

AMENDMENTS TO LB1216

Introduced by Cavanaugh, M., 6.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 30-2627, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 30-2627 (a) Except as provided in subsection (b) of this section,
6 any Any competent person or the Public Guardian may be appointed guardian
7 of a person alleged to be incapacitated, ~~except that~~

8 (b) Except as provided in subsection (c) of this section, it shall
9 be unlawful for any agency providing residential care in an institution
10 or community-based program, or any owner, part owner, manager,
11 administrator, employee, or spouse of an owner, part owner, manager,
12 administrator, or employee of any nursing home, room and board home,
13 assisted-living facility, or institution engaged in the care, treatment,
14 or housing of any person physically or mentally handicapped, infirm, or
15 aged to be appointed guardian of any such person residing, being under
16 care, receiving treatment, or being housed in any such home, facility, or
17 institution within the State of Nebraska.

18 (c)(1) Nothing in this subsection (b) of this section shall prevent:

19 (i) The ~~the~~ spouse, adult child, parent, or other relative of the
20 person alleged to be incapacitated from being appointed guardian; or

21 (ii) The ~~prevent the~~ guardian officer for one of the Nebraska
22 veterans homes as provided in section 80-327 from being appointed
23 guardian or conservator for the person alleged to be incapacitated.

24 (2)(i) Nothing in subsection (b) of this section shall prevent an
25 individual from being employed by, or an independent provider at, an
26 institution, program, home, or facility described in subsection (b) of
27 this section if such individual is:

1 (A) A guardian or if such individual has a power of attorney for a
2 person who is alleged to be incapacitated and who is residing, being
3 under care, receiving treatment, or being housed in such institution,
4 program, home, or facility; and

5 (B) The spouse, adult child, parent, or other relative of the
6 allegedly incapacitated person.

7 (ii) An employee or independent provider described in this
8 subdivision (c)(2) may be subject to increased monitoring and checks by
9 the Office of the Public Guardian.

10 (d) It shall be unlawful for any county attorney or deputy county
11 attorney appointed as guardian for a person alleged to be incapacitated
12 to circumvent his or her duties or the rights of the ward pursuant to the
13 Nebraska Mental Health Commitment Act by consenting to inpatient or
14 outpatient psychiatric treatment over the objection of the ward.

15 (e) ~~(b)~~ Persons who are not disqualified under subsection (b) ~~(a)~~ of
16 this section and who exhibit the ability to exercise the powers to be
17 assigned by the court have priority for appointment as guardian in the
18 following order:

19 (1) A person nominated most recently by one of the following
20 methods:

21 (i) A person nominated by the incapacitated person in a power of
22 attorney or a durable power of attorney;

23 (ii) A person acting under a power of attorney or durable power of
24 attorney; or

25 (iii) A person nominated by an attorney in fact who is given power
26 to nominate in a power of attorney or a durable power of attorney
27 executed by the incapacitated person;

28 (2) The spouse of the incapacitated person;

29 (3) An adult child of the incapacitated person;

30 (4) A parent of the incapacitated person, including a person
31 nominated by will or other writing signed by a deceased parent;

1 (5) Any relative of the incapacitated person with whom he or she has
2 resided for more than six months prior to the filing of the petition;

3 (6) A person nominated by the person who is caring for him or her or
4 paying benefits to him or her;

5 (7) The Public Guardian.

6 (f) ~~(e)~~ When appointing a guardian, the court shall take into
7 consideration the expressed wishes of the allegedly incapacitated person.
8 The court, acting in the best interest of the incapacitated person, may
9 pass over a person having priority and appoint a person having lower
10 priority or no priority. With respect to persons having equal priority,
11 the court shall select the person it deems best qualified to serve.

12 (g) ~~(d)~~ In its order of appointment, unless waived by the court, the
13 court shall require any person appointed as guardian to successfully
14 complete within three months of such appointment a training program
15 approved by the Public Guardian. If the person appointed as guardian does
16 not complete the training program, the court shall issue an order to show
17 cause why such person should not be removed as guardian.

18 (h) ~~(e)~~ The court may require a guardian to furnish a bond in an
19 amount and conditioned in accordance with the provisions of sections
20 30-2640 and 30-2641. The Public Guardian shall not be required to post
21 bond.

22 Sec. 2. Section 30-2639, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 30-2639 (a) Except as provided in subsection (b) of this section,
25 the ~~The~~ court may appoint an individual, a corporation with general power
26 to serve as trustee, or the Public Guardian as conservator of the estate
27 of a protected person, ~~except that~~

28 (b) Except as provided in subsection (c) of this section, it shall
29 be unlawful for any agency providing residential care in an institution
30 or community-based program or any owner, part owner, manager,
31 administrator, employee, or spouse of an owner, part owner, manager,

1 administrator, or employee of any nursing home, room and board home,
2 assisted-living facility, or institution engaged in the care, treatment,
3 or housing of any person physically or mentally handicapped, infirm, or
4 aged to be appointed conservator of any such person residing, being under
5 care, receiving treatment, or being housed in any such home, facility, or
6 institution within the State of Nebraska.

7 (c)(1) Nothing in subsection (b) of this section ~~subsection~~ shall
8 prevent the spouse, adult child, parent, or other relative of the person
9 in need of protection from being appointed conservator.

10 (2)(i) Nothing in subsection (b) of this section shall prevent an
11 individual from being employed by, or an independent provider at, an
12 institution, program, home, or facility described in subsection (b) of
13 this section if such individual is:

14 (A) A conservator or such individual has a power of attorney for a
15 person who is alleged to be incapacitated and who is residing, being
16 under care, receiving treatment, or being housed in such institution,
17 program, home, or facility; and

18 (B) The spouse, adult child, parent, or other relative of the
19 allegedly incapacitated person.

20 (ii) An employee or independent provider described in this
21 subdivision (c)(2) may be subject to increased monitoring and checks by
22 the Office of the Public Guardian.

23 (d) ~~(b)~~ Persons who are not disqualified under subsection (b) ~~(a)~~ of
24 this section and who exhibit the ability to exercise the powers to be
25 assigned by the court have priority for appointment as conservator in the
26 following order:

27 (1) A person nominated most recently by one of the following
28 methods:

29 (i) A person nominated by the protected person in a power of
30 attorney or durable power of attorney;

31 (ii) A person acting under a power of attorney or durable power of

1 attorney; or

2 (iii) A person nominated by an attorney in fact who is given power
3 to nominate in a power of attorney or a durable power of attorney
4 executed by the protected person;

5 (2) A conservator, guardian of property, or other like fiduciary
6 appointed or recognized by the appropriate court of any other
7 jurisdiction in which the protected person resides;

8 (3) An individual or corporation nominated by the protected person
9 if he or she is fourteen or more years of age and has, in the opinion of
10 the court, sufficient mental capacity to make an intelligent choice;

11 (4) The spouse of the protected person;

12 (5) An adult child of the protected person;

13 (6) A parent of the protected person or a person nominated by the
14 will of a deceased parent;

15 (7) Any relative of the protected person with whom he or she has
16 resided for more than six months prior to the filing of the petition;

17 (8) A person nominated by the person who is caring for him or her or
18 paying benefits to him or her;

19 (9) The Public Guardian.

20 (e) ~~(e)~~ When appointing a conservator, the court shall take into
21 consideration the expressed wishes of the person to be protected. A
22 person having priority listed in subdivision (2), (4), (5), (6), or (7)
23 of subsection (d) ~~(b)~~ of this section may nominate in writing a person to
24 serve in his or her stead. With respect to persons having equal priority,
25 the court shall select the person it deems best qualified of those
26 willing to serve. The court, acting in the best interest of the protected
27 person, may pass over a person having priority and appoint a person
28 having lower priority or no priority.

29 (f) ~~(d)~~ In its order of appointment, unless waived by the court, the
30 court shall require any person appointed as conservator to successfully
31 complete within three months of such appointment a training program

1 approved by the Public Guardian. If the person appointed as conservator
2 does not complete the training program, the court shall issue an order to
3 show cause why such person should not be removed as conservator.

4 Sec. 3. Original sections 30-2627 and 30-2639, Reissue Revised
5 Statutes of Nebraska, are repealed.