Commonwealth of Virginia
October 18th, 2021

Report to the Governor and the General Assembly of Virginia

Improving Virginia's Adult Guardian and Conservator System

2021

JLARC
JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

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JLARC Report 553
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Summary: Improving Virginia's Adult Guardian and Conservator System

WHAT WE FOUND

WHY WE DID THIS STUDY

In 2020, the Joint Legislative Audit and Review Commission (JLARC) asked staff to conduct a review of Virginia's guardianship and conservatorship system. The study resolution directed the examination of the court process to appoint guardians and conservators, oversight of guardians and conservators, the process for restoring rights to adults under guardianship or conservatorship, and Virginia's laws to prevent the abuse or neglect of vulnerable adults.

ABOUT GUARDIANSHIP AND CONSERVATORSHIP

Guardianship and conservatorship support incapacitated adults by providing them a representative who legally makes decisions on their behalf. Guardianship is a legal process where a court-appointed individual supervises the personal affairs of an adult who is incapacitated because of a disability or illness. In conservatorship, a court-appointed individual manages the financial affairs of an incapacitated adult.

Approximately 12,000 Virginia adults are under guardianship, relying on a court-appointed third party to manage their affairs

Adults under guardianship and conservatorship are among the most vulnerable Virginians; they typically have long-term, complex physical and/or mental conditions such as dementia, traumatic injury, or autism. Approximately 12,000 adults in Virginia were under guardianship in FY20.

When adults are placed under guardianship or conservatorship by a circuit court, the court legally removes some or all of their rights and grants another individual—a family member, friend, professional guardian, or private attorney—control over their affairs. Guardians make potentially life-altering decisions, such as where the adult lives, the medical or mental health care that they receive, and who the adult can have contact with. Conservators make decisions regarding the management of the adult's financial affairs.

Few adults under guardianship have their rights restored, but circuit courts should regularly consider changes to guardianship arrangements

Most guardianship arrangements are permanent. The conditions of most adults under guardianship are unlikely to improve, and they are likely to need a guardian to make important housing, medical, and financial decisions for the rest of their lives. Adults can be under guardianship for a long time—in FY20, nearly half of the state's approximately 12,000 adults under guardianship were under age 45.

The term "guardianship" as used in this report **encompasses both guardianship and conservatorship.** Adults under guardianship who have sufficient income and/or assets typically also have a conservator. The term "conservator" is used when discussing responsibilities that are specific to a conservator, such as financial management.

Some adults under guardianship may not need a guardian permanently, but Virginia courts restore the rights of few adults under guardianship. From October 2018 to March 2021, about 30 adults had their rights restored. Unlike some other states, Virginia state law does not require periodic court reviews of guardianship arrangements. The absence of a periodic review may have led to adults remaining under guardianship even though they could have had their rights restored.

Circuit courts need better information to make the best decisions in guardianship cases

Investigations and recommendations by guardians ad litem (GALs) are the primary source of information judges use to decide whether to place an adult under guardianship and who the guardian should be. However, GALs are not required to report some pertinent information on the suitability of prospective guardians, such as the number of incapacitated adults prospective guardians serve or the distance the guardian would need to travel to visit the adult.

GALs are also not required to explain to the circuit court judge why arrangements other than a full permanent guardianship are not appropriate to meet the adult's needs. Alternative arrangements should be fully considered, especially since guardianship removes all or most of the adult's rights, and rights are rarely restored.

Guardians have too much discretion to restrict contact with adults under their guardianship

Contact with family, friends, and others can help prevent the abuse, neglect, and exploitation of incapacitated adults because visitors can observe the condition, care, and living arrangements of a person under guardianship. In contrast to Virginia, other states have stronger laws establishing conditions and processes for when a guardian can restrict contact with adults they serve. For example, guardians in Virginia are not required to provide the affected parties with a rationale for their decision to restrict contact or inform them of how they can challenge the restriction through the circuit court. Additionally, the Code of Virginia merely requires that the conditions for restricting contact with the adult be "reasonable" according to the guardian, which is an overly broad standard that affords the guardian too much discretion. This vague standard, combined with guardians' ability to restrict contact with adults under guardianship without providing justification or informing parties of their ability to challenge the restriction, enables guardians to unjustifiably restrict contact between an adult and their family members or other individuals who may be able to contribute to the adult's care and well-being.

Virginia's public guardianship program is effective, but demand for public guardians exceeds available slots

Most adults under guardianship are served by private guardians, but indigent adults who do not have someone who is willing to serve as their guardian may be served by guardians who work for 13 organizations that provide state-funded "public" guardianship services. Virginia's public guardianship program serves approximately 1,000 indigent adults under guardianship and is managed and overseen by the Department for Aging and Rehabilitative Services (DARS).

Virginia's public guardianship program requirements closely align with national standards for an effective guardianship program. One national expert said that Virginia

has a "model system," and other states—including Nebraska and Oregon—have modeled their public guardianship programs on Virginia's. DARS provides comprehensive and effective oversight of the public guardianship program. Staff conduct a multi-day, on-site review of each provider organization every 12 to 18 months.

Demand exceeds available slots in the public guardianship program. Nearly 700 individuals are currently on waitlists for public guardianship services, and the waitlists will likely grow. More than half of the public slots are dedicated to individuals with intellectual and developmental disabilities or serious mental health issues. People who fall into these categories tend to be relatively young when a guardian is appointed and are likely to remain in public guardianship for a long period; therefore, the number of public slots that open up over time is unlikely to keep pace with additional demand.

Expansion of the public guardianship program would require additional state funding. Expanding the program by an additional 700 slots to eliminate the current program waitlist would require approximately $2.7 million annually based on the current average funding for a public guardianship slot (a 60 percent increase to current program funding of $4.5 million).

Most adults under guardianship are served by private guardians, who are not subject to any standards

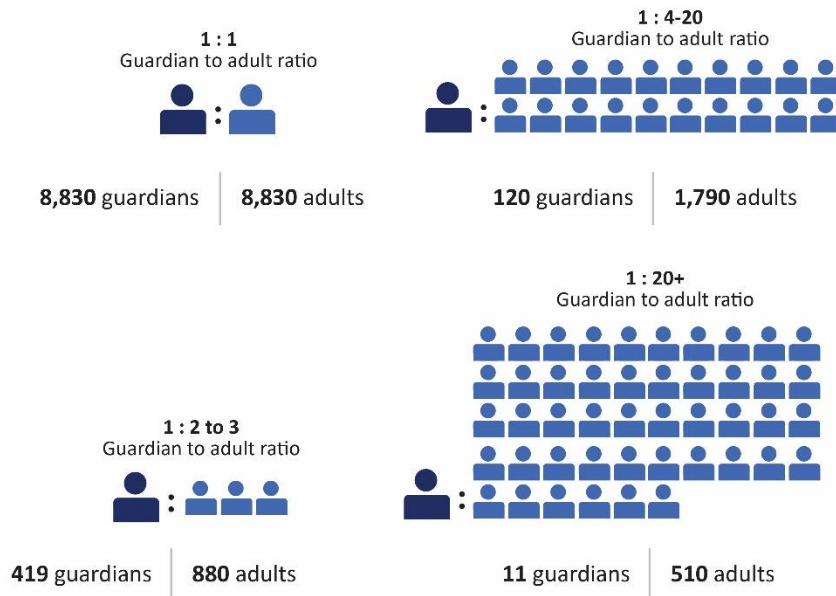
Most private guardians are a family member or friend of the individual under guardianship and only serve as guardian to one adult. However, adults who do not have a family member or friend able to serve as their guardian may be served by an attorney or a professional guardian.

Private guardians are not subject to any standards. In contrast to the public program, private guardians do not have a caseload standard, visitation requirements, or training requirements. In FY20, 510 adults under guardianship were served by 11 private guardians who had caseloads of more than 20, with a median of 33 adults per guardian and one guardian with a caseload of 110. Adults are not under guardianship by choice, and most cannot choose whether a public or private guardian serves them, so there should be similar assurances of quality service in both the public and private systems.

Unlike the public guardianship program, Virginia does not have a centralized process that adults under guardianship or their advocates can use to file a complaint about a private guardian. Family members of individuals under private guardianship and advocates for adults under guardianship routinely shared with JLARC staff that they have felt helpless and frustrated by the lack of a complaint process.

Virginia does not require independent visits by professionals of adults under private guardianship to assess their health and well-being, even though such visits are considered by national experts to be effective for overseeing guardians. Several other states use independent care visits to enhance their oversight of guardians.

Number of guardians and adults under guardianship by caseload size



SOURCE: JLARC analysis of DARS data, FY20.

Content and format of annual guardianship report are ineffective for overseeing private guardians

The annual guardianship report is the primary mechanism for overseeing private guardians. State law requires all guardians to submit an annual report to their local department of social services (LDSS), which subsequently provides the report to the circuit court. However, the broad content and open-ended structure of the annual report make it an ineffective tool for overseeing guardians. The report lacks questions that could be useful for monitoring the quality of care being provided to an adult under guardianship and identifying potential problems. The report's questions are also open-ended, which results in vague responses that are not particularly helpful. Sixty-three percent of LDSS staff responding to a JLARC survey disagreed that the information from the annual reports is useful for overseeing guardians.

Court-appointed conservators can become responsible for complex financial decisions and need more training

Conservators are responsible for managing the finances of incapacitated adults who courts determine are unable to manage their own financial affairs. The finances that conservators may manage range from modest retirement accounts to large estates with multiple properties and investment accounts. Conservators are not required to have a financial background, and the state does not require or offer any training for conservators. Forty-three percent of local commissioners of accounts—who oversee conservators—said conservators supervised by their office do not receive adequate training and guidance, and 61 percent said the conservators supervised by their office

do not have adequate experience and knowledge to fulfill their fiduciary responsibilities.

Initial inventory of assets owned by adults is self-reported by conservators and not verified, creating risk of improper spending

Conservators submit an initial inventory report of an adult's assets to the local commissioner of accounts. Commissioners of accounts use these inventories as the basis for which to evaluate the propriety of future expenditures of the adult's assets that the conservator documents in annual reports. The initial inventory, however, is self-reported by the conservator and is not verified by a third party. This creates a risk that a conservator's improper expenditures of the adult's assets would be undetected.

WHAT WE RECOMMEND

Legislative action

- Require a periodic circuit court hearing to review guardianship and conservatorship appointments, unless the court determines that periodic reviews are unnecessary.
- Require that guardians ad litem explain in their report to the judge why an alternative arrangement to full guardianship is not appropriate for the adult and report to the judge additional information pertinent to the prospective guardian's suitability, such as the guardian's current caseload.
- Require private guardians and conservators to take state-provided training.
- Specify the circumstances that allow for restricting contact with adults under guardianship and create a formal, transparent process for guardians to implement a visitation restriction against one or more individuals.
- Set a visitation requirement for private guardians.
- Require the annual guardianship report to include more detailed and pertinent information.
- Give DARS new responsibilities related to private guardianship and direct DARS to develop a proposal for conducting independent care visits for a subset of private guardianships to ensure adults are receiving quality care.
- Appropriate funds to eliminate the public guardianship program's waitlist.
- Require conservators to notify family members and other interested parties that they may request a copy of the initial inventory of an adult's assets to review it for completeness and accuracy.
- Require the court order appointing a conservator to include a statement of the adult's financial resources for commissioners of accounts to compare to the conservator's initial inventory of assets.

Executive action

- Develop a process for guardians ad litem to request Adult Protective Services (APS) records.
- Develop and provide training for private guardians.
- Develop a centralized process for receiving complaints against private guardians and referring filers of complaints to state and local agencies that can address the complaint.
- Issue a request for information to determine organizations' interest in providing additional public guardianship services.
- Develop required online training for conservators.

Recommendations: Improving Virginia's Adult Guardian and Conservator System

RECOMMENDATION 1

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem explain in their report their reasoning for i) a decision not to recommend counsel for an adult under consideration for guardianship and ii) a determination that an alternative arrangement to guardianship or conservatorship is not appropriate, including an existing arrangement such as a power of attorney. (Chapter 2)

RECOMMENDATION 2

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardian ad litem reports to the court include i) the size of the prospective guardian's current guardianship caseload, ii) whether the prospective guardian employs representatives to manage day-to-day tasks of guardianship, (iii) the travel time between the prospective guardian's residence or place of business and the expected residence of the adult under consideration for guardianship, iv) whether the prospective guardian works as a professional guardian on a full-time basis, and v) whether the guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaint. (Chapter 2)

RECOMMENDATION 3

The Department for Aging and Rehabilitative Services (DARS) should develop a process and an efficient mechanism for guardians ad litem to request and obtain information from DARS about whether a guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaints, including the circumstances of those complaints and how the complaints were resolved. (Chapter 2)

RECOMMENDATION 4

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem include in their reports an assessment of suitability and propriety of all individuals interested in serving as a guardian for the adult who is the subject of the petition. (Chapter 2)

RECOMMENDATION 5

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105 and § 13.1-501 of the Code of Virginia, to provide financial records of adults under consideration for guardianship when requested by a guardian ad litem. (Chapter 2)

RECOMMENDATION 6
The Office of the Executive Secretary of the Supreme Court of Virginia should maintain, and update as needed, training for judges on adult guardian and conservator cases on its online learning center for judges. (Chapter 2)

RECOMMENDATION 7
The Virginia Judicial Education Committee of the Judicial Conference of Virginia should periodically offer training for judges on adult guardian and conservator cases at future judicial conferences. (Chapter 2)

RECOMMENDATION 8
The Virginia Benchbook Committee should, in consultation with Virginia's Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), create additional reference materials for circuit court judges about adult guardian and conservator cases and work with the publisher to include these materials in the *Virginia Civil Benchbook for Judges and Lawyers*. (Chapter 2)

RECOMMENDATION 9
The Virginia Judicial Council should amend the Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons to require that new guardians ad litem shadow experienced guardians ad litem on two cases that involve appointment of a guardian or conservator for an incapacitated adult, as defined in § 64.2-2000 in the Code of Virginia. (Chapter 2)

RECOMMENDATION 10
The Office of the Executive Secretary of the Supreme Court of Virginia should identify one or more private legal organizations or higher education institutions that could develop and offer a continuing legal education course for guardians ad litem that focuses on litigation in contested guardianship cases and convey to them the existing need for such a course in Virginia. (Chapter 2)

RECOMMENDATION 11
The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should formally communicate to all circuit court judges the availability, accuracy, and timeliness of the list of qualified guardians ad litem maintained by OES. (Chapter 2)

RECOMMENDATION 12
The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should include each attorney's years of experience and areas of expertise as a guardian ad litem (GAL) on its published list of GALs. (Chapter 2)

RECOMMENDATION 13

The General Assembly may wish to consider amending § 64.2-2004 of the Code of Virginia to require that a notice be provided by the petitioner to an adult being considered for guardianship and their family, which clearly states that anyone may file a petition or a motion to intervene to become a party to the case if they wish to propose a different individual to serve as guardian than the one stated in the petition. (Chapter 2)

RECOMMENDATION 14

The General Assembly may wish to consider amending §64.2, Chapter 20, of the Code of Virginia to require circuit courts to hold a periodic review hearing for guardianship and conservatorship cases no later than one year after appointment of the guardian and at least once every three years thereafter, unless the court determines at the time of the initial guardian appointment order, or upon completion of a review hearing, that further review hearings are unnecessary or impracticable. (Chapter 3)

RECOMMENDATION 15

The Department for Aging and Rehabilitative Services should require each public guardianship provider's visitation policy to require guardians to conduct at least one unannounced visit for each adult under guardianship each year. (Chapter 4)

RECOMMENDATION 16

The Department for Aging and Rehabilitative Services should conduct an evaluation of the 1:20 ratio for public guardian providers to ensure that guardians can effectively carry out their work, and then every 10 years (or sooner if changes to state law or other circumstances indicate a reevaluation is needed), and adjust the ratio as warranted. (Chapter 4)

RECOMMENDATION 17

The Department for Aging and Rehabilitative Services (DARS) should require the public guardianship provider organizations to report at least annually to DARS the details of each complaint the organizations have received against public guardians and how each complaint was resolved. (Chapter 4)

RECOMMENDATION 18

The Department for Aging and Rehabilitative Services should develop and provide initial and ongoing training for private guardians, including training on the responsibilities and duties of guardians, how to complete annual guardianship reports, and how to involve adults in decisions made by guardians. (Chapter 4)

RECOMMENDATION 19

The General Assembly may wish to consider amending Title 64.2 of the Code of Virginia to require any individual who is named as a private guardian, and staff who perform duties on their behalf, to undergo guardianship training developed by the Department for Aging and Rehabilitative Services within four months of appointment and give local departments of social services responsibility for verifying compliance with the training requirement. (Chapter 4)

RECOMMENDATION 20

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require private guardians to visit each adult under guardianship in person at least once every three months and that during visits, guardians observe and assess (i) the safety and adequacy of the adult's living environment; (ii) the adult's overall condition and well-being, especially as compared to previous visits; (iii) whether and how the adult's physical and behavioral health-care needs are being met, including whether the adult has been hospitalized and why; (iv) progress made by the adult toward goals; (v) participation in social activities and educational or vocational programs, and (vi) contact and involvement with family and friends. (Chapter 4)

RECOMMENDATION 21

The General Assembly may wish to consider amending §64.2-2020 of the Code of Virginia to require that the annual guardianship report direct guardians to report, at a minimum, on the following items regarding adults under their guardianship: (i) names of medical and therapeutic providers and dates seen, and dates, location of, and reasons for any hospitalizations; (ii) any new or changed diagnoses; (iii) any change in the adult's physical and/or behavioral health, including whether and to what degree the adult's health is expected to improve; (iv) dates of the guardian's visits to the adult; (v) an assessment by the guardian, based on the most recent visits, of the adequacy of the adult's living arrangements and the adult's safety and well-being; (vi) the guardian's activities, if any, performed on behalf of the adult during the year to improve the adult's quality of life; (vii) a description of social activities, recreational or educational programs, or job training, if any, the adult participated in and the name and location of such programs or activities; (viii) progress made by the adult toward goals, if applicable; (ix) any Adult Protective Services report or investigation in which the adult was the alleged victim and whether there has been any other indication of exploitation, abuse, or neglect; (x) any visitation restrictions imposed by the guardian and the reasons for them; (xi) a self-assessment by the guardian of their ability to continue to carry out their duties; (xii) whether the guardian has taken guardianship training; and (xiii) any other information deemed necessary to report by the Office of the Executive Secretary of the Supreme Court of Virginia (OES) or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of adults under guardianship. This section of the Code should also be amended to make clear that OES may collect additional information in the annual guardianship report than that listed in Code without statutory amendment. (Chapter 4)

RECOMMENDATION 22
The Department for Aging and Rehabilitative Services, in coordination with the Virginia Department of Social Services, should develop and provide training to local department of social services staff on how to review annual guardianship reports and provide guidance to help staff identify concerns that should prompt a more in-depth review or investigation. (Chapter 4)

RECOMMENDATION 23
The Department for Aging and Rehabilitative Services, in consultation with the Virginia Department of Social Services and local departments of social services, should develop a proposal for conducting independent care visits for a subset of private guardianship cases on an ongoing basis. The proposal should describe criteria for determining which adults under guardianship should receive visits, who should conduct the visits, the purpose of the visits, what the visitor should monitor during the visit, when to request and review additional documents, and potential actions to take when problems are identified. The proposal should also include an estimate of one-time and ongoing total costs of independent care visits and be submitted to the House Appropriations Committee and Senate Finance and Appropriations Committee no later than December 31, 2022. (Chapter 4)

RECOMMENDATION 24
The General Assembly may wish to consider amending Title 51.1, Chapter 14, Article 6 of the Code of Virginia to grant new responsibilities to the Department for Aging and Rehabilitative Services to strengthen the accountability and quality of the private guardian system. These new responsibilities should include: providing information about Adult Protective Services complaints against prospective guardians to guardians ad litem as part of the guardianship court hearing process; providing and/or coordinating training to private guardians and local department of social services staff; facilitating additional monitoring of private guardians through independent care visits; improving guardianship data tracking and quality control; and creating and administering a private guardian complaint process. (Chapter 4)

RECOMMENDATION 25
The Department for Aging and Rehabilitative Services (DARS) should update its PeerPlace data system to ensure the agency can systematically identify and quantify cases where an adult under guardianship may be a victim of, or a guardian may be a perpetrator of, abuse, neglect, or exploitation. DARS should quantify and summarize the number and types of Adult Protective Services cases involving an adult under guardianship or a guardian of an incapacitated adult and report that information in its Annual Report on Adult Protective Services. (Chapter 5)

RECOMMENDATION 26
The Department for Aging and Rehabilitative Services (DARS) should develop and administer a process for receiving complaints against private guardians and referring complainants to the appropriate court, state agency, or local agency. DARS should develop criteria for determining which state or local entities should receive a complaint, follow-up with respective entities as necessary to ensure complaints are being addressed, collect data about complaints, and use the data to analyze trends in complaints against guardians. (Chapter 5)

RECOMMENDATION 27
The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require guardians who restrict an individual from visiting or contacting an adult under their guardianship to provide the individual, on a form provided by the Office of the Executive Secretary, with written notification that clearly outlines (i) terms of the restriction, (ii) reasons for the restriction, and (iii) how the restricted individual can challenge the restriction through the circuit court that has jurisdiction over the case. (Chapter 5)

RECOMMENDATION 28
The Office of the Executive Secretary of the Supreme Court should develop a form to be used by guardians for providing notice to individuals subject to a visitation or contact restriction and a form to be used by restricted individuals to petition the court if they wish to challenge the restriction. (Chapter 5)

RECOMMENDATION 29
The General Assembly may wish to consider amending § 64.2-2019 to require guardians to provide a copy of any notification or court order pertaining to a visitation restriction to the local department of social services that oversees the case. (Chapter 5)

RECOMMENDATION 30
The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to permit guardians to restrict contact with the adults they serve only in cases where such a restriction is necessary to prevent physical, emotional, or mental harm or protect their finances. (Chapter 5)

RECOMMENDATION 31
The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require the guardian to notify designated contacts, as specified by the court, of certain changes in the condition or circumstances of an adult under guardianship, including a change to the adult's primary residence, a temporary change in living location, admission to a hospital or hospice care, and death, as well as provide them with a copy of the annual guardianship report each year at the time it is submitted to the local department of social services. (Chapter 5)

RECOMMENDATION 32

The General Assembly may wish to consider amending §64.2, Chapter 20, of the Code of Virginia to (i) define self-dealing, at a minimum, to include using the estate of an adult under guardianship or conservatorship to complete a sale or transaction with the guardian or conservator, their spouse, agent, attorney, or business with which they have a financial interest; (ii) prohibit self-dealing by a guardian or conservator unless court approval is first obtained or the sale or transaction was entered into before the guardian or conservator was appointed; and (iii) make voidable by the court any sale or transaction that constitutes self-dealing. (Chapter 5)

RECOMMENDATION 33

The General Assembly may wish to consider amending § 63.2-1605 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105, and § 13.1-501 of the Code of Virginia, to provide financial records of alleged victims of financial exploitations to Adult Protective Services (APS) as part of APS investigations. (Chapter 5)

RECOMMENDATION 34

The General Assembly may wish to consider including additional funding in the Appropriation Act to pay for 700 new slots in the public guardianship program, which would allow the Department for Aging and Rehabilitative Services to eliminate the current waitlist. (Chapter 6)

RECOMMENDATION 35

The General Assembly may wish to consider including one-time funding in the Appropriation Act for the Department for Aging and Rehabilitative Services (DARS) to hire a third party to study the need for expanding the capacity of the state's public guardianship program in total and by region; to assess the actual cost of providing expanded public guardianship services (personnel, overhead, etc.); and to assess the additional cost of providing equal funding to all provider organizations for the same types of public guardianship slots. DARS should submit the findings to the chairs of the House Appropriations and Senate Finance and Appropriations committees by October 1, 2023. (Chapter 6)

RECOMMENDATION 36

The Department for Aging and Rehabilitative Services (DARS) should issue a request for information for public guardianship services as soon as practicable to assess the availability of organizations to serve as public guardianship providers. DARS should include the results of the request in the report to the chairs of the House Appropriations and Senate Finance and Appropriations committees. (Chapter 6)

RECOMMENDATION 37

The Office of the Executive Secretary of the Supreme Court of Virginia should coordinate with the Conference of Commissioners of Accounts and the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia to develop online training for conservators or contract with a third party to develop training. Training should include the responsibilities and duties of conservators, how to complete inventories and annual accounting reports, and more advanced financial management training on issues such as benefits and managing investments. (Chapter 7)

RECOMMENDATION 38

The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require conservators to complete state-provided training within four months of their court appointment, and consider amending Title 64.2, Chapter 12 of the Code of Virginia, to assign commissioners of accounts responsibility for verifying compliance with training requirements for conservators under their supervision. (Chapter 7)

RECOMMENDATION 39

The General Assembly may wish to consider amending Title 64.2, Chapter 12 of the Code of Virginia to require conservators to (i) notify family members and other interested parties, who are specified in the initial petition for conservatorship, that an initial inventory of assets will be submitted, and (ii) provide copies of the initial inventory to notified parties, if requested, and inform these parties that they may raise any concerns about the accuracy and completeness of the inventory with the commissioner of accounts overseeing the conservator. (Chapter 7)

RECOMMENDATION 40

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require guardians ad litem to include in their report to the court all assets and income of adults under consideration for guardianship that they identify when determining the amount of surety on a conservator's bond. (Chapter 7)

RECOMMENDATION 41

The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to require the court order appointing a conservator to include a list of the financial resources of the adult being placed under conservatorship to the extent known as identified in the petition for conservatorship and the guardian ad litem report. (Chapter 7)

RECOMMENDATION 42

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should collaborate with the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia and the Conference of Commissioners of Accounts to contract with a third party to review a subset of conservator annual accounting reports. The review should, at minimum, assess the timeliness of submission and review of the reports, confirm that information provided by conservators is accurate and complete, assess the accuracy and thoroughness of the review performed by commissioners of accounts, and evaluate how commissioners are reviewing conservator compensation. OES should be directed to report the findings of the review to the Conference of Commissioners of Accounts and the chief circuit court judge and commissioner of accounts in each locality included in the review, and to use the findings to inform the development and/or refinement of guidance for commissioners of accounts and new conservator training. (Chapter 7)

1 Overview of Virginia's Guardian and Conservator System

The Joint Legislative Audit and Review Commission (JLARC) approved a resolution in 2020 directing its staff to review Virginia's court-appointed guardian and conservator system. (See Appendix A for study resolution.) Specifically, the study resolution directed staff to:

- identify the Commonwealth's current laws that help prevent and remedy abuse, neglect, and exploitation of elderly and incapacitated persons, and to examine opportunities to strengthen the Commonwealth's laws;
- determine the maximum number of adults under guardianship per guardian that should be permitted to ensure a high level of oversight and care;
- identify appropriate training, qualification, and oversight requirements for court-appointed guardians;
- determine the type and amount of information that court-appointed guardians should be required to provide when making decisions on behalf of adults under guardianship and identify the parties to whom such information should be provided;
- consider one or more processes that could be implemented to allow for the receipt and investigation of complaints regarding the actions of court-appointed guardians; and
- review the adequacy of oversight of the guardian and conservator system.

To address the study mandate, JLARC staff analyzed court system data on the characteristics and outcomes of guardian and conservator cases; criminal data regarding abuse, neglect, and financial exploitation of adults; Adult Protective Services case data; and data about adults under guardianship statewide. JLARC staff interviewed public guardianship and Adult Protective Services staff at the Department for Aging and Rehabilitative Services (DARS), staff at the Office of the Executive Secretary of the Supreme Court, and staff at the Department of Behavioral Health and Developmental Services; staff at local departments of social services, commissioners of accounts, and public guardianship provider organizations; court process stakeholders such as circuit court clerks, circuit court judges, and attorneys who have experience working on guardianship cases; state and national experts; and advocates who have had family and friends affected by guardianship. JLARC staff also surveyed staff at local departments of social services, staff at public guardianship providers, commissioners of accounts, and members of the Public Guardian and Conservator Advisory Board. Finally, JLARC staff reviewed various documents,

including court case files and guidance materials provided to courts, commissioners of accounts, and guardians and conservators, as well as participated in training from the Virginia State Bar for guardians ad litem (GAL). (See Appendix B for a detailed description of research methods.)

Guardians and conservators handle major life decisions and finances for incapacitated adults

An incapacitated adult "is someone, 18 years or older, who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to the extent that they lack the capacity to meet their own essential needs and/or manage property or financial affairs" (§64.2-2000).

National experts and the Code of Virginia consider guardianship and conservatorship to be the most "restrictive" option for assisting and serving an incapacitated adult. The Code lists "less restrictive alternative[s]...including the use of an advance directive, supported decision-making agreement, or durable power of attorney" (§64.2-2003(B)).

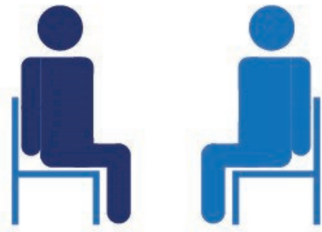
A **guardian** is appointed by a circuit court to be responsible for the personal affairs of an incapacitated adult (sidebar). Court-appointed guardians are expected to act in the adult's best interest. State law requires guardians to make key life decisions for the adult under guardianship. Examples may include their living arrangement, health-care needs and planning, and vocational or educational opportunities. The Code of Virginia directs guardians to maintain enough contact with their adults under guardianship to know about their capabilities, limitations, and needs. Adults under guardianship who have sufficient income and/or assets typically also have a conservator.

A **conservator** is an individual appointed by a circuit court to manage the estate and financial affairs of an incapacitated adult. State law requires conservators to manage the estate and finances in the adult's best interest. Conservators' financial responsibilities can include paying bills, making loan payments, or paying fees to service providers such as in-home nursing care. The conservator also manages the adult under guardianship's financial planning, such as the disbursements of a retirement account and whether to hold or sell assets. The Code of Virginia also directs the conservator to assess the value of an adult's assets, such as a house, vehicles, furniture, or jewelry, and submit that information to the courts (Figure 1-1).

Unlike a power of attorney (POA) or an advanced health-care directive, guardianship and conservatorship arrangements remove an adult's rights (sidebar). However, POA and advance directives can be executed only when a person has the capacity to sign a contract. Therefore, if a person has not executed a POA or advance directive before they become incapacitated, guardians and conservators must make such decisions.

The authority of a guardian and/or conservator is established in the court order appointing the guardian or conservator (Appendix C).

FIGURE 1-1
Responsibilities of guardians and conservators



Guardian responsibilities

- Making key life decisions for adult
- Encouraging adult's participation in major decisions
- Visiting adult as needed
- Making funeral arrangements

Conservator responsibilities

- Monitoring/managing adult's assets, routine payments, and financial goals
- Encouraging adult's participation in financial decisions
- Managing estate after death before estate transfers to successors

SOURCE: JLARC staff analysis of Code of Virginia §64.2-2019 and §64.2-2021-2022.

The term "**guardianship**" as used in this report **encompasses both guardianship and conservatorship.** Adults under guardianship who have sufficient income and/or assets typically also have a conservator. The term "conservator" is used when discussing responsibilities and policies that are specific to a conservator, such as financial management.

Courts determine need for a guardian or conservator and appoint someone to that role

Circuit court judges ultimately decide whether a guardian will be appointed (sidebar). Appointment of a guardian is made through a civil court process defined in state law (Figure 1-2). The process begins when an individual or entity files a petition with the local circuit court to determine whether an adult is incapacitated. The petition must include detailed information about the adult's circumstances and a clinical evaluation report submitted by a physician, psychologist, or other licensed professional. The petitioner must mail notice of the guardianship hearing to the adult, the individual's family, or other interested parties at least seven days before the hearing.

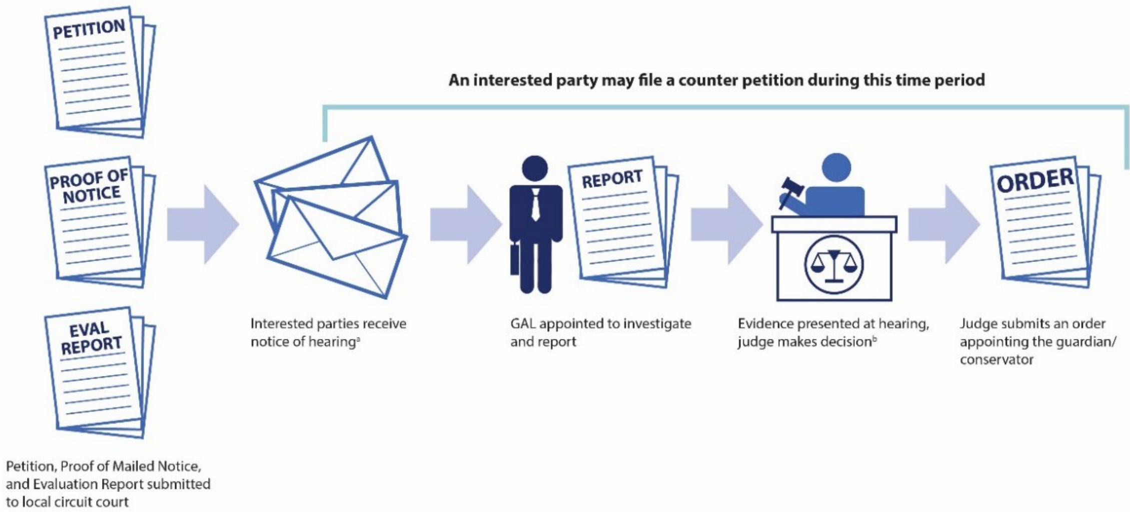
An adult being considered for guardianship can request **a trial by jury**, but most hearings are bench trials where an appointment decision is made by the judge.

If the court determines an adult to be both incapacitated and indigent, all court fees are paid by the state (sidebar). To be deemed indigent, a person's available funds must be equal to or below 125 percent of the federal poverty level ($16,100 for FY21). Indigent adults who have no other individuals willing to serve as the guardian are eligible to be considered for acceptance into the public guardianship program (if there is available capacity).

Court fees can include guardian ad litem (GAL) costs, defense counsel fees, and the petition filing fee.

FIGURE 1-2
Court process for appointment of a guardian or conservator

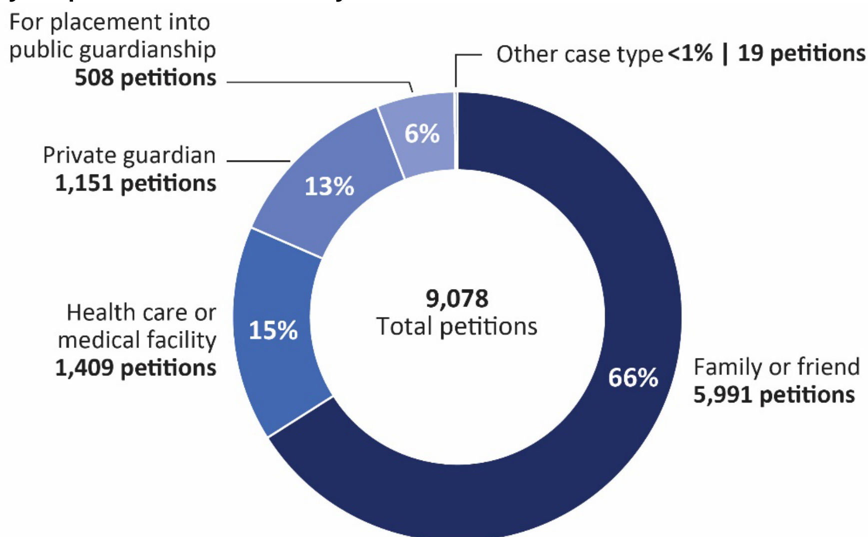
The court assigns an attorney to serve as **guardian ad litem (GAL)** for a guardianship case. The GAL's duty is to investigate the client's condition and suitability of the proposed guardian, and produce a report with information and recommendations to the court. The GAL is charged with acting the in the adult's best interest, but is not legal representation for the adult (§64.2-2003).



SOURCE: JLARC staff analysis of §64.2-2001 through §64.2-2009.
NOTE: Figure does not include the qualification of the guardian and/or conservator. A guardian and or conservator qualifies before the clerk of court by swearing to fulfill their fiduciary duty, posting bond, and accepting any educational materials provided by the court. [a] Notice of the hearing must be sent by the petitioner to interested parties seven days prior to the hearing date. The petitioner may request a waiver of the seven-day notice window in emergency cases as approved by the court. [b] The judge's final order may differ from the recommendation of the GAL. Adults under consideration for guardianship can request a trial by jury.

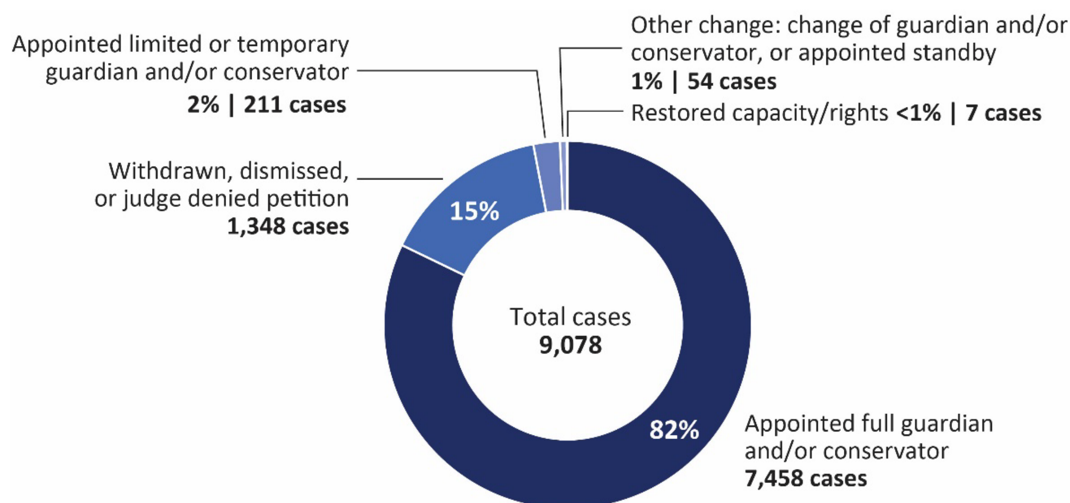
Petitioners for guardianship typically fall into one of several categories. A majority of petitioners (66 percent) are family members or friends of the adult being considered for guardianship (Figure 1-3). The majority of guardianship petitions statewide (82 percent) result in a full guardian and/or conservator being appointed (Figure 1-4).

FIGURE 1-3
Majority of petitioners are family members (FY16 to FY21)



SOURCE: JLARC staff analysis of Office of the Executive Secretary Case Management System FY16 to March of FY21. Excludes Alexandria and Fairfax court data.
NOTE: *Petitions for placement into public guardianship* include those initiated by local departments of social services, Community Services Boards (CSB), Behavioral Health Authorities (BHAs), or health care providers; as well as petitions by public guardianship provider organizations to transfer guardianship of an adult they serve from their private program into the public program or to seek restoration of an adult's rights. Public guardianship provider organizations themselves do not petition the court to initially find an adult incapacitated and to be placed under guardianship. An adult's family or a care provider such as a hospital may use a private guardian (typically an attorney) to serve as the petitioner and ultimately serve as the guardian.

FIGURE 1-4
Most cases result in a full guardian and conservator appointment



SOURCE: JLARC staff analysis of Office of the Executive Secretary Case Management System FY16 to March of FY21. Excludes Alexandria and Fairfax court data.
NOTE: Fairfax and Alexandria circuit courts' record keeping systems are separate from the Office of the Executive Secretary's Case Management System. Fairfax and Alexandria data does not indicate the specific outcome of a guardianship trial. Therefore, these localities are not included in the analysis of court case outcomes.

There are three types of guardianships:

A *full guardian/conservator* has all of the duties and powers of a guardian/conservator outlined in §64.2-2019 and §64.2-2021-2022.

A *limited guardian/conservator* only has the ability to make certain types of decisions or manage certain types of financial affairs as listed in the appointment order (§64.2-2009).

A *temporary guardian/conservator* can be full or limited in nature, but only lasts for a duration as specified in the appointment order (§64.2-2000).

Adults under guardianship are among the most vulnerable Virginians, numbers are likely to grow

Guardianship demographic data is limited. Race is available for only about 45 percent of adults under guardianship; disability status is only reported for one in six adults under guardianship; and living arrangement is not consistently reported.

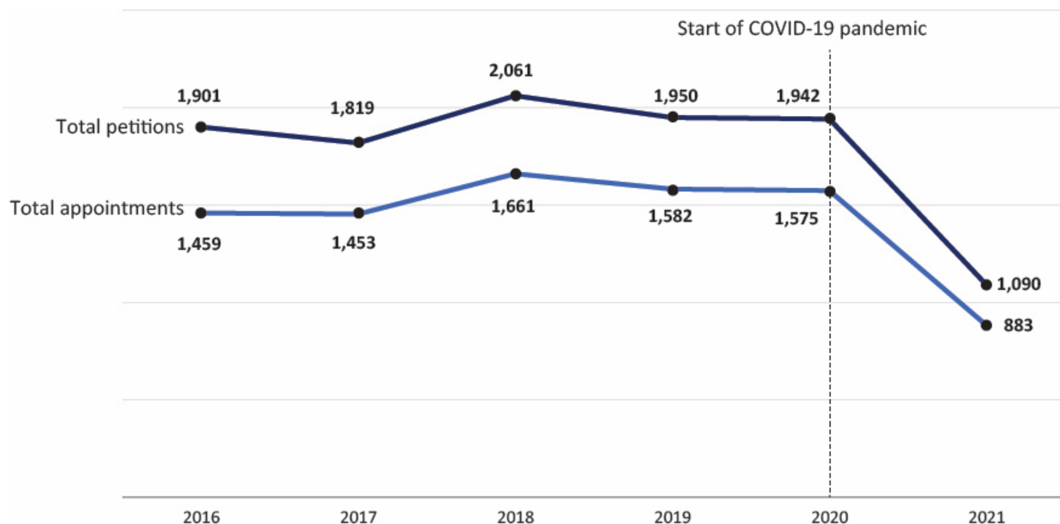
PeerPlace is the data system maintained by DARS and used by local departments of social services staff to track adults under guardianship and their demographic information; it has been in place for approximately three years, so assessing changes in the guardianship population over time is challenging because comprehensive data for prior years is maintained in a legacy system.

The **number of adults under guardianship** was calculated using DARS's PeerPlace guardianship data (Appendix B).

Adults under guardianship are among the most vulnerable Virginians; they typically have long-term, complex physical and/or mental conditions such as dementia, traumatic injury, or severe autism. Approximately 12,000 Virginians were under guardianship in FY20. About half of adults under guardianship are 18 to 44 years old. A majority of adults under guardianship for which race data is available are white (72 percent) and 18 percent are Black (sidebar).

The number of petitions to local circuit courts to place an individual under guardianship and the number of individuals placed under guardianship have stayed relatively stable in the last five years. From FY16 to FY20, approximately 1,900 to 2,000 guardianship petitions were filed and resolved annually, 82 percent of which resulted in the appointment of a guardian (Figure 1-5). Petitions and guardian appointments declined in FY21, likely due to the COVID-19 pandemic.

FIGURE 1-5
Petitions for guardianship and appointments were stable over last five years



SOURCE: JLARC staff analysis of Office of the Executive Secretary Case Management System data FY16 to March of FY21, Fairfax County Court Public Access Network system data FY16 to March of FY21, City of Alexandria Justice Information System data FY16 to March of FY21.
NOTE: Includes filings that have a valid "resolution," such as "guardian appointed" or "case dismissed." Total appointments include only full guardianship. Fairfax County and Alexandria City guardianship appointments are estimated based on total petitions in each locality and assuming appointment rates that reflect the statewide average.

The number of adults under guardianship is likely to grow. Adults under guardianship tend to have a guardian in control of their affairs until their death. Half of all adults under guardianship in Virginia are age 44 or younger. Because these adults are relatively young, they will likely remain under guardianship for a long time. Experts indicate that

higher numbers of young adults are being placed under guardianship, and so the average length of time an adult spends under guardianship is likely to increase. If the *number of new* guardianship appointments in Virginia remains stable, and the *duration of existing* guardianship arrangements increases, the total number of adults under guardianship will likely increase over time.

State public guardianship program serves indigent adults, but majority of adults have private guardians

Virginia offers a public guardianship program for indigent, incapacitated adults. The public guardianship program is available only to individuals who meet specific criteria. Adults must be referred to the program by an individual who is familiar with a person's need for guardianship services; must be incapacitated, indigent, and in need of someone to help make medical, financial, or daily living decisions; and cannot have a family member, friend, or other suitable person who is willing and able to serve as a guardian (sidebar). Once an adult is identified as meeting the criteria for the public guardianship program and the program has sufficient capacity, the court names the public guardianship provider organization as the adult's guardian.

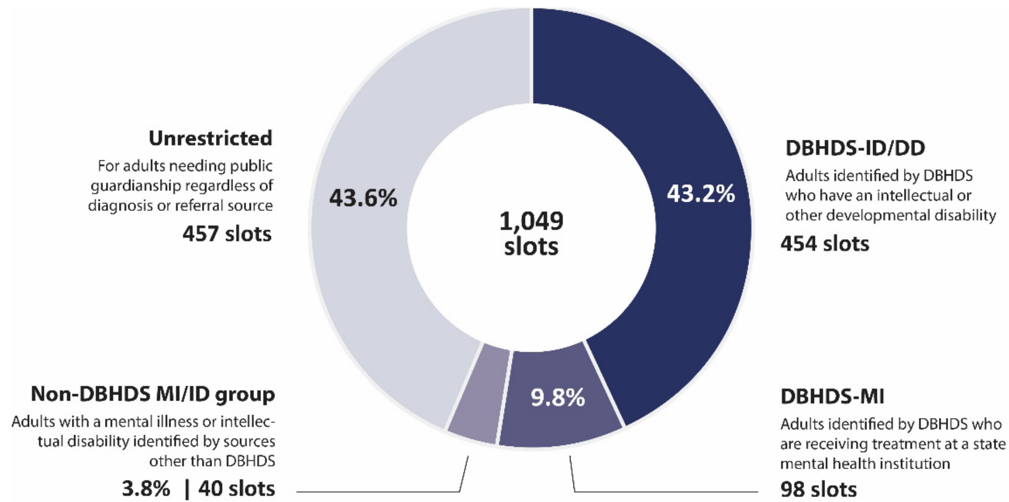
A referral for the public guardianship program typically comes from an adult residential facility such as a nursing home, a local department of social services, a hospital, a community services board, or the Department of Behavioral Health and Developmental Services.

DARS oversees the public guardianship program and contracts with 13 nonprofit organizations to provide guardianship services. Employees of these organizations serve as guardian representatives (sidebar). The program received $4.5 million in general funds in FY21, allowing it to serve a little more than 1,000 adults.

Public guardian provider organizations are named as legal guardians by the court. The employees are called "guardian representatives" and act on behalf of the public guardian program provider to carry out the duties of a guardian. They are referred to as "public guardians" throughout the rest of this report.

The public guardianship program has 1,049 "slots," which are allocated to certain adult populations (Figure 1-6). There are four categories of public guardianship slots: those for adults with developmental disabilities (DD), adults with intellectual disabilities (ID), adults with mental illness (MI), and unrestricted slots for any individuals in need of guardianship. More than half of the slots are reserved for individuals in the first three categories.

FIGURE 1-6
Categories of public guardianship slots available for adults in need of guardianship



SOURCE: Department for Aging and Rehabilitative Services.

The public guardianship program is currently at capacity and has an extensive waiting list. There is a specific process for managing the waitlist to assign a "slot" to individuals as they become available.

A majority of the guardianships in Virginia are private guardianships, where a family member, friend, or professional such as an attorney is appointed as guardian. Of the approximately 12,000 adults under guardianship statewide, about 11,000 are served by a private guardian.

Guidelines for fees are included in the Commissioner of Accounts Manual. Fees charged are reviewed by the commissioners of accounts as part of the review of annual accountings.

Private guardianship is available to anyone being placed under guardianship. The availability of private guardians is determined by whether individuals or entities such as attorneys, nonprofits, and family members are willing to serve in this role. Private guardians receive no state funding. Adults under guardianship who have assets or income typically pay for private guardianship or conservatorship services (sidebar), but family members or attorneys serving on a pro bono basis generally do not receive compensation. A petitioning entity, such as a hospital or nursing home, will sometimes pay for a private guardian if an adult has no family or friends available to serve as guardian.

Both public and private guardians and conservators have similar responsibilities—providing for the health and financial needs of incapacitated adults under their guardianship, and acting in their best interests—but are subject to different funding, oversight, and requirements (Table 1-1).

TABLE 1-1
Key elements of the public and private guardianship systems

Key Elements	Public	Private
Criteria for appointment of a guardian/conservator	Individual is incapacitated, indigent, and has no suitable person available to serve as guardian	Individual is incapacitated
Funding for guardianship services	State funded, approximately $4.5M annual; about $4,300 per adult under guardianship served	Typically paid by the estate of the adult under guardianship (or not paid if guardian is a family member, or the guardian is serving on a pro bono basis)
Capacity	1,049 public "slots" available	No limit
Guardian requirements	Must comply with ideal guardian to adult ratio (*provider* must maintain an overall ratio of 20 adults or fewer per guardian); visitation requirements; and care planning	None
Oversight	DARS's Division for Community Living and annual guardianship report to local department of social services [a]	Annual guardianship report to local department of social services
Guardian characteristics	Professional guardians employed by one of the providers that contract with DARS	Family members, friends, private attorneys, non-profits [b], or local departments of social services

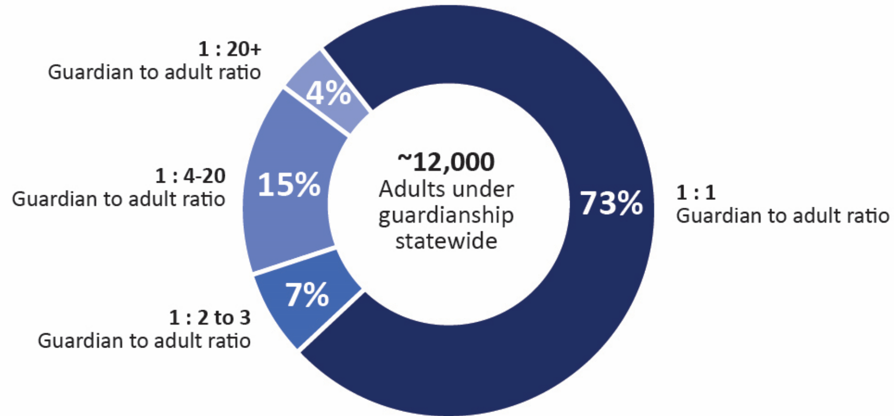
SOURCE: JLARC staff review of the Code of Virginia, FY21 Appropriation Act, and Virginia Administrative Code.
[a] Local circuit courts also receive a copy of annual guardianship reports from the local department of social services but are not required to review them. [b] Nonprofit organizations that serve as public guardianship providers can also serve as a private guardian on a pro bono basis or for compensation from adults under guardianship or a public entity such as DBHDS.

About 4 percent of adults under guardianship are served by guardians with large caseloads

Most guardians have caseloads of 20 or fewer adults (sidebar). A majority (73 percent) of guardians in Virginia are responsible for only one adult (Figure 1-7). Experts and best practices indicate that guardians who serve a large number of adults may provide lower quality of service for adults under guardianship, such as less personalized care planning and fewer in-person visits. Eleven guardians in Virginia had a caseload of more than 20 adults under guardianship in FY20, accounting for 510 adults under guardianship (a median of 33 adults per guardian), or 4 percent of the statewide total. The state's highest caseloads are approximately 110, 75, and 61 adults per guardian (Figure 1-8).

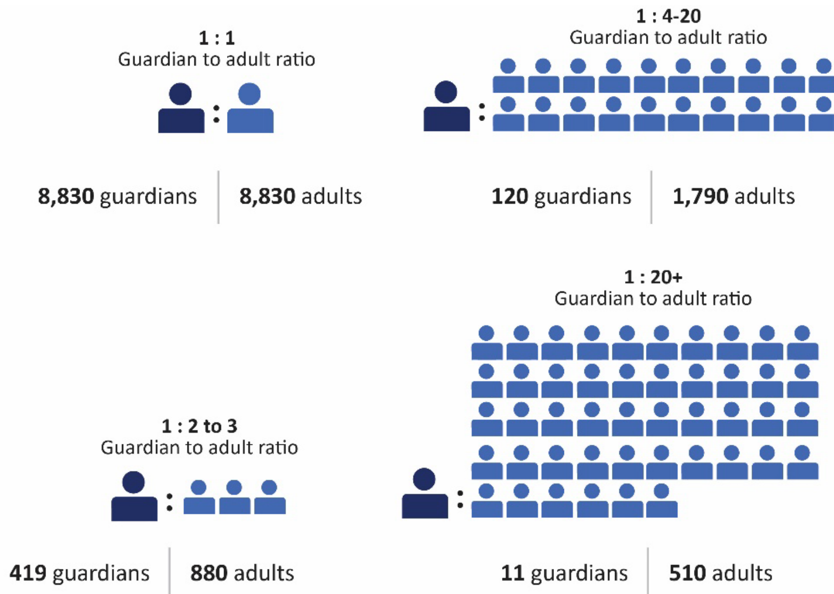
The public guardianship program requires public provider organizations to maintain **an overall ratio of 20 adults per guardian.** Nonprofit organizations that offer private guardianship services indicate that, while not required to, they typically use a similar guardian to adult ratio for their private guardianship services.

FIGURE 1-7
Percentage of adults under guardianship by caseload size



SOURCE: JLARC staff analysis of DARS PeerPlace data, FY20.
NOTE: Guardians with four to 20 adults under guardianship include an estimated 73 guardians working at nonprofit organizations that serve as public guardianship providers and/or offer private guardianship services. Nonprofit guardianship representatives typically have a caseload of approximately 20 adults. Percentages do not sum to 100 because of rounding.

FIGURE 1-8
Number of guardians and adults by caseload size



SOURCE: JLARC staff analysis of DARS PeerPlace data, FY20.
NOTE: Guardians with four to 20 adults under guardianship include an estimated 73 guardians working at nonprofit organizations that serve as public guardianship providers and/or offer private guardianship services. Nonprofit guardianship representatives typically have a caseload of approximately 20 clients. Percentages do not sum to 100 because of rounding.

Guardians and conservators are primarily overseen at the local level

Private guardians and conservators are primarily overseen by local departments of social services (LDSS) and local commissioners of accounts, respectively. Guardians report on the current condition and needs of the adult under guardianship in an annual report to the LDSS, which ensures the annual report is submitted on time and is complete. The LDSS then submits a copy of the annual report to the clerk of the circuit court that appointed the guardian. Conservators report the adult's assets and spending to the local commissioner of accounts, who ensures that annual accounting reports submitted by conservators are timely and accurate.

At the state level, DARS oversees the public guardianship provider organizations (sidebar). DARS staff review quarterly reports and conduct in-depth onsite reviews of organizations' operations. They ensure that public guardianship providers are adhering to state regulations and the terms and conditions of the contract between DARS and each organization. DARS has a complaint process for the public program that adults under guardianship, or other concerned parties, can use to report perceived mistreatment.

DARS also administers programs that support older or vulnerable adults and individuals with significant disabilities, including Adult Protective Services (APS).

Recent and ongoing efforts to improve guardianship and conservatorship in Virginia

Several legislative proposals have sought to make changes to guardianship in Virginia in recent years. SB 1072, enacted during the 2020 General Assembly session, prohibits (except for good cause shown) a petitioner such as a hospital and other health-care institution from using their retained attorney as both the petitioner and proposed guardian in the same case. Other legislative reforms considered, but not enacted, during the 2020 General Assembly session would have expanded the notice requirements before a guardianship hearing, family and friends' rights to visit adults under guardianship, and the role of guardians ad litem in investigating conflicts of interest.

A Virginia group is working to improve guardianship as part of a national network. The American Bar Association leads the national Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) initiative in response to nationwide guardianship shortcomings. State-level WINGS groups aim to improve information, judicial processes, accountability, and training pertaining to guardianship and conservatorship. The Virginia WINGS group includes judges, court clerks, hospital and private provider association representatives, elder law attorneys, state and national experts, and state and local staff. To date, Virginia WINGS has produced information about alternative arrangements to guardianship, a guide to frequently asked questions about guardianship, and an informational brochure on the guardianship system. WINGS is also identifying data that could be collected to better understand

guardianships and the court process; developing training and guidance that could be provided to guardians ad litem and judges; and identifying improvements to the guardianship annual report submitted to local departments of social services and subsequently provided to the circuit court.

2 Improving the Court Process to Appoint Guardians

Most states, including Virginia, use a civil court process to determine whether an adult is incapacitated and whether to appoint a guardian or conservator. Circuit courts hold a hearing to make these determinations, relying on investigations conducted by an impartial court-appointed investigator (the guardian ad litem, or GAL) and a clinical evaluation.

A thorough court process is crucial to best protect the rights of adults under consideration for guardianship. The court process should include, for example, notification to relevant parties, the use of an impartial investigator, a clinical evaluation of the adult's physical and mental condition, and a full hearing. The process must also be efficient because appointment of a guardian or conservator is often the critical first step toward getting incapacitated adults the help they need, such as applying for Medicaid benefits or placement in a more appropriate living arrangement.

JLARC staff examined each element of the court process to appoint a guardian or conservator and found that courts generally follow the requirements outlined in state law to appoint a guardian. This includes providing notice to relevant parties such as the adult being considered for guardianship and his or her family members, appointing an impartial court-appointed investigator, requiring a clinical evaluation, and holding a hearing.

Improvements could be made to strengthen the process, especially with additional authority and requirements for GALs and additional training provided to judges and GALs.

More thorough information could support better decisions by judges in guardianship cases

GAL reports are the primary source of information judges use to decide whether to place someone under guardianship. GALs conduct an in-depth investigation of the adult's circumstances that includes visits with the adult, interviews with family and friends, an assessment of the suitability of the person being considered for guardian, and consideration of alternatives to guardianship. The GAL is also responsible for explaining the proceedings to adults to ensure they understand their rights in the process (to the extent possible).

The Code of Virginia requires GAL reports to include key information to help judges make guardianship decisions. GALs conduct an investigation and produce a report to the court, which must address several items:

- whether a guardian or conservator is needed and the extent of decision-making power the guardian needs to assume;
- whether an alternative to guardianship is appropriate;
- an assessment of the "propriety and suitability" of the recommended guardian; and
- a recommendation regarding where the adult should live (e.g., at home or a nursing facility).

The GAL is also required to recommend whether legal counsel should be appointed for the adult.

However, additional information should be required to be reported by GALs, and additional authority needs to be granted to improve and ensure consistency in the quality and content of the GAL report.

GALs are not required to support key recommendations and determinations

"No one is giving us a 180-degree view of the person, what's going on with them... It's not until you get a tough one do you realize how much more there should be."

– Circuit court judge

Two of the issues that GALs must address are especially vital to protect the interests and rights of an adult being considered for guardianship: whether the adult needs an attorney and why alternatives to guardianship are *not* appropriate. However, GALs are not required to support their recommendation on counsel and their determination regarding alternatives in their reports. Judges interviewed by JLARC said that information supporting GALs' conclusions regarding these two issues would help them make the best decisions in a guardianship case. They indicated that it would be especially helpful for newer judges.

Defense attorneys can play an important role in preserving the rights of adults under consideration for guardianship, especially in cases where more than one party wants to be the adult's guardian or where all or at least some of the adult's rights could be preserved (such as the right to vote). GALs are required to recommend whether someone under consideration for guardianship needs a defense attorney but are not required to support in their written report why a defense attorney is not needed. For example, one GAL report reviewed by JLARC simply stated: "Additional counsel for Respondent is not necessary at this time." GALs should be required to support in the GAL report why they do not recommend a defense attorney, to give judges more complete information.

GALs should also be required to support determinations that alternatives to guardianship are not appropriate. Currently, the Code of Virginia only directs GALs to *consider* whether an alternative arrangement to guardianship or conservatorship is available. Guardianship is typically viewed as an option of last resort, since it removes many or all of a person's rights to make decisions about his or her personal affairs. Therefore, consideration of alternatives is a key element to safeguarding an adult's rights. GAL reports should document which options were considered and why alternatives to

guardianship, like a power of attorney (POA) or limited or temporary guardianship, are not appropriate (sidebar). This would also apply to cases where a GAL considers an existing arrangement, such as a POA, to no longer be appropriate. Some GAL reports omit a discussion of this element, which limits the court's ability to adequately consider alternatives to guardianship, or for the adult under consideration for guardianship to contest this determination.

Alaska requires a court investigator, as part of the investigator's report for a guardianship hearing, to provide "a description of alternatives to guardianship that were considered and not recommended and why they will not be able to meet the respondent's needs."

RECOMMENDATION 1

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem explain in their report their reasoning for i) a decision not to recommend counsel for an adult under consideration for guardianship and ii) a determination that an alternative arrangement to guardianship or conservatorship is not appropriate, including an existing arrangement such as a power of attorney.

GALs should be required to take additional steps to evaluate the suitability of the potential guardian

GALs are required by the Code of Virginia to report on the "propriety and suitability" of a potential guardian, but the current requirements to make these determinations are insufficient. GALs are not required to report the number of people served by guardians, the amount of work guardians delegate to other staff in their office, or the distance guardians would have to travel to visit the incapacitated adult. Some guardians employ staff, such as paralegals, to oversee day-to-day guardianship responsibilities, such as visits and paperwork. In addition, some professional guardians also work as attorneys on other matters, which affects the amount of time they can spend serving people under their guardianship. Finally, GALs are not required to investigate or report whether the potential guardian is named as an alleged perpetrator in any substantiated Adult Protective Services (APS) complaints for mistreatment of an incapacitated adult (sidebar).

An alleged perpetrator in an APS complaint is a person who may be responsible for mistreating a vulnerable adult.

A substantiated APS complaint is one where the APS investigator determined that there is sufficient evidence that abuse, neglect, or exploitation has occurred or is at risk of occurring, and that the adult is in need of services to help protect them from mistreatment.

GAL reports should include detailed information about a guardian's workload to help judges determine how well the prospective guardian will be able to monitor the conditions and circumstances of the adult. Factors that can affect whether guardians can carry out their duties include the number of people under their guardianship; whether they have other professional obligations (such as a full-time job as an attorney); whether they employ staff to assist in guardianship responsibilities (such as conducting visits to people under guardianship, filling out benefits applications, or conducting accounting); or how far they live/work from the adult they serve. A guardian with a significant workload might be unable to visit the adults they serve frequently enough to check on their well-being, ensure they are receiving necessary medical care, or manage their financial affairs effectively. Likewise, guardians who are located a long distance from the adults they serve are less likely to visit frequently.

In addition, GALs are not required to report whether a prospective guardian is named as an alleged perpetrator in any *substantiated* APS complaint for mistreating a vulnerable adult. Identifying instances where a prospective guardian may have done so would present the judge with critical information for making the most informed and appropriate decision about the suitability of the prospective guardian.

22VAC30-100-50(F) authorizes GALs to receive information about Adult Protective Services complaints.

Currently, GALs cannot easily determine whether a prospective guardian is named as an alleged perpetrator in any substantiated complaints of adult abuse, neglect, or exploitation with APS (sidebar). The Department for Aging and Rehabilitative Services (DARS) maintains a centralized database of APS complaints, which includes how the complaint was resolved. The GAL, via a request to DARS, should be required to determine whether there are any substantiated complaints in which the prospective guardian is named as the alleged perpetrator of mistreatment. The process should be easily accessible to GALs, such as through a dedicated email address or online portal to submit requests, and DARS staff would fulfill the request. DARS staff indicate that IT upgrades would be needed to facilitate this type of APS records search, which would likely have a one-time fiscal impact. DARS will also require additional staff to fulfill this responsibility (Chapter 4).

When a substantiated complaint is identified, the GAL should be required to inform the court about the circumstances of the complaint. A substantiated APS complaint would not automatically disqualify a person from serving as guardian, since some substantiated APS complaints may result from a caretaker who is overwhelmed, rather than a person intentionally mistreating a vulnerable adult (Chapter 5). The judge in a guardianship case would ultimately weigh whether a substantiated APS complaint affects a person's suitability to serve as a guardian.

RECOMMENDATION 2

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardian ad litem reports to the court include i) the size of the prospective guardian's current guardianship caseload, ii) whether the prospective guardian employs representatives to manage day-to-day tasks of guardianship, (iii) the travel time between the prospective guardian's residence or place of business and the expected residence of the adult under consideration for guardianship, iv) whether the prospective guardian works as a professional guardian on a full-time basis, and v) whether the guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaint.

RECOMMENDATION 3

The Department for Aging and Rehabilitative Services (DARS) should develop a process and an efficient mechanism for guardians ad litem to request and obtain information from DARS about whether a guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaints, including the circumstances of those complaints and how the complaints were resolved.

GALs are currently required to assess the propriety and suitability of the person named as the proposed guardian in the petition, but not others who emerge during the court process and express a desire to serve as guardian, such as a family member. GALs should be required to assess and report on the suitability and propriety of all parties expressing interest in serving as guardian. This would ensure that judges, who ultimately decide who is appointed guardian, are able to adequately consider all prospective guardians. Further, it would provide additional transparency for adults under consideration for guardianship, their defense attorney, and their families should they wish to challenge the suitability of one or more individuals being considered to serve as guardian.

RECOMMENDATION 4

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem include in their reports an assessment of suitability and propriety of all individuals interested in serving as a guardian for the adult who is the subject of the petition.

GALs have insufficient authority to collect information on the finances of adults under consideration for guardianship

GALs need additional authority to access the financial information of adults under consideration for guardianship to ensure a complete and comprehensive investigation into the adult's finances (sidebar). An adult's finances are a crucial part of a guardianship case, and attorneys that serve as GALs indicated that they sometimes have difficulty fully investigating a person being considered for guardianship because GALs lack authority to access financial information. Investigation of an adult's finances is often necessary to determine whether the adult needs a conservator and the dollar amount at which to set bond for the conservator (sidebar). In addition, courts often need additional information about adults' finances to confirm whether they are indigent and thus qualify for the public guardianship program.

GALs have the authority to **access both educational and medical records** in Virginia law (§ 64.2-2003).

Courts may set a bond for a conservator, which is a financial stake imposed by the court meant to ensure that conservators will fulfill their duties.

GALs should have access to protected financial records held by financial institutions to ensure that the court has adequate information to consider in a guardianship case and to protect the adult who is under consideration for guardianship from financial exploitation. Under state law, banks and other financial institutions are not required to share protected financial information with GALs unless ordered by a judge. However, financial institutions sometimes refuse to provide protected financial records, even when the court orders them to do so, according to GALs. Furthermore, courts do not always order banks to release financial information, making it more difficult or impossible for a GAL to obtain it.

RECOMMENDATION 5
The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105 and § 13.1-501 of the Code of Virginia, to provide financial records of adults under consideration for guardianship when requested by a guardian ad litem.

Additional requirements could modestly increase GAL workload and the cost of GAL compensation

Additional requirements placed on GALs could modestly increase the workload and cost of compensating GALs. Certain additional requirements, such as documenting their support for key decisions, should not materially increase a GAL's workload. Other activities, such as identifying past APS violations of the prospective guardian, may modestly increase workload. Likewise, assessing the workload of a prospective guardian could require the GAL to take additional steps. Additional authority to investigate an adult's finances could increase GALs' workload if there is additional information to review, but this could be at least partially offset by eliminating efforts to access information from reluctant financial institutions.

The Office of the Executive Secretary of the Supreme Court of Virginia sets **rates paid to GALs** in cases where the adult being considered for guardianship is indigent.

GAL fees for indigent clients are paid by the state and an increase in GAL workload is unlikely to substantially increase these costs. For cases where the adult under consideration for guardianship is indigent, GALs are paid $55 per hour for their investigation and $75 per hour for time spent in the courtroom by the circuit court (sidebar). In 48 guardianship cases reviewed by JLARC staff, the median GAL payment by circuit courts was $522, indicating that cases generally take between eight and 10 hours. However, the GAL fees are paid by the adult under consideration for guardianship when the adult is not indigent. Increasing workload for non-indigent cases could have a more appreciable impact on GAL costs, because the GAL may charge their standard hourly rate as an attorney, which is typically higher than the fee paid by the commonwealth for cases with an indigent adult. In cases reviewed by JLARC staff where the adult paid the GAL fee, the median total fee was $1,125.

Additional judge and GAL training could better protect the rights of adults being considered for guardianship

Although both circuit court judges and GALs receive training prior to working on guardianship cases, both could benefit from additional training. Additional training related to the guardianship court process would further ensure a comprehensive and consistent court process that best protects the rights and interests of adults under consideration for guardianship.

Circuit court judges receive limited training about guardianship cases

Judges primarily learn to conduct guardianship cases through experience in the courtroom. Circuit court judges receive less than one hour of training about guardianship cases when they are first appointed as a judge—similar to the amount received for other types of cases—and there are no ongoing guardianship-specific training opportunities (sidebar). For example, judges receive no training about available alternatives to full guardianship, including limited guardianship or supported decision-making. Judges report that they often rely on petitioners and GALs to guide them through technical aspects of guardianship cases.

Judges attend a three-day training when they are first appointed where they learn about all types of cases they may hear. Each type of criminal and civil case receives a similar amount of emphasis during the training.

Ensuring judges are adequately trained and equipped to hear guardianship cases is essential because guardianship is a potentially permanent decision that removes a person's ability to make decisions about their life. Without proper training, judges may not have knowledge or understanding to make the most effective decisions in guardianship cases. Optional training could offer judges more opportunity to gain further expertise on guardianship cases, especially newer judges who have not handled many guardianship cases.

Additional training opportunities pertaining to guardianship and conservatorship should be made available to judges. Judges have the opportunity for additional training, primarily at the Virginia Judicial Conference each year. The 2022 conference will include a mandatory training session on adult guardian and conservator cases, and this training will be recorded and available to judges after the conference. OES should ensure that this training remains up to date and available to judges on an ongoing basis through its online learning center. Furthermore, the Virginia Judicial Education Committee should consider periodically including the training in future judicial conferences.

RECOMMENDATION 6

The Office of the Executive Secretary of the Supreme Court of Virginia should maintain, and update as needed, training for judges on adult guardian and conservator cases on its online learning center for judges.

RECOMMENDATION 7

The Virginia Judicial Education Committee of the Judicial Conference of Virginia should periodically offer training for judges on adult guardian and conservator cases at future judicial conferences.

Judges receive reference books during their initial training; including the *Civil Benchbook for Judges and Lawyers*.

The **Benchbook Committee** develops the criminal benchbook and civil benchbook to be referend by Virginia judges. The committee comprises judges appointed by the chief justice of the Supreme Court.

The reference book given to judges provides little additional information about guardianship cases. Judges receive the *Virginia Civil Benchbook for Judges and Lawyers*, a book of reference materials, when they are appointed (known as the "benchbook"). This reference book contains information about all types of civil cases a judge might hear, including an overview of relevant state laws. However, the information about hearing guardianship and conservator cases is primarily composed of statutory citations and does not include additional information or best practices to assist a judge (sidebar).

Virginia's Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), a working group made up of government employees, subject-matter experts, court stakeholders, and citizen members, has been working to develop further guidance about guardianship cases to be included in the reference book for judges.

To qualify as a GAL, an attorney must complete a six-hour course offered by the Virginia State Bar (VSB) that includes information about the court process to appoint a guardian, how to investigate cases, and ethical considerations in guardianship cases. JLARC staff reviewed the course offered by VSB.

In addition to shadowing an experienced GAL, attorneys may also assist a petitioning attorney on two guardianship cases or serve as a guardian or conservator for at least two people to qualify as a GAL.

GALs are appointed for adults in other types of civil trials. For instance, if a respondent is incarcerated and unable to appear in court for a case such as a divorce, the court appoints a GAL to represent the respondent's interests.

The Virginia Benchbook Committee determines the content of the benchbook, and Virginia's Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) has been working to enhance the information provided to judges on key considerations, best practices, and other important elements of adult guardian and conservator cases (sidebar). Upon completion of the work, this information could be incorporated into the reference book provided to all judges to serve as a more informative reference on guardianship and conservatorship.

RECOMMENDATION 8

The Virginia Benchbook Committee should, in consultation with Virginia's Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), create additional reference materials for circuit court judges about adult guardian and conservator cases and work with the publisher to include these materials in the *Virginia Civil Benchbook for Judges and Lawyers*.

Initial GAL training is helpful, but changes to training could improve GAL effectiveness

GALs report the training they receive to qualify as a GAL includes most information they need to perform in their role, but additional topics and ongoing training opportunities could improve their ability to investigate and report on guardianship cases (sidebar). Before attorneys qualify as GALs, they must complete a course through the Virginia State Bar (VSB) and fulfill other requirements as specified in the Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons.

One method for attorneys to qualify as a GAL is to shadow an experienced GAL for two cases to obtain firsthand experience in guardianship and conservatorship cases (sidebar). However, standards outlining the shadowing requirements are not sufficiently clear to ensure prospective GALs shadow GALs in relevant cases. In interviews, some GALs indicated that they shadowed GALS working on other types of civil cases involving appointment of a GAL, rather than guardianship or conservatorship cases (sidebar). Requiring prospective GALs to specifically shadow experienced GALs working on adult guardianship or conservatorship cases would help to adequately prepare prospective GALs for their role. GALs believe two cases is an appropriate number in which to shadow, given the time involved in shadowing and the information that can be gained.

RECOMMENDATION 9

The Virginia Judicial Council should amend the Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons to require that new guardians ad litem shadow experienced guardians ad litem on two cases that involve appointment of a guardian or conservator for an incapacitated adult, as defined in § 64.2-2000 in the Code of Virginia.

Additional training about the GAL's role in litigation in guardianship cases (i.e., filing motions with the court or testifying in court) should be available to practicing GALs. In focus groups with JLARC staff, GALs reported disputed guardianship cases are becoming increasingly common, which leads to increased litigation. Typically, a GAL's role in a guardianship case does not involve litigation, and initial training does not include training about the authority GALs have in litigation—for instance, whether they can file motions with the court, call witnesses to court, or cross-examine a witness brought by the petitioner.

GALs must fully understand their authority and role in litigation in guardianship cases to effectively represent the rights and best interests of adults being considered for guardianship. For example, if GALs do not know they have the authority to cross-examine a witness in a guardianship case, they might miss an opportunity to uncover information about who would be the most appropriate guardian for an adult. Further training on litigation in contested guardianship cases can ensure that GALs are prepared to effectively represent the rights and best interests of adults under consideration for guardianship.

OES and the Virginia Judicial Council should encourage one or more private legal organizations that develop continuing legal education (CLE) courses in Virginia to develop a CLE about GALs' litigation responsibilities in contested guardianship cases. The state relies on these private entities (e.g., Virginia CLE, Virginia Association of Elder Law Attorneys) and higher education institutions to produce CLE courses, because no Virginia state agency is responsible for performing this role. Any CLE developed would need to be submitted to the Virginia State Bar for review and approval, as is required for all CLEs.

RECOMMENDATION 10
The Office of the Executive Secretary of the Supreme Court of Virginia should identify one or more private legal organizations or higher education institutions that could develop and offer a continuing legal education course for guardians ad litem that focuses on litigation in contested guardianship cases and convey to them the existing need for such a course in Virginia.

Better rotation of GALs across cases could alleviate concerns about conflicts of interest

Judges and attorneys themselves determine when potential conflicts of interest arise in guardianship legal proceedings, and they are required by ethical standards to remove themselves from cases when they identify a conflict of interest. The Virginia State Bar (VSB) Rules of Professional Conduct and Professional Guidelines set ethical standards that apply to Virginia attorneys generally—including those related to conflicts of interest (sidebar). In addition, VSB can issue a legal ethical opinion upon request from

The Virginia State Bar investigates complaints from the public about attorney conduct, including failing to prevent conflicts of interest. VSB has the authority to take action against attorneys, ranging from a private admonition to revoking an attorney's license to practice law. From July 2016 to June 2021, VSB disciplined 11 attorneys for situations related to guardianship. (These cases did not necessarily involve a conflict of interest).

an attorney to address more specific questions related to an attorney's ethical obligations. There are no comprehensive guidelines on what constitutes a conflict of interest specific to guardianship cases in Virginia. The 2020 General Assembly addressed one type of potential conflict of interest by passing a law (SB 1072) that forbids an attorney who has represented the petitioner in a guardianship case in the past three years from serving as a guardian in cases initiated by that petitioner, unless good cause is shown for naming that attorney as guardian.

Circuit court judges have discretion over how GALs are chosen. Some courts allow the petitioning attorney to request which GAL they would like to use and typically approve the requests, while other courts have a group of known GALs who they assign to cases on a rotating basis. Judges ultimately appoint the GAL and have discretion.

Advocates seeking reform of the guardianship system indicated that the repeated pairing of the same GAL and petitioner could result in a conflict of interest in a guardianship hearing. Many localities allow a petitioner to request a specific attorney to serve as GAL, and the court usually grants that request (though a judge always has discretion to appoint a different GAL) (sidebar). This practice creates a concern that, because the GAL has a financial interest in being requested by that same petitioner again in the future, the GAL will reach conclusions and make recommendations that support the petitioner's desire to place an adult under guardianship.

JLARC staff assessed whether using the same GAL appeared to influence whether adults were placed under full guardianship, and this practice does not appear to affect case outcomes. Health-care providers, such as hospital systems, are the type of petitioner that most commonly request a specific attorney to serve as the GAL. JLARC staff examined 572 cases where a hospital system served as the petitioner, including both hospitals that typically used the same GAL and hospitals that used different GALs (e.g., rotated). Cases where a hospital system typically used the same GAL did *not* result in a higher rate of a full guardianship appointment than cases where a hospital system used a variety of GALs.

Nonetheless, the appearance of a petitioner repeatedly using the same GAL has raised advocates' and stakeholders' concerns, and limiting this practice merits further consideration. Some stakeholders have suggested using the list of GALs maintained by OES to randomize or rotate selection and appointment of GALs across cases, especially those brought forward by the same petitioner. The GAL list is intended to be a directory of currently practicing GALs across the state.

However, judges and petitioning attorneys interviewed by JLARC staff indicated that they believe OES's GAL list includes inaccurate or insufficient information, and therefore they are reluctant to rely on it for rotating or randomizing GALs. Judges and petitioning attorneys pointed to past experiences where the inaccurate information—such as names of attorneys who no longer work as GALs, have moved out of state, or live too far away from the court to efficiently investigate a case—have resulted in selecting a GAL that is not available, causing delays to the case. Furthermore, judges and petitioning attorneys indicated that some cases are more challenging and require experienced GALs or GALs with specific areas of expertise. Since the GAL list lacks this information, courts rely on the same GALs repeatedly because they are familiar with the attorneys and their work. Judges and petitioning attorneys reported situations where inexperienced GALs were slow or ineffective in their investigations and reports,

which resulted in a lack of sufficient information for the court or a delayed case resolution.

OES staff should take steps to educate court personnel about the GAL list they maintain and take further steps to enhance the usefulness of the list. This could include informing courts of recent steps taken to ensure the GAL list is up to date (sidebar) and reminding judges to rely on the list maintained by OES, rather than their own local lists of qualified GALs. OES should also take steps to ensure that judges understand how to use the list, such as through training at the Virginia Judicial Conference and a message on OES's website. Additionally, OES should include the level of experience and area(s) of expertise for each GAL (i.e. contested guardianship cases, mental health guardianship cases, and young adult cases). GALs should be asked to provide their years of experience and areas of expertise when they qualify to be on the GAL list to ensure that this information is provided to judges and petitioning attorneys.

Office of Executive Secretary staff indicated that attorneys who have not completed their continuing education requirements or who have been disbarred are automatically removed from the qualified GAL list. However, some processes, such as changing or updating addresses and courts served, remain the responsibility of the GALs themselves.

RECOMMENDATION 11

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should formally communicate to all circuit court judges the availability, accuracy, and timeliness of the list of qualified guardians ad litem maintained by OES.

RECOMMENDATION 12

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should include each attorney's years of experience and areas of expertise as a guardian ad litem (GAL) on its published list of GALs.

A more direct way to prevent conflicts of interest between the petitioner and the GAL would be to limit the number or proportion of cases for which a petitioner can request the same GAL. For instance, state law could limit the proportion of a petitioner's filed cases to which a particular GAL could be assigned each year (e.g., no more than half of cases brought by the petitioner). Two potential drawbacks are that this would create an additional administrative burden for circuit courts and could make it difficult to find a GAL for cases in areas of the state where there are relatively few GALs. Tracking the pairing of GALs and petitioners would require an update to the Circuit Court Case Management system to allow circuit court clerks to track the names of the attorney serving as a GAL in guardian and conservator cases.

Notice of guardianship hearing does not fully inform adult and their family of all available options

Participation from family members in the guardianship hearing process can be important for ensuring that family input and concerns are being heard by the court, especially in cases where the petition has named a non-relative as the proposed guardian.

A **party** is a formal participant in a guardianship case, such as the adult under consideration for guardianship or the petitioner.

Best practices indicate the importance of fully considering familial relationships during the hearing process to appoint a guardian.

Adults being considered for guardianship and their family may not be fully aware of their option to contest, in court, the prospective guardian named in the original petition. Currently, the petitioner is required by state law to send notice of the hearing to the adult being considered for guardianship and their family members to inform them of 1) the adult's right to request counsel, 2) the adult's right to a hearing, and 3) the potential that the adult could lose some or all rights if found to be incapacitated. However, the notice is not required to inform the adult or their family that they can request that the court consider someone else to serve as guardian. The adult or family members can do so by filing a petition or motion to be named a party in the case.

Virginia should require that petitioners' notices sent to adults being considered for guardianship and their family members include information about how they can request that the court consider a different guardian. The notice should inform them they will need to file a petition or motion with the court to request being named a party in the case. The court would then consider both the prospective guardian named in the original petition, and any other prospective guardian brought forward by additional parties (such as a family member), to serve as guardian.

RECOMMENDATION 13

The General Assembly may wish to consider amending § 64.2-2004 of the Code of Virginia to require that a notice be provided by the petitioner to an adult being considered for guardianship and their family, which clearly states that anyone may file a petition or a motion to intervene to become a party to the case if they wish to propose a different individual to serve as guardian than the one stated in the petition.

3 Periodic Court Review of Guardianship Arrangements

Most guardianship appointments are permanent. The conditions of most adults under guardianship are unlikely to improve, and they are likely to need a guardian to make important housing, medical, and financial decisions for the rest of their lives. For example, adults with dementia or who have an intellectual disability are unlikely to improve or recover over time. However, some adults under guardianship may not need a guardian permanently, and other adults under guardianship may benefit from a change in who serves as guardian.

After receiving a **petition** regarding an **existing guardianship**, the court may hold a hearing and: (i) declare the incapacitated person restored to capacity; (ii) modify the existing guardianship arrangement (type of appointment, duties, and authorities of the guardian); (iii) terminate the guardianship or order removal of the individual serving as guardian; or (iv) maintain the existing guardianship arrangement (§ 64.2-2012).

The court is the only entity with the authority to make changes to a guardianship arrangement, such as restoring rights to an adult under guardianship or changing who serves as guardian. Currently, an individual must petition local courts to modify a guardianship arrangement or request a restoration of rights. The petitioner can be the adult under guardianship, a guardian, or any other person on the adult's behalf (sidebar). However, many adults under guardianship or their families do not have the knowledge or resources to petition the court.

Few adults under guardianship have their rights restored

Courts restore the rights of few individuals under guardianship in Virginia (sidebar). From October 2018 to March 2021, about 30 adults previously under guardianship had their rights restored (approximately 0.25 percent of all adults under guardianship). Most of these adults either had family members serving as their guardians or were part of the public guardianship program.

For the purpose of this section, **restoration of rights** to an adult under guardianship refers to the adult being declared restored to capacity, which restores their rights to manage their personal and financial affairs and removes their guardian.

While most adults under guardianship likely will not improve enough to have their rights restored, adults under guardianship and their families may be unaware of their right, or lack the resources, to petition the court to eliminate or modify the guardianship arrangement. State law specifies that guardianship arrangements are subject to change after a successful petition to the court, but the court order appointing the guardian is not required to inform adults under guardianship that they have the right to petition the court for a change. Furthermore, adults under guardianship—often indigent or not in control of their own finances—likely cannot hire an attorney, even though doing so would be advantageous to successfully petition the court for a restoration of rights or modification of a guardianship arrangement. Some judges in Virginia indicated that they require a review hearing for a later date as part of the court order appointing a guardian. However, this practice is at a judge's discretion and is not widely used.

A periodic hearing to review guardianship cases could better protect adults' rights and well-being

A guardianship appointment typically removes nearly all of an adult's rights to manage their affairs, and periodic review hearings are needed to help protect an adult's rights. A guardian's decisions can directly affect an adult's mental and physical health, so periodic reviews are also necessary to help protect the adult's well-being. Justifications for a periodic hearing to review guardianship arrangements include:

As part of a guardianship hearing, the petitioner is required to submit a **clinical evaluation** from a licensed professional, assessing the condition of the adult being considered for guardianship. Where appropriate and consistent with their professional license, the clinician is to assess the ability to learn self-care skills, adaptive behavior, and social skills and provide a prognosis for improvement (§ 64.2-2005).

- Adults' conditions can change over time which can reduce their need for guardianship. For example, a person might be experiencing a mental health crisis and improve after receiving treatment. Additionally, a clinician might conclude through an initial evaluation that an adult has the ability to improve or that it is not possible to assess the adult's likelihood of improvement (sidebar).
- An initial guardianship appointment can be contested, and there is value in revisiting the decision to evaluate whether the initial appointment decision was appropriate.
- The court entrusts guardians to act in the best interest of the adult under guardianship, and a periodic review hearing can help to ensure they are effectively carrying out their duty.
- Guardianship and conservatorship affect some of the state's most vulnerable citizens—incapacitated and often indigent adults—many who have little ability to seek recourse because of a lack of resources to petition the court for changes or a lack of knowledge about the process for doing so.

At least four other states require periodic reviews of guardianship cases

At least four other states require courts to periodically review guardianship cases after the initial guardian appointment. In these states, the goals of the periodic hearings include considering whether the adult remains incapacitated, the guardian's performance, and whether changes should be made to the guardianship arrangement. These reviews resemble the initial guardianship appointment hearing, including the use of a court investigator to visit the adult and report to the court on the condition of the adult and the level of care they are receiving. Unlike the initial hearing, periodic hearings also review the guardian's performance.

- **California** has a hearing to review each guardianship and conservatorship one year after the appointment and at least once every two years thereafter.

- **Connecticut** has a hearing to review each conservatorship no later than one year after the conservatorship was ordered and at least every three years after the initial one-year review (sidebar).
- **New Mexico** sets a hearing to review cases at any time within the first 10 years after the initial appointment and every 10 years thereafter.

Connecticut uses the term 'conservator' to encompass both the role of conservator of the estate and conservator of the person (e.g., guardian).

Furthermore, all guardianship cases in Alaska receive a review from a court 'visitor' (comparable to Virginia's guardian ad litem) every three years, and if changes to the guardianship arrangement are warranted based on a recommendation of the visitor, the court will hold a hearing.

Periodic review hearings would not be necessary in all guardianship cases and would modestly increase court workloads

A periodic review hearing could help protect the rights of an adult under guardianship, but a periodic court review is likely not necessary for every guardianship case. When considering the need for a periodic review hearing, the court could consider three factors. First, the adult's condition and the potential to regain capacity should be considered. For example, an older adult who has dementia is unlikely to regain capacity and will likely need guardianship indefinitely. Second, court should consider the suitability of the guardian and whether there were any concerns or disputes (e.g., a contested case) as part of the initial appointment. Third, the court should consider whether the adult under guardianship had contested or consented to the initial appointment; in some cases, the person being placed under guardianship may have expressed a desire for a particular outcome (e.g., an aging parent who requests to be placed under the guardianship of a son or daughter). Any concerns related to these criteria would indicate that a review hearing would be beneficial to protect the rights and preferences of the adult.

The state could give the court discretion to waive the need for a periodic review in guardianship cases where additional hearings are not necessary or practicable. The court should decide whether further periodic review is necessary at the time of a guardian appointment or upon completion of any review hearing thereafter. For cases where a periodic review hearing is waived, the court order should explicitly state that further review is not needed and provide reasoning for that decision based on these three considerations—adult's condition and potential to regain capacity; suitability of the guardian; and whether the adult contested the guardian appointment. The state could also choose to exclude adults under public guardianship from undergoing a periodic court review because the public guardianship providers already review public guardianship cases each year to ensure the guardianship is still appropriate (sidebar).

The Code of Virginia requires each public guardianship provider to have a **multidisciplinary panel (MDP)**. One of the MDP's primary responsibilities is to "annually review cases being handled by the program to ensure that a public guardian or conservator appointment remains appropriate."

The General Assembly would need to determine how often to conduct periodic reviews of guardianship cases. To balance protecting the adult's rights with court workload, a hearing could be held one year after the initial appointment of a guardian, then at longer intervals thereafter, such as every three years. Court review processes for

Virginia law requires a **periodic hearing for other types of civil processes** where an individual's rights are removed. These include involuntary civil commitment for mental health treatment and civil commitment for sexually violent predators.

other civil proceedings in Virginia occur six months to one year after the court's initial determination of the individual's capacity (sidebar). Two of four states with a periodic review hearing for guardianship cases conduct the first review no later than one year after appointment; in three states, the period between subsequent reviews is two or three years.

The state would also need to determine how comprehensive periodic review hearings would be. A limited hearing could involve judges reviewing the guardians' annual reports and hearing testimony from the adults under guardianship (if able) and their guardian. A limited review could reduce administrative costs to the court or the adult, such as guardian ad litem (GAL) fees, but may reduce the effectiveness of the review. A full hearing, including a GAL investigation, GAL report, and clinical evaluation, would likely offer more comprehensive information to determine whether an adult has partially or fully regained capacity. A full hearing would also provide information on the performance and continued suitability of the guardian, such as the guardian's caseload, whether the guardian has been named as an alleged perpetrator in any Adult Protective Services complaints, or whether family or friends have concerns about the care being provided for the adult. The guardian could be required to provide written notice of the hearing to family members to ensure that they are aware of right to be a part of the review hearing process.

RECOMMENDATION 14

The General Assembly may wish to consider amending §64.2, Chapter 20, of the Code of Virginia to require circuit courts to hold a periodic review hearing for guardianship and conservatorship cases no later than one year after appointment of the guardian and at least once every three years thereafter, unless the court determines at the time of the initial guardian appointment order, or upon completion of a review hearing, that further review hearings are unnecessary or impracticable.

A periodic court review of guardianship cases would require additional court filings and hearings but would not substantially increase court workloads. In 2019, guardianship cases accounted for 0.6 percent of circuit court filings in Virginia. Periodic review hearings would make up a smaller percentage of court filings because not all initial hearings result in the appointment of a guardian; the court would have the authority to waive a periodic review hearing when justified; and the periodic review hearing would not be conducted every year. Periodic review hearings would also only be considered for new guardian or conservator appointments and would not retroactively apply to existing ones. In the future, the Office of the Executive Secretary of the Supreme Court of Virginia could assess the effect of periodic review hearings on court workload during its annual caseload reporting or as part of the more comprehensive Judicial Workload Assessment Report process.

4 Requirements, Training, and Oversight for Guardians

Most adults under guardianship are served by private guardians, but many indigent adults are served by guardians who work for state-funded "public" guardianship organizations. While public and private guardians provide the same services to adults under their guardianship, they are subject to different requirements, training, and oversight. Effective requirements, training, and oversight for guardians are important, regardless of whether an individual is under public or private guardianship. Adults are typically not under guardianship by choice, and most cannot choose whether they are served by a public or private guardian. Courts ultimately have the authority to change guardianship arrangements, such as replacing a guardian who fails to carry out their responsibilities or mistreats an adult. However, effective requirements, training, and oversight help to ensure that guardians are fulfilling their role and that adults are being protected.

Public guardianship program has effective requirements and oversight, but improvements could be made

The Department for Aging and Rehabilitative Services (DARS) manages and oversees Virginia's public guardianship program, which serves approximately 1,000 indigent adults under guardianship. The agency contracts with 13 nonprofit organizations across the state, whose employees serve as public guardians (Appendix D). To qualify for the public guardianship program, adults must be incapacitated and indigent and have no other individuals willing to serve as their guardian.

Public guardianship program has effective requirements, training, and oversight

The Code of Virginia, DARS's regulations, and DARS's contracts with public provider organizations require public guardians in Virginia to comply with several key requirements, including:

- filing an annual guardianship report with the local department of social services (LDSS) where the adult under guardianship resides;
- maintaining a caseload of no more than 20 adults under guardianship;
- visiting each adult in person at least once a month;
- developing a care plan that identifies the adult's needs and the guardian's plan for addressing those needs; and

- making decisions for the adult using person-centered planning, which (1) focuses on the preferences, personal values, and needs of the adult under guardianship, and (2) empowers and supports the adult under guardianship to contribute to decisions.

Virginia's public guardianship program requirements closely align with national standards for an effective guardianship program (sidebar). One national expert said that Virginia has a "model system," and other states—including Nebraska and Oregon—have modeled their public guardianship programs based on Virginia's. Public guardianship program directors (sidebar) agreed that most requirements for public guardians are appropriate: 11 of 13 directors agreed the caseload requirement generally allows public guardians to carry out their responsibilities effectively, and 12 of 13 agreed the visitation requirement ensures that public guardians know the incapacitated adult's circumstances and needs.

Several national organizations promulgate **standards for an effective guardianship program**, including:

National Guardianship Association standards cover areas such as decision-making about medical treatment, the guardian's relationship with family members and service providers, and conflicts of interest.

National Probate Court Standards focus on the petitioning process, but also have standards related to guardianship monitoring and oversight.

DARS regulations require each of the 13 public guardian organizations to have a **program director** who supervises and provides overall administration for the local public guardianship program.

DARS's training for public guardians also aligns with the national standards for an effective public guardianship program (sidebar). Training is primarily provided during an annual training conference organized by DARS staff. Sessions are taught by experts, and public guardianship provider staff have input on the topics taught, which helps ensure the training topics are relevant. The majority (86 percent) of public guardianship program staff (directors and guardians) responding to the JLARC survey indicated that DARS's training is effective and helps them do their jobs better, and 11 of 13 directors agreed the training requirements for public guardians are appropriate. One national expert noted that DARS provides "very strong" training to public guardians.

Public guardians are **required to complete an orientation program and receive ongoing training** that includes (1) the duties and powers of guardians and conservators, (2) reporting requirements, and (3) working with special needs populations. They must also participate in other training programs required by DARS.

DARS provides comprehensive and effective oversight of the public guardianship program. DARS staff conduct a multi-day, on-site review of each provider organization every 12 to 18 months to ensure they are complying with program requirements. During the site visit, DARS staff review the files of adults under guardianship, meet with the program director and staff, visit with randomly selected adults under guardianship and their third-party service providers (such as nursing home staff), and conduct a physical inspection of the provider's operations. The program director is also required to complete a comprehensive questionnaire about various aspects of the program's operations, including the program's organization structure and staff, processes, and procedures. After the on-site review, DARS staff prepare a summary report that identifies findings, observations, and suggested best practices. All but one of the program directors agreed that these reviews provide them with useful feedback.

Public guardianship provider organizations also contribute to oversight of public guardians through the supervision of the guardians they employ. For example, a director at one provider organization said they review each guardian's case files every three months and review the annual guardianship reports prepared by guardians before they are submitted to the LDSS.

Finally, the Public Guardian and Conservator Advisory Board advises DARS about the public guardianship program. The board meets quarterly to advise DARS staff,

provides advice on public guardianship services, and makes recommendations for legislative and executive actions to improve the program. Board members have appropriate knowledge and experience to support DARS staff in this role (sidebar).

Board member qualifications and duties are outlined in the Code. The board has 15 members, several of which are required to represent certain perspectives, such as social services providers, the court system, and state agencies. Ten of the 15 members are required to represent certain agencies and groups like the Department of Behavioral Health and Developmental Services and the Virginia State Bar.

Additional requirements and oversight for public guardians would help further protect adults under public guardianship

Despite having generally effective requirements, training, and oversight, additional improvements would further ensure quality care for adults under public guardianship. For example, DARS does not require public guardians to conduct unannounced visits, periodically reevaluate the maximum caseloads allowed, or track complaints against public guardians.

Unannounced visits

Requiring guardians to conduct at least one unannounced visit to each adult under guardianship each year would help ensure residential facilities are providing adequate care. Unannounced visits help guardians observe adults under guardianship in their typical environment and may make it easier for guardians to detect inappropriate or inadequate care (such as neglect). If a residential facility is expecting a guardian to visit at a particular date and time, staff could "pre-plan" the visit to show the adult under guardianship in a better light. Currently, each public guardianship provider is required to have a visitation policy that includes expectations about whether visits will be announced or unannounced, and some public guardianship providers do conduct unannounced visits, but there is no *requirement* for them to do so (sidebar). Exceptions to this requirement could be made, for example, when an unannounced visit might upset the adult under guardianship.

A few public guardianship programs already conduct **unannounced visits**. One public provider requires that all monthly visits be unannounced. Another provider requires some unannounced visits at different locations, if applicable. (For example, they may conduct unannounced visits at an individual's residential facility and a day program that the individual attends.)

RECOMMENDATION 15

The Department for Aging and Rehabilitative Services should require each public guardianship provider's visitation policy to require guardians to conduct at least one unannounced visit for each adult under guardianship each year.

Assess caseload maximum

DARS should periodically reevaluate the public guardian maximum caseload to assess whether it is appropriate. Virginia's current maximum caseload is viewed as a national standard, and most public guardianship program directors agreed that a maximum caseload of 20 adults per guardian generally allows guardians to carry out their responsibilities effectively.

However, more than half (53 percent) of public guardianship staff indicated on the survey that their workload is "too much" or "way too much," and almost half (47 percent) said they work overtime frequently (daily or every week). Public guardians who serve adults with developmental or intellectual disabilities or mental health issues are more likely to indicate that a caseload of 20 adults is too high because these cases

often require more work than others. For example, guardians serving these adults may need to ensure these adults are receiving adequate vocational and therapeutic services or respond to individuals experiencing mental health emergencies.

In conducting its review of the caseload maximums, DARS should consider whether the current number of cases permitted is manageable for staff and allows adequate service for adults under guardianship. Any reduction to the maximum number of cases would likely require more funding for the public program because additional guardians would be needed to serve the same total number of adults.

RECOMMENDATION 16
The Department for Aging and Rehabilitative Services should conduct an evaluation of the 1:20 ratio for public guardian providers to ensure that guardians can effectively carry out their work, and then every 10 years (or sooner if changes to state law or other circumstances indicate a reevaluation is needed), and adjust the ratio as warranted.

Complaints against public guardians

Virginia's public guardianship program has a complaint process available for alleged mistreatment by public guardians (sidebar). The provider organization receives and investigates the complaint, and if resolved to the satisfaction of the parties involved, is not required to report the complaint to DARS. If the provider organization does not resolve the complaint within 14 days, the complainant can resubmit the complaint to DARS, at which point DARS has 14 days to respond. Only one public guardianship provider organization reported a complaint to DARS in the last two years.

The public guardianship program complaint form is readily available on the public guardianship program section of the DARS agency website.

Because DARS receives only complaints that are not satisfactorily resolved by the public guardianship organizations, the agency is not aware of the number, scope, and nature of all complaints against providers in the public guardianship program. Tracking these complaints would allow DARS staff to better understand complaints about the public guardianship providers and could inform future actions, such as the type of training delivered to public guardians or modifications to contract terms between DARS and public guardianship provider organizations.

RECOMMENDATION 17
The Department for Aging and Rehabilitative Services (DARS) should require the public guardianship provider organizations to report at least annually to DARS the details of each complaint the organizations have received against public guardians and how each complaint was resolved.

Most adults are served by private guardians, who are not subject to any standards

State law includes a few requirements for private guardians, but they are less specific and far less stringent than those for public guardians (Table 4-1). For example, state law does not limit the number of adults private guardians can serve, or require training or the development of care plans. The law suggests guardians should visit the adult, but does not require it. State law *does* require private guardians to submit an annual report on the condition of each adult under guardianship to the LDSS. It also requires some elements of person-centered planning (sidebar).

The Code of Virginia calls for, in effect, **person-centered planning** to be provided by private guardians (§ 64.2-2019). Guardians must encourage the adult to participate in decisions, act on their own behalf, and develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the adult.

Because private guardians have few requirements, Virginia has few safeguards to ensure consistent service and protection to adults under private guardianship. For example, private guardians may serve too many adults to be able to consistently provide quality service. Likewise, private guardians are not required to regularly visit adults, which is a best practice for ensuring that guardians are familiar with an adult's condition, care, and preferences.

TABLE 4-1
Virginia has few requirements for private guardians

Requirement	Public guardians	Private guardians
Annual reporting	●	●
Visitation	●	◑
Use of person-centered planning	●	◑
Caseload ratio [a]	●	○
Training	●	○
Development of care plans	●	○

SOURCE: JLARC staff analysis of the Code of Virginia, Virginia Administrative Code, and DARS's contract with public provider organizations.
[a] Public guardianship provider organizations must maintain an overall ratio of one guardian representative per 20 adults under guardianship.

Private guardians are not required to receive training, and no statewide training is available

Private guardians in Virginia are not required to undergo any training. Private guardians' lack of training makes it less likely that they understand their responsibilities, such as completing an annual guardianship report. A lack of training can also hinder their ability to adequately serve adults. For example, private guardians who do not receive training may not effectively use person-centered planning and not understand the importance of including the adult in decision-making. Furthermore, national experts and best practices emphasize the importance of ongoing training and development for guardians. Instead of training, the state has written guidance for private guardians

The primary guidance developed for guardians is *You've Been Appointed: Information for Virginia Guardians and Conservators*, which was developed by Virginia WINGS and the Office of the Executive Secretary of the Supreme Court of Virginia.

(sidebar). However, it is unclear the extent to which private guardians use this written guidance, and there is no mechanism to require them to reference it.

No state entity develops or provides training for private guardians in Virginia, and few local departments of social services offer it. Only 24 percent of LDSS staff responding to the JLARC survey said their agency provides optional training to guardians about how to complete annual guardianship reports, and 12 percent said their agency provides optional training about how to effectively carry out guardian responsibilities. LDSS staff indicated a need for additional training for guardians and said they would provide training to private guardians if they had enough funding.

Some states require training for private guardians or offer optional training. Florida requires that every guardian complete an eight-hour educational course within four months of appointment that covers reporting, duties, and responsibilities. Florida's professional guardians—those with a caseload over a certain number—are required to complete a more extensive 40-hour course. New York's Guardian Assistance Network provides court-approved, bi-monthly training to guardians online and free of charge.

Virginia should provide initial and ongoing training to private guardians. Initial training could include information about the duties and responsibilities of a guardian, the annual guardianship report, and involving adults in decisions made by guardians. This training would be a modest time commitment for guardians and could be optional for experienced guardians and guardians who have already taken training. Initial training should be taken within four months of being appointed. Additional ongoing training could be provided on topics such as benefits programs, vocational and education opportunities for adults under guardianship, medical decision-making, considerations when making residence changes for an adult, and working with populations that have special needs. Best practices recommend that guardians have access to several different types of training, particularly if the needs of the adult under guardianship increase or the individual changes from a home setting to an assisted-living or institutional setting.

Many private guardians, especially those with larger caseloads, have staff who perform day-to-day guardianship duties on their behalf, including visits and other administrative tasks such as applying for benefits programs. These staff tend to be paralegals or administrative staff who do not have training or experience in how to effectively carry out guardianship duties. These guardians stated that their staff allow them to serve more adults, particularly adults who other guardians may not be willing to serve, such as those with little or no ability to pay for the service. The state could consider requiring these staff to be subject to the same training requirements as the guardians.

DARS should lead the development of training for private guardians. This could be done with assistance from the Office of the Executive Secretary of the Supreme Court of Virginia (OES), Virginia Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), and state and national experts. DARS could also consult with the National Guardianship Association and other states who have implemented similar training. Training should be primarily offered online to make it accessible to guardians

around the state. The training should be offered to guardians free of charge since many serve for little or no compensation. Developing training for guardians would have a one-time fiscal impact for DARS.

LDSS should be required to verify that new guardians have completed training requirements and notify the circuit court when requirements have not been met. For example, guardians could be required to submit to the LDSS a DARS-issued certificate after they complete training. Certificates are commonly used to verify other types of required training. Training requirements would apply to guardian appointments going forward (for subsequent guardianships, a guardian could use the same training certificate as proof that training was completed). To encourage compliance with the training requirement, LDSS could submit to the court a list of guardians who have not completed training, and the court could address the issue; this would mirror the existing process used by LDSS and courts for reporting and enforcing delinquent annual guardian reports.

RECOMMENDATION 18

The Department for Aging and Rehabilitative Services should develop and provide initial and ongoing training for private guardians, including training on the responsibilities and duties of guardians, how to complete annual guardianship reports, and how to involve adults in decisions made by guardians.

RECOMMENDATION 19

The General Assembly may wish to consider amending Title 64.2 of the Code of Virginia to require any individual who is named as a private guardian, and staff who perform duties on their behalf, to undergo guardianship training developed by the Department for Aging and Rehabilitative Services within four months of appointment and give local departments of social services responsibility for verifying compliance with the training requirement.

Private guardians are required to visit adults they serve as often as necessary, but visits to some adults are infrequent or not done at all

State law does not require private guardians to visit adults under their guardianship in person (sidebar). In practice, private guardians have broad discretion for how often they visit an adult; some guardians choose to visit frequently, while others indicated that they visit rarely (once per year) or not at all. Guardians with high caseloads are less likely to visit an adult often, if at all, because of the amount of time required, including travel time. For instance, one private guardian in Virginia served 75 adults in FY20, and the average distance from the guardian's law firm to each adult was 46 miles. Fifteen of those individuals were over 100 miles away. Conversely, some private guardians with high caseloads indicated they are able to visit adults under their guardianship once a month, as required for public guardians, and some indicated they visit more frequently if needed.

The **Code of Virginia** states a guardian should "maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities" and they should visit "as often as necessary."

Adding a minimum visitation requirement for private guardians could better ensure adults under guardianship are receiving adequate care. Visits allow the guardian to assess the individual's physical appearance and condition and the appropriateness of the person's current living situation; learn about the person's needs and preferences; communicate with caregivers; assess the overall quality of services provided to the person; and seek remedies when care is found to be insufficient. For private guardians who have staff who perform day-to-day guardianship duties, the state could consider allowing visits from these staff to count toward visitation requirements, especially if those staff have completed guardianship training.

A guardian's visit should be required to be in person and should include discussions with the adult under guardianship (if able to communicate) and the adult's care providers. The guardian should observe the living environment and inquire about, as relevant, changes in the adult's physical and behavioral health; attention to medical needs; hospitalizations; health and safety concerns, including any involvement with Adult Protective Services (APS); progress made toward goals; participation in social activities and educational and vocational programs; and contact and involvement with family and friends. Guardians should also rotate visits between day support programs and residential facilities, if applicable, to monitor the adult's overall health and safety across different aspects of their life. The training for private guardians could include information on effective visits to adults under guardianship.

Private guardians' compliance with the visitation requirement could be monitored by LDSS staff as part of the annual guardianship report process. Private guardians could be required to provide the dates of each visit on the annual report, and LDSS staff could, if they have reason to, verify those visits using visitation logs from residential facilities. The current annual report form emphasizes the importance of providing accurate and truthful information by stating that guardians could be guilty of perjury if they knowingly provide false information. The Code of Virginia also allows a civil penalty of up to $500 if a guardian provides false information as part of the annual report process.

RECOMMENDATION 20

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require private guardians to visit each adult under guardianship in person at least once every three months and that during visits, guardians observe and assess (i) the safety and adequacy of the adult's living environment; (ii) the adult's overall condition and well-being, especially as compared to previous visits; (iii) whether and how the adult's physical and behavioral health-care needs are being met, including whether the adult has been hospitalized and why; (iv) progress made by the adult toward goals; (v) participation in social activities and educational or vocational programs, and (vi) contact and involvement with family and friends.

A visitation requirement for private guardians could prompt guardians with especially high caseloads to petition the court to have at least some adults reassigned to a different guardian, especially adults who are indigent or located a long distance from the guardians. Private guardians do not receive state funding, and some private guardians have indicated additional workload from new requirements could make them unable to continue to serve as guardians. The appointment of a new guardian for these adults could be beneficial as long as the court is able to identify and appoint a suitable guardian who can meet the quarterly visitation requirement. When there is not a suitable alternative private guardian, the court could either deny the petition or work with the LDSS to have the department serve as the guardian. Expanding the capacity of the state's public guardianship program (Chapter 6) could help to provide guardians for these adults as well.

The state has several ways to implement a minimum visitation requirement. The state could choose to: (1) implement the new requirement for all private guardians effective July 1, 2022; (2) implement the visitation requirement only for *new* guardianship appointments effective July 1, 2022; or (3) delay implementation for one year or more to give guardians time to petition the court to change the guardian for adults they feel they cannot visit quarterly. If more time is needed to ensure all adults have a guardian who is able to meet the visitation requirement, the General Assembly could extend the timeframe.

Capping private guardian caseloads is not needed if training and visitation requirements are implemented and enforced

Virginia does not limit private guardians' caseloads, and some private guardians in the state have high caseloads. Eleven private guardians had more than 20 adults under guardianship in FY20, with 510 total adults under their guardianship (with a median caseload of 33 adults). The largest caseload in Virginia that year was 110. Best practices indicate that guardians' caseloads should be small enough so that the guardian can be sufficiently familiar with adults' conditions to advocate for their treatment and needs.

The state could implement a maximum caseload requirement for private guardians, but this requirement could have the unintended consequence of reducing the number of adults who could be served. Private guardians with larger caseloads tend to serve areas of the state with the greatest demand for guardianship services (e.g., Richmond and Northern Virginia), and limiting the number of individuals they can serve could mean fewer adults in these areas are able to receive guardianship services. This could result in vulnerable adults who are unable to access the guardianship services they need, such as having someone to make living arrangements or sign them up for public benefits programs. An expansion of the public guardianship program would likely alleviate some of the potential shortage of guardianship services, but non-indigent adults who are not eligible for public guardianship would still require a private guardian.

Furthermore, ensuring that private guardians are complying with the maximum caseload requirement would be challenging. Many private guardians with large caseloads employ staff to help them fulfill their guardian duties, which makes their caseload ratio much lower in practice. For example, a guardian serving 50 adults with the assistance of four additional staff would have a lower ratio of adults per staff member (10 adults to each staff/guardian) than a single guardian serving 20 adults without the assistance of additional staff. Additional data would need to be collected from private guardians to determine if they employ staff, the proportion of time each staff dedicates to performing guardianship services (as opposed to other paralegal or clerical work), and whether they have sufficient staffing levels to meet the maximum caseload requirement.

Implementing training and visitation requirements (Recommendations 19 and 20) would reduce the need for a maximum caseload requirement for private guardians and are more practical approaches to ensuring that adults receive the service and attention they need from their guardian. Caseload and visitation requirements are closely related because large caseloads make it more difficult for guardians to regularly visit adults under their guardianship. Requiring private guardians, or their staff, to be trained and to regularly visit adults under guardianship in person could have the effect of reducing caseloads, because private guardians unable to comply with the requirements under their current caseloads are likely to petition the court to remove some adults from their guardianship—most likely those who are indigent or live relatively far from the guardian.

Requiring care plans may be too burdensome for some private guardians

Private guardians in Virginia (unlike public guardians) are not required to develop care plans for adults they serve, and requiring them to do so would be burdensome for many private guardians. Guardianship care plans identify and document the needs of adults under guardianship and the guardian's plans for meeting those needs. Care plans are considered a best practice by national experts, but few states require them, according to a recent survey by the National Center for State Courts.

The public guardianship program has an administrative structure in place to review care plans developed by public guardians. Staff from each provider organization, which could include the program director or the multidisciplinary panel, can review these plans.

Creating care plans may be too burdensome for many private guardians, such as family members or those serving for little or no compensation. In addition, the state does not have an oversight entity with enough resources to review the plans (sidebar). Rather than require private guardians to develop care plans for the adults under their care, DARS could discuss the importance of developing care plans in training for private guardians (Recommendation 18) and encourage guardians to develop them if they are able to do so.

Annual report is insufficient to oversee adults under private guardianship

The annual guardianship report is the primary mechanism for overseeing private guardians (sidebar). State law requires all guardians to submit an annual report to their LDSS that subsequently provides the report to the circuit court, and statute broadly outlines what the report should include. Guardians are required to submit reports on a standard form developed by OES that identically mirrors the requirements listed in state law (Appendix E). This includes:

Public **guardians are also required to submit annual guardianship reports,** but these reports are not the primary oversight mechanism for public guardians.

- a description of the current mental, physical, and social condition of the adult under guardianship and the person's living arrangements;
- the medical, educational, vocational, and other professional services provided to the adult under guardianship and the guardian's opinion on the adequacy of the individual's care;
- a statement of the frequency and nature of the guardian's visits with and activities on behalf of the adult under guardianship; and
- a recommendation on the need for continued guardianship and any recommended changes to the scope of the guardianship.

Annual guardianship reports are ineffective for overseeing private guardians

The broad content and open-ended structure of Virginia's annual report for guardians make it an ineffective tool for overseeing private guardians. While the report requirement complies with national standards (sidebar), and the report template includes the elements outlined in state law, it lacks other questions that could be useful for monitoring the quality of care being provided and identifying potential problems. The report's questions are also open-ended, which can result in vague responses that are not particularly helpful. For example, guardians often describe "the current mental, physical, and social condition of the adult under guardianship" in general terms such as "excellent" and "she likes to dance in her room." Sixty-three percent of LDSS staff responding to the JLARC survey disagreed that the information from the annual reports is useful for overseeing guardians. WINGS, which is studying ways to improve guardianship in Virginia under the direction of OES, has also identified the content and structure of the annual report as problematic.

The National Guardianship Association standards and other national organizations recommend an **annual reporting requirement.**

The annual guardianship report needs to be redesigned to require reporting on key information that will allow each LDSS and the relevant court to understand the condition, treatment, and well-being of adults under guardianship. Additional useful information—asked on other states' guardianship reports and suggested by LDSS staff responding to the JLARC survey and Virginia WINGS—could include:

- health-care information, such as names of medical and therapeutic providers and dates seen, and date and location of any hospitalizations;
- any new or changed diagnoses; changes in the healthcare provider's assessment of the adult's physical and/or behavioral health, including whether and to what degree their health is expected to improve; and reasons for hospitalizations (to the extent allowed by the Health Insurance Portability and Accountability Act [HIPPA]);
- dates of guardian visits;
- the guardian's assessment, based on the most recent visits, of the adequacy of the adult's living arrangements and the adult's safety and well-being;
- activities performed on behalf of the adult during the year to improve the adult's quality of life, such as arranging for modifications or repairs to the adult's home or arranging for transportation services for the adult;
- description and location of social or recreational activities, educational programs, or job training the adult has participated in and progress made by the adult toward goals;
- whether the adult has been the alleged victim in an APS report or investigation, and whether there has been any other indication of exploitation, abuse, or neglect;
- names of individuals the guardian has restricted from visiting the adult and the reasons for the visitation restriction; and
- health or other barriers to the guardian's ability to continue serving.

The report could also ask for other information to improve the relevance, consistency, and quality of guardianship data and better inform future policy decisions for the guardianship system. For example, the report could request the relationship of the guardian to the adults they serve to help the state identify what types of guardians (i.e., family guardians or non-family guardians) are more likely to be involved in cases that require follow-up from LDSS staff (such as an investigation) and inform decisions about policy and program changes. In addition, more accurate and complete reporting on race and ethnicity could better inform the state about the impact of policies affecting guardianship on racial equity.

Several other considerations should guide the process to redesign the annual report. The annual report should be formatted to encourage standardized and detailed responses, such as a checkbox format for certain questions. Changes to the annual report will have to balance the reporting burden it creates for guardians (both public and private), many of whom already have a high workload, with the potential benefits of the information collected. In addition, the report should be designed to not require submission of medical information that is confidential or threatens the adult's privacy, because collecting this information could mean the reports are no longer public documents. There are benefits of the annual reports remaining public documents, such as the ability for family and friends of the adult to review the report for accuracy. Further,

to help LDSS staff ensure new guardians are taking required training, the initial annual guardianship report should require private guardians to affirm they have taken completed initial training and provide a space for guardians to indicate any training that they have undertaken during the year. Finally, the annual report could be produced in several languages to best serve the needs of Virginians whose primary language is not English.

OES would maintain statutory authority for producing the report, but could collaborate with other entities when redesigning the report, including DARS, Virginia WINGS, and the Virginia League of Social Services Executives or other LDSS staff. DARS staff maintain the PeerPlace database, which is used to capture information from the annual report, and therefore should have insight into which data elements would be most useful to collect. Members of Virginia WINGS have been researching and considering changes to the annual report for some time and would provide valuable input to the redesign process. LDSS staff are responsible for reviewing the annual reports and would likely have input into the types of information that would help them oversee guardians and identify abuse and neglect. Annual guardianship reports used in other states also offer examples of more effective content and formatting. OES staff indicated that the annual guardianship report is an official court form, and the final version of the form developed during the collaborative process would ultimately have to be approved by the Judicial Council of Virginia.

The Code of Virginia would likely need to be amended to facilitate a redesign of the annual report. OES staff indicate that they feel constrained to include only questions that are specifically mentioned in state law. The General Assembly should amend the Code to replace the existing statutory requirements for report content with language that requires the report to include certain key information but that gives OES (with input from stakeholders) the flexibility to design an annual report in a format that adequately assesses guardianship arrangements. This would allow OES and other stakeholders to include other information in the report and make future changes to it.

If the General Assembly enacts legislation to implement this recommendation, staff of the Division of Legislative Services should consult with the Office of the Attorney General to ensure that the requirements for reporting on health-care services and conditions are framed in such a way so as to be compliant with HIPPA.

RECOMMENDATION 21

The General Assembly may wish to consider amending §64.2-2020 of the Code of Virginia to require that the annual guardianship report direct guardians to report, at a minimum, on the following items regarding adults under their guardianship: (i) names of medical and therapeutic providers and dates seen, and dates, location of, and reasons for any hospitalizations; (ii) any new or changed diagnoses; (iii) any change in the adult's physical and/or behavioral health, including whether and to what degree the adult's health is expected to improve; (iv) dates of the guardian's visits to the adult; (v) an assessment by the guardian, based on the most recent visits, of the adequacy of the adult's living arrangements and the adult's safety and well-being; (vi) the guardian's activities, if any, performed on behalf of the adult during the year to improve the adult's quality of life; (vii) a description of social activities, recreational or educational programs, or job training, if any, the adult participated in and the name and location of such programs or activities; (viii) progress made by the adult toward goals, if applicable; (ix) any Adult Protective Services report or investigation in which the adult was the alleged victim and whether there has been any other indication of exploitation, abuse, or neglect; (x) any visitation restrictions imposed by the guardian and the reasons for them; (xi) a self-assessment by the guardian of their ability to continue to carry out their duties; (xii) whether the guardian has taken guardianship training; and (xiii) any other information deemed necessary to report by the Office of the Executive Secretary of the Supreme Court of Virginia (OES) or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of adults under guardianship. This section of the Code should also be amended to make clear that OES may collect additional information in the annual guardianship report than that listed in Code without statutory amendment.

Potential inconsistencies in LDSS' review of annual reports can result in varying levels of guardianship oversight

LDSS staff reviews of annual guardianship reports can vary substantially because of limited statewide guidance. DARS provides written guidance on how to review annual guardianship reports, but the guidance is limited, essentially restating the questions in the report. For example, one question asks the guardian to "state the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person." DARS's guidance simply suggests: "This section should include a statement regarding the number of times the guardian visited the incapacitated person and the purpose of the visits. This should also include a statement describing activities performed by the guardian on behalf of the incapacitated person."

DARS's guidance does not identify specific "red flags" or concerns to look for in reviewing the annual report that should prompt further review of a guardian. For example, some LDSS's might use the number and type of doctor's appointments for the adult as a potential trigger for further review, while other LDSS's might use different

criteria. As a result, a guardian in one locality that indicates the adult they serve had no medical visits in the past year (e.g., routine physical or other care) might receive follow-up from LDSS staff, such as an in-person visit to check on the well-being of the adult. However, LDSS staff in another locality may approve the same report without any further follow-up.

DARS should develop training for LDSS staff to help ensure they review reports consistently and thoroughly (sidebar). The training could include further instruction on how to review reports and the types of information that should trigger further follow-up from staff (e.g., the adult under guardianship has not seen a doctor during the reporting period, or the guardian has not visited the adult under guardianship). Training will be even more important if the annual report template is revised, and training could be done in coordination with that effort. DARS staff indicated that they have been planning to develop a DARS training course for reviewing annual reports, but other priorities and the COVID-19 pandemic have delayed that process. Developing training for LDSS staff would have a one-time fiscal impact for DARS.

DARS develops and VDSS delivers most training to LDSS staff, even for topics related to DARS responsibilities such as Adult Protective Services and adult services.

RECOMMENDATION 22
The Department for Aging and Rehabilitative Services, in coordination with the Virginia Department of Social Services, should develop and provide training to local department of social services staff on how to review annual guardianship reports and provide guidance to help staff identify concerns that should prompt a more in-depth review or investigation.

Independent care visits would enhance oversight of private guardians

Independent visits to adults under guardianship would improve the oversight of private guardians and help ensure that adults under private guardianship are receiving adequate care. Independent care visits—where an individual other than the guardian visits adults under guardianship periodically to ensure they are receiving quality care from both their guardian and other providers (health care, residential, etc.)—are considered by national experts to be an effective practice for overseeing the care provided by guardians (sidebar). A recent survey by the National Center for State Courts found that in many cases no one visits adults under guardianship other than the guardian, which provides "ample room for actions by guardians who may be inclined toward negligence or malfeasance." One LDSS staff responding to the JLARC survey stated: "The way to improve on [the annual report] is to…do yearly visits to the [adult]."

Several national experts and organizations—including the American Association of Retired Persons and the American Bar Association—support **visits by individuals other than the guardian** as a way to monitor both guardians and individuals under guardianship. The Uniform Guardianship and Protective Proceedings Act, a model guardianship statute, also states that courts may assign a "visitor" to interview the guardian or adult under guardianship, or investigate any other matter involving the guardianship.

Several other states, and one locality in Virginia, use independent care visits to enhance their oversight of guardians. Florida uses court monitors to visit adults under guardianship, typically done at the request of a family member or friend of the adult. Texas and Ohio use volunteers to visit adults under guardianship. Arlington County's Department of Human Services (DHS) recently completed a pilot project to improve

guardianship that included independent visits. The pilot was initiated by an Arlington County judge through a court order, which gave DHS staff the authority to conduct these visits. DHS staff visited approximately 40 adults under guardianship to assess their living arrangements, physical well-being, and satisfaction with their guardian, and also interviewed their guardians to identify any barriers to providing effective guardianship services. Based on these visits and interviews, DHS staff made several recommendations to guardians to improve the care of the adult under guardianship, and in one case, referred a case to the county's Adult Protective Services division for investigation, which ultimately resolved the issue. Staff are planning to release a report on the pilot's effectiveness later this year.

DARS's annual monitoring reviews for the *public guardianship program* **include an element of independent care visits.** DARS staff visit with a sample of adults under public guardianship to ensure they are receiving appropriate care.

Independent care visits could be conducted for a sample of adults under private guardianship (sidebar). Individuals to be visited could be selected randomly or based on specific factors, such as adults served by guardians with high caseloads or cases where a guardian fails to submit an annual report or provides insufficient information on a report. Consideration would have to be given to whether care visits are conducted on an unannounced basis. As part of these visits, the information provided in the annual report could be verified, if needed, by requesting documentation, such as proof of doctors' appointments or participation in day or vocational programs. Several LDSS staff responding to the JLARC survey expressed concern about the lack of verification of annual reports.

Arlington DHS estimated that two-thirds of one full-time staff member was dedicated to assessing 41 guardianship cases for its pilot program (assessments included visiting the adult under guardianship and interviewing the guardian). **The dedicated staff time cost an estimated $40,000, or $1,000 in staff time resources per assessment**.

While independent care visits would be conducted for only a sample of private guardianship cases, they may prompt guardians who are not included in the sample to provide better service for adults under guardianship. The possibility of independent care visits, and potential verification of information in annual reports as part of that process, could deter private guardians from not meeting state requirements and from submitting inaccurate information.

LDSS staff, such as adult services staff or social workers, are best suited to conduct independent care visits for guardianship cases, according to DARS staff, but LDSS likely would need increased resources to effectively conduct independent care visits for even a subset of guardianship cases (Appendix F). Staff would need to identify a sample of guardianship cases for visits, plan for and conduct in-person visits to adults, and follow up as needed (e.g., request and review documents or identify services to help an adult). If the state required visits for 5 percent of adults under private guardianship each year, 550 visits would be required statewide. Based on estimates of Arlington DHS's pilot program, this would result in a statewide investment of $550,000 (sidebar).

LDSS are primarily funded through allocations from VDSS and local government funds. In FY21, the state allocated VDSS approximately $500 million to distribute to the state's approximately 120 LDSS using a funding formula.

Funding for independent care visits could be allocated based on the number of adults under guardianship in each locality. This would range from approximately 88 visits in Fairfax County (5 percent of 1,760 adults under guardianship) to as few as just one in each of 46 localities that have 20 or fewer adults under guardianship (sidebar).

DARS should work with VDSS and LDSS staff to develop a proposal to submit to the General Assembly to conduct independent care visits for a subset of guardianship cases beginning in 2023. The proposal should include criteria for selecting the adults under guardianship who should receive visits; expectations for how the visits should be structured and conducted, including who should be responsible for conducting them and what they should be monitoring during the visit; and criteria for requesting and reviewing documents to verify what is reported by the adult or guardian during the visit or as part of the annual guardianship report. Consideration will also need to be given to determining what actions LDSS staff would take when problems are identified. Some issues, such as abuse or neglect, would fall under the purview of Adult Protective Services to investigate and address. However, some issues related to the suitability of a guardianship arrangement, such as aging guardians who are unable to effectively carry out their responsibilities, would need to be addressed by the circuit court. The proposal should also determine the extent to which DARS regional consultants will need to provide support and technical assistance to LDSS staff. DARS should include an estimate of the total up-front and annual costs of implementation and submit the proposal to the General Assembly.

RECOMMENDATION 23

The Department for Aging and Rehabilitative Services, in consultation with the Virginia Department of Social Services and local departments of social services, should develop a proposal for conducting independent care visits for a subset of private guardianship cases on an ongoing basis. The proposal should describe criteria for determining which adults under guardianship should receive visits, who should conduct the visits, the purpose of the visits, what the visitor should monitor during the visit, when to request and review additional documents, and potential actions to take when problems are identified. The proposal should also include an estimate of one-time and ongoing total costs of independent care visits and be submitted to the House Appropriations Committee and Senate Finance and Appropriations Committee no later than December 31, 2022.

State should give DARS additional responsibilities for private guardianship

The lack of effective requirements, training, and oversight of private guardians poses risks to vulnerable adults under private guardianship. Currently, a combination of state and local agencies have some involvement with private guardians—including OES, local courts, and LDSS—but there is no single agency with overall responsibility for several necessary functions related to private guardians. The lack of centralization means that the state lacks a reliable and comprehensive way to carry out activities such as training guardians, training LDSS staff for guardianship-related responsibilities, receiving complaints about guardians, and tracking data. Furthermore, the state lacks the

ability to identify, characterize, and quantify weaknesses in the private guardianship system for the purpose of informing future policy decisions.

DARS should be granted additional responsibilities related to private guardianship. The agency currently provides effective support and oversight for Virginia's public guardianship program, designs certain training and guidance for LDSS staff, and has specialization in serving aging and disabled adults. Therefore, DARS would be the most appropriate state entity to assign additional responsibilities intended to strengthen Virginia's private guardianship system. These responsibilities could include:

- providing information to guardians ad litem on APS investigations or complaints about prospective guardians during the guardianship appointment process (Chapter 2) or the periodic review process (Chapter 3);
- developing and/or coordinating training for private guardians (Chapter 4);
- advising OES on the revision of the annual guardianship report and providing additional training to LDSS staff for reviewing the reports (Chapter 4);
- developing a plan and guidance, in coordination with other stakeholders, for conducting independent care visits for private guardians (Chapter 4);
- improving the state's data tracking and reporting on private guardianship, which would include identifying additional data and information to collect from guardians as part of the annual guardianship report and performing quality control of PeerPlace guardianship data (Chapter 4 and Chapter 5); and
- creating and administering a process for receiving complaints against private guardians and sending complaint information to the relevant state and local agencies equipped to address them (Chapter 5).

DARS would need additional funding and staff to fulfill these responsibilities. DARS's public guardianship office has had two staff and total annual spending of approximately $175,000 in recent years. These two staff oversee and provide assistance to public guardianship provider organizations, coordinate training, and develop regulations. Any expansion of the public guardianship program would impose additional work on DARS's existing public guardianship program staff (Chapter 6). DARS's APS division has spent approximately $1.2 million annually in recent years, including personnel expenses for 13 APS, adult services, and support staff, as well as overhead costs primarily for operating the PeerPlace database. APS central office and regional consultant staff perform duties related to APS and adult services, including providing training, technical assistance, and support for local staff, and maintaining the PeerPlace database. Both public guardianship program staff and APS staff likely have insufficient capacity to absorb the workload required to perform additional responsibilities related to private guardians. An estimated three additional staff may be required to carry out these duties. The approximate annual cost could be $400,000.

RECOMMENDATION 24

The General Assembly may wish to consider amending Title 51.1, Chapter 14, Article 6 of the Code of Virginia to grant new responsibilities to the Department for Aging and Rehabilitative Services to strengthen the accountability and quality of the private guardian system. These new responsibilities should include: providing information about Adult Protective Services complaints against prospective guardians to guardians ad litem as part of the guardianship court hearing process; providing and/or coordinating training to private guardians and local department of social services staff; facilitating additional monitoring of private guardians through independent care visits; improving guardianship data tracking and quality control; and creating and administering a private guardian complaint process.

5 Protections for Adults Under Guardianship

Adults under guardianship are vulnerable to mistreatment by their guardian or others. Additional protections are needed to ensure their well-being beyond an effective court process (Chapters 2 and 3) and requirements, training, and oversight for guardians (Chapter 4). Virginia's Adult Protective Services (APS) system is an important protection for vulnerable adults. In addition, family members and friends of an adult who is under guardianship can be important protections as long as they have access to the adult and are aware of the adult's circumstances, and there are resources and a process they can use to voice any concerns. The court ultimately has authority to make changes to guardianship arrangements, such as replacing guardians who fail to carry out their responsibilities or mistreat adults. However, comprehensive and effective protections ensure that guardians are fulfilling their role and that adults are being protected, and protections are needed both within and outside the court system.

Extent of mistreatment of adults under guardianship is unknown

APS is the only entity with authority to investigate allegations of abuse, neglect, and exploitation of vulnerable adults, and often arranges for needed services to protect vulnerable adults after the investigation is complete. APS investigates allegations of mistreatment, including financial exploitation of adults ages 60 and over, and adults ages 18–59 with diminished mental or physical capacity. APS determines if an alleged victim needs protective services, such as help with home-based care, medication, or home repairs (Appendix F). APS can also refer a case that constitutes criminal abuse, neglect, or financial exploitation (sidebar) to law enforcement or a commonwealth's attorney (Appendix G).

Adult abuse is purposefully causing physical injury or pain to a physically or mentally incapacitated adult.

Adult neglect is purposefully failing to provide physically or mentally incapacitated adults with necessary care and resources to ensure their health and safety.

Financial exploitation is taking money or property without permission from an incapacitated adult.

JLARC's analysis identified 20 guardians who were named as alleged perpetrators in substantiated allegations of mistreatment of the adults they served between FY19 and FY21 (sidebar), but this may not entirely capture the extent of mistreatment. Nineteen of the substantiated allegations were for neglect and one was for financial exploitation. The guardians in all 20 cases were family members or friends of the adult under guardianship (as opposed to an attorney, professional guardian, or nonprofit organization). Data limitations required JLARC to attempt to link APS reports to adults under guardianship using names and other identifying information such as the locality in which the adult lives (Appendix B), which may have resulted in not all allegations being successfully identified.

A "substantiated" APS complaint is one where the APS investigator determined that there is sufficient evidence that abuse, neglect, or exploitation has occurred or is at risk of occurring, and that the adult is in need of services to help protect them from mistreatment.

The majority of cases of neglect by a guardian involved either a guardian needing additional assistance to care for the person under guardianship (Case Studies 5-1 and

5-2) or a guardian not fulfilling obligations to visit or approve payment for services the adult needed. Six cases of neglect involved guardians who were months or years overdue in submitting annual guardianship reports. Two co-guardians who were named as alleged perpetrators in the same substantiated APS allegation were criminally charged with a felony for neglecting multiple adults under their care but were ultimately convicted of less serious crimes. JLARC staff analysis of APS data indicates that courts removed three guardians from their role after a substantiated APS allegation for neglect between January 2019 and March 2021.

CASE STUDY 5-1
Neglect by a guardian

APS received a report of suspected neglect of an adult with autism whose parents served as his guardians. His parents would frequently lock him in his room because they said he wandered the house, and they were afraid he would burn himself on their wood-burning stove. APS provided the family with an electronic system that alerted the parents when their son left his room so that he no longer would be locked inside.

JLARC conducted an online survey of local Departments of Social Services (LDSS) Adult Protective Services (APS) staff, including LDSS agency directors, APS supervisors, APS investigators, and LDSS staff who review guardianship annual reports. The survey covered topics including APS funding and staffing, APS authority, APS training needs, and perspectives on the quality and review of annual guardianship reports. The survey received 303 completed responses from 108 of 120 LDSS offices.

CASE STUDY 5-2
Neglect by a guardian

APS received a report of suspected neglect of an adult with developmental disabilities who was arriving at his day program in soiled clothing without having bathed on a regular basis. His parents served as his guardians, and APS learned that the family did not have reliable access to laundry, and the adult needed more support to help with bathing. APS was able to arrange for access to laundry and help with daily activities.

While APS investigators are not required to document guardianship information in alleged adult mistreatment cases, most (92 percent) APS investigators indicated on a JLARC survey that they do (sidebar). APS investigators often report this information in detailed case notes but do not collect the information in a way that is easily analyzed or searched, such as in a specific data field.

APS is currently best positioned to collect and report data about the known extent of mistreatment of adults under guardianship. Currently, the Department for Aging and Rehabilitative Services (DARS) collects data about whether an alleged victim in an APS case is under guardianship and whether the alleged perpetrator in the case is the adult's guardian. However, the current system does not allow DARS to quantify the total number of APS cases that involve guardianship or to assess the nature of that mistreatment (e.g., trends or most common types of mistreatment). For example, DARS is unable to determine what percentage of APS cases involving an adult under guardianship involve physical abuse. DARS should update its PeerPlace database to include data fields that allow for these cases to be quantified and to be able to assess the results.

Findings should be reported each year in DARS's Annual Report on Adult Protective Services. Updates to PeerPlace may require additional one-time funding to DARS.

RECOMMENDATION 25

The Department for Aging and Rehabilitative Services (DARS) should update its PeerPlace data system to ensure the agency can systematically identify and quantify cases where an adult under guardianship may be a victim of, or a guardian may be a perpetrator of, abuse, neglect, or exploitation. DARS should quantify and summarize the number and types of Adult Protective Services cases involving an adult under guardianship or a guardian of an incapacitated adult and report that information in its Annual Report on Adult Protective Services.

Virginia lacks a centralized complaint process for the private guardianship system

An effective complaint process could help address mistreatment of adults under guardianship, but the state has a complaint process only for public guardianship (sidebar). Several existing state agencies and programs in Virginia can help resolve problems associated with guardianship, but without a process to determine which agency is best suited to handle an issue, an adult under guardianship or someone acting on their behalf may not be able to identify the avenues that are available and appropriate for addressing their concerns. Some states address guardianship complaints through the court system without a court petition and hearing, but attorneys, guardians ad litem (GALs), and court clerks report that Virginia's circuit courts do not have staff—such as ombudsmen or investigators—to accept and investigate complaints.

Private guardians serve approximately 11,000 of the 12,000 adults under guardianship.

There is no centralized resource for adults under guardianship or their advocates to know what steps to take when they have a complaint or concern about a private guardian or the treatment of an adult under guardianship. Family members of people under private guardianship and advocates for adults under guardianship routinely shared with JLARC staff that they have felt helpless and frustrated by the lack of a complaint process. They were often unable to identify the appropriate channel for submitting a concern.

Virginia has several state and local entities that have authority to address complaints and concerns about private guardians and the care received by an adult under guardianship:

- **Local circuit courts** are the only entity with the ability to change the authority granted to a guardian or change the status of a guardianship, such as restoring all rights to an adult under guardianship or removing the guardian and appointing another person to serve in that role.

The Virginia Department of Health (VDH) administers state licensing programs for hospitals, outpatient surgical hospitals, nursing facilities, home care organizations, and hospice programs.

The Department of Behavioral Health and Developmental Services (DBHDS) licenses public and private providers of services such as inpatient psychiatric hospitalization, day support, day treatment, case management services, and other residential services such as group homes. DBHDS also runs eight state mental health hospitals.

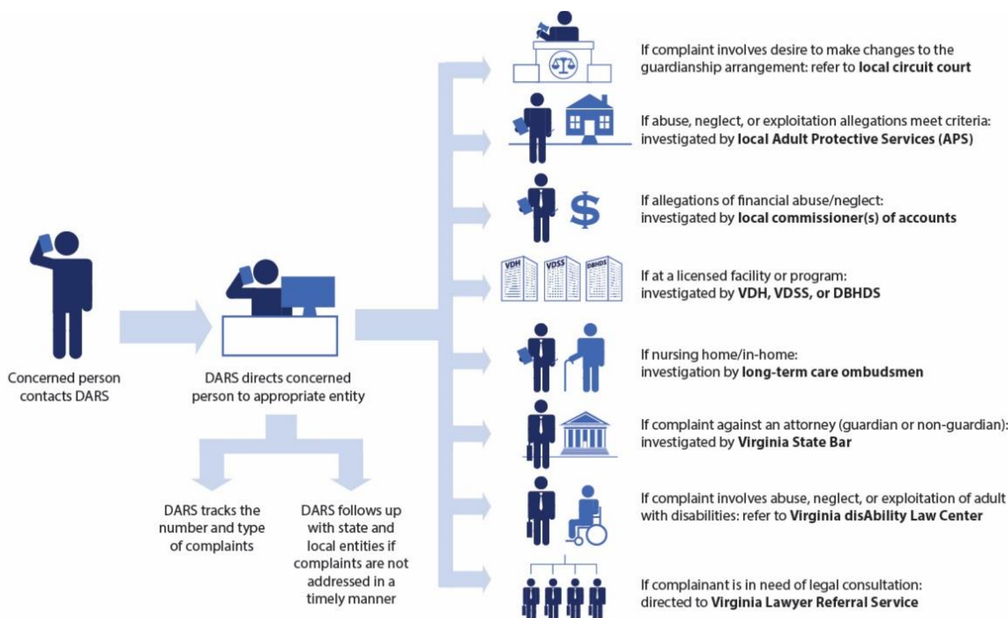
The **Virginia Department of Social Services (VDSS)** licenses adult day care centers and assisted living facilities.

- **Adult Protective Services** (APS) receives complaints of mistreatment on behalf of vulnerable adults and can investigate specific allegations of abuse, neglect, or exploitation. APS cannot investigate other complaints about guardians, such as disagreements about the living arrangement selected for an adult under guardianship.
- **Commissioners of accounts** may receive complaints about financial actions taken by conservators and/or guardians. They can investigate these complaints themselves, or refer them to another entity, such as the courts, law enforcement, or APS.
- The **Virginia Department of Health, Virginia Department of Social Services,** and **Department of Behavioral Health and Developmental Services** receive complaints about programs and facilities they are responsible for licensing (sidebar). They have the authority to investigate complaints related to licensing regulations. Many, but not all, adults under guardianship are served by these types of facilities or programs.
- **The Office of the State Long-term Care Ombudsman** handles complaints made by, or on behalf of, people who reside in long-term care facilities such as nursing homes or people who receive services like nursing care in their own homes.
- **The Virginia State Bar** (VSB) receives and investigates complaints against attorneys. VSB can formally discipline attorneys or suspend or revoke their licenses if they violate rules of professional conduct, but cannot investigate concerns about the treatment of an adult under guardianship. VSB also provides the **Virginia Lawyer Referral Service**, which refers interested individuals to an attorney specializing in a specific legal area, such as elder law, for a consultation.
- **Virginia disAbility Law Center** is the state's designated advocacy organization to provide information, tools, and legal services (where possible) to help disabled individuals who are experiencing abuse, neglect, and discrimination related to their disability. Many adults under guardianship are disabled.

A centralized process to collect and disseminate complaints to entities that have the authority to address the complaint could be administered by DARS. This would allow DARS staff to serve as a single point-of-contact for individuals submitting a complaint and offer continuity for the case, rather than individuals being required to navigate several different state and local entities on their own. DARS staff could direct people who wish to file a complaint about a private guardian to the state or local entity that is best positioned to address their particular issue (Figure 5-1). DARS would not be responsible for investigating and adjudicating complaints because the court or other state and local entities have this existing authority.

A centralized complaint process would provide several other benefits. DARS could provide individuals with information and assistance about how to file their specific complaint, such as the process for petitioning a local circuit court or submitting a complaint to VDH about a nursing home. DARS staff could also follow-up with other state and local entities if a complaint has not been resolved in a timely manner. Through a centralized complaint process, DARS could track the number and type of complaints against guardians to determine if certain private guardians receive many complaints or if certain types of complaints are common, which could inform policy changes about the guardianship system.

FIGURE 5-1
Illustrative complaint process for adults under private guardianship



SOURCE: JLARC staff.

DARS should develop this centralized complaint process for the private guardianship system. The process should be clearly defined and include an easy method to submit a complaint to DARS, such as a dedicated phone complaint line or a mechanism to file a complaint online; have clear guidelines for DARS staff to determine which state or local entity is in the best position to address the complaint; clearly describe how relevant state and local entities will be notified about the complaint; determine an appropriate timeframe for addressing the complaint; and articulate options for additional recourse if the complaint is not sufficiently resolved. Information about the complaint process should be provided to all adults under guardianship and long-term care and congregate living facilities and prominently displayed on the DARS website to ensure other interested parties, such as family members or caretakers, can access the information. DARS would require additional staff resources to fulfill this role. Chapter 4 contains information about the scope and cost for expanding DARS's responsibilities

related to private guardianship.

RECOMMENDATION 26
The Department for Aging and Rehabilitative Services (DARS) should develop and administer a process for receiving complaints against private guardians and referring complainants to the appropriate court, state agency, or local agency. DARS should develop criteria for determining which state or local entities should receive a complaint, follow-up with respective entities as necessary to ensure complaints are being addressed, collect data about complaints, and use the data to analyze trends in complaints against guardians.

Guardians have too much authority to restrict who can visit or contact adults under guardianship

Maintaining social bonds with family and friends is healthy for adults under guardianship and offers an additional layer of oversight of the guardian and protection for the adult. Occasionally, a guardian may need to restrict or prevent someone from contacting a person under guardianship. Many states have laws establishing conditions and processes for when a guardian can prevent access to adults under their guardianship.

The Code of Virginia states that a guardian "shall not unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship" (§ 64.2-2019).

Currently, guardians in Virginia have broad authority to restrict contact with an adult under their guardianship. Although the Code of Virginia addresses such restrictions, it gives guardians substantial latitude to determine what constitutes a reasonable restriction (sidebar). Guardians have discretion to restrict visitation or other types of contact (such as phone calls) based on what they determine to be "reasonable," without any intervention from the court. Advocates and family members of adults under guardianship interviewed by JLARC staff cited guardians' use of this authority as one of the most significant problems faced by Virginia's guardianship system.

Visitation and contact from family and friends is important for adults under guardianship, but restrictions can be necessary

Contact with family, friends, and others in the community can have a positive impact on the health and well-being of an adult under guardianship. Preserving people's ability to visit, communicate, and interact with these adults is essential to their quality of life, according to the American Bar Association Commission on Law and Aging. Similarly, the National Guardianship Association encourages visitation and encourages guardians to acknowledge the person's right to interpersonal relationships. Social isolation has negative consequences for the health and well-being of older and incapacitated adults, according to gerontology experts interviewed for this study.

In addition, contact with family, friends, and others can help prevent the abuse, neglect, and exploitation of incapacitated adults. Visitors can observe the condition, care, and living arrangements for a person under guardianship. A guardian may be less likely to

provide inadequate or inappropriate services when they know the adult can or will receive visitors.

In some cases, guardians may need authority to restrict someone from having access to an adult. In interviews, private guardians cited reasons they had restricted visitation or contact, such as instances where a family member verbally abused nursing home staff or where a family member posed a threat of taking valuable belongings from the adult's home. A person familiar with the public guardianship program shared a case where contact with a family member was causing emotional distress to both the adult and others with whom the adult shared a group home. Adults under guardianship may be unable to advocate on their own behalf, and it is the guardian's duty to act in their best interest in these situations.

Family and friends of an adult under guardianship may not be aware of the reason for a contact restriction or their ability to challenge it

JLARC staff reviewed several guardianship cases where access to adults under guardianship was restricted (sidebar). These included cases where guardians limited the times and dates an adult could receive a visitor, required that some or all visits to the adult be supervised, or banned visits altogether from one or more specific people. In three of five cases examined, the guardian provided the affected individuals with written terms of the restriction. In two other instances, the affected party alleges that they were informed of a contact restriction by nursing home staff or an in-home caretaker at the place where the adult resided. In one of the cases, a family member shared documentation showing that a guardian's contact restriction prevented two members of the clergy from visiting the adult. The most common reason for the restriction cited by the guardian was "interference with the care [of the adult under guardianship]." Several of the affected individuals indicated that, at the time of the restriction, they were unaware of what recourse they could take to challenge the guardian's decision.

JLARC interviewed six individuals (representing five different cases) about their experience being restricted from visiting a family member or person with whom they had an established relationship. Four of the five cases involved a family member, or family members, of the adult under guardianship who had their visitation restricted. Staff also reviewed court and administrative data, and documents from families, about the cases when available.

Virginia needs a more formal and transparent process for visitation and contact restrictions with adults under guardianship to better balance the guardians' authority with the desires of family and friends and well-being of the adult. A more formal and transparent process would allow guardians to retain their authority to establish contact restrictions but would require them to take additional steps to notify affected parties about the restriction and their options to challenge it. For instance, at the time a restriction is put in place, the guardian should provide written notification to the affected person that includes specific reasons why their contact with the adult is restricted, such as dates and descriptions of incidents that led to the restriction; the terms of the restriction; and details about how to contest the restriction through a petition to the circuit court. The notice should be provided on a standardized form developed by the Office of the Executive Secretary of the Supreme Court (OES) to ensure that all affected parties are provided with consistent and comprehensive information. This form should be easy to complete, locate, and submit to the court so that people can petition

the court to challenge the restriction without the help of an attorney. To avoid a financial cost to the affected individual, the state could consider waiving the court filing fee for petitions to challenge a contact or visitation restriction. Other states use a similar process to allow a guardian to establish a visitation or contact restriction (Maine, Oregon, Nebraska, and West Virginia).

This process could increase the workload of guardians and the court system. The guardian would be required to notify affected parties and participate in a court hearing if that restriction is challenged. Likewise, the court's workload would increase in cases where the affected party challenged the guardian's decision through a petition, triggering a court hearing. However, private guardians, judges, and elder law attorneys indicated that guardianship visitation and contact restrictions are rare, and therefore, the impact to court workload would likely be minimal.

RECOMMENDATION 27

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require guardians who restrict an individual from visiting or contacting an adult under their guardianship to provide the individual, on a form provided by the Office of the Executive Secretary, with written notification that clearly outlines (i) terms of the restriction, (ii) reasons for the restriction, and (iii) how the restricted individual can challenge the restriction through the circuit court that has jurisdiction over the case.

RECOMMENDATION 28

The Office of the Executive Secretary of the Supreme Court should develop a form to be used by guardians for providing notice to individuals subject to a visitation or contact restriction and a form to be used by restricted individuals to petition the court if they wish to challenge the restriction.

The guardian should notify the appropriate LDSS of guardianship contact restrictions by providing them with a copy of the notice concurrently with the individual subject to the restriction. Furthermore, the annual guardianship report could require the guardian to include details about contact restrictions, such as the name of the affected parties, the terms of the restriction, and the effective date of the restriction. This would allow the LDSS to consider taking extra steps such as conducting an independent care visit to the adult under guardianship (Chapter 4).

RECOMMENDATION 29

The General Assembly may wish to consider amending § 64.2-2019 to require guardians to provide a copy of any notification or court order pertaining to a visitation restriction to the local department of social services that oversees the case.

The General Assembly could consider establishing additional requirements for cases where guardians impose visitation or contact restrictions. For example, the court could

be required to hear a challenge to a restriction within a certain timeframe to minimize the risk of it being unnecessarily in place for a long period of time. In Virginia, courts are required to hold a hearing on a preliminary protective order within 15 days (sidebar). Nevada requires that the court consider petitions related to guardianship visitation restrictions within nine weeks. To ensure a restricted individual has prompt access to a hearing, the state could require the court to hold a hearing within a certain time period after an individual petitions the court to dispute a visitation or contact restriction (within 45 days, for example). Furthermore, guardians could be made personally liable for attorney's fees in cases where the guardian's restriction was not upheld by the court. This could help discourage guardians from potentially implementing frivolous visitation or contact restrictions.

A protective order prohibits an alleged perpetrator from committing acts of violence, force, or threat or any other contact that could harm the health and well-being of the petitioner.

Some states have required guardians to seek court approval to establish restrictions *before* they can be put in place (sidebar). However, this could potentially endanger the adult under guardianship if there is a risk of immediate harm. Public and private guardians in Virginia indicated the need for autonomy to act in what they believe to be the best interest of adults, which includes the ability to act immediately in the event of a potential threat to their safety or well-being. Furthermore, requiring court action on *all* contact restrictions may unnecessarily increase the burden on courts and guardians, as some restrictions may be agreed to by the affected individual, and otherwise would not result in a court hearing. Finally, enacting the notice requirement would ensure that individuals who are subject to visitation restrictions are sufficiently aware of the reasons for the restriction and the recourse they have to challenge them.

Four states require guardians to receive court approval to establish (or make permanent) a guardianship visitation or contact restriction (Nevada, New Mexico, Rhode Island, and Utah).

Conditions justifying a visitation restriction are not adequately defined in state law

Another way to prevent unjustified visitation restrictions would be for the General Assembly to better define the criteria that would be needed to restrict visits to, or contact with, an adult under guardianship. The Code of Virginia should better define the circumstances under which guardians can restrict visitation or contact with the adult they serve. Private guardians, elder law attorneys, and judges in Virginia reported that current state law in this area is vague and open to interpretation, saying only that a guardian cannot "unreasonably" restrict contact or visitation. In contrast, Virginia's protective order law more clearly defines the circumstances that justify a protective order: preventing contact to ensure a person's health and safety, including preventing violence, physical harm, criminal offenses, and threats. Likewise, other states use a clearer definition for laws governing guardianship contact restrictions. For example, Nevada law requires a guardian to determine that the protected person is being harmed physically, emotionally, or mentally by the particular person who is subject to the restriction.

RECOMMENDATION 30

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to permit guardians to restrict contact with the adults they serve only in cases where such a restriction is necessary to prevent physical, emotional, or mental harm or protect their finances.

Visitation and contact restriction statutory provisions should pertain specifically to restrictions imposed by guardians and not to visitation policies established by residential facilities such as nursing homes and group homes. Such facilities would continue to have discretion and authority to prohibit visitation from someone who violates their policy.

Virginia law does not require guardians to share important information with families of adults under guardianship

Virginia has no requirements for guardians to share information about major decisions or changes with families of adults under guardianship. Guardians may make decisions—such as decisions about end-of-life care or moving an adult under guardianship farther away from their family—without the family being aware. Notifying family members of such decisions or changes is cited as a best practice by national experts and model legislation. In addition, some states guarantee certain individuals, such as family members, a right to information about significant changes in the condition or circumstances of an adult under guardianship.

The American Bar Association identified six states that have laws requiring guardians to notify certain individuals about changes to the condition and circumstances of an adult under guardianship. For example:

- Texas requires notification when an the residence of an adult under guardianship changes;
- Texas and West Virginia require notification when an adult under guardianship will be in a different location for more than a certain time period (e.g., more than seven days);
- Arizona, Texas, and Illinois require notification when an adult under guardianship is admitted to a hospital (or has a hospital stay longer than a certain time period such as three days) or placed in hospice care;
- Six states require notification when an adult under guardianship dies, and four of these states require notification about funeral arrangements.

The state could also require guardians to provide family and friends with a copy of the annual guardianship report at the time of its submission to the LDSS. Providing the annual guardianship report to family and friends would give them important information about the adult's well-being, such as information about medical care, educational or vocational opportunities, and visitation. Providing the annual report to family and friends would provide an additional means of holding the guardian accountable

for their activities and the report's content. Family and friends who presumably are familiar with the adult's care and well-being could review the information submitted and contact the LDSS or the court if they have concerns about its accuracy or completeness. The annual guardianship report is publicly available once received by the court (after the LDSS review), so providing a copy of the report to family or friends would not present a confidentiality issue.

States have different rules for who is eligible to receive notices regarding major decisions or changes in condition or circumstance. West Virginia requires guardians to notify *relatives* who have been *granted access* by the court. Texas and Illinois require that *anyone* wishing to receive notices about a person under guardianship write to the guardian to request future updates. Arizona requires guardians to notify *spouses and adult children* of changes, which is a best practice according to experts.

The state would need to balance the rights of family and friends to receive notification with the burden on the guardian of having to provide these notifications. Guardians are often family members who are serving as a primary caretaker and may be overburdened by that responsibility. In addition, public and private guardians with larger caseloads emphasized that extensive notification requirements for adults under guardianship would be unmanageable. To manage guardian workload, parties subject to notification should be responsible for providing the guardian with up-to-date contact information. Furthermore, the guardian should be responsible for sending the information to the specified parties using the contact information provided, but not for verifying that the information was received by the person.

State law could specify which circumstances or changes in condition require a notification from a guardian. These should include, at a minimum, notification about a change in the adult's primary residence, a temporary change in location, admission to a hospital or hospice care, and death. To balance adequate notification and the guardian's workload, anyone entitled to be notified about the condition of an adult under guardianship should be identified in the court order to appoint a guardian. The court could prioritize the spouse and adult children of the adult under guardianship, as suggested by best practice. Individuals not included in the initial court order, but who decide at a later date that they would like to receive notifications about the adult, would have to petition the court and be added to a subsequent order.

RECOMMENDATION 31

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require the guardian to notify designated contacts, as specified by the court, of certain changes in the condition or circumstances of an adult under guardianship, including a change to the adult's primary residence, a temporary change in living location, admission to a hospital or hospice care, and death, as well as provide them with a copy of the annual guardianship report each year at the time it is submitted to the local department of social services.

Guardians and conservators can financially benefit at an adult's expense

Virginia's laws could better protect adults under guardianship by prohibiting self-dealing by guardians and conservators. Self-dealing occurs when guardians or conservators make decisions on behalf of adults that can financially benefit themselves or a close acquaintance, such as a family member or business partner. Self-dealing often violates a guardian's or conservator's fiduciary duty to act in the adult's best interest. Advocates and attorneys practicing in guardianship cases in Virginia shared examples of self-dealing that could occur. For example, an attorney who serves as a guardian might work at a law firm with a real estate division. If that attorney uses the firm's real estate division to handle the sale of a home owned by the adult, the guardian's law firm would financially benefit from the sale. In addition, a guardian or conservator could have a family member who owns a business that provides services for the adult, such as housekeeping, home contracting, or estate liquidation. If the guardian or conservator pays for these services using the adult's assets, this would benefit the guardian's relative.

Best practices indicate that self-dealing by guardians and conservators should be prohibited by law. The Uniform Guardianship and Protective Proceedings Act (a national model guardianship statute) recommends prohibiting any transaction that creates a conflict between guardians' or conservators' fiduciary duties and their own personal interests. The National Guardianship Association recommends that guardians and conservators avoid all self-dealing or the appearance of self-dealing.

At least seven states and Washington, D.C., have laws to define and prevent self-dealing by guardians and conservators (Maine, Michigan, Minnesota, North Dakota, Utah, Washington, and West Virginia). For example, Washington D.C. and North Dakota statutes define self-dealing by a conservator to include "Any sale or encumbrance to a conservator, the spouse, domestic partner, agent, attorney of a conservator, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest." West Virginia statute defines self-dealing, in part, as "directly or indirectly purchasing, leasing, or selling property or services to or from any entity in which the conservator or a relative of the conservator…owns a significant financial interest." In all seven states and Washington, D.C., the court can void any transaction found to violate the self-dealing statute if brought to its attention, but self-dealing is not classified as a criminal offense. Some states allow for exceptions to the law under certain conditions. For example, Michigan allows conservators to use an adult's assets for some transactions if first approved by the court after interested parties are notified (e.g., the adult's family members) or when the transaction involves a contract entered into before the adult was placed under conservatorship.

RECOMMENDATION 32

The General Assembly may wish to consider amending §64.2, Chapter 20, of the Code of Virginia to (i) define self-dealing, at a minimum, to include using the estate of an adult under guardianship or conservatorship to complete a sale or transaction with the guardian or conservator, their spouse, agent, attorney, or business with which they have a financial interest; (ii) prohibit self-dealing by a guardian or conservator unless court approval is first obtained or the sale or transaction was entered into before the guardian or conservator was appointed; and (iii) make voidable by the court any sale or transaction that constitutes self-dealing.

Adult Protective Services lacks guidance and authority to fully investigate financial exploitation

LDSS staff, including agency directors, APS program managers, and APS investigative staff, report that they need more authority to effectively investigate suspected financial exploitation of elderly and incapacitated adults in Virginia. The findings and recommendations in this section pertain to all incapacitated adults (sidebar), not only those under guardianship.

The Code of Virginia (§ 18.2-369) defines an incapacitated adult for the purpose of criminal investigations and charges as "any person 18 years of age or older who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes" that affects his or her ability to make decisions in their best interest. A person need not be found incapacitated by a court to be eligible for APS services.

APS staff have become increasingly involved in cases of financial exploitation. APS reports, criminal charges, and criminal convictions for financial exploitation have increased since FY15, when Virginia made financial exploitation of a person with diminished mental capacity a specific crime (sidebar). Between FY15 and FY19, the number of convictions across the state for financial exploitation nearly tripled (from 39 to 106 convictions), while the number of substantiated APS reports for suspected financial exploitation increased by 60 percent in the same period (from 1,016 to 1,620).

Virginia Code § 18.2-178.1 made financial exploitation of an incapacitated person a crime starting in FY15. Prior to FY15, crimes that can now be prosecuted under this statute could have been prosecuted under other code sections, such as those for larceny or fraud.

Investigations of financial exploitation are among the most complex for APS investigators. They can require contacting multiple financial institutions such as banks and brokerage firms, reconciling accounts, requesting access to email addresses or other online accounts, and interviewing multiple people. APS investigators must also work with law enforcement in some cases, but according to one APS investigator, when law enforcement is involved, "who does what during the investigation can sometimes be unclear." DARS is currently developing additional training specifically related to financial exploitation investigations, and the agency recently hired a full-time staff member to develop training modules for APS staff using APS-specific federal funds related to COVID-19 relief and recovery.

The majority (75 percent) of APS investigators and program managers feel they have adequate authority to investigate APS complaints in general. However, a majority of APS investigators who indicated they *did not* have enough authority cited financial exploitation as the area where they most lacked authority. Fifteen of 26 APS investigators who indicated the need for more authority specifically cited access to financial records.

The Consumer Financial Protection Bureau, Securities and Exchange Commission, Federal Reserve System, and other federal financial regulators have noted that portions of the Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act, permit financial institutions to share information with government agencies conducting civil investigations, such as an APS investigation.

These concerns were also identified during interviews with APS staff. APS investigators already have the authority to access other sensitive information, such as medical and psychological records.

The lack of a clear expectation that financial institutions will share financial information with APS hinders APS investigators' ability to fully investigate cases of suspected financial exploitation. Adults under guardianship are particularly vulnerable to financial exploitation, since they are incapacitated and often have a conservator who is legally authorized to handle their financial affairs. Federal law permits, but does not require, financial institutions to share financial information with entities like APS as part of an investigation (sidebar). Financial institutions, like banks, are not *required* under Virginia law to share financial records with APS. Some, but not all, financial institutions share information with APS investigators without a court order. In cases where a bank will not share records, APS workers must seek a court order for the bank to release them.

At least five other states have laws that require financial institutions to release records to APS investigators. Amending the Code of Virginia to require financial institutions to share records with APS investigators would better equip APS to uncover and address financial exploitation of vulnerable adults. Such a change would apply to financial institutions doing business in Virginia, including those that are headquartered in another state.

RECOMMENDATION 33

The General Assembly may wish to consider amending § 63.2-1605 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105, and § 13.1-501 of the Code of Virginia, to provide financial records of alleged victims of financial exploitations to Adult Protective Services (APS) as part of APS investigations.

6 Public Guardianship Program Capacity and Funding

The public guardianship program serves some of the most vulnerable adults in the Commonwealth. Adults who qualify for the public guardianship program are incapacitated, indigent, and have no one willing and able to serve as guardian or conservator. These adults are unable to make decisions or advocate for themselves and do not have friends or family to advocate on their behalf. Moreover, their participation in public benefit programs and services (e.g., Medicaid) requires regular recertification, which they are unable to do on their own.

The Code of Virginia defines an indigent person for eligibility in the public guardianship program as someone who is a recipient of a state or federally funded public assistance program and/or whose available income and liquid assets are equal to or below 125 percent of the federal poverty income guidelines.

Because the public guardianship program has limited capacity, many adults who should qualify for the program are served by a private guardian. While private guardianship may be an appropriate backup option for a public program with limited resources, a key way to better ensure its effectiveness would be to provide private guardians with an adequate financial incentive to provide quality service to these vulnerable adults. Currently, no incentive is available.

A more practical solution would be to invest public money in what has been shown to be an effective public program, rather than in compensation for private guardians. Expanding the public program could occur through near-term and longer term investments.

Over half of state funding for public guardianship is reserved for adults with specific needs

Virginia's public guardianship program is funded by the state general fund and has limited capacity. The 2021 Appropriation Act allocated $4.5 million to fund 1,049 public guardianship slots. There are four categories of public guardianship slots, more than half of which are reserved for individuals with developmental disabilities (DD), intellectual disabilities (ID), or serious mental illness (MI). State funding for these reserved slots accounted for 62 percent of total state funding in FY21.

Public guardianship provider organizations are social service organizations that provide a variety of services such as counseling, home care, and meal delivery. The organizations that offer public guardianship services have a division of staff dedicated to the program within their organization.

Each public guardianship provider organization receives state funding based on the designated number and category of slots they are allocated. The current number of slots at each program is determined through provider organizations' contracts with the Department for Aging and Rehabilitative Services (DARS) (Appendix D). The average state funding per guardianship slot is about $4,300 annually, but the funding varies by type of slot. For example, the average funding per unrestricted slot is $3,778, while the average funding for slots for people with mental illness (and referred to the program by the Department of Behavioral Health and Developmental Services [DBHDS]) is $7,000 (Table 6-1). The Appropriation Act sets the amount of funding for each type of slot, which is generally related to the perceived workload associated

with serving adults in each category. For example, an adult with mental illness may require more work on behalf of the guardian, such as visitation, management of treatment, and changes to living arrangements, than an older adult with mild dementia but without behavioral and psychological symptoms and who lives in a nursing home; therefore, the average MI slot is funded at a higher rate than the average unrestricted slot.

The state has expanded the number of available slots over time; the program grew from 603 slots in FY11 to 1,049 in FY21 (74 percent increase). This increase includes 343 slots that were added in FY17 and FY18.

TABLE 6-1
Funding differs by type of slot in the public guardianship program

Type of slot	Average funding per slot	Number of slots	Total general funds
MI [a]	$7,000	98	$686,000
ID/DD [a]	4,341	454	1,970,600
Unrestricted	3,778	457	1,726,700
MI/ID [b]	3,138	40	125,500
Total	4,298	1,049	4,508,800

SOURCE: FY 2021 Appropriation Act.
NOTE: ID: Intellectual disabilities; DD: Developmental disabilities; MI: Mental illness.
[a] Intellectual disability and developmental disability (ID/DD) and mental illness (MI) slots are reserved for people referred to the public guardianship program by the Department of Behavioral Health and Developmental Services.
[b] Mental illness and intellectual disability (MI/ID) slots are reserved for people with mental illness or intellectual disability who are referred to the program by a source other than DBHDS.

Waitlist for public guardianship slots is substantial

Public guardianship provider organizations serve regions that are a set of designated localities, therefore, individuals are subject to waitlists at the provider organization(s) that serve the locality in which they reside.

Virginia's public guardianship program has insufficient slots and funding to meet demand for the program. Nine of the 13 public guardianship program directors indicated that their program has "too few" or "far too few" slots available to meet existing demand, and all but one program had a waitlist as of the third quarter of FY21 (sidebar). Nearly 700 individuals are currently on waitlists for public guardianship services (Table 6-2), most of whom are waiting for an unrestricted slot. Some individuals have been on the program's waitlist for an extended period of time. The average amount of time individuals have stayed on waitlists ranges from three months for one provider organization to four years.

TABLE 6-2
Waitlist for public guardianship slots has nearly 700 adults

Type of slot	Waitlist
Unrestricted	507
DBHDS-ID/DD	152
MI/ID	22
Total	681

SOURCE: Department for Aging and Rehabilitative Services and Department of Behavioral Health and Developmental Services.
NOTE: Unrestricted and MI/ID slots waitlist as June 30, 2021. DBHDS ID/DD waitlist as of June 4, 2021.

Individuals on the public guardianship waitlist are either not being served by a guardian or are served by a private guardian who is receiving little to no compensation and who does not wish to permanently serve in that role. A review of 418 guardianship court cases by JLARC staff indicated that at least 57 percent of individuals being considered for guardianship were identified as indigent. Many of these indigent individuals were appointed a private guardian even though they likely would have qualified for the public program if slots were available. No data is available on the number of adults on the public guardianship waitlists who are not appointed a private guardian.

The waitlist for the public guardianship program is expected to grow. More than half of the public slots are dedicated to individuals with intellectual and developmental disabilities or serious mental health issues. People in these categories tend to be relatively young when a guardian is appointed and are likely to remain in public guardianship for a long time; the number of public slots that open up over time is therefore unlikely to keep pace with additional demand.

In addition, recommendations in Chapter 4 would place new requirements on private guardians that could prompt at least some of them to petition the court to seek removal of some adults from their caseload. Private guardians indicated that they might not be willing or able to meet requirements, such as quarterly visits to adults they serve, especially for adults who are indigent and provide them with little or no compensation for their service. Private guardians seeking removal of indigent adults from their caseload could further contribute to demand for public guardianship services (sidebar).

In FY20, **11 private guardians had more than 20 adults under their guardianship**, serving a total of 510 adults. Several of these guardians estimate that a majority of the adults they serve are indigent and would qualify for the public guardianship program if the program had sufficient capacity.

Some state and local agencies pay for private guardianship services with other state or federal funds when no public guardianship slots are available for the individuals they serve. For example, DBHDS contracts with Jewish Family Services of Tidewater to provide *private* guardianship services for individuals who would otherwise be served by the public guardianship program, if MI slots are unavailable (sidebar). DBHDS spent about $400,000 on private guardianship services for approximately 80 of these adults in FY21. In addition, local departments of social services (LDSS) directly served as *private* guardians for 23 individuals in FY20, with staff performing guardianship services using the agency's existing budget. Sometimes LDSS will use their own funds to pay private guardianship providers rather than serve as the guardian themselves. Private guardianship services paid for by DBHDS or an LDSS, or directly provided by

There is no waiting list for DBHDS mental illness slots because adults referred to those slots are typically exiting a state hospital and require a guardian to be in place to help facilitate a discharge. As a result, DBHDS contracts with a nonprofit organization to provide private guardianship services for these adults if there are no public slots available.

LDSS staff, are not subject to the public guardianship program's requirements, training, and oversight.

Indigent adults who are assigned a private guardian may not receive quality guardianship services

Relying on the private guardianship system to serve indigent adults who are on the waitlist for the public guardianship program may not be in the best interest of these adults. Unlike the public guardianship program, private guardians are not required to undergo training or meet other requirements, such as minimum visitation requirements, and are subject to limited oversight (as discussed in Chapter 4).

Many private guardians serve pro bono or for a small fee, especially for indigent adults, which is a disincentive for frequent visits with clients or other time-consuming tasks, according to advocates for people under guardianship, experts, and attorneys serving as private guardians. Three private guardians with a large number of adults under guardianship attributed this minimal compensation to their decision to not create a care plan for their clients, which is cited by experts as a best practice. When asked about care planning, an attorney serving as a guardian responded: "Who is going to pay for that?" Likewise, another guardian cited compensation as the reason they rarely visited a client in a nursing home in a different part of the state, explaining: "I'm not driving three hours every month for $21." Reliance on private guardianship in its current form is not an acceptable approach for addressing the current and future unmet guardianship needs of indigent adults in Virginia.

Virginia has too *few* private guardians willing to serve indigent adults. Representatives from some of the state's most common guardianship petitioners (hospitals and LDSS) indicated that it was difficult to locate individuals who are willing and able to serve as guardians for indigent adults. Similarly, elder law attorneys and organizations that commonly serve as private guardians spoke of their hesitancy to take on additional guardianship clients—especially indigent adults who are unable to pay—and cited instances where they had turned down requests to serve as a guardian.

Public guardianship program should be expanded to eliminate the waitlist

In the near term, the most effective approach for addressing the insufficient capacity in the public guardianship program would be to provide funding to eliminate the current program waitlist. Doing so would address issues with current program capacity and allow time for an assessment of future program needs. Expanding the program by an additional 700 slots would require approximately $2.7 million annually based on the current average funding (~$3,800) for an unrestricted public guardianship slot (60 percent increase to current program funding of $4.5 million).

RECOMMENDATION 34

The General Assembly may wish to consider including additional funding in the Appropriation Act to pay for 700 new slots in the public guardianship program, which would allow the Department for Aging and Rehabilitative Services to eliminate the current waitlist.

State needs to assess fully unmet demand for public guardianship and examine feasibility and cost of further expansion of the program

A comprehensive assessment of demand for public guardianship slots is needed, even if funding is provided to eliminate the current waitlist. The current waitlist is likely a good indicator of demand for additional public guardianship services, but may not be an entirely accurate portrayal. For example, the length of the waitlist may deter petitioners from placing some qualified individuals on it, and petitioners may instead choose to pursue a private guardianship that is more immediately available. In addition, the public guardianship waitlists do not reflect future increased demand on the public program that could materialize if the General Assembly requires private guardians to meet additional standards, such as training and visitation requirements (Chapter 4). Conversely, some providers place an individual who is referred to the program on a waitlist without fully assessing whether the individual would be eligible for the program until a slot is available. This means that not everyone on the waitlist would ultimately be accepted into the program.

DARS staff indicate that the Public Guardian and Conservator Advisory Board has **requested funding** for another study several times over the past 14 years, but the agency has not received an appropriation.

DARS has not assessed the need for additional public guardianship slots in recent years. State law requires DARS to contract with a research entity every four years to study the need for public guardianships *if* the General Assembly provides funding for the work (sidebar). DARS has received funding for the study only once, in 2005. That study was completed in 2007 and found a need for 1,400 additional slots in addition to the program's 368 slots that were available at the time.

An assessment of the need for additional public guardianship slots should take into consideration the geographical demand for additional program capacity. Currently, the number of public guardianship slots varies widely by region (e.g., public guardianship provider organization) when accounting for an area's total population and the total number of people under guardianship located in that region (sidebar). For example, Northern Virginia (Arc of Northern Virginia) is allocated just one public guardianship slot per 42,000 residents, whereas far Southwest Virginia (Mountain Empire Older Citizens) has the most public guardianship slots per capita at one per 1,900 residents. Likewise, just one in 50 adults under guardianship in Northern Virginia is served by the public program, whereas one in three adults under guardianship in the far southwest region has a public guardian. As of FY20, Northern Virginia, with the fewest public guardianship slots per capita, had three of the four private guardians with the

Public guardianship programs are allocated a specific number of slots and serve designated regions. Individuals accepted into the program are placed under guardianship of a provider organization that serves the locality in which they reside. The three provider organizations that have DBHDS-MI slots can accept clients for those slots outside of their geographic service area.

The original methodology for allocating slots to public guardianship providers predates current DARS program administrative staff and is largely unknown. DARS staff allocated the new slots funded in 2017 and 2018 based on the size of provider organizations' waitlists at the time.

largest caseloads statewide (Table 6-3). Appendix D includes a full list of public guardianship providers and the localities they serve.

TABLE 6-3
Quantity of public guardianship slots varies greatly depending on region (FY20)

Public guardianship program (see Appendix D for region served)	Public guardianship slots at provider organization	Public guardianship slots per capita	Total # of adults under guardianship per public slot available
The Arc of Northern Virginia	50	29,016	50
Autumn Valley Guardianship	21	18,704	37
Catholic Charities of Eastern Virginia	96	7,525	26
Bridges Senior Care Solutions	194	6,159	7
Family Services of Roanoke Valley	80	5,769	16
Commonwealth Catholic Charities	120	5,338	11
Senior Connections	40	5,313	10
Jewish Family Services of Richmond	40	5,180	8
Jewish Family Services of Tidewater	184	4,555	2
Alleghany Highlands Community Services	18	2,920	8
District Three Senior Services	125	2,453	7
Appalachian Agency for Senior Citizens, Inc.	35	2,397	5
Mountain Empire Older Citizens	45	1,497	3
Average	**1,049**	**6,327**	**11**

SOURCE: JLARC staff analysis of Weldon Cooper Center Population estimates and Department for Aging and Rehabilitative Services PeerPlace guardianship data.
NOTE: Public guardianship slots per capita includes adult population only. Total number of adults under guardianship per public slot available includes total individuals under guardianship, public and private, in the region served by each provider. Methodology accounts for localities that are served by more than one public guardianship provider.

An updated needs assessment for public guardianship slots should be conducted and include (1) the total additional capacity needed and (2) the geographic distribution of demand for additional public guardianship slots. The General Assembly should provide DARS with funding needed for the study. The information from this study should be used to help determine whether, and the extent to which, the public program needs to be expanded in total and by region.

Historically, additional public guardianship program funding has been allocated to new slots (while existing slots maintained existing funding levels). This has led to **provider organizations receiving different funding per slot based on when they first were allocated their funding**.

The funding for *existing* public guardianship slots should be reevaluated. According to the JLARC survey of public guardianship provider organizations, 77 percent of program directors said that the total funding they receive from DARS for the public guardianship program is not sufficient to operate the program effectively, and 62 percent stated funding provided for public guardianship slots is one of their program's greatest challenges.

Finally, DARS should also evaluate how funding is distributed across provider organizations (sidebar). Currently, provider organizations receive different levels of funding for the *same* type of slot because their funding is largely based on *when* the additional slots and funding were given to the organization, rather than being based on criteria

such as the actual cost of providing services, regional differences in cost of living, or the funding received by other providers. For example, a provider organization that received 20 additional unrestricted slots in FY05 receives less for those slots than a provider organization that received 20 additional unrestricted slots at a later date (because the additional funding for the 20 new slots in 2005 was less than the additional funding for 20 new slots in the later year). As a result, one provider organization receives $3,100 for each unrestricted slot, while another receives $3,400 per slot. The $300 difference for each unrestricted slot is equivalent to a $6,000 difference in state funding for each public guardian employed by the organizations (assuming a 20 to 1 caseload for each public guardian).

DARS should also assess the actual cost of providing public guardianship services to determine whether current funding per slot is adequate. As a part of the evaluation, DARS should calculate the amount of increased funding required to ensure equitable funding to each provider for the same type of slot. In doing the assessment, DARS could consider whether regional differences in cost of living should factor into determining whether funding is equitable across provider organizations in different regions of the state. The evaluation should also consider the cost of any potential new responsibilities for public guardianship providers, such as staff costs and legal fees associated with periodic review hearings to determine the appropriateness of guardianship (Recommendation 14), completing a more detailed and comprehensive annual report (Recommendation 21), or new notification requirements (Recommendation 27, Recommendation 29, and Recommendation 31).

RECOMMENDATION 35

The General Assembly may wish to consider including one-time funding in the Appropriation Act for the Department for Aging and Rehabilitative Services (DARS) to hire a third party to study the need for expanding the capacity of the state's public guardianship program in total and by region; to assess the actual cost of providing expanded public guardianship services (personnel, overhead, etc.); and to assess the additional cost of providing equal funding to all provider organizations for the same types of public guardianship slots. DARS should submit the findings to the chairs of the House Appropriations and Senate Finance and Appropriations committees by October 1, 2023.

The extent to which existing provider organizations would be willing to provide additional public guardianship services is unknown. DARS has not issued a request for proposals for public guardianship providers since before 2015 when the agency received a sole source exemption because of the nature of public guardianship services, which allows the agency to contract with public services providers without going through the typical state procurement requirements.

DARS should issue a request for information (RFI) to determine whether organizations would be interested, willing, and have the capacity to participate in an expanded

public guardianship program. The RFI could be conducted in coordination with the DARS study on the need for additional public guardianship slots to identify any potential constraints to the program's expansion.

RECOMMENDATION 36

The Department for Aging and Rehabilitative Services (DARS) should issue a request for information for public guardianship services as soon as practicable to assess the availability of organizations to serve as public guardianship providers. DARS should include the results of the request in the report to the chairs of the House Appropriations and Senate Finance and Appropriations committees.

Expansion of the public program may need to be phased in over time because not all eligible participants could be accepted into the program immediately. Individuals may already have a private guardian, and an individual (or advocate) would need to petition the court to change the guardianship arrangement. A periodic court review of guardianship cases (Chapter 3), if implemented, could serve as one mechanism for reassigning adults under private guardianship to the public program. In addition, current provider organizations would not be able to take on additional clients immediately because new staff would need to be hired and trained. A phase-in period of two to three years may be appropriate.

Finally, expansion of the public program would likely require additional staffing resources at DARS to implement the program. Currently, DARS's public guardianship office has two staff and total annual spending of approximately $175,000. These two staff members' responsibilities include overseeing and providing assistance to public guardianship provider organizations, writing and managing contracts with provider organizations, coordinating training for public guardian representatives, developing regulations, and collecting and reporting data. Expansion of the public program would result in a greater administrative burden to oversee public guardian provider organizations because of larger caseloads at existing organizations (e.g., longer monitoring visits) and potentially more organizations to oversee. Likewise, the demand for assistance and support from DARS from public guardianship organization staff would likely increase. Assessing the demand for public guardianship program capacity, the actual cost of providing guardianship services, and the appropriateness of the size of public guardian maximum caseloads (Chapter 4), would also increase the workload for DARS staff. At least one additional public guardianship position at DARS may be required to carry out this expanded workload. The approximate annual cost could be $100,000.

7 Training and Oversight for Conservators

Conservators are responsible for managing the finances of incapacitated adults who courts determine are unable to manage their own financial affairs. The types of finances that conservators manage range from modest retirement accounts to large estates with multiple properties and investment accounts. Appropriate training and oversight are critical to conservators' ability to effectively manage the funds of adults under conservatorship.

Local commissioners of accounts oversee conservators. They review the initial inventory of a person's assets and income and annual reports submitted by conservators; review annual accounting reports and supporting documentation submitted by conservators; compel conservators to submit delinquent reports; hold administrative hearings when conservators are not adequately performing their duties; and notify law enforcement or the courts in cases of suspected financial mismanagement or exploitation.

Conservators often lack financial experience and would benefit from training

Conservators are often responsible for complex financial management activities. Conservator responsibilities range from daily activities, such as balancing a checking account, to more complex activities such as making decisions related to personal investments (brokerage accounts, 401[k] plans, etc.); ratifying or rejecting a contract; maintaining life, health, casualty, and liability insurance for the adult under conservatorship or legal dependents; borrowing or paying off debt; and selling real estate. The conservator is also responsible for preparing annual accounting reports that document all financial activities.

Conservators are not required to have a financial background, and the state does not require or offer any training for conservators. Only 5 percent of commissioners of accounts responding to JLARC's survey indicated they provide formal in-person or virtual training to conservators about how to complete inventories and annual accountings (sidebar). Instead of training, commissioners are more likely to provide written guidance or informal assistance, such as answering questions via phone and email. No state agency develops or provides formal training for conservators, although some written guidance is available (sidebar).

Commissioners of accounts indicated conservators need training. Forty-three percent of commissioners said conservators supervised by their office do not receive adequate training and guidance, and 61 percent said the conservators supervised by their office

JLARC staff surveyed commissioners of accounts on topics such as enforcement authority, guidance and training, and conservator compliance with reporting requirements. Seventy commissioners and assistant commissioners responded to the survey, representing at least 49 localities.

Written guidance documents for conservators include: Office of the Executive Secretary of the Supreme Court's *You've Been Appointed* document; Consumer Financial Protection Bureau's *Help for Court-Appointed Conservators in Virginia;* and various commissioner of accounts websites.

do not have adequate experience and knowledge to fulfill their fiduciary responsibilities. Several commissioners suggested conservators needed additional training, telling JLARC staff: "[Conservators] often seem to not know what they are supposed to be doing," and "Conservators are often ill-equipped… to handle the reporting requirements." Likewise, national experts and the National Guardianship Association standards emphasize the importance of training for conservators.

Conservators without relevant experience and training may not be able to adequately fulfill their responsibilities. For example, they may not understand requirements governing how money of the adult under conservatorship can be spent, their responsibility to act in the adult's best interest, and the need to keep the adult's money separate from their own. They also may be unaware of their reporting requirements, such as maintaining supporting documentation for financial transactions, which are critical for a commissioner of accounts to adequately oversee their activities.

Some states offer training for conservators and require conservators to participate. Idaho has an online training course that is required *before* an individual is appointed as a conservator by the court. Arizona has a licensing program for conservators, which involves completing training and passing an exam. Arizona also requires training for conservators who are not licensed. Nebraska offers a four-hour class for family members serving as conservator.

Virginia should require conservators to participate in training within a certain time period after they are appointed. Training should be primarily offered online through videos or webinars to make it accessible to conservators around the state, particularly lay conservators (e.g., family members). Different levels of training could be created to account for the needs and experience level of conservators, ranging from basic training about the duties, responsibilities, and reporting requirements, to more complex training on topics such as public benefit programs and managing investments. The training could be optional for experienced conservators already serving in that role.

Conservators should complete their initial training within the first four months after appointment, which is the time period conservators have to complete their first reporting requirement (initial inventory). Conservators should be required to complete the initial training, but more advanced training could be optional. Training should be developed by the state rather than individual commissioners of accounts to ensure that conservators around the state receive uniform and consistent training. Training should also be provided to conservators for free since many are family members of the adult under conservatorship and are serving in the role for modest or no compensation. Training requirements would apply to conservator appointments moving forward (for subsequent appointments, a conservator could use the same training certificate as proof that training was completed). Commissioners of accounts could be responsible for verifying that each conservator completes training. In cases where proof of training was not submitted, a commissioner could use existing authority to

The Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia developed the Commissioner of Accounts Manual, which provides guidance to commissioners of accounts on how to carry out their duties.

compel the conservator to complete training, submit proof of training, or refer the matter to the court (sidebar).

The Office of the Executive Secretary of the Supreme Court (OES), as the state's centralized agency for providing assistance to the courts, is the most appropriate state entity to coordinate the development of statewide training for conservators. OES staff lack the subject matter expertise to develop the training and therefore should contract with a third party or coordinate with subject matter experts, such as the Conference of Commissioners of Accounts and the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia, to develop the training (sidebar). Contracting with a third party to develop the training would have a one-time fiscal impact for OES. The training should be hosted on the OES website or other prominent location so it is readily available and easily accessible to conservators statewide.

Enforcement authority of commissioners of accounts includes issuing subpoenas to require conservators to provide documents; issuing an order to show cause if a conservator does not submit an inventory or accounting; and holding hearings to adjudicate claims (e.g., claims about the spending of money).

The Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia developed the Commissioner of Accounts Manual, which provides guidance to commissioners of accounts on how to carry out their duties.

RECOMMENDATION 37

The Office of the Executive Secretary of the Supreme Court of Virginia should coordinate with the Conference of Commissioners of Accounts and the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia to develop online training for conservators or contract with a third party to develop training. Training should include the responsibilities and duties of conservators, how to complete inventories and annual accounting reports, and more advanced financial management training on issues such as benefits and managing investments.

RECOMMENDATION 38

The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require conservators to complete state-provided training within four months of their court appointment, and consider amending Title 64.2, Chapter 12 of the Code of Virginia, to assign commissioners of accounts responsibility for verifying compliance with training requirements for conservators under their supervision.

Oversight of conservators is generally effective but could be strengthened to better protect adults

Oversight of conservators is important to ensure that conservators are fulfilling their responsibilities appropriately and that adults under conservatorship are protected from financial mismanagement and exploitation.

Commissioners of accounts have adequate authority to oversee conservators

Most commissioners of accounts indicated they have adequate authority to ensure conservators are complying with reporting requirements and to take action against conservators if needed. Commissioners can compel conservators to submit late re-

ports, require conservators to provide additional information and supporting documents, and take action against conservators who may be mismanaging the funds of the adult under conservatorship. A majority of commissioners responding to the JLARC survey (88 percent) indicated they had adequate authority to investigate conservators that their office suspected of mismanaging funds; 98 percent indicated that they had adequate authority to compel conservators to meet reporting requirements.

Conservator annual accounting reports allow for effective oversight; initial inventory report is less effective because of lack of verification

Local commissioners of accounts oversee conservators by reviewing their annual accounting reports of all financial transactions they conduct on behalf of an adult under conservatorship. The Code of Virginia requires conservators to submit an initial inventory within four months of being appointed, an accounting report six months after appointment, and an annual accounting report every year thereafter. The initial inventory is a comprehensive list of the assets owned by the adult under conservatorship, including items such as property, real estate, government benefits, trusts, and income from any other sources. The annual accounting report documents changes in assets and money spent during the past year (Figure 7-1). Conservators must include documentation for all transactions in the annual accounting, such as receipts, bank account statements, or investment account statements. The commissioner of accounts uses the initial inventory as a starting point and then uses the annual accounting report to ensure all funds in the inventory are accounted for.

FIGURE 7-1
Inventory and annual accounting reports provide detailed financial information

INITIAL INVENTORY

Inventory for Estate for Adult Under Conservatorship

Provide a description and value for each of the following:

- Personal estate under conservator's supervision and control
- Real estate in Virginia over which conservator has a power of sale
- Adult under conservatorship's other real estate in Virginia
- Adult under conservatorship's non-Virginia real estate
- Interest in any real or personal property that will pass to another at the adult under conservatorship's death by way of survivorship or beneficiary designation
- Adult under conservatorship's interest in any trust
- Adult under conservatorship's rights to periodic payments from certain agencies of the U.S. government
- Adult under conservatorship's right to periodic payments from any other source

STATEMENT OF CONSERVATOR: I hereby certify that to the best of my knowledge and belief this is an accurate and complete inventory of this estate made in accordance with my responsibilities under Virginia law.

STATEMENT OF COMMISSIONER: The Commissioner of Accounts has not independently verified the value of the items on the inventory, or the fact that they are the only assets of the estate. Inspected, found to be in proper form, and approved on [date].

ANNUAL ACCOUNTING

Account Summary for Adult Under Conservatorship

1. Beginning Assets (from inventory or prior account) $____
2. Receipts $____
3. Gains on Asset Sales* $____
4. Adjustments* $____
5. Total of 1, 2, 3 and 4 $____

6. Disbursements* $____
7. Losses on Asset Sales* $____
8. Distributions* (final account only) $____
9. Assets on Hand* (carrying value) $____
10. Total of 6, 7, 8 and 9 (must equal total on Line 5) $____

Any amounts received as Designated Representative but not included in 2 above $____

Market Value of Assets on Hand $____

STATEMENT OF CONSERVATOR: I declare, under penalty of perjury, that this is a true and accurate accounting of the estate for the period described and that to the best of my knowledge all taxes have been paid or provided for.

*Attach itemized list

SOURCE: Illustrative Inventory for Estate of Incapacitated Adult form and Account for Incapacitated Adult form.

The vast majority (98 percent) of commissioners of accounts responding to the JLARC survey indicated that the *annual accounting* reports are useful for identifying mismanagement of funds, fraud, or financial exploitation. The accounting reports require conservators to provide detailed information and documentation, which help commissioners verify that the information provided is accurate and complete. One private guardian said the state does a much better job monitoring conservators than guardians, stating: "God forbid you don't account for every dollar spent." An elder law attorney who serves as a conservator in Virginia and who is familiar with how other states monitor conservators indicated that Virginia's annual accounting report and review from the local commissioner of accounts is the most detailed audit and rigorous oversight they have experienced.

Commissioners indicated that the *initial inventory* report is less useful because conservators self-report the assets and income of the adult under conservatorship. One commissioner stated: "We do NOT verify that the assets on the inventory are either accurate or complete. In fact, the language on the form says that." Neither commissioners of accounts nor any other entity is responsible for verifying the accuracy and completeness of the information.

Without verification of the initial inventory, there is a risk that not all of an adult's assets are reported, and the commissioner of accounts would be unable to detect this. For example, a conservator could have access to a portion of an adult's assets that the commissioner of accounts does not know about, potentially allowing for unsupervised use of those funds. One commissioner stated: "The review by the commissioner of accounts depends on accuracy of reporting in the inventory… A conservator could omit assets and use those assets for themselves rather than the [adult under conservatorship], and this office would have no way of knowing of such inaccuracy."

It is unclear whether the lack of verification of initial inventories has led to conservators' misuse of funds. Commissioners identified the lack of verification as a concern, but several indicated that they believe financial exploitation is rare. One noted that a conservator is often the person who *prevents* financial exploitation from being perpetrated by a family member or friend and that financial exploitation is more common against elderly adults who *do not* have a conservator. Commissioners indicated that a lack of training and experience among conservators was a more common problem than potential financial exploitation.

Despite the lack of independent verification of inventories, several protections are intended to ensure these reports are accurate and complete. Conservators must certify on the inventory form that the information provided is accurate and complete to the best of their knowledge. Under Virginia law, financial exploitation of a mentally incapacitated individual is a criminal offense. State law also allows any interested person to object to the administration of an estate, and a commissioner of accounts can hold a hearing to address the individual's objection. Finally, the guardian ad litem (GAL) assesses the suitability of a potential conservator during the court appointment process.

Improved accountability to ensure accurate initial inventories could be achieved in several ways

There are several potential approaches to hold conservators more accountable for preparing an accurate initial inventory of financial assets for adults under conservatorship. They vary in their potential to identify and prevent inaccurate inventories. Two of the approaches should not impose a significant additional burden on the conservatorship system.

Review by family members

The Code of Virginia (§ 64.2-2002) requires a petition for the appointment of a guardian/conservator to include the names and addresses of family members and/or other individuals who have been involved in the adult's care.

The state should require conservators to provide notice to the family or friends of an adult under conservatorship (those included in the initial petition to the court) that (1) an initial inventory will be submitted; (2) they can request a copy of the inventory from the conservator; and (3) they have a certain period of time to submit an objection to the inventory's contents with the commissioner of accounts (sidebar). This would provide an opportunity for individuals, who are presumably familiar with the assets and income of the adult being placed under conservatorship, to review the initial inventory for accuracy and completeness and object when appropriate. This is similar to the "notice of probate" requirements for executors of estates in Virginia (e.g., personal representatives), who are required to provide written notice to beneficiaries and heirs of the deceased to inform them that they are entitled to a copy of the initial inventory and other documents. Conservators could also be required to provide the commissioner of accounts with a copy of the notice and a list of family and friends to whom the notice was sent to verify they have carried out this requirement.

RECOMMENDATION 39

The General Assembly may wish to consider amending Title 64.2, Chapter 12 of the Code of Virginia to require conservators to (i) notify family members and other interested parties, who are specified in the initial petition for conservatorship, that an initial inventory of assets will be submitted, and (ii) provide copies of the initial inventory to notified parties, if requested, and inform these parties that they may raise any concerns about the accuracy and completeness of the inventory with the commissioner of accounts overseeing the conservator.

Asset verification during court appointment of conservator

Commissioners of accounts suggested the court could more formally assess and report on the financial resources of adults under consideration for conservatorship and provide this information to them. Commissioners of accounts could then use the information to verify the initial inventory. One commissioner explained in the survey: "It would be very helpful if the court order appointing the conservator identified with specificity the income and assets belonging to the [adult under conservatorship]. We would then have a document to which we can compare the inventory."

Some or all of an adult's assets and income are identified during the court process for appointing a conservator, but this information is not required to be fully documented. The petitioner is required to identify the assets and income of an adult being considered for conservatorship *to the extent known* and to document that information in their petition (sidebar). In addition, the GAL is required to recommend the amount of surety on a conservator's bond (sidebar). To make this recommendation, GALs examine an adult's finances and may identify additional assets or income that were not identified by the petitioner. However, statute does not *require* GALs to document in their reports the financial information discovered when fulfilling this responsibility (although some GALs include this information in their report). GALs should be required to list in their court report all of an adult's assets and income they considered when determining the amount of surety for the conservator's bond.

The Code of Virginia (§ 64.2-2002) requires a petition for the appointment of a guardian/conservator to include "a statement of the financial resources of the respondent that shall, *to the extent known*, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts."

RECOMMENDATION 40

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require guardians ad litem to include in their report to the court all assets and income of adults under consideration for guardianship that they identify when determining the amount of surety on a conservator's bond.

Surety bond is the agreed upon dollar amount that the conservator must pay the court if they breach their fiduciary duty to the adult under conservatorship. The bond amount is calculated using total assets of the adult under conservatorship, and is confirmed by the commissioner of accounts.

The court order appointing a conservator should include all known information about an adult's assets and income to provide the commissioner of accounts with at least some baseline information. Currently, commissioners of accounts receive a copy of the court order when a conservator is appointed, but the order is not required to list assets or income that have been identified by the court. A commissioner of accounts has to request or access the petition and/or the GAL report if they wish to reference the assets and income identified in those documents. Requiring the court to include an adult's known financial resources in the court order would not necessarily provide the commissioner of accounts with an exhaustive list of resources in every case, as the court may not have identified all assets and income. However, the commissioner would have at least some financial information to which they can compare the contents of the initial inventory. This information could be placed in an addendum to the court order and placed under seal (sidebar) in the court case file to facilitate confidentiality if the court deems privacy to be a concern.

Documents in a court case file can be **placed under seal** by the court, making them inaccessible to the public without an order from a judge to unseal the document.

RECOMMENDATION 41

The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to require the court order appointing a conservator to include a list of the financial resources of the adult being placed under conservatorship to the extent known as identified in the petition for conservatorship and the guardian ad litem report.

Requiring the GAL or the petitioner to identify and verify *all* of an adult's assets and income with certainty is likely not feasible for all cases. For example, it may not be

realistic to expect the petitioner and GAL to locate all assets and income sources for an adult with a complex or opaque financial situation. Requiring an exhaustive inventory during the court process could result in court delays and higher costs (in terms of payment to GALs for hours worked for conservator appointment hearings).

Audit by commissioners of accounts

Another option would be to require commissioners of accounts to verify that the information in initial inventories is accurate and complete through audits. This option would require commissioners to conduct a comprehensive in-depth audit of some, or all, conservator initial inventories. This approach would provide the greatest assurance that the initial inventory is accurate and complete.

Staffing at commissioner of accounts offices varies widely. Some offices in small localities do not have a full-time staff member who oversees conservators, and several only have someone who spends a quarter or less of their time on conservators.

There are several potential disadvantages of requiring commissioners to audit some or all initial inventories received by their office. This approach would increase the commissioners' workload substantially and would be particularly challenging for small commissioners offices (sidebar). It would also increase the costs to adults under conservatorship because commissioners charge fees for their services, which are typically paid for with the assets of the adult. A routine review of an initial inventory has a fee of about $100 to $300, and an in-depth audit would likely cost significantly more. Commissioners would also likely need additional legal authority to access individuals' bank records and other relevant financial documents. Finally, an audit would be burdensome to conservators, particularly family conservators who could already be overburdened while serving as a caretaker.

Commissioners have adequate guidance for reviewing conservator compensation

The **Guidelines for Fiduciary Compensation** allow for a conservator's fee based on income (5 percent of all non-investment income) and the value of assets (0.5 percent to 1 percent depending on market value).

Most commissioners of accounts indicated they have adequate guidance for evaluating the compensation conservators receive from the estate of the adult under conservatorship. The Code of Virginia states that commissioners of accounts shall allow a "reasonable compensation" for conservators, but does not explicitly require commissioners to approve the compensation amount. There is no specific definition of "reasonable compensation," and most commissioners use the guidelines for fiduciary compensation (sidebar) in the Commissioner of Accounts Manual to determine what is reasonable. The manual explains that the fee schedule serves as guidance and is not a requirement "because of the many factors involved in determining reasonable compensation." Nevertheless, commissioners interviewed by JLARC staff and most responding to the JLARC survey indicated that the guidance is adequate for them to effectively carry out this role (94 percent of survey respondents).

Decentralized commissioner of accounts system means oversight of conservators may vary in scope and quality

Virginia's system of commissioners of accounts is decentralized, and there are differences in the quality and scope of their oversight of conservators (sidebar). Each commissioner can have different procedures for reviewing accountings, IT, or other systems to track conservators' compliance with reporting deadlines, requirements, and training for their staff, and approaches for deciding what concerns merit additional follow-up with a conservator. Some commissioners have full-time professional staff, such as accountants, who review reports submitted by conservators (and other fiduciaries), and other commissioners have no staff and perform all duties themselves. Many commissioners also maintain and operate their own law practice concurrently.

There is **no centralized state oversight** of commissioners of accounts. They are local officials who are required to be attorneys. They are appointed by local circuit judges and overseen by local circuit courts.

Differences in workload and staffing resources can result in differences in the timeliness of a commissioner's review or the level of scrutiny a commissioner is able to apply to an annual accounting report. Several state agency staff and national experts noted that Virginia's decentralized oversight of conservators is unique, and that Virginia's system can result in different levels of oversight for conservators depending on the commissioner they report to. One commissioner of accounts illustrated this point, sharing that their predecessor did not conduct much enforcement with conservators who did not submit complete or timely reports, stating that the office had "diverted from statute without anyone noticing."

The Judicial Council of Virginia has developed guidance to promote standardization among commissioners of accounts, but commissioners are not required to follow it, which can also contribute to inconsistency in how commissioners conduct oversight. The primary guidance is the Commissioner of Accounts Manual (sidebar). The Virginia Conference of Commissioners of Accounts also shares information with commissioners' offices through annual meetings, continuing education events, and an email listserv.

The Commissioner of Accounts Manual was developed because of a lack of direction in state law for commissioners. It provides guidance on procedures and practices considered to be "best practices" on topics such as surety bond coverage, allowable expenditures, and financial exploitation.

To identify and address potential inconsistencies in commissioners' oversight of conservators, OES could be required to contract with a third party to perform a one-time review of a sample of annual accounting reports from across the state. The goal of the review would not be to penalize commissioners of accounts if issues are found, but to provide updated or additional guidance to commissioners that will improve their ability to oversee conservators in the future (sidebar). The results of the review could also inform the development of training for new conservators if, for example, common reporting errors are identified across the sample. The need for further or ongoing reviews could be determined based on the findings and result of this initial review.

The chief judge of each circuit court has ultimate responsibility and authority for the supervision of the commissioner of accounts in their locality.

The review could assess several aspects of how commissioners carry out their duty to oversee conservators. This could include the extent to which:

- accountings are submitted by conservators on time, and commissioners conduct appropriate follow-up if they are submitted late or are incomplete;

- accountings are reviewed by commissioners in a timely manner;
- expenditures reported in the accounting align with the supporting documentation provided by the conservator;
- accountings are mathematically correct;
- commissioners followed up on potential irregularities, such as substantial changes in expenditures; and
- commissioners are following guidelines when reviewing conservator compensation and provide adequate justification in cases where they deviate from the guidelines.

Key considerations would be the number of accountings that would be reviewed and whether the reports reviewed would be selected randomly or would focus on certain types of cases, such as high-asset estates.

OES, as the state's centralized agency for providing assistance to the courts, is the most appropriate state entity to manage the contracting process. OES could consult with subject-matter experts, such as the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia and the Conference of Commissioners of Accounts, when establishing the contract. Commissioners indicated that the specialized nature of the role of the commissioner of accounts could necessitate that the third-party performing the review have previous experience in that role or at least a strong understanding of it. Contracting with a third party to perform the audit would have a one-time fiscal impact for OES.

RECOMMENDATION 42

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should collaborate with the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia and the Conference of Commissioners of Accounts to contract with a third party to review a subset of conservator annual accounting reports. The review should, at minimum, assess the timeliness of submission and review of the reports, confirm that information provided by conservators is accurate and complete, assess the accuracy and thoroughness of the review performed by commissioners of accounts, and evaluate how commissioners are reviewing conservator compensation. OES should be directed to report the findings of the review to the Conference of Commissioners of Accounts and the chief circuit court judge and commissioner of accounts in each locality included in the review, and to use the findings to inform the development and/or refinement of guidance for commissioners of accounts and new conservator training.

Appendix A: Study resolution

Adequacy of Virginia's Court-Appointed Guardian and Conservator system

Authorized by the Commission on November 9, 2020

WHEREAS, court-appointed guardians and conservators support individuals who are incapacitated and in need of assistance in making medical, financial, or daily living decisions and who have no other suitable person to serve as their guardian or conservator; and

WHEREAS, court-appointed guardians are responsible for supervising their wards' medical care, overseeing residential care, monitoring social services benefits, and advocating on behalf of incapacitated persons; and

WHEREAS, court-appointed conservators are responsible for managing the estate and financial affairs of an incapacitated person; and

WHEREAS, across the nation, there has been a rise in cases of abuse, neglect, and exploitation of elderly and incapacitated persons; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to study the adequacy of Virginia's system of court-appointed guardians and conservators.

In conducting its study, the Joint Legislative Audit and Review Commission shall (i) identify the Commonwealth's current laws that help prevent and remedy abuse, neglect, and exploitation of elderly and incapacitated persons; (ii) examine opportunities to strengthen the Commonwealth's laws to better prevent and remedy abuse, neglect, and exploitation of such persons, including instances in which such abuse, neglect, or exploitation is committed by a court-appointed guardian or conservator; (iii) determine the maximum number of wards per guardian that should be permitted to ensure a high level of oversight and care; (iv) identify appropriate training, qualification, and oversight requirements for court-appointed guardians; (v) determine the types and amount of information that court-appointed guardians should be required to provide when making decisions on behalf of their ward and identify the parties to whom such information should be provided; (vi) consider one or more processes that could be implemented to allow for the receipt and investigation of complaints regarding the actions of court-appointed guardians; and (vii) review the adequacy of oversight of the guardian and conservator system.

JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Department for Aging and Rehabilitative Services, Department of Social Services, Office of the Executive Secretary of the Supreme Court, Virginia Public Guardian and Conservator Advisory Board, Community Services Boards, and local departments of social services shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

Appendix B: Research activities and methods

Key research activities performed by JLARC staff for this study included:

- interviews with state agency staff, directors of local guardianship provider organizations, private guardians, local circuit court clerks, circuit court judges, staff at local government agencies (including commissioners of accounts and local departments of social services), elder law attorneys who serve as guardians ad litem in guardianship cases or are members of the Virginia Academy of Elder Law Attorneys (VAELA), stakeholders and subject-matter experts, and guardianship advocates (including family members of adults under guardianship);
- attendance at, and observations of, board meetings and Virginia's Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) stakeholder working group meetings;
- surveys of public guardianship provider organizations, commissioners of accounts, local departments of social services (LDSS), and members of the Public Guardian and Conservator Advisory Board;
- analysis of court data and guardianship data;
- review of guardianship documents and court case files, including guardianship petitions, court orders, guardian ad litem reports, guardianship annual reports, and conservator inventories and accountings;
- review of guardianship and Adult Protective Services (APS) spending; and
- review of other documents and literature.

Structured interviews and focus groups

Structured interviews were a key research method for this report. JLARC staff conducted 70 interviews and focus groups with over 94 individuals from several agencies and organizations. Key interviewees included:

- state agency staff, including staff from the Department for Aging and Rehabilitative Services (DARS) and the Office of the Executive Secretary of the Supreme Court of Virginia (OES);
- guardianship providers, including public guardianship provider organizations and private guardians;
- court officials, including judges, local circuit court clerks, and guardians ad litem;
- local government agencies, including commissioners of accounts and LDSS; and
- stakeholders and subject-matter experts.

Staff also conducted four focus groups. Two focus groups were conducted with six guardians ad litem, and two were conducted with 12 individuals representing several hospitals around the state and the Virginia Hospital and Healthcare Association.

State agencies

JLARC staff conducted over 20 interviews with staff from several state agencies, including DARS, OES, the Department of Behavioral Health and Developmental Services (DBHDS), and the Virginia Office of the State Long-term Care Ombudsman.

JLARC staff conducted over 10 interviews with DARS staff, including multiple interviews with the program coordinator of DARS's Public Guardian and Conservator Program and the director of DARS's APS Division. The primary purpose of these interviews was to understand how the programs are administered and services are provided, the challenges faced by the public guardianship and APS programs, and the availability of data. Staff also interviewed the commissioner of DARS and three DARS APS regional consultants. Finally, interviews were conducted with staff that support the Public Guardian and Conservator Advisory Board—as well as members of each board.

JLARC staff conducted several interviews with OES staff. The primary goal of these interviews was to understand the role of the courts in the guardianship appointment process, assess the availability of court data, and discuss ideas for improving guardianship in Virginia.

In addition to DARS and OES, JLARC staff interviewed staff at other state agencies that have a role in guardianship in Virginia or interact with guardians, including staff at DBHDS and the Virginia Office of the State Long-term Care Ombudsman.

Public and private guardianship providers

JLARC staff conducted interviews with the directors of four public provider organizations and four private guardians. Topics discussed with the public provider organizations included the requirements, training, and oversight of the public guardianship program; the assistance provided by DARS; challenges associated with providing public guardianship services; and potential improvements to the public program.

Staff interviewed four private guardians from the central and northern Virginia regions who are considered large-scale guardians because they have more than 20 clients. Interview topics included types of activities conducted by private guardians; challenges associated with serving as a private guardian; the demand for private guardianship services; perspectives on the effectiveness of the annual reporting requirements; the qualifications, training, guidance, and requirements for private guardians; perspectives on concerns that some individuals have with private guardians (e.g., denying visitation to family members, adequacy of care provided by guardians); and other issues such as complaints, compensation, and the court process.

Court officials

JLARC staff conducted structured interviews with several court officials across the commonwealth, including four judges and three local circuit court clerks. JLARC supplemented information from interviews with judges by requesting written responses to select questions from 12 additional judges. The interviews with judges (and written responses) focused on the training and guidance they receive for guardianship cases; their perspectives on other court staff involved in guardianship cases, such as guardians ad litem; and other aspects of the court process, including conflicts of interest and the use of counsel for adults being considered for guardianship. Court clerks were interviewed to obtain their

perspectives on the guardianship court process, the adequacy of training for court staff and guardians, and the availability of court data.

JLARC staff conducted focus groups with six guardians ad litem and four individual interviews with attorneys who have experience serving as a guardian ad litem. The guardian ad litem focus groups and interviews covered topics such as the duties of guardians ad litem, adequacy of training they receive, authority to access records, and the court appointment and evaluation processes.

Local agencies

JLARC staff conducted interviews with several local government agencies, including five local departments of social services and three commissioners of accounts. LDSS staff were interviewed to learn about their processes for handling APS cases, their perspectives on their authority to investigate APS cases, coordination and cooperation with other entities, and APS staff's review of guardianship annual reports and the usefulness of these reports. Staff also interviewed the Arlington County Department of Human Services to discuss a recent pilot project focused on improving aspects of guardianship, including reporting, oversight, and providing guardians with training and resources. Commissioners of accounts were interviewed to learn about their role in overseeing conservators, the usefulness of inventories and annual accountings in identifying mismanagement of funds or financial exploitation, their authority to ensure compliance with reporting requirements, their ability to review reports in a timely manner, their role in assessing the appropriateness of conservator fees and compensation, training and guidance provided to conservators, and their perspectives on the qualifications of conservators.

Staff also interviewed staff from two area agencies on aging and a local community services board because these agencies frequently interact with individuals under guardianship.

Stakeholders and subject-matter experts

JLARC staff interviewed representatives from several stakeholder organizations that interact with or have a role in guardianship in Virginia, including;

- disAbility Law Center of Virginia;
- Virginia Hospital and Healthcare Association;
- National Guardianship Association;
- Virginia Association of Elder Law Attorneys;
- Virginia Network of Private Providers; and
- Virginia Poverty Law Center.

The purpose of these interviews was to understand each organization's role in guardianship and adult mistreatment, obtain their perspectives on the strengths and weaknesses of guardianship in Virginia, and discuss potential opportunities to improve it. JLARC staff also asked their opinions on the effectiveness of DARS; the adequacy of Virginia's laws to prevent and address adult abuse, neglect and financial exploitation; and whether they were aware of effective practices in other states.

Staff interviewed several subject-matter experts, several of whom serve on the Virginia Guardian and Conservator Advisory Board and are considered national experts, in additional to having expertise

with guardianship in Virginia. These individuals included staff from the Virginia Tech Center on Gerontology and the Virginia Center on Aging at Virginia Commonwealth University, a former legislative staff member, and an attorney and former staff member from the American Bar Association. The purpose of these interviews was to obtain their perspectives on the strengths and weaknesses of guardianship in Virginia, discuss potential opportunities to improve it, and learn about best practices. Staff also interviewed a journalist with experience covering guardianship issues in Virginia.

Family members and guardianship advocates

JLARC staff interviewed six guardianship advocates, most of whom had family members under private guardianship, to discuss their experiences and concerns with private guardianship in Virginia. Interviewees discussed challenges with the court process, their concerns with the care provided to their family members, visitation and contact restriction imposed by guardians, shortcomings of private guardianship in Virginia, and changes that should be made to improve guardianship in Virginia.

Observations of board and stakeholder group meetings

JLARC staff attended and observed two quarterly meetings of the Virginia Guardian and Conservator Advisory Board and two meetings of Virginia's WINGS working group. All of these meetings were held online.

Staff attended the Virginia Guardian and Conservator Advisory Board meetings to receive updates on the public guardianship program, learn about the different types of issues discussed at the meetings, and assess the level of engagement by board members and the types of advice they provide. Staff also observed quarterly meetings of WINGS—a broad-based and multi-disciplinary group that includes judges, court clerks, hospital and private provider association representatives, elder law attorneys, state and national experts, state and local staff, and family members of individuals under guardianship—to learn about the guardianship issues the group is working to address.

Surveys

Four surveys were conducted for this study: (1) a survey of public guardianship provider organizations, (2) a survey of commissioners of accounts, (3) a survey of local departments of social services, and (4) a survey of the Public Guardian and Conservator Advisory Board.

Survey of public guardianship provider organizations

JLARC staff administered an electronic survey to the directors and public guardians at each of the 13 public guardianship provider organizations. Staff sent the survey to each of the 13 program directors, and asked them to forward the survey to each public guardian in their organization. JLARC received a total of 49 survey responses: 13 program directors (100 percent) and 36 public guardians responded.

The survey covered numerous topics, including program capacity and funding; waitlists; recruitment and retention of public guardians; employee job satisfaction and compensation; workload; qualifications and other requirements for public guardians; training; assistance, oversight, and guidance

provided by DARS and by each provider organization; usefulness of annual guardianship reports; complaints about public guardians; and restoration of rights.

Survey of commissioners of accounts

JLARC staff administered an electronic survey to all commissioners of accounts and assistant commissioners of accounts in Virginia. Seventy commissioners and assistant commissioners responded to the survey, representing 49 localities. JLARC staff are unable to calculate a response rate for individual commissioners and assistant commissioners because the Conference of Commissioners of Accounts distributed the survey on behalf of JLARC, and the exact number of individuals who received it is not known.

Survey topics included workload, conservator compliance with reporting requirements, timeliness of review of conservator annual accountings, usefulness of annual accountings, authority of commissioners, guidance for commissioners of accounts, complaints against conservators, guidance and training for conservators, and conservator fees.

Survey of local departments of social services

JLARC staff administered an electronic survey for several types of staff at local departments of social services: LDSS directors, APS program managers and supervisors, APS caseworkers and investigators, and other staff who review annual guardianship reports. DARS staff sent the survey to all LDSS directors on JLARC's behalf, and LDSS directors were asked to forward the survey to the appropriate staff in their agency. JLARC received survey responses from 331 staff from 108 local departments (90 percent of all departments). JLARC staff are unable to calculate a response rate from LDSS staff because agency directors distributed the survey to staff members on behalf of JLARC, and the exact number that received it is unknown.

The survey covered two broad topic areas: the APS investigative function and the agency's review of annual guardianship reports. Specific topics covered in the APS section of the survey included training, technical assistance from DARS, authority to investigate and address APS cases and cases regarding guardians and guardianship clients, APS relationships with law enforcement, and adequacy of funding for APS. Topics covered in the section on the agency's review of annual guardianship reports included guardians' compliance with reporting requirements, usefulness of the annual reports, investigations of a guardian and/or adult under guardianship based on the annual report, and guidance for LDSS staff for reviewing annual reports. The survey also included questions about complaints about guardians and other activities the LDSS may perform related to guardians.

Survey of Public Guardian and Conservator Advisory Board members

JLARC staff administered an electronic survey to the members of the Virginia Public Guardian and Conservator Advisory Board. Topics included board member engagement, guidance and support of DARS staff, effectiveness of the board, the board's responsibility and authority, and opinions on public and private guardianship in Virginia. JLARC received survey responses from nine board members, for an overall response rate of 60 percent.

Data collection and analysis

JLARC staff conducted several types of data analyses using data from two primary sources: OES's court case management system, which is used by local courts, and DARS's PeerPlace system, which is primarily used by LDSS staff. JLARC staff used this data to:

- calculate the number of adults under guardianship for each private guardian in the state;
- calculate the number of guardianship petitions each year and the rate at which different guardianship arrangements (e.g., full guardian and conservator, conservator only, limited guardianship) are put in place by the court;
- identify the most common petitioners for guardianship (e.g., health care facilities);
- determine the number of adults under guardianship who have been a victim of mistreatment in a substantiated APS complaint;
- determine whether any guardians had substantiated APS complaints for mistreating an adult under their guardianship, or another adult;
- determine whether any guardians have had criminal charges or convictions for adult abuse, neglect, or financial exploitation; and
- calculate the number of charges, convictions, and types of sentences for criminal incidents of adult abuse, neglect, and financial exploitation.

Number of adults under private guardianship

JLARC staff used PeerPlace data to calculate the number of people under private guardianship. The data contains an entry for each person each year a guardianship annual report is sent to the LDSS. Using SAS, the data was unduplicated by a unique client ID, the client's locality of residence, and report due date. Staff used the annual guardian report due date to calculate the fiscal year(s) in which an adult was under guardianship, and counted the number of people under guardianship in FY20.

Guardianship petitions, petitioners, and arrangements

JLARC staff used circuit court civil data from OES's Court Case Management System (CCMS) to determine (1) the number of guardianship petitions each year and (2) the rate at which different guardianship arrangements were used by courts.

A total of 10,055 cases appeared in the OES data JLARC received for FY16 through Q3 of FY21. The case outcome was unclear in about 10 percent of cases, but 9,078 cases had "valid" final resolutions:

- guardian and/or conservator was appointed;
- guardian was removed or released (occurs when a guardian needs to be changed);
- case dismissed;
- case withdrawn by the petitioner; or
- rights/capacity were restored.

The analysis did not include cases from Fairfax County or Alexandria because their data does not contain information to determine the case outcome. However, JLARC staff were able to project the

total number of resolved petitions by using the total number of filings from Fairfax County and Alexandria (available from OES outside of the CCMS data) and multiplying the number by the percentage of filings from all other localities that were resolved. Staff were also able to project the total number of full guardianship appointments in Fairfax County and Alexandria by using the projected filings and multiplying the number by the percentage of cases from all other localities that resulted in the appointment of a full guardian.

JLARC staff also used this data to identify the most common petitioners—that is, petitioners who bring the highest volume of cases to the court—for use in case file reviews.

Adults under guardianship as victims of mistreatment

JLARC staff used PeerPlace APS and guardianship data to attempt to find adults under guardianship who were victims of mistreatment. PeerPlace is a case management database with different screens where users enter data about APS and guardianship cases. Although both are housed in PeerPlace, APS and guardianship data come from different data tables that had to be merged together for this analysis. JLARC staff used SAS to attempt to match adults under guardianship with adults listed as alleged victims in APS complaints using name, locality, and a unique client ID. However, because of limitations with PeerPlace data, including missing and incorrect data, staff could not accurately match adults under guardianship with adults listed as alleged victims in APS cases.

Guardians as perpetrators of mistreatment against adults under their care in APS complaints

Using PeerPlace guardianship and APS data, JLARC staff matched guardian names with names of alleged perpetrators of mistreatment in APS complaints using a procedure in SAS that outputs a data set with potential matches based on full or partial matches of guardian first name, last name, and locality. Staff then manually checked each match to determine which matches were accurate. Using the APS reports identified through this process, JLARC staff manually examined APS report records to determine whether the victim in the case was the adult under guardianship. Staff attempted to identify cases where a guardian was the alleged perpetrator against an adult not under their guardianship. However, because of missing and inconsistent data, staff could not reliably identify these individuals.

Criminal charges and convictions of guardians for adult abuse, neglect, or exploitation

Using PeerPlace guardianship and OES CCMS criminal court data, JLARC staff matched guardian names with names of individuals charged with or convicted of crimes related to adult abuse, neglect, or financial exploitation. Staff used the same matching procedure in SAS that outputs a data set with potential matches based on full or partial matches of guardian first name and last name. Staff then manually checked each match to determine which matches were accurate.

Criminal charges, convictions, and sentences for adult abuse, neglect, and exploitation

JLARC staff used OES CCMS criminal data from circuit and general district courts, and adults charged in juvenile and domestic relations court, to calculate the number of charges and convictions and the types of sentences given for crimes involving abuse, neglect, and financial exploitation of vulnerable adults. Data for FY11 through Q3 of FY21 were used. A total of 915 charges for abuse,

neglect, or financial exploitation of an incapacitated adult occurred between FY11 and FY21. However, 299 of these charges were not valid for the analysis because either the outcome was not clear, the outcome involved transfer to another court, or the case was an appeal. JLARC staff ultimately used the remaining 616 charges for its analysis. Charges and convictions were counted using Virginia Crime Codes.

Review of guardianship documents and court case files

JLARC staff reviewed guardian and conservator court case files to support several research activities. Staff accessed the files electronically for circuit courts in 23 localities using the state's online case imaging system called Officer of the Court Remote Access (OCRA), or the locality-specific case imaging system where a locality does not use OCRA. Altogether, these localities represented 73 percent of guardianship and/or conservatorship court cases from 2016 to 2020.

JLARC staff reviewed over 500 case files for guardianship and/or conservatorship cases from 2016 to 2020. Case files typically included documents such as guardianship petitions, court orders, guardian ad litem reports, and annual guardianship reports.

JLARC staff reviewed:

- 418 cases to determine whether individuals being considered for guardianship were indigent and who served as the guardian ad litem;
- 54 detailed case files to assess if guardianship cases were fulfilling requirements outlined in Code, specifically: evaluated court documents such as petitions, clinical evaluations, guardian ad litem reports, and court orders for completeness, level of detail, and overall compliance with statutory intent; examined the notice process to determine how many people were served notice, and if anyone other than family received notice; and assessed the number of hours and court fees guardians ad litem worked on guardianship cases (median and range);
- approximately 100 guardianship annual reports and 30 conservator reports to determine the type of information provided, the level of detail, and the usefulness of the information provided;
- 30 cases where an adult had their rights restored to identify the type of guardian they were served by (public vs. private), who petitioned the court to restore their rights, and the reason for the restoration of rights.

Review of public guardianship and APS spending

JLARC staff examined spending related to the public guardianship program, including funding allocated to provider organizations for their provision of public guardianship services and administrative costs associated with DARS's management of the program. Provider organization funding was assessed by type of public guardianship slot and by provider organization. DARS program administrative costs were examined over the past five years.

JLARC staff examined spending related to APS, including funding allocated to LDSS specifically for services provided to adults who were the subject of a substantiated APS complaint, as well as costs associated with DARS's central APS office for FY16 through FY21.

Review of documents and literature

JLARC staff reviewed many other documents and literature pertaining to guardianship and APS in Virginia and other states, such as:

- Virginia laws, regulations, policies, and guidance documents;
- national guardianship standards and best practices;
- DARS documents on the public guardianship program and APS;
- prior studies and reports on issues related to guardianship in Virginia and the U.S.; and
- other states' laws, regulations, and policies.

Review of Virginia laws, regulations, policies, and guidance documents

JLARC staff reviewed state laws and regulations related to public and private guardianship and APS. Guardianship laws and regulations were reviewed to determine the extent to which they comply with national standards and best practices, and to assess differences between public and private guardianship. APS laws were reviewed to determine whether they are adequate to prevent and remedy abuse, neglect, and exploitation of elderly and incapacitated adults in Virginia. Staff also reviewed various policies and guidance documents, including APS policies, policies for reviewing guardianship annual reports, and guidance documents for commissioners of accounts (primarily the Commissioner of Accounts Manual).

Review of national guardianship standards and best practices

JLARC staff reviewed guardianship standards and best practices developed by several national organizations, including:

- National Guardianship Association's Standards of Care, Agency Standards, and Ethical Standards;
- National Probate Court Standards; and
- Center for Guardianship Certification requirements.

The team also reviewed the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA), a model guardianship law developed by the Uniform Law Commission that states can choose to implement.

Several best practices documents were also reviewed:

- *Adult Guardianship Guide: A Guide to Plan, Develop, and Sustain a Comprehensive Court Guardianship and Conservatorship Program*, National Association of Court Management (2013-14);
- *Adult Guardianship Court Data and Issues: Results from an Online Survey* (2010);
- *Guardianship Monitoring: Promising State and Local Court Practices to Protect Incapacitated Older Adults,* Karp and Wood (2008);

- *Guarding the Guardians: Promising Practices for Court Monitoring*, Karp and Wood (2007);
- *Wards of the State: A National Study of Public Guardianship*, Teaster, Wood, Karp, etc. (2005); and
- *Steps to Enhance Guardianship Monitoring*, Sally Balch Hurme;

In addition, JLARC staff conducted research to compare guardianship and conservatorship practices in Virginia to those in other states. The American Bar Association has several publications that facilitated these other states comparison, including areas of law related to the court process to appoint a guardian, oversight of guardians, periodic review hearings for guardianship cases, and guardianship visitation and contact laws.

DARS documents on the public guardianship program and APS

JLARC staff requested and received various documents from DARS on the public guardianship program. Documents include monitoring outcome reports for the most recent DARS oversight reviews of the 13 public provider organizations; monitoring questionnaires completed by each public provider organization, which are part of the DARS oversight process; quarterly data reports; current and previous contracts with public guardianship provider organizations; DARS biennial reports to the General Assembly for 2018 and 2020; DARS annual APS division reports; and agendas from DARS annual training conferences from 2017 to 2020.

Finally, JLARC staff reviewed several reports and media articles related to guardianship, including those from the U.S. Government Accountability Office, National Center for State Courts, Virginia Joint Commission on Health Care, U.S. Senate Special Committee on Aging, and state and local media sources.

Appendix C: Example guardianship court order

The following text is a sample court order appointing a guardian and conservator; it serves as an example of the personal rights that can be removed by the court when a guardian is appointed.

Order

This matter came on this day to be heard in open Court, at the address stated in the Notice of Hearing, upon the papers formerly read and the Petition, appearing by counsel, to appoint a guardian for John Doe, the Respondent, and for any other relief as set forth in the Petition.

Also present and attending the hearing was the undersigned guardian ad litem, J. Smith, Esquire, and A. and B. Doe, the proposed guardians.

No request for jury having been made, the Court heard the matter without a jury.

John Doe was not present before the Court and no request for his attendance by the guardian ad litem was presented to the Court.

The Court finds from the record that due and timely notice of this hearing, and personal service of process concerning this proceeding, has been given to John Doe as required by VA. Code §64.2-2004 (B), (C), and (D), and that due and timely notice as required by law has been given to all individuals and entities thereto entitled.

The Court, upon the testimony adduced and the exhibits filed, including the evaluation report submitted in accordance with VA. Code §64.2-2005 addressing the nature, type and extent of the incapacity of John Doe, and his inability to care for himself, or to provide for his personal decisions and the report of the guardian ad litem presented in compliance with VA. Code §64.2-2003, makes the following findings, by clear and convincing evidence:

1. This Court has proper jurisdiction over this matter pursuant to VA. Code §64.2-2107, since the Respondent has resided at 123 That Way Over There, City, VA 12345, City of Over There.

2. John Doe was personally, timely, and reasonably served with the notice of hearing, a copy of the Petition, and a copy of the Order appointing a guardian ad litem for him as required by VA. Code §64.2-2004 (B), (C) and (D).

3. The nature of the incapacity that afflicts John Doe includes Autistic Spectrum Disorder, which has rendered the Respondent incapable of making, communicating, and effecting responsible decisions regarding his ongoing health care, and his person. John Doe is in need of a guardian.

4. The Respondent has no financial assets.

5. The duration of incapacity that currently afflicts John Doe with respect to his person is believed to be perpetual, and the appointment of a guardian under this order shall continue in full force until further order of this court.

6. The Court also finds that:

a. John Doe shall be deemed incapable of driving a motor vehicle and of legally possessing a firearm;

b. John Doe shall maintain his right to vote, however, forfeiting his right to execute a will under further order of this Court;

7. A. and B. Doe are suitable and willing representatives to serve as the guardians for the person of John Doe with the powers and duties set forth herein.

Wherefore, having specifically considered the foregoing findings of fact in conjunction with the demonstrated limitations of John Doe, the potential for development of the maximum self-reliance and independence of John Doe, the extent to which it is necessary to protect John Doe from neglect, exploitation, or abuse, the actions needed to be taken by the fiduciary to be appointed by the Court, and the suitability of the proposed fiduciary for appointment, it is hereby

ORDERED, ADJUDGED & DECREED

A. That in accordance with a VA. Code §64.2-2000 *et seq.*, as a result of his Autistic Spectrum Disorder it has rendered him incapable of making, communicating, and effecting responsible decisions on his behalf and to his benefit regarding his health care, and his person, John Doe is an incapacitated individual unable to manage his person. The extent and duration of this incapacity is unknown at the present time;

B. That the rights of John Doe with respect to his person are hereby limited in accordance with the specific findings above, and not otherwise;

C. The guardian appointed under this Order shall keep the Respondent informed of major decisions made on his behalf to the extent that it is reasonably possible for the guardian to do so, in such guardian's discretion alone, and the guardian shall consider the Respondent's preferences with respect to such decisions;

D. That the exclusive powers and the sole duties and responsibilities of the guardian appointed by this Order are as follows:

1. The power and sole discretion to exercise complete custody and control over the person of John Doe, as necessary or helpful to provide for his admission or retention, even if contrary to his expressed wished provided the guardian considers those wishes, to any nursing facility, convalescent home, continuing care retirement

community, adult care residence, private home, or any other residential or therapeutic placement, including any facility that is not licensed to care for more than three unrelated adults. The sole duty of the guardian, which corresponds to the power conferred in this subparagraph, may be fully and completely discharged by the exercise of such power to admit, or retain admission, of John Doe to or in any nursing facility or adult care residence licensed by the Commonwealth of Virginia, without personal liability on the part of the guardian for the expense of any such facility, and without personal liability on the part of the guardian for any act or omission by John Doe, or any injury which may occur to John Doe, once admitted to any nursing facility or adult care residence licensed by the Commonwealth of Virginia; and

2. the power and sole discretion to exercise complete custody and control over the person of John Doe, as necessary or helpful to provide for his admission or retention to a facility for psychiatric care and treatment, and consistent with the requirements under Virginia Code §37.2-805.1 (B), even if contrary to his expressed wishes provided the guardian considers those wishes; and

3. the power and sole discretion to consent, withhold consent, suspend consent, or terminate consent as to medical treatment or procedures affecting John Doe. The sole duty of the guardian which corresponds to the power conferred in this subparagraph may be fully and completely discharged if, before the guardian consents, withholds consent, suspends consent, or terminates consent, the guardian makes a good faith effort to ascertain the risks and benefits of and alternatives to the procedures or treatment, or termination or withdrawal of such treatment, and the religious beliefs and basic values of John Doe, and to the extent possible to do so, informs the Respondent and considers his preferences; but to the extent that the religious beliefs, basic values, and preferences of John Doe are unknown, unclear to the guardian, or cannot be communicated by the Respondent for consideration, then the guardian shall have no liability to any person if the guardian acts in the best interest of John Doe, as the guardians shall in their discretion alone determine; and

4. the authority but not the duty to make arrangements for the Respondent's funeral and disposition of his remains, including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains, or some combination thereof, after considering the Respondent's preferences for the disposition of his remains if such preferences are communicated by the Respondent, or in the alternative, if the guardian is not aware of any person that has been otherwise designated to make such arrangements as set forth in §54.1-2825. The guardian shall have authority to make arrangements for the funeral and disposition of the Respondent's remains after his death. The funeral service licensee, funeral services establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil liability for any act, decision, or omission resulting from the

acceptance of the Respondent's remains when the provisions of Virginia Code §64.2-2019(F) have been met; and

5. the authority as John Doe's "personal representative" to "act on his behalf" and to be "treated as the individual" for purposes of disclosure, receipt, and inspection of any medical records and health information, pursuant to the privacy standards of the Health Insurance Portability and Accountability Act of 1996 (45 CFR Parts 160 and 164); and

6. the completion and filing of the report as required by Va. Code §64.2-2020.

E. That A. and B. Doe are appointed as guardians of the person of John Doe, with the powers and duties as set forth above and in accordance with Va. Code §64.2-2019, and the guardians shall make those reports required by Va. Code §64.2-2020;

F. That this adjudication of incapacity is also a finding that John Doe is "incompetent" for all purposes of the Social Security Act, particularly with reference to the appointment of a representative payee for Social Security and other governmental benefits due him, as the term "incompetent" is defined under 20 C.F.R. Section 404.2015;

G. That A. and B. Doe are appropriate parties to serve as representative payee for John Doe;

H. That the bond of the guardian for John Doe is set in the penalty of $XXXX.XX, without corporate surety, pursuant to Va. Code §§64.2-2019 and 2020, for the faithful performance of duties as guardians;

I. That John Doe is found to be indigent and accordingly the Guardian *ad litem* shall be paid $XXX.XX for his services to be paid by the Commonwealth of Virginia pursuant to VA. Code §64.2-2008;

J. The guardian ad litem is hereby discharged from further duty and authority in the premises;

K. That the appointment of guardian under this order shall continue in full force until further order of this court;

L. That this matter shall be ended, and the Clerk is directed to place the papers amongst the ended causes, properly indexed.

M. That the Clerk shall forward an attested copy of this Order to Counsel of record.

Appendix D: Public guardianship in Virginia

This appendix provides additional information about the 13 public guardianship provider organizations in Virginia. The 13 program provider organizations serve designated localities in Virginia and vary in the number of "slots" they are allocated.

Table D-1
Provider organizations for Virginia's public guardianship program

Provider Org.	Total # of slots	Primary area(s) served
The Arc of Northern Virginia	50	Alexandria city, Arlington County, Fairfax city, Fairfax County, Falls Church city, Manassas city, Manassas Park city, Prince William County
Jewish Family Services of Tidewater	184	Danville city, Henry County, King and Queen County, King William County, Martinsville, Patrick County, Pittsylvania County
Bridges Senior Care Solutions	194	Albermarle County, Caroline County, Charlottesville city, Culpeper County, Essex County, Fauquier County, Fluvanna County, Fredericksburg city, Greene County, Halifax County, King George County, Lancaster County, Loudoun County, Louisa County, Madison County, Mecklenburg County, Nelson County, Northumberland County, Orange County, Rappahannock County, Richmond County, Spotsylvania County, Stafford County, Westmoreland County, South Boston city
Catholic Charities of Eastern Virginia	96	Accomack County, Chesapeake city, Emporia city, Franklin city, Gloucester County, Greensville County, Hampton city, Isle of Wight County, James City County, Mathews County, Newport News city, Northampton County, Poquoson city, Portsmouth city, Southampton County, Suffolk city, Surry County, Virginia Beach city, Williamsburg city, York County
Commonwealth Catholic Charities	120	Amelia County, Brunswick County, Buckingham County, Charlotte County, Chesterfield County, Cumberland County, Dinwiddie County, Henrico County, Lunenburg County, Nottoway County, Prince Edward County
Family Services of Roanoke Valley	80	Amherst County, Appomattox County, Bedford County, Botetourt County, Campbell County, Craig County, Franklin County, Lynchburg city, Roanoke city, Roanoke County, Salem city, Bedford city
Autumn Valley Guardianship	21	Augusta County, Clarke County, Frederick County, Harrisonburg city, Page County, Rockingham County, Shenandoah County, Staunton city, Warren County, Waynesboro city, Winchester city
District Three Senior Services	125	Bland County, Bristol city, Carroll County, Floyd County, Galax city, Giles County, Grayson County, Montgomery County, Pulaski County, Radford city, Smyth County, Washington County, Wythe County
Jewish Family Services of Richmond	40	Goochland County, Hanover County, Hopewell County, Petersburg city, Powhatan County, Prince George County, Sussex County
Senior Connections	40	Charles City County, New Kent County, Richmond city
Appalachian Agency for Senior Citizens, Inc.	35	Buchanan County, Dickenson County, Russell County, Tazewell County
Mountain Empire Older Citizens	45	Lee County, Scott County, Wise County
Alleghany Highlands Community Services (CSB)	18	Alleghany County, Bath County, Buena Vista city, Covington city, Highland County, Lexington city, Rockbridge County

Public guardianship provider organizations serve as guardians for incapacitated adults who are referred to their program from specific localities in the state. There are three regional organizations: Jewish Family Services of Tidewater, Bridges Senior Care Solutions, and District Three Senior Services. The three providers that receive funding for DBHDS-MI slots can accept clients for those slots outside of their contractually defined geographic service area (Figure D-1).

FIGURE D-1
Locations and service areas of Virginia public guardian programs

SOURCE: Virginia Department for Aging and Rehabilitative Services (DARS).

Appendix E: Annual guardian report

This appendix includes a copy of Virginia's annual guardian report to be submitted by the guardian to a local department of social services each year as required by § 64.2-2020.

REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON

COMMONWEALTH OF VIRGINIA

VA. CODE § 64.2-2020

Name of Incapacitated Person:			
Address of Incapacitated Person:			
Circuit Court where Guardian appointed:		Age:	
Circuit Court Case No.:			
Date of Order of Appointment:		Date Qualified by Clerk:	
Guardian's Name:			
Address:			
Telephone Number:			
Conservator's Name:			
Address:			
☐ Same as Guardian			
Telephone Number:			

☐ Initial four-month report ☐ Annual report ☐ Final report ____________________

REASON FOR FILING FINAL REPORT

The period covered by this report is: ____________ to ____________

1. Describe the incapacitated person's living arrangements:

2. Describe the current mental, physical and social condition of the incapacitated person (attach additional pages if necessary):

   Mental:

   Physical:

   Social:

   State any changes in the condition of the incapacitated person in the past year:

3. Describe all medical, educational, vocational and professional services provided to the incapacitated person for the period covered by this report, and state your opinion of the adequacy of the care received by the incapacitated person:

4. State the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person (Guardians are required to visit the incapacitated person as often as necessary to know of his or her capabilities, limitations, needs and opportunities):

5. State whether or not you agree with the current treatment or care plan:

6. State your recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and the steps to be taken to make those changes, and any other information useful, in your opinion, to a consideration of the guardianship:

7. If you incurred expenses in exercising your duties as guardian and if you requested reimbursement or compensation for those expenses, itemize the expenses and list the person(s) from whom you requested reimbursement or compensation.:

I declare, under penalty of perjury, that the information contained in this Annual Report is true and correct to the best of my knowledge.

DATE

SIGNATURE OF GUARDIAN

DSS Use Only:

Date Received: .... Date Reviewed: ....

REVIEWER'S SIGNATURE AND TITLE

Appendix F: Adult Protective Services

Adult Protective Services (APS) is a state supervised, locally administered program that serves adults age 60 and over and adults ages 18–59 with diminished mental or physical capacity when they experience abuse, neglect, or exploitation. The APS program is overseen by DARS, but day-to-day operations are carried out by local departments of social services (LDSS).

APS has the authority to investigate only "valid" reports (64 percent of reports in FY20). To be considered a valid APS report, the report must meet the following criteria:

- the adult must be at least 60 years or older or age 18 to 59 and incapacitated;
- the adult must be living and identifiable;
- circumstances must allege abuse, neglect, or exploitation; and
- the correct LDSS must have jurisdiction (e.g., LDSS office for the locality in which the adult lives).

"Incapacitated" for the purposes of APS means that a person is vulnerable because of diminished mental or physical capacity to the extent that they lack sufficient understanding or capacity to make, communicate, or carry out responsible decisions concerning their well-being. A person does *not* have to be found incapacitated by a court to be eligible for APS.

Any concerned person may make an APS report on behalf of a vulnerable adult. They can contact APS via their LDSS or a central complaint line operated and staffed by the Virginia Department of Social Services if they are concerned a vulnerable adult is being mistreated. Family members and friends, financial institutions, and social workers submitted nearly one-third of all reports in FY20. Certain people are mandated reporters, meaning they are required by law to make reports to APS if they learn of potential mistreatment. Mandated reporters include allied health professionals, mental health counselors, social workers, emergency medical technicians, police, and a person's guardian or conservator.

Self-neglect is most common reason for APS reports

There were over 37,000 APS reports in FY20, an increase of 60 percent since FY16 (Table F-1). The number of reports investigated by APS workers increased 35 percent in the same period. The percentage of investigations with substantiated mistreatment declined by 5 percentage points, meaning that APS investigated more cases, but a smaller proportion were substantiated. A complaint is "substantiated" when the APS investigator finds that an adult needs protective services because abuse, neglect, or exploitation has occurred or is at risk of occurring.

TABLE F-1
Number of APS reports received and investigated has increased (FY16 to FY20)

	FY16	FY20	5-year change
Total reports received	23,432	37,398	+60%
Total reports investigated	17,764	23,968	+35
Total substantiated reports	9,755	12,004	+23
Percentage of reports substantiated [a]	55%	50%	n/a

SOURCE: DARS APS annual reports, FY16–FY20.
NOTE: APS does not fully investigate all reports received because some do not meet criteria for investigation. For instance, a concerned citizen might make a report to APS about a situation that is not actually abuse, neglect, or financial exploitation, but a disagreement among family about decisions regarding a vulnerable adult's life.
[a] Percentage of reports substantiated comes from the number of substantiated reports divided by total reports investigated, *not* total reports received.

The most common types of abuse, neglect, or exploitation in substantiated APS reports were self-neglect (54 percent), neglect by another (18 percent), and financial exploitation (13 percent) in FY20 (Table F-2).

TABLE F-2
Types of substantiated mistreatment cases (FY20)

Type of mistreatment	Total reports	Percentage of all substantiated cases
Self-neglect	7,772	54%
Neglect	2,647	18
Financial exploitation	1,840	13
Physical abuse	892	6
Mental abuse	709	5
Other	352	2
Sexual abuse	102	1
	14,413	

SOURCE: DARS APS annual report, FY 2020.
[a] APS reports can contain more than one type of mistreatment (for instance, a person being physically abused may also experience financial exploitation), so the total exceeds total substantiated reports overall.

APS cases are investigated and can receive one of four possible outcomes: an adult needs and accepts protective services; an adult needs and refuses protective services; the need for protective services no longer exists; or the complaint was unsubstantiated (Table F-3). Cases may also be "invalid" if they do not meet criteria to be investigated. Invalid cases were not included in calculations for this appendix. Unlike child protective services, adults can refuse help from APS, even if there is a preponderance of evidence that the adult has been mistreated. Nearly half of cases were unsubstantiated in FY20. Only 19 percent of cases resulted in APS identifying an adult that needed protective services, and the adult accepted those services.

TABLE F-3
Resolution of APS investigations (FY20)

Outcomes	Percentage of all investigated cases
Needs and accepts protective services: sufficient evidence that mistreatment has occurred or will occur exists, and the victim accepts help from APS	19%
Needs and refuses protective services: sufficient evidence that mistreatment has occurred or will occur exists but the victim refuses help from APS	11
Need for protective services no longer exists: sufficient evidence that mistreatment has occurred or will occur exists, but the situation has been resolved and the victim is safe	23
Unsubstantiated: insufficient evidence that mistreatment has occurred or will occur	47

SOURCE: DARS APS annual report, FY20.

LDSS employ minimal numbers of APS staff, many APS staff have non-APS responsibilities

Fifty-nine percent of LDSS directors, APS supervisors, and APS investigators report they do not have sufficient APS staff at their agency, according to the JLARC survey of LDSS staff. The median number of APS full-time equivalent (FTE) employees at LDSS is two, but ranges from less than one to 24 FTEs, among the LDSSs that provided a response to that question.

Not all LDSS have dedicated APS investigators. Some APS investigators in smaller localities have other duties, such as case management for adult services or child welfare, in addition to being responsible for APS investigations.

APS funding has declined while number of complaints has increased

State general fund and federal block grant funding for APS in FY20 totaled about $527,100, a 29 percent decline since FY16. This decrease in funding corresponds with a 60 percent increase in the number of APS complaints during this period. This funding is primarily for supports and services for clients when an APS report is substantiated. For instance, in a case of self-neglect, APS may use funding to pay for a housekeeper to help clean the adult's home so that the adult can remain in their home. Localities are required to contribute a 15.5 percent match to receive the maximum state and federal funding.

Median state and federal funding for local APS programs in FY21 was just over $7,000, ranging from under $500 to just over $91,000 per LDSS. Local APS programs use this funding to provide services to vulnerable adults when an APS investigation has found they are in need of help, not for the operation of APS at LDSS. Instead, funding for APS operations comes from the general operations funding allocated to and distributed by the Virginia Department of Social Services.

Appendix G: Criminal mistreatment of vulnerable adults

This appendix summarizes JLARC staff's analysis of criminal charges of abuse, neglect, and exploitation. The source of the data was the Office of the Executive Secretary of the Supreme Court of Virginia's Case Management System and two local data systems (Fairfax County and Alexandria circuit courts) for circuit, general district, and juvenile and domestic relations courts in Virginia. A total of 616 charges against 595 individuals were ultimately used in this analysis, and 209 charges resulted in convictions for adult abuse, neglect, or financial exploitation. In addition, one person was convicted of making a false Adults Protective Services report, a misdemeanor.

Criminal charges for crimes against vulnerable adults

Financial exploitation and abuse or neglect were the two most common charges for crimes against vulnerable adults from FY11 to FY21, accounting for 52 percent and 25 percent of total charges, respectively, during the 10-year period (Table G-1). Some of the charges listed in Table G-1 are not charges for adult abuse, neglect, or financial exploitation because defendants will sometimes be charged with one crime and ultimately convicted of another. For instance, a defendant may be charged with first-degree murder in the death of a vulnerable adult, but ultimately be convicted of adult abuse resulting in death, a less serious offense.

TABLE G-1
Criminal charges for crimes against vulnerable adults (FY11–FY21)

Name of crime	Type of crime	Number of charges
Financial exploitation of incapacitated adult, less than $1,000 [a]	Misdemeanor	322
Abuse or neglect incapacitated adult	Misdemeanor	156
Abuse or neglect incapacitated adult resulting in serious injury	Felony	67
Financial exploitation of incapacitated adult $1,000 or more [a]	Felony	35
Abuse or neglect incapacitated adult resulting in death	Felony	18
Obtain money by false pretenses	Felony	4
Unlawful wounding	Felony	2
Abuse or neglect incapacitated adult, second+ offense	Felony	2
First degree murder	Felony	2
Malicious wounding	Felony	1
Burglary	Felony	1
Credit card theft	Felony	1
Forgery of a public record	Felony	1
General forgery	Felony	1
Uttering (verbally lying to commit forgery)	Felony	1
Petit larceny (less than $1,000) [a]	Misdemeanor	1
Robbery	Felony	1
Total		**616**

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court Case Management System data, FY11 to FY21; Fairfax County Case Management System, FY11 to FY21; and Alexandria Case Management System, FY11 to FY21.

[a] In 2020, the General Assembly raised the threshold for felony larceny to $1,000 from $200. Most convictions in this data are prior to 2020, so the threshold at that time would have been $200 for the crime to be classified as a felony.

Convictions and penalties for crimes against vulnerable adults

Abuse or neglect and financial exploitation were the two most common convictions for crimes against vulnerable adults from FY11 to FY21, accounting for 40 percent and 31 percent of convictions, respectively (Table G-2).

TABLE G-2
Convictions for adult abuse, neglect, and financial exploitation (FY11 to FY21)

Name of crime	Type of crime	Number of convictions
Abuse or neglect of incapacitated adult	Misdemeanor	83
Financial exploitation of incapacitated adult, $1000 or more [a]	Felony	65
Abuse or neglect incapacitated adult resulting in serious injury	Felony	26
Financial exploitation of incapacitated adult, less than $1000 [a]	Misdemeanor	26
Abuse or neglect incapacitated adult resulting in death	Felony	7
Abuse or neglect incapacitated adult, second+ offense	Felony	2
Total		**209**

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court Case Management System Data FY11 to FY21; Fairfax County Case Management System FY11 to FY21; and Alexandria Case Management System FY11 to FY21.

[a] In 2020, the General Assembly raised the threshold for felony larceny to $1,000 from $200. Most convictions in this data are prior to 2020, so the threshold at that time would have been $200 for the crime to be classified as a felony.

Approximately one-third (70 of 209) of convictions for adult abuse, neglect, and financial exploitation (Table G-2) resulted in a penalty of active jail or prison time; 76 convictions resulted in probation only; and 64 convictions resulted in neither (Table G-3).

TABLE G-3
Penalties for adult abuse, neglect, and financial exploitation, FY11–FY21

Name of crime	Active incarceration [a]	Probation only	Neither [b]
Abuse or neglect of incapacitated adult resulting in death	5	2	0
Abuse or neglect of incapacitated adult resulting in serious injury	17	6	4
Abuse or neglect of incapacitated adult (misdemeanor)	11	29	44
Abuse or neglect of incapacitated adult, second+ offense	1	0	0
Financial exploitation of an incapacitated adult, less than $1000 [c]	5	11	10
Financial exploitation of an incapacitated adult, $1000 or more [c]	31	28	6
Total	**70**	**76**	**64**

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court Case Management System data, FY11 to FY21; Fairfax County Case Management System, FY11 to FY21; and Alexandria Case Management System, FY11 to FY21.

[a] Active incarceration means time to actually serve in a jail or prison. Judges can suspend part or all of jail and prison sentences.

b No active incarceration or probation does not mean there were no sanctions or requirements placed on the offender. Some examples of other sanctions or requirements are substance abuse treatment, counseling, or arranging for in-home care for the victim.

[c] In 2020, the General Assembly raised the threshold for felony larceny to $1,000 from $200. Most convictions in this data are prior to 2020, so the threshold at that time would have been $200 for the crime to be classified as a felony.

Appendix H: Agency responses

As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent a partial or full exposure draft of this report to the Department for Aging and Rehabilitative Service (DARS), the Office of the Executive Secretary of the Supreme Court of Virginia (OES), the secretary of health and human resources, and Virginia Department of Social Services (VDSS). JLARC staff conducted a meeting to discuss findings and recommendations with commissioners of accounts who serve in leadership roles in the Virginia Conference of Commissioners of Accounts.

Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report. This appendix includes response letters from DARS, OES, and the secretary of health and human resources.

COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

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October 12, 2021

Mr. Hal E. Greer
Director
Joint Legislative Audit and Review Commission
919 East Main Street, Suite 2101
Richmond, VA 23219

Dear Mr. Greer,

The Department for Aging and Rehabilitative Services (DARS) would like to thank the staff at the Joint Legislative Audit and Review Commission (JLARC) for their diligence and thoroughness in reviewing Virginia's guardianship and conservatorship system. It was a daunting task to delve into this complex subject and we appreciate the opportunities that have been offered to provide feedback.

DARS has reviewed the exposure draft, provided technical comments, and supports many of the recommendations. DARS agrees with the recommendations that seek to provide additional information to guardians ad litem, provide training and guidance to staff with the local departments of social services, and address funding challenges and clarify policies within the Virginia Public Guardianship and Conservator Program. The agency is immensely proud of the Virginia Public Guardianship and Conservator Program, and I was delighted, but not surprised, to see that important work acknowledged in this report.

We do, however, have a few comments that we wish to highlight. The first relates to oversight and training of guardians and those involved in the guardianship process. We agree that required training for guardians is an excellent recommendation. To properly implement the training and reporting process outlined in the report, funding would be necessary to establish and sustain staffing and information technology at DARS and within the local departments of social services (LDSS). This would be both a one-time development cost as indicated in some areas of the report as well as an ongoing cost to sustain effective training. Any ramifications for not completing the training would have to be imposed by the courts.

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Additionally, we would also respectfully suggest that guardianship training be required of judges and other officers of the court involved with the guardianship process. It is paramount that the individuals charged with reviewing these cases understand the process and ramifications of imposing a guardianship order.

DARS becoming a "navigator" for individuals looking to resolve issues with a guardianship case could indeed provide helpful information for individuals not familiar with the guardianship process and the available avenues of recourse and we see DARS as an option to fulfill this need. With that in mind, we do have concerns regarding the scope of the proposal which suggests that DARS follow-up on referrals and gather information on guardians. This raises issues of confidentiality, public access to information, data and information sharing between entities, and staff time. Before any action is taken in these areas, we believe careful consideration should be given to the potential unintended consequences and confusion amongst the public about DARS' role and authority.

Many of the proposed recommendations will require additional staff, and we appreciate JLARC recognizing this for several of the report's recommendations. However, we estimate that the resources needed to undertake the recommended tasks need to also take into account additional technology and staff costs. For example, it will require additional staff time to have local departments of social services workers confirm guardianship trainings and notices of visitation restrictions.

DARS commends the work of JLARC staff in seeking to understand this complicated topic and formulate solutions to better protect some of the Commonwealth's most vulnerable citizens. All Virginians, regardless of age, type of disability, race or ethnicity, gender, or socioeconomic status deserve to have a quality oversight system for those serving as guardians and conservators. Thank you for allowing DARS to participate in this process and we look forward to continuing to work on addressing this important issue.

Sincerely,

Kathryn A. Hayfield

CC: The Honorable Daniel Carey, M.D. – Secretary of Health and Human Resources

Mr. Duke Storen – Commissioner, Department of Social Services

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October 12, 2021

Mr. Hal E. Greer, Director
Joint Legislative Audit and Review Commission
919 East Main Street, Suite 2101
Richmond, Virginia 23219

Dear Mr. Greer:

Thank you for the opportunity to review and comment on the exposure draft of the JLARC report, "Improving Virginia's Adult Guardian and Conservator System." I appreciate you taking the time to meet with staff in the Office of the Executive Secretary and incorporating our feedback into your report.

In 2016, Chief Justice Lemons formed the Virginia Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) to develop community partnerships that aim to protect individual rights through evaluating court practices, developing standards and processes, improving public and court education, addressing resources and funding, and providing a network to exchange ideas. This network has served as an ongoing problem-solving mechanism to enhance the quality of care and quality of life of adults in or potentially in the guardianship system. I appreciate the recognition, in the exposure draft report, of the work done by WINGS to improve guardianship and conservatorship proceedings in Virginia.

The Office of the Executive Secretary (OES) is the administrative office of the court system. We provide administrative support to the courts of the Commonwealth in areas such as human resources, information technology, accounts payable, and education and training for judicial branch employees. OES does not have supervisory authority over judges, circuit court clerks, commissioners of accounts or guardians ad litem. The following feedback relates to recommendations in the exposure draft report directed to OES.

OES is responsible for administration of the criminal fund, from which court-appointed counsel and guardians ad litem are paid. If the subject of a guardianship proceeding is determined to be indigent, the fees of the guardian ad litem are paid from the criminal fund pursuant to Va. Code § 64.2-2008. As noted in the exposure draft report, several recommendations would increase the duties and responsibilities of a guardian ad litem appointed to represent a respondent in a guardianship matter.

If adopted, these recommendations are likely to increase time spent by guardians ad litem appointed to represent indigent respondents in guardianship proceedings. Since guardians ad litem are paid an hourly fee, adoption of these recommendations would have a fiscal impact on the criminal fund.

OES will need funding relating to the recommendation to develop online training for conservators. OES staff do not have subject matter expertise regarding the responsibilities and duties of conservators. In addition, OES does not currently produce any training for parties to court proceedings. This recommendation, if adopted, will require OES to contract with a third party to develop such training.

Finally, OES is not the appropriate entity to be responsible for conducting a review of annual accounting reports filed by conservators with commissioners of accounts. Commissioners of accounts are appointed by circuit court judges to supervise fiduciaries qualified by the clerk of court. Va. Code § 64.2-1200. Staff in OES do not have any involvement with fiduciary accountings filed with commissioners of accounts, nor does OES have any supervisory authority over commissioners of accounts. Staff in OES do not have the subject matter expertise necessary to oversee a review of annual accounting reports. If the recommendation for OES to contract with a third party to review accounting reports is adopted, funding will be necessary for OES to contract for this service to be performed.

Thank you again for the opportunity to review the draft report and provide feedback. I would be happy to answer any additional questions from you or your Commission.

Very truly yours,

Karl R. Hade

COMMONWEALTH of VIRGINIA

Office of the Governor

Daniel Carey, MD
Secretary of Health and Human Resources

October 12, 2021

Hal E. Greer, Director
Joint Legislative Audit and Review Commission
919 East Main Street, Suite 2101
Richmond, VA 23219

Re: Draft JLARC report, *Improving Virginia's Adult Guardianship and Conservator System*

Dear Mr. Greer:

Thank you for the opportunity to review and comment on the draft JLARC report, *Improving Virginia's Adult Guardianship and Conservator System*. This letter will confirm that I have reviewed the relevant report, I discussed my feedback with the Virginia Department of Social Services, and with the Department of Aging and Rehabilitative Services. Commissioner Hayfield's comments reflect HHR's concerns.

Thank you as always for the thoroughness of your reports, including meeting with and hearing feedback from our agencies.

Sincerely,

Daniel Carey, MD, MHCM

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