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SENATE BILL NO. 345

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Senator Roem)

A BILL to amend and reenact § 64.2-2006 of the Code of Virginia, relating to guardianship or conservatorship of incapacitated adult; right to request counsel.

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-2006 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-2006. Counsel for respondent.

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem, if the court determines that counsel is needed to protect the respondent's interest. *Where the respondent is unable to communicate verbally, in writing, or with the assistance of any device to the extent that he is incapable of receiving and evaluating information effectively or responding to people, events, or environments and is therefore unable to request that he be represented by counsel, the court may upon the request of (i) the respondent's immediate family member or (ii) an agent under a power of attorney authorized to act on behalf of the respondent, provided that such family member or agent has become a party to the proceedings in accordance with subsection D of § 64.2-2004, appoint counsel for the respondent. In making such determination, the court shall consider whether the guardian ad litem has made the recommendation that no counsel for the respondent be appointed in his report as required by § 64.2-2003.* Counsel appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of the proceeding.

A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under § 64.2-2005.

For the purposes of this section, "immediate family member" includes any relative listed in subdivision B 3 of § 64.2-2002.

HOUSE SUBSTITUTE

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