

SENATE BILL NO. 302

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Deeds)

A BILL to amend and reenact §§ 64.2-2002 and 64.2-2009 of the Code of Virginia, relating to petitions for guardianship; appointment of guardians.

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2002 and 64.2-2009 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2002. Who may file petition; contents.

A. Any person, including a community services board and other local or state governmental agency, may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;

2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;

3. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;

4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;

27 5. The name, place of residence or location, and post office address of any agent designated under
28 a durable power of attorney or an advance directive of which the respondent is the principal, and any
29 guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner
30 shall attach a copy of any such durable power of attorney, advance directive, or order appointing the
31 guardian, committee, or conservator, if available;

32 6. The type of guardianship or conservatorship requested and a brief description of the nature and
33 extent of the respondent's alleged incapacity;

34 7. When the petition requests appointment of a guardian, a brief description of the services
35 currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate,
36 a recommendation as to living arrangements and treatment plan;

37 8. If the appointment of a limited guardian is requested, the specific areas of protection and
38 assistance to be included in the order of appointment and, if the appointment of a limited conservator is
39 requested, the specific areas of management and assistance to be included in the order of appointment;

40 9. The name and post office address of any proposed guardian or conservator or any guardian or
41 conservator nominated by the respondent and that person's relationship to the respondent;

42 10. The native language of the respondent and any necessary alternative mode of communication;

43 11. A statement of the financial resources of the respondent that shall, to the extent known, list the
44 approximate value of the respondent's property and the respondent's anticipated annual gross income,
45 other receipts, and debts;

46 12. A statement of whether the petitioner believes that the respondent's attendance at the hearing
47 would be detrimental to the respondent's health, care, or safety; and

48 13. A request for appointment of a guardian ad litem.

49 **§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.**

50 A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of
51 the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the
52 incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify
53 whether the appointment of a guardian or conservator is limited to a specified length of time, as the court

54 in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with
55 the finding of incapacity, including but not limited to mental competency for purposes of Article II,
56 Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate
57 following consideration of the factors specified in § 64.2-2007; (vi) set the bond of the guardian and the
58 bond and surety, if any, of the conservator; and (vii) where a petition is brought prior to the incapacitated
59 person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, whether the order shall take effect
60 immediately upon entry or on the incapacitated person's eighteenth birthday.

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

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

74 D. A guardian need not be appointed for a person who has appointed an agent under an advance
75 directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of
76 Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the
77 principal or there is a need for decision making outside the purview of the advance directive. A guardian
78 need not be appointed for a person where a health care decision is made pursuant to the Health Care
79 Decisions Act (§ 54.1-2981 et seq.) unless the court determines that the decision is not in accordance with
80 the wishes of the principal.

81 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
 82 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-
 83 1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision
 84 making outside the purview of the durable power of attorney or (ii) whose only or major source of income
 85 is from the Social Security Administration or other government program and who has a representative
 86 payee.

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

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

96 2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian,
 97 to the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider
 98 the expressed desires and personal values of the incapacitated person to the extent known, and shall not
 99 unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other
 100 persons with whom the incapacitated person has an established relationship.

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

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

106 **2. That the Department of Behavioral Health and Developmental Services shall convene a work**
 107 **group to consider issues related to (i) the care of adults with permanent disabilities that render them**

108 incapable of making informed decisions about their own care and (ii) potential changes to
109 guardianship requirements to make it easier for parents to care for their adult children with such
110 disabilities. The work group shall include representatives from the Joint Legislative Audit and
111 Review Commission, the Department for Aging and Rehabilitative Services, the Department of
112 Social Services, the Department of Medical Assistance Services, the Office of the Executive
113 Secretary of the Supreme Court of Virginia, the Virginia Poverty Law Center, the Virginia
114 Disability Law Center, the Virginia Academy of Elder Law Attorneys, the Virginia Board for People
115 with Disabilities, and The Arc of Virginia. The work group shall make recommendations for
116 legislative changes to address these issues by November 1, 2022, to the Chairmen of the Senate
117 Committee on the Judiciary and the House Committee for Courts of Justice.

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