



Economic Impact Analysis Virginia Department of Planning and Budget

22 VAC 5-30 – The Virginia Public Guardian and Conservator Program
Virginia Department for the Aging
May 23, 2007

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 787 of the 1998 Virginia Acts of Assembly, the Department for the Aging (Department) proposes to promulgate new regulations to implement, administer, and manage the Guardian and Conservator Program.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Chapter 787 of the 1998 Virginia Acts of Assembly created the Virginia Public Guardian and Conservator Program (Program). Section § 2.2-712 states that the Department shall fund from appropriations received for such purposes a statewide system of local or regional public guardian and conservator programs. A guardian is an individual appointed by the court who is responsible for the personal affairs of an incapacitated person. A conservator is an individual appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person.

Chapter 787 further states that

The Department shall promulgate reasonable regulations in accordance with the Administrative Process Act (§ [9-6.14:1](#) et seq.) as appropriate to implement, administer and manage the state and local or regional programs authorized by this article, including, but not limited to: adoption of minimum training and experience requirements for volunteers and professional staff of

the local and regional programs; adoption of an ideal range of staff to client ratios for the programs; adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff to client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts, sheriffs, where appropriate, and the Department; and adoption of procedures governing disqualification of any program falling below or exceeding the ideal range of staff to client ratios, which shall include a process for evaluating any program which has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has had or is having upon the program and upon the incapacitated persons served by the program. The regulations shall require that such evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range.

Up until now, the Program has been run without regulations. According to the Department, all of the requirements and procedures that the legislation mandated be set forth in regulation have in practice been consistently set forth in contracts with public guardian service providers. The Department now proposes to set these requirements in regulation. Setting the requirements in regulation is beneficial to the public in that interested parties can much more easily ascertain the specifics of the requirements. Also, the public may produce valuable comment in the promulgating process.

With the exception of criminal background checks and drug screening, all of the requirements in the proposed regulations are the same as the requirements that have been in the Department's contracts with public guardian service providers since the beginning of the Program.¹ The proposed regulations require that for each paid staff member hired on or after January 1, 2009 who works for a Public Guardian Program service provider and has direct

¹ Source: Virginia Department for the Aging

contact with clients or client estates, a criminal background check shall be conducted and the staff member shall be free of illegal drug use as confirmed by a drug screening test conducted prior to the assumption of any duties with an incapacitated person.

The Virginia State Police charges \$37 per criminal background check. According to the Department, most if not all public guardian service providers already conduct criminal background checks. They are already responsible via contract to ensure that their employees have not been convicted of a relevant crime. Since most if not all public guardian service providers already conduct criminal background checks, this proposed requirement will not likely have a large effect. If this proposed requirement does increase the frequency of background checks, then the net impact is likely positive, since the potential cost in life and property in permitting a criminal access to vulnerable citizens is very large.

The proposed requirement that staff be free of illegal drug use as confirmed by a drug screening test conducted prior to the assumption of any duties with an incapacitated person is potentially beneficial. Even if the staff member means no harm, if he is under the influence of drugs his judgment and the safety of the incapacitated person may be compromised. An employee passing a drug test prior to initially assuming duties does not guarantee that he will not later use illegal drugs; but if an employee cannot discipline himself to be free of drugs during the known drug test prior to the assumption of duties, that implies that the employee may have an ongoing problem with drugs. The cost of a drug test (administered by the Department via a urine sample) ranges from \$10 to \$20. Given the potential danger to incapacitated clients, the benefit of reducing the likelihood that incapacitated persons are served by staff under the influence of illegal drugs likely exceeds the cost of the drug test.

Businesses and Entities Affected

The proposed regulations affect the 15 public guardian service providers, their employees, and incapacitated individuals served by the public guardian service providers. One of the service providers is a small business; the other 14 are non-profit entities.

Localities Particularly Affected

The proposed regulations do not disproportionately affect specific localities.

Projected Impact on Employment

The proposed regulations are unlikely to significantly affect total employment. There may be a small decrease in the probability that an individual addicted to illegal drugs will gain employment serving incapacitated persons.

Effects on the Use and Value of Private Property

The proposed regulations will likely produce a moderate increase in the demand for drug testing materials. There may be a very modest increase in the value of firms that sell these materials.

Small Businesses: Costs and Other Effects

The proposed required drug testing will increase the cost of hiring new staff who have direct contact with clients or client estates by \$10 to \$20 per employee.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There is no reasonable alternative method that minimizes the small adverse impact, while still achieving the intended policy goal.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a

description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.