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**HOUSE BILL NO. 1010**

Offered January 11, 2012

Prefiled January 11, 2012

*A BILL to amend and reenact §§ 37.2-805.1, 37.2-1001, 37.2-1002, 37.2-1005, 37.2-1007, 37.2-1009, and 37.2-1012 of the Code of Virginia, relating to appointment of guardian; voluntary commitment.*

Patrons—Ramadan and Albo

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:****1. That §§ 37.2-805.1, 37.2-1001, 37.2-1002, 37.2-1005, 37.2-1007, 37.2-1009, and 37.2-1012 of the Code of Virginia are amended and reenacted as follows:**

§ 37.2-805.1. Admission of incapacitated persons pursuant to advance directives or by guardians.

A. An agent for a person who has been determined to be incapable of making an informed decision may consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the person has executed an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, he has included in his advance directive specific authorization for his agent to make health care decisions even in the event of his protest as provided in § 54.1-2986.2. In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

B. A guardian who has been appointed for an incapacitated person pursuant to Chapter 10 (§ 37.2-1000 et seq.) may consent to admission of that person to a facility for no more than 30 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § 37.2-1009. *The requirements of clause (i) shall be considered to be satisfied if the guardianship order contains a finding that the person meets the criteria for commitment pursuant to subsection C of § 37.2-817 and the guardian may consent to the admission of the person provided the requirements of clauses (ii) and (iii) are met.* In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

C. A person admitted to a facility (i) pursuant to ~~this section~~ subsection A shall be discharged no later than 10 calendar days after admission, and (ii) pursuant to subsection B shall be discharged no later than 30 calendar days after admission, unless, within that time, the person's continued admission is authorized under other provisions of law.

§ 37.2-1001. Filing of petition; jurisdiction; instructions to be provided.

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § 63.2-100, or any other similar institution or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. Article 2 (§ 37.2-1037 et seq.) of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or conservator for an adult.

C. Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where the petition is brought by any other person, the petition may be filed no earlier than the respondent's eighteenth birthday.

D. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be

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provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide that information to each guardian and conservator upon notice of appointment.

E. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

*F. A petition for the appointment of a guardian may include a request that a commitment hearing for the involuntary admission of the respondent pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 be conducted by the circuit court concurrently with the hearing on the petition.*

§ 37.2-1002. Who may file petition; contents.

A. Any person may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address and the sealed filing of the social security number;

2. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;

3. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;

4. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal or any guardian, committee, or conservator currently acting, whether in this state or elsewhere, with a copy of any such documents, if available, attached by the petitioner;

5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;

6. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangement and treatment plan;

*7. When the petition requests appointment of a guardian, where appropriate, a request that a commitment hearing for the involuntary admission of the respondent pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 be conducted concurrently with the hearing on the petition;*

8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;

89. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent and that person's relationship to the respondent;

910. The native language of the respondent and any necessary alternative mode of communication;

1011. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts;

1112. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; and

1213. A request for appointment of a guardian ad litem.

§ 37.2-1005. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian ad litem or may order a report and delay the hearing until the report is prepared, filed, and provided to the guardian ad litem.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type, and extent of the respondent's incapacity, including the respondent's specific functional impairments;

2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement;

3. The date or dates of the examinations, evaluations, and assessments upon which the report is

based; and

4. The signature of the person conducting the evaluation and the nature of the professional license held by that person.

C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

D. A report prepared pursuant to this section shall be admissible as evidence of the facts stated therein and the results of the examination or evaluation referred to therein, unless counsel for the respondent or the guardian ad litem objects.

*E. If a commitment hearing for the involuntary admission of the respondent pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 is conducted concurrently with the hearing on the petition, a report prepared pursuant to this section shall be considered to satisfy the requirements of § 37.2-815.*

§ 37.2-1007. Hearing on petition to appoint.

The respondent is entitled to a jury trial, upon request, and may compel the attendance of witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

The court or, if one is requested, the jury shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

In determining the need for a guardian or a conservator and the powers and duties of any needed guardian or conservator, consideration shall be given to the following factors: the limitations of the respondent; the development of the respondent's maximum self-reliance and independence; the availability of less restrictive alternatives, including advance directives and durable powers of attorney; the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; the actions needed to be taken by the guardian or conservator; and the suitability of the proposed guardian or conservator.

If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person, who may be the spouse of the respondent, to be the guardian or the conservator or both, giving due deference to the wishes of the respondent.

The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.

*Provided that the court has received the evaluation report pursuant to § 37.2-1005 prior to the hearing, the court may conduct a commitment hearing for the involuntary admission of the respondent pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 concurrently with the hearing on the petition; except that to the extent the community services board is required to participate at the hearing or provide a preadmission screening report pursuant to Article 5, such participation or report shall not be required as part of the concurrent commitment hearing.*

§ 37.2-1009. Court order of appointment; limited guardianships and conservatorships.

The court's order appointing a guardian or conservator shall: (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 37.2-1007; and (vi) set the bond of the guardian and the bond and surety, if any, of the conservator.

The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs.

Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed

psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition. *If a guardian is appointed, the court may order that the incapacitated person be involuntarily admitted pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 if the court finds that the incapacitated person meets the requirements for commitment pursuant to that article. In addition, if the court finds by clear and convincing evidence that the incapacitated person meets the requirements for commitment pursuant to subsection C § 37.2-817, the court's order authorizing the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1 shall be considered to satisfy the requirements of clause (i) of subsection B of § 37.2-805.1.*

A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive.

The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes specified in the order.

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to § 26-72 that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

§ 37.2-1012. Petition for restoration, modification or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or upon motion of the court, the court may declare the incapacitated person restored to capacity; modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; terminate the guardianship or conservatorship; order removal of the guardian or conservator as provided in § 26-3; *authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1 or to consent to the admission of the person for an additional period of no more than 30 days if the guardianship order already contains such authorization;* or order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 43 of § 17.1-275.

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship *or to authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1 or to consent to the admission of the person for an additional period of no more than 30 days if the guardianship order already contains such authorization,* the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § 37.2-1004. The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § 37.2-1004, and any other person or entity as the court may require, the court shall hold a hearing.

C. Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;

2. The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need therefor;

3. The incapacitated person's understanding or capacity to manage the estate and financial affairs or to provide for his health, care, or safety has so changed as to warrant such action; or

4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.

D. If, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has, in the case of a guardianship, substantially regained his ability to care for his person or, in the case of a conservatorship, to manage and handle his estate, it shall declare the person restored to capacity and discharge the guardian or conservator.

In the case of a petition for modification of a guardianship or conservatorship, if the court finds by a preponderance of the evidence that it is in the best interests of the incapacitated person to limit or reduce the powers of the guardian or conservator, it shall so order; if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to increase or expand the powers of the guardian or conservator, it shall so order.

The court may order a new bond or other appropriate relief upon finding by a preponderance of the

244 evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or  
245 of the estate.

246 E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of  
247 the guardian or conservator or upon the termination of the guardianship or conservatorship.

248 A guardianship or conservatorship shall terminate upon the death of the incapacitated person or, if  
249 ordered by the court, following a hearing on the petition of any interested person.

250 F. The court may allow reasonable compensation from the estate of the incapacitated person to any  
251 guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed  
252 shall be taxed as costs of the proceeding.