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SENATE BILL NO. 514

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on March 2, 2022)

(Patron Prior to Substitute—Senator McPike)

A BILL to amend and reenact §§ 64.2-2003, 64.2-2004, and 64.2-2020 of the Code of Virginia, relating to guardianship and conservatorship of incapacitated persons.

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2003, 64.2-2004, and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2003. Appointment of guardian ad litem.

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

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

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

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

§ 64.2-2004. Notice of hearing; jurisdictional.

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

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

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

D. Any adult individual or entity whose name and post office addresses appear in the petition may

60 *become a party to the proceeding by filing a pleading in accordance with Rule 1:4 of the Rules of the*
61 *Supreme Court of Virginia. Such individual or entity shall mail his pleadings via first-class mail to the*
62 *petitioner, any counsel of record, the guardian ad litem, and all other adult individuals and entities*
63 *whose names and post office addresses appear in the petition. Such pleading may also be sent via*
64 *electronic mail or facsimile to all counsel of record and the guardian ad litem, as well as those other*
65 *adult individuals and entities whose email addresses or facsimile numbers are known to the person*
66 *filing the pleading. If a cross-petition is filed, the petitioner shall file a response to such cross-petition.*

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

71 **WARNING TO THE RESPONDENT**

72 AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE
73 APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE
74 APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE
75 APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR
76 PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS,
77 WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT
78 RIGHTS.

79 **NOTIFICATION TO OTHERS**

80 ANY ADULT INDIVIDUAL OR ENTITY WHOSE NAME AND POST OFFICE ADDRESSES APPEAR
81 IN THE PETITION FOR APPOINTMENT MAY BECOME A PARTY TO THIS ACTION BY FILING A
82 PLEADING WITH THE CIRCUIT COURT IN WHICH THIS CASE IS PENDING. THAT PLEADING
83 MUST BE MAILED TO THE PETITIONER, ANY COUNSEL OF RECORD, THE GUARDIAN AD
84 LITEM, AND ALL OTHER ADULT INDIVIDUALS AND ENTITIES WHOSE NAMES AND POST
85 OFFICE ADDRESSES APPEAR IN THE PETITION. IN ADDITION, SUCH PLEADING MAY BE SENT
86 BY EMAIL OR FAX TO ANY SUCH OTHER ADULT INDIVIDUAL OR ENTITY FOR WHOM SUCH
87 EMAIL ADDRESS OR FAX NUMBER IS KNOWN.

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

91 **§ 64.2-2020. Annual reports by guardians.**

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

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

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

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

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

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

121 ~~5.~~ 4. A statement of whether the guardian agrees with the current treatment or habilitation plan;

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

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

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

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

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

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

11. If no visit is made within a six-month period, the guardian shall describe any challenges or limitations in completing such visit;

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

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

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

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

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