

HOUSE BILL REPORT

ESHB 1329

As Passed House:
March 8, 2019

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

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

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kilduff, Harris, Jinkins, Klippert, Valdez, Walen, Tharinger and Leavitt).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/30/19, 2/8/19 [DPS].

Floor Activity:

Passed House: 3/8/19, 93-5.

Brief Summary of Engrossed Substitute Bill

- Authorizes the Office of Public Guardianship (OPG) to develop and adopt a case-weighting system.
- Allows the OPG to increase the standard caseload limit of a certified professional guardian contracted by the OPG from 20 cases up to 36 cases in certain instances.
- Removes obsolete language and language pertaining to the pilot nature of the public guardianship program.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Valdez, Walen and Ybarra.

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

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

Staff: Ingrid Lewis (786-7289).

Background:

A guardian is an individual or entity appointed and empowered by the court to make decisions for either the person or the estate, or both, of an incapacitated person. A person may be deemed incapacitated when the court determines that there is a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. Incapacity as to the person's estate means the person is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. If a person is incapacitated in some aspects, but not others, a limited guardian may be appointed over the person, the estate, or both, to make decisions regarding the areas in which the person is incapacitated.

Office of Public Guardianship.

In 2007 the Office of Public Guardianship (OPG) was created within the Administrative Office of the Courts to provide public guardianship services to incapacitated individuals who need the services of a guardian and for whom adequate services may be otherwise unavailable. To be eligible for a public guardian, incapacitated individuals must: (1) be over 18 years of age and have incomes less than 200 percent of the federal poverty level; or (2) be receiving long-term care services through the Department of Social and Health Services. 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.

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.

A public guardian is a certified professional guardian who contracts with the OPG to provide services to low income individuals. 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.

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 nonprobate assets;
4. one or more of the beneficiaries or transferees of the decedent's probate or nonprobate 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;
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 Engrossed Substitute 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 decision-making assistance" means 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.

- "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 decision-making 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 to the estate of an individual who died at age 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 when the decedent's income prior to death exceeded 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.

The OPG may authorize, on a case-by-case basis, payment of services to a contract service provider that is serving more than 20 incapacitated persons per professional guardian. The OPG is required to develop policies and procedures to determine the ability of a public guardian or contract service provider to accept more than 20 cases. When determining caseload size, consideration must be given to the expected activities, time, and demands involved, as well as the available support for each case. Case load size must not exceed 36 cases. The caseload restrictions apply to both public and private pay guardianships.

The OPG must submit the final case-weighting system to the Legislature by December 1, 2019, and it must be publicly available. The Administrative Office of the Courts is required to notify the Superior Courts of the final case-weighting policies.

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 would expand the services offered by the Office of Public Guardianship (OPG) to include representative payee and attorney-in-fact, in addition to the estate administration component. The bill recognizes the fact that there is a spectrum of adults that the OPG serves. Supported decisionmaking and different types of protective arrangements can accomplish what is needed at a more efficient cost than a full guardianship. This is a smart upfront investment because guardianship is an expensive option. There are many opportunities where a person could be assisted in their decisionmaking without stripping the person of their rights through a guardianship.

It is still the state's responsibility to take good care of incapacitated persons. If lesser levels of support are allowed for people, their needs must still be adequately met. There needs to be a review process to ensure that happens.

(Opposed) None.

Persons Testifying: Representative Kilduff, prime sponsor; Steve Lindstrom, Washington Association of Professional Guardians; David Lord, Disability Rights Washington; and Dory Nicpon, Board for Judicial Administration.

Persons Signed In To Testify But Not Testifying: None.