
SUBSTITUTE SENATE BILL 5320

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Franklin, McCaslin, Kline, Stevens, Prentice, Parlette, Regala, Hargrove, Rasmussen, Murray, Jacobsen, Hewitt, Keiser and Roach)

READ FIRST TIME 02/08/07.

1 AN ACT Relating to creating an office of public guardianship as an
2 independent agency of the judiciary; and adding a new chapter to Title
3 2 RCW.

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

5 NEW SECTION. **Sec. 1.** In establishing an office of public
6 guardianship, the legislature intends to promote the availability of
7 guardianship services for individuals who need them and for whom
8 adequate services may otherwise be unavailable. The legislature
9 reaffirms its commitment to treat liberty and autonomy as paramount
10 values for all Washington residents and to authorize public
11 guardianship only to the minimum extent necessary to provide for health
12 or safety, or to manage financial affairs, when the legal conditions
13 for appointment of a guardian are met. It does not intend to alter
14 those legal conditions or to expand judicial authority to determine
15 that any individual is incapacitated.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Office" means the office of public guardianship.

1 (2) "Public guardian" means an individual or entity providing
2 public guardianship services.

3 (3) "Public guardianship services" means the services provided by
4 a guardian or limited guardian appointed under chapters 11.88 and 11.92
5 RCW, who is compensated under a contract with the office of public
6 guardianship.

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

11 NEW SECTION. **Sec. 3.** (1) There is created an office of public
12 guardianship as an independent agency of the judicial branch.

13 (2) The supreme court shall appoint a public guardianship
14 administrator to establish and administer a public guardianship program
15 in the office of public guardianship. The public guardianship
16 administrator serves at the pleasure of the supreme court.

17 NEW SECTION. **Sec. 4.** The public guardianship administrator is
18 authorized to establish and administer a public guardianship program as
19 follows:

20 (1)(a) The office shall contract with public or private entities or
21 individuals to provide public guardianship services to persons age
22 eighteen or older whose income does not exceed two hundred percent of
23 the federal poverty level determined annually by the United States
24 department of health and human services or who are receiving long-term
25 care services through the Washington state department of social and
26 health services. Neither the public guardianship administrator nor the
27 office may act as public guardian or limited guardian or act in any
28 other representative capacity for any individual.

29 (b) The office is exempt from RCW 39.29.008 because the primary
30 function of the office is to contract for public guardianship services
31 that are provided in a manner consistent with the requirements of this
32 chapter. The office shall otherwise comply with chapter 39.29 RCW and
33 is subject to audit by the state auditor.

34 (c) Public guardianship service contracts are dependent upon
35 legislative appropriation. This chapter does not create an
36 entitlement.

1 (d) The initial implementation of public guardianship services
2 shall be on a pilot basis in a minimum of two geographical areas that
3 include one urban area and one rural area. There may be one or several
4 contracts in each area.

5 (2) The office shall, within one year of the commencement of its
6 operation, adopt eligibility criteria to enable it to serve individuals
7 with the greatest need when the number of cases in which courts propose
8 to appoint a public guardian exceeds the number of cases in which
9 public guardianship services can be provided. In adopting such
10 criteria, the office may consider factors including, but not limited
11 to, the following: Whether an incapacitated individual is at
12 significant risk of harm from abuse, exploitation, abandonment,
13 neglect, or self-neglect; and whether an incapacitated person is in
14 imminent danger of loss or significant reduction in public services
15 that are necessary for the individual to live successfully in the most
16 integrated and least restrictive environment that is appropriate in
17 light of the individual's needs and values.

18 (3) The office shall adopt minimum standards of practice for public
19 guardians providing public guardianship services. Any public guardian
20 providing such services must be certified by the certified professional
21 guardian board established by the supreme court.

22 (4) The office shall require a public guardian to visit each
23 incapacitated person for which public guardianship services are
24 provided no less than monthly to be eligible for compensation.

25 (5) The office shall not petition for appointment of a public
26 guardian for any individual. It may develop, and shall consult with
27 the advisory committee regarding the need to develop, a proposal for
28 the legislature to make affordable legal assistance available to
29 petition for guardianships.

30 (6) The office shall not authorize payment for services for any
31 entity that is serving more than twenty incapacitated persons per
32 certified professional guardian.

33 (7) The office shall track cost savings to the state and report the
34 amount every two years to the legislature and the governor. The office
35 shall monitor and oversee the use of state funding to ensure compliance
36 with this chapter.

37 (8) The office shall collect uniform and consistent basic data
38 elements regarding service delivery. This data shall be made available

1 to the legislature and supreme court in a format that is not
2 identifiable by individual incapacitated person to protect
3 confidentiality.

4 (9) The office shall report to the legislature on how services
5 other than guardianship services, and in particular services that might
6 reduce the need for guardianship services, might be provided under
7 contract with the office by December 1, 2009. The services to be
8 considered should include, but not be limited to, services provided
9 under powers of attorney given by the individuals in need of the
10 services.

11 (10) The office shall submit a biennial budget request.

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

21 (12) The office shall require public guardianship providers to
22 certify annually that for each individual served they have reviewed the
23 need for continued public guardianship services and the appropriateness
24 of limiting, or further limiting, the authority of the public guardian
25 under the applicable guardianship order, and that where termination or
26 modification of a guardianship order appears warranted, the superior
27 court has been asked to take the corresponding action.

28 (13) The office shall adopt a process for receipt and consideration
29 of and response to complaints against the office and contracted
30 providers of public guardianship services. The process shall include
31 investigation in cases in which investigation appears warranted in the
32 judgment of the administrator. The office shall provide the advisory
33 committee with a summary and analysis of the results of these
34 complaints. When requested by the complaining party, his or her
35 identity shall not be disclosed to the advisory committee created under
36 section 5 of this act.

37 (14) The office shall contract with the Washington state institute
38 for public policy for a study. An initial report is due two years

1 following the effective date of this section and a second report by
2 December 1, 2011. The study shall analyze costs and off-setting
3 savings to the state from the delivery of public guardianship services.

4 (15) The office shall develop standardized forms and reporting
5 instruments that may include, but are not limited to, intake, initial
6 assessment, guardianship care plan, decisional accounting, staff time
7 logs, changes in condition or abilities of an incapacitated person, and
8 values history. The office shall collect and analyze the data gathered
9 from these reports and submit it to the advisory committee
10 periodically.

11 (16) The office shall identify training needs for guardians it
12 contracts with, and shall make recommendations, after consultation with
13 the advisory committee, to the supreme court, the certified
14 professional guardian board, and the legislature for improvements in
15 guardianship training. The office may offer training to individuals
16 providing services pursuant to this chapter.

17 (17) The office shall establish a system for monitoring the
18 performance of public guardians, and office staff shall make in-home
19 visits to a randomly selected sample of public guardianship clients.
20 The office may conduct further monitoring, including in-home visits, as
21 the administrator deems appropriate. For monitoring purposes, office
22 staff shall have access to any information relating to a public
23 guardianship client that is available to the guardian. The office
24 shall confer with the advisory committee in developing its monitoring
25 process.

26 (18) The office shall issue an annual report of its activities,
27 after review of and comment by the advisory committee.

28 NEW SECTION. **Sec. 5.** (1) There is created a public guardianship
29 advisory committee consisting of the following members:

30 (a) Two persons appointed by the supreme court;

31 (b) Two persons appointed by the board for judicial administration;

32 (c) Two senators, one from each of the two largest caucuses,
33 appointed by the president of the senate; and two members of the house
34 of representatives, one from each of the two largest caucuses,
35 appointed by the speaker of the house of representatives;

36 (d) One person appointed by the governor;

- 1 (e) One person appointed by the secretary of the department of
2 social and health services;
- 3 (f) Two persons appointed by the director of the Washington
4 protection and advocacy system;
- 5 (g) One person appointed by the chairperson of the governor's
6 committee on disability issues and employment;
- 7 (h) Two persons appointed by the chairperson of the developmental
8 disabilities council;
- 9 (i) One person appointed by the long-term care ombudsman;
- 10 (j) One person appointed by the Washington state bar association;
11 and
- 12 (k) One person appointed by the dean of the University of
13 Washington school of social work.
- 14 (2) During the term of his or her appointment, an appointee may not
15 be employed by a provider of public guardianship services.
- 16 (3) Except as provided in subsection (4) of this section, members
17 shall each serve a three-year term, subject to renewal for no more than
18 one additional three-year term.
- 19 (4) The first appointments to the advisory committee shall be for
20 terms of varying durations as follows: By the supreme court for two
21 and four years; by the board for judicial administration for three and
22 four years; by the president of the senate for two and three years; by
23 the speaker of the house of representatives for two and three years; by
24 the governor for four years; by the secretary of the department of
25 social and health services for two years; by the director of the
26 Washington protection and advocacy system for one and three years; by
27 the chairperson of the governor's committee on disability issues and
28 employment for four years; by the chairperson of the developmental
29 disabilities council for two and four years; by the long-term care
30 ombudsman for three years; by the Washington state bar association for
31 three years; and by the dean of the University of Washington school of
32 social work for four years.
- 33 (5) Members of the advisory committee receive no compensation for
34 their services as members of the advisory committee, but may be
35 reimbursed for travel and other expenses in accordance with rules
36 adopted by the office of financial management.
- 37 (6) The advisory committee: Shall review the activities of the
38 office; shall review the performance of the public guardianship

1 administrator; and may make recommendations to the supreme court, the
2 certified professional guardian board, and the legislature on issues
3 relating to the provision of public guardianship services.

4 (7) The meetings of the advisory committee shall be open to the
5 public, with agendas published in advance and minutes kept and made
6 available to the public. The public notice of all meetings shall
7 indicate that accommodations for disability will be available upon
8 request.

9 NEW SECTION. **Sec. 6.** The courts shall waive court costs and
10 filing fees in any proceeding in which an incapacitated person is
11 receiving public guardianship services funded under this chapter.

12 NEW SECTION. **Sec. 7.** The public guardianship administrator may
13 develop rules to implement this chapter. The administrator shall
14 request and consider recommendations from the advisory committee in the
15 development of rules.

16 NEW SECTION. **Sec. 8.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
21 a new chapter in Title 2 RCW.

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