

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 51.5-149.1 and 51.5-151 of the Code of Virginia, relating to Public Guardian and Conservator Advisory Board member terms; local or regional public guardian and conservator programs; staff to client ratio.

[H 2029]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-149.1 and 51.5-151 of the Code of Virginia are amended and reenacted 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~~ *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. ~~The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.~~

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.

§ 51.5-151. Minimum requirements for local programs; authority.

Every local or regional program with which the Department contracts to provide services as a public guardian or conservator shall (i) furnish bond with corporate surety in an amount deemed sufficient by the Department to afford adequate financial protection to the maximum number of incapacitated persons to be served by the program; (ii) have in place a multidisciplinary panel to (a) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person and (b) continually review cases being handled by the program as required by the Department; (iii) accept only appointments as guardian or conservator that generate no fee or would generate a minimal fee as defined by regulation payable from a public source of funds and not from the estate of the incapacitated person; *and* (iv) have a direct service staff to client ratio that is consistent with that specified by regulation of the Department; ~~and (v) develop a plan, in consultation with the local circuit court and sheriffs, where appropriate, to provide advance notice to the court when the program falls below or exceeds the ideal range of staff to client ratios in order to assure continuity of services.~~ Volunteers shall not be counted for purposes of ascertaining compliance with the staff to client ratio specified by the Department.

A local or regional program that exceeds the specified staff to client ratio shall not be disqualified from serving as a guardian or conservator except as provided by regulation or if the court or the Department finds that there is an immediate threat to the person or property of any incapacitated person or that exceeding the specified ratio is having or will have a material and adverse effect on the ability of

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57 the program to properly serve all of the incapacitated persons it has been designated to serve.

58 A local or regional program appointed as a guardian or conservator shall have all the powers and
59 duties specified in Article 2 (§ 64.2-2019 et seq.) of Chapter 20 of Title 64.2, except as otherwise
60 specifically limited by the court. In addition, a public guardian or conservator shall have a continuing
61 duty to seek a proper and suitable person who is willing and able to serve as guardian or conservator for
62 the incapacitated person. A public guardian or conservator shall have authority to make arrangements for
63 the funeral and disposition of remains, including cremation, interment, entombment, memorialization,
64 inurnment, or scattering of the cremains, or some combination thereof, if the public guardian or
65 conservator is not aware of any person that has been otherwise designated to make such arrangements as
66 set forth in § 54.1-2825. A public guardian or conservator shall have authority to make arrangements for
67 the funeral and disposition of remains after the death of an incapacitated person if, after the public
68 guardian or conservator has made a good faith effort to locate the next of kin of the incapacitated
69 person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish
70 to make the arrangements or the next of kin cannot be located. Good faith effort shall include contacting
71 the next of kin identified in the petition for appointment of a guardian or conservator. The funeral
72 service licensee, funeral service establishment, registered crematory, cemetery, cemetery operator, public
73 guardian or conservator shall be immune from civil liability for any act, decision, or omission resulting
74 from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this
75 section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.

76 A public guardian shall not have authority to approve or authorize a sterilization procedure except
77 when specific authority has been given pursuant to a proceeding in the circuit court. A public guardian
78 may authorize admission of an incapacitated person to a mental health facility as provided in subsection
79 B of § 37.2-805.1 and may authorize mental health treatment, including the administration of
80 psychotropic medication, unless the appointing court specifically provides otherwise.

81 A local or regional program appointed as a guardian or conservator may delegate the powers, duties,
82 and responsibilities to individual volunteers or professional staff as authorized in the contract with the
83 Department.

84 In addition to funds received from the Department, a local or regional program may accept private
85 funds solely for the purposes of providing public education, supplemental services for incapacitated
86 persons, and support services for private guardians and conservators, consistent with the purposes of this
87 article.