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SENATE BILL NO. 8

Offered January 11, 2012

Prefiled December 16, 2011

A *BILL to amend and reenact §§ 2.2-713 and 37.2-1020 of the Code of Virginia, relating to guardians' authority to dispose of unclaimed bodies.*

Patron—Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-713 and 37.2-1020 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-713. Minimum requirements for local programs; authority.

Every local or regional program with which the Department contracts to provide services as a public guardian or conservator shall (i) furnish bond with corporate surety in an amount deemed sufficient by the Department to afford adequate financial protection to the maximum number of incapacitated persons to be served by the program; (ii) have in place a multi-disciplinary panel to (a) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person and (b) continually review cases being handled by the program as required by the Department; (iii) accept only appointments as guardian or conservator that generate no fee or would generate a minimal fee as defined by regulation payable from a public source of funds and not from the estate of the incapacitated person; (iv) have a direct service staff to client ratio that is consistent with that specified by regulation of the Department; and (v) develop a plan, in consultation with the local circuit court and sheriffs where appropriate, to provide advance notice to the court when the program falls below or exceeds the ideal range of staff to client ratios in order to assure continuity of services. Volunteers shall not be counted for purposes of ascertaining compliance with the staff to client ratio specified by the Department.

A local or regional program that exceeds the specified staff to client ratio shall not be disqualified from serving as a guardian or conservator except as provided by regulation or if the court or the Department finds that there is an immediate threat to the person or property of any incapacitated person or that exceeding the specified ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve.

A local or regional program appointed as a guardian or conservator shall have all the powers and duties specified in Article 2 (§ 37.2-1019 et seq.) of Chapter 10 of Title 37.2, except as otherwise specifically limited by the court. In addition, a public guardian or conservator shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian or conservator for the incapacitated person. A public guardian or conservator shall have authority to make *arrangements for the funeral, cremation, or burial arrangements and disposition of remains, including cremation, interment, entombment, memorialization, inurnment, or scattering of the remains, or some combination thereof*, if the public guardian or conservator is not aware of any person that has been otherwise designated to make *such* arrangements ~~for disposition of remains~~ as set forth in § 54.1-2825 of the Code of Virginia. A public guardian or conservator shall have authority to make *arrangements for the funeral, cremation, or burial arrangements and disposition of remains* after the death of an incapacitated person if the next of kin of the incapacitated person does not wish to make the arrangements and the public guardian or conservator has made a good faith effort to locate the next of kin to determine if the next of kin wishes to make ~~the burial, cremation or funeral~~ *such* arrangements. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian or conservator. The funeral service licensee, funeral service establishment, registered crematory, public guardian or conservator 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.

A public guardian shall not have authority to approve or authorize a sterilization procedure except when specific authority has been given pursuant to a proceeding in the circuit court. A public guardian may authorize admission of an incapacitated person to a mental health facility as provided in subsection B of § 37.2-805.1 and may authorize mental health treatment, including the administration of psychotropic medication, unless the appointing court specifically provides otherwise.

A local or regional program appointed as a guardian or conservator may delegate the powers, duties and responsibilities to individual volunteers or professional staff as authorized in the contract with the Department.

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59 In addition to funds received from the Department, a local or regional program may accept private
60 funds solely for the purposes of providing public education, supplemental services for incapacitated
61 persons and support services for private guardians and conservators, consistent with the purposes of this
62 article.

63 § 37.2-1020. Duties and powers of guardian.

64 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was
65 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the
66 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person, unless the
67 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of
68 the incapacitated person.

69 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance
70 directive or durable power of attorney previously executed by the incapacitated person. A guardian may
71 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as
72 provided by the Uniform Power of Attorney Act (§ 26-72 et seq.). Notwithstanding the provisions of the
73 Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of § 37.2-1012, a
74 guardian may seek court authorization to modify the designation of an agent under an advance directive,
75 but the modification shall not in any way affect the incapacitated person's directives concerning the
76 provision or refusal of specific medical treatments or procedures.

77 C. A guardian shall maintain sufficient contact with the incapacitated person to know of his
78 capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as
79 often as necessary.

80 D. A guardian shall be required to seek prior court authorization to change the incapacitated person's
81 residence to another state, to terminate or consent to a termination of the person's parental rights, or to
82 initiate a change in the person's marital status.

83 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in
84 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A
85 guardian, in making decisions, shall consider the expressed desires and personal values of the
86 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best
87 interest and exercise reasonable care, diligence, and prudence.

88 F. A guardian shall have authority to make arrangements for the funeral and disposition of remains,
89 including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains,
90 or some combination thereof, if the guardian is not aware of any person that has been otherwise
91 designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to
92 make arrangements for the funeral and disposition of remains after the death of an incapacitated person
93 if the next of kin of the incapacitated person does not wish to make the arrangements and the guardian
94 has made a good faith effort to locate the next of kin to determine if the next of kin wishes to make
95 such arrangements. Good faith effort shall include contacting the next of kin identified in the petition for
96 appointment of a guardian. The funeral service licensee, funeral service establishment, registered
97 crematory, or guardian shall be immune from civil liability for any act, decision, or omission resulting
98 from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this
99 section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.