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SENATE BILL NO. 352

Offered January 8, 2020

Prefiled January 6, 2020

A *BILL to amend and reenact §§ 64.2-2000 and 64.2-2003 of the Code of Virginia, relating to guardianship and conservatorship; supported decision-making alternative.*

Patron—Lucas

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 64.2-2000 and 64.2-2003 of the Code of Virginia are amended and reenacted 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.).

"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.

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

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

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

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59 appointment.

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

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

66 "*Principal*" means an adult with intellectual and developmental disabilities, as those terms are
67 defined in § 37.2-100, who has entered into a supported decision-making agreement.

68 "Property" includes both real and personal property.

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

71 "*Support services*" means a coordinated system of social and other services supplied by private,
72 state, institutional, or community providers designed to help maintain the independence of an adult,
73 including any of the following:

74 1. *Homemaker-type services, including house repair, home cleaning, laundry, shopping, and meal*
75 *preparation;*

76 2. *Companion-type services, including transportation and facilitation of written, oral, and electronic*
77 *communication;*

78 3. *Visiting nurse and attendant care;*

79 4. *Health care provider;*

80 5. *Physical and psychosocial assessment;*

81 6. *Financial assessment and advisement on banking, taxes, loans, investments, and management of*
82 *real property;*

83 7. *Legal assessment and advisement;*

84 8. *Education and educational assessment and advisement;*

85 9. *Hands-on treatment or care, including assistance with activities of daily living, such as bathing,*
86 *dressing, eating, range of motion, toileting, transferring, and ambulation;*

87 10. *Care planning; and*

88 11. *Other services needed to maintain the independence of an adult.*

89 "*Supported decision-making agreement*" means an agreement between a principal and a supporter
90 for the purpose of assisting the principal in making and communicating decisions to manage his affairs
91 by providing support services.

92 "*Supporter*" means a person who is named in a supported decision-making agreement who acts in
93 good faith to assist the principal to make and communicate decisions to manage his affairs. A supporter
94 shall not be (i) a person who is an employer or employee of the principal, unless the person is an
95 immediate family member of the principal; (ii) a person directly providing paid support services other
96 than those included in the supported decision-making agreement to the principal, unless the person is an
97 immediate family member of the principal; or (iii) a person against whom the principal has obtained a
98 protective order or a person who is the subject of a civil or criminal order prohibiting contact with the
99 principal.

100 § 64.2-2003. Appointment of guardian ad litem.

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

104 B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the
105 respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the
106 respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent,
107 pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary;
108 (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a
109 report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.

110 C. In the report required by clause (iv) of subsection B, the guardian ad litem shall address the
111 following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or
112 conservator is needed *based on evaluations and reviews conducted pursuant to subsection B*; (iii)
113 *whether a supported decision-making agreement is a viable option in lieu of guardianship or*
114 *conservatorship*; (iv) the extent of the duties and powers of the guardian or conservator; ~~(iv)~~ (v) the
115 propriety and suitability of the person selected as guardian or conservator after consideration of the
116 person's geographic location, familial or other relationship with the respondent, ability to carry out the
117 powers and duties of the office, commitment to promoting the respondent's welfare, any potential
118 conflicts of interests, wishes of the respondent, and recommendations of relatives; ~~(v)~~ (vi) a
119 recommendation as to the amount of surety on the conservator's bond, if any; and ~~(vi)~~ (vii) consideration
120 of proper residential placement of the respondent.

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