

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 125

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO GUARDIANSHIP AND CONSERVATORSHIP; AMENDING SECTION 15-5-308,
2 IDAHO CODE, TO REVISE PROVISIONS RELATING TO CRIMINAL HISTORY AND BACK-
3 GROUND CHECKS ON CERTAIN PERSONS, TO REVISE PROVISIONS RELATING TO
4 GUARDIANSHIP PROCEEDINGS AND TO MAKE A TECHNICAL CORRECTION; AMENDING
5 SECTION 15-5-311, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO THE
6 APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON AND TO ESTABLISH
7 CERTAIN REPORTING REQUIREMENTS; AMENDING SECTION 15-5-316, IDAHO CODE,
8 TO REVISE PROVISIONS RELATING TO CRIMINAL HISTORY AND BACKGROUND CHECKS
9 CONDUCTED ON CERTAIN PERSONS; AMENDING SECTION 56-1004A, IDAHO CODE,
10 TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO CRIMINAL HISTORY AND
11 BACKGROUND CHECKS, TO GRANT THE DEPARTMENT OF HEALTH AND WELFARE CER-
12 TAIN RULEMAKING AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
13 SECTION 66-404, IDAHO CODE, TO REVISE TERMINOLOGY, TO ESTABLISH PRO-
14 VISIONS RELATING TO THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR OF AN
15 INCAPACITATED PERSON AND TO ESTABLISH CERTAIN REPORTING REQUIREMENTS;
16 AND AMENDING SECTION 66-405, IDAHO CODE, TO REVISE TERMINOLOGY, TO PRO-
17 VIDE THAT CERTAIN INFORMATION SHALL BE INCLUDED IN A CERTAIN REPORT AND
18 TO MAKE TECHNICAL CORRECTIONS.
19

20 Be It Enacted by the Legislature of the State of Idaho:

21 SECTION 1. That Section 15-5-308, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. (1) A visitor is, with
24 respect to guardianship proceedings, a person who is trained in law, nurs-
25 ing, psychology, social work, or counseling or has other qualifications that
26 make him suitable to perform the function and is an officer, employee or spe-
27 cial appointee of the court with no personal interest in the proceedings.
28 The visitor's report is to include the following information: a descrip-
29 tion of the nature, cause and degree of incapacity, and the basis upon which
30 this judgment is made; a description of the needs of the person alleged to be
31 incapacitated for care and treatment and the probable residential require-
32 ments; a statement as to whether a convicted felon resides in or frequents
33 the incapacitated person's proposed residence; an evaluation of the appro-
34 priateness of the guardian or conservator whose appointment is sought and a
35 description of the steps the proposed guardian or conservator has taken or
36 intends to take to meet the needs of the incapacitated person; a descrip-
37 tion of the abilities of the alleged incapacitated person and a recommenda-
38 tion as to whether a full or limited guardianship or conservatorship should
39 be ordered and, if limited, the visitor's recommendation of the specific ar-
40 eas of authority the limited guardianship or conservatorship should have and
41 the limitations to be placed on the incapacitated person; any expression of
42 approval or disapproval made by the alleged incapacitated person concern-

1 ing the proposed guardianship or conservatorship; an analysis of the finan-
2 cial status and assets of the alleged incapacitated person; identification
3 of people with significant interest in the welfare of the alleged incapaci-
4 tated person who should be informed of the proceedings; a description of the
5 qualifications and relationship of the proposed guardian or conservator; an
6 explanation of how the alleged incapacitated person responded to the advice
7 of the proceedings and the right to be present at the hearing on the peti-
8 tion; in the case of conservatorship, a recommendation for or against a bond
9 requirement for the proposed conservator, taking into account the financial
10 statement of the person whose appointment is sought.

11 (2) Any person appointed as a visitor shall be personally immune from
12 any liability for acts, omissions or errors in the same manner as if such
13 person were a volunteer or director under the provisions of section 6-1605,
14 Idaho Code.

15 (3) The visitor may not also be appointed as guardian ad litem for the
16 person alleged to be incapacitated nor may the guardian ad litem for the per-
17 son alleged to be incapacitated be appointed as visitor, nor may the visi-
18 tor and the guardian ad litem for the person alleged to be incapacitated be
19 members or employees of the same entity including, but not limited to, being
20 members or employees of the same law firm.

21 (4) ~~The visitor shall have the discretionary authority to conduct court~~
22 ~~may order a criminal history and background check to be conducted at the~~
23 ~~proposed guardian's expense on a proposed guardian, conservator or a per-~~
24 ~~son any individual who resides in or frequents the incapacitated person's~~
25 ~~proposed residence. Any such check shall be conducted pursuant to section~~
26 ~~56-1004A(2) and (3), Idaho Code.~~

27 (5) In preparing their reports, the visitor and guardian ad litem
28 shall consider all information available to them concerning any proposed
29 guardian, conservator and individual who resides in or frequents the in-
30 capacitated person's proposed residence including, but not limited to,
31 such information as might be available to the visitor pursuant to section
32 15-5-311(5), Idaho Code.

33 SECTION 2. That Section 15-5-311, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 15-5-311. WHO MAY BE GUARDIAN -- PRIORITIES. (1) Any competent person,
36 except as set forth hereafter, or a suitable institution may be appointed
37 guardian of an incapacitated person.

38 (2) The person preferred by the incapacitated person shall be appointed
39 guardian unless good cause be shown why appointment of such person is con-
40 trary to the best interests of the incapacitated person. If the incapaci-
41 tated person is unable to express a preference, any previous expression, in-
42 cluding a durable power of attorney for health care, may be considered by the
43 court.

44 (3) Persons who are not disqualified have priority for appointment as
45 guardian in the following order:

46 (a) The person preferred by the incapacitated person. The court shall
47 always consider the wishes expressed by an incapacitated person as to
48 who shall be appointed guardian;

1 (b) The person(s) nominated as health care agent in a durable power of
 2 attorney for health care by the incapacitated person, in the order of
 3 priority set forth in such power;

4 (c) The spouse of the incapacitated person;

5 (d) An adult child of the incapacitated person;

6 (e) A parent of the incapacitated person, including a person nominated
 7 by will or other writing signed by a deceased parent;

8 (f) Any relative of the incapacitated person with whom he has resided
 9 for more than six (6) months prior to the filing of the petition;

10 (g) A person nominated by the person who is caring for him or paying ben-
 11 efits to him.

12 (4) No convicted felon, or person whose residence is the incapacitated
 13 person's proposed residence or will be frequented by the incapacitated per-
 14 son and is frequented by a convicted felon, shall be appointed as a guardian
 15 of an incapacitated person unless the court finds by clear and convincing ev-
 16 idence that such appointment is in the best interests of the incapacitated
 17 person.

18 (5) No individual shall be appointed as guardian of an incapacitated
 19 person unless all of the following first occurs:

20 (a) The proposed guardian has submitted to and paid for a criminal his-
 21 tory and background check conducted pursuant to section 56-1004A(2) and
 22 (3), Idaho Code;

23 (b) Pursuant to an order of the court so requiring, any individual who
 24 resides in the incapacitated person's proposed residence has submit-
 25 ted, at the proposed guardian's expense, to a criminal history and back-
 26 ground check conducted pursuant to section 56-1004A(2) and (3), Idaho
 27 Code;

28 (c) The findings of such criminal history and background checks have
 29 been made available to the visitor and guardian ad litem by the depart-
 30 ment of health and welfare; and

31 (d) The proposed guardian provided a report of his or her civil judg-
 32 ments and bankruptcies to the visitor, the guardian ad litem and all
 33 others entitled to notice of the guardianship proceeding pursuant to
 34 section 15-5-309, Idaho Code.

35 (6) The provisions of paragraphs (a) and (d) of subsection (5) of this
 36 section shall not apply to an institution nor to a legal or commercial en-
 37 tity.

38 (7) Each proposed guardian and each appointed guardian shall imme-
 39 diately report any change in his or her criminal history and any material
 40 change in the information required by subsection (5) of this section to the
 41 visitor, guardian ad litem, all others entitled to notice of the guardian-
 42 ship proceeding pursuant to section 15-5-309, Idaho Code, and to the court.

43 SECTION 3. That Section 15-5-316, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 15-5-316. GUARDIAN AD LITEM -- RIGHTS AND POWERS. (1) The guardian ad
 46 litem has the rights and powers set forth in this section, which shall con-
 47 tinue until the resignation of the guardian ad litem or until the court re-
 48 moves the guardian ad litem or no longer has jurisdiction, whichever occurs
 49 first.

1 (2) The guardian ad litem shall have the right and power to file plead-
 2 ings, motions, memoranda and briefs on behalf of the ward, and to have all of
 3 the rights of the ward, whether conferred by statute, rule of court, or oth-
 4 erwise.

5 (3) All parties to any proceeding under this chapter shall promptly no-
 6 tify the guardian ad litem, and the guardian's attorney, if any, of all hear-
 7 ings, staff hearings or meetings, investigations, depositions, and signifi-
 8 cant changes of circumstances of the ward.

9 (4) Except to the extent prohibited or regulated by federal law, upon
 10 presentation of a copy of the order appointing the guardian ad litem, any
 11 person or agency including, without limitation, any hospital, school or-
 12 ganization, department of health and welfare, doctor, nurse or other health
 13 care provider, psychologist, psychiatrist, police department, or mental
 14 health clinic, shall permit the guardian ad litem to inspect and copy perti-
 15 nent records relating to the ward necessary for the proceeding for which the
 16 guardian ad litem has been appointed.

17 (5) ~~The guardian ad litem shall have the discretionary authority to~~
 18 ~~conduct~~ may request, and the court may order whether in response to such re-
 19 quest or otherwise, a criminal history and background check to be conducted
 20 at the proposed guardian's expense on a proposed guardian, conservator or
 21 person any individual who resides in or frequents the ward's proposed resi-
 22 dence. Any such check shall be conducted pursuant to section 56-1004A(2) and
 23 (3), Idaho Code.

24 SECTION 4. That Section 56-1004A, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 56-1004A. CRIMINAL HISTORY AND BACKGROUND CHECKS. (1) To assist in the
 27 protection of children and vulnerable adults, the legislature hereby autho-
 28 rizes the department of health and welfare to conduct criminal history and
 29 background checks of individuals who provide care or services to vulnera-
 30 ble adults or children and are identified in rule as being required to have a
 31 criminal history and background check.

32 (2) To further assist in the protection of vulnerable adults, the de-
 33 partment of health and welfare may:

34 (a) Conduct criminal history and background checks of those seeking
 35 guardianship or conservatorship and those who reside in an incapaci-
 36 tated person's proposed residence;

37 (b) Make the findings of such criminal history and background checks
 38 available to visitors, guardians ad litem and evaluation committees ap-
 39 pointed pursuant to chapter 5, title 15 or chapter 4, title 66, Idaho
 40 Code; and

41 (c) Promulgate such rules as are necessary to carry out the provisions
 42 of this section.

43 The provisions of subsection (6) of this section shall not apply to criminal
 44 history and background checks conducted pursuant to this subsection.

45 (3) Criminal history and background checks will be conducted by the de-
 46 partment of health and welfare when:

47 (a) Required or ordered by the court pursuant to chapter 5, title 15 or
 48 chapter 4, title 66, Idaho Code;

49 (b) Requested by those required to undergo such checks; and

1 (c) Paid for in full by those required to undergo such checks.

2 (4) The criminal history and background check will be a fingerprint-
3 based check of state and national records and may include information from
4 the following:

5 (a) Statewide criminal identification bureau;

6 (b) Federal bureau of investigation (FBI);

7 (c) National crime information center;

8 (d) Statewide sex offender registry;

9 (e) Idaho transportation department driving records;

10 (f) Adult and child protection registries;

11 (g) Nurse aide registry; and

12 (h) Department of health and human services office of the inspector
13 general list of excluded individuals and entities.

14 (35) The department of health and welfare shall promulgate rules to
15 further define those individuals who are required to have a criminal history
16 and background check and the effective date. Each individual shall complete
17 an application, which includes a notarized signature, on forms provided
18 by the department. The completed application authorizes the department to
19 obtain and release information in accordance with state and federal law. The
20 applicant must disclose all information requested, including information
21 on past convictions, driver's license revocations, and known adult or child
22 protection findings. Once an application has been completed, the employer,
23 at its discretion, may allow the individual to provide care or services prior
24 to the individual completing fingerprinting and pending completion of the
25 criminal history and background check by the department. The department
26 shall promulgate rules defining the time frame for submitting the applica-
27 tion. Under no circumstances may the individual be allowed to provide care
28 or services where the employer has reviewed the completed application and
29 the individual has disclosed a designated crime as set forth in rule.

30 (46) The department shall review the information received from the
31 criminal history and background check and determine whether the applicant
32 has a criminal or other relevant record that would disqualify the individ-
33 ual. The department shall determine which crimes disqualify the applicant
34 and for what period of time according to promulgated rules. The process for
35 the check and the issuance of a clearance or denial is set forth in department
36 rules. The applicant shall be provided an opportunity for a formal review
37 of a denial. The department shall communicate clearance or denial to the
38 applicant and the applicant's employer.

39 (57) Applicants are responsible for the cost of the criminal history
40 and background check except where otherwise provided by department rules.

41 (68) The department, or an employer of an applicant, who acts in rea-
42 sonable reliance on the results of the criminal history and background check
43 in making an employment decision, is immune from liability for that decision
44 when it is based on such results.

45 (79) The department, its officers and employees are immune from liabil-
46 ity for the consequences of including or excluding classes of individuals in
47 the criminal history and background check process.

48 (810) Clearance through the criminal history and background check
49 process is not a determination of suitability for employment.

1 (911) Effective until September 30, 2007, or when federal funding is
 2 no longer available, the legislature hereby authorizes the department of
 3 health and welfare to participate in a federal pilot project to conduct
 4 criminal history and background checks of providers, employees and contrac-
 5 tors who have access to patients in long-term care settings. Long-term care
 6 facilities or providers include nursing facilities, institutional care fa-
 7 cilities for people with intellectual disabilities, residential or assisted
 8 living facilities, long-term care hospitals or hospitals with swing beds,
 9 and home health and hospice providers. The criminal history and background
 10 checks for the long-term care providers, employees and contractors will be
 11 funded through the federal grant at no cost to the long-term care providers,
 12 employees or contractors until September 30, 2007, or the federal funding is
 13 no longer available.

14 SECTION 5. That Section 66-404, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVA-
 17 TORS. (1) A ~~developmentally disabled~~ person with a developmental disability
 18 or any person interested in his welfare may petition for a finding of legal
 19 disability or partial legal disability and appointment of a guardian and/or
 20 conservator.

21 (2) The petition shall:

22 (a) State the names and addresses of the persons entitled to notice un-
 23 der subsection (4) of this section;

24 (b) Describe the impairments showing the respondent is developmentally
 25 disabled, the respondent's ability to receive, evaluate and communi-
 26 cate information, and the respondent's ability to manage financial re-
 27 sources and meet essential requirements for physical health or safety;

28 (c) State the nature and scope of guardianship and/or conservatorship
 29 services sought;

30 (d) Describe the respondent's financial condition, including signif-
 31 icant assets, income and ability to pay for the costs of judicial pro-
 32 ceedings; and

33 (e) State if the appointment is made by will pursuant to section 15-5-
 34 301, Idaho Code, and the name(s) and address(es) of the person(s) named
 35 in the will to be guardian.

36 (3) Upon filing of a petition, the court shall set a date for a hearing,
 37 appoint an attorney to represent the respondent in the proceedings unless
 38 the respondent has an attorney, and authorize an evaluation committee to ex-
 39 amine the respondent, interview the proposed guardians and/or conservators
 40 and report to the court in writing. The report shall contain:

41 (a) A description of the nature and extent of the evaluation and the al-
 42 leged impairments, if any;

43 (b) A description of the respondent's mental, emotional and physical
 44 condition; educational status; and adaptive and social skills;

45 (c) A description of the services, if any, needed by the respondent to
 46 meet essential requirements for physical health and safety, and/or man-
 47 age financial resources;

1 (d) A recommendation regarding the type and extent of guardianship or
 2 conservatorship assistance, if any, required by the respondent and why
 3 no less restrictive alternative would be appropriate;

4 (e) An opinion regarding the probability that the extent of the respon-
 5 dent's disabilities may significantly lessen, and the type of services
 6 or treatment which may facilitate improvement in the respondent's be-
 7 havior, condition, or skills;

8 (f) The respondent's preference, if any, regarding the person or per-
 9 sons to be appointed as guardian and/or conservator;

10 (g) The suitability of the person or persons proposed as guardian
 11 and/or conservator; and

12 (h) The signature of each member of the evaluation committee with a
 13 statement of concurrence or nonconcurrence with the findings and any
 14 dissenting opinions or other comments of the members.

15 (4) Notice of the time and place of the hearing on the petition together
 16 with a copy of the petition shall be served no less than ten (10) days before
 17 the hearing on:

18 (a) The respondent;

19 (b) The respondent's spouse, parents and adult children, or if none,
 20 the respondent's closest relative, if any can be found; and

21 (c) Any person who is currently serving as guardian, conservator or who
 22 is providing care for the respondent.

23 Notice shall be served personally if the person to be served can be found
 24 within the state. If the person to be served cannot be found within the
 25 state, service shall be accomplished by registered mail to such person's
 26 last known address.

27 (5) The respondent is entitled to be present at the hearing in person,
 28 to present evidence, call and cross-examine witnesses, and to see or hear all
 29 evidence in the proceeding.

30 (6) At the hearing the court shall:

31 (a) Determine whether the respondent ~~is developmentally disabled~~ has a
 32 developmental disability;

33 (b) Evaluate the respondent's ability to meet essential requirements
 34 for physical health or safety and manage financial resources;

35 (c) Evaluate the ability of the proposed guardian and/or conservator
 36 to act in the respondent's best interests to manage the respondent's fi-
 37 nancial resources and meet essential requirements for the respondent's
 38 physical health or safety;

39 (d) Determine the nature and scope of guardianship or conservatorship
 40 services necessary to protect and promote the respondent's well-being;
 41 and

42 (e) Evaluate the ability of the respondent or those legally responsible
 43 to pay the costs associated with the judicial proceedings and fix re-
 44 sponsibility therefor.

45 (7) No individual shall be appointed as guardian or conservator of an
 46 incapacitated person unless all of the following first occurs:

47 (a) The proposed guardian or conservator has submitted to and paid for
 48 a criminal history and background check conducted pursuant to section
 49 56-1004A(2) and (3), Idaho Code;

1 (b) In the case of a petition for guardianship and pursuant to an order
 2 of the court so requiring, any individual who resides in the inca-
 3 pacitated person's proposed residence has submitted, at the proposed
 4 guardian's expense, to a criminal history and background check con-
 5 ducted pursuant to section 56-1004A(2) and (3), Idaho Code;

6 (c) The findings of such criminal history and background checks have
 7 been made available to the evaluation committee by the department of
 8 health and welfare; and

9 (d) The proposed guardian or conservator provided a report of his or
 10 her civil judgments and bankruptcies to the evaluation committee and
 11 all others entitled to notice of the guardianship or conservatorship
 12 proceeding pursuant to subsection (4) of this section.

13 (8) The provisions of paragraphs (a) and (d) of subsection (7) of this
 14 section shall not apply to an institution nor to a legal or commercial en-
 15 tity.

16 (9) Each proposed guardian and conservator and each appointed guardian
 17 and conservator shall immediately report any change in his or her criminal
 18 history and any material change in the information required by subsection
 19 (7) of this section to the evaluation committee, all others entitled to no-
 20 tice of the guardianship or conservatorship proceeding pursuant to subsec-
 21 tion (4) of this section and to the court.

22 SECTION 6. That Section 66-405, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that
 25 the respondent ~~is not developmentally disabled~~ does not have a developmental
 26 disability but appears in need of protective services, the court may cause
 27 the proceeding to be expanded or altered for consideration under the uniform
 28 probate code.

29 (2) If it is determined that the respondent is able to manage financial
 30 resources and meet essential requirements for physical health or safety, the
 31 court shall dismiss the petition.

32 (3) If it is determined that the respondent ~~is developmentally disabled~~
 33 has a developmental disability and is unable to manage some financial re-
 34 sources or meet some essential requirements for physical health or safety,
 35 the court may appoint a partial guardian and/or partial conservator on
 36 behalf of the respondent. An order establishing partial guardianship or
 37 partial conservatorship shall define the powers and duties of the partial
 38 guardian or partial conservator so as to permit the respondent to meet
 39 essential requirements for physical health or safety and to manage finan-
 40 cial resources commensurate with his ability to do so, and shall specify
 41 all legal restrictions to which he is subject. A person for whom a partial
 42 guardianship or partial conservatorship has been appointed under this chap-
 43 ter retains all legal and civil rights except those which have by court order
 44 been limited or which have been specifically granted to the partial guardian
 45 or partial conservator by the court.

46 (4) If it is determined that the respondent ~~is developmentally disabled~~
 47 has a developmental disability and is unable to manage financial resources
 48 or meet essential requirements for physical health or safety even with the

1 appointment of a partial guardian or partial conservator, the court may ap-
2 point a total guardian and/or total conservator.

3 (5) In the event that more than one (1) person seeks to be appointed
4 guardian and/or conservator, the court shall appoint the person or persons
5 most capable of serving on behalf of the respondent; the court shall not cus-
6 tomarily or ordinarily appoint the department or any other organization or
7 individual, public or private, that is or is likely to be providing services
8 to the respondent. If an appointment of a guardian is made by will pursuant
9 to section 15-5-301, Idaho Code, such appointment shall be entitled to pref-
10 erence as the guardian under this chapter, if the person so appointed by will
11 is capable of serving on behalf of the respondent and the court finds that it
12 is not in the best interests of the respondent to appoint a different person
13 as guardian.

14 (6) Subject to the limitations of the provisions of subsection (7) of
15 this section, guardians or conservators may have any of the duties and powers
16 as provided in sections 15-5-312(1) (a) through (d), 15-5-424 and 15-5-425,
17 Idaho Code, and as specified in the order. Any order appointing a partial or
18 total guardian or partial or total conservator under the provisions of this
19 section must require a report to the court at least annually. In addition to
20 such other requirements imposed by law or order, the report shall include:

- 21 (a) A description of the respondent's current mental, physical and so-
22 cial condition;
23 (b) The respondent's present address and living arrangement;
24 (c) A description of any significant changes in the capacity of the re-
25 spondent to meet essential requirements for physical health or safety
26 or to manage financial resources;
27 (d) A description of services being provided the respondent;
28 (e) A description of significant actions taken by the guardian or con-
29 servator during the reporting period;
30 (f) Any significant problems relating to the guardianship or conserva-
31 torship;
32 (g) A complete financial statement of the financial resources under the
33 control or supervision of the guardian or conservator; ~~and~~
34 (h) A description of the need for continued guardianship or conserva-
35 torship services; and
36 (i) Any material change in the information that the guardian or conser-
37 vator provided or caused to be provided to the evaluation committee and
38 the court pursuant to section 66-404(7), Idaho Code.

39 (7) No guardian appointed under this chapter shall have the authority
40 to refuse or withhold consent for medically necessary treatment when the
41 effect of withholding such treatment would seriously endanger the life or
42 health and well-being of the person with a developmental disability. To
43 withhold or attempt to withhold such treatment shall constitute neglect
44 of the person and be cause for removal of the guardian. No physician or
45 caregiver shall withhold or withdraw such treatment for a respondent whose
46 condition is not terminal or whose death is not imminent. If the physician
47 or caregiver cannot obtain valid consent for medically necessary treatment
48 from the guardian, he shall provide the medically necessary treatment as
49 authorized by section 39-4504(1) (i), Idaho Code.

1 (8) A guardian appointed under this chapter may consent to withholding
2 or withdrawal of artificial life-sustaining procedures, only if the respon-
3 dent:

4 (a) Has an incurable injury, disease, illness or condition, cer-
5 tified by the respondent's attending physician and at least one (1)
6 other physician to be terminal such that the application of artificial
7 life-sustaining procedures would not result in the possibility of sav-
8 ing or significantly prolonging the life of the respondent, and would
9 only serve to prolong the moment of the respondent's death for a period
10 of hours, days or weeks, and where both physicians certify that death is
11 imminent, whether or not the life-sustaining procedures are used; or

12 (b) Has been diagnosed by the respondent's attending physician and at
13 least one (1) other physician as being in a persistent vegetative state
14 which is irreversible and from which the respondent will never regain
15 consciousness.

16 (9) Any person, who has information that medically necessary treatment
17 of a respondent has been withheld or withdrawn, may report such information
18 to adult protective services or to the Idaho protection and advocacy system
19 for people with developmental disabilities, ~~who~~ which shall have the author-
20 ity to investigate the report and in appropriate cases to seek a court order
21 to ensure that medically necessary treatment is provided.

22 If adult protective services or the protection and advocacy system de-
23 termines that withholding of medical treatment violates the provisions of
24 this section, they may petition the court for an ex parte order to provide
25 or continue the medical treatment in question. If the court finds, based on
26 affidavits or other evidence, that there is probable cause to believe that
27 the withholding of medical treatment in a particular case violates the pro-
28 visions of this section, and that the life or health of the patient is en-
29 dangered thereby, the court shall issue an ex parte order to continue or to
30 provide the treatment until such time as the court can hear evidence from the
31 parties involved. Petitions for court orders under this section shall be ex-
32 pedited by the courts and heard as soon as possible. No bond shall be re-
33 quired of a petitioner under this section.

34 (10) No partial or total guardian or partial or total conservator ap-
35 pointed under the provisions of this section may without specific approval
36 of the court in a proceeding separate from that in which such guardian or con-
37 servator was appointed:

38 (a) Consent to medical or surgical treatment the effect of which per-
39 manently prohibits the conception of children by the respondent unless
40 the treatment or procedures are necessary to protect the physical
41 health of the respondent and would be prescribed for a person who ~~is not~~
42 developmentally disabled does not have a developmental disability;

43 (b) Consent to experimental surgery, procedures or medications; or

44 (c) Delegate the powers granted by the order.