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HOUSE BILL NO. 2028

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 20, 2023)

(Patron Prior to Substitute—Delegate Roem)

A BILL to amend and reenact §§ 64.2-2019 and 64.2-2020 of the Code of Virginia, relating to guardianship; duties of guardian; visitation requirements.

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2019 and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:

§ 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 and as needed to comply with the duties imposed upon him pursuant to the order of appointment and this section and any other provision of law. The guardian shall visit the incapacitated person as often as necessary and at least three times per year, with at least one visit occurring every 120 days. Except as otherwise provided in subsection C1, of the three required visits, at least two visits shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the second such visit may be conducted by the guardian via virtual conference or video call between the guardian and incapacitated person, provided that the technological means by which such conference or call can take place are readily available.

The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. If a person other than the guardian conducts any such visit, he shall provide a written report to the guardian regarding any visit conducted by such person.

A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

C1. If for reasons outside the guardian's control the guardian cannot make an in-person visit to an incapacitated person, then such visit may be conducted in person by an individual designated by the guardian pursuant to subsection C. If either the guardian or such individual designated by the guardian is unable to conduct an in-person visit, then such visit may be conducted virtually through electronic means such as a virtual conference or video call, or, if such technological means are not readily available, by telephone.

C2. In the event of a state of emergency or public health crisis in which a facility in which the incapacitated person resides is not allowing in-person visitation, visitation requirements required pursuant to subsection C may be met via a virtual conference or video call between the guardian and incapacitated person, to the extent feasible for the facility to provide the technological means by which such conference or call can take place. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

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

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

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

79 **§ 64.2-2020. Annual reports by guardians.**

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

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

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

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

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

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

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

111 6. A recommendation as to the need for continued guardianship and any recommended changes in
112 the scope of the guardianship;

113 7. The name of any persons whose access to communicate, visit, or interact with the incapacitated
114 person has been restricted and the reasons for such restriction;

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

118 9. Unless the incapacitated person resides with the guardian, a statement of the frequency and nature
119 of any (i) in-person visits from the guardian with the incapacitated person over the course of the
120 previous year and (ii) visits over the course of the previous year from a designee who is directly
121 supervised or contracted by the guardian, including the name of the designee performing such visit. If

122 any visit described in this section is made virtually, the guardian shall include such information in the
 123 annual report;
 124 10. If no visit is made within a ~~six-month~~ 120-day period, the guardian shall describe any challenges
 125 or limitations in completing such visit;
 126 11. A general description of the activities taken on by the guardian for the benefit of the
 127 incapacitated person during the past year;
 128 12. Any other information deemed necessary by the Office of the Executive Secretary of the
 129 Supreme Court of Virginia or the Department for Aging and Rehabilitative Services to understand the
 130 condition, treatment, and well-being of the incapacitated person;
 131 13. Any other information useful in the opinion of the guardian; and
 132 14. The compensation requested and the reasonable and necessary expenses incurred by the guardian.
 133 The guardian shall certify by signing under oath that the information contained in the annual report
 134 is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the
 135 annual report, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be
 136 collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall
 137 be deposited into the general fund.
 138 C. If the local department of social services files notice that the annual report has not been timely
 139 filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons
 140 or rule to show cause why the guardian has failed to file such annual report.