
SENATE BILL 5794

State of Washington

57th Legislature

2001 Regular Session

By Senators Thibaudeau, Deccio, Fairley and Costa

Read first time 02/02/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to medical reports in guardianship proceedings by
2 advanced registered nurse practitioners; and amending RCW 11.88.045.

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

4 **Sec. 1.** RCW 11.88.045 and 1996 c 249 s 9 are each amended to read
5 as follows:

6 (1)(a) Alleged incapacitated individuals shall have the right to be
7 represented by willing counsel of their choosing at any stage in
8 guardianship proceedings. The court shall provide counsel to represent
9 any alleged incapacitated person at public expense when either: (i)
10 The individual is unable to afford counsel, or (ii) the expense of
11 counsel would result in substantial hardship to the individual, or
12 (iii) the individual does not have practical access to funds with which
13 to pay counsel. If the individual can afford counsel but lacks
14 practical access to funds, the court shall provide counsel and may
15 impose a reimbursement requirement as part of a final order. When, in
16 the opinion of the court, the rights and interests of an alleged or
17 adjudicated incapacitated person cannot otherwise be adequately
18 protected and represented, the court on its own motion shall appoint an
19 attorney at any time to represent such person. Counsel shall be

1 provided as soon as practicable after a petition is filed and long
2 enough before any final hearing to allow adequate time for consultation
3 and preparation. Absent a convincing showing in the record to the
4 contrary, a period of less than three weeks shall be presumed by a
5 reviewing court to be inadequate time for consultation and preparation.

6 (b) Counsel for an alleged incapacitated individual shall act as an
7 advocate for the client and shall not substitute counsel's own judgment
8 for that of the client on the subject of what may be in the client's
9 best interests. Counsel's role shall be distinct from that of the
10 guardian ad litem, who is expected to promote the best interest of the
11 alleged incapacitated individual, rather than the alleged incapacitated
12 individual's expressed preferences.

13 (c) If an alleged incapacitated person is represented by counsel
14 and does not communicate with counsel, counsel may ask the court for
15 leave to withdraw for that reason. If satisfied, after affording the
16 alleged incapacitated person an opportunity for a hearing, that the
17 request is justified, the court may grant the request and allow the
18 case to proceed with the alleged incapacitated person unrepresented.

19 (2) During the pendency of any guardianship, any attorney
20 purporting to represent a person alleged or adjudicated to be
21 incapacitated shall petition to be appointed to represent the
22 incapacitated or alleged incapacitated person. Fees for representation
23 described in this section shall be subject to approval by the court
24 pursuant to the provisions of RCW 11.92.180.

25 (3) The alleged incapacitated person is further entitled to testify
26 and present evidence and, upon request, entitled to a jury trial on the
27 issues of his or her alleged incapacity. The standard of proof to be
28 applied in a contested case, whether before a jury or the court, shall
29 be that of clear, cogent, and convincing evidence.

30 (4) In all proceedings for appointment of a guardian or limited
31 guardian, the court must be presented with a written report from a
32 physician licensed to practice under chapter 18.71 or 18.57 RCW (~~(or)~~),
33 licensed or certified psychologist, or advanced registered nurse
34 practitioner licensed under chapter 18.79 RCW, selected by the guardian
35 ad litem. If the alleged incapacitated person opposes the health care
36 professional selected by the guardian ad litem to prepare the medical
37 report, then the guardian ad litem shall use the health care
38 professional selected by the alleged incapacitated person. The
39 guardian ad litem may also obtain a supplemental examination. The

1 physician or psychologist shall have personally examined and
2 interviewed the alleged incapacitated person within thirty days of
3 preparation of the report to the court and shall have expertise in the
4 type of disorder or incapacity the alleged incapacitated person is
5 believed to have. The report shall contain the following information
6 and shall be set forth in substantially the following format:

7 (a) The name and address of the examining physician or
8 psychologist;

9 (b) The education and experience of the physician or psychologist
10 pertinent to the case;

11 (c) The dates of examinations of the alleged incapacitated person;

12 (d) A summary of the relevant medical, functional, neurological,
13 psychological, or psychiatric history of the alleged incapacitated
14 person as known to the examining physician or psychologist;

15 (e) The findings of the examining physician or psychologist as to
16 the condition of the alleged incapacitated person;

17 (f) Current medications;

18 (g) The effect of current medications on the alleged incapacitated
19 person's ability to understand or participate in guardianship
20 proceedings;

21 (h) Opinions on the specific assistance the alleged incapacitated
22 person needs;

23 (i) Identification of persons with whom the physician or
24 psychologist has met or spoken regarding the alleged incapacitated
25 person.

26 The court shall not enter an order appointing a guardian or limited
27 guardian until a medical or psychological report meeting the above
28 requirements is filed.

29 The requirement of filing a medical report is waived if the basis
30 of the guardianship is minority.

31 (5) During the pendency of an action to establish a guardianship,
32 a petitioner or any person may move for temporary relief under chapter
33 7.40 RCW, to protect the alleged incapacitated person from abuse,
34 neglect, abandonment, or exploitation, as those terms are defined in
35 RCW 74.34.020, or to address any other emergency needs of the alleged
36 incapacitated person. Any alternative arrangement executed before
37 filing the petition for guardianship shall remain effective unless the
38 court grants the relief requested under chapter 7.40 RCW, or unless,
39 following notice and a hearing at which all parties directly affected

1 by the arrangement are present, the court finds that the alternative
2 arrangement should not remain effective.

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