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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22VAC30-70
<b>VAC Chapter title(s)</b>	The Virginia Public Guardian and Conservator Program
<b>Action title</b>	Amend Regulations Following Periodic Review
<b>Date this document prepared</b>	April 1, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Virginia Public Guardian and Conservator Program ("Program"), operated by the Department for Aging and Rehabilitative Services ("DARS" or the department), provides public guardian and conservator services for adults who are incapacitated, indigent, and for whom no other proper or suitable person can be identified who is willing and able to serve as the individual's guardian, or conservator, or both, as applicable. The Program has capacity to provide public guardianship services, public conservatorship services, or both to 1,049 incapacitated adult residents of Virginia who are found by a Virginia circuit court to be (i) incapacitated, and (ii) who meet the criteria for public guardianship as set forth in § 64.2-2010 of the Code of Virginia. These services are provided by 13 local public guardian programs, which are operated by local public guardian program contractors under contract with the department.

Following a Periodic Review (#2005) of the chapter conducted in 2020, the Periodic Review Report of Findings, filed on December 2, 2020, concluded that the regulation be amended. The current chapter requires regulatory changes in order to further define program requirements; protect the health, safety,

and welfare of the vulnerable clients; and bring conformity to program standards and operations across the Commonwealth.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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DARS or department = Virginia Department for Aging and Rehabilitative Services  
 DBHDS = Department of Behavioral Health and Developmental Services  
 Program = Virginia Public Guardian and Conservator Program  
 UAI = Uniform Assessment Instrument

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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This regulatory action is being initiated following a Periodic Review (#2005) of the chapter conducted in 2020. The Periodic Review Report of Findings, filed on December 2, 2020, concluded that the regulation be amended. The current chapter requires regulatory changes in order to further define program requirements; protect the health, safety, and welfare of the vulnerable clients; and bring conformity to program standards and operations across the Commonwealth.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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The Program is established under §§ 51.5-149 et seq. of the Code of Virginia and with funding under Items 340 and 344 of the 2020 Appropriation Act. Section 51.5-149 gives DARS the oversight for the provision of the Program. In accordance with § 51.5-150 B 3 of the Code of Virginia, the department is authorized to "adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer, and manage the Program," including the adoption of: 1) minimum training and experience requirements for Program staff and volunteers; 2) client-to-staff ratios; and 3) person-centered practices.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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This chapter prescribes the requirements that the 13 local public guardian programs must meet in order to receive state funds from the Program and for services provided in accordance with §§ 51.5-149.1 et seq. of the Code of Virginia and Items 340 and 344 of the 2020 Appropriation Act. DARS does not regulate or have authority over private guardians or conservators.

The Program serves some of the Commonwealth’s most vulnerable citizens: individuals who are incapacitated, unbefriended, and indigent. There is a continued need for the regulations as they are mandated by law and they protect the health, welfare, and safety of Program clients. In addition, clear regulatory requirements are vital to protecting the health, welfare, and safety of Program clients.

In development of proposed regulatory revisions, a fair and reasonable balance will be made to ensure adequate protection of Program clients while considering the impact on public guardian program contractors.

As DARS works through the regulatory process, it will seek input from the Virginia Public Guardian and Conservator Advisory Board, the 13 public guardian program contractors, and other stakeholders and advocates, as appropriate.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Since the proposed regulatory action involves a comprehensive review of chapter, revisions to all areas of the regulation will be considered. The regulatory action will potentially include changes to requirements regarding:

- Management of Waitlists,
- Separation of Public and Private Guardian Programs,
- Direct Staff to Client Ratio,
- Changes to Client Status,
- Standards for the Operations of Multidisciplinary Panels,
- Program Priorities,
- Surety Bond,
- Conflicts of Interest, and
- Client Records.

DARS also intends to amend sections that may be determined, upon further review, to be outdated or inconsistent with policy and practice.

Other revisions to the regulation content may also be proposed based on public comment or from discussions with the Virginia Public Guardian and Conservator Advisory Board, the 13 public guardian program contractors, and other stakeholders and advocates.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

The regulatory requirements are designed to protect the health, welfare, and safety of incapacitated persons (“clients”) served by the Program.

DARS maintains contracts with all 13 public guardian program contractors. DARS could add or maintain requirements in the contracts held with these contractors. However, regulations provide consistency, transparency, clarity, and clear enforcement of Program requirements. The regulation represents the best alternative to minimize any adverse impact on public guardian program contractors while still ensuring the protection of Program clients.

Further, with increasing attention on both public and private guardianships in the Commonwealth, the primary advantage of the regulatory chapter is the protection and clarity it provides to Program clients and public guardian programs.

**Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

This NOIRA is not being used to announce a periodic review or a small business impact review.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The Department for Aging and Rehabilitative Services (DARS) is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Charlotte Arbogast, Policy Analyst, 8004 Franklin Farms Drive, Henrico, VA 23229, phone: 804-662-7093, fax: 804-662-7663, and email: [charlotte.arbogast@dars.virginia.gov](mailto:charlotte.arbogast@dars.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.