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SENATE BILL 5694

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State of Washington

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2013 Regular Session

By Senators Conway, Schlicher, Dammeier, Hargrove, Carrell, Chase, Mullet, Harper, McAuliffe, and Kohl-Welles

Read first time 02/08/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to improving protections for incapacitated adults;  
2 amending RCW 11.88.020, 11.88.030, 11.88.040, 11.88.120, 11.88.090,  
3 11.92.043, 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 11.88.020 and 2011 c 329 s 1 are each amended to read  
7 as follows:

8 (1) Any suitable person over the age of eighteen years, or any  
9 parent under the age of eighteen years or, if the petition is for  
10 appointment of a professional guardian, any individual or guardianship  
11 service that meets any certification requirements established by the  
12 administrator for the courts, may, if not otherwise disqualified, be  
13 appointed guardian or limited guardian of the person and/or the estate  
14 of an incapacitated person. A financial institution subject to the  
15 jurisdiction of the department of financial institutions and authorized  
16 to exercise trust powers, and a federally chartered financial  
17 institution when authorized to do so, may act as a guardian of the  
18 estate of an incapacitated person without having to meet the

1 certification requirements established by the administrator for the  
2 courts. No person is qualified to serve as a guardian who is:

3 (a) Under eighteen years of age except as otherwise provided  
4 herein;

5 (b) Of unsound mind;

6 (c) Convicted of a felony or of a misdemeanor involving moral  
7 turpitude;

8 (d) A nonresident of this state who has not appointed a resident  
9 agent to accept service of process in all actions or proceedings with  
10 respect to the estate and caused such appointment to be filed with the  
11 court;

12 (e) A corporation not authorized to act as a fiduciary, guardian,  
13 or limited guardian in the state;

14 (f) A person whom the court finds unsuitable.

15 (2) The professional guardian certification requirements required  
16 under this section shall not apply to a testamentary guardian appointed  
17 under RCW 11.88.080.

18 (3) If a guardian or limited guardian is not a certified  
19 professional guardian or financial institution authorized under this  
20 section, the guardian or limited guardian shall complete any  
21 standardized training video or web cast for lay guardians made  
22 available by the administrative office of the courts and the superior  
23 court where the petition is filed unless granted a waiver by the court  
24 under RCW 11.92.043 or 11.92.040. The training video or web cast must  
25 be provided at no cost to the guardian or limited guardian.

26 (a) If a petitioner requests the appointment of a specific  
27 individual to act as a guardian or limited guardian, the petition for  
28 guardianship or limited guardianship shall include evidence of the  
29 successful completion of the required training video or web cast by the  
30 proposed guardian or limited guardian. The superior court may defer  
31 the completion of the training requirement to a date no later than  
32 ninety days after appointment if the petitioner requests expedited  
33 appointment due to emergent circumstances.

34 (b) If no person is identified to be appointed guardian or limited  
35 guardian at the time the petition is filed, then the court shall  
36 require the completion of the required training video or web cast by a  
37 date no later than ninety days after the appointment.

1       (4) A proposed professional guardian shall disclose in writing to  
2 the guardian ad litem any prior or existing relationship, or other  
3 circumstance that would cause the appearance of a conflict of interest  
4 in the matter.

5       **Sec. 2.** RCW 11.88.030 and 2011 c 329 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, certified professional guardian, or financial  
9 institution authorized in RCW 11.88.020 as the guardian or limited  
10 guardian of an incapacitated person. No liability for filing a  
11 petition for guardianship or limited guardianship shall attach to a  
12 petitioner acting in good faith and upon reasonable basis. A petition  
13 for guardianship or limited guardianship shall state:

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

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

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

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

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

26       (f) The names and addresses, and nature of the relationship, so far  
27 as known or can be reasonably ascertained, of the persons most closely  
28 related by blood, marriage, or state registered domestic partnership to  
29 the alleged incapacitated person;

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

32       (h) The reason why the appointment of a guardian or limited  
33 guardian is sought and the interest of the petitioner in the  
34 appointment, and whether the appointment is sought as guardian or  
35 limited guardian of the person, the estate, or both;

36       (i) A description of any alternate arrangements previously made by

1 the alleged incapacitated person, such as trusts or powers of attorney,  
2 including identifying any guardianship nominations contained in a power  
3 of attorney, and why a guardianship is nevertheless necessary;

4 (j) The nature and degree of the alleged incapacity and the  
5 specific areas of protection and assistance requested and the  
6 limitation of rights requested to be included in the court's order of  
7 appointment;

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

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

13 (2) The petition shall include evidence of successful completion of  
14 any training required under RCW 11.88.020 by the proposed guardian or  
15 limited guardian unless the petitioner requests expedited appointment  
16 due to emergent circumstances.

17 (3)(a) The attorney general may petition for the appointment of a  
18 guardian or limited guardian in any case in which there is cause to  
19 believe that a guardianship is necessary and no private party is able  
20 and willing to petition.

21 (b) Prepayment of a filing fee shall not be required in any  
22 guardianship or limited guardianship brought by the attorney general.  
23 Payment of the filing fee shall be ordered from the estate of the  
24 incapacitated person at the hearing on the merits of the petition,  
25 unless in the judgment of the court, such payment would impose a  
26 hardship upon the incapacitated person, in which case the filing shall  
27 be waived.

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

32 (5)(a) Notice that a guardianship proceeding has been commenced  
33 shall be personally served upon the alleged incapacitated person and  
34 the guardian ad litem along with a copy of the petition for appointment  
35 of a guardian. Such notice shall be served not more than five court  
36 days after the petition has been filed.

37 (b) Notice under this subsection shall include a clear and easily  
38 readable statement of the legal rights of the alleged incapacitated

1 person that could be restricted or transferred to a guardian by a  
2 guardianship order as well as the right to counsel of choice and to a  
3 jury trial on the issue of incapacity. Such notice shall be in  
4 substantially the following form and shall be (~~in capital letters,~~)  
5 double-spaced(~~(7)~~) and in a type size not smaller than ten-point type:

6                    Important notice                    Please read carefully

7 A petition to have a guardian appointed for you has been filed in the  
8 . . . . . county superior court by . . . . . If a guardian is  
9 appointed, (~~you could~~) the court will determine whether you retain or  
10 lose one or more of the following rights:

- 11        (1) To marry, divorce, or enter into or end a state registered  
12 domestic partnership;
- 13        (2) To vote (~~or hold an elected office~~);
- 14        (3) To enter into a contract or make or revoke a will;
- 15        (4) To appoint someone to act on your behalf;
- 16        (5) To sue and be sued other than through a guardian;
- 17        (6) To possess a license to drive;
- 18        (7) To buy, sell, own, mortgage, or lease property;
- 19        (8) To consent to or refuse medical treatment;
- 20        (9) To decide who shall provide care and assistance;
- 21        (10) To make decisions regarding social aspects of your life.

22 Under the law, you have certain rights.

23 You have the right to be represented by a lawyer of your own choosing.  
24 The court will appoint a lawyer to represent you if you are unable to  
25 pay or payment would result in a substantial hardship to you.

26 You have the right to ask for a jury to decide whether or not you need  
27 a guardian to help you.

28 You have the right to be present in court and testify when the hearing  
29 is held to decide whether or not you need a guardian. If a guardian ad  
30 litem is appointed, you have the right to request the court to replace  
31 that person.

32 If a guardian or limited guardian is appointed, you retain certain  
33 rights including the right to representation by an attorney and the  
34 right to request modification of the guardianship or discharge of the  
35 guardian. Guardians cannot involuntarily detain someone in a

1 residential facility. Guardians and limited guardians must choose the  
2 least restrictive alternatives. All actions of a guardian or limited  
3 guardian are subject to review by the court.

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

9 (7) The court must provide a person filing a petition under this  
10 section information regarding professional and lay guardians. The  
11 purpose of the information is to provide family members of  
12 incapacitated adults with information detailing: What a guardian is,  
13 the different types of guardianships in Washington, the powers granted  
14 to a guardian, an explanation of how professional guardian fees are  
15 approved by the court and how professional guardians may bill for their  
16 services, a description of the process to modify a guardianship or to  
17 remove a guardian, the ethical and fiduciary duties of a guardian, and  
18 information about the certified professional guardian board and  
19 program. Failure to provide the information set forth in this  
20 subsection does not constitute the sole cause for discharge of a  
21 guardian or delay of a guardianship hearing.

22 **Sec. 3.** RCW 11.88.040 and 2008 c 6 s 803 are each amended to read  
23 as follows:

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

29 (2) Before appointing a guardian or a limited guardian, notice of  
30 a hearing, to be held not less than (~~ten~~) fifteen days after service  
31 thereof, (~~shall~~) the name of the person who the court or guardian ad  
32 litem proposes to be appointed as guardian or limited guardian, a copy  
33 of the petition for appointment of guardian, and the statement of the  
34 legal rights of the alleged incapacitated person that could be  
35 restricted or transferred to a guardian by a guardianship order must be  
36 given by registered or certified mail to the last known address  
37 requesting a return receipt signed by the addressee or an agent

1 appointed by the addressee, or by personal service in the manner  
2 provided for services of summons, but duplicates of information already  
3 provided under RCW 11.88.030 or other applicable statutes or rules need  
4 not be given, to the following:

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

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

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

16 ((+4)) (3) If the petition is by a parent asking for appointment  
17 as guardian or limited guardian of a minor child under the age of  
18 fourteen years, or if the petition is accompanied by the written  
19 consent of a minor of the age of fourteen years or upward, who consents  
20 to the appointment of the guardian or limited guardian asked for, or if  
21 the petition is by a nonresident guardian of any minor or incapacitated  
22 person, then the court may appoint the guardian without notice of the  
23 hearing. The court for good cause may reduce the number of days of  
24 notice, but in every case, at least three days notice shall be given.

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

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

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

23 (3) By the next judicial day after receipt of (~~an unrepresented~~)  
24 a person's request to modify or terminate a guardianship order, or to  
25 replace a guardian or limited guardian, the clerk shall deliver the  
26 request to the court. The court (~~may (a)~~) must direct the clerk to  
27 schedule a hearing(~~, (b)~~) on the request and mail notice to the  
28 guardian, the incapacitated person, the applicant, all counsel of  
29 record, and any other person entitled to receive notice of proceedings  
30 in the matter, except that the court may deny the application without  
31 scheduling a hearing, if it appears based on documents in the court  
32 file that the application is frivolous. Consideration of the request  
33 may be deferred to the next regularly scheduled hearing if there is no  
34 indication that the incapacitated person will suffer physical,  
35 emotional, or financial harm as a result of the court's delay. The  
36 court may appoint a guardian ad litem to investigate the issues raised  
37 by the application or to take any emergency action the court deems



1 necessary to protect the incapacitated person until a hearing can be  
2 held(~~(, or (c) deny the application without scheduling a hearing, if it~~  
3 ~~appears based on documents in the court file that the application is~~  
4 ~~frivolous)).~~ Any denial of an application without a hearing shall be  
5 in writing with the reasons for the denial explained. A copy of the  
6 order shall be mailed by the clerk to the applicant, to the guardian,  
7 and to any other person entitled to receive notice of proceedings in  
8 the matter. (~~(Unless within thirty days after receiving the request~~  
9 ~~from the clerk the court directs otherwise, the clerk shall schedule a~~  
10 ~~hearing on the request and mail notice to the guardian, the~~  
11 ~~incapacitated person, the applicant, all counsel of record, and any~~  
12 ~~other person entitled to receive notice of proceedings in the matter.)~~)

13 (4) In a hearing on an application to modify or terminate a  
14 guardianship, or to replace a guardian or limited guardian, the court  
15 may grant such relief as it deems just and in the best interest of the  
16 incapacitated person.

17 (5) The court may order persons who have been removed as guardians  
18 to deliver any property or records belonging to the incapacitated  
19 person in accordance with the court's order. Similarly, when guardians  
20 have died or been removed and property or records of an incapacitated  
21 person are being held by any other person, the court may order that  
22 person to deliver it in accordance with the court's order.  
23 Disobedience of an order to deliver shall be punishable as contempt of  
24 court.

25 **Sec. 5.** RCW 11.88.090 and 2008 c 6 s 804 are each amended to read  
26 as follows:

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

33 (2) Prior to the appointment of a guardian or a limited guardian,  
34 whenever it appears that the incapacitated person or incapacitated  
35 person's estate could benefit from mediation and such mediation would  
36 likely result in overall reduced costs to the estate, upon the motion  
37 of the alleged incapacitated person or the guardian ad litem, or

1 subsequent to such appointment, whenever it appears that the  
2 incapacitated person or incapacitated person's estate could benefit  
3 from mediation and such mediation would likely result in overall  
4 reduced costs to the estate, upon the motion of any interested person,  
5 the court may:

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

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

9 (c) Allocate the cost of the mediation pursuant to RCW  
10 ~~((11.96.140))~~ 11.96A.300(8), unless otherwise ordered by the court for  
11 good cause shown.

12 (3)(a) 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))~~ (i) Be free of influence from anyone interested in the  
18 result of the proceeding; and

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

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

14 (4)(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

1 areas relevant to the needs of incapacitated persons, legal procedure,  
2 and the requirements of chapters 11.88 and 11.92 RCW.

3 The written statement of qualifications shall include the names of  
4 any counties in which the person was removed from a guardian ad litem  
5 registry pursuant to a grievance action, and the name of the court and  
6 the cause number of any case in which the court has removed the person  
7 for cause; and

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

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

14 (d) The background and qualification information shall be updated  
15 annually.

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

24 (f) The superior court shall require utilization of the model  
25 program developed by the advisory group as described in (e) of this  
26 subsection, to assure that candidates applying for registration as a  
27 qualified guardian ad litem shall have satisfactorily completed  
28 training to attain these essential minimum qualifications to act as  
29 guardian ad litem.

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

32 (a) To meet and consult with the alleged incapacitated person as  
33 soon as practicable following appointment and explain, in language  
34 which such person can reasonably be expected to understand, the  
35 substance of the petition, the nature of the resultant proceedings, the  
36 person's right to contest the petition, the identification of the  
37 proposed guardian or limited guardian, the right to a jury trial on the

1 issue of his or her alleged incapacity, the right to independent legal  
2 counsel as provided by RCW 11.88.045, and the right to be present in  
3 court at the hearing on the petition;

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

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

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

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

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

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

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

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

28 (ii) A description of the needs of the incapacitated person for  
29 care and treatment, the probable residential requirements of the  
30 alleged incapacitated person and the basis upon which these findings  
31 were made;

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

36 (iv) A description of any alternative arrangements previously made  
37 by the alleged incapacitated person or which could be made, and whether  
38 and to what extent such alternatives should be used in lieu of a

1 guardianship, and if the guardian ad litem is recommending  
2 discontinuation of any such arrangements, specific findings as to why  
3 such arrangements are contrary to the best interest of the alleged  
4 incapacitated person;

5 (v) A description of the abilities of the alleged incapacitated  
6 person and a recommendation as to whether a guardian or limited  
7 guardian should be appointed. If appointment of a limited guardian is  
8 recommended, the guardian ad litem shall recommend the specific areas  
9 of authority the limited guardian should have and the limitations and  
10 disabilities to be placed on the incapacitated person;

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

14 (vii) Any expression of approval or disapproval made by the alleged  
15 incapacitated person concerning the proposed guardian or limited  
16 guardian or guardianship or limited guardianship;

17 (viii) Identification of persons with significant interest in the  
18 welfare of the alleged incapacitated person who should be advised of  
19 their right to request special notice of proceedings pursuant to RCW  
20 11.92.150; and

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

25 Within forty-five days after notice of commencement of the  
26 guardianship proceeding has been served upon the guardian ad litem, and  
27 at least fifteen days before the hearing on the petition, unless an  
28 extension or reduction of time has been granted by the court for good  
29 cause, the guardian ad litem shall file its report and send a copy to  
30 the alleged incapacitated person and his or her counsel, spouse or  
31 domestic partner, all children not residing with a notified person,  
32 those persons described in (f)(viii) of this subsection, and persons  
33 who have filed a request for special notice pursuant to RCW 11.92.150.  
34 If the guardian ad litem needs additional time to finalize his or her  
35 report, then the guardian ad litem shall petition the court for a  
36 postponement of the hearing or, with the consent of all other parties,  
37 an extension or reduction of time for filing the report. If the  
38 hearing does not occur within sixty days of filing the petition, then

1 upon the two-month anniversary of filing the petition and on or before  
2 the same day of each following month until the hearing, the guardian ad  
3 litem shall file interim reports summarizing his or her activities on  
4 the proceeding during that time period as well as fees and costs  
5 incurred;

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

16 (h) To disclose in writing to the court any prior or existing  
17 relationship, or other circumstance that would cause the appearance of  
18 a conflict of interest in the guardian ad litem's recommendation when  
19 the guardian ad litem is making a recommendation of appointment of a  
20 particular person or persons as a guardian to a court. Such disclosure  
21 must also be provided to persons receiving copies of the report as  
22 required in (f)(ix) of this subsection.

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

29 (7) The parties to the proceeding may file responses to the  
30 guardian ad litem report with the court and deliver such responses to  
31 the other parties and the guardian ad litem at any time up to the  
32 second day prior to the hearing. If a guardian ad litem fails to file  
33 his or her report in a timely manner, the hearing shall be continued to  
34 give the court and the parties at least fifteen days before the hearing  
35 to review the report. At any time during the proceeding upon motion of  
36 any party or on the court's own motion, the court may remove the  
37 guardian ad litem for failure to perform his or her duties as specified  
38 in this chapter, provided that the guardian ad litem shall have five

1 days' notice of any motion to remove before the court enters such  
2 order. In addition, the court in its discretion may reduce a guardian  
3 ad litem's fee for failure to carry out his or her duties.

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

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

21 (10) The guardian ad litem shall receive a fee determined by the  
22 court. The fee shall be charged to the alleged incapacitated person  
23 unless the court finds that such payment would result in substantial  
24 hardship upon such person, in which case the county shall be  
25 responsible for such costs: PROVIDED, That the court may charge such  
26 fee to the petitioner, the alleged incapacitated person, or any person  
27 who has appeared in the action; or may allocate the fee, as it deems  
28 just. If the petition is found to be frivolous or not brought in good  
29 faith, the guardian ad litem fee shall be charged to the petitioner.  
30 The court shall not be required to provide for the payment of a fee to  
31 any salaried employee of a public agency.

32 (11) Upon the presentation of the guardian ad litem report and the  
33 entry of an order either dismissing the petition for appointment of  
34 guardian or limited guardian or appointing a guardian or limited  
35 guardian, the guardian ad litem shall be dismissed and shall have no  
36 further duties or obligations unless otherwise ordered by the court.  
37 If the court orders the guardian ad litem to perform further duties or  
38 obligations, they shall not be performed at county expense.



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

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

7 **Sec. 6.** RCW 11.92.043 and 2011 c 329 s 3 are each amended to read  
8 as follows:

9 It shall be the duty of the guardian or limited guardian of the  
10 person:

11 (1) To file within three months after appointment a personal care  
12 plan for the incapacitated person which shall include (a) an assessment  
13 of the incapacitated person's physical, mental, and emotional needs and  
14 of such person's ability to perform or assist in activities of daily  
15 living, and (b) the guardian's specific plan for meeting the identified  
16 and emerging personal care needs of the incapacitated person.

17 (2) To file annually or, where a guardian of the estate has been  
18 appointed, at the time an account is required to be filed under RCW  
19 11.92.040, a report on the status of the incapacitated person, which  
20 shall include:

21 (a) The address and name of the incapacitated person and all  
22 residential changes during the period;

23 (b) The services or programs which the incapacitated person  
24 receives;

25 (c) The medical status of the incapacitated person;

26 (d) The mental status of the incapacitated person;

27 (e) Changes in the functional abilities of the incapacitated  
28 person;

29 (f) Activities of the guardian for the period;

30 (g) Any recommended changes in the scope of the authority of the  
31 guardian;

32 (h) The identity of any professionals who have assisted the  
33 incapacitated person during the period;

34 (i)(i) Evidence of the guardian or limited guardian's successful  
35 completion of any standardized training video or web cast for guardians  
36 or limited guardians made available by the administrative office of the  
37 courts and the superior court when the guardian or limited guardian:

1 (A) Was appointed prior to July 22, 2011; (B) is not a certified  
2 professional guardian or financial institution authorized under RCW  
3 11.88.020; and (C) has not previously completed the requirements of RCW  
4 11.88.020(3). The training video or web cast must be provided at no  
5 cost to the guardian or limited guardian.

6 (ii) The superior court may, upon (A) petition by the guardian or  
7 limited guardian; or (B) any other method as provided by local court  
8 rule:

9 (I) For good cause, waive this requirement for guardians appointed  
10 prior to July 22, 2011. Good cause shall require evidence that the  
11 guardian already possesses the requisite knowledge to serve as a  
12 guardian without completing the training. When determining whether  
13 there is good cause to waive the training requirement, the court shall  
14 consider, among other facts, the length of time the guardian has been  
15 serving the incapacitated person; whether the guardian has timely filed  
16 all required reports with the court; whether the guardian is monitored  
17 by other state or local agencies; and whether there have been any  
18 allegations of abuse, neglect, or a breach of fiduciary duty against  
19 the guardian; or

20 (II) Extend the time period for completion of the training  
21 requirement for ninety days; and

22 (j) Evidence of the guardian or limited guardian's successful  
23 completion of any additional or updated training video or web cast  
24 offered by the administrative office of the courts and the superior  
25 court as is required at the discretion of the superior court unless the  
26 guardian or limited guardian is a certified professional guardian or  
27 financial institution authorized under RCW 11.88.020. The training  
28 video or web cast must be provided at no cost to the guardian or  
29 limited guardian.

30 (3) To report to the court within thirty days any substantial  
31 change in the incapacitated person's condition, or any changes in  
32 residence of the incapacitated person.

33 (4) Consistent with the powers granted by the court, to care for  
34 and maintain the incapacitated person in the setting least restrictive  
35 to the incapacitated person's freedom and appropriate to the  
36 incapacitated person's personal care needs, assert the incapacitated  
37 person's rights and best interests, and if the incapacitated person is  
38 a minor or where otherwise appropriate, to see that the incapacitated

1 person receives appropriate training and education and that the  
2 incapacitated person has the opportunity to learn a trade, occupation,  
3 or profession.

4 (5) Consistent with RCW 7.70.065, to provide timely, informed  
5 consent for health care of the incapacitated person, except in the case  
6 of a limited guardian where such power is not expressly provided for in  
7 the order of appointment or subsequent modifying order as provided in  
8 RCW 11.88.125 as now or hereafter amended, the standby guardian or  
9 standby limited guardian may provide timely, informed consent to  
10 necessary medical procedures if the guardian or limited guardian cannot  
11 be located within four hours after the need for such consent arises.  
12 No guardian, limited guardian, or standby guardian may involuntarily  
13 commit for mental health treatment, observation, or evaluation an  
14 alleged incapacitated person who is unable or unwilling to give  
15 informed consent to such commitment unless the procedures for  
16 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are  
17 followed. Nothing in this section shall be construed to allow a  
18 guardian, limited guardian, or standby guardian to consent to:

- 19 (a) Therapy or other procedure which induces convulsion;
- 20 (b) Surgery solely for the purpose of psychosurgery;
- 21 (c) Other psychiatric or mental health procedures that restrict  
22 physical freedom of movement, or the rights set forth in RCW 71.05.217.

23 A guardian, limited guardian, or standby guardian who believes  
24 these procedures are necessary for the proper care and maintenance of  
25 the incapacitated person shall petition the court for an order unless  
26 the court has previously approved the procedure within the past thirty  
27 days. The court may order the procedure only after an attorney is  
28 appointed in accordance with RCW 11.88.045 if no attorney has  
29 previously appeared, notice is given, and a hearing is held in  
30 accordance with RCW 11.88.040.

31 (6) No guardian, limited guardian, or standby guardian may prevent  
32 or limit contact between the incapacitated person and a family member  
33 without a court order authorizing such action: PROVIDED, That if a  
34 guardian has grounds to believe that contact with a family member or  
35 members should be limited to protect the incapacitated person from  
36 abuse, neglect, abandonment, or exploitation, as those terms are  
37 defined in RCW 71.34.020, the guardian may prevent or limit contact

1 without a court order for the period necessary to prepare and file a  
2 petition for a vulnerable adult protection order or other court order  
3 conveying this authority.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 2.56 RCW  
5 to read as follows:

6 The administrator for the courts must publish on its web site  
7 information regarding professional and lay guardians. The purpose of  
8 the publication is to provide family members of incapacitated adults  
9 with information detailing: What a guardian is, the different types of  
10 guardianships in Washington, the powers granted to a guardian, an  
11 explanation of how professional guardian fees are approved by the court  
12 and how professional guardians may bill for their services, forms and  
13 a description of the process to request that the court modify a  
14 guardianship or to remove a guardian, the ethical and fiduciary duties  
15 of a guardian, and information about the certified professional  
16 guardian board and program.

17 **Sec. 8.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read  
18 as follows:

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

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

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

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

31 ~~(+4))~~ (d) Provide for training volunteers and promoting the  
32 development of citizen organizations to participate in the ombudsman  
33 program. A trained volunteer long-term care ombudsman, in accordance  
34 with the policies and procedures established by the state long-term  
35 care ombudsman program, shall inform residents, their representatives,  
36 and others about the rights of residents, and may identify,

1 investigate, and resolve complaints made by or on behalf of residents  
2 of long-term care facilities relating to action, inaction, or  
3 decisions, that may adversely affect the health, safety, welfare, and  
4 rights of these individuals; and

5 (e) Publish on a web site, or otherwise make available to  
6 residents, families of residents, and the public, information regarding  
7 professional and lay guardians. The purpose of the publication is to  
8 provide family members of incapacitated adults with information  
9 detailing: What a guardian is, the different types of guardianships in  
10 Washington, the powers granted to a guardian, an explanation of how  
11 professional guardian fees are approved by the court and how  
12 professional guardians may bill for their services, forms and a  
13 description of the process to request that the court modify a  
14 guardianship or remove a guardian, the ethical and fiduciary duties of  
15 a guardian, and information about the certified professional guardian  
16 board and program.

17 (2) Nothing in ((chapter 133, Laws of 1999 shall)) this section or  
18 RCW 43.190.065 may be construed to empower the state long-term care  
19 ombudsman or any local long-term care ombudsman with statutory or  
20 regulatory licensing or sanctioning authority.

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