

Public Guardianship: The Commonwealth of Virginia Model

(Inherent Safeguards to Protect Individual Autonomy to the Greatest Extent Feasible)

National Home and Community-Based Services Conference
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Department for Aging and Rehabilitative Services (DARS)
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Important Disclosures

- The materials contained herein are not intended as legal advice.
- Laws and regulations cited in this presentation are valid in the Commonwealth of Virginia.
- Each State may have different laws and regulations pertaining to Guardianship.
- Any opinions stated during the presentation do not necessarily reflect the opinions or policy of the Department for Aging and Rehabilitative Services.
- Statute citations are current as of 9/5/13.

SESSION OUTLINE

- I. Public Guardianship, A Program of Last Resort to Serve Incapacitated Adults
- II. Safeguards to Balance Surrogate Decision Making with Individual Autonomy (*Who Decides*)
- III. Public Policy and “Balancing the Needs of the Many with the Needs of the Few” (*Who Pays*)
- IV. Quality Assurance (*Who Watches*)
- V. Outcome Measures and Safeguard-Enforcement (*Who Evaluates*)
- VI. The Commonwealth of Virginia Model Pursuant to § 51.5-149 et seq., Code of Virginia
- VII. Systemic Issues Impacting Individuals in Need of Guardianship
- VIII. Questions, Comments, Discussion

“Model” as Compared to What?

- **Wards of the State: A National Study of Public Guardianship**, Teaster, Wood, Karp, Lawrence, Schmidt Jr. and Mendiondo, 2005
- **Public Guardianship After 25 Years: In the Best Interest of Incapacitated People?** (National Study of Public Guardianship Phase II Report, January 2008), Teaster, Wood, Schmidt, Jr. and Lawrence, 2008

I. *Wards* Study - Definition of Public Guardianship

- “Public Guardianship is the appointment and responsibility of a public official or publically funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.”

II. Recommendations for Publically Funded Guardianship Programs from *Wards Study*

SAFEGUARDS TO BALANCE SURROGATE DECISION -MAKING WITH INDIVIDUAL AUTONOMY (***WHO DECIDES***)

- Recommendation -

- Limited Guardianships should be used by Courts, to the greatest extent possible, to maximize the autonomy of the ward and implement the least restrictive alternative principle (see *Wards of the State: A National Study of Public Guardianship*, page 166).

III. Recommendations for Publically Funded Guardianship Programs

PUBLIC POLICY AND “BALANCING THE NEEDS OF THE MANY WITH THE NEEDS OF THE FEW” (**WHO PAYS**)

- Recommendation -

- States should provide adequate funding for programs (see *Wards* at page 165).
- States should provide adequate funding for community based care (see *Wards* at 162).
- Courts should waive costs and filing fees for indigent (see *Wards* at page 166).
- Programs should track cost savings and report regularly (see *Wards* at page 164).

IV. Recommendations for Publically Funded Guardianship Programs

QUALITY ASSURANCE (***WHO WATCHES***)

- Recommendation -

- Study needed on the effect of services on wards over time (see *Wards* at page 162).
- Courts should exercise more oversight over programs (see *Wards* at page 165).

V. Recommendations for Publically Funded Guardianship Programs

OUTCOME MEASURES AND SAFEGUARD-ENFORCEMENT (**WHO EVALUATES**)

- Recommendation -

- Programs should undergo a periodic external evaluation (see *Wards* at page 164).

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

Public Guardianship Law =

Guardianship Law Applicable to ALL
(Private & Public Guardians)

+

Additional Safeguards to protect the extremely
vulnerable adult (*Unbefriended* and Indigent)

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

Public Guardianship Law =

Guardianship Law Applicable to ALL
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+

Additional Safeguards to protect the extremely
vulnerable adult (*Unbefriended* and Indigent)

- Law (Statutory Authority)
- Regulations (Regulations have the force of law in VA)
- Contract (DARS and Guardianship Service Provider)

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

Statutory Law – Applicable to all Guardians and Conservators in Virginia (both public and private)

- **Definitions** – Va. Code § 64.2-2000 (Guardian, Conservator, Respondent, Incapacitated Person, Limited Guardian, Limited Conservator, Mental Illness, etc.).
- **Limited guardianships are available in Virginia**
- **Consequences** if a Guardian or Conservator is appointed:
 - **Unless preserved**, a person adjudicated as incapacitated in Virginia loses the right to vote, operate a motor vehicle and o possess, purchase or transfer firearms. Va. Code § 64.2-2014.

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

**PROCEDURAL AND SUBSTANTIVE SAFEGUARDS TO
PROTECT THE CIVIL RIGHTS OF RESPONDENTS:**

Notice: Notice of Hearing and Warning. Va. Code § 64.2-2004.

GAL Appointed: Guardian Ad Litem (attorney) must be appointed. Va.
Code § 64.2-2003.

Legal Counsel: Respondent has a right to a Lawyer. Va. Code § 64.2-
2006.

Jury Trial: Respondent has a right to a jury trial. Va. Code § 64.2-2007.

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

**ADDITIONAL SAFEGUARDS TO PROTECT THE CIVIL
RIGHTS OF RESPONDENTS WHO HAVE BEEN
ADJUDICATED “INCAPACITATED” AND APPOINTED A
GUARDIAN OR CONSERVATOR:**

- Fiduciaries as a matter of law: Guardians and Conservators are Fiduciaries and may be held personally liable for breach of their Fiduciary Duty. Va. Code § 64.2-100; § 64.2-2019.
- Annual reporting required: Guardians are required by statute to report annually to the local department of Social Services. Va. Code § 64.2-2020.
- Financial accountability: Conservators are required by statute to provide financial accountings to a Commissioner of Accounts (COA), appointed by the Circuit Court. Va. Code § 64.2-1305. COAs in Virginia must be licensed attorneys.

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

ADDITIONAL SAFEGUARDS
(-continued-)

- Circuit Court Orders may be modified or terminated: Circuit Court Orders for Guardianship and Conservatorship may be modified or extinguished by filing a Petition for Restoration, Modification or Termination. Va. Code § 64.2-2012.
- State pays for the poor and unbefriended: There is a publically funded program for indigent adults who have no other means of obtaining a Guardian or Conservator when needed. Va. Code § 64.2-2010 (Eligibility for a Public Guardian or Conservator); Va. Code § 51.5-149 et seq. (Virginia Public Guardian and Conservator Program).

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

Law and Regulations Applicable ONLY to Public
Guardianship
(Additional Safeguards & Responsibilities)

[Refer to Outline for Discussion]

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

Key Components of Virginia's Public Guardianship Program

- ❑ STATE AGENCY ADMINISTRATION.
- ❑ NARROW ELIGIBILITY CRITERIA (A PROGRAM OF ABSOLUTE LAST RESORT!). CRITERIA INCLUDES.
- ❑ PERSON CENTERED PLANNING (PCP) FOCUS PROMOTES INDIVIDUAL AUTONOMY TO THE GREATEST EXTENT FEASIBLE.
- ❑ ONGOING EVALUATION AND MONITORING.
- ❑ STABLE FUNDING SOURCE.

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

Public Guardianship – Inherent safeguards to Protect Individual Autonomy

- INDIVIDUAL AUTONOMY RESPECTED THROUGH MANDATED USE OF PERSON-CENTERED PLANNING AND PRACTICES (PCP).
- DECISION MAKING: THE “SUBSTITUTED JUDGMENT” STANDARD IS PREFERRED OVER THE “BEST INTEREST” STANDARD.
- THE PUBLIC GUARDIAN PROGRAM IS A PROGRAM OF LAST RESORT.
- MULTIDISCIPLINARY PANEL (MDP).
- CLIENT TO STAFF RATIO ENFORCED. 20:1

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

**Public Guardianship – Inherent safeguards to
Protect Individual Autonomy
(-continued-)**

- EXPERIENCE REQUIRED FOR PUBLIC GUARDIANS AND PUBLIC GUARDIAN PROGRAM DIRECTORS.
- END OF LIFE DECISION-MAKING PLAN REQUIRED IN ADVANCE.
- CRIMINAL BACKGROUND CHECKS AND DRUG SCREENING REQUIRED PRIOR TO SERVING.

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

**PUBLIC GUARDIANSHIP – CHECKS AND BALANCES TO
ENSURE PROGRAM COMPLIANCE**

- ON-SITE MONITORING (**ANNUALLY**).
- REPORTS TO VIRGINIA'S LEGISLATURE (**BIENNIALLY**).
- REQUIRED ATTENDANCE AT ANNUAL STATEWIDE TRAINING PROVIDED BY DARS (**ANNUALLY**).
- REPORTING BY PROGRAMS (**QUARTERLY**).

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

PROGRAM FUNDING AND COST SAVINGS TO VIRGINIA

- **Cost.** \$ 2,149,474 serves 601 incapacitated adults at an average cost of \$3,577 (about 19% too low to maintain current programs).
- **Documented Savings:** \$2,500,000+ Annually.
- **Improved Quality of Life.** Some programs actively seek donations and support for their Client such as Dentures and other items not covered by Medicaid; Birthday and holiday celebrations (not mandated or required by DARS). Many programs voluntarily provide “extras” to improve the quality of life for their Clients. ***Tenacious Advocacy*** (Public Guardians are professionally trained and will challenge unnecessary medical procedures when appropriate (such as a request for a feeding tube when the real issue is that the Client eats very s-l-o-w-l-y and merely needs more time to eat before the food is taken away, etc.). Public Guardians also have ***Permissive Authority to make funeral arrangements*** after a Client dies. Va. Code § 51.5-151.

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

SYSTEMIC ISSUES IMPACTING INDIVIDUALS IN NEED OF GUARDIANSHIP

- **Pro-active education is needed** (Guardianship and Alternatives to Guardianship).
- **Shortage** of qualified guardians and conservators for adults with challenging behaviors.
- **Shortage** of community based housing and care for adults with challenging behaviors.
- **Little or no** statewide assessment and planning for unmet needs and projected increase.

DISCUSSION POINTS

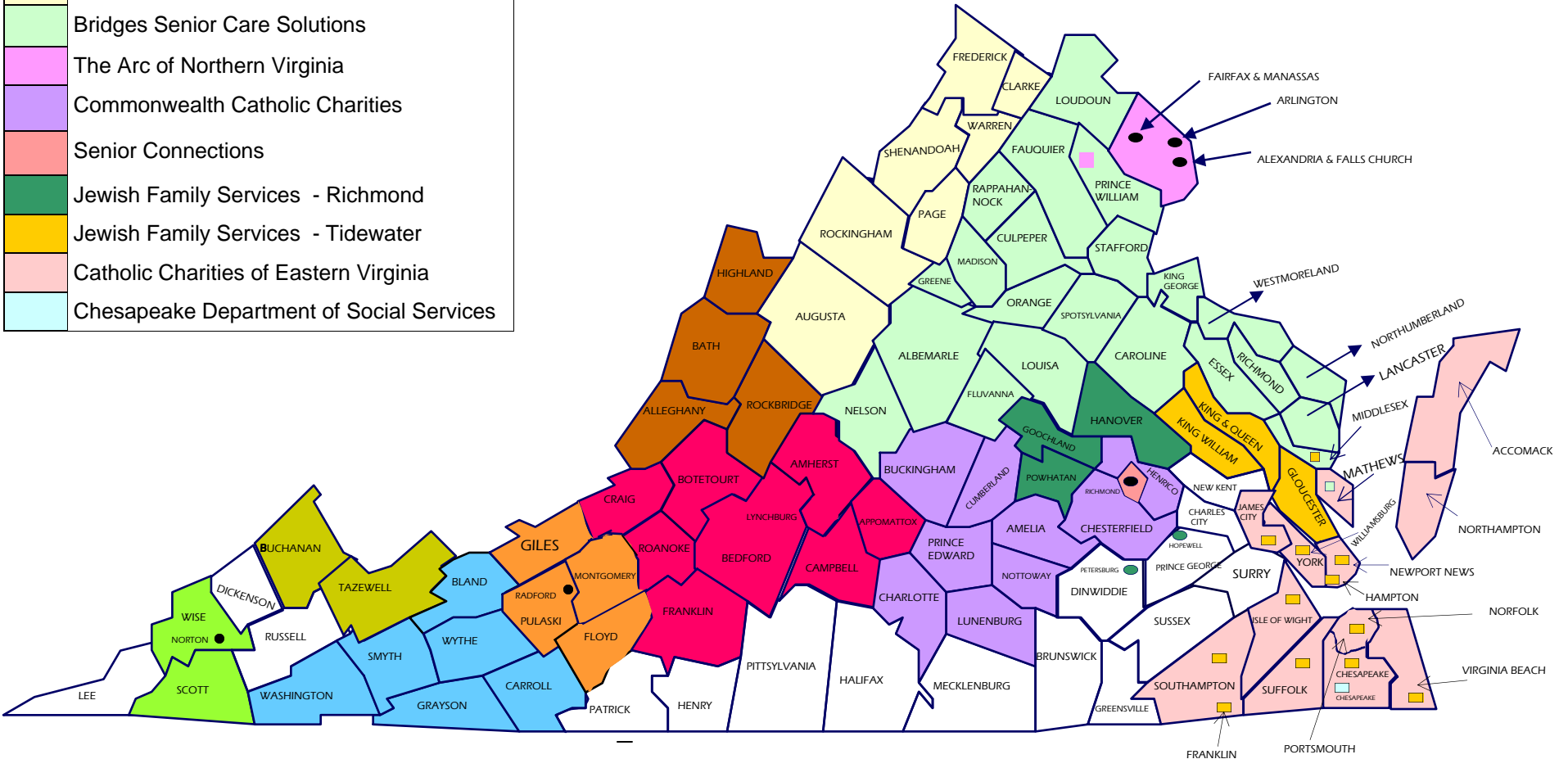
- ❖ QUESTIONS?
- ❖ COMMENTS?
- ❖ IDEAS?

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- THANK YOU

VIRGINIA PUBLIC GUARDIAN & CONSERVATOR PROGRAMS SERVICE AREA

	Mountain Empire Older Citizens
	Appalachian Agency for Senior Citizens
	District III Governmental Cooperative
	Southwest Virginia Legal Aid Society
	Family Services of Roanoke Valley
	Rockbridge Area Community Services PGP
	Autumn Valley Guardianship
	Bridges Senior Care Solutions
	The Arc of Northern Virginia
	Commonwealth Catholic Charities
	Senior Connections
	Jewish Family Services - Richmond
	Jewish Family Services - Tidewater
	Catholic Charities of Eastern Virginia
	Chesapeake Department of Social Services



2013 NATIONAL HOME AND COMMUNITY-BASED SERVICES CONFERENCE

SESSION TITLE

**PUBLIC GUARDIANSHIP: THE COMMONWEALTH OF VIRGINIA MODEL
(Inherent Safeguards to Protect Individual Autonomy to the Greatest Extent Feasible)**

SESSION PRESENTER

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SESSION CONTENT

This session will cover the legal basis, regulatory requirements and inherent safeguards in Virginia's successful Public Guardianship Model. Virginia's program continues to respond to the documented need for guardians of last resort for adults aged 18 years and older who are adjudicated *incapacitated* and indigent by a Circuit Court and have no other person willing and able to serve as his or her Guardian. The current program has capacity to serve 601 vulnerable adults and has resulted in substantial savings to the Commonwealth since its implementation in 1998. As of the 2012 Biennial Report to the Virginia General Assembly, the youngest individual served by the program is 20 years old and the oldest individual served by the program is 102 years old.

SESSION OBJECTIVES

The Presenter will describe the law and the inherent safeguards established in the Code of Virginia and Virginia's Administrative Code that protect individual autonomy. The session will be interactive, providing opportunities for questions and networking opportunities. Participants will be able to

- (1) Identify the key components of Virginia's Public Guardian Program.
- (2) Describe the inherent safeguards in Virginia's Public Guardianship Law and Regulations that protect an individual's autonomy.
- (3) Adapt the statutory basis (law and regulations) of Virginia's program for use as a model.

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- II. Safeguards to Balance Surrogate Decision Making with Individual Autonomy (*Who Decides*)
- III. Public Policy and "Balancing the Needs of the Many with the Needs of the Few" (*Who Pays*)
- IV. Quality Assurance (*Who Watches*)
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PUBLIC GUARDIANSHIP: THE COMMONWEALTH OF VIRGINIA MODEL
(Inherent Safeguards to Protect Individual Autonomy to the Greatest Extent Feasible)

SESSION OUTLINE

- I. PUBLIC GUARDIANSHIP, A PROGRAM OF LAST RESORT TO SERVE INCAPACITATED ADULTS
 - A. Definition: “Public Guardianship is the appointment and responsibility of a public official or publically funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.” (**Wards of the State: A National Study of Public Guardianship**, Teaster, Wood, Karp, Lawrence, Schmidt and Mendiondo, 2005).

- II. SAFEGUARDS TO BALANCE SURROGATE DECISION MAKING WITH INDIVIDUAL AUTONOMY (***WHO DECIDES***)
 - A. Recommendation by Ward Study:

Limited Guardianships should be used by Courts, to the greatest extent possible, to maximize the autonomy of the ward and implement the least restrictive alternative principle (see *Wards of the State: A National Study of Public Guardianship*, page 166).

- III. PUBLIC POLICY AND “BALANCING THE NEEDS OF THE MANY WITH THE NEEDS OF THE FEW” (***WHO PAYS***)
 - A. Recommendations by Ward Study:
 1. States should provide adequate funding for programs (*Wards* at page 165).
 2. States should provide adequate funding for community based care (*Wards* at page 162).
 3. Courts should waive costs and filing fees for indigent (*Wards* at page 166).
 4. Programs should track cost savings and report regularly (*Wards* at page 164).

- IV. QUALITY ASSURANCE (***WHO WATCHES***)
 - A. Recommendations by *Ward* Study:
 1. Study needed on the effect of services on wards over time (*Wards* at page 162).
 2. Courts should exercise more oversight over programs (*Wards* at page 165).

- V. OUTCOME MEASURES AND SAFEGUARD-ENFORCEMENT (***WHO EVALUATES***)
 - A. Recommendation by Ward Study:
 1. Programs should undergo a periodic external evaluation (*Wards* at page 164).

VI. THE COMMONWEALTH OF VIRGINIA PUBLIC GUARDIANSHIP MODEL
PURSUANT TO VA. CODE § 51.5-149 ET SEQ.

A. PUBLIC GUARDIANSHIP LAW IN VIRGINIA – A PROGRAM OF LAST
RESORT.

B. STATUTORY LAW – APPLICABLE TO ALL GUARDIANS AND
CONSERVATORS IN VIRGINIA (BOTH PUBLIC AND PRIVATE).

1. DEFINITIONS (Defined Terms): Va. Code § 64.2-2000 (Guardian, Conservator, Respondent, Incapacitated Person, Limited Guardian, Limited Conservator, Mental Illness, etc.
2. CONSEQUENCES OF GUARDIAN OR CONSERVATOR APPOINTMENT: if a Guardian or Conservator is appointed: Unless preserved, a person adjudicated as incapacitated in Virginia loses the right to vote, operate a motor vehicle and to possess, purchase or transfer firearms. Va. Code § 64.2-2014.
3. LIMITED GUARDIANSHIPS AVAILABLE: Powers and Duties of the Guardian and Conservator can be tailored to the needs of the individual by using a Limited Guardian or Limited Conservator Circuit Court Order. Va. Code § 64.2-2000; § 64.2-2009.
4. PROCEDURAL AND SUBSTANTIVE SAFEGUARDS TO PROTECT THE CIVIL RIGHTS OF **RESPONDENTS**:
 - a. Notice: Notice of Hearing and Warning. Va. Code § 64.2-2004.
 - b. GAL Appointed: Guardian Ad Litem (attorney) must be appointed. Va. Code § 64.2-2003.
 - c. Legal Counsel: Respondent has a right to a Lawyer. Va. Code § 64.2-2006.
 - d. Jury Trial: Respondent has a right to a jury trial. Va. Code § 64.2-2007.
5. ADDITIONAL SAFEGUARDS TO PROTECT THE CIVIL RIGHTS OF **RESPONDENTS WHO HAVE BEEN ADJUDICATED “INCAPACITATED”** AND APPOINTED A GUARDIAN OR CONSERVATOR.
 - a. Fiduciaries as a matter of law: Guardians and Conservators are Fiduciaries and may be held personally liable for breach of their Fiduciary Duty. Va. Code § 64.2-100; § 64.2-2019.
 - b. Annual reporting required: Guardians are required by statute to report annually to the local department of Social Services. Va. Code § 64.2-2020.

- c. Financial accountability: Conservators are required by statute to provide financial accountings to a Commissioner of Accounts (COA), appointed by the Circuit Court. Va. Code § 64.2-1305. COAs in Virginia must be licensed attorneys.
- d. Circuit Court Orders may be modified or terminated: Circuit Court Orders for Guardianship and Conservatorship may be modified or extinguished by filing a Petition for Restoration, Modification or Termination. Va. Code § 64.2-2012.
- e. State pays for the poor and unbefriended: There is a publically funded program for indigent adults who have no other means of obtaining a Guardian or Conservator when needed. Va. Code § 64.2-2010 (Eligibility for a Public Guardian or Conservator); Va. Code § 51.5-149 et seq. (Virginia Public Guardian and Conservator Program).

C. STATUTORY LAW – APPLICABLE ONLY TO PUBLIC GUARDIANS AND CONSERVATORS IN VIRGINIA (ADDITIONAL ACCOUNTABILITY AND RESPONSIBILITIES).

1. **POLICY STATEMENT: VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM ESTABLISHED (1998).** VA. CODE § 51.5-149: *[A]. The General Assembly declares that it is the policy of the Commonwealth to ensure that persons who cannot adequately care for themselves because of incapacity (in this article, also referred to as clients) are able to meet essential requirements for physical and emotional health and management of financial resources with the assistance of a guardian or conservator, as appropriate, in circumstances where (i) the incapacitated person's financial resources are insufficient to fully compensate a private guardian or conservator 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. In order to ensure that the protection and assistance of a guardian or conservator are available to all incapacitated persons in the Commonwealth, there is established the statewide Virginia Public Guardian and Conservator Program (the Program) within the Department to (a) facilitate the creation of local or regional programs to provide services as public guardians or conservators and (b) fund, coordinate, administer, and manage such programs. [B]. The definitions found in § 64.2-2000 shall apply to this article.*
2. **STATE AGENCY DUTIES AND RESPONSIBILITIES:** DARS provides program administration and oversight but does not provide direct services to Clients (Wards are called “Clients” by statute in Virginia). § 51.5-150.
3. **SERVICE PROVIDER DUTIES AND RESPONSIBILITIES:** Minimum Requirements for Local Programs; Authority. Va. Code § 51.5-151.

4. ADVISORY BOARD DUTIES AND RESPONSIBILITIES: Advisory Board of up to 15 persons, established by statute, assists DARS' Commissioner in the coordination and management of the program. Va. Code § 2.2-2411 and § 2.2-2412.

D. REGULATORY LAW – APPLICABLE **ONLY** TO THE PUBLIC GUARDIAN AND CONSERVATOR PROGRAM (NOTE: REGULATIONS HAVE THE FORCE OF LAW IN VIRGINIA).

1. REGULATIONS PROVIDE THE “HOW TO” IMPLEMENT, EVALUATE AND MONITOR THE PUBLIC GUARDIAN PROGRAM.

- a. Definitions. Va. Administrative Code § 22VAC30-70-10.
- b. Introduction and Purpose of the Public Guardian Program. Va. Administrative Code § 22VAC30-70-20
- c. Personnel Standards. Va. Administrative Code § 22VAC30-70-40
- d. Required Recordkeeping. Va. Administrative Code § 22VAC30-70-50.
- e. Program Evaluation and Monitoring. Va. Administrative Code § 22VAC30-70-60.

E. CONTRACTUAL AGREEMENT UNIQUE TO THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM.

1. Contract between DARS and each individual service provider (one year renewable).

F. KEY COMPONENTS OF THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM.

1. STATE AGENCY ADMINISTRATION:

- a. Virginia Department for Aging and Rehabilitative Services (DARS), contracts with *15 service providers* for Guardian and Conservator services for 601 vulnerable adults. Va. Code § 51.5-150(B)(1).
 - i. DARS provides program administration and oversight but does not provide direct services to **Clients** (Wards are called “Clients” by statute in Virginia).
 - ii. Visit the DARS webpage (Aging Division) at www.vda.virginia.gov for additional information.
- b. Service providers may include public and private entities (e.g. not-for-profits, for-profit, Area Agencies on Aging (AAA), local departments of Social Services (DSS), Community Service

Boards (CSB) and faith-based organizations). Va. Code § 51.5-150(B)(2).

- i. Pursuant to statute, Circuit Court Orders name the service provider organization as the Guardian and/or Conservator (rather than an individual person as done in other Guardian/Conservator Orders). Va. Code § 64.2-2000 and Va. Administrative Code § 22VAC30-70-30(E)(2).

2. NARROW ELIGIBILITY CRITERIA (A PROGRAM OF ABSOLUTE LAST RESORT!). CRITERIA INCLUDES:

- a. Age (18 years of age and older; exception for 17 ½ years),
- b. Incapacitated (as determined by a Virginia Circuit Court),
- c. Indigent (as determined by a Virginia Circuit Court),
- d. Unbefriended (no other suitable person willing and able to serve),
- e. No least restrictive alternative, and
- f. Screening (Accepted into the public program after screening by a Multidisciplinary panel pursuant to statute).

3. PERSON CENTERED PLANNING (PCP) FOCUS PROMOTES INDIVIDUAL AUTONOMY TO THE GREATEST EXTENT FEASIBLE.

- a. Person Centered Practices Required. Va. Code § 51.5-150(B)(3)(d).

4. ONGOING EVALUATION AND MONITORING.

- a. Annual on-site monitoring is conducted for each service provider.
- b. Quarterly Reporting Required. Programs are required to submit detailed Quarterly Reports to DARS.

5. STABLE FUNDING SOURCE.

- a. General State Funds (ongoing) support program administration and Client services.

G. VIRGINIA PUBLIC GUARDIANSHIP – INHERENT SAFEGUARDS TO PROTECT INDIVIDUAL AUTONOMY.

1. INDIVIDUAL AUTONOMY RESPECTED.

- a. Person Centered Practices (PCP) Required. Va. Code § 51.5-150(B)(3)(d). PCP focuses on preferences and needs of the individual, and empower and support the Client in defining the direction for his or her life and promoting self-determination and community involvement.
2. DECISION MAKING: THE “SUBSTITUTED JUDGMENT” STANDARD IS PREFERRED OVER THE “BEST INTEREST” STANDARD.
 3. THE PUBLIC GUARDIAN PROGRAM IS A PROGRAM OF LAST RESORT.
 - a. Guardianship is *required to be the least restrictive alternative available* to assist the Client. Va. Administrative Code § 22VAC30-70-30(E)(1)(a).
 4. MULTIDISCIPLINARY PANEL.
 - a. In addition to the service provider (local or regional public guardian program), an *independent multidisciplinary panel that screens cases*, initially and annually, to ensure that Guardianship is appropriate and the least restrictive alternative to assist the individual. Va. Administrative Code § 22VAC30-70-30(C)(2) and § 22VAC30-70-30(F)(3).
 5. CLIENT TO STAFF RATIO ENFORCED.
 - a. *A required 20:1 direct service ratio of Clients to staff* (i.e. each full time paid staff serves no more than 20 incapacitated adults). Va. Code § 51.5-150(B)(3)(b) and Va. Administrative Code § 22VAC30-70-30(D).
 6. EXPERIENCE REQUIRED FOR PUBLIC GUARDIANS AND PUBLIC GUARDIAN PROGRAM DIRECTORS.
 - a. Public Guardian and Conservator Staff *must have sufficient experience and training prior* to serving Clients. Va. Administrative Code § 22VAC30-70-30(A).
 - b. Public Guardian *Program Directors must have significant additional qualifications*, training and be a full time paid staff person to the program. Va. Administrative Code § 22VAC30-70-30(C)(1) and § 22VAC30-70-40(A).
 - c. Guardians and Conservators are *Mandated Reporters* and required to report actual or suspected abuse, neglect and exploitation to DSS. Va. Administrative Code § 22VAC30-70-30(F)(7).
 7. END OF LIFE DECISION-MAKING REQUIRED IN ADVANCE.

- a. Each program is required to have in place written procedures and standards to make *end-of-life decisions or other health-related interventions in accordance with the expressed desires and personal values of the incapacitated person*. Va. Administrative Code § 22VAC30-70-30(F)(5).

8. CRIMINAL BACKGROUND CHECKS AND DRUG SCREENING REQUIRED.

- a. Staff must undergo *criminal record check and drug screen* **prior** to the assumption of any duties with an incapacitated person. Va. Administrative Code § 22VAC30-70-40(A)(2) and (3).

H. PUBLIC GUARDIANSHIP – CHECKS AND BALANCES TO ENSURE PROGRAM COMPLIANCE.

1. ON-SITE MONITORING (ANNUALLY).

- a. Annually, on-site monitoring is conducted for each program service provider.
- b. In addition to random review of files, Clients are randomly selected on the first day of monitoring for a face-to-face visit. DARS utilizes a standardized monitoring tool and forms for this purpose.
- c. Pursuant to regulation (Va. Administrative Code § 22VAC30-70-50), *each Client's file is required to contain:*
 - i. Virginia Uniform Assessment Instrument (UAI) or other comprehensive assessment instrument,
 - ii. Values History Form (Mandated Virginia form was developed with input from service providers, stakeholders and the Advisory Board and is required for all persons coming into the Public Guardian program),
 - iii. Annual Guardian Report to the Department of Social Services,
 - iv. Annual Accounting to the Commissioner of Accounts when appropriate,
 - v. All applicable Circuit Court Orders and Petitions, and
 - vi. Documentation and case notes from required monthly face-to-face visits.
 - vii. Additional scrutiny (enhanced monitoring and a larger sampling size) is used for service providers with inherent

conflict of issue potential (i.e. Community Services Boards, local Departments of Social Services, Dual Programs that serve both Public and Private Clients, etc.).

2.REPORTS TO VIRGINIA’S LEGISLATURE (BIENNIALLY).

- a. DARS is *required to report to Virginia’s Legislature (General Assembly) on a biennial basis*. Va. Code § 51.5-150(B)(9).
- b. In addition and as funds permit, *Virginia statute authorizes DARS to contract with an appropriate research facility to conduct an evaluation report and recommendations on the operation of Virginia’s Public Guardian and Conservator program* (once every four years if funds are allocated for this purpose). Va. Code § 51.5-150(B)(9).
 - i. The Need for Public Guardians in the Commonwealth of Virginia, Roberto, Duke, Brossoie, Teaster, Virginia Polytechnic Institute and State University, Center for Gerontology, Blacksburg, Virginia (2007).
 - ii. Virginia Public Guardian and Conservator Programs: Evaluation of Program Status and Outcomes, Teaster, Roberto, Virginia Polytechnic Institute and State University, Center for Gerontology, Blacksburg, Virginia (2003).

3.REQUIRED ANNUAL TRAINING PROVIDED BY DARS (ANNUALLY).

- a. DARS provides and requires Program Directors to attend an Annual Statewide Training for Public Guardians and Conservators. Annual training includes updates to the law and regulations, trends and emerging issues affecting our population, Best Practices, technical assistance and networking.

4.REPORTING BY PROGRAMS (QUARTERLY).

- a. Programs are required to submit detailed Quarterly Reports to DARS and these reports are reviewed by DARS and appropriate action taken when necessary.

I. PROGRAM FUNDING AND COST SAVINGS TO THE COMMONWEALTH OF VIRGINIA.

- 1.Cost. \$ 2,149,474 serves 601 incapacitated adults at an average cost of \$3,577. However, the true cost is about 19% higher (\$4,257¹) because service providers have not received an increase in over six years and unable to sustain their program at current funding levels.

¹ \$4,257 is the minimum to maintain program staff at current salary levels (i.e. the 19% increase will only cover increases in fuel costs, insurance, etc. but does not provide for salary increases for Public Guardians. An average rate of about \$5,069 would enable programs to better reward and retain experienced Public Guardian and Conservator staff.

2. Documented Savings²: \$2,500,000 Annually. 2006-2011, the Public Guardian program, with the assistance of other state agencies and programs, have saved the Commonwealth over \$15,000,000.³

3. Improved Quality of Life. Some programs actively seek donations and support for their Client such as Dentures and other items not covered by Medicaid; Birthday and holiday celebrations (not mandated or required by DARS). Many programs voluntarily provide “extras” to improve the quality of life for their Clients. *Tenacious Advocacy* (Public Guardians are professionally trained and will challenge unnecessary medical procedures when appropriate (such as a request for a feeding tube when the real issue is that the Client eats very s-l-o-w-l-y and merely needs more time to eat before the food is taken away, etc.). Public Guardians also have *Permissive Authority to make funeral arrangements* after a Client dies. Va. Code § 51.5-151.

VII. SYSTEMIC ISSUES IMPACTING INDIVIDUALS IN NEED OF GUARDIANSHIP.

- A. Pro-active education is needed (Alternatives to Guardianship and Guardianship).
- B. Shortage of qualified guardians and conservators for adults with challenging behaviors.
- C. Shortage of community based housing and care for adults with challenging behaviors.
- D. Little or no statewide assessment and planning for unmet needs and projected increase in the *unbefriended* population that may need a Guardian..

VIII. QUESTIONS, COMMENTS, DISCUSSION

Thank You!

² Included are only those savings that DARS is able to document, based largely upon individuals transitioned from Virginia Training Centers to community settings. However, there are hundreds of thousands of dollars in undocumented savings that DARS has not included here (e.g. savings to the Commonwealth by assisting individuals in the community so that inpatient care in institutionalized settings is unnecessary, etc.).

³ Between 2006 and 2011, the Public Guardian Program has successfully enabled the transitioning of 44 adults to the community at an estimated savings to the Commonwealth of over \$2,500,000 annually. See Report to the General Assembly of Virginia, Virginia Public Guardian & Conservator program, Biennial Report (2012).
<http://leg2.state.va.us/DLS/H&SDocs.NSF/682def7a6a969fbf85256ec100529ebd/bc1fae12925e8bc98525769a00639af9?OpenDocument> .