

HOUSE BILL REPORT

HB 1865

As Reported By House Committee On:

Law & Justice

Title: An act relating to guardianship.

Brief Description: Clarifying numerous miscellaneous guardianship provisions.

Sponsors: Representatives Mitchell and Tokuda.

Brief History:

Committee Activity:

Law & Justice: 2/21/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

Staff: Brian Buckley (786-7291).

Background: Superior courts have the authority to appoint a guardian to represent an incapacitated person and/or that person's estate. A person may be deemed incapacitated if the person is incapable of providing for his or her basic needs, if the person is incapable of adequately managing his or her finances or property, or if the person is a minor. A court may also appoint a limited guardian for those persons with only a restricted capability to care for themselves.

Any person over the age of 18 and any parent may serve as a guardian if the court deems them to be suitable. The guardian is at all times under the direction and control of the court. A guardian is allowed reasonable compensation for his or her services and administrative costs, subject at all times to approval by the court. Any person may petition the court to modify or terminate a guardianship.

Prior to appointment of a guardian for an incapacitated person, the court must receive a written report from an examining physician or psychologist regarding the

incapacitated person's condition. Current law has been interpreted to require this examination within 30 days of the court hearing to appoint a guardian.

The Department of Social and Health Services (DSHS) has control over guardianship fees and compensation when an incapacitated person is a client of the department and is obligated to contribute a portion of his or her income to the cost of residential or supportive services. Under those circumstances, a guardian may not receive fees or costs greater than an amount set by the department and may not be compensated for providing services that the department funds or provides.

The appointment of a legal guardian or limited guardian does not affect the authority of the court to appoint a guardian ad litem to represent the interests of the incapacitated person in court proceedings.

Summary of Substitute Bill: The bill makes amendments to a number of code sections regarding guardianship. It provides that notice of the commencement of guardianship proceedings must be provided within five court days of filing of a guardianship petition. It also provides that notice of the hearing to appoint a guardian will be sent to the last known address of each person to be notified.

Prior to the appointment of a guardian for an incapacitated person, the court must receive a written report from a physician or psychologist regarding the person's condition. The bill provides that the examination by the physician or psychologist must be performed within 30 days of the preparation of that report, rather than within 30 days of the appointment hearing. In addition, the bill exempts guardianship based on minority from the medical report requirement.

For cases in which a guardian ad litem has been appointed to represent an incapacitated person in court, the bill restricts the number and nature of persons to whom the guardian ad litem must send his or her report. In addition to immediate family and anyone who has requested special notice, the guardian ad litem need only send his or her report to persons with significant interest in the welfare of the incapacitated person.

The bill adds the provision that appointment of a guardian for an estate automatically revokes any powers of attorney, and that appointment of a guardian for a person automatically revokes any medical powers of attorney.

The bill makes discretionary the current requirement that the court appoint a guardian ad litem to review the report of a guardian for the purposes of settling an intermediate guardianship account. It also includes intestate estates in the provisions for settlement of terminated guardianship accounts, and grants the court authority to appoint a guardian ad litem to review the final settlement of a guardianship account.

The authority of DSHS to establish the amount of recoverable guardianship fees and the list of compensable services for incapacitated persons under their care is revoked. The bill provides that DSHS has the right to notice of, access to, and participation in any hearings which affect the assets of an incapacitated person, if that person is a client of the department and is required to contribute to the cost of residential or support services. The department is required to establish a procedure for determining what position it will take at a hearing concerning guardianship fees and compensation.

The bill makes several technical changes that amend incorrect references and outdated grammar, and add gender neutral language.

Substitute Bill Compared to Original Bill: The substitute bill restores the current requirement that an incapacitated person or guardian ad litem receive notice of the commencement of guardianship proceedings by personal service, and not by first class mail.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Current law giving DSHS control over guardianship fees was hastily established with no guardian input, and it creates a conflict of interest because guardians often advocate against DSHS. If DSHS sets a cap on fees that is too low, it will be impossible to attract competent professional guardians who must be able to cover time and overhead. This bill maintains the court's control over guardianship and allows DSHS a proactive advisory role. The court system is effective and protects all interests. The amount of money saved by the state under current law will be minor because it will lose the effective advocacy of professional guardians.

Housekeeping measures will save state money by streamlining guardianship proceedings.

Testimony Against: The bill may jeopardize federal funding for DSHS clients by putting DSHS out of compliance with Medicaid requirements. The bill provides that guardianship appointment revokes all powers of attorney, but does not require the court to examine the current powers of attorney arrangements that are being upset.

Testified: Representative Mitchell, prime sponsor (pro); Liz Lindley, Washington Association of Professional Guardians and Lifetime Advocates Plus (pro); Tom O'Brien, Guardianship Services of Seattle (pro); Judy Williams, Northwest Guardianship Services (pro); and Bill Kiskaddon, Washington Association of

Professional Guardians (pro).