

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 113

**PRINTER NO.** 987

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

January 13, 2017

**PRIME SPONSOR**

Senator Eichelberger

**DESCRIPTION**

Amends Title 20 (Decedents, Estates and Fiduciaries) by adding a new Subchapter G (Rights of Incapacitated Persons) to address an incapacitated person's right of communication, visitation or interaction with other persons.

This legislation prohibits a guardian from restricting an incapacitated person's right of communication, visitation or interaction with other persons, including the right to receive visitors, telephone calls or personal mail. It establishes a presumption, in the event that the incapacitated person cannot express consent that the incapacitated person consents to interaction with another person based on the incapacitated person's prior relationship history with the person. A guardian shall comply with a protective order that remains in effect to protect the incapacitated person from other persons, even if it was issued prior to the appointment of the guardian.

Permits a guardian with good cause to petition the court to place restrictions on a person's ability to communicate, visit, or interact with an incapacitated person. Good cause includes:

- The existence of a prior protective order or whether a protective order is being sought to protect the incapacitated person from the person seeking access to the incapacitated person;
- Whether a protective order has been issued to protect the incapacitated person from the person seeking access to the incapacitated person;
- Whether the person seeking access subjected or is likely to subject the incapacitated person to abuse, neglect, or financial exploitation;
- Documented intention of the incapacitated person to reject communication, visitation or interaction with specific persons; or
- Any other factors deemed relevant by the court.

Provides for relief by the courts by allowing a court to order restrictions to be placed on the communications, visitations or interactions a person may have with an incapacitated person upon a showing of good cause by the guardian.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

Grants standing to an interested person, including the incapacitated person, to petition the court to seek relief when a guardian restricts the communication, visitation or interaction with other persons, including the right to receive visitors, telephone calls or personal mail. Provides that a guardian who knowingly restricts the interactions and communications of an incapacitated person is subject to discharge and replacement. The court shall schedule a hearing on such petitions no later than 60 days after the date that the petition is filed.

Provides for certain sanctions that the court may impose if a guardian has violated a court order under this newly created subchapter.

Finally, this legislation provides that a guardian shall promptly notify an incapacitated person's immediate family and any other person designated by the incapacitated person to be notified along with the appropriate contact information, upon the guardian's knowledge that:

- The incapacitated person's permanent residence has changed;
- The incapacitated person is staying at a location other than his or her residence for more than seven consecutive days;
- The incapacitated person is admitted to or discharged from a nursing home or assisted-care living facility;
- The incapacitated person has been admitted to a medical facility for emergency care or acute care; or
- The incapacitated person has died, provided that notification of the incapacitated person's death shall be made in person or by telephone.

An exception to the notice requirement is permitted if a person entitled to such notice informs the guardian in writing that the person does not wish to receive the notice or a court orders that no notice shall be provided to certain persons.

This act shall take effect in 60 days.

### **FISCAL IMPACT:**

The enactment of this legislation will have no adverse effect on Commonwealth funds.