

Virginia Public Guardian and Conservator Advisory Board



2015 Biennial Report



**COMMONWEALTH OF VIRGINIA
PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD**

September 10, 2015

Dear Commissioner Rothrock,

Pursuant to §2.2-2412(5) of the Code of Virginia, the Public Guardian and Conservator Advisory Board (Board) shall "[s]ubmit to the Department by October of each odd-numbered year, a report regarding the activities and recommendations of the Board, to be posted on the Department's website."

The Board applauds the work of the Department for Aging and Rehabilitative Services for its call to action for increased statewide planning for guardianship for incapacitated persons and the \$500,000 in new funding for the Public Guardian and Conservator Program it received from the General Assembly in 2015.

Court-community partnerships across the nation (DC, NY, IN, MN, MS, MO, OH, OR, TX, UT, WA, WV, WI) have formed to make improvements in adult guardianship. These jurisdictions have developed Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to provide a continuing forum for evaluation of strengths and weaknesses, prioritization of needs, and collaborative action. The Board wholeheartedly supports a WINGS initiative in Virginia to improve judicial processes, enhance services, and, most importantly, protect individual rights and promote accountability for all guardianships.

This report includes a recommendation for a budget amendment to fund a statutorily mandated (Virginia Code § 51.5-150(B)(9)) contract with a research entity to "evaluate local public guardian and conservator programs" to identify unmet need trends and provide recommendations. The unmet demand for public guardian services for Virginia's state and local human services and public safety agencies needs to be quantified to support additional General Assembly funding requests to increase capacity to serve individuals on the waiting list in need of public guardianship services.

Finally, the Board recommends moving its authorizing statutes from Virginia Code §§ 2.2-2411 and 2.2-2412 to Title 51.5 and removing from its named membership the Virginia Guardianship Association since the organization is disbanding.

An overview of the Virginia Public Guardian and Conservator Program and significant Board accomplishments are also presented in this report. The Board is grateful for this opportunity to submit this report to you for your review and posting to the agency website at <http://www.vda.virginia.gov/guardboard.asp>.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa Moore".

Lisa Moore, Chair

Biennial Report (July 1, 2013–July 1, 2015)
Public Guardian and Conservator Advisory Board

The Board is established as an advisory board in the executive branch of state government. Under Code of Virginia §§ 2.2-2411 and 2.2-2412, the purpose of the Board is to report to and advise the Commissioner of the Department for Aging and Rehabilitative Services (Department) on the Virginia Public Guardian and Conservator Program, established pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5, and to “assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators.”

The Virginia Public Guardian and Conservator Program was established in 1998 after a successful demonstration pilot project. Public guardianship is defined as 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. Once appointed by the circuit court, the public guardian usually serves for the life of the incapacitated adult.

The Department administers the program through a competitively negotiated contract process currently with 13 local and regional programs. Code of Virginia §51.5-150 states, “The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.” With the additional funding appropriated by the 2015 General Assembly, the Virginia Public Guardian and Conservator Program for the first time is operating statewide and currently serves 706 incapacitated persons.

Beginning in 2007, the General Assembly provided resources to the Department of Behavioral Health and Developmental Services (DBHDS) to provide guardianship services to individuals currently residing in, or at risk of placement in, state training centers for persons with intellectual disability. DBHDS, working collaboratively with the Department, added significant capacity to the existing public program by authorizing additional slots for at-risk adults with intellectual disability. Currently, individuals receiving services from DBHDS account for approximately 40 percent of the program budget.

At the request of the Board in 2012, the existing programs started maintaining a real-time waiting list. The documented unmet need for public guardians in those programs is almost 1,000 persons. This probably does not include all of the individuals in Virginia who would be eligible

for and in need of public guardians across state and local human services and public safety agencies.

Accomplishments of the Board

The Board is comprised of up to 15 members representing a comprehensive and diverse stakeholder base. Members include representatives of the Virginia Guardianship Association, the Virginia Area Agencies on Aging, a retired circuit court judge, the Virginia Bar Association, The Arc of Virginia, the National Alliance on Mental Illness (NAMI) Virginia, the Virginia Association of Community Services Boards, and the Virginia League of Social Services Executives. In 2014, eight new gubernatorial members were appointed to the Board.



Left to right: Veronica Williams, Cathy Thompson, Rose Palmer, George McAndrews, James Talbert, James Almand, Naila Alam and Paul Izzo, Seated: Commissioner James Rothrock.

Notable accomplishments for this biennial period follow.

- **Legislative Involvement:** The Board, along with stakeholders, successfully advocated for \$500,000 in additional funding for the Public Guardianship and Conservator Program. The Board expresses its appreciation to Delegate Chris Peace and Senator Emmett Hanger for carrying the budget amendments in 2015 and for their strong advocacy on this issue.
- **Annual Statewide Training for Public Guardians:** The Department develops and provides comprehensive annual training for public guardians, and Board members are active participants. Former board chairs, a retired elder law attorney and an instructor at Eastern Virginia Medical School, have volunteered their time to conduct comprehensive legal and

“brain and incapacity” training during these sessions. In 2014, Governor McAuliffe recognized the tenth annual statewide training with a gubernatorial proclamation.

- Ongoing Collaboration and Strong Support: The Board has been instrumental in encouraging individual public guardian and conservator programs across the Commonwealth. The Board invites the public guardian and conservator program staff to attend Board meetings and offer presentations in order to keep apprised of issues and to provide expert feedback.

Recommendations

Guardianship serves one of society’s most vulnerable populations—older individuals and those with disabilities who need assistance in making decisions about their health, lives, and finances and who may be at risk of abuse, neglect, or exploitation. In recent years, the Board has seen an increased demand for public guardians as Virginia undergoes a demographic shift in the aging and disability populations. Also, more public guardians have been needed for incapacitated persons leaving state training centers under the Department of Justice Settlement Agreement and for those reentering the community after years in prison.¹

While Virginia’s guardian and public guardianship laws are effective, there is room for improvement in court oversight, collection of adult guardianship data, and training for all stakeholders. Nationally, there is a growing movement to develop Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to provide a continuing forum for evaluation of strengths and weaknesses, prioritization of needs, and collaborative action through a court-community partnership. A brief video introduction by DC Chief Judge Eric Washington to the WINGS replication guide is available at <https://player.vimeo.com/video/130107291>. The Board recommends a WINGS initiative be established in Virginia to improve judicial processes, enhance services, and, most importantly, protect individual rights and promote accountability for all guardianships.

Virginia Code § 51.5-150(B)(9) requires the Department to contract with a research entity to “evaluate local public guardian and conservator programs” to identify unmet need trends and provide recommendations. The last report was done in 2007 by Virginia Tech and the statute requires the evaluation be done every four years. *See* The Need for Public Guardians in

¹ A growing number of ex-offenders who are released back into the community lack capacity to give informed consent due to medical and mental health conditions. Frequently, these ex-offenders have no Power of Attorney or relative willing or able to act as a substitute decision maker. Ex-offenders lacking capacity and substitute decision makers may require public guardianship.

the Commonwealth of Virginia—Final Report, Center for Gerontology, Virginia Polytechnic Institute and State University, Roberto, Duke, Brossoie and Teaster (2007). The Board requests a budget amendment in the amount of \$30,000 to quantify unmet needs for the public guardians in Virginia and provide recommendations for program improvements.

Finally, the Board recommends moving its authorizing statutes from Virginia Code §§ 2.2-2411 and 2.2-2412 to Title 51.5 and removing from its named membership the Virginia Guardianship Association since the organization is disbanding.

Current Focus and Priorities of the Board

The Board is committed to serving as a technical resource to public guardianship programs and the Department. The Board welcomes the opportunity to work with the Commissioner and the 2016 General Assembly to promote its recommendations for a statewide study of guardianship through a court-community WINGS partnership, a budget amendment to fund a study regarding unmet need for public guardians in the Commonwealth, and technical amendments to the Board's authorizing statute.

Public Guardian and Conservator Advisory Board 2015

- **Lisa Moore, Chair**
Wytheville
Virginia Association of
Community Services Boards
- **Lisa Linthicum, Vice-Chair**
Campbell County Virginia
League of Social Services
Executives
- **Naila Alam**
Herndon
Qualified Person
- **The Honorable James F. Almand**
Arlington
Circuit Court Judge
- **Paul G. Izzo**
Richmond
Virginia Bar Association
- **George McAndrews**
Vienna
Qualified Person
- **Rose A. Palmer, Secretary**
Richmond
Qualified Person
- **Mira Signer**
Richmond
National Alliance on Mental Illness
(NAMI) Virginia
- **Debbie Smith**
Richmond
DBHDS
- **James P. Talbert**
Hampton
The Arc of Virginia
- **Cathy V. Thompson**
Roanoke
Virginia Guardianship Association
- **Thelma Bland Watson**
Richmond
Virginia Area Agencies on Aging
- **Lynne Williams**
Richmond
Department of Social Services
- **Veronica E. Williams**
Richmond
Commonwealth Council on Aging

For addition information concerning this report, please contact Board staff:

Amy Marschean, Senior Policy Analyst
Department for Aging and Rehabilitative Services
Amy.Marschean@dars.virginia.gov



Virginia Department for Aging and Rehabilitative Services
Division for the Aging
1610 Forest Avenue, Suite 100 Richmond, VA 23229
(804) 662-9333
FAX: (804) 662-9354
dars@dars.virginia.gov