HB 343 - AS AMENDED BY THE HOUSE

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2023 SESSION

23-0026
04/10

HOUSE BILL ***343***

AN ACT relative to release of confidential records of a person appointed a guardian.

SPONSORS: Rep. Schmidt, Straf. 14

COMMITTEE: Judiciary

ANALYSIS

This bill provides that a person appointed a guardian shall retain the right to access and consent to the release of his or her confidential records unless the terms of the appointment provide otherwise.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to release of confidential records of a person appointed a guardian.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Guardians and Conservators; Findings; Release of Confidential Records. Amend RSA 464-A:9, IV to read as follows:

IV. No person determined to be incapacitated thus requiring the appointment of a guardian of the person and estate, or the person, or the estate, shall be deprived of any legal rights, including the right to marry, to obtain a motor vehicle operator's license, to testify in any judicial or administrative proceedings, to make a will, to convey or hold property, [~~or~~] to contract, ***or to have access to or to grant release of his or her confidential records and papers, including medical records,*** except upon specific findings of the court. The court shall enumerate in its findings which legal rights the proposed ward is incapable of exercising.

2 New Paragraph; Guardians and Conservators; Findings; Release of Confidential Records. Amend RSA 464-A:9 by inserting after paragraph IV the following new paragraph:

IV-a. Unless the court has specifically ordered that the ward be deprived access to or ability to grant release of his or her confidential records and papers, pursuant to paragraph IV, the guardian shall provide medical, financial, or other records to the ward within 10 days of the ward's request. The guardian may file a petition with the court seeking to amend the existing guardianship order to deprive the ward the right to access or grant release of his or her confidential records. The guardian must file such petition within 10 days of receipt of the ward's request for copies of his or her records. Upon a finding in the record based on evidence beyond a reasonable doubt that the ward is incapable of exercising his or her right to access or grant release of his or her confidential records, the court shall issue an amended order of guardianship.

3 New Paragraph; Resignation, Removal, or Death of Guardian. Amend RSA 464-A:39 by inserting after paragraph III the following new paragraph:

III-a. Notwithstanding an order pursuant to RSA 464-A:9, IV depriving the ward of his or her rights to access or grant release of his or her confidential records, upon the ward's filing a motion to remove the guardian, the ward may request authority to access and grant release of his or her confidential records. No sooner than 10 days following the filing of such request to access or grant release of records, the court shall issue an order granting the ward access to and the ability to release his or her confidential records, including financial and medical records. In the event the guardian or an interested party files an objection to the ward's access or release of such records, the court shall schedule a hearing on the matter. Unless the guardian or interested party establishes, beyond a reasonable doubt, that authorizing the ward to access or grant release of his or her

confidential records and papers, including medical records, would be harmful to the interests of the ward, the court shall issue an order granting the ward access to and the ability to release his or her confidential records, including financial and medical records.

4 Guardians and Conservators; Termination of Guardianship; Release of Records to Ward. Amend RSA 464-A:40, II to read as follows:

II.(a) The ward or any person interested in the ward's welfare may, at any time, file a motion for the termination of the guardianship based upon a finding that the ward is no longer incapacitated. Provided, however, an order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no motion concerning such adjudication may be filed without special leave.

(b) A ward may request the termination of the guardianship based on a finding that he or she is no longer incapacitated in an informal letter to the court or judge. Persons directly responsible for the care and supervision of the ward may assist the ward in preparing a letter of this kind. Any person who knowingly interferes with a transmission made by, or on behalf of, a ward to the court or judge may be adjudged guilty of contempt of court.

(c) ***Notwithstanding an order pursuant to RSA 464-A:9, IV depriving the ward of his or her rights to access or grant release of his or her confidential records, upon the ward's filing a motion to terminate or modify the guardianship order, the ward may request authority to access and grant release of his or her confidential records. No sooner than 10 days following the filing of such request to access or grant release of records, the court shall issue an order granting the ward access to and the ability to release his or her confidential records, including financial and medical records. In the event the guardian or an interested party files an objection to the ward's access or release of such records, the court shall schedule a hearing on the matter. Unless the guardian or interested party establishes, beyond a reasonable doubt, that authorizing the ward to access or grant release of his or her confidential records and papers, including medical records, would be harmful to the interests of the ward, the court shall issue an order granting the ward access to and the ability to release his or her confidential records, including financial and medical records.***

(d) Unless the motion is without merit, the court shall hold a hearing similar to that provided for in RSA 464-A:8 and RSA 464-A:9 at which the guardian shall be required to prove that the grounds for appointment of a guardian provided in RSA 464-A:9 continue to exist.

5 Effective Date. This act shall take effect January 1, 2024.