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SENATE BILL NO. 514

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 24, 2022)

(Patron Prior to Substitute—Senator McPike)

A *BILL to direct the Office of the Executive Secretary of the Supreme Court of Virginia to perform certain tasks related to adult guardianship and conservatorship cases; to amend and reenact §§ 51.5-150, 64.2-2003, 64.2-2004, 64.2-2009, 64.2-2019, and 64.2-2020 of the Code of Virginia; and to amend the Code of Virginia by adding sections numbered 64.2-2009.1 and 64.2-2019.1, relating to guardianship and conservatorship of incapacitated persons.*

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Office of the Executive Secretary of the Supreme Court of Virginia shall (i) maintain and update as needed training for circuit court judges on adult guardianship and conservatorship cases held pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 of the Code of Virginia; (ii) identify one or more entities that could develop and offer a continuing legal education course for guardians ad litem appointed in such adult guardianship and conservatorship cases that focuses on litigation in contested guardianship and conservatorship cases and communicate the offering of such course; (iii) include on the list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem in such cases the years of experience as a guardian ad litem and specific expertise of each such guardian ad litem; and (iv) formally communicate to all circuit court judges the availability, accuracy, and timeliness of such list.*

2. *That §§ 51.5-150, 64.2-2003, 64.2-2004, 64.2-2009, 64.2-2019, and 64.2-2020 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 64.2-2009.1 and 64.2-2019.1 as follows:*

§ 51.5-150. Powers and duties of the Department with respect to public guardian and conservator program and court-appointed guardians for incapacitated adults.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall, *with respect to the public guardian and conservator program:*

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§ 2.2-4300 et seq.);

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia public guardian and conservator programs in those cases in which a court, pursuant to §§ 64.2-2010 and 64.2-2015, determines that a person is eligible to have a public guardian or conservator appointed;

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer, and manage the state and local or regional programs authorized by this article, including, but not limited to, the adoption of:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. An ideal range of staff to client ratios for the programs, and adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff to client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts, sheriffs, where appropriate, and the Department;

c. Procedures governing disqualification of any program falling below or exceeding the ideal range of staff to client ratios, which shall include a process for evaluating any program that has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has, had, or is having upon the program and upon the incapacitated persons served by the program.

The regulations shall require that evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range; and

d. Person-centered practice procedures that shall:

(1) Focus on the preferences and needs of the individual receiving public guardianship services; and

(2) Empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia public guardian and conservator programs from any other guardian or conservator program operated by the entity with whom the Department contracts, specifically addressing the need for

60 separation in programs that may be fee-generating;

61 5. Establish recordkeeping and accounting procedures to ensure that each local or regional program
62 (i) maintains confidential, accurate, and up-to-date records of the personal and property matters over
63 which it has control for each incapacitated person for whom it is appointed guardian or conservator and
64 (ii) files with the Department an account of all public and private funds received;

65 6. Establish criteria for the conduct of and filing with the Department and as otherwise required by
66 law: values history surveys, annual decisional accounting and assessment reports, the care plan designed
67 for the incapacitated person, and such other information as the Department may by regulation require;

68 7. Establish criteria to be used by the local and regional programs in setting priorities with regard to
69 services to be provided;

70 8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of
71 all local and regional programs;

72 9. Maintain statistical data on the operation of the programs and report such data to the General
73 Assembly on or before January 1 of each even-numbered year as provided in the procedures of the
74 Division of Legislative Automated Systems for the processing of legislative documents regarding the
75 status of the Virginia Public Guardian and Conservator Program and the identified operational needs of
76 the program. Such report shall be posted on the Department's website. In addition, the Department shall
77 enter into a contract with an appropriate research entity with expertise in gerontology, disabilities, and
78 public administration to conduct an evaluation of local public guardian and conservator programs from
79 funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report
80 with recommendations to the Department and to the Public Guardian and Conservator Advisory Board
81 established pursuant to § 51.5-149.1. Trends identified in the report, including the need for public
82 guardians, conservators, and other types of surrogate decision-making services, shall be presented to the
83 General Assembly. The Department shall request such a report from an appropriate research entity every
84 four years, provided the General Assembly appropriates funds for that purpose; and

85 10. Recommend appropriate legislative or executive actions.

86 C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2
87 with an entity that may also provide privately funded surrogate decision-making services, including
88 guardian and conservator services funded with fees generated by the estates of incapacitated persons,
89 provided such private programs are administered by the contracting entity entirely separately from the
90 local or regional Virginia public guardian and conservator programs, in conformity with regulations
91 established by the Department in that respect.

92 D. In accordance with the Public Procurement Act (§ 2.2-4300 et seq.) and recommendations of the
93 Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit
94 private entity that does not provide services to incapacitated persons as guardian or conservator to
95 administer the program, and, if it does, the term "Department" when used in this article shall refer to the
96 contract administrator.

97 *E. The Department shall develop and provide training for guardians pursuant to Chapter 20*
98 *(§ 64.2-2000 et seq.) of Title 64.2, which shall include training on the responsibilities and duties of*
99 *guardians, how to complete annual guardianship reports, and how to involve and encourage*
100 *participation of incapacitated adults in decisions made by such guardians.*

101 **§ 64.2-2003. Appointment of guardian ad litem.**

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

105 B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the
106 respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the
107 respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent,
108 pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary;
109 (iv) *notifying the court as soon as practicable if the respondent requests counsel regardless of whether*
110 *the guardian ad litem recommends counsel*; (v) investigating the petition and evidence, requesting
111 additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or
112 conservatorship is available, including the use of an advance directive, supported decision-making
113 agreement, or durable power of attorney, and filing a report pursuant to subsection C; and ~~(v)~~ (vi)
114 personally appearing at all court proceedings and conferences. If the respondent is between 17 and a half
115 and 21 years of age and has an Individualized Education Plan (IEP) and transition plan, the guardian ad
116 litem shall review such IEP and transition plan and include the results of his review in the report
117 required by clause ~~(iv)~~ (v).

118 C. In the report required by clause ~~(iv)~~ (v) of subsection B, the guardian ad litem shall address the
119 following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or
120 conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the
121 extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the

person selected 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) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. *The report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship or conservatorship is not available, and (c) determination that appointment of a limited guardian or conservator is not appropriate.*

D. A health care provider and local school division 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 days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition. 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 APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

ANY ADULT INDIVIDUAL RECEIVING A COPY OF THIS NOTICE MAY FILE A PETITION TO INTERVENE IN THE ACTION TO BECOME A PARTY AND TO REQUEST TO BE APPOINTED YOUR GUARDIAN OR YOUR CONSERVATOR OR PROPOSE THAT ANOTHER GUARDIAN OR CONSERVATOR BE APPOINTED IN LIEU OF THE ONE SELECTED.

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

§ 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.

A1. In the order of appointment, the court shall set a schedule for periodic review hearings, to be held no later than one year after the initial appointment and no later than every three years thereafter, unless the court orders that such hearings are to be waived because they are unnecessary or impracticable or that such hearings shall be held on such other schedule as the court shall determine.

183 Any such determination to waive the hearing or use a schedule differing from that prescribed herein
184 shall be supported in the order and address the reason for such determination, including (i) the
185 likelihood that the respondent's condition will improve or that the respondent will regain capacity; (ii)
186 whether there were concerns or questions about the suitability of the person appointed as a guardian or
187 conservator at the time of the initial appointment; and (iii) whether the appointment of a guardian or
188 conservator or the appointment of the specifically appointed guardian or conservator was contested by
189 the respondent or another party.

190 The court shall not waive any such hearing where the petitioner for guardianship or conservatorship
191 is a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, a
192 nursing facility or nursing home, a convalescent home, an assisted living facility as defined in
193 § 63.2-100, or any other similar institution, or a health care provider other than a family member.

194 Any person may file a petition, on a form developed by the Office of the Executive Secretary of the
195 Supreme Court of Virginia, to hold a periodic review hearing prior to the scheduled date set forth in
196 the order of appointment. The court shall hold an earlier hearing upon good cause shown. At such a
197 hearing, the court shall review the schedule set forth in the order of appointment and determine whether
198 future periodic review hearings are necessary or may be waived.

199 A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian
200 ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and
201 file a report. The incapacitated person has a right to be represented by counsel and the provisions of
202 § 64.2-2006 shall apply, mutatis mutandis. The petitioner shall provide notice of the hearing to the
203 incapacitated person and to all individuals entitled to notice as identified in the court order of
204 appointment. Fees and costs shall be paid in accordance with the provisions of § 64.2-2008. The court
205 shall enter an order reflecting any findings made during the review hearing and any modification to the
206 guardianship or conservatorship.

207 B. The court may appoint a limited guardian for an incapacitated person who is capable of
208 addressing some of the essential requirements for his care for the limited purpose of medical decision
209 making, decisions about place of residency, or other specific decisions regarding his personal affairs.
210 The court may appoint a limited conservator for an incapacitated person who is capable of managing
211 some of his property and financial affairs for limited purposes that are specified in the order.

212 C. Unless the guardian has a professional relationship with the incapacitated person or is employed
213 by or affiliated with a facility where the person resides, the court's order may authorize the guardian to
214 consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and
215 convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs
216 the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed
217 psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian
218 has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive
219 setting suitable for the person's condition.

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

224 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
225 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act
226 (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need
227 for decision making outside the purview of the durable power of attorney or (ii) whose only or major
228 source of income is from the Social Security Administration or other government program and who has
229 a representative payee.

230 E. All orders appointing a guardian shall include the following statements in conspicuous bold print
231 in at least 14-point type:

232 "1. Pursuant to § 64.2-2009 of the Code of Virginia, _____ (name of guardian), is hereby
233 appointed as guardian of _____ (name of respondent) with all duties and powers granted to a
234 guardian pursuant to § 64.2-2019 of the Code of Virginia, including ~~but not limited to or limited as~~
235 follows: (enter a statement of the rights removed and retained, if any, at the time of appointment;
236 whether the appointment of a guardian is a full guardianship, public guardianship pursuant to
237 § 64.2-2010 of the Code of Virginia, limited guardianship pursuant to § 64.2-2009 of the Code of
238 Virginia, or temporary guardianship; and the duration of the appointment).

239 2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to
240 the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the
241 expressed desires and personal values of the incapacitated person to the extent known, and shall not
242 ~~unreasonably~~ restrict an incapacitated person's ability to communicate with, visit, or interact with other
243 persons with whom the incapacitated person has an established relationship *unless such restriction is*
244 *reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such*

incapacitated person or is the expressed wish of the incapacitated person. Such restriction shall only be imposed pursuant to § 64.2-2019.1 of the Code of Virginia.

3. Pursuant to § 64.2-2020 of the Code of Virginia, an annual report shall be filed by the guardian with the local department of social services for the jurisdiction where the incapacitated person resides.

4. Pursuant to § 64.2-2012 of the Code of Virginia, all guardianship orders are subject to petition for restoration of the incapacitated person to capacity; modification of the type of appointment or areas of protection, management, or assistance granted; or termination of the guardianship."

§ 64.2-2009.1. Periodic review hearings.

A hearing held pursuant to the schedule set forth in subsection A1 of § 64.2-2009 shall include the following assessments by the court: (i) whether the guardian or conservator is fulfilling his duties prescribed by either § 64.2-2019, 64.2-2019.1, 64.2-2020, or 64.2-2021 and (ii) whether continuation of the guardianship or conservatorship is necessary and, if so, whether the scope of such guardianship or conservatorship warrants modification.

The court shall appoint a guardian ad litem to represent the interests of the incapacitated person at such hearing. The guardian shall obtain and submit to the court an evaluation report within a reasonable time prior to the periodic review hearing. The provisions of § 64.2-2005 shall apply to the evaluation report submitted pursuant to the provisions of this section, mutatis mutandis.

§ 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 as needed to comply with the duties imposed upon him pursuant to the order of appointment and this section. The guardian shall visit the incapacitated person as often as necessary and at least once every 90 days. During each visit, the guardian shall observe and assess the following: (i) the safety and adequacy of the incapacitated person's living arrangements; (ii) the incapacitated person's overall mental, physical, and social condition especially as compared to previous visits; (iii) whether and how the incapacitated person's physical and mental health care needs are being met, including whether the adult has been hospitalized and why; (iv) progress made by the incapacitated person toward any expressed goals; (v) participation by the incapacitated person in social activities and educational or vocational programs; and (vi) contact and involvement with relatives and friends by the incapacitated person.

In the event of a state of emergency or public health crisis in which the facility in which an adult resides is not allowing in-person visitation, visitation requirements of this subsection can be met via virtual conference or video call between the guardian and incapacitated person, to the extent that is feasible that the facility can provide the technological means by which such conference or call can take place. A telephone call may be used in instances where such technological means are not readily available to be provided. Further, if for reasons outside of the guardian's control the guardian cannot physically visit an incapacitated person, then such visits may be conducted virtually through electronic means such as virtual conference or video call or telephone.

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 unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person or is the

expressed wish of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.

E1. A guardian and any staff employed or contracted by such guardian to perform guardianship duties on behalf of the guardian shall complete the training developed by the Department for Aging and Rehabilitative Services pursuant to subsection E of § 51.5-150 within four months of the date of entry of the initial order of appointment pursuant to § 64.2-2009, unless such training was completed within the past 12 months in conjunction with another guardianship appointment made pursuant to § 64.2-2009.

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. In carrying out the duties prescribed by this section and the orders of the court, an individual appointed as guardian may utilize a person, who is directly supervised by the guardian, or may contract the services of a trained or experienced professional who specializes in the field of life-care management, geriatrics, older adults and aging, or adults with disabilities. Any such professional shall submit a written report to the guardian regarding such visits.

A guardian shall not utilize any such person to meet the 90-day visitation requirement prescribed by subsection C more than two consecutive times or twice a year. In the event such a person is utilized to meet such requirement, payment for such service shall be made out of the compensation paid to the guardian, and not out of the assets of the incapacitated person.

§ 64.2-2019.1. Procedures to restrict communication, visitation, or interaction.

A. A guardian may restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship only when such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person or is the expressed wish of such incapacitated person. Any such restriction imposed shall be the least restrictive means possible to prevent any such harm or exploitation.

B. The guardian shall provide written notice to the restricted person, on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of the restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the restricted person may challenge such restriction in court. The guardian shall inform the incapacitated person of such restriction, unless the guardian has a good faith belief that such information would be detrimental to the health or safety of such incapacitated person, shall forward a copy of such written notice to the incapacitated person subject to the guardianship and the local department of social services of the jurisdiction where the incapacitated person resides, and shall file a copy of such notice with the court.

C. Any restricted person may petition the circuit court to be allowed communication, visitation, or interaction with an incapacitated person. A hearing held pursuant to this subsection shall be held within 45 days of return of such form to the court or filing of such motion with the court.

D. If the court finds that a restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person, the court may continue or modify such restriction in its discretion.

E. If the court does not find that a restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person, the court may issue an order terminating, continuing, or modifying any restriction the guardian imposed on the person challenging such restriction.

F. If the court finds that a guardian imposed restrictions or filed a motion under this section in bad faith, primarily for the purposes of harassment, or clearly frivolous or vexatious, the court may require the guardian to pay or reimburse the restricted person all or some of the costs and fees, including attorney fees, incurred by the restricted person in connection with such motion.

G. If the court finds that the claim of a restricted person who filed a motion pursuant to this section was brought in bad faith, primarily for the purposes of harassment, or clearly frivolous or vexatious, the court may require such restricted person to pay or reimburse the guardian all of some of the costs and fees, including attorney fees, incurred by the guardian in connection with such motion.

H. Any court order issued pursuant to the provisions of this section shall be forwarded to the local department of social services of the jurisdiction where the incapacitated person resides.

§ 64.2-2020. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 64.2-1305 with the local department of social services for the jurisdiction where the incapacitated person then resides. The annual report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. *To the extent practicable, the annual report shall be formatted in a manner to encourage standardized and detailed responses from guardians.* The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

B. The annual report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person, *including any change in diagnosis or assessment of any such condition of such incapacitated person by any medical provider since the last report;*

2. A description of the incapacitated person's living arrangements during the reported period, *including a specific assessment of the adequacy of such living arrangement;*

3. The medical, educational, vocational, social, recreational, and any other professional services and activities provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care. *The information required by this subdivision shall include (i) the specific names of the medical providers that have treated the incapacitated person and a description of the frequency or number of times the incapacitated person was seen by such providers; (ii) the date and location of and reason for any hospitalization of such incapacitated person; and (iii) a description of the educational, vocational, social, and recreational activities in which such incapacitated person participated;*

4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the incapacitated person, *including the specific activities performed on behalf of the incapacitated person to improve such person's quality of life. A statement of the frequency and nature of the guardian's visits shall not be required if the incapacitated person lives with the guardian;*

5. A statement of whether the guardian agrees with the current treatment or habilitation plan;

6. A statement of whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such incapacitated person;

7. A recommendation as to the need for continued guardianship; *and any recommended changes in the scope of the guardianship; and any other information useful in the opinion of the guardian; and*

7. 8. *The names of any persons whose access to communicate, visit, or interact with the incapacitated person has been restricted, the reasons for such restriction, and a statement of whether the incapacitated person has been informed of the restriction;*

9. A self-assessment by the guardian as to whether he believes he is able to continue to carry out the powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of appointment pursuant to § 64.2-2009;

10. A statement as to whether the guardian has completed the training required by subsection E1 of § 64.2-2019;

11. A statement that each guardian is required to visit the incapacitated person at least once each 90 days and a statement of the specific dates of each such visit. In any case where such a visit was made virtually or by a designee, the guardian shall state as such, including the name of the designee performing the visit;

12. Unless the incapacitated person resides with the guardian, a statement on the frequency and nature of the guardian's other visits with the incapacitated person;

13. A general description of the activities taken on by the guardian for the benefit of the incapacitated person during the past year;

14. Any other information deemed necessary by the Office of the Executive Secretary of the Supreme Court of Virginia or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of the incapacitated person;

15. Any other information useful in the opinion of the guardian; and

429 16. The compensation requested and the reasonable and necessary expenses incurred by the guardian.
430 The guardian shall certify by signing under oath that the information contained in the annual report
431 is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the
432 annual report, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be
433 collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall
434 be deposited into the general fund.

435 C. If the local department of social services files notice that the annual report has not been timely
436 filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons
437 or rule to show cause why the guardian has failed to file such annual report.

438 **3. That the Department for Aging and Rehabilitative Services shall develop and implement the**
439 **training specified by § 51.5-150 of the Code of Virginia, as amended by this act, by July 1, 2023.**

440 **4. That guardians appointed pursuant to § 64.2-2009 of the Code of Virginia prior to July 1, 2023,**
441 **shall complete the training required by § 64.2-2019 of the Code of Virginia, as amended by this**
442 **act, by July 1, 2024.**

443 **5. That the Office of the Executive Secretary of the Supreme Court of Virginia shall develop forms**
444 **consistent with the provisions of this act.**