

# FINAL BILL REPORT

## ESHB 1329

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Synopsis as Enacted

**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).

**House Committee on Civil Rights & Judiciary**  
**Senate Committee on Law & Justice**

### **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.

The Office of Public Guardianship (OPG) provides 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

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*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.*

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, the order of persons to serve is 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:**

#### 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 acting as a representative payee, an attorney-in-fact, or a trustee.

Eligibility criteria for supported decisionmaking and estate administration services are 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.

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.

**Votes on Final Passage:**

House	93	5
Senate	38	7

**Effective:** July 28, 2019