

**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
2024**



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 users dial 711
Fax (804) 662-7644

January 4, 2024

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

Members of the General Assembly:

DARS is please to present this report on the status of the Virginia Public Guardian and Conservator Program, pursuant to Virginia Code § 51.5-150. This document includes statistical data on the number and type of vulnerable adults served by the Program and the distribution of slots funded by the General Assembly.

If you need any additional information, please contact Laura Koch, Esq., Public Guardian Program Director, by email at laura.koch@dars.virginia.gov, or by telephone at 804-588-3989.

Sincerely,

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

Kathryn A. Hayfield
Commissioner

TABLE OF CONTENTS

Executive Summary	i
Introduction	1
Section I: Overview of the Public Guardian & Conservator Program	1
Section II: Public Guardianship Slots & Client Demographics	3
Section III: Unrestricted Waitlists and DARS' 2023 RFP	7
Section IV: The Public Guardian and Conservator Advisory Board	8
Appendix A: Providers and Service Areas	9
Appendix B: Slot Allocation by Provider and Funding Category	12
Appendix C: Waitlists by Provider and Funding Category	13

EXECUTIVE SUMMARY

The Virginia Public Guardian and Conservator Program (“Program”) operates within the Department for Aging and Rehabilitative Services (“DARS”) under Virginia Code section §§ 51.5-149 *et seq.* The Program provides public guardianship and conservatorship services for adults who are incapacitated, indigent, and without any other proper and suitable person willing and able to serve as their legal decisionmaker.

When a circuit court determines an individual meets the eligibility criteria for public guardianship and/or conservatorship, it appoints one of 12 entities (“Providers”) who have contracted with DARS to provide these services. To ensure statewide coverage, each Provider has a designated geographic service area.

The Program currently has capacity to serve up to 1,349 individuals, an increase of 300 since the 2022 biennial report. A total of 214 new clients entered the Program in SFY 2022-2023, while 176 clients exited—165 due to death, and 11 for other reasons.

The majority of clients (58%) live either in sponsored residential homes or group homes. The current age range is 18 to 98, while 46% are between the ages of 60 and 79. Most clients remain in the Program for the rest of their lives; however, the Provider’s multi-disciplinary panel reassesses each client annually to ensure that public guardianship continues to be appropriate.

The Program’s contractual and regulatory requirements, technical support, annual training, and monitoring activities help ensure a high level of quality of Provider services. For example, Providers maintain a client-to-staff ratio not exceeding 20:1, and public guardian representatives have face-to-face contact with their clients at least once a month.

INTRODUCTION

The Virginia Public Guardian and Conservator Program (“Program”) operates within the Department for Aging and Rehabilitative Services (“DARS”) under Virginia Code section §§ 51.5-149 *et seq.* This 2024 biennial report on the status of the Program is provided to the Virginia General Assembly pursuant to Virginia Code § 51.5-150.

SECTION I

OVERVIEW OF THE PUBLIC GUARDIAN & CONSERVATOR PROGRAM

The Program provides public guardianship and conservatorship services for adult residents of Virginia who are incapacitated, indigent, and without any other proper and suitable person willing and able to serve as their legal decisionmaker (collectively, “eligibility criteria”), as determined by a circuit court. (Virginia Code § 64.2-2010.) The Program currently has capacity to serve up to 1,349 clients, an increase of 300 slots since the 2022 biennial report.

When a circuit court determines an individual meets the eligibility criteria for public guardianship and/or conservatorship,¹ it appoints one of 12 entities (“Providers”) who have contracted with DARS to provide these services. These Providers are:

- | | |
|--|---|
| ◇ Alleghany Highlands Community Services Board | ◇ District Three Governmental Cooperative |
| ◇ Appalachian Agency for Senior Citizens | ◇ Family Service of Roanoke Valley |
| ◇ The Arc of Northern Virginia | ◇ Jewish Family Services (Richmond) |
| ◇ Bridges Senior Care Solutions | ◇ Jewish Family Service of Tidewater |
| ◇ Catholic Charities of Eastern Virginia | ◇ Mountain Empire Older Citizens |
| ◇ Commonwealth Catholic Charities | ◇ Senior Connections – Capital Area Agency on Aging |

To ensure statewide coverage, each Provider has a designated geographic service area (see Appendix A). Referrals are directed to the Provider serving the area where the individual currently resides. If an active client later moves out of its service area, the Provider appointed as public guardian continues to serve the client unless a replacement is appointed by a circuit court.

As of the 2022 biennial report, the Program had 13 Providers. When Autumn Valley Guardianship elected not to renew its contract that year, DARS covered the cost of petitioning the court to appoint Bridges Senior Care Solutions as the successor guardian for each of Autumn Valley’s 20 clients. Bridges now covers Autumn Valley’s prior geographic service area as well.

¹ For ease of reference, the term “public guardian” will be used in lieu of “public guardian, or public conservator, or both” throughout the remainder of this report. “Public guardianship services” will likewise refer inclusively to conservatorship services unless the context indicates otherwise.

Phases in the Creation of a Public Guardianship

There are three phases in the creation of a public guardianship:

1. **Referral:** Referrals for DBHDS slots are assigned to Providers by DARS. (See Table 1). For Unrestricted or MI/ID slots, any interested individual or entity, such as a family or community member, a private guardian who can no longer serve, a care facility, etc., may submit referrals directly to the Provider.
2. **MDP Acceptance:** The Provider’s multi-disciplinary panel (“MDP”) must screen the referral prior to acceptance to determine whether the individual is an appropriate candidate. Specifically, the MDP is tasked with ensuring that:
 - a. the individual appears to meet the statutory eligibility criteria for public guardianship;
 - b. there is no less restrictive alternative that would meet the individual’s needs; and
 - c. the Provider has the resources to serve the individual and the appointment would be consistent with its established priorities. (See 22VAC30-70-30.D.3.)
3. **The Court Process:** If the referred individual is accepted as a prospective client, the referring party engages an attorney and petitions the circuit court to appoint the Provider as the public guardian. Neither DARS nor the Provider is a party to the court action.
 - a. The appoints a guardian ad litem to investigate the statements in the petition and file a report with the court.
 - b. The subject of the petition (“respondent”) may be granted a court-ordered attorney.
 - c. If the judge finds that the respondent meets the eligibility criteria and appoints the Provider as guardian, the Provider may begin providing the services specified in the court order.

After a public guardian has been appointed for them, most clients remain in the Program for the rest of their lives, but each Provider’s MDP reassess its clients annually to ensure that public guardianship continues to be appropriate (22VAC30-70-30.D.5). A few clients each year exit after regaining capacity and having their rights restored by the court, or when someone appropriate, such as a family member, steps forward to serve as their private guardian. The longest period of public guardianship is for a 60-year-old client who has been in the Program since 1997—27 years.

Ensuring Quality Public Guardianship Services

Public guardianships are subject to regulation and oversight by DARS. The Program maintains a high level of quality by requiring that Providers:

- ◇ Maintain a client-to-staff ratio not exceeding 20:1(22VAC30-70-30.C.2.);
- ◇ Utilize person-centered planning to empower and support clients based on their expressed preferences, values, and needs (22VAC30-70-30.F.4); and

- ◇ Assemble an MDP composed of local professionals knowledgeable about human services needs in the area served. This may include representatives from the local department of social services (“LDSS”), community services boards (“CSBs”), area agencies on aging (“AAA”), local health departments, attorneys, physicians, and administrators of local hospitals and residential settings (22VAC30-70-30.D.2).

Additionally, DARS supports and monitors Providers by:

- ◇ Providing technical support and guidance in meeting contract, statutory, and regulatory requirements (22VAC30-70-60.C);
- ◇ Providing annual multi-day trainings on pertinent topics (22VAC30-70-40.A);
- ◇ Holding quarterly meetings for local program directors;
- ◇ Requiring a quarterly report from each Provider regarding the number of active clients served in each funding category, openings, and waitlist status (22VAC30-70-50.C); and
- ◇ Conducting on-site monitoring of programs, including reviewing client files and interviewing randomly selected clients (22VAC30-70-60.A).

SECTION II

PUBLIC GUARDIANSHIP SLOTS & CLIENT DEMOGRAPHICS

Public Guardianship Slots

The Program has capacity to serve up to 1,349 clients in four funding categories established by the General Assembly. The table in Appendix B provides the number of slots each Provider has contracted to serve in each funding category.

To be considered for a slot, an individual must meet the basic eligibility criteria discussed above, as well as any applicable restrictions for the funding category. All Providers have been allocated Unrestricted slots, which are not limited to a particular diagnosis or referral source. Two Providers have slots reserved for clients diagnosed with either a serious mental illness or intellectual disability (“MI/ID slots”).

Table 1: Funding Categories and Slot Distribution, Total = 1,349

Unrestricted: Clients with any diagnosis—primarily dementia, serious mental illness, traumatic brain injury, etc.	757
MI/ID: Clients diagnosed with serious mental illness and/or intellectual disability referred by Richmond Behavioral Health	40
DBHDS-ID/DD: Requires diagnosis of intellectual or developmental disability (DBHDS clients only)	454
DBHDS-MI: Clients diagnosed with a serious mental illness who are discharging from a state hospital (DBHDS clients only)	98

In total, 34% percent of the Program’s slots are reserved for individuals referred by the Department of Behavioral Health and Developmental Services (“DBHDS”). Nine of the Providers serve DBHDS clients in slots reserved for individuals with a diagnosis of intellectual or developmental disability (“DBHDS-ID/DD slots”). Three Providers serve individuals with a serious mental illness who are preparing to discharge from a state hospital (“DBHDS-MI slots”). These are the only slots for which a Provider may accept a client not living in its designated service area.

Active and In-Process Clients

As of December 1, 2023, 1,157 Program slots were filled, including 91 individuals awaiting appointment of a public guardian by the circuit court (“in-process clients”), and 1,066 active clients. Three active clients had a conservator only, 725 had a guardian only, and 216 had both.

Table 2: Current Clients by Funding Category (as of 12/1/23)

Funding Category	Active Clients	In-Process Clients	Totals
Unrestricted	540	56	540
DBHDS-ID/DD	416	33	416
DBHDS-MI	74	2	74
MI/ID	36	0	36
Totals	1,066	91	1,157

Residence Type

Most clients in the Program live in a group home, nursing home, or sponsored residential home. Tables 4 and 5 show the distribution of active clients across various residential settings overall and within each funding category.

Group homes and sponsored residential homes, which have a maximum of two residents, are DBHS-licensed residential settings that primarily serve clients diagnosed with an intellectual disability. The “Other” category includes settings such as private hospitals, crisis stabilization, or living in the community with family or friends.

Table 3: Active Client Residential Setting (as of 12/1/2023)

Type of Residential Setting	Percentage	Type of Residential Setting	Percentage
Group Home	45%	Living Independently	3%
Nursing Home	23%	Patient at a State Hospital	2%
Sponsored Residential Home	13%	Intermediate Care Facility	1%
Assisted Living Facility	12%	Other	1%

Table 4: Residential Setting of Active Clients by Funding Category (as of 12/1/2023)

Funding Category	Type of Residential Setting	Percentage
Unrestricted (540 Active Clients)	Group Home	24%
	Nursing Home	41%
	Sponsored Residential Home	8%
	Assisted Living Facility	18%
	Living Independently	5%
	State Hospital	1%
	Other	3%
MI/ID (36 Active Clients)	Group Home	72%
	Nursing Home	3%
	Sponsored Residential Home	17%
	Assisted Living Facility	0%
	Living Independently	3%
	State Hospital	0%
	Other	6%
DBHDS-ID/DD (416 Active Clients)	Group Home	76%
	Nursing Home	0%
	Sponsored Residential Home	20%
	Assisted Living Facility	0%
	Living Independently	1%
	State Hospital	0%
	Other	2%
DBHDS-MI (74 Active Clients)	Group Home	16%
	Nursing Home	22%
	Sponsored Residential Home	3%
	Assisted Living Facility	38%
	Living Independently	1%
	State Hospital	19%
	Other	1%

Age Distribution

As of December 1, 2023, the oldest active client was 98 years old and the youngest was 18. In the Unrestricted, MI/ID, and DBHDS-MI categories, the largest percentage of clients fall between the ages of 60 and 79. The Unrestricted category has the largest percentage of 80- to 99-year-olds. By contrast, clients in the DBHDS-ID/DD category tend to be younger, with 62% being under age 60.

Clients over 60 now represent 67% of Unrestricted slots and 64% of MI/ID slots, compared to 60% and 51%, respectively, two years ago; but the mean and median ages are similar—57.8 and 60.2, respectively, in 2022; 58.7 and 60.2, respectively, in 2024.

Table 5: Age Distribution of Active Clients (as of 12/1/2023)

Funding Category	Age Range	Percentage
All Funding Categories (1,066 Active Clients)	18–39	19%
	40–59	27%
	60–79	46%
	80–99	8%
Unrestricted (540 Active Clients)	18–39	14%
	40–59	19%
	60–79	53%
	80–99	13%
MI/ID (36 Active Clients)	18–39	14%
	40–59	25%
	60–79	58%
	80–99	3%
DBHDS-ID/DD (416 Active Clients)	18–39	26%
	40–59	36%
	60–79	35%
	80–99	3%
DBHDS-MI (74 Active Clients)	18–39	14%
	40–59	28%
	60–79	53%
	80–99	5%

Program Entries and Exits

A total of 214 new clients entered the Program in SFYs 2022-2023—74 in SFY 2022 and 140 in SFY 2023. During the same period, 176 clients exited the Program²—91 in SFY 2022 and 85 in SFY 2023. A substitute guardian was appointed for four clients, one person was removed due to no longer being indigent, and six individuals were restored to legal capacity because they no longer need a guardian. The remaining 165 clients were removed from the Program due to death.

Table 6: New Active Clients and Program Removals, SFY 2022-2023

New Active Clients	Unrestricted	DBHDS-ID/DD	DBHDS-MI	MI/ID	Total
SFY 2022	45	17	11	1	74
SFY 2023	105	30	4	1	140

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² This is a duplicated count including individuals who entered the Program after the start of the reporting period and also exited before the end of the period.

Client Removals from Program			Unrestricted	DBHDS- ID/DD	DBHDS- MI	MI/ID	Total
SFY 2022	Reasons:	Death	46	21	16	0	83
		Other	7	0	1	0	8
		Total	53	21	17	0	91
SFY 2023	Reasons:	Death	49	24	8	1	82
		Other	2	0	1	0	3
		Total	51	24	9	1	85

SECTION III

Unrestricted Waitlists and DARS' 2023 RFP

As of the end of SFY 2024 Quarter 1, three Providers had no Unrestricted waitlist, two Providers each accounted for 7% of the waitlist, and six accounted for a combined 10%. (See Appendix C.) The remaining 76% of all individuals waiting for an Unrestricted slot were on the waitlist for Jewish Family Service of Tidewater (“JFST”). This is related to the fact that JFST operates a large private guardianship program, and the majority of its waitlist is comprised of individuals for whom JFST has been appointed the private guardian.

JFST is unique among Providers in that it is the private guardian for a significant number of people referred by community hospitals in order to facilitate discharge. If the individual is indigent, the hospital pays the fee for a limited time, after which JFST may place the individual on its Unrestricted public guardianship waitlist. Because of the need to get a guardian in place quickly, community hospitals do not normally make referrals of individuals awaiting discharge to public guardianship Providers.

As of the 2022 biennial report, JFST reported an Unrestricted waitlist of 320. This number was reduced by the removal of individuals living outside of JFST’s catchment area and the allocation of an additional 56 Unrestricted slots as of SFY 2023 Quarter 2; this resulted in a 46% reduction in JFST’s Unrestricted waitlist and contributed to a 55% reduction in the combined total (228 versus 505).

In 2023, the DARS procurement office issued a request for proposals with the intention of contracting with a local provider to serve 40 clients living in five counties along the North Carolina border. The only proposal submitted was from JFST, and because this Provider employs guardian representatives living in or near the target area and demonstrated the administrative capacity for further expansion, DARS allocated JFST the additional 40 Unrestricted slots as of November 1, 2023. This allocation affected only two individuals on its existing waitlist, but JFST is reaching out to referral sources in the community to inform them about the additional openings.

SECTION IV

THE PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

The Virginia Public Guardian and Conservator Advisory Board (“Board”) serves as a technical resource for the Program and advisor to the DARS Commissioner. The Board is comprised of up to 15 members representing a diverse group of stakeholders. 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, and The Arc of Virginia. The Board also includes five qualified persons drawn from various backgrounds, including an attorney, a veteran, and community advocates focused on the needs of older adults.

The Board submitted a biennial report regarding its activities and recommendations on October 1, 2023, pursuant to § 51.5-149.2 (5) of the Code of Virginia. The report is posted on the DARS website at: <https://vda.virginia.gov/boardsandcouncils.htm>.

Appendix A

Virginia Public Guardian and Conservator Program Providers and Service Areas (as of 12/1/23)

(Current Provider contact information is available at <https://vda.virginia.gov/publicguardianship.htm>)

Provider, Program Name, and Location	Service Area
<p><u>Alleghany Highlands Community Services</u> AHCSB Public Guardian Program Clifton Forge</p>	<p><u>Counties:</u> Alleghany, Bath, Highland, and Rockbridge <u>Independent Cities:</u> Buena Vista, Covington, Lexington</p>
<p><u>Appalachian Agency for Senior Citizens, Inc.</u> AASC Public Guardian and Conservator Program Cedar Bluff</p>	<p><u>Counties:</u> Buchanan, Dickenson, Russell, Tazewell</p>
<p><u>The Arc of Northern Virginia</u> The Arc of Northern Virginia’s Public Guardianship of Last Resort Program Fairfax</p>	<p><u>Counties:</u> Arlington, Fairfax, Prince William <u>Independent Cities:</u> Alexandria, Fairfax, Falls Church, Manassas, Manassas Park</p>
<p><u>Bridges Senior Care Solutions</u> Bridges Public Guardianship Program Fredericksburg</p>	<p><u>Counties:</u> Albemarle, Augusta, Caroline, Clarke, Culpeper, Essex, Fauquier, Fluvanna, Frederick, Greene, King George, Lancaster, Louisa, Loudoun, Madison, Mathews, Middlesex, Nelson, Northumberland, Orange, Page, Prince William, Rappahannock, Richmond, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren, Westmoreland <u>Independent Cities:</u> Charlottesville, Fredericksburg, Harrisonburg, Staunton, Waynesboro, Winchester</p>
<p><u>Catholic Charities of Eastern Virginia</u> CCEVA Public Guardianship Program Norfolk</p>	<p><u>Counties:</u> Accomack, Gloucester, Greensville, Isle of Wight, James City, Mathews, Northampton, Southampton, Surry, York <u>Independent Cities:</u> Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg</p>

Provider, Program Name, and Location	Service Area
<p><u>Commonwealth Catholic Charities</u> CCC Public Guardian Program Richmond</p>	<p><u>Counties:</u> Amelia, Brunswick, Buckingham, Charlotte, Chesterfield, Cumberland, Dinwiddie, Henrico, Lunenburg, Nottoway, Prince Edward <u>Independent Cities:</u> Colonial Heights</p>
<p><u>District Three Governmental Cooperative</u> District Three Public Guardian Program Marion</p>	<p><u>Counties:</u> Bland, Carroll, Floyd, Giles, Grayson, Montgomery, Pulaski, Smyth, Washington, Wythe <u>Independent Cities:</u> Bristol, Galax, Radford</p>
<p><u>Family Service of Roanoke Valley</u> Family Service of Roanoke Valley Public Guardian and Conservator Program Roanoke</p>	<p><u>Counties:</u> Amherst, Appomattox, Bedford, Botetourt, Campbell, Craig, Franklin, Roanoke <u>Independent Cities:</u> Bedford, Lynchburg, Roanoke, Salem</p>
<p><u>Jewish Family Services [Richmond]</u> Public Guardian and Conservator Program of Jewish Family Services Richmond</p>	<p><u>Counties:</u> Goochland, Hanover, Powhatan, Prince George, Sussex <u>Independent Cities:</u> Hopewell, Petersburg</p>
<p><u>Jewish Family Service of Tidewater</u> JFS of Tidewater Public Guardian and Conservator Program Virginia Beach</p>	<p><u>Counties:</u> Gloucester, Halifax, Henry, Isle of Wight, James City, King & Queen, King William, Mathews, Mecklenburg, Middlesex, Patrick, Pittsylvania, Southampton, York <u>Independent Cities:</u> Chesapeake, Danville, Franklin, Hampton, Martinsville, Newport News, Norfolk, Poquoson, Portsmouth, South Boston, Suffolk, Virginia Beach, Williamsburg</p>
<p><u>Mountain Empire Older Citizens</u> MEOC Public Guardian and Conservator Program Big Stone Gap</p>	<p><u>Counties:</u> Lee, Scott, Wise <u>Independent Cities:</u> Norton</p>
<p><u>Senior Connections - Capital Area Agency on Aging</u> Senior Connections Public Guardian Program Richmond</p>	<p><u>Counties:</u> Charles City, New Kent <u>Independent Cities:</u> Richmond</p>

Appendix B

Slot Allocation by Provider and Funding Category (as of 11/1/23)

	Unrestrict- ed	DBHDS- ID/DD	DBHDS -MI	MI-ID	TOTAL
Alleghany Highlands CSB	20	0	0	0	20
Appalachian Agency for Senior Citizens	40	0	0	0	40
The Arc of Northern Virginia	17	33	0	0	50
Bridges Senior Care Solutions	116	104	34	0	269
Catholic Charities of Eastern Virginia	82	38	0	0	120
Commonwealth Catholic Charities	56	84	0	20	160
District Three Governmental Cooperative	112	23	25	0	160
Family Service of Roanoke Valley	54	46	0	0	100
Jewish Family Services (Richmond)	22	18	0	0	40
Jewish Family Service of Tidewater	158	83	39	0	280
Mountain Empire Older Citizens	60	0	0	0	60
Senior Connections	20	10	0	20	50
TOTAL	757	454	98	40	1,349

Note: All Providers contract with DARS for Unrestricted slots, which are open to any individual who meets basic eligibility criteria. CSBs and state hospitals are requested to direct their referrals through DBHDS to reduce the amount of time non-DBHDS clients wait for Unrestricted slots.

Appendix C

Public Guardian Waitlists by Provider and Funding Category³

Provider	Unrestricted	DBHDS-ID/DD	MI/ID
Alleghany Highlands CSB	0	—	—
Appalachian Area Senior Citizens	0	N/A	—
Arc of Northern Virginia	3	9	—
Bridges Senior Care Solutions	16	21	—
Catholic Charities of Eastern Virginia	5	4	—
Commonwealth Catholic Charities	17	23	—
District Three Governmental Cooperative	2	12	—
Family Service of Roanoke Valley	0	28	—
Jewish Family Services (Richmond)	3	20	—
Jewish Family Service of Tidewater	173	7	—
Mountain Empire Older Citizens	2	—	—
Senior Connections	7	13	0
Overlapping territory: Bridges Senior Care Solutions/ Arc of Northern Virginia	—	2	—
Overlapping territory: Catholic Charities of Eastern Virginia/ Jewish Family Service of Tidewater	—	4	—
Total	228	143	18

Note: Unrestricted and MI/ID Waitlists are maintained locally by each Provider. The DBHDS-ID/DD Waitlist is maintained by DBHDS and jointly managed with DARS. If a CSB client lives in the service area of a Provider that is not allocated DBHS-ID/DD slots or has a dual diagnosis, the client may be served in an Unrestricted slot. There is no waitlist for DBHDS-MI slots; DARS assigns these referrals to one of three contracted providers, based on the hospital where the individual is receiving treatment.

³ A dash is used to indicate the Provider is not allocated a particular type of slot. The DBHDS slot data is as of 12/1/23; other data was derived from Provider Quarterly Reports for SFY 2024-Q1.