

**REPORT TO THE  
GENERAL ASSEMBLY OF VIRGINIA**

**VIRGINIA PUBLIC GUARDIAN &  
CONSERVATOR PROGRAM**



**BIENNIAL REPORT OF  
THE VIRGINIA DEPARTMENT FOR AGING AND  
REHABILITATIVE SERVICES  
COMMONWEALTH OF VIRGINIA  
RICHMOND  
2016**

## 2016 Biennial Report - Virginia Public Guardian and Conservator Program

### EXECUTIVE SUMMARY

The Virginia Public Guardian and Conservator Program, within the Department for Aging and Rehabilitative Services (DARS), continues to respond to the documented need for guardians of last resort for adults aged 18 years and older who are *incapacitated* and indigent and have no other person willing and able to serve as his or her Guardian when needed.

#### **Current Statistics – \$500,000 Investment (Fiscal Year-2016)**

In the 2015 session of the General Assembly, \$500,000 was allocated for statewide expansion and an additional 100 client slots, to address the unmet need in unserved areas of the Commonwealth (i.e., counties of Dickenson, Russell, Halifax, Mecklenburg, Surry, Greenville, Brunswick, Dinwiddie, Prince George, Sussex, Patrick, Henry, Pittsylvania, Lee, New Kent and Charles City). Significantly, as a result of this funding and for the first time in the history of the Commonwealth, 100% statewide coverage has been achieved. Public guardianship services are now available in every jurisdiction of the Commonwealth, including those jurisdictions in more rural areas of the state. The current program has capacity to serve 706 persons.

#### **Current Trends – Utility of the Supportive-Decision-Making Model (SDMM) (House Document No. 6-HJR 190, 2014)**

The SDMM comports well with DARS' mandated person-centered practices in Virginia law and regulations for public guardian service providers. SDMM may also, in cases where appropriate, assist in reducing the statewide waiting list by providing a less restrictive and cost effective alternative to the publically funded guardianship program.

#### **Current Challenges – Complexity of Cases, Leveraging Resources and Circuit Court Petitioning Costs**

The complexity of cases continues to increase and may prove unsustainable unless we are better able to leverage community resources. The cost of petitioning a court for guardianship (legal fees and capacity evaluations) has also become a barrier for some in obtaining guardianship services when needed.

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

The VPGCAB continues to serve as a valuable technical resource and advisor for the Program and is commended. DARS concurs with the attached recommendations of the VPGCAB.

#### **Partnership with the Department of Behavioral Health and Developmental Services (DBHDS)**

Many vulnerable adults have transitioned from training centers to the community. This successful outcome was accomplished with the working collaboration of DBHDS. In addition, DBHDS has provided valuable training and technical assistance for public guardians.

#### **Pro-Active Education Focus**

As more agencies and nonprofits grapple with an increasing demand for services (without a corresponding increase in funds), partnerships will grow increasingly important to leverage finite resources. Pro-active education is an important key in educating the public about alternatives to guardianship *before* guardianship becomes necessary.



**COMMONWEALTH OF VIRGINIA**  
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December 1, 2015

Members of the General Assembly  
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Members of the General Assembly:

Pursuant to § 51.5-150 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 emerging issues threatening program stability.

As more agencies and nonprofits grapple with an increasing demand for services (without a corresponding increase in funds), partnerships will grow increasingly important to leverage finite resources. Pro-active education is an important key in educating the public about alternatives to guardianship *before* guardianship becomes necessary. Whether an unexpected incapacity arising from a traumatic brain injury, dementia, or a debilitating illness – we have a vested interest in educating the public so that unnecessary guardianships can be avoided and less restrictive alternatives to guardianship are in place whenever possible (such as the Supported Decision-Making Model discussed in Section III).

Should you need additional information, please contact Janet James, Esq., Public Guardian Program Coordinator, by email at [janet.james@dars.virginia.gov](mailto:janet.james@dars.virginia.gov) or by telephone at 804-662-7049.

With best regards, I am

Sincerely,

A handwritten signature in blue ink, appearing to read "James A. Rothrock", with a large circular flourish underneath.

James A. Rothrock

JAR/jj

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## SECTION I

### THE PUBLIC GUARDIAN PROGRAM – HISTORY, INTENT, LAW & REGULATIONS

The Virginia Public Guardian and Conservator Program was established by law in 1998 in §§ 51.5-149 *et seq.*, Code of Virginia. The Virginia Department for Aging and Rehabilitative Services (DARS) administers the program with thirteen 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 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 later<sup>1</sup>, the program has grown in capacity to serve 706 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)<sup>2</sup>, DARS, in partnership with DBHDS, has significantly increased services available to people served by local Community Services Boards (CSBs).

## SECTION II

### CURRENT STATISTICS – VULNERABLE ADULTS SERVED BY THE PUBLIC GUARDIAN PROGRAM, \$500,000 INVESTMENT OUTCOMES (FISCAL YEAR-2016)

The Virginia Public Guardian and Conservator 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. In the 2015 session of the General Assembly, five hundred thousand

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<sup>1</sup> 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).

<sup>2</sup> House Document 37 (2002) resulted from House Joint Resolution 614, patroned by Delegate DeBoer and 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).

dollars (\$500,000) was allocated for statewide expansion and an additional one hundred (100) client slots, to address the unmet need in unserved areas of the Commonwealth (i.e., counties of Dickenson, Russell, Halifax, Mecklenburg, Surry, Greenville, Brunswick, Dinwiddie, Prince George, Sussex, Patrick, Henry, Pittsylvania, Lee, New Kent and Charles City). One significant outcome that occurred as a result of this funding is that, for the first time in the history of the Commonwealth, 100% statewide coverage has been achieved. Public guardianship services are now available in every jurisdiction of the Commonwealth, including those jurisdictions in more rural areas of the state (reference Appendix-B for a “before and after” statewide coverage map). Another significant outcome is a 17% increase in program capacity from 606 client slots to 706 client slots. As the statistical table below illustrates, the current program has capacity to serve 706 vulnerable adults and the program is currently **91%** full. There are an additional 884 persons on the statewide waiting list. **100%** of the client slots will be filled by December 1, 2015.<sup>3</sup> As of the first quarter of fiscal year 2016, the youngest client served by the program is 19 years old and the oldest client served is 96 years old. Demographically, 49% of clients served are middle age (30 to 59 years of age), 44% are older adults (60 years of age and older) and 7% are young adults (18 to 29 years of age).

<b>DEMOGRAPHICS – PUBLIC GUARDIAN PROGRAM (AS OF 9/30/15)</b>			
<b>706 CLIENT CAPACITY (MAXIMUM)</b>			
<b>Age Group</b>	<b>Age Range</b>	<b>Number of Clients</b>	<b>Percentage</b>
Young Adults	18 to 29	48	7%
Middle Age	30 to 59	312	49%
Older Adults	60+	281	44%
<b>Total</b>		<b>641</b>	<b>100%</b>

**Data Source:** 1<sup>st</sup> Quarter Reports – Public Guardian Programs (Fiscal Year 2016)

- Youngest Client Served – 19 Years Old
- Oldest Client Served – 96 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 several vulnerable adults, in need of guardianship services, to the community. This result was achieved through a coordinated team process involving Case Managers, Public Guardians and Training Center and DBHDS staff. Although included in previous reports, the

<sup>3</sup> “Unfilled Client Slots” – The 65 empty client Slots reflected in this report will be filled by 12/1/15 from individuals currently on the waiting list.

following cases continue to represent the program’s clients (Note: The examples below were included in prior reports to the General Assembly).

### REAL LIVES AND REAL PEOPLE

Person/Age	Diagnosis	Years in Training Center	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 Intellectual Disability from birth	51 years	Goes fishing; laughs easily; emotional outbursts decreased
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 III

#### CURRENT TRENDS – UTILITY OF THE SUPPORTIVE DECISION-MAKING MODEL (HOUSE DOCUMENT NO. 6 – HJR 190, 2014)<sup>4</sup>

DARS administers the Virginia Public Guardian and Conservator Program pursuant to the law and regulations authorized by the Commonwealth of Virginia. The Commonwealth will provide the least restrictive alternative for an incapacitated person to ensure they are able to meet essential requirements for physical and emotional health and management of financial resources with the assistance of a public guardian or conservator, as appropriate, only 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 public guardian or conservator, also referred to as *substitute*

<sup>4</sup> House Document 6 (2015): Report of the Secretary of Health and Human Resources, Supportive Decision-Making Study (HJR 190, 2014).

*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. Public 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. Therefore, DARS requires the use of Person-Centered Practices.

### **Person-Centered Practices (PCP) Required by DARS**

DARS requires that when the public 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 public 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 principles 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.

### **The Supportive Decision-Making Model (SDMM)**

As referenced in House Document No. 6, the Supportive Decision-Making Study, "[t]he theory behind Supported Decision Making is consistent with the state's vision for a system of care that is person-centered, community-based, and rooted in respect for the rights of the individual." This theory comports well with mandated person-centered practices in Virginia law and regulations as evidenced in public guardianship. This model may also, in cases where appropriate, assist in reducing the statewide waiting list by providing a high quality and cost effective alternative to the public guardianship program of last resort. From a policy and programmatic standpoint – no individual should be approved for a publically funded guardianship slot if there is a less restrictive alternative available, including SDMM. Public Guardians have received training on the SDMM and the SDMM is promoted by DARS as an excellent alternative to guardianship, where appropriate.

## **SECTION IV**

### **CURRENT CHALLENGES – COMPLEXITY OF CASES, LEVERAGING COMMUNITY RESOURCES AND CIRCUIT COURT PETITIONING COSTS**



The complexity of cases continues to increase and may prove unsustainable unless we are better able to leverage community resources. For example, there are individuals with dual diagnoses of Intellectual Disability (ID) and Mental Illness who may also have a Traumatic Brain Injury. If or when a crisis occurs, it can be a daunting task to work with other partners to quickly stabilize an individual quickly before the individual harms himself or others. There has also been an increase in clients arrested and jailed. A recent example was an individual who was on an outing in a mall and became agitated and disorderly. And while the individual did not cause injury to himself or others, the individual was ultimately arrested, convicted of “disorderly conduct” and sentenced to six months in jail. The public guardian immediately appealed the case (if an individual is jailed for six months, an ID waiver could be lost along with the stable placement). Public Guardians have also experienced cases where arrested individuals did not receive proper medication and supports while incarcerated.

Fortunately, there appears to be a greater level of cooperation among community resource partners and professionals as we work better together to leverage resources.

Unfortunately, there is an area of concern for which there appears to be no immediate remedy – petitioning costs for (1) individuals in need of an initial guardianship and (2) legal costs to transfer an individual from one local or regional public guardian program to another. In the first instance, adult protective services, nursing homes and community agencies that have identified incapacitated, *un-befriended* persons in need of guardianship, many times do not have the wherewithal to petition a Circuit Court for guardianship and arrange for a psychological examination (competency evaluation) when required as evidence in a court proceeding. In the second instance – and this is happening more frequently, especially in southwest Virginia, an existing public guardian client is moved hundreds of miles away, beyond a public guardian’s service area, and must be transferred to another local or regional public guardian program. Circuit Court Orders are then required to be transferred (which involves reopening the case and returning to the Court for a Substitution Order and Bond Qualification).

## SECTION V

### **THE VIRGINIA PUBLIC GUARDIAN & CONSERVATOR ADVISORY BOARD (VPGCAB)<sup>5</sup>**

The VPGCAB serves as a technical resource and advisor for the Public Guardian Program and has been commended by DARS in past reports to the General Assembly and is again commended. The VPGCAB is comprised of up to 15 members representing a comprehensive and diverse stakeholder base. Members include representatives of the Virginia Guardianship Association, the Virginia Area Agencies on Aging, a retired circuit court judge, the Virginia Bar Association, The Arc of Virginia, the National Alliance on Mental Illness (NAMI) Virginia, the Virginia Association of Community Services Boards, and the Virginia League of Social Services Executives. In 2014, eight new gubernatorial members were appointed to the VPGCAB.

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<sup>5</sup> This report contains substantial text and a picture from the Virginia Public Guardian and Conservator Advisory Board, [2015 Biennial Report](#), published September 10, 2015 and posted, in its entirety, to the DARS webpage at [www.vda.virginia.gov/guardboard.asp](http://www.vda.virginia.gov/guardboard.asp).



Left to right: Veronica Williams, Cathy Thompson, Rose Palmer, George McAndrews, James Talbert, James Almand, Naila Alam and Paul Izzo. Seated: Commissioner James Rothrock.

## Accomplishments of the VPGCAB

- **Legislative Involvement:** The VPGCAB, along with stakeholders, successfully advocated for \$500,000 in additional funding for the Public Guardianship and Conservator Program. The VPGCAB expresses its appreciation to Delegate Chris Peace and Senator Emmett Hanger for carrying the budget amendments in 2015 and for their strong advocacy on this issue.
- **Annual Statewide Training for Public Guardians:** The Department develops and provides comprehensive annual training for public guardians, and VPGCAB members are active participants. Former board chairs, a retired elder law attorney and an instructor at Eastern Virginia Medical School have volunteered their time to conduct comprehensive legal and “brain and incapacity” training during these sessions. In 2014, Governor McAuliffe recognized the tenth annual statewide training with a gubernatorial proclamation.
- **Ongoing Collaboration and Strong Support:** The VPGCAB has been instrumental in encouraging individual public guardian and conservator programs across the Commonwealth. The VPGCAB invites the public guardian and conservator program staff to attend VPGCAB meetings and offer presentations in order to keep apprised of issues and to provide expert feedback.

## Recommendations of the VPGCAB

### (DARS Concurs with Recommendations Presented by the VPGCAB)

Guardianship serves one of society’s most vulnerable populations—older individuals and those with disabilities who need assistance in making decisions about their health, lives, and finances and who may be at risk of abuse, neglect, or exploitation. In recent years, the Board has seen an increased demand for public guardians as Virginia undergoes a demographic shift in the aging and disability populations. Also, more public guardians have been needed for incapacitated

persons leaving state training centers under the Department of Justice Settlement Agreement and for those reentering the community after years in prison.<sup>6</sup>

### **Board Recommendation #1**

While Virginia’s guardian and public guardianship laws are effective, there is room for improvement in court oversight, collection of adult guardianship data, and training for all stakeholders. Nationally, there is a growing movement to develop Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to provide a continuing forum for evaluation of strengths and weaknesses, prioritization of needs, and collaborative action through a court-community partnership. A brief video introduction by DC Chief Judge Eric Washington to the WINGS replication guide is available at <https://player.vimeo.com/video/130107291>. The VPGCAB recommends a WINGS initiative be established in Virginia to improve judicial processes, enhance services, and, most importantly, protect individual rights and promote accountability for all guardianships.

### **Board Recommendation #2**

Virginia Code § 51.5-150(B)(9) requires the Department to contract with a research entity to “evaluate local public guardian and conservator programs” to identify unmet need trends and provide recommendations. The last report was done in 2007 by Virginia Tech and the statute requires the evaluation be done every four years. See 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 (2007). The VPGCAB requests a budget amendment in the amount of \$30,000 to quantify unmet needs for the public guardians in Virginia and provide recommendations for program improvements.

### **Board Recommendation #3**

Finally, the Board recommends moving its authorizing statutes from Virginia Code §§ 2.2-2411 and 2.2-2412 to Title 51.5 and removing from its named membership the Virginia Guardianship Association since the organization is disbanding.

DARS supports these three recommendations of the VPGCAB.

## **SECTION VI**

### **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 training centers. DBHDS, working collaboratively with DARS, added significant capacity to the existing public program by authorizing additional client slots for at risk adults. In addition, DBHDS funding enabled some previously unserved areas of the

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<sup>6</sup> A growing number of ex-offenders who are released back into the community lack capacity to give informed consent due to medical and mental health conditions. Frequently, these ex-offenders have no Power of Attorney or relative willing or able to act as a substitute decision maker. Ex-offenders lacking capacity and substitute decision makers may require public guardianship.

Commonwealth to have public guardianship services in their area. Currently, DBHDS funding accounts for approximately 40% of the Public Guardian Program budget and provides guardianship services for 259 clients. Since 2006 (fiscal year 2007), with funding through DBHDS, the Public Guardian Program has successfully enabled the transitioning of several vulnerable adults to the community. 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 Services Boards, Training Center staff and others. Most recently, DBHDS has served as presenter during annual statewide trainings (2013, 2014, 2015 and planned for 2016) and hosted an in-depth full day training for public guardians on the Department of Justice (DOJ) Settlement Agreement and community resources to assist individuals with ID/DD.

### **A Phenomenal Outcome**

DBHDS developed an excel data base to track training center and other individuals in “real time.” The data base has many features and can search for individuals based upon any number of factors, including, name, funding stream, service provider, community services board, unique identification number, etc. The data base has the capability to print an instant report with data on current client slots, court orders, pending, withdrawn and deceased individuals and has broad application for accountability and data collection. The system has been designed to expand as needed and may eventually be able to serve the entire public guardian program (for all DBHDS and DARS clients).

## **SECTION VII**

### **LOOKING TO THE FUTURE – STRATEGIC PLANNING, PARTNERING, AND RECOMMENDATIONS**

#### **Service Providers**

DARS administers the program but does not provide direct services to clients. Through a competitively negotiated process, DARS contracts with thirteen service providers who are on-call 24- hours- a- day, every day, including holidays, to provide guardianship services. DARS closely monitors the program and the individual service providers to ensure legal, regulatory and contractual requirements are adhered to consistently. In addition, DARS provides ongoing technical assistance to the programs, conducts onsite monitoring (programmatic, 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 DARS.

#### **Upcoming Retirements and Succession Planning**

Public Guardian Service Providers demonstrate a high level of commitment and concern for the individuals served by the public guardian program. They are extraordinary in their skill as professional guardians and in complying with numerous legal, regulatory, contractual and programmatic requirements. Unfortunately for the public guardian program, the majority of these highly skilled workers will retire in the next five to ten years. Current Public Guardian Program Directors earn substantially less than their counterparts in state government with similar education and credentials (some averaging less than \$40,000 annually) and Public Guardian Case

mangers earn even less even though they have degrees (Bachelors and some Masters Degrees). As these individuals retire, it will become increasing difficult to attract and retain staff at such low compensation levels. To address this issue, DARS initiated succession planning training two years ago with annual refreshers and emphasis on the importance of strategic planning to ensure continuation of operations in a satisfactory manner should a key staff retire.

### **Partnerships and Pro-Active Education (2016-2018 Focus)**

As more agencies and nonprofits grapple with an increasing demand for services (without a corresponding increase in funds), partnerships will grow increasingly important to leverage finite resources. Pro-active education is an important key in educating the public about alternatives to guardianship *before* guardianship becomes necessary. Whether an unexpected incapacity arising from a traumatic brain injury, a dementia diagnosis, or a debilitating illness – we have a vested interest in educating the public so that unnecessary guardianships can be avoided and less restrictive alternatives to guardianship are in place whenever possible (such as the Supported Decision-Making Model discussed in Section III).

### **Recommendations**

DARS supports the recommendations advanced by the VPGCAB discussed in Section V.

## **APPENDIX - A**

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

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

**LAW**

§ 51.5-149. Policy statement; Virginia Public Guardian and Conservator Program established; definitions.

§ 51.5-150. Powers and duties of the Department with respect to public guardian and conservator program.

§ 51.5-151. Minimum requirements for local programs; authority.

§ 64.2-2000. Definitions.

§ 64.2-2010. Eligibility for public guardian or conservator.

§ 64.2-2015. 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.

§ 64.2-2020. Annual reports by guardians.

**REGULATIONS**

22VAC30-70-10. Definitions.

22VAC30-70-20. Introduction and purpose.

22VAC30-70-30. Public guardian programs.

22VAC30-70-40. Personnel standards.

22VAC30-70-50. Recordkeeping.

22VAC30-70-60. Evaluation and monitoring of public guardian programs.

**§ 51.5-149. 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 § 64.2-2015. 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 (a) facilitate the creation of local or regional programs to provide services as public guardians or conservators and (b) fund, coordinate, administer, and manage such programs.

B. The definitions found in § 64.2-2000 shall apply to this article.

(1998, c. 787, §§ 2.1-373.10, 2.1-373.11; 2001, c. 844, § 2.2-711; 2005, c. 712; 2012, cc. 803, 835.)

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**§ 51.5-150. 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 §§ 64.2-2010 and 64.2-2015, 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, and 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;

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; and

d. Person-centered practice procedures that shall:

(1) Focus on the preferences and needs of the individual receiving public guardianship services; and

(2) Empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

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 recordkeeping 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 established pursuant to § 2.2-2411. 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; and

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, § 2.2-712; 2005, c. 712; 2010, cc. 411, 801; 2012, cc. 322, 803, 835.)

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**§ 51.5-151. 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 multidisciplinary 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 (§ 64.2-2019 et seq.) of Chapter 20 of Title 64.2, 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 arrangements for the funeral and disposition of remains, including cremation, interment, entombment,

memorialization, inurnment, or scattering of the cremains, or some combination thereof, if the public guardian or conservator is not aware of any person that has been otherwise designated to make such arrangements as set forth in § 54.1-2825. A public guardian or conservator shall have authority to make arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after the public guardian or conservator has made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin cannot be located. 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, cemetery, cemetery operator, 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, § 2.2-713; 2006, c. 854; 2010, c. 792; 2012, cc. 463, 803, 835.)

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## **§ 64.2-2000. 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 Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 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 Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department of Behavioral Health and Developmental Services, including the buildings and land associated with it.

"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 Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 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 Department for Aging and Rehabilitative Services 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.

"Individual receiving services" or "individual" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client."

"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.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"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, § 37.2-1000; 2006, c. 724; 2012, cc. 614, 803, 835.)

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**§ 64.2-2010. Eligibility for public guardian or conservator.**

The circuit court may appoint a local or regional program authorized by the Department for Aging and Rehabilitative Services pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 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 § 64.2-2015. The court shall use the guidelines for determining indigency set forth in § 19.2-159 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, § 37.2-1010; 2012, cc. 614, 803, 835.)

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**§ 64.2-2015. When no guardian or conservator appointed within one month of adjudication.**

A. 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 Aging and Rehabilitative Services pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5. 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 Aging and Rehabilitative Services. 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 Aging and Rehabilitative Services under § 51.5-150.

B. 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 where the respondent is an inhabitant; and 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, § 37.2-1015; 2012, cc. 614, 803, 835.)

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**§ 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 for Aging and Rehabilitative Services 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 20 (§ 64.2-2000 et seq.) of Title 64.2.

B. The Board shall consist of no more than 15 members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association, one representative of the Virginia Association of 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 ARC of Virginia, one representative of the National Alliance on Mental Illness of Virginia, 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, 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, who may include a representative of the Commonwealth's designated protection and advocacy system.

C. The Commissioners of Social Services and Behavioral Health and Developmental Services, or their designees, 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. 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; 2012, cc. 476, 507, 803, 835; 2013, c. 571.)

§ **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 20 (§ 64.2-2000 et seq.) of Title 64.2;
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 § 64.2-2015 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.)

§ **64.2-1020**. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 64.2-1305 with the local department of social services for 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 § 64.2-1305.

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.

(1997, c. 921, § 37.1-137.2; 1998, c. 582; 2000, c. 198; 2003, c. 527; 2005, c. 716, § 37.2-1021; 2012, c. 614; 2013, c. 133.)

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## REGULATIONS

### **22VAC30-70-10**. 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 Aging and Rehabilitative Services as a public conservator pursuant to §§ 51.5-149, 51.5-150, and 51.5-151 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 Aging and Rehabilitative Services 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.

"Department" means the Department for Aging and Rehabilitative Services.

"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 as a public guardian pursuant to §§ 51.5-149, 51.5-150, and 51.5-151 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 department 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 the department as a public guardian, a public conservator or both, pursuant to §§ 51.5-150 and 51.5-151 of the Code of Virginia, and operating under a contract entered into with the department.

#### Statutory Authority

§ 51.5-131 of the Code of Virginia.

#### Historical Notes

Former 22VAC5-30-10 derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009; amended and renumbered Virginia Register Volume 29, Issue 4, eff. November 22, 2012.

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**22VAC30-70-20. Introduction and purpose.**

A. Introduction. Pursuant to § 51.5-149 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

§ 51.5-131 of the Code of Virginia.

Historical Notes

Former 22VAC5-30-20 derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009; amended and renumbered Virginia Register Volume 29, Issue 4, eff. November 22, 2012.

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**22VAC30-70-30. Public guardian programs.**

A. Designation. The department shall select public guardian programs in accordance with the requirements of the Virginia Public Procurement Act. Only those programs that contract with the department 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 the department.

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 the department'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 the department 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 the department'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 the department 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 the department shall comply with policy established by the department. Other than an emergency or unusual circumstance as described in the preceding sentence, a waiver must be requested to exceed the department's established ideal ratio. The department, 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 §§ 51.5-150 and 51.5-151 of the Code of Virginia. The department shall report waiver requests and status of granted waivers to the advisory board at its regularly scheduled meetings. The department 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 the department'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 22VAC30-70-30 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 22VAC30-70-30 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 the department.

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. The department 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 the department 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 the department and maintain compliance with the department's program guidelines. The department 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 the department.

#### Statutory Authority

§ 51.5-150 of the Code of Virginia.

#### Historical Notes

Former 22VAC5-30-30 derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009; amended and renumbered Virginia Register Volume 29, Issue 4, eff. November 22, 2012.

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**22VAC30-70-40. 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 22VAC30-70-30 C 1.

5. Participate in mandatory training programs required by the department.

#### 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 22VAC30-70-30 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 (§§ 51.5-149, 51.5-150, and 51.5-151 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

§ 51.5-150 of the Code of Virginia.

#### Historical Notes

Former 22VAC5-30-40 derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009; amended and renumbered Virginia Register Volume 29, Issue 4, eff. November 22, 2012.

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#### **22VAC30-70-50. 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 § 64.2-2020 of the Code of Virginia, the annual accounting to the Commissioner of Accounts as required by § 64.2-1305 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 the department.

#### Statutory Authority

§ 51.5-150 of the Code of Virginia.

#### Historical Notes

Former 22VAC5-30-50 derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009; amended and renumbered Virginia Register Volume 29, Issue 4, eff. November 22, 2012.

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**22VAC30-70-60. Evaluation and monitoring of public guardian programs.**

The department 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

§ 51.5-150 of the Code of Virginia.

#### Historical Notes

Former 22VAC5-30-60 derived from Virginia Register Volume 24, Issue 25, eff. January 1, 2009; amended and renumbered Virginia Register Volume 29, Issue 4, eff. November 22, 2012.

**APPENDIX - B**

**VIRGINIA PUBLIC GUARDIAN PROGRAM - UNMET NEED MAP**



**16 counties unserved  
prior to 7/1/15**



- The Arc of Northern Virginia
- Allegheny/Highlands Community Services PGP
- Appalachian Agency for Senior Citizens
- Autumn Valley Guardianship
- Bridges Senior Care Solutions
- Catholic Charities of Eastern Virginia
- Commonwealth Catholic Charities
- District II Senior Services
- Family Services of Roanoke Valley
- Jewish Family Services - Richmond
- Jewish Family Services - Tidewater
- Mountain Empire Older Citizens
- Senior Connections

**Statewide coverage  
post 7/1/15**

