

ESSB 5740 - H COMM AMD
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 11.88.040 and 2008 c 6 s 803 are each amended to read
4 as follows:

5 (1) Before ~~((appointing))~~ the court appoints a guardian or a
6 limited guardian, ~~((notice of a hearing, to be held not less than ten
7 days after service thereof, shall be served personally upon))~~ the
8 petitioner must send notice of a hearing by personal service in the
9 manner provided for services of summons no less than fifteen days in
10 advance of the hearing on the petition to the alleged incapacitated
11 person, if over fourteen years of age, and ~~((served upon))~~ the guardian
12 ad litem.

13 (2) Before ~~((appointing))~~ the court appoints a guardian or a
14 limited guardian, the petitioner must send notice of a hearing~~((, to be
15 held not less than ten days after service thereof, shall be given))~~ by
16 registered or certified mail to the last known address requesting a
17 return receipt signed by the addressee or an agent appointed by the
18 addressee, or by personal service in the manner provided for services
19 of summons, no less than fifteen days in advance of the hearing on the
20 petition to the following:

21 ~~((+1))~~ (a) The alleged incapacitated person, ~~((or minor,))~~ if
22 under fourteen years of age;

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

26 ~~((+3))~~ (c) Any other person who has been appointed as guardian or
27 limited guardian, or the person with whom the alleged incapacitated
28 person resides. No notice need be given to those persons named in
29 ~~((subsections (2) and (3)))~~ (a) and (b) of this subsection if they have

1 signed the petition for the appointment of the guardian or limited
2 guardian or have waived notice of the hearing.

3 ~~((4))~~ (3) Notice of a hearing under subsection (2) of this
4 section must include the name of the person who the court or guardian
5 ad litem proposes to be appointed as guardian or limited guardian. If
6 a person receiving notice of a hearing under subsection (2) of this
7 section did not receive notice of the commencement of the guardianship
8 proceeding under RCW 11.88.030, the notice of a hearing sent to the
9 person must include a copy of the petition for appointment of a
10 guardian and the statement of the legal rights of the alleged
11 incapacitated person that could be restricted or transferred to a
12 guardian by a guardianship order.

13 (4) If the petition is by a parent asking for appointment as
14 guardian or limited guardian of a minor child under the age of fourteen
15 years, or if the petition is accompanied by the written consent of a
16 minor of the age of fourteen years or upward, who consents to the
17 appointment of the guardian or limited guardian asked for, or if the
18 petition is by a nonresident guardian of any minor or incapacitated
19 person, then the court may appoint the guardian without notice of the
20 hearing. The court for good cause may reduce the number of days of
21 notice, but in every case, at least three days notice shall be given.

22 (5) The alleged incapacitated person shall be present in court at
23 the final hearing on the petition(~~:- PROVIDED, That~~). However, this
24 requirement may be waived at the discretion of the court for good cause
25 other than mere inconvenience shown in the report to be provided by the
26 guardian ad litem pursuant to RCW 11.88.090 as now or hereafter
27 amended, or if no guardian ad litem is required to be appointed
28 pursuant to RCW 11.88.090, as now or hereafter amended, at the
29 discretion of the court for good cause shown by a party.
30 Alternatively, the court may remove itself to the place of residence of
31 the alleged incapacitated person and conduct the final hearing in the
32 presence of the alleged incapacitated person. Final hearings on the
33 petition may be held in closed court without admittance of any person
34 other than those necessary to the action or proceeding.

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

1 **Sec. 2.** RCW 11.88.090 and 2008 c 6 s 804 are each amended to read
2 as follows:

3 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
4 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
5 11.92.180 shall affect or impair the power of any court to appoint a
6 guardian ad litem to defend the interests of any incapacitated person
7 interested in any suit or matter pending therein, or to commence and
8 prosecute any suit in his or her behalf.

9 (2) Prior to the appointment of a guardian or a limited guardian,
10 whenever it appears that the incapacitated person or incapacitated
11 person's estate could benefit from mediation and such mediation would
12 likely result in overall reduced costs to the estate, upon the motion
13 of the alleged incapacitated person or the guardian ad litem, or
14 subsequent to such appointment, whenever it appears that the
15 incapacitated person or incapacitated person's estate could benefit
16 from mediation and such mediation would likely result in overall
17 reduced costs to the estate, upon the motion of any interested person,
18 the court may:

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

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

22 (c) Allocate the cost of the mediation (~~pursuant to RCW~~
23 ~~11.96.140~~)).

24 (3)(a) Upon receipt of a petition for appointment of guardian or
25 limited guardian, except as provided herein, the court shall appoint a
26 guardian ad litem to represent the best interests of the alleged
27 incapacitated person, who shall be a person found or known by the court
28 to:

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

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

33 (b) The guardian ad litem shall within five days of receipt of
34 notice of appointment file with the court and serve, either personally
35 or by certified mail with return receipt, each party with a statement
36 including: His or her training relating to the duties as a guardian ad
37 litem; his or her criminal history as defined in RCW 9.94A.030 for the
38 period covering ten years prior to the appointment; his or her hourly

1 rate, if compensated; whether the guardian ad litem has had any contact
2 with a party to the proceeding prior to his or her appointment; and
3 whether he or she has an apparent conflict of interest. Within three
4 days of the later of the actual service or filing of the guardian ad
5 litem's statement, any party may set a hearing and file and serve a
6 motion for an order to show cause why the guardian ad litem should not
7 be removed for one of the following three reasons: (i) Lack of
8 expertise necessary for the proceeding; (ii) an hourly rate higher than
9 what is reasonable for the particular proceeding; or (iii) a conflict
10 of interest. Notice of the hearing shall be provided to the guardian
11 ad litem and all parties. If, after a hearing, the court enters an
12 order replacing the guardian ad litem, findings shall be included,
13 expressly stating the reasons for the removal. If the guardian ad
14 litem is not removed, the court has the authority to assess to the
15 moving party, attorneys' fees and costs related to the motion. The
16 court shall assess attorneys' fees and costs for frivolous motions.

17 (c) No guardian ad litem need be appointed when a parent is
18 petitioning for a guardian or a limited guardian to be appointed for
19 his or her minor child and the minority of the child, as defined by RCW
20 11.92.010, is the sole basis of the petition. The order appointing the
21 guardian ad litem shall recite the duties set forth in subsection (5)
22 of this section. The appointment of a guardian ad litem shall have no
23 effect on the legal competency of the alleged incapacitated person and
24 shall not overcome the presumption of competency or full legal and
25 civil rights of the alleged incapacitated person.

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

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

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

4 (A) Level of formal education;

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

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

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

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

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

15 The written statement of qualifications shall include the names of
16 any counties in which the person was removed from a guardian ad litem
17 registry pursuant to a grievance action, and the name of the court and
18 the cause number of any case in which the court has removed the person
19 for cause; and

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

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

26 (d) The background and qualification information shall be updated
27 annually.

28 (e) The department of social and health services shall convene an
29 advisory group to develop a model guardian ad litem training program
30 and shall update the program biennially. The advisory group shall
31 consist of representatives from consumer, advocacy, and professional
32 groups knowledgeable in developmental disabilities, neurological
33 impairment, physical disabilities, mental illness, domestic violence,
34 aging, legal, court administration, the Washington state bar
35 association, and other interested parties.

36 (f) The superior court shall require utilization of the model
37 program developed by the advisory group as described in (e) of this
38 subsection, to assure that candidates applying for registration as a

1 qualified guardian ad litem shall have satisfactorily completed
2 training to attain these essential minimum qualifications to act as
3 guardian ad litem.

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

6 (a) To meet and consult with the alleged incapacitated person as
7 soon as practicable following appointment and explain, in language
8 which such person can reasonably be expected to understand, the
9 substance of the petition, the nature of the resultant proceedings, the
10 person's right to contest the petition, the identification of the
11 proposed guardian or limited guardian, the right to a jury trial on the
12 issue of his or her alleged incapacity, the right to independent legal
13 counsel as provided by RCW 11.88.045, and the right to be present in
14 court at the hearing on the petition;

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

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

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

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

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

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

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

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

1 (ii) A description of the needs of the incapacitated person for
2 care and treatment, the probable residential requirements of the
3 alleged incapacitated person and the basis upon which these findings
4 were made;

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

9 (iv) A description of any alternative arrangements previously made
10 by the alleged incapacitated person or which could be made, and whether
11 and to what extent such alternatives should be used in lieu of a
12 guardianship, and if the guardian ad litem is recommending
13 discontinuation of any such arrangements, specific findings as to why
14 such arrangements are contrary to the best interest of the alleged
15 incapacitated person;

16 (v) A description of the abilities of the alleged incapacitated
17 person and a recommendation as to whether a guardian or limited
18 guardian should be appointed. If appointment of a limited guardian is
19 recommended, the guardian ad litem shall recommend the specific areas
20 of authority the limited guardian should have and the limitations and
21 disabilities to be placed on the incapacitated person;

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

25 (vii) Any expression of approval or disapproval made by the alleged
26 incapacitated person concerning the proposed guardian or limited
27 guardian or guardianship or limited guardianship;

28 (viii) Identification of persons with significant interest in the
29 welfare of the alleged incapacitated person who should be advised of
30 their right to request special notice of proceedings pursuant to RCW
31 11.92.150; and

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

36 Within forty-five days after notice of commencement of the
37 guardianship proceeding has been served upon the guardian ad litem, and
38 at least fifteen days before the hearing on the petition, unless an

1 extension or reduction of time has been granted by the court for good
2 cause, the guardian ad litem shall file its report and send a copy to
3 the alleged incapacitated person and his or her counsel, spouse or
4 domestic partner, all children not residing with a notified person,
5 those persons described in (f)(viii) of this subsection, and persons
6 who have filed a request for special notice pursuant to RCW 11.92.150.
7 If the guardian ad litem needs additional time to finalize his or her
8 report, then the guardian ad litem shall petition the court for a
9 postponement of the hearing or, with the consent of all other parties,
10 an extension or reduction of time for filing the report. If the
11 hearing does not occur within sixty days of filing the petition, then
12 upon the two-month anniversary of filing the petition and on or before
13 the same day of each following month until the hearing, the guardian ad
14 litem shall file interim reports summarizing his or her activities on
15 the proceeding during that time period as well as fees and costs
16 incurred;

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

27 (h) To disclose in writing to the court any prior relationship or
28 circumstance for the period covering ten years prior to the guardian ad
29 litem's appointment or any existing relationship or circumstance that
30 causes the appearance of a conflict of interest with respect to the
31 guardian ad litem's recommendation of the appointment of a particular
32 person or persons as a guardian or limited guardian of the alleged
33 incapacitated person. Such disclosure must also be provided to persons
34 receiving copies of the report as required in (f)(viii) of this
35 subsection (5).

36 (6) If the petition is brought by an interested person or entity
37 requesting the appointment of some other qualified person or entity and
38 a prospective guardian or limited guardian cannot be found, the court

1 shall order the guardian ad litem to investigate the availability of a
2 possible guardian or limited guardian and to include the findings in a
3 report to the court pursuant to subsection (5)(f) of this section.

4 (7) The parties to the proceeding may file responses to the
5 guardian ad litem report with the court and deliver such responses to
6 the other parties and the guardian ad litem at any time up to the
7 second day prior to the hearing. If a guardian ad litem fails to file
8 his or her report in a timely manner, the hearing shall be continued to
9 give the court and the parties at least fifteen days before the hearing
10 to review the report. At any time during the proceeding upon motion of
11 any party or on the court's own motion, the court may remove the
12 guardian ad litem for failure to perform his or her duties as specified
13 in this chapter, provided that the guardian ad litem shall have five
14 days' notice of any motion to remove before the court enters such
15 order. In addition, the court in its discretion may reduce a guardian
16 ad litem's fee for failure to carry out his or her duties.

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

23 (9) The court-appointed guardian ad litem shall have the authority
24 to move for temporary relief under chapter 7.40 RCW to protect the
25 alleged incapacitated person from abuse, neglect, abandonment, or
26 exploitation, as those terms are defined in RCW 74.34.020, or to
27 address any other emergency needs of the alleged incapacitated person.
28 Any alternative arrangement executed before filing the petition for
29 guardianship shall remain effective unless the court grants the relief
30 requested under chapter 7.40 RCW, or unless, following notice and a
31 hearing at which all parties directly affected by the arrangement are
32 present, the court finds that the alternative arrangement should not
33 remain effective.

34 (10) The guardian ad litem shall receive a fee determined by the
35 court. The fee shall be charged to the alleged incapacitated person
36 unless the court finds that such payment would result in substantial
37 hardship upon such person, in which case the county shall be
38 responsible for such costs: PROVIDED, That the court may charge such

1 fee to the petitioner, the alleged incapacitated person, or any person
2 who has appeared in the action; or may allocate the fee, as it deems
3 just. If the petition is found to be frivolous or not brought in good
4 faith, the guardian ad litem fee shall be charged to the petitioner.
5 The court shall not be required to provide for the payment of a fee to
6 any salaried employee of a public agency.

7 (11) Upon the presentation of the guardian ad litem report and the
8 entry of an order either dismissing the petition for appointment of
9 guardian or limited guardian or appointing a guardian or limited
10 guardian, the guardian ad litem shall be dismissed and shall have no
11 further duties or obligations unless otherwise ordered by the court.
12 If the court orders the guardian ad litem to perform further duties or
13 obligations, they shall not be performed at county expense.

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

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

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 11.88 RCW
21 to read as follows:

22 The administrator for the courts must publish or cause to be
23 published on a web site information regarding professional and lay
24 guardians, including descriptions of the following:

25 (1) The different types of guardianships available under this
26 chapter and chapter 11.92 RCW;

27 (2) The duties and responsibilities of guardians and limited
28 guardians appointed by the court;

29 (3) The court approval process for a guardian or limited guardian
30 to receive reimbursement for expenses and other costs from an
31 incapacitated person's estate; and

32 (4) The certified professional guardian board and office of public
33 guardianship.

34 **Sec. 4.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read
35 as follows:

36 (1) A long-term care ombudsman (~~shall~~) must:

1 ~~((1))~~ (a) Identify, investigate, and resolve complaints made by
2 or on behalf of residents of long-term care facilities relating to
3 administrative action, inaction, or decisions which may adversely
4 affect the health, safety, welfare, and rights of these individuals;

5 ~~((2))~~ (b) Monitor the development and implementation of federal,
6 state, and local laws, rules, regulations, and policies with respect to
7 long-term care facilities in this state;

8 ~~((3))~~ (c) Provide information as appropriate to residents,
9 resident representatives, and others regarding the rights of residents,
10 and to public agencies regarding the problems of individuals residing
11 in long-term care facilities; and

12 ~~((4))~~ (d) Provide for training volunteers and promoting the
13 development of citizen organizations to participate in the ombudsman
14 program. A trained volunteer long-term care ombudsman, in accordance
15 with the policies and procedures established by the state long-term
16 care ombudsman program, shall inform residents, their representatives,
17 and others about the rights of residents, and may identify,
18 investigate, and resolve complaints made by or on behalf of residents
19 of long-term care facilities relating to action, inaction, or
20 decisions, that may adversely affect the health, safety, welfare, and
21 rights of these individuals.

22 (2) Publish on a web site, or otherwise make available to
23 residents, families of residents, and the public information regarding
24 professional and lay guardians, including descriptions of the
25 following:

26 (a) The different types of guardianships available under chapters
27 11.88 and 11.92 RCW;

28 (b) The duties and responsibilities of guardians and limited
29 guardians appointed by the court;

30 (c) The court approval process for a guardian or limited guardian
31 to receive reimbursement for expenses and other costs from an
32 incapacitated person's estate; and

33 (d) The certified professional guardian board and office of public
34 guardianship.

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

EFFECT: Makes the following changes:

(1) Specifies that the information published on the web sites of the administrator for the courts and the long-term care ombudsman must include the list of information provided in the bill. Removes the requirement that the court must provide information regarding professional and lay guardians to a person filing a petition for guardianship.

(2) Changes the deadline to achieve service of the notice of a hearing on a petition for guardianship to an alleged incapacitated person, if over the age of 14, and a guardian ad litem from ten to fifteen days in advance of the hearing.

(3) Specifies that a guardian ad litem is required to disclose any relationship or circumstance only from the previous ten years that would cause the appearance of a conflict of interest with respect to his or her recommendation of the appointment of a particular person as a guardian or limited guardian.

(4) Removes the requirement that the court must consider a written request by an unrepresented person for the modification or termination of a guardianship as a motion for an order to show cause.

(5) Removes the requirement that the court must schedule a hearing upon the receipt of a request to modify or terminate a guardianship unless it appears that the application is frivolous.

(6) Removes the requirement that the burden of proof shift to the professional guardian to prove the appropriateness of his or her conduct if an applicant makes a prima facie showing that the professional guardian has breached a fiduciary, professional, or ethical duty.

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