

**REPORT TO THE
GENERAL ASSEMBLY OF VIRGINIA**

**VIRGINIA PUBLIC GUARDIAN AND
CONSERVATOR PROGRAM**



**BIENNIAL REPORT OF
THE VIRGINIA DEPARTMENT FOR AGING AND
REHABILITATIVE SERVICES
COMMONWEALTH OF VIRGINIA
2020**



COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

KATHRYN A. HAYFIELD
Commissioner

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November 26, 2019

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

Members of the General Assembly:

Pursuant to Virginia Code § 51.5-150, 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, program history, and emerging issues related to program expansion.

If you need any additional information, please contact Patti Meire, Esq., Public Guardian Program Coordinator, by email at patti.meire@dars.virginia.gov or by telephone at 804-588-3989.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn A. Hayfield".

Kathryn A. Hayfield
Commissioner

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EXECUTIVE SUMMARY

The Virginia Public Guardian and Conservator Program (“Program”), operated within the Department for Aging and Rehabilitative Services (“DARS”), provides guardian and conservator services for adults who are incapacitated and indigent and for whom no other proper or suitable person can be identified who is willing and able to serve as the individual’s guardian, or conservator, or both, as applicable.

Program Overview

The Program has capacity to provide public guardianship services, public conservatorship services, or both to 1,049 incapacitated adult residents of Virginia who are found by a Virginia circuit court to be (i) incapacitated, and (ii) who meet the criteria for public guardianship as set forth in Virginia Code § 64.2-2010. These services are provided by 13 local providers who have contracted with DARS. Slots are allocated among four eligibility categories: Unrestricted; DBHDS-ID/DD; DBHDS-MI; and MI/ID. The body of the report provides information regarding the services provided by public guardians as required by law and contract.

Information Regarding Clients

The report includes demographic information regarding the public guardianship clients receiving services as of June 30, 2019, including the number of clients being served in each eligibility category, the age distribution of the Program’s clients, and the type of residences where they were then living.

Program Expansion – State Fiscal Years 2017 - 2019

The 2016 General Assembly increased funding to DARS by \$850,000 in State Fiscal Year (“SFY”) 2017 to increase the number of public guardianship clients served through the Program by 150 client slots and in SFY 2018 appropriated an additional \$1,061,000 for 193 new client slots. In SFY 2017, unexpected delays were experienced in bringing the 150 new clients into the Program. These delays resulted primarily from difficulties encountered in bringing the legal proceedings necessary for the establishment of the guardianships to court. Steps were taken in SFY 2018 to reduce these delays.

The Challenge of Circuit Court Petitioning Costs in Cases with an Indigent Respondent

A major hurdle for individuals in need of public guardianship is the need to identify a petitioner willing to hire an attorney or find a pro bono attorney to file for and obtain the order of guardianship for an indigent, allegedly incapacitated respondent. While DARS and the Department for Behavioral Health and Developmental Services (“DBHDS”) have allocated funding to assist with the cost of legal proceedings, the funding is temporary; consequently, this may become an issue again in the future.

Partnership with DBHDS

DARS works collaboratively with DBHDS to provide public guardianship services to adult residents of the state who have been determined to be incapacitated by a Virginia circuit court and who have an ID/DD diagnosis or are receiving treatment at a state hospital. The funding provided by the General Assembly to serve these populations has added significant capacity to the Program. This collaboration has enabled the Program to assist many vulnerable adults in maintaining safe and appropriate community placements and in transitioning from state hospitals to the community.

REPORT TO THE GENERAL ASSEMBLY OF VIRGINIA VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM

SECTION I: THE PUBLIC GUARDIAN AND CONSERVATOR PROGRAM

The Virginia Public Guardian and Conservator Program (“Program”), operates within the Virginia Department for Aging and Rehabilitative Services (“DARS”) under Virginia Code §§ 51.5-149 *et seq.* This 2020 biennial report on the status of the Program is provided to the Virginia General Assembly pursuant to Virginia Code § 51.5-150.

For ease of reference, throughout the remainder of this report the term “public guardian” will be used in lieu of the phrase “public guardian, or public conservator, or both” and the services provided by the Program will be referred to as “public guardianship services.”

Program Overview

The Program provides public guardianship services for adult residents of Virginia who have been found by a Virginia circuit court to be:

- indigent;
- incapacitated; and
- without any other proper and suitable person who is willing and able to serve as a guardian, or as a conservator, or as both. (Virginia Code § 64.2-2010).

Once appointed, the public guardian usually serves for the life of the person for whom it has been appointed. Public guardianship services are provided at no charge to the individuals being served.

DARS administers the Program through contracts with 13 local providers. These local providers are the legal entities appointed by circuit courts to serve as public guardians. They maintain 24-hour-a-day, 365-days-a-year coverage for the individuals served. The 13 local providers are Alleghany Highlands Community Services Board, Appalachian Agency for Senior Citizens, The Arc of Northern Virginia, Autumn Valley Guardianship, Bridges Senior Care Solutions, Catholic Charities of Eastern Virginia, Commonwealth Catholic Charities, District Three Governmental Cooperative, Family Service of Roanoke Valley, Jewish Family Services (Richmond), Jewish Family Service of Tidewater, Mountain Empire Older Citizens, and Senior Connections-Capital Area Agency on Aging.

Local public guardianship providers serve specific geographic service areas. Referrals are made to the local provider that serves the geographic area where the allegedly incapacitated person resides at the time of the initial referral. Bridges Senior Care Solutions, District Three Governmental Cooperative, and Jewish Family Service of Tidewater serve as regional programs and will accept clients who at the time of the referral reside outside of the provider’s traditional geographic service area. As a practical matter, all of the local public guardianship providers sometimes must serve clients who reside outside of their geographic service area because of residential placement changes that are beneficial to the client but place the client outside of the public guardianship provider’s service area. Appendix A describes the geographic area served by each local public guardianship provider.

Before any local public guardianship provider can accept an individual for public guardianship services, 22VAC30-70-30 requires that the provider's multi-disciplinary panel ("MDP") must review the referral to determine whether the individual is an appropriate candidate for that provider's program. Specifically, the MDP must review the referral to ensure that:

- the individual cannot adequately care for himself;
- the individual is indigent;
- there is no alternative less restrictive than guardianship to meet the individual's needs;
- the needs of the individual are consistent with the priorities of the public guardian program; and
- no other proper and suitable person or entity can be identified who is willing and able to serve as the guardian.

Public Guardianship Slots

Public guardianship slots are divided among four eligibility categories that correspond to the four funding categories established by the General Assembly. These are:

- DBHDS-ID/DD – For adults identified by the Virginia Department of Behavioral Health and Developmental Services ("DBHDS") who have an intellectual or other developmental disability and need public guardianship services;
- DBHDS-MI – For adults identified by DBHDS who have a mental illness and need public guardianship services. To date, these slots have been used exclusively for individuals treated at state hospitals;
- MI/ID – For adults with either mental illness or an intellectual disability, including individuals who have been identified as needing public guardianship services by a source other than DBHDS; and
- Unrestricted – For adults who meet the statutory criteria for public guardianship services regardless of the diagnosis or circumstances underlying their incapacity or the referral source. For example, individuals incapacitated by dementia or an acquired brain injury resulting from an accident or a stroke would be assigned to an unrestricted slot.

The Program currently funds 1,049 slots: 454 DBHDS-ID/DD, 98 DBHDS-MI, 40 MI/ID, and 457 Unrestricted slots. Appendix B lists the number of slots contracted with each local public guardianship provider for each eligibility category.

Ensuring Quality Public Guardianship Services

Unlike the work of private guardians, the work of public guardians is subject to regulation and oversight by DARS. High quality public guardianship services are maintained through regulations and contract provisions requiring that:

- The ratio of any provider’s public guardianship clients to full-time direct service staff not exceed 20:1 (22VAC30-70-30, *see* Appendix C);
- Each client receives a monthly face-to-face visit;
- Each provider has an MDP consisting of local professionals knowledgeable about human service needs in that geographic area and may include representatives from the local departments of social services, community services boards (“CSBs”), area agencies on aging, health departments, licensed attorneys, physicians, and administrators of local hospitals, nursing homes, assisted living facilities, and group homes (22VAC30-70-30);
- Person-centered planning is utilized to ensure that decisions made on behalf of clients are as individualized as possible (22VAC30-70-30);
- Providers report to DARS quarterly regarding the number of clients served;
- DARS conduct periodic on-site monitoring of local providers (22VAC30-70-60); and
- Specified staff attends DARS-sponsored public guardianship training sessions (22VAC30-70-40). DARS provides multi-day training sessions annually.

Additionally, each client’s case is reviewed annually by the public guardianship provider’s MDP to consider whether public guardianship continues to be appropriate (22VAC30-70-30).

SECTION II: INFORMATION REGARDING CLIENTS

At the end of State Fiscal Year (“SFY”) 2019, the Program was 98 percent full, with 950 individuals having a court order in place naming a local public guardianship provider as their public guardian (“Active Clients”) and 77 individuals approved for a slot with a local public guardianship provider but for whom a court order naming the public guardian had not yet been entered (“In-Process Clients”). These figures include the 152 individuals receiving public conservatorship services, all but seven of whom also received public guardianship services.

NUMBER OF INDIVIDUALS SERVED – PUBLIC GUARDIAN PROGRAM ACTIVE CLIENTS (As of 6/30/2019)

Eligibility Category	Total Slots Available	Active Clients	In-Process Clients	Open Slots
Unrestricted	457	415	27	15
DBHDS-ID/DD	454	411	43	0
DBHDS-MI	98	85	6	7
MI/ID	40	39	1	0

Data Source: 4th Quarter Reports – Public Guardianship Providers (SFY 2019)

Among the Active Clients at the end of SFY 2019, the youngest was 19 years old and the oldest 100 years old. The table below illustrates the age distribution of Active Clients at the end of SFY 2019 for the Program as a whole and for each of the eligibility categories.

**AGE DISTRIBUTION – PUBLIC GUARDIAN PROGRAM
ACTIVE CLIENTS
(As of 6/30/2019)**

Eligibility Category	Age Group	Age Range	Percentage
Public Guardian and Conservator Program/All Funding Categories (950 Active Clients)	Young Adult	18 – 29	7.89%
	Middle Aged	30 – 59	42.74%
	Older Adult	≥60	49.37%
	Total		100.00%
Unrestricted (415 Active Clients)	Young Adult	18 – 29	6.75%
	Middle Aged	30 – 59	31.56%
	Older Adult	≥60	61.69%
	Total		100.00%
DBHDS-ID/DD (411 Active Clients)	Young Adult	18 – 29	9.49%
	Middle Aged	30 – 59	54.99%
	Older Adult	≥60	35.52%
	Total		100.00%
DBHDS-MI (85 Active Clients)	Young Adult	18 – 29	7.06%
	Middle Aged	30 – 59	37.65%
	Older Adult	≥60	55.29%
	Total		100.00%
MI/ID (39 Active Clients)	Young Adult	18 – 29	5.13%
	Middle Aged	30 – 59	43.59%
	Older Adult	≥60	51.28%
	Total		100.00%

Data Source: 4th Quarter Reports – Public Guardianship Providers (SFY 2019)

At the end of SFY 2019, the 950 Active Clients lived in the following situations:

- 48.42 percent in group homes;
- 16.84 percent in nursing homes;
- 12.74 percent in sponsored residential homes;
- 12.32 percent in assisted living facilities;
- 4.95 percent in state hospitals;
- 2.53 percent in independent living settings;
- <0.50 percent in training centers; and
- 2.11 percent in other community settings (*e.g.*, private hospitals, REACH stabilization homes,¹ or adult foster care).

The following table describes the distribution of Active Clients as of June 30, 2019 by housing type among the eligibility categories.

**HOUSING TYPE – PUBLIC GUARDIAN PROGRAM
ACTIVE CLIENTS
(As of 6/30/19)**

¹ These are “Regional Education Assessment Crisis Habilitation” homes operated through DBHDS and CSBs to provide short-term behavioral stabilization services to individuals diagnosed with an intellectual or developmental disability.

Eligibility Category	Housing Type	Percentage of Active Clients
Unrestricted (415 Active Clients)	Assisted Living Facility	21.20%
	Group Home	24.10%
	Nursing Home	37.35%
	Sponsored Placement	8.43%
	State Hospital	1.69%
	Independent Living	4.34%
	Training Center	0.00%
	Other	2.89%
DBHDS-ID/DD (411 Active Clients)	Assisted Living Facility	<1%
	Group Home	76.40%
	Nursing Home	0.00%
	Sponsored Placement	19.95%
	State Hospital	<1%
	Independent Living	<1%
	Training Center	<1%
	Other	<1%
DBHDS-MI (85 Active Clients)	Assisted Living Facility	30.60%
	Group Home	12.95%
	Nursing Home	5.85%
	Sponsored Placement	1.18%
	State Hospital	45.89%
	Independent Living	1.18%
	Training Center	0.00%
	Other	2.35%
MI/ID (39 Active Clients)	Assisted Living Facility	2.56%
	Group Home	82.05%
	Nursing Home	0.00%
	Sponsored Placement	7.69%
	State Hospital	0.00%
	Independent Living	2.56%
	Training Center	0.00%
	Other	5.14%

Data Source: 4th Quarter Reports – Public Guardianship Providers (SFY 2019)

SECTION III: STATE FISCAL YEARS 2017 - 2019 PROGRAM EXPANSION

In 2016, the General Assembly appropriated \$850,000 to create 150 new client slots in SFY 2017 and \$1,061,000 to create 193 new client slots in SFY 2018.

Implementation

During this period the Program grew by 48 percent from 706 slots to 1,049. Two hundred and ninety-three of the new slots were allocated for individuals identified for public guardianship services by DBHDS, 195 of which were DBHDS-ID/DD slots and 98 were DBHDS-MI slots. The remaining 50 were Unrestricted slots.

In addition to funding new Program slots, the 2016 General Assembly provided funding for additional staff for DARS to meet the expanded administrative needs of the Program. DARS now has two full-time staff assigned to the Program, a program coordinator and a program specialist.

During the period SFY 2017 – SFY 2019, 512 people became Active Clients of the Program, some filling the new expansion slots, others filling slots opened by attrition. Specifically, the Program received 166 new Active Clients in SFY 2017, 195 in SFY 2018, and 151 in SFY 2019.² During the same three year period, 261 Active Clients were removed from the Program (101, 75, and 85 in SFYs 2017, 2018, and 2019, respectively). Five of the individuals removed as Active Clients were restored to capacity, one was removed when he was placed with a private guardian after it was determined that he was no longer eligible for public guardianship, and the others were removed as a result of their death.

Expansion Challenges

For a person to receive the protection of a public or private guardian in Virginia, a proceeding must be initiated in a Virginia circuit court pursuant to Virginia Code § 64.2-2000 *et seq.* The court must (i) determine that the respondent is incapacitated, and (ii) appoint the guardian. If the respondent meets the statutory criteria set forth in § 64.2-2010 and a local or regional public guardianship provider has an opening in its program, the court may appoint a public provider contracted through DARS to serve as the respondent's public guardian, provided the public guardianship provider has agreed to serve.

Completion of the legal proceedings required to have a public guardian named for individuals referred to the Program has been challenging. The Memorandum of Agreement between DARS and DBHDS for Public Guardian and Conservator Services (MOA 17-016) places the responsibility for completion of the public guardianship legal proceedings for individuals going into the DBHDS slots on DBHDS, providing that DBHDS will ensure that state hospitals, CSBs or other appropriate entities take the necessary action to petition the appropriate circuit court and arrange for all legal services and fees. DBHDS passed this responsibility to CSBs, determining that the CSB that recommended the individual to DBHDS for public guardianship services or, in the case of individuals receiving treatment at state hospitals, the CSB serving the area where the individual lived prior to admission to the state facility, would serve as the petitioner. DBHDS

² The decline in the number of new Active Clients between SFY 2018 and SFY 2019 is attributable to the large number slots filled in SFY 2018. At the beginning of SFY 2018, 193 new client slots were added to the Program. At the beginning of SFY 2018 after the addition of these new slots, the Program was 79% full. At the end of SFY 2018, the Program was 95% full. At the end of SFY 2019, the Program was 98% full.

records show that for the period SFY 2017 – SFY 2019, 35 CSBs have been involved in hiring attorneys to bring cases seeking the appointment of a public guardian. DBHDS provided funding to reimburse CSBs for the attorneys’ fees incurred in the cases filed for DBHDS-ID/DD clients in SFY 2017 and increased the funding in SFY 2018. DBHDS provided Discharge Assistance Program funding to reimburse CSBs for the attorneys’ fees incurred in the cases of DBHDS-MI clients. In SFY 2018, DARS began to make funding available to reimburse the legal fees of petitioners seeking to have an individual placed in an Unrestricted or MI/ID public guardianship slot.³ Each agency has established a per case cap on the amount of reimbursement.

The table below shows the length of time it has taken to have public guardianship orders put in place for individuals referred to DBHDS-ID/DD slots with a local provider in SFYs 2017, 2018, and 2019.

**LENGTH OF TIME BETWEEN REFERRAL TO OPEN DBHDS-ID/DD SLOT
AND ENTRY OF COURT ORDER APPOINTING PUBLIC GUARDIAN
(As of 6/30/19)**

	SFY 2017	SFY 2018	SFY 2019
Number of persons referred to an open public guardian slot in the specified year who also became an Active Client on or before 6/30/2019	100	80 ⁴	21 ⁵
Of this group, the percentage of individuals for whom the number of months between the date the person was referred to an open public guardianship slot with a local provider and the date the guardianship order was entered by a court falls within the specified date ranges:			
More than 12 Months	25%	27%	0%
Nine to 12 Months	11%	19%	19%
Six to Nine Months	34%	15%	33%
Less than Six Months	30%	39%	48%
Average Number of Months between Date of Referral and Court Order Appointing the Public Guardian	9	8	6

Data Source: 4th Quarter Reports – Public Guardianship Providers (SFY 2019)

During the period of SFY 2018 – SFY 2019, 147 individuals became Active Clients of local public guardian providers in Unrestricted slots. The average length of time between the date the person was accepted for a public guardianship slot and the date the court order was entered was four months. This does not include the period between the date on which the local public guardian program received the referral from a community source and the date the referral was accepted by the local guardianship provider’s MDP.

³ In SFY 2017, before the second year of the expansion, DARS recommended to the Office of the Attorney General that a centralized process be created to more efficiently manage the legal proceedings and to ensure that everyone identified as needing a public guardian would have a petitioner available to bring their matter to court. This recommendation was not accepted. For a fuller discussion, see DARS’ 2018 Report to the General Assembly on the Virginia Public Guardian and Conservator Program, Section V, pages 9-10.

⁴ As of June 30, 2019, there were six In-Process Clients whose cases were referred in SFY 2018 to an open DBHDS-ID/DD slot with a local public guardian provider but who had not yet received a court order appointing a public guardian.

⁵ As of June 30, 2019, there were 37 In-Process Clients whose cases were referred in SFY 2019 to an open DBHDS-ID/DD slot with a local public guardian provider but who had not yet received a court order appointing a public guardian.

SECTION IV: THE CHALLENGE OF CIRCUIT COURT PETITIONING COSTS IN CASES WITH AN INDIGENT RESPONDENT

A major hurdle for individuals in need of a public guardian is the need to identify a petitioner who is willing to hire an attorney or find a pro bono attorney to file for and obtain the order of guardianship.⁶ Individuals in need of public guardianship services historically have been referred to the Program by DBHDS, law enforcement, local CSBs, local departments of social services, hospitals, nursing homes, and assisted living facilities. CSBs, local departments of social services, nursing homes, and assisted living facilities sometimes have not initiated guardianship proceedings for clients believed to be incapacitated because of their unwillingness or inability to hire counsel to bring the matter to court. While DBHDS and DARS currently provide reimbursement funding to petitioners seeking to have an individual receive public guardianship through certain types of slots, it is unclear how long the funding related to DBHDS-ID/DD, Unrestricted, and MI/ID slots will remain available. In the future, funding to support the legal proceedings necessary to fill Program vacancies may again become a significant issue.

SECTION V: PARTNERSHIP WITH DBHDS

The General Assembly has invested significant resources to provide public guardianship services to individuals residing in or at risk of placement in state training centers. The funding increase provided to DARS in the 2016 session of the General Assembly was targeted toward increasing the number of public guardianship slots for DBHDS-referred individuals incapacitated by an intellectual disability or mental illness. DARS and DBHDS, working collaboratively, have added significant capacity to the Program by authorizing additional client slots for at-risk adults. Currently, funding for DBHDS-referred clients accounts for approximately 59 percent of the Program budget. Fifty-three percent of public guardianship slots (552 slots) are reserved for individuals referred to the Program through DBHDS. During the period SFY 2017 – SFY 2019, the Program served 293 new Active Clients in DBHDS-ID/DD and DBHDS-MI slots from 35 CSBs and all eight state hospitals. This successful outcome was accomplished by using a coordinated team process with the collaboration of many individuals from the public and private sectors, including CSB case managers, public guardian service providers, training center staff, social workers and discharge planners at state hospitals, and others.

SECTION VI: THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

The Virginia Public Guardian and Conservator Advisory Board (“Board”) serves as a technical resource and advisor for the Program. The Board is comprised of up to 15 members representing a broad and diverse stakeholder base. Members include representatives of the Commonwealth Council on Aging, DBHDS, the National Alliance on Mental Illness Virginia, the Virginia Area Agencies on Aging, the Virginia Association of Community Services Boards, the Virginia Department of Social Services, the Virginia League of Social Services Executives, the Virginia State Bar, and The Arc of Virginia, and a retired circuit court judge.

⁶ This also is a problem for many individuals for whom a private guardian would be appropriate.

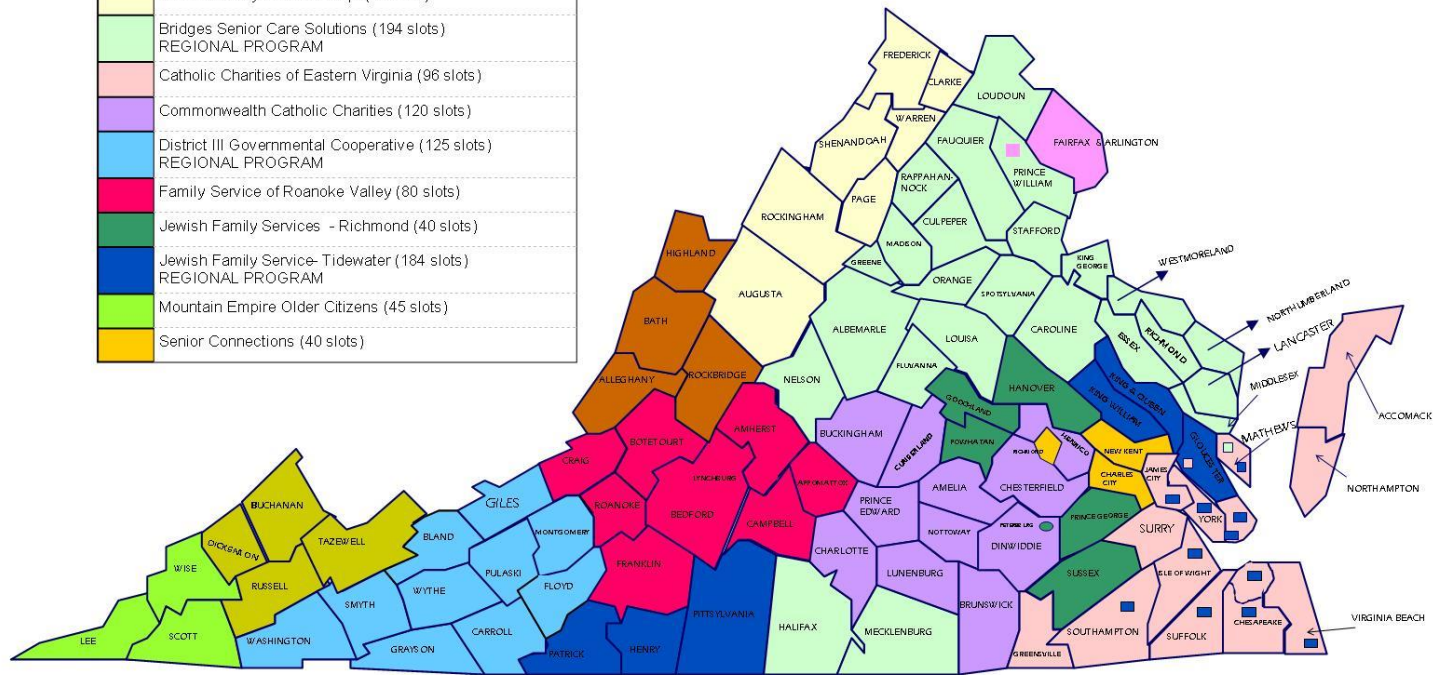
Appendix A
Virginia Public Guardian and Conservator Program
Geographic Service Areas as of June 30, 2019

AGENCY NAME	SERVICE AREA
Alleghany Highlands Community Services (CSB) 543 Church Street Clifton Forge, VA 24422 Phone: (540) 863-1620	Counties of Alleghany, Bath, Highland, and Rockbridge Cities of Covington, Buena Vista, and Lexington
Appalachian Agency for Senior Citizens, Inc. 216 College Ridge Road Wardell Industrial Park PO Box 765 Cedar Bluff, VA 24609-0765 Phone: (276) 964-7114	Counties of Buchanan, Dickenson, Russell, and Tazewell
The Arc of Northern Virginia 2755 Hartland Road, Suite 200 Falls Church, VA 22043 Phone: (703) 208-1119	Counties of Arlington, Fairfax, and Prince William Cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park
Autumn Valley Guardianship P.O. Box 1201 Harrisonburg, VA 22803 Phone: (540) 421-5107 (540) 908-4437	Counties of Augusta, Clarke, Frederick, Page, Rockingham, Shenandoah, and Warren Cities of Harrisonburg, Staunton, Waynesboro, and Winchester
Bridges Senior Care Solutions <u>REGIONAL PROGRAM</u> P.O. Box 1310 Fredericksburg, VA 22402 Phone: (540) 899-3404	Counties of Albemarle, Caroline, Culpeper, Essex, Fauquier, Fluvanna, Greene, Halifax, King George, Lancaster, Loudoun, Louisa, Madison, Mathews, Mecklenburg, Middlesex, Nelson, Northumberland, Orange, Prince William, Rappahannock, Richmond, Spotsylvania, Stafford, and Westmoreland Cities of Charlottesville, Fredericksburg, and South Boston
Catholic Charities of Eastern Virginia 4855 Princess Anne Road Virginia Beach, VA 23462 Phone: (757) 467-7707	Counties of Accomack, Gloucester, Greensville, Isle of Wight, James City, Mathews, Northampton, Southampton, Surry, and York Cities of Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg

<p>Commonwealth Catholic Charities 1601 Rolling Hills Drive Richmond, VA 23229 Phone: (804)-545-5900</p>	<p>Counties of Amelia, Brunswick, Buckingham, Charlotte, Chesterfield, Cumberland, Dinwiddie, Henrico, Lunenburg, Nottoway, and Prince Edward</p>
<p>District Three Governmental Cooperative REGIONAL PROGRAM 4453 Lee Highway Marion, VA 24354-4269 Phone: (276) 783-8157</p>	<p>Counties of Bland, Carroll, Floyd, Giles, Grayson, Montgomery, Pulaski, Smyth, Washington, and Wythe Cities of Bristol, Galax, and Radford</p>
<p>Family Service of Roanoke Valley 360 Campbell Avenue, SW Roanoke, VA 24016 Phone: (540) 563-5316</p>	<p>Counties of Amherst, Appomattox, Bedford, Botetourt, Campbell, Craig, Franklin, and Roanoke Cities of Bedford, Lynchburg, Roanoke, and Salem</p>
<p>Jewish Family Services of Richmond 6718 Patterson Avenue Richmond, VA 23226 Phone: (804) 282-5644</p>	<p>Counties of Goochland, Hanover, Powhatan, Prince George, and Sussex Cities of Hopewell and Petersburg</p>
<p>Jewish Family Service of Tidewater REGIONAL PROGRAM 5000 Corporate Woods Dr. Suite 300 Virginia Beach VA 23462 P.O. Box 65127 Virginia Beach, VA 23467 Phone: (757) 938-9130</p>	<p>Counties of Gloucester, Henry, Isle of Wight, James City, King & Queen, King William, Mathews, Middlesex, Patrick, Pittsylvania, Southampton, and York Cities of Chesapeake, Danville, Franklin, Hampton, Martinsville, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg</p>
<p>Mountain Empire Older Citizens 1501 3rd Avenue East P.O. Box 888 Big Stone Gap, VA 24219 Phone: (276) 523-4202</p>	<p>Counties of Lee, Scott, and Wise City of Norton</p>
<p>Senior Connections 24 East Cary Street Richmond, VA 23219-3796 Phone: (804) 343-3031</p>	<p>Counties of Charles City and New Kent City of Richmond</p>

VIRGINIA PUBLIC GUARDIAN & CONSERVATOR PROGRAMS SERVICE AREA As of June 30, 2019

	Alleghany/Highlands Community Services PGP (18 slots)
	Appalachian Agency for Senior Citizens (35 slots)
	The Arc of Northern Virginia (50 slots)
	Autumn Valley Guardianship (21 slots)
	Bridges Senior Care Solutions (194 slots) REGIONAL PROGRAM
	Catholic Charities of Eastern Virginia (96 slots)
	Commonwealth Catholic Charities (120 slots)
	District III Governmental Cooperative (125 slots) REGIONAL PROGRAM
	Family Service of Roanoke Valley (80 slots)
	Jewish Family Services - Richmond (40 slots)
	Jewish Family Service- Tidewater (184 slots) REGIONAL PROGRAM
	Mountain Empire Older Citizens (45 slots)
	Senior Connections (40 slots)



Appendix B

Client Slots Contracted to Local Guardianship Providers as of June 30, 2019

	Unrestricted	DBHDS- ID/DD	DBHDS-MI	MI-ID	TOTAL
Alleghany Highlands Community Services (CSB)	18	0	0	0	18
Appalachian Agency for Senior Citizens	35	0	0	0	35
The Arc of Northern Virginia	17	33	0	0	50
Autumn Valley Guardianship	6	15	0	0	21
Bridges Senior Care Solutions	56	104	34	0	194
REGIONAL PROGRAM					
Catholic Charities of Eastern Virginia	58	38	0	0	96
Commonwealth Catholic Charities	16	84	0	20	120
District Three Governmental Cooperative	78	23	24	0	125
REGIONAL PROGRAM					
Family Service of Roanoke Valley	34	46	0	0	80
Jewish Family Services (Richmond)	22	18	0	0	40
Jewish Family Service of Tidewater	62	83	39	0	184
REGIONAL PROGRAM					
Mountain Empire Older Citizens	45	0	0	0	45
Senior Connections Capital Area Agency on Aging	10	10	0	20	40
Totals	457	454	97*	40	1048*

* One DBHDS-MI slot is unallocated and is being held in reserve as a floater to be allocated to the appropriate local program as the need arises.

Appendix C

Virginia Administrative Code
Title 22. Social Services
Agency 30. Department for Aging and Rehabilitative Services

Chapter 70. Chapter 70 the Virginia Public Guardian and Conservator Program

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.

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.

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 shall 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 Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 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 shall 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 shall 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. Attorneys 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 or courts 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 subdivision C 2 of this section 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 guardian or conservator shall be guided by person-centered planning that:

a. Focuses on the expressed preferences, personal values, and needs of the individual receiving public guardian program services; and

b. Empowers and supports the individual receiving public guardian program services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

4. To the maximum extent feasible, the person-centered planning process shall:

a. Include people chosen by the individual;

b. Provide necessary information and support to enable the individual to direct the process and to make informed choices and decisions;

c. Be timely and occur at times and locations convenient for the individual;

d. Require participation and collaboration, in the case of an individual receiving case management services licensed or funded by the Department of Behavioral Health and Developmental Services, among the guardian or conservator, case managers, and providers in meeting the individual's planning goals, in conformity with the guardian or conservator's court order;

e. Reflect the individual's cultural values;

f. Offer choices to the individual regarding the services the individual receives and from whom the individual receives those services; and

g. Include documentation of processes employed in and the outcomes of person-centered planning.

5. The multidisciplinary panel described in subdivision C 2 of this section 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.

6. 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.

7. 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.

8. 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.

9. 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, which

provides for the protection of aged or incapacitated adults, mandates reporting, and provides for a penalty for failure to report.

10. 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, including person-centered planning utilization and documentation, to ensure compliance with the terms of the contract between the public guardian program and the department.

Statutory Authority

§§ 51.5-131 and 51.5-150 of the Code of Virginia.

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.

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.

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.