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SENATE BILL NO. 466

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services)

(Patrons Prior to Substitute—Senators Wagner and McEachin [SB 632])

Senate Amendments in [] — February 5, 2016

A BILL to amend the Code of Virginia by adding a section numbered 64.2-2019.1, relating to guardianship; communication between incapacitated person and others.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 64.2-2019.1 as follows:

§ 64.2-2019.1. Communication between incapacitated person and others.

A. An incapacitated person for whom a guardian has been appointed or a power of attorney executed has the right of communication, visitation, or interaction with other persons whom the incapacitated person has expressed a desire to communicate with, visit, or interact with. If the incapacitated person is unable to express such a desire because of a physical or mental condition, it may be presumed by the guardian, agent under a power of attorney, or court on the basis of the incapacitated person's prior relationship with such person.

B. ~~[Absent a court order, a guardian or agent under a power of attorney may not restrict an incapacitated person's right of communication, visitation, or interaction with other persons whom the incapacitated person has expressed a desire to communicate with, visit, or interact with. However, a guardian may petition the court for permission to restrict the incapacitated person's right to such communication, visitation, or interaction. Such petition shall be deemed a petition to expand the scope of the guardianship pursuant to § 64.2-2012.~~

C. Notwithstanding subsection B, a guardian may impose reasonable time, place, and manner restrictions on the incapacitated person's communication, visitation, and interaction with other persons. The incapacitated person may challenge the reasonableness of such time, place, and manner restrictions by petitioning the court for relief pursuant to § 64.2-2012. At a hearing upon such petition, the burden shall be on the guardian to prove the reasonableness of the challenged time, place, or manner restrictions by a preponderance of the evidence. Any person whom the incapacitated person has expressed an interest in communicating with, visiting, or interacting with, or a family member of the incapacitated person who wishes to communicate with, visit, or interact with the incapacitated person, may also challenge the reasonableness of such time, place, and manner restrictions imposed by the guardian on the incapacitated person's right to communicate with, visit, or interact with such person.

D.] Under no circumstances shall a guardian or agent under a power of attorney restrict an incapacitated person's right to speak privately with his attorney, an ombudsman, or a representative of the protection and advocacy entity established pursuant to § 51.5-39.13.

ENGROSSED

SB46ES1