

SENATE BILL NO. 514

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(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 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.

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

29 B. The Department shall, with respect to the public guardian and conservator program:

30 1. Make and enter into all contracts necessary or incidental to the performance of its duties and in
31 furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§
32 2.2-4300 et seq.);

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

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

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

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

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

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

53 d. Person-centered practice procedures that shall:

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

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

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

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

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

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

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

75 9. Maintain statistical data on the operation of the programs and report such data to the General
76 Assembly on or before January 1 of each even-numbered year as provided in the procedures of the
77 Division of Legislative Automated Systems for the processing of legislative documents regarding the
78 status of the Virginia Public Guardian and Conservator Program and the identified operational needs of
79 the program. Such report shall be posted on the Department's website. In addition, the Department shall
80 enter into a contract with an appropriate research entity with expertise in gerontology, disabilities, and

81 public administration to conduct an evaluation of local public guardian and conservator programs from
 82 funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report with
 83 recommendations to the Department and to the Public Guardian and Conservator Advisory Board
 84 established pursuant to § 51.5-149.1. Trends identified in the report, including the need for public
 85 guardians, conservators, and other types of surrogate decision-making services, shall be presented to the
 86 General Assembly. The Department shall request such a report from an appropriate research entity every
 87 four years, provided the General Assembly appropriates funds for that purpose; and

88 10. Recommend appropriate legislative or executive actions.

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

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

100 E. The Department shall develop and provide training for guardians pursuant to Chapter 20 (§
 101 64.2-2000 et seq.) of Title 64.2, which shall include training on the responsibilities and duties of guardians,
 102 how to complete annual guardianship reports, and how to involve and encourage participation of
 103 incapacitated adults in decisions made by such guardians.

104 **§ 64.2-2003. Appointment of guardian ad litem.**

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

108 B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the
109 respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent
110 has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to §
111 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the
112 court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem
113 recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if
114 necessary, considering whether a less restrictive alternative to guardianship or conservatorship is
115 available, including the use of an advance directive, supported decision-making agreement, or durable
116 power of attorney, and filing a report pursuant to subsection C; and ~~(v)~~ (vi) personally appearing at all
117 court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has
118 an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP
119 and transition plan and include the results of his review in the report required by clause ~~(iv)~~ (v).

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

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

136 **§ 64.2-2004. Notice of hearing; jurisdictional.**

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

140 B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with
141 the notice of the hearing, a copy of the petition, and a copy of the order appointing a guardian ad litem
142 pursuant to § 64.2-2003. A certification, in the guardian ad litem's report required by subsection B of §
143 64.2-2003, that the guardian ad litem personally served the respondent with the notice, a copy of the
144 petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for
145 purposes of this section.

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

151 D. The notice to the respondent shall include a brief statement in at least 14-point type of the
152 purpose of the proceedings and shall inform the respondent of the right to be represented by counsel
153 pursuant to § 64.2-2006 and to a hearing pursuant to § 64.2-2007. Additionally, the notice shall include
154 the following statement in conspicuous, bold print.

155 **WARNING**

156 **AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE**
157 **APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE**
158 **APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE**
159 **APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR**

160 PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS,
161 WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT
162 RIGHTS.

163 ANY ADULT INDIVIDUAL RECEIVING A COPY OF THIS NOTICE MAY FILE A
164 PETITION TO INTERVENE IN THE ACTION TO BECOME A PARTY AND TO REQUEST TO BE
165 APPOINTED YOUR GUARDIAN OR YOUR CONSERVATOR OR PROPOSE THAT ANOTHER
166 GUARDIAN OR CONSERVATOR BE APPOINTED IN LIEU OF THE ONE SELECTED.

167 E. The petitioner shall file with the clerk of the circuit court a statement of compliance with
168 subsections B, C, and D.

169 **§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.**

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

181 A1. In the order of appointment, the court shall set a schedule for periodic review hearings, to be
182 held no later than one year after the initial appointment and no later than every three years thereafter,
183 unless the court orders that such hearings are to be waived because they are unnecessary or impracticable
184 or that such hearings shall be held on such other schedule as the court shall determine. Any such
185 determination to waive the hearing or use a schedule differing from that prescribed herein shall be
186 supported in the order and address the reason for such determination, including (i) the likelihood that the

187 respondent's condition will improve or that the respondent will regain capacity; (ii) whether there were
188 concerns or questions about the suitability of the person appointed as a guardian or conservator at the time
189 of the initial appointment; and (iii) whether the appointment of a guardian or conservator or the
190 appointment of the specifically appointed guardian or conservator was contested by the respondent or
191 another party.

192 The court shall not waive any such hearing where the petitioner for guardianship or
193 conservatorship is a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-
194 123, a nursing facility or nursing home, a convalescent home, an assisted living facility as defined in §
195 63.2-100, or any other similar institution, or a health care provider other than a family member.

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

201 A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian
202 ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file
203 a report. The incapacitated person has a right to be represented by counsel and the provisions of § 64.2-
204 2006 shall apply, mutatis mutandis. The petitioner shall provide notice of the hearing to the incapacitated
205 person and to all individuals entitled to notice as identified in the court order of appointment. Fees and
206 costs shall be paid in accordance with the provisions of § 64.2-2008. The court shall enter an order
207 reflecting any findings made during the review hearing and any modification to the guardianship or
208 conservatorship.

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

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

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

226 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
227 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-
228 1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision
229 making outside the purview of the durable power of attorney or (ii) whose only or major source of income
230 is from the Social Security Administration or other government program and who has a representative
231 payee.

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

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

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

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

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

254 **§ 64.2-2009.1. Periodic review hearings.**

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

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

264 **§ 64.2-2019. Duties and powers of guardian.**

265 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was
266 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the
267 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the

268 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of
269 the incapacitated person.

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

278 C. A guardian shall maintain sufficient contact with the incapacitated person ~~to know of his~~
279 ~~capabilities, limitations, needs, and opportunities~~ as needed to comply with the duties imposed upon him
280 pursuant to the order of appointment and this section. The guardian shall visit the incapacitated person as
281 often as necessary and at least once every 90 days. During each visit, the guardian shall observe and assess
282 the following: (i) the safety and adequacy of the incapacitated person's living arrangements; (ii) the
283 incapacitated person's overall mental, physical, and social condition especially as compared to previous
284 visits; (iii) whether and how the incapacitated person's physical and mental health care needs are being
285 met, including whether the adult has been hospitalized and why; (iv) progress made by the incapacitated
286 person toward any expressed goals; (v) participation by the incapacitated person in social activities and
287 educational or vocational programs; and (vi) contact and involvement with relatives and friends by the
288 incapacitated person.

289 In the event of a state of emergency or public health crisis in which the facility in which an adult
290 resides is not allowing in-person visitation, visitation requirements of this subsection can be met via virtual
291 conference or video call between the guardian and incapacitated person, to the extent that is feasible that
292 the facility can provide the technological means by which such conference or call can take place. A
293 telephone call may be used in instances where such technological means are not readily available to be
294 provided. Further, if for reasons outside of the guardian's control the guardian cannot physically visit an

295 incapacitated person, then such visits may be conducted virtually through electronic means such as virtual
296 conference or video call or telephone.

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

300 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in
301 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A
302 guardian, in making decisions, shall consider the expressed desires and personal values of the
303 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest
304 and exercise reasonable care, diligence, and prudence. A guardian shall not ~~unreasonably~~ restrict an
305 incapacitated person's ability to communicate with, visit, or interact with other persons with whom the
306 incapacitated person has an established relationship unless such restriction is reasonable to prevent
307 physical, mental, or emotional harm to or financial exploitation of such incapacitated person or is the
308 expressed wish of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-
309 2019.1.

310 E1. A guardian and any staff employed or contracted by such guardian to perform guardianship
311 duties on behalf of the guardian shall complete the training developed by the Department for Aging and
312 Rehabilitative Services pursuant to subsection E of § 51.5-150 within four months of the date of entry of
313 the initial order of appointment pursuant to § 64.2-2009, unless such training was completed within the
314 past 12 months in conjunction with another guardianship appointment made pursuant to § 64.2-2009.

315 F. A guardian shall have authority to make arrangements for the funeral and disposition of remains,
316 including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains,
317 or some combination thereof, if the guardian is not aware of any person that has been otherwise designated
318 to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to make
319 arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after
320 the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine
321 if the next of kin wishes to make such arrangements, the next of kin does not wish to make the

322 arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of
323 kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral service
324 establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil
325 liability for any act, decision, or omission resulting from acceptance of any dead body for burial,
326 cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or
327 omissions resulted from bad faith or malicious intent.

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

333 A guardian shall not utilize any such person to meet the 90-day visitation requirement prescribed
334 by subsection C more than two consecutive times or twice a year. In the event such a person is utilized to
335 meet such requirement, payment for such service shall be made out of the compensation paid to the
336 guardian, and not out of the assets of the incapacitated person.

337 **§ 64.2-2019.1. Procedures to restrict communication, visitation, or interaction.**

338 A. A guardian may restrict an incapacitated person's ability to communicate with, visit, or interact
339 with other persons with whom the incapacitated person has an established relationship only when such
340 restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such
341 incapacitated person or is the expressed wish of such incapacitated person. Any such restriction imposed
342 shall be the least restrictive means possible to prevent any such harm or exploitation.

343 B. The guardian shall provide written notice to the restricted person, on a form developed by the
344 Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of the
345 restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the
346 restricted person may challenge such restriction in court. The guardian shall inform the incapacitated
347 person of such restriction, unless the guardian has a good faith belief that such information would be
348 detrimental to the health or safety of such incapacitated person, shall forward a copy of such written notice

349 to the incapacitated person subject to the guardianship and the local department of social services of the
350 jurisdiction where the incapacitated person resides, and shall file a copy of such notice with the court.

351 C. Any restricted person may petition the circuit court to be allowed communication, visitation, or
352 interaction with an incapacitated person. A hearing held pursuant to this subsection shall be held within
353 45 days of return of such form to the court or filing of such motion with the court.

354 D. If the court finds that a restriction is reasonable to prevent physical, mental, or emotional harm
355 to or financial exploitation of such incapacitated person, the court may continue or modify such restriction
356 in its discretion.

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

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

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

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

370 **§ 64.2-2020. Annual reports by guardians.**

371 A. A guardian shall file an annual report in compliance with the filing deadlines in § 64.2-1305
372 with the local department of social services for the jurisdiction where the incapacitated person then resides.
373 The annual report shall be on a form prepared by the Office of the Executive Secretary of the Supreme
374 Court and shall be accompanied by a filing fee of \$5. To the extent practicable, the annual report shall be
375 formatted in a manner to encourage standardized and detailed responses from guardians. The local

376 department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of
377 services to adults in need of protection. Within 60 days of receipt of the annual report, the local department
378 shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be
379 placed with the court papers pertaining to the guardianship case. Twice each year the local department
380 shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in
381 filing an annual report as required by this section. If the guardian is also a conservator, a settlement of
382 accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

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

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

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

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

396 4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of
397 the incapacitated person, including the specific activities performed on behalf of the incapacitated person
398 to improve such person's quality of life. A statement of the frequency and nature of the guardian's visits
399 shall not be required if the incapacitated person lives with the guardian;

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

401 6. A statement of whether the incapacitated person has been an alleged victim in a report of abuse,
402 neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the

403 extent known, and whether there are any other indications of abuse, neglect, or exploitation of such
404 incapacitated person;

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

407 7-8. The names of any persons whose access to communicate, visit, or interact with the
408 incapacitated person has been restricted, the reasons for such restriction, and a statement of whether the
409 incapacitated person has been informed of the restriction;

410 9. A self-assessment by the guardian as to whether he believes he is able to continue to carry out
411 the powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of
412 appointment pursuant to § 64.2-2009;

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

415 11. A statement that each guardian is required to visit the incapacitated person at least once each
416 90 days and a statement of the specific dates of each such visit. In any case where such a visit was made
417 virtually or by a designee, the guardian shall state as such, including the name of the designee performing
418 the visit;

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

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

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

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

427 16. The compensation requested and the reasonable and necessary expenses incurred by the
428 guardian.

