

23105525D

HOUSE BILL NO. 2028

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 27, 2023)

(Patron Prior to Substitute—Delegate Roem)

*A BILL to amend and reenact § 64.2-2019 of the Code of Virginia, relating to guardianship; duties of guardian; visitation requirements.***Be it enacted by the General Assembly of Virginia:****1. That § 64.2-2019 of the Code of Virginia is amended and reenacted as follows:****§ 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 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

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

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities *and as needed to comply with the duties imposed upon him pursuant to the order of appointment and this section and any other provision of law.* The guardian shall visit the incapacitated person as often as necessary *and at least three times per year, with at least one visit occurring every 120 days. Except as otherwise provided in subsection C1, of the three required visits, at least two visits shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the second such visit may be conducted by the guardian via virtual conference or video call between the guardian and incapacitated person, provided that the technological means by which such conference or call can take place are readily available.*

The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. If a person other than the guardian conducts any such visit, he shall provide a written report to the guardian regarding any visit conducted by such person. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

C1. If for reasons outside the guardian's control the guardian cannot make a physical visit to an incapacitated person, then such visit may be conducted by a person designated by the guardian pursuant to subsection C, virtually through electronic means such as a virtual conference or video call, or, if such technological means are not readily available, by telephone.

C2. In the event of a state of emergency or public health crisis in which a facility in which the incapacitated person resides is not allowing in-person visitation, visitation requirements required pursuant to subsection C may be met via a virtual conference or video call between the guardian and incapacitated person, to the extent feasible for the facility to provide the technological means by which such conference or call can take place. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

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

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best

60 interest and exercise reasonable care, diligence, and prudence. A guardian shall not unreasonably restrict
61 an incapacitated person's ability to communicate with, visit, or interact with other persons with whom
62 the incapacitated person has an established relationship.

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