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HOUSE BILL NO. 634

Offered January 12, 2022

Prefiled January 11, 2022

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

 Patron—Roem

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 64.2-2019 of the Code of Virginia is amended and reenacted as follows:****§ 64.2-2019. Duties and powers of guardian.**

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

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

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

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

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

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

F. A guardian shall have authority to make arrangements for the funeral and disposition of remains, including cremation, interment, entombment, memorialization, inurnment, or scattering of the remains, or some combination thereof, if the guardian is not aware of any person that has been otherwise designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to

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HB634

59 make arrangements for the funeral and disposition of remains after the death of an incapacitated person
60 if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to
61 determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make
62 the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next
63 of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral
64 service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune
65 from civil liability for any act, decision, or omission resulting from acceptance of any dead body for
66 burial, cremation, or other disposition when the provisions of this section are met, unless such acts,
67 decisions, or omissions resulted from bad faith or malicious intent.

68 *G. In carrying out the duties prescribed by this section and under the order of appointment, a*
69 *guardian may utilize a person, who is directly employed and supervised by the guardian, or contract the*
70 *services of a care manager who is a trained professional who specializes in the field of life-care*
71 *management, geriatrics, older adults and aging or adults with disabilities and who provides written*
72 *reports to the guardian regarding any such visits. Any such person employed or contracted may only*
73 *visit the incapacitated person up to two times in lieu of such guardian to satisfy the visitation*
74 *requirement prescribed by subsection C.*

75 *The funds to employ or contract the services of any such person shall not come out of the*
76 *incapacitated person's estate and or financial accounts.*