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November 28, 2017

Dear Interested Groups,

I chair the Guardianship Forms Subcommittee. The subcommittee develops all court forms for Washington state that relate to Title 11 guardianships. We have been grappling with a particular concern regarding medical sterilization of incapacitated persons. We want to hear from you.

Guardians are not authorized to consent to sterilization on behalf of the incapacitated person. That consent can only be authorized through a court order, after appointment of counsel for the incapacitated person and formal court proceedings. However, within the subcommittee members’ experience, some doctors have performed these procedures without a court order. Sometimes, the court only learns about a sterilization of an incapacitated person after it has occurred. The subcommittee believes that education about this issue should be increased.

In the spirit of education, the subcommittee has already changed the order appointing a guardian to specify that the guardian does not have authority to consent to sterilization. The subcommittee also asked that this information is included in the family guardian training. It is ideal to educate medical professionals about this, but the subcommittee members are in the legal field and do not know how to effectively reach medical practitioners.

The subcommittee is currently grappling with whether to create court forms that are specific to sterilization. The goal in doing so is to make it very clear that there is a special court process. Anyone accessing the guardianship forms on the Washington Courts web site could see the sterilization forms, which could itself trigger awareness. The presence of forms could also increase awareness by judges and lawyers, who may not know that court cases outline a special procedure for sterilization motions. The court cases would be cited so the correct law can be followed.

It may be a good idea to develop sterilization forms, or it may not. It is not the subcommittee’s goal to encourage more sterilizations than already would occur. Further, the most important people to become educated about this law are medical practitioners, who would be unlikely to make changes based on the mere existence of legal forms.

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We ask for your insight in this important subject. Should we develop sterilization forms? How can this information be shared effectively with medical practitioners? Would it be wise to introduce legislation, so the law is in statute and not only case law? I am attaching draft forms, which are not at all finalized, to give you an idea of what may be published if the subcommittee moves forward on this.

The voice of disabled people and those who advocate for them is of utmost importance to this decision. Feel free to share this letter with colleagues who you think have insight into this issue.

Sincerely,

Commissioner Rebekah Zinn

Washington State Pattern Forms Committee Chair

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