

# Commonwealth Council on Aging – Recent Reports

January 26, 2022

## SHHR - Aging Services Workgroup

<https://rga.lis.virginia.gov/Published/2022/RD37>

## Background

- The General Assembly directed SHHR to convene a workgroup to review and develop an optimal organizational structure for aging services within state government.
- Pursuant to the language in Item 291 (F) of the 2021 Acts of Assembly, the intent of the General Assembly is to ensure "that aging services be elevated in importance within state government."
- The workgroup was directed to "include consideration of reestablishing a separate agency on aging under the Office of the SHHR" as well as the appropriate placement for aging services, adult services, adult protective services, and auxiliary grant.
- Workgroup members includes: the Commissioner of DARS, representatives from Virginia's Area Agencies on Aging (AAA), and staff from the House Appropriations Committee, Senate Finance and Appropriations Committee, Division of Legislative of Services, and Department of Planning and Budget (DPB).

## Stakeholder Engagement

- SHHR, with the concurrence of other workgroup members, conducted a stakeholder engagement process focused on elevating aging.
- The process was facilitated by ADvancing States, an association representing the nation's 56 state and territorial agencies on aging, disabilities, and long term services and supports (LTSS) directors.
- Engagement include:
  - 5 workgroup meetings
  - 2 virtual stakeholder forums via Zoom
  - Online surveys of AAAs and local department of social services (LDSS) adult services and adult protective services staff
  - Roughly 50+ key informant interviews and focus groups with stakeholders and agency staff

## Findings: Input Received

- Aging is not elevated in Virginia.
- AAA concerns differ from broader stakeholder concerns.
- There exists some lack of understanding of the programs and services that DARS is responsible for administering.
- There are numerous examples of synergies within DARS.
- Concern was expressed about the bifurcated mission of DARS.
- There is strong support for DARS staff, but a desire for more resources and staff for aging programs.
- DARS needs additional resources to support a culture of innovation.
- The Commonwealth lacks a visible high-level official with sole responsibility for aging and the ability to pull interagency groups together within DARS.
- Overall [of those who provided an opinion]\*, minimal support for a single state agency emerged.
- Communication from DARS could improve.
- Several aging issues of concern were brought up throughout interviews: the workforce crisis; the need for affordable housing; funding, regulation, and treatment of assisted living facilities, nursing homes, and adult day centers, and adult day programs; public guardianship slots, access to services in rural areas, and lack of transportation options

## Findings: What Does Elevating Aging Look Like?

- Institutionalizing collaboration at the state level and promoting collaboration at the local level
- Promoting a positive perception of aging
- Supporting focused, dedicated leadership
- A broad vision of aging services, including a focus on healthy aging in the community
- Fostering innovation
- Improving the visibility of aging programs and communication from DARS
- Developing and advancing policies that strengthen service delivery in the aging network

## Findings: Structural Options

- There was no consensus among the workgroup on an ideal structure.
- Option A: Create a Standalone Agency for Aging Services
- Option B: A Coordinating Organization (e.g. Aging Cabinet) and/or Strategic/Master Plan
- Option C: Expand Aging Programs
- Option D: Appoint a dedicated aging leader in the Governor's office
- Option E: "Reimagine" Aging Services

## Findings: Transition Plans

- Create a Standalone Agency for Aging Services – needs:
  - 25 FTE staff
  - \$3.6 million in ongoing costs
  - \$800,000 in one-time costs
- Option 2: Meeting Unmet Needs for Aging Services within OARS to Elevate Aging – needs:
  - 21 FTE staff, 3 PT staff
  - \$3 million in ongoing costs
- Option 3: Create a Standalone Agency to Meet Unmet Needs and Elevate Aging Services – needs:
  - 42 FTE staff, 3 PT staff
  - \$6.2 million in ongoing costs
  - \$800,000 in one-time costs

## General Assembly Actions Pending (so far)

- Possibly related: [HB917](#) Aging services; allocation of resources; individuals with the greatest economic need.
- Related Selected Governor's Budget Introduced Budget Items for DARS:
  - Add adult protective services regional office staff - \$600,000 in General Fund and 5 authorized positions
  - Increase support for public guardianship slots - \$2.69 million in General Fund and 1 authorized position
  - Increase support for the Virginia Insurance Counseling and Assistance Program - \$600,000 in General Fund
  - Continue support for the Senior Legal Helpline - \$100,000 in General Fund

## SHHR/DBHDS Dementia Services

<https://rga.lis.virginia.gov/Published/2021/RD801>

## Background

- Item 321 N.4 of the 2021 Appropriations Act directs the SHHR to convene a workgroup consisting of state agencies, providers, and other stakeholders to make recommendations for enhanced services for individuals with dementia in order to reduce preventable hospitalizations.
- The workgroup should include DBHDS, DSS, DARS, providers, and other stakeholders, to identify existing services and make recommendations for the development, evaluation, implementation, and scaling-up of evidence-based and evidence-informed services for persons living with dementia in order to improve quality and availability of care and reduce preventable hospitalizations.
- The workgroup shall also include as part of its analysis, an evaluation of the Northern Virginia Regional Older Adult Facilities Mental Health Support Team (RAFT) and determine the feasibility of replicating the RAFT model elsewhere in the Commonwealth to support persons living with dementia with disruptive behaviors or severe and persistent behavioral health conditions.
- The workgroup shall report to the Governor and the Chairmen of the House Appropriations and Senate Finance and Appropriations Committees, and the Joint Commission on Health Care by November 1, 2021.

## Workgroup Members

- State Agencies: DBHDS, DSS, DARS, DMAS
- Stakeholders Organizations:
  - Alzheimer's Association
  - disAbility Law Center of Virginia
  - Virginia Center on Aging
  - Virginia Academy of Elder Law Attorneys
- Community Services Boards (CSBs) & the Virginia Municipal League
- RAFT representatives
- Virginia General Assembly - Senate Finance Committee
- Providers:
  - LeadingAge Virginia
  - Virginia Assisted Living Association
  - Virginia Association of Area Agencies on Aging
  - Virginia Health Care Association
  - Virginia College of Emergency Room Physicians
  - Virginia Hospital and Healthcare Association
- The Dementia Services Workgroup met four times between June and September of 2021.

## Issues

- Virginia's state mental health hospitals have been experiencing increasingly high bed census rates over the past several years.
  - The high state hospital census is felt most acutely in geriatric hospitals and units (reserved for individuals 65 and older) which consistently run above 100% capacity, even though 85% capacity or lower is considered safe.
  - Fifty-seven percent of these admissions have a dementia diagnosis.
  - Between 2017-2020 there was a 48% increase in the total number of geriatric individuals with dementia who were hospitalized in state psychiatric hospitals.
- One large population with above-average lengths of stay is the population of individuals with dementia and other forms of cognitive impairment.
  - For the geriatric population with dementia, the average length of stay was roughly 3.5 times higher at 229 days (than the average length of stay for other hospital patients).
- Often, these patients have no underlying serious mental illness and yet may exhibit behavioral and psychological symptoms of dementia (BPSD) that result in a temporary detention order (TDO) and transfer to a state hospital.
  - These state facilities specialize in pharmacological treatments in large, crowded settings.
- Temporary detention and inpatient hospitalization could be avoided through proactive prevention in individual's home and community environments, whether that be with a family member, in an assisted living facility (ALF), or nursing facility (NF).
- State mental health facilities struggle to provide the type of treatment that these individuals require, which includes non-pharmacological interventions as a first line of treatment.

## Workgroup Goals

- 1. Identify existing services for individuals living with dementia.
- 2. Make recommendations to increase access to evidence-based services for persons living with dementia.
  - Consider alternatives to inpatient psychiatric hospitalization for individuals with dementia experiencing behavioral or psychological symptoms.
  - Evaluate and propose needed changes to the current definition of mental illness regarding its impact on this population.
- 3. Evaluate the Northern Virginia Regional Older Adult Facilities Mental Health Support Team (RAFT) and feasibility of replicating it elsewhere in the Commonwealth.

## Immediate Workgroup Recommendations

- 1. Provide funding for dementia behavioral specialists, to be integrated into the system of care.
- 2. Collect data and explore partnerships in order to further develop a workforce that has the expertise to provide evidence-based, person-centered dementia care. DARS would take the lead on this as the lead agency on aging, however additional resources would be required to complete this work.
- 3. Make targeted investments to DARS in the areas of awareness, education, and training to involved stakeholders and the community at large.
- 4. Develop and pilot respite and crisis care options for individuals to receive treatment when they can no longer stay in their homes and communities.
- 5. Provide resources to DARS to spearhead increased collaboration across agencies and among public and private organizations involved in dementia care and advocacy.

## General Assembly Actions Pending (so far)

- Selected Governor's Introduced Budget Items for DBHDS:
  - Increase dementia expertise by supporting regional dementia specialists - \$1 million in General Fund, 6 authorized positions
  - Provide funds for additional discharge planning and modernize tracking system - \$3.27 million in General Fund
  - Sustain dementia/older adult pilot program for individuals who would otherwise be served by state hospitals - \$1.65 million in General Fund
  - Fund comprehensive study of state behavioral health system - \$1 million
  - Expand discharge transportation program to all state facilities - \$1 million
  - Fund benefit positions at state hospitals - \$735,000 in General Fund, 8 authorized positions

# JCHC: Aging in Place

<http://jchc.virginia.gov/reports.asp>

## Background

- There is a growing need to provide aging supports to older Virginians.
- Like many states, Virginia continues to focus on ways to support seniors in their homes and communities, instead of in more costly and restrictive settings such as nursing facilities.
- The JCHC directed staff to study strategies that Virginia could pursue to support aging Virginians in their communities.
- The study resolution specifically directs staff to:
  - identify the necessary continuum of services to support older adults,
  - understand the extent to which services vary across Virginia and ways services could be better coordinated, and
  - identify effective programs or strategies that could be implemented to better support older Virginians to “age in place.”
- Staff were directed to focus specifically on older adults with functional needs, those who need assistance with activities of daily living (ADLs), rather than on adults with intellectual or developmental disabilities, dementia, and other conditions that require additional supports.

## Findings - Highlights

- Approximately 200,000 older Virginians need aging supports, with Virginia spending \$752 million on aging programs in FY20.
  - The number of Virginians age 60 and over has grown by 34% since 2010 and is projected to increase and become more diverse
  - Many Virginians do not have access to retirement savings or are expected to outlive their financial resources during retirement
  - Virginia spent \$752 million on community-based LTSS in 2020, primarily through the Medicaid program
- Older Virginians with limited means but not eligible for Medicaid have difficulty accessing HCBS  
Home care and housing supports are the biggest unmet needs for older Virginians
  - Personal care, companion, and homemaker services are the greatest need across Virginia
  - Older Virginians have unmet housing and home modification needs
  - More older Virginians receive food and transportation assistance, but many are underserved
- Opportunities exist to bolster support for older Virginians across a variety of current programs and services

## Recommendations – Medicaid

- Virginia’s Medicaid program could be expanded to include additional services and populations for older adults with LTSS needs
- Option 1 - DMAS could develop a plan for implementing a 1915(i) state plan home-and-community based services option that targets older Virginians up to 300% of SSI and with functional eligibility criteria that are less restrictive than the current criteria for the elderly home and community-based services waiver
  - Adopted as a JCHC recommendation by a 12-1 vote
- Option 2 - JCHC could introduce a budget amendment providing funds to the Department of Medical Assistance Services to conduct a rate study for the section 1115 High Needs Supports waiver
  - No action taken

## Recommendations - DARS

- Option 3 - increase state funding for home care and home modification services, and include language in the Appropriation Act directing Department of Aging and Rehabilitative Services to estimate the amount of additional state funding necessary to address the current unmet need
  - Adopted as a JCHC recommendation by a 14-1 vote
- Option 4 - provide state funding for the Virginia Lifespan Respite Voucher Program that would supplement federal grant funds
  - No action taken
- Option 5 - provide a tax credit to eligible working family caregivers to offset the cost of eligible caregiving expenses
  - Adopted as a JCHC recommendation by a 14-1 vote
- Option 6 - create a grant program to develop and expand community-based volunteer organizations that provide caregiver-like services in their communities
  - Motion to adopt as a JCHC recommendation failed.

## Recommendations - Interagency

- Option 7 - Direct the Department for Housing and Community Development to update the current Housing and Supportive Services Interagency Leadership Team initiative to include older Virginians as a target subpopulation and add the appropriate stakeholders to develop proposals for increasing the supply of permanent supportive housing for older Virginians
  - Adopted as a JCHC recommendation by a 14-1 vote

## General Assembly Actions Pending (so far)

- [HB239](#) and [SB263](#) Housing and Supportive Services Interagency Leadership Team initiative; housing and services for older Virginians.
- [HB291](#) and [SB266](#) Family caregiver tax credit.
- Related:
  - [HB720](#) Family caregiver tax credit.
  - [SB632](#) Family caregiver tax credit.

## JCHC – Nursing Facility Workforce

<http://jchc.virginia.gov/reports.asp>

## Background

- Nursing home operators and resident advocates have been concerned about staffing challenges in Virginia’s nursing homes for more than twenty years.
- The COVID-19 pandemic exacerbated many of these existing issues.
- In December of 2020 the JCHC directed staff to study staffing in Virginia’s nursing homes and its impact on the quality of care residents receive. Specifically, the study resolution directed staff to:
  - Assess the extent to which there are staffing shortages for nursing homes in Virginia and understand the underlying causes;
  - Evaluate the impact of staffing shortages on the quality of care provided in nursing homes;
  - Analyze whether these impacts are disproportionately impacting certain populations in Virginia based on race, socioeconomic status, or other factors;
  - Assess whether Virginia’s current licensing requirements and oversight are appropriately identifying and addressing quality of care issues in nursing homes; and
  - Identify strategies to improve recruitment and retention of the necessary workforce.

## Findings – Staffing

- Staffing is a challenge across Virginia nursing homes, particularly for those serving low-income residents
  - One-fifth of Virginia’s nursing homes are not meeting CMS expectations for total direct care hours per resident
  - Staffing shortages disproportionately impact facilities with low-income and Black residents
  - Raising Medicaid reimbursement rates for nursing homes with a high concentration of Medicaid beds could improve staffing
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## Findings – Staffing

- Low staffing increases the risk of low-quality care
  - Facilities with the fewest staff per resident are more likely to have lower health inspection and quality ratings
  - Research literature consistently finds a strong relationship between staffing and quality
  - Virginia is one of 16 states without a nursing home staffing requirement
  - Virginia could require all nursing homes and certified nursing facilities to meet a baseline staffing level
  - Funds to support a staffing requirement could come from the general fund or other dedicated revenue

## Findings – Workforce

- Broader health care workforce shortage contributes to staffing problems in nursing homes
  - Fewer LPNs and CNAs have entered the workforce each year since 2016
  - The COVID-19 pandemic continues to significantly exacerbate the labor shortage
  - Successful recruitment and retention of nursing facility staff depends on many different factors

## Findings – Quality Improvement

- Additional strategies could incentivize and support better staffing and care quality
  - Incentivizing quality can improve care at facilities that already meet staffing standards
  - Behavioral health needs are increasing, but not sufficiently addressed through reimbursement rates
  - Prioritizing other types of care would reduce need for nursing home workforce over the long term

## Recommendations – Reimbursement

- Option 1 - Direct DMAS to develop a plan to increase nursing home reimbursement rates for nursing homes with a disproportionate share of Medicaid residents
  - Adopted as a JCHC recommendation by a 13-1 vote
- Option 4 - Direct the DMAS to develop a proposal for a nursing home provider assessment that can be submitted to CMS for approval. DMAS should work with appropriate stakeholders, including LeadingAge Virginia and VHCA, when developing the proposed assessment
  - No action taken
- Option 8 – Direct DMAS to develop a plan for an enhanced reimbursement rate to nursing homes for residents with behavioral health diagnoses. The plan should include the diagnoses to be included, the additional care and staff training required, and the estimated cost. The plan should be submitted to the Joint Commission on Health Care, and the Chairs of the House Appropriations and Senate Finance Committees by October 1, 2022
  - Adopted as a JCHC recommendation by a 13-1 vote

## Recommendations – Staffing

- Option 2 - Amend section § 32.1-127 of the Code of Virginia to require nursing homes to provide at least 3.25 hours per resident day of total direct patient care (total RN, LPN, CNA hours), including at least 0.4 hours per resident day of RN care
  - No action taken
- Option 3 - Amend section § 32.1-127 of the Code of Virginia to require nursing homes to provide at least the number of expected total direct care hours and total RN hours that are calculated by CMS based on resident acuity in each nursing home
  - Adopted as a JCHC recommendation by a 10-2-1 vote
- Option 7- Direct and fund DMAS to include a formal evaluation that includes assessing the program's effectiveness at increasing staffing and quality
  - Adopted as a JCHC recommendation by a 13-1 vote

## Recommendations – Workforce Development

- Option 5 - Provide general fund appropriations to the Long-Term Facility Nursing Scholarship program
  - Adopted as a JCHC recommendation by a 13-1 vote
- Option 6 – Direct DMAS to design and seek CMS approval for a quality improvement program addressing nursing home capacity-building with funding from the Civil Monetary Penalties Reinvestment Fund. Program design could be based on the results of the Virginia Gold Quality Improvement Program pilot project
  - Adopted as a JCHC recommendation by a 13-1 vote
- Option 9 (added) - Endorse VCCS request for nursing education funds (Member-proposed)
  - Adopted as a JCHC recommendation by a 13-1 vote

## General Assembly Actions Pending (so far)

- [HB330](#) Minimum staffing standards for nursing homes and certified nursing facilities; administrative sanctions; Long-Term Care Services Fund.
- [HB646](#) Nursing home standards of care and staff requirements; regulations.
- [SB406](#) Minimum staffing standards for nursing homes and certified nursing facilities; administrative sanctions; Long-Term Care Services Fund.
- Selected Governor's Introduced Budget Items:
  - DMAS - Hire position to support provider reimbursement - \$90,000 in General Fund, \$90 in Non-General Fund, and 1 authorized position

## Other pending JCHC legislation (related to Aging)

- [HJ5](#) Study; Joint Commission on Health Care; benefits of hospitals, health systems, and other providers addressing the health-related social needs of Virginians; report. Directs the Joint Commission on Health Care to study the benefits of hospitals, health systems, and other providers in addressing the health-related social needs of Virginians. The study shall identify opportunities for policy making to make health care in Virginia more affordable and effective through innovations in care coordination, workforce development, payment options, and improved data collection.

# JLARC

## Guardianship & Conservatorship

<http://jlarc.virginia.gov/landing-2021-virginias-adult-guardian-and-conservator-system.asp>

### Background

- In 2020, JLARC asked staff to conduct a review of Virginia's guardianship and conservatorship system. The study resolution directed the examination of 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 or neglect of vulnerable adults.
- Guardianship and conservatorship support incapacitated adults by providing them a representative who legally makes decisions on their behalf. Guardianship is a legal process where a court-appointed individual supervises the personal affairs of an adult who is incapacitated because of a disability or illness. In conservatorship, a court-appointed individual manages the financial affairs of an incapacitated adult.

## Findings – Highlights

- Approximately 12,000 Virginia adults are under guardianship, relying on a court-appointed third party to manage their affairs
- Few adults under guardianship have their rights restored, but circuit courts should regularly consider changes to guardianship arrangements
- Circuit courts need better information to make the best decisions in guardianship cases
- Guardians have too much discretion to restrict contact with adults under their guardianship
- Virginia’s public guardianship program is effective, but demand for public guardians exceeds available slots
- Most adults under guardianship are served by private guardians, who are not subject to any standards
- Content and format of annual guardianship report are ineffective for overseeing private guardians
- Court-appointed conservators can become responsible for complex financial decisions and need more training
- Initial inventory of assets owned by adults is self-reported by conservators and not verified, creating risk of improper spending

## Interface with DARS

- Public Guardian and Conservator Program
- Adult Services (AS), Adult Protective Services (APS), and Local Departments of Social Services (LDSS)
- Office of the State Long-Term Care Ombudsman

## Recommendations - General

- Require a periodic circuit court hearing to review guardianship and conservatorship appointments, unless the court determines that periodic reviews are unnecessary.
- Require that guardians ad litem explain in their report to the judge why an alternative arrangement to full guardianship is not appropriate for the adult and report to the judge additional information pertinent to the prospective guardian's suitability, such as the guardian's current caseload.
- Require private guardians and conservators to take state-provided training.
- Specify the circumstances that allow for restricting contact with adults under guardianship and create a formal, transparent process for guardians to implement a visitation restriction against one or more individuals.
- Set a visitation requirement for private guardians.
- Require the annual guardianship report to include more detailed and pertinent information.

## Recommendations – Related to DARS

- Give DARS new responsibilities related to private guardianship and direct DARS to develop a proposal for conducting independent care visits for a subset of private guardianships to ensure adults are receiving quality care.
- Appropriate funds to eliminate the public guardianship program's waitlist.
- Develop a process for guardians ad litem to request Adult Protective Services (APS) records.
- Develop and provide training for private guardians.
- Develop a centralized process for receiving complaints against private guardians and referring filers of complaints to state and local agencies that can address the complaint.
- Issue a request for information to determine organizations' interest in providing additional public guardianship services.

## Recommendations - Conservators

- Require conservators to notify family members and other interested parties that they may request a copy of the initial inventory of an adult's assets to review it for completeness and accuracy.
- Require the court order appointing a conservator to include a statement of the adult's financial resources for commissioners of accounts to compare to the conservator's initial inventory of assets.
- Develop required online training for conservators.

## Related General Assembly Actions Pending (so far; selected legislation)

- [HB94](#) Public Guardianship and Conservator Ombudsman Office.
- [HB96](#) Public guardian and conservator program; decennial review of staff-to-client ratios; report.
- [HB424](#) Guardianship; duties of guardian; visitation requirements.
- [HB623](#) Guardianship and conservatorship; duties of the guardian ad litem; report contents.
- [HB634](#) Guardianship; duties of guardian; visitation requirements.
- [HB643](#) Guardianship and conservatorship; periodic review hearings.
- [HB1207](#) Department for Aging and Rehabilitative Services; training; powers and duties of guardian; annual reports by guardians; information required.
- [SB302](#) Natural guardianship of permanently incapacitated persons.