of adequate statutory protection for the mentally retarded in Pennsylvania. Her proposal contemplated the establishment of a State agency to supervise all aspects of guardianship for the mentally retarded. This agency would be independent of other State agencies. The proposal allowed for plenary and limited guardians. The director of the agency would be the guardian of last resort. House Bill 1516 was referred to the House Judiciary Committee's Subcommittee on Guardianship of the Mentally Retarded.

This subcommittee, working with the Subcommittee on Persons under Disability of the Joint State Government Commission Task Force and Advisory Committee on Decedents' Estates Laws, issued a report in September 1974 entitled

"Guardianship of the Mentally Retarded," and proposed substitute legislation which was introduced by Representative Fawcett as House Bills 2576 and 2577. As explained in the report at pages 4 and 5, while there was a consensus in favor of many of the concepts contained in House Bill 1516, concerns were expressed over establishing a set of procedures for mentally retarded persons different from the procedures existing for the appointment of guardians of other types of incompetents. House Bills 2576 and 2577 amended the Probate, Estates and Fiduciaries Code to conform the procedures for appointment of guardians of the mentally retarded to existing procedures and amended the Mental Health and Mental Retardation Act of 1966 to implement the social welfare agency provisions of House Bill 1516. However, instead of a State agency, a position of administrator for the mentally retarded would be established in each county. This position could be filled, according to the report, by existing staff if qualified and within existing budgets. The Pennsylvania Association of Retarded Citizens was very active throughout these discussions and supported the legislation.

House Bill 2576, amending the mental health act, passed the House 170-8 and House Bill 2577, amending the probate code, passed the House 160-11. Both, however,

remained in Senate committee and were reintroduced in 1975 as House Bills 411 and 412, respectively. House Bill 411 was reported out of the House Health and Welfare Committee, recommitted to the Judiciary Committee, reported out again and recommitted to the Appropriations Committee. House Bill 412 passed the House 176-3 and received first consideration in the Senate before being recommitted to the Senate Judiciary Committee.

Representative Fawcett did not return to the General Assembly for the 1977-78 legislative session. Legislation amending the mental health act providing for a county officer for the mentally retarded was not reintroduced. However, Representatives Berson, Scirica and others introduced House Bill 2162, which was very similar to House Bill 412 of the previous session and provided for limited guardianships as well as procedural changes in the appointment of guardians. House Bill 2162 passed the House 188-0 but failed to be reported out of the Senate Judiciary Committee.

The initiative in the 1979-80 legislative session was taken by Senator Michael A. O'Pake who introduced Senate Bill 782, a comprehensive revision of Pennsylvania guardianship law, repealing Chapter 55 of the probate code

and replacing it with a new chapter. The bill was not reported out of the Senate Judiciary Committee.

Representative David C. DiCarlo also introduced a comprehensive revision of Chapter 55 during the 1979-80 session. Representatives Yohn and Scirica introduced House Bill 2074 and Senator Kelley introduced Senate Bill 1271. The latter two bills were identical to House Bill 2162 of the 1977-78 session. None of these bills moved out of committee.

Meanwhile, a suit involving the funds of patients at State mental hospitals had been brought against the Commonwealth. The series of court decisions which resulted between 1974 and 1979 discussed the

> rights of patients confined in state mental hospitals in Pennsylvania to control and manage their own property as against: (1) the right of the Commonwealth to summarily seize and control it for the duration of the hospitalization without prior notice or hearing on the issue of the patient's competency to control that property; and (2) the right of the Commonwealth to appropriate part of the patient's property in satisfaction of the cost of care and maintenance, without prior or subsequent hearing on the correctness of the Commonwealth's assessment.[1]

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[1]Vecchione v. Wohlgemuth, 377 F.Supp. 1361, at 1362 (E.D. Pa., 1974).

Sections 424 and 501 of the Pennsylvania mental health act were found to be unconstitutional as violating the equal protection and due process clauses of the 14th amendment. Since the initial decision was in the form of an injunction against further application of Section 424, several years elapsed and many court appearances ensued before implementation of the decision providing a procedure for the handling of the funds of mental patients was established.[2]

During the past few years several model acts have been suggested for consideration in Pennsylvania. Lawrence A. Frolik, a professor at the University of Pittsburgh School of Law, prepared a Report on the Guardianship and Protective Services Objective for the Pennsylvania Developmental Disabilities Council. This 1981 report contains a comprehensive model guardianship and conservatorship statute which was used extensively by the Subcommittee on Guardianships in drafting the limited guardianship legislation set out in part III.

The Council of State Governments included in its 1983 Suggested State Legislation a protection of the elderly act which provides protective services for abused,

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[2]See 426 F.Supp. 1297 (1977), 558 F.2d 150 (1977), cert. denied, 434 U.S. 943 (1977), 481 F.Supp. 776 (1979), and 80 FRD 32 (1978).

neglected, exploited or abandoned elderly persons. These services may include guardianship. Senate Bills 250 and 805 were introduced in 1983 with Senators Loeper and Zemprelli, respectively, as prime sponsors. These bills are very similar to the suggested protection of the elderly act. Senate Bill 250 was reported out of Senate committee, tabled by the full Senate September 21, 1983 and removed from the table February 13, 1984. No action has been taken on Senate Bill 805.

The American Bar Association's Commission on the Mentally Disabled, as part of its Developmental Disabilities State Legislative Project, recently proposed a comprehensive model guardianship and conservatorship act in its Disabled Persons and the Law. Research for the act took place from 1977 to 1980. The act provides for plenary and limited guardianships and conservatorships for disabled persons who are defined on the basis of functional disability.

This model act also has provisions applicable to minors, including a more restrictive use of limited guardianships and conservatorships. Procedures are established for emergency intervention proceedings, and a substantial number of due process rights are included. A volunteer public guardianship program is established through which the State compensates private citizens for serving as

public guardians. A gubernatorially appointed oversight commission is established to provide information and training to volunteer public guardians and to monitor the appointment process.

In addition, the Commissioners on Uniform State Laws drafted a uniform protective proceedings act, which was approved in early 1983 by the House of Delegates of the American Bar Association. The purpose of the act is to establish procedures to enable individuals who are capable of managing their own estates and of providing for their own care to do so to the greatest extent possible. The model act includes the limited guardianship concept so that the protector's authority intrudes on the rights of the protected person only to the degree necessary to protect his interests.

The Council of State Governments included in its 1977 Suggested State Legislation a public guardian act designed to aid elderly individuals who have no friends or relatives willing and able to serve as guardian. Under this model act, the public guardian would be a court officer.

More recently, Edward P. Carey, regional counsel for the Department of Public Welfare, drafted a proposal to establish a State office to act as public guardian of last resort for Pennsylvania residents. This proposal is

not limited to elderly persons. The office would serve as the guardian of any resident in need of guardianship services when no one else is willing and qualified to serve. Mr. Carey's proposal provided the starting point for the Subcommittee on Guardianships as it drafted the public guardian legislation in part III.

COMMONWEALTH GUARDIANSHIP OFFICE

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, adding provisions creating the Commonwealth Guardianship Office to serve as guardian of the estate or of the person, or both, for Pennsylvania incompetents in need of such services when no other person is willing and qualified to become guardian; waiving the defense of sovereign immunity in certain cases; and making an appropriation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3155 of Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 3155. Persons entitled.

* * *

(b) Letters of administration.--Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

* * *

(7) The Commonwealth Guardianship Office in the case of an incompetent who dies during a guardianship administered by it.

* * *

Section 2. Section 5514 of Title 20 is amended to read:

§ 5514. To fill vacancy; co-guardian.

The court, after such notice to parties in interest as it shall direct, may appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of a person found to be incompetent without a hearing. Whenever the Commonwealth Guardianship Office petitions to become the successor guardian, the court shall appoint the office as guardian if it finds that the person remains incompetent and no other person is willing and qualified to become guardian.

Section 3. Chapter 55 of Title 20 is amended by adding a subchapter to read:

SUBCHAPTER F

COMMONWEALTH GUARDIANSHIP OFFICE

Sec.

5551. Short title of subchapter.

5552. Commonwealth Guardianship Office.

5553. Undertaking guardianships.

5554. Cooperation with office.

§ 5551. Short title of subchapter.

This subchapter shall be known and may be cited as the Commonwealth Guardianship Office Act.

§ 5552. Commonwealth Guardianship Office.

(a) Creation.--The Commonwealth Guardianship Office is hereby created as an independent agency. The office shall be headed by a director appointed by the Governor for a term of five years. The director shall not be removed from office except for cause. Salary and terms of employment for the director shall be established by the Executive Board. The director may hire personnel necessary to carry out the duties of the office, including legal counsel. The director may establish regional offices.

(b) Administrative powers and duties.--The office shall have the power and duty to:

(1) Establish and maintain contacts with Federal, State and local, public and private, agencies which service residents of this Commonwealth in need of guardianship services.

(2) Promulgate regulations necessary to establish the policies and procedures for the effective performance of its responsibilities.

(c) Powers and duties as guardian.--In addition to section 5521 (relating to provisions concerning powers, duties and liabilities), the office shall have the power and duty to:

(1) Invest the principal and income of incompetents for whom it is the guardian of the estate. For this purpose, it may pool the principal and income but shall maintain an individual account for each incompetent reflecting his participation therein.

(2) Expend and, if necessary, advance costs necessary to administer guardianships for which it has been appointed guardian.

(3) Prepare and maintain an annual report setting forth the physical, mental and financial status for each incompetent for whom the office is appointed guardian.

(4) Petition to be discharged as guardian if the incompetent has become competent.

(5) Apply for letters or otherwise administer the estate of any incompetent for whom it has been appointed guardian who dies during the guardianship when no one else is willing and qualified to serve.

§ 5553. Undertaking guardianships.

(a) Procedure.--The Commonwealth Guardianship Office may be appointed by the court guardian of the estate or of the person, or both, of an incompetent upon a finding by the court that no other person is willing and qualified to become guardian. The office itself shall be appointed guardian and no specific individual shall be named by the court. If appointed, the office shall have all of the powers and duties of a corporate fiduciary. The office shall not be required to post bond.

(b) Monitoring care and progress of incompetent.--The office shall monitor on a continuous basis the care and progress of an incompetent for whom it has been appointed guardian. It shall provide such reasonable and necessary monitoring periodically as is required and shall have personal contact with the incompetent at least annually. It shall require periodic reports from all individuals and public and private agencies providing care and services to the incompetent. These reports and its annual report for each incompetent shall be maintained as confidential records and shall not be open to review except as the court shall otherwise direct.

(c) Costs and compensation.--The office shall be reimbursed from the incompetent's estate for the court costs and shall be allowed compensation for its services as guardian in the same manner as provided in section 7185 (relating to compensation). Any compensation or reimbursement for costs advanced received by the office shall be paid into the General Fund through the Department of Revenue.

(d) Liability of office.--The office shall be liable for acts or omissions while serving as guardian to the same extent as any other guardian appointed by the court would be liable and for this purpose the defense of sovereign immunity is waived.

§ 5554. Cooperation with office.

All individuals and Federal, State and local agencies, public and private, which are rendering services to an incompetent, or which have available services necessary for the incompetent's care and progress, shall cooperate with the office. The cooperation shall include, but not be limited to, providing relevant medical and other testimony, periodic reports and results of investigations undertaken by it, or at the request of the office. This section shall not require the disclosure of information that is otherwise required to be kept confidential.

Section 4. (a) Unless there is another person willing and qualified to serve as guardian, the Commonwealth Guardianship Office shall petition the court to be named successor guardian to the guardian officer at a State mental hospital or center when an adjudicated incompetent for whom the guardian officer is serving as guardian is discharged from the facility.

(b) Within one year after the effective date of this act the Commonwealth Guardianship Office shall petition the court to be substituted as successor guardian to the guardian officer at a State mental hospital or center who is serving as guardian of an incompetent.

(c) One year after the effective date of this act, all appropriations, personnel, equipment, records and all other material expended, employed or used by the guardian offices at

State mental hospitals or centers shall be transferred to the Commonwealth Guardianship Office and shall have the same force and effect as if the appropriations had been made to, the personnel had been employed by and the equipment, records and material had been the property of the Commonwealth Guardianship Office in the first instance.

Section 5. The sum of $200,000, or as much thereof as may be necessary, is hereby appropriated to the Commonwealth Guardianship Office for salaries and all necessary expenses for the work of the office as provided by this act.

Section 6. This act shall take effect in 60 days.

LIMITED GUARDIANSHIP

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, adding provisions relating to guardians of incompetents.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The heading of Subchapter A of Chapter 55 of Title 20 of the Pennsylvania Consolidated Statutes is amended to read:

CHAPTER 55

INCOMPETENTS

SUBCHAPTER A

[MEANING OF INCOMPETENT]

GENERAL PROVISIONS

Section 2. Title 20 is amended by adding a section to read:

§ 5500. Purpose.

Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incompetent persons to participate as fully as possible in all decisions which affect them; which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their

abilities to the maximum extent possible; and which accomplishes these objectives through the use of the least restrictive alternative.

Section 3. Section 5501 of Title 20 is amended to read:

§ 5501. Meaning of incompetent.

"Incompetent" means a person who, because of infirmities of [old age] aging, mental illness, mental deficiency or retardation, drug addiction or inebriety:

(1) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons; or

(2) lacks sufficient capacity to make or communicate responsible decisions concerning his person or property.

"Infirmities of aging" means organic brain damage caused by advancing age or other physical degeneration in connection therewith.

Section 4. Title 20 is amended by adding a section to read:

§ 5510. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Licensed practitioner." A physician, including a psychiatrist, a licensed psychologist or a registered nurse.

Section 5. Section 5511(a) of Title 20 is amended to read:

§ 5511. Petition and hearing; examination by court-appointed physician.

(a) Resident.--The court, upon petition [and a hearing at which good cause is shown], hearing and clear and convincing evidence, may find a person domiciled in the Commonwealth to be incompetent and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged incompetent's welfare. The court may dismiss a proceeding where it finds as a fact that the proceeding has not been instituted to aid or benefit the alleged incompetent. Notice of the petition and hearing shall be given in such manner as the court shall direct to the alleged incompetent, to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incompetent if he died intestate at that time, and to such other parties as the court may direct. The hearing may be closed to the public and without a jury unless the alleged incompetent or his counsel objects. The hearing shall be closed and with or without a jury if the person alleged to be incompetent or his counsel so requests. The alleged incompetent shall be present at the hearing unless:

[(i)] (1) the court is satisfied, upon the [presentation of positive testimony] deposition or testimony of, or sworn statement by, a licensed practitioner, that because of his physical or mental condition his welfare would [not] be [promoted] harmed by his presence; or

[(ii)] (2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged incompetent to be represented by a guardian ad litem in the proceeding.

Counsel may be appointed to represent the alleged incompetent in any matter for which independent counsel has not been retained by or on behalf of that individual. However, counsel shall be appointed if the alleged incompetent is not present or counsel for the petitioner advises the court that the alleged incompetent will not be present at the hearing and the licensed practitioner under paragraph (1) does not appear in person at the hearing. If the alleged incompetent is unable to pay for counsel or if payment would result in substantial financial hardship, the county shall be responsible for the cost of counsel.

Comment: Subsection (a) is amended to specify "clear and convincing evidence" as the burden of proof in finding a person incompetent. This is a codification of present case law, see Matter of Caine, 490 Pa. 24, 415 A.2d 13 (1980). Paragraph (a)(i) is amended to conform the procedure for receiving testimony on the issue of the alleged incompetent's presence at the hearing with Section 5518 which provides the procedure for receiving testimony concerning the alleged incompetent's mental condition. While the court at any time may appoint counsel to represent an alleged incompetent when independent counsel has not been retained, the court is required to appoint counsel under subsection (a), as amended, when the alleged incompetent does not have independent counsel, is not present at the hearing and the testimony on why he is not present is not given in person before the court.

Section 6. Title 20 is amended by adding a section to read:

§ 5512.1. Determination of incompetency.

(a) Findings.--If a person is determined to be incompetent, the court shall consider and make findings of fact or conclusions of law regarding the:

(1) Nature and extent of the general intellectual functioning of the incompetent.

(2) Nature and extent of the general physical functioning of the incompetent.

(3) Nature of impairment in the adaptive behavior of the incompetent.

(4) Ability of the incompetent to care for himself by making and communicating responsible decisions concerning himself.

(5) Ability of the incompetent to care for his financial resources by making and communicating responsible decisions concerning his property.

(b) Nature of the guardianship.--The court order establishing the guardianship shall specify over which areas of legal disability the guardian is assigned powers and duties. The petition shall contain the specific recommendations of the petitioner with regard thereto. The areas may include, but are not limited to, the following:

(1) General care, maintenance and custody of the incompetent.

(2) Establishing the place of abode for the incompetent.

(3) Assuring that the incompetent receives training, education, medical and psychological services, and social and vocational opportunities, as appropriate, as well as assisting the incompetent in the development of maximum self-reliance and independence.

(4) Fiscal management of the assets of the incompetent.

(5) Providing required consents or approvals on behalf of the incompetent.

(c) Legal rights retained.--A person for whom a guardian has been appointed shall retain all legal rights except those which have, by court order, been designated as areas of legal disability under subsection (b). The appointment of a guardian under this chapter shall not constitute a finding of legal incompetency except in those areas specified by the court.

(d) Review hearing.--The court, in its order establishing the guardianship, shall set the date of the initial review hearing. At the review hearing the guardian shall present a report containing the following information:

(1) Significant changes in the capacity of the incompetent to meet the essential requirements for his physical health or safety.

(2) Services being provided to the incompetent.

(3) Significant actions taken for the incompetent by the guardian during the reporting period.

(4) Significant problems relating to the guardianship which have arisen during the reporting period.

(5) Whether the guardianship, in the opinion of the guardian, should continue, be modified or be terminated, and the reasons therefor.

Section 7. Sections 5518 and 5521 of Title 20 are amended to read:

§ 5518. Evidence of mental condition.

In any hearing relating to the mental condition of a person whose competency is in question, the deposition of, or sworn statement by, a [superintendent, manager, physician or psychiatrist or any State-owned mental hospital or veterans' administration hospital or a physician or psychiatrist at any hospital or institution] licensed practitioner shall be admissible in evidence as to the condition of [an inmate of such hospital] the alleged incompetent in lieu of [his] the licensed practitioner's appearance and testimony, unless by special order, the court directs his appearance and testimony in person.

§ 5521. Provisions concerning powers, duties and liabilities.

(a) In general.--The provisions concerning the powers, duties and liabilities of guardians of incompetents' estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incompetency of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

Section 3332 (relating to inherent powers and duties).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3359 (relating to record of proceedings; county where real estate lies).

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 3372 (relating to substitution of personal representative in pending action or proceedings).

Section 3374 (relating to death or removal of fiduciary).

Section 3390 (relating to specific performance of contracts).

Section 5141 (relating to possession of real and personal property).

Section 5142 (relating to inventory).

Section 5143 (relating to abandonment of property).

Section 5145 (relating to investments).

Section 5146 (relating to guardian named in conveyance).

Section 5147 (relating to proceedings against guardian).

Section 5151 (relating to power to sell personal property).

Section 5154 (relating to title of purchaser).

Section 5155 (relating to order of court).

(b) Powers and duties not granted to guardian.--Unless otherwise ordered by the court, a guardian shall not have the power and duty to:

(1) Admit the incompetent to any institution for the treatment of the mentally ill or to any facility for the care and training of the mentally retarded.

(2) Consent on behalf of the incompetent to an abortion, sterilization, psychosurgery or removal of a body organ.

(3) Prohibit the marriage or divorce of the incompetent.

(4) Consent on behalf of the incompetent to the termination of the person's parental rights.

(5) Consent on behalf of the incompetent to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

Section 8. This act shall apply to all proceedings begun after the effective date of this act and proceedings in progress may be amended with leave of court to conform to this act. Existing guardianships may be modified by the court in accordance with this act upon petition of any interested party.

Section 9. This act shall take effect immediately.

Appendix

PUBLIC GUARDIAN LAW--OTHER STATES

This summary is the result of a survey of the guardianship law of the 50 states. Thirty-nine of the states provide for public guardians. Topics covered, where applicable, include the organization of the public guardian's office, the procedure for appointment of the public guardian as the guardian of a ward, the powers and duties of the public guardian, the disposition of the ward's resources and the method of compensation for the public guardian.

Alabama — The judge as guardian of the probate court may appoint a general guardian for the county who acts when no one else is willing or qualified. His term is the same as the term of the appointing judge. (Ala. Code § 26-2-26 (1975)) If no one qualifies as guardian of a minor and there is no county general guardian, the sheriff is appointed guardian. (Ala. Code § 26-2-27 (1975))

Alaska — The public administrator serves as public guardian for the judicial district for which he is appointed when no one else is willing or qualified. He has the same powers and duties as a private guardian and may delegate them to staff and volunteers. He must try to find a suitable private guardian and must establish relationships with governmental, public and private agencies to assure an effective program. The public guardian must visit each ward quarterly, keep financial and statistical records, provide general information to the public, assist private guardians and develop a current listing of public and private services and programs available. He may contract for necessary services to carry out his duties and may accept the services of volunteer workers and consultants. He may intervene in any guardianship proceeding if the appointed guardian is not fulfilling his duties, if the estate is subject to waste or if it is in the best interests of the ward. The public guardian is to investigate the financial status of any person requesting a public guardianship and any person for whom the court appoints the public guardian. Administrative and appointment procedure costs are not charged against the income or estate of the ward unless he is financially able to pay. The reasonable value of the services rendered without cost are a claim against the estate upon the death of the ward. (Alaska Stat. §§ 13.26.360-13.26.410 (1983 Supp.))

Arizona — The county board of supervisors may create the office of and appoint a public fiduciary for persons and decedents' estates in need of services when no one else is qualified and willing to serve. All funds received

are to be deposited in the county treasury and disbursed by court order or deposited in insured banks or savings and loan associations in the county. Costs incurred in conducting the office are a charge against the county. The public fiduciary has a claim against the ward's estate for reasonable expenses incurred. All funds received for expenses and compensation are to be paid into the county treasury and credited to the general fund. (Ariz. Rev. Stat. Ann. §§ 14-5601 to 14-5604 (West 1983 Supp.))

Arkansas

If no other suitable person exists, the court may appoint an employee of a public agency as the limited or temporary guardian for the incapacitated person, but he cannot serve as plenary guardian. If an employee of a public agency provides direct services to the incapacitated person, he cannot serve as guardian. (Ark. Stat. Ann. § 57-811 (1983 Supp.))

California

The county board of supervisors may create the office of and appoint a public guardian and staff and set their compensation. The public administrator for the county may serve as ex officio public guardian. The public guardian must post an official bond for the joint benefit of all his wards. He may employ private attorneys if the person's estate is sufficient to pay those costs. Generally, to be appointed, the public guardian must apply for letters of guardianship; however, he may take immediate charge of property when it is being wasted, uncared for or lost. If the person for whom guardianship is sought is under the jurisdiction of the state Department of Mental Health or the state Department of Developmental Services, the department must consent to the guardianship. The public guardian's authority ceases at termination and vests in his successor. Upon the death of the ward, the public guardian is authorized to pay the ward's final medical bills, funeral bills and administer the estate. All funds are to be deposited in the county treasury and disbursed upon proper warrant or deposited in an insured bank or savings and loan association within the state. Each estate is credited with the highest rate of interest it could have earned individually, with the remainder paid to the county to offset costs. Once the public guardian has taken charge of a person's estate, costs, plus a reasonable fee for services ($25 to $500), are to be charged upon appointment of a subsequent guardian. There is a claim against the estate for reasonable expenses, which may be advanced by the county. The court determines just and reasonable compensation and all court fees are waived. (Cal. Welf. & Inst. Code §§ 8000-8015 (West 1984 Supp. Pamphlet))

The office of director of developmental services may be appointed guardian for certain developmentally disabled individuals. A bond of $25,000 must be posted to cover all guardianships. The director has the same powers and duties as a private guardian and may delegate those to regional centers. The director may be nominated by the developmentally disabled person, his parent, other relative, friend, guardian or conservator or the director may petition for appointment. The person must be present at the appointment hearing or good reason must be shown as to why he is unavailable. The appointment does not, of itself, prove the person is legally incompetent. The person has a right to counsel at the hearing; court-appointed if necessary. A current diagnosis (which is not a public record) of the person's physical and mental condition and social adjustment is to be provided by the regional center. The director must annually review each ward's condition. Court fees are waived. As for private guardians, the director is allowed reasonable fees. These fees are paid into the state general fund. (Cal. Health & Safety Code §§ 416-416.23 (West 1984 Supp.))

Colorado

The department of state may petition for or accept an appointment as guardian for an incapacitated person for the purpose of providing protective services if the person's assets are less than $10,000 and

there is no one else more appropriate to serve. The state department makes semiannual reports to its appointing court and must petition that court to terminate the guardianship. It is otherwise governed by the rules for private guardians. (Colo. Rev. Stat. § 26-3-107 (1982))

Connecticut — The commissioner of children and youth services serves as guardian of children and youth who are uncared for, neglected or dependent and who have been committed to his care. Maximum commitment is 18 months, unless the court extends it. Revocation of the commitment terminates the guardianship. (Conn. Gen. Stat. Ann. § 46b-129 (West 1983 Supp.))

Delaware — The office of public guardian is established by the legislature. The public guardian is appointed by and serves at the pleasure of the chancery court and receives a salary of $18,500 which is paid from the general fund. He serves as guardian of the property of aged, mentally infirm or incapacitated persons and guardian of the person of aged, mentally infirm or physically incapacitated persons in danger of harming themselves or being subjected to abuse. He may serve as both guardian of the property and of the person for a single ward. The guardian may appoint subordinate guardians which may include nonprofit organizations. He makes an annual report to the chancellor and General Assembly of the operations of his office and any other reports that are requested or required by law. Every six months the court shall review the case and status of the ward to determine whether or not the guardianship should be continued. Administrative costs and appointment procedure costs are not to be charged against the income or estate of the ward unless he can afford it; those costs are initially paid from the general fund. The court may waive fees. (Del. Code Ann. tit. 12, §§ 3991 to 3997 (1979))

Georgia — If no other person is available to be guardian of the person of an incapacitated adult, the judge of the probate court may appoint the director of the Department of Family and Children Services of the county of the residence of the person. The director may delegate his duties to responsible employees of the department. If no other person is available to be guardian of the property of an incapacitated adult, the judge may appoint the county guardian to be guardian of the property. (Ga. Code Ann. § 29-5-2(d) (1981)) The county administrator serves as ex officio county guardian when no one has applied to be guardian and a need for one exists. He is appointed by the judge of the county probate court and in counties with populations over 400,000 the judge appoints assistant administrators. The guardian must be a county citizen, a resident there at least one year and over the age of 21. The clerk of the superior court is eligible to be county administrator. The term of the county administrator is four years and a bond of $10,000 is required. He has the same rights and liabilities as private guardians. The failure to post additional bond or security is cause for removal. He continues to act on all estates remaining in his hands when his term expires or he is removed until his letters of administration are revoked. All vacancies in the office are to be filled by the judge of the probate court for the unexpired term. The county administrator, in his role as county guardian, receives the same compensation as private guardians. (Ga. Code Ann. §§ 29-3-1 to 29-3-3, §§ 53-6-90 to 53-6-101 (1982))

Idaho — The chief judge of each judicial district is to determine if guardians are needed and none are qualified and willing to serve for incapacitated persons. If so, the judge is to create a Board of Community Guardian. Seven to eleven members are appointed for two-year staggered terms, with a maximum term of eight years. They meet quarterly and serve as a guardian of last resort for incapacitated persons. The board has all the powers and duties of private guardians. The board is to be provided access to confidential records concerning the ward and monitors public services provided to the ward. The board annually reports in writing to the chief judge, with a copy to the county commissioners of each

participating county in the circuit. The report includes a fiscal report, the number of volunteer guardians found and the number of incapacitated persons who are wards of the board, as well as any recommendations the board may have. The board, serving as guardian, is entitled to the same compensation as private guardians. The court may waive fees. There is a lien against the estate for fees, which may be gradually repaid. (Idaho Code §§ 15-5-601 to 15-5-603 (1983) Supp.))

Illinois

The governor, with the advice and consent of the Senate, appoints a public guardian and conservator for each county every four years. In counties with populations over 1,000,000, the chief judge of the local circuit court appoints a licensed attorney as public guardian, who serves at the judge's pleasure. An oath and a $5,000 bond are required, but the court may require additional security. The public guardian has the same powers and duties as a private guardian with some modifications. He monitors each ward's care and progress on a continuous basis (at least monthly contact) and receives reports from provider agencies. If the ward is placed outside his home, the guardian must visit the proposed facility. He must inventory the ward's possessions and insure them. He cannot make any substantial distribution of the ward's estate without a court order and with some restraints he may liquidate assets to pay for care and storage of property. He may sell real property, but it must be appraised. Any person interested in the ward's estate may petition the court for a temporary order restraining the public guardian from performing specified acts if it appears that the guardian might act contrary to the ward's best interests. On the public guardian's petition, the court may, for good cause shown, transfer a private guardianship to the state guardian. When the court directs, the public guardian must submit an affidavit setting forth in detail the services he has provided for the benefit of the ward. An annual report listing the number of cases handled, the date assigned, the date of termination of each closed case and its disposition and the total amount of fees collected is to be filed with the clerk of the circuit court. If the public guardian defaults on his bond his office is deemed vacant, at which point the governor or circuit court should fill the vacancy. Upon the death of the ward, the guardian turns over to a court-appointed administrator all the ward's assets and an account of his receipt and administration of the ward's property. In counties with populations over 1,000,000, the public guardian receives an annual salary, set by the county board, not to exceed that of the public defender. All expenses are paid from the county treasury and all fees are paid into it. (Ill. Ann. Stat. ch. 110 1/2, §§ 13-1 to 13-5 (Smith-Hurd 1983 Supp.))

Indiana

The Department of Public Welfare or any public department, bureau or agency or the state may be appointed guardian of any incompetent that it has supervision, control or custody over. (Ind. Code Ann. § 29-1-18-9 (Burns 1983 Supp.))

Kentucky

The district court of each county appoints a discreet, fit person as guardian of orphans who have no guardians. An oath and a bond are required and the guardian serves at the discretion of the court. The court can remove the guardian. Otherwise, the guardian is subject to the same rules governing private guardians. (Ky. Rev. Stat. Ann. §§ 395.380 to 395.400 (Baldwin 1982))

Maine

The probate court may appoint the Bureau of Mental Retardation as guardian for mentally retarded persons and the Department of Human Services as guardian for other incapacitated persons, but a private guardian is preferred. It is an exclusive appointment (no co-guardianships permitted). If the bureau is appointed, the director and his delegates exercise the authority of the public guardian. If the department is appointed, the commissioner and his delegates exercise the same authority. They can delegate their authority to a staff of

competent social workers. A surety bond equal to the total assets held is required. Anyone eligible to petition for the appointment of a guardian may nominate the public guardian. The nomination must be accepted or rejected within 30 days and if accepted, the agency must submit a detailed plan of guardianship. With some modifications, the guardian has the same powers and duties as a private guardian. He may only place his wards in licensed facilities. He must keep records of the ward's money--from where it is received and how it is disbursed. He may authorize performance of an autopsy on the body of a deceased ward and may bury him. An institutionalized mentally retarded minor is to be examined before his eighteenth birthday to determine whether he will need a guardian and, prior to the release of any mentally retarded person from a state mental facility, the person is to be examined to determine whether he will need a guardian. At least annually, and when the court orders, the public guardian must review the case of every person who is a ward. The report is to contain an examination and evaluation of the plan for the ward. For mentally retarded persons, the public guardian receives reasonable amounts for expenses as the probate court may allow. Fees allowed are allocated to a trust fund to cover expenses of administration. For incapacitated persons, no compensation is allowed; expenses are to be reimbursed out of the ward's estate. The cost of a guardian ad litem are paid by the Department of Human Services. (Me. Rev. Stat. Ann. tit. 18-A, § 5-601 to 5-614 (1984 Supp.))

Maryland

As a last resort, the director of the local department of social services may be appointed guardian for a disabled person under the age of 65. For a person over 65, the director of the state Office on Aging or local office on aging may be appointed. (Md. Est. and Trusts Code Ann. § 13-707(a)(9) (1982 Supp.))

Massachusetts

Public and private protective services agencies may serve as guardian of an elderly person. (Mass. Gen. Laws Ann. ch. 19A § 17(6) (West 1983 Supp.))

Minnesota

The commissioner of public welfare is authorized to act as public guardian for mentally retarded persons. He can delegate his duties through the Department of Public Welfare or county welfare departments or may contract for services with any public or private agency or individual. In each case, the commissioner may be nominated as guardian by an interested person, a guardian or a mentally retarded person. He must accept or reject the nomination within 15 days of receipt of the comprehensive evaluation of the person. No authority is conferred unless affirmed at a judicial hearing. Upon receipt of a nomination, the commissioner orders a comprehensive evaluation. If he accepts the nomination, he must petition for appointment in county or probate court. The petition for appointment must allege that a guardian is required. A hearing is held 10-20 days after the evaluation is filed, with notice to the proposed ward, his counsel (court-appointed if necessary), family, the county attorney and others. All the persons receiving notice may attend the hearing and testify. However, only the ward and the petitioner may examine witnesses. If it is not in the person's best interest to attend, he need not. The hearing is to be stenographically or tape recorded. The commissioner has general supervisional authority over the ward's residence, care, education and employment. He takes possession of the ward's personal property and may liquidate or hold it for the ward's benefit. He has power over marriage, contracts and judicial action; he may consent to sterilization, nonemergency surgical operations, adoption and short-term institutionalization. He determines if guardianship of the estate is necessary. He obtains consent from relatives for medical treatment, if possible. The probate or county court must approve sterilization. The commissioner develops an individual plan for each ward. The comprehensive evaluation is prepared by the county welfare department in an appropriate facility. The evaluation consists of a physician's

diagnosis of the person's physical condition, a psychologist's report on his intellectual capacity and functional abilities and a social worker's report on his social history and adjustment. The commissioner provides an annual review of the physical, mental and social adjustment and progress of each ward and annually reviews the ward's legal status. The commissioner, ward or any interested person may petition for modification or removal of the guardianship. The county pays the costs of the hearing; cost of proceedings are to be reimbursed to the county in which the ward has been placed by the state. (Minn. Stat. Ann. §§ 252A.01-252A.21 (West 1984 Supp.))

Mississippi — The clerk of the chancery court is appointed guardian if no one else is qualified to serve. He has the same powers and duties as private guardians. A special cumulative bond is required covering all of his wards. (Miss. Code. Ann. §§ 93-13-21, 93-13-129 (1972))

Missouri — The county public administrator is to serve as ex officio public guardian for estates of minors placed in his charge by the probate court. Every county and the city of St. Louis elects a public administrator every four years. An oath and a minimum $10,000 bond are required and the court may require additional security. The public administrator may appoint deputies (in first-class counties) to perform ministerial and nondiscretionary duties delegated to them and he is liable for their acts. All civil officers are to inform him of all property known to them which is liable to loss, waste or injury and which should be in his possession. He has a duty to take charge of those estates and to prosecute suits to recover the property of the ward. He must give notice of his taking charge of any estate and annually must make a statement, under oath, of the amount of property in his control. He may be removed from office in the same manner and for the same causes as judges of the county court. He may be removed for failure to give notice of his taking charge of an estate. The court may order an accounting and delivery of assets to his successor or the ward's heirs. He may continue to act for one year after his termination. In first-class counties not having a charter government and containing a portion of a city with a population of over 400,000, he receives an annual salary of $25,000. He may also receive additional compensation, as authorized by the governing body of the county, but his total annual compensation cannot exceed $34,000. In other counties, he receives what a private guardian would receive, unless the court allows a higher amount. In salaried counties, fees go into the county treasury. In first-class counties, deputies' salaries are set by the public administrator; in smaller counties, they are paid out of the administrator's fees. (Mo. Ann. Stat. §§ 473.730 to 473.773 (Vernon 1984 Supp.))

Montana — The Department of Social and Rehabilitation Services may accept appointment by any district court as guardian of a mentally retarded or other developmentally disabled person. It is governed by the same rules as private guardians. (Mont. Code Ann. § 53-20-402(2)(c) (1981))

Nebraska — The Department of Public Welfare is the guardian of all the children committed to it. (Neb. Rev. Stat. § 43-905 (1977 Supp.))

Nevada — The board of county commissioners of any county may establish an office of public guardian. He may be appointed for a four-year term or the commissioners may designate an elected or appointed county officer as ex officio public guardian. He must take an oath of office and file a bond set by the commissioners. Within the limits of the appropriations for his office, he may employ subordinates or contract for the services of consultants or assistants. The public guardian serves as guardian for those persons 60 years old or older who have no one else to do so or

cannot afford a private guardian. A qualified resident or anyone on his behalf may petition the district court of the county in which he resides to make the appointment. The public guardian must keep records in all cases and has all the powers and duties of private guardians. The public guardian investigates the financial status of the proposed ward to determine his eligibility to have a public guardian appointed. The court may at any time terminate the appointment upon the petition of the ward or any interested person or upon the court's own motion if it appears that public guardian services are no longer necessary. The board of county commissioners must promptly fill any vacancy and the district court may designate any qualified person to serve as acting public guardian until the vacancy is filled. An appointed guardian's salary is set by the commissioners and paid out of the general fund; a designated guardian receives no compensation. There is no charge for administrative or appointment costs against the ward's income or estate unless he can afford to pay. The value of services rendered is a claim against the ward's estate and any money received goes into the county general fund. (Nev. Rev. Stat. §§ 253.150-253.250 (1977))

New Hampshire — When it is necessary to nominate a guardian for an institutionalized mentally ill person, an elderly person who is receiving nursing care in the state home for the elderly or a developmentally disabled person within the state service delivery system and there is no relative, friend or interested person available, willing and able to serve as guardian for such a person, the probate court may appoint the public guardianship and protective program. For all others in need of guardianship services who have no one available, willing and able to serve, the court may appoint the program provided there are funds available to pay for such services. The program can serve as co-guardian with a private guardian and has the same powers and duties as those granted to private guardians. The division of mental health and developmental services, Department of Health and Welfare, with the approval of the governor and council, contracts with organizations approved by the New Hampshire Supreme Court to provide the services and those organizations are then designated as the public guardianship and protection program. The contract fixes the cost per guardianship and permits subcontracting for consulting services. The contract can also provide for protection services that are consistent with the general guardianship law. Annual reports must be filed with the probate court for each ward. The court must review the report to insure that the program is complying with state and federal laws, that the ward is receiving appropriate care and services and that the highest ethical standards are being maintained. Except for cases of court-determined indigency, costs are to be borne by the person or the estate of such person receiving the services. (N.H. Rev. Stat. Ann. §§ 547-B:1 to 547-B:8 (1983 Supp.)) The public guardianship and protection program may be appointed guardian under the general guardianship law. (N.H. Rev. Stat. Ann. § 464-A:10 (1983 Supp.))

New Jersey — The juvenile court may terminate parental rights and commit a child to the guardianship and control of the Bureau of Children's Services. The bureau is to be removed only upon charges preferred and upon good cause shown after an opportunity to be heard. Such guardianship is to be of both the person and the property of the ward. The county court has jurisdiction over all proceedings affecting the guardianship. The director of public welfare may petition for guardianship by the bureau. (N.J. Stat. Ann. §§ 30:4C-20 to 30:4C-22; § 30:4C-24 (West 1983 Supp.))

North Carolina — The clerk of the superior court may appoint a public guardian in every county for an eight-year term to serve as guardian of minors. An oath and a minimum $6,000 bond are required. However, the bond must always be double the aggregate value of the real and personal estate of all the guardian's wards. Any person entitled to letters of guardianship may request, in writing, that the clerk issue letters to the public guardian

and those same individuals may petition for their revocation. He has the same powers and duties and receives the same compensation as private guardians. (N.C. Gen. Stat. §§ 33-44 to 33-47.1 (1976)) The clerk of the superior court must take control of the assets of estates of incompetents and inebriates if no one else is willing to do so. (N.C. Gen. Stat. 35-6 (1983 Supp.)) The clerk may appoint a disinterested public agent as the guardian of an incompetent adult, but only if no other individual or corporation can be found to serve. (N.C. Gen. Stat. §§ 35-1.6 to 35-1.39 (1983 Supp.))

North Dakota

Each county elects a public administrator in each year in which a national presidential election is held. The public administrator acts as public guardian for minors and incapacitated persons who have no one else willing and able to serve as their guardian. An oath, certificate of election and bond must be filed with the judge of the county court. All civil officers must inform the public administrator of all property known to them which is liable to loss, waste or injury and which should be in the guardian's hands. He is to prosecute necessary suits to recover property and must give notice of his taking charge of any estate. He must act as receiver in an assignment for the benefit of creditors and must make an annual statement, under oath, of the amount of property in his control. Otherwise, he has the same powers and duties as private guardians. Failure to furnish his bond or to give notice of taking charge of an estate may be cause for removal. Otherwise, he may be removed in the same manner and for the same reasons as other public officers. He may be required to account for and deliver a ward's property to his successor in office or the ward's heirs. He receives the same compensation as private guardians unless the court, for special reasons, allows a higher amount. (N.D. Cent. Code §§ 11-21-01 to 11-21-14 (1981))

Ohio

The Department of Mental Retardation and Developmental Disabilities may accept appointment by any probate court as guardian for a mentally retarded or developmentally disabled person. No costs or fees may be charged and no appointment made without performing a comprehensive evaluation of the person's medical, psychological, social and educational history. An annual review is required. (Ohio Rev. Code Ann. §§ 5123.55 to 5123.58 (Baldwin 1982 Supp.))

Oklahoma

The director of public welfare serves as guardian of children whose parents have had their parental rights terminated until a new guardian is appointed. (Okla. Stat. Ann. tit. 10, § 1145 (West 1983 Supp.)) The superintendent of a state institution for children serves as guardian of those children in his custody. (Okla. Stat. Ann., tit. 10, § 1415 (West 1983 Supp.)) The Department of Institutions, Social and Rehabilitative Services may be appointed temporary guardian of an elderly person in order to consent to the provision of emergency protective services. (Okla. Stat. Ann. tit. 43A, § 808D.4 (West 1979))

Oregon

The county court or board of county supervisors may create an office of public guardian and conservator for persons who do not have relatives or friends willing and capable of serving. The guardian serves upon the petition of any person or upon his own petition. He must file an official bond, which may be increased to cover all of the estates he controls. He may employ private attorneys if their fees can be paid from the ward's estate. Upon the finding that the county does not need the services of a public guardian and conservator, the county board of commissioners may terminate the office. All funds are to be deposited in the county treasury and disbursed by proper warrant or deposited in insured banks or savings and loan associations in the county. County funds may be used to operate the office, but if the county compensates the guardian, any reimbursement must be paid to the county. There is a claim against the person's estate for reasonable expenses and such

compensation as the probate court deems just and reasonable. No court fees may be charged in public guardianship proceedings. (Or. Rev. Stat. §§ 126.905 to 126.965 (1981))

Rhode Island — Any agency to which a child is entrusted becomes the guardian of that child. (R.I. Gen. Laws § 14-1-35 (1981))

South Carolina — The judge of the probate court for each county is required to act as guardian of the estate of minors or incompetents who do not have and cannot find a guardian. He serves on his official bond and has the same powers and duties as private guardians. The application for his appointment may be made by the proposed ward's father, mother, husband, brother, executor, administrator or other interested person. The petition must state the person's name, age, the value of his estate and that no one is available to serve as guardian. The guardian must make an annual report at the first term of the county court of common pleas in open court, under oath, of all his acts. His report must include the ward's name, date of his appointment, value and contents of estate, investments, expenditures and recommendations. Orders of discharge may be granted after a full and fair accounting has been made and upon a judge's death or retirement, all property in his control is transferred to his successor. All investments made are to be approved by the judge of the circuit court upon petition and proof that the investment is a safe and good one. He receives the same compensation that a private guardian would and the costs of proceedings are the same as for similar probate proceedings. (S.C. Code Ann. §§ 21-23-10 to 21-23-110 (Law Co-op. 1976))

South Dakota — The county board of mental retardation must investigate any complaints in which it is alleged that a person is mentally retarded and is not receiving proper care and education. The county school board must provide access to school records to aid in these investigations. If the board finds the situation to be as alleged and there is no responsible relative available to take custody and petition for guardianship, the board must notify the board of social services, which may petition for letters of guardianship. Each resident of facilities six months prior to his eighteenth birthday is to be evaluated to determine his competency. If he is determined to be incompetent, parents or other interested persons or entities if there are no parents, are to be notified and requested to file a petition for the appointment of a guardian. If no petition is filed, the board of social services may file for letters of guardianship. The administrator of a facility in which a resident 18 years or older needs a guardian, is to inform the board of social services, which may petition for letters of guardianship. (S.D. Comp. Laws Ann. §§ 27B-6-1 to 27B-6-5 (1976)) The functions of the division of mental health and mental retardation under this title are transferred to the Department of Social Services. (S.D. Comp. Laws Ann. §§ 1-36-5.1 to 1-36-7.4 (1983 Supp.)) If no responsible person or facility is willing to accept the limited guardianship of an incapacitated person, the court may appoint the secretary of social services as limited guardian. (S.D. Comp. Laws Ann. § 27B-6A-19 (1983 Supp.))

Tennessee — The county courts have the power at any quarterly session to appoint or elect a public guardian to serve as guardian of the estate of minors, idiots and lunatics who have no guardian. Notice is to be given to persons entitled to serve. The public guardian must make an official oath and post a bond in an amount set at the discretion of the court. Upon the guardian's death, removal or resignation, the county court may, at the first succeeding quarterly session, fill the vacancy for the unexpired term. He has the same powers and duties as private guardians and receives the same compensation. (Tenn. Code Ann. §§ 30-1501 to § 30-1508 (1977))

Texas — Only as a last resort, the court may appoint the state Department of Mental Health and Mental Retardation or a community mental health and mental retardation center limited guardian of an incapacitated person. (Tex. Prob. Code Ann. § 1301 (Vernon 1984 Supp.))

Utah — A public protective services agency may be appointed guardian for a disabled adult in an emergency situation to have the responsibility for the person's welfare and the authority to consent to approved protective services until the emergency order authorizing the protective services expires. (Utah Code Ann. § 55-19-5.5(c)(5) (1983) Supp)) The director of the protective services agency or his delegate may be appointed by the court as guardian to prevent or cause discontinuance of abuse, neglect or exploitation. (Utah Code Ann. § 55-19-7 (1983 Supp.))

Vermont — The state district court may appoint the commissioner of mental health as guardian of the person of noninstitutionalized mentally retarded persons over the age of 18. Any interested person may request that the state's attorney file a petition with the court requesting the appointment of a guardian. The petition must state the petitioner's name, address and interest in the alleged mentally retarded person, the name, address and age of the alleged mentally retarded person, the name and address of his nearest relative and spouse, if any, and the reasons why supervision and protection are needed. The court must mail a copy of the petition to the commissioner, who arranges for an evaluation of the person's developmental and social functioning by a qualified mental retardation professional, who makes recommendations. A hearing with notice is required. The person has a right to counsel and to appeal the court's determination. The commissioner, as guardian, must maintain close contact with the mentally retarded person, assist him in obtaining services and encourage maximum self-reliance on the part of the mentally retarded person. He has general supervisory power of the mentally retarded person, including the power to change the person's residence, and to provide for the person's care, habilitation, education and employment, the power to approve contracts, to institute or defend judicial actions and to consent to surgical operations in nonemergency situations. The person cannot be institutionalized unless proper procedure is followed and the commissioner's exercise of his authority is to be in a manner least restrictive of the mentally retarded person's personal freedom consistent with his needs for supervision and protection. A person receiving such services may appeal a decision of the commissioner. An annual review of the social adjustment, progress and legal status of the person is required. The commissioner, the mentally retarded person or any interested person may petition for the modification or termination of a guardianship. A hearing with notice is required. (Vt. Stat. Ann. tit. 33 §§ 3601-3617 (1981))

West Virginia — The Department of State must provide care for neglected children who are committed to its care for custody or guardianship. A child committed for guardianship after termination of parental rights shall remain in the department's care until he attains his majority, marries, is adopted or guardianship is relinquished through the court. (W. Va. Code §§ 49-2-1 to 49-2-2 (1980))

Wisconsin — The circuit court of a county in which a person is a patient in a state or county hospital or mental hospital, a patient in a state institution for the mentally deficient or a resident of a county home or infirmary may designate the county as guardian of these people if the court finds no relative or friend is available to serve. The counsel for the Department of Health and Social Services, the county corporation counsel or district attorney makes the application for the appointment to the circuit court of the county in which the facility is located or where the patient resided prior to entering the home. No oath or bond is required of the county. The employee of the county responsible for

dealing with funds must be designated a securities agent and must file a bond. The court may place any limitations upon the guardianship as it deems to be in the best interest of the patient. Any guardian who has property of his ward valued at over $200 and fails to pay bills for the patient's care and support from the department of health and social services within three months of their receipt can be removed. (Wis. Stat. Ann. § 880.295 (West 1983 Special Pamphlet))

Wyoming

The state board of charities and reform may petition in district court to be appointed guardian of minors coming into its care and custody. The guardianship is terminated by the ward's adoption, attaining the age of majority or by court order. Notice and hearing are required. (Wyo. Stat. §§ 3-2-401 to 3-2-404 (1977))

LIMITED GUARDIANSHIP LAW--OTHER STATES

This summary is the result of a survey of the guardianship law of the 50 states. Forty-three of the states provide for some form of limited guardianships. Topics covered, where applicable, include the type of limited guardianship which may be imposed, the procedure for appointment of a limited guardian, the powers and duties of a limited guardian, the rights and privileges retained by the ward, the method of guardian selection and the procedure for termination or modification of a limited guardianship.

Alabama

Limited guardians may be appointed for partially disabled persons whose ability to receive and evaluate information effectively or communicate decisions is impaired to the extent that they lack the capacity to manage at least some of their financial resources or meet at least some of the essential requirements for their physical health or safety. The limited guardian's powers, duties and liabilities are limited by the court to those areas in which the person is disabled. The partially disabled person retains all legal and civil rights that have not been granted to the limited guardian. No appointment can be made without an investigation. Any relative or friend can petition for a hearing. If the person does not have counsel, a guardian ad litem will be appointed. A six-person jury will hear the petition and all parties may subpeona witnesses. The disabled person is to be present at the trial, if it is consistent with his health or safety. The court must prefer as guardian the disabled person's nearest relative who can best manage the estate. The guardianship can be revoked upon petition of the disabled person or his guardian. (Ala. Code § 26-2-1, §§ 26-2-40 to 26-2-55 (1983 Supp.))

Alaska

Partial (limited) guardians may be appointed for incapacitated persons. Such guardianships shall be designed to encourage the development of the maximum self-reliance and independence of the person and are only ordered to the extent necessitated by the person's actual mental and physical limitations. A temporary guardian may be appointed to consent to necessary services during the pendency of the petition for a full or partial guardianship. A partial guardian has only those powers and duties over his ward that are stated in the court order. He may not place his ward in an institution for the mentally ill without a formal commitment proceeding, consent to abortion, sterilization, psychosurgery or removal of bodily organs except to preserve the ward's life or prevent serious harm to his physical health, consent to withholding life-saving medical procedures or experiments, nor may he consent to termination of the ward's parental rights, prohibit the ward's voting or obtaining a driver's license or prohibit marriage or divorce. The incapacitated person is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or specifically granted to the guardian. A hearing with notice is required. Any person may petition for a hearing. The petition must describe the extent of the incapacity, the type of protection and assistance sought and the facts supporting the need for an appointment. The court must appoint a visitor to arrange for evaluations and to file a report. An expert in the field of the alleged incapacity must also perform an investigation. The visitor must inform the person of his right to an attorney and to employ his own expert. The incapacitated person may choose not to answer questions during the examinations and evaluations. The visitor has 90 days to file his report, which must explain the alternatives to guardianship and recommend any that can meet the person's needs. The evaluation report should also include the results of all tests, an evaluation of the person's need for treatment, the names of potential

guardians and the specific, least restrictive authority needed by the guardian to provide services. A guardian ad litem may be appointed to protect the rights of the ward. At the hearing, the person has a right to present evidence, to cross-examine witnesses, to remain silent, to request an open or closed hearing, to be present and to be tried by a jury. The court must be made aware of any psychotropic medication which may influence the person at the hearing and must take it into consideration in making the appointment. If the court finds a partial incapacity and that alternatives are not feasible or inadequate, the court must appoint a partial (limited) guardian. The court order must adopt a guardianship plan and specify the authority of the guardian in the areas of medical treatment, housing, care and services and fulfilling the ward's wishes. It is to be the least restrictive alternative designed to encourage participation and development by the ward. Any competent person, the public guardian or a private association or nonprofit corporation with a guardianship program may be appointed. Priority for appointment is as follows: the person's nominee, his spouse, adult child or parent, relative, a private association or nonprofit corporation with a guardianship program and the public guardian. Ninety days after his appointment, the guardian must submit a report annually or request a visitor be appointed to do so. A court-appointed visitor must submit a report at least once in every three-year period. Additional reports by the guardian are required when the court orders it, the ward's capacity changes, the guardian resigns or is removed, the guardianship ends or the ward requests one. The report must contain a discussion or the ward's mental, physical and social condition, present living arrangement, changes in the ward's capacity, services being provided and the number of contacts between the guardian and his ward (if they do not live together). The report shall also contain a financial accounting and other necessary information. Any interested person may petition for removal, modification or termination of the guardianship. (Alaska Stat. §§ 13.26.090 to 13.26.150 (1983 Supp.)) The public guardian may serve as a partial guardian. (Alaska Stat. § 13.26.370 (1982 Supp.))

Arizona

The powers and duties of a guardian of an incapacitated person may be modified by court order. (Ariz. Rev. Stat. Ann. § 14-5312 (1974))

Arkansas

Limited guardians may be appointed for incapacitated persons over the age of 18 whose ability to receive and evaluate information and whose behavior manifests an inability to communicate decisions such that they are unable to provide for essential requirements of health or safety without court-ordered assistance. Such guardianships shall be used only as is necessary to promote and protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence and shall only be ordered to the extent necessitated by the person's actual mental, physical and adaptive limits. Temporary limited guardians may be appointed for 90 days. The limited guardian's rights, powers and duties are specifically enumerated in the court order and expressed court approval is necessary in order for a guardian to consent to abortion, sterilization, psychosurgery or removal of bodily organs except in a life-threatening situation, consent to withholding life-saving treatment, authorize experimental medical procedures, authorize termination of parental rights, prohibit voting or obtaining a driver's license and consent to settlement or compromise of any claim for or against the person. The incapacitated person is not presumed incompetent and retains all legal and civil rights except those which have been expressly limited by court order or specifically granted to the guardian. A hearing with notice is required. Any adult person may petition for a hearing. The petition must make a recommendation as to the type of guardianship sought and evidence of exploration of alternatives to guardianship. An evaluation of the person's medical and physical condition, adaptive behavior, intellectual functioning, support systems available and recommendations must be made by professionals regarding specific areas needing assistance and the least restrictive

alternatives available. At the hearing the person has the right to be represented by counsel, present evidence, cross-examine adverse witnesses, remain silent and be present. The court order must define the limited guardians powers and duties, specify all legal disabilities and state the duration of the guardianship. Any suitable person may be appointed guardian and the court is to consider the person's preference. A bond is required and an annual report must be filed,reporting the person's mental, physical and social condition, present living arrangement and the need for continued guardianship services. The report shall also contain an accounting and other necessary information. Periodic review is required every three years. The incapacitated person or any interested person may petition to have the guardianship modified or dismissed. (Ark. Stat. Ann. §§ 57-801 to 57-820 (1983 Supp.))

California

Limited conservators may be appointed for developmentally disabled adults. The limited conservator of the person has the care, custody and control of the limited conservatee, but not any of the following powers unless they are specifically granted by the court: decide on the residence of the conservatee, have access to confidential records and papers, consent to marriage of the conservatee, consent to contract, consent to medical treatment, control the person's social and sexual contacts and relationships and decisions concerning education. The conservator secures such habilitation, treatment, training, education, medical and psychological services and social and vocational opportunities that will assist the person in the development of maximum self-reliance and independence. The powers and duties of a limited conservator of an estate must be specifically provided in the court order. The court order appointing a limited conservator lists the properties of the person that the conservator is entitled to possession and management, the debts, rentals, wages or other claims due the person that the conservator is entitled to collect, the contractual or other obligations he may incur and the claims against the person that he may pay, compromise or defend. The limited conservators powers and duties should permit the developmentally disabled adult to care for himself or manage his financial resources commensurate with his ability to do so. The proposed conservatee, his spouse, any relative, interested public entity or interested person or friend may petition for the appointment of a conservator. The petition must set forth the nature and degree of the alleged disability, the powers and duties requested for the limited conservator and any requested limitations of the civil and legal rights of the conservatee. Notice of the hearing must be given at least 15 days in advance. The person has the right to appear at the hearing and oppose the petition. He has the right to counsel and to a jury trial. The person is excused from attending the hearing if he is out of state, medically unable or the court investigator has reported that he does not wish to attend the hearing, contest the petition or object to the proposed conservator. The person, with his consent, is to be assessed at a regional center, which submits a report to the court including an assessment of his disability and any recommendations. If the court finds that the person possesses the capacity to care for himself and to manage his property as a reasonably prudent person, it must dismiss the petition. The conservator, the conservatee or any relative or friend may petition to modify the conservatorship. (Cal. Prob. Code §§ 1820 to 1830 (West 1984 Supp.), §§ 2350 to 2359 (West 1981), §§ 2400 to 2407 (West 1984 Supp.))

Colorado

Guardians of incapacitated persons are plenary guardians unless the court specifies in its order any limitations or restrictions on the scope or duration of the guardianship. (Colo. Rev. Stat. § 15-14-304 (1982 Supp.)) Conservators of minors and disabled persons may have their powers and duties modified by court order. (Colo. Rev. Stat. § 15-14-426 (1982 Supp.))

Connecticut

Limited guardians of mentally retarded persons are appointed to supervise certain specified aspects of the care of an adult person who, by reason of the severity of his mental retardation, is able to do some but not all of the tasks necessary to care for himself or to make some but not all informed decisions about matters related to his care. The guardian may have any of the following powers and duties for those particular areas in which the person lacks the capacity to meet the essential requirements for his physical or mental health or safety: take general custody; assure the least restrictive, most normal setting for the person's place of abode that is consistent with his essential safety requirements; assure care and comfort and necessary services; provide any required consents or approvals; assist in those particular areas in which the person's capacity to meet the essential requirements of his physical or mental health or safety is impaired; protect his legal rights; and assist him in fulfilling his civil duties (such as voting). With certain exceptions, the limited guardian cannot have the person committed, consent to abortion, sterilization, psychosurgery or removal of a body organ, prohibit marriage or divorce, consent to termination of the person's parental rights or consent to any experiments on the person. Any adult person may petition for appointment, but the petition must specify the person's inabilities and in what areas he needs protection. A hearing with notice is required. The person has a right to counsel (court-appointed if necessary), to present evidence, to cross-examine witnesses and to be present at those portions of the hearing that the court finds would not be seriously detrimental to his condition. A physician and a psychologist evaluate the person's condition and submit reports to the court. In appointing the guardian, the court should consider the person's nominee. The guardian submits reports annually, as well as when the court orders one, when there is a change in the person's capacity, when the guardian resigns or is removed and at termination. The report must list any significant changes, the services being provided, the guardian's actions, any signficant problems and any recommendations of changes to be made in the guardianship. The court reviews each guardianship at least every three years. The guardian may be removed if doing so is in the best interest of the ward. (Conn. Gen. Stat. Ann. §§ 45-320 to 45-336 (West 1983 Supp.))

Florida

A limited guardian of the property may be appointed for an incompetent over the age of 18 years who is wholly or substantially self-supporting by means of compensation from employment. The guardian is to receive, manage, disburse and account for the property the incompetent receives from other sources. The incompetent has the right to receive and expend the compensation from his employment. He may contract or otherwise legally bind himself for any sum of money not exceeding one month's wages and earnings or $300, whichever is greater. (Fla. Stat. Ann. § 744.303 (West 1983 Supp.))

Georgia

A limited guardian may be appointed for an incapacitated adult who is incapacitated to the extent that he lacks sufficient understanding or capacity to make significant responsible decisions concerning his person or to the extent he is incapable of communicating his decisions or is incapable of managing his estate and thus his property will be wasted or dissipated or his estate is needed for the support of himself and his dependents. A limited guardian of the person has those rights and powers reasonably necessary to provide adequately for the support, care, education and well-being of the ward. He has custody and may determine the person's place of abode; he must make financial arrangements for the ward's support and training, maintain regular contact or communication, care for the ward's personal property, participate in legal proceedings and give necessary consents or approvals. The court may limit any of the guardian's powers in its order. A ward has a right to a guardian who will respect the individual's rights and dignity at all times, will act in his best interests and is reasonably accessible. He has the right to have his property utilized to provide adequately for his support, care, education and well-being and he has the right to

communicate freely and privately with other persons. The appointment generally gives the following powers to the guardian unless the court specifically retains them for the ward: make marriage and other contracts, consent to medical treatment, establish a residence or place of abode, bring or defend any action at law or equity, buy, sell or otherwise dispose of or encumber real, personal or trust property or enter into other business or commercial transactions. The ward is not to be deprived of any civil, political, personal or property rights without due process. No presumption of incapacity is to be drawn from a finding of need of treatment or services or criminal insanity or incompetency to stand trial. Any interested person may petition for appointment of a guardian and the petition must discuss the incapacitated person's limitations and list specific areas where he needs assistance. A physician or psychiatrist's evaluation must accompany the petition. A hearing with notice is required. The person has a right to counsel and to subpeona and cross-examine witnesses. In selecting a guardian, the court should consider the following preferences: the person's nominee, spouse, adult child, parent, guardian of a minor child, relative who has cared for the person, other persons or the county director of the department of family and children services as a last resort. The guardian may be a corporation. Within four months after his appointment and within two months of each anniversary date, the guardian must file a personal status report. Any person may petition for review that could result in modification or termination of the guardianship. (Ga. Code Ann. §§ 29-5-1 to 29-5-12 (1983 Supp.))

Hawaii

The order of appointment of a guardian of an incapacitated person may limit or modify his powers and duties or may specify areas in which the ward shall retain the power to make and carry out decisions concerning his person. (Hawaii Rev. Stat. § 560:5-304 (1981 Supp.))

Idaho

A limited guardian may be appointed for a person incapacitated by mental or physical causes (but not minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. A guardian has the following powers and duties, except as modified by court order: custody; determination of place of abode; provision for the care, comfort, maintenance, training and education of the person and provision for his personal effects, necessary consents or approvals, receipt money and tangible property. The court encourages the development of maximum self-reliance and independence and makes orders only to the extent necessitated by the person's actual limitations. Any interested person may petition for an appointment. A hearing with notice is required. The person must be examined by a physician or other qualified person and interviewed by a court visitor. The person has a right to counsel, to be present at the hearing, to present evidence and cross-examine witnesses and may request a closed hearing. Any competent person or suitable institution may serve, with the following preferences: the person's spouse, adult child, parent or testamentary nominee of parent, a relative with whom he is residing or a nominee of the person caring for or paying benefits to him. The guardian is to report on the condition of his ward and of his estate as is required by the court. The court can dismiss a petition or make other dispositive orders and may remove a guardian if it is in the ward's best interest. (Idaho Code § 15-5-101, §§ 15-5-301 to 15-5-313 (1983 Supp.)) Partial (limited) guardians or conservators may be appointed for developmentally disabled persons who are unable to manage some of their financial resources or meet some essential requirements for physical health or safety. The services provided shall be no more restrictive than is necessary for the person's protection and the protection of society, shall encourage maximum participation in decision-making by the person and shall assist the person in developing or regaining their abilities to the maximum extent possible. The order appointing the partial guardian defines his powers and duties so as to permit the person to care for himself to the extent of his ability to do

so. The order must specify all legal restrictions on the developmentally disabled person. The person retains all legal and civil rights except those limited by the court order or specifically granted to the guardian. No partial or total conservator, without specific court approval, may consent to medical or surgical treatment that permanently prohibits the conception of children unless necessary to protect the person's physical health, withhold consent to life-saving treatment, consent to experimental surgery, procedures or medications or delegate powers. The developmentally disabled person or any interested person may petition for the appointment of a guardian. The petition must include a description of the person's impairments and the nature and scope of the guardianship sought, the services sought and the person's financial condition. A hearing, with notice is required. The person has a right to an attorney. An evaluation committee must prepare a report for the court that states the nature and extent of the impairments, the mental, emotional and physical condition and educational status of the person, his adaptive and social skills, the services needed, recommendations regarding the type and extent of the guardianship and the person's preference for guardian. A report, at least annually, must be made by the guardian regarding the developmentally disabled person's current mental, physical and social condition, his present living arrangement, services provided, significant changes in capacity, significant actions taken by the guardian, significant problems that have arisen, a financial statement and the needs for continued guardianship. The developmentally disabled person, his legal guardian, parent, attorney or friend can petition for review. (Idaho Code §§ 66-401 to 66-414 (1983 Supp.))

Illinois

A limited guardian may be appointed for a disabled adult who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person or is unable to manage his estate or financial affairs. Causes of disability may include physical or mental problems, developmental disabilities and "gambling, idleness, debauchery or excessive use of intoxicants or drugs." The appointment of a limited guardian of a person removes only those rights and powers specifically granted to the guardian by the court, which may be any of the following: custody, support, care, comfort, health, education, maintenance and professional services. The guardian is to assist the ward in the development of maximum self-reliance and independence. A limited guardian of the estate has all the following powers not specifically reserved to the ward: care, manage and invest the assets of the estate, apply income and principal for the ward's expenses, perform contracts and participate in legal proceedings. The appointment of a limited guardian is not a determination of incompetency. Any reputable person or the disabled person may petition for a hearing. The petition is to include the reasons for the guardianship request. The petition is to be accompanied by an evaluation report, with recommendations. A veterans' administration determination of incompetency is prima facie evidence of the necessity for the appointment. The person has a right to counsel, to a six-member jury trial, to present evidence, to cross-examine witnesses and to request a closed hearing. Any person over 18 who is not of unsound mind, not adjudged disabled or not ever convicted of an infamous crime may be appointed guardian. Any public agency or nonprofit corporation may serve as guardian of the person or the estate. Any domestic corporation or qualified state resident may serve as guardian of the estate. Before becoming disabled, a person may designate a guardian in writing. The guardian is to report at intervals indicated by the court, but at least annually. The court may dismiss or make any other disposition of the petition. A ward may request a hearing to terminate or modify the guardianship. (Ill. Rev. Stat. ch. 110.5, §§ 11a-1 to 11a-23 (Smith-Hurd 1983 Supp.))

Indiana

A limited guardian may be appointed to assist an incompetent in managing a portion of his property or his affairs. The limited guardian's powers and duties are limited to those specifically stated in the order of appointment. The ward retains all other rights, powers and duties. These may include the care and maintenance of the ward and the preservation and management of his estate, as well as providing for his training and education. Any person may file a petition for the appointment of a guardian, which must include a description of the nature of the incapacity and the reason it is sought. A hearing with notice is required. At the hearing, the person has a right to counsel, to request a jury trial and to be present in court. Any public agency or charitable organization may be appointed guardian and the court is to consider the person's request, a testamentary appointment, a spouse's request, the proposed guardian's relationship by blood or marriage to the proposed ward and the proposed ward's assets. The guardian of the person may be required to report on the condition of his ward to the court at regular intervals or otherwise as the court directs and guardians of the estate must make biennial accountings. The guardianship may be terminated without a court order upon the ward's majority, adjudication of competency or death. It may be terminated by court order when the estate is exhausted, is less than $3,500 or the person's residence is out of state and another guardian has been appointed or it is no longer necessary. The ward or other person may petition for an adjudication of competency. (Ind. Code Ann. § 29-1-18-1 to 29-1-18-52 (Burns 1983 Supp.))

Iowa

The court may direct that the guardian of a ward have only a specially limited responsibility and shall state those areas which shall be supervised by the guardian and all other areas and rights shall be retained by the ward. (Iowa Code Ann. § 633.635 (West 1983 Supp.))

Kansas

Limited guardians may be appointed for disabled adults whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to manage his financial resources or to meet his essential requirements of physical health or safety. Any person may file a petition for the appointment of a guardian in the district court of the county of residence or presence of the proposed ward. The petition must specify the reasons why a guardian is sought, and the court may require that it include a physician's statement that he has examined the person's disability. The court may allow the petition to be accompanied by a statement that the person has refused to be examined. The court may require that the person submit to a mental evaluation at such place and by such persons as the court designates. The court may issue an order of investigation, to cover the person's character, past conduct, family relationships, the nature and extent of the person's property and income and other pertinent factors. A hearing with notice is required. At all times, the person has a right to an attorney. At the hearing, the proposed ward must appear unless the court determines it would be injurious to his welfare. There can be no waiver of the person's appearance at the hearing if he requests to be there in writing. The hearing will be without a jury unless 48 hours in advance, the person requests a jury, which would consist of six jurors. The person has a right to testify and to present and cross-examine witnesses. If the court makes a finding that a disabled person is able to and should be permitted to make some decisions which affect the person, a limited guardian shall be appointed, whose powers and duties are to be specified on his letters of guardianship. If the court finds that the person can make some decisions concerning his property, a limited conservator shall be appointed. Private, nonprofit corporations may be appointed as guardians if they have been certified by the secretary of social and rehabilitative services. A ward or any person on his behalf may petition for a restoration to capacity. A hearing with notice is required on the petition. The court may order the termination of a

guardianship. The person's restoration to capacity or his death also terminates the guardianship. Annual and final reports and accountings are required and every three years the court must review the guardianship. (Kan. Stat. Ann. §§ 59-3001 to 59-3038 (1983))

Maine

In any case in which a guardian needs to be appointed, the judge may appoint a limited guardian. The specific duties and powers of the guardian are enumerated in the court order. The ward retains all legal and civil rights except those suspended by the court order. (Me. Rev. Stat. tit. 18-A, §§ 5-105, 5-312 (1981)) This provision also applies to public guardianships. (Me. Rev. Stat. Ann. tit. 18-A § 5-614 (1981))

Maryland

A guardian of the person may be appointed for a disabled person who is proved to lack sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing or shelter because of any mental disability, senility, other mental weakness, disease, habitual drunkenness or addiction to drugs and no less restrictive form of intervention is available which is consistent with the person's welfare and safety. A petition, hearing and notice are required. The person may be present at the hearing and has a right to present evidence and cross-examine witnesses. He may request a closed hearing without a jury. Preferences for selection as guardian are as follows: a person, agency or corporation nominated by the person if he was 16 years or older and had sufficient mental capacity to make an intelligent choice at the time he made the nomination, his spouse, parents, testamentary nominee of a parent, children, adult heirs, nominee of a person caring for him, any other appropriate person, agency or corporation or for persons under 65, the director of the local department of social services and for persons over 65, the director of the state office on aging or local office on aging. The court may grant only those powers necessary to provide for the demonstrated need of the disabled person. They may include the same powers and duties a parent has over an unemancipated minor child, the right to custody and to establish the ward's place of abode, to provide for care, comfort and maintenance, which may include training and education, the right to care for the person's personal property and to give necessary consents or approvals. An adjudication of disability is not grounds for commitment to a mental institution and appointment of a guardian is not evidence of incompetency nor does it modify any civil right of the disabled person unless the court so orders. An annual report must be filed by the guardian with the court indicating the person's residence and health status, the guardian's plans and a recommendation as to whether or not the guardianship should be continued. The court may hold a hearing to determine if grounds for continuance exist and it may order a discontinuance. (Md. Est. & Trusts Code Ann. §§ 13-704 to 13-710 (1982 Supp.)) Any limitation on the powers of a guardian contained in a will nominating the guardian should ordinarily be imposed by the court order. If the court limits any power conferred on the guardian, the limitation shall be endorsed upon his letters of appointment. (Md. Est. & Trusts Code Ann. § 14-215 (1974))

Massachusetts

When a guardian is appointed by the probate and family court to consent to the provision of protective services for an elderly person, the court is to establish the least restrictive form of fiduciary representation that will satisfy the needs of such elderly person. (Mass. Gen. Laws Ann. ch. 19A, § 20(a) (West 1983 Supp.)) A mentally retarded adult who is wholly or substantially self-supporting by means of his wages or earnings from employment or other financial entitlement may be permitted by the court to manage his wages or other financial entitlement, or $300 per month, whichever is less. (Mass. Gen. Laws Ann. Ch. 201 § 16B (West 1984 Supp.))

Michigan

Limited guardians may be appointed for unmarried minors, who have all the powers and duties of full guardians except that they cannot consent to a minor ward's adoption or marriage. A minor over the age of 14 years or other interested person may petition for the appointment of a guardian. There must be a hearing with notice at which the minor is entitled to counsel. (Mich. Stat. Ann. §§ 27.5424 to 27.5435 (Callaghan 1982 Supp.)) Partial (limited) guardians may be appointed for developmentally disabled persons, but only to the extent necessitated by the person's actual mental and adaptive limitations. A partial guardianship is the preferred form for developmentally disabled persons and the rights, powers and duties of the guardian are to be specifically enumerated by court order. They may include custody, care, comfort and maintenance, and training, education and other services that will assist in developing the person's maximum self-reliance and independence. Any interested person or entity may petition for the appointment. The petition must list the facts and reasons justifying the guardianship request and must contain an evaluation report prepared by a physician or psychologist and others containing recommendations. The person may request an independent evaluation. A hearing with notice is required. The person is entitled to counsel, may demand a six-member jury, present evidence, confront and cross-examine witnesses, be present at the hearing and may request a closed hearing. The appointment of a guardian is not a finding of legal incompetence or incapacity. The court should try to appoint the ward's preferred guardian. The guardian must file reports with the court at intervals indicated by the court, but not less often than annually. A hearing is required for discharge of the guardian or modification of his powers. (Mich. Stat. Ann. §§ 14.800(600) to 14.800(642) (Callaghan 1980))

Minnesota

The court may restrict the powers of the commissioner of public welfare in his position as public guardian. (Minn. Stat. Ann. § 252A.11 (West 1982))

Missouri

Limited guardians may be appointed for incapacitated persons who by reason of any physical or mental condition are unable to receive and evaluate information or to communicate decisions to such an extent that they lack capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur. Limited conservators may be appointed for disabled persons who for the same reasons lack ability to manage their financial resources. Any person may petition for the appointment of a limited guardian or limited conservator. A limited conservator may be appointed for a disabled person without hearing or notice if the person requests it, or consents to it, and the court, after appointment of counsel for the person, interviews the person and determines that the person understands the need for a conservatorship. Otherwise, a hearing with notice is required. The court may direct that the person be examined by an appropriate professional, who must submit a written report to the court. The person must be informed that he has a right to remain silent during the examination. The person has the right to counsel, a jury trial, an open or closed hearing and to present evidence, cross-examine witnesses, remain silent and be present at the hearing.

If the court, after hearing, finds that a person is partially incapacitated, the court shall appoint a limited guardian of the person of the ward. The order of appointment shall specify the powers and duties of the limited guardian so as to permit the partially incapacitated ward to care for himself commensurate with his ability to do so and shall also specify the legal disabilities to which the ward is subject. In establishing a limited guardianship, the court shall impose only such legal disabilities and restraints on personal liberty as are necessary to promote and protect the well-being of the individual and shall design the guardianship so as to encourage the development of

maximum self-reliance and independence in the individual. If the court, after hearing, finds that a person is partially disabled, the court shall appoint a limited conservator of the estate. The order of appointment shall specify the powers and duties of the limited conservator so as to permit the partially disabled person to manage his financial resources commensurate with his ability to do so.

Annually the court must review all guardianships and conservatorships. The guardian or conservator must file an annual report. (Mo. Ann. Stat. §§ 475.010 to 475.335 (Vernon 1984 Supp.))

Montana

A limited guardian may be appointed for an incapacitated person who, because of mental or physical reasons (but not minority) lack sufficient understanding or capacity to make or communicate responsible decisions concerning his person or is incapable of realizing and making a rational decision with respect to his need for treatment. The limited guardian's powers and duties are to be specified in the order appointing the limited guardian. Any incapacitated person or any interested person may petition for an appointment which must contain reasons for the requested guardianship and those powers and duties requested for the guardian. The person is to be examined by a court-appointed physician. A hearing with notice is required. At the hearing, the person has a right to counsel, to be present at the hearing, to present evidence, to cross-examine witnesses, to request a jury trial and to request the hearing be closed. The appointment may not limit the exercise of any civil or political rights except those that are clearly consistent with the exercise of the powers granted the guardian and does not create a presumption of incompetence. The selection should follow these preferences: the person's nominee, spouse, adult child, parent or testamentary nominee of a parent, any relative with whom he resided six months prior to petition, any sincerely interested relative or friend, a private association or nonprofit corporation or a nominee of the person caring for or paying benefits to the person. The guardian is to report on the condition of the incapacitated person as required by the court or by court rule. Upon termination, the limited guardian must make an accounting. The ward or any interested person may petition for removal if it would be in the ward's best interests. (Mont. Code Ann. §§ 72-5-301 to 72-5-325 (1981))

Nebraska

The powers and duties of a guardian of an incapacitated person may be modified by court order. (Neb. Rev. Stat. § 30-2628 (1974))

Nevada

Special (limited) guardians may be appointed for persons of limited capacity, who are able to independently make some but not all of the decisions necessary for their own care and the management of their property. Any concerned person may petition for the appointment of a guardian. The petition must specify the reasons why a guardian is needed and what powers are sought. An investigator may be appointed, who must submit a written report of his opinion as to the nature of the proposed ward's incapacity and what powers a guardian would need to assist the proposed ward. A hearing with notice is required. The person has a right to counsel and to be present at the hearing, unless the court for good cause excuses him. The court order must specify the powers and duties of the special guardian. The special guardian must exercise his supervisory authority over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision and protection. The court may grant additional powers and duties to the special guardian. Annual reports are required, and the court may order additional ones. (Nev. Rev. Stat. §§ 159.013 to 159.085 (1981))

New Hampshire — Limited guardians may be appointed for incapacitated persons who have been found to be unable to manage an estate or to provide for personal needs for health care, food, clothing, shelter or safety. The guardianship imposed represents only those limitations necessary to provide the ward with needed care and rehabilitative services and that the ward shall enjoy the greatest amount of personal freedom and civil liberties consistent with his mental and physical limitations. The guardian has the following powers, except as modified by court order: accept custody of the ward, determine his place of abode, provide for his care and maintenance, arrange for his training and education and consent to medical or professional care. No guardian may consent to psychosurgery, electro-shock, sterilization or experimental treatment without court order. The court may limit or impose additional powers and duties on the guardian. The incapacitated person cannot be deprived of his legal rights such as the right to marry, obtain a driver's license, testify in a judical or administrative proceeding, make a will, convey or hold property or contract, except upon specific findings of the probate court. The court order appointing the guardian must enumerate which legal rights the person is incapable of exercising. A guardian of the estate must manage the ward's property as he would his own affairs. He must give a receipt for the ward's property. The probate judge may authorize the guardian to sell estate property. The guardian must take an oath before a license to sell property is issued by the court. With court approval, he may purchase property for the ward's homestead. The court may limit his powers or impose additional ones if it deems doing so to be in the best interests of the ward. Any relative, public official, interested person or the incapacitated person may petition for the appointment of a guardian. The petition must include a statement as to the type of guardianship sought and a statement of specific factual allegations indicating a need for guardianship services. A hearing with notice is required. The hearing will be closed unless the incapacitated person requests it be open. At the hearing, the person is presumed to be capable and his incapacity must be proven beyond a reasonable doubt. He has an absolute right to counsel and is to be present at the hearing unless a written statement is submitted that he does not wish to attend the meeting. That statement must be accompanied by a physician's affidavit indicating that the person's condition is such that he is likely to suffer harm or has no ability to understand the nature and consequences of the proceeding. Any competent person may be appointed guardian. The judge of probate sets the amount of the bond, which may be waived if the gross value of the estate is less than $2,500 or if the guardianship is only of the person. The guardian of the estate must file an annual accounting and the guardian of the person must file an annual report stating the person's medical condition, care, treatment and supportive social services received, any changes in his living situation, the guardian's plan to preserve or maintain the person's well-being and the need to continue or end the guardianship. A biennial court hearing is to be held to determine if the guardianship is to be continued. Notice is required and the person has a right to counsel. The court must give annual notice to the ward of his right to seek a modification or termination of the guardianship. (N.H. Rev. Stat. Ann. §§ 464-A:1 to 464-A:44 (1981 Supp.)) The public guardianship and protective services program may also be limited. (N.H. Rev. Stat. Ann. § 547-B:4 (1983 Supp.))

New Jersey — The court may limit the powers conferred upon a guardian. The limitations must be stated in the certificate of letters of guardianship. (N.J. Stat. Ann. § 3B:12-37 (West 1982 Pamphlet))

New Mexico — The court may modify by order a guardian's powers. (N.M. Stat. Ann. § 45-5-312 (1978))

New York — A limited guardian of the property may be appointed for a mentally retarded person over 18 years old who is wholly or substantially self-supporting by means of his wages or earnings from employment. The guardian is empowered to receive, manage, disburse and account for only such property of the person as is received from other than wages or earnings. The mentally retarded person has a right to receive and expend any and all wages or other earnings from his employment. He has the power to contract or legally bind himself for any sum of money not exceeding one month's wages or earnings from such employment or $300, whichever is greater. (New York Surr. Ct. Proc. Act § 1751 (Consol. 1980))

North Carolina — Guardianships for incompetent adults seek to preserve for the incompetent the opportunity to exercise those rights that are within his comprehension and judgement, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent. To the maximum extent of his capabilities, an incompetent individual should be permitted to participate as fully as possible in all decisions that will affect him. Any person may file a petition for an incompetency hearing. A hearing with notice is required. The person has a right to counsel and may request a multidisciplinary evaluation be performed. The person has a right to trial by jury, to request a closed hearing, to present evidence, to subpoena witnesses, to request production of documents and to examine and cross-examine witnesses. The clerk of the court may order that the ward retains certain rights and privileges to which he was entitled prior to being adjudged incompetent. The clerk is to consider appointing a guardian according to the following order of priority: an individual, a corporation or a disinterested public agency. A status report must be filed within six months of the appointment, then annually starting one year after the appointment. A petition and hearing is necessary to determine if the ward has been restored to competency. (N.C. Gen. Stat. §§ 35-1.6 to 35-1.39 (1983 Supp.))

North Dakota — An incapacitated person or any interested person may petition for a finding of incapacity and appointment of a guardian. A hearing is required. The person is to be examined by a court-appointed physician, who submits a written report to the court, and is to be interviewed by a court-appointed visitor. The person has a right to an attorney, to be present at the hearing and to present evidence and cross-examine witnesses. The hearing may be closed if the alleged incapacitated person requests it. The court must exercise its authority consistent with the maximum self-reliance and independence of the incapacitated person and shall make orders only to the extent necessitated by the person's actual mental and adaptive limitations. The court must determine if the person is mentally incompetent and thus not qualified to vote. Any limitations of the guardian's powers must be endorsed on his letters. Any competent person, including a designated person from a suitable institution, agency or nonprofit group home may be appointed guardian. (N.D. Cent. Code §§ 30.1-28-02 to 30.1-28-13 (1983 Supp))

Oklahoma — The appointment of a temporary guardian to consent to the provision of protective services to an elderly person shall not deprive the elderly person of any rights except to the extent validly provided for in the order of appointment. (Okla. Stat. Ann. tit. 43A, § 808D.5 (West 1979))

Oregon — The court may modify the powers and duties of a guardian by specifying the authority of the guardian to act only in those specific areas in which the ward has a demonstrated incapacity. (Or. Rev. Stat. § 126.137 (1983))

South Carolina — Limited guardians of property may be appointed for mentally retarded persons who are over the age of 21 years and are wholly or substantially self-supporting by means of their wages or earnings from employment. The guardian is to receive, manage, disburse and account for only that property that the ward receives from other sources. He must post a bond of twice the amount of the estate. The ward has a right to receive and expend any and all wages or other earnings from his employment and the power to contract or legally bind himself for any sum of money not exceeding one month's wages or earnings or $300, whichever is greater. The guardian is to make a full and complete inventory within 90 days of appointment and annually thereafter make a full and complete return showing the disposition of all property. The guardianship is terminated at death or by court order after petition and hearing or upon the marriage of a mentally retarded female. (S.C. Code Ann. §§ 21-19-10 to 21-19-260 (Law. Co-op. (1976))

South Dakota — Limited guardians may be appointed for those persons who are impaired by reason of developmental disability to the extent they lack sufficient understanding or capacity to make or communicate responsible decisions concerning their persons. The court is to define the powers and duties of the limited guardian so as to permit the incapacitated person to care for himself or to manage his property commensurate with his ability to do so. If the guardian controls the person's property, he must take care of and manage it as a prudent person would manage his own property. Any interested person may petition for appointment of a guardian. The petition must describe the nature of the incapacity, the reason why a guardian is needed, the specific areas in which the person needs protection and assistance and any limitations on the person's rights. A hearing with notice is required. At the hearing the person has a right to counsel, to be present at the hearing unless it is not in his best interest and to request a closed hearing. If the person is found to be fully capable or fully incapacitated, the court must dismiss the petition. If the person is found to be fully incapacitated a new proceeding for appointment of a plenary guardian should be initiated. In appointing the limited guardian, the court should consider the person's preference. No presumption of incompetence is to be drawn from the appointment and the person retains all rights not specifically granted the guardian. The guardian is to report on the person's condition to the court at regular intervals or otherwise as the court may direct. He is to make an initial inventory within three months of his appointment and annual and final accounts must be made. The ward or any other interested person may petition for the removal of the guardian if it is in the best interest of the ward or if the guardianship is no longer needed. (S.D. Comp. Laws Ann. §§ 27B-6A-1 to 27B-6A-32 (1983 Supp.))

Tennessee — A limited guardian may be appointed to manage, supervise or protect a disabled person to the extent ordered by the court. The court may order any of the following powers and duties: custody, care, comfort, maintenance and support, as well as support of the person's dependents; secure training, education, medical and psychological services and social and vocational opportunities that will assist the disabled person to develop maximum self-reliance and independence; and consent to medical and mental examinations and treatment to the extent the court orders them. Any interested person may petition for the appointment. The petition must list the nature of the disability, the reason a guardian is needed, the specific areas in which the person needs protection and assistance and any limitations of his rights. A hearing with notice is required and the court must order a medical evaluation. At the hearing, the person has a right to counsel, to request a jury trial, to present evidence, to confront and cross-examine witnesses and to be present at the hearing. The disabled person loses only those rights specifically removed, among which can be the right to vote, dispose of property, execute instruments, make purchases, enter

contractual relationships, hold a driver's license and consent to medical and mental examinations and treatment. Any suitable person may be appointed guardian. At court-directed intervals of at least annually, the guardian is to submit a report describing his activities and an accounting of any property. A guardianship may be discharged or modified after petition and hearing if the person is no longer disabled or the guardian fails to perform his duties or act in the ward's best interest. (Tenn. Code Ann. §§ 34-12-101 to 34-12-118 (1983 Supp.))

Texas

A limited guardian may be appointed for an incapacitated person, but only as necessary to promote and protect the well-being of the individual and only to the extent necessitated by his actual mental or physical limitations. The court order establishes the guardian's powers and duties. If the guardian has control of property, he must take care of and manage it as a prudent man would manage his own property. The appointment of a guardian does not create a presumption of incompetence and the person retains all civil rights and powers except those the court designates as legal disabilities by virtue of specifically granting them to the limited guardian. Any interested person may petition for an appointment of a guardian. The petition must list the nature of the incapacity, the reason an appointment is requested, the specific areas in which the person needs protection and assistance and any limitations to be imposed on the person's rights. A hearing with notice is required. If the alleged incapacity is mental retardation, then a state-approved facility must conduct an examination of the person and submit a report. At the hearing, the person has a right to be present at the hearing, to counsel, to request a jury trial and to request a closed hearing. The court should consider the person's preference in appointing a guardian. If the person is found to be totally incapacitated a new proceeding for appointment of a plenary guardian should be initiated. Within three months of the limited guardian's appointment, he must file an inventory. He is to file an annual accounting and is required to report on the condition of his ward to the court at regular intervals or otherwise as the court directs. An incapacitated person or any interested person may petition to have the guardian removed if it is in the ward's best interest. (Tex. Prob. Code Ann. §§ 130A to 1300 (Vernon 1984 Supp.))

Utah

The powers and duties of a guardian of an incapacitated person may be modified by court order. (Utah Code Ann. (1978))

Vermont

A limited guardian may be appointed for a mentally disabled person over 18 years who is unable to manage some or all aspects of his personal care or financial matters, but only to the extent required by his actual mental and adaptive limitations. The court may specify that the guardian has any of the following powers: general supervision, approval of contracts, sale of property, handling of the ward's income and resources, consent to surgery or other medical procedures and handling legal actions. The court may restrict those powers further in order to permit the ward to care for himself and his property commensurate with his ability to do so. The guardian has a duty to maintain close contact with the ward, to encourage his self-reliance and assure that he receives all the benefits and services he is lawfully entitled to. The ward retains all civil and legal rights not specifically granted the guardian. Any interested person may file a petition for an appointment of a guardian. The petition shall contain reasons why a guardian is needed, specific areas where supervision and protection are requested and the powers requested. A hearing with notice is required. The court must order an evaluation by a qualified mental health professional. At the hearing, the person has a right to counsel and to subpoena, present and cross-examine witnesses. If the court finds that the person is not mentally disabled, it must dismiss the petition. Any competent person over 18 years may be appointed guardian, but the court is to consider

the ward's preference, the geographic location of the proposed guardian, the proposed guardian's relationship to the ward, the ability of the guardian to carry out his powers and duties and any potential financial conflict of interest between the guardian and the ward. An annual report and a financial accounting are required. Any interested person may petition for the termination or modification of the guardianship. The appointing court must send an annual notice to each ward of his right to petition for termination or modification of the guardianship. (Vt. Stat. Ann. tit. 14, §§ 3060 to 3081 (1983 Supp.))

Virginia

Partial (limited) guardians may be appointed for those persons determined to be incapacitated because of mental illness or retardation or who are incapable of taking care of their person or property because of age or impaired health. For persons incapacitated because of mental illness or retardation, the guardian's powers, duties and liabilities are to be limited to matters within the areas in which incapacitated has been determined. However, for persons incapacitated because of age or impaired health, the guardian has all the powers and duties of a full guardian, unless otherwise limited by the court. The following provisions apply to both types of incapacitated persons. Subject to any conditions or limitations set forth in the order appointing him, the guardian has the following powers and duties: custody and control of the person, possession of the person's estate, handling all claims or demands of every nature in favor of or against his ward or his ward's estate, prosecuting and defending any actions to which his ward was a party at the time of the appointment and all others subsequently arising, preserving and managing the ward's estate to its best advantage, paying the ward's debts and paying for the maintenance of the ward and his family from the ward's estate. The court must authorize any medical treatment. Any person may petition for the appointment. A hearing with notice, as well as a comprehensive evaluation of the current condition of the person, is required. At the hearing, the person has a right to be present, to counsel and to request a jury trial. The court is to consider the person's preference in appointing a guardian and is to define the powers and duties of the guardian so as to permit the incapacitated person to care for himself and manage his property to the extent that he is capable. The appointment of a guardian does not constitute an adjudication of legal incompetency. Any person may petition for a hearing to determine a restoration of competency or capacity. (Va. Code §§ 37.1-128.01 to 37.1-147 (1983 Supp.))

Washington

Limited guardians of the person or estate, or both, may be appointed for disabled persons who, because of their disability, need protection and assistance, but are not fully incompetent. All limited guardians must take an oath and post bond. They may prosecute and defend actions, but only to the extent provided in the appointment order. Limited guardians of the estate are to pay claims against the person's estate to the extent specified by the order. They are to protect and preserve it, apply it, account for it and invest it. Court authority is required for disbursement. Limited guardians of the person generally provide for the person's care and maintenance, assert his rights and best interests, consent to necessary medical procedures and, if the person is a minor, see that the person is properly trained and educated and given an opportunity to learn a trade, occupation or profession. Any interested person may petition for the appointment. The petition must specify why the appointment is sought, the nature and degree of disability, specific areas to be protected and any limitations on the person's rights requested. A guardian ad litem is appointed to prepare an evaluation of the proposed ward and make recommendations. A hearing with notice is required to appoint a guardian. At the hearing, the person has a right to counsel, to request a jury trial and to be present at the hearing which he may request be closed. Any suitable person over the age of 18 years may be appointed guardian. The limited guardian of the person may

be required to report the condition of his ward to the court, at regular intervals or otherwise, as the court directs. A limited guardian of the estate must file an inventory within three months of his appointment. He must make an annual accounting of his administration and account within 30 days for any substantial changes in the estate. (Wash. Rev. Code Ann. §§ 11.88.005 to 11.88.150 and §§ 11.92.010 to 11.92.190 (1981))

West Virginia — Limited guardians may be appointed for mentally retarded or mentally handicapped persons over the age of 18 years who are wholly or substantially self-supporting by means of their wages or earnings from employment. The guardian is to receive, disburse and account for only property of the person received from other than the wages or earnings of the person. A nonprofit corporation may serve as guardian. The ward has the right to receive and expend any and all wages or other earnings of his employment and has the power to contract or legally bind himself for any sum of money not exceeding one month's wages or earnings or $300, whichever is less. (W.Va. Code §§ 44-10A-1 to 44-10A-6 (1982))

Wisconsin — Guardians of the person may be appointed for limited incompetents. Limited guardians of property may be appointed for incompetents over the age of 18 years who are capable of managing in whole or in part their wages, earnings, income or assets. Limited guardians of property may receive, manage, disburse and account for all property of the person not resulting from wages or earnings. The incompetent person has the right to receive and expend any and all wages or other earnings from his employment and may contract and legally bind himself for any sum of money not exceeding $300 or one month's wages or earnings, whichever is greater. Any incompetent person over 18, his guardian or any person authorized to petition for guardianship of the person may apply for a limited guardianship of the property. The appointment of a limited guardian does not constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order. A hearing with notice to determine competency is required. A licensed physician or psychologist or both must examine the proposed ward and prepare a written statement on the person's mental condition. The person may request an independent evaluation. At the hearing, the person has the right to counsel, to request a trial by jury, to present and cross-examine witnesses and to appeal. The court must base its finding upon clear and convincing evidence. The court must make specific findings as to which legal rights the person is competent to exercise, e.g., to vote, marry, obtain a driver's license, testify, hold or convey property and contract. An annual report is required of a guardian of the person of an incompetent. Such report shall include the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. The guardian, ward or any interested person may petition requesting restoration of any legal right or termination of the guardianship. (Wis. Stat. Ann. §§ 880.01 to 880.38 (West 1983 Special Pamphlet))

Wyoming — Limited guardians may be appointed for developmentally disabled persons. Any interested person may petition for the appointment. The petition must specify the nature and extent of the developmental disability and the extent of the need for protection and assistance. A hearing with notice is required. The guardian may have any of the powers and duties which may be exercised by a guardian of the person or estate of an incompetent person or any fiduciary, but only those specified in the court order appointing him. No presumption of incompetency arises because of the appointment. At the hearing, the person has a right to be present, to testify and to present and cross-examine witnesses. The hearing is without a jury unless the court

orders one. The guardianship must have an expiration date, the maximum of which is ten years from the date of the appointment. Anyone entitled to petition for the appointment may petition for modification, removal or termination of the guardianship. A hearing with notice is required. (Wyo. Stat. §§ 3-2-501 to 3-2-509 (1983 Supp.))