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Final Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	_22__ VAC_30_-70-30__
Regulation title(s)	The Virginia Public Guardian and Conservator Program
Action title	Amendments to include person-centered planning procedures
Date this document prepared	May 26, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Public Guardian and Conservator Program within the Department for Aging and Rehabilitative Services (DARS) will direct its local or regional programs to use person-centered planning through this regulatory action. Such planning (a) focuses on the preferences, personal values, and needs of the individual receiving public guardianship services and (b) empowers and supports the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Department for Aging and Rehabilitative Services (DARS)

“Public guardianship” is 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) indigent, and (iv) for whom there is no person willing and suitable to serve as a guardian. "Public guardian program" means a local or regional public or private nonprofit entity or program designated by DARS as a public guardian, a public conservator or both, pursuant to §§ 51.5-150 and 51.5-151 of the Code of Virginia.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On May 26, 2016, The Commissioner of the Department for Aging and Rehabilitative Services approved these amendments to the regulations for the Virginia Public Guardian and Conservator Program.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The regulatory action of DARS will conform regulations to changes in the Code of Virginia in Chapter 322 of the 2012 Acts of Assembly (House Bill 270). The Commissioner of DARS has authority to promulgate regulations pursuant to Code of Virginia § 51.5-131.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The 2011 General Assembly passed Senate Joint Resolution 397, which requested the Secretary of Health and Human Resources and human services agencies to adopt and implement person-centered practices in providing services to citizens. This resolution noted that every individual is

unique and no two individuals have the exact same preferences and needs. Person-centered planning supports individuals in making choices and decisions about the supports that best meet their preferences and needs. DARS adopts these statutorily mandated person-centered regulations for its Public Guardian and Conservator Program to implement person-centered planning procedures for the public guardian program serving the Commonwealth’s most vulnerable citizens, protecting their welfare and safety.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The regulation requires, to the maximum extent feasible, the person-centered planning process to (i) include people chosen by the individual; (ii) provide necessary information and support to enable the individual to direct the process and to make informed choices and decisions; (iii) be timely and occur at times and locations convenient for the individual; (iv) reflect the individual’s cultural values; (v) offer choices to the individual regarding the services the individual receives and from whom the individual receives them; and (vi) include documentation of the processes employed in and the outcome of person-centered planning. Added to the final regulation is the requirement that to the extent feasible, for individuals receiving services licensed or funded by the Department of Behavioral Health and Developmental Services, guardians or conservators, case managers, and providers should collaborate and actively participate in meeting the individual’s planning goals, in conformity with the guardian or conservator’s court order.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The regulation demonstrates that DARS and the Commonwealth are committed to building a strong community infrastructure of person-centered long-term community supports and services. The local and regional public guardian programs, public and private service providers, and community stakeholders, including the Public Guardian and Conservator Advisory Board, likewise share the commitment to person-centered planning. The amended regulations pose no known disadvantage to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements associated with the regulation.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The person-centered planning procedures in this regulation will promote individual self-determination

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
22VAC 30-70-30	This requirement was not included in the proposed stage.	*d. Require participation and collaboration, in the case of an individual receiving case management services licensed or funded by the Department of Behavioral Health and Developmental Services, among the guardian or conservator,	This requirement was added as the result of a public comment for individuals receiving services licensed or funded by the Department of Behavioral Health and

		case managers, and providers in meeting the individual’s planning goals, in conformity with the guardian or conservator’s court order;	Developmental Services. This provision was included to ensure that the guardian or conservators, case managers and providers are all included in the person-centered planning process in conformity with the guardian or conservator’s court order.
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Jennifer G. Fidura, Virginia Network of Private Providers, Inc.	<p>Add to F. (Services) #3. an additional item as follows:</p> <p>The regulation does not encourage the level of cooperation which is necessary to successfully support individuals in HCBS; the following language should be added:</p> <p>“c. In the case of an individual who receives case management services from a community services board (CSB) or behavioral health authority</p>	<p>The agency agrees with the commenter’s statement. An agency representative contacted the commenter in order to develop an acceptable addition that could be added to this section.</p> <p>The final regulation adds to the person-centered planning process for individuals receiving services licensed or funded by the Department of Behavioral Health and Developmental Services, to the maximum extent feasible, participation and collaboration among the guardian or conservator, case managers, and providers in meeting the individual’s planning goals, in conformity with the guardian or</p>

	(BHA), the guardian or conservator shall actively support the individual’s participation in the person-centered planning process as required by the Department of Behavioral Health and Developmental Services. The guardian or conservator shall, to the degree agreed to by the individual, participate in all planning meetings, support the development and implementation of the supports plans which are the outcome of those meetings and work with the case manager and all providers to facilitate meeting the individual’s desired goals.	conservator’s court order.
Colleen Miller, Executive Director, dLCV	Letter received supporting the proposed amendments to include person-centered planning	

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC 30-70-30		The guardian or conservator shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain	The regulatory change expands on the current requirement by specifically requiring person-centered planning that focuses on the expressed preferences, personal values and needs of the individual receiving public guardianship services and empowers and supports the

		<p>the capacity to manage his personal affairs to the extent feasible.</p>	<p>individual, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement. The regulation requires, to the maximum extent feasible, the person-centered planning process to:</p> <ul style="list-style-type: none"> a. Include people chosen by the individual; b. Provide necessary information and support to enable the individual to direct the process and to make informed choices and decisions; c. Be timely and occur at times and locations convenient for the individual; d. Require participation and collaboration, in the case of an individual receiving case management services licensed or funded by the Department of Behavioral Health and Developmental Services, among the guardian or conservator, case managers, and providers in meeting the individual’s planning goals, in conformity with the guardian or conservator’s court order; e. Reflect the individual’s cultural values; f. Offer choices to the individual regarding the services the individual receives and from whom the individual receives them; and g. Include documentation of the processes employed in and the outcome of person-centered planning. <p>The intent of the regulation is to promote individual self-determination and the likely impact will be to ensure quality long-term supports and services to vulnerable individuals receiving public guardian services in settings they choose to the maximum extent feasible.</p>
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