

# Virginia Public Guardian and Conservator Advisory Board



## 2023 Biennial Report



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

October 1, 2023

Dear Commissioner Hayfield,

Pursuant to § 51.5-149.2(5) of the Code of Virginia, the Public Guardian and Conservator Advisory Board (Board) shall submit to the Department for Aging and Rehabilitative Services (DARS) by October of each odd-numbered year, a report regarding the activities and recommendations of the Board, to be posted on the DARS website.

The Board has met virtually and in person over the past two years, reflecting the changing landscape in the wake of the COVID-19 pandemic. Members have continued to welcome staff from the Public Guardian Programs (PGPs) to share their Programs' successes and challenges with the Board. The Legislative Committee has been newly invigorated under the capable leadership of Chair Erica Wood. However, the Board is finding it increasingly difficult to conduct its business due to a confluence of expiring terms and a delay in new appointments. While nine of thirteen gubernatorial appointees' terms expired during the reporting period, no new gubernatorial appointments to the Board have been made.

The Board is pleased to report that it has had a successful two years during which many of its legislative and policy recommendations have been adopted. These recommendations addressed a wide range of concerns, some stemming directly from the Joint Legislative Audit and Review Commission's 2021 report "Improving Virginia's Adult Guardian and Conservator System," including increasing the number of slots available through the PGP, equalizing the reimbursement rate for each type of slot across providers, and funding for studies on the staff-to-client ratio and a needs assessment. The Board also continues to support the Department's participation in the WINGS initiative.

This year the Board has adopted a slate of three recommendations that were previously shared with the Commissioner and the Department and posted on the Department's website. The recommendations for 2024 are 1) to provide training for the PGP's multi-disciplinary panels (MDPs), 2) to enhance judicial training on the PGP, and 3) for DARS to develop and disseminate training for all guardians in Virginia.

A brief overview of the PGP 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 <https://vda.virginia.gov/boardsandcouncils.htm>.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "L. Pickral".

Lindsay Pickral, Chair

**Biennial Report (July 1, 2021-June 30, 2023)**

**Public Guardian and Conservator Advisory Board**

The Board is established as an advisory board in the executive branch of state government. Under the Code of Virginia § 51.5-149.1, the purpose of the Board is to report to and advise the Commissioner of the Department for Aging and Rehabilitative Services (DARS) on the Virginia Public Guardian and Conservator Program (hereafter Public Guardian Program, PGP), and to assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators.

The Board consists of up to 15 members representing a comprehensive and diverse stakeholder base who are largely appointed by the Governor (two are representatives of agency heads and are not subject to the normal appointments process). Members include representatives of the Virginia Area Agencies on Aging, the Virginia Bar Association, The Arc of Virginia, the National Alliance on Mental Illness (NAMI) Virginia, the Virginia Association of Community Services Boards, the Virginia League of Social Services Executives, and a retired circuit court judge.

**Virginia Public Guardian and Conservator Program**

The PGP was established in 1998 after a successful demonstration pilot project. As part of Virginia's public safety net, the program protects adults who are indigent, incapacitated, and in need of someone to help them make medical, financial, or daily living decisions and who do not have a suitable family member or friend to serve as a guardian. Historically, a locality's sheriff served as the guardian of last resort, but now a public guardian can be appointed by the circuit court to enable a vulnerable, incapacitated adult to move from a hospital or a state training center to the community, or to continue living in the community; protect the adult from financial exploitation, abuse, or neglect; and assist with legal and medical decision-making. Once appointed by the circuit court, the public guardian usually serves for the life of the incapacitated adult.

DARS administers the program through competitively negotiated contracts with 12 local and regional programs (PGP providers). With the additional funding appropriated in the

2015, 2016, 2018, and 2022 legislative sessions, the PGP operates statewide and can serve up to 1,349 incapacitated persons. Additional funds were appropriated in 2022 to equalize payments per slot across PGP providers. These sessions recognized the challenges of increasing numbers of older incapacitated adults, due in part to the eventual closing of four of the five state training centers for individuals with intellectual disability under the United States Department of Justice Settlement Agreement with the Commonwealth, pressures of increased discharges from state mental hospitals, and the demographic shift in the aging and disability populations. In addition to funding for the program, the General Assembly provided an additional staff for DARS to meet the expanded administrative needs of the program. The PGP is a highly cost-effective system-level response to protect the most vulnerable part of the public safety net—those who lack decision-making capacity and are most at risk of maltreatment through self-neglect or at the hands of perpetrators.

Beginning in 2007, the General Assembly appropriated funds to the Department of Behavioral Health and Developmental Services (DBHDS) to provide guardianship services for individuals currently residing in or at risk of admission to a state training center. DBHDS, working collaboratively with DARS, added significant capacity to the existing public guardianship program by seeking additional slots for at-risk adults with intellectual disability (DBHDS-DD slots) and, beginning in 2016 with the budget amendments to DARS, adults with mental illness (DBHDS-MH slots). The General Assembly further expanded funding for the public guardian program in 2022 to provide a further 300 unrestricted slots and to equalize the reimbursement for the various slots across providers.

At the request of the Board in 2012, existing PGP providers started maintaining real-time waiting lists. At the end of FY2023, there were 279 individuals on the waiting lists maintained by the programs or agencies as follows: 254 for unrestricted slots and 25 for mental illness/developmental disability slots. The waiting list for DBHDS-DD slots was not available. The waiting lists are only an indication, not a complete picture, of potential demand for the PGP.

## **Accomplishments of the Board**

### **COVID-19 Pandemic Impact:**

The easing of the COVID-19 pandemic following the widespread implementation of vaccines in 2021, and the end of Virginia's declared State of Emergency on June 30, 2021, required the Board to resume in-person meetings from the start of the reporting period. However, the first in-person meeting in September 2021 was cancelled due to a lack of a quorum, and in-person meetings only resumed from December 2021. Changes to the Freedom of Information Act (FOIA) in the wake of the pandemic allow the Board to meet virtually up to twice a year, provided that virtual meetings are not consecutive. The Board has taken advantage of that on two occasions (March 15, 2022, and June 20, 2023), reflecting expected difficulties in achieving the quorum of five members at an in-person meeting. The Board would like to thank DARS' staff, especially the technical support team, for ensuring smooth electronic and in-person meetings. The Board would also like to highlight the very high attendance at electronic meetings since 2020.

### **PGP Provider Board Presentations:**

The Board remains instrumental in encouraging individual PGPs across the Commonwealth. The Board regularly invites PGP staff to attend Board meetings and offer presentations to keep apprised of issues and to provide expert feedback to the PGPs. During the reporting period, the Board had a presentation from Alleghany Highlands Community Services, which highlighted one of the smaller provider's strengths, successes, and challenges. One challenge that was noted was the lack of low-cost third-party representative payee services. These presentations are vital for keeping the Board informed about the day-to-day issues and challenges faced by the PGP providers in delivering high-quality public guardianship services.

### **Legislative Committee:**

The Board's bylaws provide for a standing Legislative Committee with five members, including the vice-chair. The Committee is tasked with following legislation and recommending positions for advocacy to the Board for presentation to the Commissioner of DARS. Prior to the period covered in this report, the Legislative Committee last met in 2015. Energized by the appointment of Erica Wood as chair, the Committee met three times

during the reporting period: July 2021, July 2022, and March 2023. At each meeting, committee members reviewed recent legislation pertaining to guardianship generally—and the PGP in particular—and made recommendations for consideration by DARS for the following year’s budget and General Assembly session. The Committee also began meeting earlier in the year to ensure its recommendations were available to DARS ahead of the budgeting process. The recommendations approved by the Board for SFY2024 can be found on page 7, while the recommendations adopted in September 2021 and June 2022 and their outcomes are described in the table below.

**2021/2022 Board Policy Recommendations and Outcomes:**

<b>Recommendation (year/s recommended)</b>	<b>Outcome</b>
<b>Four-yearly Public Guardianship Needs Evaluation (2021)</b>  The Board recommended DARS to request \$100,000 to conduct needs evaluation described in § 51.5-150(B)(9), last funded in 2007.	Funded in 2022 Budget (Item #335.A.1)
<b>Funding to Eliminate Payment Disparities Among PGP Providers (2021)</b>  The amount of reimbursement to providers per slot previously was locked in when the slot was funded, which led to providers being reimbursed at lower rates for earlier funded slots than for more recently funded slots.	Funded in 2022 Budget (Item #331.B)
<b>Funding for Additional PGP Slots (2021)</b>  The Board endorsed the JLARC recommendation for 700 additional slots in the program and recommended that a phased approach be taken for additional slots to ensure their orderly take-up.	300 additional slots funded in 2022 Budget (Item #331.B)

Virginia Public Guardian and Conservator Advisory Board  
2023 Biennial Report

<p><b>Technical Revision to Code of Virginia § 51.5-151 (2021/2022)</b></p> <p>The Board noted that the Code was misaligned with actual practice and recommended that providers not be required to develop a plan to provide advance notice to courts and sheriffs about changes in PGP capacity (reflected in shifting staff-to-client ratios).</p>	<p>Code section changed as recommended in 2023 (HB 2029)</p>
<p><b>Revision to Code of Virginia § 51.5-151 Board Member Terms (2022)</b></p> <p>The Board recommended that all members be appointed for four-year terms rather than an arbitrary mix of three- and four-year terms.</p>	<p>Code section changed as recommended in 2023 (HB 2029).</p>
<p><b>Funding a Court Adult Guardianship and Conservatorship Database Case Management System (2021)</b></p> <p>Board recommended funding a uniform system for ongoing collection, tracking, and reporting of timely statewide guardianship and conservatorship data.</p>	<p>Virginia Courts Office of the Executive Secretary received a grant to support implementation of a case management database</p>
<p><b>Require Training for All Guardians in Virginia (2022)</b></p> <p>Recognizing that public guardian providers are already required to undergo training, the Board recommended that all guardians and conservators in Virginia be required to have training in line with the JLARC recommendations.</p>	<p>Not achieved</p>
<p><b>Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) (2021/22)</b></p> <p>The Board recommended DARS staff continue to participate actively in WINGS.</p>	<p>DARS staff continue to participate actively in WINGS.</p>

### **Challenges Facing the Board**

Although the Board has achieved much over the past two years, it has been facing membership challenges that are increasingly hampering the Board's regular functioning. Legislation recommended by the Board in 2023 equalized members' terms at four years from the prior mix of three- and four-year terms. However, the earlier mix led to a situation in 2022 when more than half the Board members' terms expired. Although members may continue to serve until a fresh appointment is made, pursuant to a 2013 Office of the Attorney General Opinion, several members indicated they were unable to continue to serve for more than six months after the expiration of their terms. Currently the Board has five vacancies, and only two of the current members are serving formal, appointed terms. The delay of new and second-term gubernatorial appointments means that several key organizations and groups represented on the Board as specified in § 51.5-149.1 are unable to participate. It has become difficult to meet the requirements for the orderly functioning of the Board, such as filling committee vacancies and achieving the codified quorum of five members required for conducting business at its quarterly meetings.

The Board kindly requests continued support from DARS in identifying and supporting potential candidates for Board positions, and the receipt of formal appointments to the Board.



## **2023 Recommendations of the Board**

### **1. Training for the Public Guardianship Program multi-disciplinary panels**

PGP providers are required by 22VAC30-70-30(D) to “establish a multidisciplinary panel (MDP) to (i) screen cases to ensure that the appointment of a public guardian or public conservator is appropriate under the circumstances and is the least restrictive option available to assist the incapacitated person, and (ii) annually review cases being handled by the program to ensure that a public guardian or conservator appointment remains appropriate.” There are currently no requirements regarding training or education of the panel members, who may include representation from a variety of local organizations and individuals including departments of social services and adult protective services, community services boards, licensed attorneys, area agencies on aging, local health departments, long-term care administrators, physicians and other community representatives.

In order for the MDPs to effectively carry out their duties and responsibilities, the Board recommends that DARS, working together with the PGP providers, develop a brief introductory training for MDP members on guardianship, conservatorship, less restrictive alternatives to these, and capacity determinations. This is a legislative request with budget implications.

### **2. Enhance judicial training on Public Guardian Program**

Although judges make appointments of the PGP providers to serve as guardian and/or conservator when no one else is willing and appropriate, there is no specific training available for the judiciary to describe the PGP and the role it has within the guardianship and conservatorship structure in Virginia. Judges need to know about the process for case acceptance into the PGP, the PGP standards, and the practices of the local/regional providers. The Board recommends that DARS work with the Supreme Court WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) to create a judicial fact sheet, video, and/or other training opportunity to be made available to circuit court judges across Virginia. DARS should also create an awareness campaign to encourage utilization of the new training program.

This is a legislative request with budget implications.

### **3. DARS requested to develop and disseminate training for all guardians in Virginia**

Guardianship is a legal process in which a court-appointed individual or entity makes decisions and supervises the affairs of an adult whom the court has found to be incapacitated. In conservatorship, a court-appointed person or entity manages the financial affairs of an incapacitated adult.

In 2021, the Virginia Joint Legislative Audit and Review Commission (JLARC) completed a study of the state's guardianship and conservatorship system.<sup>1</sup> The JLARC report made 42 recommendations to strengthen oversight, restore rights when possible, and prevent and detect abuse and exploitation. While many of these recommendations have been addressed in the past two years, one key legislative recommendation not yet acted upon is requiring initial and ongoing training for guardians and conservators.

The Board understands that public guardians currently receive training in guardianship and conservatorship, while private guardians do not. Basic resources for private guardians have been made available by the Supreme Court of Virginia, working with WINGS. However, guardianship is a daunting responsibility, and private guardians – particularly family guardians – could benefit by additional help in better understanding their duties. The more private guardians are equipped to serve adults in need, there may be less reliance on the PGP, preserving it for cases of last resort. The Board recommends legislation requiring private guardians to complete initial training provided by DARS within four months of appointment, and requiring DARS to develop and provide this training. Such legislation was introduced in 2023 on both the House and Senate side, but was not passed by the House Appropriations Committee.

This is a legislative request with budget implications.

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<sup>1</sup> <http://jlarc.virginia.gov/landing-2021-virginias-adult-guardian-and-conservator-system.asp>

**Public Guardian and Conservator Advisory Board**

**Lindsay Pickral, Chair**  
Virginia State Bar, Richmond

**Donna Smith, Vice-Chair**  
Virginia Association of Area Agencies  
on Aging (V4A)

**Susan Elmore**  
Qualified Person, Richmond

**Erica Wood**  
Commonwealth Council on Aging,  
Arlington

**Kathy Harkey**  
National Alliance on Mental Illness  
of Virginia (NAMI Virginia),  
Richmond

**Cristi Zedd, Chair**  
Virginia Association of Community  
Services Boards, Richmond

**Kimberly King**  
Department of Behavioral Health and  
Disability Services (representing  
Commissioner Smith), Richmond

**Vacancy**  
Circuit Court Judge (active or retired)

**Monica Karavanic**  
The Arc of Virginia, Danville

**Vacancy**  
Virginia League of Social Service  
Executives

**Tara Ragland**  
Department of Social Services  
(representing Commissioner Avula),  
Richmond

**Vacancy**  
Qualified Person

**Ming Truong**  
Qualified Person, Virginia Beach

**Vacancy**  
Qualified Person

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

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