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FISCAL AND POLICY NOTE
First Reader

Senate Bill 430

(Senators Bates and Salling)

Judicial Proceedings

Guardianship of a Disabled Person - Communication and Notification Rights

This bill confers access rights to the adult family members of a disabled person who is under guardianship. It specifically prohibits a guardian of the person of a disabled person from proscribing or restricting communication between the disabled person and a member of the disabled person's family except by court order and under specified circumstances. A right of action is established for family members and individuals who are not related to a disabled person to petition a court to compel visitation and/or communication with a disabled person. Pursuant to a petition from the guardian of the person of a disabled person, a court may issue an order prohibiting or restricting communication between the disabled person and a specific family member if it determines, by a preponderance of the evidence, that the family communication poses a direct threat to the disabled person's physical or emotional safety. However, a guardian who violates the bill's provisions is subject to a court order to compel compliance or is subject to termination as guardian, pursuant to a petition from an affected family member, as specified.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. No effect on revenues.

Local Effect: Any additional petitions or hearings due to the bill's requirements can be handled by the circuit courts with existing budgeted resources. No effect on revenues.

Small Business Effect: None.

Analysis

Bill Summary:

Petition Procedure: A guardian of the person of a disabled person may petition a court for an order authorizing the guardian to prohibit or restrict communication between the disabled person and a family member. The petition must state the grounds for prohibiting or restricting communication, and a copy of the petition must be served on the disabled person and the member of the disabled person's family who is the subject of the petition. A court must hold a hearing on the petition, and the disabled person must have the opportunity to either attend the hearing or submit a notarized statement addressing the court regarding the disabled person's preferences.

Court Procedure: A court may issue an order authorizing a guardian to prohibit or restrict communication between a disabled person and a family member. In making its determination, the court the must consider:

- the disabled person's preferences;
- any ongoing estrangement between the disabled person and the family member;
- any history of violence, abuse, exploitation, or neglect involving the disabled person and the family member, including evidence that:
 - (1) the disabled person sought a peace order or protective order against the family member before appointment of the guardian;
 - (2) the family member was convicted of committing a crime against the disabled person; and
 - (3) any other factors the court considers relevant.

Orders granted by the court may authorize a guardian of the person of a disabled person to take any action the court considers necessary to protect the physical and emotional health of the disabled person, including preventing or restricting the disabled person from receiving visits, telephone calls, or personal mail from the family member, restricting the length and frequency of visits or telephone calls, and requiring supervised communication. If a court authorizes supervised visitation, it must require the family member and guardian to negotiate in good faith on the development of a visitation schedule that takes into account the wishes of the disabled person.

Right of Action for Family Members: Guardians of the person of a disabled person may place reasonable limitations on the hours when a disabled person may receive telephone calls or visitors. However, a guardian may not prohibit or restrict communication between a disabled person and a member of the disabled person's family without a court order.

An affected family member may bring an action in court to (1) compel the guardian to comply with the law's requirements or (2) terminate the guardian's appointment. In cases where the petitioning family prevails, guardians are liable for reimbursement to the petitioning family member for court costs and reasonable attorney fees.

Right of Action for Unrelated Individuals: Individuals who are not related to a disabled person and who petition a court to compel visitation must state the grounds for compelling visitation, and a copy must be served on both the guardian of the person of the disabled person and the disabled person. A court must consider any evidence concerning the past or existing relationship between the individual and the disabled person and issue an order only if the court determines that visitation is in the best interest of the disabled person. If an individual prevails in an action for visitation, a guardian must reimburse the individual for court costs and reasonable attorney's fees.

Notification Requirements: The bill requires a guardian to notify a disabled person's emergency contact and each member of the disabled person's immediate family for whom the guardian has contact information within 24 hours of a disabled person being admitted, or moved to a different health care facility, or as soon as possible; but no later than 24 hours after the disabled person dies. Notification must be made in person, by telephone or by first class mail in cases where notification in-person or by telephone is not possible.

Current Law: While guardians of a person of a disabled person have general authority to direct the activities of a disabled person, there are no State statutory provisions that specifically limit or grant a guardian's authority to restrict or prohibit communication with adult family members or other individuals.

On petition and after any notice or hearing authorized by statute or the Maryland Rules, a court may appoint a guardian of the person of a disabled person. A guardian of the person must be appointed if a court determines from clear and convincing evidence that (1) a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs and (2) no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

Generally, a court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person. The rights, duties, and powers which the court may order include, but are not limited to:

- the same rights, powers, and duties that a parent has with respect to an unemancipated minor child, except that the guardian is not liable solely by reason of the guardianship to third persons for any act of the disabled person;

- the right to custody of the disabled person and to establish his or her place of abode, if there is court authorization for any change in the classification of abode, except that no one may be committed to a mental facility without an involuntary commitment proceeding as specified;
- the duty to provide for care, comfort, and maintenance, including social, recreational, and friendship requirements, and, if appropriate, for training and education of the disabled person; and
- the duty to take reasonable care of the clothing, furniture, vehicles, and other personal effects of the disabled person, and, if other property requires protection, the power to commence protective proceedings.

Background: According to the “Catherine Falk Organization,” an advocacy group that represents vulnerable adults, similar legislation is pending in at least eight states, including Colorado, Illinois, Indiana, Hawaii, New Mexico, Rhode Island, Washington, and Utah. The bill may represent part of a national effort to address the issue that adult children and other family members may not have any specific legal rights regarding visitation or communication with their disabled or incapacitated family members in cases where the disabled person’s guardian restricts access. Often referred to as “visitation bills” or “Peter Falk Laws,” the legislation is intended to confer affirmative rights on the family members of disabled persons and impose specific duties on the guardians of disabled persons.

Additional Information

Prior Introductions: None.

Cross File: HB 512 (Delegate Kittleman) – Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Disabilities, Department of Health and Mental Hygiene, Department of Human Resources, Catherine Falk Organization, Department of Legislative Services

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