



# COMMONWEALTH of VIRGINIA

## Department for the Aging

Linda L. Nablo, Commissioner

December 1, 2008

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, an update on statewide coverage expansion and increased capacity through the use of Department of Mental Health Mental Retardation and Substance Abuses Services (DMHMRSAS) funds, significant accomplishments of the Virginia Public Guardian & Conservator Advisory Board (VPGCAB) and new Public Guardian and Conservator Program Regulations effective January 1, 2009.

### 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 (VDA) administers the program with sixteen 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 eighteen years of age or older;
- who is incapacitated;
- who is indigent; and

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- 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 has the capacity to protect 637 of the most vulnerable citizens of the Commonwealth; over a two hundred percent (200%) increase from 2005. The primary focus 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.

#### Program Expansion and Increased Capacity - DMHMRSAS

Two research studies and assessments authorized by the General Assembly in 2003<sup>1</sup> and 2007<sup>2</sup> both identified a substantial need for increased statewide coverage and capacity to serve more vulnerable adults in the Commonwealth. As a result of this need and comports with the *Olmstead Initiative*, additional funds were appropriated in 2005 to expand guardianship services for adults with mental illness and/or mental retardation. The following year, additional general funds were appropriated to further expand services for public guardianship. Using these funds, the VPGCP was able to add three new programs in previously un-served areas resulting in an increased program capacity of 366 individuals.

Then in fiscal years 2007 thru 2009, the General Assembly invested significant resources, through DMHMRSAS, to provide guardianship services to individuals currently residing in, or at risk of placement, in a state mental retardation (MR) training center. DMHMRSAS, working collaboratively with VDA through a Memorandum of Agreement, added significant capacity to the existing public program. As a direct result of funding received from DMHMRSAS, capacity in the public program was increased to

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<sup>1</sup> Virginia Public Guardian and Conservator Programs: Evaluation of Program Status and Outcomes, Final Report (Teaster and Roberto, December 2003). The 2003 evaluation of the Virginia Public Guardian & Conservator Program found that programs in Virginia continue to perform reasonably well even though programs face critical funding shortages. In particular, two critical funding needs were identified. The first is the need for *program rate increases* and the second is the need for *funding to support statewide coverage* to ensure service for citizens of the Commonwealth who need a guardian and/or conservator.

<sup>2</sup> The Need for Public Guardians in the Commonwealth of Virginia: Final Report (Roberto, Duke, Brossoie and Teaster, Virginia Polytechnic Institute and State University, Center for Gerontology, May 2007). Based on U.S. Census population estimates and projections and data on unmet need provided by a survey of 114 agency representatives (including 100% of the 15 current public guardian programs), there is an estimated need for 1,441 additional public guardians than are currently available through the Virginia Public Guardian and Conservator Program. By 2010, this number is expected to increase to 1,707; and by 2030 the estimated unmet need will be 2,170. These numbers are conservative in nature and represent only those impoverished persons in desperate need of state funded guardianship services.

serve an additional 73 persons in state MR training centers, and 198 individuals in the community at risk of placement in state MR facilities for a total of 271 persons. This amount represents 43% of the total Virginia Public Guardian and Conservator Program capacity of 637 persons. Also significant is the increase in statewide coverage. The program service area has been expanded to encompass previously un-served areas of the state, including Central Virginia and Northwestern parts of the state. [See Appendix-A of coverage area for FY 09 as compared to 5 years prior].

#### Virginia Public Guardian & Conservator Advisory Board (VPGCAB)

Pursuant to §§ 2.2-2411 and 2.2-2412 of the Code of Virginia, the Public Guardian and Conservatory Advisory Board (the "Board") is established as an advisory board in the executive branch of state government. The purpose of the Board is to *report to and advise the Commissioner of the Department for the Aging on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators.*

VDA commends the Board on their significant assistance and accomplishments this past year which have resulted in effective advocacy and improvement in the public guardian program. Notable accomplishments include:

- The Board conducted a survey of the Virginia Public Guardian and Conservator Programs to determine the composition of their multidisciplinary panels (MDP). The MDP is a statutory requirement for local programs, whose role is to review referrals to the program to determine if they are appropriate for guardian services.
- The Board held a strategic planning session to identify measurable goals to accomplish in 2009, focusing on expanding funding for local programs and creating new programs; and service delivery quality of care issues.
- Several members from the Board assisted in the Annual Statewide Training for Public Guardians and Conservators. Highlights included two workshops and a panel discussion. The interaction and participation by Board members was instrumental in providing valuable insight and encouragement to public guardians.
- The Board Chair, on behalf of the entire Board, made a presentation to the General Assembly's Joint Commission on Health Care on the Public Guardian Program.
- The Board was instrumental in the development and review of the Public Guardian and Conservator Program Regulations which were approved and are

effective January 1, 2009 (see section below on Public Guardian and Conservator Program Regulations).

Public Guardian and Conservator Program Regulations

As reported to the General Assembly in last year's report, work continued this year on Public Guardian and Conservator Program Regulations pursuant to § 2.2-712 (B)(3) of the Code of Virginia. VDA is pleased to report that, after more than 8 years in research and deliberations and with substantial assistance and input from the Virginia Public Guardian & Conservator Advisory Board and other interested parties and stakeholders, that Final Regulations have been promulgated and will be effective January 1, 2009<sup>3</sup>. [See Appendix-B for text of the approved regulation].

If you need any additional information, please contact Janet James, Esq., State Legal Services Developer at 804-662-7049 or [janet.james@vda.virginia.gov](mailto:janet.james@vda.virginia.gov).

Sincerely,

A handwritten signature in blue ink that reads "Linda Nablo". The signature is written in a cursive, flowing style.

Linda Nablo  
Commissioner

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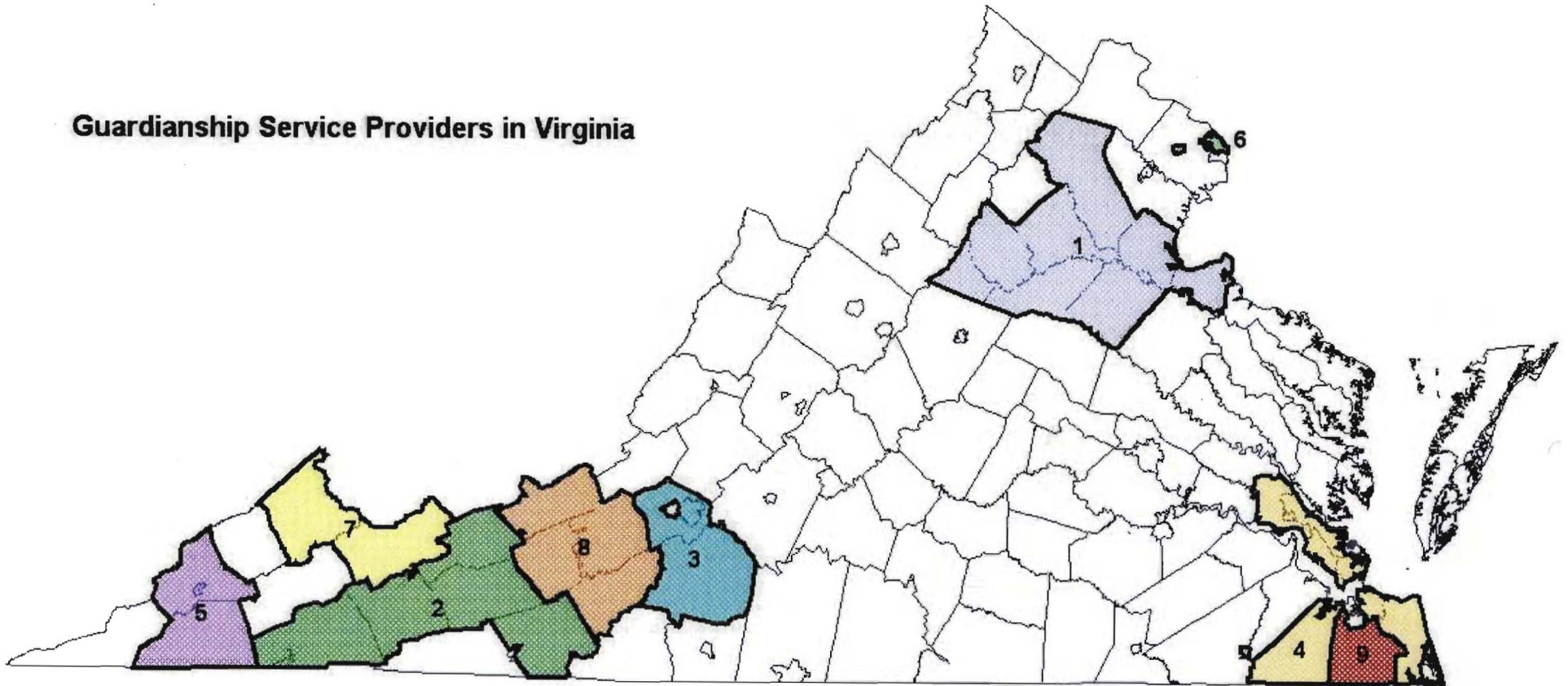
<sup>3</sup> Reference: Virginia Register, Volume 24 Issue 25; 22 VAC 5-30. Publication date 8/18/08

# **Appendix**

## **A**

**GUARDIANSHIP PROGRAMS IN VIRGINIA  
2004**

**Guardianship Service Providers in Virginia**



Guardianship Program Service Providers	
Provider Agency	
(1) Bridges Senior Care Solutions	
(2) District Three Governmental Cooperative	
(3) Family Services of Roanoke Valley	
(4) Jewish Family Svs & Catholic Charities of Hampton Roads	
(5) Mountain Empire Older Citizens Inc	
(6) Personal Support Network	
(7) "GOLD"	
(8) Southwest Virginia Legal Aid Society	
(9) Chesapeake DSS	



# **Appendix**

## **B**



# REGULATIONS

For information concerning the different types of regulations, see the Information Page.

## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR THE AGING

#### Final Regulation

Title of Regulation: 22VAC5-30. The Virginia Public Guardian and Conservator Program (adding 22VAC5-30-10 through 22VAC5-30-60).

Statutory Authority: §2.2-712 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: Janet James, Esq., State Legal Services Developer, Department for the Aging, 1610 Forest Avenue, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, TTY (804) 662-9333, or email janet.james@vda.virginia.gov.

#### Summary:

*The regulation sets forth requirements for the statewide Virginia Public Guardian and Conservator Program to ensure uniformity among programs in serving eligible persons, at public expense, who need a guardian or conservator or both, to assist them in meeting essential requirements for physical and emotional health and management of financial resources, as appropriate.*

*Based upon public comment, the proposed regulation has been amended to (i) clearly establish an ideal ratio of clients to paid staff of 20 incapacitated persons to every one paid full-time staff; (ii) include language to address emergency of unusual circumstances for programs to voluntarily serve five additional persons; (iii) include language requiring VDA, in consultation with the advisory board, to establish written procedures for public programs to obtain waivers regarding deviations in the ideal ratio of clients to paid staff; (iv) under "Appointments," included language to address existing information available to assist the multidisciplinary panel in screening of cases for individuals receiving case management services through a community services board (CSB) or behavioral health authority (BHA); and (v) add language requiring multidisciplinary panels to affirmatively recommend limitations on the scope of guardianship, where appropriate, as part of the screening process. In addition, some existing language has been amended or re-positioned to more clearly state the program's intent and duty to encourage incapacitated persons to participate in decisions, to act on their own behalf, and*

*to develop or regain the capacity to manage their personal affairs, where possible.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Changes Since Proposed is not available

### CHAPTER 30 THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM

#### 22VAC5-30-10. Definitions.

The following words and terms when used in this regulation shall have the following meaning unless the context clearly indicates otherwise:

"Advisory board" means the Virginia Public Guardian and Conservator Advisory Board as authorized by §§2.2-2411 and 2.2-2412 of the Code of Virginia.

"Client" means a person who has been adjudicated incapacitated and who is receiving services from a public guardian program.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to §501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for the Aging (VDA) as a public conservator, it may also serve as a conservator for other individuals. Incorporated by reference to this definition is the definition of "conservator" found in §37.2-1000 of the Code of Virginia and any successor language thereof.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety,

## Regulations

habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for the Aging as a public guardian pursuant to Article 2 (§2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to §501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for the Aging as a public guardian, it may also serve as a guardian for other individuals. Incorporated by reference to this definition is the definition of "guardian" found in §37.2-1000 of the Code of Virginia and any successor language thereof.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 of the Code of Virginia unless the court order entered pursuant to this chapter specifically provides otherwise. Incorporated by reference to this definition is the definition of "incapacitated person" found in §37.2-1000 of the Code of Virginia and any successor language thereof.

"Indigency" means the client is a current recipient of a state-funded or federally funded public assistance program for the indigent or as otherwise defined in §19.2-159 of the Code of Virginia.

"Least restrictive alternatives" means, but is not limited to money management services including bill payer and representative payee services, care management, and services provided pursuant to a financial or health care power of attorney.

"Minimal fee" means allowable fees collected or payable from government sources and shall not include any funds from an incapacitated person's estate.

"Public guardian program" means a local or regional public or private nonprofit entity or program designated by VDA as a public guardian, a public conservator or both, pursuant to §§2.2-712 and 2.2-713 of the Code of Virginia, and operating under a contract entered into with VDA.

### 22VAC5-30-20. Introduction and purpose.

A. Introduction. Pursuant to §2.2-711 of the Code of Virginia, the General Assembly declared that the policy of the Commonwealth is to ensure the appointment of a guardian or conservator to persons who cannot adequately care for themselves because of incapacity to meet essential living requirements where (i) the incapacitated person is indigent, and (ii) there is no other proper and suitable person willing and able to serve in such capacity.

B. Purpose. This regulation sets forth requirements for the statewide program of local and regional public guardian programs and establishes the requirements for local and regional entities to operate a designated public guardian program.

### 22VAC5-30-30. Public guardian programs.

A. Designation. VDA shall select public guardian programs in accordance with the requirements of the Virginia Public Procurement Act. Only those programs that contract with VDA will be designated as public guardian programs. Funding for public guardian programs is provided by the appropriation of general funds.

B. Authority. A public guardian program appointed as a guardian, a conservator, or both as a guardian and conservator, shall have all the powers and duties specified in Article 1 (§37.2-1000 et seq.) of Chapter 10 of Title 37.2 of the Code of Virginia, except as otherwise specifically limited by a court.

### C. Structure.

1. Each public guardian program shall have a program director who supervises and is responsible for providing guardianship services to any incapacitated persons assigned by the court and to provide overall administration for the public guardian program. The program director must be a full-time employee of the program and have experience as a service provider or administrator in one or more of the following areas: social work, case management, mental health, nursing or other human service programs. The program director must also demonstrate by objective criteria, a knowledge and understanding of Virginia's guardianship laws, alternatives to guardianship, and surrogate decision making activities. The program director shall attend all training and activities required by VDA.

2. Each public guardian program shall establish a multidisciplinary panel to (i) screen cases for the

purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person [ . This screening shall include a duty to recommend the most appropriate limitations on the power of the guardian or conservator, if any, to ensure that the powers and duties assigned are the least restrictive, ] and (ii) annually review cases being handled by the program to ensure that a guardian or conservator appointment remains appropriate. Composition of a multidisciplinary panel should include representatives from various human services agencies serving the city, county, or region where the public guardian program accepts referrals. If serving a region, the multidisciplinary panel shall have at least one representative from each local jurisdiction within the region. To the extent appropriate disciplines are available, this panel [ may should ] include but is not limited to representation from:

- a. Local departments of social services, adult protective services;
- b. Community services boards [ or behavioral health authorities ];
- c. An attorney licensed by the Virginia State Bar;
- d. Area agencies on aging;
- e. Local health departments;
- f. Nursing home, assisted living, and group home administrators; and
- g. Physicians and community representatives.

#### D. Client ratio to paid staff.

1. Each public guardian program shall maintain a direct service ratio of clients to paid staff that does not exceed [ VDA's established ideal ratio of ] 20 incapacitated persons to every one paid full-time staff person [ 20:1 ] . [ A deviation up to and including 30 incapacitated persons to every one paid full-time staff person may be authorized by VDA, in writing, where the proposed plan for staffing ensures that the guardian or conservator will maintain sufficient contacts with the incapacitated person. For the purposes of this section, the term "sufficient contacts" means that the guardian or conservator has an appropriate amount of contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities; and, to the extent feasible, the guardian or conservator shall encourage the incapacitated person to participate in decisions to act on his own behalf and to develop or regain the capacity to manage his personal affairs. ]

2. Each public guardian program shall have in place a plan to immediately provide notice to the circuit court(s)

in its jurisdiction and to VDA when the program determines that it may exceed its [ maximum ideal ] ratio of clients to paid staff.

3. [ In an emergency or unusual circumstance, each program, in its discretion, may exceed VDA's established ideal ratio by no more than five additional incapacitated persons. Each program shall have in place a policy to immediately provide notice to VDA when such an emergency or unusual circumstance occurs and when the emergency or unusual circumstance ends and the ideal ratio has returned to 20:1. The notice to VDA shall comply with policy established by VDA. Other than an emergency or unusual circumstance as described in the preceding sentence, a waiver must be requested to exceed VDA's established ideal ratio. ] VDA [ , in consultation with the advisory board, ] shall establish written procedures for public guardian programs to obtain appropriate waivers regarding deviations in the [ ideal ] ratio of clients to paid staff. Procedures shall comply with § [ §2.2-712 and ] 2.2-713 of the Code of Virginia. VDA shall [ inform the Advisory Board whenever a waiver is issued to a Public Guardian Program report waiver requests and status of granted waivers to the advisory board at its regularly scheduled meetings ]. VDA shall review such waivers every six months [ until the ratio of clients to paid staff does not exceed 20 incapacitated persons to every 1 paid staff person to ensure that there is no immediate threat to the person or property of any incapacitated person nor that exceeding VDA's established ideal ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve ].

#### E. Appointments.

1. Prior to the public guardian program accepting an individual for services, the multidisciplinary panel, described in 22VAC5-30-30 C 2, shall screen referrals to ensure that:

- a. The public guardian program is appointed as guardian, or conservator, or both only in those cases where guardianship [ or conservatorship ] is the least restrictive alternative available to assist the individual;
- b. The appointment is consistent with serving the type of client identified by the established priorities of the public guardian program;
- c. The individual cannot adequately care for himself;
- d. The individual is indigent; and
- e. There is no other proper or suitable person or entity to serve as guardian.

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[ f. In the case of an individual who receives case management services from a community services board (CSB) or behavioral health authority (BHA), the multidisciplinary panel may also request the results of the "determination of capacity" as authorized by 12VAC35-115-145 (Determination of capacity to give consent or authorization) and verification that no other person is available or willing to serve as guardian pursuant to 12VAC35-115-146 E (Authorized representatives). ]

2. Appointments by a circuit court shall name the public guardian program, rather than an individual person, as the guardian, the conservator or both guardian and conservator.

3. A public guardian program shall only accept appointments as guardian, conservator, or both guardian and conservator that generate no fee or that generate a minimal fee.

### F. Services.

1. A public guardian program shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian, conservator, or both guardian and conservator for the incapacitated person.

[ 2. The guardian or conservator shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage his personal affairs to the extent feasible. ]

[ ~~2.~~ 3. ] The multidisciplinary panel, described in 22VAC5-30-30 C 2, shall review active cases at least once every 12 months to determine that:

- a. The client continues to be incapacitated;
- b. The client continues to be indigent; and
- c. There is no other proper or suitable person or entity to serve as guardian, conservator, or both guardian and conservator.

[ ~~3.~~ 4. ] Each public guardian program shall set priorities with regard to services to be provided to incapacitated persons in accordance with its contract with VDA.

[ ~~4.~~ 5. ] Each public guardian program shall develop written procedures and standards to make end-of-life decisions or other health-related interventions in accordance with the expressed desires and personal values of the incapacitated person to the extent known. If expressed desires or personal values are unknown, then written procedures [ should, including an ethical decision-making process, shall be used to ] ensure that the guardian or conservator acts in the incapacitated person's best interest and exercises reasonable care, diligence and prudence on behalf of the client.

[ ~~5.~~ 6. ] The public guardian program shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the incapacitated person. Impropriety or conflict of interest arises where the public guardian program has some personal or agency interest that might be perceived as self-serving or adverse to the position or the best interest of the incapacitated person. Examples include, but are not limited to, situations where the public guardian program provides services such as housing, hospice or medical care directly to the client. VDA reserves the right to monitor all administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between VDA and the public guardian program.

[ ~~6.~~ 7. ] Each public guardian program and its employees are required to report any suspected abuse, neglect, or exploitation in accordance with §63.2-1606 of the Code of Virginia that provides for the protection of aged or incapacitated adults, mandates reporting, and provides for a penalty for failure to report.

[ ~~7.~~ 8. ] Each public guardian program shall submit data and reports as required by VDA and maintain compliance with VDA program guidelines. VDA shall periodically monitor administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between the public guardian program and VDA.

### 22VAC5-30-40. Personnel standards.

A. Each paid staff who is working in the public guardian program and has direct contact with clients or client estates shall:

1. Complete an orientation program concerning guardian and conservator duties to include the following subjects:

- a. Privacy and confidentiality requirements;
- b. Recordkeeping;
- c. Services provided, and standards for these services;
- d. A historical and factual review about the needs of the elderly and people with disabilities; and
- e. Indications of and actions to be taken where adult abuse, neglect, or exploitation is suspected.

2. Have a satisfactory work record and be a person of good character; demonstrate a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of an incapacitated person; and have not been convicted of any criminal offense involving any physical attack, neglect or abuse of a

person, lying, cheating, or stealing nor convicted of any felony. A criminal record check will be conducted on each person hired on or after January 1, 2009.

3. Be free of illegal drug use as confirmed by a drug screening test conducted prior to the assumption of any duties with an incapacitated person for each person hired on or after January 1, 2009.

4. Demonstrate, by objective criteria, knowledge of Virginia's guardianship laws and alternatives to guardianship. For each person hired on or after January 1, 2009, minimum education requirements apply and include a high school diploma or general education diploma (GED) from a Virginia accredited program and training or course work on (i) the duties and powers of guardians and conservators in Virginia, [ including an understanding of surrogate decision making and how it differs from substituted judgment decision-making standards, ] (ii) mandatory reporting requirements to the Department of Social Services and Commissioner of Accounts where applicable, and (iii) working with special needs populations including individuals with physical and mental disabilities. Program directors have additional requirements as specified in 22VAC5-30-30 C 1.

5. Participate in mandatory training programs required by VDA.

**B. Volunteers.**

1. Volunteers may be recruited and used to supplement paid staff. However, volunteers shall not be included in the public guardian program direct service ratio of 20 incapacitated persons to every one paid staff person as required under 22VAC5-30-30 D 1.

2. Volunteers may not exercise the authority of a guardian or conservator.

3. Each public guardian program that uses volunteers shall develop and implement written procedures for volunteer management and supervision including requirements that each volunteer shall:

a. Complete an orientation program that provides an overview of the Virginia Public Guardian and Conservator Program (§ [ § ] 2.2-711 et seq. of the Code of Virginia).

b. Complete an orientation program that provides an overview of the local public guardian program for which the person intends to serve as a volunteer, including (i) services provided by the local program, (ii) specific duties of the volunteer, (iii) privacy and confidentiality requirements, (iv) recordkeeping and documentation requirements, and (v) indications of

and action to be taken where adult abuse, neglect, or exploitation is suspected.

c. Have a satisfactory work record and personal record and be a person of good character and have not been convicted of any criminal offense involving any physical attack, neglect or abuse of a person, lying, cheating, or stealing nor convicted of any felony. A criminal record check will be conducted on each volunteer accepted by the local program on or after January 1, 2009.

**22VAC5-30-50. Recordkeeping.**

A. Each public guardian program shall maintain an accurate and complete client record for each incapacitated person. Records shall be kept confidential. Access to client records shall be limited to the client's legal representative; as directed by court order; as directed by duly authorized government authorities or as specifically authorized by the Code of Virginia or federal statutes, including by written consent of the client's legal representative. Provision shall be made for the safe storage of client records or accurate and legible reproductions for a minimum of five years following termination of the guardian or conservator court order.

B. The client's record shall contain a Virginia Uniform Assessment Instrument (UAI) [ or a similar comprehensive assessment instrument ] , a care plan, a values history, the annual report by guardians submitted to the Department of Social Services as required by §37.2-1021 of the Code of Virginia, the annual accounting to the Commissioner of Accounts as required by §26-17.4 of the Code of Virginia, and all applicable court orders and petitions. A client's record shall be completed and on file within 60 days of the program's appointment as guardian.

C. Each public guardian program shall maintain all records, provide reports, including audit information and documents in accordance with its contract with VDA.

**22VAC5-30-60. Evaluation and monitoring of public guardian programs.**

VDA shall periodically administer, monitor, evaluate, provide technical assistance and expertise, and shall ensure fiscal accountability and quality of service of public guardian programs.

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## THE VIRGINIA REGISTER INFORMATION PAGE

**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

### **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

### **FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

### **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

### **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

### **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. 23:7 VA.R. 1023-1140 December 11, 2006, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

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