
HOUSE BILL 1329

State of Washington

66th Legislature

2019 Regular Session

By Representatives Kilduff, Harris, Jinkins, Klippert, Valdez, Walen, Tharinger, and Leavitt

Read first time 01/18/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to the methods of services provided by the office
2 of public guardianship; and amending RCW 2.72.005, 2.72.010,
3 2.72.020, 2.72.030, and 11.28.120.

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

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

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

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

1 individual needs and wishes. The legislature also recognizes that
2 these services are less expensive than guardianship for the state,
3 the courts, and for individuals with limited capacity and their
4 families.

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

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

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

11 (2) "Office" means the office of public guardianship.

12 ~~((2))~~ (3) "Public guardian" means an individual or entity
13 providing public guardianship services.

14 ~~((3))~~ (4) "Public guardianship services" means the services
15 provided by a guardian or limited guardian appointed under chapters
16 11.88 and 11.92 RCW, who is compensated under a contract with the
17 office of public guardianship.

18 ~~((4))~~ (5) "Long-term care services" means services provided
19 through the department of social and health services either in a
20 hospital or skilled nursing facility, or in another setting under a
21 home and community-based waiver authorized under 42 U.S.C. Sec.
22 1396n.

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

26 (7) "Supported decision-making assistance" means support for an
27 individual with diminished decision-making ability in making
28 decisions affecting health or safety or to manage financial affairs.
29 Assistance includes, without limitation, acting as a representative
30 payee, an attorney-in-fact, a trustee, or a public guardian.

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

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

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

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

11 (1)(a) The office shall contract with public or private entities
12 or individuals to provide:

13 (i) Public guardianship, supported decision-making assistance,
14 and estate administration services to persons age eighteen or older
15 whose income does not exceed two hundred percent of the federal
16 poverty level determined annually by the United States department of
17 health and human services or who are receiving long-term care
18 services through the Washington state department of social and health
19 services;

20 (ii) Supported decision-making services for a fee to persons age
21 eighteen or older when there is no one else qualified who is willing
22 and able to serve; and

23 (iii) Estate administration services for a fee to decedents age
24 eighteen or older, in circumstances where a service provider under
25 contract with the office of public guardianship is granted letters
26 under RCW 11.28.120(7).

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

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

37 ~~((e))~~ (d) Public guardianship, supported decision-making
38 assistance, and estate administration service contracts are dependent

1 upon legislative appropriation. This chapter does not create an
2 entitlement.

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

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

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

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

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

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

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

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

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

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

23 (10) Fees may be collected from the estate of persons whose
24 income exceeds two hundred percent of the federal poverty level
25 determined annually by the United States department of health and
26 human services, based on a fee schedule established by the office
27 that must be published annually.

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

36 (12) The office shall adopt a process for receipt and
37 consideration of and response to complaints against the office and
38 contracted providers of public guardianship, supported decision-
39 making assistance, and estate administration services. The process

1 shall include investigation in cases in which investigation appears
2 warranted in the judgment of the administrator.

3 ~~(13) ((The office shall contract with the Washington state
4 institute for public policy for a study. An initial report is due two
5 years following July 22, 2007, and a second report by December 1,
6 2011. The study shall analyze costs and off-setting savings to the
7 state from the delivery of public guardianship services.~~

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

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

24 ~~((16))~~ (15) The office shall establish a system for monitoring
25 the performance of ~~((public guardians))~~ contract service providers,
26 and office staff shall make in-home visits to a randomly selected
27 sample of public guardianship and supported decision-making
28 assistance clients. The office may conduct further monitoring,
29 including in-home visits, as the administrator deems appropriate. For
30 monitoring purposes, office staff shall have access to any
31 information relating to a public guardianship, supported decision-
32 making assistance, and estate administration client that is available
33 to the guardian.

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

36 **Sec. 5.** RCW 11.28.120 and 2007 c 156 s 28 are each amended to
37 read as follows:

38 Administration of an estate if the decedent died intestate or if
39 the personal representative or representatives named in the will

1 declined or were unable to serve shall be granted to some one or more
2 of the persons hereinafter mentioned, and they shall be respectively
3 entitled in the following order:

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

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

9 (3) The trustee named by the decedent in an inter vivos trust
10 instrument, testamentary trustee named in the will, guardian of the
11 person or estate of the decedent, or attorney-in-fact appointed by
12 the decedent, if any such a fiduciary controlled or potentially
13 controlled substantially all of the decedent's probate and nonprobate
14 assets.

15 (4) One or more of the beneficiaries or transferees of the
16 decedent's probate or nonprobate assets.

17 (5) (a) The director of revenue, or the director's designee, for
18 those estates having property subject to the provisions of chapter
19 11.08 RCW; however, the director may waive this right.

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

23 (6) One or more of the principal creditors.

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

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