

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1329

Chapter 215, Laws of 2019

66th Legislature
2019 Regular Session

OFFICE OF PUBLIC GUARDIANSHIP--SUPPORTED DECISION-MAKING AND ESTATE
ADMINISTRATION SERVICES

EFFECTIVE DATE: July 28, 2019

Passed by the House March 8, 2019
Yeas 93 Nays 5

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 13, 2019
Yeas 38 Nays 7

CYRUS HABIB

President of the Senate

Approved April 30, 2019 2:36 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1329** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 1, 2019

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1329

Passed Legislature - 2019 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By House Civil Rights & Judiciary (originally sponsored by Representatives Kilduff, Harris, Jinkins, Klippert, Valdez, Walen, Tharinger, and Leavitt)

READ FIRST TIME 02/13/19.

1 AN ACT Relating to methods of services provided by the office of
2 public guardianship; and amending RCW 2.72.005, 2.72.010, 2.72.020,
3 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 may be 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 the estate of
24 an individual who died at age eighteen or older, in circumstances
25 where a service provider under contract with the office of public
26 guardianship is granted letters 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
8 its operation,))~~ adopt and maintain eligibility criteria to enable it
9 to serve individuals with the greatest need when the number of cases
10 in which courts propose to appoint a public guardian exceeds the
11 number of cases in which public guardianship and supported decision-
12 making assistance services can be provided. In adopting such
13 criteria, the office may consider factors including, but not limited
14 to, the following: Whether an ~~((incapacitated))~~ individual with
15 diminished decision-making ability is at significant risk of harm
16 from abuse, exploitation, abandonment, neglect, or self-neglect; and
17 whether an ~~((incapacitated person))~~ individual with diminished
18 decision-making ability is in imminent danger of loss or significant
19 reduction in public services that are necessary for the individual to
20 live successfully in the most integrated and least restrictive
21 environment that is appropriate in light of the individual's needs
22 and values.

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

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

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

36 (6) ~~((The office shall not authorize payment for services for any
37 entity that is serving more than twenty incapacitated persons per
38 certified professional guardian.))~~ The office shall develop and adopt
39 a case-weighting system designed to balance the increasing need for
40 access to guardianship services, while effectively managing public

1 guardian caseloads and providing appropriate supports for individuals
2 on that caseload.

3 (a) The standard caseload limit for a contract service provider
4 must be no more than twenty incapacitated persons per certified
5 professional guardian. The office may authorize adjustments to the
6 standard caseload limit on a case-by-case basis, and payment for
7 services to a contract service provider that serves more than twenty
8 incapacitated persons per professional guardian is subject to review
9 by the office. In evaluating caseload size, the office shall consider
10 the expected activities, time, and demands involved, as well as the
11 available support for each case.

12 (b) Caseload limits must not exceed thirty-six cases. The office
13 shall not authorize payment for services for any contract service
14 provider that fails to comply with the standard caseload limit
15 guidelines.

16 (c) The office shall develop case-weighting guidelines to include
17 a process for adjusting caseload limits, relevant policies and
18 procedures, and recommendations for changes in court rules which may
19 be appropriate for the implementation of the system.

20 (d) By December 1, 2019, the office must submit to the
21 legislature a report detailing the final case-weighting system and
22 guidelines, and implementation progress and recommendations. The
23 report must be made available to the public.

24 (e) The administrative office of the courts shall notify the
25 superior courts of the policies contained in the final case-weighting
26 system.

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

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

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

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

11 (10) Fees may be collected from the estate when the decedant's
12 income prior to death exceeded two hundred percent of the federal
13 poverty level, determined annually by the United States department of
14 health and human services, based on a fee schedule established by the
15 office that must be published annually.

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

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

30 ~~(13) ((The office shall contract with the Washington state~~
31 ~~institute for public policy for a study. An initial report is due two~~
32 ~~years following July 22, 2007, and a second report by December 1,~~
33 ~~2011. The study shall analyze costs and off-setting savings to the~~
34 ~~state from the delivery of public guardianship services.~~

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

1 ~~((15))~~ (14) The office shall identify training needs for
2 ~~((guardians))~~ service providers it contracts with, and shall make
3 recommendations to the supreme court, the certified professional
4 guardian board, and the legislature for improvements in
5 ~~((guardianship))~~ training. The office may offer training to
6 individuals providing services pursuant to this chapter ~~((or))~~,
7 individuals who, in the judgment of the administrator or the
8 administrator's designee, are likely to provide such services in the
9 future, to lay guardians, and to the family and friends of
10 individuals subject to guardianship.

11 ~~((16))~~ (15) The office shall establish a system for monitoring
12 the performance of ~~((public guardians))~~ contract service providers,
13 and office staff shall make in-home visits to a randomly selected
14 sample of public guardianship and supported decision-making
15 assistance clients. The office may conduct further monitoring,
16 including in-home visits, as the administrator deems appropriate. For
17 monitoring purposes, office staff shall have access to any
18 information relating to a public guardianship, supported decision-
19 making assistance, and estate administration client that is available
20 to the guardian.

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

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

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

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

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

35 (3) The trustee named by the decedent in an inter vivos trust
36 instrument, testamentary trustee named in the will, guardian of the
37 person or estate of the decedent, or attorney-in-fact appointed by
38 the decedent, if any such a fiduciary controlled or potentially

1 controlled substantially all of the decedent's probate and nonprobate
2 assets.

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

5 (5) (a) The director of revenue, or the director's designee, for
6 those estates having property subject to the provisions of chapter
7 11.08 RCW; however, the director may waive this right.

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

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

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

Passed by the House March 8, 2019.

Passed by the Senate April 13, 2019.

Approved by the Governor April 30, 2019.

Filed in Office of Secretary of State May 1, 2019.

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