



Improving Virginia's Adult Guardian and Conservator System

Study mandate

- Review Virginia's court-appointed guardian and conservator system
 - examine opportunities to strengthen laws
 - review the adequacy of oversight of the guardian and conservator system
 - identify appropriate training, qualification, and oversight requirements for court-appointed guardians

Research activities

Interviews

- state and local staff
- court process stakeholders
- advocates and subject-matter experts

Data and document analysis

- court case, adult protective services, and guardianship data
- court case files

Surveys of

- local departments of social services staff
- public guardianship provider organization staff
- commissioners of accounts

In brief

Judges may lack adequate information when considering whether to appoint a guardian or conservator; judges and guardians ad litem would benefit from more training.

The state's public guardianship program has strong oversight and effective visitation, training, and caseload requirements.

In contrast, private guardians are not subject to standards and are subject to ineffective reporting and monitoring.

Quality of guardianship services can be improved through strengthened requirements for, and oversight of, private guardians and expansion of the public guardianship program.

In this presentation

Background

Court process for appointing a guardian or conservator

Training, requirements, and oversight for private guardians

Training, requirements, and oversight for conservators

Virginia's public guardianship program

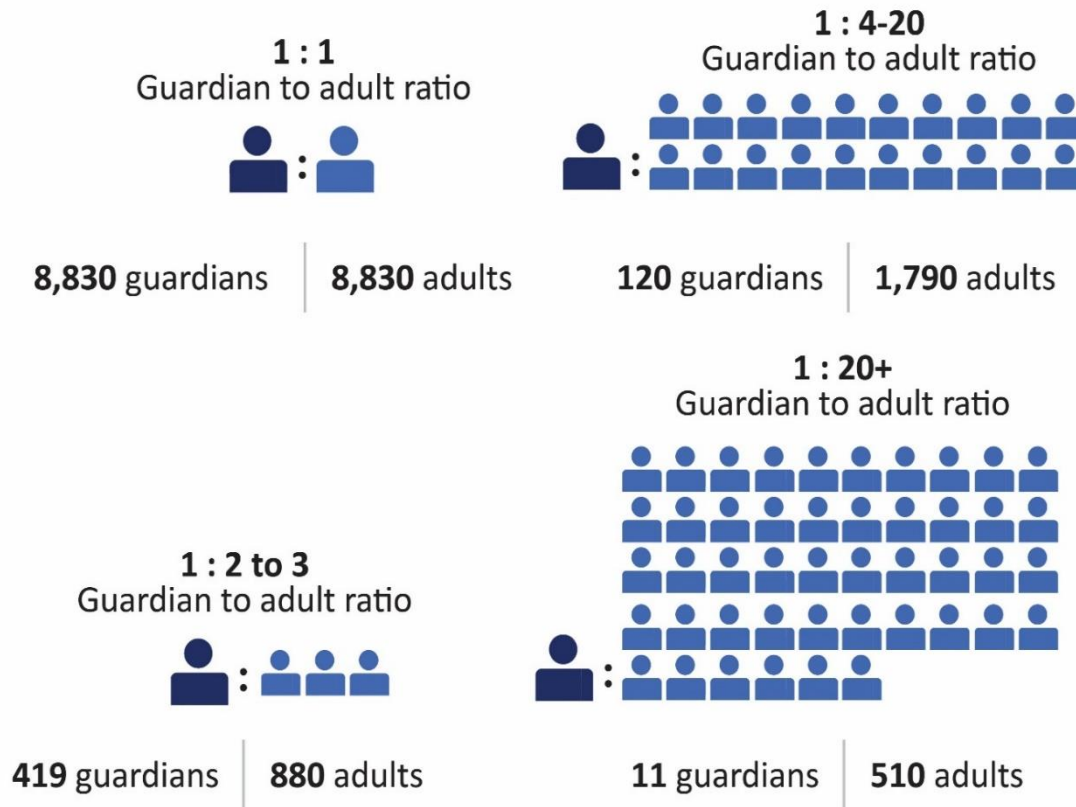
About 12,000 Virginia adults are under guardianship, and number is likely to grow

- About half of adults under guardianship are relatively young, between 18 and 44 years old
- The number of adults newly placed under guardianship annually has remained stable in the last five years (~1,400 to 1,700 statewide)
- Guardianship tends to be a lifelong arrangement
- Number of adults under guardianship likely to increase over time

Adults can be served through the public guardianship program or by a private guardian

- Public guardianship (~1,000 adults)
 - incapacitated adults with limited ability to pay and no family or friends willing or able to be guardian
 - 13 organizations contract with state to serve as guardian
 - funded by general funds (~\$4.5 million in FY21)
- Private guardianship (~11,000 adults)
 - any incapacitated adult
 - a family member, friend, attorney, professional guardian, or organization serve as guardian
 - paid for from the estate of the adult, if there is one

Most guardians serve one adult; 11 private guardians with large caseloads serve 510 adults



All public guardianship representatives are included in the 1 : 4 to 20 ratio, despite the ability of some public guardians to temporarily serve a caseload larger than 20. Caseloads as of FY 2020.

Extent of mistreatment of adults under guardianship in Virginia is unknown

- Adult protective services (APS) data and criminal court data indicate 20 guardians in Virginia mistreated the adults they were serving (FY19 to FY21)
 - Nineteen of the allegations were for neglect; one was for financial exploitation
 - Guardians in all 20 cases were family members or friends of the adult under guardianship
- Not all mistreatment of adults under guardianship is captured in APS or criminal court data

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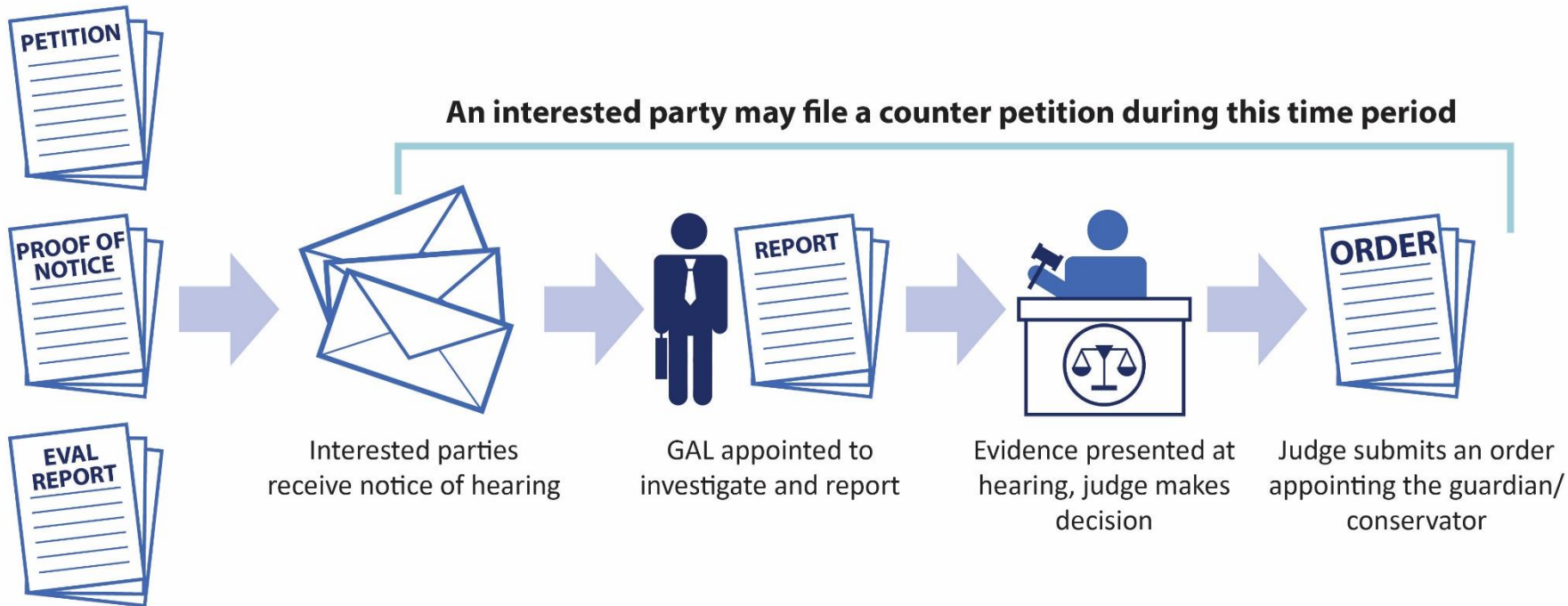
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Court process for appointing a guardian or conservator has several steps



Petition, Proof of Mailed Notice, and Evaluation Report submitted to local circuit court

Finding

Additional information should be required to be reported by guardians ad litem (GALs) to ensure consistency and quality of the information presented to the court.

GALs are not required to support recommendations and determinations

- GALs recommend whether an adult needs a defense attorney but are not required to support their recommendation that a defense attorney is not needed
- GALs consider whether alternatives to guardianship are appropriate but are not required to support their determination that alternatives are not appropriate
- GALs are required to report on the “propriety and suitability” of a potential guardian, but the current requirements are insufficient

Recommendations

The General Assembly may wish to consider requiring the guardian ad litem report to include support for why: (i) an adult under consideration for guardianship does not need defense counsel, and (ii) an alternative to guardianship is not appropriate. [*Adopted by the 2022 General Assembly, SB514*]

GALs should be required to further evaluate the (i) the potential guardian's workload, and (ii) whether that person is the subject of any substantiated adult protective services complaints.

Finding

Additional training is needed for judges and GALs to ensure a comprehensive and consistent court process that best protects the rights and interests of adults under consideration for guardianship.

Judges and GALs make critical decisions and recommendations but are insufficiently trained

- Circuit court judges receive limited training about guardianship cases
- Reference book given to judges has little additional guidance for guardianship cases
- GAL training is helpful, but more training is needed for contested guardianship cases

Recommendations

Offer training and guidance materials for judges on adult guardianship cases.

Develop and offer a GAL training course on contested guardianship cases.

Finding

The lack of a periodic court hearing to review guardianship cases may mean that adults' rights and well-being are not being fully protected.

Court's decision to appoint a guardian merits further review

- A guardian appointment is typically permanent and removes most or all of an adult's rights, however
 - adults' conditions can improve over time
 - guardians may not always effectively perform their duties
 - adults under guardianship may have little ability to advocate for themselves
- About 30 adults had their rights restored during the past 2.5 years (~0.25% of adults under guardianship)^a
- Courts in at least four other states require a periodic review of guardianship cases

^a From October 2018 to March 2021

Periodic review hearings would not be necessary in all cases

- Court could waive the need for a periodic review hearing when deemed unnecessary, based on
 - the adult's condition and potential for improvement
 - whether there were concerns with or disputes about the initial guardian appointment
- Holding a review hearing for some guardianship cases
 - would modestly affect court workload
 - could affect guardian's workload

Recommendation

The General Assembly may wish to consider requiring circuit courts to hold a periodic review hearing for guardianship and conservatorship cases, unless the court determines that further review hearings are unnecessary or impracticable.

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Finding

Most adults are served by *private* guardians, who are not subject to any standards.

Private guardians are not required to regularly visit adults they serve

- Code gives private guardians broad discretion for how often they visit an adult: stating “as often as necessary”
 - Some visit frequently, others visit rarely or not at all
- Lack of visits means the guardian is likely unable to
 - observe and assess adult’s physical condition and living situation,
 - learn adult’s needs and preferences, or
 - observe changes in condition over time
- Regular visits can be difficult for guardians with large caseloads but are important to ensure adequate service

Recommendation

The General Assembly may wish to consider amending Code to require guardians to visit adults in person at least once every three months to observe and assess the adult's living environment, condition, and well-being.

Private guardians are not required to receive training

- Training is important for private guardians to understand:
 - their roles and responsibilities
 - importance of including the adult in decision-making
 - how to approach critical decisions like medical planning and selecting an appropriate living arrangement
- Training is beneficial for the guardian, as well as any staff performing duties on their behalf
- State does not offer training to private guardians

Recommendation

The General Assembly may wish to consider requiring any individual who is appointed to be a private guardian—and staff who perform duties on their behalf—to become trained within four months of their appointment.

Finding

The annual report that is completed by guardians and submitted to local departments of social services is insufficient to monitor the service provided by guardians or the well-being of the adult they serve.

The annual guardianship report is ineffective for monitoring private guardians; should be redesigned

- Annual guardianship report is the primary source of information related to adult's condition and well-being
- Report form lacks useful questions and is not well structured
 - Does not ask about factors such as adult protective services involvement or progress made towards goals
 - Reliance on open-ended responses to questions enables vague and inconsistent reporting

Recommendation

The General Assembly may wish to consider requiring that the annual guardianship report be redesigned to include additional information needed to fully understand the condition, treatment, and well-being of adults under their guardianship. [*Adopted by the 2022 General Assembly, SB514*]

Findings

Guardians have overly broad latitude to restrict family or friends from visiting adults under guardianship.

Family and friends may not be aware of the reason for the restriction or the process to challenge the restriction in court.

Contact with family and friends helps the well-being of adults under guardianship in most cases

- Social isolation has negative consequences for the health and well-being of incapacitated adults
- Contact with family, friends, and others can help prevent and identify abuse, neglect, and exploitation
 - Visitors can observe condition and living arrangements
 - Guardian may better serve an adult when they know that person will receive visitors
- Guardian may have to restrict certain individuals from contacting/visiting an adult to protect their well-being

State law on restricting contact or visitation is too broad

- Code of Virginia says only that a guardian cannot “unreasonably” restrict contact or visitation with adult
- Code does not require guardian to explain to affected persons why they are restricted from contact or visitation
- Code does not require guardian to notify affected individuals that they can challenge the restriction in court or about the process for doing so

Recommendations

The General Assembly may wish to consider permitting guardians to restrict contact with adults only when necessary to prevent physical, emotional, or mental harm or to protect finances.

The General Assembly may wish to consider requiring guardians who restrict an individual from visiting or contacting an adult to notify the individual in writing about (i) the terms of the restriction, (ii) the reasons for the restriction, and (iii) how the individual can challenge the restriction through the court.

Finding

Independent monitoring visits to adults under *private* guardianship would help ensure they are receiving adequate service.

Monitoring visits to adults would further improve oversight of private guardians

- Monitoring visits are made by someone other than the guardian to check the adult's condition and circumstances
- Several other states and one Virginia locality use these types of visits
 - can identify problems that would otherwise be undetected
 - Visit potential could incentivize guardian to better perform
- Visits are conducted for public guardians but not private
- Visits from LDSS staff could be conducted for a sample of adults under private guardianship
 - must balance usefulness and resource constraints

Recommendation

The Department for Aging and Rehabilitative Services (DARS), in consultation with the Virginia Department of Social Services and local departments of social services, should develop a proposal for conducting monitoring visits for a sample of private guardianship cases each year.

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Improvements could be made to ensure conservators appropriately report and spend assets

The court order appointing a conservator should include financial resources identified as part of the court process.

Conservators should (i) notify family members and other interested parties of the initial inventory (ii) provide copies of the initial inventory to notified parties, if requested.

Conservators often lack financial experience and would benefit from training.

State should better define circumstances and prohibit the use of an adult's estate for conservators own financial benefit.

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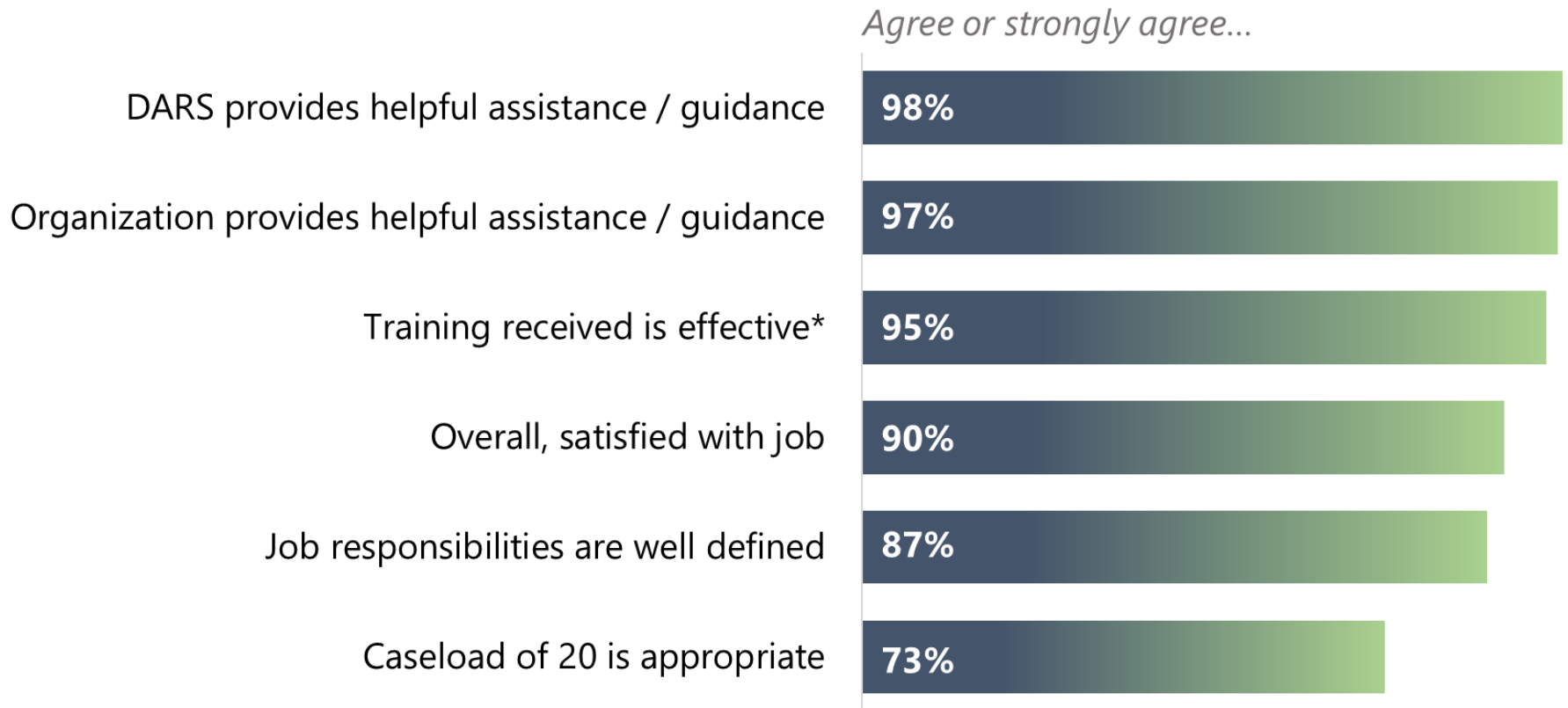
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Finding

Public guardianship program directors and staff:

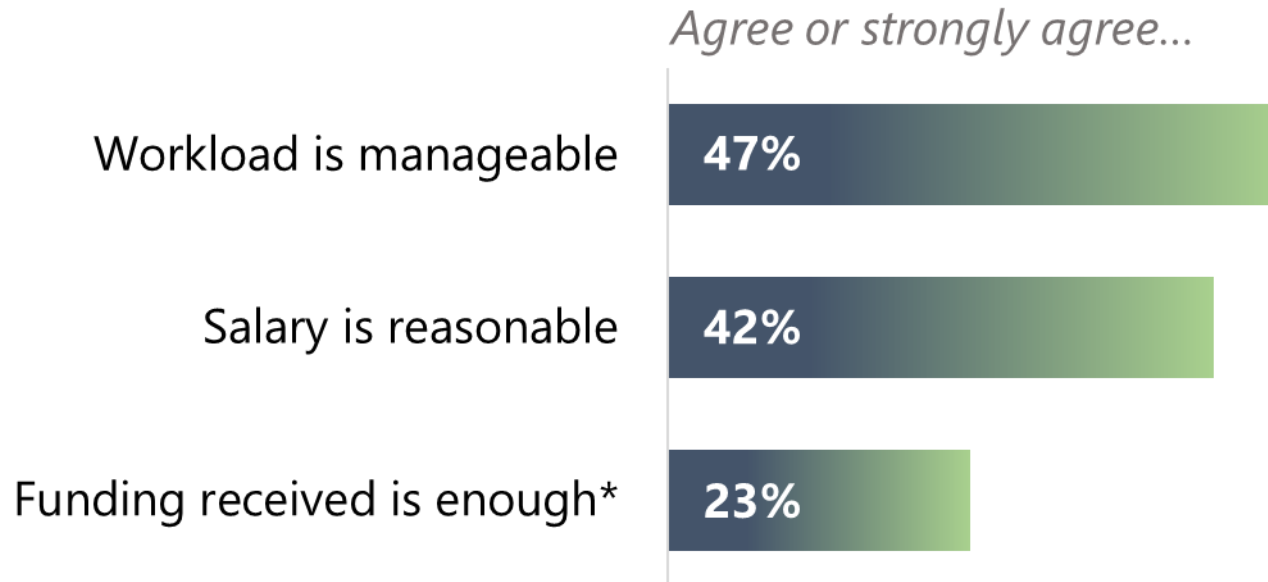
- are generally satisfied with their job, the training they receive, and program guidelines.
- have concerns with workload, compensation, and state funding.

Public guardianship staff are satisfied with guidance and training, generally satisfied with job



*Includes training provided by DARS and training provided by public guardianship provider organization. Excludes responses of “no opinion”.

Public guardianship staff are concerned with workload, compensation, and state funding



*Program directors only. Excludes responses of “no opinion”

Despite overall satisfaction, public guardianship is challenging work

- Top challenges cited by program directors
 - Recruiting and retaining qualified staff
 - Program capacity / being able to meet demand
 - Complying with state requirements
 - Amount of funding provided by the state
- Top challenges cited by guardian representatives
 - Too many clients / not enough time to spend with each client
 - Distance required to travel
 - Finding care for clients (group homes, assisted living, nursing facilities, medical providers, behavioral health providers)

Finding

Virginia's public guardianship program has effective requirements and oversight; steps could be taken to further strengthen the program.

Public guardianship program is well structured and well managed

- Requirements align with national standards
 - Average ratio of 20 adults to one guardian
 - Minimum of one visit per month to each adult
- Training is comprehensive and effective
- DARS provides comprehensive and effective oversight
 - On-site reviews of guardianship providers and adults
 - Information collection and reporting
- Program is well regarded by stakeholders and experts

Steps could be taken to further strengthen public guardianship requirements and oversight

- Unannounced visits to adults under guardianship help ensure residential facilities are providing adequate care
 - Observe adult in their typical environment
 - Make it easier to detect inappropriate or inadequate care
- Concern with public guardian representative workload and increasing complexity of their caseload
- Public guardianship program has a formal complaint process, but prevalence of complaints is unknown
 - Only unresolved complaints are forwarded to DARS
 - Unable to know the number and nature of all complaints

Recommendations

DARS could:

- require public guardians to conduct at least one unannounced visit for each adult under guardianship each year.
- periodically conduct an evaluation of the 1:20 ratio for public guardian providers to ensure that guardians can effectively carry out their work.
- require public guardianship provider organizations to report to DARS the details of each complaint the organizations have received against public guardians and how each complaint was resolved.

Findings

Public guardianship program provider organizations have substantial waitlists.

Unmet demand for public guardianship services is not fully known.

Funding for existing public guardianship slots should be reevaluated.

Public guardianship program has insufficient capacity to meet demand for the program

- Program is full (1,049 slots) and has nearly 700 adults on waitlists; average wait ranges from 3 months at one organization to 4 years at another
- Those on the waitlists either have a private guardian who does not wish to permanently serve or are not served by a guardian at all
- DBHDS and some LDSS contract for private guardianship services because of lack of public slots
 - ~100 adults at a cost of ~\$0.5M annually

DBHDS: Department of Behavioral Health and Developmental Services

Public program should be expanded to eliminate the waitlists and demand should be fully assessed

- Most effective approach in the near term is to provide guardianship to those currently on waitlists
 - Create 700 slots at approximately \$2.7 million annually
- Further assessment is needed for:
 - total unmet demand for public guardianship
 - actual cost of providing guardianship services

Public guardianship program has 1,049 slots and receives \$4.5M of general funds each year.

Recommendations

The General Assembly may wish to consider

- providing funding to pay for 700 new slots in the public guardianship program to address the current waitlists.
- providing one-time funding for DARS to (i) hire a third party to study the need for any further expansion of the public program, and (ii) to assess the cost of providing services.

Conclusion: Key findings

Judges may lack adequate information when considering whether to appoint a guardian or conservator; judges and guardians ad litem would benefit from more training.

The state's public guardianship program has strong oversight and effective visitation, training, and caseload requirements.

In contrast, private guardians are not subject to standards and are subject to ineffective reporting and monitoring.

Quality of guardianship services can be improved through strengthened requirements for, and oversight of, private guardians and expansion of the public guardianship program.

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