
HOUSE BILL 2797

State of Washington

64th Legislature

2016 Regular Session

By Representative Santos

Read first time 01/20/16. Referred to Committee on Judiciary.

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

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 11.88
6 RCW to read as follows:

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

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

18 (3) Upon a guardian or limited guardian's motion and a showing of
19 good cause, the court may enter an order allowing restrictions to be
20 placed on an incapacitated person's ability to communicate, visit, or

1 interact with another person. In determining good cause, the court
2 must consider:

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

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

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

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

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

21 **Sec. 2.** RCW 11.92.043 and 2011 c 329 s 3 are each amended to
22 read as follows:

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

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

32 (2) To file annually or, where a guardian of the estate has been
33 appointed, at the time an account is required to be filed under RCW
34 11.92.040, a report on the status of the incapacitated person, which
35 shall include:

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

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

1 (c) The medical status of the incapacitated person;
2 (d) The mental status of the incapacitated person;
3 (e) Changes in the functional abilities of the incapacitated
4 person;
5 (f) Activities of the guardian for the period;
6 (g) Any recommended changes in the scope of the authority of the
7 guardian;
8 (h) The identity of any professionals who have assisted the
9 incapacitated person during the period;
10 (i)(i) Evidence of the guardian or limited guardian's successful
11 completion of any standardized training video or web cast for
12 guardians or limited guardians made available by the administrative
13 office of the courts and the superior court when the guardian or
14 limited guardian: (A) Was appointed prior to July 22, 2011; (B) is
15 not a certified professional guardian or financial institution
16 authorized under RCW 11.88.020; and (C) has not previously completed
17 the requirements of RCW 11.88.020(3). The training video or web cast
18 must be provided at no cost to the guardian or limited guardian.
19 (ii) The superior court may, upon (A) petition by the guardian or
20 limited guardian; or (B) any other method as provided by local court
21 rule:
22 (I) For good cause, waive this requirement for guardians
23 appointed prior to July 22, 2011. Good cause shall require evidence
24 that the guardian already possesses the requisite knowledge to serve
25 as a guardian without completing the training. When determining
26 whether there is good cause to waive the training requirement, the
27 court shall consider, among other facts, the length of time the
28 guardian has been serving the incapacitated person; whether the
29 guardian has timely filed all required reports with the court;
30 whether the guardian is monitored by other state or local agencies;
31 and whether there have been any allegations of abuse, neglect, or a
32 breach of fiduciary duty against the guardian; or
33 (II) Extend the time period for completion of the training
34 requirement for ninety days; and
35 (j) Evidence of the guardian or limited guardian's successful
36 completion of any additional or updated training video or web cast
37 offered by the administrative office of the courts and the superior
38 court as is required at the discretion of the superior court unless
39 the guardian or limited guardian is a certified professional guardian
40 or financial institution authorized under RCW 11.88.020. The training

1 video or web cast must be provided at no cost to the guardian or
2 limited guardian.

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

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

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

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

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

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

25 ~~((+5))~~ (6) Consistent with RCW 7.70.065, to provide timely,
26 informed consent for health care of the incapacitated person, except
27 in the case of a limited guardian where such power is not expressly
28 provided for in the order of appointment or subsequent modifying
29 order as provided in RCW 11.88.125 as now or hereafter amended, the
30 standby guardian or standby limited guardian may provide timely,
31 informed consent to necessary medical procedures if the guardian or
32 limited guardian cannot be located within four hours after the need
33 for such consent arises. No guardian, limited guardian, or standby
34 guardian may involuntarily commit for mental health treatment,
35 observation, or evaluation an alleged incapacitated person who is
36 unable or unwilling to give informed consent to such commitment
37 unless the procedures for involuntary commitment set forth in chapter
38 71.05 or 72.23 RCW are followed. Nothing in this section shall be
39 construed to allow a guardian, limited guardian, or standby guardian
40 to consent to:

- 1 (a) Therapy or other procedure which induces convulsion;
2 (b) Surgery solely for the purpose of psychosurgery;
3 (c) Other psychiatric or mental health procedures that restrict
4 physical freedom of movement, or the rights set forth in RCW
5 71.05.217.

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

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