CHAPTER 443

An Act to amend and reenact §§ 24.2-232, 24.2-410, 64.2-2000, 64.2-2003, 64.2-2009, and 64.2-2009.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 64.2-2009.2, relating to incapacitated persons; finding of lack of capacity to understand act of voting.

[S 34]

Approved April 8, 2026

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-232, 24.2-410, 64.2-2000, 64.2-2003, 64.2-2009, and 64.2-2009.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 64.2-2009.2 as follows:

§ 24.2-232. Vacancy occurring when officer adjudicated to lack capacity to understanding voting.

~~A person who is determined to be incapacitated in a judicial proceeding as provided for in Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 shall be deemed for purposes of Article II, Section 1 of the Constitution of Virginia and this title to be "mentally incompetent" as that term is used in those provisions.~~ The office of any person who is ~~so determined to be incapacitated,~~ *adjudicated to lack the capacity to understand the act of voting in a judicial proceeding as provided for in Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2* shall become vacant and the vacancy filled in the manner provided by law. Notwithstanding the provisions of Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2, however, any officer shall have a jury trial unless it is waived by him or for him by his counsel of record.

§ 24.2-410. Clerks of circuit courts to furnish lists of certain adjudications.

The clerk of each circuit court shall furnish monthly to the Department of Elections a complete list of all persons adjudicated ~~incapacitated~~ *to lack the capacity to understand the act of voting* pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 or whose ~~incapacity~~ *lack of capacity to understand the act of voting* has been recognized pursuant to § 64.2-2115~~, and therefore "mentally incompetent" for purposes of this title unless the court order specifically provides otherwise,~~ during the preceding month or a statement that no adjudications have occurred that month. The list shall contain each such person's name; address; county, city, or town of residence; social security number, if any; date and place of birth; and date of adjudication. The Commissioner of Elections and the Executive Secretary shall determine the procedure for furnishing such lists, which may be by electronic means. The Department shall transmit the information from the list to the appropriate general registrars.

§ 64.2-2000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advance directive" shall have the same meaning as provided in § 54.1-2982.

"Annual report" means the report required to be filed by a guardian pursuant to § 64.2-2020.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." "Conservator" includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department of Behavioral Health and Developmental Services, including the buildings and land associated with it.

"Guardian" means a person appointed by the court who has the powers and duties set out in § 64.2-2019, or § 63.2-1609 if applicable, and who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal

Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Guardian ad litem" means an attorney appointed by the court to represent the interests of the respondent and whose duties include evaluation of the petition for guardianship or conservatorship and filing a report with the court pursuant to § 64.2-2003.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall *not* be construed as a finding that the person ~~is "mentally incompetent" as that term is used in~~ *lacks the capacity to understand the act of voting for purposes of* Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Individualized education plan" or "IEP" means a plan or program developed annually to ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational institution receives specialized instruction and related services as provided by 20 U.S.C. § 1414.

"Individual receiving services" or "individual" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client."

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Petition" means the document filed with a circuit court to initiate a proceeding to appoint a guardian or conservator.

"Power of attorney" has the same meaning ascribed to it in § 64.2-1600.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

"Supported decision-making agreement" has the same meaning ascribed to it in § 37.2-314.3.

"Temporary conservator" means a person appointed by a court for a limited duration of time as specified in the order of appointment.

"Temporary guardian" means a person appointed by a court for a limited duration of time as specified in the order of appointment.

"Transition plan" means the plan that is required as part of the IEP used to help students and families prepare for the future after the student reaches the age of majority.

§ 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; (vi) making a good faith effort to consult directly with the respondent's primary health care provider, if any, unless the evaluation report required by § 64.2-2005 is prepared in whole or in part by such provider; and (vii) 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 (v).

C. In the report required by clause (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 (a) the person's geographic location, (b) the person's familial or other relationship with the respondent, (c) the person's ability to carry out the powers and duties of the office, (d) the person's commitment to promoting the respondent's welfare, (e) any potential conflicts of interests, (f) whether the person works as a professional guardian on a full-time basis, (g) the person's expected capacity as a guardian, (h) the wishes of the respondent, (i) the recommendations of relatives, ~~and~~ (j) whether the person is named as a perpetrator in any substantiated adult protective services complaint involving the respondent following allegations of abuse or neglect, *and (k) whether the respondent lacks the capacity to understand the act of voting*; (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 advisable, and (c) determination that appointment of a limited guardian or conservator is not appropriate. If the guardian ad litem was unable to consult directly with the respondent's primary health care provider, such information shall also be included in such report.

D. Any individual or entity with information, records, or reports relevant to a guardianship or conservatorship proceeding, including any (i) health care provider, local school division, or local department of social services; (ii) criminal justice agency as that term is defined in § 9.1-101, unless the disclosure of such information, records, or reports would impede an ongoing criminal investigation or proceeding; and (iii) financial institution as that term is defined in § 6.2-100, investment advisor as that term is defined in § 13.1-501, or other financial service provider 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 to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. The request from the guardian ad litem shall be accompanied by a copy of the court order (a) appointing the guardian ad litem for the respondent and (b) that allows the release of the respondent's nonpublic personal information to the guardian ad litem. All such information, records, and reports shall be provided to the guardian ad litem at no charge. Disclosures, records, and reports can be provided in electronic form to the guardian ad litem and may be accompanied by a statement of expenses or an invoice, which shall be filed with the report of the guardian ad litem to be considered by the court when awarding costs among the parties pursuant to § 64.2-2008. Absent gross negligence or willful misconduct, the person or entity making disclosures, and their staff, shall be immune from civil or criminal liability for providing information or records to a court-appointed guardian ad litem pursuant to this section.

§ 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 whether the person has been found disqualified to vote due to lack of capacity for the purposes of Article II, Section 1 of the Constitution of Virginia in accordance with the provisions of § 64.2-2009.2 and any specific findings of fact and conclusions of law in support of such finding of lack of capacity; (v)* specify ~~the~~ *other* 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, § 1 of the Constitution of Virginia or Title 24.2~~; ~~(v)~~ *(vi)* include any limitations deemed appropriate following consideration of the factors specified in § 64.2-2007; ~~(vi)~~ *(vii)* set the bond of the guardian and the bond and surety, if any, of the conservator; and ~~(vii)~~ *(viii)* where a petition is brought prior to the incapacitated person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, *specify* whether the order shall take effect immediately upon entry or on the incapacitated person's eighteenth birthday.

A1. Beginning July 1, 2023, the court shall set a schedule in the order of appointment 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 the court orders that such hearings are to be waived because they are unnecessary or impracticable or that such hearings shall be held on such other schedule as the court shall determine. Any such determination to waive the hearing or use a schedule differing from that prescribed in this subsection shall be supported in the order and address the reason for such determination, including (i) the likelihood that the respondent's condition will improve or the respondent will regain capacity, (ii) whether concerns or questions were raised about the suitability of the person appointed as a guardian or conservator at the time of the initial appointment, and (iii) whether the appointment of a guardian or conservator or the appointment of the specifically appointed guardian or conservator was contested by the respondent or another party.

The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection where the petitioner for guardianship or conservatorship is a hospital, convalescent home, or certified nursing

facility licensed by the Department of Health pursuant to § 32.1-123; an assisted living facility, as defined in § 63.2-100, or any other similar institution; or a health care provider other than a family member. If the petitioner is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this chapter shall require such petitioner to attend any periodic review hearing.

Any person may file a petition, which may be 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. *For the purposes of this subsection, "good cause" shall include a petition filed pursuant to subsection C of § 64.2-2009.2.* 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.

A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file a report. The incapacitated person has a right to be represented by counsel, and the provisions of § 64.2-2006 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the incapacitated person and to all individuals entitled to notice as identified in the court order of appointment. Fees and costs shall be paid in accordance with the provisions of §§ 64.2-2003 and 64.2-2008. The court shall enter an order reflecting any findings made during the review hearing and any modification to the guardianship or conservatorship.

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. A guardian need not be appointed for a person where a health care decision is made pursuant to, and within the scope of, the Health Care Decisions Act (§ 54.1-2981 et seq.).

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

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

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

2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known, and shall not restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship, unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.

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

4. Pursuant to § 64.2-2012 of the Code of Virginia, all guardianship orders are subject to petition for

restoration of the incapacitated person to capacity; modification of the type of appointment or areas of protection, management, or assistance granted; or termination of the guardianship. In lieu of such a petition, if the person subject to the guardianship is not represented by counsel, such person may initiate the process by sending informal written communications to the court. All orders appointing a guardian, conservator, or both shall include the current mailing address, email address, and physical address of the court issuing the order and to which such informal written communication shall be directed.

§ 64.2-2009.1. Periodic review hearings.

A hearing held pursuant to the schedule set forth in subsection A1 of § 64.2-2009 shall include the following assessments by the court: (i) whether the guardian or conservator is fulfilling his duties ~~and~~*;* (ii) whether continuation of the guardianship or conservatorship is necessary and, if so, whether the scope of such guardianship or conservatorship warrants modification*; and (iii) whether the respondent's incapacity status pursuant to § 64.2-2009.2 has changed.*

§ 64.2-2009.2. Finding of lack of capacity to understand act of voting.

A. No person shall be deemed disqualified to vote due to lack of capacity for the purposes of Article II, Section 1 of the Constitution of Virginia unless a court makes a specific finding by clear and convincing evidence that such person lacks the capacity to understand the act of voting. No court shall find a person disqualified to vote due to lack of capacity pursuant to this section based on the determination of a guardian ad litem in the report submitted in accordance with § 64.2-2003 without a showing that reasonable accommodation appropriate to such person's diagnosis or condition has been provided for the purpose of determining such person's capacity to understand the act of voting.

B. No court shall, in determining that a person lacks capacity pursuant to this section, consider the results of or such person's failure to complete or comply with any test or device that evaluates such person's (i) ability to read or write, (ii) educational achievement or knowledge of any particular subject, or (iii) moral character. For purposes of this subsection, medical reports or medical information shall not constitute such prohibited tests or devices.

C. Any person who was deemed disqualified to vote due to lack of capacity for the purposes of Article II, Section 1 of the Constitution of Virginia prior to July 1, 2026, may petition the court that made such determination for the limited purpose of a review of such determination in accordance with the provisions of this section.

D. When a person who has been deemed disqualified to vote due to lack of capacity for the purposes of Article II, Section 1 of the Constitution of Virginia prior to July 1, 2026, either in accordance with the provisions of this section or by a finding of incapacity without a court order to the contrary, has not filed a petition for a review of such determination of such person's lack of capacity to understand the act of voting, a review of such determination shall be conducted at such person's next periodic review hearing pursuant to § 64.2-2009 in accordance with the provisions of this section.

2. That nothing in the provisions of this act shall be construed to automatically nullify or void any determination of mental incompetence made, whether explicitly or construed by a finding of incapacity without a court order to the contrary, prior to July 1, 2026.