

Virginia Public Guardian & Conservator Advisory Board



2011 Biennial Report

2011 Biennial Report – Virginia Public Guardian and Conservator Advisory Board

EXECUTIVE SUMMARY

Pursuant to §§ 2.2-2411 and 2.2-2412 of the Code of Virginia , the Public Guardian and Conservator Advisory Board (the “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 the Aging on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators.*

Examples of Persons Served and Impact on *Olmstead* Requirement

Comporting with the Commonwealth’s *Olmstead* initiative, the Virginia Public Guardian and Conservator Program continues to provide a cost effective method to transition vulnerable adults, who need a guardian, from Training Centers to improved lives in the community. Since 2006, the program has successfully transitioned 44 adults to the community at an estimated savings to the Commonwealth of over \$5,000,000 annually. Some examples are included in this report. The Virginia Department for the Aging is commended for administering an efficient and cost effective program that improves the lives of vulnerable adults.

Unmet Needs

There are 242 documented individuals on program waiting lists who need Public Guardianship services. For some of these individuals, a Public Guardian will allow them to remain in the community as opposed to being institutionalized in a state-funded facility. For others, a Public Guardian monitors their care and safety and acts as an authorized substitute decision-maker.

Un-served Areas of the Commonwealth

§ 2.2-711 of the Code of Virginia states the intent of the General Assembly, in 1998, to establish a *statewide* program to ensure that all areas in the Commonwealth have access to Public Guardianship services. Citizens in Southern and Southwest Virginia still do not have programs to serve their areas. These un-served areas of the Commonwealth include the counties of Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greensville, Lee and Dickenson.

Recommendations

It is the recommendation of the Virginia Public Guardian and Conservator Advisory Board that the Virginia Department for the Aging fund the Public Guardian Program by an additional five million dollars (\$5,000,000 dollars) to serve an additional 484 vulnerable adult citizens, including those currently living in Training Centers and in un-served areas of the Commonwealth.

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Examples of Persons Served and Impact on the *Olmstead* Requirement

Comporting with the Commonwealth’s *Olmstead* initiative, the Virginia Public Guardian and Conservator Program continues to provide a cost effective method to transition vulnerable adults, who need a guardian, from Training Centers to improved lives in the community. Since 2006, the program has successfully transitioned 44 adults to the community at an estimated savings to the Commonwealth of over \$5,000,000 annually¹. Some examples are included below (and many more examples can be provided upon request). The Virginia Department for the Aging is commended for administering an efficient and cost effective program that improves the lives of vulnerable adults.

Real Lives and Real People

Person/Age	Diagnosis	Years in Training Center²	Quality of Life Improvement
22 year male	Autistic	16 years	Self-injurious and aggressive behaviors have stopped
61 year female	Down’s Syndrome	60 years	No longer drools or chews on clothes; likes music
58 year male	Profound Mental Retardation from birth	51 years	Goes fishing; laughs easily; emotional outbursts ceased
49 year male	Autism; Seizure Disorder	31 years	Cataract surgery; communicates through gestures; self identifies
68 year female	Dual diagnosis; intellectual & psychiatric	50+ years	Self-injurious behaviors ceased; smiles and interacts with others

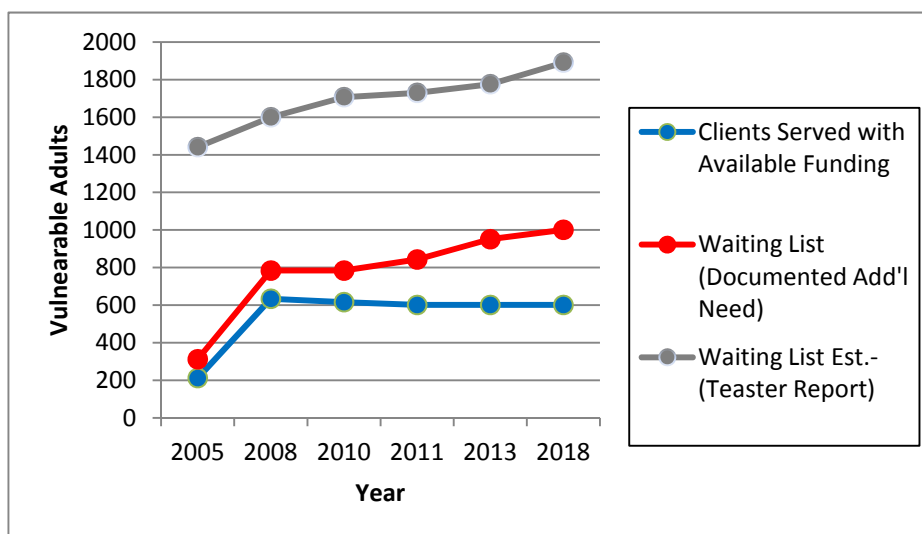
¹ Estimated cost savings for each individual transitioned from a state-funded Training Center to a community setting is approximately \$117,600 annually according to findings by the Department of Justice (reference 2/10/11 report from the Department of Justice to Governor McDonnell for the Commonwealth of Virginia). Based on these figures, 44 individuals multiplied by \$117,600 each, equals a savings to the Commonwealth of \$5,174,400 annually.

² Years that the individual lived in a State Training Center or otherwise institutionalized in a state-funded facility prior to their transition to the community with the assistance of a Public Guardian.

23 year male	Dual diagnosis; intellectual & cognitive	5 years (estimated)	Protection from founded family abuse; supported employment
84 year male	Intellectual disability and numerous health issues	61 years	Enjoys being part of a family and Sunday activities and trips
61 year female	Intellectual disability	50+ years	No longer smacks her head; able to sleep, calmer; health improved

Unmet Needs

There are 242 documented individuals on program waiting lists who need Public Guardianship services. For some of these individuals, a Public Guardian will allow them to remain in the community as opposed to being institutionalized in a state-funded facility. For others, a Public Guardian monitors their care and safety and acts as an authorized substitute decision-maker. In addition, the 242 figure is considered low since programs do not document all requests received. As the chart below illustrates, the actual projected unmet need for the Commonwealth is substantially higher based on a study by Virginia Tech in 2007.³ The need for Public Guardians can be expected to increase exponentially.



Un-served Areas of the Commonwealth

§ 2.2-711 of the Code of Virginia states the intent of the General Assembly, in 1998, to establish a *statewide* program to ensure that all areas in the Commonwealth have access to Public Guardianship services. Citizens in Southern and Southwest Virginia

³ 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 Report (2007).

still do not have programs that serve their area. These un-served areas of the Commonwealth include the counties of Patrick, Henry, Pittsylvania, Halifax, Mecklenburg, Brunswick, Greensville, Lee and Dickenson.

RECOMMENDATIONS

#1 – Funding to Serve 484 More Vulnerable Adults (Cost is \$5 Million Dollars):

It is the recommendation of the Virginia Public Guardian and Conservator Advisory Board that the Virginia Department for the Aging fund the Public Guardian Program by an additional five million dollars (\$5,000,000 dollars) to serve an additional 484 vulnerable adult citizens, including those in Training Centers and in un-served areas of the Commonwealth.

#2 – 4-Year Program Evaluation:

Pursuant to § 2.2-712(B)(9), Code of Virginia, request additional funds to conduct an evaluation of the program. The last evaluation, a needs assessment study, was conducted in 2007⁴. The law allows VDA to request a new program evaluation every four years, “provided the General Assembly appropriates funds for that purpose”. *Important Note:* The last study cost \$18,000. However, based on the way in which the appropriations language was written, program service funds were reduced by \$18,000 to cover the cost of the study. It is not the Board’s intent to reduce funds (service dollars) to serve vulnerable adults.

#3 – Amendment to Virginia Code:

The Code of Virginia needs to be updated to reflect a name change to one of the Board’s representative organizations. *The Association of Retarded Citizens* is now called *The Arc*. See § 2.2-2411(B), Code of Virginia.

HISTORY AND BACKGROUND INFORMATION (PROGRAM)

The Virginia Public Guardian and Conservator Program was established by law in 1997 (to become effective in 1998) in §§ 2.2-711 *et seq.*, Code of Virginia. The Virginia Department for the Aging administers the program with fifteen local programs, through a competitively negotiated contract process. Public guardianship is the discharge of the commonly held precept that “government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community” (Constitution of Virginia, Article I, Section 3). Public guardianship is defined as the appointment and responsibility of a publicly funded entity that serves as a legal guardian for a person:

- who is eighteen years of age or older;
- who is incapacitated;

⁴ 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 Report (2007).

- who is indigent; and
- for whom there is no person willing and suitable to serve as guardian.

Once appointed by a Circuit Court, the guardian of last resort or Public Guardian usually serves for the life of the incapacitated adult. The current program continues to respond to the documented need for guardians of last resort and has evolved over the years. From modest beginnings in 1994 when the General Assembly appropriated funds to explore the feasibility of a publicly funded program, to three demonstration pilot projects and subsequent service to 93 vulnerable adults some years later⁵, the program has grown in capacity to serve 601⁶ of the Commonwealth's most vulnerable adults. In addition and pursuant to recommendations contained in House Document Number 37, *Report of the Select Committee to Study the Statewide System of Providing Substitute Consent for People with Mental Disabilities*, (2002)⁷, VDA, in partnership with the Department of Behavioral Health and Developmental Services (DBHDS), has significantly increased services available to people served by local Community Service Boards (CSBs) and more than doubled its statewide coverage.

HISTORY AND BACKGROUND INFORMATION (ADVISORY BOARD)

Pursuant to §§ 2.2-2411 and 2.2-2412 of the Code of Virginia, the Public Guardian and Conservator Advisory Board (the 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 the Aging on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators.” The Board, established by the General Assembly in 1997 (to become effective in 1998), is comprised of up to 15 individuals representing a comprehensive and diverse stakeholder base. **See Attachment A.** The current Board structure ensures that meaningful representation occurs and that all citizens of the Commonwealth have a *voice* in matters relating to Public Guardianship.

PAST ACCOMPLISHMENTS OF THE ADVISORY BOARD

⁵ Teaster and Roberto Report (1997) and the Virginia Public Guardian and Conservator Programs: Summary of the First Year Evaluation Report, Center for Gerontology, Virginia Polytechnic Institute and State University, Teaster and Roberto (2002).

⁶ Past published reports have stated program capacity as high as 638. However, due to past funding reductions, this number has been reduced and the current program capacity for fiscal year 2012 is 601 as of 9/22/11.

⁷ House Document 37 (2002) resulted from House Joint Resolution 614, patroned by Delegate DeBoer, agreed to during the 2001 General Assembly Session, established a select committee (Delegates Jay W. DeBoer, Robert D. Orrock, Sr., Anne G. Rhodes, John M. O'Bannon, III, and Senators Janet D. Howell, William C. Mims, and Frederick M. Quayle) to study the system of providing substitute consent to persons with mental disabilities. The study resolution was introduced at the request of the Virginia Association of Community Services Boards (VACSB).

The Board serves as an advocate and advisor for the Public Guardian Program and has been commended by VDA in past reports to the General Assembly. Notable accomplishments include:

- Public Guardianship Regulations: As reported to the General Assembly by VDA in the 2008 Annual Public Guardian Report, the Board provided substantial assistance in developing regulations pursuant to § 2.2-712 (B)(3) of the Code of Virginia. Public Guardian Regulations became effective in Virginia on January 1, 2009 (See §§s 22VAC5-30-10 to 22VAC5-30-60, Virginia Administrative Code).
- End-of-Life Decision Making and Multi-Disciplinary Panels: The Board assisted local and regional programs in identifying clear and consistent processes to employ when clients are terminally ill and there was no clear documentation as to an individual's end-of-life wishes. As a result of the Board's assistance, the programs' Multi-disciplinary Panels (MDPs) now assist the programs in addressing these difficult decisions. [Note: The MDP is a statutory requirement for local programs, whose role is to review referrals to the program to ensure that no other least restrictive alternatives exist to serve the prospective client. The MDP serves as a safeguard to ensure that every prospective client is appropriate for the public program and serves only as a last resort].
- Legislative Technical Assistance: The Board assisted in identifying conflicting language in existing law as compared to the proposed revised language in the Virginia Health Care Decision Act (Senate Bill 1142), effective July 1, 2009. The VPGCAB agreed to pursue advocacy efforts to assist the program by eliminating conflicts between the new law and existing law contained in the public guardian statute at § 2.2-713, Code of Virginia.
- Annual Statewide Training for Public Guardians: For the last four years, members of the Board actively participate in annual training for the Public Guardians. In addition, the current Chairman (an elder law attorney in private practice) and the immediate prior Board Chairman (an instructor at Eastern Virginia Medical School), have conducted comprehensive training during these sessions, including a session on the Advance Medical Directive revisions in the Virginia Health Care Decision Act. Board members also make valuable contributions by interacting with Public Guardian program staff and providing financial support for the annual training program.
- Advocacy, Education and Outreach: The Board advocates for program and funding support for the program and actively seeks public, stakeholder and legislative understanding and support for the program as well as strategic efforts to position the program to respond to growing and unmet needs. The Board made a presentation to the Joint Commission on Health Care on the continuing need and success of the Public Guardian Program. The Board also prepared an outline and offered to conduct Public Guardianship Training for Circuit Court Judges. In consultation with the Commissioner of VDA, the Board meets with

members of the General Assembly, the Secretary of Health & Human Resources and other stakeholders.

- Ongoing Collaboration and Strong Support: The Board has been instrumental in actively encouraging individual programs across the Commonwealth. The Board has invited Public Guardian program staff to attend Board meetings and conduct presentations. Board members attend local MDP meetings and trainings in support of the Programs. The Board consistently demonstrates concern for the vulnerable adults served and responds immediately to potential developments that may adversely impact them and the program.

CURRENT FOCUS AND PRIORITIES OF THE BOARD

The Board is committed to serving as a technical resource to the programs and VDA. The Board stands ready to assist in the coming 2012 General Assembly session supporting the Program and educating legislators about any proposed legislation that may adversely impact the vulnerable adults served by the Public Guardian Program. The Board supports \$ 5 million in additional funding to support services to incapacitated adults in the Commonwealth. The Board intends to build on its past work involving local Multi-Disciplinary Panels and avenues to strengthen and expand this valuable group of professionals who volunteer their time and expertise to the programs.

ADDITIONAL INFORMATION OR QUESTIONS

For additional information or questions regarding this report, please contact John M. Powell, Board Chairman by telephone at (703) 442-0923 or by email at jmpowell@powcheylaw.com. You may also contact Janet James, Esq. , Public Guardian Program Coordinator. She may be reached at (804) 662-7049 and email is janet.james@vda.virginia.gov.

ATTACHMENT – A

Current Representation and Members of the Board

Representation Requirement	Board Member	Term of Office and Expiration
Virginia Guardianship Association	John M. Powell, Chairman*	4-Years; 6/30/14
Virginia Area Agencies on Aging	Thelma Bland Watson*	3-Years; 6/30/14
Virginia State Bar	Kathryn L. Pryor	4-Years; 6/30/10 #
Circuit Court Judge	[Vacant]	4-Years; 6/30/14
The Arc ⁸	Debra Holloway	3-Years; 6/30/13
Virginia Alliance for the Mentally Ill	Paul Aravich	3-Years; 6/30/10 #
Virginia League of Social Service Executives	Janis Selbo	3-Years; 6/30/10 #
Virginia Association of Community Service Boards	Deborah O. Burcham	3-Years; 6/30/13
Department of Social Services (DSS)	Gail S. Nardi	Designee of DSS Commissioner
Department of Behavioral Health & Developmental Services (DBHDS)	Cynthia D. Smith*	Designee of DBHDS Commissioner
The Virginia Office of Protection and Advocacy (VOPA)	Dana Traynham	Designee of VOPA Director
Commonwealth Council on Aging	Karen L. Fortier	4-Years; 6/30/14
Qualified Person	Kate C. Mason*	3-Years; 6/30/13
Qualified Person	DeMaris Miller	4-Years; 6/30/14
Qualified Person	Eileen McDonnell Reinaman	4-Years; 6/30/14

** denotes member of the Executive Board*

denotes expired term pending further instruction from the Governor's office

⁸ The Code of Virginia needs to be updated to reflect the organization's new name, *The Arc*. The organization's prior name, *The Association of Retarded Citizens*, is still included in § 2.2-2411(B), Code of Virginia.



Telephone (804) 662-9333
Toll-Free (800) 552-3402

E-mail: aging@vda.virginia.gov
Web site: www.vda.virginia.gov

COMMONWEALTH of VIRGINIA
Virginia Public Guardian & Conservator Advisory Board

1610 Forest Avenue, Suite 100
Richmond, Virginia 23229

James A. Rothrock, Interim Commissioner
Virginia Department for the Aging
1610 Forest Avenue, Suite 100
Richmond, VA 23229

October 31 2011

RE: Biennial Report Pursuant to § 2.2-2412(5), Code of Virginia – Activities and
Recommendations of the Virginia Public Guardian & Conservator Advisory Board

Dear Commissioner Rothrock,

Pursuant to § 2.2-2412(5) of the Code of Virginia, this report on the activities and recommendations of the Virginia Public Guardian and Conservator Advisory Board is presented. The document includes examples of persons served, current needs and un-met needs in the Commonwealth and recommendations from the Board to the Virginia Department for the Aging. This report also includes background information on the Virginia Public Guardian and Conservator Program, a description of the Public Guardian and Conservator Advisory Board, past Board accomplishments and current Board focus.

The Board is grateful for the opportunity to submit this report to you for your review and posting to the agency's web page at www.vda.virginia.gov.

Respectfully Submitted,

Virginia Public Guardian and Conservator Advisory Board, Executive Committee

Handwritten signature of John M. Powell in blue ink, written over a horizontal line.

John M. Powell, Chairman

Handwritten signature of Cynthia D. Smith in blue ink, written over a horizontal line.

Cynthia Smith, Secretary

Handwritten signature of Kate C. Mason in blue ink, written over a horizontal line.

Kate C. Mason, Vice Chairman

Handwritten signature of Thelma Bland Watson in blue ink, written over a horizontal line.

Thelma Bland Watson, Member at Large