

IN THE SENATE

SENATE BILL NO. 1047

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE TREATMENT AND CARE OF THE DEVELOPMENTALLY
 2 DISABLED; AMENDING CHAPTER 4, TITLE 66, IDAHO CODE, BY THE
 3 ADDITION OF A NEW SECTION 66-418, IDAHO CODE, TO PROVIDE
 4 FOR TEMPORARY GUARDIANS AND TEMPORARY CONSERVATORS OF
 5 DEVELOPMENTALLY DISABLED PERSONS; AMENDING CHAPTER 4, TITLE 66,
 6 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 66-419, IDAHO CODE,
 7 TO PROVIDE THE DUTIES, RIGHTS AND POWERS OF A GUARDIAN AD LITEM;
 8 AND DECLARING AN EMERGENCY.
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10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Chapter 4, Title 66, Idaho Code, be, and the same is hereby amended
 12 by the addition thereto of a NEW SECTION, to be known and designated as Section 66-418,
 13 Idaho Code, and to read as follows:

14 66-418. TEMPORARY GUARDIAN OR CONSERVATOR. This section shall apply
 15 only if a petition has previously or contemporaneously been filed pursuant to section 66-404,
 16 Idaho Code, and shall be commenced under the same heading and case number as the filed
 17 petition.

18 (1) Upon filing of an ex parte petition, the court may appoint, without a hearing, a person
 19 to act as a temporary guardian or a temporary conservator, or may appoint both a temporary
 20 guardian and a temporary conservator, pending a final hearing, upon a finding supported by a
 21 statement made under oath that an emergency situation exists. The emergency appointment of
 22 a temporary guardian or temporary conservator shall remain in effect for a period not to exceed
 23 ninety (90) days from the appointment, unless extended for good cause upon application of the
 24 temporary guardian or temporary conservator.

25 (2) Any one (1) of the following shall be considered an emergency situation for purposes
 26 of this section:

27 (a) A finding that the appointed guardian or conservator is not properly performing the
 28 duties imposed upon him as guardian or conservator;

29 (b) A finding that there is an imminent likelihood of substantial harm to a respondent's
 30 health, safety or welfare;

31 (c) A finding that the respondent is unable to reasonably manage his finances and as
 32 a result, his assets will be wasted or dissipated unless proper management is provided
 33 without delay;

34 (d) A finding that the respondent has been taken advantage of and that the situation is
 35 likely to continue unless an emergency appointment is made without delay;

36 (e) A finding that the funds are needed for support, care and welfare of the respondent
 37 and an emergency appointment is necessary to secure such funding; or

1 (f) A finding that other conditions exist that, in the court's determination, necessitate the
2 emergency appointment of a temporary guardian or a temporary conservator, or both.

3 (3) The court shall specify in writing the powers of the temporary guardian who
4 shall exercise only those powers specified in the court's order. The powers and duties of
5 the temporary guardian shall be limited to those absolutely necessary or least restrictive to
6 secure the immediate health and safety of the respondent. Emergency letters of guardianship
7 shall limit the emergency guardian's access to the respondent's assets to that necessary to
8 provide and pay for the respondent's necessities of life, including, but not limited to, short and
9 long-term health care, but shall expressly deny the right to have the temporary guardian's name
10 added to any of the respondent's assets.

11 (4) The duty of a temporary conservator shall be to preserve and protect the assets of the
12 estate and to provide the funding necessary for the support, care and welfare of the respondent.
13 The temporary conservator shall have all the powers enumerated in section 15-5-424, Idaho
14 Code, but may exercise such powers only within the limited context of this section. The court
15 may expand the duties of the temporary conservator upon application and a finding that the
16 requested action is necessary.

17 (5) Neither a temporary guardian nor a temporary conservator shall remove any of the
18 assets of the respondent's estate from the jurisdiction of the court without a specific order to
19 that effect.

20 (6) Upon filing of an application by a person interested in the respondent's welfare
21 and upon a hearing, the court may limit the powers and duties of the temporary guardian or
22 temporary conservator, or both.

23 (7) A court may appoint a temporary guardian, a temporary conservator or both without
24 first giving notice to the respondent, his attorney or other known interested persons only if the
25 court finds from the petition or other sworn testimony that the respondent will be substantially
26 harmed before a hearing on the appointment can be held. If the court appoints a temporary
27 guardian, a temporary conservator or both without notice to the respondent, his attorney and
28 other known interested persons, the petitioner shall give written notice of the appointment to
29 the respondent, his attorney and other known interested persons within forty-eight (48) hours
30 of the appointment. The court shall hold a hearing on the appropriateness of the appointment
31 within five (5) days after the petitioner gives notice of the appointment if requested by an
32 interested person.

33 SECTION 2. That Chapter 4, Title 66, Idaho Code, be, and the same is hereby amended
34 by the addition thereto of a NEW SECTION, to be known and designated as Section 66-419,
35 Idaho Code, and to read as follows:

36 66-419. GUARDIAN AD LITEM – DUTIES, RIGHTS AND POWERS. Subject to the
37 direction of the court, a guardian ad litem shall have the duties, rights and powers as provided
38 in sections 15-5-434 and 15-5-435, Idaho Code.

39 SECTION 3. An emergency existing therefor, which emergency is hereby declared to
40 exist, this act shall be in full force and effect on and after its passage and approval.