
Judiciary Committee

HB 1402

Title: An act relating to the rights and obligations associated with incapacitated persons and other vulnerable adults.

Brief Description: Concerning the rights and obligations associated with incapacitated persons and other vulnerable adults.

Sponsors: Representatives Jinkins, Griffey, Rodne, Goodman, Muri, Kilduff, Orwall, Haler, Kirby, Hansen, Frame, Johnson, Appleton, Ortiz-Self and Cody.

Brief Summary of Bill

- Provides that incapacitated persons retain certain associational rights.
- Prohibits guardians from restricting those associational rights, with some exceptions.
- Defines "isolate" or "isolation" in the laws regarding abuse of vulnerable adults.
- Adds certain notice requirements to the duties of a guardian.
- Requires the Office of Public Guardianship to work with the Office of the State Long-Term Care Ombuds to develop certain types of targeted training.

Hearing Date: 1/26/17

Staff: Audrey Frey (786-7289).

Background:

Guardianship.

A guardian is a person appointed and empowered by the court to make decisions for the person or the estate, or both, of an incapacitated person. A person may be deemed incapacitated as to person when the court determines 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. Incapacity as to the person's estate means the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial

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affairs. If a person is incapacitated in some aspects, but not others, a limited guardian may be appointed over the person, the estate, or both, to make decisions regarding the areas in which the person is incapacitated.

Vulnerable adults.

Certain persons are required to report suspected incidents of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult to the Department of Social and Health Services, which is required to investigate those allegations.

"Vulnerable adult" means: (1) a person 60 years of age or older who has the functional, mental, or physical inability to care for himself or herself; (2) a person who is found incapacitated under the guardianship laws; (3) a person who has a developmental disability; (4) a person who is admitted to certain facilities; (5) a person who is receiving services from home health, hospice, or home care agencies licensed or required to be licensed; (6) a person who is receiving services from certain individual providers; or (7) a person who self-directs his or her own care and receives services from certain personal aides.

A vulnerable adult, or interested person on behalf of a vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for a Vulnerable Adult Protection Order (VAPO) in superior court. Procedures for filing a VAPO are provided by statute.

Relevant definitions. "Abuse" means willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult.

"Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult.

"Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline in a manner that: (1) is inconsistent with federal or state requirements; (2) is not medically authorized; or (3) otherwise constitutes abuse.

Office of Public Guardianship.

The Office of Public Guardianship (OPG) is a judicial branch agency within the Administrative Office of the Courts that provides public guardianship services to incapacitated persons who need the services of a guardian and for whom adequate services may be otherwise unavailable. The OPG is authorized to provide guardianship training to individuals with whom the OPG contracts to provide public guardian services, as well as individuals who, in the judgment of the administrator of the OPG, are likely to provide public guardianship services in the future.

Office of the State Long-Term Care Ombuds.

All states are mandated by federal law to operate a long-term care ombudsman program. The Office of the State Long-Term Care Ombuds addresses complaints and advocates for improvements in the long-term care system. Long-term care facilities are defined to include: (1) facilities that maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent patients; (2) facilities that provide supportive, restorative, and

preventive health services in conjunction with a socially oriented program to its residents, and which maintain and operate 24-hour services; (3) any family home, group care facility, or similar facility for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual; and (4) any swing bed in an acute care facility. One of the duties of a long-term care ombuds is to provide certain types of training.

Summary of Bill:

The associational rights of incapacitated persons and the related duties of guardians are set forth.

Associational rights of an incapacitated person.

Incapacitated persons retain the right to associate with persons of their choosing, including, but not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means.

Duties of a guardian with respect to an incapacitated person's associational rights.

A guardian of an incapacitated person who is unable to express consent or make a decision regarding association with another person must: (1) personally inform the incapacitated person of the decision under consideration using plain language; (2) maximize the incapacitated person's participation in the decision-making process; and (3) give substantial weight to the incapacitated person's expressed and historical preferences.

A guardian may not restrict an incapacitated person's associational rights unless: (1) the restriction is specifically authorized by the guardianship court in the court order establishing or modifying the guardianship; (2) the restriction is pursuant to a protective order; or (3) the guardian has good cause to believe that there is an immediate need for the restriction in order to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation, and within 14 days of imposing the restriction, the guardian files a petition in the guardianship proceeding for a vulnerable adult protection order (VAPO).

A VAPO sought in the context of a guardianship proceeding must: (1) include written findings of fact and conclusions of law; (2) may not be more restrictive than necessary to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation; and (3) may not completely deny association between the incapacitated person and another person unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the incapacitated person.

Isolation.

"Isolate" or "isolation" means "to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing." Isolation may be evidenced by intentional acts, including, but not limited to: (1) acts that are committed for the purpose of preventing, and do prevent, a vulnerable adult from communicating with others; and (2) acts that prevent or obstruct a vulnerable adult from meeting with others.

"Isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under the guardianship laws.

The definition of "improper use of restraint" is expanded to include the inappropriate use of chemical, physical, or mechanical restraints for the purpose of isolating a vulnerable adult.

Additional duties of a guardian.

Guardians are given additional duties.

Mental health reports. Guardians must include reports from mental health professionals on the status of the incapacitated person, if any exist, along with the required annual reporting.

Notice requirements. Guardians must inform any person entitled to special notice of proceedings, and any other person designated by the incapacitated person, as soon as possible, but in no case more than five days after the incapacitated person: (1) makes a change in residence that is likely to last more than 14 calendar days; (2) is admitted to a medical facility for emergency or acute care that requires inpatient treatment; or (3) dies, in which case the notification must be made in person, by telephone, or by certified mail.

Training.

The Office of Public Guardianship is required to work in partnership with the Office of the State Long-Term Care Ombuds to develop and offer training targeted to the legal community and persons working in long-term care facilities regarding the different types of decision-making authority that guardians, persons with powers of attorney, and persons with surrogate health care decision-making authority have, including their various roles, duties, and responsibilities.

Appropriation: None.

Fiscal Note: Requested on 1/22/17.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.