

## Provisional Draft

Interim 2025-2026

For review by the Children, Families, Health, and Human Services Interim Committee (CFHHS)  
January 13, 2026

HJ26 1.1

1 \*\*\*\* BILL NO. \*\*\*\*  
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3 INTRODUCED BY \*\*\*\*  
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5 BY REQUEST OF THE \*\*\*\*  
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10 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ADULT PERSONS  
11 UNDER DISABILITY GUARDIANSHIP AND CONSERVATORSHIP; REQUIRING PLAIN LANGUAGE  
12 INFORMATION TO BE SENT TO A PERSON ALLEGED TO BE INCAPACITATED OR A PERSON TO BE  
13 PROTECTED IN ADVANCE OF A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING; ALLOWING  
14 COURTS TO REQUIRE A GUARDIAN OR CONSERVATOR TO COMPLETE TRAINING RELATED TO THE  
15 APPOINTED ROLE; AND PROVIDING AN EFFECTIVE DATE."  
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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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20 **Section 1.** Section 72-5-312, MCA, is amended to read:  
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22 "**72-5-312. Who may be guardian -- priorities.** (1) Any competent person or a suitable institution,  
23 association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated  
24 person.  
25 (2) Persons who are not disqualified have priority for appointment as guardian in the following  
26 order:  
27 (a) a person, association, or private, nonprofit corporation nominated by the incapacitated person if  
28 the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make  
29 a reasonably intelligent choice;  
30 (b) the spouse of the incapacitated person;  
31 (c) an adult child of the incapacitated person;  
32 (d) a parent of the incapacitated person, including a person nominated by will or other writing  
33 signed by a deceased parent;  
34 (e) any relative of the incapacitated person with whom the incapacitated person has resided for  
35 more than 6 months prior to the filing of the petition;

1 (f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the  
2 incapacitated person;

3 (g) a private association or nonprofit corporation with a guardianship program for incapacitated  
4 persons, a member of the private association or nonprofit corporation approved by the association or  
5 corporation to act as a guardian for the incapacitated person, or a person included on an official list of the  
6 association or organization as willing and suitable to act as guardian of incapacitated persons;

7 (h) a person nominated by the person who is caring for the incapacitated person or paying benefits  
8 to the incapacitated person.

9 (3) The priorities established in subsection (2) are not binding, and the court shall select the  
10 person, association, or nonprofit corporation that is best qualified and willing to serve.

11 (4) Except as provided in subsection (5), the court may not appoint a person, institution,  
12 association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution,  
13 association, or nonprofit corporation:

14 (a) provides or is likely to provide during the guardianship substantial services to the incapacitated  
15 person in the professional or business capacity other than in the capacity of guardian;

16 (b) is or is likely to become during the guardianship period a creditor of the incapacitated person,  
17 other than in the capacity of guardian:

18 (c) has or is likely to have during the guardianship period interests that may conflict with those of  
19 the incapacitated person; or

20 (d) is employed by a person, institution, association, or nonprofit corporation that would be  
21 disqualified under subsections (4)(a) through (4)(c).

22 (5) To ensure a person is best qualified to serve as guardian, the court may require the person to  
23 receive guardianship training in prior to or after the person's appointment as a guardian. The court will consider  
24 the specific needs of the incapacitated person and the potential guardian to determine what training should be  
25 required.

26 (6) The court may require a person to complete a background check, including a criminal history  
27 check and credit check, before appointing that person as a guardian. The court may decline to appoint a person  
28 as guardian if the results of the background check indicate the person is not suitable to act as guardian of the

1     incapacitated person.

2           (5)(7) If the court determines that there is no qualified person willing and able to serve as guardian,  
3     the court may appoint an agency of the state or federal government that is authorized or required by statute to  
4     provide services to the person or to persons suffering from the kind of disability from which the incapacitated  
5     person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an  
6     agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of  
7     the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified  
8     interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the  
9     responsibility of the agency."

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11       **Section 2.** Section 72-5-314, MCA, is amended to read:

12       **"72-5-314. Notices in guardianship proceedings** -- plain language information to alleged

13     incapacitated person. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated  
14     person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of  
15     hearing must be given to each of the following:

16           (a)     the ward or the person alleged to be incapacitated and the ward's or person's spouse, parents,  
17     and adult children;

18           (b)     any person who is serving as the ward's or person's guardian or conservator or who has the  
19     ward's or person's care and custody; and

20           (c)     in case no other person is notified under subsection (1)(a), at least one of the ward's or  
21     person's closest adult relatives, if any can be found.

22           (2)     Notice must be served personally on the alleged incapacitated person and the person's spouse  
23     and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found  
24     within the state, and to all other persons except the alleged incapacitated person must be given as provided in  
25     72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends  
26     the hearing or the person's waiver of notice is confirmed in an interview with the visitor. Representation of the  
27     alleged incapacitated person by a guardian ad litem is not necessary.

28           (2)     For a proceeding for the appointment of a guardian of an incapacitated person, the court shall

1     send to the alleged incapacitated person plain-language information that includes:  
2         (i)     the purpose and basis for guardianship established in 72-5-306;  
3         (ii)    the procedure for the appointment of a guardian and the procedural rights of the person alleged  
4         to be incapacitated as provided for in 72-5-315;  
5         (iii)   the rights of a ward;  
6         (iv)    the powers and duties of a guardian as prescribed in 72-5-321; and  
7         (v)     the report process."

9     **Section 3.** Section 72-5-445, MCA, is amended to read:

10    **"72-5-445. Notice of hearing -- plain language information to person to be protected.** (1) Notice

11    of the hearing of the petition must be given, regardless of age, for the period and in the manner provided by 72-  
12    1-301 to all of the following:

13         (1)(a)    the persons required to be named in a petition for the appointment of a conservator;  
14         (2)(b)    so far as is known to the petitioner, beneficiaries under any document executed by the  
15    protected person that may have testamentary effect unless the court for good cause dispenses with such  
16    notice;

17         (3)(c)    if the proposed action involves a trust, to all persons entitled to receive notice with respect to  
18    such an action under Title 72, chapter 38;

19         (4)(d)    so far as is known to the petitioner, the persons who, if the protected person were to die  
20    immediately, would be the protected person's heirs under the laws of intestate succession unless the court for  
21    good cause dispenses with the notice; and

22         (5)(e)    other persons as the court may order.

23         (2)    For a hearing regarding a petition for appointment of a conservator for reasons other than  
24    minority, the court shall send to the person to be protected plain-language information that includes:

25         (i)     a general overview of the proceeding, including the rights of the person to be protected and the  
26    requirements of 72-5-408(2);

27         (ii)    the rights of a protected person;

28         (iv)    the duties and requirements of a conservator as provided for in 72-5-410, 72-5-428, and 72-5-

1     438."

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3     **Section 4.** Section 72-5-410, MCA, is amended to read:

4         **"72-5-410. Who may be appointed conservator -- priorities.** (1) The court may appoint an  
5         individual or a corporation with general power to serve as trustee as conservator of the estate of a protected  
6         person. The following are entitled to consideration for appointment in the order listed:

7             (a)     a conservator, guardian of property, or other like fiduciary appointed or recognized by the

8         appropriate court of any other jurisdiction in which the protected person resides;

9             (b)     an individual or corporation nominated by the protected person if the person is 14 years of age  
10         or older and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

11             (c)     the spouse of the protected person;

12             (d)     an adult child of the protected person;

13             (e)     a parent of the protected person or a person nominated by the will of a deceased parent;

14             (f)     any relative of the protected person with whom the protected person has resided for more than  
15         6 months prior to the filing of the petition;

16             (g)     a person nominated by the person who is caring for the person or paying benefits to the  
17         person;

18             (h)     a conservator corporation organized under Title 35, chapter 2;

19             (i)     the public administrator.

20             (2)     A person in priorities listed in subsections (1)(a) and (1)(c) through (1)(f) may nominate in  
21         writing a person to serve in that person's stead.

22             (3)     With respect to persons having equal priority, the court is to select the one who is best qualified  
23         of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a  
24         person having less priority or no priority.

25             (4)     To ensure a person is best qualified to serve as conservator, the court may require the person  
26         to receive training prior to or after the person's appointment as a conservator. The court will consider the  
27         specific needs of the protected person and the potential conservator to determine what training should be  
28         required.

1        (6) The court may require a person to complete a background check, including a criminal history  
2        check and credit check, before appointing that person as a conservator. The court may decline to appoint a  
3        person as conservator if the results of the background check indicate the person is not suitable to act as  
4        conservator for the protected person."

5        **Section 5. Effective date.** [This act] is effective \_\_\_\_\_.

6        - END -

DRAFT