

THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM

Title of Regulation: The Virginia Public Guardian and Conservator Program

Statutory Authority: § 2.2-711 through 2.2-713 of the Code of Virginia.

Effective Date: July 1, 2005.

Summary: This Regulation is promulgated by the Virginia Department for the Aging (VDA) and sets forth guidance for a statewide program of local and regional Public Guardian Programs.

22 VAC 5-30-10. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Client” means a person who has been adjudicated incapacitated and who is receiving services from a Public Guardian Program.

“Indigency” means the client is a current recipient of a state-funded or federally-funded public assistance program for the indigent as defined in § 19.2-159 of the Code of Virginia. This presumption shall be rebuttable where a more thorough examination of the financial resources of the client finds otherwise.

“Least Restrictive Alternatives” means, but is not limited to: money management services including bill payer and representative payee services, care management, and services provided pursuant to a financial or health care power of attorney.

“Minimal Fee” means allowable fees collected from government sources.

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“Public Guardian Program” means a local or regional public or private nonprofit entity or program designated by VDA as a public guardian, a public conservator or both, pursuant to §§ 2.2-712 and 2.2-713 of the Code of Virginia and operating under a contract entered into with VDA.

22 VAC 5-30-20

A. Introduction.

The General Assembly declared that the policy of the Commonwealth is to ensure the appointment of a guardian or conservator to persons who cannot adequately care for themselves because of incapacity so to meet essential living requirements where: (i) the incapacitated person is indigent, and (ii) there is no other proper and suitable person willing and able to serve in such capacity.

B. Purpose.

This regulation sets forth guidance for the statewide program of local and regional Public Guardian Programs and establishes the requirements for local and regional entities to operate a designated Public Guardian Program.

22 VAC 5-30-30. Public Guardian Programs.

A. Designation.

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VDA shall select Public Guardian Programs in accordance with the requirements of the Virginia Public Procurement Act. Only those programs that contract with VDA will be designated as Public Guardian Programs. Funding for Public Guardian Programs is provided by the appropriation of General Funds.

B. Authority.

A Public Guardian Program appointed as a guardian, a conservator, or both as a guardian and conservator, shall have all the powers and duties specified in Article 2 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37 of the Code of Virginia, except as otherwise specifically limited by a court.

C. Structure.

1. Each Public Guardian Program shall have a program director who supervises and is responsible for providing guardianship services to any incapacitated persons assigned by the court and to provide overall administration for the Public Guardian Program.

2. Each Public Guardian Program shall establish a multi-disciplinary panel comprised of representatives from various human services agencies serving the city, county, or region where the Public Guardian Program accepts referrals. If serving a region, the multi-disciplinary panel shall have at least one representative from each local jurisdiction within the region. To the extent appropriate

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disciplines are available, this panel may include but is not limited to representation from:

- a. Local Departments of Social Services, Adult Protective Services;
- b. Community Services Boards;
- c. An attorney licensed by the Virginia State Bar;
- d. Area Agencies on Aging;
- e. Local health departments;
- f. Nursing home, assisted living, and group home administrators; and
- g. Physicians and community representatives.

D. Client Ratio to Paid Staff.

- 1. Each Public Guardian Program shall maintain a direct service ratio of clients to paid staff that does not exceed 20 incapacitated persons to every 1 paid staff person.
- 2. Each Public Guardian Program shall have in place a plan to immediately provide notice to the Circuit Court(s) in its jurisdiction and to VDA when the program determines that it may exceed its maximum ratio of clients to paid staff.
- 3. VDA shall establish written procedures for Public Guardian Programs to obtain appropriate waivers regarding deviations in the

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ratio of clients to paid staff. Procedures shall comply with § 2.2-713 of the Code of Virginia. VDA shall inform the Advisory Board whenever a waiver is issued to a Public Guardian Program. VDA shall review such waivers each six months until the ratio of clients to paid staff does not exceed 20 incapacitated persons to every 1 paid staff person.

E. Appointments.

1. Prior to the Public Guardian Program accepting an individual for services, the multi-disciplinary panel shall screen referrals to ensure that:

a. The Public Guardian Program is appointed as guardian, or conservator, or both only in those cases where guardianship is the least restrictive alternative available to assist the individual;

b. The appointment is consistent with serving the type of client identified by the established priorities of the Public Guardian Program;

c. The individual cannot adequately care for himself;

d. The individual is indigent; and

e. There is no other proper or suitable person or entity to serve as guardian.

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2. Appointments by a circuit court shall name the Public Guardian Program as the guardian, the conservator or both guardian and conservator.
3. A Public Guardian Program must furnish bond as directed by the circuit court.
4. A Public Guardian Program shall only accept appointments as guardian, conservator, or both guardian and conservator which generate no fee or which generate a minimal fee.

F. Services.

1. A Public Guardian Program shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian, conservator, or both guardian and conservator for the incapacitated person.
2. The multi-disciplinary panel shall review active cases as needed or at least once every 12 months to determine that:
  - a. The client continues to be incapacitated;
  - b. The client continues to be indigent; and
  - c. There is no other proper or suitable person or entity to serve as guardian, conservator, or both guardian and conservator.
3. Each Public Guardian Program shall set priorities with regard to services to be provided to incapacitated persons, in accordance

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with VDA criteria.

4. Each Public Guardian Program shall develop procedures and standards to make end-of-life decisions.
5. The Public Guardian Program shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the incapacitated person. Impropriety or conflict of interest arises where the Public Guardian Program has some personal or agency interest that might be perceived as self-serving or adverse to the position or the best interest of the incapacitated person.
6. Each Public Guardian Program and its employees are required to report any suspected abuse, neglect, or exploitation in accordance with § 63.2-1606 of the Code of Virginia which provides for the protection of aged or incapacitated adults, mandates reporting, and provides for a penalty for failure to report.
7. Each Public Guardian Program shall submit data and reports as determined by VDA, and maintain compliance with VDA program guidelines.
8. In addition to funds received from VDA, a Public Guardian Program may, and is encouraged, to accept private funds solely for the purposes of providing public education, supplemental services for incapacitated persons, and support services for private guardians

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and conservators, consistent with the purposes of the Virginia Public Guardian and Conservator Program. Each program shall file with VDA an account of all public and private funds received.

22 VAC 5-30-40. Personnel Standards.

A. Each person, paid staff or volunteer, who is working in the Public Guardian Program shall:

1. Complete an orientation program concerning guardian and conservator duties to include the following subjects:
  - a. Privacy and confidentiality requirements;
  - b. Record keeping;
  - c. Services provided, and standards for these services;
  - d. A historical and factual review about the needs of the elderly and people with disabilities; and
  - e. Indications of and actions to be taken where adult abuse, neglect, or exploitation is suspected.
2. Have a satisfactory work record and not have been convicted of any felony or crime involving moral turpitude. A criminal records check will be conducted on each person hired on or after January 1, 2006.



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3. Be free of illegal drug use as confirmed by a drug screening test conducted prior to the assumption of any duties with an incapacitated person for persons commencing work after December 31, 2005. Effective January 1, 2006, each person, paid staff, or volunteer, who is working in the Public Guardian Program shall be randomly screened, annually to ensure that each person is free of illegal drug use.

B. Each paid staff or volunteer who is working in the Public Guardian Program shall:

1. Have experience in aging and/or disabilities with a basic knowledge of Virginia's guardianship laws, alternatives to guardianship, and surrogate decision-making activities and standards.
2. Understand the responsibilities and standards of care appropriate to handle the personal affairs and property of an incapacitated person; and
3. Participate in training programs conducted or approved by VDA.

C. Volunteers.

1. Volunteers may be recruited and used to supplement paid staff.
2. Volunteers may not exercise the authority of a guardian or conservator.

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3. Each Public Guardian Program that uses volunteers shall develop and implement procedures for volunteer management and supervision.

22 VAC 5-30-50. Record Keeping.

- A. Each Public Guardian Program shall maintain an accurate and complete client record for each incapacitated person.
- B. The client's record shall contain: a Virginia Uniform Assessment Instrument (UAI), a Care Plan, a Values History, the Annual Report by Guardians submitted to the Department of Social Services as required by § 37.2-1021 of the Code of Virginia, the annual accounting to the Commissioner of Accounts as required by § 26-17.4 of the Code of Virginia, and all applicable court orders. A client's record shall be completed and on file within 60 days of the program's appointment as guardian.
- C. Each Public Guardian Program shall maintain all records and documents in accordance with its contract with VDA.

22 VAC 5-30-60. Evaluation and Monitoring of Public Guardian Programs.

VDA shall administer, monitor, evaluate, provide technical assistance and expertise, and shall ensure fiscal accountability and quality of service of Public Guardian Programs.

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