

HOUSE BILL REPORT

HB 1139

As Passed House:
February 1, 2017

Title: An act relating to the methods of services provided by the office of public guardianship.

Brief Description: Concerning the methods of services provided by the office of public guardianship.

Sponsors: Representatives Kilduff, Rodne, Jinkins and Muri; by request of Board For Judicial Administration.

Brief History:

Committee Activity:

Judiciary: 1/17/17, 1/26/17 [DP].

Floor Activity:

Passed House: 2/1/17, 84-13.

Brief Summary of Bill

- Authorizes the Office of Public Guardianship to expand the program to also include supported decisionmaking assistance and estate administration.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert and Orwall.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Cece Clynch (786-7195).

Background:

Office of Public Guardianship.

In 2007 the Office of Public Guardianship (OPG) was created, within the Administrative Office of the Courts (AOC), to provide public guardianship services to incapacitated

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individuals who need the services of a guardian and for whom adequate services may be otherwise unavailable. Initial implementation of the public guardianship program was on a pilot basis. To date, there are 10 programs in the following counties: Clallam; Grays Harbor; King; Okanogan; Pierce; Snohomish; Spokane; Clark; Kitsap; and Thurston.

A guardian is a surrogate decisionmaker appointed by the court to make decisions, either personal, financial, or both, for a person whom a court has determined has a significant risk of personal or financial harm based on a demonstrated inability to adequately provide for his or her nutrition, health, and physical safety or to manage financial affairs or property. To be eligible for a public guardian, incapacitated individuals must be over 18 years of age *and* have incomes less than 200 percent of the federal poverty level *or* be receiving long-term care services through the Department of Social and Health Services.

The OPG may contract with individuals and organizations, either public or private, to provide public guardianship services. A public guardian must be certified by the Certified Professional Guardian Board and must meet minimum standards of practice adopted by the OPG. Any entity providing professional guardianship services to more than 20 incapacitated persons per certified professional guardian may not be compensated for public guardian services.

Public guardianship service contracts are dependent upon legislative appropriation. It is expressly provided that the OPG statutes do not create an entitlement.

The OPG is authorized to provide guardianship training to individuals with whom the OPG contracts to provide public guardian services, as well as individuals who, in the judgment of the administrator of the OPG, are likely to provide public guardianship services in the future.

Estate Administration.

After the entry of an order admitting a will to probate and appointing a personal representative, letters of administration are granted by the court to the person appointed. In the case of a decedent who dies without a will, or if the personal representative named in a will declines or is unable to serve, a statute specifies the order of persons to serve as follows:

1. surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed;
2. next of kin, in the specified order;
3. trustee, guardian, or attorney-in-fact, if any such fiduciary controlled or potentially controlled substantially all of the decedent's probate and non-probate assets;
4. one or more of the beneficiaries or transferees of the decedent's probate or non-probate assets;
5. director of the Department of Revenue, or the director's designee, for estates subject to laws regarding escheat property, which is property that reverts to the state;
6. secretary of the Department of Social and Health Services for estates owing debts for long-term care services; or
7. one or more of the principal creditors.

The court may appoint any suitable person to administer the estate if none of the above persons petition for letters of administration, as well as in certain other circumstances.

Summary of Bill:

Office of Public Guardianship.

The Office of Public Guardianship (OPG) is authorized to establish a program that includes supported decisionmaking assistance and estate administration, in addition to public guardianship.

"Supported decisionmaking assistance" means support for an individual with diminished decisionmaking ability in making decisions affecting health or safety or to manage financial affairs. Assistance includes, without limitation, acting as a representative payee, an attorney-in-fact, a trustee, and a public guardian.

- "Representative payee" means the designated agent for a recipient of government benefits whom a government agency has determined to be incapable of managing his or her benefits.
- "Attorney-in-fact" means an agent authorized by an individual to act on his or her behalf pursuant to a power of attorney.
- "Trustee" means a person or organization named in a trust agreement to handle trust property for the benefit of one or more beneficiaries in accordance with the terms of the agreement.

Eligibility criteria for supported decisionmaking and estate administration services is the same as for public guardianship services. In addition, other categories of persons are eligible for fee-based services:

- Supported decisionmaking services are available to persons age 18 or older when there is no one else qualified who is willing and able to serve.
- Estate administration services are available in the case of decedents 18 or older, in circumstances where a service provider under contract with the OPG is granted letters of administration. Fees may be collected from the estate of persons whose income exceeds 200 percent of the federal poverty level, determined annually by the United States Department of Health and Human Services, based on a fee schedule established by the OPG that must be published annually.

Provisions found within the laws governing the OPG pertaining to the pilot nature of the program and reports from the OPG and the Washington Institute of Public Policy are stricken. References to a repealed section and a chapter that no longer exists in code are also stricken.

Estate Administration.

In circumstances in which a court may appoint any suitable person to administer an estate, the court may appoint a service provider under contract with the OPG.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill addresses the real challenges that people face, particularly people of limited means. Not everyone needs a guardian, but they may need a representative payee to handle checks for them. Estate administration is also added as a service. Under this bill, these services would be something that Office of Public Guardianship (OPG) may contract for. Society is judged by how it treats the most vulnerable. By 2030 one in five persons in Washington will be over 65 years of age. More people will need these services. With the addition of these other services, more people can be served in a less expensive way. This is request legislation from the Board for Judicial Administration and has been a stakeholder effort. There is a need for these services, and currently they have nowhere to turn. This will not take away work from other attorneys. Concerns have been expressed that this request for these new services is being made before expansion of the guardianship services, but the Working Interdisciplinary Network of Guardianship Stakeholders has recommended that these services be added first. Currently, the OPG only has one very powerful tool, guardianship. This is often too powerful for the need, and this bill will add tools that are less restrictive and allow individuals to maintain their independence. For instance, someone needs a root canal and the dentist doesn't think the person has the capacity to consent. Or, there is a need for someone to pay the bills, or just walk through the finances in order for the individual to be able to make an informed decision. Supported decisionmaking is empowering. This preserves the dignity of risk. Sometimes the way to learn and grow is to learn from mistakes. If the bill were to pass and be enacted into law, some individuals could be transitioned from a guardianship to something less restrictive and more appropriate for their needs. There is an example of one older woman with multiple sclerosis, and without much money. She just needed help with financial transactions, but law students at the legal clinic could not find such services for her. The OPG is underfunded, but this will allow the office to grow in a cost-effective way.

(Opposed) None.

Persons Testifying: Representative Kilduff, prime sponsor; Seth Dawson, National Alliance on Mental Illness Washington; Brady Horenstein and Shirley Bondon, Administrative Office of the Courts; Diana Stadden, The Arc of Washington State; Noah Seidel and Ivanova Smith, Self Advocates in Leadership; Loralee McDonnell-Williams, South Sound Alternatives; and David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.