

SENATE BILL REPORT

SB 6479

As of January 29, 2018

Title: An act relating to the training and monitoring of guardians.

Brief Description: Concerning the training and monitoring of guardians.

Sponsors: Senators Conway and Chase.

Brief History:

Committee Activity: Law & Justice: 1/30/18.

Brief Summary of Bill

- Establishes an advisory group, convened by the Department of Social and Health Services (DSHS).
- Requires the advisory group to develop a model program to monitor professional and lay guardianships.
- Requires the advisory group to develop an in-person training program for lay guardians.
- Representatives of the advisory group include state and local agencies, and professional organizations.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: In Washington's guardianship law the Legislature included an intent statement that says:

"The Legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs."

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A guardian is a person, a professional agency or a corporate fiduciary—such as a nonprofit corporation or bank trust department—appointed by a court to assist and protect a person who is legally incapable of managing their own affairs. In Washington, there are professional guardians, public guardians and lay guardians. RCW 11.88.008 defines a professional guardian as a guardian appointed by the court who is not a member of the incapacitated person's family and who charges fees for carrying out the duties of a court-appointed guardian of three or more incapacitated persons. A public guardian is a professional guardian that provides guardianship services under a contract with the Office of Public Guardianship (OPG) when there is no one else qualified, willing and able to serve. A lay guardian may be a member of the incapacitated person's family. Lay guardians are required to complete a no-cost training video.

Guardianship in Washington State is a legal process in superior court, in which a guardian is appointed to exercise the legal rights of a person subject to guardianship, referred to as the incapacitated person, who is at significant risk of harm based on a demonstrated inability to adequately manage property or financial affairs or a demonstrated inability to adequately provide for nutrition, health, housing or physical safety.

Any person may petition the court to appoint a guardian for an alleged incapacitated person. Following a hearing, the court may establish the extent and duration of the guardian's power as a decision-maker for the incapacitated person. A limited guardianship may cover only decisions in one area—such as estate or property matters. A full guardianship, on the other hand, transfers authority for all major decisions to the appointed legal guardian.

When a guardianship has been established, incapacitated persons may lose the right to:

- marry, divorce, or enter into a domestic partnership;
- vote;
- enter into a contract, make or revoke a will;
- have a driver's license and drive;
- buy, sell, own, or lease property;
- consent to or refuse medical treatment;
- decide who will provide care; and
- to make decisions regarding social aspects of life.

Given the scope of the guardian's authority, some measures exist to ensure that guardians are accountable for their decisions. Complaints against a guardian may be filed with a court, or with the Certified Professional Guardianship Board. Superior courts retain ultimate responsibility for protecting the incapacitated person. In addition, regulatory oversight of professional guardians comes from the Washington State Supreme Court's Certified Professional Guardianship Board. The board has the authority to review and approve applications for certification, set standards for ethics and training, hear grievances, and issue sanctions for certified professional guardians.

A few county courts have established programs to monitor guardians appointed by the court. Guardianship monitoring programs are not required by state law. There are no statewide standards for monitoring programs. Monitoring programs commonly use volunteers to review reports required to be filed by guardians. Monitoring programs typically do not conduct field trips to check on the condition of an incapacitated person subject to a

guardianship. Guardian monitoring programs created by county courts are not required to compile or report to the state on any findings of guardian deficiencies.

Summary of Bill: DSHS must convene an advisory group to develop a model program to:

- monitor both professional and law guardians appointed by the court, and
- develop an in-person training program for use by lay guardians.

The advisory group must consist of representatives from:

- the Office of Developmental Disabilities Ombuds;
- DSHS' Developmental Disabilities Administration;
- DSHS' Aging and Long Term Support Administration;
- the Long-Term Care Ombudsman Program;
- the Administrative Office of the Courts;
- the Washington State Bar Association;
- the superior courts;
- local area agencies on aging;
- the Certified Professional Guardianship Board;
- certified professional guardians;
- a nonprofit organization that advocates for people with intellectual or developmental disabilities;
- a nonprofit organization that advocates for people with mental illness;
- a nonprofit organization that advocates for people with dementia;
- the Washington State Coalition for Language Access;
- a nonprofit organization that advocates for senior citizens;
- two self-advocates who are persons with intellectual or developmental disabilities;
- a union representing individual providers working with the aging and long-term support administration; and
- an organization representing Washington hospitals.

In addition to this list of representatives, the advisory group must include two members of the House of Representatives, and two members of the Senate. The advisory group must select co-chairs from the appointed legislative members.

There is no deadline for the advisory group to develop either of the two required programs. There is no reporting requirement for the advisory group. The advisory group does not have a sunset date.

Appropriation: None.

Fiscal Note: Requested on January 28, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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