

**REPORT OF THE
DEPARTMENT OF
SOCIAL SERVICES**

**Public Guardianship:
Program Design Options
for Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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BLAIR BUILDING
8007 DISCOVERY DRIVE
RICHMOND, VIRGINIA 23229-8699

(804)662-9204



LARRY D. JACK
COMMISSIONER

COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

January 11, 1990

TO: The Honorable Gerald L. Baliles
 Governor of Virginia

 and

 The General Assembly of Virginia

The 1989 General Assembly, by Senate Document Number 29, requested the Department of Social Services to study the concept of public guardianship and report back to the 1990 Session of the General Assembly with finding regarding structure and costs.

Enclosed for your review and consideration is the report that has been prepared in response to this request.

Cordially,

A handwritten signature in cursive script, appearing to read "Larry D. Jackson".

Larry D. Jackson
Commissioner

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PROGRAM DESIGN
OPTIONS FOR VIRGINIA**

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the General Assembly of Virginia**

TABLE OF CONTENTS

EXECUTIVE SUMMARY i
ACKNOWLEDGEMENTS. v

I. INTRODUCTION. 1

 A. Study Overview and Purpose. 1
 B. Background on Public Guardianship 1
 C. Study Approach. 3

II. NEED FOR PUBLIC GUARDIANSHIP IN VIRGINIA. 6

 A. Persons Who Need a Public Guardian. 6
 B. The Extent of Need. 7
 C. Profile of Those Needing Guardian 7
 D. The Community Response to Need. 8
 E. When No Guardian is Available 9
 F. Conclusions 10

III. PUBLIC GUARDIANSHIP DESIGN OPTIONS. 11

 A. The Target Population 11
 B. Essential Components. 12
 C. Alternative Administrative Structures 13
 D. Recommended Approach. 16
 E. Conclusions 17

IV. COMPONENTS OF A PILOT PROJECT 18

 A. Purpose of the Pilot. 18
 B. Criteria for Admission to Public Guardianship Pilot 19
 C. Process for Appointment of the Public Guardian. . . 20
 D. Evaluation Plan 23
 E. Cost of the Pilot 24
 F. Conclusions 24

APPENDICES

 A. Bibliography 26
 B. Description of the Components. 28
 C. Position Descriptions. 32
 D. Pilot Project Evaluation Plan. 34

EXECUTIVE SUMMARY

The 1988 Session of the Virginia General Assembly issued Senate Document Number 29 and instructed the Virginia Department of Social Services to examine the concept of public guardianship as a service of last resort. This report responds to that directive. Guardianship is a legal relationship in which the State, through the circuit court, removes from a person (the ward) the right to make decisions. Decision-making authority is then given by the court to another adult (the guardian). Court appointment of a guardian signifies a dramatic reduction in the basic civil rights of the ward. Families of Virginia's incapacitated adults and providers who serve those adults are acutely aware of the tremendous responsibilities inherent in the role of a guardian.

The increasing demand for guardians can be attributed to several national and State trends including the growing number of persons reaching advanced old age. Interest in public guardianship is related to an insufficient number of people available to meet the demand. In situations where a guardian is not available or not performing in the best interest of the ward, the lack of persons available to serve as guardians can result in extreme suffering and even loss of life. A public guardian is a public employee whose job responsibility is to serve as a guardian and thereby assure the availability of a person to assume guardianship when the service is needed and is not otherwise available.

This report uses data collected from a variety of sources including: 1) the Virginia Department of Social Services' Task Force on Guardianship; 2) a survey of other states; 3) interviews with State and national experts on public guardianship; and 4) a literature review.

There is no authoritative data on the number of adults needing a public guardian. However, two recent studies began to document the extent of need for guardians. The Department of Social Services' 1988 Task Force report, A Study of Guardianship in Virginia, identified 2,174 adults who need a guardian and for whom no guardian is available. In 1988, the Joint Subcommittee studying Legal Guardianship surveyed Community Services Boards and facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services and identified 2,649 persons needing a guardian. Some duplication may exist between the two studies.

Family, volunteers, and private guardians continue to be the primary source of guardians. However, these sources are insufficient to meet the need for the increasing number of vulnerable adults. The lack of a guardian can result in continued abuse, neglect, or exploitation.

In formulating design options for a public guardianship program, consideration was given to: 1) the target population; 2) essential components to safeguard the rights of wards; and 3) administrative structures.

A public guardianship program should serve the most vulnerable adult population without regard to age, cause of disability, living arrangement, or income. The participating State agencies and members of the Guardianship Task Force agree that a Virginia public guardianship program should target Adult Protective Services recipients. As a group, adults needing protective services are older and more frail than the general adult population. They have multiple physical and mental health problems and are less likely to have family and friends available.

The following components are identified as essential to safeguard the rights of adults and to ensure a high quality, responsive public guardianship program:

- 1) emphasis on alternatives to guardianship;
- 2) standardized eligibility criteria;
- 3) multidisciplinary assessment/reassessment;
- 4) clear roles for human resource agencies;
- 5) use of volunteers;
- 6) due process protections;
- 7) ongoing case monitoring;
- 8) minimum standards of performance;
- 9) public education/professional development; and,
- 10) use of an interagency advisory board.

Five administrative structures based on other states' experiences were considered in this study. They were: 1) public guardianship provided by the Virginia Department of Social Services with local departments of social services responsible for referral, assessment and for ongoing casework service; 2) guardianship services through state initiated contracts with public and/or private service providers; 3) a new and free-standing agency of public guardianship in the Secretariat of Health and Human Resources; 4) guardianship provided by volunteers who are recruited, trained, and monitored by State agencies; and 5) guardianship provided by the circuit court.

The Departments of Social Services; Aging; Rights of the Disabled; Mental Health, Mental Retardation and Substance Abuse Services and the Department of Social Services' Task Force on Guardianship agree on the target population, the essential program components, and the need to move forward with a two-year pilot project.

The purpose of the pilot is to test the feasibility and appropriateness of utilizing the Department of Social Services to

provide public guardianship and to gather data not currently available in order to design a long-range plan for statewide implementation. The proposed pilot project will be located in one of the seven Virginia Department of Social Services' regions. The region will be selected in collaboration with the Virginia Department for the Aging for the purpose of coordinating two related projects; i.e., public guardianship (Virginia Department of Social Services) and alternatives to guardianship (Virginia Department for the Aging). Both the Department of Social Services and the Department for the Aging have requested funding in the 1990-92 biennium for these projects.

The proposed pilot will at any one time serve 80 of Virginia's most vulnerable adults--incapacitated adults who are abused, neglected or exploited as defined in the Adult Protective Services Statutes (Section 63.1-55.1 of the Code of Virginia). Additional criteria are related to the appropriateness of alternatives, the availability of other sources of guardians, financial resources, documentation of need by a multi-disciplinary assessment and findings of the circuit court.

The process for the appointment of a public guardian, during the pilot project, would include the following four steps:

Step I--Investigation and Screening: As a part of the adult protective services investigation, local departments of social services will screen incapacitated adults to determine the appropriateness of alternative services, the availability of private guardians, and whether the client meets criteria for public guardianship.

Step II--Petitioning and Assessment: The local department of social services will petition the court for guardianship and will request a court-ordered assessment and a waiver of court costs. The petition will identify those professionals essential for a comprehensive multi-disciplinary assessment. The written assessment will be submitted to the court at least five working days prior to the guardianship proceedings.

Step III--Court Hearing and Appointment: The professionals involved in the assessment shall be available to the court, as appropriate, during the hearing. The public guardian will attend the hearing.

Step IV--Service Delivery/Reassessment: The public guardian will file an account of the ward's estate with the Commissioner of Accounts and will serve as decision-maker within the scope defined by the court. Reassessment of the need for continued guardianship will be done at least annually.

The evaluation of the pilot project is expected to result in recommendations about: 1) the need for a public guardianship program; 2) the types of guardian services needed; 3) the number of people needing a guardian; 4) statewide cost projections for providing public guardian services; 5) the appropriateness of providing public guardianship through the Department of Social Services; and 6) the possible alternatives to public guardianship services.

The evaluation design will utilize a selected "control" group of localities within the pilot region, a group of localities offering public guardianship services, and a group of localities offering both public guardianship and alternative services. As a part of the evaluation, court record data will be analyzed to determine the effect the guardianship pilot has on the number of people referred and the types of services they need. Statewide cost projections will be made based on the data collected during the pilot.

The funding needed to accomplish the public guardianship pilot will pay for three items: public guardian staff, a fund for emergency services, and bonding costs for the public guardians. Each item is listed below by fiscal year:

	<u>FY 91</u>	<u>FY 92</u>
I. Guardian Staff (salary, benefits, operations)	\$155,480	\$181,435
II. Emergency Services Fund	53,320	53,320
III. Bonding Costs	<u>3,000</u>	<u>3,000</u>
TOTAL (General Fund)	\$211,800	\$237,755

As a result of the Study, the following recommendations are presented:

- the ten essential components identified in this document and described in Appendix B be incorporated into Virginia's public guardianship design;
- public guardianship services be targeted to the most vulnerable adult population; i.e., incapacitated adults who are abused, neglected, or exploited or at risk of abuse, neglect, or exploitation;
- the Department of Social Services' amended Addendum Budget Proposal for Public Guardianship be funded in the 1990-92 biennium to allow a two-year pilot project to begin providing public guardianship services and to gather data for long-range planning.

ACKNOWLEDGEMENTS

Staff from the Department of Social Services conducted this study with assistance from a Task Force on Guardianship. The Task Force includes representatives of State and local public agencies, the Office of Attorney General of Virginia, the private bar, the long-term care industry, acute care hospitals and advocates of disabled adults and the elderly. The Task Force's role was to identify essential components for a public guardianship program, review program design options and participate in formulating recommendations for a Virginia public guardianship program.

Task Force Members:

Joy Duke, Chairperson, Virginia Department of Social Services
Fran Behrens, Home Care Alternatives, Richmond
Randall Blevins, Washington County Department of Social Services
Stanley Butkus, Ph.D., Virginia Department of Mental Health,
Mental Retardation and Substance Abuse Services
Maxine Byrd, Newport News Department of Social Services
Marie Caffrey, Richmond Memorial Hospital
James Cotter, Virginia Department for the Aging
Virginia Dize, Virginia Department for the Aging
Jean Galloway, Attorney
Lucy Hayth, Richmond Commission on the Elderly
Jane Kizer, Virginia League of Social Service Executives
Helen Leonard, Virginia Department of Social Services
Francis Littman, St. Mary's Hospital, Richmond
Kathleen Martin, Office of the Attorney General
Marsha Montague, Virginia Department of Social Services
Helen Napps, Virginia Department of Social Services
Kathrine Noyes, Virginia Department of Volunteerism
Mike Osorio, Virginia Association of Homes for Adults
Barbara Patrick, Richmond City Department of Social Services
Edna Paylor, Virginia Association of Non-Profit Homes for the Aging
Sandy Reen, Virginia Department for Rights of the Disabled
Linda Sawyers, Office of Secretary of Health and Human Resources
Gina Simpson, Advocate
Beverly Soble, Virginia Health Care Association
David Stasko, Virginia Department of Social Services
Virginia Tyack, Capital Area Agency on Aging

I. INTRODUCTION

A. Study Overview and Purpose

Virginia's interest in guardianship parallels a national crisis in guardianship services to older and disabled Americans. The current crisis results from a lack of persons willing and suitable to serve as guardians, the lack of monitoring of the services provided by guardians, and a lack of protection to ensure due process for recipients of guardianship services. Guardianship is a legal relationship in which the State, through the circuit court, removes from a person (the ward) the right to make decisions. Decision-making authority is then given by the court to another adult (the guardian). Court appointment of a guardian signifies a dramatic reduction in the basic civil rights of the ward. Families of Virginia's incapacitated adults and providers who serve those adults are acutely aware of the tremendous responsibilities inherent in the role of a guardian.

The Virginia General Assembly's Report of the Joint Subcommittee Studying Legal Guardianship, Senate Document Number 29, dated 1989, instructed the Virginia Department of Social Services, under the direction of the Office of the Secretary of Health and Human Resources, to examine further the concept of public guardianship as a service of last resort. The Joint Subcommittee asked for further evaluation of public guardianship to include recommendations regarding structure and costs. This report responds to the Joint Subcommittee's directives by: 1) identifying various design options for a Virginia public guardianship program; 2) discussing advantages and disadvantages of administrative design options; 3) recommending an initial approach to public guardianship for the Commonwealth; and 4) identifying the cost of the recommended approach.

This document has five chapters. This chapter presents an overview of the report, background on public guardianship, and a description of approaches used to conduct the study. Chapter II provides insight into the need for public guardianship in Virginia. Chapter III discusses the target population, essential program components, and a variety of administrative design structures. Chapter IV discusses the use of a pilot project as a method of beginning a public guardianship program in Virginia and presents recommendations.

B. Background on Public Guardianship

A public guardian is a public employee whose job responsibility is to serve as a guardian and thereby assure the availability of a person to assume guardianship functions ordered by the court. Some of the functions of a public guardian can include making decisions about where a person lives, whether or not medical care is given, and how funds are disbursed. Public guardians can have the power and responsibility to assume control over the property and/or person of another individual adjudicated by the courts to be

incompetent to manage his/her own affairs. While Virginia does not currently have a public guardianship program, Virginia statute authorizes the appointment of the sheriff as guardian of last resort. The appointment of the sheriff is not a satisfactory solution because the sheriff has neither the time nor the training to assume the responsibilities of guardianship for incompetent/incapacitated adults needing the service. Furthermore, the statute authorizing the appointment of the sheriff permits, rather than mandates, the appointment. Therefore, the sheriff is not available for appointment in every locality.

Senate Document Number 29, 1989, sets the parameters for this report on public guardianship by defining public guardianship as a service of last resort. Within the context of a service of last resort, a public guardianship program should serve the most needy, that is those adults most vulnerable. Public guardianship should be available when all of the following conditions exist:

- alternatives to guardianship, such as representative payees, are not appropriate;
- all other sources of guardians such as family, volunteers, and attorneys, have been explored and are not available or suitable; and
- the court orders appointment of a guardian.

In Virginia, and in the nation, there is increasing need for public guardianship services. The following trends contribute to the growing need for public guardianship:

- Persons who are 60 years of age or older are the most frequent users of guardianship services. The increasing number of persons who are reaching advanced old age and for whom no friend or relative is available or suitable to serve as guardian is a significant cause of the increasing need for public guardianship.
- Community based care for mentally impaired adults presumes that persons needing community services will request the services. Mentally impaired adults may not be competent to make the request for essential services. Therefore, State and national policies of community based care for mentally impaired persons contribute to the need for public guardianship.
- Statistical reports show an annual increase in the number of Adult Protective Services complaints received during the last six years. Approximately 40 percent of all founded Adult Protective Services complaints are on persons who are self-neglecting. The increasing number of adults found to be self-neglecting and incapacitated contributes to the need for public guardianship.

- ° Cost containment policies of acute care hospitals result in early hospital discharge and the need for responsible representatives to make decisions about nursing home placement. This precipitates requests for the appointment of guardians and contributes to the need for public guardianship.
- ° The State and nationally recognized problem of the abuse of incapacitated adults by family members and other caregivers eliminates those persons as potential guardians and contributes to the need for public guardianship.
- ° A mobile society that finds families physically separated by great distances and therefore unavailable on a regular basis to perform guardianship functions exacerbates the need for public guardianship.

During the last decade, the Commonwealth of Virginia has moved toward examination of the feasibility of a public guardianship program. Figure I on the following page describes six major statewide initiatives which have laid a foundation for the Virginia Department of Social Service's current work on a public guardianship program for Virginia.

These six initiatives during the last decade have consistently identified problems in Virginia's current guardianship process. Problems in Virginia's guardianship process include but are not limited to: 1) over utilization of plenary/full guardianship; 2) an inadequate supply of persons available to serve as guardians--a problem especially acute for indigent adults; and 3) insufficient monitoring of the activities of the guardian throughout the duration of the guardianship.

C. Study Approach

Several approaches provided data and insight on the various public guardianship design options. Data also provided information on related issues, including the advantages and disadvantages of the various public guardianship structures discussed in this report. The following study methods were utilized:

Task Force Work Sessions-- In 1987, the Department of Social Services convened an inter-agency Task Force to study guardianship issues. Membership on the Task Force included representatives of State and local human resource agencies, the long-term care industry, the private bar, acute care hospitals, the Attorney General's Office, the Office of the Secretary of Health and Human Services, and advocates for the aged and disabled. This Task Force on Guardianship continued as a group and participated in this study. The Task Force members met on three occasions to discuss, identify, and define essential components of a public guardianship program. The essential components identified during Task Force work sessions provide the foundation for this report's design options. By drawing upon their own expertise and that of their

**FIGURE I
STATEWIDE INITIATIVES**

1978	<p>The Public Interest Law Center of Virginia proposed public guardianship legislation. The proposed statute specified that the Court appoint a disinterested employee of the local Mental Health, Mental Retardation Services Board or of the local Welfare Department to serve as public guardian. This draft statute also allowed the Court to appoint the Secretary of Health and Human Resources who could delegate the responsibility to a person under his/her supervision.</p>
1980	<p>A Study Committee, convened by the Virginia Office on Aging studied guardianship in the Commonwealth. This study committee considered the need and appropriateness of public guardianship, and made recommendations for improving the process and increasing the availability of guardians and alternatives to guardianship. The 1980 study identified the following problems related to guardianship:</p> <ul style="list-style-type: none"> • the judiciary's lack of essential information on the aging process and on alternatives to full (plenary) guardianship; • plenary or full guardianship is used more frequently by the Court than necessary; • roles of the guardian ad-litem are ambiguous and vary widely across the Commonwealth; • there is minimal or no monitoring by the Court following the appointment of a guardian; • the sheriff, currently designated by the Code of Virginia as guardian of last resort, is not an appropriate candidate for that task; and • a lack of persons available, willing and suitable to serve as guardians.
1985	<p>A Seminar on Guardianship Legislation, Policy and Practice for Older Persons in the Commonwealth of Virginia was sponsored by the Gerontological Society of America on July 1, 1985. This Seminar made recommendations for improving the guardianship process in Virginia.</p>
1985-86	<p>A Guardianship Task Force was convened by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Guardianship Task Force studied guardianship issues, reviewed practices of other states, analyzed alternatives, and prepared legislation for the 1986 session of the General Assembly to implement the recommendations of the Task Force. The Task Force made recommendations for revisions to Section 37.1-134.2 of the Code of Virginia. The proposed Code revisions would differentiate between consent to medical treatment for protesting and non-protesting patients and would define "certified health care representatives" for the purposes of substitute decision-making.</p>
1988	<p><i>A Study of Guardianship in Virginia</i> is a study completed in January 1988 by an inter-agency Task Force under the leadership of the Virginia Department of Social Services. The Study identifies basic demographic data on adults who have legally appointed guardians. The Study documents that 2,174 Virginians ages 18 years and older have a need for a guardian and no suitable person is available to serve as guardian.</p>
1989	<p><i>Senate Document 29</i> to the 1989 Virginia General Assembly documents the findings of the 1988 Joint Subcommittee studying legal guardianship and directs the Office of the Secretary of Health and Human Resources to report on design options and costs for a Virginia public guardianship program.</p>

colleagues, the Task Force members examined program components from many perspectives to ensure that the potential wards of public guardians would receive quality services. The Task Force also made recommendations regarding the target population and the administrative structure.

Literature Review--A review of current literature focused on "state of the art" public guardianship programs and other relevant issues. The literature review documents national concern regarding the availability of suitable persons to serve as guardians, the quality of services provided, accountability of guardians, due process protections for person who enter the guardianship system, and abuses of the system. (See Bibliography, Appendix A.)

Survey of Other States--Twelve states or subdivisions of states, were surveyed to obtain information about their public guardianship programs. States surveyed included: Tennessee, Ohio, Maine, Massachusetts, North Carolina, New Mexico, Kansas, New Hampshire, Maryland, Delaware, San Mateo County, California, and Alleghany County, Pennsylvania. Programs in these states illustrate diversity in the approaches used to provide public guardianship services. The survey gathered information on the advantages and disadvantages of the various program designs.

Interviews with Experts on Guardianship Issues--National organizations and agencies were contacted to obtain all available information on designs and implementation of public guardianship programs. An interview was conducted with staff of the Center for Public Interest in California. The Center has been instrumental in promoting alternatives to guardianship and in organizing the National Association of Guardians. Other interviewees were representatives of the Supreme Court of Virginia, advocates for older and disabled adults, representatives of Virginia long-term care industry, representatives of the Virginia League of Social Service Executives, professionals in the areas of aging and mental health/mental retardation, and persons interested in protection and advocacy for the mentally ill.

II. NEED FOR PUBLIC GUARDIANSHIP IN VIRGINIA

A. Persons Needing a Public Guardian

Case I - Mrs. White

Mrs. White was an 82-year-old woman identified as a result of an Adult Protective Services report. She was found on her porch barefooted, smelled of urine, had feces between her toes, did not know her age, her income, whether she had family, when she had last eaten, or how long she had been on the porch. Mrs. White's legs were swollen. She suffered from malnutrition, dementia, and numerous other health problems. Her house was strewn with clothing, spoiled food, feces, mail, personal checks, and several thousand pennies. A large number of cancelled checks, lay about the house. The checks were made out to cash and were signed with an "X". Mrs. White could not provide information on the identity of the person who cashed the checks. The local department of social services petitioned the court for appointment of a guardian, but no person willing to serve as guardian could be located. The search for a suitable guardian continued for several weeks, during which time Mrs. White's resources continued to be depleted by an unidentified person. Mrs. White died before a person could be found to serve as guardian. The person who cashed Mrs. White's checks was never identified.

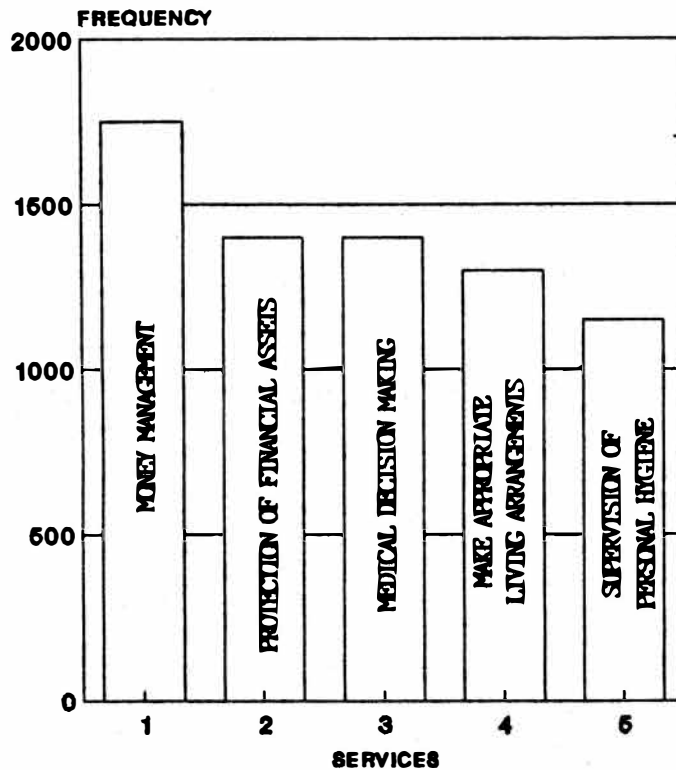
The case example is illustrative of Virginians who are abused, neglected, or exploited and who need a guardian to alleviate these situations. Persons who need public guardians are adults with intense service needs and for whom other sources of guardians are not available. As in Mrs. White's case, there is frequently no family available to serve. In many cases, the service needs are so extensive and/or behavior is so problematic that volunteers or family are unwilling to serve. Some persons simply have no financial resources to attract a guardian who is available to serve for a fee and some persons are not well-served by their court appointed guardians and other guardians are not available.

The need for public guardianship has been an issue in the Commonwealth for the last decade as documented in Chart I of this report. National interest in guardianship was catalyzed by a series of Associated Press articles which appeared in newspapers across the country in September 1987. The articles described adult guardianship as a "troubled system." Since September 1987, the American Bar Association, the United States Congress, and Gerontology and Social Services specialists have studied guardianship issues and have made recommendations to safeguard adult wards of the guardianship system. The Department of Social Services' Task Force on Guardianship and the Departments of Social Services, Aging, Rights of the Disabled, and Mental Health, Mental Retardation and Substance Abuse Services have also been interested in a public guardianship design that ensures availability of appropriate services and maximum protection of individual rights.

B. The Extent of Need for Guardians

There is no authoritative data on the number of incompetent adults in Virginia who need a public guardian. The Virginia Department of Social Services' Task Force on Guardianship's January 1988 report, A Study of Guardianship in Virginia, identifies 2,174 adults who have an unmet need for guardians. The January 1988 report documents that many adults who need a guardian need help with multiple problems. The report identifies five functional problems that generally lead to the filing of a guardianship petition. Of the 2,174 adults identified as having an unmet need for a guardian, 71 percent needed money management type services. Other service needs include assistance in protecting financial assets (55%), assistance with medical decision-making (54%), assistance with making appropriate living arrangements (51%), and assistance with personal hygiene (44%). Table I describes the most frequently needed guardianship services by persons requiring a guardian.

**TABLE I
GUARDIANSHIP SERVICES NEEDED
11/87**



Need for guardianship services was further documented by staff of the 1988 Joint Subcommittee studying Legal Guardianship. Community Service Boards and facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services were surveyed regarding mental health clients who need a guardian. The Joint Subcommittee survey identified 2,649 persons needing a guardian and for whom no person was available to serve. The Joint Subcommittee attempted to survey agencies and organizations not covered by the Social Services survey, but the response was poor. Most of the 2,649 identified as having an unmet need for a guardian were identified by facilities under the Department of Mental Health, Mental Retardation and Substance Abuse Services. While Community Service Boards were surveyed by the Department of Social Services survey, facilities were not surveyed. Community Service Boards identified 931 of the 2,174 cases in the Social Services survey. These 931 may have been identified again in the Joint Subcommittee survey. While some duplication of count in the surveys probably occurred, the findings suggest that the number of adults who have an unmet need for guardianship services exceeds 3,000.

C. Profile of Those Needing Guardians

In addition to the 2,174 adults with unmet needs for guardians, A Study of Guardianship in Virginia identified 591 adults who currently have a guardian.

Most persons who have a guardian and who were included in A Study of Guardianship in Virginia are 60 years of age or older. Descriptive data collected on adult wards of guardians document that 57 percent are adults who are 60 years of age or older. An additional 36 percent are adults who are 18 to 59 years old. The ages of 7 percent are unknown.

The study documents that persons for whom guardians are appointed have mental and physical impairments. Of the population identified in the study as having a guardian, 92 percent are mentally impaired and 52 percent have physical impairments. Forty-four percent live in institutional settings, i.e. nursing homes, homes for adults, or group homes. Twenty-two percent of the persons identified in the study live with friends or relatives, 18 percent live alone, 10 percent are in hospitals, and the living arrangement of 6 percent is unknown.

The study also confirmed that relatives are the persons most frequently appointed guardians. Relatives were appointed in 48 percent of cases followed by attorneys who were appointed for 14 percent of those cases studied. Friends and other volunteers served as guardians in 8 percent of the cases and the sheriff in 2 percent of the cases. In 28 percent of the cases, the role of guardians was assumed by local departments of social services, foster parents, banks, homes for adults, and hospitals.

D. The Community Response to Need

The community response to the need for guardianship services varies widely across the Commonwealth. Although most local human service agencies throughout the Commonwealth recognize the need for guardianship services, there are only a handful of agency-sponsored guardianship programs. A few local agencies do recruit volunteers on a case-by-case basis, some assume guardianship themselves when no other person is available to serve, and others initiate volunteer guardianship programs. Families respond to the need by being the most frequent petitioners for guardianship. Family members are also the persons most frequently appointed as guardians.

In October 1987, the Guardianship Task Force identified 12 volunteer guardianship programs sponsored by local human service agencies. Six of those 12 programs responded to the Task Force's survey. In those six programs, 14 volunteers served 20 adult wards. However, volunteer guardianship programs are difficult to maintain. Two years later in October 1989, two of the 12 programs no longer operate, one refers clients to the local Bar Association but does not follow the case, three provide Representative Payees and other alternative services but do not provide guardians. The remaining six programs use 28 volunteers to serve a total of 31 adults. Four programs which account for 24 volunteers and 27 adult wards are located in Northern Virginia. Except for one volunteer who serves three adults, all volunteers serve one adult each. One program reported that volunteers are not usually available to serve again once the responsibility for the first ward has ended. Similar follow-up information was not available from other programs.

Family members, friends, attorneys, and volunteers are primary sources of private guardians. Volunteers are a valuable part of this resource and the level of satisfaction with the performance of volunteer guardians is reported to be high. However, volunteers are not a feasible method of providing public guardianship to a large population of incompetent/incapacitated adults who have a wide range of behavioral/family and other problems. When an adult who needs a guardian has a history of violent or self-destructive behavior, volunteer guardians are not usually available. Volunteers are also difficult to recruit for persons whose problems include alcoholism or other drug abuses. Volunteers are not readily available to serve persons who have family members who exhibit anti-social, violent, or other difficult behavior.

E. When No Guardian is Available

Local departments of social services report a growing need for guardians as more persons in the community find themselves unable to manage their personal and financial affairs and there is no one available or willing to serve in the capacity of guardian. Many such situations come to the attention of local departments of social services as the result of an Adult Protective Services complaint involving persons not previously known to the agency and not being served by other agencies. Adults who need services and care suffer while attempts are made to find a person willing to

accept guardianship responsibilities. Even when a guardian is eventually appointed, there are almost always dangerous delays before finally being able to provide the necessary services needed by the adult. Incapacitated adults who need but do not have a guardian may not have the capacity to request services to ensure their health, safety, and dignity. In situations where a guardian is not available or not performing in the best interest of the ward, the lack of persons available to serve as guardians can result in extreme suffering and even loss of life.

The growing need for public guardianship is expected to continue during the next 40 years as the elderly population in the nation doubles from 32 million in 1990 to 64 million in 2030. The number of persons age 85 and over will increase fivefold between 1984 and 2030.

F. Conclusions

The demand for guardianship services already far outweighs the availability of the service. As many as 2,174 adults were identified as needing a guardian with no access to these services. The need for a public guardian may be related to financial resources, and/or to violent or socially unacceptable behavior of the ward or the ward's family, and/or to the client's extensive service needs. When family and volunteer efforts and available private guardians are insufficient to meet the need for an increasing number of vulnerable adults, public guardians become a last resort, i.e. the only other source for this service. The Commonwealth faces a rapidly increasing number of adults who need guardianship services and for whom traditional sources of the service are unavailable. For those who currently go unserved, the lack of a guardian contributes to extreme suffering and even loss of life. This is a critical need to find a more comprehensive solution to the demand for guardianship.

III. PUBLIC GUARDIANSHIP DESIGN OPTIONS

This chapter discusses design options for a public guardianship program for Virginia. The chapter specifies: 1) the target population for a Virginia public guardianship program; 2) the essential components which would safeguard the rights of persons who become wards of a public guardian; and 3) alternative administrative structures for a Virginia public guardianship program.

A. The Target Population

There is consensus among the Departments of Social Services, Aging Rights of the Disabled, Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Social Services' Task Force on Guardianship that a public guardianship program should serve the most vulnerable adults. The most vulnerable are incapacitated adult recipients of Adult Protective Services. Persons enter the Adult Protective Services Program as a result of complaints received and investigated by the local department of social services pursuant to Section 63.1-55.4 of the Code of Virginia. When a protective services investigation finds that the incapacitated adult is abused, neglected, or exploited or that the adult is "at risk" of abuse, neglect, or exploitation, a determination is made that the adult needs protective services.

In some Adult Protective Services cases, the need for protective services includes the need for a guardian to manage affairs for the incapacitated/incompetent adult. In those cases, guardianship services are the resources needed by the local worker and the court to eliminate or reduce the risk of abuse, neglect, or exploitation. However, family members are the most frequent perpetrators of abuse, neglect, and exploitation and therefore are unlikely to be available and suitable to serve as guardians. In these cases, the family is the source of the problem.

In 1988/89 5,428 Adult Protective Services complaints were received. Thirty-three percent of those complaints related to adults who lived alone. Some of those adults who lived alone have family available to assist in the provision of care but many did not. Persons who are eligible for Adult Protective Services, as a group, are older, more frail, have more disabling health problems, and have fewer available family members. Persons needing Adult Protective Services also have a smaller social circle and less ability to advocate for themselves than does the general adult population.

Because Adult Protective Services recipients in need of a guardian usually either lack financial resources or cannot access their resources, they are particularly vulnerable to crisis. Frequently there are no community resources for emergencies such as eviction, utility disconnection/"cut-off," lack of food, and medical care for chronic as well as acute illness. Local departments of social

services frequently do not have funding to purchase services for this vulnerable adult population.

B. The Essential Components

A survey of literature, interviews with authorities on guardianship, and a review of experiences in other states led to the identification of the following ten components as essential to a public guardianship program. (See Appendix B for detailed descriptions.)

Emphasis on Alternatives--when guardianship is not appropriate and when assistance in managing affairs is necessary to help the adult retain control over his life and/or affairs;

Eligibility Criteria Based on Need--and without regard to age, cause of disability, community based or institutional living arrangement or income;

Multi-Disciplinary Assessment/Reassessment Process--in order to provide the court with a holistic assessment of the adult;

Defined Roles of Human Service Agencies--to utilize available services and collective expertise in serving adults who are wards of the public guardianship system;

Use of Volunteers--to provide alternative services, such as representative payees, as well as use of volunteers to enhance the quality of the public guardianship system;

Due Process Protections--to assure that constitutional rights to personal liberty and control of property are protected;

Ongoing Case Monitoring--to assess the performance of the guardian and the well-being of the ward;

Minimum Standards of Performance--against which to measure the performance of the guardian;

Public Education and Professional Development--to increase public knowledge and professional proficiency;

Advisory Board--to function as a planning, coordinating and problem-solving forum for the public guardianship program.

In the summer of 1988, guardianship experts from across the country participated in the American Bar Association's National Guardianship Symposium. The objective of the Symposium was to produce recommendations for reform of the national guardianship system. The Symposium made 31 recommendations which are intended to better safeguard the rights of disabled adult wards. Some of the 31 recommendations made by the Symposium coincide and support essential components identified by the Department of Social Services' Task Force. Those mutually identified recommendations/components include: 1) an emphasis on

alternatives; 2) the use of a multi-disciplinary Advisory Board or Committee; 3) minimum standards of performance for guardians; 4) due process safeguards; 5) public education and training for professionals; and 6) ongoing monitoring.

In 1988, the House of Representatives' Select Committee on Aging issued a publication on model standards to ensure quality guardianship and representative payeeship services. The purpose of the Standards is to promote quality decision-making services for vulnerable Americans. The Standards address duties of guardians, personal contact and ongoing responsibilities, rights of wards, programmatic requirements such as staffing, emergency and on-call services, liability insurance, case management and other issues. Ten components identified in this paper and described in Appendix B are compatible with the standard. With some modifications the federal standards can be implemented as minimum standards of performance for the Commonwealth's public guardianship program.

C. Alternative Administrative Structures

Five public guardianship administrative structures were considered by the Task Force. The five structures are modifications of designs utilized in other states and include: 1) a public guardianship program administered by the Department of Social Services; 2) State initiated contracts for public guardianship services; 3) a free-standing public guardianship agency; 4) a volunteer guardianship program; and 5) guardianship administered by the court. The structures range from working within existing agencies to the creation of a new public agency for the purpose of providing public guardianship services. Each structure requires action by the General Assembly to: establish a legal base for public guardianship; provide authority for the promulgation of regulations to implement the design; and fund the program. In Options II and IV, public guardianship responsibility would be shared by several State agencies and therefore some coordination mechanism at the State level would be required. The five structures are discussed below. The discussion of each structure includes the advantages and disadvantages of each structure.

Option I: Public Guardianship provided by the Virginia Department of Social Services; local departments of social services responsible for referral, assessment and ongoing casework services

Discussion--This option proposes the direct provision of public guardianship services by the seven regional offices of the Department of Social Services. Intake and initial screening would be functions of local departments of social services. Representatives of Area Agencies on Aging, Community Service Boards, and other appropriate professionals would participate in conducting assessments. Monitoring of regional guardianship cases would be a function of the public guardianship administrator. The Guardianship Task Force identified this option as the most realistic approach.

Advantages--This option builds on the current service delivery system in which Adult Protective Services workers provide casework and case management to adults who are abused, neglected and/or exploited. The casework/case management by local departments of social services would continue throughout the guardianship and would complement the services provided by the public guardian. The public guardian will be employed at the Department of Social Services regional office.

This design promotes a multi-disciplinary approach to assessment. A multi-disciplinary assessment minimizes the potential conflict of interest inherent in a design which places guardianship responsibility in a public service agency, and it uses the expertise of Area Agencies on Aging, Community Service Boards, and other local agencies serving specialized populations.

Disadvantages--This option may result in an increase in the number of Adult Protective Services reports to local departments of social services. Some think that a potential conflict of interest exists for local departments of social services; i.e., a public guardian employed by a service providing agency may have less freedom to independently evaluate and advocate for their wards' needs and, if necessary, challenge inadequate or inappropriate services. Additional State positions and State and local funds will be required to implement this design.

**Option II: Guardianship Services through State Initiated
 Contracts with Public and/or Private Service
 Providers**

Discussion--This option stipulates that the responsibility for providing guardianship is shared by three different agencies: the Departments of Social Services; Mental Health, Mental Retardation and Substance Abuse Services; and Aging. Each agency would enter into contracts with public or private service providers to serve a population to be identified by the contracting agency. Each agency would monitor cases served under its contracts.

Advantages--This option encourages a public-private partnership in addressing this problem. The discrete services to be provided would be specified in each contract and could vary according to the needs of the population to be served. This design allows greater variability in services offered and utilizes agency expertise in serving specialized populations.

Disadvantages--There is considerable overlap in the populations served by the three agencies designated to provide public guardianship. This overlap would result in a lack of clarity regarding the agency with ultimate responsibility to serve any given client. The three State agencies named in this option use different service delivery areas which exacerbates coordination efforts.

Option III: A new and free-standing agency of public guardianship in the Secretariat of Health and Human Resources

Discussion--This option creates a new agency that reports directly to the Secretary of Health and Human Resources. The new agency for public guardianship would have ultimate responsibility for policy development and program administration with involvement of other agencies by inter-agency agreement.

Advantages--This option creates an agency that has the delivery of guardianship services as its first priority. This design maximizes statewide consistency in program administration.

Disadvantages--This option would unnecessarily expand State government via the creation of a new and separate agency. The cost of this design in a time of very limited resources is a disadvantage.

Option IV: Guardianship provided by volunteers who are recruited, trained, and monitored by State agencies

Discussion--This option promotes the direct provision of guardianship services by volunteers. The volunteers are to be recruited, trained, and cases monitored by one of several State agencies which may choose to participate in the program.

Advantages--This option would create community awareness of the problem and would build a network of advocates for this overlooked population. Some long-range cost savings may be a result.

Disadvantages--Since a single volunteer typically provides guardianship to a very limited number of adults, a large number of volunteers would be needed to meet the demand for guardians. While volunteers have been known to serve difficult cases, some situations are not appropriate for volunteers; e.g., local volunteer programs have found that volunteers are not usually willing to serve in situations that include violent or abusive behavior, and in some situations that require intensive services.

Many localities throughout the Commonwealth have experienced difficulty in establishing volunteer guardianship programs. Some volunteer programs have failed to materialize in spite of considerable effort by sponsoring agencies. Some volunteer programs were established but sponsoring agencies were unable to maintain the program. Difficulty in maintaining programs are most frequently attributed to an inability to recruit sufficient volunteers and to the amount of staff time required to maintain and operate a quality volunteer program. Staff must be available to volunteers to provide information, support, monitoring, intensive group training, and ongoing one-on-one training.

Option V: Guardianship provided by the Court

Discussion--This option proposes the direct provision of public guardianship services by court staff. Intake, initial screening, and referral to alternatives would be functions of court staff. Local service agencies would assist with assessment on a case-by-case basis as ordered by the court.

Advantages--This option gives the public guardian ready access to the court and can provide a centralized place to receive and screen referrals from all sources.

Disadvantages--The Virginia Supreme Court takes the position that the operation of a guardianship program is not an appropriate function of the court. The National Judicial Conference, in a meeting in 1986, recommended that such guardianship programs not be placed in the court. A lack of consistency in the program from jurisdiction to jurisdiction could be expected with the implementation of this design option.

D. Recommended Approach

The Department of Social Services recommends that 1) a pilot project be used as a vehicle for beginning Virginia's public guardianship program and for beginning the process of data collection and that 2) the Department of Social Services implement the pilot project in one of its seven regions, using the local departments of social services to provide casework and case management, with public guardianship provided at the regional office level.

Data essential for long-range planning for public guardianship is not currently available. The pilot will provide opportunity to begin the data collection and will make reliable data available for long-range planning. The pilot evaluation will include, but will not be limited to, an assessment of the appropriateness of providing guardianship services through the Department of Social Services. The issue of conflict of interest will specifically be addressed.

There is a close relationship between public guardianship and the Adult Protective Services program administered by the Department of Social Services. Guardianship is one in a continuum of protective services needed by adults who are abused, neglected, or exploited or are at risk of abuse, neglect, or exploitation.

E. Conclusions

General consensus exists on three key features of a Virginia public guardianship program. First, public guardianship services should serve Virginia's most vulnerable adult population--those incapacitated adults in need of Adult Protective Services. Second, a coordinated, high quality, Virginia public guardianship program requires that ten essential components which are identified in this

report be incorporated into the program design. Third, a public guardianship program should begin with a pilot project.

The Virginia Department of Social Services would direct the pilot to examine a public guardianship program utilizing Virginia's social services delivery system. The Departments of Aging; Rights of the Disabled; and Mental Health, Mental Retardation and Substance Abuse Services support the concept of beginning public guardianship services with a pilot project in order to collect the information necessary for long-range planning for public guardianship in the Commonwealth. A pilot project will enable the Department of Social Services, in coordination with other human resource agencies, to examine the impact of a public guardianship program on Virginia's current service delivery systems.

IV. COMPONENTS OF A PILOT PROJECT

A. Purpose of the Pilot

This chapter discusses the purpose and objectives of a pilot, defines the scope of the pilot, describes criteria for admission to the pilot project, describes the process for appointment of the public guardianship, presents an evaluation plan for the pilot, and identifies the resources required to accomplish a pilot.

The proposed pilot project will examine the feasibility and effectiveness of providing public guardianship through the Department of Social Services. If funded, the pilot project would operate for two years and serve an estimated 80 Adult Protective Services clients at any one time. Cost of the service per client would be analyzed, as well as the impact of a public guardianship program on the administration of Adult Protective Services.

The Department will select one of its seven regions as the pilot site. The Virginia Department of Social Services and the Virginia Department for the Aging will collaborate to incorporate in the pilot project an alternative to guardianship component, provided that the 1990 Virginia General Assembly appropriates funds for the alternatives project.

The pilot project will address each of these objectives as a part of the evaluation of the pilot. (See Appendix D for a detailed evaluation plan.)

- Objective 1: Determine the effects that availability of public guardianship have on the number of people referred for the service and determine types of guardianship services needed.
- Objective 2: Assess the impact of the design on local departments of social services' Adult Protective Services programs and on the court.
- Objective 3: Define the roles of the players involved, i.e., the public guardian, the local department of social services, the Advisory Board to the public guardian, volunteers, local human service agencies, and others.
- Objective 4: Determine whether the program should be limited in the services to be provided, i.e. limited guardianship and, if so, what services should be provided.
- Objective 5: Estimate the number of persons in the Commonwealth who currently need the service of a public guardian and project the need through the year 2010.
- Objective 6: Estimate the annual cost of providing public guardianship.

- Objective 7: Assess conflict of interest issues, i.e. the conflict inherent in a program which places public guardianship in a public human services agency.
- Objective 8: Determine need for the development of legislation, policy, procedures and guidelines in order to provide direction and uniformity to the program.
- Objective 9: Determine other service needs of persons identified as needing a public guardian. Identify the source of any services, other than guardianship, being provided.
- Objective 10: Determine whether the availability of alternative services will significantly impact the number of adults needing public guardianship. This objective is contingent upon funding of the Department for the Aging's 1990-92 budget addendum to develop alternative services.

The guardianship pilot project will consist of a public guardianship administrator who will have overall administrative/supervisory/monitoring responsibilities for the program, and two regional public guardians. The two regional public guardians will provide guardianship services to an estimated 80 adults at any one time. Referrals to the program will come through local Adult Protective Services programs. Local departments of social services will maintain open cases on all adults who are served by a regional public guardian and will retain responsibility for ongoing casework and case management.

B. Criteria for Admission to Public Guardianship Pilot

The criteria outlined below are guidelines for admission to the public guardianship pilot project. The pilot project would serve incapacitated adults found to be abused, neglected or exploited or at risk of abuse, neglect or exploitation as defined in the Code of Virginia, Section 63.1-55.1 and in the Department of Social Services' Adult Protective Services' policy. Adults who receive public guardianship services must meet the criteria outlined below:

- eligible adults are Adult Protective Services clients of a local department of social services;
- a more suitable provider of guardianship services is not available; i.e. the adult has no relative or other person available, willing, and suitable to serve as guardian;
- an emergency order pursuant to Section 63.1-55.6 of the Code of Virginia is not appropriate;
- other less restrictive services, e.g. social or medical services, money management or representative payee, are not appropriate;

- ° the lack of guardianship services would reasonably be expected to result in abuse, neglect or exploitation and would seriously jeopardize the adult's safety and well-being;
- ° the adult has insufficient financial resources to obtain suitable services elsewhere, or in spite of financial resources there is a special problem which results in the inability to obtain a guardian;
- ° a multi-disciplinary assessment team has conducted an assessment which includes an assessment of capacity and identified specific functions for which a guardian is needed; and
- ° the circuit court has found the adult to be incapacitated and has appointed the public guardian.

C. Process for Appointment of the Public Guardian

The pilot project for public guardianship services is proposed as a four-step process that begins in Step I with an Adult Protective Services investigation and screening. Step II details the petitioning and assessment process. Step III outlines the court hearing and appointment process. Step IV covers the service delivery/reassessment process. These processes are diagrammed in Figure II and discussed below.

Step I Investigation and Screening

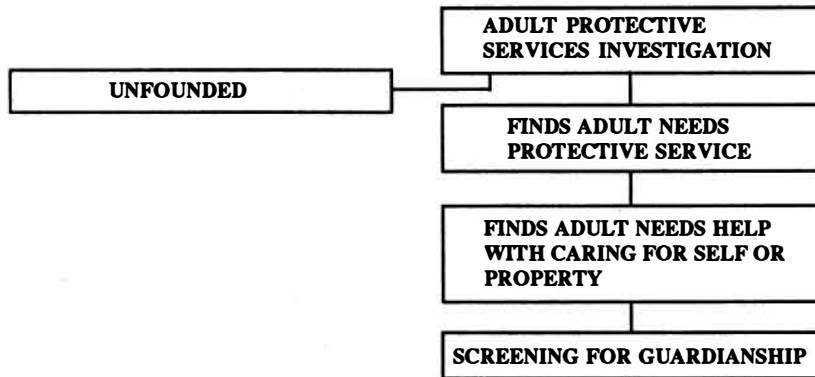
The process for appointment of a public guardian will begin with an Adult Protective Services investigation by a local department of social services pursuant to Section 63.1-55.4 of the Code of Virginia. Once the Adult Protective Services worker determines that the adult needs protective services and that the adult may need help with making decisions or with acting on these decisions, the local department of social services will proceed with a screening for guardianship. The purpose of screening is to:

- (1) determine the availability and appropriateness of alternative services such as representative payee or other less restrictive, alternative services, e.g. those currently available through Area Agencies on Aging and those to be developed by the Virginia Department for the Aging;
- (2) determine the availability and suitability of private guardians, e.g. family, friends, volunteers, attorneys, private guardianship services;
- (3) determine whether the client meets criteria for admission to the public guardianship pilot program.

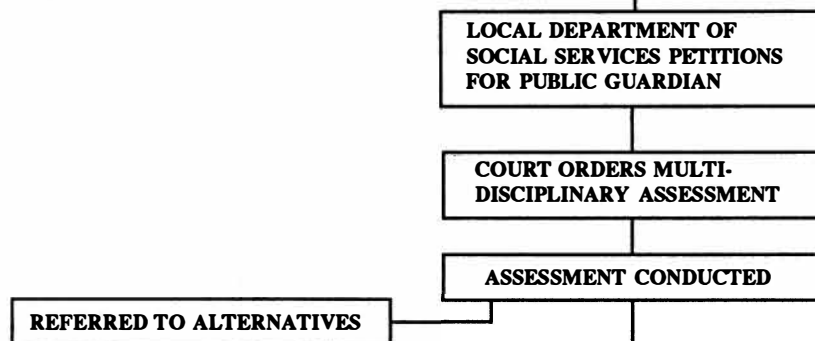
Figure II

FUNCTIONAL FLOW CHART FOR APPOINTMENT OF PUBLIC GUARDIAN

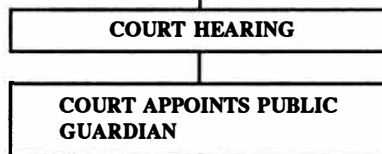
Step I - Investigation and Screenings



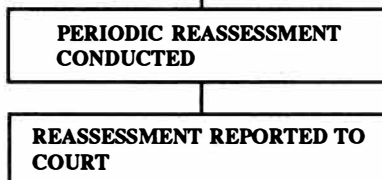
Step II - Petitioning and Assessment



Step III - Court Hearing and Appointment



Step IV - Reassessment



If the local department of social services' preliminary screening indicates that the client meets criteria for admission to the public guardianship pilot program, the local department will file a petition for guardianship.

Step II Petitioning and Assessment

During the pilot, the petition for guardianship filed by the local department of social services requesting appointment of the public guardian will request that the circuit court order a comprehensive assessment of the current condition of the person prior to the guardianship hearing. The petition for guardianship will also request that the court waive the cost of guardianship proceedings when the petition is filed by the local department of social services. The cost of filing the petition is a major barrier in some localities as no federal, State or local funds are available for that purpose.

As a part of the petition, the local department of social services will identify the professional disciplines that should participate on the multi-disciplinary assessment team. The assessment team will vary from petition to petition depending upon the unique needs of the Adult Protective Services recipient. Persons to be identified by the petitioner as essential participants on the team should include at least: one licensed psychiatrist or other physician who is skilled in evaluating the particular area of incapacity; one social worker; and other professional individuals including, but not limited to, geriatricians, gerontologists, nurses, public health workers, and mental health professionals. The court should order the assessment not less than 15 working days before the guardianship proceedings.

Each member of the assessment team shall, by court order, individually or collectively, conduct an examination of the alleged incapacitated person. Whenever possible, the examination should take place at the usual environment of the alleged incapacitated adult. The assessment team's written report should be submitted to the court not less than five working days before the guardianship proceeding. The written report should include: a statement about the adult's decision-making capacity, a statement about the adult's functional capabilities and limitations, and a description of specific behavioral manifestations relevant to the adult's current condition.

The written report should result in a comprehensive assessment that recommends whether or not the adult is in need of a guardian. The written assessment report should include documentation that all other options have been explored and are not available or are not suitable. Other options include: 1) the purchase of guardianship from the alleged incapacitated person's assets; 2) available family; and 3) volunteer guardians. The assessment should include a statement that all criteria for the appointment of the public guardian has been satisfied and that there is no less restrictive alternative to serve the adult. If the assessment team determines, based on the outcome of the assessment, that the alleged

incapacitated individual is not in need of a guardian, the court should dismiss the guardianship petition.

Step III Court Hearing and Appointment

The assessment team should be available at the guardianship proceedings if (1) the alleged incapacitated individual or the attorney for the alleged incapacitated individual requests that the team be available or (2) the court requests that the team be available at the proceedings. The public guardian who is to be appointed should also attend the proceedings. The court should state in the order the specific responsibilities assigned to the public guardian. After the appointment of a public guardian, the court should order a reassessment at a specified time, not less frequently than annually.

Step IV Service Delivery/Reassessment

Upon appointment, the regional public guardian would file an account of the ward's estate with the Commissioner of Accounts within the current specified time frames. The regional public guardian would fulfill all duties on behalf of the ward as ordered by the court. Position descriptions for regional guardians and a central office administrator are included in Appendix C. The local department of social services would maintain an open social services case and provide casework and case management services to the client throughout the duration of the public guardianship.

Reassessments by the assessment team would be conducted, at least annually, to determine whether or not the ward continues to need a guardian. Building upon the original assessment, the reassessment would identify functional limitations, risks, specific management services needed and would evaluate continuing need for public guardianship.

D. Evaluation Plan

The Department of Social Services, with consultation by the Department of Information Technology, would conduct an evaluation to determine the feasibility and effectiveness of providing public guardianship services through the Virginia Department of Social Services. The evaluation of the guardianship pilot program is expected to result in recommendations about:

- (1) the need for a public guardianship program;
- (2) the types of guardian services needed;
- (3) the number of people needing a guardian;
- (4) statewide cost projections for providing public guardian services;
- (5) the appropriateness of providing public guardianship through the Department of Social Services; and

(6) the possible alternatives to public guardianship services.

An extensive description of the Pilot Project Evaluation Plan is included as Appendix D.

E. Cost of the Pilot

The Department of Social Services has submitted a Budget Addendum for the 1990-92 biennium to fund a two-year public guardianship pilot project. The pilot project will serve an anticipated 80 clients. The anticipated cost per client is \$2,648 for FY '91 and \$2,972 for FY '92.

In addition to staffing costs, the Budget Addendum includes bonding cost based on the estimated assets of 80 wards. The addendum also includes funds for the estimated costs of emergency services. Emergencies include but are not limited to eviction, utility "cut-off," lack of food, need for medical examination for placement in a home for adults, medical treatment, and purchase of medication. Costs identified in the Budget Addendum are presented in Table II.

F. Conclusions

As a result of the study, the following recommendations are presented:

- 1) Ten essential components identified in this document and described in Appendix B should be a part of the Virginia public guardianship design. These components are: emphasis on alternatives to public guardianship; eligibility criteria based on need; multi-disciplinary assessment/reassessment; defined roles of human resource agencies; use of volunteers; due process protection; ongoing case monitoring; minimum standards of performance for public guardians; public education/professional development; and use of an advisory board.
- 2) Virginia's public guardianship services should target the most vulnerable adult population, i.e. incapacitated adults who are abused, neglected, or exploited or at risk of abuse, neglect, or exploitation.
- 3) A pilot is the recommended mechanism to begin meeting the need for guardianship services and to gather data which is essential to long-range planning. It is recommended that the Department of Social Services Addendum Budget Proposal (1990-92 Biennium) for Public Guardianship be funded to allow a two-year pilot project. The Addendum Budget Proposal requests:

\$211,800	--	FY'91
<u>\$237,755</u>	--	FY'92
\$449,555	--	Grand Total for the Biennium (General Fund)

TABLE II

	FY '91	FY '92	TOTAL
I. Guardian Staff			
Central Office Costs (Guardian Administrator and Part Time Secretary)			
Salary & Fringe	\$ 50,505	\$ 53,620	
Other Staff Costs (telephones, space, supplies, insurance travel)	\$ 7,995	\$ 7,995	
Equipment (furniture, machines)	\$ 7,565	\$ 0	
Regional Office Costs (Two Regional Guardians and One Secretary)			
Salary & Fringe	\$ 63,635	\$103,830	
Other Staff Costs (telephones, space, supplies, insurance travel)	\$ 10,660	\$ 15,990	
Equipment (furniture, machines)	\$ 15,120	\$ 0	
II. SUBTOTAL			\$336,915
II. Bonding Costs	\$ 3,000	\$ 3,000	\$ 6,000
III. Emergency Fund	\$ 53,320	\$ 53,320	\$106,640
GRAND TOTAL (General Fund)	\$211,800	\$237,755	\$449,555

APPENDIX A

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APPENDIX B

Description of the Components

Emphasis on Alternatives--The development of a public guardianship program should be accompanied by a statewide effort to encourage elderly and disabled adults to use advance planning to minimize the possibility that changes in circumstances will lead to guardianship. The effort should include the development of alternative services to serve adults whose problems are not appropriate for guardianship petitions. Alternatives should include health care consent statutes and living wills, durable and health care powers of attorney, representative payees and other money management programs, emergency orders for protective services pursuant to Section 63.1-55.6 of the Code of Virginia, and medical decision making pursuant to Section 37.1-134.5 of the Code of Virginia and others. Individuals should be directed into programs that will address specific management needs while helping the person retain maximum control over his or her life and affairs. Petitions for guardianship should be filed only when alternatives have been considered and found not appropriate for the adult.

Eligibility Criteria--Access to the program should be extended to the most vulnerable adult population without restrictions based on age, disability, living arrangement, or income. Eligibility should be restricted to recipients of Adult Protective Services and should include adults:

- ° 18 years of age or older;
- ° whose functional disability warrants the appointment of a guardian (without regard to the cause of the disability);
- ° who may live in community or in institutional settings; and,
- ° who will be considered for public guardianship without regard to income. While income may be a valid consideration, persons who need the service and for whom the service is not otherwise available should not be denied the service solely because of income.

Multi-Disciplinary Assessment/Reassessment Process--The program should include a formal multi-disciplinary assessment process, using an instrument that is uniformly applied to all referrals for public guardianship. The purpose of the assessment is to identify functional disabilities, risks, specific management services needed, and to identify the least restrictive method of reducing risk and providing the needed guardianship services. Reassessment should occur at specified intervals throughout the duration of the guardianship. The multi-disciplinary team should consist of persons who have

expertise in assessing the particular areas of incapacity alleged of the adult being assessed. Whenever possible, the alleged incapacitated person should be examined at a time and place most convenient to that person. A team approach has the advantage of bringing the expertise of several professional disciplines together to provide the court with a holistic assessment of the alleged incapacitated adult.

Roles of Human Resource Agencies--Public human resource agencies, individually and collectively, have a responsibility to advocate and to actively pursue programs and policies which serve the best interest of the agencies' client population. The involvement of State human resource agencies is essential to a comprehensive public guardianship program. Appropriate roles of the agencies include, but are not limited to: advocacy for the client, development of alternative services, promotion and provision of public education, participation in development of minimum standards for guardians, participation on multi-disciplinary teams, participation on an advisory board to the public guardian program, recruitment and training of volunteers to work in alternative programs, and assistance with data collection activities.

Use of Volunteers--Volunteer guardianship efforts in Virginia have not been impressive in terms of numbers served. However, such programs have demonstrated the dedication and commitment of volunteers toward serving vulnerable adults. Volunteers should be recruited, trained, and supervised to serve in programs that offer alternatives to guardianship and to provide support to public guardians. Volunteers, including family member, may be encouraged to serve when professional support is available to the volunteers. The professional support may include payment of court cost when such cost impedes volunteer service.

Ensure Due Process Protection--"Congress finds that thousands of elderly and infirm individuals are being deprived of their constitutional rights to personal liberty and control of their property by the imposition of guardianship orders without being accorded due process of law" (National Guardianship Rights Act). Governing principles of the 14th amendment (no State shall deprive any person of life, liberty, or property, without due process of law) are too often not applied in guardianship cases. The issue of due process protection was address by the National Judicial Conference (1986), the American Bar Association (1988), and in The National Guardianship Rights Act of 1988 (H.R. 5266, Pepper) and 1988 (H.R. 1702, Pepper). A public guardianship program should include:

- ° protection of the basic rights of alleged incapacitated individuals (e.g. the right to notice, to be present at hearings, to be represented by counsel, to have an independent assessment, to have clarity regarding the role of the guardian ad litem, etc.);

- ° protection of rights at the hearing (e.g. right to present evidence and to cross-exam witnesses, to have persons essential to the hearing to appear in court, consideration of the adult's preference of who shall serve as guardians, right to the limited transfer of decision-making authority so that the ward continues to make decisions that he or she has the ability to make, etc.);
- ° the right to competent and trained guardians, including the supervision and accountability of the guardians;
- ° periodic reassessment of need for guardianship;
- ° the restoration of competency at the earliest appropriate time; and
- ° placement of the burden of proof on the person who seeks to continue the guardianship.

Ongoing Case Monitoring--In Virginia and in the nation, existing guardianship systems have not been able to adequately monitor the performance of guardians or the well-being of wards. In Virginia, guardians' fiscal transactions are monitored by the Commissioner of Accounts. The 1987 Associated Press study found in 32 of the 40 Virginia cases used for the national survey, guardians filed the required financial accountings late. There is no monitoring of non-financial decision-making of persons appointed as guardians. Some jurisdictions in some states, e.g. the city and county of San Francisco, California, accomplish case monitoring through a court visitor, while others use caseworkers to assist with monitoring the condition and well-being of the wards. Ongoing case monitoring is an essential component of a public guardian program.

Minimum Standards of Performance for Public Guardians--Minimum standards of performance for public guardians are an essential part of ensuring quality of services. Such standards should be based on principles which encourage and support maximum self-reliance and independence of adults who are wards of the public guardian system.

Public Education and Professional Development--There should be a statewide public information campaign to increase public knowledge of and involvement in the guardianship process. Also, the development of model training and orientation material for guardians is essential and training should be mandatory for public guardians. The public guardian should be given an outline of specific duties and information concerning the availability of community resources. Guardians need to know what is expected of them and where to get help before being held accountable or being expected to comply with standards of performance. Professionals (judges, attorneys, social workers, assessment team members and others) who

participate in the guardianship process need education and training that relate to their particular functions. All training should emphasize the involvement of the ward in decision-making to the greatest extent possible.

Advisory Board--An Advisory Board should be appointed to advise on matters concerning public guardianship services to adults who are abused, neglected, or exploited or at risk. The Advisory Board should include the following members or their designees:

Commissioner, Department of the Aging

Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services

Commissioner, Department of Social Services

Director, Department of the Rights of the Disabled

Attorney General of Virginia

Executive Director, Virginia Association of Area Agencies on Aging

Chairperson, State Board of Social Services

President, League of Social Service Executives

President, Society of Hospital Social Work Directors

Executive Director, Virginia Association of Community Service Boards

The Advisory Board shall meet quarterly and as the need may arise. Once an Advisory Board has been established, the Board will compose a set of by-laws to provide the Board with some form of continuity and rules of governance.

APPENDIX C

POSITION DESCRIPTIONS

Duties of the Public Guardianship Administrator

The Chief Administrator of the Public Guardianship Program will be located at the Department of Social Services Central Office and will have the following duties:

develops policy and guidelines which will govern the operation of the program

supervises the regional public guardians, and in this role will act as back-up guardian should a regional position become vacant

serves as staff to the Advisory Board which will function as a planning, coordinating and problem-solving forum for the pilot project

develops, with the Advisory Board, Minimum Standards of Performance for public guardians

develops training curriculum for the training of public guardians and develops public education materials

collects data and works with the evaluators to provide a thorough evaluation of the project

Duties of the Regional Public Guardians

The Regional Public Guardian's responsibilities to the ward will be ordered by the court and may include the following activities;

authorizes changes in living arrangements: e.g. nursing home placement; moves from one facility to another; authorizes applications and signs applications as responsible party;

authorizes health care: gives or withholds consent for medical and psychological services; may require second opinions;

authorizes applications for public or private benefits: includes the authorization of appeals as necessary;

authorizes application for community services: e.g. Club Houses for mentally impaired, Adult Day Care, etc.;

acts as a fiduciary: e.g. pays bills on behalf of the ward, keeps records, insures that all goods and services purchased are delivered, manages property, buys or sells property (real and personal);

authorizes expenditures: e.g. food, shelter, clothing,
medical care, personal comfort;

reports to the Commissioner of Accounts:

invest funds for the ward's future needs.

In addition to those activities order by the Court, the Regional
Public Guardians will:

keep the ward informed about his/her affairs;

notify appropriate persons, agencies and the court of the
death of the ward;

make frequent contacts with the ward;

collect data for the evaluation; and

work with family or volunteers who may be able to assume the
guardianship.

APPENDIX D

Pilot Project Evaluation Plan

Research Design

The guardian pilot project will be conducted in one of the seven social services regions. Within this selected region, several urban and rural localities will be selected to participate in the guardianship program, and several urban and rural localities will be selected to serve as a "control" group. Data from the "control" group of non-participating localities will be collected to serve as a comparison to the pilot project experience. For ease in administration, these localities will be selected from within the region where the pilot project is being conducted and will be selected to match as closely as possible the localities participating in the guardianship program.

Localities participating in the guardianship program will be phased in over a period of six months. To enable an analysis of the depth and breadth of the need for public guardianship services, the actual number of localities served will be limited to a number that will allow for complete guardianship services to all that need guardianship in these localities.

Data currently available for an estimate of the number of people needing guardians is very limited. One possible estimate is based on the number of Adult Protective Services (APS) cases at "high-risk." During the last half of 1988, on a statewide basis there were 342 ongoing cases and an average of about 100 newly initiated cases each month. Urban localities had a much heavier concentration of cases than rural localities. For example, for this time period, Richmond City averaged 36 ongoing "high risk" cases and 20 newly initiated "high-risk" cases. At the same time, Buckingham County averaged six ongoing cases and one newly initiated case. Unfortunately, this code is no longer being maintained, and data on APS cases no longer distinguishes between high and moderate risk. While "high-risk" appears to define the population that would need a guardian, it is not known whether or not all of these "high-risk" cases need a guardian, or whether or not there are persons not in this category or not in Adult Services or Adult Protective Services programs in need of guardians. Another estimate from a survey of agencies in the State, conducted by the Department of Social Services' Guardianship Task Force in January of 1988; showed that there could be as many as 2,174 persons in the State needing public guardians.

Information from other states which have public guardianship programs show that caseload size for a guardian varies from as few as 15 cases per guardian in Massachusetts to as many as 65 cases in the San Mateo, California program. Based on this information, the Department of Social Services estimates that each of the public guardians will be able to serve 40 incapacitated adults. Therefore, it can be anticipated that one or two urban localities and several rural localities will be phased into providing guardianship services during the pilot project.

Data Collection and Analysis

Overall, data will be collected as an ongoing effort as part of the pilot project. To facilitate reliable projections about service needs and costs for State implementation, some data will be collected and analyzed from both participating localities and non-participating, that is "control" localities within the pilot region.

Administrative Issues

Administrative data will be collected through administrative reports and detailed service records from the localities where public guardianship service is implemented. These reports will address the issues related to the development of policy, the steps involved in implementing and running the program, the roles and activities of administrator in administering the program, the type of guardian services rendered, and the methods used to monitor the program.

Effect on Local Departments of Social Services, Courts and Other Agencies

Caseloads and types of services rendered by local department of social Adult Protective Services workers will be examined by the Department of Social Services for periods of time, both before the implementation of the public guardianship project and during the project.

Data relating to the effect of the public guardian program on the courts and other agencies will be collected through a review of court records. Also, a structured survey of the courts and other human services agencies' personnel who have knowledge about public guardianship will be completed. The court related data will be collected from localities participating in the guardianship program. Regional public guardians will collect this data.

It is proposed that the issue of possible conflict of interest in regard to the provision of guardianship services by the Department of Social Services be addressed through a review of practices in other states, and an independent assessment by the Management Consulting Division of the Department of Information Technology.

Number and Type of Services Needed by People Needing Public Guardians

Data addressing the number and types of people needing public guardians will primarily be collected through an enhanced record keeping system for the APS screening and ongoing APS or Adult Services case record.

Since current data about the need for public guardians is incomplete, it will not be possible to review "before" and "after" data to determine the effect the guardianship pilot has on the

number of people referred and the types of services they need. Therefore, data from localities not participating in the guardianship program will be collected for the same time period as the pilot project and compared to the data from the participating localities.

Projected Cost on a Statewide Basis

Cost projections will be calculated based on the detailed administrative costs records and the summaries of numbers of clients and types of services collected from the participating localities, and their "matched" non-participating localities.

Expected Outcomes of the Pilot

The evaluation of the public guardian program is expected to result in recommendations about:

- the need for a public guardian program,
- the types of guardian services needed,
- the number of people needing guardian services,
- statewide cost projections for providing public guardian services,
- the appropriateness of providing public guardian services through the Department of Social Services, and
- the possible alternatives to public guardian services.

Resource Requirements for the Evaluation

The Bureau of Planning and Management Analysis of the Department of Social Services will conduct the evaluation. Personnel from the Bureau will work with the central office administrator to develop record keeping systems for administrative reports and service costs. They will also work with the administrator to adapt the data collection effort to serve both the program and the goal of unduplicated counts for program service and cost projections. Data collection from court records will be a responsibility of the regional public guardian. Outside help with the evaluation will be sought for one area of the evaluation. The assessment of the possible conflict of interest issues regarding the Department of Social Services administering this program will be conducted by the Management Consulting Division of the Department of Information Technology. Cost of the evaluation will be absorbed by the Department of Social Services and the Department of Information Technology.

