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HOUSE BILL NO. 270

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on January 17, 2012)

(Patron Prior to Substitute—Delegate Peace)

A BILL to amend and reenact § 2.2-712 of the Code of Virginia, relating to the Department for the Aging; public guardianship and conservator program.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-712 of the Code of Virginia is amended and reenacted as follows:

§ 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 §§ 37.2-1010 and 37.2-1015, 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; and

d. Person-centered practice procedures that shall:

1. Focus on the preferences and needs of the individual receiving public guardianship services; and

2. Empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

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 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 such data to the General Assembly on or before January 1 of each even-numbered year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents regarding the status of the

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60 Virginia Public Guardian and Conservator Program and the developing trends with regard to the need  
61 for guardians, conservators and other types of surrogate decision-making services. Such statistical data  
62 shall be posted on the Department's website. In addition, the Department shall enter into a contract with  
63 an appropriate research entity with expertise in gerontology, disabilities and public administration to  
64 conduct an evaluation of local public guardian and conservator programs from funds specifically  
65 appropriated and allocated for this purpose, and the evaluator shall provide a report with  
66 recommendations to the Department and to the Public Guardian and Conservator Advisory Board.  
67 Trends identified in the report shall be presented to the General Assembly. The Department shall request  
68 such a report from an appropriate research entity every four years, provided the General Assembly  
69 appropriates funds for that purpose.

70 10. Recommend appropriate legislative or executive actions.

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

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