

22106485D

SENATE BILL NO. 514
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator McPike
 on February 10, 2022)

(Patron Prior to Substitute—Senator McPike)

A *BILL to direct the Office of the Executive Secretary of the Supreme Court of Virginia to perform certain tasks related to adult guardianship and conservatorship cases; to amend and reenact §§ 51.5-150, 64.2-2003, 64.2-2004, 64.2-2009, 64.2-2019, and 64.2-2020 of the Code of Virginia; and to amend the Code of Virginia by adding sections numbered 64.2-2009.1 and 64.2-2019.1, relating to guardianship and conservatorship of incapacitated persons.*

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Office of the Executive Secretary of the Supreme Court of Virginia shall (i) maintain and update as needed training for circuit court judges on adult guardianship and conservatorship cases held pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 of the Code of Virginia; (ii) identify one or more entities that could develop and offer a continuing legal education course for guardians ad litem appointed in such adult guardianship and conservatorship cases that focuses on litigation in contested guardianship and conservatorship cases and communicate the need for the offering of such course; (iii) include on the list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem in such cases the years of experience as a guardian ad litem and specific expertise of each such guardian ad litem; and (iv) formally communicate to all circuit court judges the availability, accuracy, and timeliness of such list.*

2. *That §§ 51.5-150, 64.2-2003, 64.2-2004, 64.2-2009, 64.2-2019, and 64.2-2020 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 64.2-2009.1 and 64.2-2019.1 as follows:*

§ 51.5-150. Powers and duties of the Department with respect to public guardian and conservator program and court-appointed guardians for incapacitated adults.

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, *with respect to the public guardian and conservator program:*

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

60 separation in programs that may be fee-generating;

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

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

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

70 8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of
71 all local and regional programs;

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

85 10. Recommend appropriate legislative or executive actions.

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

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

97 E. Provide support and guidance with respect to guardianships administered pursuant to Chapter 20
98 (§ 64.2-2000 et seq.) of Title 64.2 by:

99 1. Developing and providing training for guardians appointed pursuant to Chapter 20 (§ 64.2-2000
100 et seq.) of Title 64.2, which shall include training on the responsibilities and duties of guardians, how to
101 complete annual guardianship reports, and how to involve and encourage participation of incapacitated
102 adults in decisions made by such guardians, medical advocacy, and decision making on behalf of other
103 persons;

104 2. Developing a process for responding to guardians ad litem appointed pursuant to § 64.2-2003
105 who request any substantiated report of adult abuse, neglect, or exploitation made pursuant to Article 2
106 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2 regarding a prospective or appointed guardian as
107 permitted by law;

108 3. Developing and providing a training program for local departments of social services on how to
109 review annual guardianship reports pursuant to § 51.5-145;

110 4. Providing guidance to local departments of social services on identifying areas of concern that
111 should prompt a more in-depth review of a guardianship appointment pursuant to § 51.5-145;

112 5. Developing a proposal regarding conducting visits by the Department or another designated entity
113 to certain incapacitated persons under a guardianship to ensure that such persons are receiving quality
114 care from the guardian involved in their care. The proposal shall describe (i) criteria for determining
115 which adults under guardianship should receive visits, (ii) who should conduct the visits, (iii) the
116 purpose of the visits, (iv) what the individual conducting the visit should monitor during a visit, (v)
117 when to request and review additional documents regarding the incapacitated person, and (vi) potential
118 actions to take when problems or concerns are identified in the course of a visit. The proposal shall
119 also include an estimate of one-time and ongoing total costs of such visits and be submitted to the
120 House Committee on Appropriations and Senate Committee on Finance and Appropriations no later
121 than December 31, 2022;

6. *Improving the Department's data tracking and reporting system on guardianships; and*
 7. *Creating and administering a process for receiving complaints against appointed guardians.*

§ 64.2-2003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) *notifying the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel*; (v) investigating the petition and evidence, requesting additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available, including the use of an advance directive, supported decision-making agreement, or durable power of attorney, and filing a report pursuant to subsection C; and ~~(v)~~ (vi) personally appearing at all court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and transition plan and include the results of his review in the report required by clause ~~(iv)~~ (v).

C. In the report required by clause ~~(iv)~~ (v) of subsection B, the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the person selected as guardian or conservator after consideration of the person's geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. *The report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited guardian or conservator is not appropriate.*

D. A health care provider and local school division shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section.

§ 64.2-2004. Notice of hearing; jurisdictional.

A. Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.

B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice of the hearing, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to § 64.2-2003. A certification, in the guardian ad litem's report required by subsection B of § 64.2-2003, that the guardian ad litem personally served the respondent with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for purposes of this section.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first-class mail by the petitioner at least ~~seven~~ 10 days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition. The court, for good cause shown, may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail by first-class mail a copy of the petition and any order entered to those individuals and entities.

D. *Any adult individual or entity whose name and post office addresses appear in the petition may become a party to the proceeding by filing a pleading in accordance with Rule 1:4 of the Rules of the Supreme Court of Virginia. Such individual or entity shall mail his pleadings via first-class mail to the petitioner, any counsel of record, the guardian ad litem, and all other adult individuals and entities whose names and post office addresses appear in the petition. Such pleading may also be sent via electronic mail or facsimile to all counsel of record and the guardian ad litem, as well as those other adult individuals and entities whose email addresses or facsimile numbers are known to the person filing the pleading. If a cross-petition is filed, the petitioner shall file a response to such cross-petition.*

~~D.~~ E. The notice to the respondent shall include a brief statement in at least 14-point type of the purpose of the proceedings and shall inform the respondent of the right to be represented by counsel pursuant to § 64.2-2006 and to a hearing pursuant to § 64.2-2007. Additionally, the notice shall include

the following statement in conspicuous, bold print.

WARNING TO THE RESPONDENT

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

NOTIFICATION TO OTHERS

ANY ADULT INDIVIDUAL OR ENTITY WHOSE NAME AND POST OFFICE ADDRESSES APPEAR IN THE PETITION FOR APPOINTMENT MAY BECOME A PARTY TO THIS ACTION BY FILING A PLEADING WITH THE CIRCUIT COURT IN WHICH THIS CASE IS PENDING. THAT PLEADING MUST BE MAILED TO THE PETITIONER, ANY COUNSEL OF RECORD, THE GUARDIAN AD LITEM, AND ALL OTHER ADULT INDIVIDUALS AND ENTITIES WHOSE NAMES AND POST OFFICE ADDRESSES APPEAR IN THE PETITION. IN ADDITION, SUCH PLEADING MAY BE SENT BY EMAIL OR FAX TO ANY SUCH OTHER ADULT INDIVIDUAL OR ENTITY FOR WHOM SUCH EMAIL ADDRESS OR FAX NUMBER IS KNOWN.

E. F. The petitioner shall file with the clerk of the circuit court a statement of compliance with subsections B, C, and D. *E. Certification of personal service made by the guardian ad litem as required by subsection B may satisfy this requirement as to compliance with subsection B.*

§ 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, Section 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. *In the order of appointment, the court shall set a schedule 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 herein 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 that the respondent will regain capacity; (ii) whether there were concerns or questions 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 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 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 or participate in any periodic review hearing.

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

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

D. A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive.

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

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

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

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

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

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

§ 64.2-2009.1. Periodic review hearings.

A hearing held pursuant to the schedule set forth in subsection A1 of § 64.2-2009 shall include the following assessments by the court: (i) whether the guardian or conservator is fulfilling his duties prescribed by either § 64.2-2019, 64.2-2019.1, 64.2-2020, or 64.2-2021 and (ii) whether continuation of the guardianship or conservatorship is necessary and, if so, whether the scope of such guardianship or conservatorship warrants modification.

The court shall appoint a guardian ad litem to represent the interests of the incapacitated person at such hearing. The guardian shall obtain and submit to the court an evaluation report within a reasonable time prior to the periodic review hearing. The provisions of § 64.2-2005 shall apply to the evaluation report submitted pursuant to the provisions of this section, mutatis mutandis.

§ 64.2-2019. Duties and powers of guardian.

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the

306 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the
307 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of
308 the incapacitated person.

309 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance
310 directive or durable power of attorney previously executed by the incapacitated person. A guardian may
311 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as
312 provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of
313 the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of
314 § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an
315 advance directive, but the modification shall not in any way affect the incapacitated person's directives
316 concerning the provision or refusal of specific medical treatments or procedures.

317 C. A guardian shall maintain sufficient contact with the incapacitated person to know of his
318 capabilities, limitations, needs, and opportunities *as needed to comply with the duties imposed upon him*
319 *pursuant to the order of appointment and this section.* The guardian shall visit the incapacitated person
320 as often as necessary.

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

324 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in
325 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A
326 guardian, in making decisions, shall consider the expressed desires and personal values of the
327 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best
328 interest and exercise reasonable care, diligence, and prudence. A guardian shall not ~~unreasonably~~ restrict
329 an incapacitated person's ability to communicate with, visit, or interact with other persons with whom
330 the incapacitated person has an established relationship *unless such restriction is reasonable to prevent*
331 *physical, mental, or emotional harm to or financial exploitation of such incapacitated person or is the*
332 *expressed wish of the incapacitated person. Such restrictions shall only be imposed pursuant to*
333 *§ 64.2-2019.1.*

334 *E1. A guardian and any staff employed or contracted by such guardian to perform guardianship*
335 *duties on behalf of the guardian shall complete the training developed by the Department for Aging and*
336 *Rehabilitative Services pursuant to subsection E of § 51.5-150 within four months of the date of entry of*
337 *the initial order of appointment pursuant to § 64.2-2009. No guardian shall be required to complete*
338 *such training more frequently than once every 36 months.*

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

352 G. *In carrying out the duties prescribed by this section and any orders of the court, an individual*
353 *appointed as guardian may utilize a person who is directly supervised by the guardian or may contract*
354 *the services of a trained or experienced professional who specializes in the field of life-care*
355 *management, geriatrics, older adults and aging, or adults with disabilities. Any such professional shall*
356 *submit a written report to the guardian regarding such visits.*

357 **§ 64.2-2019.1. Procedures to restrict communication, visitation, or interaction.**

358 A. A guardian may restrict an incapacitated person's ability to communicate with, visit, or interact
359 with other persons with whom the incapacitated person has an established relationship only when such
360 restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of
361 such incapacitated person and shall take into account the expressed wishes of the incapacitated person.
362 Any such restriction imposed shall be the least restrictive means possible to prevent any such harm or
363 exploitation.

364 B. The guardian shall provide written notice to the restricted person, on a form developed by the
365 Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of
366 the restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the
367 restricted person may challenge such restriction in court. The guardian shall inform the incapacitated

person of such restriction, unless the guardian has a good faith belief that such information would be detrimental to the health or safety of such incapacitated person, shall forward a copy of such written notice to the incapacitated person subject to the guardianship and the local department of social services of the jurisdiction where the incapacitated person resides, and shall file a copy of such notice with the court.

C. Any restricted person may petition the circuit court to be allowed communication, visitation, or interaction with an incapacitated person. A hearing held pursuant to this subsection shall be held within 45 days of return of such form to the court or filing of such motion with the court.

D. If the court finds that a restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of, and takes into account the expressed wishes of the incapacitated person, the court may continue or modify such restriction in its discretion.

E. If the court does not find that a restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of, and takes into account the expressed wishes of the incapacitated person, the court may issue an order terminating, continuing, or modifying any restriction the guardian imposed on the person challenging such restriction.

F. If the court finds that a guardian imposed restrictions or filed a motion under this section in bad faith, primarily for the purposes of harassment, or clearly frivolous or vexatious, the court may require the guardian to pay or reimburse the restricted person all or some of the costs and fees, including attorney fees, incurred by the restricted person in connection with such motion.

G. If the court finds that the claim of a restricted person who filed a motion pursuant to this section was brought in bad faith, primarily for the purposes of harassment, or clearly frivolous or vexatious, the court may require such restricted person to pay or reimburse the guardian all of some of the costs and fees, including attorney fees, incurred by the guardian in connection with such motion.

H. Any court order issued pursuant to the provisions of this section shall be forwarded to the local department of social services of the jurisdiction where the incapacitated person resides.

§ 64.2-2020. Annual reports by guardians.

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

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

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

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

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

4. ~~A statement of the frequency and nature of the guardian's visits with and activities on behalf of the incapacitated person;~~

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

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

6. A recommendation as to the need for continued guardianship; and any recommended changes in

429 the scope of the guardianship, and any other information useful in the opinion of the guardian; and

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

433 8. A self-assessment by the guardian as to whether he feels he is able to continue to carry out the
434 powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of
435 appointment pursuant to § 64.2-2009;

436 9. A statement as to whether the guardian has completed the training required by subsection E1 of
437 § 64.2-2019;

438 10. Unless the incapacitated person resides with the guardian, a statement of the frequency and
439 nature of any (i) in-person visits from the guardian with the incapacitated person over the course of the
440 previous year and (ii) visits over the course of the previous year from a designee who is directly
441 supervised or contracted by the guardian, including the name of the designee performing such visit. If
442 any visit described in this section is made virtually, the guardian shall include such information in the
443 annual report;

444 11. If no visit is made within a six-month period, the guardian shall describe any challenges or
445 limitations in completing such visit;

446 12. A general description of the activities taken on by the guardian for the benefit of the
447 incapacitated person during the past year;

448 13. Any other information deemed necessary by the Office of the Executive Secretary of the Supreme
449 Court of Virginia or the Department for Aging and Rehabilitative Services to understand the condition,
450 treatment, and well-being of the incapacitated person;

451 14. Any other information useful in the opinion of the guardian; and

452 15. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

453 The guardian shall certify by signing under oath that the information contained in the annual report
454 is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the
455 annual report, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be
456 collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall
457 be deposited into the general fund.

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

461 **3. That the Department for Aging and Rehabilitative Services shall develop and implement the**
462 **training specified by § 51.5-150 of the Code of Virginia, as amended by this act, by July 1, 2023.**

463 **4. That guardians appointed pursuant to § 64.2-2009 of the Code of Virginia prior to July 1, 2023,**
464 **shall complete the training required by § 64.2-2019 of the Code of Virginia, as amended by this**
465 **act, by January 1, 2025.**

466 **5. That the Office of the Executive Secretary of the Supreme Court of Virginia shall develop forms**
467 **consistent with the provisions of this act.**