

**REPORT TO THE
GENERAL ASSEMBLY OF VIRGINIA**

**VIRGINIA PUBLIC GUARDIAN AND
CONSERVATOR PROGRAM**



**BIENNIAL REPORT OF
THE VIRGINIA DEPARTMENT FOR AGING AND
REHABILITATIVE SERVICES
COMMONWEALTH OF VIRGINIA
2022**



COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

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January 13, 2022

Members of the General Assembly
General Assembly Building
910 Capitol Square
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Members of the General Assembly:

Pursuant to Virginia Code § 51.5-150, this report on the status of the Virginia Public Guardian and Conservator Program is presented. The document includes statistical data on the number and type of vulnerable adults served by the program, program history, and emerging issues related to the program.

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

Sincerely,

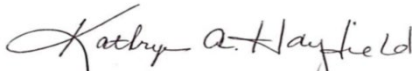

Kathryn A. Hayfield

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EXECUTIVE SUMMARY

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

Program Overview

The Program has capacity to provide public guardianship services, public conservatorship services, or both to 1,049 incapacitated adult residents of Virginia who are found by a Virginia circuit court to be (i) incapacitated and (ii) who meet the criteria for public guardianship as set forth in Virginia Code § 64.2-2010, which include indigency and a finding that there is no other proper and suitable person willing and able to serve as guardian. These services are provided by 13 local providers who have contracted with DARS (“PGP Providers”). Slots are allocated among four eligibility categories: Unrestricted; DBHDS-ID/DD; DBHDS-MI; and MI/ID. The body of the report provides information regarding the services provided by PGP Providers required by law or contract.

Information Regarding Clients

The report includes demographic information regarding the public guardianship clients receiving services as of June 30, 2021, including the number of clients being served in each eligibility category, the age distribution of the Program’s clients, the type of residences where they were then living, and the number of new clients added and the number of existing clients removed from the Program in State Fiscal Years (“SFYs”) 2020 and 2021.

Program Growth through SFY 2021

The Program has grown from a pilot project funded by the General Assembly in SFY 1997 to its current operational structure of 13 PGP Providers offering public guardianship services to 1,049 individuals throughout the state. The most recent increase in funding for public guardianship slots was provided in the SFY 2017-2018 biennial budget, which increased the number of slots from 706 to 1,049, primarily to accommodate new public guardianship clients referred by the Virginia Department of Behavioral Health and Developmental Services (“DBHDS”). Currently, funding for DBHDS-referred clients accounts for 59 percent of the Program’s funding for Program slots. Fifty-three percent of the Program slots are reserved for individuals referred by DBHDS.

The Need for More Program Slots

As of June 30, 2021, there were 663 individuals on waitlists for slots in the Program. These waitlists indicate that there is more demand for public guardianship services than slots available, although waitlists offer only a rough approximation of the unmet need. Virginia Code § 51.1-150 B 9 requires that every four years DARS engage a research entity to undertake a study of the need for public guardians and conservators, and other types of surrogate decisions makers, *provided* the General Assembly appropriates funds for that purpose. The General Assembly last provided funding for this purpose in SFY 2006 and the last study was conducted in 2007.

Budget Considerations

DARS has requested the Governor’s SFY 2023-2024 biennial budget include an additional \$2,487,731 each year for Program slots, increasing the funding for Program slots from \$4,508,833 to \$6,996,564 annually. A portion of this requested increase (\$1,500,000) would be used to create 300 new Program slots and the remainder of the requested increase (\$987,731) would be used to address a funding imbalance in the payment to providers for individual slots. In addition, DARS has requested that the Governor’s biennial budget include an additional \$129,495 annually to cover the administrative expenses of overseeing a large program and \$75,000 in SFY2023 for the purpose of funding the study to evaluate the anticipated need for public guardianship services required by Virginia Code § 51.1-150 B 9.

Recent Regulatory Activity

The regulations governing the Program appear in 22VAC30-70 (“PGP Regulations”). The PGP Regulations were revised effective June 25, 2021 through a fast-track administrative process to make non-controversial changes needed to better align the regulations with the Code of Virginia and the requirements of DARS’ contracts with PGP Providers; clarify the existing regulations; and improve the logic and flow of the chapter. In 2020, DARS also undertook a periodic review of the PGP Regulations as required by Virginia Code §§ 2.2-4007.1 and 2.2-4017 and Executive Order 14 (as amended July 16, 2018). DARS determined that regulatory changes are needed to better define Program requirements; protect the health, safety, and welfare of the individuals served by the Program; and bring conformity to the operations of PGP Providers. DARS submitted a Notice of Intended Regulatory Action (“NOIRA”) on April 1, 2021. That NOIRA has been reviewed by the Department of Planning and Budget and is under review by the Secretary of Health and Human Resources.

Common Misconceptions

The Program is an important part of the social safety net for many of Virginia’s most vulnerable adults; however, the role of the guardian is not commonly well-understood and there are many misconceptions. Many of the most common misconceptions are discussed in the report.

COVID-19; The Pandemic

A significant percentage of the Program’s clients live in congregate residential settings, placing them, and the staff of PGP Providers who oversee their care and conduct regular visits, at a heightened risk of contracting and transmitting COVID-19. In response, DARS has revised visitation policies as necessary throughout the pandemic, provided personal protective equipment to PGP Providers, and provided training to PGP Providers to help them respond appropriately to the pandemic. PGP Providers have diligently maintained contact with their public guardianship clients throughout the pandemic. As of June 30, 2021, 223 Program clients had been positively diagnosed with COVID-19. Of these 20 had died as a result of the infection.

Joint Legislative Audit and Review Commission Report and Recommendations

The Joint Legislative Audit and Review Commission (“JLARC”) conducted a review of Virginia’s guardianship system in SFYs 2021 and 2022. DARS assisted JLARC by providing information regarding the operation of the Program, as well as responding to questions regarding the operation of guardianship in Virginia generally. JLARC’s draft report made public on October 18, 2021 was complimentary of the Program and recommended that the General Assembly consider including additional funding in the Appropriations Act to pay for 700

new public guardianship slots. JLARC made several other suggestions for Program improvements. These are (i) that at least one of the required face-to-face visits with each client be unannounced each year; (ii) periodic reevaluation of the 20:1 client-to-staff ratio to ensure that PGP Providers can effectively carry out their work, with changes made to the ratio as warranted; (iii) PGP Providers maintain a reportable record of formal complaints received with respect to performance of their guardianship duties that is shared with DARS annually; (iv) the General Assembly consider providing one-time funding to DARS for the purpose of hiring a third-party to study the need for expanding the capacity of the Program; to assess the cost of providing expanded public guardianship services; and to assess the costs of providing equal funding to all provider organizations for the same types of public guardianship slots; and (v) DARS issue a request for information for public guardianship services as soon as practicable to assess the availability of organizations interested in providing public guardianship services.

The Virginia Public Guardian and Conservator Advisory Board

The 15 member Virginia Public Guardian and Conservator Advisory Board serves as a technical resource and advisor to the Commissioner for the Program. Members are appointed by the Governor and, as required by Virginia Code § 51.1-149.1 B, include a representative of the Virginia Association of Area Agencies on Aging; a representative of the Virginia State Bar; a circuit court judge recommended by the Chief Justice of the Supreme Court; a representative of ARC of Virginia; a representative of the National Alliance on Mental Illness of Virginia; a representative of the Virginia League of Social Service Executives; a representative of the Virginia Association of Community Services Boards; the Commissioner of Social Services or his designee; the Commissioner of Behavioral Health and Developmental Services or his designee; one person who is a member of the Commonwealth Council on Aging; and other individuals who serve as at-large members.

SECTION I

THE PUBLIC GUARDIAN AND CONSERVATOR PROGRAM

The Virginia Public Guardian and Conservator Program (the “Program”), operates within the Virginia Department for Aging and Rehabilitative Services (“DARS”) under Virginia Code §§ 51.5-149 *et seq.* This 2022 biennial report on the status of the Program is provided to the Virginia General Assembly pursuant to Virginia Code § 51.5-150.

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

Program Overview

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

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

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

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

The PGP Providers serve specific geographic service areas (See Appendix A). Referrals are made to the PGP Provider that serves the geographic area where the allegedly incapacitated person resides at the time of the initial referral. However, as a practical matter, PGP Providers sometimes must serve clients who reside outside of their geographic service area because of residential placement changes that are beneficial to the client but place the client outside of the PGP Provider’s service area.

In addition, three PGP Providers (Bridges Senior Care Solutions, District Three Governmental Cooperative, and Jewish Family Service of Tidewater) are contracted to serve incapacitated individuals in slots reserved for people receiving treatment at hospitals operated by the Department of Behavioral Health and Developmental Services (“DBHDS”) and who are referred

to DARS for public guardianship services by DBHDS. With respect to this type of referral, these three PGP Providers are not limited to accepting referrals from their traditional geographic service areas.

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

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

Public Guardianship Slots

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

- DBHDS-ID/DD – For adults identified by the DBHDS who have an intellectual or other developmental disability and need public guardianship services (454 DBHDS-ID/DD slots);
- DBHDS-MI – For adults identified by DBHDS who have a mental illness and need public guardianship services. To date, these slots have been used exclusively for individuals receiving treatment at state hospitals generally in anticipation of discharge (98 DBHDS-MI slots);
- MI/ID – For adults with either mental illness or an intellectual disability, including individuals who have been identified as needing public guardianship services by a source other than DBHDS (40 MI/ID slots); and
- Unrestricted – For adults who meet the statutory criteria for public guardianship services regardless of the diagnosis or circumstances underlying their incapacity or the referral source. For example, individuals incapacitated by dementia, a brain injury resulting from an accident or a stroke, or serious and persistent mental illness may be assigned to an Unrestricted slot (457 Unrestricted slots).

The Program currently funds 1,049 slots in total amongst the four eligibility categories with the following allocations: 454 DBHDS-ID/DD, 98 DBHDS-MI, 40 MI/ID, and 457 Unrestricted slots. Appendix B lists the number of slots contracted with each PGP Provider for each eligibility category.

Ensuring Quality Public Guardianship Services

Unlike the work of private guardians, the work of public guardians is subject to regulation and oversight by DARS, with standards that exceed those typically imposed on guardians by the courts. High quality **public** guardianship services are maintained through regulations and contract provisions requiring that:

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

SECTION II INFORMATON REGARDING CLIENTS

At the end of State Fiscal Year (“SFY”) 2021, the Program was 99% full, with 987 individuals having a court order in place naming a PGP Provider as their public guardian (“Active Clients”) and 47 individuals approved for a slot with a PGP Provider waiting for a court order appointing the PGP Provider as the public guardian (“In-Process Clients”). These figures include 156 individuals receiving public conservatorship services, all but five of whom also received public guardianship services.

Table 1: Number of Individuals Served –Active Clients (as of 6/30/2021)

Eligibility Category	Total Slots Available	Active Clients	In-Process Clients	Open Slots
Unrestricted	457	429	19	9
DBHDS-ID/DD	454	434	18	2
DBHDS-MI	98	87	7	4
MI/ID	40	37	3	0

Data Source: 4th Quarter Reports – PGP Providers (SFY 2021)

Among the Active Clients at the end of SFY 2021, the youngest was 18 years old and the oldest was 94 years old. The table below illustrates the age distribution of Active Clients at the end of SFY 2021 for the Program as a whole and for each of the eligibility categories.

Table 2: Age Distribution –Active Clients (as of 6/30/2021)

Eligibility Category	Age Group	Age Range	Percentage
All Funding Categories (987 Active Clients)	Young Adult	18 – 29	8%
	Middle Aged	30 – 59	43%
	Older Adult	≥60	50%
	Total		100%
Unrestricted (429 Active Clients)	Young Adult	18 – 29	6%
	Middle Aged	30 – 59	34%
	Older Adult	≥60	60%
	Total		100%
DBHDS-ID/DD (434 Active Clients)	Young Adult	18 – 29	9%
	Middle Aged	30 – 59	54%
	Older Adult	≥60	37%
	Total		100%
DBHDS-MI (87 Active Clients)	Young Adult	18 – 29	7%
	Middle Aged	30 – 59	33%
	Older Adult	≥60	60%
	Total		100%
MI/ID (37 Active Clients)	Young Adult	18 – 29	8%
	Middle Aged	30 – 59	41%
	Older Adult	≥60	51%
	Total		100%

Data Source: 4th Quarter Reports - PGP Providers (SFY 2021)

At the end of SFY 2021, the 987 Active Clients lived in the following situations:

- 47% in group homes;
- 18% in nursing homes;
- 14% in sponsored residential homes;
- 11% in assisted living facilities;
- 3% in state hospitals;
- 3% in independent living settings; and
- 4% in other community settings (e.g., private hospitals, REACH stabilization homes,¹ or adult foster care).

The following table describes the distribution of Active Clients as of June 30, 2021 by housing type among the eligibility categories.

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

Table 3: Housing Type –Active Clients (as of 6/30/2021)

Eligibility Category	Housing Type	Percentage of Active Clients
Unrestricted (429 Active Clients)	Assisted Living Facility	20%
	Group Home	24%
	Nursing Home	37%
	Sponsored Placement	8%
	State Hospital	2%
	Independent Living	5%
	Training Center	None
	Other	4%
DBHDS-ID/DD (434 Active Clients)	Assisted Living Facility	<1%
	Group Home	74%
	Nursing Home	<1%
	Sponsored Placement	21%
	State Hospital	<1%
	Independent Living	1%
	Training Center	None
	Other	3.00
DBHDS-MI (87 Active Clients)	Assisted Living Facility	29%
	Group Home	11%
	Nursing Home	19%
	Sponsored Placement	6%
	State Hospital	28%
	Independent Living	1%
	Training Center	None
	Other	6%
MI/ID (37 Active Clients)	Assisted Living Facility	3%
	Group Home	78%
	Nursing Home	None
	Sponsored Placement	11%
	State Hospital	None
	Independent Living	None
	Training Center	None
	Other	8%

Data Source: 4th Quarter Reports – Public Guardianship Providers (SFY 2021)

During the period SFY 2020 – SFY 2021, 225 people became new Active Clients of the Program upon the entry of a court order appointing a public guardian (115 and 110 in SFY 2020 and SFY 2021, respectively). During the same two-year period, 169 Active Clients were removed from the Program (82 and 87 in SFY 2020 and SFY 2021, respectively). One individual was removed as an Active Client because an appropriate substitute guardian came forward, one individual was

restored to capacity, and two were removed after it was determined that the individual no longer met the eligibility criteria for public guardianship and an appropriate private guardian was identified. The remaining 165 Active Clients were removed from the Program as a result of death.

Table 4: New Active Clients and Active Clients Removed from the Program

	Unrestricted	DBHDS-ID/DD	DBHDS-MI	MI/ID	Totals
SFY 2020 New Active Clients	56	42	15	2	115
SFY 2021 New Active Clients	79	19	12	0	110
SFY 2020 Active Client Removals					
Deaths	59	16	5	1	81
Other Removals	1	0	0	0	1
SFY 2021 Active Client Removals					
Deaths	54	16	11	3	84
Other Removals	2	0	1	0	3

SECTION III PROGRAM GROWTH THROUGH SFY 2021

Funding and Number of People Served

The Virginia General Assembly first provided funding for public guardianship in SFY 1997 when \$150,000 was provided to the Virginia Department of Aging (“VDA,” now a part of DARS) to fund pilot programs to provide guardianships for older residents of the Commonwealth. The Program was formally established in 1998 with the adoption of Chapter 787 of the 1998 Acts of Assembly (SB 394; Garlan, Jr.). In SFY 2001, for the first time, the General Assembly appropriated funds (\$500,000) to VDA to support PGP Providers. The General Assembly provided additional funding in SFY 2006 to expand services to individuals with mental illness and/or intellectual disabilities. In SFY 2016, additional funding was allocated to provide public guardianship services to individuals served by DBHDS pursuant to an interagency agreement between DARS and DBHDS, and in SFY 2017, the funding for DBHDS clients was revised to specify that a portion of it would be used to fund public guardianship services to individuals with intellectual or other developmental disabilities and a portion would be used for DBHDS clients with mental illness. In the 2016 Session, the General Assembly established the four funding categories that DARS now uses in its PGP Contract with PGP Providers (*i.e.*, Unrestricted, DBHDS-ID/DD, DBHDS-MI, and MI/ID), and the number of Program slots the General Assembly expected to be provided in each funding category was specified. This practice has continued for the funding provided through SFY 2021.

From July 1, 2010 – June 30, 2015 (SFYs 2011- 2015), 603 individuals were able to hold a public guardianship slot at any one time. The number of Program slots increased to 706 in SFY 2016, 856 in SFY 2017, and to its current 1,049 in SFY 2018. The slot increases received in SFY 2017 and SFY 2018 were shared across 11 of the 13 PGP Providers, with all but Alleghany Highlands Community Services Board and Appalachian Agency for Senior Citizens receiving new slots in one or both years. All 13 PGP Providers were operating at capacity at the end of SFY2021.

Partnership with DBHDS

The General Assembly has invested significant resources to provide public guardianship services to individuals with an intellectual or developmental disability as part of its efforts to help these individuals live successfully in the community. Historically, many of these individuals would likely have lived in state-operated training centers. The funding increase provided to DARS in the 2016 session of the General Assembly was targeted toward increasing the number of Program slots reserved for DBHDS-referred individuals incapacitated by an intellectual disability or mental illness. DARS and DBHDS, working collaboratively, have added significant capacity to the Program by authorizing additional client slots for at-risk adults.

Currently, funding for DBHDS-referred clients accounts for approximately 59 percent of the Program’s funding for the provision of public guardianship services. Fifty-three percent of Program slots (552 slots) are reserved for individuals referred to the Program through DBHDS. During the period SFY 2017 – SFY 2021, the Program served 385 new Active Clients in DBHDS-ID/DD and DBHDS-MI slots from 36 CSBs and all eight state hospitals.

SECTION IV THE NEED FOR MORE PROGRAM SLOTS; UNMET NEED

As of June 30, 2021, there were 684 individuals on waitlists for slots in the Program: 505 individuals on waitlists with PGP Providers for Unrestricted slots; 29 on the waitlists for the two PGP Providers that have MI/ID slots; and 150 on the waitlist maintained by DBHDS for DBHDS-ID/DD slots. DBHDS makes referrals to DARS for open DBHDS-MI slots but does not maintain a formal waitlist available to DARS. Because filled-slots rarely become available during the lifetime of the person holding the slot, individuals can be on a waitlist for a public guardian slot for months, or in some cases, years. Appendix C specifies the number of individuals waiting for slots in the Program by PGP Provider.

While these waitlists indicate there is more demand for public guardianship services than slots available, DARS does not have sufficient information to accurately quantify the current unmet need for public guardianship services, or to estimate the likely future need for public guardians. Waitlists offer only a rough approximation of need. When PGP Providers do not have open slots and are operating with waitlists, it likely discourages some new, appropriate referrals. In addition, the Unrestricted waitlists of some PGP Providers are influenced by guardianship programs they operate outside of their PGP Contract. This may give the appearance that there is a greater need in one area of the state, when in reality that need is present in other areas of the state as well.

Virginia Code § 51.1-150 B 9 requires that every four years DARS engage a research entity to undertake a study of the need for public guardians and conservators, and other types of surrogate decisions makers, *provided* the General Assembly appropriates funds for that purpose. The General Assembly last provided funding for this purpose in SFY 2006 and the last study was conducted in 2007. Without the aforementioned study to estimate the current unmet need for public guardianship and the likely future need for such services, the only tool available is the current public guardian program waitlists. Please see Appendix C for more information regarding waitlist challenges.

SECTION V BUDGET CONSIDERATIONS

DARS has requested the Governor's SFY 2023-2024 biennial budget include the following additional funds to support the Program:

- \$2,487,731 each year for Program slots, increasing the funding from the SFY 2022 funding level for slots from \$4,508,833 to \$6,996,564, annually;
- \$129,495 each year for administrative funds to cover the costs of overseeing a larger program; and
- \$75,000 in SFY 2023 for the purpose of contracting with a research entity to evaluate the anticipated need for public guardianship services in Virginia across the various geographic regions of the state over the next five years, and the projected costs of providing such services, and to make recommendations for Program improvements.

For additional information see:

http://publicreports.dpb.virginia.gov/rdPage.aspx?rdReport=OB_DocView&Param1=73078528

DARS' request for \$2,487,731 in additional funding for Program slots includes \$987,731 annually to address a funding imbalance in the payment to providers for individual slots. Currently, PGP Providers are paid a blended rate for slots in each funding category, based primarily upon when the slot was first created, so that older slots pay less than more recently created slots. This has resulted in significant disparities in payment rates across the PGP Providers. For example, in SFY 2021, the payment rate for Unrestricted slots ranged from \$2,869 to \$5,000 annually, with an average rate of payment across all programs of \$3,683/year. The additional \$987,731 would address this disparity and allow PGP Providers to be paid \$5,000 annually for each Unrestricted slot, DBHDS-ID/DD slot, and MI/ID slot, and \$7,000 annually for each DBHDS-MI slot.

In the 2016 session of the General Assembly, 50 new slots were added to the Unrestricted category (SFY 2018), 195 to the DBHDS-ID/DD category (SFYs 2017 and 2018 combined), and 98 to the DBHDS-MI category (SFYs 2017 and 2018 combined). The funding provided for these new slots was sufficient to pay at a rate of \$5,000 annually for each new Unrestricted slot and DBHDS-ID/DD slot, and \$7,000 annually for each new DBHDS-MI slot.

There is no operational reason why newer slots should pay at a higher rate than older slots. The date on which the slot was first created does not relate to the public guardianship services provided to clients in those slots, nor is it an indication of when the client holding the slot first became a public guardianship client.

DARS' request for \$2,487,731 in additional funding for Program slots also includes \$1,500,000 annually to create 300 new slots to help reduce the waitlist for Unrestricted and DBHDS-ID/DD slots. If funded, DARS anticipates that PGP Providers receiving new slots would be paid at a rate of \$5,000 annually for each new slot received.

DARS' request for \$75,000 in SFY 2023 to engage a research entity to evaluate the anticipated need for public guardianship services over the next five years is made pursuant to Virginia Code § 51.1-150 B 9 which requires DARS to fund such a study every four years *provided* the General Assembly appropriates funds for that purpose. The General Assembly last provided funding for this purpose in SFY 2006 and the last study was conducted in 2007.

SECTION VI RECENT REGULATORY ACTIVITIES

The regulations governing the Program appear in 22VAC30-70 ("PGP Regulations"). On June 18, 2020, DARS initiated a fast-track rulemaking process for changes to the PGP Regulations that were expected to be noncontroversial but were needed to better align the regulations with the Code of Virginia and the requirements included in the PGP Contracts. Additional changes were made to clarify the existing regulations and to improve the logic and flow of the chapter. (See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8977>). The fast-track process was initiated following DARS-led discussions with the PGP Providers and with the Virginia Public Guardian and Conservator Advisory Board concerning the need for regulatory changes and substance of the proposed changes. The proposed changes were published in the Virginia Register Volume 37, Issue 19 (May 10, 2021) and became final on June 25, 2021.

In 2020, DARS also undertook a periodic review of the PGP Regulations as required by Virginia Code §§ 2.2-4007.1 and 2.2-4017 and Executive Order 14 (as amended July 16, 2018). The beginning of the review process was announced in the Virginia Register Volume 37, Issue 4 (October 12, 2020). DARS determined that regulatory changes are needed to better define Program requirements; protect the health, safety, and welfare of the vulnerable individuals served by the Program and those applying to be served by the Program; and to bring conformity to standards applied by, and the operations of, PGP Providers. On April 1, 2021, DARS submitted a Notice of Intended Regulatory Action ("NOIRA") describing in greater detail the need for regulatory changes (See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9239>). The PGP NOIRA was reviewed by the Department of Planning and Budget on April 14, 2021 and currently is under review by the Secretary of Health and Human Resources.

SECTION VII COMMON MISCONCEPTIONS

The Program is an important part of the social safety net for many of Virginia's most vulnerable individuals. There are, however, many misconceptions about the Program's role. These include the following:

Misconception: Program Standards Apply to All Guardians Appointed by a Virginia Court.

Fact: The standards established by DARS for public guardianship services only apply to individuals who are receiving guardianship as part of the Program. In Virginia, all

guardianships are established by Virginia circuit courts pursuant to orders that establish and define the powers of the guardian. All guardians, public and private, are subject to the authority of the court, the requirements and limitations included in the guardianship order, and the provisions Virginia Code 64.2-2000 *et seq.* Only individuals receiving public guardianship services as part of the Program are protected by the provisions of Virginia Code § 51.5-149 *et seq.*, 22VAC30-70, and the PGP Contract.

Misconception: Any Guardian who is not a Family Member is a Virginia Public Guardian.

Fact: A Virginia public guardian is a PGP Provider contracted with DARS to operate a public guardianship program providing public guardianship services to a specified number of individuals as part of the Program. It is estimated that currently 12,000 adults in Virginia have a court-appointed guardian.² No more than 1,049 of these individuals have a public guardian. Further, not all of the guardianship clients served by PGP Providers are receiving *public* guardianship services. Several PGP Providers also operate private guardianship programs and clients served by those providers as part of the provider's private guardianship program are not part of the Program. In the PGP Contract for SFY2022, DARS included a provision requiring each PGP Provider to (i) register with the Virginia State Corporation Commission a tradename for its public guardianship operations that includes the phrase "Public Guardian Program," (ii) use that tradename on all documents signed on behalf of public guardian clients, and (iii) refrain from using that tradename in connection with services provided to any other individual.

Misconception: A Public Guardian Provides Direct Services to its Clients.

Fact: Public guardians are legal decision-makers for their clients who consent to, and oversee, the services provided to their clients and who advocate for their needs, but public guardians are not hands-on caregivers.

Misconception: A Public Guardian Can Control an Individual's Behaviors.

Fact: Many referring entities request a public guardian in the hope of controlling a "difficult" individual's behaviors. A public guardian is a legal decision-maker. A public guardian cannot control the behaviors of clients. A public guardian can consent to medical care, arrange residential placement, and consent to the provision of various social services. A public guardian cannot force a client to take medication, keep a job, stop abusing substances, or terminate a relationship with a person they wish to see and have the ability to contact.

A legal determination that an individual is incapacitated and in need of a guardian is an awesome deprivation of an individual's right to be in control of their own life that should be entered into conservatively. The Virginia Code makes clear in the definition of "incapacitated person" that appears in Section 64.2-2000, that a determination that a person is incapacitated should be reserved for situations in which the individual "has been found by a court to be *incapable* [emphasis added] of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his

² Estimate from the Joint Legislative Audit and Review Commission, 2021, <http://jlarc.virginia.gov/landing-2021-virginias-adult-guardian-and-conservator-system.asp>.

health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.” The definition goes on to state, “A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition.” Whether an individual receives a guardian should not turn on the question of whether the guardian would exercise better judgment than the allegedly incapacitated person, but whether the individual truly lacks capacity to make essential decisions for themselves.

Misconception: A Public Guardian should be Appointed Whenever There is an Emergency Need for a Guardian.

Fact: The Program is not structured to serve as an emergency provider of guardianship services. Many situations can occur that give rise to a perceived need for an emergency guardianship (*e.g.*, the death of an existing guardian or a family caretaker, a young adult aging out of foster care, a hospital or a residential facility in need of discharge assistance, or a situation involving abuse, neglect or financial exploitation). There are only 1,049 Program slots for the entire state, and they are allocated among different geographic areas. The conditions that lead an individual to be placed under guardianship rarely improve over time, so individuals who receive a public guardianship slot generally hold that slot for the remainder of their life. Consequently, a PGP Provider generally will not have an open slot when an emergency arises and often has a waiting list of other individuals in great need who have been waiting for an open slot for a long time. Moreover, it cannot accept additional public clients in excess of the slots allocated through its contract with DARS or outside of its contracted service area or which will cause it to be out of compliance with the Program requirements designed to ensure adequate staffing.

Misconception: Any Compassionate Person can be an Effective Guardian Representative for a PGP Provider.

Fact: While compassion is an essential qualification for the employees of the PGP Providers who interact with clients directly (“Guardian Representatives”), effective Guardian Representatives must have extensive knowledge of the laws, regulations, and systems affecting their clients, including, for example:

- Benefits available through the Social Security Administration and the Veterans Administration;
- Medicare and Medicaid benefits;
- Medicaid Home and Community Based Services waivers that fund many of the services provided to older adults and individuals with intellectual and developmental disabilities;
- DBHDS’ Discharge Assistance Plan funding used to provide benefits to individuals leaving state hospitals;
- DSS’ Auxiliary Grant Program that funds housing for many individuals incapacitated by serious mental illness and traumatic brain injuries;
- CSB services; and
- Regulations governing long-term care facilities.

Guardian Representatives also must have an understanding of the medical conditions and psychiatric disorders that affect their clients so that they can advocate for services and provide appropriate consents. Guardian Representatives must understand Program requirements and be able to grapple with the many ethical questions that arise as they respond to their clients' needs. They must have sufficient interpersonal skills to work effectively with their clients and the many third-party service providers, including doctors, attorneys, government employees, therapists, and residential providers. Finally, Guardian Representatives must have the intelligence, clarity, and conviction needed to advocate on behalf of their clients.

SECTION VIII COVID-19; THE PANDEMIC

Client Visits

A significant percentage of the Program's clients live in congregate settings such as group homes, nursing homes, assisted living facilities, and state hospitals. Since early 2020, these facilities have been at a heightened risk of COVID-19 outbreaks. In response to the pandemic, DARS advised PGP Providers on March 11, 2020, that it would not regard a suspension of in-person, face-to-face visits with clients as a violation of the provision of their PGP Contract with DARS, as long as a Guardian Representative made a remote/electronic visit with the client instead, or if not possible, ascertained the client's condition through a remote/electronic visit with the client's residential provider. DARS further recommended that when making face-to-face visits, Guardian Representatives should wear personal protective equipment ("PPE"), maintain an appropriate social distance from others, and otherwise follow the advice of the U.S. Centers for Disease Control and Prevention and the Virginia Department of Health ("VDH"). These steps were undertaken to protect both the clients and Guardian Representatives.

In April 2021, DARS announced that all PGP Providers would be expected to resume in-person, face-to-face visitation with clients as of May 1, 2021, subject to some exceptions. On September 8, 2021, however, DARS announced that in-person, face-to-face visits would not be required if the city or county in which the client resides is identified during the month by VDH as having a "High" or "Substantial" COVID-19 transmission rate. For clients not receiving an in-person visit, DARS expects at least one remote/electronic visit with the client during the month, or if that is not possible, a status update from the residential provider.

Throughout the pandemic, PGP Providers have been diligent and creative about maintaining contact with their clients. Guardian Representatives have made window, porch, and driveway visits as an alternative to normal visits inside a client's home, depending on the client's living situation. For clients who cannot be seen this way, the Guardian Representatives have made remote/electronic visits when possible, and have typically reached out to the client more frequently than once a month.

DARS was able to provide enough PPE to PGP Providers to allow for seven in-person visits with every client and sponsored a VDH training session for the PGP Providers explaining how to properly use PPE.

COVID-19 Diagnoses among Clients

As of June 30, 2021, PGP Providers had reported that 223 active clients had been diagnosed with COVID-19 since the beginning of the pandemic. Of these, 20 had died as a result of the infection.

Monitoring and Training

The pandemic has prevented DARS from making on-site auditing visits to PGP Providers. DARS looks forward to resuming these visits in calendar year 2022. In addition, DARS substituted live on-line training for its usual in-person training for PGP Providers in both SFY 2020 and SFY 2021

SECTION IX JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION REPORT AND RECOMMENDATIONS

The Joint Legislative Audit and Review Commission (“JLARC”) conducted a review of Virginia’s guardianship and conservatorship system in SFYs 2021 and 2022. The study resolution required JLARC staff to examine 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 and neglect of vulnerable adults.

On October 18, 2021, JLARC made public the “Commission Draft” of its report entitled, “Improving Virginia’s Adults Guardian and Conservator System” (the “Draft Report”). DARS was pleased to assist JLARC by providing information regarding the operation of the Program, as well as information regarding private guardianships in Virginia.

The Draft Report is complimentary of the Program stating, “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 based on Virginia’s. DARS provides comprehensive and effective oversight of the public guardianship program.” (Draft Report, pages ii-iii). The Draft Report includes 42 recommendations for improving the guardianship and conservatorship system in Virginia. Six of the recommendations specifically address the Program. These are:

- 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.
- 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.

- 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.
- Recommendation 34 – The General Assembly may wish to consider including additional funding in the Appropriations 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.
- Recommendation 35 – The General Assembly may wish to consider including one-time funding in the Appropriations 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 cost of providing expanded public guardianship services; and to assess the actual costs 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.
- 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.”

Additional information regarding these recommendations can be found in the Draft Report. See specifically Chapters 4 and 6. The Draft Report can be found at <http://jlarc.virginia.gov/landing-2021-virginias-adult-guardian-and-conservator-system.asp>.

SECTION X

THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

The Virginia Public Guardian and Conservator Advisory Board (“Board”) serves as a technical resource and advisor to the Commissioner for the Program. The Board is comprised of up to 15 members representing a broad and diverse stakeholder base. Members include representatives of the Commonwealth Council on Aging, DBHDS, the National Alliance on Mental Illness Virginia, the Virginia Association of Area Agencies on Aging, the Virginia Association of Community Services Boards, the Virginia Department of Social Services, the Virginia League of Social Services Executives, the Virginia State Bar, The Arc of Virginia, and a circuit court judge (retired). The Board also includes five qualified persons drawn from various backgrounds, including an attorney, a veteran, and community advocates focused on the needs older individuals.

Pursuant to § 51.5-149.2 (5) of the Code of Virginia, the Board submitted to DARS a report regarding the activities and recommendations of the Board. The Board’s report is posted on the DARS website and it can be found here: <https://vda.virginia.gov/boardsandcouncils.htm>.

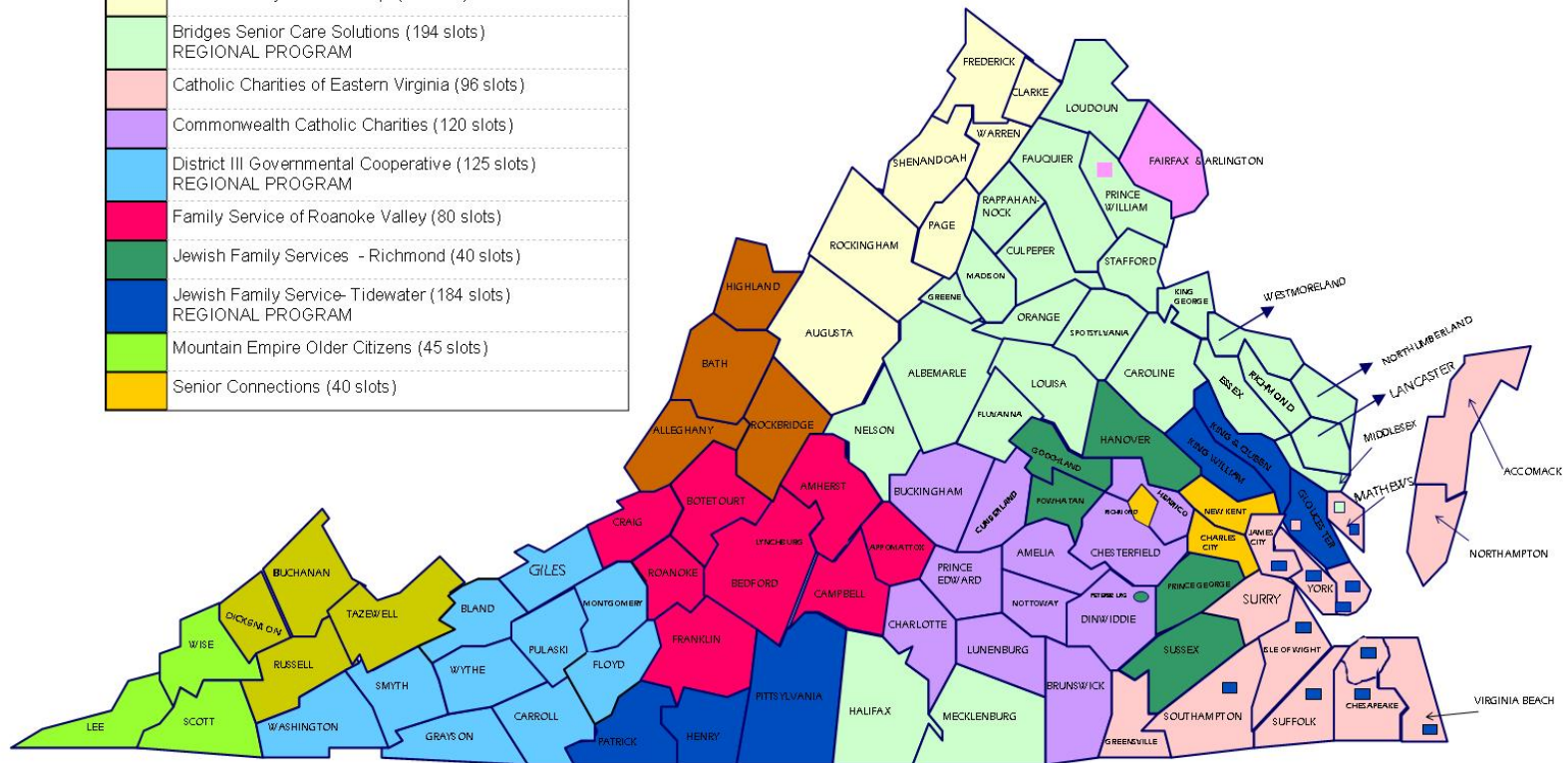
Appendix A
Virginia Public Guardian and Conservator Program
Geographic Service Areas as of June 30, 2021

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

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

VIRGINIA PUBLIC GUARDIAN & CONSERVATOR PROGRAMS SERVICE AREA As of June 30, 2021

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



A(iii)

Appendix B
Client Slots Contracted to PGP Providers as of June 30, 2021

	Unrestricted*	DBHDS- ID/DD	DBHDS- MI	MI-ID	TOTAL
Alleghany Highlands Community Services (CSB)	18	0	0	0	18
Appalachian Agency for Senior Citizens	35	0	0	0	35
The Arc of Northern Virginia	17	33	0	0	50
Autumn Valley Guardianship	6	15	0	0	21
Bridges Senior Care Solutions	56	104	34	0	194
Catholic Charities of Eastern Virginia	58	38	0	0	96
Commonwealth Catholic Charities	16	84	0	20	120
District Three Governmental Cooperative	78	23	25	0	126
Family Service of Roanoke Valley	34	46	0	0	80
Jewish Family Services (Richmond)	22	18	0	0	40
Jewish Family Service of Tidewater	62	83	39	0	184
Mountain Empire Older Citizens	45	0	0	0	45
Senior Connections Capital Area Agency on Aging	10	10	0	20	40
Totals	457	454	98	40	1049

*All PGP Providers may serve individuals with intellectual disabilities, developmental disabilities, and serious mental illness in their Unrestricted slots, although in the case of referrals from CSBs for individuals who meet the criteria for a DBHDS-ID/DD referral or a DBHDS-MI referral, an effort is made to place the individual in the appropriate eligibility category to preserve Unrestricted slots for individuals who are not eligible for those reserved slots.

Appendix C

Number of Individuals on Waitlists for Public Guardianship Slot as of June 30, 2021³

PGP Provider	Unrestricted Waitlist	MI/ID Waitlist
Alleghany Highlands CSB	1	N/A
Appalachian Area Senior Citizens	10	N/A
Arc of Northern Virginia	3	N/A
Autumn Valley Guardianship	15	N/A
Bridges Senior Care Solutions	41	N/A
Catholic Charities of Eastern Virginia	22	N/A
Commonwealth Catholic Charities	28	22
District Three Governmental Cooperative	23	N/A
Family Service of Roanoke Valley	1	N/A
Jewish Family Services (Richmond)	9	N/A
Jewish Family Service of Tidewater	320 (See discussion below)	N/A
Mountain Empire Older Citizens	16	N/A
Senior Connections	16	7
Total	505	29

Data Source: 4th Quarter Reports – Public Guardianship Providers (SFY 2021)

PGP Provider	DBHDS-ID/DD Waitlist
Alleghany Highlands CSB	N/A
Appalachian Area Senior Citizens	N/A
Arc of Northern Virginia	11
Autumn Valley Guardianship	11
Bridges Senior Care Solutions	6
Catholic Charities of Eastern Virginia	1
Commonwealth Catholic Charities	30
District Three Governmental Cooperative	9
Family Service of Roanoke Valley	30
Jewish Family Services (Richmond)	15
Jewish Family Service of Tidewater	5
Mountain Empire Older Citizens	N/A
Senior Connections	12
Catholic Charities of Eastern VA/JFS-Tidewater*	16
Bridges Senior Care/Arc of NOVA*	4
Total	149

Data Source: DBHDS

* This denotes an overlapping territory for Catholic Charities of Eastern Virginia and JFS-Tidewater and an overlapping territory for Bridges Senior Care Solutions and the Arc of Northern Virginia.

³The Unrestricted and MI/ID Waitlists are maintained by each provider. The DBHDS-ID/DD Waitlist is maintained by DBHDS and organized by the PGP Provider's geographic service area. DBHDS makes referrals to DARS for open DBHDS-MH slots, but DARS does not maintain a formal waitlist.

Additional Information regarding Unrestricted Waitlists

The Unrestricted waitlist figures vary significantly across PGP Providers. As of June 30, 2021, 63% of all individuals waiting for an Unrestricted slot across all providers were on the Unrestricted waitlist maintained by Jewish Family Service of Tidewater (“JFS-Tidewater”). No other provider’s waitlist represented more than 8% of the individuals waiting for an Unrestricted public guardianship slot. One explanation for this large discrepancy is that JFS-Tidewater operates a large private guardianship program. Ninety-eight percent of the individuals on JFS-Tidewater’s Unrestricted waitlist on June 30, 2021 were incapacitated, indigent individuals for whom JFS-Tidewater was acting as a private guardian. As part of its private program, JFS-Tidewater serves a significant number of people referred by community hospitals in need of a legal decision-maker to facilitate their discharge from the hospital. For individuals who are indigent, the community hospitals pay JFS-Tidewater a fee to provide private guardianship services. If the fee period ends before the individual’s need for a guardian, JFS-Tidewater places the individual on the waitlist for an Unrestricted public guardianship slot. Approximately 43% of the individuals on the Unrestricted waitlist at JFS-Tidewater on June 30, 2021 were private guardianship clients who had come from a community hospital referral. An additional 39% of the individuals on JFS-Tidewater’s Unrestricted Waitlist on June 30, 2021 were indigent, incapacitated individuals for whom JFS-Tidewater was acting as a private guardian for a fee paid by a LDSS.

While community hospitals clearly provide treatment to many individuals who likely would be eligible for public guardianship services if a slot were available, community hospitals generally are not a major referral source to other PGP Providers, primarily because the other PGP Providers do not operate large private guardianship programs. A hospital typically seeks a guardian when a patient is ready for discharge. It cannot wait for a public guardianship slot to become available. It is similarly atypical for a LDSS to pay a PGP Provider for private guardianship services. It is likely the numbers from JFS-Tidewater indicate an unquantified, unmet need for public guardianship that exists throughout the state.