

Virginia Public Guardian & Conservator
Advisory Board



2013 Biennial Report



**COMMONWEALTH OF VIRGINIA
PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD**

October 8, 2013

Dear Commissioner Rothrock,

Pursuant to Virginia Code §2.2-2412(5) of the Code of Virginia, the Public Guardian and Conservator Advisory Board (Board) shall “[s]ubmit to the Department by October of each odd-numbered year, a report regarding the activities and recommendations of the Board, to be posted on the Department’s website.”

In January 2013, the National Association of States United for Aging and Disabilities included Virginia’s public guardian program as a “promising guardianship practice.” The Board applauds the work of the newly established state agency, the Department for Aging and Rehabilitative Services (Department), but requests a call to action for increased statewide planning for substitute decision-making for incapacitated persons and long overdue new funding for the Public Guardian and Conservator Program.

This report includes a perennial recommendation for additional critical funding to stabilize the public guardianship program, address the unmet demand, and expand the program into unserved regions of the state. The Commonwealth’s human services and public safety agencies, both state and local, are desperate for public guardians to help care for indigent and incapacitated adults who are without anyone willing or able to serve as a guardian. The unmet demand for guardian services is projected to be 1,200 incapacitated adults. To fully address the unmet need would cost an additional \$5 million.

An overview of the Virginia Public Guardian and Conservator Program and significant Board accomplishments are also presented in this report. The Board is grateful for this opportunity to submit this report to you for your review and posting to the agency website: <http://www.vda.virginia.gov/guardboard.asp>.

Respectfully submitted,

A handwritten signature in cursive script that reads "Demaris H. Miller".

Demaris Miller, Chair

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Public guardianship, as with private guardianship, is intended to be of last resort and is a function of the state under the doctrine of 'parens patriae'. . . , which provides public guardians for situations in which family members are inappropriate, individuals are indigent, or persons are labeled social deviants and are in need of therapeutic intervention by the state. (Schmidt, 1995). The aging of the population, including the increase in the numbers of persons 85 years of age and older, along with the rise in persons with [intellectual disability] or other developmental disabilities who are outliving their parents, and persons with AIDS comprise populations that also may require guardianship. Because of these increasing numbers, as well as the complexity of making decisions for individuals in these groups, it is imperative that Virginia fiscally supports public guardianship services so that persons throughout the Commonwealth may be free from neglect, exploitation, and abuse and have a maximized quality of life.

--The Need for Public Guardians in the Commonwealth of Virginia—Final Report, Center for Gerontology, Virginia Polytechnic Institute and State University, Roberto, Duke, Brossoie and Teaster (2007), p. 16 (emphasis added) (2007 Report).

Under Code of Virginia §§ 2.2-2411 and 2.2-2412, the Public Guardian and Conservator Advisory Board (Board) is established as an advisory board in the executive branch of state government. The purpose of the Board is to report to and advise the Commissioner of the Department for Aging and Rehabilitative Services (Department) on the Virginia Public Guardian and Conservator Program, established pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5, and to “assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators.”

The Virginia Public Guardian and Conservator Program was established in the Code of Virginia in 1998 after a successful demonstration pilot project. Public guardianship is defined as the appointment and responsibility of a publicly funded entity to serve as a legal guardian for a person who is (i) 18 years of age or older, (ii) incapacitated, (iii) and indigent, and (iv) for whom there is no person willing and suitable to serve as a guardian. Once appointed by the circuit court, the public guardian usually serves for the life of the incapacitated adult.

The Department administers the program through a competitively negotiated contract process with 15 local and regional programs. Code of Virginia §51.5-150 states, “The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.” Currently, the Virginia Public Guardian and Conservator Program is operating at full capacity and serves 601 incapacitated persons throughout the Commonwealth.

Beginning in 2007, the General Assembly provided resources to the Department of Behavioral Health and Development Services (DBHDS) to provide guardianship services to individuals currently residing in, or at risk of placement in, state training centers for persons with intellectual disability. DBHDS, working collaboratively with the Department, added significant capacity to the existing public program by authorizing additional slots for at-risk adults. In addition, DBHDS funding allowed some previously unserved areas in the Commonwealth to provide public guardianship services in their area. Currently, DBHDS funding accounts for approximately 50% of the program budget.

Even with DBHDS funding, however, residents in mostly southern and southwest Virginia remain unserved by the Virginia Public Guardian and Conservator Program. These unserved areas include the counties of Lee, Dickenson, Russell, Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greenville, Dinwiddie, Sussex, Surry, Prince George, Charles City and New Kent.

At the request of the Board, the existing programs recently started maintaining a real-time waiting list. The unmet need for public guardians in those programs is expected to exceed 1,000 by December 2013. The projected unmet need from unserved portions of the state and waiting lists for existing programs is generally consistent with the 2007 report which projected a need for 1,707 public guardians by 2010, 1,939 by 2020, and 2,170 by 2030. *Id.* at ii.

Recommendation

Additional public guardianship funding is critically needed in order to stabilize the program, address the unmet demand and expand the program into unserved regions of the state.

Older public guardianship programs are reaching a crisis point. Funding has not increased to keep pace with increased costs, including staffing and mileage. The programs are under court order to provide services throughout the incapacitated person's lifetime so it is difficult to take on new clients despite growing waiting lists. Without an increase in funding, one or more public guardianship contractors are likely to discontinue providing services. With no willing public guardian provider, the state will be responsible.¹ In addition, there is an increased demand for public guardians for incapacitated persons leaving state training centers

¹ Code of Virginia § 64.2-2015.

under the Department of Justice Settlement Agreement and for those reentering the community after years in prison.²

The current unmet demand for guardianship services is projected to be 1,200 incapacitated adults. In order to stabilize existing programs, begin to address waiting lists, and expand the program to the rest of the state an additional \$5 million is needed.

Accomplishments of the Board

The Board is comprised of up to 15 members representing a comprehensive and diverse stakeholder base. Members include representatives of the Virginia Guardianship Association, the Virginia Area Agencies on Aging, the Virginia State Bar, The Arc of Virginia, the National Alliance on Mental Illness (NAMI) Virginia, the Virginia Association of Community Services Boards, the Virginia State Bar, the Virginia League of Social Services Executives, and the disAbility Law Resource Center (formerly the Virginia Office for Protection and Advocacy). Notable accomplishments for this biennial period follow.

- **Public Guardianship Regulations:** The Board has provided substantial assistance in developing regulations for person-centered practice procedures for the public guardian and conservator programs. During the 2012 General Assembly, HB 270 (Delegate Peace) required the Department to adopt person-centered practice procedures for the programs that “(i) focus on the preferences and needs of the individual receiving public guardianship services and (ii) empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.” In addition, the Board reviewed the Values History Form used by the programs to bring uniformity to person-centered planning practices.
- **Legislative Involvement:** The Board successfully opposed the 2012 Government Reform Initiative that sought to combine the Board and the Alzheimer’s Disease and Related Disorders Commission with the Commonwealth Council on Aging. The 2012 General

² A growing number of ex-offenders who undergo release back into the community lack capacity to give informed consent due to medical and mental health conditions. Frequently, these ex-offenders have no Power of Attorney or relative willing or able to act as a health care decision maker. Ex-offenders lacking capacity and healthcare decision makers may require public guardianship.

Assembly accepted the Board's recommendation that its elimination would be detrimental to the public guardianship program.

- Annual Statewide Training for Public Guardians: Members of the Board actively participate in the annual training for the public guardians. Current board members, a retired elder law attorney and an instructor at Eastern Virginia Medical School, have volunteered their time to conduct comprehensive legal and "brain and incapacity" training during these sessions.
- Ongoing Collaboration and Strong Support: The Board has been instrumental in encouraging individual programs across the Commonwealth. The Board invites the public guardian and conservator program staff to attend Board meetings and conduct presentations in order to keep apprised of issues and to provide expert feedback.

Current Focus and Priorities of the Board

The Board is committed to serving as a technical resource to the programs and the Department. The Board welcomes the opportunity to work with the DARS Commissioner and the 2014 General Assembly to promote its recommendation for an additional \$5 million of funding to support services to incapacitated adults in the Commonwealth.

Public Guardian and Conservator Advisory Board 2013

- **Demaris H. Miller, Chair**
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and Advocacy
- **Thelma Bland Watson**
Richmond
Virginia Area Agencies on
Aging
- **Vacant**
Circuit Court Judge

For addition information concerning this report, please contact Board staff:

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