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SENATE BILL 5447

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State of Washington

65th Legislature

2017 Regular Session

By Senator Conway; by request of Board For Judicial Administration

1 AN ACT Relating to the methods of services provided by the office  
2 of public guardianship; and amending RCW 2.72.005, 2.72.010,  
3 2.72.020, 2.72.030, and 11.28.120.

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

5 **Sec. 1.** RCW 2.72.005 and 2007 c 364 s 1 are each amended to read  
6 as follows:

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

19 (2) The legislature further recognizes that services that support  
20 decision making for people who have limited capacity can preserve  
21 individual liberty and provide effective support responsive to

1 individual needs and wishes. The legislature also recognizes that  
2 these services are less expensive than guardianship for the state,  
3 the courts, and for individuals with limited capacity and their  
4 families.

5 **Sec. 2.** RCW 2.72.010 and 2007 c 364 s 2 are each amended to read  
6 as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

12 (3) "Public guardianship services" means the services provided by  
13 a guardian or limited guardian appointed under chapters 11.88 and  
14 11.92 RCW, who is compensated under a contract with the office of  
15 public guardianship.

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

20 (5) "Supported decision-making assistance" means support for an  
21 individual with diminished decision-making ability in making  
22 decisions affecting health or safety or to manage financial affairs.  
23 Assistance includes, without limitation, acting as a representative  
24 payee, an attorney-in-fact, a trustee, and a public guardian.

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

28 (7) "Attorney-in-fact" means an agent authorized by an individual  
29 to act on his or her behalf pursuant to a power of attorney.

30 (8) "Trustee" means a person or organization named in a trust  
31 agreement to handle trust property for the benefit of one or more  
32 beneficiaries in accordance with the terms of the agreement.

33 **Sec. 3.** RCW 2.72.020 and 2007 c 364 s 3 are each amended to read  
34 as follows:

35 (1) There is created an office of public guardianship within the  
36 administrative office of the courts.

37 (2) The supreme court shall appoint a public guardianship  
38 administrator to establish and administer a public guardianship.

1 supported decision-making assistance, and estate administration  
2 program in the office of public guardianship. The public guardianship  
3 administrator serves at the pleasure of the supreme court.

4 **Sec. 4.** RCW 2.72.030 and 2009 c 117 s 1 are each amended to read  
5 as follows:

6 The public guardianship administrator is authorized to establish  
7 and administer a public guardianship, supported decision-making  
8 assistance, and estate administration program as follows:

9 (1)(a) The office shall contract with public or private entities  
10 or individuals to provide: (i) Public guardianship, supported  
11 decision-making assistance, and estate administration services to  
12 persons age eighteen or older whose income does not exceed two  
13 hundred percent of the federal poverty level determined annually by  
14 the United States department of health and human services or who are  
15 receiving long-term care services through the Washington state  
16 department of social and health services; (ii) supported decision-  
17 making services for a fee to persons age eighteen or older when there  
18 is no one else qualified who is willing and able to serve; and (iii)  
19 estate administration services for a fee to decedents age eighteen or  
20 older, in circumstances where a service provider under contract with  
21 the office of public guardianship is granted letters under RCW  
22 11.28.120(7).

23 (b) Neither the public guardianship administrator nor the office  
24 may act as public guardian or limited guardian or act in any other  
25 representative capacity for any individual.

26 ~~((b))~~ (c) ~~The (office is exempt from RCW 39.29.008 because~~  
27 ~~the))~~ primary function of the office is to contract for public  
28 guardianship, supported decision-making assistance, and estate  
29 administration services that are provided in a manner consistent with  
30 the requirements of this chapter. The office ~~((shall otherwise comply~~  
31 ~~with chapter 39.29 RCW and))~~ is subject to audit by the state  
32 auditor.

33 ~~((c))~~ (d) Public guardianship, supported decision-making  
34 assistance, and estate administration service contracts are dependent  
35 upon legislative appropriation. This chapter does not create an  
36 entitlement.

37 ~~((d) The initial implementation of public guardianship services~~  
38 ~~shall be on a pilot basis in a minimum of two geographical areas that~~

1 ~~include one urban area and one rural area. There may be one or~~  
2 ~~several contracts in each area.))~~

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

18 (3) The office shall adopt minimum standards of practice for  
19 public guardians and contract service providers providing public  
20 guardianship, supported decision-making assistance, and estate  
21 administration services. Any public guardian providing such public  
22 guardianship services must be certified by the certified professional  
23 guardian board established by the supreme court.

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

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

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

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

37 (8) The office shall collect uniform and consistent basic data  
38 elements regarding service delivery. This data shall be made  
39 available to the legislature and supreme court in a format that is

1 not identifiable by individual incapacitated person to protect  
2 confidentiality.

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

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

20 ~~((11))~~ (10) Fees may be collected from the estate of persons  
21 whose income exceeds two hundred percent of the federal poverty level  
22 determined annually by the United States department of health and  
23 human services, based on a fee schedule established by the office  
24 that must be published annually.

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

33 (12) The office shall adopt a process for receipt and  
34 consideration of and response to complaints against the office and  
35 contracted providers of public guardianship, supported  
36 decision-making assistance, and estate administration services. The  
37 process shall include investigation in cases in which investigation  
38 appears warranted in the judgment of the administrator.

39 ~~(13) ((The office shall contract with the Washington state~~  
40 ~~institute for public policy for a study. An initial report is due two~~

1 years following July 22, 2007, and a second report by December 1,  
2 2011. The study shall analyze costs and off-setting savings to the  
3 state from the delivery of public guardianship services.

4 ~~(14))~~ 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,  
8 and values history. The office shall collect and analyze the data  
9 gathered from these reports.

10 ~~((15))~~ (14) The office shall identify training needs for  
11 ~~((guardians))~~ service providers it contracts with, and shall make  
12 recommendations to the supreme court, the certified professional  
13 guardian board, and the legislature for improvements in  
14 ~~((guardianship))~~ training. The office may offer training to  
15 individuals providing services pursuant to this chapter ~~((or))~~,  
16 to individuals who, in the judgment of the administrator or the  
17 administrator's designee, are likely to provide such services in the  
18 future, to lay guardians, and to the family and friends of  
19 individuals subject to a guardianship.

20 ~~((16))~~ (15) The office shall establish a system for monitoring  
21 the performance of ~~((public guardians))~~ contract services providers,  
22 and office staff shall make in-home visits to a randomly selected  
23 sample of public guardianship and supported decision-making  
24 assistance clients. The office may conduct further monitoring,  
25 including in-home visits, as the administrator deems appropriate. For  
26 monitoring purposes, office staff shall have access to any  
27 information relating to a public guardianship, supported decision-  
28 making assistance, or estate administration client that is available  
29 to the guardian.

30 ~~((17) During the first five years of its operations, the office~~  
31 ~~shall issue annual reports of its activities.))~~

32 **Sec. 5.** RCW 11.28.120 and 2007 c 156 s 28 are each amended to  
33 read as follows:

34 Administration of an estate if the decedent died intestate or if  
35 the personal representative or representatives named in the will  
36 declined or were unable to serve shall be granted to some one or more  
37 of the persons hereinafter mentioned, and they shall be respectively  
38 entitled in the following order:

1 (1) The surviving spouse or state registered domestic partner, or  
2 such person as he or she may request to have appointed.

3 (2) The next of kin in the following order: (a) Child or  
4 children; (b) father or mother; (c) brothers or sisters; (d)  
5 grandchildren; (e) nephews or nieces.

6 (3) The trustee named by the decedent in an inter vivos trust  
7 instrument, testamentary trustee named in the will, guardian of the  
8 person or estate of the decedent, or attorney-in-fact appointed by  
9 the decedent, if any such a fiduciary controlled or potentially  
10 controlled substantially all of the decedent's probate and nonprobate  
11 assets.

12 (4) One or more of the beneficiaries or transferees of the  
13 decedent's probate or nonprobate assets.

14 (5)(a) The director of revenue, or the director's designee, for  
15 those estates having property subject to the provisions of chapter  
16 11.08 RCW; however, the director may waive this right.

17 (b) The secretary of the department of social and health services  
18 for those estates owing debts for long-term care services as defined  
19 in RCW 74.39A.008; however the secretary may waive this right.

20 (6) One or more of the principal creditors.

21 (7) If the persons so entitled shall fail for more than forty  
22 days after the death of the decedent to present a petition for  
23 letters of administration, or if it appears to the satisfaction of  
24 the court that there is no next of kin, as above specified eligible  
25 to appointment, or they waive their right, and there are no principal  
26 creditor or creditors, or such creditor or creditors waive their  
27 right, then the court may appoint a service provider under contract  
28 with the office of public guardianship under chapter 2.72 RCW or any  
29 suitable person to administer such estate.

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