

ASSEMBLY, No. 794

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Establishes procedure to enforce certain visitation rights of incapacitated persons and persons receiving care from caregiver.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain rights of incapacitated persons and
2 persons receiving care from a caregiver and supplementing Title
3 3B of the New Jersey Statutes and Title 10 of the Revised
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. a. An individual who has been found by the court to be
10 incapacitated, and for whom a general or limited guardian of the
11 person has been appointed pursuant to section 12 of P.L.2005, c.304
12 (C.3B:12-24.1) and qualified before a county surrogate, shall retain
13 the right to receive visitors, telephone calls, and personal mail,
14 unless specifically limited by court order.

15 b. Upon the petition of an adult child or sibling of the
16 incapacitated person, the court may conduct a hearing and issue an
17 order that grants a guardian of the person the power to enforce the
18 incapacitated person's right to receive visitors, telephone calls, and
19 personal mail, an order that directs a guardian to permit the
20 incapacitated person to receive visitors, telephone calls, and
21 personal mail, or any other order that the court determines to be
22 appropriate in the circumstances of the particular incapacitated
23 person concerning those rights.

24 c. If the health of the incapacitated person is in significant
25 decline or the death of the incapacitated person is imminent, the
26 court shall schedule and conduct the hearing required pursuant to
27 subsection b. of this section on an emergent, expedited basis.

28
29 2. A guardian of the person shall, upon request by an adult
30 child or sibling of the incapacitated person, or as ordered by the
31 court, provide notification of any of the following, within 24 hours
32 of the event's occurrence: the incapacitated person's admission to a
33 hospital or hospice care, the death of the incapacitated person, the
34 finalization of funeral arrangements, and the disposition of the
35 person's remains.

36
37 3. As used in this act:

38 "Caregiver" means a person, unrelated by blood to the resident,
39 who provides care to the resident on a paid or unpaid basis.

40 "Family member" means an adult child or sibling of the resident.

41 "Resident" means an adult who is receiving care and services
42 from a caregiver in the resident's home or other residence, and who
43 is not subject to a guardianship of the person.

44
45 4. a. If a family member of the resident is being denied the
46 opportunity to visit, telephone, or mail the resident by the caregiver,
47 the family member may petition the court of the county in which the
48 resident resides to compel visitation, or telephonic or mail contact

1 with the resident. The court shall conduct a hearing and issue an
2 order, as appropriate.

3 b. The court shall not issue an order compelling visitation if the
4 resident has capacity and has expressed a desire not to be visited or
5 contacted by the petitioning family member, or if the court finds
6 that visitation, or telephonic or mail contact by the petitioner is not
7 in the resident's best interests.

8 c. If the health of the resident is in significant decline or the
9 death of the resident is imminent, the court shall schedule and
10 conduct the hearing required pursuant to subsection a. of this
11 section on an emergent, expedited basis.

12

13 5. The Supreme Court of the State of New Jersey may adopt
14 court rules as may be appropriate or necessary to effectuate the
15 purposes of this act.

16

17 6. This act shall take effect on the first day of the third month
18 next following enactment.

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STATEMENT

22

23 This bill would prevent guardians of the person and caregivers
24 from being able to deny certain family members from visiting or
25 having telephonic or mail contact with their family member, who is
26 incapacitated or receives care from a caregiver.

27 This bill expressly reserves to individuals who are subject to a
28 general or limited guardianship of the person, the right to receive
29 visitors, telephone calls, and personal mail, unless specifically
30 limited by court order. The bill provides that the court may issue an
31 order that specifically grants a guardian of the person the power to
32 enforce the incapacitated person's right to receive visitors,
33 telephone calls, and personal mail, an order that directs a guardian
34 to allow the person to receive visitors, telephone calls and personal
35 mail, or any other order that the court determines to be appropriate
36 in the circumstances of a particular incapacitated person concerning
37 that person's right to receive visitors, telephone calls, and personal
38 mail. If the health of the incapacitated person is in significant
39 decline or the death of the incapacitated person is imminent, the
40 court is to schedule and conduct the hearing on an emergent,
41 expedited basis.

42 The bill requires a guardian of the person, upon request by an
43 adult child or sibling of the incapacitated person, or as ordered by
44 the court, to provide notification of any of the following, within 24
45 hours of the event's occurrence: the incapacitated person's
46 admission to a hospital or hospice care, the death of the
47 incapacitated person, the finalization of funeral arrangements, and
48 the disposition of the person's remains.

1 The bill similarly provides that a sibling or adult child who is
2 being denied the opportunity to visit, telephone, or mail a resident
3 (who is not subject to a guardianship of the person) who is
4 receiving care from a caregiver in the resident's home or in another
5 residence, may petition the court of the county in which the resident
6 resides to compel visitation, or telephonic or mail contact with the
7 resident. The bill defines "caregiver" as a person, unrelated by
8 blood to the resident, who provides care to the resident on a paid or
9 unpaid basis.

10 Further, the bill requires that the court not issue an order
11 compelling visitation if the resident has capacity and has expressed
12 a desire not to be visited or contacted by the petitioning family
13 member, or if the court finds that visitation, or telephonic or mail
14 contact by the petitioner is not in the resident's best interests. The
15 court is to schedule and conduct the hearing on an emergent,
16 expedited basis if the health of the resident is in significant decline
17 or the death of the resident is imminent.

18 Similar legislation has been enacted in California and other
19 states following media reports of family members, including those
20 of actor Mickey Rooney and of country music star Glen Campbell,
21 who were denied the right to visit or communicate with their ailing
22 parent or relative by that person's legal guardian. The daughter of a
23 New Jersey couple in Cherry Hill reported that she and her aunt
24 were denied access to her mother for the last three years of her
25 mother's life by her own father and the mother's caregiver.

26 The bill would take effect on the first day of the third month
27 following enactment.