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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC30-70
VAC Chapter title(s)	The Public Guardian and Conservator Program
Date this document prepared	December 2, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Client = An incapacitated person served by the Program
DARS or department = Virginia Department for Aging and Rehabilitative Services
Program = Virginia Public Guardian and Conservator Program

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Program is established under §§ 51.5-149 et seq. of the Code of Virginia and with funding under Items 340 and 344 of the 2020 Appropriation Act. Section 51.5-149 gives DARS the oversight for the provision of the Program. In accordance with § 51.5-150 B 3 of the Code of Virginia, the department is authorized to “adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer, and manage the Program,” including the adoption of: 1) minimum training and experience requirements for Program staff and volunteers; 2) client-to-staff ratios; and 3) person-centered practices.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The regulatory requirements are designed to protect the health, welfare, and safety of incapacitated persons (“clients”) served by the Program. There are no other alternatives to the proposed regulatory action; a periodic review of this regulation is required.

DARS maintains contracts with all 13 public guardian program contractors. DARS could add or continue to maintain requirements in the contracts held with these contractors. The regulations provide consistency, transparency, clarity, and clear enforcement of Program requirements. The regulation represents the best alternative to minimize any adverse impact on public guardian program contractors while still ensuring the protection of Program clients.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Joanna Wise Barnes, ServiceSource, Inc.	<p>The commenter requests that the general funding appropriated for the Public Guardian and Conservator Program be expanded to include funding for capacity evaluations by licensed professionals to document individuals’ incapacity, when appropriate.</p> <p>The commenter references capacity requirements and limitations found in 12VAC35-115.</p> <p>The commenter states that currently there is no funding for professional capacity evaluations and capacity evaluations should not be expected to be completed at</p>	<p>This regulatory chapter identifies the requirements for the Program as established pursuant to §§ 51.5-149.1 et seq. of the Code of Virginia and Items 340 and 344 of the 2020 Appropriation Act. DARS does not regulate or have authority over private guardians or conservators.</p> <p>In the Program, a public guardian program contractor’s multidisciplinary panel (MDP) conducts preliminary screenings of potential public guardian clients, and may request information from a community services board (CSB) or behavioral health authority for information gathering purposes. Ultimately, however, eligibility for the Program and incapacity are decided by a circuit court as part of an evidentiary proceeding.</p>

	<p>the expense of any provider. Hence, the need for public funding for capacity evaluations.</p> <p>The commenter expressed support for Senate Bill 585 from the Special Session of the General Assembly, which prompted another study of the use/value of Supported Decision Making as a better (less restrictive) approach to providing support and guidance than the more commonly used “full guardianship.”</p>	<p>DARS does not regulate or have authority over the requirements found in 12VAC35-115 (Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services).</p> <p>The commenter’s request regarding the need for public funding for capacity evaluations and the commenter’s support for SB 585 are best addressed through the General Assembly.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order 14 (2018) as it is necessary for the protection of public health, safety and welfare of the individuals in the Commonwealth. The regulation protects the health and safety of 1,049 clients 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 § 64.2-2010 of the Code of Virginia. No comments have been received indicating that the regulations were not clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that the regulation be amended.

The Program, operated within DARS provides public 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. The Program has capacity to provide public guardianship services, public conservatorship services, or both to 1,049 clients 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. These services are provided by 13 local public guardian program, which are operated by local public guardian program contractors under contract with department.

This chapter prescribes the requirements that the 13 local public guardian programs must meet in order to receive state funds provided in accordance with §§ 51.5-149.1 et seq. of the Code of Virginia and Items 340 and 344 of the 2020 Appropriation Act. With increasing attention on both public and private guardianships in the Commonwealth, the primary advantage of the regulatory chapter is the protection and clarity it provides to Program clients and public guardian programs.

The current chapter requires regulatory changes in order to address further define program requirements; protect the health, safety, and welfare of the vulnerable clients; and bring conformity to program standards and operations across the commonwealth.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for the regulations as they are mandated by law and they protect the health, welfare, and safety of Program clients.

No complaints or comments about the chapter were received during the periodic review. The regulation is designed to support clarity and ensure transparency with the Program and the operations of public guardian program contractors. The chapter comprises only those requirements for the implementation of the Program.

As a state-based and state-funded program, there are no other federal or state regulations for public guardian or conservator programs or services. As such, the chapter does not conflict with federal or state law or regulation.

The chapter was last revised in 2016 to incorporate person-centered planning components as required by Chapter 322 of the 2012 Acts of Assembly (House Bill 270).

There is a small business impact as a result of this regulation. All 13 public guardian program contractors would likely be considered small businesses. However, the chapter does not include overly burdensome requirements, reinforces common standards for business management, and protects the health and safety of the Program's vulnerable clients.