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**HOUSE BILL NO. 1947**

Offered January 11, 2017

Prefiled January 10, 2017

*A BILL to amend and reenact §§ 64.2-2009, 64.2-2012, and 64.2-2019 of the Code of Virginia, relating to temporary delegation of powers by guardian.*

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Patron—Peace

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Referred to Committee for Courts of Justice

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 64.2-2009, 64.2-2012, and 64.2-2019 of the Code of Virginia are amended and reenacted as follows:**

**§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.**

A. 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 § 64.2-2007; (vi) set the bond of the guardian and the bond and surety, if any, of the conservator; and (vii) where a petition is brought prior to the incapacitated person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, whether the order shall take effect immediately upon entry or on the incapacitated person's eighteenth birthday.

B. 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. 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 that are specified in the order.

C. 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.

D. 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.

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 the Uniform Power of Attorney Act (§ 64.2-1600 et seq.) 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.

*E. The court's order may authorize the guardian appointed pursuant to this section to delegate to another person 18 years of age or older, for a single period not exceeding 90 days during any 12-month period, any of the guardian's powers regarding the incapacitated individual, as specified in the court's order of appointment pursuant to this section. All duties required of the guardian appointed pursuant to this section, as enumerated in § 64.2-2019, shall apply to any such person. The court's order may further specify individuals to whom the guardian is prohibited from delegating such powers.*

*Any delegation made by the guardian pursuant to this subsection shall be made in writing, signed by the guardian, and attested to by at least two witnesses 18 years of age or older, neither of whom is the person to whom the delegation of powers is being made. The person to whom the delegation of powers is being made shall provide written acceptance.*

**§ 64.2-2012. Petition for restoration, modification, or termination; effects.**

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59 A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or  
60 upon motion of the court, the court may (i) declare the incapacitated person restored to capacity; (ii)  
61 modify the type of appointment or the areas of protection, management, or assistance previously granted  
62 or require a new bond; (iii) terminate the guardianship or conservatorship; (iv) order removal of the  
63 guardian or conservator as provided in § 64.2-1410; or (v) order other appropriate relief. *Upon petition*  
64 *by a guardian appointed pursuant to § 64.2-2009, the court may authorize such guardian to delegate to*  
65 *another person 18 years or older, for a single period not exceeding 90 days during any 12-month*  
66 *period, any of the guardian's powers regarding the incapacitated individual. The requirements of*  
67 *subsection E of § 64.2-2009 shall apply to such authorization.* The fee for filing the petition shall be as  
68 provided in subdivision A 43 of § 17.1-275.

69 B. In the case of a petition for modification to expand the scope of a guardianship or  
70 conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing  
71 and a copy of the petition shall be personally served on the incapacitated person and mailed to other  
72 persons entitled to notice pursuant to § 64.2-2004. The court shall appoint a guardian ad litem for the  
73 incapacitated person and may appoint one or more licensed physicians or psychologists or licensed  
74 professionals skilled in the assessment and treatment of the physical or mental conditions of the  
75 incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other  
76 such petition or upon the motion of the court, and after reasonable notice to the incapacitated person,  
77 any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an  
78 original petition as provided in § 64.2-2004, and any other person or entity as the court may require, the  
79 court shall hold a hearing.

80 C. An order appointing a guardian or conservator may be revoked, modified, or terminated upon a  
81 finding that it is in the best interests of the incapacitated person and that:

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

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

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

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

90 D. The court shall declare the person restored to capacity and discharge the guardian or conservator  
91 if, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence  
92 that the incapacitated person has substantially regained his ability to (i) care for his person in the case of  
93 a guardianship or (ii) manage and handle his estate in the case of a conservatorship.

94 In the case of a petition for modification of a guardianship or conservatorship, the court shall order  
95 (a) limiting or reducing the powers of the guardian or conservator if the court finds by a preponderance  
96 of the evidence that it is in the best interests of the incapacitated person to do so, or (b) increasing or  
97 expanding the powers of the guardian or conservator if the court finds by clear and convincing evidence  
98 that it is in the best interests of the incapacitated person to do so.

99 The court may order a new bond or other appropriate relief upon finding by a preponderance of the  
100 evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or  
101 of the estate.

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

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

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

109 **§ 64.2-2019. Duties and powers of guardian.**

110 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was  
111 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the  
112 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the  
113 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of  
114 the incapacitated person.

115 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance  
116 directive or durable power of attorney previously executed by the incapacitated person. A guardian may  
117 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as  
118 provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of  
119 the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of  
120 § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an

advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence. A guardian shall not unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship.

F. A guardian shall have authority to make arrangements for the funeral and disposition of remains, including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains, or some combination thereof, if the guardian is not aware of any person that has been otherwise designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to make arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.

*G. Pursuant to subsection E of § 64.2-2009 or subsection A of § 64.2-2012, the court may authorize the guardian appointed pursuant to § 64.2-2009 to delegate to another person 18 years of age or older, for a single period not exceeding 90 days during any 12-month period, any of the guardian's powers regarding the incapacitated individual, as specified in the court's order of appointment pursuant to § 64.2-2009. All duties required of the guardian appointed pursuant to § 64.2-2009 shall apply to any such person. The court's order allowing such authorization may further specify individuals to whom the guardian is prohibited from delegating such powers. The requirements of subsection E of § 64.2-2009 shall apply to such authorization.*