

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 418**

H. P. 327

House of Representatives, February 10, 1977

On motion of Mr. Spencer of Standish, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hughes of Auburn.

Cosponsor: Mr. Spencer of Standish.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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### **AN ACT Relating to Guardianship of Incapacitated Adults in Need of Protective Services.**

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. 18 MRSA § 3639, 1st sentence**, as enacted by PL 1973, c. 631, § 1, is amended to read:

The public guardian may be nominated and appointed as guardian of the person, ~~and~~ **and** estate **or both** of those adults who have been determined under this subchapter to be incapacitated and in need of guardianship.

**Sec. 2. 18 MRSA § 3642, 1st sentence**, as repealed and replaced by PL 1975, c. 105, § 2, is amended to read:

Pursuant to its nomination the public guardian shall, or in its discretion in any other case may, petition for its appointment to act as guardian of the person ~~and~~ **and**, estate **or both** of an alleged incapacitated person by filing a written petition in the probate court for the county in which the alleged incapacitated person resides or in which his estate is located.

**Sec. 3. 18 MRSA § 3642, sub-§ 1**, as enacted by PL 1975, c. 105, § 2, is amended to read:

1. A detailed written guardianship plan which, **where relevant**, shall include but not be limited to the type of proposed living arrangement; how financial needs will be met; how medical and other remedial needs will be met; how social needs will be met; the plan for continuing contact with relatives and friends; and

**Sec. 4. 18 MRSA § 3644, last ¶**, as enacted by PL 1973, c. 631, § 1, is amended to read:

At such hearing, the burden shall be upon the petitioner to establish that the person for whom a guardian is sought to be appointed is so incapacitated by reason of advanced age, physical or mental illness or incapacity or other causes that he is incapable of managing himself and his affairs independently, and requires care and supervision of his person ~~and~~, estate or both.

**Sec. 5. 18 MRSA § 3646**, as enacted by PL 1973, c. 631, § 1, is repealed and the following enacted in its place:

**§ 3646. Duties of public guardian**

Except as otherwise specifically provided in this subchapter, the general provisions of this chapter relating to the powers and duties of guardians of adult persons are applicable to the public guardian acting under this subchapter.

When the public guardian is appointed the guardian of the person of an incapacitated adult, the public guardian shall have custody of the person of the ward and shall determine the ward's place of residence. The public guardian may apply for and effect the placement of any ward in accordance with law, in an appropriate home, hospital or institution having facilities and staff adequate to provide care and supervision consistent with the need of the ward. Any placement, if in a facility described in Title 22, sections 5 and 1811, shall be made only if such facility is duly licensed. In the event that the license of any such facility shall be suspended or revoked, the public guardian having any ward placed therein shall remove such ward and effect an appropriate placement of the ward as soon as practicable after knowledge of the suspension or revocation of the license.

When the public guardian is appointed guardian of the estate of an incapacitated adult, the public guardian may apply for and receive on behalf of the ward any benefits, grants or public aid to which such ward is entitled. The public guardian shall keep books of account or other records showing separately the principal amount received, increments thereto and disbursements therefrom for the benefit of any ward, together with the name of the ward, the source from which the money was received and the purpose for which the money was expended. The public guardian shall settle the account of its ward in accordance with section 3901.

Upon termination of the guardianship, the public guardian shall file with the court its final accounting and shall make disposition of any assets of any such ward then in its hands as ordered by the court. This section shall not abrogate any powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any ward under the guardianship of the public guardian.

**STATEMENT OF FACT**

A Maine Committee on Aging survey conducted this year estimated that there are 400 nursing and boarding home residents in need of protective rela-

tionships. A subcommittee of the Maine Committee on Aging studied this, and the 1976 Blaine House Conference on Aging determined that, to better meet the needs of these individuals and other incapacitated adults in the community, changes in the public guardianship law allowing the department to provide guardianship of the person and the estate are required.

The intent of this bill is to allow the Department of Human Services to provide incapacitated adults with the degree of protection they need without depriving them of whatever rights and responsibilities they can manage.

Current law requires the Department of Human Services to assume responsibility for both the person and estate of incapacitated adults for whom it has been appointed public guardian. This law enables the Department of Human Services to be appointed public guardian of the person and estate of adults determined by the probate court to be incapacitated and in need of guardianship. This law addresses the fact that some incapacitated adults need lesser degrees of public guardianship and could benefit from a public guardian responsible only for their person or for their estate. This recognizes that incapacitated adults have varying kinds and degrees of impairments requiring different types of protective relationships. It further recognizes that many incapacitated adults have relatives, friends or lawyers willing and able to assume some responsibility for their person or estate. This bill enables the department to provide the incapacitated adult with the least restrictive protective relationship that will meet his or her needs.