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**HOUSE BILL 2797**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representative Santos

AN ACT Relating to communication, visitation, and interaction involving incapacitated persons; amending RCW 11.92.043; and adding a new section to chapter 11.88 RCW.

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

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

(1) Except as otherwise provided in this section, an incapacitated person retains the right to communicate, visit, and interact with other persons upon his or her consent, which includes the right to receive visitors, telephone calls, and personal mail. If the incapacitated person is unable to express consent for communication, visitation, or interaction with another person, consent may be presumed based on the incapacitated person's prior relationship or history with the person.

(2) A guardian or limited guardian may not restrict an incapacitated person's right to communicate, visit, or interact with other persons unless specifically authorized by court order.

(3) Upon a guardian or limited guardian's motion and a showing of good cause, the court may enter an order allowing restrictions to be placed on an incapacitated person's ability to communicate, visit, or interact with another person. In determining good cause, the court must consider:

(a) Whether any protection, restraining, or no-contact orders have been issued to protect the incapacitated person from the person seeking access to the incapacitated person;

(b) Whether abuse, neglect, or financial exploitation of the incapacitated person by the person seeking access to the incapacitated person has occurred or is likely to occur;

(c) Any documented wishes of the incapacitated person regarding communication, visitation, or interaction with the person seeking access; and

(d) Any other factors deemed relevant by the court.

(4) If a guardian or limited guardian has grounds to believe that there is an immediate need to prevent or limit the incapacitated person's contact with another person in order to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation, as those terms are defined in RCW 74.34.020, the guardian may prevent or limit contact without a court order for the period necessary to prepare and file a petition for a vulnerable adult protection order.

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

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

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

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

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

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

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

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

(I) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

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

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

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

(4) To promptly inform any relatives entitled to notice of proceedings under RCW 11.92.150 and any other person designated by the incapacitated person if the incapacitated person:

(a) Changes residence or is staying at a location other than his or her residence;

(b) Has been admitted to a medical facility for emergency care in response to a life-threatening injury or medical condition, or for acute care; or

(c) Dies, in which case the notification must be made in person or by telephone.

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

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

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.217.

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

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