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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

Senate Bill No. 664

(By SENATOR PALUMBO)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 664

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[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §44A-3-1 and §44A-3-2 of the Code of West Virginia, 1931, as amended, all relating to the duties and reports of the guardian of a protected person; providing that the guardian owes a fiduciary duty to act in the best interests of the protected person; requiring the guardian to make provision for social interactions between the protected person and the protected person's friends and family; requiring the periodic guardian reports to include a summary of the guardian's efforts and activities on behalf of the protected person; and including the guardian's efforts to facilitate the protected persons involvement in social activities and social interaction with friends and family as a part of the guardian's periodic reports.

Be it enacted by the Legislature of West Virginia:

That §44A-3-1 and §44A-3-2 of the Code of West Virginia, 1931, as amended, be amended, all to read as follows:

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-1. Duties of guardian of protected person.

1 (a) The guardian of a protected person owes a fiduciary
2 duty to the protected person and is responsible for obtain-
3 ing provision for and making decisions with respect to the
4 protected person's support, care, health, habilitation,
5 education, therapeutic treatment, social interactions with
6 friends and family, and, if not inconsistent with an order
7 of commitment or custody, to determine the protected
8 person's residence.

9 (b) A guardian shall maintain sufficient contact of not
10 less than once very six months with the protected person
11 to know of the protected person's capabilities, limitations,
12 needs, and opportunities.

13 (c) A guardian shall be required to seek prior court
14 authorization to change the protected person's residence
15 to another state, to terminate or consent to a termination
16 of the protected person's parental rights, to initiate a
17 change in the protected person's marital status, to deviate
18 from a protected person's living will or medical power of
19 attorney, or to revoke or amend a durable power of
20 attorney executed by the protected person.

21 (d) A guardian shall exercise authority only to the extent
22 necessitated by the protected person's limitations, and,
23 where feasible, shall encourage the protected person to
24 participate in decisions, to act on his or her own behalf,
25 and to develop or regain the capacity to manage personal
26 affairs.

27 (e) A guardian shall, to the extent known, consider the
28 express desires and personal values of the protected person
29 when making decisions, and shall otherwise act in the
30 protected person's best interests and exercise reasonable
31 care, diligence, and prudence.

32 (f) Upon the petition of an interested party or upon its
33 own motion, the court or Mental Hygiene Commissioner

34 may order the guardian to take appropriate action to
35 address the needs and best interests of the protected
36 person as required by this section.

§44A-3-2. Reports by guardian of protected person.

1 (a) Any guardian appointed pursuant to the provisions
2 of this chapter shall file periodic reports, in accordance
3 with section eleven of this article including:

4 (1) A description of the current mental, physical, and
5 social condition of the protected person;

6 (2) A description of the protected person's living ar-
7 rangements during the reported period;

8 (3) The medical, educational, vocational, and other
9 professional services provided to the protected person and
10 the guardian's opinion as to the adequacy of the protected
11 person's care;

12 (4) A summary of the guardian's visits with the protected
13 person, the guardian's social interactions with the pro-
14 tected persons, the guardian's efforts and activities on
15 behalf of the protected person, including the guardian's
16 efforts facilitating on behalf of the protected person social
17 interactions with friends and families, and the guardian's
18 efforts facilitating the protected person engagement in
19 social activities;

20 (5) A statement of whether the guardian agrees with the
21 current treatment or habilitation plan;

22 (6) A recommendation as to the need for continued
23 guardianship and any recommended changes in the scope
24 of the guardianship;

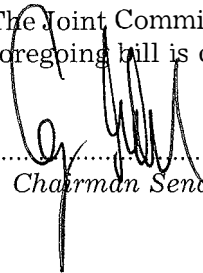
25 (7) Any other information requested by the court or
26 useful in the opinion of the guardian;

27 (8) The compensation requested and the reasonable and
28 necessary expenses incurred by the guardian; and

29 (9) A verification signed by the guardian stating that all
30 of the information contained in the report is true and
31 correct to the best of his or her knowledge.

32 (b) The court may order the guardian to attend a hearing
33 on the report by motion of the court or Mental Hygiene
34 Commissioner, or upon the petition of any interested
35 person. A report of the guardian may be incorporated into
36 and made a part of the accounting of the conservator.

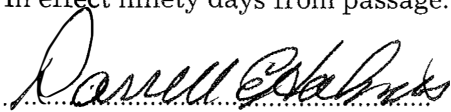
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

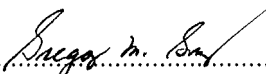

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Chairman Senate Committee

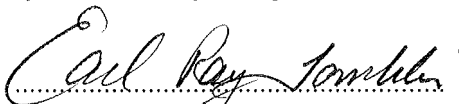

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *2nd*
Day of *April*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:30am