



Proposed Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation	22VAC 30-70-30
Regulation title	The Virginia Public Guardian and Conservator Program
Action title	Amendment to include person-centered planning procedures
Date this document prepared	September 20, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

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.

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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, 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.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The regulation requires, to the maximum extent feasible, the person-centered planning process to:

- 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. Reflect the individual's cultural values.
- e. Offer choices to the individual regarding the services the individual receives and from whom the individual receives them.
- f. Include documentation of the processes employed in and the outcome of person-centered planning.

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 the regulatory action poses 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 requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Vanessa S. Rakestraw, Ph.D., CRC 8004

Franklin Farms Drive, Henrico, VA 23229, Vanessa.Rakestraw@dars.virginia.gov, Fax (804) 662-7663. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	The local and regional public guardian programs will be charged with implementing the person-centered procedures, which includes recordkeeping. The public guardian programs use person-centered planning already and this regulates current practice.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	There are presently 15 local and regional public guardian programs.
Benefits expected as a result of this regulatory proposal.	A more responsive, integrated, person-centered long-term supports and services system that ensures people can access quality services in settings they choose to the maximum extent feasible.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	0
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	0
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	0

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There is no alternative to this statutorily mandated regulatory change.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no alternative to this statutorily mandated regulatory change.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
None		

Family impact

Please assess the impact of the proposed 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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 capacity to manage his personal affairs to the extent feasible.	<p>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 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. Reflect the individual’s cultural values. e. Offer choices to the individual regarding the services the individual receives and from whom the individual receives them. f. 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>