

HOUSE BILL NO. 56
INTRODUCED BY B. THOMAS
BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A GUARDIAN OF AN INCAPACITATED PERSON MAY GIVE INFORMED CONSENT TO ADMISSION OR CONTINUED INPATIENT STATUS OF THE WARD AT THE MONTANA MENTAL HEALTH NURSING CARE CENTER AND TO ADMINISTRATION OF MEDICATION IF THE WARD DOES NOT REFUSE; AMENDING SECTIONS 53-21-414 AND 72-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 53-21-414, MCA, is amended to read:

"53-21-414. Admissions to mental health nursing care center. (1) The Montana mental health nursing care center may admit patients on a voluntary basis according to admission criteria and procedures established in administrative rules and, under the circumstances specified in 72-5-321, pursuant to the authority of a guardian.

(2) A patient involuntarily committed to the Montana state hospital may be transferred by the department of public health and human services to the Montana mental health nursing care center if the patient meets the admission criteria of the center. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Section 53-21-128 applies to extensions of involuntary commitment of patients to the center.

(3) Except as provided in 53-21-413(2) and subsection (2) of this section, patients involuntarily transferred to the center have the rights provided in this chapter."

Section 2. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to

report the condition of the incapacitated person and of the estate that has been subject to ~~his~~ the limited guardian's possession and control, as required by the court or by court rule.

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

(a) ~~To the extent that it is consistent~~ Except when it is inconsistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, ~~he~~ the full guardian is entitled to custody of the person of ~~his~~ the ward and may establish the ward's place of ~~abode within or without~~ residence inside or outside of this state.

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

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If ~~no~~ a conservator for the estate of the ward has not been appointed, a full guardian may:

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

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

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

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

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

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

(5) ~~No~~ Except as provided in 72-5-322 or in subsection (6) of this section, a full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is ~~himself~~ unwilling or unable to give informed consent to ~~such~~ the commitment, ~~except as provided in 72-5-322,~~ or treatment unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed.

(6) If a court of competent jurisdiction has found the ward to be incapacitated because of a mental disease or defect, including dementia, but not in need of intensive psychiatric care, such as that which is provided at the state hospital, the court may authorize a guardian to give informed consent on behalf of the ward to admission or continued inpatient status of the ward at the Montana mental health nursing care center if the ward does not refuse admission or continued inpatient status. If a court of competent jurisdiction has found the ward to be incapacitated because of a mental disease or defect, including dementia, and the court finds that it is necessary to protect the ward or the public or to facilitate effective treatment of the mental disease or defect, the court may authorize a guardian to give informed consent on behalf of the ward to administration of medications, including psychotropic medications, if the ward does not refuse the administration of medication.

(7) This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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