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Senate Bill 798 (as introduced 2-19-20)
Sponsor: Senator Michael D. MacDonald
Committee: Judiciary and Public Safety

Date Completed: 10-27-20

CONTENT

The bill would amend the Estates and Protected Individuals Code (EPIC) to prohibit the guardian of a legally incapacitated individual from restricting the individual's ability to communicate, visit, or interact with a person, unless certain conditions applied, and to allow an individual who was restricted from interaction with the legally incapacitated individual to petition to have to restriction removed.

Under Section 5314 of EPIC, if meaningful communication is possible, a legally incapacitated individual's guardian must consult with the individual before making a major decision affecting the individual. To the extent a guardian is granted powers by the court, the guardian is responsible for the ward's care, custody, and control, but is not liable to third parties because of that responsibility for the ward's acts. The guardian of the legally incapacitated individual has certain powers and duties, to the extent granted by a court order.

The bill would prohibit the guardian of a legally incapacitated individual from restricting the individual's ability to communicate, visit, or interact with a person, unless any of the following applied:

- The ward expressed in a valid power of attorney, patient advocate designation, or any other writing or communication that the ward did not wish to communicate, visit, or interact with the person.
- The court, through a specific order, found by clear and convincing evidence that the restrictions were necessary because interaction with the person would pose a risk of physical, psychological, or financial harm to the ward.
- A personal protection order or other court order outside of a guardianship was in effect that limited contact between the ward and the person.
- The guardian had good cause to believe restriction was necessary because interaction with the person posed a risk of physical, psychological, or financial harm to the ward; and within seven days after the guardian restricted the ward's ability to communicate, visit, or interact with the person, the guardian sent the person, court, and health facility or agency, or licensed adult foster care facility, where the ward resided written notice, on a form created by the State Court Administrative Office, specifically identifying each reason for the restrictions and why less restrictive options were not reasonably available.

Failure of the guardian to provide the form described above would lift the restriction and could subject the guardian to removal.

An individual who had been restricted from interaction could petition for the restriction to be removed. The court could not order the restriction to remain in place unless it was shown by clear and convincing evidence that both of the following applied:

- The restriction was necessary because interaction with the individual posed a risk of physical, psychological, or financial harm to the ward.
- A less restrictive option was not reasonably available.

MCL 700.5314

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would not have a significant fiscal impact on the State or local court systems. The State Court Administrative Office would incur some minor costs related to the bill's requirement to create and make available notice forms for when a guardian chose to restrict a person's access to an incapacitated individual. The costs to produce these forms and make them available to local courts likely would be absorbed by existing appropriations.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.