

SENATE BILL NO. 514

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

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 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.

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; and

89 11. Provide support, oversight, and guidance with respect to guardianships administered pursuant
90 to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 by:

91 a. Developing and providing training for guardians appointed pursuant to Chapter 20 (§ 64.2-2000
92 et seq.) of Title 64.2, which shall include training on the responsibilities and duties of guardians, how to
93 complete annual guardianship reports, and how to involve and encourage participation of incapacitated
94 adults in decisions made by such guardians;

95 b. Developing a process for providing information to guardians ad litem appointed pursuant to §
96 64.2-2003 on any valid report of adult abuse, neglect, or exploitation made pursuant to Article 2 (§ 63.2-
97 1603 et seq.) of Chapter 16 of Title 63.2 regarding a prospective or appointed guardian as permitted by
98 law;

99 c. Developing and providing a training program for local departments of social services on how to
100 review annual guardianship reports;

101 d. Providing guidance to local departments of social services on identifying areas of concern that
102 should prompt a more in-depth review of a guardianship appointment;

103 e. Facilitating additional monitoring of guardians through developing a proposal regarding
104 conducting visits by the Department or another designated entity to certain incapacitated persons under a
105 guardianship to ensure that such persons are receiving quality care from both the guardian and any other
106 provider involved in their care. The proposal shall describe (i) criteria for determining which adults under
107 guardianship should receive visits, (ii) who should conduct the visits, (iii) the purpose of the visits, (iv)

108 what the individual conducting the visit should monitor during a visit, (v) when to request and review
109 additional documents regarding the incapacitated person, and (vi) potential actions to take when problems
110 or concerns are identified in the course of a visit. The proposal shall also include an estimate of one-time
111 and ongoing total costs of such visits and be submitted to the House Committee on Appropriations and
112 Senate Committee on Finance and Appropriations no later than December 31, 2022;

113 f. Taking any actions necessary to assist in improving the Commonwealth's data tracking and
114 reporting system on guardianships; and

115 g. Creating and administering a process for receiving complaints against appointed guardians.

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

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

127 E. The Department shall develop and provide training for guardians pursuant to Chapter 20 (§
128 64.2-2000 et seq.) of Title 64.2, which shall include training on the responsibilities and duties of guardians,
129 how to complete annual guardianship reports, how to involve and encourage participation of incapacitated
130 adults in decisions made by such guardians, medical advocacy, and decision-making on behalf of other
131 persons.

132 **§ 64.2-2003. Appointment of guardian ad litem.**

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

136 B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the
137 respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent
138 has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to §
139 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the
140 court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem
141 recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if
142 necessary, considering whether a less restrictive alternative to guardianship or conservatorship is
143 available, including the use of an advance directive, supported decision-making agreement, or durable
144 power of attorney, and filing a report pursuant to subsection C; and ~~(v)~~ (vi) personally appearing at all
145 court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has
146 an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP
147 and transition plan and include the results of his review in the report required by clause ~~(iv)~~ (v).

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

159 guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited
160 guardian or conservator is not appropriate.

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

164 **§ 64.2-2004. Notice of hearing; jurisdictional.**

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

168 B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with
169 the notice of the hearing, a copy of the petition, and a copy of the order appointing a guardian ad litem
170 pursuant to § 64.2-2003. A certification, in the guardian ad litem's report required by subsection B of §
171 64.2-2003, that the guardian ad litem personally served the respondent with the notice, a copy of the
172 petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for
173 purposes of this section.

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

179 D. Any adult individual or entity whose name and post office addresses appear in the petition may
180 become a party to the proceeding by filing a pleading in accordance with Rule 1:4 of the Rules of the
181 Supreme Court of Virginia. Such individual or entity shall mail his pleadings via first-class mail to the
182 petitioner, any counsel of record, the guardian ad litem, and all other adult individuals and entities whose
183 names and post office addresses appear in the petition. Such pleading may also be sent via electronic mail
184 or facsimile to all counsel of record and the guardian ad litem, as well as those other adult individuals and

185 entities whose email addresses or facsimile numbers are known to the person filing the pleading. If a cross-
186 petition is filed, the petitioner shall file a response to such cross-petition.

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

191 WARNING TO THE RESPONDENT

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

199 NOTIFICATION TO OTHERS

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

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

211 **§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.**

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

223 A1. In the order of appointment, the court shall set a schedule for periodic review hearings, to be
224 held no later than one year after the initial appointment and no later than every three years thereafter,
225 unless the court orders that such hearings are to be waived because they are unnecessary or impracticable
226 or that such hearings shall be held on such other schedule as the court shall determine. Any such
227 determination to waive the hearing or use a schedule differing from that prescribed herein shall be
228 supported in the order and address the reason for such determination, including (i) the likelihood that the
229 respondent's condition will improve or that the respondent will regain capacity; (ii) whether there were
230 concerns or questions about the suitability of the person appointed as a guardian or conservator at the time
231 of the initial appointment; and (iii) whether the appointment of a guardian or conservator or the
232 appointment of the specifically appointed guardian or conservator was contested by the respondent or
233 another party.

234 The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection
235 where the petitioner for guardianship or conservatorship is a hospital, convalescent home, or nursing
236 facility licensed by the Department of Health pursuant to § 32.1-123, an assisted living facility as defined
237 in § 63.2-100, or any other similar institution, or a health care provider other than a family member. If the
238 petitioner is a hospital, convalescent home, or nursing facility licensed by the Department of Health

239 pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this chapter shall
240 require such petitioner to attend or participate in any periodic review hearing.

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

246 A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian
247 ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file
248 a report. The incapacitated person has a right to be represented by counsel and the provisions of § 64.2-
249 2006 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the
250 incapacitated person and to all individuals entitled to notice as identified in the court order of appointment.
251 Fees and costs shall be paid in accordance with the provisions of § 64.2-2008. The court shall enter an
252 order reflecting any findings made during the review hearing and any modification to the guardianship or
253 conservatorship.

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

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

265 formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting
266 suitable for the person's condition.

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

271 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
272 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-
273 1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision
274 making outside the purview of the durable power of attorney or (ii) whose only or major source of income
275 is from the Social Security Administration or other government program and who has a representative
276 payee.

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

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

286 2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian,
287 to the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider
288 the expressed desires and personal values of the incapacitated person to the extent known, and shall not
289 ~~unreasonably~~ restrict an incapacitated person's ability to communicate with, visit, or interact with other
290 persons with whom the incapacitated person has an established relationship unless such restriction is
291 reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated

292 person or is the expressed wish of the incapacitated person. Such restriction shall only be imposed pursuant
293 to § 64.2-2019.1 of the Code of Virginia.

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

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

299 **§ 64.2-2009.1. Periodic review hearings.**

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

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

309 **§ 64.2-2019. Duties and powers of guardian.**

310 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was
311 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the
312 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the
313 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of
314 the incapacitated person.

315 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance
316 directive or durable power of attorney previously executed by the incapacitated person. A guardian may
317 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided
318 by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of the Health

319 Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of § 64.2-2012, a guardian
320 may seek court authorization to modify the designation of an agent under an advance directive, but the
321 modification shall not in any way affect the incapacitated person's directives concerning the provision or
322 refusal of specific medical treatments or procedures.

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

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

330 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in
331 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A
332 guardian, in making decisions, shall consider the expressed desires and personal values of the
333 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest
334 and exercise reasonable care, diligence, and prudence. A guardian shall not ~~unreasonably~~
335 incapacitated person's ability to communicate with, visit, or interact with other persons with whom the
336 incapacitated person has an established relationship unless such restriction is reasonable to prevent
337 physical, mental, or emotional harm to or financial exploitation of such incapacitated person or is the
338 expressed wish of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-
339 2019.1.

340 E1. A guardian and any staff employed or contracted by such guardian to perform guardianship
341 duties on behalf of the guardian shall complete the training developed by the Department for Aging and
342 Rehabilitative Services pursuant to subsection E of § 51.5-150 within four months of the date of entry of
343 the initial order of appointment pursuant to § 64.2-2009, unless such training was completed within the
344 past 12 months in conjunction with another guardianship appointment made pursuant to § 64.2-2009. No
345 guardian shall be required to complete such training more frequently than once every 36 months.

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

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

364 **§ 64.2-2019.1. Procedures to restrict communication, visitation, or interaction.**

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

370 B. The guardian shall provide written notice to the restricted person, on a form developed by the
371 Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of the
372 restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the

373 restricted person may challenge such restriction in court. The guardian shall inform the incapacitated
374 person of such restriction, unless the guardian has a good faith belief that such information would be
375 detrimental to the health or safety of such incapacitated person, shall forward a copy of such written notice
376 to the incapacitated person subject to the guardianship and the local department of social services of the
377 jurisdiction where the incapacitated person resides, and shall file a copy of such notice with the court.

378 C. Any restricted person may petition the circuit court to be allowed communication, visitation, or
379 interaction with an incapacitated person. A hearing held pursuant to this subsection shall be held within
380 45 days of return of such form to the court or filing of such motion with the court.

381 D. If the court finds that a restriction is reasonable to prevent physical, mental, or emotional harm
382 to or financial exploitation of, or is the expressed wish of, such incapacitated person, the court may
383 continue or modify such restriction in its discretion.

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

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

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

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

398 **§ 64.2-2020. Annual reports by guardians.**

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

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

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

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

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

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

- 426 ~~5-4.~~ A statement of whether the guardian agrees with the current treatment or habilitation plan;
- 427 ~~6-5.~~ A statement of whether the incapacitated person has been an alleged victim in a report of
- 428 abuse, neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2,
- 429 to the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such
- 430 incapacitated person;
- 431 ~~6.~~ A recommendation as to the need for continued guardianship, and any recommended changes
- 432 in the scope of the guardianship, and any other information useful in the opinion of the guardian; and
- 433 ~~7.~~ The names of any persons whose access to communicate, visit, or interact with the incapacitated
- 434 person has been restricted, the reasons for such restriction, and a statement of whether the incapacitated
- 435 person has been informed of the restriction;
- 436 ~~8.~~ A self-assessment by the guardian as to whether he feels he is able to continue to carry out the
- 437 powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of appointment
- 438 pursuant to § 64.2-2009;
- 439 ~~9.~~ A statement as to whether the guardian has completed the training required by subsection E1 of
- 440 § 64.2-2019;
- 441 ~~10.~~ Unless the incapacitated person resides with the guardian, a statement of the frequency and
- 442 nature of any (i) in-person visits from the guardian with the incapacitated person over the course of the
- 443 previous year and (ii) visits over the course of the previous year from a designee who is directly supervised
- 444 or contracted by the guardian, including the name of the designee performing such visit. If any visit
- 445 described in this section is made virtually, the guardian shall include such information in the annual report;
- 446 ~~11.~~ If no visit is made within a six-month period, the guardian shall describe any challenges or
- 447 limitations in completing such visit;
- 448 ~~12.~~ A general description of the activities taken on by the guardian for the benefit of the
- 449 incapacitated person during the past year;
- 450 ~~13.~~ Any other information deemed necessary by the Office of the Executive Secretary of the
- 451 Supreme Court of Virginia or the Department for Aging and Rehabilitative Services to understand the
- 452 condition, treatment, and well-being of the incapacitated person;

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

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

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

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

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

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

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

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