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HOUSE BILL 2797

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State of Washington

64th Legislature

2016 Regular Session

By Representative Santos

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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