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HOUSE BILL 1510

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives R. Meyers and Padden.

Read first time January 31, 1991. Referred to Committee on Judiciary.

1            AN ACT Relating to guardianship; amending RCW 11.88.010, 11.88.045,  
2 11.88.090, 11.88.095, 11.88.120, 11.88.125, 11.88.140, 11.92.040,  
3 11.92.043, and 11.92.180; and adding a new section to chapter 11.88  
4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 11.88.010 and 1990 c 122 s 2 are each amended to read  
7 as follows:

8            (1) The superior court of each county shall have power to appoint  
9 guardians for the persons and/or estates of incapacitated persons, and  
10 guardians for the estates of nonresidents of the state who have  
11 property in the county needing care and attention.

12            (a) For purposes of this chapter, a person may be deemed  
13 incapacitated as to person when the superior court determines the  
14 individual has a significant risk of personal harm based upon a

1 demonstrated inability to adequately provide for nutrition, health,  
2 housing, or physical safety.

3 (b) For purposes of this chapter, a person may be deemed  
4 incapacitated as to the person's estate when the superior court  
5 determines the individual is at significant risk of financial harm  
6 based upon a demonstrated inability to adequately manage property or  
7 financial affairs.

8 (c) A determination of incapacity is a legal not a medical  
9 decision, based upon a demonstration of management insufficiencies over  
10 time in the area of person or estate. Age, eccentricity, poverty, or  
11 medical diagnosis alone shall not be sufficient to justify a finding of  
12 incapacity.

13 (d) A person may also be determined incapacitated if he or she is  
14 under the age of majority as defined in RCW 26.28.010.

15 (e) For purposes of giving informed consent for health care  
16 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any  
17 person who is (i) incompetent by reason of mental illness,  
18 developmental disability, senility, habitual drunkenness, excessive use  
19 of drugs, or other mental incapacity, of either managing his or her  
20 property or caring for himself or herself, or both, or (ii)  
21 incapacitated as defined in (a), (b), or (d) of this subsection.

22 (f) For purposes of the terms "incompetent," "disabled," or "not  
23 legally competent," as those terms are used in the Revised Code of  
24 Washington to apply to persons incapacitated under this chapter, those  
25 terms shall be interpreted to mean "incapacitated" persons for purposes  
26 of this chapter.

27 (2) The superior court for each county shall have power to appoint  
28 limited guardians for the persons and estates, or either thereof, of  
29 incapacitated persons, who by reason of their incapacity have need for  
30 protection and assistance, but who are capable of managing some of

1 their personal and financial affairs. After considering all evidence  
2 presented as a result of such investigation, the court shall impose, by  
3 order, only such specific limitations and restrictions on an  
4 incapacitated person to be placed under a limited guardianship as the  
5 court finds necessary for such person's protection and assistance. A  
6 person shall not be presumed to be incapacitated nor shall a person  
7 lose any legal rights or suffer any legal disabilities as the result of  
8 being placed under a limited guardianship, except as to those rights  
9 and disabilities specifically set forth in the court order establishing  
10 such a limited guardianship. In addition, the court order shall state  
11 the period of time for which it shall be applicable.

12 (3) Venue for petitions for guardianship or limited guardianship  
13 shall lie in the county wherein the alleged incapacitated person is  
14 domiciled, or if such person resides in a facility supported in whole  
15 or in part by local, state, or federal funding sources, in either the  
16 county where the facility is located, the county of domicile prior to  
17 residence in the supported facility, or the county where a parent or  
18 spouse of the alleged incapacitated person is domiciled.

19 If the alleged incapacitated person's residency has changed within  
20 one year of the filing of the petition, any interested person may move  
21 for a change of venue for any proceedings seeking the appointment of a  
22 guardian or a limited guardian under this chapter to the county of the  
23 alleged incapacitated person's last place of residence of one year or  
24 more. The motion shall be granted when it appears to the court that  
25 such venue would be in the best interests of the alleged incapacitated  
26 person and would promote more complete consideration of all relevant  
27 matters.

28 (4) Under RCW 11.94.010, a principal may nominate, by a durable  
29 power of attorney, the guardian or limited guardian of his or her  
30 estate or person for consideration by the court if guardianship

1 proceedings for the principal's person or estate are thereafter  
2 commenced. The court shall make its appointment in accordance with the  
3 principal's most recent nomination in a durable power of attorney  
4 except for good cause or disqualification.

5 (5) When a court imposes a full guardianship for an incapacitated  
6 person, the person shall not be considered incompetent for purposes of  
7 rationally exercising the right to vote and shall not lose the right to  
8 vote, unless the court specifically finds that the person is not  
9 rationally capable of exercising the franchise. Imposition of a  
10 limited guardianship for an incapacitated person (~~(may)~~) shall not  
11 result in the loss of the right to vote (~~(when in the courts~~  
12 ~~discretion,)~~) unless the court determines that the person is  
13 incompetent for purposes of rationally exercising the franchise.

14 NEW SECTION. Sec. 2. A new section is added to chapter 11.88 RCW  
15 to read as follows:

16 The department of social and health services shall petition for the  
17 appointment of a guardian or limited guardian of an individual if it  
18 appears to the department that the individual: (1) Is entitled to  
19 notice of a denial or termination of benefits administered by the  
20 department; (2) lacks the mental capacity to understand the notice and  
21 exercise any right to appeal the denial or termination; and (3) has  
22 neither a guardian nor a person authorized by a durable power of  
23 attorney to receive notice for and act on behalf of him or her.

24 Sec. 3. RCW 11.88.045 and 1990 c 122 s 6 are each amended to read  
25 as follows:

26 (1)(a) Alleged incapacitated individuals shall have the right to be  
27 represented by counsel at any stage in guardianship proceedings. The  
28 court shall provide counsel to represent any alleged incapacitated

1 person at public expense when either: (i) The individual is unable to  
2 afford counsel, or (ii) the expense of counsel would result in  
3 substantial hardship to the individual, or (iii) the individual does  
4 not have practical access to funds with which to pay counsel. If the  
5 individual can afford counsel but lacks practical access to funds, the  
6 court shall provide counsel and may impose a reimbursement requirement  
7 as part of a final order. When, in the opinion of the court, the  
8 rights and interests of an alleged or adjudicated incapacitated person  
9 cannot otherwise be adequately protected and represented, the court on  
10 its own motion shall appoint an attorney at any time to represent such  
11 person. Counsel shall be provided as soon as practicable after a  
12 petition is filed and long enough before any final hearing to allow  
13 adequate time for consultation and preparation. Absent a convincing  
14 showing in the record to the contrary, a period of less than three  
15 weeks shall be presumed by a reviewing court to be inadequate time for  
16 consultation and preparation.

17 (b) Counsel for an alleged incapacitated individual shall act as an  
18 advocate for the client and shall not substitute counsel's own judgment  
19 for that of the client on the subject of what may be in the client's  
20 best interests. Counsel's role shall be distinct from that of the  
21 guardian ad litem, who is expected to promote the best interest of the  
22 alleged incapacitated individual, rather than the alleged incapacitated  
23 individual's expressed preferences.

24 (c) If an alleged incapacitated person is represented by counsel  
25 and does not communicate with counsel, counsel may ask the court for  
26 leave to withdraw for that reason. If satisfied, after affording the  
27 alleged incapacitated person an opportunity for a hearing, that the  
28 request is justified, the court may grant the request and allow the  
29 case to proceed with the alleged incapacitated person unrepresented.

1 (2) During the pendency of any guardianship, any attorney  
2 purporting to represent a person alleged or adjudicated to be  
3 incapacitated(~~(7)~~) shall (~~enter a notice of appearance for~~  
4 ~~appointment~~) petition to be appointed to represent the incapacitated  
5 or alleged incapacitated person. Fees for representation described in  
6 this section shall be subject to approval by the court pursuant to the  
7 provisions of RCW 11.92.180.

8 (3) The alleged incapacitated person is further entitled upon  
9 request to a jury trial on the issues of his or her alleged incapacity.  
10 The standard of proof to be applied in a contested case, whether before  
11 a jury or the court, shall be that of clear, cogent, and convincing  
12 evidence.

13 (4) In all proceedings for appointment of a guardian or limited  
14 guardian, the court must be presented with a written report from a  
15 physician licensed to practice under chapter 18.71 RCW or licensed or  
16 certified psychologist selected by the guardian ad litem. The  
17 physician or psychologist shall have personally examined and  
18 interviewed the alleged incapacitated person within thirty days of the  
19 report to the court and shall have expertise in the type of disorder or  
20 incapacity the alleged incapacitated person is believed to have. The  
21 report shall contain the following information and shall be set forth  
22 in substantially the following format:

23 (a) The name and address of the examining physician or  
24 psychologist;

25 (b) The education and experience of the physician or psychologist  
26 pertinent to the case;

27 (c) The dates of examinations of the alleged incapacitated person;

28 (d) A summary of the relevant medical, functional, neurological,  
29 psychological, or psychiatric history of the alleged incapacitated  
30 person as known to the examining physician or psychologist;

1 (e) The findings of the examining physician or psychologist as to  
2 the condition of the alleged incapacitated person;

3 (f) Current medications;

4 (g) The effect of current medications on the alleged incapacitated  
5 person's ability to understand or participate in guardianship  
6 proceedings;

7 (h) Opinions on the specific assistance the alleged incapacitated  
8 person needs;

9 (i) Identification of persons with whom the physician or  
10 psychologist has met or spoken regarding the alleged incapacitated  
11 person.

12 The court shall not enter an order appointing a guardian or limited  
13 guardian until a medical or psychological report meeting the above  
14 requirements is filed.

15 **Sec. 4.** RCW 11.88.090 and 1990 c 122 s 8 are each amended to read  
16 as follows:

17 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010  
18 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and  
19 11.92.180, as now or hereafter amended, shall affect or impair the  
20 power of any court to appoint a guardian ad litem to defend the  
21 interests of any incapacitated person interested in any suit or matter  
22 pending therein, or to commence and prosecute any suit in his behalf.

23 (2) Upon receipt of a petition for appointment of guardian or  
24 limited guardian, except as provided herein, the court shall appoint a  
25 guardian ad litem to represent the best interests of the alleged  
26 incapacitated person, who shall be a person found or known by the court  
27 to

28 (a) be free of influence from anyone interested in the result of  
29 the proceeding;

1 (b) have the requisite knowledge, training, or expertise to perform  
2 the duties required by this section.

3 No guardian ad litem need be appointed when a parent is petitioning  
4 for a guardian or a limited guardian to be appointed for his or her  
5 minor child and the minority of the child, as defined by RCW 11.92.010,  
6 is the sole basis of the petition. The order appointing the guardian  
7 ad litem shall recite the duties set forth in subsection (5) of this  
8 section. The appointment of a guardian ad litem shall have no effect  
9 on the legal competency of the alleged incapacitated person and shall  
10 not overcome the presumption of competency or full legal and civil  
11 rights of the alleged incapacitated person.

12 (3)(a) The superior court of each county shall develop by September  
13 1, 1991, a registry of persons who are willing and qualified to serve  
14 as guardians ad litem in guardianship matters. The court shall choose  
15 as guardians ad litem only persons whose names appear on the registry,  
16 except in extraordinary circumstances.

17 (b) To be eligible for the registry a person shall:

18 (i) Present a written statement of qualifications describing the  
19 person's knowledge, training, and experience in each of the following:  
20 Needs of impaired elderly people, physical disabilities, mental  
21 illness, developmental disabilities, and other areas relevant to the  
22 needs of incapacitated persons, legal procedure, and the requirements  
23 of ~~((chapter[s]))~~ chapters 11.88 and 11.92 RCW; and

24 (ii) Complete a training program ~~((approved))~~ adopted by the court,  
25 or, in the absence of a locally adopted program, a candidate for  
26 inclusion upon the registry shall have completed a model training  
27 program as described in (d) of this subsection.

28 (c) The superior court of each county shall approve training  
29 programs designed to:

1 (i) Train otherwise qualified human service professionals in those  
2 aspects of legal procedure and the requirements of chapters 11.88 and  
3 11.92 RCW with which a guardian ad litem should be familiar;

4 (ii) Train otherwise qualified legal professionals in those aspects  
5 of medicine, social welfare, and social service delivery systems with  
6 which a guardian ad litem should be familiar.

7 (d) The superior court of each county (~~shall~~) may approve a  
8 guardian ad litem training program on or before June 1, 1991. The  
9 department of social and health services, aging and adult services  
10 administration, shall convene an advisory group to develop a model  
11 guardian ad litem training program. The advisory group shall consist of  
12 representatives from consumer, advocacy, and professional groups  
13 knowledgeable in developmental disabilities, neurological impairment,  
14 physical disabilities, mental illness, aging, legal, court  
15 administration, and other interested parties.

16 (e) Any superior court that has (~~failed to adopt~~) not adopted a  
17 guardian ad litem training program by September 1, (~~1992~~) 1991, shall  
18 (~~use the~~) require utilization of a model program developed by the  
19 advisory group (~~convened by the department of social and health~~  
20 services, aging and adult services administration) as described in (d)  
21 of this subsection, to assure that candidates applying for registration  
22 as a qualified guardian ad litem shall have satisfactorily completed  
23 training to attain these essential minimum qualifications to act as  
24 guardian ad litem.

25 (4) The guardian ad litem's written statement of qualifications  
26 required by RCW 11.88.090(3)(b)(i) shall be made part of the record in  
27 each matter in which the person is appointed guardian ad litem.

28 (5) The guardian ad litem appointed pursuant to this section shall  
29 have the following duties:

1 (a) To meet and consult with the alleged incapacitated person as  
2 soon as practicable following appointment and explain, in language  
3 which such person can reasonably be expected to understand, the  
4 substance of the petition, the nature of the resultant proceedings, the  
5 person's right to contest the petition, the identification of the  
6 proposed guardian or limited guardian, the right to a jury trial on the  
7 issue of his or her alleged incapacity, the right to independent legal  
8 counsel as provided by RCW 11.88.045, and the right to be present in  
9 court at the hearing on the petition;

10 (b) To obtain a written report according to RCW 11.88.045; and such  
11 other written or oral reports from other qualified professionals as are  
12 necessary to permit the guardian ad litem to complete the report  
13 required by this section;

14 (c) To meet with the person whose appointment is sought as guardian  
15 or limited guardian and ascertain:

16 (i) The proposed guardian's knowledge of the duties, requirements,  
17 and limitations of a guardian; and

18 (ii) The steps the proposed guardian intends to take or has taken  
19 to identify and meet the needs of the alleged incapacitated person; ~~d~~  
20 To consult as necessary to complete the investigation and report  
21 required by this section with those known relatives, friends, or other  
22 persons the guardian ad litem determines have had a significant,  
23 continuing interest in the welfare of the alleged incapacitated person;

24 (e) To provide the court with a written report which shall include  
25 the following:

26 (i) A description of the nature, cause, and degree of incapacity,  
27 and the basis upon which this judgment was made;

28 (ii) A description of the needs of the incapacitated person for  
29 care and treatment, the probable residential requirements of the

1 alleged incapacitated person and the basis upon which these findings  
2 were made;

3 (iii) An evaluation of the appropriateness of the guardian or  
4 limited guardian whose appointment is sought and a description of the  
5 steps the proposed guardian has taken or intends to take to identify  
6 and meet current and emerging needs of the incapacitated person;

7 (iv) A description of the abilities of the alleged incapacitated  
8 person and a recommendation as to whether a guardian or limited  
9 guardian should be appointed. If appointment of a limited guardian is  
10 recommended, the guardian ad litem shall recommend the specific areas  
11 of authority the limited guardian should have and the limitations and  
12 disabilities to be placed on the incapacitated person;

13 (v) An evaluation of the person's mental ability to rationally  
14 exercise the right to vote and the basis upon which the evaluation is  
15 made;

16 (vi) Any expression of approval or disapproval made by the alleged  
17 incapacitated person concerning the proposed guardian or limited  
18 guardian or guardianship or limited guardianship;

19 (vii) Identification of persons with significant interest in the  
20 welfare of the alleged incapacitated person who should be advised of  
21 their right to request special notice of proceedings pursuant to RCW  
22 11.92.150; and

23 (viii) Unless independent counsel has appeared for the alleged  
24 incapacitated person, an explanation of how the alleged incapacitated  
25 person responded to the advice of the right to jury trial, to  
26 independent counsel and to be present at the hearing on the petition.

27 Within twenty days after appointment of the guardian ad litem, and  
28 at least ten days before the hearing on the petition, unless an  
29 extension or reduction of time has been granted by the court for good  
30 cause, the guardian ad litem shall file its report and send a copy to

1 the alleged incapacitated person and his or her spouse, all children  
2 not residing with a notified person, those persons described in (d) of  
3 this subsection, and persons who have filed a request for special  
4 notice pursuant to RCW 11.92.150;

5 (f) To advise the court of the need for appointment of counsel for  
6 the alleged incapacitated person within five days after the meeting  
7 described in (a) of this subsection unless (i) counsel has appeared,  
8 (ii) the alleged incapacitated person affirmatively communicated a wish  
9 not to be represented by counsel after being advised of the right to  
10 representation and of the conditions under which court-provided counsel  
11 may be available, or (iii) the alleged incapacitated person was unable  
12 to communicate at all on the subject, and the guardian ad litem is  
13 satisfied that the alleged incapacitated person does not affirmatively  
14 desire to be represented by counsel.

15 (6) If the petition is brought by an interested person or entity  
16 requesting the appointment of some other qualified person or entity and  
17 a prospective guardian or limited guardian cannot be found, the court  
18 shall order the guardian ad litem to investigate the availability of a  
19 possible guardian or limited guardian and to include the findings in a  
20 report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter  
21 amended.

22 (7) The court appointed guardian ad litem shall have the authority,  
23 in the event that the alleged incapacitated person is in need of  
24 emergency life-saving medical services, and is unable to consent to  
25 such medical services due to incapacity pending the hearing on the  
26 petition to give consent for such emergency life-saving medical  
27 services on behalf of the alleged incapacitated person.

28 (8) The guardian ad litem shall receive a fee determined by the  
29 court. The fee shall be charged to the alleged incapacitated person  
30 unless the court finds that such payment would result in substantial

1 hardship upon such person, in which case the county shall be  
2 responsible for such costs: PROVIDED, That if no guardian or limited  
3 guardian is appointed the court may charge such fee to the petitioner  
4 or the alleged incapacitated person, or divide the fee, as it deems  
5 just; and if the petition is found to be frivolous or not brought in  
6 good faith, the guardian ad litem fee shall be charged to the  
7 petitioner. The court shall not be required to provide for the payment  
8 of a fee to any salaried employee of a public agency.

9 (9) Upon the presentation of the guardian ad litem report and the  
10 entry of an order either dismissing the petition for appointment of  
11 guardian or limited guardian or appointing a guardian or limited  
12 guardian, the guardian ad litem shall be dismissed and shall have no  
13 further duties or obligations unless otherwise ordered by the court.  
14 If the court orders the guardian ad litem to perform further duties or  
15 obligations, they shall not be performed at county expense.

16 **Sec. 5.** RCW 11.88.095 and 1990 c 122 s 9 are each amended to read  
17 as follows:

18 (1) In determining the disposition of a petition for guardianship,  
19 the court's order shall be based upon findings as to the capacities,  
20 condition, and needs of the alleged incapacitated person, and shall not  
21 be based solely upon agreements made by the parties.

22 (2) Every order appointing a full or limited guardian of the person  
23 or estate shall include:

24 (a) Findings as to the capacities, condition, and needs of the  
25 alleged incapacitated person;

26 (b) The amount of the bond, if any, or a bond review period;

27 (c) When the next report of the guardian is due;

28 (d) Whether the guardian ad litem shall continue acting as guardian  
29 ad litem;

1 (e) Whether a review hearing shall be required upon the filing of  
2 the inventory;

3 (f) The authority of the guardian, if any, for investment and  
4 expenditure of the ward's estate; and

5 (g) Names and addresses of those persons described in RCW  
6 (~~(11.92.090(5)(d))~~) 11.88.090(5)(d), if any, whom the court believes  
7 should receive copies of further pleadings filed by the guardian with  
8 respect to the guardianship.

9 (3) If the court determines that a limited guardian should be  
10 appointed, the order shall specifically set forth the limits by either  
11 stating exceptions to the otherwise full authority of the guardian or  
12 by stating the specific authority of the guardian.

13 (4) In determining the disposition of a petition for appointment of  
14 a guardian or limited guardian of the estate only, the court shall  
15 consider whether the alleged incapacitated person is capable of giving  
16 informed medical consent or of making other personal decisions and, if  
17 not, whether a guardian or limited guardian of the person of the  
18 alleged incapacitated person should be appointed for that purpose.

19 (~~((5) If a court determines that the person is incapacitated and  
20 that a guardian or limited guardian should be appointed, the court  
21 shall determine whether the incapacity is a result of a developmental  
22 disability as defined by RCW 71A.10.020, and if so, determine whether  
23 the incapacity due to the developmental disability can be expected to  
24 continue indefinitely.))~~)

25 **Sec. 6.** RCW 11.88.120 and 1990 c 122 s 14 are each amended to read  
26 as follows:

27 (1) At any time after establishment of a guardianship or  
28 appointment of a guardian, the court may, upon the death of the

1 guardian or limited guardian, or, for other good reason, modify or  
2 terminate the guardianship or replace the guardian or limited guardian.

3 (2) Any person, including an incapacitated person, may apply to the  
4 court for an order to modify or terminate a guardianship or to replace  
5 a guardian or limited guardian. If applicants are represented by  
6 counsel, counsel shall move for an order to show cause why the relief  
7 requested should not be granted. If applicants are not represented by  
8 counsel, they may move for an order to show cause, or they may deliver  
9 a written request to the clerk of the court.

10 (3) By the next judicial day after receipt of an unrepresented  
11 person's request to modify or terminate a guardianship order, or to  
12 replace a guardian or limited guardian, the clerk shall (~~present~~)  
13 deliver the request to the court. The court may (a) direct the clerk to  
14 schedule a hearing, (b) appoint a guardian ad litem to investigate the  
15 issues raised by the application or to take any emergency action the  
16 court deems necessary to protect the incapacitated person until a  
17 hearing can be held, or (c) deny the application without scheduling a  
18 hearing, if it appears based on documents in the court file that the  
19 application is frivolous. Any denial of an application without a  
20 hearing shall be in writing with the reasons for the denial explained.  
21 A copy of the order shall be mailed by the clerk to the applicant, to  
22 the guardian, and to any other person entitled to receive notice of  
23 proceedings in the matter. Unless within thirty days after receiving  
24 the request from the clerk the court directs otherwise, the clerk shall  
25 schedule a hearing on the request and mail notice to the guardian, the  
26 incapacitated person, the applicant, all counsel of record, and any  
27 other person entitled to receive notice of proceedings in the matter.

28 (4) In a hearing on an application to modify or terminate a  
29 guardianship, or to replace a guardian or limited guardian, the court

1 may grant such relief as it deems just and in the best interest of the  
2 incapacitated person.

3 (5) The court may order persons who have been removed as guardians  
4 to deliver any property or records belonging to the incapacitated  
5 person in accordance with the court's order. Similarly, when guardians  
6 have died or been removed and property or records of an incapacitated  
7 person are being held by any other person, the court may order that  
8 person to deliver it in accordance with the court's order.  
9 Disobedience of an order to deliver shall be punishable as contempt of  
10 court.

11 **Sec. 7.** RCW 11.88.125 and 1990 c 122 s 15 are each amended to read  
12 as follows:

13 (1) The person appointed by the court as either guardian or limited  
14 guardian of the person and/or estate of an incapacitated person, shall  
15 file in writing with the court, a (~~designated~~) notice designating a  
16 standby limited guardian or guardian to serve as limited guardian or  
17 guardian at the death or legal incapacity of the court-appointed  
18 guardian or limited guardian. The notice shall state the name,  
19 address, zip code, and telephone number of the designated standby or  
20 limited guardian. Notice of the guardian's designation of the standby  
21 guardian shall be given to the standby guardian, the incapacitated  
22 person and his or her spouse and adult children, any facility in which  
23 the incapacitated person resides, and any person entitled to special  
24 notice under RCW 11.92.150 or any person entitled to receive pleadings  
25 pursuant to RCW 11.88.095(2)(g). Such standby guardian or limited  
26 guardian shall have all the powers, duties, and obligations of the  
27 regularly appointed guardian or limited guardian and in addition shall,  
28 within a period of thirty days from the death or adjudication of  
29 incapacity of the regularly appointed guardian or limited guardian,

1 file with the superior court in the county in which the guardianship or  
2 limited guardianship is then being administered, a petition for  
3 appointment of a substitute guardian or limited guardian. Upon the  
4 court's appointment of a new, substitute guardian or limited guardian,  
5 the standby guardian or limited guardian shall make an accounting and  
6 report to be approved by the court, and upon approval of the court, the  
7 standby guardian or limited guardian shall be released from all duties  
8 and obligations arising from or out of the guardianship or limited  
9 guardianship.

10 (2) Letters of guardianship shall be issued to the standby guardian  
11 or limited guardian upon filing an oath and posting a bond as required  
12 by RCW 11.88.100 as now or hereafter amended. The oath may be filed  
13 prior to the appointed guardian or limited guardian's death. Notice of  
14 such appointment shall be provided to the standby guardian, the  
15 incapacitated person, and any facility in which the incapacitated  
16 person resides. The provisions of RCW 11.88.100 through 11.88.110 as  
17 now or hereafter amended shall apply to standby guardians and limited  
18 guardians.

19 (3) In addition to the powers of a standby limited guardian or  
20 guardian as noted in subsection (1) of this section, the standby  
21 limited guardian or guardian shall have the authority to provide  
22 timely, informed consent to necessary medical procedures, as authorized  
23 in RCW 11.92.040 as now or hereafter amended, if the guardian or  
24 limited guardian cannot be located within four hours after the need for  
25 such consent arises.

26 **Sec. 8.** RCW 11.88.140 and 1990 c 122 s 17 are each amended to read  
27 as follows:

28 (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited  
29 guardianship is terminated:

1 (a) Upon the attainment of full and legal age, as defined in RCW  
2 26.28.010 as now or hereafter amended, of any person defined as an  
3 incapacitated person pursuant to RCW 11.88.010 as now or hereafter  
4 amended solely by reason of youth, RCW 26.28.020 to the contrary  
5 notwithstanding, subject to subsection (2) of this section;

6 (b) By an adjudication of capacity or an adjudication of  
7 termination of incapacity;

8 (c) By the death of the incapacitated person;

9 (d) By expiration of the term of limited guardianship specified in  
10 the order appointing the limited guardian, unless prior to such  
11 expiration a petition has been filed and served, as provided in RCW  
12 11.88.040 as now or hereafter amended, seeking an extension of such  
13 term.

14 (2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF  
15 COMPLETION. A guardianship for the benefit of a minor may be  
16 terminated upon the minor's attainment of legal age, as defined in RCW  
17 26.28.010 as now or hereafter amended, by the guardian filing a  
18 declaration that states:

19 (a) The date the minor attained legal age;

20 (b) That the guardian has paid all of the minor's funds in the  
21 guardian's possession to the minor, who has signed a receipt for the  
22 funds, and that the receipt has been filed with the court;

23 (c) That the guardian has completed the administration of the  
24 minor's estate and the guardianship is ready to be closed; and

25 (d) The amount of fees paid or to be paid to each of the following:

26 (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or  
27 accountants; and that the guardian believes the fees are reasonable and  
28 does not intend to obtain court approval of the amount of the fees or  
29 to submit a guardianship accounting to the court for approval. Subject  
30 to the requirement of notice as provided in this section, unless the

1 minor petitions the court either for an order requiring the guardian to  
2 obtain court approval of the amount of fees paid or to be paid to the  
3 guardian, lawyers, or accountants, or for an order requiring an  
4 accounting, or both, within thirty days from the filing of the  
5 declaration of completion of guardianship, the guardian shall be  
6 automatically discharged without further order of the court. The  
7 guardian's powers will cease thirty days after filing the declaration  
8 of completion of guardianship. The declaration of completion of  
9 guardianship shall, at the time, be the equivalent of an entry of a  
10 decree terminating the guardianship, distributing the assets, and  
11 discharging the guardian for all legal intents and purposes.

12 Within five days of the date of filing the declaration of  
13 completion of guardianship, the guardian or the guardian's lawyer shall  
14 mail a copy of the declaration of completion to the minor together with  
15 a notice that shall be substantially as follows:

16 CAPTION OF CASE NOTICE OF FILING A DECLARATION OF  
17 COMPLETION OF GUARDIANSHIP

18 NOTICE IS GIVEN that the attached Declaration of Completion of  
19 Guardianship was filed by the undersigned in the above-entitled court  
20 on the ..... day of ....., 19..; unless you file a petition  
21 in the above-entitled court requesting the court to review the  
22 reasonableness of the fees, or for an accounting, or both, and serve a  
23 copy of the petition on the guardian or the guardian's lawyer, within  
24 thirty days after the filing date, the amount of fees paid or to be  
25 paid will be deemed reasonable, the acts of the guardian will be deemed  
26 approved, the guardian will be automatically discharged without further  
27 order of the court and the Declaration of Completion of Guardianship  
28 will be final and deemed the equivalent of an order terminating the

1 guardianship, discharging the guardian and decreeing the distribution  
2 of the guardianship assets.

3 If you file and serve a petition within the period specified, the  
4 undersigned will request the court to fix a time and place for the  
5 hearing of your petition, and you will be notified of the time and  
6 place of the hearing, by mail, or by personal service, not less than  
7 ten days before the hearing on the petition.

8 DATED this ..... day of ....., 19...  
9 .....  
10 Guardian

11 If the minor, after reaching legal age, waives in writing the  
12 notice required by this section, the guardian will be automatically  
13 discharged without further order of the court and the declaration of  
14 completion of guardianship will be effective as an order terminating  
15 the guardianship without an accounting upon filing the declaration. If  
16 the guardian has been required to furnish a bond, and a declaration of  
17 completion of guardianship is filed according to this section, any bond  
18 furnished by the guardian shall be automatically discharged upon the  
19 discharge of the guardian.

20 (3) TERMINATION ON COURT ORDER. A guardianship or limited  
21 guardianship may be terminated by court order after such notice as the  
22 court may require if the guardianship or limited guardianship is no  
23 longer necessary.

24 The guardian or limited guardian shall, within thirty days of the  
25 date of termination, unless sooner ordered by a court, prepare and file  
26 with the court a final verified account of administration. The final  
27 verified account of administration shall contain the same information  
28 as required for (a) an intermediate verified account of administration

1 of the estate under RCW 11.92.040(2) and (b) an intermediate personal  
2 care status report under RCW 11.92.043(2).

3 (4) EFFECT OF TERMINATION. When a guardianship or limited  
4 guardianship terminates other than by the death of the incapacitated  
5 person, the powers of the guardian or limited guardian cease, except  
6 that a guardian or limited guardian of the estate may make  
7 disbursements for claims that are or may be allowed by the court, for  
8 liabilities already properly incurred for the estate or for the  
9 incapacitated person, and for expenses of administration. When a  
10 guardianship or limited guardianship terminates by death of the  
11 incapacitated person, the guardian or limited guardian of the estate  
12 may proceed under RCW 11.88.150 as now or hereafter amended, but the  
13 rights of all creditors against the incapacitated person's estate shall  
14 be determined by the law of decedents' estates.

15 **Sec. 9.** RCW 11.92.040 and 1990 c 122 s 20 are each amended to read  
16 as follows:

17 It shall be the duty of the guardian or limited guardian of an  
18 estate:

19 (1) To file within three months after the guardian's appointment a  
20 verified inventory of all the property of the incapacitated person  
21 which comes into the guardian's possession or knowledge, including a  
22 statement of all encumbrances, liens, and other secured charges on any  
23 item;

24 (2) To file annually, within (~~thirty~~) ninety days after the  
25 anniversary date of the guardian's or limited guardian's appointment,  
26 and also within thirty days after termination of the appointment, a  
27 written verified account of the administration, which account shall  
28 contain at least the following information:

1 (a) Identification of property of the guardianship estate as of the  
2 date of the last account or, in the case of the initial account, as of  
3 the date of inventory;

4 (b) Identification of all additional property received into the  
5 guardianship, including income by source;

6 (c) Identification of all expenditures made during the account  
7 period by major categories;

8 (d) Any adjustments to the guardianship estate required to  
9 establish its present fair market value, including gains or losses on  
10 sale or other disposition and any mortgages, deeds of trust or other  
11 encumbrances against the guardianship estate; and

12 (e) Identification of all property held in the guardianship estate  
13 as of the date of account, the assessed value of any real property and  
14 the guardian's estimate of the present fair market values of other  
15 property (including the basis on which such estimate is made), and the  
16 total net fair market value of the guardianship estate. In addition,  
17 immediately following such statement of present fair market value, the  
18 account shall set forth a statement of current amount of the guardian's  
19 bond and any other court-ordered protection for the security of the  
20 guardianship assets((-));

21 (3) The court in its discretion may allow reports at intervals of  
22 up to thirty-six months for estates with assets (exclusive of real  
23 property) having a value of not more than twice the homestead  
24 exemption. Notwithstanding contrary provisions of this section, the  
25 guardian or limited guardian of an estate need not file an annual  
26 report with the court if the funds of the guardianship are held for the  
27 benefit of a minor in a blocked account unless the guardian requests a  
28 withdrawal from such account, in which case the guardian shall provide  
29 a written verified account of the administration of the guardianship  
30 estate along with the guardian's petition for the withdrawal. The

1 guardian or limited guardian shall report any substantial change in  
2 income or assets of the guardianship estate within thirty days of the  
3 occurrence of the change. A hearing shall be scheduled for court  
4 review and determination of provision for increased bond or other  
5 provision in accordance with RCW 11.88.100;

6 ~~((3) If the court has made a finding as provided in RCW  
7 11.88.095(5), that the person is incapacitated as a result of a  
8 developmental disability that is expected to continue indefinitely and  
9 the incapacitated person's estate has a value, exclusive of real  
10 property, of not more than twice the homestead exemption, the court, in  
11 its discretion, may allow reports at intervals up to thirty six months  
12 and may modify or waive certain reporting requirements in subsection  
13 (2) of this section that the court considers unduly burdensome or  
14 inapplicable. The court may not waive the requirement that the  
15 guardian or limited guardian report any substantial change in the  
16 incapacitated person's income or assets;))~~

17 (4) To protect and preserve the guardianship estate, to apply it as  
18 provided in this chapter, to account for it faithfully, to perform all  
19 of the duties required by law, and at the termination of the  
20 guardianship or limited guardianship, to deliver the assets of the  
21 incapacitated person to the persons entitled thereto. Except as  
22 provided to the contrary herein, the court may authorize a guardian or  
23 limited guardian to do anything that a trustee can do under the  
24 provisions of RCW 11.98.070 for a period not exceeding one year from  
25 the date of the order or for a period corresponding to the interval in  
26 which the guardian's or limited guardian's report is required to be  
27 filed by the court pursuant to subsection (2) of this section,  
28 whichever period is longer;

1 (5) To invest and reinvest the property of the incapacitated person  
2 in accordance with the rules applicable to investment of trust estates  
3 by trustees as provided in chapter 11.100 RCW, except that:

4 (a) No investments shall be made without prior order of the court  
5 in any property other than unconditional interest bearing obligations  
6 of this state or of the United States and in obligations the interest  
7 and principal of which are unconditionally guaranteed by the United  
8 States, and in share accounts or deposits which are insured by an  
9 agency of the United States government. Such prior order of the court  
10 may authorize specific investments, or, in the discretion of the court,  
11 may authorize the guardian or limited guardian during a period not  
12 exceeding one year following the date of the order or for a period  
13 corresponding to the interval in which the guardian's or limited  
14 guardian's report is required to be filed by the court pursuant to  
15 subsection (2) of this section, whichever period is longer, to invest  
16 and reinvest as provided in chapter 11.100 RCW without further order of  
17 the court;

18 (b) If it is for the best interests of the incapacitated person  
19 that a specific property be used by the incapacitated person rather  
20 than sold and the proceeds invested, the court may so order;

21 (6) To apply to the court no later than the filing of the inventory  
22 for an order authorizing disbursements on behalf of the incapacitated  
23 person: PROVIDED, HOWEVER, That the guardian or limited guardian of  
24 the estate, or the person, department, bureau, agency, or charitable  
25 organization having the care and custody of an incapacitated person,  
26 may apply to the court for an order directing the guardian or limited  
27 guardian of the estate to pay to the person, department, bureau,  
28 agency, or charitable organization having the care and custody of an  
29 incapacitated person, or if the guardian or limited guardian of the  
30 estate has the care and custody of the incapacitated person, directing

1 the guardian or limited guardian of the estate to apply an amount  
2 weekly, monthly, quarterly, semi-annually, or annually, as the court  
3 may direct, to be expended in the care, maintenance, and education of  
4 the incapacitated person and of his or her dependents. In proper  
5 cases, the court may order payment of amounts directly to the  
6 incapacitated person for his or her maintenance or incidental expenses.  
7 The amounts authorized under this section may be decreased or increased  
8 from time to time by direction of the court. If payments are made to  
9 another under an order of the court, the guardian or limited guardian  
10 of the estate is not bound to see to the application thereof.

11 **Sec. 10.** RCW 11.92.043 and 1990 c 122 s 21 are each amended to  
12 read as follows:

13 It shall be the duty of the guardian or limited guardian of the  
14 person:

15 (1) To file within three months after appointment a personal care  
16 plan for the incapacitated person which shall include (a) an assessment  
17 of the incapacitated person's physical, mental, and emotional needs and  
18 of such person's ability to perform or assist in activities of daily  
19 living, and (b) the guardian's specific plan for meeting the identified  
20 and emerging personal care needs of the incapacitated person.

21 (2) To file annually or, where a guardian of the estate has been  
22 appointed, at the time an account is required to be filed under RCW  
23 11.92.040, a report on the status of the incapacitated person, which  
24 shall include:

25 (a) The address and name of the incapacitated person and all  
26 residential changes during the period;

27 (b) The services or programs which the incapacitated person  
28 receives;

29 (c) The medical status of the incapacitated person;

1 (d) The mental status of the incapacitated person;

2 (e) Changes in the functional abilities of the incapacitated  
3 person;

4 (f) Activities of the guardian for the period;

5 (g) Any recommended changes in the scope of the authority of the  
6 guardian;

7 (h) The identity of any professionals who have assisted the  
8 incapacitated person during the period.

9 ~~((If the court has made a finding as provided in RCW 11.88.095(5),  
10 that the person is incapacitated as a result of a developmental  
11 disability that is expected to continue indefinitely, the court in its  
12 discretion, may allow reports at intervals up to thirty-six months and  
13 may modify or waive certain reporting requirements in this subsection,  
14 that the court considers inapplicable or unduly burdensome. The court  
15 may not waive the requirement that the guardian or limited guardian  
16 report any substantial change in the incapacitated person's  
17 condition.))~~

18 (3) To report to the court within thirty days any substantial  
19 change in the incapacitated person's condition, or any changes in  
20 residence of the incapacitated person.

21 (4) Consistent with the powers granted by the court, to care for  
22 and maintain the incapacitated person in the setting least restrictive  
23 to the incapacitated person's freedom and appropriate to the  
24 incapacitated person's personal care needs, assert the incapacitated  
25 person's rights and best interests, and if the incapacitated person is  
26 a minor or where otherwise appropriate, to see that the incapacitated  
27 person receives appropriate training and education and that the  
28 incapacitated person has the opportunity to learn a trade, occupation,  
29 or profession.

1 (5) Consistent with RCW 7.70.065, to provide timely, informed  
2 consent for health care of the incapacitated person, except in the case  
3 of a limited guardian where such power is not expressly provided for in  
4 the order of appointment or subsequent modifying order as provided in  
5 RCW 11.88.125 as now or hereafter amended, the standby guardian or  
6 standby limited guardian may provide timely, informed consent to  
7 necessary medical procedures if the guardian or limited guardian cannot  
8 be located within four hours after the need for such consent arises.  
9 No guardian, limited guardian, or standby guardian may involuntarily  
10 commit for mental health treatment, observation, or evaluation an  
11 alleged incapacitated person who is unable or unwilling to give  
12 informed consent to such commitment unless the procedures for  
13 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are  
14 followed. Nothing in this section shall be construed to allow a  
15 guardian, limited guardian, or standby guardian to consent to:

16 (a) Therapy or other procedure which induces convulsion;

17 (b) Surgery solely for the purpose of psychosurgery;

18 (c) Other psychiatric or mental health procedures that restrict  
19 physical freedom of movement, or the rights set forth in RCW 71.05.370.

20 A guardian, limited guardian, or standby guardian who believes  
21 these procedures are necessary for the proper care and maintenance of  
22 the incapacitated person shall petition the court for an order unless  
23 the court has previously approved the procedure within the past thirty  
24 days. The court may order the procedure only after an attorney is  
25 appointed in accordance with RCW 11.88.045 if no attorney has  
26 previously appeared, notice is given, and a hearing is held in  
27 accordance with RCW 11.88.040.

28 **Sec. 11.** RCW 11.92.180 and 1990 c 122 s 36 are each amended to  
29 read as follows:

1       A guardian or limited guardian shall be allowed such compensation  
2 for his or her services as guardian or limited guardian as the court  
3 shall deem just and reasonable. Guardians and limited guardians shall  
4 not be compensated at ((public)) county expense. Additional  
5 compensation may be allowed for other administrative costs, including  
6 services of an attorney and for other services not provided by the  
7 guardian or limited guardian. Where a guardian or limited guardian is  
8 an attorney, the guardian or limited guardian shall separately account  
9 for time for which compensation is requested for services as a guardian  
10 or limited guardian as contrasted to time for which compensation for  
11 legal services provided to the guardianship is requested. In all  
12 cases, compensation of the guardian or limited guardian and his or her  
13 expenses including attorney's fees shall be fixed by the court and may  
14 be allowed at any annual or final accounting; but at any time during  
15 the administration of the estate, the guardian or limited guardian or  
16 his or her attorney may apply to the court for an allowance upon the  
17 compensation or necessary expenses of the guardian or limited guardian  
18 and for attorney's fees for services already performed. If the court  
19 finds that the guardian or limited guardian has failed to discharge his  
20 or her duties as such in any respect, it may deny the guardian any  
21 compensation whatsoever or may reduce the compensation which would  
22 otherwise be allowed.