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**HOUSE BILL 2083**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Macri, Harris, Santos, and Gilday

AN ACT Relating to addressing consent to long-term care placement and services; amending RCW 70.41.310, 11.130.585, and 11.130.590; and adding a new section to chapter 11.130 RCW.

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

**Sec.**  RCW 70.41.310 and 1995 1st sp.s. c 18 s 3 are each amended to read as follows:

(1)(a) The department of social and health services, in consultation with hospitals and acute care facilities, shall promote the most appropriate and cost-effective use of long-term care services by developing and distributing to hospitals and other appropriate health care settings information on the various chronic long-term care programs that it administers directly or through contract. The information developed by the department of social and health services shall, at a minimum, include the following:

(i) An identification and detailed description of each long-term care service available in the state;

(ii) Functional, cognitive, and medicaid eligibility criteria that may be required for placement or admission to each long-term care service; and

(iii) A long-term care services resource manual for each hospital, that identifies the long-term care services operating within each hospital's patient service area. The long-term care services resource manual shall, at a minimum, identify the name, address, and telephone number of each entity known to be providing long-term care services; a brief description of the programs or services provided by each of the identified entities; and the name or names of a person or persons who may be contacted for further information or assistance in accessing the programs or services at each of the identified entities.

(b) The information required in (a) of this subsection shall be periodically updated and distributed to hospitals by the department of social and health services so that the information reflects current long-term care service options available within each hospital's patient service area.

(2) To the extent that a patient will have continuing care needs, once discharged from the hospital setting, hospitals shall, during the course of the patient's hospital stay, promote each patient's family member's and/or legal representative's understanding of available long-term care service discharge options by, at a minimum:

(a) Discussing the various and relevant long-term care services available, including eligibility criteria;

(b) Making available, to patients, their family members, and/or legal representative, a copy of the most current long-term care services resource manual;

(c) Responding to long-term care questions posed by patients, their family members, and/or legal representative;

(d) Assisting the patient, their family members, and/or legal representative in contacting appropriate persons or entities to respond to the question or questions posed; and

(e) Linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support.

(3)(a) If a patient who does not have the capacity to make health care decisions requires long-term care, as defined in RCW 74.39A.009, when discharged from the hospital setting, persons authorized under RCW 7.70.065 to provide informed consent to health care on behalf of the patient are also authorized to provide consent for long-term care as an individual's representative in the order of priority established in RCW 7.70.065.

(b) Persons providing consent for long-term care pursuant to (a) of this subsection shall provide a declaration, signed and dated under penalty of perjury pursuant to chapter 5.50 RCW, that the person shall actively assist in any initiation of guardianship, conservatorship, or other protective arrangement proceedings under chapter 11.130 RCW.

(c) The department of social and health services, the hospital, or an interested party may file for guardianship, conservatorship, or other protective arrangement proceedings under chapter 11.130 RCW as necessary.

**Sec.**  RCW 11.130.585 and 2020 c 312 s 315 are each amended to read as follows:

(1) After the hearing on a petition under RCW 11.130.270 for a guardianship or under RCW 11.130.580(2) for a protective arrangement instead of guardianship, the court may issue an order under subsection (2) of this section for a protective arrangement instead of guardianship if the court finds by clear and convincing evidence that:

(a) The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

(b) The respondent's identified needs cannot be met by a less restrictive alternative.

(2) If the court makes the findings under subsection (1) of this section, the court, instead of appointing a guardian, may:

(a) Authorize or direct a transaction necessary to meet the respondent's need for health, safety, or care, including:

(i) A particular medical treatment or refusal of a particular medical treatment; ((~~or~~))

(ii) Visitation or supervised visitation between the respondent and another person;

(iii) Discharge from an acute care hospital to home or to a licensed or certified long-term care setting capable of meeting the health and safety needs of the respondent and willing to provide care to the respondent; or

(iv) A plan of care required to receive medicaid or other services funded by a governmental entity;

(b) Restrict access to the respondent by a specified person whose access places the respondent at serious risk of physical, psychological, or financial harm; and

(c) Reorder other arrangements on a limited basis that are appropriate.

(3) In deciding whether to issue an order under this section, the court shall consider the factors under RCW 11.130.330 and 11.130.335 that a guardian must consider when making a decision on behalf of an adult subject to guardianship.

**Sec.**  RCW 11.130.590 and 2019 c 437 s 503 are each amended to read as follows:

(1) After the hearing on a petition under RCW 11.130.365 for conservatorship for an adult or under RCW 11.130.580(3) for a protective arrangement instead of a conservatorship for an adult, the court may issue an order under subsection (3) of this section for a protective arrangement instead of conservatorship for the adult if the court finds by clear and convincing evidence that:

(a) The adult is unable to manage property or financial affairs because:

(i) Of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; or

(ii) The adult is missing, detained, or unable to return to the United States;

(b) An order under subsection (3) of this section is necessary to:

(i) Avoid harm to the adult or significant dissipation of the property of the adult; or

(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or an individual entitled to the adult's support; and

(c) The respondent's identified needs cannot be met by a less restrictive alternative.

(2) After the hearing on a petition under RCW 11.130.365 for conservatorship for a minor or under RCW 11.130.580(3) for a protective arrangement instead of conservatorship for a minor, the court may issue an order under subsection (3) of this section for a protective arrangement instead of conservatorship for the respondent if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest, and:

(a) If the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;

(b) Either:

(i) The minor owns money or property requiring management or protection that otherwise cannot be provided;

(ii) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(iii) The arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor; and

(iv) The order under subsection (3) of this section is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(3) If the court makes the findings under subsection (1) or (2) of this section, the court, instead of appointing a conservator, may:

(a) Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

(i) An action to establish eligibility for benefits, including medicaid;

(ii) Payment, delivery, deposit, or retention of funds or property;

(iii) Sale, mortgage, lease, or other transfer of property;

(iv) Purchase of an annuity;

(v) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;

(vi) Addition to or establishment of a trust;

(vii) Ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; ((~~or~~))

(viii) Settlement of a claim; or

(ix) Authorization of medicaid or other services funded by a governmental entity; or

(b) Restrict access to the respondent's property by a specified person whose access to the property places the respondent at serious risk of financial harm.

(4) After the hearing on a petition under RCW 11.130.580(1)(b), whether or not the court makes the findings under subsection (1) or (2) of this section, the court may issue an order to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear and convincing evidence:

(a) Through fraud, coercion, duress, or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

(b) Poses a serious risk of substantial financial harm to the respondent or the respondent's property.

(5) Before issuing an order under subsection (3) or (4) of this section, the court shall consider the factors under RCW 11.130.505 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

(6) Before issuing an order under subsection (3) or (4) of this section for a respondent who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor, and the preference of the minor, if the minor is twelve years of age or older.

NEW SECTION. **Sec.**  A new section is added to chapter 11.130 RCW to read as follows:

Every superior court shall prioritize guardianship petitions for any respondent who is a patient in an acute care hospital at the time the petition is filed.

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