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HOUSE BILL NO. 1207

Offered January 18, 2022

A BILL to amend and reenact §§ 51.5-150, 64.2-2019, and 64.2-2020 of the Code of Virginia, relating to Department for Aging and Rehabilitative Services; training; powers and duties of guardian; annual reports by guardians; information required.

Patron—Roem

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-150, 64.2-2019, and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:

§ 51.5-150. Powers and duties of the Department with respect to public guardian and conservator program.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall:

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§ 2.2-4300 et seq.);

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia public guardian and conservator programs in those cases in which a court, pursuant to §§ 64.2-2010 and 64.2-2015, determines that a person is eligible to have a public guardian or conservator appointed;

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer, and manage the state and local or regional programs authorized by this article, including, but not limited to, the adoption of:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. An ideal range of staff to client ratios for the programs, and adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff to client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts, sheriffs, where appropriate, and the Department;

c. Procedures governing disqualification of any program falling below or exceeding the ideal range of staff to client ratios, which shall include a process for evaluating any program that has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has, had, or is having upon the program and upon the incapacitated persons served by the program.

The regulations shall require that evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range; and

d. Person-centered practice procedures that shall:

(1) Focus on the preferences and needs of the individual receiving public guardianship services; and

(2) Empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia public guardian and conservator programs from any other guardian or conservator program operated by the entity with whom the Department contracts, specifically addressing the need for separation in programs that may be fee-generating;

5. Establish recordkeeping and accounting procedures to ensure that each local or regional program (i) maintains confidential, accurate, and up-to-date records of the personal and property matters over which it has control for each incapacitated person for whom it is appointed guardian or conservator and (ii) files with the Department an account of all public and private funds received;

6. Establish criteria for the conduct of and filing with the Department and as otherwise required by law: values history surveys, annual decisional accounting and assessment reports, the care plan designed for the incapacitated person, and such other information as the Department may by regulation require;

7. Establish criteria to be used by the local and regional programs in setting priorities with regard to services to be provided;

8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of

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59 all local and regional programs;

60 9. Maintain statistical data on the operation of the programs and report such data to the General  
61 Assembly on or before January 1 of each even-numbered year as provided in the procedures of the  
62 Division of Legislative Automated Systems for the processing of legislative documents regarding the  
63 status of the Virginia Public Guardian and Conservator Program and the identified operational needs of  
64 the program. Such report shall be posted on the Department's website. In addition, the Department shall  
65 enter into a contract with an appropriate research entity with expertise in gerontology, disabilities, and  
66 public administration to conduct an evaluation of local public guardian and conservator programs from  
67 funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report  
68 with recommendations to the Department and to the Public Guardian and Conservator Advisory Board  
69 established pursuant to § 51.5-149.1. Trends identified in the report, including the need for public  
70 guardians, conservators, and other types of surrogate decision-making services, shall be presented to the  
71 General Assembly. The Department shall request such a report from an appropriate research entity every  
72 four years, provided the General Assembly appropriates funds for that purpose; ~~and~~

73 10. Recommend appropriate legislative or executive actions; *and*

74 11. *Develop and provide training for guardians appointed pursuant to Chapter 20 (§ 64.2-2000 et*  
75 *seq.) of Title 64.2, which shall include training on the responsibilities and duties of guardians, how to*  
76 *complete annual guardianship reports, how to involve and encourage participation of incapacitated*  
77 *adults in decisions made by such guardians, medical advocacy, and decision making on behalf of other*  
78 *persons.*

79 C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2  
80 with an entity that may also provide privately funded surrogate decision-making services, including  
81 guardian and conservator services funded with fees generated by the estates of incapacitated persons,  
82 provided such private programs are administered by the contracting entity entirely separately from the  
83 local or regional Virginia public guardian and conservator programs, in conformity with regulations  
84 established by the Department in that respect.

85 D. In accordance with the Public Procurement Act (§ 2.2-4300 et seq.) and recommendations of the  
86 Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit  
87 private entity that does not provide services to incapacitated persons as guardian or conservator to  
88 administer the program, and, if it does, the term "Department" when used in this article shall refer to the  
89 contract administrator.

90 **§ 64.2-2019. Duties and powers of guardian.**

91 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was  
92 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the  
93 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the  
94 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of  
95 the incapacitated person.

96 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance  
97 directive or durable power of attorney previously executed by the incapacitated person. A guardian may  
98 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as  
99 provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of  
100 the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of  
101 § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an  
102 advance directive, but the modification shall not in any way affect the incapacitated person's directives  
103 concerning the provision or refusal of specific medical treatments or procedures.

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

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

110 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in  
111 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A  
112 guardian, in making decisions, shall consider the expressed desires and personal values of the  
113 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best  
114 interest and exercise reasonable care, diligence, and prudence. A guardian shall not unreasonably restrict  
115 an incapacitated person's ability to communicate with, visit, or interact with other persons with whom  
116 the incapacitated person has an established relationship.

117 *E1. A guardian and any staff employed by such guardian to perform guardianship duties on behalf*  
118 *of the guardian shall complete the training developed by the Department for Aging and Rehabilitative*  
119 *Services pursuant to subdivision B 11 of § 51.5-150 within four months of the date of entry of the initial*  
120 *order of appointment pursuant to § 64.2-2009.*

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

134 **§ 64.2-2020. Annual reports by guardians.**

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

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

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

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

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

162 4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of  
 163 the incapacitated person, *including the specific activities performed on behalf of the incapacitated person*  
 164 *to improve such person's quality of life. A statement of the frequency and nature of the guardian's visits*  
 165 *shall not be required if the incapacitated person lives with the guardian;*

166 5. A statement of whether the guardian agrees with the current treatment or habilitation plan;

167 6. *Whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or*  
 168 *exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent*  
 169 *known, and any other indications of abuse, neglect, or exploitation of such incapacitated person;*

170 7. A recommendation as to the need for continued guardianship; *and any recommended changes in*  
 171 *the scope of the guardianship; and any other information useful in the opinion of the guardian; and*

172 7. 8. *The names of any persons whose access to communicate, visit, or interact with the*  
 173 *incapacitated person has been restricted, the reasons for such restriction, and a statement of whether*  
 174 *the incapacitated person has been informed of the restriction;*

175 9. *A self-assessment by the guardian as to whether he feels able to continue to carry out the powers*  
 176 *and duties imposed upon him by § 64.2-2019 and as specified in the court's order of appointment*  
 177 *pursuant to § 64.2-2009;*

178 10. *A statement as to whether the guardian has completed the training required by subsection E1 of*  
 179 *§ 64.2-2019;*

180 11. *A statement that each guardian is required to visit the incapacitated person at least once each*  
 181 *90 days and a statement of the specific dates of each such visit. In any case where such a visit was*

182 *made virtually or by a designee, the guardian shall state as such, including the name of the designee*  
183 *performing the visit;*

184 *12. Unless the incapacitated person resides with the guardian, a statement on the frequency and*  
185 *nature of the guardian's other visits with the incapacitated person;*

186 *13. A general description of the activities taken on by the guardian for the benefit of the*  
187 *incapacitated person during the past year;*

188 *14. Any other information deemed necessary by the Office of the Executive Secretary of the Supreme*  
189 *Court of Virginia or the Department for Aging and Rehabilitative Services to understand the condition,*  
190 *treatment, and well-being of the incapacitated person;*

191 *15. Any other information useful in the opinion of the guardian; and*

192 *16. The compensation requested and the reasonable and necessary expenses incurred by the guardian.*  
193 *The guardian shall certify by signing under oath that the information contained in the annual report*  
194 *is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the*  
195 *annual report, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be*  
196 *collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall*  
197 *be deposited into the general fund.*

198 *C. If the local department of social services files notice that the annual report has not been timely*  
199 *filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons*  
200 *or rule to show cause why the guardian has failed to file such annual report.*