

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1553
99TH GENERAL ASSEMBLY

4096H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.322, 475.355, and 630.005, RSMo, and to enact in lieu thereof thirty-five new sections relating to guardianship proceedings.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 2 475.061, 475.062, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 3 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.322, 475.355, and 4 630.005, RSMo, are repealed and thirty-five new sections enacted in lieu thereof, to be known 5 as sections 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 6 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 7 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.322, 475.341, 475.342, 475.343, 8 475.344, 475.355, 475.357, 475.359, 475.361, and 630.005, to read as follows:

473.730. 1. Every county in this state, except the City of St. Louis, shall elect a public 2 administrator at the general election in the year 1880, and every four years thereafter, who shall 3 be ex officio public guardian and conservator in and for the public administrator's county. A 4 candidate for public administrator shall be at least twenty-one years of age and a resident of the 5 state of Missouri and the county in which he or she is a candidate for at least one year prior to 6 the date of the general election for such office. The candidate shall also be a registered voter and 7 shall be current in the payment of all personal and business taxes. Each candidate for public 8 administrator shall provide to the election authority a copy of a signed affidavit from a surety 9 company, indicating that the candidate meets the bond requirements for the office of public

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

10 administrator under this section. The secretary of state shall notify each election authority of the
11 requirements of this section. The secretary of state will provide the necessary forms to assure
12 compliance of the requirements of this section.

13 2. Before entering on the duties of the public administrator's office, the public
14 administrator shall take the oath required by the constitution, and enter into bond to the state of
15 Missouri in a sum not less than ten thousand dollars, with one or more securities, approved by
16 the court and conditioned that the public administrator will faithfully discharge all the duties of
17 the public administrator's office, which bond shall be given and oath of office taken on or before
18 the first day of January following the public administrator's election, and it shall be the duty of
19 the judge of the court to require the public administrator to make a statement annually, under
20 oath, of the amount of property in the public administrator's hands or under the public
21 administrator's control as such administrator, for the purpose of ascertaining the amount of bond
22 necessary to secure such property; and such court may from time to time, as occasion shall
23 require, demand additional security of such administrator, and, in default of giving the same
24 within twenty days after such demand, may remove the administrator and appoint another.

25 3. The public administrator in all counties, in the performance of the duties required by
26 chapters 473, 474, and 475, is a public officer. The duties specified by ~~[section]~~ **sections**
27 **475.120, 475.343, and 475.359** are discretionary. The county shall defend and indemnify the
28 public administrator against any alleged breach of duty, provided that any such alleged breach
29 of duty arose out of an act or omission occurring within the scope of duty or employment.

30 4. After January 1, 2001, all salaried public administrators shall be considered county
31 officials for purposes of section 50.333, subject to the minimum salary requirements set forth in
32 section 473.742.

33 5. The public administrator for the City of St. Louis shall be appointed by a majority of
34 the circuit judges and associate circuit judges of the twenty-second judicial circuit, en banc.
35 Such public administrator shall meet the same qualifications and requirements specified in
36 subsection 1 of this section for elected public administrators. The elected public administrator
37 holding office on August 28, 2013, shall continue to hold such office for the remainder of his or
38 her term.

473.770. 1. Whenever, in the judgment of any public administrator in any county of the
2 first class, it is necessary for the proper and efficient conduct of the business of the public
3 administrator's office that the public administrator appoint any deputies to assist the public
4 administrator in the performance of his or her official duties as public administrator or as
5 executor, administrator, personal representative, guardian, or conservator in any estates wherein
6 the public administrator has been specially appointed, the public administrator may appoint one
7 or more deputies to assist him or her in the performance of his or her duties as public

8 administrator and as executor, administrator, personal representative, guardian, or conservator
9 in the estates wherein the public administrator has been specially appointed. The appointment
10 shall be in writing and shall be filed with the court, and, upon the filing, the court shall issue
11 under its seal a certificate of the appointment for each deputy, stating that the appointee is vested
12 with the powers and duties conferred by this section. The certificate shall be valid for one year
13 from date, unless terminated prior thereto, and shall be renewed from year to year as long as the
14 appointment remains in force, and may be taken as evidence of the authority of the deputy. The
15 appointment and authority of any deputy may at any time be terminated by the public
16 administrator by notice of the termination filed in the court, and upon termination the deputy
17 shall surrender the public administrator's certificate of appointment.

18 2. In all counties of the first classification not having a charter form of government and
19 containing a portion of a city having a population of three hundred thousand or more inhabitants,
20 the compensation of each such deputy shall be set by the public administrator, with the approval
21 of the governing body of the county, and shall be paid in equal monthly installments out of the
22 county treasury. In all other counties of the first classification the compensation of each such
23 deputy shall be prescribed and paid by the public administrator out of the fees to which he or she
24 is legally entitled, and no part of such compensation shall be paid out of any public funds or
25 assessed as costs or allowed in any estate.

26 3. Each deputy so appointed shall be authorized to perform such ministerial and
27 nondiscretionary duties as may be delegated to him or her by the public administrator, including:

28 (1) Assembling, taking into possession, and listing moneys, checks, notes, stocks, bonds
29 and other securities, and all other personal property of any and all estates in the charge of the
30 public administrator;

31 (2) Depositing all moneys, checks, and other instruments for the payment of money in
32 the bank accounts maintained by the public administrator for the deposit of such funds;

33 (3) Signing or countersigning any and all checks and other instruments for the payment
34 of moneys out of such bank accounts, in pursuance of general authorization by the public
35 administrator to the bank in which the same are deposited, as long as such authorization remains
36 in effect;

37 (4) Entering the safe deposit box of any person or decedent whose estate is in the charge
38 of the public administrator and any safe deposit box maintained by the public administrator for
39 the safekeeping of assets in his or her charge, as a deputy of the public administrator, pursuant
40 to general authorization given by the public administrator to the bank or safe deposit company
41 in charge of any such safe deposit box, as long as such deputy-authorization remains in effect,
42 and withdrawing therefrom and depositing therein such assets as may be determined by the
43 public administrator. The bank or safe deposit company shall not be charged with notice or

44 knowledge or any limitation of authority of the authorized deputy, unless specially notified in
45 writing thereof by the public administrator, and may allow the deputy access to the safe deposit
46 box, in the absence of notice, to the full extent allowable to the public administrator in person.

47 4. The enumeration of the foregoing powers shall not operate as an exclusion of any
48 powers not specifically conferred. No authorized deputy shall exercise any power, other than as
49 prescribed in this section, which shall require the exercise of a discretion enjoined by law to be
50 exercised personally by the executor, administrator, personal representative, guardian, or
51 conservator in charge of the estate to which the discretionary power refers.

52 5. Notwithstanding the provisions of subsections 3 and 4 of this section to the contrary,
53 a public administrator in a county of the first classification having a charter form of government
54 and containing all or part of a city with a population of at least three hundred thousand
55 inhabitants, and a public administrator in any county of the first classification may delegate to
56 any deputy appointed by the public administrator any of the duties of the public administrator
57 enumerated in section 473.743, and sections 475.120 ~~[and]~~ , 475.130, **475.343, and 475.359**.
58 Such public administrator may also delegate to a deputy who is a licensed attorney the authority
59 to execute inventories, settlements, surety bonds, pleadings and other documents filed in any
60 court in the name of the public administrator, and the same shall have the force and effect as if
61 executed by the public administrator.

473.771. 1. Whenever, in the judgment of any public administrator in any county which
2 is not a county of the first classification, it is necessary for the proper and efficient conduct of
3 the business of his or her office that the public administrator appoint a deputy to assist the public
4 administrator in the performance of his or her official duties as public administrator or as
5 executor, administrator, personal representative, guardian, or conservator in any estates wherein
6 the public administrator has been specially appointed, the public administrator may appoint a
7 deputy to assist him or her in the performance of his or her duties as public administrator and as
8 executor, administrator, personal representative, guardian, or conservator in the estates wherein
9 the public administrator has been specially appointed. The appointment shall be in writing and
10 shall be filed with the court, and, upon the filing, the court shall issue under its seal a certificate
11 of the appointment for the deputy, stating that the appointee is vested with the powers and duties
12 conferred by this section. The certificate shall be valid for one year from the date, unless
13 terminated prior thereto, and shall be renewed from year to year as long as the appointment
14 remains in force, and may be taken as evidence of the authority of the deputy. The appointment
15 and authority of a deputy may at any time be terminated by the public administrator by notice of
16 the termination filed in the court, and upon termination the deputy shall surrender his or her
17 certificate of appointment.

18 2. The compensation of a deputy appointed pursuant to the provisions of this section
19 shall be prescribed and paid by the public administrator out of the fees to which he or she is
20 legally entitled.

21 3. A deputy appointed pursuant to the provisions of this section shall be authorized to
22 perform such ministerial and nondiscretionary duties as may be delegated to him or her by the
23 public administrator, including:

24 (1) Assembling, taking into possession, and listing moneys, checks, notes, stocks, bonds
25 and other securities, and all other personal property of any and all estates in the charge of the
26 public administrator;

27 (2) Depositing all moneys, checks, and other instruments for the payment of money in
28 the bank accounts maintained by the public administrator for the deposit of such funds;

29 (3) Signing or countersigning any and all checks and other instruments for the payment
30 of moneys out of such bank accounts, in pursuance of general authorization by the public
31 administrator to the bank in which the same are deposited, as long as such authorization remains
32 in effect;

33 (4) Entering the safe deposit box of any person or decedent whose estate is in the charge
34 of the public administrator and any safe deposit box maintained by the public administrator for
35 the safekeeping of assets in his or her charge, as a deputy of the public administrator, pursuant
36 to general authorization given by the public administrator to the bank or safe deposit company
37 in charge of any such safe deposit box, as long as such authorization as a deputy remains in
38 effect, and withdrawing therefrom and depositing therein such assets as may be determined by
39 the public administrator. The bank or safe deposit company shall not be charged with notice or
40 knowledge or any limitation of authority of the authorized deputy, unless specially notified in
41 writing thereof by the public administrator, and may allow the deputy access to the safe deposit
42 box, in the absence of notice, to the full extent allowable to the public administrator in person.

43 4. The enumeration of the foregoing powers shall not operate as an exclusion of any
44 powers not specifically conferred. No authorized deputy shall exercise any power, other than as
45 prescribed in this section, which shall require the exercise of a discretion enjoined by law to be
46 exercised personally by the executor, administrator, personal representative, guardian, or
47 conservator in charge of the estate to which the discretionary power refers.

48 5. Notwithstanding the provisions of subsections 3 and 4 of this section to the contrary,
49 a public administrator in a county which is not a county of the first classification may delegate
50 to any deputy appointed by the public administrator any of the duties of the public administrator
51 enumerated in section 473.743, and sections 475.120 ~~[and]~~ , 475.130, **475.343**, and **475.359**.
52 Such public administrator may also delegate to a deputy who is a licensed attorney the authority
53 to execute inventories, settlements, surety bonds, pleadings, and other documents filed in any

54 court in the name of the public administrator, and the same shall have the force and effect as if
55 executed by the public administrator.

475.010. When used in this chapter, unless otherwise apparent from the context, the
2 following terms mean:

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Claims", liabilities of the protectee arising in contract, in tort or otherwise, before
5 or after the appointment of a conservator, and liabilities of the estate which arise at or after the
6 adjudication of disability or after the appointment of a conservator of the estate, including
7 expenses of the adjudication and of administration. The term does not include demands or
8 disputes regarding title of the protectee to specific assets alleged to be included in the estate;

9 (3) "Conservator", one appointed by a court to have the care and custody of the estate
10 of a minor or a disabled person. A "limited conservator" is one whose duties or powers are
11 limited. The term "conservator", as used in this chapter, includes limited conservator unless
12 otherwise specified or apparent from the context;

13 (4) **"Conservator ad litem", one appointed by the court in which particular**
14 **litigation is pending regarding the management of financial resources on behalf of a minor,**
15 **a disabled person, or an unborn person in that particular proceeding or as otherwise**
16 **specified in this code;**

17 (5) "Custodial parent", the parent of a minor who has been awarded sole or joint physical
18 custody of such minor, or the parent of an incapacitated person who has been appointed as
19 guardian of such person, by an order or judgment of a court of this state or of another state or
20 territory of the United States, or if there is no such order or judgment, the parent with whom the
21 minor or incapacitated person primarily resides;

22 ~~[(5)]~~ (6) "Disabled" or "disabled person", one who is:

23 (a) Unable by reason of any physical ~~[or]~~, mental, **or cognitive** condition to receive and
24 evaluate information or to communicate decisions to such an extent that the person lacks ability
25 to manage ~~[his]~~ **the person's** financial resources; or

26 (b) The term "disabled" or "disabled person", as used in this chapter includes the terms
27 partially disabled or partially disabled person unless otherwise specified or apparent from the
28 context;

29 ~~[(6)]~~ (7) "Eligible person" or "qualified person", a natural person, social service agency,
30 corporation or national or state banking organization qualified to act as guardian of the person
31 or conservator of the estate pursuant to the provisions of section 475.055;

32 ~~[(7)]~~ (8) "Guardian", one appointed by a court to have the care and custody of the person
33 of a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers
34 are limited. A "standby guardian" is one approved by the court to temporarily assume the duties

35 of guardian of a minor or of an incapacitated person under section 475.046. The term
36 "guardian", as used in this chapter, includes limited guardian and standby guardian unless
37 otherwise specified or apparent from the context;

38 ~~[(8)]~~ **(9)** "Guardian ad litem", one appointed by a court, in which particular litigation is
39 pending~~[, to represent]~~ **on behalf of** a minor, an incapacitated person, a disabled person, or an
40 unborn person in that particular proceeding or as otherwise specified in this code;

41 ~~[(9)]~~ **(10)** "Habilitation", ~~[instruction, training, guidance or treatment designed to enable~~
42 ~~and encourage a intellectually disabled or developmentally disabled person as defined in chapter~~
43 ~~630 to acquire and maintain those life skills needed to cope more effectively with the demands~~
44 ~~of his or her own person and of his or her environment]~~ **a process of treatment, training, care,**
45 **or specialized attention that seeks to enhance and maximize the ability of a person with an**
46 **intellectual disability or a developmental disability to cope with the environment and to live**
47 **as determined by the person as much as possible, as is appropriate for the person**
48 **considering his or her physical and mental condition and financial means;**

49 ~~[(10)]~~ **(11)** "Incapacitated person", one who is unable by reason of any physical ~~[or]~~ ,
50 mental, **or cognitive** condition to receive and evaluate information or to communicate decisions
51 to such an extent that ~~[he or she]~~ **the person, even with appropriate services and assistive**
52 **technology**, lacks capacity to ~~[meet]~~ **manage the person's** essential requirements for food,
53 clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely
54 to occur. The term "incapacitated person" as used in this chapter includes the term partially
55 incapacitated person unless otherwise specified or apparent from the context;

56 **(12)** "Interested persons", **spouses, children, parents, adult members of a ward's**
57 **or protectee's family, creditors or any others having a property right or claim against the**
58 **estate of a protectee being administered, trustees of a trust of which the ward or protectee**
59 **is a beneficiary, agents of a durable power of attorney for a ward or protectee, and**
60 **children of a protectee who may have a property right or claim against or an interest in the**
61 **estate of a protectee. This meaning may vary at different stages and different parts of a**
62 **proceeding and shall be determined according to the particular purpose and matter**
63 **involved;**

64 ~~[(11)]~~ **(13)** "Least restrictive ~~[environment]~~ **alternative"**, ~~[that there shall be imposed~~
65 ~~on the personal liberty of the ward only such restraint as is necessary to prevent the ward from~~
66 ~~injuring himself or herself and others and to provide the ward with such care, habilitation and~~
67 ~~treatment as are appropriate for the ward considering his or her physical and mental condition~~
68 ~~and financial means]~~ **with respect to the guardianship order and the exercise of power by**
69 **the guardian, a course of action or an alternative that allows the incapacitated person to**
70 **live, learn, and work with minimum restrictions on the person, as are appropriate for the**

71 **person considering his or her physical and mental condition and financial means. "Least**
72 **restrictive alternative" also means choosing the decision or approach that:**

73 **(a) Places the least possible restriction on the person's personal liberty and exercise**
74 **or rights and that promotes the greatest possible inclusion of the person into his or her**
75 **community, as is appropriate for the person considering his or her physical and mental**
76 **condition and financial means; and**

77 **(b) Is consistent with meeting the person's essential requirements for health, safety,**
78 **habilitation, treatment, and recovery and protecting the person from abuse, neglect, and**
79 **financial exploitation;**

80 ~~[(12)]~~ **(14)** "Manage financial resources", either those actions necessary to obtain,
81 administer, and dispose of real and personal property, intangible property, business property,
82 benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation
83 of property, or those actions necessary to provide for the care and support of such person or
84 anyone legally dependent upon such person by a person of ordinary skills and intelligence
85 commensurate with his or her training and education;

86 ~~[(13)]~~ **(15)** "Minor", any person who is under the age of eighteen years;

87 ~~[(14)]~~ **(16)** "Parent", the biological or adoptive mother or father of a child whose parental
88 rights have not been terminated under chapter 211, including:

89 (a) A person registered as the father of the child by reason of an unrevoked notice of
90 intent to claim paternity under section 192.016;

91 (b) A person who has acknowledged paternity of the child and has not rescinded that
92 acknowledgment under section 193.215; and

93 (c) A person presumed to be the natural father of the child under section 210.822;

94 ~~[(15)]~~ **(17)** "Partially disabled person", one who is unable by reason of any physical ~~[or]~~
95 , mental, **or cognitive** condition to receive and evaluate information or to communicate decisions
96 to such an extent that such person lacks capacity to manage, in part, his or her financial
97 resources;

98 ~~[(16)]~~ **(18)** "Partially incapacitated person", one who is unable by reason of any physical
99 ~~[or]~~ , mental, **or cognitive** condition to receive and evaluate information or to communicate
100 decisions to the extent that such person lacks capacity to meet, in part, essential requirements for
101 food, clothing, shelter, safety, or other care without court-ordered assistance;

102 ~~[(17)]~~ **(19)** "Protectee", a person for whose estate a conservator or limited conservator
103 has been appointed or with respect to whose estate a transaction has been authorized by the court
104 under section 475.092 without appointment of a conservator or limited conservator;

105 ~~[(18)]~~ **(20)** "Seriously ill", a significant likelihood that a person will become
106 incapacitated or die within twelve months;

107 ~~[(19)]~~ **(21)** "Social service agency", a charitable organization organized and incorporated
108 as a not-for-profit corporation under the laws of this state and which qualifies as an exempt
109 organization within the meaning of Section 501(c)(3), or any successor provision thereto of the
110 federal Internal Revenue Code;

111 ~~[(20)]~~ **(22)** "Standby guardian", one who is authorized to have the temporary care and
112 custody of the person of a minor or of an incapacitated person under the provisions of section
113 475.046;

114 ~~[(21)]~~ **(23)** "Treatment", the prevention, amelioration or cure of a person's physical and
115 mental illnesses or incapacities;

116 ~~[(22)]~~ **(24)** "Ward", a minor or an incapacitated person for whom a guardian, limited
117 guardian, or standby guardian has been appointed.

475.016. **1.** If there has been an adjudication of incompetency before September 28,
2 1983, any person so adjudicated shall be deemed totally incapacitated and totally disabled as
3 defined in section 475.010, until such time as the probate division of the circuit court of the
4 county of proper venue, upon the annual review proceeding prescribed by section 475.082 or
5 otherwise, may review the nature of the incapacity or disability of the person so adjudicated and
6 alter the nature of the adjudication if, as a consequence of the review, it appears to the court that
7 the person is not both totally incapacitated and totally disabled as defined in section 475.010.
8 A guardian of the person appointed before September 28, 1983, shall be deemed a guardian as
9 defined in section 475.010. A guardian of the estate appointed before September 28, 1983, shall
10 be deemed a conservator as defined in section 475.010.

11 **2. Existing guardians and conservators shall have one year after August 28, 2018,**
12 **to meet any annual and other reporting requirements that are different from the former**
13 **requirements of chapter 475 prior to August 28, 2018.**

475.050. **1.** Before appointing any other eligible person as guardian of an incapacitated
2 person, or conservator of a disabled person, the court shall consider the suitability of appointing
3 any of the following persons who appear to be willing to serve:

4 (1) If the incapacitated or disabled person is, at the time of the hearing, able to make and
5 communicate a reasonable choice, any eligible person nominated by the person;

6 (2) Any eligible person nominated in a durable power of attorney executed by the
7 incapacitated or disabled person, or in an instrument in writing signed by the incapacitated or
8 disabled person and by two witnesses who signed at the incapacitated or disabled person's
9 request, before the inception of the person's incapacity or disability, at a time within five years
10 before the hearing when the person was able to make and communicate a reasonable choice;

11 (3) The spouse, parents, adult children, adult brothers and sisters and other close adult
12 relatives of the incapacitated or disabled person;

13 (4) Any other eligible person or, with respect to the estate only, any eligible organization
14 or corporation, nominated in a duly probated will of such a spouse or relative [~~executed within~~
15 ~~five years before the hearing~~].

16 2. Except for good cause shown, the court shall make its appointment in accordance with
17 the incapacitated or disabled person's most recent valid nomination of an eligible person
18 qualified to serve as guardian of the person or conservator of the estate. [~~In the event there is not~~
19 ~~brought to the attention of the court any such valid nomination executed within five years before~~
20 ~~the hearing, then the court shall give consideration to the most recent valid nomination brought~~
21 ~~to its attention, but the court shall not be required to follow such nomination.~~]

22 **3. The court shall require all guardians and conservators who are seeking**
23 **appointment and who have a fiduciary responsibility to a ward, an incapacitated person,**
24 **or a disabled person, as those terms are defined in section 475.010, to submit at their own**
25 **expense to a credit history investigation and a background screening that shall include the**
26 **disqualification lists of the departments of mental health, social services, and health and**
27 **senior services; the abuse and neglect registries for adults and children; a Missouri**
28 **criminal record review; and the sexual offender registry. The nominated guardian or**
29 **conservator shall file the results of the reports with the court at least ten days prior to the**
30 **appointment hearing date unless waived or modified by the court for good cause shown by**
31 **an affidavit filed simultaneously with the petition for appointment or in the event the**
32 **protected person requests an expedited hearing.**

33 **4. An order appointing a guardian or conservator shall not be signed by the judge**
34 **until such reports have been filed with the court and reviewed by the judge, who shall**
35 **consider the reports in determining whether to appoint a guardian or conservator. Such**
36 **reports, or lack thereof, shall be certified either by an affidavit or by obtaining a certified**
37 **copy of the reports. No reports or national criminal history record check shall be required**
38 **by the court upon the application of a petitioner for an emergency temporary guardianship**
39 **or emergency temporary conservatorship. The court may waive the requirements of this**
40 **subsection for good cause shown. If appointed, a guardian or conservator may petition the**
41 **court for reimbursement of the reasonable expenses of the credit history investigation and**
42 **background screenings.**

475.060. 1. Any person may file a petition for the appointment of himself or herself or
2 some other qualified person as guardian of a minor. Such petition shall state:

3 (1) The name, age, domicile, actual place of residence and post office address of the
4 minor if known and if any of these facts is unknown, the efforts made to ascertain that fact;

5 (2) The estimated value of the minor's real and personal property, and the location and
6 value of any real property owned by the minor outside of this state;

- 7 (3) If the minor has no domicile or place of residence in this state, the county in which
8 the property or major part thereof of the minor is located;
- 9 (4) The name and address of the parents of the minor and whether they are living or
10 dead;
- 11 (5) The name and address of the spouse, and the names, ages and addresses of all living
12 children of the minor;
- 13 (6) The name and address of the person having custody of the person of the minor **or**
14 **who claims to have custody of the person of the minor;**
- 15 (7) The name and address of any guardian of the person or conservator of the estate of
16 the minor appointed in this or any other state;
- 17 (8) If appointment is sought for a natural person, other than the public administrator, the
18 names and addresses of wards and disabled persons for whom such person is already guardian
19 or conservator;
- 20 (9) The name and address of the trustees and the purpose of any trust of which the minor
21 is a qualified beneficiary;
- 22 (10) The reasons why the appointment of a guardian is sought;
- 23 (11) A petition for the appointment of a guardian of a minor may be filed for the sole and
24 specific purpose of school registration or medical insurance coverage. Such a petition shall
25 clearly set out this limited request and shall not be combined with a petition for conservatorship;
- 26 **(12) If the petitioner suggests the appointment of co-guardians, a statement of the**
27 **reasons why such appointment is sought and whether the petitioner suggests that the**
28 **co-guardians, if appointed, may act independently or whether they may act only together**
29 **or only together with regard to specified matters;**
- 30 **(13) That written consent has been obtained from any person, including a public**
31 **administrator, who is to be appointed as a co-guardian; and**
- 32 **(14) Whether the petitioner knows of any other court having jurisdiction over the**
33 **minor and the name of the court, if known.**
- 34 2. Any person may file a petition for the appointment of himself or herself or some other
35 qualified person as guardian **or limited guardian** of an incapacitated person. Such petition shall
36 state:
- 37 (1) If known, the name, age, domicile, actual place of residence, and post office address
38 of the alleged incapacitated person, and for the period of three years before the filing of the
39 petition, the most recent addresses, up to three, at which the alleged incapacitated person lived
40 prior to the most recent address, and if any of these facts is unknown, the efforts made to
41 ascertain that fact. In the case of a petition filed by a public official in his or her official capacity,

42 the information required by this subdivision need only be supplied to the extent it is reasonably
43 available to the petitioner;

44 (2) The estimated value of the alleged incapacitated person's real and personal property,
45 and the location and value of any real property owned by the alleged incapacitated person outside
46 of this state;

47 (3) If the alleged incapacitated person has no domicile or place of residence in this state,
48 the county in which the property or major part thereof of the alleged incapacitated person is
49 located;

50 (4) The name and address of the parents of the alleged incapacitated person and whether
51 they are living or dead;

52 (5) The name and address of the spouse, the names, ages, and addresses of all living
53 children of the alleged incapacitated person, the names and addresses of the alleged incapacitated
54 person's closest known relatives, and the names and relationship, if known, of any adults living
55 with the alleged incapacitated person; if no spouse, adult child, or parent is listed, the names and
56 addresses of the siblings and children of deceased siblings of the alleged incapacitated person;
57 the name and address of any agent appointed by the alleged incapacitated person in any durable
58 power of attorney, and of the presently acting trustees of any trust of which the alleged
59 incapacitated person is the grantor or is a qualified beneficiary or is or was the trustee or
60 cotrustee and the purpose of the power of attorney or trust;

61 (6) The name and address of the person having custody of the person of the alleged
62 incapacitated person;

63 (7) The name and address of any guardian of the person or conservator of the estate of
64 the alleged incapacitated person appointed in this or any other state;

65 (8) If appointment is sought for a natural person, other than the public administrator, the
66 names and addresses of wards and ~~[disabled persons]~~ **protectees** for whom such person is
67 already guardian or conservator;

68 (9) The ~~[fact]~~ **factual basis for the petitioner's conclusion** that the person for whom
69 guardianship is sought is **unable or partially unable** by reason of some specified physical ~~[or]~~
70 **, mental, or cognitive** condition to receive and evaluate information or to communicate decisions
71 to such an extent that the person lacks capacity to meet essential requirements for food, clothing,
72 shelter, safety, or other care such that serious physical injury, illness, or disease is likely to occur;

73 (10) The reasons, **incidents, and specific behaviors demonstrating** why the
74 appointment of a guardian **or limited guardian** is sought;

75 (11) **If the petitioner suggests the appointment of co-guardians, a statement of the**
76 **reasons why such appointment is sought and whether the petitioner suggests that the**

77 **co-guardians, if appointed, may act independently or whether they may act only together**
78 **or only together with regard to specified matters; and**

79 **(12) Written consent has been obtained from any person, including a public**
80 **administrator, who is to be appointed as a co-guardian.**

81 **3. If the person filing the petition seeks the appointment of an emergency guardian,**
82 **the petition shall include the same requirements as provided in subsection 1 of this section**
83 **or shall have a separate count and shall request the appointment per the requirements**
84 **provided in subsection 11 of section 475.075.**

475.061. 1. Any person may file a petition in the probate division of the circuit court of
2 the county of proper venue for the appointment of himself **or herself** or some other qualified
3 person as conservator of the estate of a minor or disabled person. The petition shall contain the
4 same allegations as are set forth in subdivisions (1), (8), and (10) of subsection 2 of section
5 475.060 with respect to the appointment of a guardian for an incapacitated person and, in
6 addition thereto, an allegation that the respondent is unable by reason of some specific physical
7 or ~~[mental]~~ **cognitive** condition to receive and evaluate information or to communicate decisions
8 to such an extent that the respondent lacks ability to manage his financial resources or that the
9 respondent is under the age of eighteen years.

10 2. A petition for appointment of a conservator or limited conservator of the estate may
11 be combined with a petition for appointment of a guardian or limited guardian of the person. In
12 such a combined petition allegations need not be repeated.

475.062. 1. ~~[When a petition for appointment of a conservator of the estate of an alleged
2 disabled person is made by said person, or said person's consent to the appointment sought is
3 endorsed on the petition or filed with it, the court, after appointment of counsel for the alleged
4 disabled person, if satisfied, by interview with the alleged disabled person or otherwise, that the
5 alleged disability does exist, that the disabled person wishes the appointment and has capacity
6 to understand the need for it and make a reasonable choice of conservator and that the person
7 nominated as conservator is suitable, qualified and has or will accept the appointment, may,
8 without notice or hearing, appoint as conservator of the estate, the person, organization or
9 corporation designated by the disabled person. If it appears that the alleged disabled person is
10 a codepositor or cotenant, the other codepositors and cotenants shall, in any event, be given
11 notice before the court acts.~~

12 ~~———2.]~~ When a petition for appointment of a conservator of the estate of an alleged disabled
13 person is not made or consented to by said alleged disabled person, the procedures as to notice,
14 appointment of counsel, hearing and adjudication of disability as prescribed by section 475.075
15 shall be followed.

16 **2. If a petition for appointment of a conservator is made by a person on account of**
17 **that person's alleged disability or is made by another on behalf of that person with that**
18 **person's consent endorsed on the petition or filed therewith, the court shall first appoint**
19 **counsel for that person. The court-appointed attorney shall advise the respondent of the**
20 **respondent's rights and of the consequences of the appointment of the conservator.**

21 **3. If the court determines that the disability exists and the respondent desires the**
22 **appointment, understands its purpose, and makes a reasonable choice of conservator, the**
23 **court may, without notice or hearing, appoint the person, organization, or corporation**
24 **designated by the respondent as conservator of the respondent's estate, provided that the**
25 **conservator is suitable and qualified and has accepted or will accept the appointment.**

26 **4. If it appears that the respondent is a codepositor or cotenant, the other**
27 **codepositors and cotenants shall, in any event, be given notice before the court acts.**

28 ~~[3-]~~ **5.** If the whereabouts of a person alleged to be disappeared or detained pursuant to
29 section 475.081 is unknown or the place or nature of his confinement or detention prevents
30 personal service, service shall be made on him by publication in accordance with the rules of
31 civil procedure.

 475.075. 1. Except as otherwise provided in section 475.062, when a petition for the
2 appointment of a guardian ad litem, guardian, or conservator ~~[against]~~ **for any [person] potential**
3 **ward or protectee, [hereinafter] who is then** referred to as the respondent, is filed **under this**
4 **chapter** on grounds other than minority, the court, if satisfied that there is good cause for the
5 exercise of its ~~[jurisdiction]~~ **authority**, shall promptly set the petition for hearing.

6 2. The respondent shall be served in person with the following: A copy of the petition;
7 a written notice stating the time and place the proceeding will be heard by the court, the name
8 and address of appointed counsel, and the names and addresses of the witnesses who may be
9 called to testify in support of the petition; and with a copy of the respondent's rights as set forth
10 in subsections 7 and 8 of this section. The notice shall be signed by the judge or clerk of the
11 court and served in person on the respondent a reasonable time before the date set for the
12 hearing. ~~[The petition shall state the names and addresses of the]~~ **A written notice stating the**
13 **time and place for the petition to be heard by the court, and the name and address of**
14 **counsel appointed to represent the respondent shall be served upon the** spouse, parents,
15 children who have reached **the age of** eighteen, any person serving as ~~[his]~~ **the respondent's**
16 **guardian, conservator, limited guardian, or limited conservator, any person proposed to serve**
17 **as guardian or conservator, any person having power to act in a fiduciary capacity with respect**
18 **to any of the respondent's financial resources, [and] any person having [his] the respondent's**
19 **care and custody known to the petitioner, and any cotenants or codepositors with the**
20 **respondent.** Each person so listed shall be served ~~[with like notice]~~ in any manner permitted

21 by section 472.100. If no such spouse, parent, or child is known, notice shall be given to at least
22 one of ~~[his]~~ **the respondent's** closest relatives who ~~[has]~~ **have** reached **the age of** eighteen.

23 3. Upon the filing of a petition under the provisions of subsection 1 of this section or for
24 the approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the
25 rendition of emergency medical treatment under the provisions of section 475.123, the court shall
26 immediately appoint an attorney to represent the respondent in the proceeding. The attorney
27 shall visit ~~[his client]~~ **the respondent at least twenty-four hours** prior to the hearing **unless the**
28 **court finds good cause for waiving this requirement.** If the ~~[client]~~ **attorney finds that the**
29 **respondent** is capable of understanding the matter in question or of contributing to the
30 advancement of the ~~[client's]~~ **respondent's** interest, the attorney shall obtain from the ~~[client]~~
31 **respondent** all possible aid. If the ~~[disability of a client compels the attorney to make decisions~~
32 ~~for the client,]~~ **attorney finds that the respondent is so impaired that the respondent cannot**
33 **communicate or participate in the proceedings,** the attorney shall consider all circumstances
34 then prevailing and act with care to safeguard and advance the interests of the ~~[client]~~
35 **respondent.**

36 4. **If the court enters an order appointing an attorney for the respondent, it shall**
37 **specify that the attorney shall have the right to obtain all medical and financial information**
38 **of the respondent from medical care providers and financial institutions, and no medical**
39 **care provider or financial institution shall be liable for damages or otherwise for the**
40 **release of this information to the attorney appointed for the respondent.** The court shall
41 allow a reasonable attorney's fee for the services rendered, to be taxed as costs of the proceeding.
42 **Upon entry of appearance by private counsel on behalf of the respondent, the court may**
43 **permit the court-appointed attorney** ~~[may be permitted]~~ **to withdraw** ~~[if the respondent employs~~
44 ~~private counsel who enters an appearance on behalf of said person]~~ **only if after a hearing the**
45 **court finds cause to permit the withdrawal.** The private counsel shall meet the
46 requirements of the court-appointed attorney in representing the respondent as provided
47 in subsections 2 and 3 of this section. The respondent's attorney shall not also serve as
48 guardian ad litem or conservator ad litem for the respondent unless and until a judgment
49 granting guardianship, conservatorship, limited guardianship, or limited conservatorship
50 has been entered by the court. If the attorney for the respondent has filed or intends to file
51 an appeal of such judgment, the attorney for the respondent shall not serve as guardian
52 ad litem or conservator ad litem for the respondent until all proceedings in connection with
53 such appeal have been finally resolved. The petitioner shall not nominate an attorney for
54 the respondent.

55 ~~[4.]~~ 5. The court may direct that the respondent be examined by a physician ~~[or]~~ ,
56 licensed psychologist, or other appropriate professional ~~[designated by the court, and may allow~~

57 a reasonable fee for the services rendered, to be taxed as costs in the proceeding] if the other
 58 **professional has experience or training in the alleged mental, physical, or cognitive**
 59 **impairment.** The court-appointed physician, licensed psychologist, or other professional shall,
 60 prior to examination, explain to the respondent in simple language, the following:

61 (1) [~~Incapacity or disability as defined in section 475.010;~~

62 ~~—(2)] That the purpose of the examination is to produce evidence which may be used to~~
 63 ~~determine whether the respondent is incapacitated, disabled [or] , partially incapacitated, or~~
 64 **partially disabled;**

65 [~~3)] (2) That respondent has the right to remain silent;~~

66 [~~4)] (3) That anything respondent says may be used at the court hearing, and in making~~
 67 ~~the determination of incapacity or disability.~~

68 [~~5-] 6. The court-appointed physician, licensed psychologist, or other professional shall~~
 69 ~~submit [his] a report in writing to the court and to counsel for all parties. **It shall not be a valid**~~
 70 **objection to the review of the report by the court or the attorneys for the parties that the**
 71 **court will be responsible for the ultimate determination of incapacity or partial incapacity.**
 72 **If other objections to the report are made by any party, the court may order a hearing for**
 73 **the limited purpose of determining whether the court shall admit the report. The court**
 74 **may allow a reasonable fee for the services rendered by the physician, licensed**
 75 **psychologist, or other professional to be taxed as costs in the proceeding.**

76 [~~6-] 7. If prima facie proof of partial or complete incapacity or disability, **with or**~~
 77 **without the court ordered evaluation as provided in subsections 4 and 5 of this section,** is
 78 made **upon motion by any party or the court on its own motion,** a physician [or] , licensed
 79 psychologist, **or other appropriate professional** is competent and may be compelled **by the**
 80 **court** to testify as to information acquired from the respondent, despite otherwise applicable
 81 testimonial privileges. Evidence received under this subsection [~~which] that would otherwise~~
 82 be privileged **and confidential** may not be used in any other civil action or criminal proceeding
 83 without the consent of the holder of the privilege. **Any resulting report shall be shared with**
 84 **the respondent and counsel for all parties but shall not be used in any other civil action or**
 85 **criminal proceeding without the consent of the holder of the privilege.**

86 [~~7-] 8. The petitioner has the burden of proving incapacity, partial incapacity, disability,~~
 87 ~~or partial disability by clear and convincing evidence.~~

88 [~~8-] 9. The respondent shall have the following rights in addition to those elsewhere~~
 89 ~~specified **and shall be advised of these rights by the attorney for the respondent:**~~

90 (1) The right to be represented by an attorney;

91 (2) The right to have a jury trial;

92 (3) The right to present evidence in [~~his] the respondent's~~ behalf;

93 (4) The right to cross-examine witnesses who testify against ~~him~~ **the respondent**;

94 (5) The right to remain silent;

95 (6) The right to have the hearing opened or closed to the public as ~~he~~ **the respondent**
96 elects;

97 (7) The right to a hearing conducted in accordance with the rules of evidence in civil
98 proceedings, except as modified by this chapter;

99 (8) The right to be present at the hearing;

100 **(9) The right to appeal the court's decision.**

101 ~~[9-]~~ **10.** If the court finds that the respondent **with such assistance** possesses capacity
102 to ~~meet his~~ **manage the respondent's** essential requirements for food, clothing, shelter, safety,
103 and other care or that ~~he~~ **the respondent** possesses the ability to manage ~~his~~ **the**
104 **respondent's** financial resources, ~~it~~ **the court** shall deny the petition. On the other hand, if the
105 court finds that the capacity of the respondent to receive and evaluate information or to
106 communicate decisions is impaired to such an extent as to render ~~him~~ **the respondent**
107 incapable of ~~meeting~~ **managing** some or all of ~~his~~ **the respondent's** essential requirements
108 for food, clothing, shelter, safety or other care so that serious physical injury, illness, or disease
109 is likely to occur, or that the ~~ability~~ **capacity** of the respondent to receive and evaluate
110 information or to communicate decisions is impaired to such an extent so as to render ~~him~~ **the**
111 **respondent** unable to manage some or all of ~~his~~ **the respondent's** financial resources, ~~it shall~~
112 ~~make and recite in its order detailed findings of fact stating:~~

113 ~~—— (1) The extent of his physical and mental incapacity to care for his person;~~

114 ~~—— (2) The extent of his physical and mental disability to manage his financial resources;~~

115 ~~—— (3) Whether or not he requires placement in a supervised living situation and, if so, the~~
116 ~~degree of supervision needed;~~

117 ~~—— (4) Whether or not his financial resources require supervision and, if so, the nature and~~
118 ~~extent of supervision needed] **the court shall appoint a guardian or limited guardian, a**~~

119 **conservator or limited conservator, or both in combination.**

120 ~~[10-]~~ **11.** If the court finds the respondent to be in some degree incapacitated or disabled,
121 or both, the court, in determining the degree of supervision necessary, shall apply the least
122 restrictive ~~environment~~ **alternative** principle as defined in this chapter and shall not restrict
123 ~~his~~ **the respondent's** personal liberty or ~~his~~ **the respondent's** freedom to manage ~~his~~ **the**
124 **respondent's** financial resources to any greater extent than is necessary to protect ~~his~~ **the**
125 **respondent's** person and ~~his~~ **the respondent's** financial resources. ~~[The court shall consider~~
126 ~~whether or not the respondent may be fully protected by the rendition of temporary protective~~
127 ~~services provided by a private or public agency or agencies; or by the appointment of a guardian~~
128 ~~or conservator ad litem; or by the appointment of a limited guardian or conservator; or, as a last~~

129 ~~resort, by the appointment of a guardian or conservator.]~~ The limitations imposed upon the
 130 authority of the guardian or conservator as set forth in the findings of the court shall be stated in
 131 the letters of the guardian or conservator and shall be set forth in the notice of first publication
 132 of letters of conservatorship granted.

133 **12. Before appointing a guardian or conservator, the court shall consider whether**
 134 **the respondent's needs may be met without the necessity of the appointment of a guardian**
 135 **or conservator, or both, by a less restrictive alternative including, but not limited to, the**
 136 **following:**

137 (1) Evidence that the respondent has appointed an attorney-in-fact in a durable
 138 power of attorney executed by the respondent before the petition was filed;

139 (2) The management of the beneficial interests of the respondent in a trust by a
 140 trustee;

141 (3) Evidence that a representative payee has been appointed to manage the
 142 respondent's public benefits;

143 (4) Supported decision-making agreements or the provision of protective or
 144 supportive services or arrangements provided by individuals or public or private services
 145 or agencies;

146 (5) The use of appropriate services or assistive technology;

147 (6) The appointment of a temporary emergency guardian ad litem or conservator
 148 ad litem under subsection 14 of this section; or

149 (7) The appointment of a limited guardian or conservator.

150 **13. The court shall make and recite in its order detailed findings of fact stating:**

151 (1) The extent of the respondent's physical, mental, and cognitive incapacity to
 152 manage essential requirements for food, clothing, shelter, safety, or other care;

153 (2) The extent of the respondent's physical, mental, and cognitive incapacity to
 154 manage the respondent's financial resources;

155 (3) Whether the respondent requires placement in a supervised living situation and,
 156 if so, the degree of supervision needed;

157 (4) Whether the respondent's financial resources require supervision and, if so, the
 158 nature and extent of supervision needed;

159 (5) Whether the respondent retains the right to vote;

160 (6) Whether the respondent is permitted to drive a motor vehicle if the respondent
 161 can pass the required driving test; and

162 (7) Whether the respondent retains the right to marry.

163 ~~[[+]]~~ **14. If it is alleged in a petition that an alleged incapacitated or disabled [person]**
 164 **respondent has no guardian or conservator and an emergency exists [which] that presents a**

165 substantial risk that serious physical harm will occur to [his] the respondent's person or
166 irreparable damage will occur to [his] the respondent's property because of [his] the
167 respondent's failure or inability to provide for [his] the respondent's essential human needs or
168 to protect [his] the respondent's property, the court may, with notice to such person's attorney,
169 as provided in subsection 3 of this section, and service of notice upon such person as provided
170 in subsection 2 of this section, and, with or without notice to other persons interested in the
171 proceeding, after hearing, appoint [a] an emergency guardian ad litem or conservator ad litem
172 for a specified period not to exceed [thirty] ninety days and for specified purposes. **Except for**
173 **good cause shown, the court shall hold a hearing on petitions filed under this section within**
174 **five business days of the filing of the petition.** Orders appointing the guardian or conservator
175 ad litem may be modified upon motion and hearing. **Only** after a hearing and a showing of
176 continuing emergency need, [orders appointing the] **the court may order the extension of the**
177 **appointment of an emergency guardian ad litem or conservator ad litem [may be extended]**
178 from time to time, not to exceed [thirty] ninety days each. A guardian ad litem or conservator
179 ad litem may be removed at any time and shall make any report the court requires. Proceedings
180 under this subsection shall not be employed as alternative to proceedings for the involuntary
181 detention and treatment of a mentally ill person under the provisions of chapter 632. **If no**
182 **petition for guardianship, conservatorship, limited guardianship, or limited**
183 **conservatorship has been filed within the first ninety days following the granting of**
184 **emergency authority under this section, the court may terminate the authority granted**
185 **under the emergency letters upon motion of the attorney for the respondent and a finding**
186 **that doing so would not be manifestly contrary to the respondent's interest.**

475.078. 1. An adjudication of partial incapacity or partial disability does not operate
2 to impose upon the ward or protectee any legal disability provided by law except to the extent
3 specified in the order of adjudication, provided that the court shall not impose upon the ward or
4 protectee any legal disability other than those which are consistent with the condition of the ward
5 or protectee.

6 2. An adjudication of incapacity or disability does operate to impose upon the ward or
7 protectee all legal disabilities provided by law, except to the extent specified in the order of
8 adjudication **or otherwise in this chapter**, and provided further that the court is without
9 [jurisdiction] **authority** to impose any legal disability upon a disabled person for whom a
10 conservator has been appointed by reason of [his] the person's disappearance, detention, or
11 confinement.

12 3. A person who has been adjudicated incapacitated or disabled or both shall be
13 presumed to be incompetent, **except as otherwise specified in this chapter.** A person who has
14 been adjudicated partially incapacitated or partially disabled or both shall be presumed to be

15 competent. The court at any time after a hearing on the question may determine that an
16 incapacitated, disabled, or partially incapacitated or partially disabled person is incompetent for
17 some purposes and competent for other purposes.

18 **4. The court may expressly enter an order that the ward's or protectee's right to**
19 **vote shall be retained even though the ward or protectee is otherwise totally incapacitated;**
20 **that the ward or protectee is permitted to drive a motor vehicle if the ward or protectee can**
21 **pass the required driving test; or that the ward or protectee retains the right to marry.**

475.079. 1. If it appears to the court [~~that a guardian should be appointed for a minor~~
2 ~~who is not incapacitated~~] or if it is found by the jury or the court upon proof by clear and
3 convincing evidence that the person for whom a guardian is sought is incapacitated as defined
4 in this law **and that the respondent's identified needs cannot be met by a less restrictive**
5 **alternative**, the court may appoint a guardian of the person. [~~The appointment of guardians of~~
6 ~~minors shall be made in accordance with section 475.045, except that if a person entitled to~~
7 ~~appointment as a guardian or entitled to select a guardian fails to appear after notice or to apply~~
8 ~~for such appointment or make selection in accordance with the order of the court the court may~~
9 ~~appoint any suitable person as guardian.~~]

10 2. If it is found that the person for whom a conservator of the estate is sought is a minor
11 or is disabled as defined in section 475.010 by a disability other than or in addition to minority
12 **and that the respondent's identified needs cannot be met by a less restrictive alternative**,
13 the court may appoint a conservator of the estate, who may be the same person appointed
14 guardian of the person.

15 **3. The court shall not appoint the public administrator to serve as guardian, limited**
16 **guardian, conservator, limited conservator, emergency guardian, emergency conservator,**
17 **guardian ad litem, or conservator ad litem unless notice is first given to the public**
18 **administrator as provided in this section and the public administrator has an opportunity**
19 **to participate in any hearing on such matter, including the right to cross-examine witnesses**
20 **and to offer witnesses and evidence. The public administrator may waive notice and the**
21 **opportunity to participate.**

475.080. 1. If the court, after hearing, finds that a person is partially incapacitated **and**
2 **that the respondent's identified needs cannot be met by a less restrictive alternative**, the
3 court shall appoint a limited guardian of the person of the ward. The order of appointment shall
4 specify the powers and duties of the limited guardian so as to permit the partially incapacitated
5 ward to [~~care for himself~~] **provide for self-care** commensurate with [~~his~~] **the ward's** ability to
6 do so and shall also specify the legal disabilities to which the ward is subject. In establishing a
7 limited guardianship, the court shall impose only such legal disabilities and restraints on personal
8 liberty as are necessary to promote and protect the well-being of the individual and shall design

9 the guardianship so as to encourage the development of maximum self-reliance and
10 independence in the individual.

11 2. If the court, after hearing, finds that a person is partially disabled **and that the**
12 **respondent's identified needs cannot be met by a less restrictive alternative**, the court shall
13 appoint a limited conservator of the estate. The order of appointment shall specify the powers
14 and duties of the limited conservator so as to permit the partially disabled person to manage ~~[his]~~
15 **the person's** financial resources commensurate with ~~[his]~~ **the person's** ability to do so.

475.082. 1. At least annually, the court shall inquire into the status of every **adult** ward
2 and protectee under its jurisdiction for the purpose of determining whether the incapacity or
3 disability may have ceased **or changed** and to insure that the guardian or conservator is
4 discharging ~~[his]~~ **the guardian's or conservator's** responsibilities and duties in accordance with
5 this chapter.

6 2. In order to implement the court review prescribed by this section, the guardian or
7 limited guardian shall file annually on the anniversary date of ~~[his]~~ **the guardian's or limited**
8 **guardian's** letters[;] a report concerning the personal status of the **adult ward and plans by the**
9 **guardian or limited guardian for future care**. Such report may be combined with the
10 settlement of accounts if the guardian is also conservator of the estate of the ward. The report
11 shall be in the form prescribed by the court and shall include the following information:

- 12 (1) The present address of the ward;
- 13 (2) The present address of the guardian;
- 14 (3) **Unless the report specifies that the ward is living with the guardian**, the number
15 of times the guardian has had contact with the ward, and the nature of such contacts including
16 the date the ward was last seen by the guardian;
- 17 (4) **A summary of the guardian's visits with the ward and activities on the ward's**
18 **behalf and the extent to which the ward has participated in decision-making;**
- 19 (5) If the ward is institutionalized, whether the guardian has received a copy of the
20 treatment or habilitation plan and whether the guardian agrees with its provision;
- 21 ~~[(5)]~~ (6) The date the ward was last seen by a physician **or other professional** and the
22 purpose;
- 23 ~~[(6) Any major changes in the physical or mental condition of the ward observed by the~~
24 ~~guardian]~~ (7) **The current mental and physical condition of the ward and any major**
25 **changes in the ward's condition since the last report;**
- 26 ~~[(7)]~~ (8) The opinion of the guardian as to the need for the continuation of the
27 guardianship and whether it is necessary to increase or decrease the powers of the guardian;
- 28 ~~[(8) The opinion of the guardian as to the adequacy of the present care of the ward]~~ (9)
29 **Educational, vocational, and other services provided to the ward; and**

30 **(10) A summarized plan for the coming year, including short-term and long-term**
 31 **goals, and the extent to which the ward has participated in the development of the plan.**
 32 **If an individual support plan is in place, the guardian may submit such plan in lieu of the**
 33 **requirements of this subdivision.**

34 3. The court may as part of its review, in its discretion, order the performance of a mental
 35 status evaluation of ~~[an incapacitated]~~ **the ward** and may require any hospital, physician, or
 36 custodial facility to submit copies of their records relating to the treatment, habilitation, or care
 37 of the ward. **The court, as part of its review and in its discretion, may also contact the**
 38 **department of health and senior services or other appropriate agencies to investigate the**
 39 **conduct of the guardian and report its findings to the court.**

40 4. If there is an indication that the incapacity or disability of the ward or protectee has
 41 ceased, the court shall appoint an attorney to file on behalf of the ward or protectee a petition for
 42 termination of the guardianship or conservatorship or for restoration.

43 5. If it appears to the court as part of its review or at any time upon motion of any
 44 interested person **interested in the welfare of the ward**, including the ward or protectee or some
 45 person on ~~[his]~~ **the ward's** behalf, that the guardian or conservator is not discharging ~~[his]~~ **the**
 46 **guardian's or conservator's** responsibilities and duties as required by this chapter or has not
 47 acted in the best interests of ~~[his]~~ **the ward or protectee**, the court may order that a hearing be
 48 held and direct that the guardian or conservator appear before the court. In the event that such
 49 a hearing is ordered and the ward or protectee is not represented by an attorney, the court shall
 50 appoint an attorney to represent the ward or protectee in the proceedings. At the conclusion of
 51 the hearing, if the court finds that the guardian ~~[or conservator]~~ is not discharging ~~[his]~~ **the**
 52 **guardian's** duties and responsibilities as required by this code~~[,]~~ or is not acting in the best
 53 interests of the ward or protectee, the court shall enter such orders as it deems appropriate under
 54 the circumstances. Such orders may include the removal of the guardian ~~[or conservator]~~ and
 55 the appointment of a successor guardian or conservator or termination of the guardianship or
 56 conservatorship on finding that the ward has recovered ~~[his]~~ capacity or the protectee is no longer
 57 disabled. The court, in framing its orders and findings, shall give due consideration to the
 58 exercise by the guardian or conservator of any discretion vested in ~~[him]~~ **the guardian or**
 59 **conservator** by law.

475.083. 1. The authority of a guardian or conservator terminates:

2 (1) When a minor ward becomes eighteen years of age;

3 (2) Upon an adjudication that an incapacitated or disabled person has been restored to
 4 ~~[his]~~ capacity or ability;

5 (3) Upon revocation of the letters of the guardian or conservator;

6 (4) Upon the acceptance by the court of the resignation of the guardian or conservator;

7 (5) Upon the death of the ward or protectee except that if there is no person other than
8 the estate of the ward or protectee liable for the funeral and burial expenses of the ward or
9 protectee the guardian or conservator may, with the approval of the court, contract for the funeral
10 and burial of the deceased ward or protectee;

11 (6) Upon the expiration of an order appointing a guardian or conservator ad litem unless
12 the court orders extension of the appointment;

13 (7) Upon an order of court terminating the guardianship or conservatorship.

14 2. A guardianship or conservatorship may be terminated by court order after such notice
15 as the court may require:

16 (1) If the conservatorship estate is exhausted;

17 (2) If the conservatorship is no longer necessary for any other reason;

18 (3) If the court finds that a parent is fit, suitable and able to assume the duties of
19 guardianship and it is in the best interest of the minor that the guardianship be terminated; **or**

20 (4) **If the court determines that the guardian is unable to provide the services of a**
21 **guardian due to the ward's absence from the state or other particular circumstances of the**
22 **ward.**

23 3. Notwithstanding the termination of the authority of a conservator, ~~he~~ **the**
24 **conservator** shall continue to have such authority as may be necessary to wind up ~~his~~
25 administration.

26 4. At any time the guardian, conservator, or any person on behalf of the ward or protectee
27 may, individually or jointly with the ward or protectee, or the ward or protectee individually may
28 petition the court to restore the ward or protectee, ~~or~~ to decrease the powers of the guardian or
29 conservator, **or to return rights to the ward;** except that, if the court determines that the
30 petition is frivolous, the court may summarily dismiss the petition without hearing. **The petition**
31 **from the ward or protectee or on behalf of the ward or protectee may be an informal letter**
32 **to the court. Anyone who interferes with the transmission of the ward's or protectee's**
33 **letter or petition may be cited by the court for contempt after notice and hearing. If at any**
34 **time the court, on its own motion, has reason to believe that the guardian's or conservator's**
35 **powers should be increased or decreased or additional rights should be returned to the**
36 **ward, the court shall set the matter for a hearing.**

37 5. Upon the filing of a joint petition by the guardian or conservator and the ward or
38 protectee, the court, if it finds restoration or modification to be in the best interests of the ward
39 or protectee, may summarily order restoration ~~or modification of the~~ **or a decrease in** powers
40 of the guardian or conservator **or return rights to the ward** without the necessity of notice and
41 hearing.

42 6. Upon the filing of a petition without the joinder of the guardian or conservator **or if**
 43 **the court requires a hearing for a petition filed with the joinder of a guardian or**
 44 **conservator**, the court shall cause the petition to be set for hearing with notice to the guardian
 45 or conservator **and to such other persons as the court directs. The hearing shall be**
 46 **conducted in accordance with the provisions of section 475.075.** If the ward or protectee is
 47 not represented by an attorney, the court shall appoint an attorney to represent the ward or
 48 protectee in such proceeding. The burden of proof by a preponderance of the evidence shall be
 49 upon the petitioner. Such a petition may not be filed more than once every one hundred eighty
 50 days.

51 7. At any time the guardian [or] , **limited guardian**, conservator, **or limited conservator**
 52 may petition the court to increase [his] **the guardian's or conservator's powers or to remove**
 53 **rights from the ward.** Proceedings on the petition shall be in accordance with the provisions
 54 of section 475.075.

55 **8. In deciding whether to terminate or modify a guardianship or conservatorship,**
 56 **the court may require a report by and consider the recommendations in the report of a**
 57 **physician, licensed psychologist, or other appropriate qualified professional who has**
 58 **experience or training in the alleged mental, physical, or cognitive impairment of the ward**
 59 **or protectee.**

 475.094. [~~If the court determines and enters a finding that a permanently totally mentally
 2 disabled protectee's estate would be substantially depleted upon his death by the payment of
 3 federal estate taxes, the court is hereby empowered: to exercise or release powers of
 4 appointment, to change the beneficiaries and elect options under insurance and annuity policies,
 5 to make gifts to the natural objects of the protectee's bounty, to convey or release his contingent
 6 and expectant interests in property including marital property rights and any right of survivorship
 7 incident to joint tenancy or tenancy by the entirety, to surrender insurance or annuity policies for
 8 their cash values, to exercise his right to an elective share in the estate of his deceased spouse,
 9 and to renounce any interest by testate or intestate succession or by inter vivos transfer, if such
 10 act or acts will not deplete the protectee's estate so as to impair the ability to provide for the
 11 protectee's foreseeable lifetime needs, and if such act will cause financial benefits to inure solely
 12 to the natural objects of the protectee's bounty. Such act shall be undertaken by the court only
 13 to the extent that it will result in a substantial saving of federal estate tax for the estate of the
 14 disabled protectee upon his death.] **1. After notice to interested persons and upon express**
 15 **authorization of the court, a conservator may:**~~

16 **(1) Make gifts that the protectee might have been expected to make including, but**
 17 **not limited to, gifts to qualify for government benefits or to reduce federal estate taxes;**

18 **(2) Convey, release, or disclaim contingent and expectant interests in property,**
 19 **including marital property rights and any right of survivorship incident to joint tenancy**
 20 **or tenancy by the entireties;**

21 **(3) Exercise or release a power of appointment;**

22 **(4) Create a revocable or irrevocable trust of property of the estate, whether the**
 23 **trust extends beyond the duration of the conservatorship, or revoke or amend a trust**
 24 **revocable by the protected person;**

25 **(5) Exercise rights to elect options and change beneficiaries under insurance**
 26 **policies and annuities or surrender the policies and annuities for cash value;**

27 **(6) Exercise any right to an elective share in the estate of the protectee's deceased**
 28 **spouse and to renounce or disclaim any interest by testate or intestate succession or by**
 29 **transfer during lifetime.**

30 **2. The court, in exercising or in approving a conservator's exercise of the powers**
 31 **listed under subsection 1 of this section, shall consider primarily the decision that the**
 32 **protectee would have made, to the extent that the decision can be ascertained. The court**
 33 **shall also consider:**

34 **(1) The financial needs of the protected person and the needs of individuals who**
 35 **are in fact dependent on the protectee for support and the interest of creditors;**

36 **(2) Possible reduction of income, estate, inheritance, or other tax liabilities;**

37 **(3) Eligibility for government assistance;**

38 **(4) The protectee's previous pattern of giving or level of support;**

39 **(5) The existing estate plan;**

40 **(6) The protectee's life expectancy and the probability that the conservatorship will**
 41 **terminate before the protectee's death; and**

42 **(7) Any other factors the court considers relevant.**

43 **3. Without authorization of the court, a conservator shall not revoke or amend a**
 44 **durable power of attorney of which the protectee is the principal. If a durable power of**
 45 **attorney is in effect, absent a court order to the contrary, a decision of the agent takes**
 46 **precedence over that of a conservator.**

475.120. 1. The guardian of the person of a minor shall be entitled to the custody and
 2 control of the ward and shall provide for the ward's education, support, and maintenance.

3 2. ~~[A guardian or limited guardian of an incapacitated person shall act in the best interest~~
 4 ~~of the ward. A limited guardian of an incapacitated person shall have the powers and duties~~
 5 ~~enumerated by the court in the adjudication order or any later modifying order.~~

6 ~~3. The general powers and duties of a guardian of an incapacitated person shall be to take~~
 7 ~~charge of the person of the ward and to provide for the ward's care, treatment, habilitation,~~

8 education, support and maintenance; and the powers and duties shall include, but not be limited
9 to, the following:

10 ~~—— (1) Assure that the ward resides in the best and least restrictive setting reasonably~~
11 ~~available;~~

12 ~~—— (2) Assure that the ward receives medical care and other services that are needed;~~

13 ~~—— (3) Promote and protect the care, comfort, safety, health, and welfare of the ward;~~

14 ~~—— (4) Provide required consents on behalf of the ward;~~

15 ~~—— (5) To exercise all powers and discharge all duties necessary or proper to implement the~~
16 ~~provisions of this section.~~

17 ~~—— 4. A guardian of an adult or minor ward is not obligated by virtue of such guardian's~~
18 ~~appointment to use the guardian's own financial resources for the support of the ward. If the~~
19 ~~ward's estate and available public benefits are inadequate for the proper care of the ward, the~~
20 ~~guardian or conservator may apply to the county commission pursuant to section 475.370.~~

21 ~~—— 5. No guardian of the person shall have authority to seek admission of the guardian's~~
22 ~~ward to a mental health or intellectual disability facility for more than thirty days for any purpose~~
23 ~~without court order except as otherwise provided by law.~~

24 ~~—— 6. Only the director or chief administrative officer of a social service agency serving as~~
25 ~~guardian of an incapacitated person, or such person's designee, is legally authorized to act on~~
26 ~~behalf of the ward.~~

27 ~~—— 7. A social service agency serving as guardian of an incapacitated person shall notify the~~
28 ~~court within fifteen days after any change in the identity of the professional individual who has~~
29 ~~primary responsibility for providing guardianship services to the incapacitated person.~~

30 ~~—— 8. Any social service agency serving as guardian may not provide other services to the~~
31 ~~ward.~~

32 ~~—— 9.] In the absence of any written direction from the ward to the contrary, a guardian may~~
33 ~~execute a preneed contract for the ward's funeral services, including cremation, or an irrevocable~~
34 ~~life insurance policy to pay for the ward's funeral services, including cremation, and authorize~~
35 ~~the payment of such services from the ward's resources. Nothing in this section shall interfere~~
36 ~~with the rights of next-of-kin to direct the disposition of the body of the ward upon death under~~
37 ~~section 194.119. If a preneed arrangement such as that authorized by this subsection is in place~~
38 ~~and no next-of-kin exercises the right of sepulcher within ten days of the death of the ward, the~~
39 ~~guardian may sign consents for the disposition of the body, including cremation, without any~~
40 ~~liability therefor. A guardian who exercises the authority granted in this subsection shall not be~~
41 ~~personally financially responsible for the payment of services.~~

475.123. 1. ~~[No]~~ **Consent of the guardian shall be obtained as authorized in section**
2 **431.061 before a** medical or surgical procedure ~~[shall]~~ **may** be performed on any ward unless

3 ~~[consent is obtained from the guardian of his person except as provided in subsections 2 and 3~~
4 ~~hereof]~~ **emergency treatment is required and consent is excused as provided under section**
5 **431.063.**

6 2. If the life of the ward is threatened and there is not time to obtain consent, a medical
7 or surgical procedure may be performed without consent after the medical necessity for the
8 procedure has been documented in the medical record of the ward.

9 3. If the life of a person is threatened and ~~[his]~~ **the person's** consent to a necessary
10 medical or surgical procedure cannot be obtained, a court, on petition filed pursuant to section
11 475.060, after hearing, may authorize consent on behalf of such person.

12 4. Any hearing conducted pursuant to subsection 3 of this section, involving a life
13 threatening medical emergency, may be conducted within or without the county at the medical
14 facility where the person has been admitted with such notice and in such form as is practicable
15 considering the time limitations imposed due to the condition of person. The fact of attempted
16 oral notice to persons interested in the welfare of the person shall be made a part of the record
17 of the hearing.

18 **5. The guardian, in making health care decisions for the adult ward or in seeking**
19 **court approval for such decisions, shall maximize the participation of the ward.**

20 **6. The guardian, in making health care decisions for the adult ward or in seeking**
21 **court approval for such decisions, shall:**

22 **(1) Consider the medical facts;**

23 **(2) Consider the health care options and risks and benefits of each; and**

24 **(3) Encourage and support the individual in understanding the facts and directing**
25 **a decision.**

26 **7. (1) To the extent the adult ward cannot currently direct the health care decision,**
27 **the guardian shall act in accordance with the ward's prior directions, directives, expressed**
28 **desires, and opinions about health care to the extent actually known or ascertainable by**
29 **the guardian. However, if the ward's prior directions, directives, expressed desires, and**
30 **opinions about health care are unknown and unascertainable, the guardian shall act in**
31 **accordance with reasonable information received from professionals and persons who**
32 **demonstrate sufficient interest in the adult ward's welfare to determine the ward's best**
33 **interests. Such determination shall include consideration of consequences for others that**
34 **an individual in the ward's circumstances would consider.**

35 **(2) In the event of an emergency, the guardian shall grant or deny authorization**
36 **of emergency health care treatment based on a reasonable assessment of the criteria listed**
37 **in section 475.359.**

38 **8. Taking into consideration the person's health and well-being, the guardian shall**
39 **seek to ensure that the person receives appropriate health care.**

475.125. 1. The court may make orders for the management of the estate of the protectee
2 for the care, education, treatment, habilitation, respite, support and maintenance of the protectee
3 and for the **support and** maintenance of ~~[his or her]~~ **the protectee's** family and education of ~~[his~~
4 ~~or her]~~ **the protectee's spouse and** children, according to ~~[his or her]~~ **the protectee's** means and
5 obligation, if any, out of the proceeds of ~~[his or her]~~ **the protectee's** estate, and may direct that
6 payments for such purposes shall be made weekly, monthly, quarterly, semiannually or annually.
7 The payments ordered under this section may be decreased or increased from time to time as
8 ordered by the court.

9 **2. In setting the amount of the support allowance for the protectee or any other**
10 **persons entitled to such support, the court shall consider the previous standard of living**
11 **of the spouse or other family members, the composition of the estate, the income and other**
12 **assets available to the protectee and the other persons, and the expenses of the protectee**
13 **or the other persons entitled to support.**

14 **3.** Appropriations for any such purposes, expenses of administration and allowed claims
15 shall be paid from the property or income of the estate. The court may authorize the conservator
16 to borrow money and obligate the estate for the payment thereof if the court finds that funds of
17 the estate for the payment of such obligation will be available within a reasonable time and that
18 the loan is necessary. If payments are made to another under the order of the court, the
19 conservator of the estate is not bound to see to the application thereof.

20 ~~[3-]~~ **4.** In acting under this section the court shall take into account any duty imposed by
21 law or contract upon a parent or spouse of the protectee, a government agency, a trustee, or other
22 person or corporation, to make payments for the benefit of or provide support, education, care,
23 treatment, habilitation, respite, maintenance or safekeeping of the protectee and ~~[his or her]~~ **the**
24 **protectee's** dependents. The guardian of the person and the conservator of the estate shall
25 endeavor to enforce any such duty.

475.130. 1. The conservator of the estate of a minor or disabled person shall, under
2 supervision of the court, protect, preserve, and manage the estate, apply it as provided in this
3 code, account for it faithfully, perform all other duties required of the conservator by law, and
4 at the termination of the conservatorship deliver the assets of the protectee to the persons entitled
5 thereto. In protecting, preserving, and managing the estate, the conservator of the estate is under
6 a duty to use the degree of care, skill, and prudence ~~[which]~~ **that** an ordinarily prudent person
7 uses in managing the property of, and conducting transactions on behalf of, others. If a
8 conservator of the estate has special skills or is appointed on the basis of representations of
9 special skills or expertise, the conservator is under a duty to use those skills in the conduct of the

10 protectee's affairs. A conservator of the estate is under a duty to act in the interest of the
11 protectee and to avoid conflicts of interest which impair the conservator's ability so to act.

12 2. The conservator of the estate shall take possession of all of the protectee's real and
13 personal property, and of rents, income, issue, and profits therefrom, whether accruing before
14 or after the conservator's appointment, and of the proceeds arising from the sale, mortgage, lease,
15 or exchange thereof. Subject to such possession, the title to all such estate, and to the increment
16 and proceeds thereof, is in the protectee and not in the conservator. Upon a showing that funds
17 available or payable for the benefit of the protectee by any federal agency are being applied for
18 the benefit of the protectee, or that such federal agency has refused to recognize the authority of
19 the conservator to administer such funds, the court may waive, by order, the duty of the
20 conservator to account therefor.

21 3. **In managing, investing, and distributing the estate of a protectee, the conservator**
22 **shall use reasonable efforts to:**

23 (1) **Ascertain the income, assets, and liabilities of the protectee;**

24 (2) **Ascertain the needs and preferences of the protectee;**

25 (3) **Coordinate with the guardian and consult with others close to the protectee;**

26 (4) **Prepare a plan for the management of the protectee's income and assets; and**

27 (5) **Provide oversight to any income and assets of the protectee under the control**
28 **of the protectee.**

29 4. The court has full authority under the rules of civil procedure to enjoin any person
30 from interfering with the right of the conservator to possession of the assets of the protectee,
31 including benefits payable from any source.

32 [4-] 5. The conservator of the estate shall prosecute and defend all actions instituted in
33 behalf of or against the protectee[;], collect all debts due or becoming due to the protectee, and
34 give acquittances and discharges therefor, and adjust, settle, and pay all claims due or becoming
35 due from the protectee so far as [~~his or her~~] **the protectee's** estate and effects will extend, except
36 as provided in sections 507.150 and 507.188.

37 [5-] 6. A conservator of the estate has power, without authorization or approval of the
38 court, to:

39 (1) Settle or compromise a claim against the protectee or the estate agreeing to pay or
40 paying not more than [~~one~~] **five** thousand dollars;

41 (2) Settle, abandon, or compromise a claim in favor of the estate [~~which~~] **that** does not
42 exceed [~~one~~] **five** thousand dollars;

43 (3) **Receive additions to the estate;**

44 (4) Sell, or agree to sell, chattels and choses in action reasonably worth not more than
45 [~~one~~] **five** thousand dollars for cash or upon terms involving a reasonable extension of credit;

- 46 ~~[(4)]~~ **(5)** Exchange, or agree to exchange, chattels and choses in action for other such
47 property of equivalent value, not in excess of ~~[one]~~ **five** thousand dollars;
- 48 ~~[(5)]~~ **(6)** Insure or contract for insurance of property of the estate against fire, theft and
49 other hazards;
- 50 ~~[(6)]~~ **(7)** Insure or contract for insurance protecting the protectee against any liability
51 likely to be incurred, including medical and hospital expenses, and protecting the conservator
52 against liability to third parties arising from acts or omissions connected with possession or
53 management of the estate;
- 54 ~~[(7)]~~ **(8)** Contract for needed repairs and maintenance of property of the estate;
- 55 ~~[(8)]~~ **(9)** Lease land and buildings for terms not exceeding one year, reserving reasonable
56 rent, and renew any such lease for a like term;
- 57 ~~[(9)]~~ **(10)** Vote corporate stock in person or by general or limited proxy;
- 58 ~~[(10)]~~ **(11)** Contract for the provision of board, lodging, education, medical care, or
59 necessities of the protectee for periods not exceeding one year, and renew any such contract for
60 a like period;
- 61 **(12) Commence a proceeding, including an administrative proceeding, or take other**
62 **appropriate action to compel a person to support the protectee or to pay moneys for the**
63 **benefit of the protectee;**
- 64 **(13) Deposit funds in a bank, including a bank operated by the conservator;**
- 65 **(14) Hold a security in the name of a nominee or in other form without disclosure**
66 **of the conservatorship so title to the security may pass by delivery, but the conservator is**
67 **liable for any act of the nominee in connection with the stock so held;**
- 68 **(15) Pay taxes, assessments, and other expenses incurred in the collection, care,**
69 **administration, and protection of the estate;**
- 70 **(16) Pay any sum distributable to a protectee or the protectee's dependent without**
71 **liability to the conservator, by paying the sum to the distributee or by paying the sum for**
72 **the use of the distributee either to the distributee's guardian or, if none, to a relative or**
73 **other person with custody of the distributee;**
- 74 **(17) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the**
75 **protection of estate assets and of the conservator in the performance of the conservator's**
76 **duties;**
- 77 **(18) Execute and deliver all instruments that will accomplish or facilitate the**
78 **exercise of the powers vested in the conservator; and**
- 79 ~~[(11)]~~ **(19)** On or after August 28, 2009, invest the estate in accordance with the
80 provisions of section 475.190.

81 ~~[6-]~~ 7. If, in exercising any power conferred by subsection ~~[5]~~ 6 of this section, a
 82 conservator breaches any of the duties enumerated in subsection 1 of this section, the conservator
 83 may be surcharged for losses to the estate caused by the breach but persons who dealt with the
 84 conservator in good faith, without knowledge of or reason to suspect the breach of duty, may
 85 enforce and retain the benefits of any transaction with the conservator which the conservator has
 86 power under subsection ~~[5]~~ 6 of this section to conduct.

475.145. When a conservator of the estate has been appointed, an inventory and
 2 appraisement of the estate of the protectee shall be made in the same manner and within the same
 3 time and subject to the same requirements as are provided in sections 473.233 to 473.243 for the
 4 inventory and appraisement of a decedent's estate. The inventory shall include property as to
 5 which the protectee is a joint tenant or tenant by the entirety and all policies of life insurance
 6 owned by the protectee, whether or not payable to a named beneficiary, together with a statement
 7 of all income and benefits to which the protectee is or will be entitled to receive. **The inventory**
 8 **shall also disclose any nonprobate transferees designated to receive nonprobate transfers**
 9 **after the protectee's death.**

475.230. 1. Sales of real estate of protectees shall be conducted in the same manner and
 2 the same proceedings shall be had with reference thereto as in cases of sale of real estate of
 3 decedents for payment of claims ~~[, except that there shall be no notice to parties in interest before~~
 4 ~~the making of the order].~~

5 **2. Unless waived by the court for cause, the protectee is entitled to ten days' prior**
 6 **notice of a required court hearing on the petition for the sale of the protectee's real or**
 7 **tangible personal property. The protectee is not entitled to notice of a hearing on the**
 8 **petition for the sale of the protectee's intangible personal property.**

475.270. 1. Every conservator shall file with the court **annually, or more often if**
 2 **required by the court,** a settlement of ~~[his]~~ **the conservator's** accounts ~~[once a year or oftener]~~
 3 if required by the court **detailing the current status of the estate under conservatorship.** The
 4 annual settlement shall be made at a time fixed by the court within ~~[thirty]~~ **sixty** days after the
 5 anniversary of the appointment of such conservator ~~[and on the corresponding date of each year~~
 6 ~~thereafter until the final settlement].~~

7 2. Each settlement of a conservator shall conform to the requirements of section 473.543
 8 as to settlements in decedents' estates.

9 3. If the conservatorship estate meets the indigency standards prescribed by chapter 208,
 10 **is under the control of another fiduciary, including a Social Security representative payee**
 11 **or Veterans Affairs fiduciary,** or if the assets of a protectee have been placed in restricted
 12 custody, the court may waive the requirements ~~[of subsection 2 of this]~~ **that the settlement**

13 **comply with the requirements of section 473.543** and require the conservator to report, in a
 14 form prescribed by the court, the following information:

15 (1) A statement of any money or property received during the preceding year including
 16 the date, source and amount or value;

17 (2) A statement of disbursements made and the purpose thereof;

18 (3) The total amount of money or property on hand;

19 (4) The name and address of any depository where estate funds are deposited and the
 20 amounts thereof.

21 **4. Except when a public administrator is serving as conservator, in addition to the**
 22 **information required under subsection 3 of this section, the settlement shall include:**

23 **(1) The present address of the protectee;**

24 **(2) The present address of the conservator;**

25 **(3) The services being provided to the protected person;**

26 **(4) The significant actions taken by the conservator during the reporting period;**

27 **(5) An opinion of the conservator as to the continued need for conservatorship and**
 28 **any recommended changes in the scope of the conservatorship;**

29 **(6) The compensation requested and the reasonable and necessary expenses**
 30 **incurred by the conservator;**

31 **(7) A plan for the coming year, including short-term or long-term goals, and the**
 32 **extent to which the protectee has participated in the development of the plan; and**

33 **(8) Any other information requested by the court or useful in the opinion of the**
 34 **conservator.**

475.276. 1. If the **assets of the protectee are under the control of another fiduciary,**
 2 **including a Social Security representative payee or Veterans Affairs fiduciary, or if the**
 3 value of the assets of the estate of a protectee does not exceed the value prescribed by chapter
 4 208 for [~~welfare~~] **public benefit** eligibility and whether or not such protectee receives other [~~old~~
 5 ~~age, disability or dependency~~] **public** benefits from the federal government or the state of
 6 Missouri, the court may, upon satisfactory proof that adequate provision has been made for the
 7 care and maintenance of the protectee, waive or modify the requirements of sections 475.270 and
 8 475.275.

9 2. If the estate of a protectee consists solely of cash or its equivalent which has been
 10 placed in restricted custody so that no withdrawals may be made except on order of the court as
 11 prescribed by section 473.160, the court may waive or modify the requirements of sections
 12 475.270 and 475.275.

13 3. Any order entered pursuant to subsection 1 or 2 of this section shall specify the events
 14 or circumstances which shall cause the same to terminate. The order may also provide that the

15 estate shall not be liable for court costs or other expenses of administration so long as the order
 16 remains in effect and may direct any state agency or require the conservator of the estate to
 17 request a federal agency to pay benefits directly to the custodial facility in which the protectee
 18 resides.

475.290. 1. Conservators shall make final settlement of their conservatorship at a time
 2 fixed by the court, either by rule or otherwise, within ~~sixty~~ **ninety** days after termination of
 3 their authority. For the purpose of settlement, the conservator shall make a just and true exhibit
 4 of the account between himself **or herself** and ~~his~~ **the** protectee, and file the same in the court
 5 having jurisdiction thereof, and cause a copy of the account, together with a written notice stating
 6 the day on which and the court in which ~~he~~ **the conservator** will make settlement, to be
 7 delivered to ~~his~~ **the** protectee or, in case of revocation or resignation, to the succeeding
 8 conservator or in case of death of ~~his~~ **the** protectee to ~~his~~ **the** executor or administrator **of the**
 9 **protectee's estate** or other person designated by the court, at least twenty days before the date
 10 set for settlement.

11 2. If, for any cause, a copy of the account and written notice cannot be delivered to the
 12 protectee or other person entitled thereto, the court may order notice of the filing of the account,
 13 and of the time and place at which final settlement is to be made, to be given by publication once
 14 a week for four weeks next before the date set for settlement in accordance with section 472.100.

15 3. At the time specified in the notice, the court, upon satisfactory proof of the delivery
 16 of a copy of the account and written notice of the settlement to the protectee or person entitled
 17 thereto, or ~~his~~ **the protectee's** written waiver thereof, or in case the court has ordered notice
 18 to be given by publication, then upon proof of compliance with such order, shall proceed to
 19 examine the accounts of the conservator, correct all errors therein, if any there be, and make a
 20 final settlement with the conservator; or the court may, for good cause, continue the settlement
 21 and proceed therein at any time agreed upon by the parties or fixed by the court.

475.322. ~~When a protectee:-~~

2 ~~—— (1) Purchased United States bonds in co-ownership form, payable to himself and another~~
 3 ~~or the survivor, or in beneficiary form, payable to himself during his lifetime and to another upon~~
 4 ~~his death;-~~

5 ~~—— (2) Deposited funds in a joint account in the name of himself and any one or more other~~
 6 ~~persons, and in form to be paid to any one or more of them, or the survivor or survivors of them,~~
 7 ~~or in an account payable to himself during his lifetime and upon his death to another, or in an~~
 8 ~~account in his own name upon revocable trust for another; or~~

9 ~~—— (3) Owns real or personal property in joint tenancy or tenancy by the entirety;-~~
 10

11 ~~the conservator may, with the authorization or approval of the court, redeem such bonds,~~
12 ~~withdraw funds from such account, and sell, exchange or mortgage the protectee's estate or~~
13 ~~interest in such joint or entirety property, to the extent that funds are needed to pay expenses~~
14 ~~under section 475.125 or claims under section 475.211. With respect to property held in joint~~
15 ~~tenancy, the provisions of sections 362.470 and 369.174 shall be applicable and with respect to~~
16 ~~any property held in tenancy by the entirety, the provisions of section 442.035 shall be applicable~~
17 ~~and the conservator, with or without court approval, shall not have authority to redeem,~~
18 ~~withdraw, sell, exchange or mortgage the protectee's estate or interest in such entirety property~~
19 ~~without the approval of the other tenant by the entirety. The court shall not authorize or approve~~
20 ~~such redemption, withdrawal, sale, exchange or mortgage as to the share contributed to the~~
21 ~~purchase of such bonds, the making of deposits in such an account, or the acquisition of such~~
22 ~~joint or entirety property by the co-owner or beneficiary of the bonds, a joint depositor, a person~~
23 ~~to whom an account is payable on death, a beneficiary of a revocable trust of an account, or a~~
24 ~~co-tenant of property.]~~

25 **1. Except as provided under section 475.094, the conservator shall**
26 **administer a protectee's estate by maintaining the protectee's estate plan as evidenced by**
27 **the protectee's will, trust, real and personal property assets held jointly with right of**
28 **survivorship, and assets titled in the protectee's name with nonprobate transfers under**
29 **sections 461.003 to 461.081 and other assets with beneficiary designations including, but**
30 **not limited to, those in bank or credit union accounts, investment accounts, motor vehicles,**
31 **insurance policies and annuities, individual retirement accounts, and deferred**
32 **compensation accounts. A conservator may examine the will and any other donative,**

33 **2. To the extent that the conservator shall pay expenses of the protectee or the**
34 **protectee's dependents under section 475.125 or claims under sections 475.205 to 475.213**
35 **or section 475.260 because the protectee's estate does not have sufficient assets in the**
36 **protectee's or estate's name solely, the conservator may apply for an order of the court**
37 **authorizing the redemption or liquidation of the decedent's joint assets or assets titled with**
38 **nonprobate transfers in the following order of priority only as necessary to pay expenses**
39 **and claims of the protectee's estate at the time of application:**

40 **(1) Assets owned solely by the unmarried protectee or the protectee's estate with**
41 **beneficiary designations under the nonprobate transfer law as provided under sections**
42 **461.003 to 461.081, banking law, and other property with beneficiary designations,**
43 **including insurance policies and annuities, individual retirement accounts, deferred**
44 **compensation and other contributory pension accounts, and any other assets with**
45 **beneficiary designations;**

46 **(2) The proportional interest in some or all of the jointly held assets upon notice**
47 **and after opportunity to be heard by the other joint owners.**

475.341. Except when a public administrator is serving as conservator, a sale,
2 **encumbrance, or other transaction involving the management of the conservatorship**
3 **entered into by the conservator for the conservator's own personal gain or which is**
4 **otherwise affected by a conflict between the conservator's fiduciary and personal interests**
5 **is voidable unless the transaction:**

6 **(1) Was approved by the court;**

7 **(2) Involves a contract entered into or claim acquired by the conservator before the**
8 **person became or contemplated becoming conservator;**

9 **(3) Involves a deposit of estate moneys to a bank operated by the conservator; or**

10 **(4) Involves an advance by the conservator of moneys for the protection of the**
11 **estate.**

475.342. The conservator shall:

2 **(1) Keep estate property separate from the conservator's own property; and**

3 **(2) Cause the estate's property to be designated so that any ownership interest of**
4 **the estate, to the extent feasible, appears in records maintained by a financial institution**
5 **or party other than the conservator or protectee.**

475.343. 1. A guardian of an adult or minor ward is not obligated by virtue of such
2 **guardian's appointment to use the guardian's own financial resources for the support of**
3 **the ward. If the ward's estate and available public benefits are inadequate for the proper**
4 **care of the ward, the guardian or conservator may apply to the county commission under**
5 **section 475.370.**

6 **2. No guardian of the person shall have authority to seek admission of the**
7 **guardian's ward to a mental health facility or an intellectual disability facility for more**
8 **than thirty days for any purpose without court order except as otherwise provided by law.**

9 **3. Only the director or chief administrative officer of a social service agency serving**
10 **as guardian of an incapacitated person, or such person's designee, is legally authorized to**
11 **act on behalf of the ward.**

12 **4. A social service agency serving as guardian of an incapacitated person shall**
13 **notify the court within fifteen days after any change in the identity of the professional**
14 **individual who has primary responsibility for providing guardianship services to the**
15 **incapacitated person.**

16 **5. Any social service agency serving as guardian shall not provide other services to**
17 **the ward.**

475.344. 1. With the approval of the court, a conservator may delegate to an agent duties and powers that are prudent under the circumstances. The conservator shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the conservatorship; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the protectee to exercise reasonable care to comply with the terms of the delegation.

3. By accepting a delegation of powers or duties from the conservator of a conservatorship that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

475.355. 1. If, upon the filing of a petition for the adjudication of incapacity or disability it appears that the respondent, by reason of a mental disorder or intellectual disability or developmental disability, presents a likelihood of serious physical harm to ~~himself~~ the respondent or others, ~~he~~ the respondent may be detained in accordance with the provisions of chapter 632 if suffering from a mental disorder, or chapter 633 if the ~~person~~ respondent has an intellectual or developmental disability, pending a hearing on the petition for adjudication.

2. As used in this section, the terms "mental disorder" and "intellectual disability" or "developmental disability" shall be as defined in chapter 630 and the term "likelihood of serious physical harm to ~~himself~~ the respondent or others" shall be as the term "likelihood of serious harm" is defined in chapter 632.

3. The procedure for obtaining an order of temporary emergency detention shall be as prescribed by chapter 632, relating to prehearing detention of mentally disordered persons.

475.357. The probate divisions of the courts of this state have jurisdiction over issues of the adjudication of incapacity, partial incapacity, disability, or partial disability and the appointment of a guardian, limited guardian, conservator, or limited conservator of an adult eighteen years of age or older whose parents have a pending matter under chapter 210 or chapter 452 for child custody or visitation of that child. The court that has jurisdiction under chapter 210 or chapter 452 shall have the authority to enter orders only as to child support after such adjudication and appointment of a guardian by the probate division.

475.359. 1. A guardian or limited guardian of an incapacitated person or partially incapacitated person shall act in the best interest of the ward, taking into consideration the ward's communications as to the ward's goals, wants, needs, and preferences, as are

4 appropriate for the ward considering his or her physical and mental condition and
5 financial means. A limited guardian of a partially incapacitated person shall have the
6 powers and duties enumerated by the court in the adjudication order or any later
7 modifying order.

8 2. Except as otherwise limited by the court, a guardian shall make decisions
9 regarding the adult ward's support, care, education, health, and welfare. A guardian shall
10 exercise authority only as necessitated by the adult ward's limitations and, to the extent
11 possible, shall encourage the ward to participate in decisions, act on the ward's own behalf,
12 and develop or regain the capacity to manage the ward's personal affairs.

13 3. Before making decisions on behalf of the adult ward, the guardian shall, to the
14 extent possible, ascertain the ward's goals, wants, needs, and preferences, as are
15 appropriate for the ward considering his or her physical and mental condition and
16 financial means, as follows:

17 (1) First, the guardian shall ask the ward what the ward wants;

18 (2) Second, if the ward has difficulty expressing what the ward wants, the guardian
19 shall do everything possible to help the ward express his or her goals, wants, needs, and
20 preferences; and

21 (3) Third, if the ward, even with assistance, cannot express his or her goals and
22 preferences, the guardian shall seek input from others familiar with the person to
23 determine what the individual would have wanted.

24 4. In making decisions on behalf of the ward, the guardian shall consider the
25 ascertained goals, wants, needs, and preferences of the ward to the extent possible. The
26 guardian shall make a decision in accordance with the ward's goals, wants, needs, and
27 preferences unless the guardian determines, after considering all of the options and their
28 potential risks and benefits, that such a decision would not be in the ward's best interest.
29 If the ward's goals, wants, needs, and preferences cannot be ascertained, the guardian shall
30 make a decision based solely on what a reasonable person would do after considering all
31 of the options and their potential risks and benefits, as are appropriate for the ward
32 considering his or her physical and mental condition and financial means.

33 5. The general powers and duties of a guardian of an incapacitated person shall be
34 to take charge of the person of the ward and to provide for the ward's care, treatment,
35 habilitation, education, support, and maintenance, and the powers and duties shall include,
36 but not be limited to, the following:

37 (1) Maintain sufficient contact, including at least one in-person annual visit, with
38 the ward to know of the ward's capacities, limitations, needs, opportunities, and physical
39 and mental health;

40 **(2) File a report with the court within ninety days of appointment indicating that**
41 **the guardian has met with the ward and describing how the guardian will meet the needs**
42 **of the ward and address the ward's preferences. Such report may include a plan from a**
43 **service provider;**

44 **(3) Assure that the ward resides in the best and least restrictive setting reasonably**
45 **available. The guardian shall give priority to home- or community-based settings if not**
46 **inconsistent with the ward's goals and preferences, as are appropriate for the ward**
47 **considering his or her physical and mental condition and financial means;**

48 **(4) Assure that the ward receives medical care and other services that are needed;**

49 **(5) Promote and protect the care, comfort, safety, health, and welfare of the ward;**

50 **(6) Provide required consents on behalf of the ward;**

51 **(7) Exercise all powers and discharge all duties necessary or proper to implement**
52 **the provisions of this section;**

53 **(8) Make a good faith effort to cooperate with other fiduciaries for the ward as**
54 **applicable including, but not limited to, any other guardian, conservator, agent under a**
55 **power of attorney, trustee, Veterans Affairs fiduciary, or representative payee; and**

56 **(9) Notify the court if, in the opinion of the guardian, the ward's condition has**
57 **changed to the extent that the ward is capable of exercising rights previously removed.**

58 **6. A guardian of an adult or minor ward is not obligated by virtue of such**
59 **guardian's appointment to use the guardian's own financial resources for the support of**
60 **the ward. If the ward's estate and available public benefits are inadequate for the proper**
61 **care of the ward, the guardian or conservator may apply to the county commissioner under**
62 **section 475.370.**

475.361. 1. The provisions of section 475.078 notwithstanding, in every
2 **guardianship, the incapacitated person has the right to:**

3 **(1) A guardian who acts in the best interests of the ward;**

4 **(2) A guardian who is reasonably accessible to the ward;**

5 **(3) Communicate freely and privately with family, friends, and other persons other**
6 **than the guardian; except that, such right may be limited by the guardian for good cause**
7 **but only as necessary to ensure the ward's condition, safety, habilitation, or sound**
8 **therapeutic treatment;**

9 **(4) Individually or through the ward's representative or legal counsel, bring an**
10 **action relating to the guardianship, including the right to file a petition alleging that the**
11 **ward is being unjustly denied a right or privilege granted by this chapter, including the**
12 **right to bring an action to modify or terminate the guardianship under the provisions of**
13 **section 475.083;**

- 14 **(5) The least restrictive form of guardianship assistance, taking into consideration**
 15 **the ward's functional limitations, personal needs, and preferences;**
 16 **(6) Be restored to capacity at the earliest possible time;**
 17 **(7) Receive information from the court that describes the ward's rights, including**
 18 **rights the ward may seek by petitioning the court; and**
 19 **(8) Participate in any health care decision-making process.**
 20 **2. An adult ward may petition the court to grant the ward the right to:**
 21 **(1) Contract to marry or to petition for dissolution of marriage;**
 22 **(2) Make, modify, or terminate other contracts or ratify contracts made by the**
 23 **ward;**
 24 **(3) Consent to medical treatment;**
 25 **(4) Establish a residence or dwelling place;**
 26 **(5) Change domicile;**
 27 **(6) Bring or defend any action at law or equity, except an action relating to the**
 28 **guardianship; or**
 29 **(7) Drive a motor vehicle if the ward can pass the required driving test.**
 30 **3. The appointment of a guardian shall revoke the powers of an agent who was**
 31 **previously appointed by the ward to act as an agent under a durable power of attorney for**
 32 **health care, unless the court so orders.**
 33 **4. The appointment of a guardian is not a determination that the ward lacks**
 34 **testamentary capacity.**

630.005. As used in this chapter and chapters 631, 632, and 633, unless the context
 2 clearly requires otherwise, the following terms shall mean:

- 3 (1) "Administrative entity", a provider of specialized services other than transportation
 4 to clients of the department on behalf of a division of the department;
 5 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results in intoxication
 6 or in a psychological or physiological dependency from continued use, which dependency
 7 induces a mental, emotional or physical impairment and which causes socially dysfunctional
 8 behavior;
 9 (3) "Chemical restraint", medication administered with the primary intent of restraining
 10 a patient who presents a likelihood of serious physical injury to himself or others, and not
 11 prescribed to treat a person's medical condition;
 12 (4) "Client", any person who is placed by the department in a facility or program licensed
 13 and funded by the department or who is a recipient of services from a regional center, as defined
 14 in section 633.005;
 15 (5) "Commission", the state mental health commission;

- 16 (6) "Consumer", a person:
- 17 (a) Who qualifies to receive department services; or
- 18 (b) Who is a parent, child or sibling of a person who receives department services; or
- 19 (c) Who has a personal interest in services provided by the department.
- 20
- 21 A person who provides services to persons affected by intellectual disabilities, developmental
- 22 disabilities, mental disorders, mental illness, or alcohol or drug abuse shall not be considered a
- 23 consumer;
- 24 (7) "Day program", a place conducted or maintained by any person who advertises or
- 25 holds himself out as providing prevention, evaluation, treatment, habilitation or rehabilitation
- 26 for persons affected by mental disorders, mental illness, intellectual disabilities, developmental
- 27 disabilities or alcohol or drug abuse for less than the full twenty-four hours comprising each daily
- 28 period;
- 29 (8) "Department", the department of mental health of the state of Missouri;
- 30 (9) "Developmental disability", a disability:
- 31 (a) Which is attributable to:
- 32 a. Intellectual disability, cerebral palsy, epilepsy, head injury or autism, or a learning
- 33 disability related to a brain dysfunction; or
- 34 b. Any other mental or physical impairment or combination of mental or physical
- 35 impairments; and
- 36 (b) Is manifested before the person attains age twenty-two; and
- 37 (c) Is likely to continue indefinitely; and
- 38 (d) Results in substantial functional limitations in two or more of the following areas of
- 39 major life activities:
- 40 a. Self-care;
- 41 b. Receptive and expressive language development and use;
- 42 c. Learning;
- 43 d. Self-direction;
- 44 e. Capacity for independent living or economic self-sufficiency;
- 45 f. Mobility; and
- 46 (e) Reflects the person's need for a combination and sequence of special,
- 47 interdisciplinary, or generic care, habilitation or other services which may be of lifelong or
- 48 extended duration and are individually planned and coordinated;
- 49 (10) "Director", the director of the department of mental health, or his designee;
- 50 (11) "Domiciled in Missouri", a permanent connection between an individual and the
- 51 state of Missouri, which is more than mere residence in the state; it may be established by the

52 individual being physically present in Missouri with the intention to abandon his previous
53 domicile and to remain in Missouri permanently or indefinitely;

54 (12) "Drug abuse", the use of any drug without compelling medical reason, which use
55 results in a temporary mental, emotional or physical impairment and causes socially
56 dysfunctional behavior, or in psychological or physiological dependency resulting from
57 continued use, which dependency induces a mental, emotional or physical impairment and causes
58 socially dysfunctional behavior;

59 (13) "Habilitation", a process of treatment, training, care or specialized attention [~~which~~]
60 **that** seeks to enhance and maximize a person with an intellectual disability or a developmental
61 disability to cope with the environment and to live as [~~normally~~] **determined by the person** as
62 **much as possible, as is appropriate for the person considering his or her physical and**
63 **mental condition and financial means;**

64 (14) "Habilitation center", a residential facility operated by the department and serving
65 only persons who are developmentally disabled;

66 (15) "Head of the facility", the chief administrative officer, or his designee, of any
67 residential facility;

68 (16) "Head of the program", the chief administrative officer, or his designee, of any day
69 program;

70 (17) "Individualized habilitation plan", a document which sets forth habilitation goals
71 and objectives for residents and clients with an intellectual disability or a developmental
72 disability, and which details the habilitation program as required by law, rules and funding
73 sources;

74 (18) "Individualized rehabilitation plan", a document which sets forth the care, treatment
75 and rehabilitation goals and objectives for patients and clients affected by alcohol or drug abuse,
76 and which details the rehabilitation program as required by law, rules and funding sources;

77 (19) "Individualized treatment plan", a document which sets forth the care, treatment and
78 rehabilitation goals and objectives for patients and clients with mental disorders or mental
79 illness, and which details the treatment program as required by law, rules and funding sources;

80 (20) "Intellectual disability", significantly subaverage general intellectual functioning
81 which:

82 (a) Originates before age eighteen; and

83 (b) Is associated with a significant impairment in adaptive behavior;

84 (21) "Investigator", an employee or contract agent of the department of mental health
85 who is performing an investigation regarding an allegation of abuse or neglect or an investigation
86 at the request of the director of the department of mental health or his designee;

87 (22) "Least restrictive environment", a reasonably available setting or mental health
88 program where care, treatment, habilitation or rehabilitation is particularly suited to the level and
89 quality of services necessary to implement a person's individualized treatment, habilitation or
90 rehabilitation plan and to enable the person to maximize his or her functioning potential to
91 participate as freely as feasible in normal living activities, giving due consideration to potentially
92 harmful effects on the person and the safety of other facility or program clients and public safety.
93 For some persons with mental disorders, intellectual disabilities, or developmental disabilities,
94 the least restrictive environment may be a facility operated by the department, a private facility,
95 a supported community living situation, or an alternative community program designed for
96 persons who are civilly detained for outpatient treatment or who are conditionally released
97 pursuant to chapter 632;

98 (23) "Mental disorder", any organic, mental or emotional impairment which has
99 substantial adverse effects on a person's cognitive, volitional or emotional function and which
100 constitutes a substantial impairment in a person's ability to participate in activities of normal
101 living;

102 (24) "Mental illness", a state of impaired mental processes, which impairment results in
103 a distortion of a person's capacity to recognize reality due to hallucinations, delusions, faulty
104 perceptions or alterations of mood, and interferes with an individual's ability to reason,
105 understand or exercise conscious control over his actions. The term "mental illness" does not
106 include the following conditions unless they are accompanied by a mental illness as otherwise
107 defined in this subdivision:

108 (a) Intellectual disability, developmental disability or narcolepsy;
109 (b) Simple intoxication caused by substances such as alcohol or drugs;
110 (c) Dependence upon or addiction to any substances such as alcohol or drugs;
111 (d) Any other disorders such as senility, which are not of an actively psychotic nature;

112 (25) "Minor", any person under the age of eighteen years;

113 (26) "Patient", an individual under observation, care, treatment or rehabilitation by any
114 hospital or other mental health facility or mental health program pursuant to the provisions of
115 chapter 632;

116 (27) "Psychosurgery":

117 (a) Surgery on the normal brain tissue of an individual not suffering from physical
118 disease for the purpose of changing or controlling behavior; or

119 (b) Surgery on diseased brain tissue of an individual if the sole object of the surgery is
120 to control, change or affect behavioral disturbances, except seizure disorders;

121 (28) "Rehabilitation", a process of restoration of a person's ability to attain or maintain
122 normal or optimum health or constructive activity through care, treatment, training, counseling
123 or specialized attention;

124 (29) "Residence", the place where the patient has last generally lodged prior to admission
125 or, in case of a minor, where his family has so lodged; except, that admission or detention in any
126 facility of the department shall not be deemed an absence from the place of residence and shall
127 not constitute a change in residence;

128 (30) "Resident", a person receiving residential services from a facility, other than mental
129 health facility, operated, funded or licensed by the department;

130 (31) "Residential facility", any premises where residential prevention, evaluation, care,
131 treatment, habilitation or rehabilitation is provided for persons affected by mental disorders,
132 mental illness, intellectual disability, developmental disabilities or alcohol or drug abuse; except
133 the person's dwelling;

134 (32) "Specialized service", an entity which provides prevention, evaluation,
135 transportation, care, treatment, habilitation or rehabilitation services to persons affected by
136 mental disorders, mental illness, intellectual disabilities, developmental disabilities or alcohol
137 or drug abuse;

138 (33) "Vendor", a person or entity under contract with the department, other than as a
139 department employee, who provides services to patients, residents or clients;

140 (34) "Vulnerable person", any person in the custody, care, or control of the department
141 that is receiving services from an operated, funded, licensed, or certified program.

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