
Judiciary Committee

HB 1736

Title: An act relating to the role of guardians for persons with developmental disabilities.

Brief Description: Revising provisions regarding the role of guardians for persons with developmental disabilities.

Sponsors: Representatives Lantz, Carrell, Boldt, Dickerson and Kenney.

Brief Summary of Bill

- Makes various changes to the guardianship statutes to, among other things, require that the court's appointment of a guardian include the authority of the guardian, if any, to exercise the ward's preferences or decision-making regarding residential placement.
- Makes changes to the statutes governing the procedures the Department of Social and Health Services must follow when giving certain notices to persons with developmental disabilities and their guardians.

Hearing Date: 2/20/03

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Guardianship

Any person or entity may petition the court for the appointment of a guardian over an alleged incapacitated person (AIP). There are extensive court procedures that must be followed when a petition for a guardian is filed. For example, the AIP must be given notice of the petition and has the right to an attorney. The petition must contain certain information, such as the nature of the alleged incapacity, the reason why the appointment is sought, and the specific areas of protection and assistance requested.

The court may establish a guardianship over the person, the person's estate, or both. A person could be found incapacitated as to his or her *estate* if the person is at a significant risk of financial harm because of an inability to manage his or her property or financial affairs. A person could be found incapacitated as to his or her *person* if the person poses a significant risk of personal harm because of an inability to provide for nutrition, health,

housing, or physical safety. The court may also establish a limited guardianship in which the guardian's duties are limited to specified areas.

The statutes specify the duties the guardian owes to the incapacitated person. Generally, a guardian must care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's needs. The guardian must assert the incapacitated person's rights and best interests.

The statutes also establish limits to the guardian's authority. The guardian may not involuntarily commit the incapacitated person for mental health treatment, observation, or evaluation if the incapacitated person is unable or unwilling to give informed consent unless the procedures for an involuntary commitment are followed. In addition, the statutes specify that no residential treatment facility providing nursing or other care may detain a person within the facility against the person's will, unless there is a court order issued under the provisions of certain statutes governing involuntary treatment.

Persons with Developmental Disabilities

The Department of Social and Health Services (DSHS) provides services to persons with developmental disabilities designed to assist those persons in acquiring and maintaining life skills. A developmental disability is a condition which started before the age 18, results in a substantial handicap, is expected to continue indefinitely, and is attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to mental retardation.

Whenever the DSHS is required to give notice to the person with developmental disabilities or to consult the person with development disabilities, the statutes require that the DSHS give notice to or consult with at least one other person in addition to the person with developmental disabilities. The statutes specify who that other person is in order of priority. If the person with developmental disabilities has a legal representative, such as a guardian, the DSHS must give notice or consult with that representative. However, if the person with developmental disabilities requests in writing that the DSHS give notice or consult with only him or her, then the DSHS must comply with that request unless the DSHS finds that the person may be at risk of losing his or her rights by not notifying or consulting with the other person.

Summary of Bill:

If a petitioner for guardianship over a person alleges that the guardian should be granted the incapacitated person's decision-making authority regarding residential placement, the petition must contain the reasons for the request. The notice given to the AIP that a petition for guardianship has been filed must also contain a statement that the AIP could lose his or her right to make decisions regarding place of residence.

The court's order appointing a guardian must include the authority of the guardian, if any, to exercise the ward's preferences or decision making with regard to residence or residential placement.

The limitations on guardians regarding involuntary commitment for mental health treatment,

observation, or evaluation is amended to specify that such limitation is not intended to apply to a guardian who has been granted specific authority to exercise an incapacitated person's decision making regarding residential placement in order to obtain services for developmentally disabled persons.

If a person with developmental disabilities requests that DSHS give notice to or consult with only the person with development disabilities and not the second person otherwise required by statute, the DSHS must comply with that request unless the person with developmental disabilities has a guardian appointed over the person.

Appropriation: None.

Fiscal Note: Not Requested.

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