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**SENATE BILL 5447**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Conway and Keiser; by request of Board For Judicial Administration

AN ACT Relating to the methods of services provided by the office of public guardianship; and amending RCW 2.72.005, 2.72.010, 2.72.020, 2.72.030, and 11.28.120.

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

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

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

(2) The legislature further recognizes that services that support decision making for people who have limited capacity can preserve individual liberty and provide effective support responsive to individual needs and wishes. The legislature also recognizes that these services are less expensive than guardianship for the state, the courts, and for individuals with limited capacity and their families.

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

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

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

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

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

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

(5) "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.

(6) "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.

(7) "Attorney-in-fact" means an agent authorized by an individual to act on his or her behalf pursuant to a power of attorney.

(8) "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.

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

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

(2) The supreme court shall appoint a public guardianship administrator to establish and administer a public guardianship, supported decision‑making assistance, and estate administration program in the office of public guardianship. The public guardianship administrator serves at the pleasure of the supreme court.

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

The public guardianship administrator is authorized to establish and administer a public guardianship, supported decision‑making assistance, and estate administration program as follows:

(1)(a) The office shall contract with public or private entities or individuals to provide: (i) Public guardianship, supported decision‑making assistance, and estate administration services to persons age eighteen or older whose income does not exceed two hundred percent of the federal poverty level determined annually by the United States department of health and human services or who are receiving long-term care services through the Washington state department of social and health services; (ii) supported decision-making services for a fee to persons age eighteen or older when there is no one else qualified who is willing and able to serve; and (iii) estate administration services for a fee to decedents age eighteen or older, in circumstances where a service provider under contract with the office of public guardianship is granted letters under RCW 11.28.120(7).

(b) Neither the public guardianship administrator nor the office may act as public guardian or limited guardian or act in any other representative capacity for any individual.

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

((~~(c)~~)) (d) Public guardianship, supported decision‑making assistance, and estate administration service contracts are dependent upon legislative appropriation. This chapter does not create an entitlement.

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

(2) The office shall, within one year of the commencement of its operation, adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian exceeds the number of cases in which public guardianship and supported decision-making assistance services can be provided. In adopting such criteria, the office may consider factors including, but not limited to, the following: Whether an ((~~incapacitated~~)) individual with diminished decision-making ability is at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and whether an ((~~incapacitated person~~)) individual with diminished decision-making ability is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

(3) The office shall adopt minimum standards of practice for public guardians and contract service providers providing public guardianship, supported decision-making assistance, and estate administration services. Any public guardian providing such public guardianship services must be certified by the certified professional guardian board established by the supreme court.

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

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

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

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

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

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

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

((~~(11)~~)) (10) Fees may be collected from the estate of persons whose income exceeds two hundred 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 office that must be published annually.

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

(12) The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of public guardianship, supported decision‑making assistance, and estate administration services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator.

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

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

((~~(15)~~)) (14) The office shall identify training needs for ((~~guardians~~)) service providers it contracts with, and shall make recommendations to the supreme court, the certified professional guardian board, and the legislature for improvements in ((~~guardianship~~)) training. The office may offer training to individuals providing services pursuant to this chapter ((~~or~~)), to individuals who, in the judgment of the administrator or the administrator's designee, are likely to provide such services in the future, to lay guardians, and to the family and friends of individuals subject to a guardianship.

((~~(16)~~)) (15) The office shall establish a system for monitoring the performance of ((~~public guardians~~)) contract services providers, and office staff shall make in-home visits to a randomly selected sample of public guardianship and supported decision-making assistance clients. The office may conduct further monitoring, including in-home visits, as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a public guardianship, supported decision-making assistance, or estate administration client that is available to the guardian.

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

**Sec.**  RCW 11.28.120 and 2007 c 156 s 28 are each amended to read as follows:

Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney-in-fact appointed by the decedent, if any such a 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)(a) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.

(b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint a service provider under contract with the office of public guardianship under chapter 2.72 RCW or any suitable person to administer such estate.

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