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HOUSE BILL NO. 786

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 64.2-2009 and 64.2-2012 of the Code of Virginia, relating to guardianship and conservatorship; restoration of capacity or modification or termination of order; informal communication.

 Patron—Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 64.2-2009 and 64.2-2012 of the Code of Virginia are amended and reenacted 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 making, decisions about place of residency, or other specific decisions regarding his personal affairs.

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59 The court may appoint a limited conservator for an incapacitated person who is capable of managing
60 some of his property and financial affairs for limited purposes that are specified in the order.

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

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

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

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

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

90 2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to
91 the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the
92 expressed desires and personal values of the incapacitated person to the extent known, and shall not
93 restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with
94 whom the incapacitated person has an established relationship, unless such restriction is reasonable to
95 prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and
96 after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be
97 imposed pursuant to § 64.2-2019.1.

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

100 4. Pursuant to § 64.2-2012 of the Code of Virginia, all guardianship orders are subject to petition for
101 restoration of the incapacitated person to capacity; modification of the type of appointment or areas of
102 protection, management, or assistance granted; or termination of the guardianship. *If the person subject*
103 *to the guardianship is not represented by counsel, such person may initiate the process to be restored to*
104 *capacity or have such guardianship modified or terminated by informal communication to the court by*
105 *any means, including informal letter, telephone call, email, or in-person visit, in lieu of filing a petition.*
106 *The order shall include the current mailing address, phone number, email address, and physical address*
107 *of the court issuing the order appointing the guardian and indicate that the person subject to such*
108 *guardianship shall direct any such informal communication to the relevant address or number of such*
109 *court.*

110 **§ 64.2-2012. Petition for restoration, modification, or termination; informal communication;**
111 **effects.**

112 A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or
113 upon motion of the court, the court may (i) declare the incapacitated person restored to capacity; (ii)
114 modify the type of appointment or the areas of protection, management, or assistance previously granted
115 or require a new bond; (iii) terminate the guardianship or conservatorship; (iv) order removal of the
116 guardian or conservator as provided in § 64.2-1410; or (v) order other appropriate relief. The fee for
117 filing the petition shall be as provided in subdivision A 42 of § 17.1-275.

118 *Al. In lieu of the petition required by subsection A, if the person subject to the guardianship or*
119 *conservatorship is not represented by counsel, such person may initiate the process to be restored to*
120 *capacity or have such guardianship or conservatorship modified or terminated by informal*

121 communication to the court by any means, including by an informal letter, telephone call, email, or
122 in-person visit.

123 In addition to the remedies prescribed by subsection A, the court may informally review such
124 communication to determine whether there is a reasonable belief that restoration of capacity or
125 modification of the guardianship or conservatorship may be appropriate. Where the court determines
126 that appointment of a guardian ad litem is appropriate, such guardian ad litem may be appointed
127 pursuant to § 64.2-2003 to determine whether a hearing on such communication is needed.

128 No filing fee shall be assessed for the receipt of such informal communication unless the judge
129 orders a hearing be held, in which case any filing fee shall be as provided in subdivision A 42 of
130 § 17.1-275.

131 B. In the case of a petition for modification to expand the scope of a guardianship or
132 conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing
133 and a copy of the petition shall be personally served on the incapacitated person and mailed to other
134 persons entitled to notice pursuant to § 64.2-2004. The court shall appoint a guardian ad litem for the
135 incapacitated person and may appoint one or more licensed physicians or psychologists or licensed
136 professionals skilled in the assessment and treatment of the physical or mental conditions of the
137 incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other
138 such petition or upon the motion of the court, and after reasonable notice to the incapacitated person,
139 any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an
140 original petition as provided in § 64.2-2004, and any other person or entity as the court may require, the
141 court shall hold a hearing.

142 C. An order appointing a guardian or conservator may be revoked, modified, or terminated upon a
143 finding that it is in the best interests of the incapacitated person and that:

144 1. The incapacitated person is no longer in need of the assistance or protection of a guardian or
145 conservator;

146 2. The extent of protection, management, or assistance previously granted is either excessive or
147 insufficient considering the current need of the incapacitated person;

148 3. The incapacitated person's understanding or capacity to manage his estate and financial affairs or
149 to provide for his health, care, or safety has so changed as to warrant such action; or

150 4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is
151 insufficient.

152 D. The court shall declare the person restored to capacity and discharge the guardian or conservator
153 if, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence
154 that the incapacitated person has substantially regained his ability to (i) care for his person in the case of
155 a guardianship or (ii) manage and handle his estate in the case of a conservatorship.

156 In the case of a petition for modification of a guardianship or conservatorship, the court shall order
157 (a) limiting or reducing the powers of the guardian or conservator if the court finds by a preponderance
158 of the evidence that it is in the best interests of the incapacitated person to do so, or (b) increasing or
159 expanding the powers of the guardian or conservator if the court finds by clear and convincing evidence
160 that it is in the best interests of the incapacitated person to do so.

161 The court may order a new bond or other appropriate relief upon finding by a preponderance of the
162 evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or
163 of the estate.

164 E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of
165 the guardian or conservator or upon the termination of the guardianship or conservatorship.

166 A guardianship or conservatorship shall terminate upon the death of the incapacitated person or, if
167 ordered by the court, following a hearing on the petition of any interested person.

168 F. The court may allow reasonable compensation from the estate of the incapacitated person to any
169 guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed
170 shall be taxed as costs of the proceeding.