



COMMONWEALTH OF VIRGINIA
DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

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Manual - Adult Protective Services Division Manual

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The following acronyms are used in this transmittal:

- APS**-Adult Protective Services
- DARS**-Department for Aging & Rehabilitative Services
- SB**-Senate Bill
- VDSS**- Virginia Department of Social Services

The purpose of this transmittal is to provide revised guidance on the APS Division Manual, Chapters 7. Minor grammatical and punctuation changes are not identified in the manual or transmittal. Unless otherwise stated, the provisions included in this transmittal are effective upon receipt.

This transmittal and manual are available on FUSION at:

<https://fusion.dss.virginia.gov/dars/DARS-Home/ADULT-SERVICES/Adult-Services-Manuals>

Changes to the manual are described in the following chart:

Chapter 7 , “Guardianship and Conservatorship”	
Section	Significant Changes
7.2.8.3	Amended the section to comport with §64.2-2108 of the Code of Virginia.
7.2.8.4	Updated the section to align with §64.2-2110 of the Code of Virginia.
7.2.8.6	Amended the section to comport with §64.2-2002 of the Code of Virginia.
7.3.2.9	Revised guidance to identify placement of the guardian report in the PeerPlace case management system when an APS is opened as a result of the guardian report review. Clarified location to document guardianship report review notes in PeerPlace.

	Corrected language to align with §64.2-2020 of the Code of Virginia.
7.3.2.10	Clarified location to document contact with the guardian in PeerPlace.
7.3.2.11	Amended guidance to include documenting the transfer in the PeerPlace guardianship registration notes.
7.3.2.12	Struck “should” and replaced with “shall.” Struck outdated guidance about maintaining a guardian report in hard copy outside of PeerPlace.
Appendix B	Struck “VDSS” and replaced with “DARS.”
Appendix C	Updated the explanations of the various fields of the annual guardian report form as a result of SB514.
Appendix H	Struck ‘CC: DARS APS Division’ from letter template.

Direct questions about this transmittal to your APS Division Regional Consultant.

Kathryn A. Hayfield, Commissioner

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GUARDIANSHIP AND CONSERVATORSHIP

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GUARDIANSHIP AND CONSERVATORSHIP

7.1 Definitions

The following words and terms are defined in the Code of Virginia and state regulations as identified below. When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

Term	Definition
Adult	Any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, “adult” may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services (§ 63.2-1603 of the Code of Virginia).
Annual Report	The report required to be filed by a guardian pursuant to § 64.2-2020. (§ 64.2-2000 of the Code of Virginia).
Conservator	A person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and where the context plainly indicates, includes a “limited conservator” or a “temporary conservator” (§ 64.2-2000 of the Code of Virginia).
Guardian	A person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health,

Term	Definition
	safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian" (§ 64.2-2000 of the Code of Virginia).
Guardian Ad Litem	An attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested. On the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided (22 VAC 30-100-10).
Incapacitated Person	An adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition (§ 64.2-2000 of the Code of Virginia).
Limited Guardian	A person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.
Public Conservator	A person who is provided through (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the

Term	Definition
	incapacitated person (§ 64.2-2000 of the Code of Virginia).
Public Guardian	A person provided through (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person (§ 64.2-2000 of the Code of Virginia).
Respondent	An allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed (§ 64.2-2000 of the Code of Virginia).
Significant-Connection State	A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available (§ 64.2-2105 of the Code of Virginia).

7.2 Protecting vulnerable adults through guardianship and/or conservatorship

7.2.1 Basis and purpose

A guardian or conservator is appointed for a person who has been found by the court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the person lacks the capacity to make decisions concerning his or her health and well-being. The purpose of the guardianship and/or conservatorship is to protect the incapacitated person or his or her assets from abuse, neglect, or exploitation.

The creation, conduct, and termination of a guardianship or conservatorship is based on Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 of the Code of Virginia.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses jurisdiction for appointment of a guardianship, the transfer of a guardianship or conservatorship to another state and the transfer of a guardianship

or conservatorship to Virginia (§§ 64.2-2100 through 64.2-2120 of the Code of Virginia).

7.2.2 Types of protection and responsibilities

7.2.2.1 Guardian

Guardians are appointed by the circuit court to make decisions about the personal life and affairs of the incapacitated adult. The guardian may be authorized by the court to make all personal decisions for the incapacitated adult or may be authorized to make decisions in only those areas specified by the court. The primary responsibilities of the guardian are to make decisions about where the incapacitated adult will live, how meals and personal care will be provided, and how health care and personal care decisions are made.

7.2.2.2 Conservator

Conservators are appointed by the circuit court to manage the incapacitated adult's assets such as, paying bills and making financial decisions. The court may authorize the conservator to make all property and financial decisions or may limit that authority to certain areas. The conservator shall have prior approval from the court to buy or sell real property. The authority to buy or sell real property may be a part of the original order. If the authority is not a part of the original order and if the conservator needs to buy or sell property, he or she will need to petition the court for an amended or supplemental order.

7.2.2.3 Guardians and conservators

An individual may be appointed to serve as both guardian of the incapacitated adult and conservator of the adult's estate. The individual appointed by the court has authority for both personal and financial decisions and for property management. The court may appoint two individuals to fulfill these duties by naming one as guardian and the other as conservator.

7.2.3 Situations that indicate need for a guardian or conservator

Section 64.2-2000 of the Code of Virginia specifies that an adult is incapacitated when he or she is incapable of receiving and evaluating information effectively or responding to people, events, or environments.

In Virginia, a court may appoint a guardian or conservator for the following situations:

- The court finds that an adult lacks the capacity to meet the essential requirements for his or her health, safety, or therapeutic needs without the assistance and protection of a guardian.
- The court finds that an adult lacks the capacity to manage property or financial affairs or to provide for his or her support or the support of legal dependents without the assistance and protection of a conservator.

7.2.4 Determining the need for a guardian and/or conservator

In the petitioning process, the adult is referred to as the respondent. The petitioning party has the responsibility to present clear and convincing evidence to substantiate the need for the appointment of a guardian and/or conservator for the respondent. Evidence generally consists of:

- Medical and/or psychiatric testimony concerning the adult's illness and his or her inability to handle his or her personal and/or financial affairs.
- Testimony of friends, relatives, service workers, and other professionals concerning self-endangering behavior.
- An evaluation report of the adult that documents the appropriateness and necessity of guardianship and/or conservatorship. This report is required under § 64.2-2005 of the Code of Virginia. See Section 7.2.5.1 for information on the evaluation report.

7.2.5 Documenting incapacity

7.2.5.1 The comprehensive evaluation

(§ 64.2-2005 of the Code of Virginia). A report evaluating the condition of the respondent shall be filed, under seal, with the court and provided to the guardian ad litem, the respondent, and all adult individuals and all entities to whom notice is required under subsection C of § 64.2-2004 within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition.

Prior to the guardianship or conservatorship hearing, the circuit court requires that one or more licensed physicians, psychologists, or licensed professionals skilled in the assessment of the physical or mental conditions alleged prepare a comprehensive evaluation of the current condition of the respondent.

The LDSS may be asked to assist with the portion of the evaluation of which it has knowledge. If the LDSS is the petitioner, the report shall be prepared before going to court.

The purpose of the report is to inform the court about the condition and abilities of the respondent. The report shall include the best available information and represent the belief of those who sign the report. It shall include the following:

- A description of the nature, type, and extent of the adult's incapacity, including the adult's specific functional impairments.
- A diagnosis or assessment of the adult's mental and physical condition, including a statement as to whether the adult is on any medications that may affect his or her actions or demeanor. Where appropriate and consistent with the scope of the evaluator's license, the report should include an evaluation of the adult's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement.
- The date(s) of the examination(s), evaluation(s) and assessment(s) upon which the report is based.
- The signature of the person conducting the evaluation and the nature of the professional license held by the evaluator.

If the evaluation report is not available, the court may hold the hearing without the report for good cause shown if the guardian ad litem does not object. The court, at its discretion, may order a report be prepared and delay the hearing until the report is available. The model form "Physician's Evaluation of Respondent" is posted on the VDSS intranet and may be provided to the physician who is conducting the evaluation. The LDSS may modify this form as needed.

The cost of the evaluation may be charged as part of the costs of the proceedings at the discretion of the court. See Section 7.2.8.8 for information on the cost of proceedings.

7.2.5.2 Role of the service worker

The service worker shall examine all available information concerning the alleged incapacitated adult's decision-making in areas that are critical to the adult. The worker shall document situations in which the adult has been unable to make decisions in his or her own interest, including but not limited to, the following areas:

- Arranging and/or receiving essential health and/or personal care.
- Providing or arranging for nutritional needs.
- Securing and wearing adequate clothing appropriate to the weather.
- Securing adequate and appropriate housing.
- Arranging and maintaining personal safety including safe shelter.
- Management of financial affairs including the use of funds to provide for one's basic needs.
- Management of his or her estate including both real and personal property.

7.2.6 Who serves as guardian or conservator?

Every effort should be made to locate the most appropriate guardian/conservator for the alleged incapacitated adult. A family member or close friend may be appropriate to serve as guardian/conservator. The first person considered for the guardian/conservator should be the adult's spouse unless the spouse is unable or unwilling to serve.

The following should be considered when determining the appropriateness of a person to serve as guardian or conservator:

- A relationship with the adult alleged to need a guardian/conservator.
- Geographic accessibility to the alleged incapacitated adult.
- The absence of a conflict of interest.
- A willingness to fulfill the required duties of guardianship or conservatorship.
- Ability to understand the requirements of guardianship or conservatorship, including the submission of required reports.
- Emotional stability.
- Good physical health of the proposed guardian or conservator.

The LDSS may develop its own guidance on whether LDSS employees may serve as guardians or conservators. The Code of Virginia does not prohibit LDSS

employees from serving as a guardian or conservator, though the LDSS should carefully evaluate whether it is appropriate for an LDSS employee to be named as a guardian for an incapacitated adult. See Section 7.3.2.7 for procedures regarding the review of the guardian report when an LDSS employee is the guardian.

7.2.6.1 Guardians/conservators who are Virginia residents

An appropriate person who is a resident of the Commonwealth may be appointed and allowed to qualify as guardian/conservator of the adult.

7.2.6.2 Guardians/conservators who are non-residents

A non-resident adult parent, brother, sister, spouse, child, or other adult descendant of the adult or any combination thereof, may be appointed and allowed to qualify as guardian/conservator of an incapacitated adult. At the time of qualification, a non-resident guardian/conservator shall file with the clerk of the circuit court his or her consent in writing that service of process in any action or proceeding against him or her as fiduciary, or any other notice with respect to the administration of the estate, trust or person in his or her charge in the Commonwealth, may be by service upon the clerk of the circuit court in which he or she is qualified or upon a resident of the Commonwealth and at the address that he or she specifies in the written instrument (§ 64.2-1426 of the Code of Virginia).

7.2.7 Eligibility for public guardian or conservator

(§ 64.2-2010 of the Code of Virginia). The circuit court may appoint a local or regional program authorized by the Department for Aging and Rehabilitative Services pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 64.2-2015. The court shall use the guidelines for determining indigency set forth in § 19.2-159 in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

There may be circumstances when an LDSS is named as a guardian or the LDSS contracts with another entity to serve as guardian because there are no other suitable individuals to serve in this capacity. When these situations occur and it is determined that the incapacitated adult meets criteria to be served by the public guardianship program, the LDSS shall refer the incapacitated adult to the public guardianship program waiting list for consideration of the next available public guardian slot.

Additional information about the Virginia Public Guardianship Program is available on the Department for Aging and Rehabilitative Services website.

7.2.8 Procedures to petition for appointment of a guardian/conservator

7.2.8.1 Circuit court in which petitions are to be filed

The guardianship/conservatorship petition is to be filed in the circuit court of the county or city in which the subject of the petition resides or is located or in which the subject of the petition resided immediately prior to entering a nursing facility, assisted living facility, state mental health facility, or any similar facility. The circuit court in which the proceeding is first commenced may order a transfer to another locality if it would be in the best interest of the incapacitated adult.

If the petition is for the appointment of a conservator for a non-resident with property in the state, the petition is to be filed in the city or county in which the alleged incapacitated adult's property is located (§ 64.2-2001 of the Code of Virginia).

7.2.8.2 Jurisdiction

A court in the Commonwealth has jurisdiction to appoint a guardian for a respondent if:

- The Commonwealth is the respondent's home state;
- On the date the petition is filed, the Commonwealth is a significant-connection state and;
 - The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the Commonwealth is a more appropriate forum; or

- The respondent has a home state, a petition for appointment is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment:
 - A petition for an appointment is not filed in the respondent's home state;
 - An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
 - The court in the Commonwealth concludes that it is an appropriate forum (§ 64.2-2107 of the Code of Virginia).

7.2.8.3 Special jurisdiction

A court of the Commonwealth lacking jurisdiction has special jurisdiction to do any of the following:

- Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth.
- *Issue a conservatorship order with respect to real or tangible personal property located in the Commonwealth; or*
- Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued.

If a petition for the appointment of a guardian in an emergency is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment (§ 64.2-2108 of the Code of Virginia).

7.2.8.4 Appropriate forum

A court of the Commonwealth that has jurisdiction to appoint a guardian *or issue a conservatorship order* may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- Any expressed preference of the respondent;
- Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;
- The length of time the respondent was physically present in or was a legal resident of the Commonwealth or another state;
- The distance of the respondent from the court in each state;
- The financial circumstances of the respondent's estate;
- The nature and location of the evidence;
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- The familiarity of the court of each state with the facts and issues in the proceeding; and
- If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator (§ 64.2-2110 of the Code of Virginia).

7.2.8.5 Who may file a petition?

Any interested person may petition the circuit court to have a guardian/conservator or both appointed for an alleged incapacitated adult. The petitioner is the person who presents evidence to the court that the respondent is unable to take care of himself or his financial affairs or both and is, therefore, in need of a guardian/conservator to perform certain duties. The petitioner's attorney files a petition with the court and is responsible for notifying relatives of the respondent of the guardianship and/or conservatorship hearing (§ 64.2-2002 of the Code of Virginia).

Petitioners are frequently relatives. It is appropriate for an LDSS to petition in an APS case when there is no family member or other interested person to file.

If the LDSS is petitioning for the appointment of a guardian, the "Request for the Appointment of a Guardian" form may be used by the LDSS to gather relevant information about the respondent that needs to be included in the petition. The LDSS may modify this form as needed or when advised to do so by the LDSS attorney. The form is posted on the VDSS intranet.

If a guardian/conservator is needed to protect the incapacitated adult from abuse, neglect, or exploitation, the LDSS attorney should be consulted as a first step in planning for petitioning the circuit court for the appointment.

7.2.8.6 Information included in a petition

The filing of a guardianship/conservatorship petition with the clerk of court constitutes the practice of law and shall be performed by an attorney. However, APS workers are frequently expected to gather essential information and complete certain paperwork in preparation for the filing.

The petition shall specify the type of guardianship or conservatorship requested and a brief description of the nature and extent of the adult's alleged incapacity (§ 64.2-2002 of the Code of Virginia).

If a limited conservator is requested, include the specific areas of management and assistance being requested.

(§ 64.2-2002 of the Code of Virginia). The petition shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent, and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;
2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;
3. The names and post office addresses of the respondent's spouse, adult children, parents and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. *If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;*
4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;
5. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, or any guardian, committee or conservator currently

acting, whether in this state or elsewhere, *and the petitioner shall attach a copy of any such durable power of attorney, advanced directive, or order appointing the guardian, committee, or conservator, if available;*

6. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;

7. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;

8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order *of appointment;*

9. The name and post office address of any proposed guardian or conservator or any guardian or conservator *nominated* by the respondent, and that person's relationship to the respondent;

10. The native language of the respondent and any necessary alternative mode of communication;

11. A statement of the financial resources of the respondent, that shall, to the extent known, list the approximate value of the respondent's property and the anticipated annual gross income, other receipts, and debts;

12. A statement of whether the petitioner believes the respondent's attendance at the hearing would be detrimental to *the respondent's* health, care or safety; and

13. A request for appointment of a guardian ad litem.

7.2.8.7 Time frame for hearing

(§ 64.2-2007 of the Code of Virginia). The court or the jury, if a jury is requested, shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The hearing shall be conducted within 120 days from the filing of the petition unless the court postpones it for cause.

7.2.8.8 Cost of proceedings waived or borne by the Commonwealth

If it is alleged under oath that the estate of the alleged incapacitated adult is unavailable or insufficient to pay the fees and costs of the proceedings, the court may waive such fees and costs as prescribed by § 64.2-2008 of the Code of Virginia). Those fees include the fees for the respondent's attorney and the guardian ad litem.

When an adult subject of a guardianship and/or conservatorship petition is determined by the circuit court to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth (§ 64.2-2008 of the Code of Virginia).

The guidelines for determining indigence set forth in § 19.2-159 of the Code of Virginia shall be used by the court in determining the sufficiency of the incapacitated adult's estate. If the incapacitated adult would be eligible for the appointment of counsel pursuant to § 19.2-159, he or she shall be eligible for the appointment of a guardian/conservator pursuant to this section.

7.2.8.9 Reimbursement to petitioner/petitioner required to pay

If a guardian or conservator is appointed and the court finds that the petition is brought in good faith and for the benefit of the respondent, the court shall order that the petitioner be reimbursed from the estate for all reasonable costs and fees if the estate of the incapacitated person is available and sufficient to reimburse the petitioner.

The court may require the petitioner to pay or reimburse all or some of the respondent's reasonable costs and fees and any other costs incurred if the court finds that the petitioner initiated a proceeding that was in bad faith or not for the benefit of the respondent (§ 64.2-2008 of the Code of Virginia).

7.2.9 Compensation to guardian ad litem, attorney, and evaluator appointed by the court

The court may allow reasonable compensation from the estate of the incapacitated adult to any guardian ad litem, attorney, or evaluator appointed by the court. Any compensation allowed shall be taxed as costs of the proceeding (§ 64.2-2012 of the Code of Virginia).

7.2.10 Duties and powers of guardians

A guardian's relationship to the incapacitated adult for whom he or she was appointed guardian is based on trust. The guardian stands in a fiduciary relationship

to the incapacitated adult. A guardian may be held personally liable for a breach of trust in his or her performance of duties on behalf of the incapacitated adult. A guardian is not liable for the acts of the incapacitated adult, unless the guardian is personally negligent. A guardian is not required to expend his or her personal funds on behalf of the incapacitated adult.

Pursuant to § 64.2-2019 of the Code of Virginia, the guardian has the following responsibilities:

- Maintaining sufficient contact with the incapacitated adult to know of his or her capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated adult as often as necessary.
- Seeking prior court authorization to change the incapacitated adult's residence to another state, to terminate or consent to a termination of the adult's parental rights, or to initiate a change in the adult's marital status.
- To the extent feasible, encouraging the incapacitated adult to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated adult to the extent known, and shall otherwise act in the adult's best interest and exercise reasonable care, diligence and prudence. A guardian shall not unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship.
- Having the authority to make arrangements for the funeral and disposition of the adult's remains, if the guardian is not aware of any person that has been otherwise designated to make such arrangements or if the next of kin does not wish to make the arrangements or the next of kin cannot be located.

The guardian also has the responsibility to file an annual report on the incapacitated adult's condition with the LDSS for the jurisdiction in which the incapacitated adult resides (§ 64.2-2020 of the Code of Virginia).

7.2.11 Petition for restoration of capacity, modification, termination of the guardianship/conservatorship or removal of the guardian/conservator

Any adult found by the court to be incapacitated, the guardian/conservator of any adult found by the court to be incapacitated, or any other person may petition the court to restore the incapacitated adult's capacity. Likewise, a petition may be filed to

request modification of the guardianship/conservatorship, or to terminate, or to order the removal of the guardian/conservator (§ 64.2-2012 of the Code of Virginia).

If the petition is for modification to expand the scope of the guardianship/conservatorship, notice of the hearing and a copy of the petition shall be personally served on the incapacitated adult and mailed to other persons entitled to notice. The court shall appoint a guardian ad litem for the incapacitated adult and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated adult.

Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated adult and that:

- The incapacitated adult is no longer in need of the assistance or protection of a guardian/conservator;
- The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the incapacitated adult's current need;
- The incapacitated adult's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant the proposed action; or
- Circumstances are such that the guardianship/conservatorship is no longer necessary or is insufficient.

Regardless of whether an individual's capacity has improved, only the Circuit Court that issued the guardianship order can terminate it. Therefore the order will remain valid and in full effect until the Circuit Court that issued the order terminates it.

7.2.12 Reasons for termination of guardianship

A guardianship order shall terminate for any of the following reasons:

- The death of the incapacitated adult.
- The court orders the termination of the guardianship following a hearing on the petition of any interested person.
- The death, resignation, or removal of the guardian.

A guardianship that terminates due to the guardian's death, resignation or removal does not necessarily mean that the adult is no longer in need of guardianship. The adult's needs and risk shall be assessed by the service worker. The LDSS or another appropriate individual may need to file another petition for guardianship.

7.2.13 Transfer of guardianship or conservatorship

(§ 64.2-2114 of the Code of Virginia). A guardian or conservator appointed in the Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if the incapacitated adult relocates to another state, the guardian may petition to transfer the guardianship to that state. Notice of a petition to transfer shall be given to the persons that would be entitled to notice of a petition in the Commonwealth for the appointment of a guardian or conservator.

7.2.14 Accepting guardianship or conservatorship transferred to the Commonwealth

A guardian appointed in another state may petition the court in the Commonwealth to accept the guardianship or conservatorship. Notice of a petition for transfer shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian in both the transferring state and the Commonwealth (§ 64.2-2115 of the Code of Virginia).

7.2.15 Registration of guardianship orders

(§ 64.2-2116 of the Code of Virginia). If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the Commonwealth, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the Commonwealth by filing as a foreign judgment in a court, in any appropriate county or city of the Commonwealth, certified copies of the order and letters of office.

7.3 Case managing a guardianship case

7.3.1 Case registration and service planning in guardianship cases

LDSS shall register guardianship report review cases into the Guardianship Program in PeerPlace.

Workers shall register guardianship cases, in which additional services such as ALF reassessment or APS investigation are being provided into the appropriate PeerPlace program.

A service plan and the Uniform Assessment Instrument (UAI) are not required to be completed in a guardianship case if the only services being provided are receipt and review of the guardianship report. If other services are being performed a service plan and UAI would be required per guidance. See Chapter 3, for additional information on service planning and UAI requirements.

7.3.2 Guardian reports filed with the LDSS

When a guardian qualifies before the clerk of the circuit court, the clerk is required by § 64.2-2011 of the Code of Virginia to forward a copy of the Order of Appointment to the LDSS in the jurisdiction where the incapacitated adult resides. It is required that the LDSS obtain both the qualification document (to confirm the date of qualification) and the order of appointment. The individual shall have a court order and qualifying order before assuming the role of guardian.

The guardian is responsible for filing an annual report on the incapacitated adult's condition with the LDSS in the jurisdiction in which the incapacitated adult resides. The report form "Report of Guardian for an Incapacitated Person" is located on the DARS public site and VDSS intranet. **Note:** Temporary or limited guardians are also required to file guardian reports. Instructions for newly appointed guardians are found in Appendix B.

The guardian shall certify the annual report by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge.

The LDSS may notify the guardian when the initial or annual report is due. See Appendix D for a sample letter.

A guardian who was appointed and qualified prior to July 1, 1997 (the date the annual report law took effect) is not required to file an annual report.

7.3.2.1 First (initial) report

Within six months from the date of the guardian's qualification date (not the appointment date), the guardian is required to file the first report on the status of the incapacitated adult with the LDSS in the jurisdiction in which the incapacitated adult resides. This first report addresses the status of the

incapacitated adult during the first four months, beginning on the date of qualification of the guardian. PeerPlace automatically computes the due date for the initial report.

When the incapacitated adult lives outside the Commonwealth of Virginia, the court that appointed the guardian retains jurisdiction and reports shall be made to the LDSS in the jurisdiction in which the guardian was appointed. See section 7.2.13 for information regarding transfer of guardianship to another state.

The guardian shall submit a \$5.00 filing fee with the first report. If the filing fee is in the form of a check it shall be made payable to the LDSS (§ 64.2-2020 of the Code of Virginia). If the filing fee is in the form of cash, the LDSS shall issue a receipt to the guardian.

7.3.2.2 Subsequent guardian reports

Subsequent guardian reports will be for a period of 12 months. Reports will be due within four months from the last day of the previous 12-month reporting period. Each report shall be accompanied by a \$5.00 filing fee. PeerPlace automatically computes the due dates for subsequent annual reports.

7.3.2.3 Co-guardian reports

When co-guardians are appointed, each co-guardian is required to sign the “Annual Report of Guardian for an Incapacitated Person” form if filing jointly. One filing fee of \$5.00 shall accompany the report signed by co-guardians. Each co-guardian may file a separate report. Separate co-guardian reports shall each be accompanied by the \$5.00 filing fee.

7.3.2.4 Exception to filing guardian report

In rare instances, the guardianship order may state that the guardian is excused from the requirement to file any guardian reports. The LDSS shall follow the guardianship order. As appropriate, the LDSS may ask their attorney to review an order that contains this exception.

7.3.2.5 Processing the guardian report filing fees

Guardianship filing fees received by the LDSS shall be used in the provision of services to adults in need of protection. The LDSS should report all guardian report filing fees as a receipt to Adult Protective Services, Budget Line 895, Cost Code 89501. To record the receipt of Guardianship Fees, the LDSS

should enter the amount collected as a credit, using Account Code 40895 Receipt of Guardianship Fees.

7.3.2.6 When the filing fee is not sent

Some guardians may submit the report without including the \$5.00 filing fee. The LDSS may develop their own guidance on how to address the issue of guardians who do not submit the \$5.00 filing fee.

The service worker is still responsible for reviewing the report even if the \$5.00 was not submitted with the report.

7.3.2.7 When the LDSS or LDSS employee is the guardian

When the LDSS or an employee of the LDSS in the jurisdiction in which the incapacitated adult resides is the guardian, the Order of Guardianship shall be forwarded to a neighboring LDSS and the annual reports shall be made by the guardian to the neighboring LDSS. The LDSS may contact the appropriate APS Division Regional Consultant for assistance in assigning responsibility to another LDSS.

7.3.2.8 Review of guardian report by the LDSS

The date the LDSS received the guardian report should be stamped or noted on the report form. **Within 10 calendar days** of the receipt of a guardian report, the service worker should review the report. The review should assess:

- Whether the report has been properly completed in its entirety.
- Whether the contents of the report provide reason to suspect that the subject of the report is being abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation. See Appendix C for guidelines on reviewing guardian reports.

7.3.2.9 Worker's response to review of the guardian report

If the review of the guardian report finds the report is incomplete, the guardian should be requested to submit the missing information.

If the worker has a concern that the guardian has made a false entry or statement on the annual report, the worker should notify the supervisor of this concern. The concerns should be discussed with the agency attorney. If a guardian makes a false entry or statement in the annual report, he shall be

subject to a civil penalty of not more than \$500. This penalty shall be collected by the attorney for the Commonwealth or the county or city attorney.

If it is the judgment of the service worker that there is reason to suspect that the subject of the report is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, an APS case shall be opened. An investigation shall be initiated.

If the incapacitated adult lives outside the Commonwealth and there is reason to suspect that the subject of the report is abused, neglected, or exploited, or is at risk of abuse, neglect, or exploitation, the service worker shall make an APS report to the appropriate state, county, or city where the incapacitated adult resides.

If an APS case is opened, a copy of the guardian's report shall be *uploaded to the attachments in the APS program registration*.

If it is the judgment of the APS worker that there is no reason to suspect that the subject of the report is abused, neglected, or exploited, or is at risk of abuse, neglect, or exploitation, the date of review and the name of the APS worker should be noted and the report filed in a place designated by the local department. Documentation of the review shall be entered in *PeerPlace guardianship program registration notes*. The LDSS may send a letter confirming receipt of the report and the date the next report is due. See Appendix G for a sample letter.

(§ 64.2-2020 of the Code of Virginia). Within 60 days of the receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case.

7.3.2.10 When a guardian fails to file a required report

If the guardian fails to file a required report within thirty days of its due date, the worker may send a letter to the guardian to notify him that the report is overdue (see Appendix E and F for sample letters).

The LDSS may also:

- Ask the court whether the guardianship was transferred to another state.
- Send a second letter by certified mail, return receipt requested, stating the report is overdue.

- Contact the guardian by phone or other means.
- Notify the court earlier than required by § 64.2-2020 of the Code of Virginia if the guardian is delinquent in submitting the report and does not respond to letters sent by the LDSS.
- Visit the home of the guardian and/or incapacitated adult.

All efforts to contact the guardian shall be documented in PeerPlace *guardianship program registration notes*.

If, the guardian continues to fail to submit the report within four months from the last day of the reporting period and the well-being of the incapacitated adult is unknown or is in question, then the LDSS shall, at its discretion, initiate an APS report and proceed with an investigation.

However, if the incapacitated adult has relocated outside of Virginia and the guardian fails to file the report, the LDSS will not be able to conduct an APS investigation. If the LDSS is concerned that the incapacitated adult may be at risk for abuse, neglect or exploitation, the LDSS shall make a report to APS in the appropriate state. The LDSS shall consult the LDSS attorney for additional guidance, as appropriate.

Twice each year the LDSS shall file with the appropriate circuit court a list of all guardians who are more than ninety days delinquent in filing an annual report (§ 64.2-2020 of the Code of Virginia).

LDSS are recommended to submit the list of delinquent guardians on agency letterhead and include the following information in the letter to court:

- Court case number
- Name of incapacitated person
- Name of guardian
- Date annual report was due
- Information about actions that the LDSS may have taken to contact the guardian and request the annual report
- Contact information for the appropriate LDSS worker who can answer questions about the situation.

A sample letter is found in Appendix H.

If the LDSS files notice that the annual report has not been filed timely in accordance with § 64.2-2020 of the Code of Virginia, the court may issue a summons or rule to show cause why the guardian has failed to file such annual report (§ 64.2-2020 of the Code of Virginia).

7.3.2.11 Transferring the guardianship case when the incapacitated adult relocates to another jurisdiction

When the incapacitated adult relocates to another jurisdiction the guardian is required to submit the annual report with the LDSS in that jurisdiction.

When the LDSS becomes aware that the incapacitated adult has relocated, the LDSS shall notify the appropriate LDSS of the relocation, *document the transfer in the guardianship registration notes*, and close the registration in PeerPlace.

If an LDSS receives a guardian report on an adult with whom they are not familiar, it is recommended that the LDSS search PeerPlace to locate the LDSS that managed the guardianship report previously. The LDSS should confirm that the adult has relocated to the new jurisdiction and the new LDSS should request that the previous LDSS close the registration.

7.3.2.12 Maintenance of the guardian report

When the guardian report has been reviewed by the service worker, and no further action is needed, the completed report form *shall* be uploaded to the attachments tab in the client registration. Once a guardian report becomes part of a case record, the report is considered a confidential social service record pursuant to §§ 63.2-104 and 2.2 3705.5 of the Code of Virginia.

7.3.2.13 Purging of the guardian report

Guardian report forms filed with the LDSS in compliance with § 64.2-2020 of the Code of Virginia shall be purged in PeerPlace following the schedule (GS-15) established by the Library of Virginia. Guardian report forms that have not been uploaded to the PeerPlace record shall be purged by the LDSS according to GS-15. GS-15 is located on the Library of Virginia's website.

7.4 Conservators

7.4.1 General duties and liabilities of conservators

A conservator stands in a fiduciary relationship to the incapacitated adult for whom he or she was appointed conservator and may be held personally liable for a breach of fiduciary duty to the incapacitated adult.

The powers of a conservator shall terminate upon the death of the incapacitated adult or upon the death, resignation, or removal of the conservator or upon the termination of the conservatorship.

The conservator's responsibilities to the incapacitated adult include:

- Acting in the best interest of the incapacitated adult and, to the extent known, considering the incapacitated adult's expressed desires and personal values.
- Caring for and preserving the estate of the incapacitated adult and managing it to the best advantage; applying the income from the estate to the payment of the incapacitated adult's debts including reasonable compensation to the conservator and to any guardian appointed and to the incapacitated adult's legal dependents.
- Encouraging the incapacitated adult to participate in decisions, to act on his or her own behalf, and to develop or regain capacity to manage the estate and his or her financial affairs (§ 64.2-2021 of the Code of Virginia).

7.4.2 Management powers and duties of the conservator

A conservator, in managing the estate of an incapacitated adult, has the following management powers and duties (§ 64.2-2022 of the Code of Virginia):

- To ratify or reject a contract entered into by the incapacitated adult;
- To pay bills for the benefit of the incapacitated adult;
- To maintain life, health, casualty and liability insurance for the benefit of the incapacitated adult or his or her legal dependents;
- To manage the estate following termination of the conservatorship until it is delivered to the incapacitated adult or his or her successors;

- To execute and deliver all documents and to take all other actions that will serve the best interest of the incapacitated adult;
- To initiate a proceeding:
 - To revoke a power of attorney under the provisions of the Uniform Power of Attorney Act (§ 64.2-1600 et seq. of the Code of Virginia);
 - To claim a share of the estate of a deceased spouse under § 64.2-302 of the Code of Virginia; or
 - To make an election to take a family allowance, exempt, property, or a homestead allowance under § 64.2-313; and
- To borrow money as seems advisable and/or to mortgage portions of the incapacitated adult's estate to secure loan(s) or renew existing loan(s).

7.4.3 Accounting responsibilities of the conservator

The conservator accounts to the Commissioner of Accounts. At the time of qualification, the clerk of the circuit court will provide the conservator with the name and address of the Commissioner of Accounts.

(§ 64.2-2021 of the Code of Virginia). A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Part A (§ 64.2-1200 et seq.) of this subtitle, specifically including the duty to account set forth in § 64.2-1305.

An accounting is a record of all money, property, and other assets for which the conservator is responsible. The accounting includes a record of money spent, a record of any investments, and a statement of available cash.

The first accounting covers the first four months of the conservatorship and shall be filed with the Commissioner of Accounts within six months of qualification. After the initial accounting, other accounts are due annually. Any account filed with the commissioner shall be signed under oath by the fiduciary who is filing.

7.4.4 APS reports involving conservators

When the LDSS receives an APS report that the incapacitated adult's funds are being misused by the conservator, and the report is valid an APS investigation shall be initiated.

7.5 Appendix A: Forms

The following forms are used in guardianship cases. These forms are located on the Adult Services forms page of the VDSS intranet.

Physician's Evaluation of Respondent

This form may be provided to the physician who is conducting an evaluation.

Report of Guardian for an Incapacitated Person

This form is used by the guardian to complete the initial report and subsequent annual guardianship report.

Request for the Appointment a Guardian/Conservator

This form may be used by the LDSS to gather information about the respondent for inclusion in the petition.

7.6 Appendix B: Instructions to newly appointed guardians

Court-appointed guardians are required under § 64.2-2020 of the Code of Virginia, to file an annual report with the LDSS in the jurisdiction in which the incapacitated adult resides.

The first report to be filed by the guardian is due at the LDSS within six months from the date of the guardian's qualification and covers the activity performed on behalf of the incapacitated person during the first four months of the guardianship.

After the first report has been filed, reports are due annually. Each annual report covers a 12 month period. Reports will be due within four months from the last day of the previous 12-month reporting period. (§ 64.2-1305 of the Code of Virginia).

The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court. The first reporting form will be provided by the clerk of the court at the time of qualification. Subsequent annual reporting forms will be provided by the LDSS. The guardian has four months from the end of the reporting period in which to complete the annual report and submit it to the LDSS. All questions on the form must be answered. **Incomplete report forms will be returned to the guardian for completion.**

The report form shall be accompanied by a \$5.00 filing fee. If the fee is submitted in check form, the check should be made payable to the LDSS.

If the guardian is to be compensated for his or her duties as guardian, the rate of compensation may be set in the court's order. If compensation is not set in the court order, the Commissioner of Accounts will need to approve the amount the conservator pays the guardian.

The guardian will need to make a written request for compensation from the conservator of the incapacitated person's estate. The amount of compensation that is requested should be reported in the section for itemizing "reasonable and necessary expenses" on the "Annual Report of Guardian for an Incapacitated Person" report form.

Twice each year the LDSS is required under § 64.2-2020 of the Code of Virginia to file with the Clerk of the Circuit Court a list of all guardians who are more than ninety days delinquent in filing an annual report as required.

If the LDSS files notice that the annual report has not been timely filed in accordance with § 64.2-2020 of the Code of Virginia, the court may issue a summons or rule to show cause why the guardian has failed to file the annual report.

If the incapacitated person relocates to another jurisdiction in Virginia, please inform this LDSS promptly.

If the incapacitated adult moves outside of Virginia, please notify this LDSS promptly.

If the incapacitated person dies, please notify this LDSS promptly.

Mail the report form and check as follows:

ANNUAL GUARDIAN REPORT

ATTENTION: _____

Department of Social Services

The local department of social services contact person regarding annual guardian reports is _____. The contact person may be reached by telephone at or by writing _____.

Guardians and Conservators are Mandated Reporters

Section 63.2-1606 of the Code of Virginia requires that when Guardians and Conservators suspect that an adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, they shall immediately report their suspicions to Adult Protective Services of the department of social services in the locality where the incapacitated person resides or to the 24-hour, toll-free APS Hotline at **1-888-832-3858**.

Section 63.2-100 of the Code of Virginia provides the following definitions:

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional

failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services (§ 63.2-100 of the Code of Virginia).

For additional information on mandated reporting visit the *DARS* public site.

7.7 Appendix C: Guidelines for review of guardian's report

Name of Incapacitated Person: The name of the person who is the subject of this report.

Address of Incapacitated Person: The address where the incapacitated person resides.

Circuit Court Where Guardian Appointed: The name of the circuit court where the guardian who is completing this report was appointed.

Age: The age of the person who is the subject of this report.

Circuit Court Case No.: The case number assigned by the circuit court where the guardian was appointed.

Date Appointed: The date the guardian who is completing this report was appointed to serve as guardian for the person who is the subject of this report.

Date Qualified: *The date the guardian qualified before the clerk of the court and was issued a certificate of qualification.*

Guardian's Name: The name of the guardian who is completing this report.

Guardian's Address: The address of the guardian who is completing this report.

Guardian's Telephone Number: The telephone number of the guardian who is completing this report.

Conservator's Name: The name of the person who serves as conservator for the person who is the subject of this report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Conservator's Address: The address of the person who serves as conservator for the person who is the subject of this annual report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Conservator's Telephone Number: The telephone number of the person who serves as conservator for the person who is the subject of this annual report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Same as Guardian: A check mark should be placed on the line if the same person serves as both guardian and conservator for the person who is the subject of this report.

Initial four-month report, annual report, or final report: A check mark should be placed in the appropriate box designating the type of report.

The Period Covered by This Report: The date the reporting period began and the date the reporting period ended.

Describe the living arrangements of the incapacitated person, including address: This section should describe the setting in which the incapacitated person lives *including if the living arrangement is adequate*. (i.e., with relatives, in a nursing home or assisted living facility, alone, etc.)

Describe the current mental, physical, and social condition of the incapacitated person (attach additional pages if necessary): This section should describe any mental, physical and/or social problems observed by the guardian and should note any changes observed in these areas in the past year.

State any changes in the condition of the incapacitated person in the past year: This section should describe any changes *in diagnosis or condition of the incapacitated person by any medical provider since the last report*.

Describe all medical, educational, vocational, social, recreational, and professional services and activities provided to the incapacitated person for the period covered by the report, and state your opinion of the adequacy of the care received by the incapacitated person: *Information required in this section includes specific names of medical providers that treated the person and the frequency or number of times the person was seen by these providers; the date and location of and reason for any hospitalization, and a description of the educational, vocational, social, and recreational activities the person participated during the reporting period.* This should include a statement that, in the opinion of the guardian, the services provided were adequate or were not adequate. If the guardian considers the services provided to be not adequate, the guardian should state what he or she plans to do to assure that services will improve. The guardian should identify areas in which he or she may need assistance from the LDSS to assure adequate care.

State whether or not you agree with the current treatment or care plan: This section should include a statement regarding whether the guardian believes that treatments, services, or current living arrangement is adequate or effective to meet the incapacitated person's needs.

State your recommendations as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful, in your opinion, to a consideration of the guardianship:

The guardian may recommend a continuation of the guardianship without changes; he or she may recommend expanding the authority of the guardian to areas not designated in the court order; or he or she may recommend rescinding all or part of the authority of the guardian and restoring all or part of the authority of the incapacitated person. In each case, the guardian should attach documentation to support the recommendations.

Itemize all reasonable and necessary expenses you incurred and list any request for compensation you have made:

In this section the guardian should itemize expenses incurred and state the amount of compensation requested. Any request for compensation should be made to the conservator who has control of the person's financial affairs.

State the name of any persons whose access to communicate, visit, or interact with the incapacitated person has been restricted and the reasons for such restriction:

In this section the guardian should identify the names of persons they restricted from contacting the incapacitated adult and the reason the restriction was made. The guardian may identify if the restriction is short term or they may identify the restriction is being more permanent.

Provide a self-assessment as to whether you feel you can continue to carry out the powers and duties imposed upon you as specified in the court's order of appointment:

This section will contain a statement by the guardian as to his or her continued ability to fulfil the duties as the appointed guardian. The guardian may identify they are pursuing a back-up guardian in the event they are unable to continue their duties.

Statement of frequency and nature of any (i) in-person visits from you with the incapacitated person over the course of the previous year and (ii) visits over the course of the previous year from a designee performing such visit. If any visit described in this section is made virtually, please specify. If not visit was made within a six-month period, describe any challenges or limitations in completing such visit. If the incapacitated person reside with you state as such:

The guardian will document in this section the number of visits made during the reporting period, identifying if they were in person, via telephone, or virtually. The guardian will identify if the contact was made by a designee. The guardian will document if a visit was not made within a six month period including what challenges prevented the visit (COVID) or limitations (such as a facility restricting visitation). The guardian will state if they reside with the incapacitated person.

Provide a general description of the activities taken on by you for the benefit of the incapacitated person during the past year: In this section the guardian should identify activities they performed on behalf of the person during the reporting period. These activities could be completing a Medicaid application, applying for housing, requesting Meals on Wheels.

State whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or exploitation to the extent known, and whether there are any other indicators of abuse, neglect, or exploitation: This section will include any indicator or reports of abuse, neglect, or exploitation involving the incapacitated person such as the person was the victim of a scam or the person was abused by another resident in the ALF.

Provide any other information useful in your opinion: In this section the guardian may state any other information they feel is important but not applicable to questions 1-11.

I certify that the information contained in this Annual Report is true and correct to the best of my knowledge.

Date: This should note the date the annual report is signed and dated by the guardian

Signature of Guardian: The guardian should use this line to affix his or her signature to the annual report.

DSS Use Only:

Date Received: The date the completed annual report is received at the LDSS should be entered on this line. If an incomplete report is received and returned to the guardian for completion, the date of receipt of the completed report is the date to be entered.

Date Reviewed: The date the report is reviewed by an APS worker should be entered on this line.

Reviewer's Signature and Title: The APS worker who reviews the annual report should sign the report and include his/her title.

7.8 Appendix D: Sample letter-the initial report is now due

Reminder: INITIAL GUARDIAN REPORT WILL SOON BE DUE

Date

Guardian's Address

Dear (**guardian's name**):

This is to notify you that the (**name of department**) Department of Social Services has received notice that you were appointed guardian for (**name of incapacitated person**). Section 64.2-2020 of the Code of Virginia requires a guardian of an incapacitated adult to file an initial report with the local department of social services in the jurisdiction in which the incapacitated adult resides within six months of the qualification date.

It is now time to file the initial guardian report for the reporting period of (**date**) through (**date**). The initial report is due no later than (**date**). The initial report should address the status of the incapacitated person for the first four months of the guardianship.

The guardian is also required to submit a \$5.00 fee with the report. If the \$5.00 is in the form of a check, please make the check out to (**name of local department**).

A blank copy of the report, with instructions, has been enclosed for your convenience. If you need assistance with completing the form or if you have questions, you may contact me at (**phone number/email address**).

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

7.9 Appendix E: Sample letter-the initial report is overdue

NOTICE OF OVERDUE INITIAL GUARDIAN REPORT

Date

Guardian's Address

Dear (**guardian's name**)

This is to notify you that the (**name of department**) Department of Social Services has not received your initial guardian report on (**name of incapacitated person**) which was due in this office on (**date report was due**). Section 64.2-2020 of the Code of Virginia, requires a guardian of an incapacitated adult to file an initial report with the local department of social services in the jurisdiction in which the incapacitated adult resides within six months of the qualification date.

I am required by § 64.2-2020 of the Code of Virginia to provide a list of guardians who are more than 90 days delinquent in filing the report to the Clerk of the Circuit Court. In response to the submission of this list, the court may issue a summons or rule to show cause why the guardian has failed to file the annual report.

In addition to notifying the court, an Adult Protective Services Investigation may be initiated if we do not receive a response from you by (**date**).

A blank copy of the report, with instructions, is enclosed for your convenience. A \$5.00 fee is also required to be submitted with the report. If the \$5.00 is in the form of a check, please make the check out to (**name of local department**).

If you need assistance with completing the form or if you have questions, you may contact me at (**phone number/email address**).

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

7.10 Appendix F: Sample letter-the annual report is overdue

NOTICE OF OVERDUE ANNUAL GUARDIAN REPORT

Date

Guardian's Address

Dear (**guardian's name**)

This is to notify you that the (**name of department**) Department of Social Services has not received your annual guardian report on (**name of incapacitated person**) which was due in this office on (**date report was due**). Section 64.2-2020 of the Code of Virginia, requires a guardian of an incapacitated adult to file an annual report with the local department of social services in the jurisdiction in which the incapacitated adult resides.

The report covers the one year period that began (**date**) and ended (**date**). The report should address the status of (**name of incapacitated person**) for this 12-month period.

I am required by § 64.2-2020 of the Code of Virginia to provide a list of guardians who are more than 90 days delinquent in filing the annual report to the Clerk of the Circuit Court. In response to the submission of this list, the court may issue a summons or rule to show cause why the guardian has failed to file the annual report. In addition to notifying the court, an Adult Protective Services Investigation may be initiated if we do not receive a response from you by (**date**).

A blank copy of the report, with instructions, is enclosed for your convenience. A \$5.00 fee is also required to be submitted with the report. If the \$5.00 is in the form of a check, please make the check out to (**name of local department**).

If you need assistance with completing the form or if you have questions, you may contact me at (**phone number/email address**).

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

7.11 Appendix G: Sample letter-the initial/annual report was received/next due date

Date

Guardian's Address

Dear (**guardian's name**)

This is to notify you that the initial/annual guardian report on (**name of incapacitated person**) was received and the next report is due (**date next report is due**). Section 64.2-2020 of the Code of Virginia, requires a guardian of an incapacitated adult to file an annual report with the local department of social services in the jurisdiction in which the incapacitated adult resides.

If the adult relocates to a different jurisdiction, please promptly notify me.

A blank copy of the report, with instructions, is enclosed for your convenience. A \$5.00 fee is also required to be submitted with the report. If the \$5.00 is in the form of a check, please make the check out to (**name of local department**).

If you need assistance with completing the form or if you have questions, you may contact me at (**phone number/email address**).

Please send the next annual report to my attention at the address below:

Name of APS Worker to Receive the Report

Address of the Local Department

Sincerely,

Enclosure

7.12 Appendix H: Sample letter-notification to court of delinquent guardians

Date

Name of Clerk of the Court

Name of Circuit Court

Address of Circuit Court

Dear (name of Clerk of Court)

Pursuant to § 64.2-2020 of the Code of Virginia, (name of LDSS) is required twice a year to submit the name of guardians who are more than 90 days overdue in submitting their annual guardian report to the appropriate LDSS.

The information below complies with this requirement.

Court File No.	Incapacitated Person	Guardian	Report Due Date
XXXXX	John Doe	Susie Smith	12/15/2018

Optional information to include in letter: (Name of LDSS) has made multiple attempts to contact the guardian by phone and in writing.

If you have any additional questions, you may contact me at (email address/phone number).

Sincerely,

Name of Worker

Name of LDSS