

SENATE BILL REPORT

SB 5447

As Reported by Senate Committee On:
Law & Justice, January 11, 2018

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: Senators Conway and Keiser; by request of Board For Judicial Administration.

Brief History:

Committee Activity: Law & Justice: 2/14/17, 1/11/18 [DP, w/oRec].

Brief Summary of Bill

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

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Angel, Darneille, Frockt and Wilson.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

Staff: Tim Ford (786-7423)

Background: Guardianship. A guardianship action is a legal process in which a guardian is appointed and empowered by the court to make decisions for an incapacitated person. This process removes decision-making authority from the incapacitated person and gives the authority to make decisions for an incapacitated person to the guardian. A determination of incapacity is a legal, not a medical, decision. A person may be deemed incapacitated if the court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person may also be deemed incapacitated if the person is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. The court may appoint a guardian for the person, for the person's estate, or both.

Office of Public Guardianship (OPG). In 2007, the Legislature established the OPG within the Administrative Office of the Courts to promote the availability of guardianship services to incapacitated individuals for whom adequate services may not otherwise be available. The OPG is authorized to contract with public or private entities or individuals to provide public guardianship services for persons age 18 or older and whose income does not exceed 200 percent of the federal poverty level. The OPG monitors and oversees the use of state funding on public guardianship, but is prohibited from acting as a public guardian or in any other representative capacity for any individual. The OPG is also required to adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases requiring appointment of a public guardian exceeds the number of cases in which public guardianship services can be provided.

The OPG creates minimum standards of practice for public guardianship services and adopts processes to receive and consider complaints against the OPG and contracted providers of public guardianship services. The OPG also has a system for monitoring the performance of public guardianship services.

Estate Administration. During a will probate process, letters of administration are granted by the court to the appointed personal representative. When a person dies, or if the personal representative named in a will declines or is unable to serve, state law 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. The 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. The Secretary of the Department of Social and Health Services for estates owing debts for long-term care services.
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: The OPG must establish and administer supported decision-making assistance programs in concert with public guardianship programs. Supported decision-making assistance would act as an alternative service to guardianship and is defined as "support for an individual with diminished decision-making 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."

The OPG must provide for supported decision-making assistance services in a similar manner as they provide for public guardianship services. Supported decision-making assistance services will be contracted through public or private entities and will be provided to individuals who meet the same age and financial requirements for public guardianship. The OPG also must create eligibility criteria and oversight for supported decision-making assistance services as it did for public guardianship services.

A provision stating that the initial implementation of public guardianship services is on a pilot basis is removed. Three provisions requiring reports be made over the first several years of the OPG's operation are removed.

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: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: *Testimony from 2017 Regular Session.* PRO: Not everyone needs a guardianship. Some incapacities can be served in a less restrictive manner. This bill expands the authority of the Office of Public Guardianship to provide services that are less than a guardianship. It will save the state money.

OTHER: The Certified Professional Guardian Board has over 117 alleged grievances against professional guardians that are outstanding. They cannot do their job currently so why expand their duties. This bill states long term care services means services provided through DSHS either in a hospital or skilled nursing facility. Yet there are two state laws that say that incapacitated persons cannot be forced into any type of facility against their wishes. There is also an article from 2013 that talks of the Legislature's mandate to keep incapacitated persons out of facilities. Why is the Office of Public Guardianship going against state law? The elderly below the poverty level need your help. This bill is not the right way to do it.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Diana Stadden, Arc of WA State; Shirley Bondon, Administrative Office of the Courts; Brady Horenstein, Administrative Office of the Courts; Donna Patrick, Developmental Disabilities Council; David Lord, Disability Rights WA.

OTHER: Claudia Donnelly, citizen.

Persons Signed In To Testify But Not Testifying: No one.