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**SENATE BILL 5685**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Rivers, Bailey, Keiser, Warnick, Becker, and Honeyford

AN ACT Relating to adopting certain safeguard standards for guardians of incapacitated persons; adding new sections to chapter 11.88 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  The legislature finds that the isolation of incapacitated persons may have detrimental effects on their health and well-being. The legislature further finds that isolation, when imposed by a guardian, may infringe on an incapacitated person's fundamental right to association with family and friends. The legislature recognizes that the national guardianship association has adopted national standards for professional guardians. National guardian association standard 4 states: "I. The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship. A. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person. B. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm."

NEW SECTION. **Sec.**  A new section is added to chapter 11.88 RCW to read as follows:

No guardian or professional guardian may restrict contact between an incapacitated person and any other person except when necessary to protect the incapacitated person from substantial harm. A guardian or professional guardian must obtain a court order prior to imposing restrictions, unless an emergency exists, and then must obtain a court order as soon as practical after imposing the restrictions. The scope of restrictions must be no more than necessary to prevent substantial harm.

NEW SECTION. **Sec.**  A new section is added to chapter 11.88 RCW to read as follows:

Any person affected by restrictions requested or imposed by a guardian or professional guardian has a right to meaningful written notice of the restrictions, provided by the guardian or professional guardian, and a right to appeal the restrictions in court. Where a court finds that a specified restriction is not necessary to protect the incapacitated person from substantial harm, the guardian or professional guardian may not assess or charge an incapacitated person or the estate of the incapacitated person for any legal or nonlegal costs or fees for the specified restriction where such costs or fees are related to the request or imposition of restrictions, or are related to defending from an appeal of the restrictions.

NEW SECTION. **Sec.**  A new section is added to chapter 11.88 RCW to read as follows:

(1) In any action to restrict contact, or appeal from restrictions between an incapacitated person and any other person, the court should consider the following:

(a) The fundamental right of the incapacitated person to freedom of association;

(b) The potential detrimental effects of restricting access between an incapacitated person and any other person;

(c) Whether a good faith basis exists for imposing restrictions in an emergency;

(d) Whether meaningful written notice was provided to affected persons citing specific facts and circumstances as a basis for the restriction;

(e) Whether meaningful written notice was provided to affected persons for a right to appeal restrictions;

(f) Whether specific facts and circumstances are based on objective evidence for the requested or imposed restrictions; and

(g) Whether the scope of the restrictions is no more than necessary to prevent substantial harm.

(2) A court order authorizing restrictions must make specific findings of fact and conclusions of law for each of these considerations.

NEW SECTION. **Sec.**  The certified professional guardianship board must adopt state standards of practice for certified professional guardians to include written protocols to assist in determining when such restrictions are needed to prevent substantial harm. The standards must provide guidance, at a minimum, for all considerations set forth in this act.

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