
SECOND SUBSTITUTE SENATE BILL 5577

State of Washington

65th Legislature

2017 Regular Session

By Senate Ways & Means (originally sponsored by Senators Conway and Keiser)

READ FIRST TIME 02/23/17.

1 AN ACT Relating to the rights and obligations associated with
2 incapacitated persons and other vulnerable adults; amending RCW
3 74.34.020 and 11.92.043; adding a new section to chapter 11.92 RCW;
4 and adding a new section to chapter 2.72 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 11.92
7 RCW to read as follows:

8 (1) If an incapacitated person is unable to express consent for
9 communication, visitation, or interaction with another person, or is
10 otherwise unable to make a decision regarding association with
11 another person, a guardian of the incapacitated person, whether full
12 or limited, must:

13 (a) Personally inform the incapacitated person of the decision
14 under consideration, using plain language, in a manner calculated to
15 maximize the understanding of the incapacitated person;

16 (b) Maximize the incapacitated person's participation in the
17 decision-making process to the greatest extent possible, consistent
18 with the incapacitated person's abilities; and

19 (c) Give substantial weight to the incapacitated person's
20 preferences, both expressed and historical.

1 (2) A guardian or limited guardian may not restrict an
2 incapacitated person's right to communicate, visit, interact, or
3 otherwise associate with persons of the incapacitated person's
4 choosing, unless:

5 (a) The restriction is specifically authorized by the
6 guardianship court in the court order establishing or modifying the
7 guardianship or limited guardianship under chapter 11.88 RCW;

8 (b) The restriction is pursuant to a protection order issued
9 under chapter 74.34 RCW, chapter 26.50 RCW, or other law, that limits
10 contact between the incapacitated person and other persons; or

11 (c)(i) The guardian or limited guardian has good cause to believe
12 that there is an immediate need to restrict an incapacitated person's
13 right to communicate, visit, interact, or otherwise associate with
14 persons of the incapacitated person's choosing in order to protect
15 the incapacitated person from abuse, neglect, abandonment, or
16 financial exploitation, as those terms are defined in RCW 74.34.020;
17 and

18 (ii) Within fourteen calendar days of imposing the restriction
19 under (c)(i) of this subsection, the guardian or limited guardian
20 files a petition for a protection order under chapter 74.34 RCW. The
21 immediate need restriction must remain in place until the court has
22 heard and issued an order or decision on the petition.

23 (3) A protection order under chapter 74.34 RCW issued to protect
24 an individual subject to a guardianship as described in subsection
25 (2)(c)(ii) of this section:

26 (a) Must include written findings of fact and conclusions of law;

27 (b) May not be more restrictive than necessary to protect the
28 incapacitated person from abuse, neglect, abandonment, or financial
29 exploitation as those terms are defined in RCW 74.34.020; and

30 (c) May not deny communication, visitation, interaction, or other
31 association between the incapacitated person and another person
32 unless the court finds that placing reasonable time, place, or manner
33 restrictions is unlikely to sufficiently protect the incapacitated
34 person from abuse, neglect, abandonment, or financial exploitation as
35 those terms are defined in RCW 74.34.020.

36 **Sec. 2.** RCW 74.34.020 and 2015 c 268 s 1 are each amended to
37 read as follows:

38 The definitions in this section apply throughout this chapter
39 unless the context clearly requires otherwise.

1 (1) "Abandonment" means action or inaction by a person or entity
2 with a duty of care for a vulnerable adult that leaves the vulnerable
3 person without the means or ability to obtain necessary food,
4 clothing, shelter, or health care.

5 (2) "Abuse" means the willful action or inaction that inflicts
6 injury, unreasonable confinement, intimidation, or punishment on a
7 vulnerable adult. In instances of abuse of a vulnerable adult who is
8 unable to express or demonstrate physical harm, pain, or mental
9 anguish, the abuse is presumed to cause physical harm, pain, or
10 mental anguish. Abuse includes sexual abuse, mental abuse, physical
11 abuse, and personal exploitation of a vulnerable adult, and improper
12 use of restraint against a vulnerable adult which have the following
13 meanings:

14 (a) "Sexual abuse" means any form of nonconsensual sexual
15 conduct, including but not limited to unwanted or inappropriate
16 touching, rape, sodomy, sexual coercion, sexually explicit
17 photographing, and sexual harassment. Sexual abuse also includes any
18 sexual conduct between a staff person, who is not also a resident or
19 client, of a facility or a staff person of a program authorized under
20 chapter 71A.12 RCW, and a vulnerable adult living in that facility or
21 receiving service from a program authorized under chapter 71A.12 RCW,
22 whether or not it is consensual.

23 (b) "Physical abuse" means the willful action of inflicting
24 bodily injury or physical mistreatment. Physical abuse includes, but
25 is not limited to, striking with or without an object, slapping,
26 pinching, choking, kicking, shoving, or prodding.

27 (c) "Mental abuse" means a willful verbal or nonverbal action
28 that threatens, humiliates, harasses, coerces, intimidates, isolates,
29 unreasonably confines, or punishes a vulnerable adult. Mental abuse
30 may include ridiculing, yelling, or swearing.

31 (d) "Personal exploitation" means an act of forcing, compelling,
32 or exerting undue influence over a vulnerable adult causing the
33 vulnerable adult to act in a way that is inconsistent with relevant
34 past behavior, or causing the vulnerable adult to perform services
35 for the benefit of another.

36 (e) "Improper use of restraint" means the inappropriate use of
37 chemical, physical, or mechanical restraints for convenience ((~~or~~))
38 discipline, or for the purpose of isolating a vulnerable adult, or in
39 a manner that: (i) Is inconsistent with federal or state licensing or
40 certification requirements for facilities, hospitals, or programs

1 authorized under chapter 71A.12 RCW; (ii) is not medically
2 authorized; or (iii) otherwise constitutes abuse under this section.

3 (3) "Chemical restraint" means the administration of any drug to
4 manage a vulnerable adult's behavior in a way that reduces the safety
5 risk to the vulnerable adult or others, has the temporary effect of
6 restricting the vulnerable adult's freedom of movement, and is not
7 standard treatment for the vulnerable adult's medical or psychiatric
8 condition.

9 (4) "Consent" means express written consent granted after the
10 vulnerable adult or his or her legal representative has been fully
11 informed of the nature of the services to be offered and that the
12 receipt of services is voluntary.

13 (5) "Department" means the department of social and health
14 services.

15 (6) "Facility" means a residence licensed or required to be
16 licensed under chapter 18.20 RCW, assisted living facilities; chapter
17 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
18 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,
19 residential habilitation centers; or any other facility licensed or
20 certified by the department.

21 (7) "Financial exploitation" means the illegal or improper use,
22 control over, or withholding of the property, income, resources, or
23 trust funds of the vulnerable adult by any person or entity for any
24 person's or entity's profit or advantage other than for the
25 vulnerable adult's profit or advantage. "Financial exploitation"
26 includes, but is not limited to:

27 (a) The use of deception, intimidation, or undue influence by a
28 person or entity in a position of trust and confidence with a
29 vulnerable adult to obtain or use the property, income, resources, or
30 trust funds of the vulnerable adult for the benefit of a person or
31 entity other than the vulnerable adult;

32 (b) The breach of a fiduciary duty, including, but not limited
33 to, the misuse of a power of attorney, trust, or a guardianship
34 appointment, that results in the unauthorized appropriation, sale, or
35 transfer of the property, income, resources, or trust funds of the
36 vulnerable adult for the benefit of a person or entity other than the
37 vulnerable adult; or

38 (c) Obtaining or using a vulnerable adult's property, income,
39 resources, or trust funds without lawful authority, by a person or
40 entity who knows or clearly should know that the vulnerable adult

1 lacks the capacity to consent to the release or use of his or her
2 property, income, resources, or trust funds.

3 (8) "Financial institution" has the same meaning as in RCW
4 30A.22.040 and 30A.22.041. For purposes of this chapter only,
5 "financial institution" also means a "broker-dealer" or "investment
6 adviser" as defined in RCW 21.20.005.

7 (9) "Hospital" means a facility licensed under chapter 70.41,
8 71.12, or 72.23 RCW and any employee, agent, officer, director, or
9 independent contractor thereof.

10 (10) "Incapacitated person" means a person who is at a
11 significant risk of personal or financial harm under RCW 11.88.010(1)
12 (a), (b), (c), or (d).

13 (11) "Individual provider" means a person under contract with the
14 department to provide services in the home under chapter 74.09 or
15 74.39A RCW.

16 (12) "Interested person" means a person who demonstrates to the
17 court's satisfaction that the person is interested in the welfare of
18 the vulnerable adult, that the person has a good faith belief that
19 the court's intervention is necessary, and that the vulnerable adult
20 is unable, due to incapacity, undue influence, or duress at the time
21 the petition is filed, to protect his or her own interests.

22 (13)(a) "Isolate" or "isolation" means to restrict a vulnerable
23 adult's ability to communicate, visit, interact, or otherwise
24 associate with persons of his or her choosing. Isolation may be
25 evidenced by intentional acts, including but not limited to:

26 (i) Acts that are committed for the purpose of preventing, and do
27 serve to prevent, a vulnerable adult from sending, making, or
28 receiving his or her personal mail, electronic communications, or
29 telephone calls; or

30 (ii) Acts that prevent or obstruct the vulnerable adult from
31 meeting with others, such as telling a prospective visitor or caller
32 that a vulnerable adult is not present, or does not wish contact,
33 where the statement is contrary to the express wishes of the
34 vulnerable adult and is made for the purpose of preventing his or her
35 contact with family, friends, or concerned persons.

36 (b) The term "isolate" or "isolation" may not be construed in a
37 manner that prevents a guardian or limited guardian from performing
38 his or her fiduciary obligations under chapter 11.92 RCW.

39 (14) "Mandated reporter" is an employee of the department; law
40 enforcement officer; social worker; professional school personnel;

1 individual provider; an employee of a facility; an operator of a
2 facility; an employee of a social service, welfare, mental health,
3 adult day health, adult day care, home health, home care, or hospice
4 agency; county coroner or medical examiner; Christian Science
5 practitioner; or health care provider subject to chapter 18.130 RCW.

6 ~~((14))~~ (15) "Mechanical restraint" means any device attached or
7 adjacent to the vulnerable adult's body that he or she cannot easily
8 remove that restricts freedom of movement or normal access to his or
9 her body. "Mechanical restraint" does not include the use of devices,
10 materials, or equipment that are (a) medically authorized, as
11 required, and (b) used in a manner that is consistent with federal or
12 state licensing or certification requirements for facilities,
13 hospitals, or programs authorized under chapter 71A.12 RCW.

14 ~~((15))~~ (16) "Neglect" means (a) a pattern of conduct or
15 inaction by a person or entity with a duty of care that fails to
16 provide the goods and services that maintain physical or mental
17 health of a vulnerable adult, or that fails to avoid or prevent
18 physical or mental harm or pain to a vulnerable adult; or (b) an act
19 or omission by a person or entity with a duty of care that
20 demonstrates a serious disregard of consequences of such a magnitude
21 as to constitute a clear and present danger to the vulnerable adult's
22 health, welfare, or safety, including but not limited to conduct
23 prohibited under RCW 9A.42.100.

24 ~~((16))~~ (17) "Permissive reporter" means any person, including,
25 but not limited to, an employee of a financial institution, attorney,
26 or volunteer in a facility or program providing services for
27 vulnerable adults.

28 ~~((17))~~ (18) "Physical restraint" means the application of
29 physical force without the use of any device, for the purpose of
30 restraining the free movement of a vulnerable adult's body. "Physical
31 restraint" does not include (a) briefly holding without undue force a
32 vulnerable adult in order to calm or comfort him or her, or (b)
33 holding a vulnerable adult's hand to safely escort him or her from
34 one area to another.

35 ~~((18))~~ (19) "Protective services" means any services provided
36 by the department to a vulnerable adult with the consent of the
37 vulnerable adult, or the legal representative of the vulnerable
38 adult, who has been abandoned, abused, financially exploited,
39 neglected, or in a state of self-neglect. These services may include,
40 but are not limited to case management, social casework, home care,

1 placement, arranging for medical evaluations, psychological
2 evaluations, day care, or referral for legal assistance.

3 ~~((19))~~ (20) "Self-neglect" means the failure of a vulnerable
4 adult, not living in a facility, to provide for himself or herself
5 the goods and services necessary for the vulnerable adult's physical
6 or mental health, and the absence of which impairs or threatens the
7 vulnerable adult's well-being. This definition may include a
8 vulnerable adult who is receiving services through home health,
9 hospice, or a home care agency, or an individual provider when the
10 neglect is not a result of inaction by that agency or individual
11 provider.

12 ~~((20))~~ (21) "Social worker" means:

13 (a) A social worker as defined in RCW 18.320.010(2); or

14 (b) Anyone engaged in a professional capacity during the regular
15 course of employment in encouraging or promoting the health, welfare,
16 support, or education of vulnerable adults, or providing social
17 services to vulnerable adults, whether in an individual capacity or
18 as an employee or agent of any public or private organization or
19 institution.

20 ~~((21))~~ (22) "Vulnerable adult" includes a person:

21 (a) Sixty years of age or older who has the functional, mental,
22 or physical inability to care for himself or herself; or

23 (b) Found incapacitated under chapter 11.88 RCW; or

24 (c) Who has a developmental disability as defined under RCW
25 71A.10.020; or

26 (d) Admitted to any facility; or

27 (e) Receiving services from home health, hospice, or home care
28 agencies licensed or required to be licensed under chapter 70.127
29 RCW; or

30 (f) Receiving services from an individual provider; or

31 (g) Who self-directs his or her own care and receives services
32 from a personal aide under chapter 74.39 RCW.

33 **Sec. 3.** RCW 11.92.043 and 2011 c 329 s 3 are each amended to
34 read as follows:

35 (1) It ~~((shall be))~~ is the duty of the guardian or limited
36 guardian of the person:

37 ~~((1))~~ (a) To file within three months after appointment a
38 personal care plan for the incapacitated person, which ~~((shall))~~ must
39 include ~~((a))~~ (i) an assessment of the incapacitated person's

1 physical, mental, and emotional needs and of such person's ability to
2 perform or assist in activities of daily living, and ~~((b))~~ (ii) the
3 guardian's specific plan for meeting the identified and emerging
4 personal care needs of the incapacitated person.

5 ~~((2))~~ (b) To file annually or, where a guardian of the estate
6 has been appointed, at the time an account is required to be filed
7 under RCW 11.92.040, a report on the status of the incapacitated
8 person, which shall include:

9 ~~((a))~~ (i) The address and name of the incapacitated person and
10 all residential changes during the period;

11 ~~((b))~~ (ii) The services or programs ~~((which))~~ that the
12 incapacitated person receives;

13 ~~((c))~~ (iii) The medical status of the incapacitated person;

14 ~~((d))~~ (iv) The mental status of the incapacitated person,
15 including reports from mental health professionals on the status of
16 the incapacitated person, if any exist;

17 ~~((e))~~ (v) Changes in the functional abilities of the
18 incapacitated person;

19 ~~((f))~~ (vi) Activities of the guardian for the period;

20 ~~((g))~~ (vii) Any recommended changes in the scope of the
21 authority of the guardian;

22 ~~((h))~~ (viii) The identity of any professionals who have
23 assisted the incapacitated person during the period;

24 ~~((i)(i))~~ (ix)(A) Evidence of the guardian or limited guardian's
25 successful completion of any standardized training video or web cast
26 for guardians or limited guardians made available by the
27 administrative office of the courts and the superior court when the
28 guardian or limited guardian: ~~((A))~~ (I) Was appointed prior to July
29 22, 2011; ~~((B))~~ (II) is not a certified professional guardian or
30 financial institution authorized under RCW 11.88.020; and ~~((C))~~
31 (III) has not previously completed the requirements of RCW
32 11.88.020(3). The training video or web cast must be provided at no
33 cost to the guardian or limited guardian.

34 ~~((ii))~~ (B) The superior court may, upon ~~((A))~~ petition by the
35 guardian or limited guardian ~~((+))~~ or ~~((B))~~ any other method as
36 provided by local court rule:

37 (I) For good cause, waive this requirement for guardians
38 appointed prior to July 22, 2011. Good cause ~~((shall))~~ requires
39 evidence that the guardian already possesses the requisite knowledge
40 to serve as a guardian without completing the training. When

1 determining whether there is good cause to waive the training
2 requirement, the court (~~shall~~) must consider, among other facts,
3 the length of time the guardian has been serving the incapacitated
4 person; whether the guardian has timely filed all required reports
5 with the court; whether the guardian is monitored by other state or
6 local agencies; and whether there have been any allegations of abuse,
7 neglect, or a breach of fiduciary duty against the guardian; or

8 (II) Extend the time period for completion of the training
9 requirement for ninety days; and

10 (~~(j)~~) (x) Evidence of the guardian or limited guardian's
11 successful completion of any additional or updated training video or
12 web cast offered by the administrative office of the courts and the
13 superior court as is required at the discretion of the superior court
14 unless the guardian or limited guardian is a certified professional
15 guardian or financial institution authorized under RCW 11.88.020. The
16 training video or web cast must be provided at no cost to the
17 guardian or limited guardian.

18 (~~(3)~~) (c) To report to the court within thirty days any
19 substantial change in the incapacitated person's condition, or any
20 changes in residence of the incapacitated person.

21 (~~(4)~~) (d) To inform any person entitled to special notice of
22 proceedings under RCW 11.92.150 and any other person designated by
23 the incapacitated person as soon as possible, but in no case more
24 than five days, after the incapacitated person:

25 (i) Makes a change in residence that is intended or likely to
26 last more than fourteen calendar days;

27 (ii) Has been admitted to a medical facility for emergency or
28 acute care in response to a life-threatening injury or medical
29 condition that requires inpatient care; or

30 (iii) Dies, in which case the notification must be made in
31 person, by telephone, or by certified mail.

32 (e) Consistent with the powers granted by the court, to care for
33 and maintain the incapacitated person in the setting least
34 restrictive to the incapacitated person's freedom and appropriate to
35 the incapacitated person's personal care needs, assert the
36 incapacitated person's rights and best interests, and if the
37 incapacitated person is a minor or where otherwise appropriate, to
38 see that the incapacitated person receives appropriate training and
39 education and that the incapacitated person has the opportunity to
40 learn a trade, occupation, or profession.

1 (~~(5)~~) (f) Consistent with RCW 7.70.065, to provide timely,
2 informed consent for health care of the incapacitated person, except
3 in the case of a limited guardian where such power is not expressly
4 provided for in the order of appointment or subsequent modifying
5 order as provided in RCW 11.88.125 as now or hereafter amended, the
6 standby guardian or standby limited guardian may provide timely,
7 informed consent to necessary medical procedures if the guardian or
8 limited guardian cannot be located within four hours after the need
9 for such consent arises. No guardian, limited guardian, or standby
10 guardian may involuntarily commit for mental health treatment,
11 observation, or evaluation an alleged incapacitated person who is
12 unable or unwilling to give informed consent to such commitment
13 unless the procedures for involuntary commitment set forth in chapter
14 71.05 or 72.23 RCW are followed. Nothing in this section (~~shall~~)
15 may be construed to allow a guardian, limited guardian, or standby
16 guardian to consent to:

17 (~~(a)~~) (i) Therapy or other procedure which induces convulsion;
18 (~~(b)~~) (ii) Surgery solely for the purpose of psychosurgery;
19 (~~(c)~~) (iii) Other psychiatric or mental health procedures that
20 restrict physical freedom of movement, or the rights set forth in RCW
21 71.05.217.

22 (2) A guardian, limited guardian, or standby guardian who
23 believes these procedures are necessary for the proper care and
24 maintenance of the incapacitated person shall petition the court for
25 an order unless the court has previously approved the procedure
26 within the past thirty days. The court may order the procedure only
27 after an attorney is appointed in accordance with RCW 11.88.045 if no
28 attorney has previously appeared, notice is given, and a hearing is
29 held in accordance with RCW 11.88.040.

30 NEW SECTION. Sec. 4. A new section is added to chapter 2.72 RCW
31 to read as follows:

32 Subject to the availability of amounts specifically appropriated
33 for this purpose, the office of public guardianship, in partnership
34 with the office of the state long-term care ombuds, must develop and
35 offer training targeted to the legal community and persons working in
36 long-term care facilities regarding the different kinds of decision-
37 making authority, including guardianship, authority granted under
38 power of attorney, and surrogate health care decision-making
39 authority. The training must include, at a minimum, information

1 regarding: The roles, duties, and responsibilities of different kinds
2 of decision makers; the scope of authority and limitations on
3 authority with respect to different kinds of decision makers; and any
4 relevant remedial measures provided in law for activity that exceeds
5 the scope of decision-making authority.

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