
ENGROSSED SUBSTITUTE SENATE BILL 5740

State of Washington

62nd Legislature

2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Kastama, Chase, and Roach)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to preventing predatory guardianships of
2 incapacitated adults; amending RCW 11.88.030, 11.88.040, 11.88.120,
3 11.88.090, and 43.190.060; and adding a new section to chapter 2.56
4 RCW.

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

6 **Sec. 1.** RCW 11.88.030 and 2009 c 521 s 36 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, marriage, or state registered domestic partnership to
12 the alleged incapacitated person;

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

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

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

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

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

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

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

36 (b) Prepayment of a filing fee shall not be required in any
37 guardianship or limited guardianship brought by the attorney general.
38 Payment of the filing fee shall be ordered from the estate of the

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

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

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

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

21 IMPORTANT NOTICE PLEASE READ CAREFULLY

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

- 25 (1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED
- 26 DOMESTIC PARTNERSHIP;
- 27 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 28 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 29 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 30 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 31 (6) TO POSSESS A LICENSE TO DRIVE;
- 32 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 33 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 34 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 35 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

36 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

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

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

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

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

15 (6) The court must provide a person filing a petition under this
16 section information regarding professional and lay guardians. The
17 purpose of the information is to provide family members of
18 incapacitated adults with information detailing: What a guardian is,
19 the different types of guardianships in Washington, the powers granted
20 to a guardian, an explanation of how professional guardian fees are
21 approved by the court and how professional guardians may bill for their
22 services, a description of the process to modify a guardianship or to
23 remove a guardian, and information about the certified professional
24 guardian board and program. Failure to provide the information set
25 forth in this subsection shall not constitute the sole cause for
26 discharge of a guardian or delay of a guardianship hearing.

27 **Sec. 2.** RCW 11.88.040 and 2008 c 6 s 803 are each amended to read
28 as follows:

29 (1) Before appointing a guardian or a limited guardian, notice of
30 a hearing, to be held not less than ten days after service thereof,
31 shall be served personally upon the alleged incapacitated person, if
32 over fourteen years of age, and served upon the guardian ad litem.

33 (2) Before appointing a guardian or a limited guardian, notice of
34 a hearing, to be held not less than ((ten)) fifteen days after service
35 thereof, ((shall)) the name of the person who the court or guardian ad
36 litem proposes to be appointed as guardian or limited guardian, a copy

1 of the petition for appointment of guardian, and the statement of the
2 legal rights of the alleged incapacitated person that could be
3 restricted or transferred to a guardian by a guardianship order must be
4 given by registered or certified mail to the last known address
5 requesting a return receipt signed by the addressee or an agent
6 appointed by the addressee, or by personal service in the manner
7 provided for services of summons, but duplicates of information already
8 provided under RCW 11.88.030 or other applicable statutes or rules need
9 not be given, to the following:

10 ((+1)) (a) The alleged incapacitated person, or minor, if under
11 fourteen years of age;

12 ((+2)) (b) A parent, if the alleged incapacitated person is a
13 minor, all known children not residing with a notified person, and the
14 spouse or domestic partner of the alleged incapacitated person if any;

15 ((+3)) (c) Any other person who has been appointed as guardian or
16 limited guardian, or the person with whom the alleged incapacitated
17 person resides. No notice need be given to those persons named in
18 ~~((subsections (2) and (3)))~~ (a) and (b) of this subsection if they have
19 signed the petition for the appointment of the guardian or limited
20 guardian or have waived notice of the hearing.

21 ((+4)) (3) If the petition is by a parent asking for appointment
22 as guardian or limited guardian of a minor child under the age of
23 fourteen years, or if the petition is accompanied by the written
24 consent of a minor of the age of fourteen years or upward, who consents
25 to the appointment of the guardian or limited guardian asked for, or if
26 the petition is by a nonresident guardian of any minor or incapacitated
27 person, then the court may appoint the guardian without notice of the
28 hearing. The court for good cause may reduce the number of days of
29 notice, but in every case, at least three days notice shall be given.

30 (4) The alleged incapacitated person shall be present in court at
31 the final hearing on the petition(~~(: PROVIDED, That)~~). However, this
32 requirement may be waived at the discretion of the court for good cause
33 other than mere inconvenience shown in the report to be provided by the
34 guardian ad litem pursuant to RCW 11.88.090 as now or hereafter
35 amended, or if no guardian ad litem is required to be appointed
36 pursuant to RCW 11.88.090, as now or hereafter amended, at the
37 discretion of the court for good cause shown by a party.
38 Alternatively, the court may remove itself to the place of residence of

1 the alleged incapacitated person and conduct the final hearing in the
2 presence of the alleged incapacitated person. Final hearings on the
3 petition may be held in closed court without admittance of any person
4 other than those necessary to the action or proceeding.

5 (5) If presence of the alleged incapacitated person is waived and
6 the court does not remove itself to the place of residence of such
7 person, the guardian ad litem shall appear in person at the final
8 hearing on the petition.

9 **Sec. 3.** RCW 11.88.120 and 1991 c 289 s 7 are each amended to read
10 as follows:

11 (1) At any time after establishment of a guardianship or
12 appointment of a guardian, the court may, upon the death of the
13 guardian or limited guardian, or, for other good reason, modify or
14 terminate the guardianship or replace the guardian or limited guardian.

15 (2) Any person, including an incapacitated person, may apply to the
16 court for an order to modify or terminate a guardianship or to replace
17 a guardian or limited guardian.

18 (a) If applicants are represented by counsel, counsel shall move
19 for an order to show cause why the relief requested should not be
20 granted.

21 (b) If applicants are not represented by counsel, they may move for
22 an order to show cause, or they may deliver a written request to the
23 clerk of the court, which must be considered by the court as the
24 equivalent of a motion for an order to show cause.

25 (3) By the next judicial day after receipt of (~~an unrepresented~~)
26 a person's request to modify or terminate a guardianship order, or to
27 replace a guardian or limited guardian, the clerk shall deliver the
28 request to the court. The court (~~may (a)~~) must direct the clerk to
29 schedule a hearing (~~(b)~~) on the request and mail notice to the
30 guardian, the incapacitated person, the applicant, all counsel of
31 record, and any other person entitled to receive notice of proceedings
32 in the matter, except that the court may deny the application without
33 scheduling a hearing, if it appears based on documents in the court
34 file that the application is frivolous. The court may appoint a
35 guardian ad litem to investigate the issues raised by the application
36 or to take any emergency action the court deems necessary to protect
37 the incapacitated person until a hearing can be held (~~(c) deny the~~

1 ~~application without scheduling a hearing, if it appears based on~~
2 ~~documents in the court file that the application is frivolous)).~~ Any
3 denial of an application without a hearing shall be in writing with the
4 reasons for the denial explained. A copy of the order shall be mailed
5 by the clerk to the applicant, to the guardian, and to any other person
6 entitled to receive notice of proceedings in the matter. (~~Unless~~
7 ~~within thirty days after receiving the request from the clerk the court~~
8 ~~directs otherwise, the clerk shall schedule a hearing on the request~~
9 ~~and mail notice to the guardian, the incapacitated person, the~~
10 ~~applicant, all counsel of record, and any other person entitled to~~
11 ~~receive notice of proceedings in the matter.))~~

12 (4) In a hearing on an application to modify or terminate a
13 guardianship, or to replace a guardian or limited guardian, the court
14 may grant such relief as it deems just and in the best interest of the
15 incapacitated person. If there is a professional guardian, and the
16 applicant makes a prima facie showing that the guardian has breached a
17 fiduciary, professional, or ethical duty with respect to the
18 guardianship as proscribed by the certified professional guardian
19 board, the burden of proof shall shift to the guardian to establish
20 that his or her conduct was appropriate.

21 (5) The court may order persons who have been removed as guardians
22 to deliver any property or records belonging to the incapacitated
23 person in accordance with the court's order. Similarly, when guardians
24 have died or been removed and property or records of an incapacitated
25 person are being held by any other person, the court may order that
26 person to deliver it in accordance with the court's order.
27 Disobedience of an order to deliver shall be punishable as contempt of
28 court.

29 **Sec. 4.** RCW 11.88.090 and 2008 c 6 s 804 are each amended to read
30 as follows:

31 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
32 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
33 11.92.180 shall affect or impair the power of any court to appoint a
34 guardian ad litem to defend the interests of any incapacitated person
35 interested in any suit or matter pending therein, or to commence and
36 prosecute any suit in his or her behalf.

1 (2) Prior to the appointment of a guardian or a limited guardian,
2 whenever it appears that the incapacitated person or incapacitated
3 person's estate could benefit from mediation and such mediation would
4 likely result in overall reduced costs to the estate, upon the motion
5 of the alleged incapacitated person or the guardian ad litem, or
6 subsequent to such appointment, whenever it appears that the
7 incapacitated person or incapacitated person's estate could benefit
8 from mediation and such mediation would likely result in overall
9 reduced costs to the estate, upon the motion of any interested person,
10 the court may:

11 (a) Require any party or other person subject to the jurisdiction
12 of the court to participate in mediation;

13 (b) Establish the terms of the mediation; and

14 (c) Allocate the cost of the mediation (~~(pursuant to RCW~~
15 ~~11.96.140)~~).

16 (3)(a) Upon receipt of a petition for appointment of guardian or
17 limited guardian, except as provided herein, the court shall appoint a
18 guardian ad litem to represent the best interests of the alleged
19 incapacitated person, who shall be a person found or known by the court
20 to:

21 ~~((a))~~ (i) Be free of influence from anyone interested in the
22 result of the proceeding; and

23 ~~((b))~~ (ii) Have the requisite knowledge, training, or expertise
24 to perform the duties required by this section.

25 (b) The guardian ad litem shall within five days of receipt of
26 notice of appointment file with the court and serve, either personally
27 or by certified mail with return receipt, each party with a statement
28 including: His or her training relating to the duties as a guardian ad
29 litem; his or her criminal history as defined in RCW 9.94A.030 for the
30 period covering ten years prior to the appointment; his or her hourly
31 rate, if compensated; whether the guardian ad litem has had any contact
32 with a party to the proceeding prior to his or her appointment; and
33 whether he or she has an apparent conflict of interest. Within three
34 days of the later of the actual service or filing of the guardian ad
35 litem's statement, any party may set a hearing and file and serve a
36 motion for an order to show cause why the guardian ad litem should not
37 be removed for one of the following three reasons: (i) Lack of
38 expertise necessary for the proceeding; (ii) an hourly rate higher than

1 what is reasonable for the particular proceeding; or (iii) a conflict
2 of interest. Notice of the hearing shall be provided to the guardian
3 ad litem and all parties. If, after a hearing, the court enters an
4 order replacing the guardian ad litem, findings shall be included,
5 expressly stating the reasons for the removal. If the guardian ad
6 litem is not removed, the court has the authority to assess to the
7 moving party, attorneys' fees and costs related to the motion. The
8 court shall assess attorneys' fees and costs for frivolous motions.

9 (c) No guardian ad litem need be appointed when a parent is
10 petitioning for a guardian or a limited guardian to be appointed for
11 his or her minor child and the minority of the child, as defined by RCW
12 11.92.010, is the sole basis of the petition. The order appointing the
13 guardian ad litem shall recite the duties set forth in subsection (5)
14 of this section. The appointment of a guardian ad litem shall have no
15 effect on the legal competency of the alleged incapacitated person and
16 shall not overcome the presumption of competency or full legal and
17 civil rights of the alleged incapacitated person.

18 (4)(a) The superior court of each county shall develop and maintain
19 a registry of persons who are willing and qualified to serve as
20 guardians ad litem in guardianship matters. The court shall choose as
21 guardian ad litem a person whose name appears on the registry in a
22 system of consistent rotation, except in extraordinary circumstances
23 such as the need for particular expertise. The court shall develop
24 procedures for periodic review of the persons on the registry and for
25 probation, suspension, or removal of persons on the registry for
26 failure to perform properly their duties as guardian ad litem. In the
27 event the court does not select the person next on the list, it shall
28 include in the order of appointment a written reason for its decision.

29 (b) To be eligible for the registry a person shall:

30 (i) Present a written statement outlining his or her background and
31 qualifications. The background statement shall include, but is not
32 limited to, the following information:

33 (A) Level of formal education;

34 (B) Training related to the guardian ad litem's duties;

35 (C) Number of years' experience as a guardian ad litem;

36 (D) Number of appointments as a guardian ad litem and the county or
37 counties of appointment;

38 (E) Criminal history, as defined in RCW 9.94A.030; and

1 (F) Evidence of the person's knowledge, training, and experience in
2 each of the following: Needs of impaired elderly people, physical
3 disabilities, mental illness, developmental disabilities, and other
4 areas relevant to the needs of incapacitated persons, legal procedure,
5 and the requirements of chapters 11.88 and 11.92 RCW.

6 The written statement of qualifications shall include the names of
7 any counties in which the person was removed from a guardian ad litem
8 registry pursuant to a grievance action, and the name of the court and
9 the cause number of any case in which the court has removed the person
10 for cause; and

11 (ii) Complete the training as described in (e) of this subsection.
12 The training is not applicable to guardians ad litem appointed pursuant
13 to special proceeding Rule 98.16W.

14 (c) Superior court shall remove any person from the guardian ad
15 litem registry who misrepresents his or her qualifications pursuant to
16 a grievance procedure established by the court.

17 (d) The background and qualification information shall be updated
18 annually.

19 (e) The department of social and health services shall convene an
20 advisory group to develop a model guardian ad litem training program
21 and shall update the program biennially. The advisory group shall
22 consist of representatives from consumer, advocacy, and professional
23 groups knowledgeable in developmental disabilities, neurological
24 impairment, physical disabilities, mental illness, domestic violence,
25 aging, legal, court administration, the Washington state bar
26 association, and other interested parties.

27 (f) The superior court shall require utilization of the model
28 program developed by the advisory group as described in (e) of this
29 subsection, to assure that candidates applying for registration as a
30 qualified guardian ad litem shall have satisfactorily completed
31 training to attain these essential minimum qualifications to act as
32 guardian ad litem.

33 (5) The guardian ad litem appointed pursuant to this section
34 (~~shall have~~) has the following duties:

35 (a) To meet and consult with the alleged incapacitated person as
36 soon as practicable following appointment and explain, in language
37 which such person can reasonably be expected to understand, the
38 substance of the petition, the nature of the resultant proceedings, the

1 person's right to contest the petition, the identification of the
2 proposed guardian or limited guardian, the right to a jury trial on the
3 issue of his or her alleged incapacity, the right to independent legal
4 counsel as provided by RCW 11.88.045, and the right to be present in
5 court at the hearing on the petition;

6 (b) To obtain a written report according to RCW 11.88.045; and such
7 other written or oral reports from other qualified professionals as are
8 necessary to permit the guardian ad litem to complete the report
9 required by this section;

10 (c) To meet with the person whose appointment is sought as guardian
11 or limited guardian and ascertain:

12 (i) The proposed guardian's knowledge of the duties, requirements,
13 and limitations of a guardian; and

14 (ii) The steps the proposed guardian intends to take or has taken
15 to identify and meet the needs of the alleged incapacitated person;

16 (d) To consult as necessary to complete the investigation and
17 report required by this section with those known relatives, friends, or
18 other persons the guardian ad litem determines have had a significant,
19 continuing interest in the welfare of the alleged incapacitated person;

20 (e) To investigate alternate arrangements made, or which might be
21 created, by or on behalf of the alleged incapacitated person, such as
22 revocable or irrevocable trusts, durable powers of attorney, or blocked
23 accounts; whether good cause exists for any such arrangements to be
24 discontinued; and why such arrangements should not be continued or
25 created in lieu of a guardianship;

26 (f) To provide the court with a written report which shall include
27 the following:

28 (i) A description of the nature, cause, and degree of incapacity,
29 and the basis upon which this judgment was made;

30 (ii) A description of the needs of the incapacitated person for
31 care and treatment, the probable residential requirements of the
32 alleged incapacitated person and the basis upon which these findings
33 were made;

34 (iii) An evaluation of the appropriateness of the guardian or
35 limited guardian whose appointment is sought and a description of the
36 steps the proposed guardian has taken or intends to take to identify
37 and meet current and emerging needs of the incapacitated person;

1 (iv) A description of any alternative arrangements previously made
2 by the alleged incapacitated person or which could be made, and whether
3 and to what extent such alternatives should be used in lieu of a
4 guardianship, and if the guardian ad litem is recommending
5 discontinuation of any such arrangements, specific findings as to why
6 such arrangements are contrary to the best interest of the alleged
7 incapacitated person;

8 (v) A description of the abilities of the alleged incapacitated
9 person and a recommendation as to whether a guardian or limited
10 guardian should be appointed. If appointment of a limited guardian is
11 recommended, the guardian ad litem shall recommend the specific areas
12 of authority the limited guardian should have and the limitations and
13 disabilities to be placed on the incapacitated person;

14 (vi) An evaluation of the person's mental ability to rationally
15 exercise the right to vote and the basis upon which the evaluation is
16 made;

17 (vii) Any expression of approval or disapproval made by the alleged
18 incapacitated person concerning the proposed guardian or limited
19 guardian or guardianship or limited guardianship;

20 (viii) Identification of persons with significant interest in the
21 welfare of the alleged incapacitated person who should be advised of
22 their right to request special notice of proceedings pursuant to RCW
23 11.92.150; and

24 (ix) Unless independent counsel has appeared for the alleged
25 incapacitated person, an explanation of how the alleged incapacitated
26 person responded to the advice of the right to jury trial, to
27 independent counsel and to be present at the hearing on the petition.

28 Within forty-five days after notice of commencement of the
29 guardianship proceeding has been served upon the guardian ad litem, and
30 at least fifteen days before the hearing on the petition, unless an
31 extension or reduction of time has been granted by the court for good
32 cause, the guardian ad litem shall file its report and send a copy to
33 the alleged incapacitated person and his or her counsel, spouse or
34 domestic partner, all children not residing with a notified person,
35 those persons described in (f)(viii) of this subsection, and persons
36 who have filed a request for special notice pursuant to RCW 11.92.150.
37 If the guardian ad litem needs additional time to finalize his or her
38 report, then the guardian ad litem shall petition the court for a

1 postponement of the hearing or, with the consent of all other parties,
2 an extension or reduction of time for filing the report. If the
3 hearing does not occur within sixty days of filing the petition, then
4 upon the two-month anniversary of filing the petition and on or before
5 the same day of each following month until the hearing, the guardian ad
6 litem shall file interim reports summarizing his or her activities on
7 the proceeding during that time period as well as fees and costs
8 incurred;

9 (g) To advise the court of the need for appointment of counsel for
10 the alleged incapacitated person within five court days after the
11 meeting described in (a) of this subsection unless (i) counsel has
12 appeared, (ii) the alleged incapacitated person affirmatively
13 communicated a wish not to be represented by counsel after being
14 advised of the right to representation and of the conditions under
15 which court-provided counsel may be available, or (iii) the alleged
16 incapacitated person was unable to communicate at all on the subject,
17 and the guardian ad litem is satisfied that the alleged incapacitated
18 person does not affirmatively desire to be represented by counsel;

19 (h) To disclose in writing to the court any prior or existing
20 relationship, or other circumstance that would cause the appearance of
21 a conflict of interest in the guardian ad litem's recommendation when
22 the guardian ad litem is making a recommendation of appointment of a
23 particular person or persons as a guardian to a court. Such disclosure
24 must also be provided to persons receiving copies of the report as
25 required in (f)(ix) of this subsection (5).

26 (6) If the petition is brought by an interested person or entity
27 requesting the appointment of some other qualified person or entity and
28 a prospective guardian or limited guardian cannot be found, the court
29 shall order the guardian ad litem to investigate the availability of a
30 possible guardian or limited guardian and to include the findings in a
31 report to the court pursuant to subsection (5)(f) of this section.

32 (7) The parties to the proceeding may file responses to the
33 guardian ad litem report with the court and deliver such responses to
34 the other parties and the guardian ad litem at any time up to the
35 second day prior to the hearing. If a guardian ad litem fails to file
36 his or her report in a timely manner, the hearing shall be continued to
37 give the court and the parties at least fifteen days before the hearing
38 to review the report. At any time during the proceeding upon motion of

1 any party or on the court's own motion, the court may remove the
2 guardian ad litem for failure to perform his or her duties as specified
3 in this chapter, provided that the guardian ad litem shall have five
4 days' notice of any motion to remove before the court enters such
5 order. In addition, the court in its discretion may reduce a guardian
6 ad litem's fee for failure to carry out his or her duties.

7 (8) The court appointed guardian ad litem shall have the authority,
8 in the event that the alleged incapacitated person is in need of
9 emergency life-saving medical services, and is unable to consent to
10 such medical services due to incapacity pending the hearing on the
11 petition to give consent for such emergency life-saving medical
12 services on behalf of the alleged incapacitated person.

13 (9) The court-appointed guardian ad litem shall have the authority
14 to move for temporary relief under chapter 7.40 RCW to protect the
15 alleged incapacitated person from abuse, neglect, abandonment, or
16 exploitation, as those terms are defined in RCW 74.34.020, or to
17 address any other emergency needs of the alleged incapacitated person.
18 Any alternative arrangement executed before filing the petition for
19 guardianship shall remain effective unless the court grants the relief
20 requested under chapter 7.40 RCW, or unless, following notice and a
21 hearing at which all parties directly affected by the arrangement are
22 present, the court finds that the alternative arrangement should not
23 remain effective.

24 (10) The guardian ad litem shall receive a fee determined by the
25 court. The fee shall be charged to the alleged incapacitated person
26 unless the court finds that such payment would result in substantial
27 hardship upon such person, in which case the county shall be
28 responsible for such costs: PROVIDED, That the court may charge such
29 fee to the petitioner, the alleged incapacitated person, or any person
30 who has appeared in the action; or may allocate the fee, as it deems
31 just. If the petition is found to be frivolous or not brought in good
32 faith, the guardian ad litem fee shall be charged to the petitioner.
33 The court shall not be required to provide for the payment of a fee to
34 any salaried employee of a public agency.

35 (11) Upon the presentation of the guardian ad litem report and the
36 entry of an order either dismissing the petition for appointment of
37 guardian or limited guardian or appointing a guardian or limited
38 guardian, the guardian ad litem shall be dismissed and shall have no

1 further duties or obligations unless otherwise ordered by the court.
2 If the court orders the guardian ad litem to perform further duties or
3 obligations, they shall not be performed at county expense.

4 (12) The guardian ad litem shall appear in person at all hearings
5 on the petition unless all parties provide a written waiver of the
6 requirement to appear.

7 (13) At any hearing the court may consider whether any person who
8 makes decisions regarding the alleged incapacitated person or estate
9 has breached a statutory or fiduciary duty.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 2.56 RCW
11 to read as follows:

12 The administrator for the courts must publish on its web site
13 information regarding professional and lay guardians. The purpose of
14 the publication is to provide family members of incapacitated adults
15 with information detailing: What a guardian is, the different types of
16 guardianships in Washington, the powers granted to a guardian, an
17 explanation of how professional guardian fees are approved by the court
18 and how professional guardians may bill for their services, a
19 description of the process to modify a guardianship or to remove a
20 guardian, and information about the certified professional guardian
21 board and program.

22 **Sec. 6.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read
23 as follows:

- 24 (1) A long-term care ombudsman (~~(shall)~~) must:
25 ~~((1))~~ (a) Identify, investigate, and resolve complaints made by
26 or on behalf of residents of long-term care facilities relating to
27 administrative action, inaction, or decisions which may adversely
28 affect the health, safety, welfare, and rights of these individuals;
29 ~~((2))~~ (b) Monitor the development and implementation of federal,
30 state, and local laws, rules, regulations, and policies with respect to
31 long-term care facilities in this state;
32 ~~((3))~~ (c) Provide information as appropriate to residents,
33 resident representatives, and others regarding the rights of residents,
34 and to public agencies regarding the problems of individuals residing
35 in long-term care facilities; and

1 (~~(4)~~) (d) Provide for training volunteers and promoting the
2 development of citizen organizations to participate in the ombudsman
3 program. A trained volunteer long-term care ombudsman, in accordance
4 with the policies and procedures established by the state long-term
5 care ombudsman program, shall inform residents, their representatives,
6 and others about the rights of residents, and may identify,
7 investigate, and resolve complaints made by or on behalf of residents
8 of long-term care facilities relating to action, inaction, or
9 decisions, that may adversely affect the health, safety, welfare, and
10 rights of these individuals.

11 (2) Publish on a web site, or otherwise make available to
12 residents, families of residents, and the public information regarding
13 professional and lay guardians. The purpose of the publication is to
14 provide family members of incapacitated adults with information
15 detailing: What a guardian is, the different types of guardianships in
16 Washington, the powers granted to a guardian, an explanation of how
17 professional guardian fees are approved by the court and how
18 professional guardians may bill for their services, a description of
19 the process to modify a guardianship or to remove a guardian, and
20 information about the certified professional guardian board and
21 program.

22 (3) Nothing in (~~chapter 133, Laws of 1999 shall~~) this section or
23 RCW 43.190.065 may be construed to empower the state long-term care
24 ombudsman or any local long-term care ombudsman with statutory or
25 regulatory licensing or sanctioning authority.

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