

SENATE BILL REPORT

SHB 1865

As Reported By Senate Committee On:
Law & Justice, March 30, 1995

Title: An act relating to guardianship.

Brief Description: Clarifying numerous miscellaneous guardianship provisions.

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

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

Committee Activity: Law & Justice: 3/28/95, 3/30/95 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Smith, Chair; Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

Staff: Martin Lovinger (786-7443)

Background: Superior courts may appoint guardians and limited guardians to represent incapacitated persons. A guardian is allowed reasonable compensation subject to approval of the court.

In 1994, the Legislature passed a law requiring the Department of Social and Health Services (DSHS) to establish in rule the maximum amount which guardians may charge clients of DSHS who are residents of nursing homes and other long-term care facilities. The law also prohibits guardians from charging DSHS clients for services which the clients are already receiving as part of their state-funded services. This law was passed partly in response to an increase in fees being paid to private guardians for DSHS clients receiving state-supported nursing home care. DSHS feels there is a need for such a statute in order to comply with participation in the federal Medicaid program.

Private guardians feel that the result of this statute, which they believe is not necessary in order to comply with federal Medicaid regulations, is to set compensation for guardians at too low a level. The result could be unqualified guardians. That could increase costs to the state that qualified guardians avoid through appropriate placements of clients in less costly and less institutional settings and recovery of stolen assets.

In addition, there are other areas in the guardianship statutes that need clarification. These include the conflict between the legal, financial and medical powers of attorney that may have been signed by the incapacitated person before being incapacitated, and the authority of the guardian to act on behalf of the incapacitated person.

Summary of Amended Bill: DSHS is entitled to receive notice of proceedings that affect the assets of DSHS clients. Language that a guardian may not receive compensation for services provided by DSHS for which the incapacitated person is eligible is eliminated.

A court must make a specific finding of fact regarding the continued validity of an existing medical power of attorney before appointing a guardian or limited guardian for the person.

The appointment of a guardian for an estate automatically revokes any powers of attorney.

There are changes in procedures addressing notice, written reports of physicians or psychologists, and reports by guardians ad litem in guardianship matters. There are also some technical changes amending incorrect references and outdated language and grammar.

Amended Bill Compared to Substitute Bill: The substitute bill revokes the authority of DSHS to establish the amount of recoverable guardianship fees when the incapacitated person is a DSHS client. The substitute bill also revokes any existing medical powers of attorney whenever a guardian is appointed for a person.

Appropriation: None.

Fiscal Note: Requested on March 24, 1995.

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

Testimony For: Guardianship is important and the bill addresses a number of points necessary to the efficient functioning of the system. The agreement between DSHS and the guardians eliminates a major problem and makes it possible for guardians to work with DSHS caseworkers in providing services to incapacitated persons.

Testimony Against: None.

Testified: PRO: Representative Mitchell, original prime sponsor; Bill Kiskaddon, Washington Association of Professional Guardians; Kathy Leitch, DSHS Aging and Adult Services.