
HOUSE BILL 1865

State of Washington 54th Legislature 1995 Regular Session

By Representatives Mitchell and Tokuda

Read first time 02/13/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to guardianship; and amending RCW 11.88.030,
2 11.88.040, 11.88.045, 11.88.090, 11.88.095, 11.92.050, 11.92.053,
3 11.92.180, and 11.94.010.

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

5 **Sec. 1.** RCW 11.88.030 and 1991 c 289 s 2 are each amended to read
6 as follows:

7 (1) Any person or entity may petition for the appointment of a
8 qualified person, trust company, national bank, or nonprofit
9 corporation authorized in RCW 11.88.020 as now or hereafter amended as
10 the guardian or limited guardian of an incapacitated person. No
11 liability for filing a petition for guardianship or limited
12 guardianship shall attach to a petitioner acting in good faith and upon
13 reasonable basis. A petition for guardianship or limited guardianship
14 shall state:

15 (a) The name, age, residence, and post office address of the
16 alleged incapacitated person;

17 (b) The nature of the alleged incapacity in accordance with RCW
18 11.88.010;

1 (c) The approximate value and description of property, including
2 any compensation, pension, insurance, or allowance, to which the
3 alleged incapacitated person may be entitled;

4 (d) Whether there is, in any state, a guardian or limited guardian,
5 or pending guardianship action for the person or estate of the alleged
6 incapacitated person;

7 (e) The residence and post office address of the person whom
8 petitioner asks to be appointed guardian or limited guardian;

9 (f) The names and addresses, and nature of the relationship, so far
10 as known or can be reasonably ascertained, of the persons most closely
11 related by blood or marriage to the alleged incapacitated person;

12 (g) The name and address of the person or facility having the care
13 and custody of the alleged incapacitated person;

14 (h) The reason why the appointment of a guardian or limited
15 guardian is sought and the interest of the petitioner in the
16 appointment, and whether the appointment is sought as guardian or
17 limited guardian of the person, the estate, or both, and why no
18 alternative to guardianship is appropriate;

19 (i) The nature and degree of the alleged incapacity and the
20 specific areas of protection and assistance requested and the
21 limitation of rights requested to be included in the court's order of
22 appointment;

23 (j) The requested term of the limited guardianship to be included
24 in the court's order of appointment;

25 (k) Whether the petitioner is proposing a specific individual to
26 act as guardian ad litem and, if so, the individual's knowledge of or
27 relationship to any of the parties, and why the individual is proposed.

28 (2)(a) The attorney general may petition for the appointment of a
29 guardian or limited guardian in any case in which there is cause to
30 believe that a guardianship is necessary and no private party is able
31 and willing to petition.

32 (b) Prepayment of a filing fee shall not be required in any
33 guardianship or limited guardianship brought by the attorney general.
34 Payment of the filing fee shall be ordered from the estate of the
35 incapacitated person at the hearing on the merits of the petition,
36 unless in the judgment of the court, such payment would impose a
37 hardship upon the incapacitated person, in which case the filing shall
38 be waived.

1 (3) No filing fee shall be charged by the court for filing either
2 a petition for guardianship or a petition for limited guardianship if
3 the petition alleges that the alleged incapacitated person has total
4 assets of a value of less than three thousand dollars.

5 (4)(a) Notice that a guardianship proceeding has been commenced
6 shall be personally served upon or sent by first class mail to the
7 alleged incapacitated person and the guardian ad litem along with a
8 copy of the petition for appointment of a guardian. Such notice shall
9 be served not more than five court days after the petition has been
10 filed.

11 (b) Notice under this subsection shall include a clear and easily
12 readable statement of the legal rights of the alleged incapacitated
13 person that could be restricted or transferred to a guardian by a
14 guardianship order as well as the right to counsel of choice and to a
15 jury trial on the issue of incapacity. Such notice shall be in
16 substantially the following form and shall be in capital letters,
17 double-spaced, and in a type size not smaller than ten-point type:

18 IMPORTANT NOTICE
19 PLEASE READ CAREFULLY

20 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
21 COUNTY SUPERIOR COURT BY IF A GUARDIAN IS
22 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 23 (1) TO MARRY OR DIVORCE;
- 24 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 25 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 26 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 27 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 28 (6) TO POSSESS A LICENSE TO DRIVE;
- 29 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 30 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 31 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 32 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

33 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

34 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
35 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
36 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

1 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED
2 A GUARDIAN TO HELP YOU.

3 YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO
4 DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

5 (5) All petitions filed under the provisions of this section shall
6 be heard within sixty days unless an extension of time is requested by
7 a party within such sixty day period and granted for good cause shown.
8 If an extension is granted, the court shall set a new hearing date.

9 **Sec. 2.** RCW 11.88.040 and 1991 c 289 s 3 are each amended to read
10 as follows:

11 Before appointing a guardian or a limited guardian, notice of a
12 hearing, to be held not less than ten days after service thereof, shall
13 be served personally (~~to~~) upon the alleged incapacitated person, if
14 over fourteen years of age, and served upon the guardian ad litem.

15 Before appointing a guardian or a limited guardian, notice of a
16 hearing, to be held not less than ten days after service thereof, shall
17 be given by registered or certified mail to the last known address
18 requesting a return receipt signed by the addressee or an agent
19 appointed by the addressee, or by personal service in the manner
20 provided for services of summons, to the following:

21 (1) The alleged incapacitated person, or minor, if under fourteen
22 years of age;

23 (2) A parent, if the alleged incapacitated person is a minor, all
24 known children not residing with a notified person, and the spouse of
25 the alleged incapacitated person if any;

26 (3) Any other person who has been appointed as guardian or limited
27 guardian, or the person with whom the alleged incapacitated person
28 resides. No notice need be given to those persons named in subsections
29 (2) and (3) of this section if they have signed the petition for the
30 appointment of the guardian or limited guardian or have waived notice
31 of the hearing.

32 (4) If the petition is by a parent asking for appointment as
33 guardian or limited guardian of a minor child under the age of fourteen
34 years, or if the petition is accompanied by the written consent of a
35 minor of the age of fourteen years or upward, who consents to the
36 appointment of the guardian or limited guardian asked for, or if the
37 petition is by a nonresident guardian of any minor or incapacitated

1 person, then the court may appoint the guardian without notice of the
2 hearing. The court for good cause may reduce the number of days of
3 notice, but in every case, at least three days notice shall be given.

4 The alleged incapacitated person shall be present in court at the
5 final hearing on the petition: PROVIDED, That this requirement may be
6 waived at the discretion of the court for good cause other than mere
7 inconvenience shown in the report to be provided by the guardian ad
8 litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no
9 guardian ad litem is required to be appointed pursuant to RCW
10 11.88.090, as now or hereafter amended, at the discretion of the court
11 for good cause shown by a party. Alternatively, the court may remove
12 itself to the place of residence of the alleged incapacitated person
13 and conduct the final hearing in the presence of the alleged
14 incapacitated person. Final hearings on the petition may be held in
15 closed court without admittance of any person other than those
16 necessary to the action or proceeding.

17 If presence of the alleged incapacitated person is waived and the
18 court does not remove itself to the place of residence of such person,
19 the guardian ad litem shall appear in person at the final hearing on
20 the petition.

21 **Sec. 3.** RCW 11.88.045 and 1991 c 289 s 4 are each amended to read
22 as follows:

23 (1)(a) Alleged incapacitated individuals shall have the right to be
24 represented by counsel at any stage in guardianship proceedings. The
25 court shall provide counsel to represent any alleged incapacitated
26 person at public expense when either: (i) The individual is unable to
27 afford counsel, or (ii) the expense of counsel would result in
28 substantial hardship to the individual, or (iii) the individual does
29 not have practical access to funds with which to pay counsel. If the
30 individual can afford counsel but lacks practical access to funds, the
31 court shall provide counsel and may impose a reimbursement requirement
32 as part of a final order. When, in the opinion of the court, the
33 rights and interests of an alleged or adjudicated incapacitated person
34 cannot otherwise be adequately protected and represented, the court on
35 its own motion shall appoint an attorney at any time to represent such
36 person. Counsel shall be provided as soon as practicable after a
37 petition is filed and long enough before any final hearing to allow
38 adequate time for consultation and preparation. Absent a convincing

1 showing in the record to the contrary, a period of less than three
2 weeks shall be presumed by a reviewing court to be inadequate time for
3 consultation and preparation.

4 (b) Counsel for an alleged incapacitated individual shall act as an
5 advocate for the client and shall not substitute counsel's own judgment
6 for that of the client on the subject of what may be in the client's
7 best interests. Counsel's role shall be distinct from that of the
8 guardian ad litem, who is expected to promote the best interest of the
9 alleged incapacitated individual, rather than the alleged incapacitated
10 individual's expressed preferences.

11 (c) If an alleged incapacitated person is represented by counsel
12 and does not communicate with counsel, counsel may ask the court for
13 leave to withdraw for that reason. If satisfied, after affording the
14 alleged incapacitated person an opportunity for a hearing, that the
15 request is justified, the court may grant the request and allow the
16 case to proceed with the alleged incapacitated person unrepresented.

17 (2) During the pendency of any guardianship, any attorney
18 purporting to represent a person alleged or adjudicated to be
19 incapacitated shall petition to be appointed to represent the
20 incapacitated or alleged incapacitated person. Fees for representation
21 described in this section shall be subject to approval by the court
22 pursuant to the provisions of RCW 11.92.180.

23 (3) The alleged incapacitated person is further entitled upon
24 request to a jury trial on the issues of his or her alleged incapacity.
25 The standard of proof to be applied in a contested case, whether before
26 a jury or the court, shall be that of clear, cogent, and convincing
27 evidence.

28 (4) In all proceedings for appointment of a guardian or limited
29 guardian, the court must be presented with a written report from a
30 physician licensed to practice under chapter 18.71 or 18.57 RCW or
31 licensed or certified psychologist selected by the guardian ad litem.
32 The physician or psychologist shall have personally examined and
33 interviewed the alleged incapacitated person within thirty days of
34 preparation of the report to the court and shall have expertise in the
35 type of disorder or incapacity the alleged incapacitated person is
36 believed to have. The report shall contain the following information
37 and shall be set forth in substantially the following format:

38 (a) The name and address of the examining physician or
39 psychologist;

1 (b) The education and experience of the physician or psychologist
2 pertinent to the case;

3 (c) The dates of examinations of the alleged incapacitated person;

4 (d) A summary of the relevant medical, functional, neurological,
5 psychological, or psychiatric history of the alleged incapacitated
6 person as known to the examining physician or psychologist;

7 (e) The findings of the examining physician or psychologist as to
8 the condition of the alleged incapacitated person;

9 (f) Current medications;

10 (g) The effect of current medications on the alleged incapacitated
11 person's ability to understand or participate in guardianship
12 proceedings;

13 (h) Opinions on the specific assistance the alleged incapacitated
14 person needs;

15 (i) Identification of persons with whom the physician or
16 psychologist has met or spoken regarding the alleged incapacitated
17 person.

18 The court shall not enter an order appointing a guardian or limited
19 guardian until a medical or psychological report meeting the above
20 requirements is filed.

21 The requirement of filing a medical report is waived if the basis
22 of the guardianship is minority.

23 **Sec. 4.** RCW 11.88.090 and 1991 c 289 s 5 are each amended to read
24 as follows:

25 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
26 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
27 11.92.180, as now or hereafter amended, shall affect or impair the
28 power of any court to appoint a guardian ad litem to defend the
29 interests of any incapacitated person interested in any suit or matter
30 pending therein, or to commence and prosecute any suit in his behalf.

31 (2) Upon receipt of a petition for appointment of guardian or
32 limited guardian, except as provided herein, the court shall appoint a
33 guardian ad litem to represent the best interests of the alleged
34 incapacitated person, who shall be a person found or known by the court
35 to

36 (a) be free of influence from anyone interested in the result of
37 the proceeding;

1 (b) have the requisite knowledge, training, or expertise to perform
2 the duties required by this section.

3 No guardian ad litem need be appointed when a parent is petitioning
4 for a guardian or a limited guardian to be appointed for his or her
5 minor child and the minority of the child, as defined by RCW 11.92.010,
6 is the sole basis of the petition. The order appointing the guardian
7 ad litem shall recite the duties set forth in subsection (5) of this
8 section. The appointment of a guardian ad litem shall have no effect
9 on the legal competency of the alleged incapacitated person and shall
10 not overcome the presumption of competency or full legal and civil
11 rights of the alleged incapacitated person.

12 (3)(a) The superior court of each county shall develop by September
13 1, 1991, a registry of persons who are willing and qualified to serve
14 as guardians ad litem in guardianship matters. The court shall choose
15 as guardians ad litem only persons whose names appear on the registry,
16 except in extraordinary circumstances.

17 (b) To be eligible for the registry a person shall:

18 (i) Present a written statement of qualifications describing the
19 person's knowledge, training, and experience in each of the following:
20 Needs of impaired elderly people, physical disabilities, mental
21 illness, developmental disabilities, and other areas relevant to the
22 needs of incapacitated persons, legal procedure, and the requirements
23 of chapters 11.88 and 11.92 RCW; and

24 (ii) Complete a training program adopted by the court, or, in the
25 absence of a locally adopted program, a candidate for inclusion upon
26 the registry shall have completed a model training program as described
27 in (d) of this subsection.

28 (c) The superior court of each county shall approve training
29 programs designed to:

30 (i) Train otherwise qualified human service professionals in those
31 aspects of legal procedure and the requirements of chapters 11.88 and
32 11.92 RCW with which a guardian ad litem should be familiar;

33 (ii) Train otherwise qualified legal professionals in those aspects
34 of medicine, social welfare, and social service delivery systems with
35 which a guardian ad litem should be familiar.

36 (d) The superior court of each county may approve a guardian ad
37 litem training program on or before June 1, 1991. The department of
38 social and health services, aging and adult services administration,
39 shall convene an advisory group to develop a model guardian ad litem

1 training program. The advisory group shall consist of representatives
2 from consumer, advocacy, and professional groups knowledgeable in
3 developmental disabilities, neurological impairment, physical
4 disabilities, mental illness, aging, legal, court administration, and
5 other interested parties.

6 (e) Any superior court that has not adopted a guardian ad litem
7 training program by September 1, 1991, shall require utilization of a
8 model program developed by the advisory group as described in (d) of
9 this subsection, to assure that candidates applying for registration as
10 a qualified guardian ad litem shall have satisfactorily completed
11 training to attain these essential minimum qualifications to act as
12 guardian ad litem.

13 (4) The guardian ad litem's written statement of qualifications
14 required by RCW 11.88.090(3)(b)(i) shall be made part of the record in
15 each matter in which the person is appointed guardian ad litem.

16 (5) The guardian ad litem appointed pursuant to this section shall
17 have the following duties:

18 (a) To meet and consult with the alleged incapacitated person as
19 soon as practicable following appointment and explain, in language
20 which such person can reasonably be expected to understand, the
21 substance of the petition, the nature of the resultant proceedings, the
22 person's right to contest the petition, the identification of the
23 proposed guardian or limited guardian, the right to a jury trial on the
24 issue of his or her alleged incapacity, the right to independent legal
25 counsel as provided by RCW 11.88.045, and the right to be present in
26 court at the hearing on the petition;

27 (b) To obtain a written report according to RCW 11.88.045; and such
28 other written or oral reports from other qualified professionals as are
29 necessary to permit the guardian ad litem to complete the report
30 required by this section;

31 (c) To meet with the person whose appointment is sought as guardian
32 or limited guardian and ascertain:

33 (i) The proposed guardian's knowledge of the duties, requirements,
34 and limitations of a guardian; and

35 (ii) The steps the proposed guardian intends to take or has taken
36 to identify and meet the needs of the alleged incapacitated person;

37 (d) To consult as necessary to complete the investigation and
38 report required by this section with those known relatives, friends, or

1 other persons the guardian ad litem determines have had a significant,
2 continuing interest in the welfare of the alleged incapacitated person;

3 (e) To provide the court with a written report which shall include
4 the following:

5 (i) A description of the nature, cause, and degree of incapacity,
6 and the basis upon which this judgment was made;

7 (ii) A description of the needs of the incapacitated person for
8 care and treatment, the probable residential requirements of the
9 alleged incapacitated person and the basis upon which these findings
10 were made;

11 (iii) An evaluation of the appropriateness of the guardian or
12 limited guardian whose appointment is sought and a description of the
13 steps the proposed guardian has taken or intends to take to identify
14 and meet current and emerging needs of the incapacitated person;

15 (iv) A description of the abilities of the alleged incapacitated
16 person and a recommendation as to whether a guardian or limited
17 guardian should be appointed. If appointment of a limited guardian is
18 recommended, the guardian ad litem shall recommend the specific areas
19 of authority the limited guardian should have and the limitations and
20 disabilities to be placed on the incapacitated person;

21 (v) An evaluation of the person's mental ability to rationally
22 exercise the right to vote and the basis upon which the evaluation is
23 made;

24 (vi) Any expression of approval or disapproval made by the alleged
25 incapacitated person concerning the proposed guardian or limited
26 guardian or guardianship or limited guardianship;

27 (vii) Identification of persons with significant interest in the
28 welfare of the alleged incapacitated person who should be advised of
29 their right to request special notice of proceedings pursuant to RCW
30 11.92.150; and

31 (viii) Unless independent counsel has appeared for the alleged
32 incapacitated person, an explanation of how the alleged incapacitated
33 person responded to the advice of the right to jury trial, to
34 independent counsel and to be present at the hearing on the petition.

35 Within forty-five days after notice of commencement of the
36 guardianship proceeding has been served upon the guardian ad litem, and
37 at least ten days before the hearing on the petition, unless an
38 extension or reduction of time has been granted by the court for good
39 cause, the guardian ad litem shall file its report and send a copy to

1 the alleged incapacitated person and his or her spouse, all children
2 not residing with a notified person, those persons described in ((+d+))
3 (e)(vii) of this subsection, and persons who have filed a request for
4 special notice pursuant to RCW 11.92.150;

5 (f) To advise the court of the need for appointment of counsel for
6 the alleged incapacitated person within five court days after the
7 meeting described in (a) of this subsection unless (i) counsel has
8 appeared, (ii) the alleged incapacitated person affirmatively
9 communicated a wish not to be represented by counsel after being
10 advised of the right to representation and of the conditions under
11 which court-provided counsel may be available, or (iii) the alleged
12 incapacitated person was unable to communicate at all on the subject,
13 and the guardian ad litem is satisfied that the alleged incapacitated
14 person does not affirmatively desire to be represented by counsel.

15 (6) If the petition is brought by an interested person or entity
16 requesting the appointment of some other qualified person or entity and
17 a prospective guardian or limited guardian cannot be found, the court
18 shall order the guardian ad litem to investigate the availability of a
19 possible guardian or limited guardian and to include the findings in a
20 report to the court pursuant to RCW 11.88.090(5)(e) as now or hereafter
21 amended.

22 (7) The court appointed guardian ad litem shall have the authority,
23 in the event that the alleged incapacitated person is in need of
24 emergency life-saving medical services, and is unable to consent to
25 such medical services due to incapacity pending the hearing on the
26 petition to give consent for such emergency life-saving medical
27 services on behalf of the alleged incapacitated person.

28 (8) The guardian ad litem shall receive a fee determined by the
29 court. The fee shall be charged to the alleged incapacitated person
30 unless the court finds that such payment would result in substantial
31 hardship upon such person, in which case the county shall be
32 responsible for such costs: PROVIDED, That if no guardian or limited
33 guardian is appointed the court may charge such fee to the petitioner
34 or the alleged incapacitated person, or divide the fee, as it deems
35 just; and if the petition is found to be frivolous or not brought in
36 good faith, the guardian ad litem fee shall be charged to the
37 petitioner. The court shall not be required to provide for the payment
38 of a fee to any salaried employee of a public agency.

1 (9) Upon the presentation of the guardian ad litem report and the
2 entry of an order either dismissing the petition for appointment of
3 guardian or limited guardian or appointing a guardian or limited
4 guardian, the guardian ad litem shall be dismissed and shall have no
5 further duties or obligations unless otherwise ordered by the court.
6 If the court orders the guardian ad litem to perform further duties or
7 obligations, they shall not be performed at county expense.

8 **Sec. 5.** RCW 11.88.095 and 1991 c 289 s 6 are each amended to read
9 as follows:

10 (1) In determining the disposition of a petition for guardianship,
11 the court's order shall be based upon findings as to the capacities,
12 condition, and needs of the alleged incapacitated person, and shall not
13 be based solely upon agreements made by the parties.

14 (2) Every order appointing a full or limited guardian of the person
15 or estate shall include:

16 (a) Findings as to the capacities, condition, and needs of the
17 alleged incapacitated person;

18 (b) The amount of the bond, if any, or a bond review period;

19 (c) When the next report of the guardian is due;

20 (d) Whether the guardian ad litem shall continue acting as guardian
21 ad litem;

22 (e) Whether a review hearing shall be required upon the filing of
23 the inventory;

24 (f) The authority of the guardian, if any, for investment and
25 expenditure of the ward's estate; and

26 (g) Names and addresses of those persons described in RCW
27 11.88.090(5)(d), if any, whom the court believes should receive copies
28 of further pleadings filed by the guardian with respect to the
29 guardianship.

30 (3) If the court determines that a limited guardian should be
31 appointed, the order shall specifically set forth the limits by either
32 stating exceptions to the otherwise full authority of the guardian or
33 by stating the specific authority of the guardian.

34 (4) In determining the disposition of a petition for appointment of
35 a guardian or limited guardian of the estate only, the court shall
36 consider whether the alleged incapacitated person is capable of giving
37 informed medical consent or of making other personal decisions and, if

1 not, whether a guardian or limited guardian of the person of the
2 alleged incapacitated person should be appointed for that purpose.

3 (5) Unless otherwise ordered, any powers of attorney or durable
4 powers of attorney shall be revoked upon appointment of a guardian or
5 limited guardian of the estate.

6 Unless otherwise ordered, any medical powers of attorney shall be
7 revoked upon appointment of a guardian or limited guardian of the
8 person.

9 **Sec. 6.** RCW 11.92.050 and 1990 c 122 s 23 are each amended to read
10 as follows:

11 (1) Upon the filing of any intermediate guardianship or limited
12 guardianship account required by statute, or of any intermediate
13 account required by court rule or order, the guardian or limited
14 guardian may petition the court for an order settling his or her
15 account with regard to any ~~((and all))~~ receipts, expenditures, and
16 investments made and acts done by the guardian or limited guardian to
17 the date of ~~((said))~~ the interim report. Upon such petition being
18 filed, the court may in its discretion, where the size or condition of
19 the estate warrants it, set a date for the hearing of ~~((such))~~ the
20 petition and require the service of the petition and a notice of
21 ~~((such))~~ the hearing as provided in RCW 11.88.040 as now or hereafter
22 amended; and, in the event ~~((such))~~ a hearing ~~((be))~~ is ordered, the
23 court ~~((shall))~~ may also appoint a guardian ad litem, whose duty it
24 shall be to investigate the report of the guardian or limited guardian
25 of the estate and to advise the court thereon at ~~((said))~~ the hearing,
26 in writing. At ~~((such))~~ the hearing on ~~((said))~~ the report of the
27 guardian or limited guardian, if the court ~~((be))~~ is satisfied that the
28 actions of the guardian or limited guardian have been proper, and that
29 the guardian or limited guardian has in all respects discharged his or
30 her trust with relation to ~~((such))~~ the receipts, expenditures,
31 investments, and acts, then, in such event, the court shall enter an
32 order approving such account~~((, and such))~~. If the court has appointed
33 a guardian ad litem, the order shall be final and binding upon the
34 incapacitated person, subject only to the right of appeal as upon a
35 final order; provided that at the time of final account of said
36 guardian or limited guardian or within one year after ~~((said))~~ the
37 incapacitated person attains his or her majority any such interim

1 account may be challenged by ~~((said))~~ the incapacitated person on the
2 ground of fraud.

3 (2) The procedure established in subsection (1) of this section for
4 financial accounts by guardians or limited guardians of the estate
5 shall apply to personal care reports filed by guardians or limited
6 guardians of the person under RCW 11.92.043.

7 **Sec. 7.** RCW 11.92.053 and 1990 c 122 s 24 are each amended to read
8 as follows:

9 Within ninety days after the termination of a guardianship for any
10 reason ~~((other than the death of the incapacitated person intestate))~~,
11 the guardian or limited guardian of the estate shall petition the court
12 for an order settling his or her account as filed in accordance with
13 RCW 11.92.040(2) with regard to any ~~((and all))~~ receipts, expenditures,
14 and investments made and acts done by the guardian to the date of
15 ~~((said))~~ the termination. Upon ~~((such))~~ the filing of the petition
16 ~~((being filed))~~, the court shall set a date for the hearing of ~~((such))~~
17 the petition after notice has been given in accordance with RCW
18 11.88.040. Any person interested may file objections to ~~((such))~~ the
19 petition or may appear at the time and place fixed for the hearing
20 thereof and present his or her objections thereto. The court may take
21 such testimony as it deems proper or necessary to determine whether an
22 order settling the account should be issued and the transactions of the
23 guardian be approved, and the court may appoint a guardian ad litem to
24 review the report.

25 At ~~((such))~~ the hearing on ~~((said))~~ the petition of the guardian or
26 limited guardian, if the court ~~((be))~~ is satisfied that the actions of
27 the guardian or limited guardian have been proper, and that the
28 guardian has in all respects discharged his or her trust with relation
29 to ~~((such))~~ the receipts, expenditures, investments, and acts, then, in
30 such event, the court shall enter an order approving ~~((such))~~ the
31 account, and ~~((such))~~ the order shall be final and binding upon the
32 incapacitated person, subject only to the right of appeal as upon a
33 final order~~((:—PROVIDED, That))~~. However, within one year after
34 ~~((said))~~ the incompetent attains his or her majority any such account
35 may be challenged by the incapacitated person on the ground of fraud.

36 **Sec. 8.** RCW 11.92.180 and 1994 c 68 s 1 are each amended to read
37 as follows:

1 (1) A guardian or limited guardian shall be allowed such
2 compensation for his or her services as guardian or limited guardian as
3 the court shall deem just and reasonable. Guardians and limited
4 guardians shall not be compensated at county or state expense.
5 Additional compensation may be allowed for other administrative costs,
6 including services of an attorney and for other services not provided
7 by the guardian or limited guardian. Where a guardian or limited
8 guardian is an attorney, the guardian or limited guardian shall
9 separately account for time for which compensation is requested for
10 services as a guardian or limited guardian as contrasted to time for
11 which compensation for legal services provided to the guardianship is
12 requested. In all cases, compensation of the guardian or limited
13 guardian and his or her expenses including attorney's fees shall be
14 fixed by the court and may be allowed at any annual or final
15 accounting; but at any time during the administration of the estate,
16 the guardian or limited guardian or his or her attorney may apply to
17 the court for an allowance upon the compensation or necessary expenses
18 of the guardian or limited guardian and for attorney's fees for
19 services already performed. If the court finds that the guardian or
20 limited guardian has failed to discharge his or her duties as such in
21 any respect, it may deny the guardian any compensation whatsoever or
22 may reduce the compensation which would otherwise be allowed. Where
23 the incapacitated person is a department of social and health services
24 client residing in a nursing facility or in a residential or home
25 setting and is required by the department of social and health services
26 to contribute a portion of their income towards the cost of residential
27 or supportive services then the department shall be entitled to notice
28 of proceedings as described in RCW 11.92.150. Any hearings scheduled
29 affecting the assets of the incapacitated person, available for payment
30 towards costs of care, shall be scheduled to reasonably accommodate the
31 presence of a representative of the department. The department is
32 authorized to delegate a representative to offer written or oral
33 testimony at the hearings regarding the amount of guardianship fees and
34 additional compensation for administrative costs ((shall not exceed the
35 amount allowed by the department of social and health services by rule,
36 and shall not include compensation for services provided or funded by
37 the department or a department contractor that the incapacitated person
38 is eligible to receive))).

1 (2) The department of social and health services shall establish
2 procedures to determine the position to be taken at hearings on
3 guardianship fees and additional compensation for administrative costs
4 that may be allowed by the court as compensation for a guardian or
5 limited guardian.

6 **Sec. 9.** RCW 11.94.010 and 1989 c 211 s 1 are each amended to read
7 as follows:

8 (1) Whenever a principal designates another as his or her attorney
9 in fact or agent, by a power of attorney in writing, and the writing
10 contains the words "This power of attorney shall not be affected by
11 disability of the principal," or "This power of attorney shall become
12 effective upon the disability of the principal," or similar words
13 showing the intent of the principal that the authority conferred shall
14 be exercisable notwithstanding the principal's disability, the
15 authority of the attorney in fact or agent is exercisable on behalf of
16 the principal as provided notwithstanding later disability or
17 incapacity of the principal at law or later uncertainty as to whether
18 the principal is dead or alive. All acts done by the attorney in fact
19 or agent pursuant to the power during any period of disability or
20 incompetence or uncertainty as to whether the principal is dead or
21 alive have the same effect and inure to the benefit of and bind the
22 principal or the principal's guardian or heirs, devisees, and personal
23 representative as if the principal were alive, competent, and not
24 disabled. A principal may nominate, by a durable power of attorney,
25 the guardian or limited guardian of his or her estate or person for
26 consideration by the court if protective proceedings for the
27 principal's person or estate are thereafter commenced. The court shall
28 make its appointment in accordance with the principal's most recent
29 nomination in a durable power of attorney except for good cause or
30 disqualification. If a guardian thereafter is appointed for the
31 principal, the attorney in fact or agent, during the continuance of the
32 appointment, shall account to the guardian rather than the principal.
33 The guardian has the same power the principal would have had if the
34 principal were not disabled or incompetent, to revoke, suspend or
35 terminate all or any part of the power of attorney or agency.

36 (2) Persons shall place reasonable reliance on any determination of
37 disability or incompetence as provided in the instrument that specifies

1 the time and the circumstances under which the power of attorney
2 document becomes effective.

3 (3) A principal may authorize his or her attorney-in-fact to
4 provide informed consent for health care decisions on the principal's
5 behalf. Unless he or she is the spouse, or adult child or brother or
6 sister of the principal, none of the following persons may act as the
7 attorney-in-fact for the principal: Any of the principal's physicians,
8 the physicians' employees, or the owners, administrators, or employees
9 of the health care facility where the principal resides or receives
10 care. This authorization is subject to the same limitations as those
11 that apply to a guardian under RCW (~~11.92.040(3) (a) through (d)~~)
12 11.92.043(5) (a) through (c).

--- END ---