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HOUSE BILL NO. 643

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 64.2-2009 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-2009.1, relating to guardianship and conservatorship; periodic review hearings.

 Patron—Roem

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-2009 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-2009.1 as follows:

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

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

A1. In the order of appointment, the court shall set a schedule for periodic review hearings, to be held no later than one year after the initial appointment and no later than every three years thereafter, unless it makes a determination that such hearings are unnecessary or impracticable and may be waived. Any such determination shall be stated in writing and address (i) the respondent's condition and ability to regain capacity, (ii) the suitability of the person appointed as guardian or conservator at the time of the initial appointment, and (iii) whether the appointment of the guardian or conservator was contested by the respondent.

The court shall not waive any such hearing where the petitioner for guardianship or conservatorship is a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, a nursing facility or nursing home, a convalescent home, an assisted living facility as defined in § 63.2-100, or any other similar institution, or a health care provider.

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

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

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

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

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59 A conservator need not be appointed for a person (i) who has appointed an agent under a durable
60 power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act
61 (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need
62 for decision making outside the purview of the durable power of attorney or (ii) whose only or major
63 source of income is from the Social Security Administration or other government program and who has
64 a representative payee.

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

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

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

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

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

84 **§ 64.2-2009.1. Periodic review hearings.**

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