
SENATE BILL 6427

State of Washington

62nd Legislature

2012 Regular Session

By Senators Kastama, Regala, Hatfield, and Conway

Read first time 01/23/12. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to improving protections for incapacitated adults;
2 amending RCW 11.88.020, 11.88.030, 11.88.040, 11.88.120, 11.88.090,
3 11.92.043, 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 11.88.020 and 2011 c 329 s 1 are each amended to read
7 as follows:

8 (1) Any suitable person over the age of eighteen years, or any
9 parent under the age of eighteen years or, if the petition is for
10 appointment of a professional guardian, any individual or guardianship
11 service that meets any certification requirements established by the
12 administrator for the courts, may, if not otherwise disqualified, be
13 appointed guardian or limited guardian of the person and/or the estate
14 of an incapacitated person. A financial institution subject to the
15 jurisdiction of the department of financial institutions and authorized
16 to exercise trust powers, and a federally chartered financial
17 institution when authorized to do so, may act as a guardian of the
18 estate of an incapacitated person without having to meet the

1 certification requirements established by the administrator for the
2 courts. No person is qualified to serve as a guardian who is

3 (a) under eighteen years of age except as otherwise provided
4 herein;

5 (b) of unsound mind;

6 (c) convicted of a felony or of a misdemeanor involving moral
7 turpitude;

8 (d) a nonresident of this state who has not appointed a resident
9 agent to accept service of process in all actions or proceedings with
10 respect to the estate and caused such appointment to be filed with the
11 court;

12 (e) a corporation not authorized to act as a fiduciary, guardian,
13 or limited guardian in the state;

14 (f) a person whom the court finds unsuitable.

15 (2) The professional guardian certification requirements required
16 under this section shall not apply to a testamentary guardian appointed
17 under RCW 11.88.080.

18 (3) If a guardian or limited guardian is not a certified
19 professional guardian or financial institution authorized under this
20 section, the guardian or limited guardian shall complete any
21 standardized training video or web cast for lay guardians made
22 available by the administrative office of the courts and the superior
23 court where the petition is filed unless granted a waiver by the court
24 under RCW 11.92.043 or 11.92.040. The training video or web cast must
25 be provided at no cost to the guardian or limited guardian.

26 (a) If a petitioner requests the appointment of a specific
27 individual to act as a guardian or limited guardian, the petition for
28 guardianship or limited guardianship shall include evidence of the
29 successful completion of the required training video or web cast by the
30 proposed guardian or limited guardian. The superior court may defer
31 the completion of the training requirement to a date no later than
32 ninety days after appointment if the petitioner requests expedited
33 appointment due to emergent circumstances.

34 (b) If no person is identified to be appointed guardian or limited
35 guardian at the time the petition is filed, then the court shall
36 require the completion of the required training video or web cast by a
37 date no later than ninety days after the appointment.

1 (4) A proposed professional guardian shall disclose in writing to
2 the guardian ad litem any prior or existing relationship, or other
3 circumstance that would cause the appearance of a conflict of interest
4 in the matter.

5 **Sec. 2.** RCW 11.88.030 and 2011 c 329 s 2 are each amended to read
6 as follows:

7 (1) Any person or entity may petition for the appointment of a
8 qualified person, certified professional guardian, or financial
9 institution authorized in RCW 11.88.020 as the guardian or limited
10 guardian of an incapacitated person. No liability for filing a
11 petition for guardianship or limited guardianship shall attach to a
12 petitioner acting in good faith and upon reasonable basis. A petition
13 for guardianship or limited guardianship shall state:

14 (a) The name, age, residence, and post office address of the
15 alleged incapacitated person;

16 (b) The nature of the alleged incapacity in accordance with RCW
17 11.88.010;

18 (c) The approximate value and description of property, including
19 any compensation, pension, insurance, or allowance, to which the
20 alleged incapacitated person may be entitled;

21 (d) Whether there is, in any state, a guardian or limited guardian,
22 or pending guardianship action for the person or estate of the alleged
23 incapacitated person;

24 (e) The residence and post office address of the person whom
25 petitioner asks to be appointed guardian or limited guardian;

26 (f) The names and addresses, and nature of the relationship, so far
27 as known or can be reasonably ascertained, of the persons most closely
28 related by blood, marriage, or state registered domestic partnership to
29 the alleged incapacitated person;

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

32 (h) The reason why the appointment of a guardian or limited
33 guardian is sought and the interest of the petitioner in the
34 appointment, and whether the appointment is sought as guardian or
35 limited guardian of the person, the estate, or both;

36 (i) A description of any alternate arrangements previously made by

1 the alleged incapacitated person, such as trusts or powers of attorney,
2 including identifying any guardianship nominations contained in a power
3 of attorney, and why a guardianship is nevertheless necessary;

4 (j) The nature and degree of the alleged incapacity and the
5 specific areas of protection and assistance requested and the
6 limitation of rights requested to be included in the court's order of
7 appointment;

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

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

13 (2) The petition shall include evidence of successful completion of
14 any training required under RCW 11.88.020 by the proposed guardian or
15 limited guardian unless the petitioner requests expedited appointment
16 due to emergent circumstances.

17 (3)(a) The attorney general may petition for the appointment of a
18 guardian or limited guardian in any case in which there is cause to
19 believe that a guardianship is necessary and no private party is able
20 and willing to petition.

21 (b) Prepayment of a filing fee shall not be required in any
22 guardianship or limited guardianship brought by the attorney general.
23 Payment of the filing fee shall be ordered from the estate of the
24 incapacitated person at the hearing on the merits of the petition,
25 unless in the judgment of the court, such payment would impose a
26 hardship upon the incapacitated person, in which case the filing shall
27 be waived.

28 (4) No filing fee shall be charged by the court for filing either
29 a petition for guardianship or a petition for limited guardianship if
30 the petition alleges that the alleged incapacitated person has total
31 assets of a value of less than three thousand dollars.

32 (5)(a) Notice that a guardianship proceeding has been commenced
33 shall be personally served upon the alleged incapacitated person and
34 the guardian ad litem along with a copy of the petition for appointment
35 of a guardian. Such notice shall be served not more than five court
36 days after the petition has been filed.

37 (b) Notice under this subsection shall include a clear and easily
38 readable statement of the legal rights of the alleged incapacitated

1 person that could be restricted or transferred to a guardian by a
2 guardianship order as well as the right to counsel of choice and to a
3 jury trial on the issue of incapacity. Such notice shall be in
4 substantially the following form and shall be (~~in capital letters,~~)
5 double-spaced(~~(7)~~) and in a type size not smaller than ten-point type:

6 Important notice Please read carefully

7 A petition to have a guardian appointed for you has been filed in the
8 county superior court by If a guardian is
9 appointed, (~~you could~~) the court will determine whether you retain or
10 lose one or more of the following rights:

- 11 (1) To marry, divorce, or enter into or end a state registered
12 domestic partnership;
- 13 (2) To vote (~~or hold an elected office~~);
- 14 (3) To enter into a contract or make or revoke a will;
- 15 (4) To appoint someone to act on your behalf;
- 16 (5) To sue and be sued other than through a guardian;
- 17 (6) (~~To possess a license to drive;~~
- 18 ~~(7)~~) To buy, sell, own, mortgage, or lease property;
- 19 ~~(8)~~) (7) To consent to or refuse medical treatment;
- 20 ~~(9)~~) (8) To decide who shall provide care and assistance(~~(+~~
- 21 ~~10) To make decisions regarding social aspects of your life~~)).

22 Under the law, you have certain rights.

23 You have the right to be represented by a lawyer of your own choosing.
24 The court will appoint a lawyer to represent you if you are unable to
25 pay or payment would result in a substantial hardship to you.

26 You have the right to ask for a jury to decide whether or not you need
27 a guardian to help you.

28 You have the right to be present in court and testify when the hearing
29 is held to decide whether or not you need a guardian. If a guardian ad
30 litem is appointed, you have the right to request the court to replace
31 that person.

32 If a guardian or limited guardian is appointed, you retain certain
33 rights including the right to representation by an attorney and the
34 right to request modification of the guardianship or discharge of the
35 guardian. Guardians cannot involuntarily detain someone in a

1 residential facility. Guardians and limited guardians must choose the
2 least restrictive alternatives. All actions of a guardian or limited
3 guardian are subject to review by the court.

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

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

22 **Sec. 3.** RCW 11.88.040 and 2008 c 6 s 803 are each amended to read
23 as follows:

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

28 (2) Before appointing a guardian or a limited guardian, notice of
29 a hearing, to be held not less than (~~ten~~) fifteen days after service
30 thereof, (~~shall~~) the name of the person who the court or guardian ad
31 litem proposes to be appointed as guardian or limited guardian, a copy
32 of the petition for appointment of guardian, and the statement of the
33 legal rights of the alleged incapacitated person that could be
34 restricted or transferred to a guardian by a guardianship order must be
35 given by registered or certified mail to the last known address
36 requesting a return receipt signed by the addressee or an agent
37 appointed by the addressee, or by personal service in the manner

1 provided for services of summons, but duplicates of information already
2 provided under RCW 11.88.030 or other applicable statutes or rules need
3 not be given, to the following:

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

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

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

15 ((+4)) (3) If the petition is by a parent asking for appointment
16 as guardian or limited guardian of a minor child under the age of
17 fourteen years, or if the petition is accompanied by the written
18 consent of a minor of the age of fourteen years or upward, who consents
19 to the appointment of the guardian or limited guardian asked for, or if
20 the petition is by a nonresident guardian of any minor or incapacitated
21 person, then the court may appoint the guardian without notice of the
22 hearing. The court for good cause may reduce the number of days of
23 notice, but in every case, at least three days notice shall be given.

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

37 (5) If presence of the alleged incapacitated person is waived and

1 the court does not remove itself to the place of residence of such
2 person, the guardian ad litem shall appear in person at the final
3 hearing on the petition.

4 **Sec. 4.** RCW 11.88.120 and 1991 c 289 s 7 are each amended to read
5 as follows:

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

10 (2) Any person, including an incapacitated person, may apply to the
11 court for an order to modify or terminate a guardianship or to replace
12 a guardian or limited guardian or to register a complaint about the
13 conduct of the guardian or limited guardian and request the court grant
14 appropriate relief.

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

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

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

1 reasons for the denial explained. A copy of the order shall be mailed
2 by the clerk to the applicant, to the guardian, and to any other person
3 entitled to receive notice of proceedings in the matter. (~~Unless~~
4 ~~within thirty days after receiving the request from the clerk the court~~
5 ~~directs otherwise, the clerk shall schedule a hearing on the request~~
6 ~~and mail notice to the guardian, the incapacitated person, the~~
7 ~~applicant, all counsel of record, and any other person entitled to~~
8 ~~receive notice of proceedings in the matter.))~~

9 (4) In a hearing on an application to modify or terminate a
10 guardianship, or to replace a guardian or limited guardian, the court
11 may grant such relief as it deems just and in the best interest of the
12 incapacitated person.

13 (5) The court may order persons who have been removed as guardians
14 to deliver any property or records belonging to the incapacitated
15 person in accordance with the court's order. Similarly, when guardians
16 have died or been removed and property or records of an incapacitated
17 person are being held by any other person, the court may order that
18 person to deliver it in accordance with the court's order.
19 Disobedience of an order to deliver shall be punishable as contempt of
20 court.

21 **Sec. 5.** RCW 11.88.090 and 2008 c 6 s 804 are each amended to read
22 as follows:

23 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
24 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
25 11.92.180 shall affect or impair the power of any court to appoint a
26 guardian ad litem to defend the interests of any incapacitated person
27 interested in any suit or matter pending therein, or to commence and
28 prosecute any suit in his or her behalf.

29 (2) Prior to the appointment of a guardian or a limited guardian,
30 whenever it appears that the incapacitated person or incapacitated
31 person's estate could benefit from mediation and such mediation would
32 likely result in overall reduced costs to the estate, upon the motion
33 of the alleged incapacitated person or the guardian ad litem, or
34 subsequent to such appointment, whenever it appears that the
35 incapacitated person or incapacitated person's estate could benefit
36 from mediation and such mediation would likely result in overall

1 reduced costs to the estate, upon the motion of any interested person,
2 the court may:

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

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

6 (c) Allocate the cost of the mediation (~~pursuant to RCW~~
7 ~~11.96.140~~)).

8 (3)(a) Upon receipt of a petition for appointment of guardian or
9 limited guardian, except as provided herein, the court shall appoint a
10 guardian ad litem to represent the best interests of the alleged
11 incapacitated person, who shall be a person found or known by the court
12 to:

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

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

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

1 (c) No guardian ad litem need be appointed when a parent is
2 petitioning for a guardian or a limited guardian to be appointed for
3 his or her minor child and the minority of the child, as defined by RCW
4 11.92.010, is the sole basis of the petition. The order appointing the
5 guardian ad litem shall recite the duties set forth in subsection (5)
6 of this section. The appointment of a guardian ad litem shall have no
7 effect on the legal competency of the alleged incapacitated person and
8 shall not overcome the presumption of competency or full legal and
9 civil rights of the alleged incapacitated person.

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

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

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

25 (A) Level of formal education;

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

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

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

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

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

36 The written statement of qualifications shall include the names of
37 any counties in which the person was removed from a guardian ad litem

1 registry pursuant to a grievance action, and the name of the court and
2 the cause number of any case in which the court has removed the person
3 for cause; and

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

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

10 (d) The background and qualification information shall be updated
11 annually.

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

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

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

28 (a) To meet and consult with the alleged incapacitated person as
29 soon as practicable following appointment and explain, in language
30 which such person can reasonably be expected to understand, the
31 substance of the petition, the nature of the resultant proceedings, the
32 person's right to contest the petition, the identification of the
33 proposed guardian or limited guardian, the right to a jury trial on the
34 issue of his or her alleged incapacity, the right to independent legal
35 counsel as provided by RCW 11.88.045, and the right to be present in
36 court at the hearing on the petition;

37 (b) To obtain a written report according to RCW 11.88.045; and such

1 other written or oral reports from other qualified professionals as are
2 necessary to permit the guardian ad litem to complete the report
3 required by this section;

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

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

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

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

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

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

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

24 (ii) A description of the needs of the incapacitated person for
25 care and treatment, the probable residential requirements of the
26 alleged incapacitated person and the basis upon which these findings
27 were made;

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

32 (iv) A description of any alternative arrangements previously made
33 by the alleged incapacitated person or which could be made, and whether
34 and to what extent such alternatives should be used in lieu of a
35 guardianship, and if the guardian ad litem is recommending
36 discontinuation of any such arrangements, specific findings as to why
37 such arrangements are contrary to the best interest of the alleged
38 incapacitated person;

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

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

10 (vii) Any expression of approval or disapproval made by the alleged
11 incapacitated person concerning the proposed guardian or limited
12 guardian or guardianship or limited guardianship;

13 (viii) Identification of persons with significant interest in the
14 welfare of the alleged incapacitated person who should be advised of
15 their right to request special notice of proceedings pursuant to RCW
16 11.92.150; and

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

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

1 the proceeding during that time period as well as fees and costs
2 incurred;

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

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

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

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

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

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

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

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

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

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

4 **Sec. 6.** RCW 11.92.043 and 2011 c 329 s 3 are each amended to read
5 as follows:

6 It shall be the duty of the guardian or limited guardian of the
7 person:

8 (1) To file within three months after appointment a personal care
9 plan for the incapacitated person which shall include (a) an assessment
10 of the incapacitated person's physical, mental, and emotional needs and
11 of such person's ability to perform or assist in activities of daily
12 living, and (b) the guardian's specific plan for meeting the identified
13 and emerging personal care needs of the incapacitated person.

14 (2) To file annually or, where a guardian of the estate has been
15 appointed, at the time an account is required to be filed under RCW
16 11.92.040, a report on the status of the incapacitated person, which
17 shall include:

18 (a) The address and name of the incapacitated person and all
19 residential changes during the period;

20 (b) The services or programs which the incapacitated person
21 receives;

22 (c) The medical status of the incapacitated person;

23 (d) The mental status of the incapacitated person;

24 (e) Changes in the functional abilities of the incapacitated
25 person;

26 (f) Activities of the guardian for the period;

27 (g) Any recommended changes in the scope of the authority of the
28 guardian;

29 (h) The identity of any professionals who have assisted the
30 incapacitated person during the period;

31 (i)(i) Evidence of the guardian or limited guardian's successful
32 completion of any standardized training video or web cast for guardians
33 or limited guardians made available by the administrative office of the
34 courts and the superior court when the guardian or limited guardian:
35 (A) Was appointed prior to July 22, 2011; (B) is not a certified
36 professional guardian or financial institution authorized under RCW

1 11.88.020; and (C) has not previously completed the requirements of RCW
2 11.88.020(3). The training video or web cast must be provided at no
3 cost to the guardian or limited guardian.

4 (ii) The superior court may, upon (A) petition by the guardian or
5 limited guardian; or (B) any other method as provided by local court
6 rule:

7 (I) For good cause, waive this requirement for guardians appointed
8 prior to July 22, 2011. Good cause shall require evidence that the
9 guardian already possesses the requisite knowledge to serve as a
10 guardian without completing the training. When determining whether
11 there is good cause to waive the training requirement, the court shall
12 consider, among other facts, the length of time the guardian has been
13 serving the incapacitated person; whether the guardian has timely filed
14 all required reports with the court; whether the guardian is monitored
15 by other state or local agencies; and whether there have been any
16 allegations of abuse, neglect, or a breach of fiduciary duty against
17 the guardian; or

18 (II) Extend the time period for completion of the training
19 requirement for ninety days; and

20 (j) Evidence of the guardian or limited guardian's successful
21 completion of any additional or updated training video or web cast
22 offered by the administrative office of the courts and the superior
23 court as is required at the discretion of the superior court unless the
24 guardian or limited guardian is a certified professional guardian or
25 financial institution authorized under RCW 11.88.020. The training
26 video or web cast must be provided at no cost to the guardian or
27 limited guardian.

28 (3) To report to the court within thirty days any substantial
29 change in the incapacitated person's condition, or any changes in
30 residence of the incapacitated person.

31 (4) Consistent with the powers granted by the court, to care for
32 and maintain the incapacitated person in the setting least restrictive
33 to the incapacitated person's freedom and appropriate to the
34 incapacitated person's personal care needs, assert the incapacitated
35 person's rights and best interests, and if the incapacitated person is
36 a minor or where otherwise appropriate, to see that the incapacitated
37 person receives appropriate training and education and that the

1 incapacitated person has the opportunity to learn a trade, occupation,
2 or profession.

3 (5) Consistent with RCW 7.70.065, to provide timely, informed
4 consent for health care of the incapacitated person, except in the case
5 of a limited guardian where such power is not expressly provided for in
6 the order of appointment or subsequent modifying order as provided in
7 RCW 11.88.125 as now or hereafter amended, the standby guardian or
8 standby limited guardian may provide timely, informed consent to
9 necessary medical procedures if the guardian or limited guardian cannot
10 be located within four hours after the need for such consent arises.
11 No guardian, limited guardian, or standby guardian may involuntarily
12 commit for mental health treatment, observation, or evaluation an
13 alleged incapacitated person who is unable or unwilling to give
14 informed consent to such commitment unless the procedures for
15 involuntary commitment set forth in chapter 71.05 or 72.23 RCW are
16 followed. Nothing in this section shall be construed to allow a
17 guardian, limited guardian, or standby guardian to consent to:

- 18 (a) Therapy or other procedure which induces convulsion;
19 (b) Surgery solely for the purpose of psychosurgery;
20 (c) Other psychiatric or mental health procedures that restrict
21 physical freedom of movement, or the rights set forth in RCW 71.05.217.

22 A guardian, limited guardian, or standby guardian who believes
23 these procedures are necessary for the proper care and maintenance of
24 the incapacitated person shall petition the court for an order unless
25 the court has previously approved the procedure within the past thirty
26 days. The court may order the procedure only after an attorney is
27 appointed in accordance with RCW 11.88.045 if no attorney has
28 previously appeared, notice is given, and a hearing is held in
29 accordance with RCW 11.88.040.

30 (6) No guardian, limited guardian, or standby guardian may prevent
31 or limit contact between the incapacitated person and another person,
32 except as follows:

33 (a) Where a guardian has grounds to believe that contact with a
34 person or persons puts the incapacitated person at substantial and
35 imminent risk of harm, the guardian may prevent or limit contact for
36 the period necessary to file and be heard on a petition for a
37 vulnerable adult protection order or other court order conveying this
38 authority.

1 (b) Where the guardian, limited guardian, or standby guardian
2 prevents or limits contact between the incapacitated person and another
3 person under (a) of this subsection, he or she shall promptly serve to
4 the incapacitated person, the affected party, and each party entitled
5 to receive a notice of proceedings pursuant to RCW 11.92.150 a written
6 statement that identifies the harm that the guardian seeks to prevent,
7 facts that support the guardian's concern, what limitations are placed
8 on contact, and written notice that the incapacitated person or the
9 affected party may seek relief from the limitation pursuant to the
10 procedure specified in RCW 11.88.120(2). The guardian, limited
11 guardian, or standby guardian shall file with the court a copy of this
12 statement, the notice, and proof of the delivery of the notice to each
13 party entitled to receive a notice of proceedings pursuant to RCW
14 11.92.150.

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

17 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, forms and
24 a description of the process to request that the court modify a
25 guardianship or to remove a guardian, the ethical and fiduciary duties
26 of a guardian, and information about the certified professional
27 guardian board and program.

28 **Sec. 8.** RCW 43.190.060 and 1999 c 133 s 1 are each amended to read
29 as follows:

- 30 (1) A long-term care ombudsman (~~((shall))~~) must:
31 ~~((+1))~~ (a) Identify, investigate, and resolve complaints made by
32 or on behalf of residents of long-term care facilities relating to
33 administrative action, inaction, or decisions which may adversely
34 affect the health, safety, welfare, and rights of these individuals;
35 ~~((+2))~~ (b) Monitor the development and implementation of federal,

1 state, and local laws, rules, regulations, and policies with respect to
2 long-term care facilities in this state;

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

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

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

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

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