

HOUSE BILL REPORT

SHB 1865

As Passed Legislature

Title: An act relating to guardianship.

Brief Description: Clarifying numerous miscellaneous guardianship provisions.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Mitchell and Tokuda).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 3/8/95, 98-0.

Senate Amended.

House Concurred.

Passed Legislature.

HOUSE COMMITTEE ON LAW & JUSTICE

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

Staff: Bill Perry (786-7123).

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

Any person over the age of 18 and any parent may serve as a guardian if the court deems them to be suitable. The guardian is at all times under the direction and control of the court. A guardian is allowed reasonable compensation for his or her

services and administrative costs, subject at all times to approval by the court. Any person may petition the court to modify or terminate a guardianship.

Prior to appointment of a guardian for an incapacitated person, the court must receive a written report from an examining physician or psychologist regarding the incapacitated person's condition. Current law has been interpreted to require this examination within 30 days of the court hearing to appoint a guardian.

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

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

Summary of Bill: Changes are made to a number of code sections regarding guardianship.

Notice of the commencement of guardianship proceedings must be provided within five court days of filing of a guardianship petition. Notice of the hearing to appoint a guardian is to be sent to the last known address of each person to be notified.

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

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

Unless otherwise ordered, appointment of a guardian for an estate automatically revokes any powers of attorney. Appointment of a guardian for a person requires the court to make a finding regarding any existing medical powers of attorney.

The court is given discretion regarding the appointment of a guardian ad litem to review the report of a guardian for the purposes of settling an intermediate guardianship account. Intestate estates are included in the provisions for settlement of terminated guardianship accounts, and the court is given authority to appoint a guardian ad litem to review the final settlement of a guardianship account.

DSHS is given the right to notice of, access to, and participation in any hearings which affect the assets of an incapacitated person, if that person is a client of the department and is required to contribute to the cost of residential or support services.

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

Appropriation: None.

Fiscal Note: Not requested.

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

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

Housekeeping measures will save state money by streamlining guardianship proceedings.

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

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