

FINAL BILL REPORT

2SHB 1402

C 268 L 17
Synopsis as Enacted

Brief Description: Concerning the rights and obligations associated with incapacitated persons and other vulnerable adults.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Jinkins, Griffey, Rodne, Goodman, Muri, Kilduff, Orwall, Haler, Kirby, Hansen, Frame, Johnson, Appleton, Ortiz-Self and Cody).

House Committee on Judiciary

House Committee on Appropriations

Senate Committee on Human Services, Mental Health & Housing

Senate Committee on Ways & Means

Background:

Guardianship.

A guardian is a person appointed and empowered by the court to make decisions for the person or the estate, or both, of an incapacitated person. A person may be deemed incapacitated when the court determines that the individual has a significant risk of personal or financial harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, physical safety, or adequately manage property or financial affairs. If a person is incapacitated in some aspects, but not others, a limited guardian may be appointed over the person, the estate, or both, to make decisions regarding the areas in which the person is incapacitated.

A vulnerable adult, or an interested person on behalf of a vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for a Vulnerable Adult Protection Order in superior court.

"Abuse" means willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, improper use of restraint, and personal exploitation of a vulnerable adult.

"Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult.

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.

"Vulnerable adult" means: (1) a person 60 years of age or older who has the functional, mental, or physical inability to care for himself or herself; (2) a person who is found incapacitated under the guardianship laws; (3) a person who has a developmental disability; (4) a person who is admitted to certain facilities; (5) a person who is receiving services from home health, hospice, or home care agencies licensed or required to be licensed; (6) a person who is receiving services from certain individual providers; or (7) a person who self-directs his or her own care and receives services from certain personal aides.

Office of Public Guardianship.

The Office of Public Guardianship (OPG) is a judicial branch agency within the Administrative Office of the Courts that provides public guardianship services to incapacitated persons who need the services of a guardian and for whom adequate services may be otherwise unavailable.

Office of the State Long-Term Care Ombuds.

All states are mandated by federal law to operate a long-term care ombudsman program. The Office of the State Long-Term Care Ombuds addresses complaints and advocates for improvements in the long-term care system.

Summary:

Associational Rights of an Incapacitated Person.

Incapacitated persons retain the right to associate with persons of their choosing, including, but not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communications, personal mail, or other means.

Duties of a Guardian with Respect to an Incapacitated Person's Associational Rights.

A guardian of an incapacitated person who is unable to express consent or make a decision regarding association with another person must: (1) personally inform the incapacitated person of the decision under consideration using plain language; (2) maximize the incapacitated person's participation in the decision-making process; and (3) give substantial weight to the incapacitated person's expressed and historical preferences.

A guardian may not restrict an incapacitated person's associational rights unless: (1) the restriction is specifically authorized by the guardianship court in the court order establishing or modifying the guardianship; (2) the restriction is pursuant to a protective order; or (3) the guardian has good cause to believe that there is an immediate need for the restriction in order to protect the incapacitated person from abuse, neglect, abandonment, financial exploitation, or activities that unnecessarily impose significant distress, and within 14 days of imposing the restriction, the guardian files a petition for a vulnerable adult protection order (VAPO).

A VAPO sought to protect a person under guardianship must: (1) include written findings of fact and conclusions of law; (2) may not be more restrictive than necessary to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation; and (3) may not completely deny association between the incapacitated person and another person

unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the incapacitated person.

Definitions Added to the Laws Regarding Vulnerable Adults.

A definition of "isolate" and "isolation" is added to the laws regarding vulnerable adults:

- "Isolate" or "isolation" means "to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing."
- Isolation may be evidenced by acts including, but not limited to: (1) acts that prevent a vulnerable adult from communicating with others; and (2) acts that prevent or obstruct a vulnerable adult from meeting with others.
- "Isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under the guardianship laws or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

Additional Duties of a Guardian.

Guardians must include reports from mental health professionals on the status of the incapacitated person, if any exist, along with the required annual reporting or accounting.

Guardians must inform any person entitled to special notice of proceedings, and any other person designated by the incapacitated person, as soon as possible, but in no case more than five business days after the incapacitated person: (1) makes a change in residence that is likely to last more than 14 calendar days; (2) is admitted to a medical facility for acute care that requires inpatient treatment; (3) has been treated in an emergency room setting or kept for hospital observation for more than 24 hours; or (4) dies, in which case the notification must be made in person, by telephone, or by certified mail.

Training.

The Office of Public Guardianship is required to work in partnership with the Office of the State Long-Term Care Ombuds to develop and offer training targeted to the legal community and persons working in long-term care facilities regarding the different types of decision-making authority that guardians, persons with powers of attorney, and persons with surrogate health care decision-making authority have, including their various roles, duties, and responsibilities.

Votes on Final Passage:

House	97	0	
Senate	49	0	(Senate amended)
House	98	0	(House concurred)

Effective: July 23, 2017