

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 43
Judiciary

(Delegate Saab)

Duties of Guardian of the Person and Visitation Between Adult Child and Parent

This bill expands the duties that a court may grant to a guardian of a disabled person to encompass enforcing the disabled person's right to receive visitors, telephone calls, personal mail, and electronic communications. The bill creates additional duties for a guardian by requiring the guardian to inform specified members of the disabled person's family of specified information. The bill also establishes a process by which an adult child may petition a court to compel visitation with a parent.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary, the Department of Human Resources, or the Maryland Department of Aging (MDoA).

Local Effect: Potential minimal increase in expenditures for local area agencies on aging (AAAs) to handle the additional requirements for guardians. The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: A guardian must, as soon as reasonably possible, inform the disabled person's spouse, adult children, adult grandchildren, parents, and siblings if the disabled person dies or has been hospitalized, as specified, for a period of at least three days. If the disabled person dies, the guardian must inform the same individuals, as soon as reasonably possible, of any funeral arrangements and the location of the person's final resting place.

An adult child may file a petition to compel visitation with a “proposed visitee.” A “proposed visitee” is a parent of an adult child for whom a visitation decision is sought. “Visitation” is defined as any in-person meeting or any telephonic, mail, or electronic communication between a proposed visitee and the proposed visitee’s adult child. The petition must be filed in the circuit court for the county in which the proposed visitee is domiciled or temporarily living. To the extent known, the petition must state (1) the condition of the proposed visitee’s health; (2) the proposed visitation that is sought; (3) the efforts made to obtain visitation with the proposed visitee; (4) whether there is any deficit in the proposed visitee’s mental functions that affects the proposed visitee’s ability to respond knowingly and intelligently to questions about the proposed visitation; and (5) the names and addresses of individuals, as specified. The petitioner must personally serve a copy of the petition on the proposed visitee and the proposed visitee’s attorney and guardian of the person, if any, and mail a copy of the petition to the proposed visitee’s spouse and relatives listed in the petition.

On the filing of a petition, the court must determine whether the proposed visitee has retained or plans to retain an attorney. The court may appoint an attorney for an unrepresented proposed visitee and must appoint an independent investigator to conduct an investigation and report written findings to the court. The investigator must (1) interview relevant parties, as specified; (2) inform the proposed visitee of the petition’s contents; (3) determine whether the proposed visitee has the capacity to consent to the requested visitation; and (4) determine whether the proposed visitee desires the proposed visitation. At least five days before the hearing on the petition, the investigator must file a written report of the findings with the court and mail a copy of the report to relevant individuals, as specified. The investigator’s report is confidential and must only be made available to the parties and other specified individuals. If an independent investigator has performed an investigation within the preceding 12 months and furnished a report to the court, the court may order, on good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

The court must provide notice of the hearing to specified individuals. In ruling on the petition, the court must determine whether the proposed visitee has sufficient capacity to make a knowing and intelligent visitation decision. The court must grant reasonable visitation if the court determines that the proposed visitee has sufficient capacity to make a knowing and intelligent visitation decision and expresses a desire for visitation. If the court determines that the proposed visitee lacks such capacity, the court must determine whether the proposed visitee would want visitation with the petitioner. In making this determination, the court must consider (1) the history of the relationship between the proposed visitee and the petitioner; (2) any statements made by the proposed visitee expressing a desire to have visitation with the petitioner; (3) any power of attorney or other document that expresses an opinion on visitation with the petitioner; and (4) the report prepared by the independent investigator. If the court determines that the proposed visitee

would want visitation and that visitation is in the best interests of the proposed visitee, the court must grant reasonable visitation. The court may not grant visitation if it determines that the proposed visitee has sufficient capacity to make a knowing and intelligent visitation decision and expresses that he or she does not desire visitation. Any determination by the court regarding capacity under the bill's provisions is not admissible as evidence in any other legal proceeding.

The court must order each petitioner to pay the reasonable fees and expenses of the independent investigator and any appointed attorney. On request of a petitioner, the court may order another individual to pay the reasonable costs and expenses on a finding that (1) the individual had custody or control of a proposed visitee and denied an adult child access to the proposed visitee for the purpose of visitation in bad faith or without substantial justification and (2) the individual is given notice of a reasonable opportunity to respond to the request. The court has continuing jurisdiction to vacate or modify an order issued pursuant to the bill's provisions.

Current Law: The court may (1) superintend and direct the care of a disabled person; (2) appoint a guardian of the person; and (3) pass orders and decrees respecting the person as seems proper. On petition and after any required notice or hearing, a guardian of the person of a disabled person is appointed if the court determines from clear and convincing evidence that (1) the 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 drug addiction and (2) no less restrictive form of intervention is available which is consistent with the person's welfare and safety. Statutory provisions set forth procedures for granting guardianship, including authorizing the director of a local department of social services, the Secretary of Aging, or the director of the area agency on aging to be appointed as guardian if there are no other suitable alternatives.

A court may grant to a guardian only those powers necessary to provide for the demonstrated need of the disabled person. Subject to this limitation, the court order may include specified rights, duties, and powers. For example, the court may delegate to the guardian the duty to provide for the disabled person's care, comfort, and maintenance (including social, recreational, and friendship requirements) and the duty to take reasonable care of the personal effects of the disabled person.

There are no provisions in State law addressing the right of an adult child to visit a parent or of an adult child to compel visitation from a parent.

Local Expenditures: MDoA advises that local AAAs served as guardians of the person for more than 900 individuals in fiscal 2015. The bill establishes additional responsibilities for guardians, which may impact the workload of AAAs. The extent of any additional

workload cannot be reliably predicted without actual experience under the bill, as it depends on a number of factors, including (1) the level of effort involved whenever AAAs serving as guardians must notify family members of specified events or intervene to enforce the disabled person's right to receive visitors; (2) how often these new duties are required; and (3) the extent to which adult children petition the court to compel visitation with a parent who has an AAA serving as guardian. Local expenditures may increase minimally to the extent that these provisions necessitate additional staff time and resources.

Additional Information

Prior Introductions: None.

Cross File: SB 70 (Senator Reilly) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Human Resources, Maryland Department of Aging, Department of Legislative Services

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