



COMMONWEALTH of VIRGINIA

Department for the Aging

Linda L. Nablo, Commissioner

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

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, current program funding and capacity, impact of state budget reductions to client services, examples of persons served and the *Olmstead* initiative, significant accomplishments of the Virginia Public Guardian & Conservator Advisory Board and new Public Guardian and Conservator Program Regulations that became 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 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
- 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.



Current Program Funding and Capacity

The current program continues to respond to the documented need for guardians of last resort and has evolved over the years. From modest beginnings in 1994 when the General Assembly appropriated funds to explore the feasibility of a publicly funded program, including three demonstration pilot projects, and subsequent service to 93 clients some years later¹, the program has grown in capacity to 620² and now contracts with sixteen local programs throughout the Commonwealth. In addition and pursuant to recommendations contained in House Document Number 37, *Report of the Select Committee to Study the Statewide System of Providing Substitute Consent for People with Mental Disabilities*, (2002)³, VDA, in partnership with DBHDS, has significantly increased services available to people served by Community Service Boards (CSBs) and more than doubled statewide coverage areas.

The primary focus of the VPGCP continues to involve social/human services rather than legal services. By definition, the complexity of the cases referred to the public guardian program require a great deal of time as well as a thorough knowledge of the social services and health care systems and their relationship to boundaries included in the law, regulations and Circuit Court appointments. Important safeguards established by the General Assembly to protect individual autonomy to the greatest extent possible continue and include, among other requirements, (1) mandatory Circuit Court proceedings, (2) appointment of a Guardian Ad Litem for those alleged to be incapacitated and (3) a Multi-disciplinary Panel for each local program to screen cases and ensure that public guardianship remains the least restrictive alternative for each program client.

State Budget Reductions: Impact on Service to Behavioral Health Clients

In fiscal years 2007 thru 2009, the General Assembly invested significant resources, through the Department of Behavioral Health and Developmental Services (formerly Department of Mental Health, Mental Retardation and Substance Abuse Services), to provide guardianship services to individuals currently residing in, or at risk of placement in, state mental retardation (MR) training centers. DBHDS, working collaboratively with VDA through a Memorandum of Agreement, added significant capacity to the existing public program by authorizing an additional 272 slots for at risk

¹ Teaster and Roberto Report (1997); and the Virginia Public Guardian and Conservator Programs: Summary of the First Year Evaluation Report, Center for Gerontology, Virginia Polytechnic Institute and State University, Teaster and Roberto (2002).

² Other published reports have stated current program capacity of 638. However, this number was reduced by 18 slots, to 620, in the last round of Commonwealth budget reductions. Please see pages 2 and 3 of this report for additional details on the effect of funding reductions to the program.

³ House Document 37 (2002) resulted from House Joint Resolution 614, patroned by Delegate DeBoer, agreed to during the 2001 General Assembly Session, established a select committee (Delegates Jay W. DeBoer, Robert D. Orrock, Sr., Anne G. Rhodes, John M. O'Bannon, III, and Senators Janet D. Howell, William C. Mims, and Frederick M. Quayle) to study the system of providing substitute consent to persons with mental disabilities. The study resolution was introduced at the request of the Virginia Association of Community Services Boards (VACSB).

adults. As a result, capacity for the entire program grew from 366 persons to 638 persons, representing an increase of 74%. Improved accessibility was also achieved because the program expansion encompassed previously unserved areas of the state, moving Virginia closer to its goal of *statewide* program coverage for the entire Commonwealth.

Unfortunately, despite DBHDS very best efforts, funding reductions for some client services were unavoidable. Specifically, 18 client slots funded through DBHDS were eliminated, reducing program capacity from 638 persons to the current level of 620 persons. And while these *numbers* may seem insignificant in terms of the percentage points involved, (i.e. 3% of total), they represent 18 of the most vulnerable at risk adults in the Commonwealth.⁴

Examples of Persons Served and Impact on Olmstead Requirement⁵

Comporting with the Commonwealth's *Olmstead Initiative*, the Virginia Public Guardian and Conservator Program continues to provide a cost effective method to serve incapacitated individuals, including those with disabilities. Additionally, *it is estimated that a high percentage of public guardianship costs are recovered by a reduction in the cost of medical and social services for persons receiving public guardianship services.*⁶ These cost saving estimates have been documented in at least three reports.⁷ Additionally, for those individuals suitable for community based care, with the assistance of a public guardian, anecdotal evidence suggests that there are considerable savings to the Commonwealth when compared to institutionalized care for the same individual in a state operated facility.

⁴ In all, DBHDS-MR Guardianship funding was reduced by \$57,050 (5%) accounting for 4 vacant slots and 14 active clients in the "referral" stage (i.e. clients already approved for services but Circuit Court Petitions not yet filed). And while all public guardian programs were not equally affected, reductions were structured to avoid the necessity of having public guardian programs return to Circuit Court to "give-back" now unfunded clients.

⁵ In 1999 the U.S. Supreme Court ruled in *Olmstead v L.C.* that unjustified isolation of people with disabilities is properly regarded as discrimination under Title II of the Americans with Disabilities Act (ADA) AND that states have a duty to provide community-based services for people with disabilities if 1) they do not object, 2) state treatment professionals determine that community placement is appropriate, and 3) the state can reasonably accommodate the placement. Guardians appointed by a Circuit Court in Virginia can assist in transitioning persons residing in institutionalized care, such as a training center, to living in the community, usually at a much reduced cost and improved quality of life for the incapacitated adult. For additional information specific to the Commonwealth of Virginia, please refer to One Community: The Olmstead Initiative at <http://www.olmsteadva.com/> (Community Integration Advisory Commission: 2009 Recommendations to the Governor).

⁶ House Document 37 at page 3 (2002).

⁷ Preliminary Evaluation of the Virginia Guardian of Last Resort and Guardianship Alternatives Demonstration Project, Center for Health Services Research, Department of Political Science, The University of Memphis, Winsor C. Schmidt (1996); Virginia Public Guardian and Conservator Programs: Summary of the First Year Evaluation Report, Center for Gerontology, Virginia Polytechnic Institute and State University, Teaster and Roberto (2002); and Virginia Public Guardian and Conservator Programs: Evaluation of Program Status and Outcomes, Final Report (Teaster and Roberto, December 2003).

Recent examples of persons served by the public program include:

- A 40 year old woman, who was housed in a training center, was accepted into the public guardianship program in August 2008. Since that time, she has been transitioned to a host home in the community where she enjoys a higher quality of life and displays much less destructive behavior. For example, while at the training center, she demonstrated many harmful behaviors in terms of hand banging and striking herself in the head. She was restless, pacing and shaking her hands. However, since living in the community, these behaviors and restlessness are greatly reduced. She responds well to redirection from her caregiver, and although she was quite shy at first, she now interacts with the caregiver's family, friends, and the community.
- A 55 year old woman, who was housed at a training center, now resides in a host home in the community. She and another resident are both wheelchair bound and require virtually total care. However, the host home has made structural modifications to the home and obtained the appropriate equipment needed for the client's care. The client's past tendency while in the training center was to strike herself in the head frequently. On one occasion, her psychiatrist noted that she demonstrated this destructive behavior more than one hundred times during one treatment session. However, since living in the community, this behavior has become nonexistent. The client is provided wheelchair van transport to a day support program and thereby is around others in her community. She also participates in community outings with her host home family as well.
- A public program was appointed guardian for a male client on 10/27/08. At that time he rented a room in the basement of an old house. The only heat was a small electric heater, which did not work at times. He had a small refrigerator and the landlady took him food several times monthly. His clothes and bed were often wet with urine. He rarely bathed or changed clothes. He would stand on the street corner and ask strangers for money. He did not take his blood pressure medicine correctly or on a regular basis. He rode his bicycle around town and would ask for food at various restaurants. He had an unsafe and unclean environment. The public guardian was able to help him move to a much nicer apartment with a kitchen and bathroom. He was able to get Medicaid and receive community based services, including assistance five days each week for help with cleaning, laundry, shopping, food preparation, medication management and transportation to the doctor and pharmacy, as needed. Since coming to the public guardian program, this gentleman now showers daily, takes pride in wearing clean clothes, and his incontinence is much improved. He has also been able to visit his elderly mother in a nursing home after losing touch with her for some years. He says he is happy and never wants to go back to where he was (before appointment of a public guardian). When people around town see him now they cannot believe this is the same man. "He delights in being

complimented on his new, clean appearance. He smiles frequently and has made new friends.”

- One client, who was housed at Central Virginia Training Center for 52 years, was moved by her public guardian into a group home with community supports. The move occurred about two years ago. She is currently doing very well and attends a day support program during the week. She also participates in numerous activities, is more talkative, and interacts more frequently with people. “She seems to have a sparkle in her eyes now.”
- One woman who had been housed at Southside Virginia Training Center for 36 years was moved in May 2009 to an Intermediate Care Facility. “She is doing well and is more playful” and has a greatly improved quality of life. She attends a day support program during the week and enjoys participating in community activities.

There are many other similar *real life* examples of vulnerable adults assisted through the public guardian program.

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 Conservator 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 continued and significant assistance and advocacy on behalf of the public guardianship program. Notable accomplishments during this past year include:

- The Board continued its focus on the local program’s Multi-disciplinary Panels (MDP). The MDP is a statutory requirement for local programs, whose role is to review referrals to the program to ensure that no other least restrictive alternatives exist to serve the prospective client. For example, two alternatives to consider before seeking judicial appointment of a guardian include Representative Payee appointments and determining whether or not there is an existing Durable Power of Attorney for an incapacitated adult. The MDP also serves as a *safeguard* to ensure that the prospective person is appropriate for the public program only as a last resort.⁸

⁸ Judicial appointment of a guardian should always be an absolute “last resort” because it strips an individual of important rights to make decisions. It should only be considered when no other alternatives are available. (Note:

- The Board assisted in identifying conflicting language in existing law as compared to the revised language in the Virginia Health Care Decision Act (Senate Bill 1142), effective July 1, 2009. The VPGCAB agreed to pursue advocacy efforts to assist VDA in eliminating conflicts between the new law and existing law contained in the public guardian statute at § 2.2-713, Code of Virginia.
- Several members from the Board traveled to and actively participated in the September 2009 Annual Statewide Training for Public Guardians and Conservators (Fredericksburg, Virginia). The Board Chairman conducted a session on the Advance Medical Directive revisions in the Virginia Health Care Decision Act. Board members made valuable contributions and interacted with public guardian program staff for the second consecutive year.

Implementation of Public Guardian Regulations – Effective 1/1/09

Implementation of The Virginia Public Guardian and Conservator Regulations, pursuant to § 2.2-712 (B)(3) of the Code of Virginia, were approved last year and became effective January 1, 2009⁹. Implementation has gone reasonably well and training/technical assistance has been provided to local programs throughout the Commonwealth. Reference 22 VAC5-30-10 thru 22 VAC5-30-60, Administrative Code of Virginia.

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.

Sincerely,



Linda Nablo
Commissioner

For further reference material on Guardianship, Conservatorship and alternatives to Guardianship, please refer to the Virginia Department for the Aging web page at <http://www.vda.virginia.gov/altguardianship.asp>.

⁹ Reference: Virginia Register, Volume 24 Issue 25; 22 VAC 5-30. Publication date 8/18/08