

GUARDIANSHIP AND CONSERVATORSHIP

Improving Virginia's Adult Guardian and Conservator System, 2021

RECOMMENDATIONS

Supporting key recommendations in guardian ad litem (GAL) court reports ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem explain in their report their reasoning for i) a decision not to recommend counsel for an adult under consideration for guardianship and ii) a determination that an alternative arrangement to guardianship or conservatorship is not appropriate, including an existing arrangement such as a power of attorney. (Recommendation 1)

Assessments of prospective guardians in GAL court reports ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardian ad litem reports to the court include i) the size of the prospective guardian's current guardianship caseload, ii) whether the prospective guardian employs representatives to manage day-to-day tasks of guardianship, (iii) the travel time between the prospective guardian's residence or place of business and the expected residence of the adult under consideration for guardianship, iv) whether the prospective guardian works as a professional guardian on a full-time basis, and v) whether the guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaint. (Recommendation 2)

Suitability of prospective guardians in GAL reports ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem include in their reports an assessment of suitability and propriety of all individuals interested in serving as a guardian for the adult who is the subject of the petition. (Recommendation 4)

GALs' authority to review financial records ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105 and § 13.1-501 of the Code of Virginia, to provide financial records of adults under consideration for guardianship when requested by a guardian ad litem. (Recommendation 5)

Notification of right to propose alternative guardian ► The General Assembly may wish to consider amending § 64.2-2004 of the Code of Virginia to require that a notice be provided by the petitioner to an adult being considered for guardianship and their family, which clearly states that anyone may file a petition or a motion to intervene to become a party to the case if they wish to propose a different individual to serve as guardian than the one stated in the petition. (Recommendation 13)

Periodic court review hearings for guardianship cases ► The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require circuit courts to hold a periodic review hearing for guardianship and conservatorship cases no later than one year after appointment of the guardian and at least once every three years thereafter, unless the court determines at the time of the initial guardian appointment order, or upon completion of a review hearing, that further review hearings are unnecessary or impracticable. (Recommendation 14)

Required guardian training ► The General Assembly may wish to consider amending Title 64.2 of the Code of Virginia to require any individual who is named as a private guardian, and staff who perform duties on their behalf, to undergo guardianship training developed by the Department for Aging and Rehabilitative Services within four months of appointment and give local departments of social services responsibility for verifying compliance with the training requirement. (Recommendation 19)

Guardian visitation requirements ► The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require private guardians to visit each adult under guardianship in person at least once every three months and that during visits, guardians observe and assess (i) the safety and adequacy of the adult's living environment; (ii) the adult's overall condition and well-being, especially as compared to previous visits; (iii) whether and how the adult's physical and behavioral health-care needs are being met, including whether the adult has been hospitalized and why; (iv) progress made by the adult toward goals; (v) participation in social activities and educational or vocational programs; and (vi) contact and involvement with family and friends. (Recommendation 20)

Improved annual guardianship report ► The General Assembly may wish to consider amending § 64.2-2020 of the Code of Virginia to require that the annual guardianship report direct guardians to report, at a minimum, on the following items regarding adults under their guardianship: (i) names of medical and therapeutic providers and dates seen, and dates, location of, and reasons for any hospitalizations; (ii) any new or changed diagnoses; (iii) any change in the adult's physical and/or behavioral health, including whether and to what degree the adult's health is expected to improve; (iv) dates of the guardian's visits to the adult; (v) an assessment by the guardian, based on the most recent visits, of the adequacy of the adult's living arrangements and the adult's safety and well-being; (vi) the guardian's activities, if any, performed on behalf of the adult during the year to improve the adult's quality of life; (vii) a description of social activities, recreational or educational programs, or job training, if any, the adult participated in and the name and location of such programs or activities; (viii) progress made by the adult toward goals, if applicable; (ix) any Adult

Protective Services report or investigation in which the adult was the alleged victim and whether there has been any other indication of exploitation, abuse, or neglect; (x) any visitation restrictions imposed by the guardian and the reasons for them; (xi) a self-assessment by the guardian of their ability to continue to carry out their duties; (xii) whether the guardian has taken guardianship training; and (xiii) any other information deemed necessary to report by the Office of the Executive Secretary of the Supreme Court of Virginia (OES) or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of adults under guardianship. This section of the Code should also be amended to make clear that OES may collect additional information in the annual guardianship report than that listed in Code without statutory amendment. (Recommendation 21)

New private guardianship responsibilities for DARS ► The General Assembly may wish to consider amending Title 51.1, Chapter 14, Article 6 of the Code of Virginia to grant new responsibilities to the Department for Aging and Rehabilitative Services to strengthen the accountability and quality of the private guardian system. These new responsibilities should include: providing information about Adult Protective Services complaints against prospective guardians to guardians ad litem as part of the guardianship court hearing process; providing and/or coordinating training to private guardians and local department of social services staff; facilitating additional monitoring of private guardians through independent care visits; improving guardianship data tracking and quality control; and creating and administering a private guardian complaint process. (Recommendation 24)

Notifying individuals restricted from visiting adults under guardianship ► The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require guardians who restrict an individual from visiting or contacting an adult under their guardianship to provide the individual, on a form provided by the Office of the Executive Secretary, with written notification that clearly outlines (i) terms of the restriction, (ii) reasons for the restriction, and (iii) how the restricted individual can challenge the restriction through the circuit court that has jurisdiction over the case. (Recommendation 27)

Notifying local social services departments of visitation restrictions ► The General Assembly may wish to consider amending § 64.2-2019 to require guardians to provide a copy of any notification or court order pertaining to a visitation restriction to the local department of social services that oversees the case. (Recommendation 29)

Defining reasons guardians can impose visitation restrictions ► The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to permit guardians to restrict contact with the adults they serve only in cases where such a restriction is necessary to prevent physical, emotional, or mental harm or protect their finances. (Recommendation 30)

Changes in circumstances or conditions of adults under guardianship ► The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require the guardian to notify designated contacts, as specified by the court, of certain changes in the condition or circumstances of an adult under guardianship, including a change to the adult's primary residence, a temporary change in living location, admission to a hospital or hospice care, and death, as well as provide them with a copy of the annual guardianship report each year at the time it is submitted to the local department of social services. (Recommendation 31)

Prohibiting guardians from "self-dealing" ► The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to (i) define self-dealing, at a minimum, to include using the estate of an adult under guardianship or conservatorship to complete a sale or transaction with the guardian or conservator, their spouse, agent, attorney, or business with which they have a financial interest; (ii) prohibit self-dealing by a guardian or conservator unless court approval is first obtained or the sale or transaction was entered into before the guardian or conservator was appointed; and (iii) make voidable by the court any sale or transaction that constitutes self-dealing. (Recommendation 32)

Financial records access for Adult Protective Services ► The General Assembly may wish to consider amending § 63.2-1605 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105, and § 13.1-501 of the Code of Virginia, to provide financial records of alleged victims of financial exploitations to Adult Protective Services (APS) as part of APS investigations. (Recommendation 33)

Expanding public guardianship program ► The General Assembly may wish to consider including additional funding in the Appropriation Act to pay for 700 new slots in the public guardianship program, which would allow the Department for Aging and Rehabilitative Services to eliminate the current waitlist. (Recommendation 34)

Assessing demand for public guardianship ► The General Assembly may wish to consider including one-time funding in the Appropriation Act for the Department for Aging and Rehabilitative Services (DARS) to hire a third party to study the need for expanding the capacity of the state's public guardianship program in total and by region; to assess the actual cost of providing expanded public guardianship services (personnel, overhead, etc.); and to assess the additional cost of providing equal funding to all provider organizations for the same types of public guardianship slots. DARS should submit the findings to the chairs of the House Appropriations and Senate Finance and Appropriations committees by October 1, 2023. (Recommendation 35)

Conservator training ► The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require conservators to complete state-provided training within four months of their court appointment, and consider amending Title 64.2, Chapter 12 of the Code of Virginia, to assign commissioners of accounts responsibility for verifying compliance with training requirements for conservators under their supervision. (Recommendation 38)

Initial inventory of adults under conservatorship ► The General Assembly may wish to consider amending Title 64.2, Chapter 12 of the Code of Virginia to require conservators to (i) notify family members and other interested parties, who are specified in the initial petition for conservatorship, that an initial inventory of assets will be submitted, and (ii) provide copies of the initial inventory to notified parties, if requested, and inform these parties that they may raise any concerns about the accuracy and completeness of the inventory with the commissioner of accounts overseeing the conservator. (Recommendation 39)

Including adults' assets and income on GAL reports ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require guardians ad litem to include in their report to the court all assets and income of adults under consideration for guardianship that they identify when determining the amount of surety on a conservator's bond. (Recommendation 40)

Including adults' assets and income in court orders ► The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to require the court order appointing a conservator to include a list of the financial resources of the adult being placed under conservatorship to the extent known as identified in the petition for conservatorship and the guardian ad litem report. (Recommendation 41)