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HOUSE BILL NO. 2430

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact § 64.2-2019 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-2012.1, relating to guardianship; communication between incapacitated persons and others; notification of relatives.

Patrons—Levine, Campbell, J.L., Reid, Adams, D.M., Bourne, Campbell, R.R., Gooditis, Kory, Krizek and Rodman

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-2019 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-2012.1 as follows:

§ 64.2-2012.1. Petitions regarding communication between incapacitated persons and others.

A. Upon petition by a guardian, and for good cause shown, the court may prohibit or restrict an incapacitated person's right to communicate with, visit, or interact with other persons with whom the incapacitated person has expressed a desire to communicate with, visit, or interact with or with whom the incapacitated person has an established relationship. Any persons subject to such potential prohibition or restriction shall be served notice of the petition to the extent possible. The petition shall specify if the incapacitated person's health is in significant decline or if the incapacitated person's death may be imminent. Where such a specification is made, the petition shall take precedence on the court's docket.

B. If the court finds that such a prohibition or restriction is warranted, the court shall limit itself to the least restrictive means possible. In making its decision, the court shall consider (i) reasonable time, manner, or place restrictions on communication between the incapacitated person and the person with whom the incapacitated person has expressed a desire to communicate with, visit, or interact with or with whom the incapacitated person has an established relationship; (ii) supervised communication, visitation, or interaction between the incapacitated person and the person with whom the incapacitated person has expressed a desire to communicate with, visit, or interact with or with whom the incapacitated person has an established relationship; (iii) a denial of communication, visitation, or interaction between the incapacitated person and the person with whom the incapacitated person has expressed a desire to communicate with, visit, or interact with or with whom the incapacitated person has an established relationship; or (iv) other appropriate relief.

C. Upon notification by the incapacitated person or any other person that the guardian is in violation of an order issued pursuant to this section or has prohibited or restricted visitation in violation of subsection E or E1 of § 64.2-2019, the court may issue summons or order to show cause why the guardian is in violation of such an order or the law. A hearing on such summons or order to show cause shall take precedence on the court's docket.

D. If the court finds that a guardian brought a petition under this section in bad faith or not for the benefit of the incapacitated person or has prohibited or restricted visitation in violation of subsection E or E1 of § 64.2-2019, the court may require the guardian to pay or reimburse all or some of the incapacitated person's reasonable costs and fees. Such a finding may also be grounds for termination of the guardianship appointment.

§ 64.2-2019. Duties and powers of guardian.

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

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

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

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

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

72 *E1. Notwithstanding subsection E, a guardian acting under the Virginia Public Guardian and*
73 *Conservator Program (§ 51.5-149 et seq.) shall not require a court order to prohibit or restrict an*
74 *incapacitated person's ability to communicate with, visit, or interact with other persons with whom the*
75 *incapacitated person has expressed a desire to communicate with, visit, or interact with or with whom*
76 *the incapacitated person has an established relationship. However, such guardian shall not*
77 *unreasonably prohibit or restrict such communication, visitation, or interaction.*

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

91 G. A guardian shall promptly notify all individuals required to be included in the initial petition for
92 appointment of guardian, pursuant to subdivision B 3 of § 64.2-2002, and who require notice of such
93 initial petition pursuant to subsection C of § 64.2-2004 in the event that:

94 1. The incapacitated person's residence has changed;

95 2. The incapacitated person is staying at a location other than his residence for more than seven
96 consecutive days;

97 3. The incapacitated person is admitted to or discharged from a facility that is assuming or has
98 assumed responsibility for the incapacitated person's care or custody;

99 4. The incapacitated person is admitted to a medical facility for emergency care in response to a
100 life-threatening medical emergency or condition or for acute care; or

101 5. The incapacitated person dies.

102 A guardian shall further promptly notify any other person designated by the incapacitated person to
103 receive notice of the above events.

104 The guardian shall provide the appropriate contact information of the incapacitated person to such
105 individuals receiving notice pursuant to this section.

106 The guardian shall not be required to provide such notice to any individual entitled to such notice
107 pursuant to this subsection if any such individual informs the guardian in writing that such individual
108 does not wish to receive such notice.

109 The guardian shall not be required to provide notice to any individual otherwise entitled to notice
110 pursuant to this section if there exists between such individual and the incapacitated person a protective
111 order or another court order prohibiting contact between such individual and the incapacitated person.