

SENATE BILL REPORT

HB 1839

As of March 27, 2015

Title: An act relating to services that provide support for decision making.

Brief Description: Concerning services that provide support for decision making.

Sponsors: Representatives Kilduff, Rodne, Muri, Goodman, Orwall, Walkinshaw, Moeller, Tharinger and Jinkins.

Brief History: Passed House: 3/11/15, 98-0.

Committee Activity: Law & Justice: 3/26/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: Guardianship. A guardianship action is a legal process in which a guardian is appointed and empowered by the court to make decisions for an incapacitated person. This process removes decision-making authority from the incapacitated person and gives the authority to make decisions for an incapacitated person to the guardian. A determination of incapacity is a legal, not a medical, decision. A person may be deemed incapacitated if the court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A person may also be deemed incapacitated if the person is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs. The court may appoint a guardian for the person, for the person's estate, or both.

The Office of Public Guardianship. In 2007 the Legislature established an Office of Public Guardianship (OPG) within the Administrative Office of the Courts to promote the availability of guardianship services to incapacitated individuals for whom adequate services may not otherwise be available. The OPG is authorized to contract with public or private entities or individuals to provide public guardianship services for persons age 18 or older and whose income does not exceed 200 percent of the federal poverty level. The OPG monitors and oversees the use of state funding on public guardianship, but is prohibited from acting as a public guardian or in any other representative capacity for any individual. The OPG is also required to adopt eligibility criteria to enable it to serve individuals with the greatest need

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when the number of cases requiring appointment of a public guardian exceeds the number of cases in which public guardianship services can be provided.

The OPG creates minimum standards of practice for public guardianship services and adopts processes to receive and consider complaints against the OPG and contracted providers of public guardianship services. The OPG also has a system for monitoring the performance of public guardianship services.

Summary of Bill: The OPG must establish and administer supported decision-making assistance programs in concert with public guardianship programs. "Supported decision-making assistance" would act as an alternative service to guardianship and is defined as "support for an individual with diminished decision-making ability in making decisions affecting health or safety or to manage financial affairs. Assistance includes, without limitation, acting as a representative payee, an attorney-in-fact, a trustee, and a public guardian."

The OPG must provide for supported decision-making assistance services in a similar manner as they provide for public guardianship services. Supported decision-making assistance services will be contracted through public or private entities and will be provided to individuals who meet the same age and financial requirements for public guardianship. The OPG also must create eligibility criteria and oversight for supported decision-making assistance services as it did for public guardianship services.

A provision stating that the "initial implementation of public guardianship services is on a pilot basis" is removed. Three provisions requiring reports be made over the first several years of the OPG's operation are removed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: America and Washington State have changing demographics. Baby boomers are retiring and one in six adults will be age 65 years or older. People are living longer and as a result more incapacity issues are challenging the elderly and their families. Incapacity is on a continuum from severe, which likely requires a court-appointed guardianship to moderate. This bill fills the gap for incapacities that don't require a guardianship. It creates authority for the OPG to contract for services that are less restrictive than a guardianship. The Certified Professional Guardianship Board (Board) has less funding than in prior years, and this allows the OPG to use their resources efficiently and effectively.

CON: The OPG and the Board use the same staff and limited resources. The Board is unable to carry out its mission to properly investigate professional guardians and discipline

them for violations of the standards of conduct. The Board needs to focus on investigation and discipline, and this bill would expand the duties of staff with no increased funding.

Persons Testifying: PRO: Representative Kilduff, prime sponsor; Diana Stadden, Arc of WA; David Lord, Disability Rights WA; Michael Kutzner, Seattle University Law Clinic; Eileen Schock, Columbia Legal Services; Jerry Reilly, Eldercare Alliance; Marsha Paprowicz, citizen.

CON: Claudia Donnelly, citizen.