

CONSENT CALENDAR

February 3, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
1325,**

**AN ACT relative to release of confidential records of a
person appointed a guardian. Having considered the
same, report the same with the following amendment,
and the recommendation that the bill OUGHT TO PASS
WITH AMENDMENT.**

Rep. Kurt Wuelper

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 1325
Title:	relative to release of confidential records of a person appointed a guardian.
Date:	February 3, 2022
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2022-0230h

STATEMENT OF INTENT

This bill, as amended, will ensure a guardian will release medical, financial, or other confidential records of a ward to that ward when the ward seeks to amend or terminate the guardianship. The bill both establishes the ward's right to such records and, by the amendment, the guardian's responsibility to provide them to the ward unless the guardian can demonstrate to the court such release would not be in the ward's best interests. The committee sees this as another step in our continuing effort to empower people to have as much control over their own lives as possible.

Vote 21-0.

Rep. Kurt Wuelper
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 1325, relative to release of confidential records of a person appointed a guardian. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kurt Wuelper for Judiciary. This bill, as amended, will ensure a guardian will release medical, financial, or other confidential records of a ward to that ward when the ward seeks to amend or terminate the guardianship. The bill both establishes the ward's right to such records and, by the amendment, the guardian's responsibility to provide them to the ward unless the guardian can demonstrate to the court such release would not be in the ward's best interests. The committee sees this as another step in our continuing effort to empower people to have as much control over their own lives as possible. **Vote 21-0.**

Original: House Clerk

Cc: Committee Bill File

Amendment to HB 1325
- Page 2 -

2022-0230h

AMENDED 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. The bill also provides that the guardian shall provide records to the ward so that the ward may pursue a termination of guardianship request unless the court determines release of such records would be harmful to the ward.

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1325

BILL TITLE: relative to release of confidential records of a person appointed a guardian.

DATE: February 3, 2022

LOB ROOM: 206-208

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Wuelper Seconded by Rep. Chase AM Vote: 21-0

Amendment # 2022-0203h

Moved by Rep. Wuelper Seconded by Rep. Chase Vote: 21-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk



2021 SESSION

Judiciary

Bill #: 1325 Motion: OTPA AM #: 0203h Exec Session Date: 2-3-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	✓		
McLean, Mark Vice Chairman	✓		
Sylvia, Michael J.	✓		
Wuelper, Kurt F. Clerk	✓		
Alexander, Joe H.	✓		
Rice, Kimberly A. EDWARDS	✓		
Silber, Norman J. MERNER	✓		
Greene, Bob J.	✓		
Kelley, Diane E.	✓		
Tausch, Lindsay ANDRUS	✓		
Trottier, Douglas R.	✓		
Smith, Marjorie K.	✓		
Berch, Paul S. WOODS	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Chase, Wendy	✓		
Kenney, Cam E.	✓		
Langley, Diane M.	✓		
McBeath, Rebecca Susan	✓		
Paige, Mark	✓		
Simpson, Alexis	✓		

Kurt Wuelper

21

0

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1325

BILL TITLE: relative to release of confidential records of a person appointed a guardian.

DATE: 1/13//2022

LOB ROOM: 206-208

Time Public Hearing Called to Order: 1:30 PM

Time Adjourned: 1:52 PM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Notter, Merner, Greene, D. Kelley, Andrus, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors: Rep P. Schmidt

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Schmidt Straf 19 Sponsor** I bring this bill on behalf of a constituent who is herself a guardian and an advocate for people with mental health issues. The bill simply adds the right to have access to and control their own over personal medical records to people with mental health problems.

Q Chase: What exactly are you trying to do?

Ans: In some cases, the guardian may have control over the records and deny access/control of them to the ward.

***Kerri TaskerSelf Supports** I am an attorney here in Concord and have b been practicing in the area of guardianship and related matters for 17 years. Wards often do not have access to their own personal records. Guardians fill out the form spelling out what the ward can access and confidential and/or medical records is one of the things on that form. Often the ward needs help to make decisions, but there is no reason the ward should be denied access to those records. One client recovered from her dementia and couldn't access her own medical records. We eventually did get an order from the court. I am here to say that when a guardianship is started, there should be a formal process t to deny the ward access to their own records. Unfortunately, the current law frequently denies them that access.

Q Sylvia: Shouldn't the entire paragraph be rewritten in simpler form?

Ans: The paragraph on the form is even worse. It is far too broad and the law needs to clearly state you can't deny the ward access to their records. The guardian needs access, but that should not simultaneously take that access away from the ward.

Q Chase: When was the last time the guardianship law was changed?

Ans: Last year and changes are common.

Q Do you know of when guardianships have been altered at all?

Ans: I have seen courts expand what is requested on the form, but guardians tend to not be careful of what rights they are taking from the ward.



Rep Kurt Wuelper, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill HB1325 on 2022-01-13

Support: 1 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Howland, Curtis	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	No	1/10/2022 1:29 PM

HB1325 Schmidt

When a guardian is appointed, the court decides which rights the ward is incapable of executing.

Some of these rights are taken away in a group of rights. One of those rights automatically removed is the right to access their own records, medical and financial, without the permission of the guardian.

This can lead to abuse by a guardian or a conservator there are public guardians, private guardians, or family guardians. People from all walks of life and socio-economic groups can be temporarily or permanently incapacitated. To remove a guardianship the ward must prove that it is no longer necessary. Medical records are usually instrumental in the removal process. Although the ward may be medically incapacitated they can find themselves prey to an unethical guardian that refuses to account for expenditures of funds or refusal to provide medical records to terminate the guardianship.

Most guardians receive financial reimbursement for the work of being a guardian. It can be in the guardian's best financial interest to retain guardianship of multiple people while performing the minimum of services for the set financial reimbursement. Do you remember the Britney Spears case where her father controlled her entire estate, her body, her marriage, and childbearing decisions? It was in place for about 13 years.

There are times that a ward should not have access to those records without the permission of the guardian. With this bill HB1325 that would be determined by the court specifically designating that the ward is incapable of that right, rather than automatically removing that right from every person under guardianship.

I am a guardian of a man that has retained all of his intelligence and financial responsibility. His estate guardianship was removed after a year. His credit had gone into decline and all of his assets were sold. He was fighting his guardianship without access to his medical records. I provided his medical records to him and he is no longer fighting his guardianship but is working to become suitable for release from the hospital.

He has also petitioned to remove false statements from his medical records, that would have been unknown by someone who did not live through the events of his life. Even a competent guardian can miss factual errors that can prejudice the court against the wards' capability to manage their own affairs.

I believe that something as important as medical and or financial records should be separately ruled on by the court. I have enclosed a copy of the guardianship form for a better understanding of the categories of rights and how they are removed from the ward or retained by the ward.

Any questions please call Wanda Duryea 603-923-2793, or email nh_cherokee@yahoo.com

HB 1325 Schmidt

**Draft Amendment to House Bill 1325,
relative to release of confidential records of a person appointed a guardian**

Amend the bill by inserting the following new section after section 1 and renumbering the remaining section:

2 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) The guardian shall provide medical, financial, or other records to the ward upon the ward's request so that the ward may prepare and pursue a guardianship termination motion or request. The guardian may file a petition with the court for an order permitting the guardian to withhold such records based on a finding that the records would not be relevant to the termination of the guardianship or that their release to the ward would be harmful to the interests of the ward. The guardian shall bear the burden of establishing to the court that the records should not be released to the ward.

(e) **(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.

HB 1325 Tasker

HB 1325 - AS INTRODUCED

2022 SESSION

22-2532
05/10

HOUSE BILL **1325**

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

SPONSORS: Rep. P. Schmidt, Straf. 19

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.

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

22-2532
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

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 Effective Date. This act shall take effect January 1, 2023.

For e-Filing only

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: _____
Case Name: _____
Case Number: _____
(if known)

PETITION FOR GUARDIAN OF INCAPACITATED PERSON

Guardianship is requested for: person estate person & estate

1. Petitioner name: _____
Relationship to ward: _____

Mailing address: _____
Street City State Zip code

Telephone: _____ E-mail: _____

Petitioner name: _____

Relationship to ward: _____

Mailing address: _____
Street City State Zip code

Telephone: _____ E-mail: _____

2. Attorney for petitioner: _____ Telephone: _____

Firm name: _____ Bar ID #: _____

Mailing address: _____
Street City State Zip code

3. Proposed ward name: _____ Date of birth: _____

Mailing address: _____
Street City State Zip code

4. Name of institution or person having care or custody of the proposed ward: _____
Telephone: _____

Mailing address: _____
Street City State Zip code

5. Has the proposed ward nominated a guardian in accordance with RSA 464-A:10? No

Yes If yes, name of this guardian: _____

Mailing address: _____
Street City State Zip code

6. Attorney for proposed ward: _____ Telephone: _____

Firm name: _____ Bar ID #: _____

Mailing address: _____
Street City State Zip code

Case Name: _____

Case Number: _____

PETITION FOR GUARDIAN OF INCAPACITATED PERSON

7. List the name and address of the ward's spouse, parents, adult children and adult siblings. For each person listed, write the relationship to the ward. Attach a separate sheet if necessary.

Name	Mailing Address	Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Are there any adults, other than the proposed guardian, who will be living in the same home as the proposed ward? Yes No
If yes, you must provide the court with a completed Criminal Record Release Authorization form and a DHHS Record Release Authorization form for each of those adults within 10 days of the filing of this petition.

9. Does proposed ward have a durable power of attorney? Yes No Unknown
(If yes, a guardianship over the estate may not be necessary)

10. Does proposed ward have a durable power of attorney for health care?
 Yes No Unknown (If yes, a guardianship over the person may not be necessary)

11. Does proposed ward have a living will? Yes No Unknown

12. If applying for guardianship over the estate, briefly describe and provide the approximate value of the estate below:

<u>BRIEF DESCRIPTION</u>	<u>VALUE</u>
Real Estate: _____	\$ _____
Personal Property: _____ (including bank/investment accounts)	\$ _____
Income (include local, state and federal benefits): _____	\$ _____
Debts: _____	\$ _____

13. Guardianship sought will be: temporary not temporary/enduring
If temporary guardianship is sought, state the reasons why a long term guardianship would not be appropriate.

14. The petitioner asks that guardianship be granted to:

Proposed guardian name: _____

Date of birth: _____

Relationship to proposed ward: _____ Occupation: _____

Mailing address: _____
Street City State Zip code

Telephone: _____ E-mail: _____

Proposed guardian name: _____

Date of birth: _____

Relationship to proposed ward: _____ Occupation: _____

Mailing address: _____
Street City State Zip code

Telephone: _____ E-mail: _____

Case Name: _____

Case Number: _____

PETITION FOR GUARDIAN OF INCAPACITATED PERSON

15. The petitioner requests that the court find the ward incapable of exercising the following rights, namely the right to: (check all appropriate boxes)

- Travel or decide where to live
- Refuse or consent to medical or other professional care, counseling, treatment or service, including the right to admit or discharge the ward from any hospital or other medical institution providing such at the lawful direction of the guardian of the person
- Marry or Divorce
- Make a will or waive the provisions of a will
- Hold or obtain a motor vehicle operator's license
- Testify in any judicial or administrative proceedings
- Have access to, grant release of, withhold, deny, or refuse authorization for the guardian of the person to obtain access to and release the ward's confidential records and papers insofar as the same may be reasonably needed by the guardian of the person to ensure that the ward's mental, emotional and physical health concerns are properly addressed and treated
- Possess or manage real or personal property or income from any source
- Make gifts
- Lend or borrow money
- Pay or collect debts
- Manage or run a business
- Convey or hold property
- Cancel, reject or oppose any authority or power granted to the guardian of the estate and/or person
- Continue to act as a member of a partnership
- Initiate, defend or settle lawsuits
- Make contracts or grant power of attorney or other authorizations
- Make decisions concerning educational matters and training
- Other (please specify) _____

NOTE: THE COURT MAY IMPOSE ADDITIONAL ORDERS AS A RESULT OF THE HEARING.

16. As required by RSA 464-A:4, III, a statement must be provided containing facts showing the necessity for the appointment of the guardian of the person and estate, or the person, or the estate of the proposed ward, including specific factual allegations as to the proposed ward's financial transactions, personal actions or actual occurrences which are claimed to demonstrate his/her inability to manage an estate, or to provide for personal needs for health care, food, clothing, shelter or safety. All evidence of inability must be within 6 months and one incident must have occurred within 20 days of the filing of this petition. (Please use additional sheets, if necessary.)

Case Name: _____

Case Number: _____

PETITION FOR GUARDIAN OF INCAPACITATED PERSON

Verification: I verify the truth and accuracy of all facts alleged within this document to the best of my belief and further verify that all facts contained in this document are alleged in good faith. By affixing my electronic signature to this document I acknowledge my understanding that any false statements made in this document are punishable as perjury which may include a fine or imprisonment or both.

Name of Filer

/s/ _____
Signature of Filer Date

Law Firm, if applicable Bar ID # of attorney

Telephone

Address

E-mail

City State Zip code

Verification: I verify the truth and accuracy of all facts alleged within this document to the best of my belief and further verify that all facts contained in this document are alleged in good faith. By affixing my electronic signature to this document I acknowledge my understanding that any false statements made in this document are punishable as perjury which may include a fine or imprisonment or both.

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E-mail

City State Zip code

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

Circuit - Probate Division -

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

**GUARDIAN OVER THE PERSON
ORDER**

Case Name:

Case Number:

After a hearing held at this court, and upon due consideration of the petition for guardianship filed by _____ and all the evidence proffered thereon, the court renders the following findings as required by RSA 464-A:9, III (a)-(d), namely:

- (a) _____ ("ward") is incapacitated.
- (b) Guardianship is necessary as a means of providing for the ward's continuing care, supervision, and rehabilitation.
- (c) There are no available alternative resources which are suitable with respect to the ward's welfare, safety or rehabilitation.
- (d) Guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the ward's civil rights and liberties.

The court finds that the ward is incapable of exercising the following rights, namely, the right to:
Travel or decide where to live.

Refuse or consent to medical or other professional care, counseling, treatment or service, including the right to be admitted or discharged from any hospital or other medical institution providing such at the lawful direction of the guardian of the person.

Testify in any judicial or administrative proceedings.

Have access to, grant release of, withhold, deny, or refuse authorization for the guardian of the person to obtain access to and release of the ward's confidential records and papers insofar as the same may be reasonably needed by the guardian of the person to ensure that the ward's mental, emotional and physical health concerns are properly addressed and treated.

Continue to act as a member of a partnership.

Cancel, reject, or oppose any authority or power of the guardian of the person duly exercised pursuant to this order.

Initiate, defend or settle lawsuits.

Make contracts or grant power of attorney or other authorizations.

Make decisions concerning educational matters and training.

Case Name: _____

Case Number: _____

GUARDIAN OVER THE PERSON - ORDER

APPOINTMENT

The court appoints _____ as guardian over the person of the ward. The guardian's mailing address is _____ and his/her telephone number is _____. The guardian is granted the right to exercise those rights as specified in this document, subject to any limitations imposed upon the guardian under RSA 464-A, and such other limitations including but not limited to those listed in this document. The guardian of the person shall act with respect to the ward in a manner which safeguards, to the greatest extent possible, the ward's civil rights, and shall restrict the ward's personal freedom only to the extent necessary.

GUARDIANSHIP OF THE PERSON

The guardian of the person shall have all the rights and powers specified herein, subject to those orders and limitations also specified herein, namely:

The right and authority to determine where the ward travels or lives.

The right and authority to determine if refusal should be made or consent should be given to any medical or other professional care, counseling, treatment, or service provided however, that:

- a. The guardian of the person shall not have the right or authority to place the ward in the New Hampshire Hospital or a similar state institution, except pursuant to RSA 464-A:25 I,(a), without the prior approval of the court; and
- b. The guardian of the person shall not have the right or authority to give consent to or contract for psychosurgery, electroshock therapies, sterilization or any other experimental or extraordinary treatment or procedure of any nature without the prior approval of the court.

The right and authority to gain access to all confidential records and papers of the ward for the limited purpose of assessing and addressing the ward's personal needs and concerns from time to time.

The duty to file an annual report of the present status, circumstances, and condition of the ward within ninety (90) days of each anniversary date of appointment in accordance with the provisions of RSA 464-A:35.

To the extent not otherwise encompassed within the foregoing, the guardian of the person shall have all of the rights, powers and authorities set forth in RSA 464-A:25.

Bond requirement is waived.

Date

HB 1325 - AS INTRODUCED

2022 SESSION

22-2532

05/10

HOUSE BILL **1325**

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

SPONSORS: Rep. P. Schmidt, Straf. 19

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.

Explanation: Matter added to current law appears in ***bold italics***.
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1 1 Guardians and Conservators; Findings; Release of Confidential Records. Amend RSA 464-A:9,
2 IV to read as follows:

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

10 2 Effective Date. This act shall take effect January 1, 2023.

Amendment to HB 1325

1 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
2 read as 3:

3

4 2 Guardians and Conservators; Termination of Guardianship; Release of Records to Ward.
5 Amend RSA 464-A:40, II(c) to read as follows:

6 (c) *The guardian shall provide medical, financial, or other records to the ward*
7 *upon the ward's request so that the ward may prepare and pursue a guardianship*
8 *termination motion or request. The guardian may file a petition with the court for an*
9 *order permitting the guardian to withhold such records based on a finding that the*
10 *records would not be relevant to the termination of the guardianship or that their release*
11 *to the ward would be harmful to the interests of the ward. The guardian shall bear the*
12 *burden of establishing to the court that the records should not be released to the ward.*

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