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SECOND SUBSTITUTE HOUSE BILL 1130

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State of Washington                      60th Legislature                      2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Lantz, Rodne, Morrell, Schual-Berke, Goodman, Kenney, Haigh and Moeller)

READ FIRST TIME 2/28/07.

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

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.

22 NEW SECTION. **Sec. 10.** If specific funding for the purposes of  
23 this act, referencing this act by bill or chapter number, is not  
24 provided by June 30, 2007, in the omnibus appropriations act, this act  
25 is null and void.

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