

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 484

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

RELATING TO BOARDS OF COMMUNITY GUARDIAN; AMENDING SECTION 15-5-602, IDAHO CODE, TO REMOVE REFERENCE TO THE LIMITATION FOR SUCCESSIVE YEARS ON A BOARD OF COMMUNITY GUARDIAN.

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

SECTION 1. That Section 15-5-602, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-602. BOARD STRUCTURE -- POWERS AND DUTIES. (a) Any board of community guardian which is created within a county or counties in a judicial district shall operate under the laws of the state of Idaho, including the Idaho guardianship, conservatorship and trust laws.

(b) A board of community guardian shall consist of not fewer than seven (7) or more than eleven (11) members who are representatives of community interests involving persons needing guardians or conservators as defined by chapter 5, title 15, Idaho Code. Members shall be appointed by the board of county commissioners that created the board of community guardian under section 15-5-601, Idaho Code.

(1) The terms of the members of the board shall be for four (4) years and shall be staggered. A number of members equaling or most closely exceeding one-half (1/2) shall initially be appointed for three (3) years. Any vacancy created by resignation or expiration of term shall be filled in the same manner as the original appointment;

~~(2) No person shall be appointed for more than three (3) successive terms or twelve (12) successive years on the board; provided however, that the limitations expressed in this paragraph do not prohibit a person from continuing~~ A member will continue to serve on the board until that person's successor is appointed;

(3) The board shall meet not less than once each quarter;

(4) No person shall be a member of a board who is also an employee of the district court or the clerk of the district court;

(5) A board member having previously provided or currently providing services to a ward shall disclose such to the board and abstain from any decision or action taken concerning that particular ward;

(6) Board members and officers shall serve without pay;

(7) Each board shall elect its own chairman and other officers.

(c) A board, in those instances when a guardian and/or conservator is required and no qualified family member or other qualified person has volunteered to serve, may:

(1) Locate a qualified person to serve as guardian and/or conservator;  
or

(2) Petition the court to be appointed guardian and/or conservator.

1 (d) The board shall have all the powers and duties where applicable by  
2 court order, as provided under section 15-5-312, Idaho Code, and/or sections  
3 15-5-408 and 15-5-424, Idaho Code, and in addition thereto shall:

4 (1) Locate and recommend to the court, where necessary, that a visitor  
5 be appointed as provided in section 15-5-503, Idaho Code;

6 (2) Have access to all confidential records, including abuse reg-  
7 istry reports that may be maintained by state or private agencies or  
8 institutions, which records concern a person for whom the board acts as  
9 guardian and/or conservator. The name of the person reporting the al-  
10 leged abuse shall be subject to disclosure according to chapter 3, title  
11 9, Idaho Code;

12 (3) Review and monitor the services provided by public and private  
13 agencies to any incapacitated person for whom the board acts as guardian  
14 and/or conservator and determine the continued need for those services;

15 (4) Assess a fee for services developed pursuant to this part;

16 (5) Have the power, subject to the approval of the board of county com-  
17 missioners, to adopt such rules as are necessary to carry out the duties  
18 and responsibilities of the board.

19 (e) When a board serves as guardian or conservator, it shall be compen-  
20 sated as other guardians or conservators pursuant to Idaho law. If, at the  
21 time the board is appointed as guardian and/or conservator, the incapac-  
22 itated person for whom the board is to act has no funds, the court may waive the  
23 payment of fees.

24 (f) When a board serves as guardian and/or conservator there is cre-  
25 ated, at the time of filing of the order of appointment, a lien in favor of  
26 the board against any real property owned by the ward or protected person,  
27 enforceable only upon the termination of the guardianship and/or conser-  
28 vatorship, for all fees which were incurred throughout the duration of the  
29 services and which were not paid prior to termination. All fees incurred  
30 throughout the duration of the services and which were not paid prior to the  
31 termination of services shall relate back to the effective date of the lien.  
32 The board must record a notice of said lien within thirty (30) days of filing  
33 of the order of appointment. Such liens shall be recorded in every county  
34 where property subject to the lien is located. The notice shall contain at  
35 least the following information: full court heading of the action in which  
36 the appointment was made; the effective date of the lien; the name and ad-  
37 dress of the board; and any limitations or terms regarding the fees covered  
38 by the lien contained in the order of appointment. The court may postpone or  
39 arrange for gradual repayment of the fees if the court finds that the immedi-  
40 ate repayment would create a hardship on the person.

41 (g) No member of a board of community guardian, any employees, or any  
42 visitor appointed at the request of such board pursuant to section 15-5-303,  
43 Idaho Code, shall be liable for civil damages by reason of authorizing med-  
44 ical treatment or surgery for the person for whom the board is appointed, if  
45 the board member, employee or visitor, after medical consultation with the  
46 person's physician, acts in good faith, is not negligent, and acts within the  
47 limits established for the guardian and/or conservator by the court. No such  
48 person shall be liable, by reason of his authorization, for injury to the  
49 person for whom the guardian and/or conservator has been appointed which in-  
50 jury results from the negligence or other acts of a third person, if the court

1 has authorized the giving of medical consent by the board or the individual  
2 members of the board. No such person shall be liable in the performance of  
3 acts done in good faith within the scope of his authority as long as the act is  
4 not of a wanton or grossly negligent nature. The board of community guardian  
5 shall be deemed to be a governmental entity for the purposes of application  
6 of the Idaho tort claims act.