
HOUSE BILL 1736

State of Washington 58th Legislature 2003 Regular Session

By Representatives Lantz, Carrell, Boldt, Dickerson and Kenney

Read first time 02/06/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to the role of guardians for persons with
2 developmental disabilities; amending RCW 11.88.030, 11.88.095,
3 11.92.043, 11.92.190, 71A.10.060, and 71A.10.070; and amending 1998 c
4 216 s 9 (uncodified).

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read
7 as follows:

8 (1) Any person or entity may petition for the appointment of a
9 qualified person, trust company, national bank, or nonprofit
10 corporation authorized in RCW 11.88.020 as the guardian or limited
11 guardian of an incapacitated person. No liability for filing a
12 petition for guardianship or limited guardianship shall attach to a
13 petitioner acting in good faith and upon reasonable basis. A petition
14 for guardianship or limited guardianship shall state:

15 (a) The name, age, residence, and post office address of the
16 alleged incapacitated person;

17 (b) The nature of the alleged incapacity in accordance with RCW
18 11.88.010;

1 (c) The approximate value and description of property, including
2 any compensation, pension, insurance, or allowance, to which the
3 alleged incapacitated person may be entitled;

4 (d) Whether there is, in any state, a guardian or limited guardian,
5 or pending guardianship action for the person or estate of the alleged
6 incapacitated person;

7 (e) The residence and post office address of the person whom
8 petitioner asks to be appointed guardian or limited guardian;

9 (f) The names and addresses, and nature of the relationship, so far
10 as known or can be reasonably ascertained, of the persons most closely
11 related by blood or marriage to the alleged incapacitated person;

12 (g) The name and address of the person or facility having the care
13 and custody of the alleged incapacitated person;

14 (h) The reason why the appointment of a guardian or limited
15 guardian is sought and the interest of the petitioner in the
16 appointment, and whether the appointment is sought as guardian or
17 limited guardian of the person, the estate, or both;

18 (i) A description of any alternate arrangements previously made by
19 the alleged incapacitated person, such as trusts or powers of attorney,
20 including identifying any guardianship nominations contained in a power
21 of attorney, and why a guardianship is nevertheless necessary;

22 (j) The nature and degree of the alleged incapacity and the
23 specific areas of protection and assistance requested and the
24 limitation of rights requested to be included in the court's order of
25 appointment;

26 (k) The requested term of the limited guardianship to be included
27 in the court's order of appointment;

28 (l) Whether the petitioner is proposing a specific individual to
29 act as guardian ad litem and, if so, the individual's knowledge of or
30 relationship to any of the parties, and why the individual is proposed.

31 (2)(a) The attorney general may petition for the appointment of a
32 guardian or limited guardian in any case in which there is cause to
33 believe that a guardianship is necessary and no private party is able
34 and willing to petition.

35 (b) Prepayment of a filing fee shall not be required in any
36 guardianship or limited guardianship brought by the attorney general.
37 Payment of the filing fee shall be ordered from the estate of the
38 incapacitated person at the hearing on the merits of the petition,

1 unless in the judgment of the court, such payment would impose a
2 hardship upon the incapacitated person, in which case the filing shall
3 be waived.

4 (3) No filing fee shall be charged by the court for filing either
5 a petition for guardianship or a petition for limited guardianship if
6 the petition alleges that the alleged incapacitated person has total
7 assets of a value of less than three thousand dollars.

8 (4) In any petition for guardianship of the person in which the
9 petitioner alleges the guardian should be granted the alleged
10 incapacitated person's decision-making authority regarding residential
11 placement, the reasons for such a request must be specifically stated
12 in the petition pursuant to subsection (1)(h) and (j) of this section.

13 (5)(a) Notice that a guardianship proceeding has been commenced
14 shall be personally served upon the alleged incapacitated person and
15 the guardian ad litem along with a copy of the petition for appointment
16 of a guardian. Such notice shall be served not more than five court
17 days after the petition has been filed.

18 (b) Notice under this subsection shall include a clear and easily
19 readable statement of the legal rights of the alleged incapacitated
20 person that could be restricted or transferred to a guardian by a
21 guardianship order as well as the right to counsel of choice and to a
22 jury trial on the issue of incapacity. Such notice shall be in
23 substantially the following form and shall be in capital letters,
24 double-spaced, and in a type size not smaller than ten-point type:

25 IMPORTANT NOTICE
26 PLEASE READ CAREFULLY

27 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
28 COUNTY SUPERIOR COURT BY IF A GUARDIAN IS
29 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 30 (1) TO MARRY OR DIVORCE;
- 31 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 32 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 33 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 34 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 35 (6) TO POSSESS A LICENSE TO DRIVE;
- 36 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 37 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 38 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

- 1 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE;
2 (11) TO MAKE DECISIONS REGARDING YOUR PLACE OF RESIDENCE.

3 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

4 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
5 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
6 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

7 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED
8 A GUARDIAN TO HELP YOU.

9 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING
10 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD
11 LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE
12 THAT PERSON.

13 ~~((+5))~~ (6) All petitions filed under the provisions of this
14 section shall be heard within sixty days unless an extension of time is
15 requested by a party or the guardian ad litem within such sixty day
16 period and granted for good cause shown. If an extension is granted,
17 the court shall set a new hearing date.

18 **Sec. 2.** RCW 11.88.095 and 1995 c 297 s 5 are each amended to read
19 as follows:

20 (1) In determining the disposition of a petition for guardianship,
21 the court's order shall be based upon findings as to the capacities,
22 condition, and needs of the alleged incapacitated person, and shall not
23 be based solely upon agreements made by the parties.

24 (2) Every order appointing a full or limited guardian of the person
25 or estate shall include:

26 (a) Findings as to the capacities, condition, and needs of the
27 alleged incapacitated person;

28 (b) The amount of the bond, if any, or a bond review period;

29 (c) When the next report of the guardian is due;

30 (d) Whether the guardian ad litem shall continue acting as guardian
31 ad litem;

32 (e) Whether a review hearing shall be required upon the filing of
33 the inventory;

34 (f) The authority of the guardian, if any, for investment and
35 expenditure of the ward's estate; ~~((and))~~

1 (g) The authority of the guardian, if any, for exercising the
2 ward's preferences or decision making with regard to residence or
3 residential placement; and

4 (h) Names and addresses of those persons described in RCW
5 11.88.090(5)(d), if any, whom the court believes should receive copies
6 of further pleadings filed by the guardian with respect to the
7 guardianship.

8 (3) If the court determines that a limited guardian should be
9 appointed, the order shall specifically set forth the limits by either
10 stating exceptions to the otherwise full authority of the guardian or
11 by stating the specific authority of the guardian.

12 (4) In determining the disposition of a petition for appointment of
13 a guardian or limited guardian of the estate only, the court shall
14 consider whether the alleged incapacitated person is capable of giving
15 informed medical consent or of making other personal decisions and, if
16 not, whether a guardian or limited guardian of the person of the
17 alleged incapacitated person should be appointed for that purpose.

18 (5) Unless otherwise ordered, any powers of attorney or durable
19 powers of attorney shall be revoked upon appointment of a guardian or
20 limited guardian of the estate.

21 If there is an existing medical power of attorney, the court must
22 make a specific finding of fact regarding the continued validity of
23 that medical power of attorney before appointing a guardian or limited
24 guardian for the person.

25 **Sec. 3.** RCW 11.92.043 and 1991 c 289 s 11 are each amended to read
26 as follows:

27 It shall be the duty of the guardian or limited guardian of the
28 person:

29 (1) To file within three months after appointment a personal care
30 plan for the incapacitated person which shall include (a) an assessment
31 of the incapacitated person's physical, mental, and emotional needs and
32 of such person's ability to perform or assist in activities of daily
33 living, and (b) the guardian's specific plan for meeting the identified
34 and emerging personal care needs of the incapacitated person.

35 (2) To file annually or, where a guardian of the estate has been
36 appointed, at the time an account is required to be filed under RCW

1 11.92.040, a report on the status of the incapacitated person, which
2 shall include:

3 (a) The address and name of the incapacitated person and all
4 residential changes during the period;

5 (b) The services or programs which the incapacitated person
6 receives;

7 (c) The medical status of the incapacitated person;

8 (d) The mental status of the incapacitated person;

9 (e) Changes in the functional abilities of the incapacitated
10 person;

11 (f) Activities of the guardian for the period;

12 (g) Any recommended changes in the scope of the authority of the
13 guardian;

14 (h) The identity of any professionals who have assisted the
15 incapacitated person during the period.

16 (3) To report to the court within thirty days any substantial
17 change in the incapacitated person's condition, or any changes in
18 residence of the incapacitated person.

19 (4) Consistent with the powers granted by the court, to care for
20 and maintain the incapacitated person in the setting least restrictive
21 to the incapacitated person's freedom and appropriate to the
22 incapacitated person's personal care needs, assert the incapacitated
23 person's rights and best interests, and if the incapacitated person is
24 a minor or where otherwise appropriate, to see that the incapacitated
25 person receives appropriate training and education and that the
26 incapacitated person has the opportunity to learn a trade, occupation,
27 or profession.

28 (5) Consistent with RCW 7.70.065, to provide timely, informed
29 consent for health care of the incapacitated person, except in the case
30 of a limited guardian where such power is not expressly provided for in
31 the order of appointment or subsequent modifying order as provided in
32 RCW 11.88.125 as now or hereafter amended, the standby guardian or
33 standby limited guardian may provide timely, informed consent to
34 necessary medical procedures if the guardian or limited guardian cannot
35 be located within four hours after the need for such consent arises.
36 No guardian, limited guardian, or standby guardian may involuntarily
37 commit for mental health treatment, observation, or evaluation an
38 alleged incapacitated person who is unable or unwilling to give

1 informed consent to such commitment unless the procedures for
2 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are
3 followed. Nothing in this section shall be construed to allow a
4 guardian, limited guardian, or standby guardian to consent to:

5 (a) Therapy or other procedure which induces convulsion;

6 (b) Surgery solely for the purpose of psychosurgery;

7 (c) Other psychiatric or mental health procedures that restrict
8 physical freedom of movement, or the rights set forth in RCW 71.05.370.

9 A guardian, limited guardian, or standby guardian who believes
10 these procedures are necessary for the proper care and maintenance of
11 the incapacitated person shall petition the court for an order unless
12 the court has previously approved the procedure within the past thirty
13 days. The court may order the procedure only after an attorney is
14 appointed in accordance with RCW 11.88.045 if no attorney has
15 previously appeared, notice is given, and a hearing is held in
16 accordance with RCW 11.88.040.

17 The limitations in subsection (5) of this section are not intended
18 to apply to a guardian of the person who has been granted specific
19 authority to exercise an incapacitated person's decision making
20 regarding residential placement in order to obtain the services
21 available under Title 71A RCW.

22 **Sec. 4.** RCW 11.92.190 and 1996 c 249 s 11 are each amended to read
23 as follows:

24 No residential treatment facility which provides nursing or other
25 care may detain a person within such facility against their will. Any
26 court order, other than an order issued in accordance with the
27 involuntary treatment provisions of chapters 10.77, 71.05, and 72.23
28 RCW, (~~which purports to authorize such involuntary detention or~~
29 ~~purports to authorize a guardian or limited guardian to consent to such~~
30 ~~involuntary detention on behalf of an incapacitated person)) or in
31 accordance with the residential placement provision of RCW
32 11.88.095(2)(g), shall be void and of no force or effect. This section
33 does not apply to the detention of a minor as provided in chapter
34 70.96A or 71.34 RCW.~~

35 Nothing in this section shall be construed to require a court order
36 authorizing placement of an incapacitated person in a residential
37 treatment facility if such order is not otherwise required by law:

1 PROVIDED, That notice of any residential placement of an incapacitated
2 person shall be served, either before or after placement, by the
3 guardian or limited guardian on such person, the guardian ad litem of
4 record, and any attorney of record.

5 **Sec. 5.** 1998 c 216 s 9 (uncodified) is amended to read as follows:
6 Sections ((1~~and~~)) 5 through 8 of this act expire June 30, 2003.

7 **Sec. 6.** RCW 71A.10.060 and 1989 c 175 s 139 are each amended to
8 read as follows:

9 (1) Whenever this title requires the secretary to give notice, the
10 secretary shall give notice to the person with a developmental
11 disability and, except as provided in subsection (3) of this section,
12 to at least one other person. The other person shall be the first
13 person known to the secretary in the following order of priority:

14 (a) A legal representative of the person with a developmental
15 disability;

16 (b) A parent of a person with a developmental disability who is
17 eighteen years of age or older;

18 (c) Other kin of the person with a developmental disability, with
19 preference to persons with the closest kinship;

20 (d) The Washington protection and advocacy system for the rights of
21 persons with developmental disabilities, appointed in compliance with
22 42 U.S.C. Sec. 6042; or

23 (e) A person who is not an employee of the department or of a
24 person who contracts with the department under this title who, in the
25 opinion of the secretary, will be concerned with the welfare of the
26 person.

27 (2) Notice to a person with a developmental disability shall be
28 given in a way that the person is best able to understand. This can
29 include reading or explaining the materials to the person.

30 (3) A person with a developmental disability may in writing request
31 the secretary to give notice only to that person. The secretary shall
32 comply with that direction unless the person has a guardian appointed
33 over his or her person, or the secretary denies the request because the
34 person may be at risk of losing rights if the secretary complies with
35 the request. The secretary shall give notice as provided in
36 subsections (1) and (2) of this section. On filing an application with

1 the secretary within thirty days of receipt of the notice, the person
2 who made the request has the right to an adjudicative proceeding under
3 RCW 71A.10.050 on the secretary's decision.

4 (4) The giving of notice to a person under this title does not
5 empower the person who is given notice to take any action or give any
6 consent, unless otherwise authorized by law.

7 **Sec. 7.** RCW 71A.10.070 and 1989 c 175 s 140 are each amended to
8 read as follows:

9 (1) Whenever this title places on the secretary the duty to
10 consult, the secretary shall carry out that duty by consulting with the
11 person with a developmental disability and, except as provided in
12 subsection (2) of this section, with at least one other person. The
13 other person shall be in order of priority:

14 (a) A legal representative of the person with a developmental
15 disability;

16 (b) A parent of a person with a developmental disability who is
17 eighteen years of age or older;

18 (c) Other kin of the person with a developmental disability, with
19 preference to persons with the closest kinship;

20 (d) The Washington protection and advocacy system for the rights of
21 persons with developmental disabilities, appointed in compliance with
22 42 U.S.C. Sec. 6042; or

23 (e) Any other person who is not an employee of the department or of
24 a person who contracts with the department under this title who, in the
25 opinion of the secretary, will be concerned with the welfare of the
26 person.

27 (2) A person with a developmental disability may in writing request
28 the secretary to consult only with that person. The secretary shall
29 comply with that direction unless the person has a guardian appointed
30 over his or her person, or the secretary denies the request because the
31 person may be at risk of losing rights if the secretary complies with
32 the request. The secretary shall give notice as provided in RCW
33 71A.10.060 when a request is denied. On filing an application with the
34 secretary within thirty days of receipt of the notice, the person who
35 made the request has the right to an adjudicative proceeding under RCW
36 71A.10.050 on the secretary's decision.

1 (3) Consultation with a person under this section does not
2 authorize the person who is consulted to take any action or give any
3 consent, unless otherwise authorized by law.

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