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SENATE BILL 5740

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Kastama, Chase, and Roach

Read first time 02/09/11. Referred to Committee on Human Services & Corrections.

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 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 any 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.

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

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

31 (2) Before appointing a guardian or a limited guardian, notice of  
32 a hearing, to be held not less than ((ten)) fifteen days after service  
33 thereof, ((shall)) the name of the person who the court or guardian ad  
34 litem proposes to be appointed as guardian or limited guardian, a copy  
35 of the petition for appointment of guardian, and the statement of the  
36 legal rights of the alleged incapacitated person that could be

1 restricted or transferred to a guardian by a guardianship order must be  
2 given by registered or certified mail to the last known address  
3 requesting a return receipt signed by the addressee or an agent  
4 appointed by the addressee, or by personal service in the manner  
5 provided for services of summons, to the following:

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

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

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

17 ((+4)) (3) If the petition is by a parent asking for appointment  
18 as guardian or limited guardian of a minor child under the age of  
19 fourteen years, or if the petition is accompanied by the written  
20 consent of a minor of the age of fourteen years or upward, who consents  
21 to the appointment of the guardian or limited guardian asked for, or if  
22 the petition is by a nonresident guardian of any minor or incapacitated  
23 person, then the court may appoint the guardian without notice of the  
24 hearing. The court for good cause may reduce the number of days of  
25 notice, but in every case, at least three days notice shall be given.

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

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

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

7       (1) At any time after establishment of a guardianship or  
8 appointment of a guardian, the court may, upon the death of the  
9 guardian or limited guardian, or, for other good reason, modify or  
10 terminate the guardianship or replace the guardian or limited guardian.

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

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

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

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

1 ~~within thirty days after receiving the request from the clerk the court~~  
2 ~~directs otherwise, the clerk shall schedule a hearing on the request~~  
3 ~~and mail notice to the guardian, the incapacitated person, the~~  
4 ~~applicant, all counsel of record, and any other person entitled to~~  
5 ~~receive notice of proceedings in the matter.))~~

6 (4) In a hearing on an application to modify or terminate a  
7 guardianship, or to replace a guardian or limited guardian((7)):

8 (a) The burden is on the guardian to establish that the guardian  
9 has met his or her fiduciary duties and in the case of a professional  
10 guardian has also met all of the guardian's professional and ethical  
11 duties as proscribed by the certified professional guardian board; and

12 (b) The court may grant such relief as it deems just and in the  
13 best interest of the incapacitated person.

14 (5) If the applicant petitioning the court to remove a guardian is  
15 the person or persons who originally petitioned the court to establish  
16 the guardianship, and the application is received within the first year  
17 of the guardianship, then the court must grant the request and appoint  
18 a new guardian. Relief under this subsection cannot be requested for  
19 any subsequent guardian.

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

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

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

36 (2) Prior to the appointment of a guardian or a limited guardian,  
37 whenever it appears that the incapacitated person or incapacitated

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

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

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

12 (c) Allocate the cost of the mediation (~~(pursuant to RCW~~  
13 ~~11.96.140)~~).

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

19 ((+a)) (i) Be free of influence from anyone interested in the  
20 result of the proceeding; and

21 ((+b)) (ii) Have the requisite knowledge, training, or expertise  
22 to perform the duties required by this section.

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

1 ad litem and all parties. If, after a hearing, the court enters an  
2 order replacing the guardian ad litem, findings shall be included,  
3 expressly stating the reasons for the removal. If the guardian ad  
4 litem is not removed, the court has the authority to assess to the  
5 moving party, attorneys' fees and costs related to the motion. The  
6 court shall assess attorneys' fees and costs for frivolous motions.

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

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

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

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

31 (A) Level of formal education;

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

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

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

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

37 (F) Evidence of the person's knowledge, training, and experience in  
38 each of the following: Needs of impaired elderly people, physical

1 disabilities, mental illness, developmental disabilities, and other  
2 areas relevant to the needs of incapacitated persons, legal procedure,  
3 and the requirements of chapters 11.88 and 11.92 RCW.

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

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

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

15 (d) The background and qualification information shall be updated  
16 annually.

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

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

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

33 (a) To meet and consult with the alleged incapacitated person as  
34 soon as practicable following appointment and explain, in language  
35 which such person can reasonably be expected to understand, the  
36 substance of the petition, the nature of the resultant proceedings, the  
37 person's right to contest the petition, the identification of the  
38 proposed guardian or limited guardian, the right to a jury trial on the

1 issue of his or her alleged incapacity, the right to independent legal  
2 counsel as provided by RCW 11.88.045, and the right to be present in  
3 court at the hearing on the petition;

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

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

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

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

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

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

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

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

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

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

36 (iv) A description of any alternative arrangements previously made  
37 by the alleged incapacitated person or which could be made, and whether  
38 and to what extent such alternatives should be used in lieu of a

1 guardianship, and if the guardian ad litem is recommending  
2 discontinuation of any such arrangements, specific findings as to why  
3 such arrangements are contrary to the best interest of the alleged  
4 incapacitated person;

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

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

14 (vii) Any expression of approval or disapproval made by the alleged  
15 incapacitated person concerning the proposed guardian or limited  
16 guardian or guardianship or limited guardianship;

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

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

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

1 upon the two-month anniversary of filing the petition and on or before  
2 the same day of each following month until the hearing, the guardian ad  
3 litem shall file interim reports summarizing his or her activities on  
4 the proceeding during that time period as well as fees and costs  
5 incurred;

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

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

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

29 (7) The parties to the proceeding may file responses to the  
30 guardian ad litem report with the court and deliver such responses to  
31 the other parties and the guardian ad litem at any time up to the  
32 second day prior to the hearing. If a guardian ad litem fails to file  
33 his or her report in a timely manner, the hearing shall be continued to  
34 give the court and the parties at least fifteen days before the hearing  
35 to review the report. At any time during the proceeding upon motion of  
36 any party or on the court's own motion, the court may remove the  
37 guardian ad litem for failure to perform his or her duties as specified  
38 in this chapter, provided that the guardian ad litem shall have five

1 days' notice of any motion to remove before the court enters such  
2 order. In addition, the court in its discretion may reduce a guardian  
3 ad litem's fee for failure to carry out his or her duties.

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

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

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

32 (11) Upon the presentation of the guardian ad litem report and the  
33 entry of an order either dismissing the petition for appointment of  
34 guardian or limited guardian or appointing a guardian or limited  
35 guardian, the guardian ad litem shall be dismissed and shall have no  
36 further duties or obligations unless otherwise ordered by the court.  
37 If the court orders the guardian ad litem to perform further duties or  
38 obligations, they shall not be performed at county expense.

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

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

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

9 (1) Any searchable database available to the public containing  
10 information about certified professional guardians must contain the  
11 following:

12 (a) All complaints filed with the certified professional guardian  
13 board against a certified professional guardian and the disposition of  
14 the complaint or complaints; and

15 (b) Any legal proceeding related to a certified professional  
16 guardian's service as a guardian.

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

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

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

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

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

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

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

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

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

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