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SENATE BILL 5685

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Rivers, Bailey, Keiser, Warnick, Becker, and Honeyford

1            AN ACT Relating to adopting certain safeguard standards for  
2 guardians of incapacitated persons; adding new sections to chapter  
3 11.88 RCW; and creating new sections.

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

5            NEW SECTION.    **Sec. 1.**    The legislature finds that the isolation  
6 of incapacitated persons may have detrimental effects on their health  
7 and well-being. The legislature further finds that isolation, when  
8 imposed by a guardian, may infringe on an incapacitated person's  
9 fundamental right to association with family and friends. The  
10 legislature recognizes that the national guardianship association has  
11 adopted national standards for professional guardians. National  
12 guardian association standard 4 states: "I. The guardian shall  
13 promote social interactions and meaningful relationships consistent  
14 with the preferences of the person under guardianship. A. The  
15 guardian shall encourage and support the person in maintaining  
16 contact with family and friends, as defined by the person, unless it  
17 will substantially harm the person. B. The guardian may not interfere  
18 with established relationships unless necessary to protect the person  
19 from substantial harm."

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 11.88  
2    RCW to read as follows:

3        No guardian or professional guardian may restrict contact between  
4    an incapacitated person and any other person except when necessary to  
5    protect the incapacitated person from substantial harm. A guardian or  
6    professional guardian must obtain a court order prior to imposing  
7    restrictions, unless an emergency exists, and then must obtain a  
8    court order as soon as practical after imposing the restrictions. The  
9    scope of restrictions must be no more than necessary to prevent  
10   substantial harm.

11       NEW SECTION.    **Sec. 3.**    A new section is added to chapter 11.88  
12    RCW to read as follows:

13       Any person affected by restrictions requested or imposed by a  
14    guardian or professional guardian has a right to meaningful written  
15    notice of the restrictions, provided by the guardian or professional  
16    guardian, and a right to appeal the restrictions in court. Where a  
17    court finds that a specified restriction is not necessary to protect  
18    the incapacitated person from substantial harm, the guardian or  
19    professional guardian may not assess or charge an incapacitated  
20    person or the estate of the incapacitated person for any legal or  
21    nonlegal costs or fees for the specified restriction where such costs  
22    or fees are related to the request or imposition of restrictions, or  
23    are related to defending from an appeal of the restrictions.

24       NEW SECTION.    **Sec. 4.**    A new section is added to chapter 11.88  
25    RCW to read as follows:

26       (1) In any action to restrict contact, or appeal from  
27    restrictions between an incapacitated person and any other person,  
28    the court should consider the following:

29       (a) The fundamental right of the incapacitated person to freedom  
30    of association;

31       (b) The potential detrimental effects of restricting access  
32    between an incapacitated person and any other person;

33       (c) Whether a good faith basis exists for imposing restrictions  
34    in an emergency;

35       (d) Whether meaningful written notice was provided to affected  
36    persons citing specific facts and circumstances as a basis for the  
37    restriction;

1 (e) Whether meaningful written notice was provided to affected  
2 persons for a right to appeal restrictions;

3 (f) Whether specific facts and circumstances are based on  
4 objective evidence for the requested or imposed restrictions; and

5 (g) Whether the scope of the restrictions is no more than  
6 necessary to prevent substantial harm.

7 (2) A court order authorizing restrictions must make specific  
8 findings of fact and conclusions of law for each of these  
9 considerations.

10 NEW SECTION. **Sec. 5.** The certified professional guardianship  
11 board must adopt state standards of practice for certified  
12 professional guardians to include written protocols to assist in  
13 determining when such restrictions are needed to prevent substantial  
14 harm. The standards must provide guidance, at a minimum, for all  
15 considerations set forth in this act.

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