

1 HOUSE BILL NO. 643
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee for Courts of Justice
4 on _____)
5 (Patron Prior to Substitute--Delegate Roem)

6 A BILL to amend and reenact § 64.2-2009 of the Code of Virginia and to amend the Code of Virginia by
7 adding a section numbered 64.2-2009.1, relating to guardianship and conservatorship; periodic
8 review hearings.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That § 64.2-2009 of the Code of Virginia is amended and reenacted and that the Code of Virginia**
11 **is amended by adding a section numbered 64.2-2009.1 as follows:**

12 **§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.**

13 A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of
14 the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the
15 incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify
16 whether the appointment of a guardian or conservator is limited to a specified length of time, as the court
17 in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with
18 the finding of incapacity, including but not limited to mental competency for purposes of Article II,
19 Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate
20 following consideration of the factors specified in § 64.2-2007; (vi) set the bond of the guardian and the
21 bond and surety, if any, of the conservator; and (vii) where a petition is brought prior to the incapacitated
22 person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, whether the order shall take effect
23 immediately upon entry or on the incapacitated person's eighteenth birthday.

24 A1. Beginning July 1, 2022, the court shall set a schedule in the order of appointment for periodic
25 review hearings, to be held no later than one year after the initial appointment and no later than every three
26 years thereafter, unless the court orders that such hearings are to be waived because they are unnecessary

27 or impracticable or that such hearings shall be held on such other schedule as the court shall determine.
28 Any such determination to waive the hearing or use a schedule differing from that prescribed herein shall
29 be supported in the order and address the reason for such determination, including (i) the likelihood that
30 the respondent's condition will improve or the respondent will regain capacity, (ii) whether there were
31 concerns or questions about the suitability of the person appointed as a guardian or conservator at the time
32 of the initial appointment, and (iii) whether the appointment of a guardian or conservator or the
33 appointment of the specifically appointed guardian or conservator was contested by the respondent or
34 another party.

35 The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection
36 where the petitioner for guardianship or conservatorship is a hospital, convalescent home, or nursing
37 facility licensed by the Department of Health pursuant to § 32.1-123, or an assisted living facility as
38 defined in § 63.2-100, or any other similar institution, or a health care provider other than a family
39 member. If the petitioner is a hospital, nursing facility, or convalescent home licensed by the Department
40 of Health pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this
41 chapter shall require such petitioner to attend any periodic review hearing.

42 Any person may file a petition, which may be on a form developed by the Office of the Executive
43 Secretary of the Supreme Court of Virginia, to hold a periodic review hearing prior to the scheduled date
44 set forth in the order of appointment. The court shall hold an earlier hearing upon good cause shown. At
45 such a hearing, the court shall review the schedule set forth in the order of appointment and determine
46 whether future periodic review hearings are necessary or may be waived.

47 A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian
48 ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file
49 a report. The incapacitated person has a right to be represented by counsel and the provisions of § 64.2-
50 2006 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the
51 incapacitated person and to all individuals entitled to notice as identified in the court order of appointment.
52 Fees and costs shall be paid in accordance with the provisions of § 64.2-2008. The court shall enter an

53 order reflecting any findings made during the review hearing and any modification to the guardianship or
54 conservatorship.

55 B. The court may appoint a limited guardian for an incapacitated person who is capable of
56 addressing some of the essential requirements for his care for the limited purpose of medical decision
57 making, decisions about place of residency, or other specific decisions regarding his personal affairs. The
58 court may appoint a limited conservator for an incapacitated person who is capable of managing some of
59 his property and financial affairs for limited purposes that are specified in the order.

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

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

72 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
73 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-
74 1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision
75 making outside the purview of the durable power of attorney or (ii) whose only or major source of income
76 is from the Social Security Administration or other government program and who has a representative
77 payee.

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

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

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

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

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

99 **§ 64.2-2009.1. Periodic review hearings.**

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

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