



COMMONWEALTH of VIRGINIA

Department for the Aging

Julie Christopher, Commissioner

December 15, 2006

Honorable Members of the General Assembly
General Assembly Building
910 Capitol Square
Richmond, Virginia 23219

Honorable Members of the General Assembly:

Pursuant to § 2.2-712 of the Code of Virginia, this report on the status of the Virginia Public Guardian and Conservator Program is presented. The document includes a brief background of the program, a summary update to the 2003 program evaluation recommendations arising out of the Virginia Public Guardian and Conservator Programs: Evaluation of Program Status and Outcomes, Final Report (Teaster and Roberto, December 2003), and findings from a new Preliminary Report: The Need for Public Guardians in the Commonwealth of Virginia (Statewide Evaluation and Needs Assessment for Public Guardianship). This most recent report is authorized pursuant to Item # 301(B)(4) of the 2005 Appropriations Act. Plans for this assessment, in conjunction with an evaluation of the programs, was submitted to this honorable assembly in last year's annual report. Last, a status update to Guardianship Regulations, pursuant to § 2.2-712 (B)(3), Code of Virginia, is also presented.

Background

The Virginia Public Guardian and Conservator Program (VPGCP) was established by law in 1997 in §§ 2.2-711 *et seq.*, Code of Virginia. The Virginia Department for the Aging administers the program with fifteen local programs, through a competitively negotiated contract process.

Public guardianship is the discharge of the commonly held precept that "government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community" (Constitution of Virginia, Article I, Section 3). Public guardianship is the appointment and responsibility of a public official or publicly funded entity that serves as a legal guardian for a person:



- who is incapacitated;
- who is indigent; and
- for whom there is no person willing and suitable to serve as guardian.

Once appointed by the circuit court, the guardian of last resort, or public guardian, usually serves for the life of the incapacitated adult.

The Virginia Public Guardian and Conservator Program (VPGCP) responds to the documented need for guardians of last resort and has evolved over the years. The VPGCP now serves to protect more than 350 of the most vulnerable citizens of the Commonwealth. The primary quality of the VPGCP is social/human services rather than legal services. By definition, the complexity of the cases referred to the public guardian programs requires a great deal of time as well as a thorough knowledge of the social services and health care systems. In spite of the intensive, specialized services required by this vulnerable population, the amount paid to public guardian providers has, on average, increased only minimally since the inception of the program in 1997.

Summary Update of 2003 Program Evaluation Recommendations

While the 2003 evaluation found that “public guardian programs in Virginia are performing reasonably well serving the incapacitated citizens needing their services,” it is also noted that, five of the fourteen recommendations highlight funding needs, with the two most critical being the need for program rate increases and the need for funding of statewide coverage in order to adequately serve the citizens of the Commonwealth.

The remaining recommendations focus on program support and program operations including the need for standardized administrative processes and documents and the need for on-going in-service training for programs; the need for on-going independent evaluation of the programs; and the need to develop the programs capacity to meet the new challenge of Virginia’s aging population and the related increase in need for public guardians.

Progress continues to be made in addressing the 2003 recommendations. Most notable, **2005 appropriations** included \$132,000 in general funds to expand services through the Virginia Public Guardian and Conservator Program to individuals with mental illness and/or mental retardation who are 18 years of age and older. Comporting with the Commonwealth’s *Olmstead Initiative*, these funds were obligated and resulted in two new programs able to serve an additional 40 individuals in previously un-served areas. **2006 Appropriations** included \$150,000 in general funds to further expand services for public guardianship. Using these funds, the VPGCP was able to add three additional new programs in previously un-served areas resulting in a new program capacity of 368 individuals, served through fifteen local programs, as of July 1, 2006. And while there is still a great need for additional capacity throughout the Commonwealth, this number represents a significant increase in capacity as compared to the 212-person capacity of a few years ago.

Additional progress in addressing the 2003 recommendations include annual mandatory statewide in-service training for public guardians and conservators, annual monitoring visits to each program and on-going technical assistance to address unusual and/or difficult cases.

Statewide Needs Assessment – Public Guardianship

In last year's annual report to this honorable assembly, a plan for a Statewide Needs Assessment for public guardianship was presented. This assessment, in conjunction with an evaluation of the programs, was authorized Pursuant to Item # 301(B)(4) of the 2005 Appropriations Act and § 2.2-712 (B)(9), Code of Virginia. In accordance with Code qualification requirements, Virginia Polytechnic Institute and State University, Center for Gerontology is conducting this assessment. A preliminary report has been received and is currently being reviewed. **Preliminary findings** indicate that currently, the VPGCP is only able to serve 26% of clients deemed eligible for services. And, at the current funding rate, by the year 2010, the gap will widen to only 22% being served; by the year 2020, only 19% served, and by the year 2030, using very conservative estimates, without additional funding, the VPGCP will only have the capacity to serve 17% of those expected to qualify for the public guardianship services.

A final report will be submitted to this honorable assembly with next year's annual report.

Guardianship Regulations

§ 2.2-712 (B)(3), Code of Virginia, requires the adoption of regulations in accordance with the Administrative Procedures Act. Specifically to:

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer and manage the state and local or regional programs authorized by this article, including, but not limited to the adoption of:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. An ideal range of staff to client ratios for the programs; adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff to client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts, sheriffs, where appropriate, and the Department; and

c. Procedures governing disqualification of any program falling below or exceeding the ideal range of staff to client ratios, which shall include a process for evaluating any program that has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has had or is having upon the program and upon the incapacitated persons served by the program.

The regulations shall require that evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range.

Honorable Members of the General Assembly
Page 4 of 4
December 15, 2006

Largely, with the assistance of the Virginia Public Guardian & Conservator Advisory Board (pursuant to §§ 2.2-2411 and 2.2-2412, Code of Virginia), substantial progress has been made in promulgating public guardianship regulations. **Stage 1**, Notice of Intended Regulatory Action (NOIRA) was completed in the fourth quarter of 2005 and **Stage 2**, Proposed Regulation, is in process with an anticipated completion date by third quarter 2007, with the final **Stage 3** regulation promulgated by second quarter 2008.

If you need any additional information, please contact Janet James, Esq. at 804-662-7049 or janet.james@vda.virginia.gov.

Sincerely,

A handwritten signature in black ink that reads "Julie Christopher". The signature is written in a cursive style with a large, looping initial "J".

Julie Christopher
Commissioner

Enclosure