

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 40

An Act to amend and reenact § 51.5-150 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 51.5-149.1 and 51.5-149.2, and to repeal §§ 2.2-2411 and 2.2-2412 of the Code of Virginia, relating to Public Guardian and Conservator Advisory Board.

[H 816]

Approved February 26, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 51.5-150 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 51.5-149.1 and 51.5-149.2 as follows:

§ 51.5-149.1. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

B. The Board shall consist of no more than 15 members who shall be appointed by the Governor as follows: one representative of the Virginia Association of Area Agencies on Aging; one representative of the Virginia State Bar; one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court; one representative of ARC of Virginia; one representative of the National Alliance on Mental Illness of Virginia; one representative of the Virginia League of Social Service Executives; one representative of the Virginia Association of Community Services Boards; the Commissioner of Social Services or his designee; the Commissioner of Behavioral Health and Developmental Services or his designee; and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board, who may include a representative of the Commonwealth's designated protection and advocacy system.

C. The Commissioners of Social Services and Behavioral Health and Developmental Services, or their designees, and the representative of the Commonwealth Council on Aging shall serve terms coincident with their terms of office or, in the case of designees, the term of the Commissioner. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2823.

§ 51.5-149.2. Powers and duties of the Board.

The Board shall have the power and duty to:

1. Assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2;

2. Provide advice and counsel on the provision of high-quality guardianship service and avoidance of conflicts of interest;

3. Promote the mobilization of activities and resources of public and private sector entities to effectuate the purposes of this article;

4. Make recommendations regarding appropriate legislative and executive actions, including, but not limited to, recommendations governing alternatives for local programs to follow upon repeal of the authority granted to the courts pursuant to § 64.2-2015 to appoint the sheriff as guardian or conservator when the maximum staff-to-client ratio of the local program is met or exceeded; and

5. Submit to the Department by October of each odd-numbered year a report regarding the activities and recommendations of the Board, to be posted on the Department's website.

§ 51.5-150. 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 §§ 64.2-2010 and 64.2-2015, 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, and 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;

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 recordkeeping 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 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. Such statistical data shall be posted on the Department's website. 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 appropriated and 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 established pursuant to § ~~2.2-2411~~ 51.5-149.1. 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; and

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.

2. That §§ 2.2-2411 and 2.2-2412 of the Code of Virginia are repealed.