

1 \*\*\*\* BILL NO. \*\*\*\*

2 INTRODUCED BY \*\*\*\*

3 BY REQUEST OF THE \*\*\*\*

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING GUARDIANSHIP PROCEEDINGS TO INCLUDE A  
6 PLAN OF CARE FOR AN INCAPACITATED PERSON; AMENDING SECTION 72-5-315, MCA; AND  
7 PROVIDING AN APPLICABILITY DATE."

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

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11 **Section 1.** Section 72-5-315, MCA, is amended to read:

12 **"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview --**  
13 **procedural rights.** (1) The incapacitated person or any person interested in the incapacitated person's welfare,  
14 including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

15 (2) (a) The petition must include a written plan for the care of the incapacitated person after  
16 appointment of the guardian, to the extent reasonably known to the petitioner at the time of filing the petition. If  
17 the needs of the incapacitated person are not reasonably known to the petitioner when the petition is filed or if  
18 the petitioner is not the proposed guardian, the guardian, within 30 days after appointment, shall submit a  
19 written plan for the care of the incapacitated person to the court, to all interested persons, and to any person  
20 who has filed a request for notice under 72-5-318. If the plan changes between the annual report of the  
21 guardian, a modified plan must be filed with the next annual report.

22 (b) The plan must be based on the needs of the incapacitated person and consider the best interest of  
23 the incapacitated person, as well as the incapacitated person's preferences, values, and prior directions, to the  
24 extent known to or reasonably ascertainable by the guardian. The plan must include:

25 (i) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue  
26 for the incapacitated person;

27 (ii) social and educational activities the guardian expects to facilitate on behalf of the incapacitated  
28 person;

(iii) any person with whom the incapacitated person has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;

(iv) the anticipated nature and frequency of the guardian's visits and communication with the incapacitated person;

(v) goals for the incapacitated person, including any goal related to the restoration of the incapacitated person's rights, and how the guardian anticipates achieving the goals;

(vi) whether the incapacitated person has an existing plan and, if so, whether the guardian's plan is consistent with that plan; and

(vii) a statement or list of the amount the guardian proposed to charge for each service the guardian anticipates providing to the incapacitated person.

~~(2)(3)~~ Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

~~(3)(4)~~ The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

~~(4)(5)~~ The person alleged to be incapacitated is entitled to be present at the hearing in person and to

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

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6 NEW SECTION. **Section 2. Applicability.** [This act] applies to guardianship proceedings  
7 commenced on or after [the effective date of this act].

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