

# Public Guardian and Conservator Advisory Board

## 1st Quarter Meeting

September 29, 2020 1:00pm

### Electronic Meeting

**Due to the active state of emergency,  
this is an electronic meeting pursuant to Item 4-0.01 of the 2020 Appropriation Act.**

### Draft Meeting Minutes

#### Members Present

James Almand  
Kathy Harkey  
Monica Karavanic  
Kimberly King (for Angela Harvell)  
George McAndrews  
Rose Palmer  
Angie Phelon  
Tara Ragland  
Latroyal Roxburgh  
Cristi Zedd

#### Staff

Marcia DuBois, Deputy Commissioner  
George Worthington, Dementia Services  
Coordinator  
Cecily Slasor, Administrative Assistant  
Kathy Miller, Director of Aging Programs  
Betty Vines, Public Guardian Program  
Assistant

Agenda Items	Speaker
<p><b>Welcome and Introductions</b> George Worthington welcomed members and reminded them that this will be an electronic, live streamed meeting. Mr. Worthington explained the rules for electronic meetings. Chair Palmer announced that Mr. Worthington would call for a roll call of members for attendance. Members introduced themselves.</p>	Rose Palmer, <i>Chair</i>
<p><b>Review and Adopt Agenda</b> <i>Action item: Adopt Agenda</i> Chair Palmer asked if members had reviewed the meeting agenda and said there would be a roll call vote to adopt the agenda. George McAndrews made a motion to adopt the Agenda as presented, and Monica Karavanic seconded the motion.</p> <p><b>Roll Call Vote</b> Almand – Yea Harkey – Yea King – Yea Karavanic – Yea McAndrews – Yea Palmer – Yea Phelon – Yea Ragland – Yea</p>	Rose Palmer

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<p>Zedd – Yea</p> <p>The motion carried by a unanimous vote and the the meeting Agenda was adopted as presented.</p>	
<p><b>Review and Adopt June 6, 2020, Minutes</b> Latroyal Roxburg having notified staff she would be late to the meeting, Chair Palmer asked if members had reviewed the June 6 meeting minutes and if there were any corrections. Judge Almand noted that the date was incorrect on Page 1. Rose Palmer adopted the minutes as amended.</p>	<p>Latroyal Roxburgh, <i>Secretary</i></p>
<p><b>Public Comment</b> Chair Palmer and George Worthington reported that there were no public comments.</p>	<p>Rose Palmer</p>
<p><b>Election of Vice-Chair</b> <b>Action Item: Election of Vice Chair</b></p> <p>Chair Palmer asked for nominations for the Vice-Chair position. Cristi Zedd indicated that she would be interested in serving as Vice –Chair for the board. Angie Phelon nominated Cristi Zedd as Vice-Chair, Judge Almand seconded the nomination.</p> <p>Chair Palmer asked if there were any additional nominations. There were none so Mr. Worthington took a roll call vote.</p> <p><b><u>Roll Call Vote for Election of Vice-Chair</u></b> Almand – yea Harkey – yea King – yea Karavanic – yea McAndrews – yea Palmer – yea Phelon – yea Ragland – yea Zedd - yea</p> <p>The vote was unanimous and Cristi Zedd is elected as the Vice-Chair for the remainder of the term ending June 30, 2021.</p>	<p>Rose Palmer</p>
<p><b>Division for Community Living Report</b></p> <p>Marcia DuBois welcomed members. Ms. DuBois reported that the DARS Office for Aging Services worked with a AAA Workgroup to develop a congregate meal best practices for reopening guide. It is available on DARS/Aging Provider Portal on the DARS website and has received positive feedback.</p>	<p>Marcia DuBois, DARS <i>Deputy Commissioner</i></p>

DARS has also collaborated with the AAA's and V4A (VA Association of Area Agencies On Aging) on the Governor's Conference on Aging. The 2020 conference was canceled due to COVID, but a new date has been set for May 2021.

A number of webinars are being presented monthly and Mr Worthington will send the link to members. Referring to recent grants received by DARS, Ms. DuBois noted that DARS received \$115,000 in additional funding for VICAP insurance counseling. October 15-December 7 is the Medicare Open Enrollment period when VICAP counselors are at their busiest. In addition, ACL awarded a one year no-cost extension for the current Falls Prevention grant. As DARS had a remaining balance it will be offering a new program called "Bingocize" to complement A Matter of Balance. The USDA awarded DARS a third and final grant for the Senior Farmers Market nutrition program which brought the funding to the same level as in 2020. DARS has approved 201 farmers, 22 new growers, 62 participating farmers markets and 32 roadside stands.

Also a reminder that the Lifespan Respite Voucher program is still operating. This program provides reimbursement of up to \$400 per family, and has just started the third year of a three-year grant. Applications are available on the DARS website <https://vda.virginia.gov/vlrvt.htm>. Finally, the No Wrong Door system can now obtain verbal rather than written consent from individuals, allowing an easier and more streamlined referral process. The NWD program received a grant through COVID relief that included to expand capacity for its networks and to partner with VA Assistive Technology System (VATS) program to get assistive technology kits out to older Virginians. Ms. DuBois added a reminder about completing the census. Information from the census is critical to most grants and funding including Older Americans Act funding.

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**Fast Track Regulation Revision Project Update**

As Charlotte Arbogast was unable to attend, Mr. Worthington presented her report drawn from the following report:

**BACKGROUND**

The enabling statutory authority for the Virginia Public Guardian and Conservator Program is found in Article 6 of Chapter 14 of Title 51.5 of the Code of Virginia. Article 6 includes [§§ 51.149 - 51.5-151](#).

Under the statutory authority, DARS has promulgated regulations for the operation of the program.

These regulations, found in the Virginia Administrative Code, outline additional requirements. The Public Guardian and Conservator Program regulatory chapter is located at [22VAC30-70 \(The Virginia Public Guardian and Conservator Program\)](#).

Charlotte Arbogast, *Policy Advisor*

### **REGULATORY ACTION 1: FAST-TRACK ACTION**

At the June 10, 2020 meeting of the Public Guardian and Conservator Advisory Board, members heard a presentation about a potential regulatory action to revise 22VAC30-70. DARS reported that the potential action would be attempted under the Fast Track process. Pursuant to § 2.2-4012.1 of the Code of Virginia, the fast-track rulemaking process is for rules that are “expected to be noncontroversial.”

During the June 10 meeting, Public Guardian and Conservator Advisory Board members expressed general support for the potential revisions, which aligned the regulations with current practices and Code requirements and improved the readability and clarity of 22VAC30-70. A couple of members raised concerns about the additional degree requirements for program directors; these members thought that this could prevent someone with years of experience but no degree from being considered for a position. DARS noted the feedback received from the Advisory Board. DARS also received feedback from the 13 public guardian program contractors.

Since that time, DARS has proceeded with the Executive Review process for the Fast-Track action. The Fast-Track action was approved internally in DARS, and received certification from the Office of the Attorney General. The Fast Track action then went to the Department of Planning and Budget (DPB). DPB determined that the revisions were appropriate for the Fast Track process. DPB staff the developed an Economic Impact Analysis (EIA) and a policy analysis; the former is available for the public while the latter is considered Governor’s Confidential Working Papers. The Fast Track action is now under review with the Secretary of Health and Human Resources.

**Key Takeaway:** The Fast Track action is still moving forward and is under Executive Review. DARS will keep the Public Guardian and Conservator Advisory Board updated as the Fast Track action progresses and in advance of any publication in the Virginia Register and the public comment period. For more information on the Fast Track action, please click [here](#).

### **REGULATORY ACTION 2: PERIODIC REVIEW**

As is tradition, under the Governor Northam’s [Executive Order 14](#), issued in 2018, agencies have been instructed to fulfill various regulatory requirements and deadlines.

Under E.O. 14 (2018), as well as the [Virginia Administrative Process Act](#), agencies are required to conduct a Periodic Review of regulatory chapters every four years to determine whether the regulations:

- 1) Should be continued without change or be amended or repealed,
- 2) Are consistent with the stated objectives of applicable law, and
- 3) Minimize the economic impact on small businesses.

The periodic review shall include: (1) the continued need for the rule; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

For the periodic review process, agencies must publish a notice of the periodic review in the Virginia Register and post the notice on the Town Hall website. The notice will be posted for 21 days of public comment.

No later than 120 days after close of the public comment period, agencies must publish a report of the findings of the regulatory review. The findings include the following options: 1) Retain As Is; 2) Amend; or 3) Repeal.

Once an agency reaches a finding, the periodic review and finding decision are also reviewed by the Office of the Attorney General and the Governor's Office to determine if the regulations are:

- 1) Necessary for the protection of public health, safety and welfare, and
- 2) Clearly written and easily understandable.

**Key Takeaway:** DARS has initiated a periodic review of the Public Guardian and Conservator Program regulations. During the upcoming 21-day public comment period, individual board members of the Public Guardian and Conservator Advisory Board may make public comments, or if there were to be a proper vote by the Public Guardian and Conservator Advisory Board, the Board may also make a public comment. This is optional; it is not required.

The public comment period will run from October 12 to November 2, 2020.

#### QUESTIONS OR COMMENTS

If you have additional questions or contacts, please contact:  
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Policy Analyst  
Virginia Department for Aging and Rehabilitative Services  
8004 Franklin Farms Drive  
Henrico, VA 23229

<p>Email: <a href="mailto:charlotte.arbogast@dars.virginia.gov">charlotte.arbogast@dars.virginia.gov</a> Phone: (804) 662-7093</p>	
<p><b>Public Guardianship Program Updates</b></p> <p>As Pattie Meire was unable to attend, Betty Vines, the Program Specialist for the Virginia Public Guardian and Conservator Program reported the following:</p> <p><b><u>Client Data:</u></b> The 13 local public guardian service providers are doing a good job keeping their slots full. The program has a total of 1,049 slots. As of June 30, 2020, the end of 4QSFY2020, reports from local providers show that the program had:</p> <ul style="list-style-type: none"><li>• 976 active clients with a court order establishing a public guardianship;</li><li>• 56 offers outstanding to individuals who had been accepted for public guardianship services but require a court order to begin the guardianship; and</li><li>• 17 open slots: 14 Unrestricted slots, two DBHDS-ID slots, and one DBHDS-MH slot. At the end of FY2020, there were enough individuals on the waiting lists to fill all of these slots.</li></ul> <p>During SFY 2020:</p> <ul style="list-style-type: none"><li>• 110 court orders were entered appointing a public guardian. (At the end of 3Q20, there had been 86.)</li><li>• 81 reported public guardian client deaths occurred. (At the end of 3Q20, there had been 57.)</li></ul> <p><b><u>COVID:</u></b> <b><u>COVID INFECTIONS AMONG ACTIVE CLIENTS</u></b> Betty will give an update on our COVID numbers. To date, 28 public guardian clients have been diagnosed with COVID-19, 19 have tested positive but are asymptomatic, 2 retested positive asymptomatic. 30 public guardian clients have recovered and 4 clients have passed.</p> <p><b><u>CLIENT VISITS</u></b> In early March, DARS recommended that local public guardian service providers suspend face-to-face visits with clients living in congregate settings and with clients residing with sponsored residential providers. This early action was taken in conformance with the “no visitation” policies adopted by long-term care facilities. Public guardian providers have maintained close contact with clients during the crisis, though. At a minimum, guardian representatives are speaking with each client via</p>	<p>Patti Meire, <i>Public Guardian Coordinator</i></p>

telephone or video chat at least once a month. The providers have indicated that most clients are contacted twice a month and that many guardian representatives are contacting each of their clients weekly. In some cases, it is not possible to communicate directly with the client. In those cases, guardian representatives are contacting care givers with the residential providers.

DARS has advised the programs that it will not enforce the in-person face-to-face visitation requirements on the contract until February 1, 2021. However DARS encourages the guardian representatives conduct in-person face-to-face visits if it can be done safely. As a guideline, DARS referenced the VDH guidance on when nursing homes can reopen to visitors. VDH, in conjunction with CMS (Centers for Medicare and Medicaid Services), has developed a system of phased reopening of nursing homes to visitors. To allow visitors, a nursing home has to be in Phase III. To achieve Phase III status, the surrounding community has to have been in Phase III for at least two weeks and the facility cannot have had a resident with a positive COVID diagnosis for four weeks. A facility that is in Phase III will go back to Phase I if a resident has a positive diagnosis. Visitation must be suspended if the surrounding community loses its Phase III status. If a staff member test positive for COVID, visitation must be suspended until the facility has been COVID free for 14 days. DSS has recommended that ALFs utilize this same standard.

Things are always changing and on September 17 CMS announced guidelines that would allow nursing homes to reopen to all visits sooner, based on a recognition that isolation from family and other support providers also can have serious negative consequences for long-term care residents. The new CMS guidelines will allow visitors wearing proper PPE into long-term care facilities if the facility has not had a positive COVID case for 14 days and the surrounding community has a positivity rate of 10% or less. The new guidelines further recognizes that compassionate visits in situations in which the facility is otherwise precluded from allowing visitors, which has largely been construed to mean, end-of-life visits, should be interpreted somewhat more broadly.

Nearly all nursing homes in Virginia are still closed to visitors, but this new policy should make it easier

for public guardians to resume visits when the infection rate at long-term care facilities declines. DARS will revise its guidance to the local public guardian service providers based on guidelines changes that are issued from VDH and DSS (Dept of Social Services).

PPE

DARS has provided enough PPE to each program to make six visits to each client. We have provided disposable KN95 masks and nitrile gloves. Additionally, we have provided each guardian representative with three reusable face shields and three disposable lab coats. We have also provided each program with hand sanitizer.

COVID RELATED TRAINING

DARS arranged a presentation to the local programs from the Virginia Department of Labor and Industry to explain the VDOLI's emergency COVID regulations and how they apply to the local programs, each of which is an employer covered by the regulations. DARS also arranged a presentation on safe use of PPE by a VDH trainer.

Other

Ms Vines is working with the programs & DBHDS to finalize a universal intake form that can be posted on our website. Patti and I had a conference call with DBHDS on Thursday to review the form. We are planning to have the form ready for use in October and it will be placed on both DARS and DBHDS websites.

We had to cancel the statewide training that was scheduled for October in Virginia Beach. Instead our speakers will present remotely with the presentations to take place over a couple of months.

We have finished with a video on the Public Guardian Program which features many of our providers, a volunteer who serves on a multidisciplinary panel, a couple of residential providers, Pam Teaster, and a client who has been restored to capacity.

**Adopt 2019 PGCAB Report to DARS**  
**Action Item: Adopt 2019 PGCAB Report**

Chair Palmer asked if board members had reviewed the 2019 Public Guardian and Conservator Advisory Board Report to DARS. She then asked if there were any edits or corrections needed.

Rose Palmer

<p>Judge Almand made a motion to adopt the report. George McAndrews seconded the motion.</p> <p><b><u>Roll Call Vote to Adopt the 2019 PGCAB Report to DARS</u></b> James Almand - yea Kathy Harkey - yea Monica Karavanic - yea Kimberly King - yea George McAndrews - yea Rose Palmer - yea Angie Phelon - yea Tara Ragland - yea Latroyal Roxburgh - yea Cristi Zedd - yea</p> <p>The vote to accept the PGCAB report was unanimous and the motion was carried.</p>	
<p><b>Adopt 2021 Meeting Calendar</b> <b>Action Item: Adopt 2021 Meeting Calendar</b></p> <p>The proposed 2021 meeting calendar was presented. Mr. Worthington noted that there had been a request to change the meetings to Tuesdays. After a brief discussion, the consensus was that Tuesday works well. The proposed meeting dates for 2021 are: March 16, 2021 June 22, 2021 September 21, 2021 November 9, 2021</p> <p>George McAndrews made a motion to adopt the meeting calendar. Monica Karavanic seconded the motion</p> <p><b><u>Roll Call Vote to Adopt the 2021 Meeting Calendar</u></b> James Almand – yea Kathy Harkey – yea Monica Karavanic - yea Kimberly King – yea George McAndrews – yea Rose Palmer – yea Angie Phelon – yea Latroyal Roxburgh – yea Cristi Zedd - yea</p> <p>The motion was carried by a unanimous vote and the revised meeting calendar for 2021 was adopted.</p>	Rose Palmer

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<b>New Business</b>  Mr. Worthington reported that he is working on revising the Bylaws for the Board to bring them into alignment with the Code of Virginia and the DARS template for Board and Commission bylaws. They have been shared with DARS Policy division and he will share them as soon as they are available ahead of the November meeting. After being presented in November, the Council will be asked to vote on the revised Bylaws in March. Mr. Worthington shared the recently created video that highlights Virginia's Public Guardianship programs and features commentary from PG program staff and others.	Rose Palmer
<b>Old Business</b>  There was no old business.	Rose Palmer
<b>Future Meeting Dates</b>  November 19, 2020	Rose Palmer
<b>Meeting Adjournment</b>  Chair Palmer called for adjournment of the meeting. Ms. Palmer adjourned the meeting at 2:05 pm.	Rose Palmer