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SENATE BILL NO. 719

Offered January 12, 2005

Prefiled December 27, 2004

A BILL to amend and reenact §§ 2.2-711, 2.2-712, 37.1-134.14:1, and 37.1-134.19 of the Code of Virginia, relating to the public guardian and conservator program.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-711, 2.2-712, 37.1-134.14:1, and 37.1-134.19 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-711. Policy statement; Virginia Public Guardian and Conservator Program established; definitions.

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 § 37.1-134.19*. 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 (i) facilitate the creation of local or regional programs to provide services as public guardians or conservators and (ii) fund, coordinate, administer and manage such programs.

B. The definitions found in § 37.1-134.6 shall apply to this article.

§ 2.2-712. Powers and duties of the Department with respect to public guardian and conservator program.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall:

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§ 2.2-4300 et seq.).

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia Public Guardian and Conservator Programs in those cases in which a court, pursuant to §§ 37.1-134.14:1 *and 37.1-134.19*, determines that a person is eligible to have a public guardian or conservator appointed.

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 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 the adoption of:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. 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

c. 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 that 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 evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia Public Guardian and Conservator Programs from any other guardian or conservator program

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operated by the entity with whom the Department contracts, specifically addressing the need for separation in programs that may be fee-generating.

5. Establish record-keeping and accounting procedures to ensure that each local or regional program (i) maintains confidential, accurate and up-to-date records of the personal and property matters over which it has control for each incapacitated person for whom it is appointed guardian or conservator and (ii) files with the Department an account of all public and private funds received.

6. Establish criteria for the conduct of and filing with the Department and as otherwise required by law: values history surveys, annual decisional accounting and assessment reports, the care plan designed for the incapacitated person and such other information as the Department may by regulation require.

7. Establish criteria to be used by the local and regional programs in setting priorities with regard to services to be provided.

8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of all local and regional programs.

9. Maintain statistical data on the programs and report to the General Assembly on or before January 1 of each year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents regarding the status of the Virginia Public Guardian and Conservator Program and the developing trends with regard to the need for guardians, conservators and other types of surrogate decision-making services. In addition, the Department shall enter into a contract with an appropriate research entity with expertise in gerontology, disabilities and public administration to conduct an evaluation of local public guardian and conservator programs from funds specifically allocated for this purpose, and the evaluator shall provide a report with recommendations to the Department and to the Public Guardian and Conservator Advisory Board by December 1, 2003. Trends identified in the report shall be presented to the General Assembly. The Department shall request such a report from an appropriate research entity every four years, provided the General Assembly appropriates funds for that purpose.

10. Recommend appropriate legislative or executive actions.

C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B. 2. with an entity that may also provide privately funded surrogate decision-making services, including guardian and conservator services funded with fees generated by the estates of incapacitated persons, provided such private programs are administered by the contracting entity entirely separately from the local or regional Virginia Public Guardian and Conservator Programs, in conformity with regulations established by the Department in that respect.

D. In accordance with the Public Procurement Act (§ 2.2-4300 et seq.) and recommendations of the Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit private entity that does not provide services to incapacitated persons as guardian or conservator to administer the program, and, if it does, the term "Department" when used in this article shall refer to the contract administrator.

§ 37.1-134.14:1. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian 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 § 37.1-134.19*. The guidelines for determining indigency set forth in § 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

§ 37.1-134.19. When no guardian or conservator appointed within one month of adjudication.

If a person is ~~not appointed~~ *adjudicated incapacitated and in need of a guardian or conservator and the court has not identified any person to serve as guardian or conservator within one month from the adjudication*, the court ~~on motion of any interested person, may appoint a guardian or conservator or, until January 1, 2000, may commit the person and/or the estate of the incapacitated person to the sheriff of the county or city in which the respondent resides. If the estate is committed to the sheriff, he shall be the conservator, and he and the sureties on his official bond shall be bound for the faithful performance of the trust~~ *may appoint a local or regional program of the Virginia Public Guardian and Conservator Program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2. If there is no such local or regional program within the court's jurisdiction, the court may appoint the local or regional program nearest to the residence of the incapacitated person as identified by the Department for the Aging. However, the court shall not appoint any such local or regional program that has reached or exceeded its ideal ratio of clients to staff pursuant to regulations adopted by the Department for the Aging under § 2.2-712.*