

1 HOUSE BILL NO. 2028

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on the Judiciary

4 on \_\_\_\_\_)

5 (Patron Prior to Substitute--Delegate Roem)

6 A BILL to amend and reenact §§ 64.2-2019 and 64.2-2020 of the Code of Virginia, relating to  
7 guardianship; duties of guardian; visitation requirements.

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

9 **1. That §§ 64.2-2019 and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:**

10 **§ 64.2-2019. Duties and powers of guardian.**

11 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was  
12 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the  
13 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the  
14 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of  
15 the incapacitated person.

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

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

33 The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian,  
34 including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained  
35 by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the  
36 care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video  
37 call between either the guardian or such family member or friend monitored by the guardian or skilled  
38 professional and the incapacitated person, provided that the technological means by which such  
39 conference or call can take place are readily available. If a person other than the guardian conducts any  
40 such visit, he shall provide a written report to the guardian regarding any visit conducted by such person.

41 A telephone call shall meet the requirements of this subsection only if such technological means  
42 are not readily available.

43 C1. If for reasons outside the guardian's control the guardian cannot make an in-person visit to an  
44 incapacitated person, then such visit may be conducted in person by an individual designated by the  
45 guardian pursuant to subsection C. If either the guardian or such individual designated by the guardian is  
46 unable to conduct an in-person visit, then such visit may be conducted virtually through electronic means  
47 such as a virtual conference or video call, or, if such technological means are not readily available, by  
48 telephone.

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

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

58           E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in  
59 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A  
60 guardian, in making decisions, shall consider the expressed desires and personal values of the  
61 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest  
62 and exercise reasonable care, diligence, and prudence. A guardian shall not unreasonably restrict an  
63 incapacitated person's ability to communicate with, visit, or interact with other persons with whom the  
64 incapacitated person has an established relationship.

65           F. A guardian shall have authority to make arrangements for the funeral and disposition of remains,  
66 including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains,  
67 or some combination thereof, if the guardian is not aware of any person that has been otherwise designated  
68 to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to make  
69 arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after  
70 the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine  
71 if the next of kin wishes to make such arrangements, the next of kin does not wish to make the  
72 arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of  
73 kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral service

74 establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil  
75 liability for any act, decision, or omission resulting from acceptance of any dead body for burial,  
76 cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or  
77 omissions resulted from bad faith or malicious intent.

78 **§ 64.2-2020. Annual reports by guardians.**

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

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

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

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

97 3. The medical, educational, vocational, social, recreational, and any other professional services  
98 and activities provided to the incapacitated person and the guardian's opinion as to the adequacy of the

99 incapacitated person's care. The information required by this subdivision shall include (i) the specific  
100 names of the medical providers that have treated the incapacitated person and a description of the  
101 frequency or number of times the incapacitated person was seen by such providers; (ii) the date and  
102 location of and reason for any hospitalization of such incapacitated person; and (iii) a description of the  
103 educational, vocational, social, and recreational activities in which such incapacitated person participated;

104 4. A statement of whether the guardian agrees with the current treatment or habilitation plan;

105 5. A statement of whether the incapacitated person has been an alleged victim in a report of abuse,  
106 neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the  
107 extent known, and whether there are any other indications of abuse, neglect, or exploitation of such  
108 incapacitated person;

109 6. A recommendation as to the need for continued guardianship and any recommended changes in  
110 the scope of the guardianship;

111 7. The name of any persons whose access to communicate, visit, or interact with the incapacitated  
112 person has been restricted and the reasons for such restriction;

113 8. A self-assessment by the guardian as to whether he feels he is able to continue to carry out the  
114 powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of appointment  
115 pursuant to § 64.2-2009;

116 9. Unless the incapacitated person resides with the guardian, a statement of the frequency and  
117 nature of any (i) in-person visits from the guardian with the incapacitated person over the course of the  
118 previous year and (ii) visits over the course of the previous year from a designee who is directly supervised  
119 or contracted by the guardian, including the name of the designee performing such visit. If any visit  
120 described in this section is made virtually, the guardian shall include such information in the annual report;

121 10. If no visit is made within a ~~six-month~~ 120-day period, the guardian shall describe any  
122 challenges or limitations in completing such visit;

