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HOUSE BILL NO. 862

Offered January 8, 2020

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A BILL to amend and reenact §§ 64.2-2000, 64.2-2002 through 64.2-2007, and 64.2-2019 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-2019.1, relating to guardianship; communication between close relatives and friends of incapacitated persons; restricted communication procedures; notification of close relatives and friends.

Patrons—Levine and Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2000, 64.2-2002 through 64.2-2007, and 64.2-2019 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-2019.1 as follows:

§ 64.2-2000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Close relative" means the spouse, adult children, parents, and adult siblings of an incapacitated person or respondent.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department of Behavioral Health and Developmental Services, including the buildings and land associated with it.

"Friend" means (i) an intimate partner of the incapacitated person or respondent, (ii) any other person with whom the incapacitated person or respondent has an established relationship, and (iii) any other person with whom the incapacitated person or respondent has expressed a desire to communicate, visit, or interact.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone

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59 shall not be considered sufficient evidence that the individual is an incapacitated person within the
60 meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that
61 the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of
62 Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides
63 otherwise.

64 "Individual receiving services" or "individual" means a current direct recipient of public or private
65 mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and
66 includes the terms "consumer," "patient," "resident," "recipient," or "client."

67 "*Intimate partner*" means any person known to be in an intimate relationship with the incapacitated
68 person or respondent at the time of or within 90 days of the filing of the petition pursuant to §
69 64.2-2002 where such relationship existed for at least one year prior to the filing of the petition.

70 "Limited conservator" means a person appointed by the court who has only those responsibilities for
71 managing the estate and financial affairs of an incapacitated person as specified in the order of
72 appointment.

73 "Limited guardian" means a person appointed by the court who has only those responsibilities for the
74 personal affairs of an incapacitated person as specified in the order of appointment.

75 "Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that
76 significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life
77 necessities and requires care and treatment for the health, safety, or recovery of the individual or for the
78 safety of others.

79 "Property" includes both real and personal property.

80 "Respondent" means an allegedly incapacitated person for whom a petition for guardianship or
81 conservatorship has been filed.

82 "*Restricted person*" means a close relative or friend of an incapacitated person or respondent
83 restricted from interaction, communication, or visits with such incapacitated person or respondent
84 pursuant to a court order or guardian directive.

85 **§ 64.2-2002. Who may file petition; contents.**

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

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

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

92 2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of
93 Chapter 21;

94 3. The names and post office addresses of the respondent's ~~spouse, adult children, parents, and adult~~
95 ~~siblings or, if close relatives and intimate partners, as defined in § 64.2-2000.~~ If no such close relatives
96 are known to the petitioner, at least three other known relatives of the respondent, including
97 stepchildren, *shall be included*. If a total of three such persons cannot be identified and located, the
98 petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final
99 order;

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

102 5. The name, place of residence or location, and post office address of any agent designated under a
103 durable power of attorney or an advance directive of which the respondent is the principal, and any
104 guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the
105 petitioner shall attach a copy of any such durable power of attorney, advance directive, or order
106 appointing the guardian, committee, or conservator, if available;

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

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

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

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

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

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

12. 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

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

§ 64.2-2003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, *if the guardian ad litem believes that counsel for the respondent is necessary unless the guardian ad litem concludes that counsel for the respondent is unnecessary and provides specific reasons for that conclusion*; (iv) *determining whether any close relatives or intimate partners were not included in the original petition filed pursuant to the requirements of subdivision B 3 of 64.2-2002 and including such persons and their contact information in the report filed pursuant to subsection C*; (v) *determining the desire and suitability of close relatives and friends who may wish to serve as guardian or conservator for the respondent*; (vi) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C *within a reasonable time prior to the hearing described in § 64.2-2007 so as to give proper notice to any person who the petitioner or guardian ad litem is aware has expressed a willingness to serve or is otherwise suitable to serve as a guardian or conservator for the respondent*; (vii) *determining whether any conflicts of interest exist among petitioner, respondent, guardian, guardian ad litem, their counsel, and any person or entity paying the attorney fees of any such person*; and ~~(viii)~~ (viii) personally appearing at all court proceedings and conferences.

C. In the report required by clause ~~(iv)~~ (vi) of subsection B, the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of ~~the person selected~~ *any person offering himself* as guardian or conservator after consideration of the person's geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, ~~any potential conflicts of interests~~, wishes of the respondent, and recommendations of relatives; (v) *any potential conflicts known by the guardian ad litem to be existing among petitioner, respondent, guardian, guardian ad litem, their counsel, and any person or entity paying the attorney fees of any such person*; (vi) a recommendation as to the amount of surety on the conservator's bond, if any; and ~~(vi)~~ (vii) consideration of proper residential placement of the respondent.

D. A health care provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section.

§ 64.2-2004. Notice of hearing; jurisdictional.

A. Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.

B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice of the hearing, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to § 64.2-2003. A certification, in the guardian ad litem's report required by subsection B of § 64.2-2003, that the guardian ad litem personally served the respondent with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for purposes of this section.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first-class mail by the petitioner at least ~~seven~~ 10 days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition *or in the guardian ad litem's report required by § 64.2-2003*. The court, for good cause shown, may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail by first-class mail a copy of the petition and any order entered to those individuals and entities.

D. The notice to the respondent shall include a brief statement in at least 14-point type of the purpose of the proceedings and shall inform the respondent of the right to be represented by counsel pursuant to § 64.2-2006 and to a hearing pursuant to § 64.2-2007. Additionally, the notice shall include the following statement in conspicuous, bold print.

WARNING

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE

182 APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE
183 APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR
184 PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS,
185 WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT
186 RIGHTS.

187 *ANY PERSON, INCLUDING ANY CLOSE RELATIVE OR FRIEND OF YOURS, MAY FILE A*
188 *PETITION TO INTERVENE IN THE ACTION TO BECOME A PARTY AND TO REQUEST TO BE*
189 *APPOINTED YOUR GUARDIAN OR YOUR CONSERVATOR.*

190 E. The petitioner shall file with the clerk of the circuit court a statement of compliance with
191 subsections B, C, and D.

192 **§ 64.2-2005. Evaluation report.**

193 A. A report evaluating the condition of the respondent shall be filed, under seal, with the court and
194 provided to the guardian ad litem, the respondent, and all *parties*, adult ~~individuals~~ *close relatives and*
195 *intimate partners*, and all entities to whom notice is required under subsection C of § 64.2-2004 within a
196 reasonable time prior to the hearing on the petition. The report shall be prepared by one or more
197 licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of
198 the physical or mental conditions of the respondent as alleged in the petition. If a report is not available,
199 the court may proceed to hold the hearing without the report for good cause shown, absent any
200 objection by the guardian ad litem, or may order a report and delay the hearing until the report is
201 prepared, filed, and provided.

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

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

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

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

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

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

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

220 **§ 64.2-2006. Counsel for respondent.**

221 The respondent has the right to be represented by counsel of the respondent's choice. If the
222 respondent is not represented by counsel, the court may appoint legal counsel upon the filing of the
223 petition or at any time prior to the entry of the order upon request of the respondent ~~or~~, the guardian ad
224 litem, *or a friend or close relative*, if the court determines that counsel is needed to protect the
225 respondent's interest. Counsel appointed by the court shall be paid a fee that is fixed by the court to be
226 taxed as part of the costs of the proceeding.

227 A health care provider shall disclose or make available to the attorney, upon request, any
228 information, records, and reports concerning the respondent that the attorney determines necessary to
229 perform his duties under this section, including a copy of the evaluation report required under §
230 64.2-2005.

231 **§ 64.2-2007. Hearing on petition to appoint.**

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

234 B. The court or the jury, if a jury is requested, shall hear the petition for the appointment of a
235 guardian or conservator. The hearing may be held at such convenient place as the court directs,
236 including the place where the respondent is located. The hearing shall be conducted within 120 days
237 from the filing of the petition unless the court postpones it for cause. *The hearing shall be expedited in*
238 *the expected imminent death of the respondent or other emergency.* The proposed guardian or
239 conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide
240 the court with a recommendation as to living arrangements and a treatment plan for the respondent. The
241 respondent is entitled to be present at the hearing and all other stages of the proceedings. The
242 respondent shall be present if he so requests or if his presence is requested by the guardian ad litem.
243 Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

C. In determining the need for a guardian or a conservator and the powers and duties of any guardian or conservator, if needed, consideration shall be given to the following factors: (i) the limitations of the respondent; (ii) the development of the respondent's maximum self-reliance and independence; (iii) the availability of less restrictive alternatives, including advance directives and durable powers of attorney; (iv) the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; (v) the actions needed to be taken by the guardian or conservator; (vi) the suitability of the proposed guardian or conservator *with due regard to any potential conflicts of interest*; and (vii) the best interests of the respondent.

D. 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.

§ 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.

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. *Prior to seeking court authorization to make such changes, the guardian shall notify any close relative or intimate partner of the incapacitated person, except a person who has requested to not be notified or who is subject to a protective order prohibiting contact with the incapacitated person.*

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 encourage and support visitation in accordance with the incapacitated person's values and preferences.* 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~~ *close relatives and friends of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.*

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 remains, 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.

§ 64.2-2019.1. Close relatives and friends of an incapacitated person.

A. A person or entity in control of the residence where the incapacitated person resides may impose

reasonable, usual, and customary time, place, and manner restrictions on close relatives and friends of the incapacitated person so long as such restrictions are applied to all visitors at the place where the incapacitated person resides and do not violate federal law or other legal restrictions on visitation times. Such restrictions shall be posted publicly or provided in writing to any member of the public upon request. A restricted person may challenge such restrictions as not reasonable, usual, or customary pursuant to subsection D.

B. A guardian may restrict an incapacitated person's ability to communicate with, visit, or interact with close relatives and friends only when necessary to prevent a reasonable expectation of serious physical or psychological harm or serious financial exploitation occurring to the incapacitated person. Any such restrictions imposed upon such close relative or friend shall be the least restrictive means possible to prevent the expected serious physical or psychological harm or serious financial exploitation. Such restrictions shall be lifted when the reasonable expectation of serious physical or psychological harm or serious financial exploitation to the incapacitated person from the restricted person no longer exists. No such restrictions shall last more than seven days without written notice as provided by subsection C.

C. 1. Without written notice or court order, the guardian may place restrictions, as described in subsection A, on the communication, visits, or interactions of close relatives and friends with an incapacitated person for a period of up to seven days.

2. No restrictions may be imposed by the guardian for a period greater than seven days unless the guardian provides written notice to the restricted person stating the nature of the restriction and the reasons why the guardian believes the restrictions are necessary.

3. Unless the restricted person challenges the restrictions pursuant to subsection D, the restrictions may be continued by the guardian for an indefinite period of time.

4. The notice required by subdivision 2 shall state, on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, the right of a restricted person to challenge the restriction on visits, interactions, and communications with the incapacitated person in circuit court in an expedited proceeding. Such notice shall further state that, unless the restricted person challenges the restriction in court, the restrictions may be continued by the guardian for an indefinite period of time.

The notice shall provide an expedited method by which the restricted person may challenge the restrictions in circuit court and the proper address and telephone number of the circuit court to which the form may be returned.

The notice shall also state that the restriction may be challenged at any time, but if the restriction is challenged within 30 days of the receipt of the notice, a circuit court hearing shall be held within 21 days of the return of the notice to the court, unless the court postpones it for good cause, and shall be expedited further in the event of an emergency, such as the expected imminent death of the incapacitated person.

D. 1. Any restricted person, by means of the form described in subdivision C 4, or by separate petition, may petition the circuit court to be allowed communication, a visit, or interaction with an incapacitated person. If the restriction is challenged within 30 days of the restricted person's receipt of the notice described in subdivision C 2, a circuit court hearing shall be held within 21 days of the return of the form to the court, unless the court postpones it for good cause, and shall be expedited further in the event of an emergency. If the petition specifies that the incapacitated person's death is expected to be imminent, the hearing on the petition shall take precedence on the court's docket.

2. Any guardian, when necessary to prevent a reasonable expectation of serious physical or psychological harm or serious financial exploitation occurring to the incapacitated person, may file in circuit court a petition to restrict an incapacitated person's ability to communicate with, visit, or interact with close relatives or friends of the incapacitated person. Such a request may be filed with the original petition filed pursuant to § 64.2-2002 if properly served upon the close relative or friend the guardian petitions to restrict. Any such restriction imposed shall be the least restrictive means possible to prevent the expected serious physical or psychological harm or serious financial exploitation. The guardian shall lift such restriction when the reasonable expectation of serious physical or psychological harm or serious financial exploitation to the incapacitated person from such restricted person no longer exists.

3. If the court finds upon clear and convincing evidence that a restriction on a close relative or friend's communication, visit, or interaction with the incapacitated person is warranted due to serious physical or psychological harm or serious financial exploitation that would reasonably be expected to the incapacitated person from such communication, visit, or interaction, the court may restrict an incapacitated person's right to communicate with, visit, or interact with a restricted person. In making its decision, the court shall consider (i) reasonable time, manner, or place restrictions; (ii) supervised communication, visitation, or interaction; or (iii) other appropriate relief. The court shall limit restrictions to the least restrictive means possible to prevent reasonably expected serious physical or psychological harm or serious financial exploitation to the incapacitated person. Any restrictions imposed shall be proportional to the nature of the expected harm or exploitation proven to the court by

clear and convincing evidence, with a complete denial of communication, visitation, or interaction imposed only if the court finds all other lesser restrictions cannot prevent a reasonable expectation of serious physical or psychological harm or serious financial exploitation being suffered by the incapacitated person.

4. If a court does not find, upon clear and convincing evidence, that a restriction on a close relative or friend's communication, visit, or interaction with the incapacitated person is warranted due to serious physical or psychological harm or serious financial exploitation that would reasonably be expected to the incapacitated person from such communication, visit, or interaction, the court shall issue an order lifting any unreasonable restrictions the guardian imposed on the close relative or friend of the incapacitated person.

E. If the court finds that a guardian imposed restrictions or brought a petition under this section in bad faith or not for the benefit of the incapacitated person, the court may require the guardian to pay or reimburse all or some of the incapacitated person's and restricted person's reasonable costs and fees. Such a finding may also be grounds for termination of the guardianship appointment. Upon notification by the incapacitated person or any other person that the guardian is in violation of an order issued pursuant to this section, the court may issue summons or order to show cause why the guardian is in violation of such an order or the law.

F. A guardian shall promptly notify all close relatives and friends of the incapacitated person in the event that:

1. The incapacitated person's residence has changed;
2. The incapacitated person is staying at a location other than his residence for more than 10 consecutive days;
3. The incapacitated person is admitted to or discharged from a facility that is assuming or has assumed responsibility for the incapacitated person's care or custody;
4. The incapacitated person is admitted to a medical facility for emergency care in response to a life-threatening medical emergency or condition or for acute care; or
5. The incapacitated person dies.

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

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

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

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