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SENATE BILL NO. 987

Offered January 11, 2023

Prefiled January 6, 2023

A *BILL to amend and reenact § 64.2-2009 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-2009.1, relating to guardianship and conservatorship; periodic review hearings.*

Patron—Mason

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-2009 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-2009.1 as follows:

§ 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, § 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. *Beginning July 1, 2023, the court shall set a schedule in the order of appointment 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. Any such determination to waive the hearing or use a schedule differing from that prescribed in this subsection shall be supported in the order and address the reason for such determination, including (i) the likelihood that the respondent's condition will improve or the respondent will regain capacity, (ii) whether concerns or questions were raised about the suitability of the person appointed as a guardian or conservator at the time of the initial appointment, and (iii) whether the appointment of a guardian or conservator or the appointment of the specifically appointed guardian or conservator was contested by the respondent or another party.*

The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection where the petitioner for guardianship or conservatorship is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123; an assisted living facility, as defined in § 63.2-100, or any other similar institution; or a health care provider other than a family member. If the petitioner is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this chapter shall require such petitioner to attend any periodic review hearing.

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

A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file a report. The incapacitated person has a right to be represented by counsel, and the provisions of § 64.2-2006 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the incapacitated person and to all individuals entitled to notice as identified in the court order of appointment. Fees and costs shall be paid in accordance with the provisions of §§ 64.2-2003 and 64.2-2008. The court shall enter an order reflecting any findings made during the review hearing and any modification to the guardianship or conservatorship.

B. The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision

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59 making, decisions about place of residency, or other specific decisions regarding his personal affairs.
60 The court may appoint a limited conservator for an incapacitated person who is capable of managing
61 some of his property and financial affairs for limited purposes that are specified in the order.

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

70 D. A guardian need not be appointed for a person who has appointed an agent under an advance
71 directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of
72 Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the
73 principal or there is a need for decision making outside the purview of the advance directive. A
74 guardian need not be appointed for a person where a health care decision is made pursuant to, and
75 within the scope of, the Health Care Decisions Act (§ 54.1-2981 et seq.).

76 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
77 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act
78 (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need
79 for decision making outside the purview of the durable power of attorney or (ii) whose only or major
80 source of income is from the Social Security Administration or other government program and who has
81 a representative payee.

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

84 "1. Pursuant to § 64.2-2009 of the Code of Virginia, _____ (name of guardian), is hereby
85 appointed as guardian of _____ (name of respondent) with all duties and powers granted to a
86 guardian pursuant to § 64.2-2019 of the Code of Virginia, including but not limited to: (enter a
87 statement of the rights removed and retained, if any, at the time of appointment; whether the
88 appointment of a guardian is a full guardianship, public guardianship pursuant to § 64.2-2010 of the
89 Code of Virginia, limited guardianship pursuant to § 64.2-2009 of the Code of Virginia, or temporary
90 guardianship; and the duration of the appointment).

91 2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to
92 the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the
93 expressed desires and personal values of the incapacitated person to the extent known, and shall not
94 unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other
95 persons with whom the incapacitated person has an established relationship.

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

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

101 **§ 64.2-2009.1. Periodic review hearings.**

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