

Legislative Analysis



ALLOW LIMITED GUARDIAN TO SUPERVISE VISITS WITH INCAPACITATED INDIVIDUALS

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Senate Bill 110 (S-1) as reported from House committee
Sponsor: Sen. Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-4-19

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 170 of 2019)

SUMMARY:

Senate Bill 110 would amend the Estates and Protected Individuals Code (EPIC) to allow a court-appointed limited guardian to supervise visits with an incapacitated individual if certain conditions were met.

Under the bill, a court could appoint a limited guardian to supervise access to an incapacitated individual if the court finds by clear and convincing evidence that all of the following conditions apply:

- The individual is incapacitated.
- The person that has the care and custody of the incapacitated individual has denied another person access to the incapacitated individual.
- The incapacitated individual desires contact with the other person or contact with the other person is in the incapacitated individual's best interest.

The bill would take effect 90 days after its enactment.

MCL 700.5306

BRIEF DISCUSSION:

Senate Bill 110 seeks to address concerns regarding access to an incapacitated adult who is under a guardianship or the care of a caregiver when that individual denies visits by family or friends. When this happens, loved ones may not know if it is truly the wishes of the person not to take a visit or phone call or if access is being denied to hide physical or mental abuse or financial exploitation. Some family members cite the inability to even say good-bye to dying parents when access is cut off by a step-parent, sibling, or caregiver who has taken physical control over the elderly or infirm adult.

Under the bill, a court could determine whether visits by family and friends are desired by the incapacitated adult or are in his or her best interest. If so, a limited guardian could be appointed to supervise visits. According to testimony by the Michigan Judges Association submitted to the Senate Judiciary and Public Safety Committee, an underlying guardianship would not be disturbed by the bill's provisions and the incapacitated adult's wishes and needs could be balanced with the guardian's responsibility to serve his or her best interests.

However, concerns remain that the bill does not go far enough to ensure adequate protection of this vulnerable population. It is also unclear how the bill's provisions would be implemented. For example, would a family member previously denied visits now be appointed to supervise all access to the incapacitated adult? If a neutral party were appointed, such as a professional guardian, how would he or she, who often handles hundreds of cases, have the time to travel to a location and supervise a visit that may last for hours? In testimony submitted to the Senate committee by the Michigan Elder Justice Initiative, these and other concerns were raised, including exploring less restrictive alternatives to a limited guardianship such as encouraging mediation to resolve disputes.

Further, the bill as written does not acknowledge that if abuse or exploitation is occurring, the incapacitated person may be afraid to express his or her wishes for fear of retaliation by the caregiver should the court deny appointment of a limited guardian to supervise visits with those to whom the caregiver has denied access. The bill also does not address situations in which—at the time visitation is denied—the incapacitated person, due to illness or disease progression, may no longer be able to communicate his or her desire to continue to see the relative or friend being denied access. An expressed desire for the visits is a required element that must be met in order for the court to appoint a limited guardian.

FISCAL IMPACT:

Senate Bill 110 could have a fiscal impact on the state and on local court funding units, but the impact would likely be minimal and would solely depend on how the bill affected court caseloads and related administrative costs.

POSITIONS:

The Probate Judges Association indicated support for the bill. (10-22-19)

The Michigan Elder Justice Initiative indicated opposition to the bill. (10-22-19)

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