

SENATE BILL REPORT

SB 6427

As of February 2, 2012

Title: An act relating to improving protections for incapacitated adults.

Brief Description: Improving protections for incapacitated adults.

Sponsors: Senators Kastama, Regala, Hatfield and Conway.

Brief History:

Committee Activity: Human Services & Corrections: 1/31/12.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Kevin Black (786-7747)

Background: Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person. Incapacitated means that the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A guardian may be a lay guardian, generally a family member or friend of the alleged incapacitated person, or a professional guardian, who charges a fee to provide guardianship services. Professional guardians are regulated by the Certified Professional Guardianship Board. The court has supervisory power over guardianships, and may modify a guardianship or remove a guardian upon petition and showing of good cause. A guardian ad litem must be appointed to represent an allegedly incapacitated person during the guardianship proceeding.

Summary of Bill: The court must provide information to persons who file petitions for guardianships about the powers of a guardian and process for modification and removal. Amendments are made in the notice provided to alleged incapacitated persons, removing warnings that the alleged incapacitated person may lose the right to hold elected office, possess a license to drive, or make decisions regarding the social aspects of his or her life, adding an advisement of the right to representation by attorney and to request modification of a guardianship or discharge of a guardian, and removing a requirement that the warning be printed in all capital letters.

The time for holding a guardianship hearing after service of a guardianship petition is extended from ten to 15 days. Any person may register a complaint about the conduct of a guardian or limited guardian with the court. An application to modify or terminate a

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guardianship by an unrepresented person must be considered the equivalent of a motion for an order to show cause. The court must schedule a hearing on a petition to modify a guardianship or discharge a guardian unless it appears to be frivolous. A guardian ad litem must disclose any relationship or circumstance that may create the appearance of a conflict of interest when recommending the appointment of a guardian. A proposed professional guardian must disclose in writing to the guardian ad litem any prior or existing relationship or other circumstance that would cause the appearance of a conflict of interest.

No guardian may limit contact between an incapacitated person and another person unless the guardian believes that such contact will place the incapacitated person at substantial and imminent risk of harm. In this case, a petition for a vulnerable adult protection order must be filed in court and a written statement describing the cause for concern must be submitted to the court and to the affected parties.

The Administrator for the Courts and the Long-Term Care Ombudsman must publish information about guardianships, the powers of guardians, and the process to modify a guardianship or discharge a guardian on a website.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We used an inclusive process to draft this bill, building on experience from last year. This updates standards for guardians of incapacitated persons, focusing on disclosure and protections to ensure that loved ones are not unduly separated. My family did not receive cooperation from the guardian for my father who was hostile to their interest and left my father in isolation. We entered the guardianship process uninformed and naive; others will benefit from the information provided in this bill. Professional guardians do not have enough accountability. Guardians inappropriately detain persons to residential care facilities. An incapacitated person should not be prevented from continuing to see established doctors or caregivers. Grievances against certified guardians should be made available to the public. We get a lot of calls from people complaining about guardians inappropriately limiting contact. The courts are very quick to appoint a guardian. Courts are too close to the interests of professional guardians. Minimal protection laws are not being followed.

OTHER: Sometimes complaints about guardians are not frivolous but can be postponed by the courts without risking harm or unnecessarily running up legal costs for the incapacitated person. The limit of access provisions should be restricted to family members so that guardians can limit the access of others who may be trying to financially exploit the incapacitated person or pose a risk to the person's health.

Persons Testifying: PRO: Senator Kastama, prime sponsor; Stephen Bradley, Claudia Donnelly, Tom Goldsmith, Teresa Maxwell, Karen Mount, citizens; Diana Stadden, The Arc of WA State; David Lord, Disability Rights Washington.

OTHER: Karen Treiger, WA State Bar Assn. Elder Law Section; Daniel Smerken, WA Assn. of Professional Guardians.