



COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

KATHRYN A. HAYFIELD
Commissioner

8004 Franklin Farms Drive
Henrico, VA 23229

Office (804) 662-7000
Toll free (800) 552-5019
TTY Toll free (800) 464-9950
Fax (804) 662-7644

November 1, 2022

MEMORANDUM

TO: The Honorable Robert Bell
Chairman, House Courts of Justice Committee

The Honorable John Edwards
Co-Chairman, Senate Judiciary Committee

The Honorable Creigh Deeds
Co-Chairman, Senate Judiciary Committee

FROM: Kathryn A. Hayfield *KAH*
Commissioner, Department for Aging and Rehabilitative Services

SUBJECT: Report from the HB 634 Workgroup (Visitation Requirements for Private Guardians)

In 2022, the General Assembly of Virginia enacted Chapter 242 of the 2022 Acts of Assembly (HB 634, Delegate Danica Roem), which mandated that the Virginia Department for Aging and Rehabilitative Services (DARS) convene a work group that included broad representation from private guardianship stakeholders. The work group was responsible for developing a summary of its activities and recommendations for establishing the number of required private guardian visits per year, the frequency with which they should occur, whether they should be in-person or virtual, resources needed to carry out the work group's recommendations, and any other parameters that should be incorporated into a new visitation requirement. Attached please find the report of the workgroup.

If you have any questions about the report, please do not hesitate to contact me.

KH/ch

Enclosure



Visitation Requirements for Guardians in Virginia

Report from the House Bill 634 Workgroup

to

**the Chairmen of the House Committee for Courts of
Justice and the Senate Committee on the Judiciary**

**Virginia Department for Aging
and Rehabilitative Services**

**Commonwealth of Virginia
Richmond, VA
November 1, 2022**

Visitation Requirements for Guardians in Virginia

Executive Summary

Overview

In 2022, the General Assembly of Virginia enacted Chapter 242 of the 2022 Acts of Assembly (HB 634, Delegate Danica Roem), which mandated that the Virginia Department for Aging and Rehabilitative Services (DARS) convene a work group that included broad representation from stakeholders from across the Commonwealth. The work group was responsible for developing a summary of its activities and recommendations for establishing the number of required private guardian visits per year, the frequency with which they should occur, whether they should be in-person or virtual, resources needed to carry out the work group's recommendations, and any other parameters that should be incorporated into a new visitation requirement.

General Background

In 2020, the Joint Legislative Audit and Review Commission (JLARC) directed staff to evaluate Virginia's guardianship and conservatorship system. As part of their review, JLARC staff were tasked with examining court processes to appoint guardians and conservators, their oversight, processes for restoring rights to adults under guardianship or conservatorship, and Virginia's laws to prevent the abuse or neglect of vulnerable adults (JLARC, 2021).

Published in 2021, the report contained 42 recommendations. Pertinent to HB 634, Recommendation 20 specifically addressed visitation requirements for private guardians and included a change to the Code of Virginia that would require private guardians to visit each adult under guardianship in-person at least once every three months with additional parameters around what items should be assessed during these visits.

Background of HB 634

While HB 634 initially reflected Recommendation 20 from the JLAC report, the bill was significantly amended prior to its adoption. As introduced in January 2022, the initial bill required that the guardian should visit the incapacitated person "as often as necessary and at least every 90 days." The final version of the bill was approved by the Governor in April 2022 and resulted in the formation of a work group charged with considering the appropriateness and effect of a potential statutory requirement stipulating the number, frequency, and nature of visits by private guardians.

HB 634 Workgroup

Chapter 242 of the 2022 Acts of Assembly (HB 634) stipulates the composition of the work group and specific issues that the group should undertake. The work group met three times in 2022: July 13, August 11, and September 19. Three proposals were officially offered. All members agreed on the importance of in-person visitation by the guardian. However, proposals

from the work group members differed in the minimum frequency, nature, and delegation of visits.

Proposal Author	Total Visits	Minimum # of In-person Visits	Guardian Visits		Qualified Designee	
			Number of Visits by Guardian	Minimum In-person	Number of Visits by a Qualified Designee	Minimum In-Person or Virtual
Delegate Roem	4	2	1	1 In-Person	3	1 In-Person (2 Virtual Permitted)
Virginia Academy of Elder Law Attorneys (VAELA) **	4	1	1	1 In-Person (3 Virtual Permitted)	3	3 Virtual Permitted
VHHA & VHCA-VCAL	2	1	2	1 In-Person (1 Virtual Permitted)		

* All proposals acknowledged that judicial discretion could modify the visitation requirements (e.g., for individuals with higher needs, good cause) or that a state of emergency may require modifications to in-person visitation.

** VAELA suggested that face-to-face visitation requirements apply only to guardians accepting appointment after the effective date of any legislation.

Report Summary

Conclusions based upon the charge of the work group follow:

- (i) evaluate how a requirement for private guardians to visit the individual under their guardianship in-person at least once every 90 days would reduce the availability of willing and qualified individuals to serve as private guardians, if at all

Views of the work group members were mixed. No specific empirical data exist to refute or support this claim.

- (ii) consider whether a different number and frequency of visits per year, other than at least once every 90 days, would better balance resource constraints with the importance of guardian visits to the incapacitated person under their care;

As with the consideration above, opinions were mixed. Members of the Virginia Hospital & Healthcare Association (VHHA) and the Virginia Health Care Association (VHCA)-Virginia Center for Assisted Living (VCAL) proposed no fewer than 180 days between visits and that they should be conducted twice a year by the guardian with the requirement that at least one of those visits be in-person. Two other proposals by Delegate Roem and the Virginia Academy of Elder Law Attorneys (VAELA) were closer to a 90-day frequency, with a combination of in-person, virtual, guardian, and delegated visitors. After much discussion, agreement could not be found on a standard number and frequency of visits.

- (iii) determine the additional resources, if any, needed to mitigate the negative impacts of an increased visitation requirement on the willingness and availability of qualified individuals to serve as private guardians and determine how those resources could be allocated to the relevant private and public entities in the guardianship system to promote compliance with an increased visitation requirement;

The VHHA and VHCA-VCAL recommended exploring mechanisms, including but not limited to Medicaid, to increase pay rates for private guardians, while minimizing the impact on the benefits of the person under guardianship. VAELA supports this objective. These members stressed that the most consistent issue raised by guardians was the low reimbursement rate. The Virginia Poverty Law Center (VPLC) cautioned that this suggestion would need to be carefully explored, as it could have a negative impact on Medicaid recipients and their families in regards to impoverishment rules.

- (iv) determine whether expansion of the Virginia Public Guardian and Conservator Program [PGP] would substantially alleviate issues related to these concerns.

Expansion of the PGP was proposed as an option by several of the participants as a long term, partial solution, but it was determined not to be the immediate ideal solution for two reasons. First, there was concern that expanding the PGP quickly and extensively by increasing the slots could compromise the quality of services and overwhelm providers. Second, many of the situations discussed involved crisis situations where a guardian is needed immediately (e.g., imminent discharge from the hospital). The PGP is not structured to adequately address these emergency situations. An additional option mentioned during the workgroup discussions was to explore the increased availability of and interest by social workers or care managers to provide guardianship services.

Visitation Requirements for Guardians in Virginia Report

Mandate

In 2022, the General Assembly of Virginia enacted Chapter 242 of the 2022 Acts of Assembly (HB 634, Delegate Danica Roem), which mandated that the Virginia Department for Aging and Rehabilitative Services (DARS) convene a work group that included broad representation from stakeholders from across the Commonwealth.

The charge to the workgroup was to undertake the following tasks:

- (i) evaluate how a requirement for private guardians to visit the individual under their guardianship in-person at least once every 90 days would reduce the availability of willing and qualified individuals to serve as private guardians, if at all;
- (ii) consider whether a different number and frequency of visits per year, other than at least once every 90 days, would better balance resource constraints with the importance of guardian visits to the incapacitated person under their care;
- (iii) determine the additional resources, if any, needed to mitigate the negative impacts of an increased visitation requirement on the willingness and availability of qualified individuals to serve as private guardians and determine how those resources could be allocated to the relevant private and public entities in the guardianship system to promote compliance with an increased visitation requirement; and
- (iv) determine whether expansion of the Virginia Public Guardian and Conservator Program would substantially alleviate issues related to these concerns.

The work group was responsible for developing a summary of its activities and recommendations for establishing the number of required private guardian visits per year, the frequency with which they should occur, whether they should be in-person or virtual, resources needed to carry out the work group's recommendations, and any other parameters that should be incorporated into a new visitation requirement.

The summary and recommendations were to be submitted to the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary by November 1, 2022.

General Background

In 2020, the Joint Legislative Audit and Review Commission (JLARC) directed staff to evaluate Virginia's guardianship and conservatorship system. As part of their review, JLARC staff were to examine court processes to appoint guardians and conservators, their oversight, processes for restoring rights to adults under guardianship or conservatorship, and Virginia's laws to prevent the abuse or neglect of vulnerable adults (JLARC, 2021).

Published in 2021, the report contained 42 recommendations. Pertinent to HB 634, Recommendation 20 specifically addressed visitation requirements for private guardians and stated the following:

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. (Recommendation 20, Chapter 4)

According to the study, private guardians do not have a caseload standard, specific visitation requirements, or training requirements. In regards to visitation standards, the Code of Virginia in § 64.2-2019 currently stipulates that:

A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

The JLARC report went on to stress that in state fiscal year (SFY) 2020, 510 adults under guardianship were served by 11 private guardians with caseloads of more than 20, median 33 adults per guardian, with one guardian reporting 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” (JLARC, 2021, p. 3).

In addition, there is no known research in Virginia or nationally on the effect of guardian visits on the morbidity, mortality, or quality of care/quality of life of clients. An understanding of frailty, particularly concerning individuals with multiple chronic medical conditions as well as cognitive problems suggests that health situations can change quickly and that regular and consistent “eyes on the person” can mean the difference between a managed situation and an acute one.

Some private guardianship visitation standards exist nationally and in other states. For example, Standards of Practice of the National Guardianship Association require monthly guardian visits (National Guardianship Association, 2013; DARS, n.d.). The District of Columbia requires monthly guardian visits. In addition, Florida, New York, and New Jersey require quarterly guardian visits (this list is not exhaustive). Moreover, as mentioned by JLARC, in Virginia, the Public Guardianship Program requires monthly visits (22VAC30-70-30 F(2)).

A body of applicable research indicates that feelings of social isolation and loneliness exert a negative impact on health and may be linked to morbidity and mortality, especially in later life (Perissinotto et al., 2015; Steptoe et al., 2012). Research on older adults in residential care facilities (e.g., hospitals, nursing homes) suggests that social engagement may serve as a protective factor. In a study by Kiely et al., (2000), participants who engaged socially were two to three times less likely to die. Residents who were satisfied by the frequency of visits from friends and family also report higher life satisfaction (Gaugler, 2005). A total isolating event in long-term care, in a study by Cohen-Mansfield and Meschiany (2022), revealed that COVID-19 had a negative impact on residents, including direct effects on morbidity and mortality and indirect effects including isolation from relatives and decreased activities for residents. The impact of isolation on LTC residents was reported as negative or very negative by over three-quarters of study respondents. Residents' behavioral problems increased in 32% of the facilities. This same observation was anecdotally confirmed in Virginia long-term care facilities during COVID-19 by a member of the work group.

Background of HB 634

HB 634, as originally introduced by Delegate Danica Roem, reflected Recommendation 20 from the JLARC report with additional language related to electronic visits and the use of employees or contractors to conduct visits. The introduced bill required that the private guardian visit the incapacitated person “as often as necessary and at least every 90 days.” During those visits, certain observations and assessments were also required. Electronic (i.e., virtual) visits were allowed under specific circumstances, such as a state of emergency or public health crisis or if for reasons outside of the guardian’s control the guardian could not physically visit the incapacitated individual. In addition, the private guardian could have an employee or contractor make two visits in lieu of the guardian.

The bill was ultimately reported from the House Courts of Justice Committee with a substitute creating a work group to evaluate private guardian visitation requirements. The substitute was accepted and passed by the House of Delegates and the Senate, with the Governor signing in April 2022. The final version of the bill, found in Chapter 242 of the 2022 Acts of Assembly, directed DARS to convene a work group to perform the following:

- (i) evaluate how a requirement for private guardians to visit the individual under their guardianship in-person at least once every 90 days would reduce the availability of willing and qualified individuals to serve as private guardians, if at all;
- (ii) consider whether a different number and frequency of visits per year, other than at least once every 90 days, would better balance resource constraints with the importance of guardian visits to the incapacitated person under their care;
- (iii) determine the additional resources, if any, needed to mitigate the negative impacts of an increased visitation requirement on the willingness and availability of qualified individuals to serve as private guardians and determine how those resources could be allocated to the relevant private and public entities in the guardianship system to promote compliance with an increased visitation requirement; and

- (iv) determine whether expansion of the Virginia Public Guardian and Conservator Program would substantially alleviate issues related to these concerns. The Department shall submit a summary of its recommendations to the Chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary by November 1, 2022.

Required membership of the work group included representatives from public guardianship provider organizations, private guardianship attorneys, the Virginia Academy of Elder Law Attorneys, the Virginia disAbility Law Center, the Virginia Poverty Law Center (VPLC), DARS, the Virginia League of Social Services Executives, the Office of the Executive Secretary of the Supreme Court of Virginia, the Virginia Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), VHHA, VHCA-VCAL and an individual who has served as guardian to a family member (Appendix C).

The work group was charged with developing a summary of its activities and recommendations regarding:

- (i) Establishing the number of required private guardian visits per year including;
 - a. The frequency with which they should occur and,
 - b. Whether they should be in-person or virtual;,
- (ii) The resources needed to carry out the work group's recommendations; and
- (iii) Any other parameters that should be incorporated into a new visitation requirement.

This report constitutes the summary and recommendations of the workgroup that are required to be submitted to the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary by November 1, 2022.

HB 634 Workgroup

Chapter 242 of the 2022 Acts of Assembly (HB 634) stipulates the composition of the work group (see Appendices) and the specific issues that the group was to undertake. In order to make progress toward the final report, the work group met three times (July 13, August 11, and September 19, 2022). The agendas for the three meetings sought to guide the discussions to address the requirements of HB 634 and are outlined below.

Work Group Meeting July 13, 2022

1. Evaluate how a requirement for private guardians to visit at least once every 90 days would reduce the availability of willing and qualified individuals to serve as private guardians, if at all.
 - a. Would visiting every 90 days reduce the availability of guardians?
2. Consider if a different number and frequency of visits would better balance resource constraints with the importance of visits.

- a. What would those parameters be?

Work Group Meeting August 11, 2022

1. Review parameters proposed at the July 13th meeting, alternative proposals, and member feedback.
2. Determine additional resources if any are needed to mitigate the impact of an increased visitation requirement on the willingness and availability of private guardians.
 - a. How those resources would be allocated to private and public entities in the guardianship system to promote compliance with an increased visitation requirement?
 - b. Would expansion of the PGP alleviate issues related to the concerns?
3. Confirm recommendations to address:
 - a. Number of required visits per year.
 - b. Frequency of guardian visits.
 - c. In-person or virtual visits.
 - d. Any other parameters in a visitation requirement.
 - e. Resources needed to carry out recommendations.

Work Group Meeting September 19, 2022

1. Review findings.
2. Review draft report.

HB 634 Workgroup Deliberations

Delegate Roem offered a proposal regarding private guardian visitation requirements at the July 13 meeting, and two other proposals were officially offered to the work group for the August 11 meeting. One of the alternate proposals was offered by the Virginia Academy of Elder Law Attorneys (VAELA) and the other was proposed by the VHHA with VHCA-VCAL. They are compared in Table 1 as well as explained in detail below.

Table 1. Recommendations

Proposal Author	Total Visits	Minimum # of In-person Visits	Guardian Visits		Qualified Designee	
			Number of Visits by Guardian	Minimum In-person	Number of Visits by a Qualified Designee	Minimum In-Person or Virtual
Delegate Roem	4	2	1	1 In-Person	3	1 In-Person (2 Virtual Permitted)
Virginia Academy of Elder Law Attorneys (VAELA)	4	1	1	1 In-Person (3 Virtual Permitted)	3	3 Virtual Permitted
VHHA & VHCA-VCAL	2	1	2	1 In-Person (1 Virtual Permitted)		

* All proposals acknowledged that judicial discretion could modify the visitation requirements (e.g., for individuals with higher needs, good cause) or that a state of emergency may require modifications to in-person visitation.

** VAELA suggested that face-to-face visitation requirements apply only to guardians accepting appointment after the effective date of any legislation.

Proposal by Delegate Roem

The proposal by Delegate Danica Roem included four visits a year (no more than 90 days between visits), with one to be in-person by the guardian (Table 1). Up to three visits could be conducted by a qualified person delegated or contracted by the guardian (“qualified designee”). One of the three meetings by the designee must be in-person, and two of the meetings could be virtual.

Proposal by the Virginia Academy of Elder Law Attorneys

The proposal by the Virginia Academy of Elder Law Attorneys (VAELA) included four visits a year with no more than 90 days between visits and with one visit required to be in-person by the guardian (Table 1). Similar to the proposal by Delegate Roem, up to three visits could be conducted by a qualified designee. However, the proposal differed from the proposal of Delegate Roem concerning the conduct of the visits; VAELA’s proposal stipulated that up to three visits by the designee could be virtual.

The proposal by VAELA stipulated that, in the event that a facility is not permitting in-person visits (i.e., COVID-19 or other outbreak), any/all visits may be accomplished virtually. Further, VAELA suggested the inclusion of a best practices standard (i.e., to visit the person under guardianship once per month if they do not reside with the guardian), but that would not be a formal requirement or minimum standard. In addition, VAELA highlighted that the issue of limited guardianships would need to be addressed because the authority of a guardian in this situation may be far less, and the individual has only been determined incapacitated for limited matters. Limited guardianships are not as well-known as full guardianships but are encouraged when appropriate so that the person under guardianship retains as many rights as possible (e.g., right to vote).

VAELA also suggested a delayed effective date to allow guardians, prospective guardians, and healthcare facilities time to prepare for the face-to-face visitation requirements. VAELA further suggested that the face-to-face visitation requirements apply only to guardians accepting appointment after the effective date of any new visitation requirement.

Proposal by the Virginia Hospital and Healthcare Association and the Virginia Healthcare Association/Virginia Center for Assisted Living

VHHA and VHCA-VCAL offered a proposal similar to the others in that it requires at least one in-person visit by the guardian (Table 1). However, the proposal differs by requiring a minimum of 2 visits, no more than 180 days apart, both conducted by the guardian, one of which must be in-person with the option of the second being virtual. Additional visits throughout the year may be performed either in-person or virtually by the guardian or by a designee.

Discussion of the Proposals

All work group members agreed that visits by guardians were important. However, work group members were unable to agree as to whether a minimum floor or a standard should be included in the Code of Virginia, and this was displayed in the consideration of the various proposals as explained below.

A number of work group members supported the proposal by Delegate Roem (e.g., disAbility Law Center of Virginia, family members, etc.), emphasizing that her proposal was a significant improvement over the current language in the Code of Virginia, which does not lay out a specific minimum or frequency requirement for visits. Several members repeatedly stressed the importance of having face-to-face contact in order to assess the health and safety of individuals and to quickly address any identified issues or concerns. Personal experiences were shared in support of Delegate Roem's proposal as well as research on social isolation mentioned previously. Moreover, supporters of visits every 90 days recognized that this requirement was more in line with the recommendations for guardians promulgated by the National Guardianship Association as well the PGP.

VAELA emphasized that guardianship laws apply to several distinct categories of incapacitated persons, including older adults, those with intellectual or developmental disabilities (or both), and those with mental health and substance use issues. The needs of the individual and the ability

of private guardians to make the required visits can be affected by these variables. In particular, the needs of the incapacitated person may often be better met through a designee such as a care manager, operating under the supervision of the guardian. VAELA maintained that these factors make it particularly challenging to have a one-size-fits-all standard.

At the request of Delegate Roem, a work group member and a staff member with the VPLC prepared the talking points that appear in Appendix C. These are summarized below:

1. There is a lack of critical guardianship data elements (e.g., JLARC found that 11 guardians have caseloads over 20; and 120 guardians have caseloads between 4 and 20 (but the vast majority have a caseload of only one, or two to three).
2. Guardian visits have been addressed by the National Guardian Association (one per month) and some states (e.g., District of Columbia-monthly; Florida, New York, New Jersey—quarterly; Virginia Public Guardian and Conservator Program-monthly).
3. Virtual meetings can mask conditions that could be seen during in-person visits.
4. A greater likelihood of poorer outcomes from a negative event (e.g., persons with precarious health situations are more vulnerable to adverse health events).
5. Judicial discretion should increase requirements for visits, not decrease them.
6. Limited guardianship orders are rarely executed.
7. Additional resources are available to mitigate the impact of the visitation requirement.

Several work group members regarded that establishing visits is key to successful guardianship reform, but they were concerned that if the minimum number of visits is written in statute at a level that would be too low or inadequate, then some private guardians may view the minimum requirement as the new standard and the one with which most private guardians would ultimately adhere. Given that the PGP standard of monthly visits reflects the standards of the National Guardianship Association and was also supported by a national study of public guardianship conducted by Teaster et al., (2010), some members were concerned that a minimum number of visits below the JLARC recommendation or Delegate Roem’s proposal (of every 90 days) would become both the ceiling and floor related to visitation practice by private guardians.

VHHA and VHCA-VCAL maintain that a minimum floor standard should be enshrined in statute rather than a recommended best practice standard. Although they recognize that there may be instances when three or more visits are appropriate, they stress that the statute should not mandate this number in all cases. Rather, VHHA and VHCA-VCAL point out that the statute should ensure that a minimum requisite level of visitation occurs, a level that addresses the most pressing matter, which is private guardians performing their duties adequately. The organizations suggest that their proposal strikes an appropriate balance given their concerns regarding the limited availability of private guardians and workforce shortages.

A number of work group members were concerned that virtual visits could mask what might be going on in the background. They regarded that a face-to-face visit is necessary in order to gain a more complete and person-centered, picture of how the person under guardianship is being cared for and treated and that this needed to happen at least quarterly in order to assess any potential changes in the individual’s situation or demeanor. Members stressed that frail or vulnerable individuals, such as those under guardianships, can more easily fall prey to abuse or be subject to

a dangerous situation due to their dependence upon others. Additionally, protecting and honoring the confidentiality of the incapacitated individual was raised as an issue that can arise with virtual visits.

Some members of the work group stressed that by assuming the role of guardian, that private guardian was taking on the responsibility for ensuring the health, safety, and welfare of that incapacitated individual. Therefore, the responsibility should only be taken on by persons who are committed to fulfilling the role in its entirety, which includes getting to know the individual under their care so that they can assess any changes in demeanor, mental or physical health status, level of independence, etc., all of which can change between visits. Some members felt one or two visits by the guardian was inadequate to ensure this level of care.

VAELA was in general agreement with the intent of Delegate Roem's proposal but offered some additional flexibilities to help address concerns about the impact on private guardians' willingness to serve in the role of guardian. These changes were offered to try and balance the desire for improved oversight with ensuring that willing private guardians remained available. VAELA shared similar concerns with VHHA and VHCA-VCAL that increasing obligations on private guardians, especially volunteer private guardians, would contribute to the declining willingness of such volunteers to serve. In their comments, VAELA stressed the importance of this issue and the need for flexibility as it is attorneys who are most often called upon to serve as guardians when there is no other person or entity available to serve, typically for an incapacitated individual without resources and limited income.

Several other members were also concerned that visiting persons under guardianship every 90 days would reduce the number of available private guardians and that the need would be felt more acutely in rural areas. A concern was raised about how statutory requirements for visits by private guardians might affect the supply of available guardians. No available data exist on this matter; however, concerns were raised that requirements might cause current private guardians to stop accepting new clients or to end that component of their practice entirely.

VHHA, and VHCA-VCAL emphasized that their approach was intended to address guardianship issues in Virginia as holistically as possible and expressed concern that mandating four or more visits for private guardians would exacerbate further constraints in an already limited supply of private guardians as well as magnify existing workforce shortages. Further, they were concerned that there would not be enough trained/qualified designees in rural areas if there is a requirement of four or more visits per year. They stressed that additional visits will continue to fall on the private guardian, increasing stress on an already overstressed system.

In addition, one member remarked that the private guardian might reside out of state or move out of state and depending on how the requirement is stipulated, would have to travel burdensome distances to visit a person under their supervision. Allowing for the private guardian to appoint a qualified designee was one solution to reducing the onus of the visit placed on the guardian.

VAELA suggested a delayed effective date of their proposal to allow private guardians time to prepare for the face-to-face visitation requirements as well as an additional suggestion that the face-to-face visitation requirements apply only to private guardians accepting appointment after

the effective date of any legislation. While Delegate Roem indicated she would be open to a delayed effective date, she and others in the work group expressed that they could not support limiting the in-person visitation requirements to private guardians appointed after the enactment of legislation and expressed serious concerns regarding the creation of two separate standards and the welfare of those “grandfathered” in.

Another solution offered was to create more slots and provide more funding for the PGP, a recommendation by VAELA, VHHA and VHCA-VCAL. One member noted that increasing the number of slots in the PGP would only alleviate the demand but so much since most individuals remain under guardianship for life. Increasing the size of the PGP would not only require additional state general funding for slots but would also require additional administrative resources for DARS and the PGP providers and that it would take time to onboard staff with the PGPs and initiate and complete guardianship proceedings through the court system. PGP growth would bring additional oversight requirements for DARS to ensure adequate staffing and management within the PGP providers as well as in ensuring the quality of public guardianship services is maintained. There were also concerns regarding current PGP provider capacity and that the crisis circumstances under which some guardianships are sought (i.e., emergencies or during an imminent facility discharge) simply do not align well with the PGP structure.

Finally, VAELA, VHHA, and VHCA-VCAL recommended creating a mechanism to increase payment rates for private guardians. Creating a separate funding stream and increasing Medicaid payment rates without a negative impact on the Medicaid recipients and their families were two options discussed. However, the work group recognized that there were many implications for either option that would need to be further examined. In particular, VPLC raised concerns regarding increasing Medicaid payment rates as this could negatively impact certain Medicaid recipients and their families. Medicaid eligibility and impoverishment rules are complicated and changes regarding guardianship payments may result in unintended consequences. VHHA and VHCA-VCAL recognized that doing so is complicated and that they did not wish to negatively impact certain Medicaid recipients and their families, however, they stressed that the most consistent issue raised by the private guardians with whom they spoke with was the low or limited reimbursement rates available to them.

Of additional note, VAELA also highlighted that limited guardianships would need to be addressed as well. VPLC voiced concerns with limited guardianships being treated differently since limited guardians still play an important role in an individual’s life and these guardians should be aware of issues in the individual’s life. VPLC argued that an individual may rapidly decline and need a full guardianship or they might improve and need a guardianship to be lessened or removed. In either circumstance, ongoing contact would be needed to evaluate the individual’s needs. VPLC also feared that given the variation in limited guardianships separating them out from full guardianship could create a loophole whereby limited guardianships that are in essence full guardianships are created in order to avoid visitation requirements.

All members agreed that, should visitation parameters be enacted, judicial discretion should be permitted. However, there was not agreement as to whether that discretion should allow an increase or decrease in the frequency of the visits required by guardians.

Lastly, it should be noted that Virginia's revised annual guardian report requires that the guardian indicate, via an open-ended question, if a visit(s) was made to the person under guardianship during the last reporting period (Appendix D).

Recommendations and Summary

Although recognizing the importance of guardian visitation to the health, safety and quality of the life of individuals with a guardian, the work group could not reach an agreement around recommendations regarding the number of required private guardian visits per year or the frequency of the visits. It was agreed that although in-person was ideal, virtual visits could be acceptable within certain parameters. However, those parameters varied within the work group. It was also agreed that a qualified designee may also be appropriate in certain circumstances. Again, the extent to which this option could be exercised could not be agreed upon.

Exploring other mechanisms to increase payment rates for private guardians was discussed but did not have consensus, particularly since the consequences of any proposals would need to be carefully studied for unintended consequences. Expansion of the PGP was discussed as a long term partial solution, but it was determined to not be the ideal immediate solution for several reasons including compromising the quality of services and that it would not address emergency situations where an individual was in need of a guardian.

References

- Code of Virginia. (2022). 22VAC30-70-30. Public guardian programs. F(2). Statutory Authority § 51.5-131. <https://law.lis.virginia.gov/admincodeexpand/title22/agency30/chapter70/>
- Cohen-Mansfield, J., & Meschiany, G. (2022). Direct and Indirect Effects of COVID-19 on Long-Term Care Residents and Their Family Members. *Gerontology*, 1-9.
- Department of Aging and Rehabilitative Services. (n.d.). [Virginia Public Guardianship Program](https://www.vda.virginia.gov/publicguardianship.htm). <https://www.vda.virginia.gov/publicguardianship.htm>
- Donovan, N. J., Wu, Q., Rentz, D. M., Sperling, R. A., Marshall, G. A., & Glymour, M. M. (2017). Loneliness, depression and cognitive function in older US adults. *International journal of geriatric psychiatry*, 32(5), 564-573.
- Gaugler, J. E. (2005). Family involvement in residential long-term care: A synthesis and critical review. *Aging & mental health*, 9(2), 105-118.
- House Bill 634. (2022). Guardianship visitation requirements; DARS shall convene a work group to review and evaluate. <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB634>
- Joint Legislative Action Committee. (2021). *Improving Virginia's adult guardian and conservator system*. <http://jlarc.virginia.gov/landing-2021-virginias-adult-guardian-and-conservator-system.asp>
- Kiely, D. K., Simon, S. E., Jones, R. N., & Morris, J. N. (2000). The protective effect of social engagement on mortality in long-term care. *Journal of the American Geriatrics Society*, 48(11), 1367-1372.
- National Guardianship Association. (2013). *Standards of Practice*. Fourth Edition. <https://www.guardianship.org/wp-content/uploads/2017/07/NGA-Standards-with-Summit-Revisions-2017.pdf>
- Perissinotto, C. M., Cenzer, I. S., & Covinsky, K. E. (2012). Loneliness in older persons: a predictor of functional decline and death. *Archives of internal medicine*, 172(14), 1078-1084.
- Steptoe, A., Shankar, A., Demakakos, P., & Wardle, J. (2013). Social isolation, loneliness, and all-cause mortality in older men and women. *Proceedings of the National Academy of Sciences*, 110(15), 5797-5801.
- Public Guardian Programs. 22VAC30-70-30 F(2). (2009 and rev. 2021?) <https://law.lis.virginia.gov/admincode/title22/agency30/chapter70/section30/>

Appendices

- A. House Bill 634
- B. HB 634 Guardianship Visitation Work Group Members
- C. Talking Points, Del. Roem – HB 634 Guardianship Work Group
- D. Report of the Guardian for An Incapacitated Person [Annual Guardian Report]

Appendix A

House Bill 634

An Act to require the Virginia Department for Aging and Rehabilitative Services to convene a work group to review and evaluate guardianship visitation requirements; report.

§ 1. The Virginia Department for Aging and Rehabilitative Services shall convene a work group including representatives from public guardianship provider organizations, private guardianship attorneys, the Virginia Academy of Elder Law Attorneys, the Virginia disAbility Law Center, the Virginia Poverty Law Center, the Virginia Department for Aging and Rehabilitative Services, and the Virginia League of Social Services Executives; a representative from the Office of the Executive Secretary of the Supreme Court of Virginia, the Virginia Working Interdisciplinary Networks of Guardianship Stakeholders, the Virginia Hospital and Healthcare Association, the Virginia Health Care Association, and the Virginia Center for Assisted Living; and an individual who has served as guardian to a family member to (i) evaluate how a requirement for private guardians to visit the individual under their guardianship in person at least once every 90 days would reduce the availability of willing and qualified individuals to serve as private guardians, if at all; (ii) consider whether a different number and frequency of visits per year, other than at least once every 90 days, would better balance resource constraints with the importance of guardian visits to the incapacitated person under their care; (iii) determine the additional resources, if any, needed to mitigate the negative impacts of an increased visitation requirement on the willingness and availability of qualified individuals to serve as private guardians; (iv) determine how those resources could be allocated to the relevant private and public entities in the guardianship system to promote compliance with an increased visitation requirement; and (v) determine whether expansion of the Virginia Public Guardian and Conservator Program would substantially alleviate issues related to these concerns.

The work group shall develop a summary of its activities and recommendations for establishing the number of required private guardian visits per year, the frequency with which they should occur, whether they should be in-person or virtual, the resources needed to carry out the work group's recommendations, and any other parameters that should be incorporated into a new visitation requirement. The summary and recommendations shall be submitted to the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary by November 1, 2022.

Appendix B

HB 634 Guardianship Visitation Work Group Members

Required Membership

Representatives from:

1. Public Guardianship Provider Organizations
 - a. Chris Stone – District 3 Program Director
2. Private guardianship attorneys
 - a. Matthew Yao
3. Virginia Academy of Elder Law Attorneys
 - a. Rhona Levine
 - b. Stephen Burns (Steve) Burns
4. Virginia disAbility Law Center
 - a. Dana Traynham
5. Virginia Poverty Law Center
 - a. Emily Hardy
6. Virginia Department for Aging and Rehabilitative Services
 - a. Andrea Jones, NOVA APS consultant
 - b. Patti Meire, Public Guardian Program Coordinator
7. Virginia League of Social Services Executives
 - a. Sarah Rexrode

A representative from:

1. The Office of the Executive Secretary of the Supreme Court of Virginia
 - a. Rachel DeGraba
2. Virginia Working Interdisciplinary Networks of Guardianship Stakeholders
 - a. Erica Wood
3. Virginia Hospital and Healthcare Association
 - a. Ryan Raisig, VCU
 - b. Rachel Becker (alternate)
4. Virginia Health Care Association
 - a. Jeannie Adams
5. Virginia Center for Assisted Living
 - a. April Payne

An individual who has served as guardian to a family member:

1. Heidi Lawyer

*Ben Traynham at the request of VHCA/VCAL to serve as alternate

* Delegate Danica Roem and Yolanda Bell at the request of the bill patron, Delegate Roem

Appendix C

Talking Points, Del. Roem – HB 634 Guardianship Work Group

(Submitted by Erica Wood and Emily Hardy, Virginia Poverty Law Center, to Delegate Roem’s staff members at the request of Delegate Roem).

- **Lack of critical guardianship data elements for finding solutions** – for example, JLARC found that 11 guardians have caseloads over 20; and 120 guardians have caseloads between 4 and 20 (but the vast majority have a caseload of only one, or two to three):
 - How many in each high caseload category are attorneys?
 - What staff do guardians in the high caseload categories have?
 - What is the frequency of visits by category?
 - Searches have revealed no research in the state or nationally on the effect of guardian visits on the morbidity, mortality or quality of care/quality of life of clients – but we know things can change quickly with frail individuals and having regular “eye on the person” is critical
- **Guardian visits requirements nationally**
 - The National Guardianship Association Standards of Practice requires monthly guardian visits
 - The District of Columbia requires monthly guardian visits
 - Florida, New York, and New Jersey require quarterly guardian visits (We did not do a search of all 50 states)
 - In Virginia, the Public Guardianship Program requires monthly visits
- **Why more than one in-person visit is needed per year. In *virtual* meetings, the guardian or designee cannot:**
 - Fully assess functional abilities, ADLs – can the person make a cup of tea, walk into the next room
 - Fully assess medical condition – can’t always see bruises on zoom
 - Fully observe interactions with family, friends, caregivers, staff
 - Fully assess adequacy/appropriateness of environment – is the home a hoarding situation; is the nursing home care sufficient
 - Fully evaluate supports, supporters, lack of supports – who is there with the person
 - Fully assess potential for abuse or undue influence – what is happening right outside the computer screen?
 - Fully guarantee confidentiality – person may need help in setting up and using technology
 - Account for hearing loss, vision loss, communications impairments or cognitive impairment which may impede understanding on screen
 - Address social isolation, which is a significant health and mental health concern, and may affect morbidity and mortality – as shown in pandemic

- **Higher risk of worse outcomes from negative event**
 - Minor trauma, such as a fall from a standing position can be three times more deadly for elderly or frail patients than for younger patients¹
 - Consequences of abuse can be more severe for at risk populations and recovery can take longer²
 - Social isolation increases the risk of death, dementia, depression and anxiety³

- **Judicial discretion in modifying visit requirements**
 - Judges should have discretion to modify requirements to increase visits, but not to decrease below 90-day floor
 - Make it easy for judges to increase visits if needed
 - Too many details and specifications may not be workable
 - Perhaps use “visits at least every 90 days unless court orders more frequent visits based on risk of harm”

- **Limited orders**
 - There are very few limited orders – JLARC said 2% of orders limited or temporary
 - Waiving or reducing visits for limited orders could be loophole
 - The responsibility of guardians as surrogate/fiduciary remains, whether the order is limited or not
 - Persons under a limited order may be more likely to move toward restoration of rights, and therefore actually more rather than less visits could be needed to assess the continuing need for guardianship as condition or supports improve

- **Additional resources “to mitigate impact of increased visitation requirement”**
 - Unmet needs study for public guardianship funded in 2022 Governor’s introduced budget should assess impact or potential impact of any visitation requirement on pool of available guardians
 - Need for additional guardians should not dilute quality of public guardianship program
 - Added attention to less restrictive options due to 2022 GAL legislation may reduce number of guardians needed
 - The 300 new public guardianship slots in the 2022 Governor’s introduced budget may reduce number of guardians needed; funding for additional 400 slots (to address the 700 on the public guardianship waiting list) could further reduce number
 - Other possible approaches
 - Volunteer guardianship programs for selected cases (Arlington has had one for years)
 - Consider Illinois model of county estate-funded public program for estates over a designated amount, in addition to the Public Guardianship Program serving indigent clients

¹ <https://www.urmc.rochester.edu/news/story/for-elderly-even-short-falls-can-be-deadly>

² <https://www.who.int/news-room/fact-sheets/detail/abuse-of-older-people>

³ <https://www.cdc.gov/aging/publications/features/lonely-older-adults.html>

Appendix D

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

Please make all responses as detailed as possible.

- Describe the incapacitated person's living arrangements, including a specific assessment of the adequacy of such living arrangement:
.....
- 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:

- Describe all medical, educational, vocational, social, recreational and any professional services and activities 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. The information required by this subdivision shall include (i) the specific frequency or number of times the incapacitated person was seen by such providers; (ii) the date and location of and reason for any

hospitalization of such incapacitated person; and (iii) a description of the educational, vocational, social, and recreational activities in which such incapacitated person participated:

.....

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

.....

5. State your recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship, and the steps to be taken to make those changes:

.....

6. 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:

.....

7. State the name of any persons whose access to communicate, visit, or interact with the incapacitated person has been restricted and the reasons for such restriction:

.....

8. Provide a self-assessment as to whether you feel you can continue to carry out the powers and duties imposed upon you by Virginia Code § 64.2-2019 and as specified in the court's order of appointment pursuant to Virginia Code § 64.2-2009:

.....

9. Unless the incapacitated person resides with you, provide a statement of the frequency and nature of any (i) in-person visits from you with the incapacitated person over the course of the previous year and (ii) visits over the course of the previous year from a designee performing such visit. If any visit described in this section is made virtually, please specify. If no visit was made within a six-month period, describe any challenges or limitations in completing such visit. If the incapacitated person resides with you, state as such:

.....

10. Provide a general description of the activities taken on by you for the benefit of the incapacitated person during the past year:

.....

11. Provide a statement of whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such incapacitated person:

.....

12. Provide any other information useful in your opinion:

.....

I certify 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

Court Use Only:

Date Received:

.....

Clerk