

SSB 5740 - S AMD 156

By Senators Kastama, Stevens, Haugen, Hargrove, Murray, Sheldon,
Roach, Hobbs

ADOPTED 03/05/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 11.88.030 and 2009 c 521 s 36 are each amended to
4 read as follows:

5 (1) Any person or entity may petition for the appointment of a
6 qualified person, trust company, national bank, or nonprofit
7 corporation authorized in RCW 11.88.020 as the guardian or limited
8 guardian of an incapacitated person. No liability for filing a
9 petition for guardianship or limited guardianship shall attach to a
10 petitioner acting in good faith and upon reasonable basis. A petition
11 for guardianship or limited guardianship shall state:

12 (a) The name, age, residence, and post office address of the
13 alleged incapacitated person;

14 (b) The nature of the alleged incapacity in accordance with RCW
15 11.88.010;

16 (c) The approximate value and description of property, including
17 any compensation, pension, insurance, or allowance, to which the
18 alleged incapacitated person may be entitled;

19 (d) Whether there is, in any state, a guardian or limited guardian,
20 or pending guardianship action for the person or estate of the alleged
21 incapacitated person;

22 (e) The residence and post office address of the person whom
23 petitioner asks to be appointed guardian or limited guardian;

24 (f) The names and addresses, and nature of the relationship, so far
25 as known or can be reasonably ascertained, of the persons most closely
26 related by blood, marriage, or state registered domestic partnership to
27 the alleged incapacitated person;

28 (g) The name and address of the person or facility having the care
29 and custody of the alleged incapacitated person;

1 (h) The reason why the appointment of a guardian or limited
2 guardian is sought and the interest of the petitioner in the
3 appointment, and whether the appointment is sought as guardian or
4 limited guardian of the person, the estate, or both;

5 (i) A description of any alternate arrangements previously made by
6 the alleged incapacitated person, such as trusts or powers of attorney,
7 including identifying any guardianship nominations contained in a power
8 of attorney, and why a guardianship is nevertheless necessary;

9 (j) The nature and degree of the alleged incapacity and the
10 specific areas of protection and assistance requested and the
11 limitation of rights requested to be included in the court's order of
12 appointment;

13 (k) The requested term of the limited guardianship to be included
14 in the court's order of appointment;

15 (l) Whether the petitioner is proposing a specific individual to
16 act as guardian ad litem and, if so, the individual's knowledge of or
17 relationship to any of the parties, and why the individual is proposed.

18 (2)(a) The attorney general may petition for the appointment of a
19 guardian or limited guardian in any case in which there is cause to
20 believe that a guardianship is necessary and no private party is able
21 and willing to petition.

22 (b) Prepayment of a filing fee shall not be required in any
23 guardianship or limited guardianship brought by the attorney general.
24 Payment of the filing fee shall be ordered from the estate of the
25 incapacitated person at the hearing on the merits of the petition,
26 unless in the judgment of the court, such payment would impose a
27 hardship upon the incapacitated person, in which case the filing shall
28 be waived.

29 (3) No filing fee shall be charged by the court for filing either
30 a petition for guardianship or a petition for limited guardianship if
31 the petition alleges that the alleged incapacitated person has total
32 assets of a value of less than three thousand dollars.

33 (4)(a) Notice that a guardianship proceeding has been commenced
34 shall be personally served upon the alleged incapacitated person and
35 the guardian ad litem along with a copy of the petition for appointment
36 of a guardian. Such notice shall be served not more than five court
37 days after the petition has been filed.

1 granted for good cause shown. If an extension is granted, the court
2 shall set a new hearing date.

3 (6) The court must provide a person filing a petition under this
4 section information regarding professional and lay guardians. The
5 purpose of the information is to provide family members of
6 incapacitated adults with information detailing: What a guardian is,
7 the different types of guardianships in Washington, the powers granted
8 to a guardian, an explanation of how professional guardian fees are
9 approved by the court and how professional guardians may bill for their
10 services, a description of the process to modify a guardianship or to
11 remove a guardian, and information about the certified professional
12 guardian board and program. Failure to provide the information set
13 forth in this subsection shall not constitute the sole cause for
14 discharge of a guardian or delay of a guardianship hearing.

15 **Sec. 2.** RCW 11.88.040 and 2008 c 6 s 803 are each amended to read
16 as follows:

17 (1) Before appointing a guardian or a limited guardian, notice of
18 a hearing, to be held not less than ten days after service thereof,
19 shall be served personally upon the alleged incapacitated person, if
20 over fourteen years of age, and served upon the guardian ad litem.

21 (2) Before appointing a guardian or a limited guardian, notice of
22 a hearing, to be held not less than (~~ten~~) fifteen days after service
23 thereof, (~~shall~~) the name of the person who the court or guardian ad
24 litem proposes to be appointed as guardian or limited guardian, a copy
25 of the petition for appointment of guardian, and the statement of the
26 legal rights of the alleged incapacitated person that could be
27 restricted or transferred to a guardian by a guardianship order must be
28 given by registered or certified mail to the last known address
29 requesting a return receipt signed by the addressee or an agent
30 appointed by the addressee, or by personal service in the manner
31 provided for services of summons, but duplicates of information already
32 provided under RCW 11.88.030 or other applicable statutes or rules need
33 not be given, to the following:

34 (~~(1)~~) (a) The alleged incapacitated person, or minor, if under
35 fourteen years of age;

36 (~~(2)~~) (b) A parent, if the alleged incapacitated person is a

1 minor, all known children not residing with a notified person, and the
2 spouse or domestic partner of the alleged incapacitated person if any;

3 ~~((+3))~~ (c) Any other person who has been appointed as guardian or
4 limited guardian, or the person with whom the alleged incapacitated
5 person resides. No notice need be given to those persons named in
6 ~~((subsections (2) and (3)))~~ (a) and (b) of this subsection if they have
7 signed the petition for the appointment of the guardian or limited
8 guardian or have waived notice of the hearing.

9 ~~((+4))~~ (3) If the petition is by a parent asking for appointment
10 as guardian or limited guardian of a minor child under the age of
11 fourteen years, or if the petition is accompanied by the written
12 consent of a minor of the age of fourteen years or upward, who consents
13 to the appointment of the guardian or limited guardian asked for, or if
14 the petition is by a nonresident guardian of any minor or incapacitated
15 person, then the court may appoint the guardian without notice of the
16 hearing. The court for good cause may reduce the number of days of
17 notice, but in every case, at least three days notice shall be given.

18 (4) The alleged incapacitated person shall be present in court at
19 the final hearing on the petition(~~(+PROVIDED, That)~~). However, this
20 requirement may be waived at the discretion of the court for good cause
21 other than mere inconvenience shown in the report to be provided by the
22 guardian ad litem pursuant to RCW 11.88.090 as now or hereafter
23 amended, or if no guardian ad litem is required to be appointed
24 pursuant to RCW 11.88.090, as now or hereafter amended, at the
25 discretion of the court for good cause shown by a party.
26 Alternatively, the court may remove itself to the place of residence of
27 the alleged incapacitated person and conduct the final hearing in the
28 presence of the alleged incapacitated person. Final hearings on the
29 petition may be held in closed court without admittance of any person
30 other than those necessary to the action or proceeding.

31 (5) If presence of the alleged incapacitated person is waived and
32 the court does not remove itself to the place of residence of such
33 person, the guardian ad litem shall appear in person at the final
34 hearing on the petition.

35 **Sec. 3.** RCW 11.88.120 and 1991 c 289 s 7 are each amended to read
36 as follows:

37 (1) At any time after establishment of a guardianship or

1 appointment of a guardian, the court may, upon the death of the
2 guardian or limited guardian, or, for other good reason, modify or
3 terminate the guardianship or replace the guardian or limited guardian.

4 (2) Any person, including an incapacitated person, may apply to the
5 court for an order to modify or terminate a guardianship or to replace
6 a guardian or limited guardian.

7 (a) If applicants are represented by counsel, counsel shall move
8 for an order to show cause why the relief requested should not be
9 granted.

10 (b) If applicants are not represented by counsel, they may move for
11 an order to show cause, or they may deliver a written request to the
12 clerk of the court, which must be considered by the court as the
13 equivalent of a motion for an order to show cause.

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

1 (4) In a hearing on an application to modify or terminate a
2 guardianship, or to replace a guardian or limited guardian, the court
3 may grant such relief as it deems just and in the best interest of the
4 incapacitated person. If there is a professional guardian, and the
5 applicant makes a prima facie showing that the guardian has breached a
6 fiduciary, professional, or ethical duty with respect to the
7 guardianship as proscribed by the certified professional guardian
8 board, the burden of proof shall shift to the guardian to establish
9 that his or her conduct was appropriate.

10 (5) The court may order persons who have been removed as guardians
11 to deliver any property or records belonging to the incapacitated
12 person in accordance with the court's order. Similarly, when guardians
13 have died or been removed and property or records of an incapacitated
14 person are being held by any other person, the court may order that
15 person to deliver it in accordance with the court's order.
16 Disobedience of an order to deliver shall be punishable as contempt of
17 court.

18 **Sec. 4.** RCW 11.88.090 and 2008 c 6 s 804 are each amended to read
19 as follows:

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

26 (2) Prior to the appointment of a guardian or a limited guardian,
27 whenever it appears that the incapacitated person or incapacitated
28 person's estate could benefit from mediation and such mediation would
29 likely result in overall reduced costs to the estate, upon the motion
30 of the alleged incapacitated person or the guardian ad litem, or
31 subsequent to such appointment, whenever it appears that the
32 incapacitated person or incapacitated person's estate could benefit
33 from mediation and such mediation would likely result in overall
34 reduced costs to the estate, upon the motion of any interested person,
35 the court may:

36 (a) Require any party or other person subject to the jurisdiction
37 of the court to participate in mediation;

1 (b) Establish the terms of the mediation; and

2 (c) Allocate the cost of the mediation (~~(pursuant to RCW~~
3 ~~11.96.140)~~).

4 (3)(a) Upon receipt of a petition for appointment of guardian or
5 limited guardian, except as provided herein, the court shall appoint a
6 guardian ad litem to represent the best interests of the alleged
7 incapacitated person, who shall be a person found or known by the court
8 to:

9 ((+a)) (i) Be free of influence from anyone interested in the
10 result of the proceeding; and

11 ((+b)) (ii) Have the requisite knowledge, training, or expertise
12 to perform the duties required by this section.

13 (b) The guardian ad litem shall within five days of receipt of
14 notice of appointment file with the court and serve, either personally
15 or by certified mail with return receipt, each party with a statement
16 including: His or her training relating to the duties as a guardian ad
17 litem; his or her criminal history as defined in RCW 9.94A.030 for the
18 period covering ten years prior to the appointment; his or her hourly
19 rate, if compensated; whether the guardian ad litem has had any contact
20 with a party to the proceeding prior to his or her appointment; and
21 whether he or she has an apparent conflict of interest. Within three
22 days of the later of the actual service or filing of the guardian ad
23 litem's statement, any party may set a hearing and file and serve a
24 motion for an order to show cause why the guardian ad litem should not
25 be removed for one of the following three reasons: (i) Lack of
26 expertise necessary for the proceeding; (ii) an hourly rate higher than
27 what is reasonable for the particular proceeding; or (iii) a conflict
28 of interest. Notice of the hearing shall be provided to the guardian
29 ad litem and all parties. If, after a hearing, the court enters an
30 order replacing the guardian ad litem, findings shall be included,
31 expressly stating the reasons for the removal. If the guardian ad
32 litem is not removed, the court has the authority to assess to the
33 moving party, attorneys' fees and costs related to the motion. The
34 court shall assess attorneys' fees and costs for frivolous motions.

35 (c) No guardian ad litem need be appointed when a parent is
36 petitioning for a guardian or a limited guardian to be appointed for
37 his or her minor child and the minority of the child, as defined by RCW
38 11.92.010, is the sole basis of the petition. The order appointing the

1 guardian ad litem shall recite the duties set forth in subsection (5)
2 of this section. The appointment of a guardian ad litem shall have no
3 effect on the legal competency of the alleged incapacitated person and
4 shall not overcome the presumption of competency or full legal and
5 civil rights of the alleged incapacitated person.

6 (4)(a) The superior court of each county shall develop and maintain
7 a registry of persons who are willing and qualified to serve as
8 guardians ad litem in guardianship matters. The court shall choose as
9 guardian ad litem a person whose name appears on the registry in a
10 system of consistent rotation, except in extraordinary circumstances
11 such as the need for particular expertise. The court shall develop
12 procedures for periodic review of the persons on the registry and for
13 probation, suspension, or removal of persons on the registry for
14 failure to perform properly their duties as guardian ad litem. In the
15 event the court does not select the person next on the list, it shall
16 include in the order of appointment a written reason for its decision.

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

18 (i) Present a written statement outlining his or her background and
19 qualifications. The background statement shall include, but is not
20 limited to, the following information:

21 (A) Level of formal education;

22 (B) Training related to the guardian ad litem's duties;

23 (C) Number of years' experience as a guardian ad litem;

24 (D) Number of appointments as a guardian ad litem and the county or
25 counties of appointment;

26 (E) Criminal history, as defined in RCW 9.94A.030; and

27 (F) Evidence of the person's knowledge, training, and experience in
28 each of the following: Needs of impaired elderly people, physical
29 disabilities, mental illness, developmental disabilities, and other
30 areas relevant to the needs of incapacitated persons, legal procedure,
31 and the requirements of chapters 11.88 and 11.92 RCW.

32 The written statement of qualifications shall include the names of
33 any counties in which the person was removed from a guardian ad litem
34 registry pursuant to a grievance action, and the name of the court and
35 the cause number of any case in which the court has removed the person
36 for cause; and

37 (ii) Complete the training as described in (e) of this subsection.

1 The training is not applicable to guardians ad litem appointed pursuant
2 to special proceeding Rule 98.16W.

3 (c) Superior court shall remove any person from the guardian ad
4 litem registry who misrepresents his or her qualifications pursuant to
5 a grievance procedure established by the court.

6 (d) The background and qualification information shall be updated
7 annually.

8 (e) The department of social and health services shall convene an
9 advisory group to develop a model guardian ad litem training program
10 and shall update the program biennially. The advisory group shall
11 consist of representatives from consumer, advocacy, and professional
12 groups knowledgeable in developmental disabilities, neurological
13 impairment, physical disabilities, mental illness, domestic violence,
14 aging, legal, court administration, the Washington state bar
15 association, and other interested parties.

16 (f) The superior court shall require utilization of the model
17 program developed by the advisory group as described in (e) of this
18 subsection, to assure that candidates applying for registration as a
19 qualified guardian ad litem shall have satisfactorily completed
20 training to attain these essential minimum qualifications to act as
21 guardian ad litem.

22 (5) The guardian ad litem appointed pursuant to this section
23 (~~shall have~~) has the following duties:

24 (a) To meet and consult with the alleged incapacitated person as
25 soon as practicable following appointment and explain, in language
26 which such person can reasonably be expected to understand, the
27 substance of the petition, the nature of the resultant proceedings, the
28 person's right to contest the petition, the identification of the
29 proposed guardian or limited guardian, the right to a jury trial on the
30 issue of his or her alleged incapacity, the right to independent legal
31 counsel as provided by RCW 11.88.045, and the right to be present in
32 court at the hearing on the petition;

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

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

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

3 (ii) The steps the proposed guardian intends to take or has taken
4 to identify and meet the needs of the alleged incapacitated person;

5 (d) To consult as necessary to complete the investigation and
6 report required by this section with those known relatives, friends, or
7 other persons the guardian ad litem determines have had a significant,
8 continuing interest in the welfare of the alleged incapacitated person;

9 (e) To investigate alternate arrangements made, or which might be
10 created, by or on behalf of the alleged incapacitated person, such as
11 revocable or irrevocable trusts, durable powers of attorney, or blocked
12 accounts; whether good cause exists for any such arrangements to be
13 discontinued; and why such arrangements should not be continued or
14 created in lieu of a guardianship;

15 (f) To provide the court with a written report which shall include
16 the following:

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

19 (ii) A description of the needs of the incapacitated person for
20 care and treatment, the probable residential requirements of the
21 alleged incapacitated person and the basis upon which these findings
22 were made;

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

27 (iv) A description of any alternative arrangements previously made
28 by the alleged incapacitated person or which could be made, and whether
29 and to what extent such alternatives should be used in lieu of a
30 guardianship, and if the guardian ad litem is recommending
31 discontinuation of any such arrangements, specific findings as to why
32 such arrangements are contrary to the best interest of the alleged
33 incapacitated person;

34 (v) A description of the abilities of the alleged incapacitated
35 person and a recommendation as to whether a guardian or limited
36 guardian should be appointed. If appointment of a limited guardian is
37 recommended, the guardian ad litem shall recommend the specific areas

1 of authority the limited guardian should have and the limitations and
2 disabilities to be placed on the incapacitated person;

3 (vi) An evaluation of the person's mental ability to rationally
4 exercise the right to vote and the basis upon which the evaluation is
5 made;

6 (vii) Any expression of approval or disapproval made by the alleged
7 incapacitated person concerning the proposed guardian or limited
8 guardian or guardianship or limited guardianship;

9 (viii) Identification of persons with significant interest in the
10 welfare of the alleged incapacitated person who should be advised of
11 their right to request special notice of proceedings pursuant to RCW
12 11.92.150; and

13 (ix) Unless independent counsel has appeared for the alleged
14 incapacitated person, an explanation of how the alleged incapacitated
15 person responded to the advice of the right to jury trial, to
16 independent counsel and to be present at the hearing on the petition.

17 Within forty-five days after notice of commencement of the
18 guardianship proceeding has been served upon the guardian ad litem, and
19 at least fifteen days before the hearing on the petition, unless an
20 extension or reduction of time has been granted by the court for good
21 cause, the guardian ad litem shall file its report and send a copy to
22 the alleged incapacitated person and his or her counsel, spouse or
23 domestic partner, all children not residing with a notified person,
24 those persons described in (f)(viii) of this subsection, and persons
25 who have filed a request for special notice pursuant to RCW 11.92.150.
26 If the guardian ad litem needs additional time to finalize his or her
27 report, then the guardian ad litem shall petition the court for a
28 postponement of the hearing or, with the consent of all other parties,
29 an extension or reduction of time for filing the report. If the
30 hearing does not occur within sixty days of filing the petition, then
31 upon the two-month anniversary of filing the petition and on or before
32 the same day of each following month until the hearing, the guardian ad
33 litem shall file interim reports summarizing his or her activities on
34 the proceeding during that time period as well as fees and costs
35 incurred;

36 (g) To advise the court of the need for appointment of counsel for
37 the alleged incapacitated person within five court days after the
38 meeting described in (a) of this subsection unless (i) counsel has

1 appeared, (ii) the alleged incapacitated person affirmatively
2 communicated a wish not to be represented by counsel after being
3 advised of the right to representation and of the conditions under
4 which court-provided counsel may be available, or (iii) the alleged
5 incapacitated person was unable to communicate at all on the subject,
6 and the guardian ad litem is satisfied that the alleged incapacitated
7 person does not affirmatively desire to be represented by counsel;

8 (h) To disclose in writing to the court any prior or existing
9 relationship, or other circumstance that would cause the appearance of
10 a conflict of interest in the guardian ad litem's recommendation when
11 the guardian ad litem is making a recommendation of appointment of a
12 particular person or persons as a guardian to a court. Such disclosure
13 must also be provided to persons receiving copies of the report as
14 required in (f)(ix) of this subsection (5).

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 subsection (5)(f) of this section.

21 (7) The parties to the proceeding may file responses to the
22 guardian ad litem report with the court and deliver such responses to
23 the other parties and the guardian ad litem at any time up to the
24 second day prior to the hearing. If a guardian ad litem fails to file
25 his or her report in a timely manner, the hearing shall be continued to
26 give the court and the parties at least fifteen days before the hearing
27 to review the report. At any time during the proceeding upon motion of
28 any party or on the court's own motion, the court may remove the
29 guardian ad litem for failure to perform his or her duties as specified
30 in this chapter, provided that the guardian ad litem shall have five
31 days' notice of any motion to remove before the court enters such
32 order. In addition, the court in its discretion may reduce a guardian
33 ad litem's fee for failure to carry out his or her duties.

34 (8) The court appointed guardian ad litem shall have the authority,
35 in the event that the alleged incapacitated person is in need of
36 emergency life-saving medical services, and is unable to consent to
37 such medical services due to incapacity pending the hearing on the

1 petition to give consent for such emergency life-saving medical
2 services on behalf of the alleged incapacitated person.

3 (9) The court-appointed guardian ad litem shall have the authority
4 to move for temporary relief under chapter 7.40 RCW to protect the
5 alleged incapacitated person from abuse, neglect, abandonment, or
6 exploitation, as those terms are defined in RCW 74.34.020, or to
7 address any other emergency needs of the alleged incapacitated person.
8 Any alternative arrangement executed before filing the petition for
9 guardianship shall remain effective unless the court grants the relief
10 requested under chapter 7.40 RCW, or unless, following notice and a
11 hearing at which all parties directly affected by the arrangement are
12 present, the court finds that the alternative arrangement should not
13 remain effective.

14 (10) The guardian ad litem shall receive a fee determined by the
15 court. The fee shall be charged to the alleged incapacitated person
16 unless the court finds that such payment would result in substantial
17 hardship upon such person, in which case the county shall be
18 responsible for such costs: PROVIDED, That the court may charge such
19 fee to the petitioner, the alleged incapacitated person, or any person
20 who has appeared in the action; or may allocate the fee, as it deems
21 just. If the petition is found to be frivolous or not brought in good
22 faith, the guardian ad litem fee shall be charged to the petitioner.
23 The court shall not be required to provide for the payment of a fee to
24 any salaried employee of a public agency.

25 (11) Upon the presentation of the guardian ad litem report and the
26 entry of an order either dismissing the petition for appointment of
27 guardian or limited guardian or appointing a guardian or limited
28 guardian, the guardian ad litem shall be dismissed and shall have no
29 further duties or obligations unless otherwise ordered by the court.
30 If the court orders the guardian ad litem to perform further duties or
31 obligations, they shall not be performed at county expense.

32 (12) The guardian ad litem shall appear in person at all hearings
33 on the petition unless all parties provide a written waiver of the
34 requirement to appear.

35 (13) At any hearing the court may consider whether any person who
36 makes decisions regarding the alleged incapacitated person or estate
37 has breached a statutory or fiduciary duty.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 2.56 RCW
2 to read as follows:

3 The administrator for the courts must publish on its web site
4 information regarding professional and lay guardians. The purpose of
5 the publication is to provide family members of incapacitated adults
6 with information detailing: What a guardian is, the different types of
7 guardianships in Washington, the powers granted to a guardian, an
8 explanation of how professional guardian fees are approved by the court
9 and how professional guardians may bill for their services, a
10 description of the process to modify a guardianship or to remove a
11 guardian, and information about the certified professional guardian
12 board and program.

13 **Sec. 6.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read
14 as follows:

- 15 (1) A long-term care ombudsman (~~((shall))~~) must:
16 ~~((+1))~~ (a) Identify, investigate, and resolve complaints made by
17 or on behalf of residents of long-term care facilities relating to
18 administrative action, inaction, or decisions which may adversely
19 affect the health, safety, welfare, and rights of these individuals;
20 ~~((+2))~~ (b) Monitor the development and implementation of federal,
21 state, and local laws, rules, regulations, and policies with respect to
22 long-term care facilities in this state;
23 ~~((+3))~~ (c) Provide information as appropriate to residents,
24 resident representatives, and others regarding the rights of residents,
25 and to public agencies regarding the problems of individuals residing
26 in long-term care facilities; and
27 ~~((+4))~~ (d) Provide for training volunteers and promoting the
28 development of citizen organizations to participate in the ombudsman
29 program. A trained volunteer long-term care ombudsman, in accordance
30 with the policies and procedures established by the state long-term
31 care ombudsman program, shall inform residents, their representatives,
32 and others about the rights of residents, and may identify,
33 investigate, and resolve complaints made by or on behalf of residents
34 of long-term care facilities relating to action, inaction, or
35 decisions, that may adversely affect the health, safety, welfare, and
36 rights of these individuals.

1 (2) Publish on a web site, or otherwise make available to
2 residents, families of residents, and the public information regarding
3 professional and lay guardians. The purpose of the publication is to
4 provide family members of incapacitated adults with information
5 detailing: What a guardian is, the different types of guardianships in
6 Washington, the powers granted to a guardian, an explanation of how
7 professional guardian fees are approved by the court and how
8 professional guardians may bill for their services, a description of
9 the process to modify a guardianship or to remove a guardian, and
10 information about the certified professional guardian board and
11 program.

12 (3) Nothing in ((chapter 133, Laws of 1999 shall)) this section or
13 RCW 43.190.065 may be construed to empower the state long-term care
14 ombudsman or any local long-term care ombudsman with statutory or
15 regulatory licensing or sanctioning authority."

SSB 5740 - S AMD

By Senators Kastama, Stevens, Haugen, Hargrove, Murray, Sheldon,
Roach, Hobbs

ADOPTED 03/05/2011

16 On page 1, line 2 of the title, after "adults;" strike the
17 remainder of the title and insert "amending RCW 11.88.030, 11.88.040,
18 11.88.120, 11.88.090, and 43.190.060; and adding a new section to
19 chapter 2.56 RCW."

EFFECT: The burden of proof placed on a professional guardian must be triggered by a prima facie showing of a breach of guardianship duties. The notice provided to parties in a guardianship need not duplicate information already provided under a different statute or rule. Failure to provide information to a petitioner for a guardianship shall not be cause to undo the guardianship or delay the guardianship hearing. Provision allowing for automatic removal of a professional guardian within one year is removed.

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