
SENATE BILL 5786

State of Washington

64th Legislature

2015 Regular Session

By Senators Conway, Darneille, Cleveland, and McAuliffe

Read first time 02/03/15. Referred to Committee on Human Services,
Mental Health & Housing.

1 AN ACT Relating to services that provide support for decision
2 making; and amending RCW 2.72.005, 2.72.010, 2.72.020, and 2.72.030.

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

4 **Sec. 1.** RCW 2.72.005 and 2007 c 364 s 1 are each amended to read
5 as follows:

6 (1) In establishing an office of public guardianship, the
7 legislature intends to promote the availability of guardianship and
8 alternate services that provide support for decision making for
9 individuals who need them and for whom adequate services may
10 otherwise be unavailable. The legislature reaffirms its commitment to
11 treat liberty and autonomy as paramount values for all Washington
12 residents and to authorize public guardianship only to the minimum
13 extent necessary to provide for health or safety, or to manage
14 financial affairs, when the legal conditions for appointment of a
15 guardian are met. It does not intend to alter those legal conditions
16 or to expand judicial authority to determine that any individual is
17 incapacitated.

18 (2) The legislature further recognizes that services that support
19 decision making for people who have limited capacity can preserve
20 individual liberty and provide effective support responsive to
21 individual needs and wishes. The legislature also recognizes that

1 these services are less expensive than guardianship for the state,
2 the courts, and for individuals with limited capacity and their
3 families.

4 **Sec. 2.** RCW 2.72.010 and 2007 c 364 s 2 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Office" means the office of public guardianship.

9 (2) "Public guardian" means an individual or entity providing
10 public guardianship services.

11 (3) "Public guardianship services" means the services provided by
12 a guardian or limited guardian appointed under chapters 11.88 and
13 11.92 RCW, who is compensated under a contract with the office of
14 public guardianship.

15 (4) "Long-term care services" means services provided through the
16 department of social and health services either in a hospital or
17 skilled nursing facility, or in another setting under a home and
18 community-based waiver authorized under 42 U.S.C. Sec. 1396n.

19 (5) "Supported decision-making assistance" means support for an
20 individual with diminished decision-making ability in making
21 decisions affecting health or safety or to manage financial affairs.
22 Assistance includes, without limitation, acting as a representative
23 payee, an attorney-in-fact, a trustee, and a public guardian.

24 (6) "Representative payee" is the designated agent for a
25 recipient of government benefits whom a government agency has
26 determined to be incapable of managing his or her benefits.

27 (7) "Attorney-in-fact" is an agent authorized by an individual to
28 act on his or her behalf.

29 (8) "Power of attorney" is an agreement between two parties, a
30 principal and an agent, which authorizes an attorney-in-fact to take
31 legal action on behalf of the principal.

32 (9) "Trustee" is a person or organization named in a trust
33 agreement to handle trust property for the benefit of one or more
34 beneficiaries in accordance with the terms of the agreement.

35 **Sec. 3.** RCW 2.72.020 and 2007 c 364 s 3 are each amended to read
36 as follows:

37 (1) There is created an office of public guardianship within the
38 administrative office of the courts.

1 (2) The supreme court shall appoint a public guardianship
2 administrator to establish and administer a public guardianship and
3 supported decision-making assistance program in the office of public
4 guardianship. The public guardianship administrator serves at the
5 pleasure of the supreme court.

6 **Sec. 4.** RCW 2.72.030 and 2009 c 117 s 1 are each amended to read
7 as follows:

8 The public guardianship administrator is authorized to establish
9 and administer a public guardianship and supported decision-making
10 assistance program as follows:

11 (1)(a) The office shall contract with public or private entities
12 or individuals to provide public guardianship and supported
13 decision-making assistance services to persons age eighteen or older
14 whose income does not exceed two hundred percent of the federal
15 poverty level determined annually by the United States department of
16 health and human services or who are receiving long-term care
17 services through the Washington state department of social and health
18 services. Neither the public guardianship administrator nor the
19 office may act as public guardian or limited guardian or act in any
20 other representative capacity for any individual.

21 (b) ~~The ((office is exempt from RCW 39.29.008 because the))~~
22 primary function of the office is to contract for public guardianship
23 and supported decision-making assistance services that are provided
24 in a manner consistent with the requirements of this chapter. The
25 office ~~((shall otherwise comply with chapter 39.29 RCW and))~~ is
26 subject to audit by the state auditor.

27 (c) Public guardianship and supported decision-making assistance
28 service contracts are dependent upon legislative appropriation. This
29 chapter does not create an entitlement.

30 ~~((d) The initial implementation of public guardianship services
31 shall be on a pilot basis in a minimum of two geographical areas that
32 include one urban area and one rural area. There may be one or
33 several contracts in each area.))~~

34 (2) The office shall, within one year of the commencement of its
35 operation, adopt eligibility criteria to enable it to serve
36 individuals with the greatest need when the number of cases in which
37 courts propose to appoint a public guardian exceeds the number of
38 cases in which public guardianship and supported decision-making
39 assistance services can be provided. In adopting such criteria, the

1 office may consider factors including, but not limited to, the
2 following: Whether an (~~incapacitated~~) individual with diminished
3 decision-making ability is at significant risk of harm from abuse,
4 exploitation, abandonment, neglect, or self-neglect; and whether an
5 (~~incapacitated person~~) individual with diminished decision-making
6 ability is in imminent danger of loss or significant reduction in
7 public services that are necessary for the individual to live
8 successfully in the most integrated and least restrictive environment
9 that is appropriate in light of the individual's needs and values.

10 (3) The office shall adopt minimum standards of practice for
11 public guardians providing public guardianship and supported
12 decision-making assistance services. Any public guardian providing
13 such services must be certified by the certified professional
14 guardian board established by the supreme court.

15 (4) The office shall require a public guardian to visit each
16 incapacitated person for which public guardianship services are
17 provided no less than monthly to be eligible for compensation.

18 (5) The office shall not petition for appointment of a public
19 guardian for any individual. It may develop a proposal for the
20 legislature to make affordable legal assistance available to petition
21 for guardianships.

22 (6) The office shall not authorize payment for services for any
23 entity (~~that is serving~~) providing guardianship services for more
24 than twenty incapacitated persons per certified professional
25 guardian.

26 (7) The office shall monitor and oversee the use of state funding
27 to ensure compliance with this chapter.

28 (8) The office shall collect uniform and consistent basic data
29 elements regarding service delivery. This data shall be made
30 available to the legislature and supreme court in a format that is
31 not identifiable by individual incapacitated person to protect
32 confidentiality.

33 (~~(9) (The office shall report to the legislature on how services~~
34 ~~other than guardianship services, and in particular services that~~
35 ~~might reduce the need for guardianship services, might be provided~~
36 ~~under contract with the office by December 1, 2009. The services to~~
37 ~~be considered should include, but not be limited to, services~~
38 ~~provided under powers of attorney given by the individuals in need of~~
39 ~~the services.~~

1 ~~(10))~~) The office shall require public guardianship providers to
2 seek reimbursement of fees from program clients who are receiving
3 long-term care services through the department of social and health
4 services to the extent, and only to the extent, that such
5 reimbursement may be paid, consistent with an order of the superior
6 court, from income that would otherwise be required by the department
7 to be paid toward the cost of the client's care. Fees reimbursed
8 shall be remitted by the provider to the office unless a different
9 disposition is directed by the public guardianship administrator.

10 ~~((11))~~) (10) The office shall require public guardianship
11 providers to certify annually that for each individual served they
12 have reviewed the need for continued public guardianship services and
13 the appropriateness of limiting, or further limiting, the authority
14 of the public guardian under the applicable guardianship order, and
15 that where termination or modification of a guardianship order
16 appears warranted, the superior court has been asked to take the
17 corresponding action.

18 ~~((12))~~) (11) The office shall adopt a process for receipt and
19 consideration of and response to complaints against the office and
20 contracted providers of public guardianship and supported
21 decision-making assistance services. The process shall include
22 investigation in cases in which investigation appears warranted in
23 the judgment of the administrator.

24 ~~((13) The office shall contract with the Washington state~~
25 ~~institute for public policy for a study. An initial report is due two~~
26 ~~years following July 22, 2007, and a second report by December 1,~~
27 ~~2011. The study shall analyze costs and off-setting savings to the~~
28 ~~state from the delivery of public guardianship services.~~

29 ~~(14))~~) (12) The office shall develop standardized forms and
30 reporting instruments that may include, but are not limited to,
31 intake, initial assessment, guardianship care plan, decisional
32 accounting, staff time logs, changes in condition or abilities of an
33 incapacitated person, and values history. The office shall collect
34 and analyze the data gathered from these reports.

35 ~~((15))~~) (13) The office shall identify training needs for
36 guardians it contracts with, and shall make recommendations to the
37 supreme court, the certified professional guardian board, and the
38 legislature for improvements in guardianship training. The office may
39 offer training to individuals providing services pursuant to this
40 chapter or to individuals who, in the judgment of the administrator

1 or the administrator's designee, are likely to provide such services
2 in the future.

3 ~~((16))~~ (14) The office shall establish a system for monitoring
4 the performance of public guardians, and office staff shall make in-
5 home visits to a randomly selected sample of public guardianship and
6 supported decision-making assistance clients. The office may conduct
7 further monitoring, including in-home visits, as the administrator
8 deems appropriate. For monitoring purposes, office staff shall have
9 access to any information relating to a public guardianship or
10 supported decision-making assistance client that is available to the
11 guardian.

12 ~~((17) During the first five years of its operations, the office
13 shall issue annual reports of its activities.))~~

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