

HOUSE BILL REPORT

2SSB 5577

As Reported by House Committee On: Judiciary

Title: An act relating to the rights and obligations associated with incapacitated persons and other vulnerable adults.

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Conway and Keiser).

Brief History:

Committee Activity:

Judiciary: 3/22/17, 3/23/17 [DPA].

Brief Summary of Second Substitute Bill (As Amended by Committee)

- Prohibits a guardian from restricting an incapacitated person's right to communicate, visit, interact, or associate with others, with certain exceptions.
- Defines "isolate" or "isolation" in the laws regarding abuse of vulnerable adults.
- Adds certain notice requirements to the duties of a guardian.
- Requires the Office of Public Guardianship to work with the Office of the State Long-Term Care Ombuds to develop certain types of targeted training.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Audrey Frey (786-7289).

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.

Background:

Guardianship.

Any person or entity may petition a superior court for the appointment of a guardian or limited guardian for an allegedly incapacitated person. In determining whether to grant or deny a petition for guardianship, the court's order must be based on findings as to the capacities, conditions, and needs of the alleged incapacitated person.

A person may be deemed incapacitated when the court determines that the individual has a significant risk of personal harm based on a demonstrated inability to adequately provide for his or her own nutrition, health, housing, or physical safety. Incapacity as to the person's estate means the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage his or her own 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 guardian may be a lay guardian (generally a family member or friend of the alleged incapacitated person) or a professional guardian. Lay guardians must be over 18 years of age and meet certain other requirements, including completing an online training video or webcast made available by the Administrative Office of the Courts. Professional guardians charge a fee to provide guardianship services and are regulated by the Certified Professional Guardianship Board.

Vulnerable Adults.

Certain persons are required to report suspected incidents of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult to the Department of Social and Health Services, which is required to investigate those allegations.

"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 (including long-term care 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.

A vulnerable adult, or 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 (VAPO) in superior court. Procedures for filing a VAPO are provided by statute.

Relevant Definitions. "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, personal exploitation of a vulnerable adult, and improper use of restraint against 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.

"Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline in a manner that: (1) is inconsistent with federal or state requirements; (2) is not medically authorized; or (3) otherwise constitutes abuse.

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. The OPG is authorized to provide guardianship training to individuals with whom the OPG contracts to provide public guardian services, as well as individuals who, in the judgment of the administrator of the OPG, are likely to provide public guardianship services in the future.

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. Long-term care facilities are defined to include: (1) facilities that maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent patients; (2) facilities that provide supportive, restorative, and preventive health services in conjunction with a socially-oriented program to residents and maintain and operate 24-hour services; (3) any family home, group care facility, or similar facility for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual; and (4) any swing bed in an acute care facility.

Summary of Amended Bill:

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 decisionmaking 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, or financial exploitation or from 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 Abuse of Vulnerable Adults.

The definition of "isolate" or "isolation" is added to the laws regarding abuse of 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.

Mental Health Reports. 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, where a guardian of the estate has been appointed, along with the required accounting.

Notice Requirements. 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 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 decisionmaking authority that guardians, persons with powers of attorney, and persons with surrogate health care decisionmaking authority have, including their various roles, duties, and responsibilities.

Amended Bill Compared to Second Substitute Bill:

The provisions of Second Substitute Senate Bill 5577 are aligned with the provisions of Second Substitute House Bill 1402 (unofficial companion), by:

1. including language in the opening paragraph setting forth the associational rights of an incapacitated person;
2. adding a provision to the section regarding immediate need restrictions that allows a guardian or limited guardian to restrict an incapacitated person's associational rights to protect the incapacitated person from activities that unnecessarily impose significant distress in the 14-day period before a Vulnerable Adult Protection Order must be filed;
3. providing that the immediate need restriction "may" (rather than "must") remain in place until the court has heard and issued an order or decision on the petition;
4. removing language added to the definition of "improper use of restraint" that referred to isolation;
5. modifying the definition of "isolate" or "isolation" to remove the intent, purpose, or state of mind requirements;
6. adding a provision to the definition of "isolate" or "isolation" stating that these terms may not be construed in a manner that prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services;
7. distinguishing emergency and acute care in the section regarding special notice requirements;
8. removing a null and void clause from the training requirements section; and
9. adding a new section containing a null and void clause applicable to the entire bill, making it null and void if specific funding is not provided in the Operating Budget.

Appropriation: None.

Fiscal Note: Available. New Fiscal note requested on March 23, 2017.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

(Other) The language in Second Substitute House Bill 1402 (2SHB 1402), the unofficial companion bill, is slightly different than the language in this bill. The language in the House bill is preferable, and the striking amendment that makes this bill the same as 2SHB 1402 is supported.

Persons Testifying: David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.