
SUBSTITUTE SENATE BILL 5740

State of Washington

62nd Legislature

2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Kastama, Chase, and Roach)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to preventing predatory guardianships of
2 incapacitated adults; amending RCW 11.88.030, 11.88.040, 11.88.120,
3 11.88.090, and 43.190.060; and adding a new section to chapter 2.56
4 RCW.

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

6 **Sec. 1.** RCW 11.88.030 and 2009 c 521 s 36 are each amended to read
7 as follows:

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

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

15 (h) The reason why the appointment of a guardian or limited
16 guardian is sought and the interest of the petitioner in the
17 appointment, and whether the appointment is sought as guardian or
18 limited guardian of the person, the estate, or both;

19 (i) A description of any alternate arrangements previously made by
20 the alleged incapacitated person, such as trusts or powers of attorney,
21 including identifying any guardianship nominations contained in a power
22 of attorney, and why a guardianship is nevertheless necessary;

23 (j) The nature and degree of the alleged incapacity and the
24 specific areas of protection and assistance requested and the
25 limitation of rights requested to be included in the court's order of
26 appointment;

27 (k) The requested term of the limited guardianship to be included
28 in the court's order of appointment;

29 (l) Whether the petitioner is proposing a specific individual to
30 act as guardian ad litem and, if so, the individual's knowledge of or
31 relationship to any of the parties, and why the individual is proposed.

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

36 (b) Prepayment of a filing fee shall not be required in any
37 guardianship or limited guardianship brought by the attorney general.
38 Payment of the filing fee shall be ordered from the estate of the

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

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

6 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING
7 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD
8 LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE
9 THAT PERSON.

10 (5) All petitions filed under the provisions of this section shall
11 be heard within sixty days unless an extension of time is requested by
12 a party or the guardian ad litem within such sixty day period and
13 granted for good cause shown. If an extension is granted, the court
14 shall set a new hearing date.

15 (6) The court must provide any person filing a petition under this
16 section information regarding professional and lay guardians. The
17 purpose of the information is to provide family members of
18 incapacitated adults with information detailing: What a guardian is,
19 the different types of guardianships in Washington, the powers granted
20 to a guardian, an explanation of how professional guardian fees are
21 approved by the court and how professional guardians may bill for their
22 services, a description of the process to modify a guardianship or to
23 remove a guardian, and information about the certified professional
24 guardian board and program.

25 **Sec. 2.** RCW 11.88.040 and 2008 c 6 s 803 are each amended to read
26 as follows:

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

31 (2) Before appointing a guardian or a limited guardian, notice of
32 a hearing, to be held not less than ((ten)) fifteen days after service
33 thereof, ((shall)) the name of the person who the court or guardian ad
34 litem proposes to be appointed as guardian or limited guardian, a copy
35 of the petition for appointment of guardian, and the statement of the
36 legal rights of the alleged incapacitated person that could be

1 restricted or transferred to a guardian by a guardianship order must be
2 given by registered or certified mail to the last known address
3 requesting a return receipt signed by the addressee or an agent
4 appointed by the addressee, or by personal service in the manner
5 provided for services of summons, to the following:

6 ((+1)) (a) The alleged incapacitated person, or minor, if under
7 fourteen years of age;

8 ((+2)) (b) A parent, if the alleged incapacitated person is a
9 minor, all known children not residing with a notified person, and the
10 spouse or domestic partner of the alleged incapacitated person if any;

11 ((+3)) (c) Any other person who has been appointed as guardian or
12 limited guardian, or the person with whom the alleged incapacitated
13 person resides. No notice need be given to those persons named in
14 (~~subsections (2) and (3)~~) (a) and (b) of this subsection if they have
15 signed the petition for the appointment of the guardian or limited
16 guardian or have waived notice of the hearing.

17 ((+4)) (3) If the petition is by a parent asking for appointment
18 as guardian or limited guardian of a minor child under the age of
19 fourteen years, or if the petition is accompanied by the written
20 consent of a minor of the age of fourteen years or upward, who consents
21 to the appointment of the guardian or limited guardian asked for, or if
22 the petition is by a nonresident guardian of any minor or incapacitated
23 person, then the court may appoint the guardian without notice of the
24 hearing. The court for good cause may reduce the number of days of
25 notice, but in every case, at least three days notice shall be given.

26 (4) The alleged incapacitated person shall be present in court at
27 the final hearing on the petition(~~(+ PROVIDED, That)~~). However, this
28 requirement may be waived at the discretion of the court for good cause
29 other than mere inconvenience shown in the report to be provided by the
30 guardian ad litem pursuant to RCW 11.88.090 as now or hereafter
31 amended, or if no guardian ad litem is required to be appointed
32 pursuant to RCW 11.88.090, as now or hereafter amended, at the
33 discretion of the court for good cause shown by a party.
34 Alternatively, the court may remove itself to the place of residence of
35 the alleged incapacitated person and conduct the final hearing in the
36 presence of the alleged incapacitated person. Final hearings on the
37 petition may be held in closed court without admittance of any person
38 other than those necessary to the action or proceeding.

1 (5) If presence of the alleged incapacitated person is waived and
2 the court does not remove itself to the place of residence of such
3 person, the guardian ad litem shall appear in person at the final
4 hearing on the petition.

5 **Sec. 3.** RCW 11.88.120 and 1991 c 289 s 7 are each amended to read
6 as follows:

7 (1) At any time after establishment of a guardianship or
8 appointment of a guardian, the court may, upon the death of the
9 guardian or limited guardian, or, for other good reason, modify or
10 terminate the guardianship or replace the guardian or limited guardian.

11 (2) Any person, including an incapacitated person, may apply to the
12 court for an order to modify or terminate a guardianship or to replace
13 a guardian or limited guardian.

14 (a) If applicants are represented by counsel, counsel shall move
15 for an order to show cause why the relief requested should not be
16 granted.

17 (b) If applicants are not represented by counsel, they may move for
18 an order to show cause, or they may deliver a written request to the
19 clerk of the court, which must be considered by the court as the
20 equivalent of a motion for an order to show cause.

21 (3) By the next judicial day after receipt of (~~(an unrepresented)~~)
22 a person's request to modify or terminate a guardianship order, or to
23 replace a guardian or limited guardian, the clerk shall deliver the
24 request to the court. The court (~~(may (a))~~) must direct the clerk to
25 schedule a hearing(~~(, (b))~~) on the request and mail notice to the
26 guardian, the incapacitated person, the applicant, all counsel of
27 record, and any other person entitled to receive notice of proceedings
28 in the matter, except that the court may deny the application without
29 scheduling a hearing, if it appears based on documents in the court
30 file that the application is frivolous. The court may appoint a
31 guardian ad litem to investigate the issues raised by the application
32 or to take any emergency action the court deems necessary to protect
33 the incapacitated person until a hearing can be held(~~(, or (c) deny the~~
34 application without scheduling a hearing, if it appears based on
35 documents in the court file that the application is frivolous)). Any
36 denial of an application without a hearing shall be in writing with the
37 reasons for the denial explained. A copy of the order shall be mailed

1 by the clerk to the applicant, to the guardian, and to any other person
2 entitled to receive notice of proceedings in the matter. (~~Unless~~
3 ~~within thirty days after receiving the request from the clerk the court~~
4 ~~directs otherwise, the clerk shall schedule a hearing on the request~~
5 ~~and mail notice to the guardian, the incapacitated person, the~~
6 ~~applicant, all counsel of record, and any other person entitled to~~
7 ~~receive notice of proceedings in the matter.))~~

8 (4) In a hearing on an application to modify or terminate a
9 guardianship, or to replace a guardian or limited guardian, the court
10 may grant such relief as it deems just and in the best interest of the
11 incapacitated person. A professional guardian shall have the burden of
12 proving that he or she has met his or her fiduciary duties and
13 professional and ethical duties as proscribed by the certified
14 professional guardian board.

15 (5) If the applicant petitioning the court to remove a guardian is
16 the person or persons who originally petitioned the court to establish
17 the guardianship, the guardian is a professional guardian, and the
18 application is received within the first year of the guardianship, then
19 the court must grant the request and appoint a new guardian, unless the
20 request appears to be frivolous, based on an improper motive, or it
21 appears that granting the request would result in a substantial
22 detriment to the incapacitated person. Relief under this subsection
23 cannot be requested for any subsequent guardian.

24 (6) The court may order persons who have been removed as guardians
25 to deliver any property or records belonging to the incapacitated
26 person in accordance with the court's order. Similarly, when guardians
27 have died or been removed and property or records of an incapacitated
28 person are being held by any other person, the court may order that
29 person to deliver it in accordance with the court's order.
30 Disobedience of an order to deliver shall be punishable as contempt of
31 court.

32 **Sec. 4.** RCW 11.88.090 and 2008 c 6 s 804 are each amended to read
33 as follows:

34 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
35 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
36 11.92.180 shall affect or impair the power of any court to appoint a

1 guardian ad litem to defend the interests of any incapacitated person
2 interested in any suit or matter pending therein, or to commence and
3 prosecute any suit in his or her behalf.

4 (2) Prior to the appointment of a guardian or a limited guardian,
5 whenever it appears that the incapacitated person or incapacitated
6 person's estate could benefit from mediation and such mediation would
7 likely result in overall reduced costs to the estate, upon the motion
8 of the alleged incapacitated person or the guardian ad litem, or
9 subsequent to such appointment, whenever it appears that the
10 incapacitated person or incapacitated person's estate could benefit
11 from mediation and such mediation would likely result in overall
12 reduced costs to the estate, upon the motion of any interested person,
13 the court may:

14 (a) Require any party or other person subject to the jurisdiction
15 of the court to participate in mediation;

16 (b) Establish the terms of the mediation; and

17 (c) Allocate the cost of the mediation (~~pursuant to RCW~~
18 ~~11.96.140~~)).

19 (3)(a) Upon receipt of a petition for appointment of guardian or
20 limited guardian, except as provided herein, the court shall appoint a
21 guardian ad litem to represent the best interests of the alleged
22 incapacitated person, who shall be a person found or known by the court
23 to:

24 (~~(a)~~) (i) Be free of influence from anyone interested in the
25 result of the proceeding; and

26 (~~(b)~~) (ii) Have the requisite knowledge, training, or expertise
27 to perform the duties required by this section.

28 (b) The guardian ad litem shall within five days of receipt of
29 notice of appointment file with the court and serve, either personally
30 or by certified mail with return receipt, each party with a statement
31 including: His or her training relating to the duties as a guardian ad
32 litem; his or her criminal history as defined in RCW 9.94A.030 for the
33 period covering ten years prior to the appointment; his or her hourly
34 rate, if compensated; whether the guardian ad litem has had any contact
35 with a party to the proceeding prior to his or her appointment; and
36 whether he or she has an apparent conflict of interest. Within three
37 days of the later of the actual service or filing of the guardian ad
38 litem's statement, any party may set a hearing and file and serve a

1 motion for an order to show cause why the guardian ad litem should not
2 be removed for one of the following three reasons: (i) Lack of
3 expertise necessary for the proceeding; (ii) an hourly rate higher than
4 what is reasonable for the particular proceeding; or (iii) a conflict
5 of interest. Notice of the hearing shall be provided to the guardian
6 ad litem and all parties. If, after a hearing, the court enters an
7 order replacing the guardian ad litem, findings shall be included,
8 expressly stating the reasons for the removal. If the guardian ad
9 litem is not removed, the court has the authority to assess to the
10 moving party, attorneys' fees and costs related to the motion. The
11 court shall assess attorneys' fees and costs for frivolous motions.

12 (c) No guardian ad litem need be appointed when a parent is
13 petitioning for a guardian or a limited guardian to be appointed for
14 his or her minor child and the minority of the child, as defined by RCW
15 11.92.010, is the sole basis of the petition. The order appointing the
16 guardian ad litem shall recite the duties set forth in subsection (5)
17 of this section. The appointment of a guardian ad litem shall have no
18 effect on the legal competency of the alleged incapacitated person and
19 shall not overcome the presumption of competency or full legal and
20 civil rights of the alleged incapacitated person.

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

32 (b) To be eligible for the registry a person shall:
33 (i) Present a written statement outlining his or her background and
34 qualifications. The background statement shall include, but is not
35 limited to, the following information:
36 (A) Level of formal education;
37 (B) Training related to the guardian ad litem's duties;
38 (C) Number of years' experience as a guardian ad litem;

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

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

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

9 The written statement of qualifications shall include the names of
10 any counties in which the person was removed from a guardian ad litem
11 registry pursuant to a grievance action, and the name of the court and
12 the cause number of any case in which the court has removed the person
13 for cause; and

14 (ii) Complete the training as described in (e) of this subsection.
15 The training is not applicable to guardians ad litem appointed pursuant
16 to special proceeding Rule 98.16W.

17 (c) Superior court shall remove any person from the guardian ad
18 litem registry who misrepresents his or her qualifications pursuant to
19 a grievance procedure established by the court.

20 (d) The background and qualification information shall be updated
21 annually.

22 (e) The department of social and health services shall convene an
23 advisory group to develop a model guardian ad litem training program
24 and shall update the program biennially. The advisory group shall
25 consist of representatives from consumer, advocacy, and professional
26 groups knowledgeable in developmental disabilities, neurological
27 impairment, physical disabilities, mental illness, domestic violence,
28 aging, legal, court administration, the Washington state bar
29 association, and other interested parties.

30 (f) The superior court shall require utilization of the model
31 program developed by the advisory group as described in (e) of this
32 subsection, to assure that candidates applying for registration as a
33 qualified guardian ad litem shall have satisfactorily completed
34 training to attain these essential minimum qualifications to act as
35 guardian ad litem.

36 (5) The guardian ad litem appointed pursuant to this section
37 (~~shall have~~) has the following duties:

1 (a) To meet and consult with the alleged incapacitated person as
2 soon as practicable following appointment and explain, in language
3 which such person can reasonably be expected to understand, the
4 substance of the petition, the nature of the resultant proceedings, the
5 person's right to contest the petition, the identification of the
6 proposed guardian or limited guardian, the right to a jury trial on the
7 issue of his or her alleged incapacity, the right to independent legal
8 counsel as provided by RCW 11.88.045, and the right to be present in
9 court at the hearing on the petition;

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

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

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

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

20 (d) To consult as necessary to complete the investigation and
21 report required by this section with those known relatives, friends, or
22 other persons the guardian ad litem determines have had a significant,
23 continuing interest in the welfare of the alleged incapacitated person;

24 (e) To investigate alternate arrangements made, or which might be
25 created, by or on behalf of the alleged incapacitated person, such as
26 revocable or irrevocable trusts, durable powers of attorney, or blocked
27 accounts; whether good cause exists for any such arrangements to be
28 discontinued; and why such arrangements should not be continued or
29 created in lieu of a guardianship;

30 (f) To provide the court with a written report which shall include
31 the following:

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

34 (ii) A description of the needs of the incapacitated person for
35 care and treatment, the probable residential requirements of the
36 alleged incapacitated person and the basis upon which these findings
37 were made;

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

5 (iv) A description of any alternative arrangements previously made
6 by the alleged incapacitated person or which could be made, and whether
7 and to what extent such alternatives should be used in lieu of a
8 guardianship, and if the guardian ad litem is recommending
9 discontinuation of any such arrangements, specific findings as to why
10 such arrangements are contrary to the best interest of the alleged
11 incapacitated person;

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

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

21 (vii) Any expression of approval or disapproval made by the alleged
22 incapacitated person concerning the proposed guardian or limited
23 guardian or guardianship or limited guardianship;

24 (viii) Identification of persons with significant interest in the
25 welfare of the alleged incapacitated person who should be advised of
26 their right to request special notice of proceedings pursuant to RCW
27 11.92.150; and

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

32 Within forty-five days after notice of commencement of the
33 guardianship proceeding has been served upon the guardian ad litem, and
34 at least fifteen days before the hearing on the petition, unless an
35 extension or reduction of time has been granted by the court for good
36 cause, the guardian ad litem shall file its report and send a copy to
37 the alleged incapacitated person and his or her counsel, spouse or
38 domestic partner, all children not residing with a notified person,

1 those persons described in (f)(viii) of this subsection, and persons
2 who have filed a request for special notice pursuant to RCW 11.92.150.
3 If the guardian ad litem needs additional time to finalize his or her
4 report, then the guardian ad litem shall petition the court for a
5 postponement of the hearing or, with the consent of all other parties,
6 an extension or reduction of time for filing the report. If the
7 hearing does not occur within sixty days of filing the petition, then
8 upon the two-month anniversary of filing the petition and on or before
9 the same day of each following month until the hearing, the guardian ad
10 litem shall file interim reports summarizing his or her activities on
11 the proceeding during that time period as well as fees and costs
12 incurred;

13 (g) To advise the court of the need for appointment of counsel for
14 the alleged incapacitated person within five court days after the
15 meeting described in (a) of this subsection unless (i) counsel has
16 appeared, (ii) the alleged incapacitated person affirmatively
17 communicated a wish not to be represented by counsel after being
18 advised of the right to representation and of the conditions under
19 which court-provided counsel may be available, or (iii) the alleged
20 incapacitated person was unable to communicate at all on the subject,
21 and the guardian ad litem is satisfied that the alleged incapacitated
22 person does not affirmatively desire to be represented by counsel;

23 (h) To disclose in writing to the court any prior or existing
24 relationship, or other circumstance that would cause the appearance of
25 a conflict of interest in the guardian ad litem's recommendation when
26 the guardian ad litem is making a recommendation of appointment of a
27 particular person or persons as a guardian to a court. Such disclosure
28 must also be provided to persons receiving copies of the report as
29 required in (f)(ix) of this subsection (5).

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

36 (7) The parties to the proceeding may file responses to the
37 guardian ad litem report with the court and deliver such responses to
38 the other parties and the guardian ad litem at any time up to the

1 second day prior to the hearing. If a guardian ad litem fails to file
2 his or her report in a timely manner, the hearing shall be continued to
3 give the court and the parties at least fifteen days before the hearing
4 to review the report. At any time during the proceeding upon motion of
5 any party or on the court's own motion, the court may remove the
6 guardian ad litem for failure to perform his or her duties as specified
7 in this chapter, provided that the guardian ad litem shall have five
8 days' notice of any motion to remove before the court enters such
9 order. In addition, the court in its discretion may reduce a guardian
10 ad litem's fee for failure to carry out his or her duties.

11 (8) The court appointed guardian ad litem shall have the authority,
12 in the event that the alleged incapacitated person is in need of
13 emergency life-saving medical services, and is unable to consent to
14 such medical services due to incapacity pending the hearing on the
15 petition to give consent for such emergency life-saving medical
16 services on behalf of the alleged incapacitated person.

17 (9) The court-appointed guardian ad litem shall have the authority
18 to move for temporary relief under chapter 7.40 RCW to protect the
19 alleged incapacitated person from abuse, neglect, abandonment, or
20 exploitation, as those terms are defined in RCW 74.34.020, or to
21 address any other emergency needs of the alleged incapacitated person.
22 Any alternative arrangement executed before filing the petition for
23 guardianship shall remain effective unless the court grants the relief
24 requested under chapter 7.40 RCW, or unless, following notice and a
25 hearing at which all parties directly affected by the arrangement are
26 present, the court finds that the alternative arrangement should not
27 remain effective.

28 (10) 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 the court may charge such
33 fee to the petitioner, the alleged incapacitated person, or any person
34 who has appeared in the action; or may allocate the fee, as it deems
35 just. If the petition is found to be frivolous or not brought in good
36 faith, the guardian ad litem fee shall be charged to the petitioner.
37 The court shall not be required to provide for the payment of a fee to
38 any salaried employee of a public agency.

1 (11) 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 (12) The guardian ad litem shall appear in person at all hearings
9 on the petition unless all parties provide a written waiver of the
10 requirement to appear.

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

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 2.56 RCW
15 to read as follows:

16 The administrator for the courts must publish on its web site
17 information regarding professional and lay guardians. The purpose of
18 the publication is to provide family members of incapacitated adults
19 with information detailing: What a guardian is, the different types of
20 guardianships in Washington, the powers granted to a guardian, an
21 explanation of how professional guardian fees are approved by the court
22 and how professional guardians may bill for their services, a
23 description of the process to modify a guardianship or to remove a
24 guardian, and information about the certified professional guardian
25 board and program.

26 **Sec. 6.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read
27 as follows:

28 (1) A long-term care ombudsman (~~(shall)~~) must:

29 ~~((+1))~~ (a) Identify, investigate, and resolve complaints made by
30 or on behalf of residents of long-term care facilities relating to
31 administrative action, inaction, or decisions which may adversely
32 affect the health, safety, welfare, and rights of these individuals;

33 ~~((+2))~~ (b) Monitor the development and implementation of federal,
34 state, and local laws, rules, regulations, and policies with respect to
35 long-term care facilities in this state;

1 (~~(+3)~~) (c) Provide information as appropriate to residents,
2 resident representatives, and others regarding the rights of residents,
3 and to public agencies regarding the problems of individuals residing
4 in long-term care facilities; and

5 (~~(+4)~~) (d) Provide for training volunteers and promoting the
6 development of citizen organizations to participate in the ombudsman
7 program. A trained volunteer long-term care ombudsman, in accordance
8 with the policies and procedures established by the state long-term
9 care ombudsman program, shall inform residents, their representatives,
10 and others about the rights of residents, and may identify,
11 investigate, and resolve complaints made by or on behalf of residents
12 of long-term care facilities relating to action, inaction, or
13 decisions, that may adversely affect the health, safety, welfare, and
14 rights of these individuals.

15 (2) Publish on a web site, or otherwise make available to
16 residents, families of residents, and the public information regarding
17 professional and lay guardians. The purpose of the publication is to
18 provide family members of incapacitated adults with information
19 detailing: What a guardian is, the different types of guardianships in
20 Washington, the powers granted to a guardian, an explanation of how
21 professional guardian fees are approved by the court and how
22 professional guardians may bill for their services, a description of
23 the process to modify a guardianship or to remove a guardian, and
24 information about the certified professional guardian board and
25 program.

26 (3) Nothing in (~~chapter 133, Laws of 1999 shall~~) this section or
27 RCW 43.190.065 may be construed to empower the state long-term care
28 ombudsman or any local long-term care ombudsman with statutory or
29 regulatory licensing or sanctioning authority.

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