

**REPORT TO THE
GENERAL ASSEMBLY OF VIRGINIA**

**VIRGINIA PUBLIC GUARDIAN &
CONSERVATOR PROGRAM**



**BIENNIAL REPORT OF
THE VIRGINIA DEPARTMENT FOR THE AGING
COMMONWEALTH OF VIRGINIA
RICHMOND
2012**

2012 Biennial Report - Virginia Public Guardian and Conservator Program

EXECUTIVE SUMMARY

The Public Guardian Program continues to respond to the documented need for guardians of last resort for adults aged 18 years and older who are adjudicated *incapacitated* and indigent by a Circuit Court and have no other person willing and able to serve as his or her Guardian. The current program has capacity to serve 601 adults through a cooperative agreement with the Department of Behavioral Health and Developmental Services (DBHDS). As of the third quarter of 2011, the youngest client served by the program is 20 years old and the oldest client served is 102 years old. Demographically, 55% of clients served are middle age (30 to 59 years of age), 36% are older adults (60 years of age and older) and 9% are young adults (20 to 29 years of age).

Relevance to the *Olmstead* Requirement

Comporting with the Commonwealth's *Olmstead* initiative, the Virginia Public Guardian and Conservator Program continues to provide a cost effective method to transition vulnerable adults, who need a guardian, from Training Centers to improved lives in the community. Since 2006, with funding from DBHDS, the program has successfully enabled the transitioning of 44 adults to the community at an estimated savings to the Commonwealth of over \$2,500,000 annually! This result was achieved through a coordinated team process involving Case Managers, Public Guardians and Training Center and DBHDS staff. Some examples are included in this report.

Partnership with the Department of Behavioral Health and Developmental Services

Beginning in fiscal years 2007 thru 2009, the General Assembly invested significant resources through DBHDS 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 the Virginia Department for the Aging (VDA), added significant capacity to the existing public program by authorizing additional slots for at risk adults. In addition, DBHDS funding enabled some previously unserved areas of the Commonwealth to have public guardianship services in their area. Currently, DBHDS funding accounts for approximately 50% of the Public Guardian Program budget.

The Virginia Public Guardian & Conservator Advisory Board (VPGCAB)

The Board serves as a technical resource and advisor for the Program and has been commended by VDA in past reports. Notable Board accomplishments are included in this Biennial Report.

Recommendations (Including Increased Funding to Address Unmet Needs and Unserved Areas of the Commonwealth)

VDA projects that an additional \$2,721,800.00 is needed to serve an additional 537 vulnerable adults in the Public Guardian Program. This number includes individuals on waiting lists (242), individuals currently living in Training Centers who may require a guardian when they transition to community-based services (about 15) and other individuals in unserved and underserved areas of the Commonwealth (280). Unserved areas of the Commonwealth include the counties of Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greensville, Lee and Dickenson. The additional funding amount needed also includes specific funding to cover the cost of legal fees and psychological evaluations required to petition Circuit Courts for Guardianship.



COMMONWEALTH of VIRGINIA
Department for the Aging
James Rothrock, Interim Commissioner

January 1, 2012

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 statistical data on the number and type of vulnerable adults served by the program, relevance to the *Olmstead* requirement, program history, benefits and statistical data from the partnership with the Department of Behavioral Health and Developmental Services (DBHDS), accomplishments and support by the Virginia Public Guardian and Conservator Advisory Board (VPGCAB) on behalf of the program, details on the administration of the program provided by the Virginia Department for the Aging (VDA) and specific unmet needs and unserved areas of the Commonwealth needing Public Guardianship services. The report also includes recommendations for increased funding to address unmet needs and expand coverage areas to include Southern and Southwest Virginia.

If you need any additional information, please contact Janet James, Esq., Public Guardian Program Coordinator, by email at janet.james@vda.virginia.gov or by telephone at 804-662-7049.

Sincerely,

A handwritten signature in blue ink, appearing to read "James A. Rothrock".

James A. Rothrock
Interim Commissioner

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SECTION I

VULNERABLE ADULTS SERVED BY THE PUBLIC GUARDIAN PROGRAM AND RELEVANCE TO THE *OLMSTEAD* REQUIREMENT

The Public Guardian Program continues to respond to the documented need for guardians of last resort for adults aged 18 years and older who are adjudicated *incapacitated* and indigent by a Circuit Court and have no other person willing and able to serve as his or her Guardian. As the statistical table below illustrates, the current program has capacity to serve 601 adults through a cooperative agreement with the Department of Behavioral Health and Developmental Services (DBHDS). As of the third quarter of 2011, the youngest client served by the program is 20 years old and the oldest client served is 102 years old. Demographically, 55% of clients served are middle age (30 to 59 years of age), 36% are older adults (60 years of age and older) and 9% are young adults (20 to 29 years of age).

DEMOGRAPHICS – PUBLIC GUARDIAN PROGRAM (AS OF 9/30/11)

Age Group	Age Range	Number of Clients	Percentage
Young Adults	18 to 29	55	9%
Middle Age	30 to 59	328	55%
Older Adults	60+	218	36%
Total		601	100%

Source: 3rd Quarter Reports – Public Guardian Programs (2011)¹

- Youngest Client Served – 20 Years Old
- Oldest Client Served – 102 Years Old

RELEVANCE TO THE *OLMSTEAD* REQUIREMENT

Comporting with the Commonwealth's *Olmstead* initiative, the Virginia Public Guardian and Conservator Program continues to provide a cost effective method to transition vulnerable adults, who need a guardian, from Training Centers to improved lives in the community. Since 2006, and with funding through DBHDS, the Public Guardian Program has successfully enabled the transitioning of 44 adults to the community at an estimated savings to the Commonwealth of over \$2,500,000 annually². This result was achieved through a coordinated team process

¹ Figures interpolated based on pending clients and deceased clients occurring during the reporting period of July 1 thru September 30, 2011.

² Estimated cost savings for each individual transitioned from a state-funded Training Center to a community setting is approximately \$117,600 annually according to findings by the Department of Justice (reference 2/10/11 report from the Department of Justice to Governor McDonnell for the Commonwealth of Virginia). Adjusting this annual figure by 50%, to factor in the federal Medicaid match, the cost to the Commonwealth is \$58,800 per individual.

involving Case Managers, Public Guardians and Training Center and DBHDS staff. Some examples are included in the chart below (and many more examples can be provided upon request)

REAL LIVES AND REAL PEOPLE

Person/Age	Diagnosis	Years in Training Center ³	Quality of Life Improvement
22 year old male	Autistic	16 years	Self-injurious and aggressive behaviors have stopped
61 year old female	Down's Syndrome	60 years	No longer drools or chews on clothes; likes music
58 year old male	Profound Mental Retardation from birth	51 years	Goes fishing; laughs easily; emotional outbursts ceased
49 year old male	Autism; Seizure Disorder	31 years	Cataract surgery; communicates through gestures; self identifies
68 year old female	Dual diagnosis: intellectual & psychiatric	50+ years	Self-injurious behaviors decreased; smiles and interacts with others
23 year old male	Dual diagnosis: intellectual & cognitive	5 years (estimated)	Protection from founded family abuse; supported employment
84 year old male	Intellectual disability and numerous health issues	61 years	Enjoys being part of a family and Sunday activities and trips
61 year old female	Intellectual disability	50+ years	No longer smacks her head; able to sleep, calmer; health improved

SECTION II

THE PUBLIC GUARDIAN PROGRAM (HISTORY, INTENT, LAW & REGULATIONS)

The Virginia Public Guardian and Conservator Program was established by law in 1997 (to become effective in 1998) 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

Based on this adjusted figure, 44 individuals multiplied by \$58,800 each, equals a savings to the Commonwealth of \$2,587,200 annually.

³ Years that the individual lived in a State Training Center or otherwise institutionalized in a state-funded facility prior to their transition to the community. These successful transitions were accomplished by using a coordinated team process, with the working collaboration of many individuals from the public and private sector, including Case Managers, Public Guardians, Community Service Boards, Training Center staff and others. In addition, it is important to note that, prior to a Public Guardianship appointment, individuals in Training Centers had substitute decision makers, such as authorized representatives (as defined under Virginia's Human Rights Regulations) and parent guardians to ensure their care, safety and development.

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 defined as 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 a Circuit Court, the guardian of last resort or Public Guardian usually serves for the life of the incapacitated adult. 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, to three demonstration pilot projects and subsequent service to 93 vulnerable adults some years later⁴, the program has grown in capacity to serve 601⁵ of the Commonwealth’s most vulnerable adults. 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)⁶, VDA, in partnership with the Department of Behavioral Health and Developmental Services (DBHDS), has significantly increased services available to people served by local Community Service Boards (CSBs) and more than doubled its statewide coverage.

SECTION III

PARTNERSHIP WITH THE DEPARTMENT OF BEHAVIORAL HEALTH & DEVELOPMENTAL SERVICES (DBHDS)

Beginning in fiscal years 2007 thru 2009, the General Assembly invested significant resources through DBHDS 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, added significant capacity to the existing public program by authorizing additional slots for at risk adults. In addition, DBHDS funding enabled some previously unserved areas of the Commonwealth to have public guardianship services in their area. Currently, DBHDS funding accounts for approximately 50% of Public Guardian Program budget and provides guardianship services for 254 clients. As mentioned previously in Section I

⁴ 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).

⁵ Past published reports have stated program capacity as high as 638. However, due to past funding reductions, this number has been reduced and the current program capacity for fiscal year 2012 is 601 as of 9/22/11.

⁶ 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).

of this report, since 2006 (fiscal year 2007), with funding through DBHDS, the Public Guardian Program has successfully enabled the transitioning of 44 adults to the community at an estimated savings to the Commonwealth of over \$2,500,000 annually! This successful outcome was accomplished by using a coordinated team process, with the working collaboration of many individuals from the public and private sector, including Case Managers, Public Guardians, Community Service Boards, Training Center staff and others.

A Unique Feature of the DBHDS Funding Partnership with VDA

Unlike other vulnerable adult protective programs, Guardianship requires a hearing in a Circuit Court, of competent jurisdiction, before an individual can qualify for Guardianship. This process, and the many safeguards associated with this legal process, can be costly. This is especially true in cases where outside legal counsel must be obtained to initiate the Public Guardianship Petition. Legal costs and fees, combined with evidentiary requirements (such as updated psychological exams to provide evidence of current incapacity), became barriers for some individuals needing guardianship. In order to provide a remedy for this problem, DBHDS, in addition to funding Public Guardian slots through VDA, was able to administer and provide additional funding for legal fees and updated psychological examinations and reports when needed. This unique feature of DBHDS’s partnership with VDA ensured that individuals needing a DBHDS-funded Public Guardianship slot were able to successfully comply with legal requirements and the petitioning process. Unfortunately, these supplementary funds have all been exhausted and no longer available.

SECTION IV

THE VIRGINIA PUBLIC GUARDIAN & CONSERVATOR ADVISORY BOARD (VPGCAB)

The Advisory Board serves as a technical resource and advisor for the Public Guardian Program and has been commended by VDA in past reports to the General Assembly. The table below outlines notable accomplishments of the Board.

Accomplishments of the Public Guardian Advisory Board
<p><u>Public Guardianship Regulations</u>: As reported to the General Assembly by VDA in the 2008 Annual Public Guardian Report, the Board provided substantial assistance in developing regulations pursuant to § 2.2-712 (B)(3) of the <u>Code of Virginia</u>. Public Guardian Regulations became effective in Virginia on January 1, 2009 (See §§s 22VAC5-30-10 to 22VAC5-30-60, <u>Virginia Administrative Code</u>).</p>
<p><u>End-of-Life Decision Making and Multi-Disciplinary Panels</u>: The Board assisted local and regional programs in identifying clear and consistent processes to employ when clients are terminally ill and there was no clear documentation as to an individual’s end-of-life wishes. As a result of the Board’s assistance, the programs’ Multi-disciplinary Panels (MDPs) now assist the programs in addressing these difficult decisions. [Note: The MDP is a statutory requirement for local programs, whose role is to review referrals to the program to ensure</p>

that no other least restrictive alternatives exist to serve the prospective client. The MDP serves as a safeguard to ensure that every prospective client is appropriate for the public program and serves only as a last resort].

Legislative Technical Assistance: The Board assisted in identifying conflicting language in existing law as compared to the proposed 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 the program by eliminating conflicts between the new law and existing law contained in the public guardian statute at § 2.2-713, Code of Virginia.

Annual Statewide Training for Public Guardians: For the last four years, members of the Board actively participate in annual training for the Public Guardians. In addition, the current Chairman (an elder law attorney in private practice) and the immediate prior Board Chairman (an instructor at Eastern Virginia Medical School), have conducted comprehensive training during these sessions, including a session on the Advance Medical Directive revisions in the Virginia Health Care Decision Act. Board members also make valuable contributions by interacting with Public Guardian program staff and providing financial support for the annual training program.

Advocacy, Education and Outreach: The Board advocates for program and funding support and actively seeks public, stakeholder and legislative understanding and support for the program, as well as strategic efforts to position the program to respond to growing and unmet needs. The Board made a presentation to the Joint Commission on Health Care on the continuing need and success of the Public Guardian Program. The Board also prepared an outline and offered to conduct Public Guardianship Training for Circuit Court Judges. In consultation with the Commissioner of VDA, the Board meets with members of the General Assembly, the Secretary of Health & Human Resources and other stakeholders.

Ongoing Collaboration and Strong Support: The Board has been instrumental in actively encouraging individual programs across the Commonwealth. The Board has invited Public Guardian program staff to attend Board meetings and conduct presentations. Board members attend local MDP meetings and trainings in support of the Programs. The Board consistently demonstrates concern for the vulnerable adults served and responds immediately to potential developments that may adversely impact them and the program.

SECTION V

PROGRAM ADMINISTRATION BY THE VIRGINIA DEPARTMENT FOR THE AGING (VDA) AND THE 15 LOCAL PROGRAMS SERVING VULNERABLE ADULTS IN THE COMMONWEALTH OF VIRGINIA

VDA administers the Virginia Public Guardian & Conservator Program pursuant to the law and regulations authorized by the Commonwealth of Virginia. The Commonwealth seeks to provide the least restrictive mode of service for an incapacitated person to ensure that persons who cannot adequately care for themselves because of incapacity are able to meet essential requirements for physical and emotional health and management of financial resources with the assistance of a guardian or conservator, as appropriate, in circumstances where (i) the incapacitated person's financial resources are insufficient to fully compensate a private guardian or conservator and pay court costs and fees associated with the appointment proceeding and (ii)

there is no other proper and suitable person willing and able to serve in such capacity. Appointment of a guardian or conservator, also referred to as *substitute decision-makers*, does not mean the incapacitated person has no right to have his or her voice heard; to have his or her rights and dignity respected at all times; and to have his or her choices honored as much as possible. Guardians and conservators must take sufficient time to develop a relationship with the individual and those who support him or her. Using Person-Centered Practices is an excellent way to ensure that this happens so VDA requires the use of Person-Centered Practices.

Person-Centered Practices (PCP)

VDA requires that when the guardian and/or conservator knows the wishes of the individual they are serving, they should, as much as possible, make the same decision(s) that the individual would make. This is called substitute *decision-making*. This type of decision making is consistent with PCP because it means that the guardian, as substitute decision-maker, makes the decision that the individual would make if she or he had not been determined to be incapacitated.

Guardians and conservators should always use the general principals of PCP whenever possible. PCP looks at *what is important to the individual* while taking into account all other factors that affect his or her life, including the effects of a disability, issues of health and safety, and the views of those who know and care about the individual. PCP principles include:

- Listening: The incapacitated person's choices and ideas and description of a good life are respected and followed.
- Community: Relationships with family, friends and people in the community are very important and at the center of planning.
- Self Direction: The individual's choice and control are supported.
- Talents and Contributions: The experience, talents and contributions of individuals are strengthened and supported.
- Responsibility: There is shared responsibility for supports and choices.

Service Providers

VDA administers the program but does not provide direct service to clients. Through a competitively negotiated process, VDA contracts with fifteen service providers who are on call 24 hours a day, every day, including holidays, to provide guardianship services. VDA closely monitors the program and the individual service providers to ensure legal, regulatory and contractual requirements are adhered to consistently. In addition, VDA provides ongoing technical assistance to the programs, conducts onsite monitoring (programmatic and financial and unannounced visits to randomly selected clients) and provides annual comprehensive statewide training. Public Guardian Program Directors are required to attend all training mandated by VDA.

Cost Per Client

Statewide, the average annual cost per client is **\$3,577.00** as the statistical table below illustrates. However, it is important to note that some service providers must subsidize the program, and at least two service providers, in the past, were unable to continue due to the low funding amount. The true cost, in today's dollars, is an average of **\$5,069.00**.

AVERAGE COST PER CLIENT (AS OF 7/1/11)⁷

Funding Stream	Funding Amount	Number of Clients	Average Cost w/Admin
General Fund	\$940,032	307	\$3,062
MH/MR Funds ⁸	\$125,492	40	\$3,137
DBHDS Funds	\$1,083,950	254	\$4,268
Combined Total	\$2,149,474	601	\$3,577

Source: VDA contract Amounts and Administrative Cost (As of 9/30/11)

- Lowest individual rate per client served is \$2,361 (Big Stone Gap, VA)
- Highest rate per client served is \$5,600 (Negotiated rate to serve 5 clients in Southwest Virginia)

SECTION VI

UNMET NEEDS AND UNSERVED AREAS OF THE COMMONWEALTH (STATEWIDE COVERAGE LACKING IN SOUTHERN AND SOUTHWEST VIRGINIA)

There are 242 documented individuals on program waiting lists who need Public Guardianship services. For some of these individuals, a Public Guardian will allow them to remain in the community as opposed to being institutionalized in a state-funded facility.⁹ For others, a Public Guardian monitors their care and safety and acts as an authorized substitute decision-maker. In addition, the 242 figure is considered low because programs do not document all requests received. As the chart below illustrates, the actual projected unmet need for the Commonwealth is substantially higher based on a study by Virginia Tech in 2007.¹⁰ The need for Public Guardians can be expected to increase exponentially. For this reason, VDA has estimated that funding to serve an additional 537 individuals is needed. This number includes individuals on waiting lists (242), individuals currently living in Training Centers who may require a guardian when they transition to community-based services (about 15) and other individuals in unserved and underserved areas of the Commonwealth (280). Unserved areas of the Commonwealth

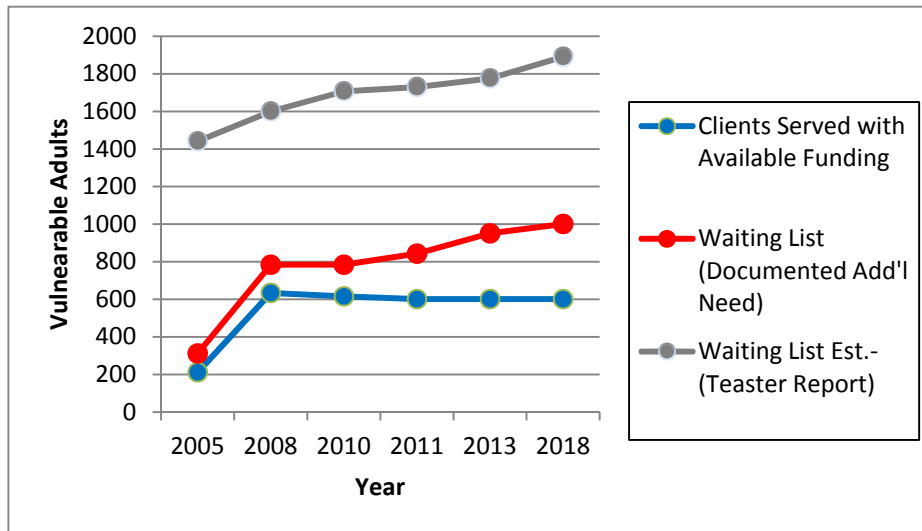
⁷ Public Guardian rates for service have generally not increased since 2006. However, the cost for DBHDS clients is higher based on negotiations beyond normal program service areas for individual programs.

⁸ Mental Health/Mental Retardation funds were appropriated by the General Assembly to VDA and targeted to this population.

⁹ While it is the purpose of this biennial report to focus on the activities of the Virginia Public Guardian and Conservator Program pursuant to Code of Virginia requirements, it is important to note that, in addition to the Public Guardian Program, individuals in Training Centers have substitute decision makers, such as authorized representatives (ARs) as defined under Virginia's Human Rights Regulations or family guardians to ensure their care, safety and development.

¹⁰ The Need for Public Guardians in the Commonwealth of Virginia – Final Report, Center for Gerontology, Virginia Polytechnic Institute and State University, Roberto, Duke, Brossoie and Teaster Report (2007).

include the counties of Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greenville, Lee and Dickenson.



Unserved Areas of the Commonwealth

§ 2.2-711 of the Code of Virginia states the intent of the General Assembly, in 1998, to establish a *statewide* program to ensure that all areas in the Commonwealth have access to Public Guardianship services. Citizens in Southern and Southwest Virginia still do not have programs that serve their area. These unserved areas of the Commonwealth include the counties of Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greenville, Lee and Dickenson.

SECTION VII

2012-2013 PROGRAM FOCUS (PERSON-CENTERED PRACTICES, UNIFORM VALUES HISTORY, INCREASED EDUCATION ON ALTERNATIVES TO GUARDIANSHIP AND TECHNICAL ASSISTANCE)

During the coming year, VDA plans to focus on uniform implementation and documentation of the use of Person-Centered Practices. As a first step in this process, VDA plans development of a uniform Values History Form to capture and document individual client preferences in a manner consistent with Person-Centered Practices. In addition and where feasible, VDA plans to increase outreach to parent-guardians of individuals residing in Training Centers. One idea being explored is to offer free quarterly training and technical assistance on guardianship, alternatives to guardianship¹¹ and community living options for an improved quality of life, consistent with Virginia’s *Olmstead* initiative.

¹¹ 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:

SECTION VIII

RECOMMENDATIONS (INCLUDING INCREASED FUNDING TO ADDRESS UNMET NEEDS AND UNSERVED AREAS OF THE COMMONWEALTH)

VDA projects that an additional \$2,721,800.00 is needed to serve an additional 537 vulnerable adults in the Public Guardian Program. This number includes individuals on waiting lists (242), individuals currently living in Training Centers who may require a guardian when they transition to community-based services (about 15) and other individuals in unserved and underserved areas of the Commonwealth (280). Unserved areas of the Commonwealth include the counties of Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greenville, Lee and Dickenson. The additional funding amount needed also includes specific funding to cover the cost of legal fees and psychological evaluations required to petition Circuit Courts for Guardianship.

As the table below illustrates, VDA recommends increasing current funding levels, through a combination of funding streams, with an emphasis on continuing the partnership and supplementary funding (to cover legal fees and other petitioning costs) administered by DBHDS.

ADDITIONAL FUNDING RECOMMENDATION TO SERVE 537 ADDITIONAL CLIENTS

Funding Stream	Direct Service	Administration	Legal/Petition Costs
General Fund	\$910,712	\$50,000	N/A
MH/MR Funds	\$124,188	0	N/A
DBHDS Funds ¹²	\$1,034,900	\$152,000	\$450,000
Combined Total	\$2,069,800	\$202,000	\$450,000

Source: Survey among 100% of current service providers willing and able to expand within a 90 day time frame. (Survey conducted in November 2011)

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>.

¹² VDA recommends that funds allocated to DBHDS include service dollars to address the unmet need of individuals diagnosed with a Mental Health disability rather than restricting funds to individuals with an Intellectual Disability diagnosis.

APPENDIX - A

**VIRGINIA STATUTES AND REGULATIONS FOR THE VIRGINIA PUBLIC
GUARDIAN & CONSERVATOR PROGRAM**

**Public Guardian Program
CODE OF VIRGINIA REQUIREMENTS and REGULATIONS**

§ 2.2-711. Policy statement; Virginia Public Guardian and Conservator Program established; definitions.

§ 2.2-712. Powers and duties of the Department with respect to public guardian and conservator program.

§ 2.2-713. Minimum requirements for local programs; authority.

§ 37.2-1000. Definitions.

§ 37.2-1010. Eligibility for public guardian or conservator.

§ 37.2-1015. When no guardian or conservator appointed within one month of adjudication.

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

§ 2.2-2412. Powers and duties of the Board.

§ 37.2-1021. Annual reports by guardians.

22VAC5-30-10. Definitions.

22VAC5-30-20. Introduction and purpose.

22VAC5-30-30. Public guardian programs.

22VAC5-30-40. Personnel standards.

22VAC5-30-50. Recordkeeping.

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

§ 2.2-711. Policy statement; Virginia Public Guardian and Conservator Program established; definitions.

A. The General Assembly declares that it is the policy of the Commonwealth to ensure that persons who cannot adequately care for themselves because of incapacity (in this article, also referred to as "clients") are able to meet essential requirements for physical and emotional health and management of financial resources with the assistance of a guardian or conservator, as appropriate, in circumstances where (i) the incapacitated person's financial resources are insufficient to fully compensate a private guardian or conservator and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to **§ 37.2-1015**. In order to ensure that the protection and assistance of a guardian or conservator are available to all incapacitated persons in the Commonwealth, there is established the statewide Virginia Public Guardian and Conservator Program (the Program) within the Department to (i) facilitate the creation of local or regional programs to provide services as public guardians or conservators and (ii) fund, coordinate, administer and manage such programs.

B. The definitions found in **§ 37.2-1000** shall apply to this article.

(1998, c. 787, §§ 2.1-373.10, 2.1-373.11; 2001, c. 844; 2005, c. 712.)

§ 2.2-712. Powers and duties of the Department with respect to public guardian and conservator program.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall:

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (**§ 2.2-4300 et seq.**).

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia Public Guardian and Conservator Programs in those cases in which a court, pursuant to §§ 37.2-1010 and 37.2-1015, determines that a person is eligible to have a public guardian or conservator appointed.

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.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia Public Guardian and Conservator Programs from any other guardian or conservator program operated by the entity with whom the Department contracts, specifically addressing the need for separation in programs that may be fee-generating.

5. Establish record-keeping and accounting procedures to ensure that each local or regional program (i) maintains confidential, accurate and up-to-date records of the personal and property matters over which it has control for each incapacitated person for whom it is appointed guardian or conservator and (ii) files with the Department an account of all public and private funds received.

6. Establish criteria for the conduct of and filing with the Department and as otherwise required by law: values history surveys, annual decisional accounting and assessment reports, the care plan designed for the incapacitated person and such other information as the Department may by regulation require.

7. Establish criteria to be used by the local and regional programs in setting priorities with regard to services to be provided.

8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of all local and regional programs.

9. Maintain statistical data on the programs and report such data to the General Assembly on or before January 1 of each even-numbered year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents regarding the status of the Virginia Public Guardian and Conservator Program and the developing trends with regard to the need for guardians, conservators and other types of surrogate decision-making services. Such statistical data shall be posted on the Department's website. In addition, the Department shall enter into a contract with an appropriate research entity with expertise in gerontology, disabilities and public administration to conduct an evaluation of local public guardian and conservator programs from funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report with recommendations to the Department and to the Public Guardian and Conservator Advisory Board. Trends identified in the report shall be presented to the General Assembly. The Department shall request such a report from an appropriate research entity every four years, provided the General Assembly appropriates funds for that purpose.

10. Recommend appropriate legislative or executive actions.

C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2 with an entity that may also provide privately funded surrogate decision-making services, including guardian and conservator services funded with fees generated by the estates of incapacitated persons, provided such private programs are administered by the contracting entity entirely separately from the local or regional Virginia Public Guardian and Conservator Programs, in conformity with regulations established by the Department in that respect.

D. In accordance with the Public Procurement Act (§ 2.2-4300 et seq.) and recommendations of the Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit private entity that does not provide services to incapacitated persons as guardian or conservator to administer the program, and, if it does, the term "Department" when used in this article shall refer to the contract administrator.

(1998, c. 787, § 2.1-373.12; 2000, c. 463; 2001, c. 844; 2005, c. 712; 2010, cc. 411, 801.)

§ 2.2-713. Minimum requirements for local programs; authority.

Every local or regional program with which the Department contracts to provide services as a public guardian or conservator shall (i) furnish bond with corporate surety in an amount deemed sufficient by the Department to afford adequate financial protection to the maximum number of incapacitated persons to be served by the program; (ii) have in place a multi-disciplinary panel to (a) 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 and (b) continually review cases being handled by the program as required by the Department; (iii) accept only appointments as guardian or conservator that generate no fee or would generate a minimal fee as defined by regulation payable from a public source of funds and not from the estate of the incapacitated person; (iv) have a direct service staff to client ratio that is consistent with that specified by regulation of the Department; and (v) develop a plan, in consultation with the local circuit court and sheriffs where appropriate, to provide advance notice to the court when the program falls below or exceeds the ideal range of staff to client ratios in order to assure continuity of services. Volunteers shall not be counted for purposes of ascertaining compliance with the staff to client ratio specified by the Department.

A local or regional program that exceeds the specified staff to client ratio shall not be disqualified from serving as a guardian or conservator except as provided by regulation or if the court or the Department finds that there is an immediate threat to the person or property of any incapacitated person or that exceeding the specified 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.

A local or regional program appointed as a guardian or conservator shall have all the powers and duties specified in Article 2 (§ 37.2-1019 et seq.) of Chapter 10 of Title 37.2, except as otherwise specifically limited by the court. In addition, a public guardian or conservator shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian or conservator for the incapacitated person. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements if the public guardian or conservator is not aware of any person that has been otherwise designated to make arrangements for disposition of remains as set forth in § 54.1-2825 of the Code of Virginia. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements after the death of an incapacitated person if the next of kin of the incapacitated does not wish to make the arrangements and the public guardian or conservator has made a good faith effort to locate the next of kin to determine if the next of kin wishes to make the burial, cremation or funeral arrangements. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian or conservator. The funeral

service licensee, funeral service establishment, registered crematory, public guardian or conservator shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation or other disposition when the provisions of this section are met, unless such acts, decisions or omissions resulted from bad faith or malicious intent.

A public guardian shall not have authority to approve or authorize a sterilization procedure except when specific authority has been given pursuant to a proceeding in the circuit court. A public guardian may authorize admission of an incapacitated person to a mental health facility as provided in subsection B of § 37.2-805.1 and may authorize mental health treatment, including the administration of psychotropic medication, unless the appointing court specifically provides otherwise.

A local or regional program appointed as a guardian or conservator may delegate the powers, duties and responsibilities to individual volunteers or professional staff as authorized in the contract with the Department.

In addition to funds received from the Department, a local or regional program may accept private funds solely for the purposes of providing public education, supplemental services for incapacitated persons and support services for private guardians and conservators, consistent with the purposes of this article.

(1998, c. 787, § 2.1-373.14; 2001, c. 844; 2006, c. 854; 2010, c. 792.)

§ 37.2-1000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"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 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 as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"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, 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 a (i) 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 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.

"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 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

(1997, c. 921, § 37.1-134.6; 1998, cc. 582, 787; 2004, c. 858; 2005, c. 716; 2006, c. 724.)

§ 37.2-1010. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 37.2-1015. The guidelines for determining **indigency** set forth in § 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

(1998, c. 787, § 37.1-134.14:1; 2005, cc. 712, 716.)

§ 37.2-1015. When no guardian or conservator appointed within one month of adjudication.

If a person is adjudicated incapacitated and in need of a guardian or conservator and the court has not identified any person to serve as guardian or conservator within one month from the adjudication, the court may appoint a local or regional program of the Virginia Public Guardian and Conservator Program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2. If there is no such local or regional program within the court's jurisdiction, the court may appoint any local or regional program within 60 miles of the residence of the incapacitated person as identified by the Department for the Aging. However, the court shall not appoint any such local or regional program that has reached or exceeded its ideal ratio of clients to staff pursuant to regulations adopted by the Department for the Aging under § 2.2-712.

If any person appointed as a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, on motion of any interested person, may appoint some other person as fiduciary, taking from the fiduciary the bond required, or shall commit the estate of the respondent to the sheriff of the county or city of which the respondent is an inhabitant; the sheriff shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.

(Code 1950, § 37-145; 1950, p. 923; 1968, c. 477, § 37.1-137; 1971, Ex. Sess., c. 155; 1976, c. 671; 1997, c. 921, § 37.1-134.19; 1998, c. 787; 2005, cc. 712, 716.)

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be 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 pursuant to Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2.

B. The Board shall consist of no more than fifteen members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association, one representative of the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the Association of Retarded Citizens, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Virginia Association of Community Services Boards, the Commissioner of Social Services or his designee, the Commissioner of Behavioral Health and Developmental Services or his designee, the Director of the Virginia Office for Protection and Advocacy or his designee, and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board.

C. The Commissioners of Social Services and Behavioral Health and Developmental Services or their designees, the Director of the Virginia Office for Protection and Advocacy or his designee, and the representative of the Commonwealth Council on Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year

terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2823.

(1998, c. 787, § 2.1-373.13; 2001, c. 844; 2002, cc. 491, 572; 2009, cc. 813, 840.)

§ 2.2-2412. Powers and duties of the Board.

The Board shall have the power and duty to:

1. Assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;
2. Provide advice and counsel on the provision of high quality guardianship service and avoidance of conflicts of interest;
3. Promote the mobilization of activities and resources of public and private sector entities to effectuate the purposes of this article;
4. Make recommendations regarding appropriate legislative and executive actions, including, but not limited to, recommendations governing alternatives for local programs to follow upon repeal of the authority granted to the courts pursuant to § 37.2-1015 to appoint the sheriff as guardian or conservator when the maximum staff-to-client ratio of the local program is met or exceeded; and
5. Submit to the Department by October of each odd-numbered year, a report regarding the activities and recommendations of the Board, to be posted on the Department's website.

(1998, c. 787, § 2.1-373.13; 2001, c. 844; 2010, cc. 411, 801.)

§ 37.2-1021. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 26-17.4 with the local department of social services for the jurisdiction in which he was appointed. It shall be the duty of that local department to forward the report to the local department of the jurisdiction where the incapacitated person then resides. The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 26-17.4.

B. The report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person;
2. A description of the person's living arrangements during the reported period;
3. The medical, educational, vocational, and other professional services provided to the person and the guardian's opinion as to the adequacy of the person's care;
4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;
5. A statement of whether the guardian agrees with the current treatment or habilitation plan;
6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and
7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify that the information contained in the report is true and correct to the best of his knowledge.

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, 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.

Statutory Authority

§ 2.2-712 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009.

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.

Statutory Authority

§ 2.2-712 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009.

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 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.

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 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 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 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.

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.

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.

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.

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, 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.

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.

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.

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.

Statutory Authority

§ 2.2-712 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009.

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.

Statutory Authority

§ 2.2-712 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 24, Issue 25, eff. 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.

Statutory Authority

§ 2.2-712 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009.

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.

Statutory Authority

§ 2.2-712 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 24 Issue 25, eff. January 1, 2009.

APPENDIX - B

VIRGINIA PUBLIC GUARDIAN PROGRAM - UNMET NEED MAP

