

Chapter 2.72 RCW
OFFICE OF PUBLIC GUARDIANSHIP AND CONSERVATORSHIP

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RCW 2.72.005 Intent. (1) In establishing an office of public guardianship and conservatorship, the legislature intends to promote the availability of guardianship, conservatorship, and alternate services that provide support for decision making for individuals who need them and for whom adequate services may otherwise be unavailable. The legislature reaffirms its commitment to treat liberty and autonomy as paramount values for all Washington residents and to authorize public guardianship and conservatorship only to the minimum extent necessary to provide for health or safety, or to manage financial affairs, when the legal conditions for appointment of a guardian or conservator are met. It does not intend to alter those legal conditions or to expand judicial authority to determine that any individual may be subject to guardianship or conservatorship.

(2) The legislature further recognizes that decision-making assistance for people who have limited capacity can preserve individual liberty and provide effective support responsive to individual needs and wishes. The legislature also recognizes that these services may be less expensive than guardianship and conservatorship for the state, the courts, and for individuals with limited capacity and their families. [2020 c 312 § 401; 2019 c 215 § 1; 2007 c 364 § 1.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

RCW 2.72.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means a person granted authority to act for a principal under a power of attorney.

(2) "Contract service provider" means a public guardian or public conservator providing services under contract with the office of public guardianship and conservatorship. Any public guardian or public conservator providing such services must be certified by the certified professional guardian [guardianship] board established by the supreme court.

(3) "Decision-making assistance" means support for an individual with diminished decision-making ability in making decisions affecting health or safety or to manage financial affairs. Assistance includes, without limitation, acting as a representative payee, an agent, a trustee, a public guardian, or a public conservator.

(4) "Estate administration" means services provided for a fee to the estate of an individual who died at age eighteen or older, in circumstances where a contract service provider is granted letters under RCW 11.28.120(7).

(5) "Long-term care services" means services provided through the department of social and health services either in a hospital or skilled nursing facility, or in another setting under a home and community-based waiver authorized under 42 U.S.C. Sec. 1396n.

(6) "Office" means the office of public guardianship and conservatorship.

(7) "Public conservator" means an individual or entity appointed by a court to make decisions with respect to property or financial affairs of an individual subject to conservatorship, and who provides these services under contract with the office of public guardianship and conservatorship.

(8) "Public guardian" means an individual or entity appointed by the court to make decisions with respect to the personal affairs of an individual, and who provides these services under contract with the office of public guardianship and conservatorship.

(9) "Representative payee" means the designated agent for a recipient of government benefits whom a government agency has determined to be incapable of managing his or her benefits.

(10) "Trustee" means a person or organization named in a trust agreement to handle trust property for the benefit of one or more beneficiaries in accordance with the terms of the agreement. [2020 c 312 § 402. Prior: 2019 c 215 § 2; 2007 c 364 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective dates—2020 c 312: See note following RCW 11.130.915.

RCW 2.72.020 Office of public guardianship and conservatorship created—Appointment of public guardianship and conservatorship administrator. (1) There is created an office of public guardianship and conservatorship within the administrative office of the courts.

(2) The supreme court shall appoint a public guardianship and conservatorship administrator to establish and administer a public guardianship, public conservatorship, decision-making assistance, and estate administration program in the office of public guardianship and conservatorship. The public guardianship and conservatorship administrator serves at the pleasure of the supreme court. [2020 c 312 § 403; 2019 c 215 § 3; 2007 c 364 § 3.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

RCW 2.72.030 Public guardianship, public conservatorship, decision-making assistance, and estate administration program—Contracts for services—Eligibility criteria and minimum standards of practice—Duties of office—Case-weighting system—Fees. The public

guardianship and conservatorship administrator is authorized to establish and administer a public guardianship, public conservatorship, decision-making assistance, and estate administration program as follows:

(1) (a) The office shall contract with certified professional guardians and conservators or certified professional guardian and conservator agencies to provide public guardianship, public conservatorship, decision-making assistance, and estate administration services to persons age eighteen or older whose income does not exceed two hundred percent of the federal poverty level determined annually by the United States department of health and human services or who are receiving long-term care services through the Washington state department of social and health services, when there is no one else qualified who is willing and able to serve.

(b) Neither the public guardianship and conservatorship administrator nor the office may act as public guardian or conservator or act in any other representative capacity for any individual.

(c) The primary function of the office is to contract for public guardianship, public conservatorship, decision-making assistance, and estate administration services that are provided in a manner consistent with the requirements of this chapter. The office is subject to audit by the state auditor.

(d) Public guardianship, public conservatorship, decision-making assistance, and estate administration service contracts are dependent upon legislative appropriation. This chapter does not create an entitlement.

(2) The office shall adopt and maintain eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian or conservator exceeds the number of cases in which services can be provided. In adopting such criteria, the office may consider factors including, but not limited to, the following: Whether an individual with diminished decision-making ability is at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and whether an individual with diminished decision-making ability is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

(3) The office shall adopt minimum standards of practice for public guardians, public conservators, and other contract service providers providing public guardianship, public conservatorship, decision-making assistance, and estate administration services.

(4) The office shall require a public guardian or conservator to visit each individual subject to guardianship or conservatorship for which public guardianship or conservatorship services are provided no less than monthly to be eligible for compensation.

(5) The office shall not petition for appointment of a public guardian or conservator for any individual. It may develop a proposal for the legislature to make affordable legal assistance available to petition for guardianships or conservatorships.

(6) The office shall develop and adopt a case-weighting system designed to balance the increasing need for access to guardianship and conservatorship services, while effectively managing public guardian and conservator caseloads and providing appropriate supports for individuals on that caseload.

(a) The standard caseload limit for a contract service provider must be no more than twenty persons placed under a guardianship per certified professional guardian or conservator. The office may authorize adjustments to the standard caseload limit on a case-by-case basis, and payment for services to a contract service provider that serves more than twenty persons placed under a guardianship per professional guardian or conservator is subject to review by the office. In evaluating caseload size, the office shall consider the expected activities, time, and demands involved, as well as the available support for each case.

(b) Adjusted caseload limits must not exceed thirty-six cases. The office shall not authorize payment for services for any contract service provider that fails to comply with the adjusted caseload limit guidelines.

(c) The office shall develop case-weighting guidelines to include a process for adjusting caseload limits, relevant policies and procedures, and recommendations for changes in court rules which may be appropriate for the implementation of the system.

(d) By December 1, 2019, the office must submit to the legislature a report detailing the final case-weighting system and guidelines, and implementation progress and recommendations. The report must be made available to the public.

(e) The administrative office of the courts shall notify the superior courts of the policies contained in the final case-weighting system.

(7) The office shall monitor and oversee the use of state funding to ensure compliance with this chapter.

(8) The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be made available to the legislature and supreme court in a format that is not identifiable by individual subject to guardianship or conservatorship to protect confidentiality.

(9) The office shall require contract service providers to seek reimbursement of fees from program clients who are receiving long-term care services through the department of social and health services to the extent, and only to the extent, that such reimbursement may be paid, consistent with an order of the superior court, from income that would otherwise be required by the department to be paid toward the cost of the client's care. Fees reimbursed shall be remitted by the contract service provider to the office unless a different disposition is directed by the public guardianship and conservatorship administrator.

(10) Fees may be collected from the estate when the decedent's income prior to death exceeded two hundred percent of the federal poverty level, determined annually by the United States department of health and human services, based on a fee schedule established by the office that must be published annually.

(11) The office shall require public guardians or conservators to certify annually that for each individual served they have reviewed the need for continued public guardianship or conservatorship and the appropriateness of limiting, or further limiting, the authority of the public guardian or conservator under the applicable order, and that where termination or modification of a guardianship or conservatorship order appears warranted, the superior court has been asked to take the corresponding action.

(12) The office shall adopt a process for receipt and consideration of and response to complaints against the office and

contract service providers of public guardianship, public conservatorship, decision-making assistance, and estate administration. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator.

(13) The office shall develop standardized forms and reporting instruments that may include, but are not limited to, intake, initial assessment, guardianship care plan, decisional accounting, staff time logs, changes in condition or abilities of an individual subject to guardianship or conservatorship, and values history. The office shall collect and analyze the data gathered from these reports.

(14) The office shall identify training needs for contract service providers it contracts with, and shall make recommendations to the supreme court, the certified professional guardian [guardianship] board, and the legislature for improvements in training. The office may offer training to individuals providing services pursuant to this chapter, to individuals who, in the judgment of the administrator or the administrator's designee, are likely to provide such services in the future, to lay guardians or conservators, and to the family and friends of individuals subject to guardianship or conservatorship.

(15) The office shall establish a system for monitoring the performance of contract service providers, and office staff shall make in-home visits to a randomly selected sample of public guardianship, public conservatorship, and decision-making assistance clients. The office may conduct further monitoring, including in-home visits, as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a public guardianship, public conservatorship, decision-making assistance, and estate administration client that is available to the guardian or conservator. [2020 c 312 § 404; 2019 c 215 § 4; 2009 c 117 § 1; 2007 c 364 § 4.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

RCW 2.72.040 Waiver of court costs. The courts shall waive court costs and filing fees in any proceeding in which an incapacitated person is receiving *public guardianship services funded under this chapter. [2007 c 364 § 6.]

***Reviser's note:** RCW 2.72.010 was amended by 2020 c 312 § 402, deleting the definition of "public guardianship services," effective January 1, 2022.

RCW 2.72.050 Administrator may develop rules. The public guardianship administrator may develop rules to implement this chapter. The administrator shall request and consider recommendations from the *advisory committee in the development of rules. [2007 c 364 § 7.]

***Reviser's note:** Section 5, chapter 364, Laws of 2007, which provided for the advisory committee, was vetoed by the governor.

RCW 2.72.055 Decision-making authority training—Legal community and persons working in long-term care facilities. The *office of

public guardianship, in partnership with the office of the state long-term care ombuds, must develop and offer training targeted to the legal community and persons working in long-term care facilities regarding the different kinds of decision-making authority, including guardianship, authority granted under power of attorney, and surrogate health care decision-making authority. The training must include, at a minimum, information regarding: The roles, duties, and responsibilities of different kinds of decision makers; the scope of authority and limitations on authority with respect to different kinds of decision makers; and any relevant remedial measures provided in law for activity that exceeds the scope of decision-making authority.
[2017 c 268 § 4.]

***Reviser's note:** The "office of public guardianship" was renamed the "office of public guardianship and conservatorship" by 2020 c 312 § 403, effective January 1, 2022.