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**SUBSTITUTE HOUSE BILL 2989**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Mitchell, Tokuda, Sheahan, Costa and Veloria)

Read first time 02/06/98. Referred to Committee on .

1 AN ACT Relating to guardians and guardians ad litem; and amending  
2 RCW 11.88.045, 11.88.090, 11.88.095, and 11.92.180.

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

4 **Sec. 1.** RCW 11.88.045 and 1996 c 249 s 9 are each amended to read  
5 as follows:

6 (1)(a) Alleged incapacitated individuals shall have the right to be  
7 represented by willing counsel of their choosing at any stage in  
8 guardianship proceedings. The court shall provide counsel to represent  
9 any alleged incapacitated person at public expense when either: (i)  
10 The individual is unable to afford counsel, or (ii) the expense of  
11 counsel would result in substantial hardship to the individual, or  
12 (iii) the individual does not have practical access to funds with which  
13 to pay counsel. If the individual can afford counsel but lacks  
14 practical access to funds, the court shall provide counsel and may  
15 impose a reimbursement requirement as part of a final order. When, in  
16 the opinion of the court, the rights and interests of an alleged or  
17 adjudicated incapacitated person cannot otherwise be adequately  
18 protected and represented, the court on its own motion shall appoint an  
19 attorney at any time to represent such person. Counsel shall be

1 provided as soon as practicable after a petition is filed and long  
2 enough before any final hearing to allow adequate time for consultation  
3 and preparation. Absent a convincing showing in the record to the  
4 contrary, a period of less than three weeks shall be presumed by a  
5 reviewing court to be inadequate time for consultation and preparation.

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

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

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

25 (3) The alleged incapacitated person is further entitled to testify  
26 and present evidence and, upon request, entitled to a jury trial on the  
27 issues of his or her alleged incapacity. Only the alleged  
28 incapacitated person or the alleged incapacitated person's attorney may  
29 request a jury trial. The standard of proof to be applied in a  
30 contested case, whether before a jury or the court, shall be that of  
31 clear, cogent, and convincing evidence.

32 (4) In all proceedings for appointment of a guardian or limited  
33 guardian, the court must be presented with a written report from a  
34 physician licensed to practice under chapter 18.71 or 18.57 RCW or  
35 licensed or certified psychologist selected by the guardian ad litem.  
36 If the alleged incapacitated person opposes the health care  
37 professional selected by the guardian ad litem to prepare the medical  
38 report, then the guardian ad litem shall use the health care  
39 professional selected by the alleged incapacitated person. The

1 guardian ad litem may also obtain a supplemental examination. The  
2 physician or psychologist shall have personally examined and  
3 interviewed the alleged incapacitated person within thirty days of  
4 preparation of the report to the court and shall have expertise in the  
5 type of disorder or incapacity the alleged incapacitated person is  
6 believed to have. The report shall contain the following information  
7 and shall be set forth in substantially the following format:

8 (a) The name and address of the examining physician or  
9 psychologist;

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

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

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

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

18 (f) Current medications;

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

22 (h) Opinions on the specific assistance the alleged incapacitated  
23 person needs;

24 (i) Identification of persons with whom the physician or  
25 psychologist has met or spoken regarding the alleged incapacitated  
26 person.

27 The court shall not enter an order appointing a guardian or limited  
28 guardian until a medical or psychological report meeting the above  
29 requirements is filed.

30 The requirement of filing a medical report is waived if the basis  
31 of the guardianship is minority.

32 (5) During the pendency of an action to establish a guardianship,  
33 a petitioner or any person may move for temporary relief under chapter  
34 7.40 RCW, to protect the alleged incapacitated person from abuse,  
35 neglect, abandonment, or exploitation, as those terms are defined in  
36 RCW 74.34.020, or to address any other emergency needs of the alleged  
37 incapacitated person. Any alternative arrangement executed before  
38 filing the petition for guardianship shall remain effective unless the  
39 court grants the relief requested under chapter 7.40 RCW, or unless,

1 following notice and a hearing at which all parties directly affected  
2 by the arrangement are present, the court finds that the alternative  
3 arrangement should not remain effective.

4 **Sec. 2.** RCW 11.88.090 and 1996 c 249 s 10 are each amended to read  
5 as follows:

6 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010  
7 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and  
8 11.92.180 shall affect or impair the power of any court to appoint a  
9 guardian ad litem to defend the interests of any incapacitated person  
10 interested in any suit or matter pending therein, or to commence and  
11 prosecute any suit in his or her behalf.

12 (2) Upon receipt of a petition for appointment of guardian or  
13 limited guardian, except as provided herein, the court shall appoint a  
14 guardian ad litem to represent the best interests of the alleged  
15 incapacitated person, who shall be a person found or known by the court  
16 to:

17 (a) Be free of influence from anyone interested in the result of  
18 the proceeding; and

19 (b) Have the requisite knowledge, training, or expertise to perform  
20 the duties required by this section.

21 The guardian ad litem shall within five days of receipt of notice  
22 of appointment file with the court and serve, either personally or by  
23 certified mail with return receipt, each party with a statement  
24 including: His or her training relating to the duties as a guardian ad  
25 litem; his or her criminal history as defined in RCW 9.94A.030 for the  
26 period covering ten years prior to the appointment; his or her hourly  
27 rate, if compensated; whether the guardian ad litem has had any contact  
28 with a party to the proceeding prior to his or her appointment; and  
29 whether he or she has an apparent conflict of interest. Within three  
30 days of the later of the actual service or filing of the guardian ad  
31 litem's statement, any party may set a hearing and file and serve a  
32 motion for an order to show cause why the guardian ad litem should not  
33 be removed for one of the following three reasons: (i) Lack of  
34 expertise necessary for the proceeding; (ii) an hourly rate higher than  
35 what is reasonable for the particular proceeding; or (iii) a conflict  
36 of interest. Notice of the hearing shall be provided to the guardian  
37 ad litem and all parties. If, after a hearing, the court enters an  
38 order replacing the guardian ad litem, findings shall be included,

1 expressly stating the reasons for the removal. If the guardian ad  
2 litem is not removed, the court has the authority to assess to the  
3 moving party, attorneys' fees and costs related to the motion. The  
4 court shall assess attorneys' fees and costs for frivolous motions.

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

14 (3)(a) The superior court of each county shall develop and maintain  
15 a registry of persons who are willing and qualified to serve as  
16 guardians ad litem in guardianship matters. The court shall choose as  
17 guardian ad litem a person whose name appears on the registry in a  
18 system of consistent rotation, except in extraordinary circumstances  
19 such as the need for particular expertise. The court shall develop  
20 procedures for periodic review of the persons on the registry and for  
21 probation, suspension, or removal of persons on the registry for  
22 failure to perform properly their duties as guardian ad litem. In the  
23 event the court does not select the person next on the list, it shall  
24 include in the order of appointment a written reason for its decision.

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

26 (i) Present a written statement outlining his or her background and  
27 qualifications. The background statement shall include, but is not  
28 limited to, the following information:

29 (A) Level of formal education;

30 (B) Training related to the guardian ad litem's duties;

31 (C) Number of years' experience as a guardian ad litem;

32 (D) Number of appointments as a guardian ad litem and the county or  
33 counties of appointment;

34 (E) Criminal history, as defined in RCW 9.94A.030; and

35 (F) Evidence of the person's knowledge, training, and experience in  
36 each of the following: Needs of impaired elderly people, physical  
37 disabilities, mental illness, developmental disabilities, and other  
38 areas relevant to the needs of incapacitated persons, legal procedure,  
39 and the requirements of chapters 11.88 and 11.92 RCW.

1 The written statement of qualifications shall include a statement  
2 of the number of times the guardian ad litem has been removed for  
3 failure to perform his or her duties as guardian ad litem; and

4 (ii) Complete the model training program as described in (d) of  
5 this subsection.

6 (c) The background and qualification information shall be updated  
7 annually.

8 (d) The department of social and health services shall convene an  
9 advisory group to develop a model guardian ad litem training program  
10 and shall update the program biennially. The advisory group shall  
11 consist of representatives from consumer, advocacy, and professional  
12 groups knowledgeable in developmental disabilities, neurological  
13 impairment, physical disabilities, mental illness, aging, legal, court  
14 administration, the Washington state bar association, and other  
15 interested parties.

16 (e) The superior court shall require utilization of the model  
17 program developed by the advisory group as described in (d) of this  
18 subsection, to assure that candidates applying for registration as a  
19 qualified guardian ad litem shall have satisfactorily completed  
20 training to attain these essential minimum qualifications to act as  
21 guardian ad litem.

22 (4) The guardian ad litem appointed pursuant to this section shall  
23 have the following duties:

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

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

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

1 (i) The proposed guardian's knowledge of the duties, requirements,  
2 and limitations of a guardian; and  
3 (ii) The steps the proposed guardian intends to take or has taken  
4 to identify and meet the needs of the alleged incapacitated person;  
5 (d) To consult as necessary to complete the investigation and  
6 report required by this section with those known relatives, friends, or  
7 other persons the guardian ad litem determines have had a significant,  
8 continuing interest in the welfare of the alleged incapacitated person;  
9 (e) To investigate alternate arrangements made, or which might be  
10 created, by or on behalf of the alleged incapacitated person, such as  
11 revocable or irrevocable trusts, or durable powers of attorney; whether  
12 good cause exists for any such arrangements to be discontinued; and why  
13 such arrangements should not be continued or created in lieu of a  
14 guardianship;  
15 (f) To provide the court with a written report which shall include  
16 the following:  
17 (i) A description of the nature, cause, and degree of incapacity,  
18 and the basis upon which this judgment was made;  
19 (ii) A description of the needs of the incapacitated person for  
20 care and treatment, the probable residential requirements of the  
21 alleged incapacitated person and the basis upon which these findings  
22 were made;  
23 (iii) An evaluation of the appropriateness of the guardian or  
24 limited guardian whose appointment is sought and a description of the  
25 steps the proposed guardian has taken or intends to take to identify  
26 and meet current and emerging needs of the incapacitated person;  
27 (iv) A description of any alternative arrangements previously made  
28 by the alleged incapacitated person or which could be made, and whether  
29 and to what extent such alternatives should be used in lieu of a  
30 guardianship, and if the guardian ad litem is recommending  
31 discontinuation of any such arrangements, specific findings as to why  
32 such arrangements are contrary to the best interest of the alleged  
33 incapacitated person;  
34 (v) A description of the abilities of the alleged incapacitated  
35 person and a recommendation as to whether a guardian or limited  
36 guardian should be appointed. If appointment of a limited guardian is  
37 recommended, the guardian ad litem shall recommend the specific areas  
38 of authority the limited guardian should have and the limitations and  
39 disabilities to be placed on the incapacitated person;

1 (vi) An evaluation of the person's mental ability to rationally  
2 exercise the right to vote and the basis upon which the evaluation is  
3 made;

4 (vii) Any expression of approval or disapproval made by the alleged  
5 incapacitated person concerning the proposed guardian or limited  
6 guardian or guardianship or limited guardianship;

7 (viii) Identification of persons with significant interest in the  
8 welfare of the alleged incapacitated person who should be advised of  
9 their right to request special notice of proceedings pursuant to RCW  
10 11.92.150; and

11 (ix) Unless independent counsel has appeared for the alleged  
12 incapacitated person, an explanation of how the alleged incapacitated  
13 person responded to the advice of the right to jury trial, to  
14 independent counsel and to be present at the hearing on the petition.

15 Within forty-five days after notice of commencement of the  
16 guardianship proceeding has been served upon the guardian ad litem, and  
17 at least fifteen days before the hearing on the petition, unless an  
18 extension or reduction of time has been granted by the court for good  
19 cause, the guardian ad litem shall file its report and send a copy to  
20 the alleged incapacitated person and his or her counsel, spouse, all  
21 children not residing with a notified person, those persons described  
22 in (f)(viii) of this subsection, and persons who have filed a request  
23 for special notice pursuant to RCW 11.92.150. If the guardian ad litem  
24 needs additional time to finalize his or her report, then the guardian  
25 ad litem shall petition the court for a postponement of the hearing or,  
26 with the consent of all other parties, an extension or reduction of  
27 time for filing the report. If the hearing does not occur within sixty  
28 days of filing the petition, then upon the two-month anniversary of  
29 filing the petition and on or before the same day of each following  
30 month until the hearing, the guardian ad litem shall file interim  
31 reports summarizing his or her activities on the proceeding during that  
32 time period as well as fees and costs incurred;

33 (g) To advise the court of the need for appointment of counsel for  
34 the alleged incapacitated person within five court days after the  
35 meeting described in (a) of this subsection unless (i) counsel has  
36 appeared, (ii) the alleged incapacitated person affirmatively  
37 communicated a wish not to be represented by counsel after being  
38 advised of the right to representation and of the conditions under  
39 which court-provided counsel may be available, or (iii) the alleged



1 incapacitated person was unable to communicate at all on the subject,  
2 and the guardian ad litem is satisfied that the alleged incapacitated  
3 person does not affirmatively desire to be represented by counsel.

4 (5) If the petition is brought by an interested person or entity  
5 requesting the appointment of some other qualified person or entity and  
6 a prospective guardian or limited guardian cannot be found, the court  
7 shall order the guardian ad litem to investigate the availability of a  
8 possible guardian or limited guardian and to include the findings in a  
9 report to the court pursuant to subsection (4)(f) of this section.

10 (6) The parties to the proceeding may file responses to the  
11 guardian ad litem report with the court and deliver such responses to  
12 the other parties and the guardian ad litem at any time up to the  
13 second day prior to the hearing. If a guardian ad litem fails to file  
14 his or her report in a timely manner, the hearing shall be continued to  
15 give the court and the parties at least fifteen days before the hearing  
16 to review the report. At any time during the proceeding upon motion of  
17 any party or on the court's own motion, the court may remove the  
18 guardian ad litem for failure to perform his or her duties as specified  
19 in this chapter, provided that the guardian ad litem shall have five  
20 days' notice of any motion to remove before the court enters such  
21 order. In addition, the court in its discretion may reduce a guardian  
22 ad litem's fee for failure to carry out his or her duties.

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

29 (8) The court-appointed guardian ad litem shall have the authority  
30 to move for temporary relief under chapter 7.40 RCW to protect the  
31 alleged incapacitated person from abuse, neglect, abandonment, or  
32 exploitation, as those terms are defined in RCW 74.34.020, or to  
33 address any other emergency needs of the alleged incapacitated person.  
34 Any alternative arrangement executed before filing the petition for  
35 guardianship shall remain effective unless the court grants the relief  
36 requested under chapter 7.40 RCW, or unless, following notice and a  
37 hearing at which all parties directly affected by the arrangement are  
38 present, the court finds that the alternative arrangement should not  
39 remain effective.

1 (9) The guardian ad litem shall receive a just and reasonable fee,  
2 as determined by the court. The fee shall be charged to the alleged  
3 incapacitated person unless the court finds that such payment would  
4 result in substantial hardship upon such person, in which case the  
5 county shall be responsible for such costs: PROVIDED, That if no  
6 guardian or limited guardian is appointed the court may charge such fee  
7 to the petitioner or the alleged incapacitated person or to any other  
8 party, or divide the fee, as it deems just; and if the petition or any  
9 proceeding is found to be frivolous or not brought in good faith, the  
10 guardian ad litem fee shall be charged to the petitioner or the party  
11 who initiated the proceeding. When determining whether the guardian ad  
12 litem fees requested are just and reasonable and when determining the  
13 proper party to pay the fees, the court may, in its discretion,  
14 consider whether the person or estate of the ward was benefited by the  
15 proceedings and any other factors the court considers relevant. The  
16 court shall not be required to provide for the payment of a fee to any  
17 salaried employee of a public agency.

18 (10) Upon the presentation of the guardian ad litem report and the  
19 entry of an order either dismissing the petition for appointment of  
20 guardian or limited guardian or appointing a guardian or limited  
21 guardian, the guardian ad litem shall be dismissed and shall have no  
22 further duties or obligations unless otherwise ordered by the court.  
23 If the court orders the guardian ad litem to perform further duties or  
24 obligations, (~~they shall not~~) the duties of the guardian ad litem may  
25 be performed at county expense with prior court approval.

26 (11) The guardian ad litem shall appear in person at all hearings  
27 on the petition unless all parties provide a written waiver of the  
28 requirement to appear.

29 (12) At any hearing the court may consider whether any person who  
30 makes decisions regarding the alleged incapacitated person or estate  
31 has breached a statutory or fiduciary duty.

32 **Sec. 3.** RCW 11.88.095 and 1995 c 297 s 5 are each amended to read  
33 as follows:

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

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

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

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

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

7 (d) Whether the guardian ad litem shall continue acting as guardian  
8 ad litem;

9 (e) Whether the court-appointed attorney for the alleged  
10 incapacitated person, if any, shall continue acting as attorney for the  
11 alleged incapacitated person and the scope of the representation;

12 (f) Whether a review hearing shall be required upon the filing of  
13 the inventory;

14 (~~(f)~~) (g) The authority of the guardian, if any, for investment  
15 and expenditure of the ward's estate; and

16 (~~(g)~~) (h) Names and addresses of those persons described in RCW  
17 11.88.090(~~(5)(d)~~) (4)(d), if any, whom the court believes should  
18 receive copies of further pleadings filed by the guardian with respect  
19 to the guardianship.

20 (i) If the petition requests reasonable attorneys' fees be paid  
21 from the estate of the ward, or if any other party to the proceedings  
22 petitions for the award of attorneys' fees to be paid from the ward's  
23 estate, the court may, at the time of the disposition of the petition  
24 for guardianship or at another appropriate time, make a finding whether  
25 the attorneys' fees requested are just and reasonable and properly  
26 payable from the ward's estate and whether any such fees should be  
27 charged to any other party. In determining whether the attorneys' fees  
28 requested are just and reasonable and properly payable from the ward's  
29 estate, the court, in its discretion, may consider whether the person  
30 or estate of the ward was benefited by the proceedings and any other  
31 factors the court considers relevant.

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

36 (4) In determining the disposition of a petition for appointment of  
37 a guardian or limited guardian of the estate only, the court shall  
38 consider whether the alleged incapacitated person is capable of giving  
39 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 If there is an existing medical power of attorney, the court must  
7 make a specific finding of fact regarding the continued validity of  
8 that medical power of attorney before appointing a guardian or limited  
9 guardian for the person.

10 **Sec. 4.** RCW 11.92.180 and 1995 c 297 s 8 are each amended to read  
11 as follows:

12 A guardian or limited guardian shall be allowed such compensation  
13 for his or her services as guardian or limited guardian as the court  
14 shall deem just and reasonable. Guardians and limited guardians shall  
15 not be compensated at county or state expense. Additional compensation  
16 may be allowed for other administrative costs, including services of an  
17 attorney and for other services not provided by the guardian or limited  
18 guardian. An attorney shall be allowed such compensation for his or  
19 her services as the court shall deem just and reasonable. In  
20 determining whether the attorneys' fees requested are just and  
21 reasonable and properly payable from the ward's estate, the court, in  
22 its discretion, may consider whether the person or estate of the ward  
23 was benefited by the proceedings and any other factors the court  
24 considers relevant. Where a guardian or limited guardian is an  
25 attorney, the guardian or limited guardian shall separately account for  
26 time for which compensation is requested for services as a guardian or  
27 limited guardian as contrasted to time for which compensation for legal  
28 services provided to the guardianship is requested. In all cases,  
29 compensation of the guardian or limited guardian and his or her  
30 expenses including attorney's fees shall be fixed by the court and may  
31 be allowed at any annual or final accounting; but at any time during  
32 the administration of the estate, the guardian or limited guardian or  
33 his or her attorney may apply to the court for an allowance upon the  
34 compensation or necessary expenses of the guardian or limited guardian  
35 and for attorney's fees for services already performed. If the court  
36 finds that the guardian or limited guardian has failed to discharge his  
37 or her duties as such in any respect, it may deny the guardian any  
38 compensation whatsoever or may reduce the compensation which would

1 otherwise be allowed. Where the incapacitated person is a department  
2 of social and health services client residing in a nursing facility or  
3 in a residential or home setting and is required by the department of  
4 social and health services to contribute a portion of their income  
5 towards the cost of residential or supportive services then the  
6 department shall be entitled to notice of proceedings as described in  
7 RCW 11.92.150. The amount of guardianship fees and additional  
8 compensation for administrative costs shall not exceed the amount  
9 allowed by the department of social and health services by rule.

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