

Virginia Public Guardian & Conservator Program
Topical Summary of Code, Regulations, and PGP Contract

1/26/23 DRAFT

This Topical Summary is not yet a binding policy/guidance document. To constitute a binding policy/guidance document, a public review and comment process must be completed; however, the provisions of the Virginia Code, Regulations, and the PGP Contract referenced in this document have been adopted and are binding.

The PGP Contract referenced in this document is the Form PGP Contract. It can be found at this link:

<https://sharepoint.wwrc.net/VDAPublic/Shared%20Documents/PGP%20Contract.docx>

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CHAPTER 1 INTRODUCTION

1.1 GENERAL

The Virginia Public Guardian and Conservator Program (sometimes referred to as the **“Program”**) provides public guardian and conservator services to adult residents of Virginia who have been found by a Virginia circuit court to be:

- Unable to adequately care for themselves because of incapacity;
- Without the financial resources needed to fully compensate a private guardian or conservator and pay court costs and fees associated with the legal proceeding to appoint a guardian and/or conservator; and
- Without any other proper and suitable person who is willing and able to help them make medical, financial, or daily living decisions as their guardian or conservator. ([COV § 51.5-149](#) and [22VAC30-70-20](#).)

Often Program clients are described as being “incapacitated, indigent, and friendless.” This is a short-hand, not official, description of the eligibility requirements. To understand the actual eligibility requirements read [COV § 51.5-149](#), [COV § 64.2-2010](#), and [22VAC30-70-20](#).

Program services are provided without charge to the individuals served. (See definition of “minimal fee” in [22VAC30-70-10](#). Also see [22VAC30-70-30.E.2](#).)

1.2 LEGAL AUTHORITY

The Program’s operations are authorized by Virginia Code (the **“COV”**) Title 5.1, Chapter 14, Article 6 (Public Guardian and Conservator Program), which can be found at [COV §§ 51.5-149 through 151](#). These COV provisions, as amended from time-to-time, are referred to in this document as the **“Program Authorizing Statute.”** §§ 51.5-150 and 151 are directly related to Program operations.

The state regulations governing operation of the Program appear in the Virginia Administrative Code, Title 22, Agency 30, Chapter 70, Sections -10 through -60 (The Virginia Public Guardian and Conservator Program), and found can be found at [22 VAC 30-70](#). These regulations, as amended from time-to-time, are referred to in this document as the **“Program Regulations.”**

Providers of public guardian and conservator services through the Virginia Public Guardian and Conservator Program are expected to operate in conformity with the

requirements of the Program Authorizing Statute and the Program Regulations, and therefore, should read and understand them.

Questions about how the Virginia Department for Aging and Rehabilitative Services (“**DARS**”) interprets the Program Authorizing Statute or the Program Regulations can be directed to the PGP Program Coordinator at DARS.

In addition, guardianships and conservatorships are established by Virginia circuit courts issued pursuant to COV Title 64.2, Chapter 20 (Guardianship and Conservatorship) found at [COV 64-2-2000 through 2029](#). These COV provisions, as amended from time-to-time, are referred to in this document as the “**Guardian/Conservator Statute.**”

Providers of public guardian and conservator services through the Program are expected to understand the requirements of the Guardian/Conservator Statute and to provide services in strict compliance with that statute and any orders issued by a Virginia circuit court naming the provider as a guardian and/or conservator. [PGP Contract § 3.4](#).

1.3 THE PGP CONTRACT

To provide public guardian and conservator services as part of the Program, an entity must execute a contract with DARS (a “**PGP Contract**”). The PGP Contract specifies the requirements for operating a local public guardian and conservator program. The PGP Contractor and the Program Director (as defined below) should read and be familiar with the terms of the PGP Contract.

The entity that signs the contract with DARS is the “**PGP Contractor**” and the public guardian and conservator program that it operates under that contract will be referred to in this document as a “**Local PGP**”

A “**Public Client**” is an individual receiving guardianship and/or conservatorship services under a PGP Contract and under an order issued by a Virginia circuit court order appointing the PGP Contractor to serve as a public guardian and/or public conservator pursuant to [COV § 64.2-2010](#). “**Public Guardian**” is used to refer to the position a PGP Contractor holds when it is providing services to Public Clients pursuant to its PGP Contract through its Local PGP operations.

The PGP Contract will specify the number of Public Clients who can receive public services under the PGP Contract through the Local PGP in various eligibility categories at any one time. See § 7.1.1 below. The PGP Contract also will specify the jurisdictions from which the Local PGP may accept referrals. See § 7.1.2 below.

1.4 PURPOSE OF DOCUMENT; RECONCILIATION OF CONFLICTS

This document is designed to assist PGP Contractors in the operation of their Local PGP. **Should there be any discrepancy between the information included in this document and the PGP Contract, the Program Authorizing Statute, the Program Regulations, PGP policies issued by DARS, or the Guardian/Conservator Statute, the terms of the PGP Contract, the Program Regulations, the applicable PGP policy, or the applicable statute, will govern.** The PGP Contractor should contact DARS to discuss any such discrepancy.

1.5 DEFINED TERMS

For ease of reference, when used in this document, the term “**Guardian**” shall mean “Guardian and/or conservator, as applicable and the term “**Guardianship**” shall mean guardianship and/or conservatorship, as applicable. When the term “**Conservator**” or “**Conservatorship**” is used, the discussion will relate specifically to the role or duties of the conservator appointed under the Guardian/Conservator Statute. “**Public Guardianship Services**” are the services that a Public Guardian provides to Public Clients under the PGP Contract pursuant to a court appointment under [COV § 64.2-2010](#) as the guardian and/or the conservator, as applicable.

Other defined terms used in this document are capitalized when used and are defined in the body of the document. Below is a list of the defined terms used in the document that specifies the section where the definition is located. The definition associated with a defined term also can be found by doing a word search using the search/navigation function on your computer (if using Microsoft, it is “Control F”) and typing the defined term in quotation marks into the search function (quotation marks because they are included around the word at the place it is defined). For example, the word “Program” is defined in § 1.1. If you open the search/navigation function and type “Program” your computer will jump to the definition for Program.

Client Assessment -- § 6.3.1

Client-to-Staff Ratio --§ 4.1

CSB -- § 6.3.1.1

Conservator -- § 1.5

Conservatorship -- § 1.5

COV -- § 1.2

DARS -- § 1.2

DBHDS -- § 6.5

DBHDS ID/DD Slots -- § 7.1.1

DBHDS MH Slots -- § 7.1.1

Designated Service Area -- § 4.4.4
Direct Services -- § 3.1
Direct Service Staff Member -- § 3.1
DNR -- § 6.3.1
DSS -- § 6.3.1
Guardian -- § 1.5
Guardian/Conservator Statute -- § 1.2
Guardian Representative -- § 3.1
Guardianship -- § 1.5
Guardian Care Plan -- § 6.3.1
Ideal Ratio -- § 4.1
In-Process -- § 8.9
Local PGP -- § 1.3
MDP -- § 7.1.3
MI/ID Slots -- § 7.1.1
Performance Period-- § 2.4.1
PGP Contract -- § 1.3
PGP Contractor -- § 1.3
Public Client -- § 1.3
Public Guardian -- § 1.3
Public Guardianship Services -- § 1.5
Program -- § 1.1
Program Authorizing Statute -- § 1.2
Program Director -- § 3.2
Program Regulations -- § 1.2
Progress Notes -- § 6.3.1
Required COA Documents -- § 6.3.1
Required Court Documents -- § 6.3.1
Required DSS Report -- § 6.3.1
Slots -- § 7.1.1
UAI - § 6.3.1
Unrestricted Slots -- § 7.1.1
Values History Survey -- § 6.3.1
Waitlist -- § 7.1.1

CHAPTER 2

CONTRACTOR/LOCAL PROGRAM REQUIREMENTS

2.1 GENERAL

The PGP Contract includes many provisions affecting how the PGP Contractor must operate its business that are not discussed in this document. For example, as a state contractor, PGP Contractors are subject to contract requirements dealing with indemnification, the implementation of anti-discrimination policies, maintenance of a drug-free workplace, civility in the workplace, antitrust requirements, and ownership of intellectual property. (PGP Contract, Article VII, General Terms and Conditions.)

This chapter focuses on a few of the requirements from the PGP Contract that are directly related to the PGP Contractor's role as a Public Guardian.

2.2 BUSINESS ORGANIZATION

A PGP Contractor must be a legal entity (e.g., a corporation, partnership, or governmental entity) authorized to conduct business in Virginia. In addition, unless an exception is provided by state law, which may be the case for entities organized as a part of local government, the entity must be registered with the Virginia State Corporation Commission and must be in good standing under Virginia law. (PGP Contract § 2.1(a).)

The PGP Contractor must perform its services under the PGP Contract under a tradename, referred to in the COV as a "fictitious name," that includes both: (i) the phrase "Public Guardian Program" or "Public Guardian & Conservator Program," and (ii) a portion of the PGP Contractor's legal name that is easily recognizable and identifiable. This tradename must be registered and maintained with the Virginia State Corporation Commission. Since July 1, 2021, Public Guardians have been required to sign all documents signed on behalf of Public Clients using this tradename. Use of the tradename helps to identify the person under Guardianship as a Public Client. (See § 5.2.2 below.) Registration of the name allows member of the public to tie that name back to the legal entity which is the PGP Contractor. (PGP Contract § 3.2.)

2.3 INSURANCE

PGP Contractors are required to purchase and maintain the following types of insurance coverage from insurance companies authorized by the Virginia State Corporation Commission to sell insurance in Virginia. (PGP Contract § 7.1.M.)

Workers' Compensation Insurance – This insurance must satisfy the requirements of the COV. (See [COV §§ 65.2-100 et seq.](#) Also see [COV § 38.2-119.](#)) Workers' compensation insurance is required for all employers who have three or more employees, and may be purchased voluntarily by employers with fewer than three employees. (See [Frequently Asked Questions for Employers](#), Virginia Workers' Compensation Commission.)

Employer's Liability Insurance – This coverage must be for at least \$100,000. Employer's liability insurance may require the insurer to pay medical, chiropractic, hospital, surgical, and funeral expenses arising out of the death or injury of any employee, regardless of any legal liability of the insured. ([COV § 38.2-119.](#))

Commercial General Liability Insurance – At a minimum this insurance shall provide \$1,000,000 in coverage per occurrence and \$2,000,000 in coverage in the aggregate. The Commonwealth of Virginia must be a named insured on the policy by an endorsement. The coverage must include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage.

Automobile Liability Insurance – At a minimum this insurance shall provide \$1,000,000 combined single limit coverage. If any of the PGP Contractor's employees drive their own personal vehicles while performing work for the PGP Contractor, the PGP Contractor may wish to obtain coverage under this policy for non-owned vehicles, as well as hired and owned vehicles.

Directors' and Officers' Liability Insurance – At a minimum this insurance shall provide \$1,000,000 in coverage. This insurance must protect members of the governing board of the PGP Contractor, the contractor's executive director, other officers of the contractor and its legal counsel against claims brought by employees, consumers, clients, or other businesses because of wrongful acts committed in the course of their executive duties for the PGP Contractor.

In addition, as Guardianships are established for Public Clients, the PGP Contractor must provide the bonds required by the Virginia circuit court creating the Guardianship. (PGP Contract § 3.11; also see [COV § 64.2-2009.](#)) No surety may be required on the Guardian's bond, but the court may require that surety be provided on any bond required from a Conservator. ([COV § 2011.A.2.](#))

2.4 **REPORTING REQUIREMENTS**

2.4.1 **Due Annually** (PGP Contract § 3.12 (b) and (c).)

The PGP Contract is structured to cover “**Performance Periods**” that are equivalent to state fiscal years. Unless the PGP Contract specifies otherwise, Performance Periods begin on July 1 of each year and end the following June 30. To prepare for entering into a PGP Contract for a new Performance Period, the PGP Contractor must provide DAR with the documents listed below three months before the new Performance Period begins. In other words, by April 1 of the year in which the new Performance Period will begin. These documents are:

1. For the PGP Contractor, either audited financial statements or a financial review prepared by a certified public accountant for the PGP Contractor’s most recently completed fiscal year.

NOTE: If the PGP Contractor is a party to another contract with DARS (*i.e.*, a contract that does not cover Public Guardian operations through the Program) and under that other contract has provided DARS with the financial statements or financial review required by the PGP Contract, the PGP Contractor **may** simply notify PGP Program staff at DARS that DARS is already in possession of these documents rather than provide them to DARS twice. This generally will apply only to a PGP Contractor that also is an area agency on aging.

2. An operating budget for Local PGP for the upcoming Performance Period using DARS’ “**Budget and Summary of Expenditures Form.**” This form will also be used after the close of the applicable Performance Period to report the actual expenses incurred to operate the Local PGP during the Performance Period.

NOTE: All money paid by DARS under the PGP Contract must be allocated to, and used for, the operation of the Local PGP. (PGP Contract § 4.1.1)

Also, while the PGP Contractor may accept private funds for Local PGP operations those funds may only be used for the purpose of providing public education and supplemental services for Public Clients. (PGP Contract § 6.9; [also see COV § 51.5-151.](#))

3. For the PGP Contractor, a certificate of good standing, or a certificate of fact of its existence, as applicable, issued by the Virginia State Corporation Commission.
4. Certificates of insurance evidencing that the insurance policies required by the PGP Contract are in effect and specifying the amount and period of coverage and the insured or beneficiary of each policy.

By August 30 of each year, the PGP Contractor will complete and send to DARS the Expenditure portion of the Budget and Summary of Expenditures Form for the recently completed Performance Period. This will identify how the moneys paid to the PGP Contractor under the PGP Contract were spent.

2.4.2 Due Quarterly (PGP Contract § 3.12(a).)

PGP Contractors must report on the status of the Program slots they contracted to serve **as of the last day of each state fiscal year quarter** using the DARS' "**Quarterly Report Form.**" Other data routinely required by DARS also appears on the Quarterly Report Form. The state fiscal year quarters are July 1 – September 30 (1st Quarter), October 1 – December 31 (2nd Quarter), January 1 – March 31 (3rd Quarter), and April 1 – June 30 (4th Quarter). Reports are due for the preceding quarter by October 20, January 20, April 20, and July 20.

BEST PRACTICE RECOMMENDATION: Staff of the Local PGP will probably find that the easiest way to keep up with the Quarterly Report is to (1) use the report for the previous quarter as the starting point for the current quarter, simply updating the previous report as necessary, and (2) recording changes in the a person's status as those changes occur, rather than inserting the information at the end of the quarter.

2.4.3 Due Periodically as to Report Specific Events

PGP Contractors are required to report certain events to DARS as they occur using forms created by DARS. These are discussed in greater detail elsewhere in this document and include:

- When a Public Client is removed from the Local PGP's program for any reason, using DARS' **"Removal Notification Form."** (See §§ 6.8.1 and 6.9 below.)
- When a person having In-Process status with the Local PGP is removed as a potential client for any reason, using DARS' Removal Notification Form. (See § 8.9 below.)
- When the Local PGP's Client-to-Staff Ratio is greater than 20:1, using DARS's **"Notice of Non-Compliance with Ratio Form."** (See § 4.4.1 below.)

In addition, if there are changes in the key personnel or the address or contact information for the PGP Contractor, the PGP should notify DARS. (PGP Contract § 6.3.)

2.5 RECORD RETENTION

Generally, the PGP Contractor is required to retain all books, records, and other documents related to the PGP Contract and the services provided under the contract for five years after the PGP ends its Local PGP operations. (PGP Contract § 3.14.)

The minimum retention period for certain documents is different:

- Each Public Client's client record must be maintained in its entirety for five years following the date on which person ceases to be a Public Client. [22VAC30-70-50.A](#).
- The record of multidisciplinary panel proceedings, conclusions, and recommendations, and all material communications between the multidisciplinary panel and the Local PGP must be retained for five years from the date of the proceeding, recommendation or communication. (PGP Contract § 3.8.)
- Referrals received for individuals who are pre-screened by the Local PGP's program director as being ineligible for Public Guardianship Services, and a written explanation of the decision, must be retained for five years following the date the

substantially completed referral form was received by the Local PGP. (PGP Contract, Attachment D § II.A.3 and § III.B.3.)

2.6 **AUDITING; DARS' ACCESS TO RECORDS**

DARS periodically will monitor the PGP Contractor to ensure its compliance with the terms of its PGP Contract. Monitoring may be conducted through on-site reviews, desk reviews, or a combination thereof. To facilitate monitoring, the PGP Contractor will make its records, office, and staff available to DARS during normal business hours upon request. (PGP Contract § 5.1 and [22VAC30-70-60](#).)

Note: During DARS' performance monitoring to ensure compliance with the PGP Contract, it may speak to employees, Public Clients, and to third-party service providers who work with Public Clients. It also may review documents and records of the PGP Contractor related to its performance under the PGP Contract. At a minimum, the PGP Contractor should expect that DARS will review the client records of a number of Public Clients randomly selected by DARS and visit with a number of Public Clients randomly selected by DARS at their residence or day support. DARS also may monitor other aspects of the PGP Contractor's operations to ensure that the PGP Contractor is not engaging in business practices that put its Local PGP operations at risk.

2.7 **CONTINUITY OF OPERATIONS PLAN**

The PGP Contractor shall develop and maintain a continuity of operations plan detailing how the PGP Contractor plans to maintain its operations during an emergency or other situation that would disrupt normal operations. (PGP Contract § 6.5.)

Note: A PGP Contractor may operate several different programs and likely will have a continuity of operations plan which covers its entire business and all of the programs it operates. When the PGP Contract refers to a PGP Contractor's "operations" it is referring primarily to its operations as a Public Guardian. The operations of a Public Contractor's Local PGP may be part of a larger continuity of operation plan maintained by the PGP Contractor, but DARS expects that a PGP Contractor will specifically consider as part of its plan how to maintain its Local PGP operations and protect the safety of its Public Clients in the event of an emergency or other situation that would disrupt normal operations.

2.8 TERMINATION; SUBCONTRACTING; ASSIGNMENT

2.8.1 Termination by PGP Contractor

A PGP Contractor wishing to end its PGP operations should notify DARS as soon as possible so that the PGP Contractor and DARS together can plan for an orderly transition of services to another provider, ideally at the end of the then current Performance Period. The PGP Contract does not give a PGP Contractor the right to simply terminate the PGP Contract during a Performance Period and the failure to perform its obligations under the PGP Contract may be treated as a breach of contract. The PGP Contractor has agreed in the PGP Contract that if the contract expires without being renewed, or is cancelled or terminated by DARS during a Performance Period, the PGP Contractor will continue to perform all obligations under the PGP Contract until Guardianship over its Public Clients is transferred to a new Program provider selected by DARS. (PGP Contract § 7.1.V.)

The concern, of course, is the well-being of the Public Clients served by the PGP Contractor. The exiting PGP Contractor is the court appointed guardian and remains so until a substitute guardian can be appointed by a Virginia Circuit Court. DARS recognizes, however, that in appointing a Public Guardian there was an expectation by the appointing court, and the petitioner who initiated the Guardianship proceeding, that the incapacitated person would be served by a Guardian operating as part of the Virginia Public Guardian and Conservator Program providing services in accordance with the standards set by DARS in the PGP Regulations and the PGP Contract. In agreeing to serve until a new Program provider is identified and put into place for existing PGP Contractor's Public Clients, the PGP Contractor is acknowledging the importance of ensuring a smooth transition and continuity of services for the individuals it serves as a Public Guardian, should it decide to leave the Program.

2.8.2 Subcontracting

A PGP Contractor may not subcontract any portion of its obligations under its PGP Contract without prior written consent from DARS. If DARS consent, the PGP Contractor will remain fully-liable and responsible for the work done by its subcontractor, and assuring that services are provided in accordance with the PGP Contract. (PGP Contract § 6.7.)

2.8.3 Assignment of PGP Contract

A PGP Contractor may not assign any portion of its PGP Contract to a third-party unless it has received prior written consent from DARS. (PGP Contract § 7.1.J.)

CHAPTER 3 LOCAL PGP STAFF

3.1 GENERAL

A PGP Contractor must have sufficient staff to operate its Local PGP, fulfill its obligations under the PGP Contract, and fully meet its obligations under the circuit court order(s) related to the Guardianship of each of its Public Clients.

Local PGP staff **must** include:

- A Program Director assigned full-time to the Local PGP; and
- A sufficient number of other direct service staff to satisfy the Ideal Ratio of Public Clients to paid full-time Local PGP Direct Service Staff Members set forth in in the Program Regulations. (For a detailed discussion of the Ideal Ratio see Chapter 4 below). ([22VAC30-70-30.C.](#))

“Direct Services” are services that require the employee to be engaged directly with Public Clients and their third-party service providers (e.g., medical providers, residential providers, and support coordinators at community services boards). If the PGP Contractor is appointed as the public Conservator, direct services include management over, and decision-making regarding, the financial assets of the Public Client. (PGP Contract, Attachment C § 1.)

A **“Direct Service Staff Member”** is an employee of the PGP Contractor assigned to provide Direct Services to its Public Clients and includes the Program Director. (See PGP Contract, Attachment C § 1.) Most Direct Service Staff Members will be Guardian Representatives, as defined below.

A **“Guardian Representative”** is a paid employee of the PGP Contractor assigned to manage the case of one or more Public Clients and whose job responsibilities with respect to those clients include:

- Making monthly face-to-face, in-person visits;
- Overseeing the benefits and services provided;
- Consulting with third-party service providers, and staff at the PGP Contractor (both supervisory and support, as necessary), to ensure that needs of those Public Clients are met; and
- Serving as an agent of the PGP Contractor with respect to legal decision-making on behalf of those Public Clients. (PGP Contract § 3.5.1.)

3.2 PROGRAM DIRECTOR

The “**Program Director**” is responsible (i) for the overall administration of the Local PGP and (ii) for overseeing the Public Guardianship Services provided to each Public Client. ([22VAC30-70-30.C.1.](#))

The Program Director must be a full-time employee of the Local PGP. ([22VAC30-70-40.A.](#)) Since the Program Director’s employer typically is the PGP Contractor operating the Local PGP, not the Local PGP itself, this requirement means the Program Director must be assigned by the PGP Contractor to work full-time in the role of the Program Director for the Local PGP and not be assigned to perform other duties for the PGP Contractor. A very limited exception to the full-time requirement is discussed in § 3.2.3 below.

3.2.1 Job Duties

The Program Director is DARS’ primary contract with the Local PGP. DARS expects the Program Director’s duties will include oversight of the work of other Local PGP staff; providing expertise and assistance to Local PGP staff in resolving issues that arise serving Public Clients; responding to questions from the public regarding the Program and the Local PGP; serving as a liaison between the Local PGP and its multidisciplinary panel; presenting referrals to the multidisciplinary panel and assisting the panel with its evaluation of new referrals for eligibility to the Local Program; assisting the multidisciplinary panel with its annual assessment of the continued eligibility of each existing Public Client for services through the Local PGP; and preparation of the reports required by DARS concerning program operations.

The Program Director also may serve as a Guardian Representative to Public Clients, **however**, if the PGP Contractor has agreed in its PGP Contract to serve 40 or more Public Clients, the Program Director **may not serve as a Guardian Representative to more than 15 Public Clients**. (PGP Contract § 3.5.3 and Attachment C § 3.)

The responsibilities of a Program Director are substantial. Before allowing a Program Director to serve as a Guardian Representative, the PGP Contractor should evaluate whether the Program Director can fill both roles effectively, and consider how many Public Clients the Program Director serve directly as a Guardian Representative without compromising Program Director’s performance of their duties as a Program Director.

3.2.2 **Required Qualifications** ([22VAC30-70-40.A.](#))

Any person hired for the position of Program Director, must:

- Have at least a high school diploma or a GED (a general education diploma) from an accredited educational institution or program. (22VAC30-70-40.A.3.)
- Have work experience as a service provider or administrator in one or more of the following service areas:
 - Social work;
 - Case management;
 - Mental health;
 - Nursing; or
 - Other human service program. (22VAC30-70-40.A.5.)
- Demonstrate, by objective criteria, a knowledge and understanding of Virginia's Guardianship laws, alternatives to Guardianship, and surrogate decision-making activities. (22VAC30-70-40.A.5.)
- Have a satisfactory work record and be of good character; demonstrate a concern for the well-being of others to the extent that the person is considered suitable to be entrusted with the care, guidance, and protection of an incapacitated person.
- Not have been convicted of any criminal offense involving a physical attack, neglect or abuse of a person, lying, cheating, or stealing, nor convicted of any felony. A criminal record check shall be conducted to confirm that each new hire meets these standards. (22VAC-30-70-40.A.1)
- Be free of illegal drug use. A drug screening test shall be conducted to confirm that each new hire meets this standard. (22VAC30-70-40.A.2). Additional drug screening may be conducted during the course of employment at the discretion of the PGP Contractor.

3.2.3 **Exceptions**

The provisions of the PGP Regulations requiring (i) Program Directors to be full-time employees of the Local PGP, (ii) drug screening tests for new hires, (iii) criminal background checks for new hires, and (iv) a high school diploma or GED for individuals hired to work as a Program Director did not come into effect until January 1, 2009. Consequently, any individual who assumed the position of Program Director for a Local PGP prior to January 1, 2009, must be a full-time employee of the PGP Contractor, but is not required to be assigned full-time to the Local PGP and may perform other duties for the PGP Contractor.

Similarly, if the individual was hired by the PGP Contractor to work in the Local PGP, in any role, before January 1, 2009, they were not at the time of hire required to have a pre-hire drug test or criminal background check.

3.3 OTHER LOCAL PGP STAFF

Local PGPs must have sufficient number of other Direct Service Staff to satisfy the Client-to-Staff Ratio set forth in in the Program Regulations. These primarily will be Guardian Representatives. The importance of Guardian Representatives cannot be overstated. They typically are the staff members who will have the most direct contact with the Public Clients and their third-party service providers. Guardian Representatives have an immense impact on the lives of their clients and the overall quality of services provided by the PGP. Their role includes assuring stability for their clients, as well as crisis management, client empowerment, and service advocacy. Guardian Representatives have a primary role in shaping the quality of life for their clients.

A Local PGP may have other staff, too, and some of these will have direct contact with Public Clients or their assets. The qualifications for Guardian Representatives, and other staff members who have direct contact with Public Clients or their assets, are discussed in the following subsections.

3.3.1 Required Qualifications ([22VAC30-70-40.A.](#))

Every Local PGP paid staff member who has direct contact with Public Clients or the estates belonging to Public Clients (*i.e.*, their money or other financial assets) must:

- Have at least a high school diploma or a GED from an accredited educational institution or program. (22VAC30-70-40.A.3)
- Have a satisfactory work record, be of good character, and demonstrate a concern for the well-being of others to the extent that the person is considered suitable to be entrusted with the care, guidance, and protection of an incapacitated person.
- Not have been convicted of any criminal offense involving any physical attack, neglect or abuse of a person, lying, cheating, or stealing, nor convicted of any felony. A criminal record check shall be conducted to confirm that each new hire meets these standards. (22VAC-30-70-40.A.1.)
- Be free of illegal drug use. A drug screening test shall be conducted to confirm that each new hire meets this standard. (22VAC30-70-40.A.2.) Additional drug screening may be conducted during the course of employment at the discretion of the PGP Contractor.

- With some limited exceptions discussed in Chapter 4 of this document, will be full-time employees of the PGP Contract assigned to work exclusively in the PGP Contractor's Local PGP operations providing Direct Services to Public Clients, so that they can be counted toward the Client-to-Staff Ratio (as defined in § 4.1.1 below).

3.2.2 **Exceptions**

The provisions of the PGP Regulations requiring (i) drug screening tests for new hires, and (ii) criminal background checks for newly hired Direct Service Staff Members did not come into effect until January 1, 2009. Consequently, if the individual was hired by the PGP Contractor to work in the Local PGP, in any role, before January 1, 2009, they were not at the time of hire required to have a pre-hire drug test or criminal background check.

Best Practice Recommendation: The PGP Contractor may ask a staff member who was hired before 2009 and who has direct contact with Public Clients or their financial assets to participate in a drug screening and consent to a criminal background check, if they haven't had one before. Certainly, because paid staff of Local PGPs who have direct contact with Public Clients or their financial assets have a continuing obligation to be free of illegal drug use and free conviction for certain crimes, the PGP should undertake a drug screening or criminal background check any time it suspects the staff member is out of compliance with these requirements.

3.4 **REQUIRED TRAINING: PROGRAM DIRECTOR AND OTHER LOCAL PGP STAFF**

3.4.1 **Required Training for New Hires** ([22VAC30-70-40.B.](#))

Before having direct contact with any Public Client, or the estate of any Public Client, each paid staff member, including the Program Director, must complete a training and orientation program that includes instruction on the following topics:

- (i) Virginia's Guardianship laws and the alternatives to Guardianship, including the duties and powers for Guardians and conservators in Virginia;

- (ii) Surrogate decision-making and how it differs from substituted judgement decision-making;
- (iii) The reporting requirements of local Departments of Social Services and Commissioner of Accounts mandated in [COV §§ 64.2-2020](#) and [64.2-1305](#);
- (iv) Working with special needs populations, including individuals with physical and mental disabilities;
- (v) The provisions of the [Program's Authorizing Statute](#), the [Program Regulations](#), and policies issued by DARS related to operation of the Program;
- (vi) Indications of, and actions to be taken when, adult abuse, neglect, or exploitation is suspected.
- (vii) The policies and procedures of the Local PGP, including:
 - Privacy and confidentiality requirements;
 - Recordkeeping and documentation requirements; and
 - Services provided and the standards for services, including the policies that the PGP Contractor is required to develop by § 3.10 of the PGP Contract (*i.e.*, policies with respect to sterilization procedures, psychiatric treatment, client visits, person- centered planning, end-of-life decision-making, funeral arrangements, and conflicts of interest).

3.4.2 **Ongoing Training**

All employees of the PGP Contractor who are Direct Service Staff Members, including the Program Director, must participate in training programs required by DARS. ([22VAC30-70-40.A.4.](#))

DARS typically provides one multi-day training program each year. Other training programs will be scheduled from time-to-time as the need arises.

3.5 **VOLUNTEERS**

3.5.1 **Limitations on How Volunteers May Serve** ([22VAC30-70-30.C.3.](#))

A Local PGP may use volunteers to assist with its administrative needs, or **supplement** the services provided by the paid staff of the Local PGP. The role of a volunteer for a Local PGP is limited, though. A volunteer **may not** act as a substitute Guardian Representative. Volunteers **may not** be given authority to make decisions on behalf of, or with respect to, Public Clients or their estates, nor can they be counted toward the Client-to-Staff Ratio. A volunteer may not fill the

role of a Guardian Representative; consequently, a volunteer's visits to a Public Client may not be counted as a required monthly visit. Volunteers for a Local PGP should clearly identify their role as a volunteer to any Public Client, third-party provider, or other member of the public with whom they interact within the course of their service with the Local PGP.

A Local PGP that uses volunteers must develop and implement written procedures for managing and supervising its volunteers.

3.5.2 Volunteer Qualifications ([22VAC30-70-40.C.](#))

Any volunteer who is going to have direct contact with any Public Client or the financial assets of any Public Client must:

- Be of a person of good character who has not been convicted of any criminal offense involving any physical attack, neglect or abuse of a person, lying, cheating, or stealing, or convicted of any felony. The PGP Contractor must conduct a criminal background check to ensure that the volunteer meets criteria.
- Be free of illegal drug use. The PGP Contractor must conduct a drug-screening before the volunteer is first assigned any duties that would give the volunteer direct contact with any Public Client or the financial assets of any Public Client. Additional drug screening may be conducted during the at the discretion of the Program Director.

3.5.3 Volunteer Training ([22VAC30-70-40.C.](#))

Every volunteer who is going to have direct contact with any Public Client or the financial assets of any Public Client must first complete an orientation program that provides an overview of:

- The Virginia Public Guardian and Conservator Program; and
- The Local PGP for which the person intends to volunteer, including (i) services provided by the Local PGP, (ii) specific duties of the volunteer, (iii) privacy and confidentiality requirements, (iv) recordkeeping and documentation requirements, and (v) indications of and action to be taken where adult abuse, neglect, or exploitation is suspected.

CHAPTER 4

CLIENT-TO-STAFF RATIO

4.1 GENERAL

The PGP Regulations require the PGP Contractor to maintain a ratio of Public Clients to every one paid full-time Local PGP Direct Service Staff Member (the “**Client-to-Staff Ratio**”) that does not exceed 20:1. ([22VAC30-70-30.C.2.a.](#)) This 20:1 ratio is referred to as the “**Ideal Ratio.**”

The Ideal Ratio is a central feature of the Program and helps ensure the Guardian Representatives have the time they need to know their Public Clients and their third-party service providers, act as effective advocates for their Public Clients, and provide high quality Public Guardianship Services to those clients.

The PGP Regulations require that Local PGPs take a person-centered (*i.e.*, client-centered) approach to decision-making on behalf of Public Clients. ([22VAC30-70-30.F. 3-5.](#)) This also is reflected in the Guardian/Conservator Statute which requires that, to the extent possible, a Guardian will:

- Encourage the incapacitated person to participate in decisions affecting their life;
- Act on their own behalf; and
- When making decisions for an incapacitated person, consider the expressed desires and personal values of the incapacitated person to the extent those desires and values are known to the Guardian. ([COV § 64.2-2019.E.](#))

The opportunity to provide person-centered Public Guardianship Services is enhanced by compliance with the Ideal Ratio.

The Ideal Ratio is not a cap on the number of Public Clients that may be on any particular Guardian Representative’s caseload. It is a ratio that is focused a level up on staffing for the Local PGP. This gives the Local PGP some flexibility in determining how best to allocate cases among its Guardian Representatives; however, a decision to limit each Guardian Representative’s caseload to 20 or less will ensure that the Local PGP always is in compliance with the Ideal Ratio.

4.2 CALCULATING THE CLIENT-TO-STAFF RATIO (PGP Contract § 3.6 and Attachment C.)

At any point in time, the Client-to-Staff Ratio is determined by dividing the number of Public Clients then being served by the Local PGP by the number of employees working

as full-time Direct Service Staff Members (including the Program Director). The result of this calculation (the quotient) is then rounded up to the nearest whole number. If the rounded quotient is 20 or less, then the Local PGP is in compliance with the Ideal Ratio. If the rounded quotient is more than 20, the Local PGP's Client-to-Staff Ratio exceeds the Ideal Ratio. (PGP Contract, Attachment C § 3.)

Example #1: A Local PGP has 100 Public Clients and five full-time Direct Service Staff Members (e.g., a Program Director and four Guardian Representatives). The Client-to-Staff Ratio will equal 20:1 and is in compliance with the Ideal Ratio ($100/5 = 20$ or 20:1)

Example #2: A Local PGP has 100 Public Clients and four full-time Direct Service Staff Members (e.g., a Program Director and three Guardian Representatives). The Client-to-Staff Ratio will equal 25:1 and is out of compliance with the Ideal Ratio ($100/4 = 25$ or 25:1)

Example #3: A Local PGP has contracted with DARS to serve 100 Public Clients, but at the point in time when the Client-to-Staff Ratio is being calculated, it only has 93 Public Clients and four full-time Direct Service Staff Members (e.g., a Program Director and three Guardian Representatives). The Client-to-Staff Ratio will equal 24:1 and is out of compliance with the Ideal Ratio. ($93/4 = 23.25$ or 24:1)

Listed below are some points to remember when calculating the Client-to-Staff Ratio.

Only Count Direct Service Staff Members: As a general rule, the calculation only includes full-time employees of the PGP Contractor who are assigned exclusively to the Local PGP as Direct Service Staff Members. A PGP Contractor will likely have other employees who provide supervision or support to the Local PGP. Some of these employees may be assigned exclusively to the Local PGP; however, the Client-to-Staff Ratio is based ONLY on those employees who provide Direct Services to Public Clients. (PGP Contract, Attachment C § 3.)

Questions about who is a Direct Service Staff Member: In most cases, the Direct Service Staff Members counted toward the ratio will be limited to the Program Director and the Guardian Representatives. If a PGP Contractor believes an employee in a different position should be considered a Direct Service Staff Member and counted toward the Client-to-Staff Ratio, the PGP Contractor should explain its position to DARS in writing so that DARS can consider whether counting that employee as a Direct Service Staff Member is appropriate. (PGP Contract, Attachment C § 3.)

Counting the Program Director: As long as the Program Director, who must be a full-time employee of the PGP Contractor assigned exclusively to the Local PGP, the Program Director may be counted as a full-time Direct Service Staff Member, without regard to the number of Public Clients the Program Director is serving as a Guardian Representative. **EXCEPTION:** Program Directors who were hired prior to the full-time requirement (2009) may have job responsibilities with the PGP Contractor that are in addition to their duties for the Local PGP. These Program Directors will be counted a part-time Direct Service Staff Members to the extent permitted by DARS. (PGP Contract, Attachment C § 3.)

4.3 PART-TIME DIRECT SERVICE STAFF MEMBERS (PGP Contract, Attachment C § 4)

The PGP Regulations provide that the Client-to-Staff Ratio is a “direct service ratio” calculated by comparing the number of clients to each “paid **full-time** staff person.” ([22VAC30-70-30.C.2.a.](#)) In the circumstances discussed below, DARS will make an exception to the “full-time” requirement. A part-time Direct Service Staff Member may be a standalone part-time employee of the PGP Contractor, or a full-time employee of the PGP Contractor assigned on a less than full-time basis to the Local PGP.

The PGP Contract prohibits employees of the PGP Contractor who participate in providing Guardianship services to any client of the PGP Contractor who is not Public Client (*i.e.*, any private Guardianship client) from serving as a Guardian Representative for a Public Client without prior written consent from DARS. (PGP Contract § 3.5.2.) If a PGP Contractor intends to use a part-time employee who is providing guardianship services to a client of the PGP Contractor who is not a Public Client as part-time Guardian Representative in the circumstance outlined below, the PGP Contractor will need the obtain consent from DARS pursuant to § 3.5.2 of the PGP Contract.

Best Practice Recommendations: **ONLY** full-time employees of the PGP Contractor who are assigned full-time to the Local PGP as Direct Service Staff Members be counted when determining if the Local PGP’s Client-to-Staff Ratio meets the Ideal Ratio, subject to certain exceptions discussed below. DARS recommends that PGP Contractors not utilize part-time Direct Service Staff Member in its Local PGP operations. While this may somewhat increase the cost of operations, it will benefit Public Clients.

4.3.1 When Number of Public Clients is not Evenly Divisible by 20. (PGP Contract, Attachment C § 4.A.1.)

If the number of Public Clients is not evenly divisible by 20, the PGP Contractor may use one part-time Direct Service Staff Member to serve as a Guardian Representative in addition to its full-time Direct Service Staff Members. This part-time staff member may be counted toward the Client-to-Staff Ratio based on the number of hours spent working as a Direct Services Staff Member for the Local PGP.

Example A: Ideally, a PGP Contractor who has contracted with DARS to serve 35 Public Clients and actually is providing PGP Services to 35 Public Clients will have two full-time Direct Service Staff Members working its Local PGP (e.g., a Program Director and a Guardian Representative). However, DARS it may have only 1.75 Direct Service Staff Members. This would be the Program Director and one part-time Direct Service Staff Member who is working 75% of a full-time schedule.

Example B: A PGP Contractor that has contracted with DARS to serve 40 Public Clients, but actually has only been named as the Guardian for 30 incapacitated individuals, will need 1.5 Direct Service Staff Members to be in compliance with the Ideal Ratio (e.g., a Program Director who is assigned full-time to the Local PGP and a Guardian Representative who is working 50% of a full-time schedule with the Local PGP). DARS recommended best practice would be for the part-time Guardian Representative to be a full-time employee of the PGP Contractor assigned full-time to the Local PGP. Once the PGP Contractor has been named as the Guardian for 40 Public Clients, it must have at least two Direct Service Staff Members assigned full-time to the Local PGP to be in compliance with the Ideal Ratio.

4.3.2 To Keep the Program Director's Caseload at 15 or Less. (PGP Contract, Attachment C § 4.A.2.)

For PGP Contractors that have contracted with DARS to serve 40 or more Public Clients, if after deducting the number of Public Clients for whom the Program Director acts as a Guardian Representative, the number of Public Clients is not evenly divisible by 20, the PGP Contractor may choose to supplement the Direct Service Staff of the Local PGP with an additional full or part-time Direct Service Staff.

Best Practice Recommendation: DARS recommends PGP Contractors who are contracted to serve 40 or more Public Clients supplement the Local PGP's Direct Service Staff Members with an additional staff Direct Service Staff Member so that (i) the Program Director can focus more on their duties as Program Director, with less responsibility for managing a caseload, and (ii) the caseloads of the other Direct Service Staff Members do not become excessive.

Example: The PGP Contractor has contracted with DARS to serve 60 Public Clients and is operating at full-capacity. The Direct Service Staff Members assigned to the Local PGP includes a Program Director and two Guardian Representatives who are working full-time in the Local PGP. The Local PGP's Client-to-Staff Ratio is in compliance with the Ideal Ratio, even though the Program Director can serve as the Guardian Representative to only fifteen (15) Public Clients. This is because DARS has agreed that any Program Director who is full-time staff of a Local PGP may be counted as a full-time Direct Service Staff Member. The PGP Contractor certainly may decide to hire a part-time employee, or even another full time Direct Service Staff Member. This would result in a Client-to-Staff Ratio that is less than 20:1 and better than DARS requires.

4.3.3 Other Situations in Which One or More Part-Time Direct Service Staff Member may be Counted in the Client-to-Staff Ratio.

(PGP Contract, Attachment C § 4.B.)

With DARS' consent, in circumstances other those described in subsections 4.3.1 and 4.3.2 above, a PGP Contractor may include one or more part-time Direct Service Staff Member when calculating the Client-to-Staff Ratio to determine if the Local PGP's is in compliance with the Ideal Ratio.

To use this option, the PGP Contractor must submit a written staffing plan to DARS for approval that includes the following information:

- How the part-time Direct Service Staff Members will be used by the Local PGP.
- Why it is necessary for the PGP Contractor to use part-time Direct Service Staff Members, rather than full-time Direct Service Staff Members.
- The minimum number of hours each week each part-time Direct Service Staff Member will be assigned to work for the Local PGP.

- The PGP Contractor's plan for bringing its staffing arrangement into compliance with DARS stated best practice, or if the number of Public Clients is not evenly divisible by 20 to a situation in which only one part-time Direct Service Staff Member is used meet the Ideal Ratio.

Generally, DARS will consider the staffing plan to be a transition plan designed to move the PGP Contractor toward compliance with DARS' recommended best practice with respect to staffing, or the use of only one part-time Direct Service Staff Member.

4.3.4 How to Count Part-Time Direct Service Staff Members when Calculating the Client-to-Staff Ratio (PGP Contract, Attachment C § 4.)

For the purposes of calculating the Client-to-Staff Ratio, a part-time Direct Service Member will be counted as "portion" or "percentage" of a full-time Direct Service Staff Member based on the minimum number of hours the PGP Contractor assigns the part-time staff member to work in the Local PGP. For the purpose of this calculation, a full-time Direct Service Staff Member will be assumed to work a minimum of 40 hours a week in the Local PGP. This means that a part-time Direct Service Staff Member assigned to a minimum of 30 hours in the Local PGP will be counted as 0.75 of a full-time Direct Service Staff Member: a part-time person assigned to a minimum of 20 hours will be counted as 0.50 of a full-time Direct Service Staff Member, and a part-time person assigned to a minimum of 10 hours will be counted as 0.25 of a full-time Direct Service Staff Member.

Example: A Local PGP has 50 Public Clients. It has two full-time Direct Service Staff Members, a Program Director and a Guardian Representative. Its Client-to-Staff Ratio is 25:1 ($50/2=25$ or 25:1) and so exceeds the Ideal Ratio of 20:1. The PGP Contractor hires a part-time Direct Service Staff Member who is assigned to work a minimum of 20 hours per week in that role. The part-time employee will count as 0.50 (50%) of a full-time employee, and the Client-to-Staff Ratio will be 20:1 ($50/2.5=20$ or 20:1), and will satisfy the Ideal Ratio.

4.4 WHEN THE CLIENT-TO-STAFF RATIO EXCEEDS THE IDEAL RATIO

A PGP Contractor will provide written notice to DARS when its Local PGP is greater than the Ideal Ratio of 20:1. In some circumstances, the PGP Contractor will need to obtain a waiver from DARS to avoid breach of the PGP Contract. The rules summarizing what action must be taken by the PGP Contractor when its Client-to-Staff Ratio exceeds the Ideal Ratio are summarized in the following subsections.

4.4.1 Provide Notice of Non-Compliance to DARS
(PGP Contract, Attachment C § 5.)

The PGP Contractor must notify DARS within five business days if its Local PGP's Client-to-Staff Ratio exceeds the Ideal Ratio using DARS' **Notice of Non-Compliance with Ratio Form** which requires the PGP Contractor to:

- Explain the circumstances causing the Local PGP to be out of compliance with the Ideal Ratio;
- The PGP Contractor's plan for resolving the compliance issue; and
- A calculation of the then current Client-to-Staff Ratio.

If the situation worsens with respect to the Client-to-Staff Ratio after the Notice of Non-Compliance with Ratio Form has been delivered to DARS, the PGP Contractor will notify DARS of the subsequent adverse change within five business days using a new Notice of Non-Compliance with Ratio form.

Once the Local PGP has returned to compliance with the Ideal Ratio, the PGP Contractor will notify DARS in writing of its return to compliance via email within five business days following the day on which the Local PGP returned to compliance.

NOTE: The PGP Regulations state that DARS must be notified immediately in writing in an emergency or unusual circumstances exists causing the Local PGP to exceed the Ideal Ratio. ([22VAC30-70-30.C.2.c.](#)) Delivery of a properly completed Non-Compliance with Ratio Form within the five-day time frame described above will be deemed to be "immediate" notice.

4.4.2 Client-to-Staff Ratio Greater than 20:1 but Less than 26:1; Emergency or Unusual Circumstances ([22VAC30-70-30.C.2.c.](#))

In emergency or unusual circumstances, a Local PGP's Client-to-Staff Ratio that is greater than the Ideal Ratio, but less than 26:1, will not be deemed to be a violation of the PGP regulations or the PGP Contract, provided that DARS is in agreement that the staffing situation stems from an emergency or unusual circumstances. DARS will base its decision on the explanation provided by the PGP Contractor in the Non-Compliance with Ratio form and subsequent conversations with the Local PGP. If DARS believes that the circumstances should not be construed as "emergency or unusual circumstances," it will notify the PGP Contractor.

Generally, the loss of a Direct Service Staff Member resulting in an unfilled position with the Local PGP, or the extended absence of a Direct Service Staff Member for 30-days or more, will be deemed to be a qualifying emergency or unusual circumstance, as long as there is a plan to resume normal staffing which the PGP Contractor is pursuing diligently.

4.4.3 Client-to-Staff Ratio Equal to or Greater than 26:1; Non-Emergency/Unusual Circumstances ([22VAC30-70-30.C.2.c.](#))

If a Local PGP's Client-to-Staff Ratio equals or exceeds 26:1, the PGP Contractor will need to obtain a waiver from DARS; otherwise, the deviation from the Ideal Ratio will violate the PGP Regulations and be a breach of the PGP Contractor's obligations under the PGP Contract.

Also, if a Local PGP's Client-to-Staff Ratio exceeds the Ideal Ratio but is less than 26:1, the PGP Contractor will need to obtain a waiver from DARS if the circumstances giving rise to the staffing problem are deemed by DARS to **NOT** be emergency or unusual circumstances. Without a waiver, the staffing problem will violate the PGP Regulations and be a breach of the PGP Contractor's obligations under the PGP Contract.

DARS is required to report waiver requests with respect to the Client-to-Staff Ratio, as well as the status of any such waivers that have been granted, to the Virginia Public Guardian and Conservator Advisory Board at its regularly scheduled meetings.

DARS must review all waivers granted with respect to the Client-to-Staff Ratio every six months to determine that there is no immediate threat to the person or property of any Public Client, and that exceeding the Ideal Ratio will not have a material and adverse effect on the ability of the Local PGP to properly serve all of the Public Clients it is contracted to serve.

When requesting a waiver with respect to the Ideal Ratio requirement, the request should be made in writing and must specifically address each of the following:

- The conditions giving rise to the Local PGP's need to exceed the Ideal Staffing Ratio.
- The extent to which the Local PGP will exceed the Ideal Staffing Ratio.
- The length of time the Local PGP expects that a compliance waiver will be required.

- The Local PGPs plan for bringing the Local PGP back into compliance with the Ideal Ratio.
- The steps that will be undertaken by the Local PGP to ensure that the excessive Client-to-Staff Ratio does not pose a threat to the services provide by the Local PGP to any Public Client or the property of any Public Client or a material adverse effect on the Local PGP's ability to serve all of Public Clients it is contracted to serve.

The PGP Contractor should expect that DARS will impose to conditions to protect the safety of clients and the reputation of the Program as a condition of any waivers that are granted.

4.4.4 Provide Notice of Non-Compliance to the Courts **(22VAC30-70-30.C.2.b.)**

A Virginia circuit court may not appoint a Public Guardian for an incapacitated respondent in a Guardianship case under Guardian/Conservator Statute if the appointment would cause the PGP Contractor to be out of compliance with the Ideal Ratio. ([COV § 64.2-2015.A.](#)) Therefore, **if** (i) the Local PGP exceeds the Ideal Ratio at any point in time, or the appointment of an additional Public Client would cause it to exceed the Ideal Ratio, **and** (ii) the Local PGP is aware of a pending proceeding under Guardian/Conservator Statute in which the PGP Contractor will be recommended by a party to serve as the Public Guardian for the respondent, it would be appropriate for the Local PGP to notify the court, the attorneys for all parties to the case, including the guardian ad litem for the allegedly incapacitated person, that it is out of compliance with the Ideal Ratio and cannot serve until it returns to compliance.

Additionally, circumstances may arise in which DARS determines that a broader notice to the circuit courts, and possibly each sheriff, operating within a Local PGP's Designated Service Area, is required. The PGP's "**Designated Service Area**" is the territory from which the PGP Contractor may accept PGP referrals and is specified in the PGP Contract. The PGP Contractor will then be expected to provide such notice as directed by DARS. PGP Contractors are required by [COV § 51.5-151](#) (1st paragraph, clause (v)) to develop a plan for providing any notice to the courts and sheriff's offices which includes a method for determining who the appropriate contact persons are and a timeline for providing timely notice.

CHAPTER 5

SEPARATION OF PUBLIC AND PRIVATE GUARDIANSHIP SERVICES

5.1 GENERAL

DARS may contract for Public Guardianship Services with entities that also provide privately funded surrogate decision-making services, including Guardian and Conservator services funded with fees generated by the estates of incapacitated persons, as long as such private programs are administered by the contracting entity entirely separately from the Virginia Public Guardian and Conservator Program, in conformity with regulations established by DARS. ([COV § 51.5-150.C](#); also see COV § 51.5-150.B.4)

The separation of Public Guardianship programs from private Guardianship programs operated by the same PGP Contractor is important because public and private Guardianships are not subject to the same regulatory and contractual framework. A PGP Contract is a contract with DARS to operate a Local PGP and provide Public Guardianship Services in accordance with the PGP Contract, the PGP Regulations, and the Program's Authorizing Statute. A PGP Contract with DARS **should not be interpreted** as a "PGP license" awarded to the PGP Contractor which has the effect of making makes all Guardianships undertaken by the contractor "Public Guardianships" provided as part of the Virginia Public Guardian and Conservator Program. A PGP Contractor may only provide Public Guardianship Services as part of the Program to the number of Public specified in its PGP Contract with DARS. These are individuals who have been found by a Virginia circuit court to meet the criteria for Public Guardianship Services and who have been identified in the records provide to DARS as Public Clients being served by the Local PGP.

Guardians who are serving individuals as part of the Virginia Public Guardian and Conservator Program are required to provide those services in compliance with (1) the court order establishing the Guardianship and the requirements of Virginia Code § 64.2-2000 *et seq.*, (2) the standards set forth in the PGP Contract, (3) PGP Regulations; and (4) the Program's Authorizing Statute. (PGP Contract § 3.4.) If an incapacitated person's Guardian is a PGP Contractor, but the guardianship services are being provided by the Contractor privately, and not as a part of the Virginia Public Guardian and Conservator Program, DARS has no contractual authority over the Guardian with respect to that incapacitated person, or regulatory authority over the Guardianship services that are being provided to the incapacitated person.

5.2 REQUIREMENTS FROM PROGRAM REGULATIONS AND THE PGP CONTRACT SEPARATING THE LOCAL PGP FROM OTHER PROGRAMS OPERATED BY THE PGP CONTRSCTOR

DARS has adopted the following requirements to provide for separation of Local PGPs from other programs and services provided by the PGP Contractor, and to help courts, third-party service providers, friends and relatives of the incapacitated person, and the general public understand that the person is receiving services through the Virginia Public Guardian and Conservator Program.

5.2.1 Separate Staffing for the Local PGP

- Subject to a few limited exceptions previously discussed in § 3.2 above, the Program Director for the Local PGP must be a full-time employee of the PGP Contractor who is assigned to work exclusively as the Program Director for the Local PGP. ([22VAC30-70-40.A.5](#))
- Subject to a few limited exceptions previously discussed in §§ 4.3.1 through 4.3.3 above, the Direct Service Staff Members of the Local PGP counted toward the Client-to-Staff Ratio must be full-time employees of the PGP Contractor who are assigned to work exclusively for the Local PGP. ([22VAC30-70-30.C.2.a](#))
- As previously discussed in § 4.3 above, no employee of the PGP Contractor who participates in providing Guardianship services to any client of the PGP Contractor who is not Public Client (*i.e.*, to any private Guardianship client) may serve as a Guardian Representative for a Public Client without prior written consent from DARS. (PGP Contract § 3.5.2.)

5.2.2 Establish and Use a Tradename for the Local PGP (PGP Contract § 3.2.)

- A PGP Contractor must register a tradename name for its Local PGP with the Virginia State Corporation Commission pursuant to [COV § 59.1–69 et seq.](#) (In the COV this is referred to as a “fictitious name.”) This tradename must include both: (i) the phrase “Public Guardian Program” or “Public Guardian & Conservator Program,” and (ii) a portion of the PGP Contractor’s legal name that is easily recognizable and identifiable.
- The PGP Contractor must request any Virginia circuit court entering an order that establishes a Guardianship for an individual who will be served by

the contractor's Local PGP include the tradename of the Local PGP. The court issued qualification document should also include the tradename of the Local PGP. This requirement does not apply to appointment orders entered before July 1, 2021, which is the date the PGP Contract provision requiring the use of a tradename was established. DARS recognizes that the PGP Contractor cannot guarantee a court's cooperation with its request to use the Local PGP's tradename.

Best Practice Recommendation: To encourage the use of the PGP Contractor's tradename for the Local PGP in guardianship appointment orders and court qualification papers, DARS recommends the PGP Contractor send a written request to both petitioner's counsel and to the GAL in any Guardianship proceeding asking that the tradename be the name that appears in the order of appointment, and if necessary, respectfully making the same request to the judge during the court proceeding.

- Any document by signed by an employee of the PGP Contractor in its capacity as the Guardian for Public Clients must use the tradename, regardless of when the Guardianship was established, or whether the Virginia circuit court establishing the Guardianship has included the Local PGP's tradename in the order creating the Guardianship or the related qualification certificate.

5.2.3 Avoid Misrepresentation (PGP Contract §3.1.4.)

When a PGP Contractor operates a Local PGP and also provides guardianship services outside of the Program, it is easy for third-party service providers and other members of the public to assume that all guardianships maintained by the PGP Contractor are Public Guardianships. PGP Contractors should make every effort to avoid confusion and clarify the situation; consequently the PGP Contract provides that unless a person served by the PGP Contractor is actually a Public Client, the PGP Contractor will not represent that the guardianship services it is providing are Public Guardianship Services or that the PGP Contractor is the person's Public Guardian.

Best Practice Recommendations: DARS recommends that to help avoid confusion as to whether Guardianship clients are being served as Public Clients through the Local PGP, or are being served privately through another program operated by the PGP Contractor, the PGP Contractor consider registering a tradename for its private Guardianship program. Additionally, the PGP Contractor should review its website and written materials available to the public to ensure that a distinction is made between its Public Guardianship Services provided through the Local PGP and its other Guardianship programs.

DARS also recommends that Direct Service Staff Members frequently remind third-party service providers for Public Clients, and when appropriate, its Public Clients, that the Public Client is being served as part of the Virginia Public Guardian and Conservator Program. The reminder could be a letter sent periodically (e.g., annually or when the third-party service provider begins working with the Public Client), that explains the PGP Contractor's role as the Public Guardian using the tradename for the PGP Contractor's Local PGP and a reference to the Program website maintained by DARS.

CHAPTER 6 Client Care

6.1 GENERAL

The Program does not place DARS in status of Guardian for any Public Client. The Guardian, the entity with a fiduciary obligation to the incapacitated person under Guardianship, is the PGP Contractor named in the court order of appointment, acting through its Local PGP, whose registered tradename will ideally be included in the order of appointment.

The PGP Contractor will perform its work as Guardian for its Public Clients through employees assigned to its Local PGP operations. The Guardian Representatives assigned to the Local PGP will have the primary role of interacting with Public Clients, overseeing their care, and making decisions on their behalf. They will do this as “agents” of their employer, the PGP Contractor. No individual working for the PGP Contractor should be named in the court order creating the guardianship as the Guardian for any Public Client.

The PGP Contractor is responsible for the acts of its employees.

Even though it is not the Guardian, DARS has specified certain minimum requirements with respect to the care of Public Clients and the records related to Public Clients. These appear in the [Program Regulations](#), the PGP Contract, and PGP Policies and Procedures. Additional expectations and requirements appear in the [PGP Authorizing Statute](#) and the [Guardian/Conservator Statute](#).

The remainder of this Chapter discusses the minimum requirements for the provision of Public Guardianship Services to Public Clients. The PGP Contractor may choose to do more than is required. The PGP Contractor is the Guardian.

6.2 AROUND THE CLOCK AVAILABILITY

The PGP Contractor shall ensure that staffing and procedures are in place at all times to respond to the needs of Public Clients. This means 24 hours per day, 365 days per year. The PGP Contractor has discretion as to how to provide access outside of normal business hours. There is no requirement that Public Clients have 24 hour access to the particular Guardian Representative who is primarily responsible for their case, but staff of

the Local PGP must **always** be available to provide assistance to Public Clients and their third-party service providers. (PGP Contract § 3.1.3.)

6.3 **CLIENT RECORD REQUIREMENTS**

6.3.1 **Content.** ([22VAC30-70-50.B](#) and PGP Contract § 3.7)

The Public Guardian must maintain an accurate and complete client record for each Public Client. Here is a list of the documents that Public Guardians are required to include in each Public Client's file as a part of the person's client record:

- A current, completed Uniform Assessment Instrument (“**UAI**”), or a similar assessment document approved by DARS (each a “**Client Assessment**”). (See 22VAC30-70-50.B.)
- A current, completed Guardian Care Plan prepared by Local PGP staff using DARS’ **Guardian Care Plan Form** that identifies client needs and the Local PGP staff’s plan for addressing such needs (a “**Guardian Care Plan**”). (See 22VAC30-70-50.B.)
- A current, completed Values History Survey prepared by Local PGP staff using DARS’ **Values History Survey Form** describing the preferences, values, and wishes of the Public Client with respect to specified topics (“**Values History Survey**”). (22VAC30-70-50.B.)
- All court petitions and court orders related to the incapacity and Guardianship proceeding of the Public Client, as well as the Guardian’s qualification certificate provided by the clerk of court (collectively, the “**Required Court Documents**”). (22VAC30-70-50.B.)
- Progress notes documenting (i) the date of each visit the Public Client receives from an employee or volunteer of the PGP Contractor summarizing the details of each visit, and (ii) all material telephone calls made to, or on behalf of the Public Client, or with respect to the Public Client’s care by staff of the PGP Contractor (“**Progress Notes**”).(PGP Contract § 3.5.2.)
- The most recent report of the Guardian filed by the PGP Contractor with a local office of the Department of Social Services (“**DSS**”) with respect to the Public Client as required by [COV § 64.2-2020](#) (the “**Required DSS Report**”)(Virginia circuit court form [CC-1644](#)). (22VAC30-70-50.B.)
- The inventory and most recent accounting filed by the PGP Contractor in its capacity as a Public Conservator with respect to the assets and income of the Public Client required by [COV § 64.2-1305](#) (the “**Required COA Documents**”)(Virginia circuit court forms [CC-1671 \(Inventory\)](#) & [CC-1682](#)). (22VAC30-70-50.B.)

- A copy of records/minutes of the Local PGP's multidisciplinary panel related to the panel's initial determination of the Public Client's eligibility for Public Guardianship Services through the Local PGP. If the person has been a Public Client for a year or more, the record/minutes of the multidisciplinary panel related to the Public Clients' annual reviews to determine continued eligibility for Public Guardianship Services also must be included the individual's client record. (PGP Contract § 3.7.)
- Other records as necessary or proper to perform Public Guardianship Services for the Public Client, including but not limited to third-party care plans, end-of-life decisional documents, advance directives, Do Not Resuscitate Orders ("**DNR**"), living wills, funeral contracts, financial reports submitted by the representative payee; and residential leases and housing agreements. (PGP Contract § 3.7.)

6.3.1.1 The Client Assessment

For Public Guardians, the Client Assessment is a standardized measure, prepared by the Public Guardian, or in some cases by a third-party service provider, that can help the Guardian understand a Public Client's needs and provide a foundation for development of the Guardian Care Plan. If prepared by a third-party service provider, the assessment also provides a window on how that provider views the Public Client.

The Program Regulations require that every Public Client's file include a current Client Assessment. This may be a UAI, or a similar assessment document approved DARS. DARS will accept any of the following as an alternative to the UAI:

- For Public Clients who live in a nursing facility licensed by the Virginia Department of Health, a current comprehensive minimum data set (MDS) completed by the staff of the nursing facility.
- For Public Clients diagnosed with an intellectual disability or other developmental disability who are receiving Medicaid waiver services, a Supports Intensity Scale (SIS), coupled with a current Virginia Individual Developmental Disability Eligibility Survey (VIDES), prepared by, or through, the community services board ("**CSB**") providing support coordination services to the Public Client.
- For Public Clients with an intellectual disability or other developmental disability who reside in an intermediate care facility (ICF), a current comprehensive functional assessment (CFA) completed by the staff of the ICF where the person resides.

- A PGP assessment instrument prepared by staff of the PGP Contractor using the DARS' PGP Assessment Form.

A **current** Client Assessment must be included in each Public Client's client record. A Client Assessment will be considered by DARS to be "current" if it is not more than 12 months old, except in the case of a SIS, which will be considered current if it is not more than 36 months old. Interim updates that are only partial versions of an Assessment Instrument may be included in a client record for informational purposes, but will not be considered to be the Client Assessment for the Public Client.

6.3.1.2 The Guardian Care Plan

The Guardian Care Plan is document that must be prepared for each Public Client annually on the form created by DARS. The purpose is to establish goals for the client that the Public Guardian will pursue during the following 12-month period based on a comprehensive, reflective evaluation of the Public Client's current situation and on-going needs. The Public Guardian may choose to use the Guardian Care Plan for interim goal setting, but this is not required by DARS. A Guardian Care Plan that was written during the 12 preceding months will be deemed by DARS to be current.

The Guardian Care Plan should be prepared by either (i) the Guardian Representative who is the primary Guardian Representative responsible for the Public Guardianship Services provided to the Public Client at the time the report is prepared, or (ii) a team of employees assigned to the Local PGP that includes the Public Client's primary Guardian Representative. (See Instructions on DARS' Guardian Care Plan Form.)

At the end of the year for which any particular Guardian Care Plan is written, the Guardian Representative should report on the outcomes for each goal set for that year, as well as provide information as to person-centered planning utilized during the year, focusing on the requirements of [22VAC30-70-30.F.5](#).

Many third-party service providers working with Public Clients will also prepare care plans for those clients, many of which will need to be signed by the Public Guardian. These care plans related to services provided to a Public Client by a third-party may be included in the client record.

Best Practice Recommendation: DARS recommends that Public Guardians participate in the care plan meetings held by third-party service providers for each of its Public Clients and keep a copy of material third-party care plans in the Public Client's records. The Public Guardian's signature on a third-party care plan signifies that the Public Guardian understands the care plan and consents services described there.

6.3.1.3 The Values History Survey

The Values History Survey is a document used to formally explore and record what the Public Client considers important to maintain the quality of their life, and how they would like their end-of-life care to be managed. It should be up-dated by the Public Client's primary Guardian Representative as often as necessary to reflect changes in the Public Client's values and attitudes, but at a minimum it must be reviewed and updated every three years using the Values History Survey Form created by DARS. A Values History Survey that has been created or updated within the preceding 36 months will be deemed by DARS to be current.

6.3.1.4 Required Court Documents

The Program Regulations require that each Public Client's record maintained by the Public Guardian include "all applicable court orders and petitions."

In most cases, the court documents that are in a Public Client's record will be limited to the petition initiating the legal proceeding in which the Public Guardian was appointed. However, if there have been other legal proceedings related to the Public Client's capacity or Guardianship, the relevant petition, motion, and court order also should be included in the client's record. This should be understood to mean all petitions (or motions initiating a proceeding) filed in a Virginia circuit court, and all court orders issued by a Virginia circuit court related to the person's Guardianship, even if the Guardian originally appointed was someone other than the Public Guardian.

For example, the client record should include any petition (or motion) filed (i) which resulted in the person being found to be incapacitated, (ii) to remove

the guardian and appoint a substitute guardian, (iii) to modify an existing guardianship order, and (vi) to restore the person to capacity. The client record also should include any and all court orders entered in the proceeding related to any of the foregoing petitions (or motions). These documents will be relevant to the history of the Public Client's loss of their rights to make legal decisions for themselves and may be necessary to understand the powers and authority of the Public Guardian.

The client record also must include the Qualification provided by the clerk of the circuit court for the court that appointed the Public Guardian for the individual. This is because the Qualification is evidence of the Public Guardian's appointment as guardian. [See COV § 64.2-2011.D.](#)

Note: While COV § 64.2-2011.D indicates that providing a Qualification from the clerk of court should be sufficient for a third-party seeking evidence of the Public Guardian's authority, DARS leaves the decision of whether to share the appointment order itself to the discretion of the Public Guardian. Generally, a Guardianship order is public information and can readily be obtained from the court that issued the order, but the order may include very personal information related to the Public Client that is not relevant to the third-party's need for information.

Best Practice Recommendation: DARS recommends that Public Guardians obtain and keep any report of a guardian *ad litem* included in court records related to the Public Client's guardianship. The report of the guardian *ad litem* may include useful information about the person's circumstances and aid the Public Guardian in understanding the court's order.

6.3.1.5 Progress Notes

Since July 1, 2021, the PGP Contract has required that the client record for each Public Client include Progress Notes with respect to visits made by the Public Guardian and other information related to the Public Client's care. These notes are important not just as a means of documenting visits, but as a means of conveying critical information regarding the Public Client so that other Local PGP staff members can understand the client's history, needs, and status should the client's primary Guardian Representative not be available. They also are critical for supervisory staff at the Local PGP and for DARS to understand the Public Client's circumstances. Finally, they provide a place to document the reasons why particular decisions were made and the due diligence undertaken by the Guardian Representative in making those decisions. Local PGPs should ensure that all of its Guardian Representatives understand how to write an informative Progress Note.

Best Practice Recommendation: Every Progress Note documenting a visit by a PGP staff member should be written by the person who made the visit and should include:

- The name of the individual who made the visit;
- The date of the visit and the date of the note (if different);
- Whether the visit was announced or unannounced;
- The length of the visit;
- A description of the client as they were during the visit;
- A summary of the conversation with the client;
- A list of all staff members working for the applicable service provider who the Guardian Representative met with during the visit to discuss the Public Client and a summary of each conversation;
- A list of any client records reviewed by the Guardian Representative; and
- A list of any items that the Guardian Representative intends to follow-up on as a result of the visit.

The Local PGP may consider requiring each visit to be documented with a date-stamped photograph of the client. Although the photographs are not shared with any third-party other than DARS, they have historically been useful in assuring third-parties that Public Guardian visits have been made.

6.3.2 Creating the Client Record; New Public Clients

For new Public Clients, a client file must be created within **60 days** of the court order appointing the PGP Contractor as Guardian that includes the following:

- A current Client Assessment;
- A Guardian Care Plan;
- A Values History Survey;
- All court petitions, court orders, and Guardian qualification documents related to the Public Client's incapacity and court proceedings related to the Guardianship (see § 6.3.1.4 above);
- All other documents required to be included in the client records for Public Clients to the extent they are reasonably available to the Public Guardian during the 60-day period (e.g., Progress Notes for visits made to the client since the entry of the court order, as well as any other documents and records that are reasonably available). ([22VAC30-70-50.B](#) and PGP Contract § 3.7.)

6.3.3 Maintenance and Retention of Client Records ([22VAC30-70-50.A](#))

Every Public Client's client record should be accurate, complete, and stored safely. It should be kept confidential. Generally, only the Public Guardian and members of its staff should have access to information in client records, although DARS recognizes that the Public Guardian, in its discretion, may determine that some information included in a client record needs to be shared with others from time-to-time in order to obtain services for the Public Client or ensure that the client's needs are met. In addition, records may be released at the direction of a court, a governmental agency, or pursuant to state or federal law.

Client records must be maintained for five years following the earlier of (i) the date on which a Public Client dies, or (ii) the PGP Contractor is removed as the person's Public Guardian.

A Public Client's client record is likely to include old, outdated versions of the required documents. Such documents may be removed from a Public Client's current working file and stored in a safe, accessible location. It is recommended that a Public Client's working client file only include the current version of documents required to be included, or documents that are relevant to the Public Client's then current situation (e.g., a lease that is effect for the Public Client's residential placement). Progress Notes for the period covered by the most recently filed Required DSS Report should always appear in the Public Client's current

working file, as well as Progress Notes prepared after the close of the reporting period covered by that report.

No provision of the PGP Regulations or the PGP Contract prevents Public Guardians from storing client records electronically; *however*, DARS must be given access to electronic client records upon request. The PGP Contract gives DARS the right to periodically monitor PGP Contractors to ensure compliance with the terms and conditions of the PGP Contract. All records of the PGP Contractor related to its Local PGP operations must be available to DARS for monitoring during normal business hours, including client records. (PGP Contract § 5.1.)

6.4 CLIENT VISITS

6.4.1 Required Visits and Contacts

Every Public Client must receive at least one in-person, face-to-face visit from the Public Guardian every calendar month. ([22VAC30-70-30.F.2](#); also see the definition of “face-to-face” in [22VAC30-70-10](#).) A core strength of the Program is the relationship that develops between a Public Client and their Guardian Representative. Consequently, every effort should be made to ensure that such visits are made by the client’s primary Guardian Representative. (PGP Contract § 3.5.4.)

Best Practice Recommendation: If someone other than the Public Client’s primary Guardian Representative is visiting with the client on behalf of the Public Guardian at a required monthly visit or otherwise, that fact should be noted in a Progress Note included in the client record. A volunteer with the Local PGP may visit Public Clients but those visits may not count as a required monthly visit.

There may be reasons **beyond the control of the Public Guardian** for not visiting a Public Client. For example, a residential facility may be temporarily closed to visitors or the Public Client may be ill with a serious, contagious disease that requires the Public Client to be quarantined from others. The first solution is for the Guardian Representative to just try again on a different day that month. If that is not possible, the Guardian Representative should try an alternative electronic visitation method, such as virtual visit, a telephone conversation, or if all else fails, a conversation with the Public Client’s residential provider or other third-party caregiver who is able to be physically present with the Public Client. (These

alternatives are listed in declining order of preference.) For any visit with a Public Client that is not an in-person, face-to-face visit, DARS expects that the type of visit will be noted in the Progress Note recording the visit. In the event of a community crisis, like a public health crisis, DARS may temporarily modify the monthly visitation requirement.

Similarly, if a Public Client does not receive any kind of visit at all from the Public Guardian during any calendar month, the reason for the Public Guardian's failure to make the visit must be included in the Progress Notes included in the client record. The Public Guardian's failure to satisfy the monthly in-person, face-to-face visitation requirement because of circumstances which could have been avoided with better planning on the part of the Guardian Representative may be noted as a short-coming in an auditing report prepared by the DARS. (PGP Contract § 3.5.4.)

Best Practice Recommendations: Guardian Representatives should periodically make **unannounced** visits with every Public Client in order to observe the care the client is receiving when the third-party service provider is not expecting the Guardian Representative.

For Public Clients who attend day-support services, the Guardian Representative should **vary the setting of the visitation** so they can observe the client at day-support and at home. For Public Clients who are receiving additional services (e.g., mental health skill building or behavioral support services), the Guardian Representative should try to time some visits so they are able to meet the third-party service provider and observe the provider's interaction with the client.

6.4.2 What to Look for During Client Visits

Monthly visits are not just a time to observe and interact with the Public Client; they provide an opportunity to check the client's records with the third-party service provider and to discuss any recent changes and needs that have been identified. The visits also give Guardian Representatives a chance to remind the third-party service provider of the Guardian's role and answer any questions the provider may have with respect to the Public Client or the role of the Guardian (being mindful not to breach confidentiality). Developing a relationship with the individuals who are

providing care to Public Clients is an important part of a Guardian Representative's job.

During client visits, it is a good idea for the Guardian Representative to try to assess the Public Client's situation within the following five spheres: Physical; Psychological; Social; Environmental; and Financial.

For example:

- Physical:** What is the client's physical condition? Does it appear from observation of the client, or their records, that there has been a change? Have new medications been prescribed? Has the client seen a doctor? How does the client look? Are they clean and well-groomed? Does it appear that they are being well-cared for?
- Psychological:** How is the client's state-of-mind? Have there been any recent changes? Has the client had any behavioral incidents? Has the client seen or worked with a therapist or a behavioral consultant during the month?
- Social:** Is the client interacting with others? Have they had visitors? Are they participating in social or recreational activities? Are they interested in participating any new activities? Have there been any significant conflicts between the client and staff or the client and other residents of the facility (or participants if the client is being seen at day support)?
- Environmental:** Is the client's room clean? Do they have clean clothing? If the client lives in the community, does the client have sufficient food and are their utilities working? If they live in a facility, are they being fed? Is their mattress in good shape? Are they safe in the environment?
- Financial:** How much money is available in the client's personal account? How has their money been spent over the course of the month? Do they need any items to be purchased and is there money to make necessary purchases? What is the status of their public assistance benefits?

Note: The foregoing are suggestions, not requirements. It is up to the Public Client's Guardian to set the standards for how visits should be conducted. DARS has developed a suggested **Visitation Checklist Form**. The form is offered as resource, not as a mandatory tool. If used, the form could also serve as a Progress Note for client visits. Please refer back to the discussion of Progress Notes that appears in § 6.3.1.5 above.

6.5 PERSON-CENTERED PRACTICE

The Guardian/Conservator Statute requires all Guardians requires to take a person-centered centered approach to decision-making. [COV § 64.2.-2019.E](#) provides that Guardians “shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.”

This emphasis on respecting individuality of the person under Guardianship is reflected in the Program Regulations. ([See 22VAC30-70-30.F.3 – F.5](#)) These regulations instruct that Public Guardians are to encourage their Public Clients to participate in decisions, act on their own behalf, and develop or regain capacity to manage their own personal affairs to the extent feasible. ([22VAC30-70-30.F.3.](#)) In addition, the Program Regulations state that person-centered planning should be used to make decisions in accordance with the a Public Client's expressed desires, needs, and personal values and that Public Clients should be empowered and supported in defining the direction for their own lives and their involvement in the community. ([22VAC30-70-30.F.4](#)) The Values History Survey prepared and maintained for each Public Client is an important tool to help Guardian Representatives take a person-centered approach.

With respect to decisions made on behalf of Public Clients, Program Regulations require Public Guardians to use person-centered tools to the maximum extent feasible. [22VAC 30-70-30.F.5.](#)) These include:

- Involving people chosen by the client;
- Providing information and support to the client that enables the client to direct the process and make informed decisions;
- Making decisions that reflect the client's cultural values; and

- Offering the client choices regarding the services they will receive and who the service provider will be.

In addition, planning meetings should be scheduled for times and locations that make it convenient for the client to attend. For Public Clients who are receiving case management services (*i.e.*, support coordination services) licensed or funded by The Virginia Department of Behavioral Health and Developmental Services (“**DBHDS**”), the Guardian Representative should strive for participation and collaboration among the Public Client, the Public Guardian, the case managers and support coordinators, and service providers to meet the client’s planning goals.

Best Practice Recommendation: It is a good idea to document in each Public Client’s client record specific instances in which person-centered planning processes are used and situations in which the Public Guardian defers to the Public Client’s choices. The Guardian Care Plan includes a section for Guardian Representatives to explain how person-centered planning and practices were used during the year. For example, the care plan could say that the client attended and participated in every quarterly planning meeting with the CSB or their residential provider, or designate specific meetings in which the client participated. It could describe a specific situation in which the client chose the day support program they attend, or could describe a situation in which a particular service was terminated because the client did not wish to participate. It’s unlikely that all incidents of person-centeredness will be documented and flagged as such in the client’s record. The documentation of person-centered practices in the Guardian Care Plan is intended to be representative, not all encompassing. It is an opportunity.

CAUTION: The Guardian/Conservator Statute and Program Regulations use the phrase “**to the extent feasible**” when discussing person-centered practices. This is a cautionary flag. Public Clients are individuals who have been found by a Virginia circuit court to be so incapable of making decisions that a Guardian has been appointed to make decisions for them. The court has given the Guardian the responsibility and the fiduciary duty to make decisions for the incapacitated person. At the same time, an incapacitated person’s ability to make decisions for themselves can vary depending on the context and the decision to be made. Guardian Representatives are tasked with the difficult job of determining when a legally-incapacitated person should be allowed to make a decision for himself. Ultimately, a decision by a Guardian Representative to allow a Public Client to make any particular decision is the responsibility of the Public Guardian because it is the Guardian Representative who has decided it is appropriate to defer to the incapacitated

client. If a Guardian Representative finds that a Public Client is capable of making most of their own personal care decisions, the Guardian Representative should talk with the Guardian Representative's supervisor about the possibility of initiating a legal proceeding to have the Public Client restored to capacity.

Note: For individuals who are restored to capacity, tools may be available to help the person with decision-making; for example, a representative payee; a medical power-of-attorney; a durable power-of-attorney; or a supported decision-making agreement. (See "[Options in Virginia to Help Another Person Make Decisions](#)," available through the Virginia Supreme Court.)

6.6 **LIMITATIONS ON A PUBLIC GUARDIAN'S AUTHORITY**

The powers and duties of a Guardian are defined by the court that creates the Guardianship and appoints the Guardian. ([COV § 64.2-2009.A.](#)) A Public Guardian **does not have authority** to make decisions that are beyond the scope of the authority granted by the court in the Guardianship order. (See the basic powers of a guardian in the definition of "guardian" that appears in [COV § 64.2-2000](#). These powers may be limited or described in more detail by the court in its written order.)

Some Guardianship orders may be limited, giving the Guardian the authority to make only certain types of decisions on behalf of an incapacitated person. For example, an order may give a Guardian the authority to make **only** decisions about what kind of medical treatment the incapacitated person receives, or to arrange a residential placement for the incapacitated person. Similarly, a Guardianship order might specifically identify decisions that a Guardian may not make.

For each Public Client, the Public Guardian must read and understand the provisions of the Guardianship order that discuss the Guardian's power and authority, as well as any orders issued by the court modifying those powers.

The Virginia Code imposes limitations on some specific types of decisions that a Guardian might be asked to make on behalf an incapacitated person. A guardian cannot unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship. ([COV § 64.2-2019.E.](#)) Any restriction that is imposed must be reported on the Required DSS Report prepared for the incapacitated person. ([COV § 64.2-2020.B.7.](#))

Best Practice Recommendation: If a Public Guardian restricts a Public Client's communication or contact with a person the Public Client has an established relationship with, the Progress Notes should explain the reasons why, specifically describe the problematic events that led to the restrictions, document any interim steps that were taken to avoid the restriction, and include a copy of the notice of the restriction provided to the residential provider and the restricted person.

In addition, the COV prohibits a Guardian from making some types of decisions without specific direction from the court. These are discussed in §§ 6.6.1 – 6.6.4 below:

6.6.1 Authority over Matters Covered by Advanced Medical Directive or Durable Power of Attorney ([COV § 64.2-2019.B](#))

Advanced medical directives and durable powers of attorney are documents created by an individual with capacity that authorize another person or persons to make specific decisions for the individual. (See [COV § 54.1-2983](#) & COV § 64.2-1600 *et seq.*) They are meant to survive and continue if the individual becomes incapacitated.

A Guardian's authority does not extend to matters covered by an existing advanced medical directive or a durable power of attorney. The person or persons named as the decision-makers in those documents have the authority to make the specified decisions.

A Guardian may ask for court authorization to revoke, suspend, or modify a durable power of attorney, or to remove the agent specified under an advanced medical directive. Note that even if the court agrees to remove the agent named in an advanced medical directive signed before the individual under Guardianship became incapacitated, the directives that the individual included in the advanced medical directive to guide the agent regarding specific medical procedures and treatments, including directives to refuse treatments or procedures, remain in effect and cannot be modified. The Guardian must defer to those directives.

6.6.2 Authority to Consent to In-Patient Psychiatric Treatment

The provisions of the COV regarding a Guardian's authority to consent to voluntary in-patient psychiatric treatment for a person under guardianship are complex. The information below describes DARS' understanding of those provisions, *but a Public*

Guardian may want to seek the advice of an attorney before consenting to a voluntary admission of a Public Client for in-patient psychiatric treatment.

A Guardian may not consent to a voluntary admission of an individual under Guardianship to a state mental health institute or other licensed facility for psychiatric treatment **unless certain conditions are met**. These are:

- The court order creating the Guardianship must grant the Guardian the authority to consent to such an admission; ([COV § 37.2-805.1.B](#); [COV § 64.2-2009.C](#))
- The person under Guardianship must have been examined by a physician selected by the proposed admitting facility and be found to be mentally ill, in need of treatment, and incapable of making an informed decision regarding admission; ([COV § 37.2-805.1.B](#)) and
- The proposed admitting facility is willing to admit the person under Guardianship for treatment. ([COV § 37.2-805.1.B](#))

If the proposed facility is a state hospital, the person under Guardianship also must be examined by a CSB as part of the admission process. ([COV § 37.2-805.1.B](#))

[COV § 64.2-2009.C](#) provides that a court can grant a Guardian the power to consent to a voluntary psychiatric admission as part of the Guardianship if the court makes the following three findings:

1. The allegedly incapacitated person has a severe and persistent mental illness that significantly impairs the person's capacity to exercise judgement or self-control. This must be confirmed by an evaluation of the allegedly incapacitated person **prepared by a licensed psychiatrist**.
2. The incapacitated person's mental health condition is unlikely to improve in the foreseeable future.
3. The proposed Guardian has developed a plan for providing treatment for the incapacitated person's mental illness in the least restrictive setting suitable for the condition.

The restrictions in the COV governing a Guardian's authority to consent to in-patient psychiatric treatment do not restrict a Guardian's authority to consent to psychotropic medications or out-patient treatment; however, such authority of the Guardian may be limited by the court order appointing the Guardian, or in a subsequent order.

The PGP Contractor must develop a written policy reflecting the COV restrictions on a Guardian's power to consent to in-patient psychiatric treatment, and also the

extent of the Public Guardian's authority to consent to other types of psychiatric treatment, including medications. (PGP Contract § 3.10.1.)

Best Practice Recommendation: If a new client's history of psychiatric treatment causes the Local PGP to believe that it occasionally may be in the client's best interest for the Public Guardian to consent to voluntary in-patient psychiatric treatment, the Local PGP should discuss its concerns with the petitioner's attorney and the GAL serving in the circuit court case to establish guardianship. The Local PGP should be familiar with the requirements of COV § 64.2-2009.C and COV § 37.2-805.1, and be prepared to discuss those provisions with the petitioner's attorney and the GAL for the allegedly incapacitated respondent.

6.6.3 Authority to Consent to Sterilization

A Public Guardian does not have the authority to consent to, or authorize, a sterilization procedure for a Public Client, except when specific authority has been given to the Public Guardian in a proceeding before a Virginia circuit court. ([COV 51.5-151, 4th paragraph](#)) A Public Guardian should not consent to any medical procedure that is expected to permanently render a Public Client infertile unless granted specific authority to consent to such medical procedure by the circuit court.

The PGP Contractor must develop a written policy reflecting the COV restrictions on a Public Guardian's power to consent to, or otherwise authorize, a sterilization procedure. (PGP Contract § 3.10.1.)

6.6.4 Other Decisions Requiring Court Consent ([COV § 64.2-2019.D.](#))

A Guardian must get court authorization before agreeing to any of the following:

- A move that would change a person under Guardianship's residence to a different state;
- A change in the person under Guardianship's marital status; or
- Any termination of a person under Guardianship's parental rights.

6.7 END-OF-LIFE DECISIONS

Program regulations give particular emphasis to the importance of using a person-centered approach when making end-of-life decisions (or to endorse health care interventions instead) on behalf of Public Clients. For example, the decision of whether to consent to palliative care rather than potentially curative medical treatment or authorizing potentially life-saving medical interventions rather than signing a DNR. PGP Contractors are required to prepare written procedures and standards to ensure those decisions are made in accordance with (i) the expressed desires and personal values of the Public Client to the extent known, or (ii) a formal, written ethical decision-making procedure if client's wishes are not known. ([22VAC30-70-30.F.7.](#))

A Public Guardian may not make end-of-life decisions that would violate a Public Client's wishes set forth in an advanced medical directive written before the client became incapacitated. (See § 6.6.1 above.)

Best Practice Recommendations: It is strongly recommended that no Guardian Representative make end-of-life decisions or consent to alternative medical-interventions alone. Such decisions should, at a minimum, be made in consultation with senior staff of the PGP Contractor. Every aspect of the Public Guardian's due diligence undertaken in making these decisions for a Public Client should be carefully documented in the client's file.

It is further recommended that the PGP Contractor's end-of-life decision-making procedures require that before a Public Guardian consents to palliative rather than curative treatment, or to a DNR, the Public Guardian will consult with the physician(s) treating the client and other physicians whom the PGP Contractor believes can offer an informed second opinion, if appropriate, and also consult client's Values History Survey and any advanced medical directives made by the client. The PGP Contractor's end-of-life decision-making procedures should also cover the process for making such decisions, as well as other items that the PGP Contractor believes are necessary.

6.8 DEATH OF A PUBLIC CLIENT

6.8.1 Notices

Guardianship ends at death, however, when a Public Client dies, the Public Guardian needs to:

- Notify DARS using DARS' **Removal Notification Form**.
- File a final Required DSS Report in which it reports the client's death.
- If serving as the Public Conservator, all Required COA Documents required to finalize the Public Conservatorship.
- Notify the client's known relatives of the death.

If the death appears to be the result of abuse, neglect, suicide or criminal activity, DARS' PGP staff should be informed as soon as possible by telephone or text message. The Public Guardian must provide this notice within four hours of learning of the Public Client's death. This telephonic notice should be followed by delivery of a completed Removal Notification Form to DARS on the business day following the death.

Deaths not resulting from the foregoing unusual circumstances must be reported to DARS within 72 hours of the Public Client's death.

6.8.2 Making Funeral Arrangements

A Public Guardian is one of a group of people that may, but is not required to, assume responsibility for the body of a deceased client. (See [COV § 32.1-309.1.B.](#))

A Public Guardian may make final arrangements for a deceased client as long as:

- To the knowledge of the Public Guardian, the deceased client had not before death designated someone else to make those arrangements under [COV § 54.1-2825](#).
- The deceased client's next of kin either cannot be located after a good faith effort, or the client's next of kin do not wish to make the arrangements. To demonstrate that it has made a good faith effort to notify the deceased client's next of kin, the Public Guardian must notify the family members, if any, named in the petition to establish the Guardianship. ([COV § 64.2-2019.F](#) and [COV § 55.1-151, 3rd paragraph.](#))

Best Practice Recommendation: "Next of kin" is defined in [COV § 54.1-2800](#) as any of the following relatives of the deceased person: legal spouse; adult child; adult parent, adult

sibling; grandparent, adult aunt or uncle, or any other adult blood relative. In addition, [COV § 32.1-309.1.B](#) states that any other adult who can identify the person's remains and is willing to pay for the arrangements may assume responsibility for disposition of the deceased person's body. Consequently, before making funeral arrangements for a deceased Public Client the Public Guardian also should reach out to other known family members and perhaps even friends of the deceased to make sure they do not want to take responsibility for the arrangements. The Public Guardian should keep a record of its communications with family and friends regarding the question of who will make the funeral arrangements.

Some residential providers will take the position that the Guardian is **required** to make the arrangements for handling the body of its deceased client. This is not correct. If the Public Guardian chooses not to take responsibility for making the post-death arrangements, the Public Guardian may refer the residential provider to [COV §§ 32.1-309.1 through 309.5](#), which govern the disposition of dead human bodies.

6.9 REMOVAL OF A PUBLIC CLIENT FOR A REASON OTHER THAN DEATH

A Public Client may be removed from a Local PGP's program for a variety of reasons other than the client's death, all of which will be by court order. For example, the person may be restored to capacity or the PGP may be removed by the court from the role of Guardian, even though the person continues to be designated as an "incapacitated person." Typically, this would occur when a substitute Guardian is appointed in lieu of the PGP Contractor. Any removal of a Public Client from the Local PGP's program should be reported to DARS using the Removal Notification Form.

CHAPTER 7 New Referrals and Waitlists

7.1 GENERAL

7.1.1 Types of Slots; Eligibility Categories

Program slots (“**Slots**”) are divided among four eligibility categories specified by the Virginia General Assembly. These are:

- **DBHDS-ID/DD** – For adults referred to DARS by DBHDS who have an intellectual or another developmental disability and need Public Guardianship Services (“**DBHDS-ID/DD Slots**”);
- **DBHDS-MI** – For adults referred to DARS by DBHDS who have a mental illness and need Public Guardianship Services. To date, these Slots have been used exclusively for individuals receiving treatment at state hospitals generally in anticipation of discharge (“**DBHDS-MI Slots**”). Note that in the PGP Contract these are referred to “DBHDS-MH Slots”;
- **MI/ID** – For adults diagnosed with a serious chronic or recurring mental illness, or an intellectual disability, or both (“**MI/ID Slots**”); and
- **Unrestricted** – For adults who meet the statutory criteria for Public Guardianship Services regardless of the diagnosis or circumstances underlying their incapacity or the referral source. For example, individuals incapacitated by dementia, a brain injury resulting from an accident or a stroke, or serious and persistent mental illness, or individuals with an intellectual or developmental disability who are not eligible for a DBHDS-ID/DD Slot (“**Unrestricted Slots**”).

Every Local PGP has Unrestricted Slots, but not every Local PGP has been given Slots in the other eligibility categories. The number of Slots that each Local PGP is given funding to serve in the respective eligibility categories is specified in the PGP Contract between DARS and the PGP Contractor. Because the demand for Public Guardianship Services exceeds the Public Clients a Local PGP may serve, there will often be a waitlist for those Slots (“**Waitlist**”). Waitlists are organized by Slot eligibility categories.

The Waitlists for Unrestricted Slots and MI/ID Slots are maintained locally by the Local PGP. New referrals and the Waitlists for Unrestricted Slots and MI/ID Slots must be managed in accordance with Attachment D of the PGP Contract.

The Waitlists for DBHDS-ID/DD Slots are maintained centrally by DBHDS. No Local PGP should maintain a Waitlist for the DBHDS-ID/D or DBHDS-MI Slots covered by the related PGP Contract. New referrals for DBHDS-ID and DBHDS-MI Slots must be managed in accordance with Attachment D of the PGP Contract.

7.1.2 Designated Service Area (PGP Contract § 3.3)

Each PGP Contractor agrees in its PGP Contract to serve a Designated Service Area identified in the contract. As a general rule, Local PGPs may only accept new referrals for individuals who either (i) reside in the applicable Designated Service Area, (ii) are subject to a discharge or transition plan from a residential or treatment facility that has identified a residential placement for the referred individual located within the applicable Designated Service Area, or (iii) are otherwise expected to reside within the Designated Service Area at the time the order of guardianship is entered by a Virginia circuit court. This helps to ensure that the individuals who reside within a particular Designated Service Area have access to the Program Slots assigned to the PGP Contractor who has agreed to serve the area. In exceptional circumstances and only with DARS written consent, a Local PGP may consider a referral for an individual who resides outside of the PGP Contractor's Designated Service Area.

The foregoing rule does not mean that a Public Client can never move to a residence outside of the Public Guardian's Designated Services Area. The choice of where a Public Client lives once the order of Guardianship is entered is the Public Guardian's decision, subject to authority given to the Guardian by the court. If, however, a Public Client is moved to a residential placement that is outside of the Designated Services Area, the PGP Contractor must continue to serve as the client's Public Guardian and fully comply with all of its obligations as a Public Guardian until it is removed from that role by a Virginia circuit court.

The rule is different for referrals for DBHDS-MI slots. If the PGP Contractor receives funding to serve Public Clients in DBHDS-MI slots, the PGP Contractor may accept referrals for those slots regardless of where the referred individual is receiving treatment or is expected to live following discharge. PGP Contractors who have these Slots and DARS will work cooperatively to develop appropriate guidelines.

7.1.3 **Consideration of Referred Individuals for Open Slots**

Before a Local PGP may offer any person an open Slot for Public Guardianship Services, the person must be reviewed and recommended for acceptance by the Local PGP's multidisciplinary panel (the "**MDP**"). The remainder of this Chapter discusses how referrals received by the Local PGP should be handled prior to being considered by the MDP. Chapter 8 discusses the MDP and how referrals should be managed once an individual is being considered for an open Slot.

7.2 **UNRESTRICTED SLOTS; THE WAITLIST AND REFERRALS**

7.2.1 **Program Director's Review of New Referrals** (PGP Contract, Attachment D § II.A)

When a Local PGP receives a substantially completed PGP referral using DARS' **PGP Referral Form** for a person not eligible for a DBHDS-ID/DD or DBHDS-MI Slot, the Program Director will review the referral before adding the person to the Unrestricted Waitlist to look for factors that obviously would disqualify the referred individual for Public Guardianship Services. The referral also should be reviewed to ensure that the referred individual lives within the Local PGP's Designated Service Area, is subject to a discharge or transition plan from a residential or treatment facility that has identified a residential placement for the referred individual located within the applicable Designated Service Area, or is otherwise expected to reside within the Designated Service Area at the time the order of guardianship is entered by a Virginia circuit court.

- If the referral credibly indicates that the referred individual likely (a) cannot adequately care for himself, (b) is indigent, (c) does not have another proper or suitable person or entity that is willing to serve as a Guardian and (d) lives (or is expected to live) within the Local PGP's Designated Service Area, the Program Director should add the individual to the Unrestricted Waitlist. (See § 8.4.1.1 below for more information about how to understand clauses (a) – (c).)
- The Program Director may make supplemental inquiries, and may conduct pre-screening interviews with the referred individual, as needed to properly assess the referral.
- If the Program Director determines that the referred individual is ineligible for the Unrestricted Waitlist, the Program Director will:
 - Notify the referring person/entity of the referred individual's ineligibility in writing.

- Keep the referral and a written explanation of why the referred individual did not make it through the pre-screening process for five years following the date of receipt of the substantially completed referral form. (PGP Contract, Attachment D § II.A.3.)
- If there is no **obvious** disqualifying factor, the referred individual should be added to the Unrestricted Waitlist as of the date a substantially completed PGP Referral Form was received by the Local PGP for that individual. This date is important and should be clearly visible when looking at the Unrestricted Waitlist. DARS requires that the date each person is added to the Unrestricted Waitlist be specified in in the Local PGP's Quarterly Report.
 - The Program Director will notify the referring person/entity that the referred individual has been added to the Unrestricted Waitlist.
- **Ambiguities should be resolved in favor of adding the person to the Unrestricted Waitlist.**

Best Practice Recommendation: DARS recommends that Program Directors use their authority to exclude referred individuals from the MDP review process sparingly and only in the clearest cases. The MDP was given the role of screening referrals for eligibility by the PGP Authorizing Statute. Having the opinion of the MDP strengthens the validity of decisions made with respect to accepting or declining a referred individual for Public Guardianship Services with the Local PGP.

7.2.2 Referrals When There is an Existing Guardian.

The Program Director **should not** screen-out a referred person **solely** because the referred individual has an existing Guardian. Referred individuals who have an existing Guardian may be added to the Waitlist in the following circumstances:

- If the referred individual has an existing Guardian who wishes to be relieved and who is not receiving compensation or is being compensated from the referred individual's income or assets, the person may be added to the Unrestricted Waitlist if there are no other exclusionary factors (e.g., a person who is obviously not indigent could be excluded). (PGP Contract, Attachment D § II.A.1.)
- If the referred individual's existing Guardian is a local DSS office, or an employee of a local DSS office, or a private Guardian who is being paid by a

local DSS office, if there are no other exclusionary factors. (PGP Contract, Attachment D § II.A.2.)

- If the PGP Contractor is serving as the private Guardian for the referred individual, the individual may be added to the Unrestricted Waitlist **as of the date the PGP Contractor was as appointed as Guardian** by a Virginia circuit **as long as** (i) the PGP Contractor never received compensation for providing such Guardianship services, or (ii) is receiving a fee which is being paid from the referred individual's income or assets, or by a local DSS office. If the PGP Contractor provides private Guardianship services to a person and receives compensation from a source other than those identified in clause (ii), the individual **cannot** be added onto the Unrestricted Waitlist until the compensation ends and the date on which the person is added for the purposes of ordering the Unrestricted Waitlist **cannot** be earlier than the date the compensation ended. (PGP Contract, Attachment D § II.B.2.)

Program Directors should be mindful that there may be other reasons for excluding an individual who is being served by a private Guardian from the Unrestricted Waitlist. For example, the person may have significant financial resources which are clearly sufficient to pay the fees of a private Guardian, or someone else may be seeking to become the substitute Guardian for the referred individual.

7.2.3 The Order in which Individuals on the Unrestricted Waitlist will be Considered for Open Unrestricted Slots (PGP Contract, Attachment D § II.B-C)

The Unrestricted Waitlist must be organized in chronological date order based on the date each person on the list was added. (PGP Contract, Attachment D § II.B.1.) Open Unrestricted Slots should be filled from the Unrestricted Waitlist in date order with the person who has been on the list the longest considered first; **however:**

- The Local PGP may choose to pass over the person at the top of the Unrestricted Waitlist up to three times in favor of a person who is below them on the Unrestricted Waitlist.
- If the person at the top of the Unrestricted Waitlist is passed over for an open Slot three times, the next time an Unrestricted Slot is available, the MDP must consider that person for the open Unrestricted Slot. If the person is not offered the open Slot, the person must be removed from the Unrestricted Waitlist.
- **EXCEPTION:** If the PGP Contractor is already serving as Guardian for a person on the Unrestricted Waitlist, that person may never be given an

Unrestricted Slot ahead of someone who has been on the Unrestricted Waitlist longer. (PGP Contract, Attachment D § II.C.)

Note: The rule providing that the person in the top place on the Unrestricted Waitlist can be passed over three times in favor of someone else, or they must be removed only applies to the person in the top spot. The number of times a person in the number two position, or any other position, is passed over does not need to be calculated or considered.

Note: The rule that allows passing-over the person at the top of the Unrestricted Waitlist focuses on open Slots, not meetings of the MDP. For example, if two Slots are available to filled at a single meeting of the MDP and the person at the top of the Unrestricted Waitlist is not given either Slot (*i.e.*, the two Slots are offered to people who are lower down on the Unrestricted Waitlist), the person who was in the in the top Slot will have been passed over twice, even though the passing-over occurred at one MDP meeting.

7.2.4 **Managing the Unrestricted Waitlist**

Referred individuals on the Unrestricted Waitlist may be on the Waitlist for months, or even years, waiting to be offered an open Unrestricted Slot. There is no restriction in the PGP Regulations or the PGP Contract that precludes Local PGPs from requesting an updated PGP Referral Form for individuals who have been on the Unrestricted Waitlist for an extended period of time. It is expected that the information provided to the MDP when an individual is considered for an existing open Unrestricted Slot will be current.

Also, there is no restriction in the PGP Regulations or the PGP Contract that precludes the MDP from periodically reviewing the information available with respect to referred individuals to eliminate those who do not satisfy the eligibility criteria listed in [22VAC30-70-30.D.3](#) from the Unrestricted Waitlist, even if those individuals are not being considered for a currently open Unrestricted Slot. This is a way of periodically culling inappropriate referrals from the Unrestricted Waitlist. This should not be understood to mean that the MDP can preclear a referred individual months in advance for an Unrestricted Slot. Circumstances can change.

When an Unrestricted Slot becomes available, the MDP should apply the eligibility criteria of [22VAC30-70-30.D.3](#) to the then current circumstances of the individual being considered for the Slot.

7.2.5 Transfers between Local PGPs

7.2.5.1 Waitlist-to-Waitlist Transfers between Local PGPs

A Local PGP will need to transfer an individual from its Unrestricted Waitlist to that of another Local PGP when the referred individual has moved out of the first Local PGP's Designated Service Area. DARS recommends that the referred individual be added to the receiving provider's Unrestricted Waitlist with the same Waitlist date the person had on the transferring provider's Unrestricted Waitlist.

7.2.5.2 Transfers of Public Clients between Local PGPs

If a Local PGP places an existing Public Client in a residential placement that is outside of its Designated Service Area, the Local PGP may wish to transfer that Public Client to the Local PGP serving the area where the Public Client resides. This will benefit the transferring provider by reducing travel costs to see the client. It will also benefit the client by placing the Guardianship with a Local PGP that is working in the geographic area where the person resides and so is likely able to maintain more frequent in-person contact with the client.

The Local PGP that is serving as the Public Guardian may submit a PGP Referral Form to the Local PGP serving the area where the Public Client resides, asking that provider to consider becoming the substitute Guardian for the Public Client. Regardless of the eligibility category the Public Client holds with the transferring provider, the Public Client may be placed on the Unrestricted Waitlist of the receiving provider. The date the referral is received from the transferring provider is the date on which the Public Client will be added to the receiving provider's Unrestricted Waitlist. The normal priority rules outlined in § 7.2.3 above will apply. The individual who is being transferred may be considered for the next open Unrestricted Slot with the receiving provider, subject to the restriction that the person at the top of the Unrestricted Waitlist cannot be passed-over more than three times. The receiving provider is not required, however, to offer an Unrestricted Slot to the individual ahead of others on its Unrestricted Waitlist who have been

waiting longer. Also, the decision to accept the transferred individual for services is at the discretion of the receiving provider.

Any such transfer of Public Clients should be highlighted on the Quarterly Reports filed by the Local PGPs involved in the transfer to assist DARS in maintaining accurate records.

Note: DARS expects that the Local PGP seeking the transfer will initiate and pay for the legal proceeding to remove itself as Guardian and substitute another Local PGP as the substitute Guardian.

7.3 MI/ID SLOTS; THE WAITLIST AND REFERRALS (PGP Contract, Attachment D § IV.)

A Local PGP that has MI/ID Slots through its PGP Contract must maintain a separate MI/ID Waitlist for those slots. Any individual referred to the Local PGP who has a diagnosis of serious chronic or recurring mental illness, or an intellectual disability, or both, may be placed on the MI/ID Waitlist. The Local PGP shall operate the MI/ID Waitlist using the same procedures that apply to Unrestricted Slots as described in § 7.2.1 above.

7.4 DBHDS-ID/DD AND DBHDS-MI SLOTS; REFERRALS (PGP Contract, Attachment D § III.)

7.4.1 Program Director's Review of New Referrals

No Local PGP maintains a Waitlist for DBHDS-ID/DD Slots or DBHDS-MI Slots. The Waitlists for these two types of slots are maintained by DBHDS. DARS provides referrals to Local PGPs as Slots in these eligibility categories open with the Local PGP. (PGP Contract, Attachment D § III.A.) When a Local PGP receives written notification from DARS that a person has been assigned to the Local PGP for a DBHDS-ID/DD Slot or a DBHDS-MH Slot, that person shall immediately be considered to be "In-Process." (See the discussion of In-Process Status in § 8.9 below.)

When a Local PGP receives a substantially completed PGP Referral Form for a for a DBHDS-ID/DD Slot or DBHDS-MI Slot, the Program Director will review the referral to determine whether the referral should go to the MDP for consideration, not whether the person should go on a Waitlist. The Program Director will look for

factors that obviously would disqualify the referred individual for Public Guardianship Services. The referral also should be reviewed to ensure that the referred individual lives within the Local PGP's Designated Service Area, is subject to a discharge or transition plan from a residential or treatment facility that has identified a residential placement for the referred individual located within the applicable Designated Service Area, or is otherwise expected to reside within the applicable Designated Service Area at the time the order of guardianship is entered by a Virginia circuit court. (Note the exception discussed in § 7.1.1 above with respect to residency in the Designated Service Area that applies to referrals for DBHDS-MI Slots discussed in § 7.1.1 above.) (PGP Contract, Attachment D § III.B.)

- The Program Director should review the referral to determine whether the referred individual arguably (a) cannot adequately care for himself, (b) is indigent, (c) does not have another proper or suitable person or entity that is willing to serve as a Guardian and (d) lives (or is expected to live) within the Local PGP's Designated Service Area. (See § 8.4.1.1 below for more information about how to understand clauses (a) – (c).)
- The Program Director may make supplemental inquiries, and may conduct pre-screening interviews with the referred individual as needed to properly assess the referral.
- If there is no **obvious** disqualifying factor, the Program Director should submit the referred individual to the MDP for consideration for the open Slot at a meeting to be held within two weeks of the date the Program Director has received all necessary information. Ideally, this will be within one month of the date DARS transmitted the referral to the Local PGP, although delays in receiving requested information might keep the Local PGP from meeting this one-month goal. To expedite consideration of the referral, it may be MDP may process the referral through emails rather than at a formal meeting (in-person or electronic), but the process described in clause 4 of § 8.3 below will apply.
- If the Program Director determines that the referred individual is unambiguously ineligible for Public Guardianship Services through the Local PGP, the Program Director will:
 - Notify DARS (on a Removal Notification Form), the CSB that initiated the referral to DBHDS, and, in the case of DBHDS-MI referrals, the Director of Social Work at the state hospital where the referred individual is receiving treatment of referred individual's ineligibility, and
 - Keep the referral and a written explanation of why the referred individual did not make it through the pre-screening process for five

years following the date of receipt of the substantially completed referral form.

Best Practice Recommendation: DARS recommends that Program Directors use their authority to exclude referred individuals from the MDP review process sparingly and only in the clearest cases. The MDP was given the role of screening referrals for eligibility by the PGP Authorizing Statute. Having the opinion of the MDP strengthens the validity of decisions made with respect to accepting or declining a referred individual with services with the Local PGP.

7.4.2 Other Referrals for Individuals Diagnosed with ID or DD

From time-to-time, a Local PGP may receive a referral on behalf of someone who was diagnosed with an intellectual disability before age 18, or a developmental disability before they turned 22 years of age. Generally, such referrals should be directed to the CSB that is providing services to the referred individual, or if the referred individual lives in a Virginia training center, to the Training Center Community Integration Manager, for transmission to DBHDS so that the referred individual can be add the Waitlist for a DBHDS-ID/DD Slot maintained by DBHDS. DBHDS' instructions for how to submit a referral to DBHDS can be found on its website at <https://dbhds.virginia.gov/developmental-services/training-centers/>

In a few limited situations, it may be appropriate for an individual with such a diagnosis to be placed on the Local PGP's Unrestricted Waitlist. This will typically be when (i) the referred individual lives in the Designated Service Area for a Local PGP that is not been given DBHDS-ID/DD Slots in its PGP Contract, or (ii) the referred individual has an existing private Guardian who has an institutional or professional Guardian. It may also be appropriate if the individual has been diagnosed with a serious mental illness in addition to having an intellectual or developmental disability. In this case, the decision to seek an Unrestricted Slot, rather than a DBHDS-ID/DD Slot, is at the discretion of the CSB providing services to the referred individual.

DARS' directive as to how Local PGPs should respond to referrals received for individuals who were diagnosed with an intellectual disability before age 18, or a

developmental disability before they turned 22 years of age, appears in the document titled "[Referral Process for Potential Clients with an ID or DD Diagnosis](#)".

CHAPTER 8

THE MDP: PRE-ACCEPTANCE REVIEW OF REFERRALS AND ANNUAL CLIENT REVIEWS

8.1 **GENERAL** ([22VAC30-70-30.D](#))

Every Local PGP must have an MDP in place to:

- Review referrals received by the Local PGP to determine whether Public Guardianship Services through the Local PGP are appropriate for the referred individual and whether appointing a Public Guardian is the least restrictive option available to assist the referred individual, and
- Review every existing Public Client's situation annually to determine whether the appointment of a Public Guardian continues to be appropriate.

The MDP provides an important link between the Local PGP and the communities it serves. The MDP can also be a source of expertise for the Local PGP and its staff, although this is not part of the MDP's formal duties.

8.2 **MDP MEMBERSHIP** ([22VAC30-70-30.D.2](#))

The PGP Regulations require that a Local PGP's MDP include individuals from the Local PGP's Designated Service Area who represent human services agencies providing services there. The PGP Regulations recommend that the MDP include representatives from some or all of the following organizations:

- Local DSS offices, including adult protective services;
- CSBs or behavioral health authorities;
- Area agencies on aging; and
- Local health departments.

The regulations state that physicians, attorneys, administrators from nursing homes, assisted living facilities and group homes, and other community representatives also may be considered for MDP membership.

8.3 **ORGANIZATIONAL DOCUMENTS** (PGP Contract § 3.8)

Rules for how the MDP will operate must be developed collaboratively by the MDP and the applicable PGP Contractor. These may take the form of policies, guidelines, or by-laws. The PGP Contract requires that the following must be included in the MDP's governing documents:

1. The minimum number of face-to-face meetings (in-person or electronic) that will be held each year;
2. Procedures for decision-making between regularly scheduled meetings of the MDP, which shall include a requirement that all members of the MDP receive written notice of the action to be taken;
3. A requirement that the quorum for an MDP meeting shall be a majority of the MDP members;
4. A requirement that the affirmative vote of not less than a majority of the MDP's members in attendance at a meeting where a quorum is present shall be required to authorize an action or decision by the MDP. In the case of any action taken electronically without a meeting (e.g., via email), the affirmative vote of not less than a majority of all MDP members shall be required; and
5. A statement that no employee of the PGP Contractor may serve as a voting member of the MDP, although employees of the PGP Contractor may participate in MDP meetings in an advisory role.

Best Practice Recommendation: Even though no employee of the PGP Contractor may be a voting member of an MDP, DARS recommends that the Program Director attend all meetings of the MDP, and if appropriate, individual Guardian Representatives also may attend. The Program Director and Guardian Representatives may have information that is helpful to the MDP. In addition, the MDP may require assistance, or some action to be taken by the Local PGP. This is work that will be undertaken through the Program Director.

8.4 **MDP REVIEW OF REFERRALS FOR OPENINGS WITH THE LOCAL PGP**

8.4.1 **Eligibility Criteria.**

The Local PGP may not accept any individual for Public Guardianship Services through the Local PGP unless the MDP has reviewed the referral and determined that in the judgment of the MDP the referred individual meets the eligibility criteria specified in [22VAC30-70-30.D.3](#) of the PGP Regulations, which are:

- a. Public Guardianship is the least restrictive alternative available to assist the individual;
- b. The Local PGP has the resources to serve the individual, and the appointment of the Local PGP is consistent with the established priorities of the Local PGP;

- c. The individual cannot adequately care for himself;
- d. The individual is indigent; and
- e. There is no proper or suitable person or entity available to serve as the individual's Guardian.

Best Practice Recommendation: DARS recommends that meetings to consider new referrals take place at a formal meeting of the MDP that is in-person, but in the alternative may be held electronically, so that members may engage in face-to-face discussion. DARS recognizes, however, that to facilitate the prompt review of pending referrals it may sometimes be necessary for the MDP to review, discuss, and vote on pending referrals via secured (i.e., encrypted) email. (PGP Contract Attachment D § V.A.1.)

The MDP will make its assessment based on information provided by the Program Director which will include a copy of the individual's PGP Referral Form.

Items c – e above are similar to provisions of the Virginia Code governing eligibility for public Guardianship, but are not identical to those provisions. The legal determination that an individual is “incapacitated” is made by a Virginia circuit court. The final determination that the subject of a Guardianship case is eligible for Public Guardianship through the Program always rests with the court in all cases in which a Local PGP has determined that it is willing and able to serve.

When appointing a Public Guardian, [COV § 64.2-2010](#) requires the court to find that the individual is (i) incapacitated, (ii) without insufficient resources to fully compensate a private Guardian and pay court costs and fees related to the appointment proceeding, and (iii) without any other proper and suitable person willing and able to in such capacity, or without a Guardian at the end of the month after the person was found to be incapacitated. A person is deemed to be incapacitated for the purposes of COV § 64.2-2010 if the court has found by clear and convincing evidence that the person is “incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.” (See the definition of “incapacitated person in [COV § 64.2-2000](#). Also see [COV § 64.2-2007.D](#).) When evaluating the sufficiency of the

individual's financial resources, the court is required to use the standards from [COV § 19.2-159](#), which are those used to determine whether a defendant in a criminal trial is eligible for a court-appointed attorney

The referral and other written materials that are going to be considered by the MDP should be provided to all members at least two working days in advance of the day the MDP is going to consider the referral. In addition to the PGP Referral Form, supplemental materials may be provided, such as the results of any "determination of capacity" prepared by a CSB pursuant to [12VAC35-115-145](#), and information regarding the status of individual's authorized representative (if any) designated under [12VAC35-115-146](#) for the purpose of consenting to CSB services or services provided by other providers licensed by DBHDS. The MDP may request that the Program Director provide additional information to the extent it is reasonably available.

8.4.1.1 Inability to Provide Self-Care; Indigency; and No Other Person Available to Serve. (See [22VAC30-70-30.D.3.c-e](#))

The criteria that the MDP is asked to evaluate in considering items c – e above are less restrictive than what the courts are required to consider in a guardianship proceeding.

Self-Care. The MDP is not required to find that a referred individual is incapacitated but that the individual cannot adequately care for himself, which should be understood to mean that the referred individual appears to lack the ability to make the decisions necessary to care for himself or obtain care for himself.

Indigent. In determining whether the individual is indigent, the MDP **may assume** that the referred individual is indigent if (i) the person is eligible for, or receiving, state-funded or federally-funded public assistance benefits whose eligibility is based in whole or part upon an evaluation of the referred individual's income against federal poverty guidelines, or (ii) the income and assets of the referred individual are equal to or less than 125% percent of the federal poverty income guidelines established by the federal Department of Health and Human Services. (See the definition of "indigent" in [22VAC30-70-10](#). Also see [COV § 19.2-159.B.3.](#))

The determination of indigency can be complex. It is unlikely that the MDP will have a full picture of each referred individual's financial situation at the time the referral is considered. Even with comprehensive information,

circumstances may exist that make the referred individual's financial status unclear. For example, the MDP may determine that an individual has assets that would render the individual ineligible for state- or federally-funded public assistance benefits until those assets are liquidated and spent down, but the amount resulting from liquidation of the assets would be insufficient to cover the individual's expenses for more than a few weeks or months, or the MDP may become aware of resources available to the referred individual, such as a well-funded special needs trust, which if utilized would enable the individual to pay for a private Guardian. If the MDP is unable to reach a clear conclusion about whether the individual is indeed indigent for the purposes of the Program Regulations, it may determine that the individual is "conditionally" eligible for Public Guardianship, and recommend that the specific issues of concern be considered by the court during the Guardianship proceeding. See § 8.4.3 below.

No Other Person Available to Serve. In many cases, it will be clear that no other person has come forward who is willing to formally take on the role of Guardian for a referred individual. In some cases, though, the referred individual may have an existing Guardian who wishes to be removed. This will not necessarily preclude the MDP from considering the referred individual. Here are some examples of situations in which the MDP may consider the referred individual for an open PGP slot as a substitute Guardian replacing the referred individual's existing Guardian:

- The referral to the Local PGP was made by the existing Guardian who has indicated that he/she/it is no longer "willing and able" to serve as Guardian and is not able to find another person or entity to take its place.
- The person or entity that made the referral believes, and is willing to present evidence in court to prove that the existing Guardian is no longer "proper and suitable" to serve as Guardian and should be removed. These referrals would most likely come from a local DSS office or a CSB.

A Virginia circuit court is unlikely to remove an existing Guardian for an incapacitated person unless a new Guardian has been identified and can be appointed at the hearing at which the existing Guardian is removed. For this reason, an MDP may determine that a referred individual who has an

existing Guardian but otherwise meets the criteria of 22VAC30-70-30.D.3, is eligible for and should receive an open Slot with the Local PGP.

In considering a referred individual who does not have an existing Guardian, the MDP may become aware of someone involved in the referred individual's life who says they are willing to serve as the Guardian, but the MDP has reason to doubt whether the individual will actually follow through and attempt to become the individuals' Guardian, or the MDP may question whether the individual is "proper and suitable." In such cases, the MDP may decide that the referred individual is "conditionally" eligible to receive an open Slot with the Local PGP and leave the ultimate decision to the court. In such cases, the MDP is saying that if the court finds that no other "proper and suitable" person has come forward, the MDP agrees that the Local PGP may serve the individual. See § 8.4.3 below.

8.4.1.2 Resources and Priorities of the Local PGP
(See [22VAC30-70-30.D.3.b](#))

In considering new referrals, the MDP must determine that the Local PGP has the resources to serve the referred individual, and that the appointment of the Local PGP is consistent with the established priorities of the Local PGP. This determination must be made in consultation with the Program Director. (PGP Contract, Attachment D § V.B.2.)

The Virginia Public Guardian and Conservator Program was established by the General Assembly to be the Guardian of last resort for qualified individuals. (See [COV § 51.5-149](#).) However, referrals may come before the MDP that the Local PGP is not able to manage with its existing resources. For example, a referral may come before the MDP for an individual who (i) is deemed to pose a serious threat to the safety of the Local PGP's Guardian Representatives, (ii) has needs that are so great, or behaviors are so extreme, that they cannot effectively be served by the Local PGP's existing staff, or (ii) is opposed to the assistance of a Guardian and likely to actively oppose or prevent the Guardian's efforts to make decisions. In some cases, it may be appropriate to simply pass-over such an individual while the Local PGP addresses barriers to its ability to serve. (See § 7.2.3 above). In other cases, the MDP may conclude that the individual should not be offered a slot with the Local PGP. DARS is aware that Program Slots are a limited resource and that some individuals who appear to otherwise meet the criteria for Public Guardianship, cannot be effectively served. MDPs should be cautious, however, about being too

reluctant to accept challenging clients. The Program has been established to serve a vulnerable population, many of whom have significant and complex needs. Local PGPs should avoid “cherry-picking” only individuals who are expected to be “easy” to serve.

8.4.1.3 Less Restrictive Alternatives. (See [22VAC30-70-30.D.3.a](#))

The MDP may determine that even if an individual appears to meet the eligibility criteria set forth in items b – e of 22VAC30-70-30.D.3, the Local PGP should not accept the individual for PGP Services because other services are available to the referred individual that are adequate to meet the individual’s needs.

Best Practice Recommendation: If a referred individual is declined because the MDP has determined that the person’s needs can be met with less restrictive alternatives than Guardianship, the MDP should specify what those services are and how they can be accessed. Additionally, the Program Director should relay that information to the person or entity that made the referral when providing notice that the referred individual has been declined by the MDP.

8.4.2 Limitations on the Power of the Guardian (See [22VAC30-70-30.D.4](#))

Guardianship is a consequential limitation on the right of an adult to make decisions for themselves. The Code of Virginia and the PGP Regulations specify that Guardianships should be created in the least restrictive manner possible to meet the needs of the incapacitate individual. (See [COV §§ 64.2-2003.B & C](#) and [64.2-2007.C](#). Also see [22VAC30-70-30.D.3.a](#).) If the MDP determines that limitations on the power and authority of the Guardian are appropriate, that information must be shared with person or entity that referred the individual to the Local PGP, and to the Guardian *ad litem* appointed by the court in the Guardianship proceeding.

8.4.3. Options Available to the MDP with Respect to Referred Individuals
(PGP Contract; Attachment D § V paragraph B.3.)

Once the MDP has considered a referred individual for eligibility for services through the Local PGP under 22VAC30-70-30.D.3, the MDP may do one of the following three things. It may:

1. Determine that the referred individual is ineligible for Public Guardianship Services through the Local PGP, with the reasons for the decision specified in MDP records;
2. Conclude that the referred individual is eligible for Public Guardianship Services through the Local PGP and recommend to the Local PGP the referred individual be offered an open Slot; or
3. Recommend that the Local PGP “conditionally” offer an open Slot to the referred individual because the MDP is unable to ascertain whether all of the 22VAC30-70-30.D.3 are satisfied, but it has determined that if the court that hears the Guardianship case finds that the referred individual meets the criteria for public Guardianship specified in COV § 64.2-2010, the Local PGP should serve as the Public Guardian. The records of the MDP must explain the questions regarding the referral keeping it from making a definitive determination with respect to the referred individual’s eligibility.

If the MDP determines that a referred individual is ineligible for Public Guardianship with the Local PGP, the Local PGP may not offer an open slot to the referred individual.

If the MDP recommends that a referred individual receive an offer of an open Slot, or recommends the Local PGP make a “conditional” offer of acceptance, the Local PGP may choose to follow the recommendation of the MDP, or for good cause, decline to follow the MDP’s recommendation. If the Local PGP declines to follow the recommendations of the MDP, it must promptly notify the MDP of its decision and provide a written explanation of why it has decided not to follow the MDP’s recommendations. The MDP will then have 10 business days to respond to the Local PGP’s decision. During this period, the Local PGP and the MDP should discuss the issues affecting the referral. If at the end of 10-day period the Local PGP still believes that it has good cause not to offer the referred individual an open Slot in contravention of the recommendations of the MDP, it must notify the MDP in writing of its decision. (PGP Contract, Attachment D §§ V.C.2 and V.C.3.)

8.5 **MDP ANNUAL REVIEW OF ACTIVE CLIENTS** ([22VAC30-70-30.D.5](#))

The MDP is required to review the case of every Public Client at least once every 12 months to determine that:

- The Public Client continues to be incapacitated;
- The Public Client continues to be indigent; and
- There is no other proper or suitable person or entity to serve as the Guardian.

The annual review is for Public Clients who have received a court order naming the PGP Contractor as the Public Guardian for the individual. This means that a court has determined that the individual to be “incapacitated, indigent, and without any other proper or suitable person/entity to serve as the Guardian,” and meets the criteria for Public Guardianship prescribed in [COV § 64.2-2010](#).

In the months and years following the Public Guardian’s appointment, the circumstances of a Public Client’s life may change, calling into question their continued eligibility for Public Guardianship. Similarly, the Public Guardian may become aware of facts that were unknown to the court at the time the order was entered that also call into question whether Public Guardianship is appropriate. During the annual review, the MDP is looking to see if any such disqualifying factors exist.

Note: Program Regulations give Public Guardians a continuing duty to seek a proper and suitable person who is willing and able to serve as Guardian, conservator, or both for the client. [22VAC30-70-30.F.1](#).

If the MDP identifies any disqualifying factors, DARS recommends the Public Guardian take the following action:

- If the Public Client appears to be able to make the decisions necessary to meet the essential requirements for their own health, care, safety, or therapeutic needs, in other words to have capacity to care for themselves without having a Guardian to act as their legal decision-maker, the Public Guardian should initiate a circuit court proceeding to have individual restored to capacity. (See [COV § 64.2-2012.A\(i\)](#).) This should be done in consultation with an attorney. (See definition of “incapacitated person” in [COV § 64.2-2000](#).)
- If the Public Client receives money, or assets that can be liquidated, that are sufficient to pay for a private Guardian for more than a few weeks or months,

the Public Guardian should seek to identify a substitute Guardian who would be willing to serve the Public Client for a fee and should consult with an attorney to initiate a circuit court proceeding to have the substitute Guardian appointed in lieu of the Public Guardian. (See [COV § 64.2-2012.A\(v\)](#).) Because there are number of complex issues to consider, including the length of time funds sufficient to pay a private Guardian will be available, the possibility of creating a special needs trust, and whether the Public Guardian also should be named as the Public Conservator, the Public Guardian will likely want to consult with an attorney before a decision is made to seek a private Guardian for the individual. Presumably, the legal fees associated with removing the PGP Contractor as the Public Guardian can be paid by the Public Client.

- If a person or entity involved with the Public Client has expressed an interest in becoming the client's Guardian, the Public Guardian should advise the potential new Guardian that they may bring a proceeding in court to have the Public Guardian removed and have themselves appointed as the substitute Guardian. The Public Guardian should remember that the question is not who would be the "better" Guardian, the Public Guardian or the potential new Guardian, but whether the potential new Guardian is "proper and suitable, willing and able" to serve. (See [COV § 64.2-2010](#).) This is a determination for the courts to make. The Public Guardian has no obligation to initiate a court proceeding asking that the potential new Guardian be appointed as a substitute Guardian. This responsibility belongs to the potential new Guardian.

8.6 MDP RECORDS

A record shall be kept of all MDP proceedings, conclusions, and recommendations, and all communications between the MDP and the Local PGP. Such records shall be maintained for five years. (PGP Contract § 3.8.)

In addition, a copy of the MDP records related to its initial determination of the Public Client's eligibility for Public Guardianship Services through the Local PGP and each MDP annual review with respect to the Public Client's continued eligibility for such services will be included in the individual client record for the Public Client. (PGP Contract § 3.7(b)).

8.7 THE ROLE OF THE LOCAL PGP WITH RESPECT TO MDP DECISION-MAKING

When the MDP is going to meet to consider new referrals for eligibility for open Slots, the Program Director shall provide the members of the MDP with the applicable Public Guardian Referral Form, along with updates and any other relevant materials that the

Local PGP has gathered regarding the referred individual. (PGP Contract, Attachment D § V.B.1.)

Best Practice Recommendation: Materials needed for the MDP to assess a referral should be provided to every member of the MDP at least two working days in advance of the date the MDP is scheduled to consider the referred individual for an open slot with the Local PGP. (PGP Contract, Attachment D § V.B.1.).

The Program Director should attend all meetings of the MDP to present the referrals, answer questions, and assist the MDP in evaluating the Local PGP has the resources necessary to provide Public Guardianship Services to the referred individuals. Other staff members of the Local PGP or the PGP Contractor may attend meetings of the MDP as appropriate. (PGP Contract, Attachment D § V.B.2.)

MDP Finds Decides the Person is Ineligible for Services through the Local PGP. (PGP Contract, Attachment D § V.C.1.)

If the MDP determines that a referred individual is ineligible for an open Slot with the Local PGP, the Local PGP shall promptly provide written notice of the decision to the following parties:

- Referrals for an Unrestricted Slot or a MI/ID Slot -- The person or entity that made the referral to the Local PGP.
- Referrals for a DBHDS-ID/DD or DBHDS-MI Slot – DARS (on a Removal Notification Form); the CSB providing services to the referred individual; and in the case of DBHDS-MI-Slots, the Director of Social Work at the applicable state mental health institute.

In addition, if the person has been declined was from the Unrestricted or MI/ID Waitlist, the Local PGP will removed the individual from the applicable Waitlist.

MDP Recommends the Local PGP Offer an Open Slot to the Referred Individual. (PGP Contract, Attachment D § V.C.2 & 3.)

If the MDP determines that a referred individual is eligible for an open Slot with the Local PGP and recommends that the Local PGP offer an open Slot to the referred individual either conditionally, or without condition, the Local PGP may either:

1. Agree with the MDP's recommendation, in which case it will promptly provide written notice of the decision to the person or entity that submitted the referral (which, in the case of a DBHDS-ID/DD or DBHDS-MI Slot, will be the CSB

providing services to the referred individual), and explain the steps that must be taken to obtain a court order naming the Local PGP as the Guardian.

OR

2. For good cause, disagree with the MDP's recommendation and decline to make the offer, in which case, the Local PGP must:
 - Promptly give the MDP written notice of its decision explaining why it has decided against the recommendation of the MDP. The Local PGP will give the MDP 10 business days to respond, during which time the Local PGP will engage in a good faith discussion of the issues with the MDP.
 - If at the end of the 10-day period, the Local PGP continues to believe that it has good cause not to offer the Slot to the referred individual, the Local PGP may decline to accept the recommendation of the MDP. The Program Director will notify the MDP in writing of its decision. The Program Director also will notify the following parties, in writing, that the Local PGP will not provide Public Guardianship Services to the referred individual.
 - Referrals for an Unrestricted Slot or a MI/ID Slot – Notice will be provided to the person or entity that made the referral to the Local PGP.
 - Referrals for a DBHDS-ID/DD or DBHDS-MI Slot -- Notice will be provided to DARS (on a Removal Notification Form); the CSB providing services to the referred individual; and in the case of DBHDS-MI-Slots, the Director of Social Work at the applicable state mental health institute.

Additional Step if MDP has Recommended a Conditional Offer.

If the MDP has recommended that a referred individual be “conditionally” offered a Slot and the Local PGP agrees with the recommendation, the Program Director will notify the attorneys involved in the Guardianship proceeding (which at a minimum will be the petitioner’s attorney and the Guardian *ad litem* for the referred individual) of the MDP’s concerns and request that court specifically consider those issues when it considers the person’s eligibility for public Guardianship pursuant to [COV § 64.2-2010](#). (PGP Contract, Attachment D § V.C.3.a.)

Additional Step of Limits if the Power of the Guardian are Recommended.

If a referred individual is accepted for an open Slot, and the MDP determines that limitations on the power and authority of the Guardian are appropriate, the Program Director will share that information in writing with the person or entity that referred the individual to the Local PGP, and to the Guardian *ad litem* appointed by the court in the

Guardianship proceeding so that the recommendation can be considered by the court.
See § 8.4.2 above.

Disqualifying Factors Identified in Annual Client Review:

If during the annual review of any existing Public Client, the MDP identifies any disqualifying factors, the Local PGP will assist in taking the corrective actions outlined in § 8.5 above.

8.8 RE-REFERRALS

A person who has been declined for, or removed from, Public Guardianship with a Local PGP may always reapply and a new referral may be submitted on their behalf. Circumstances may have changed such that Public Guardianship through Local PGP is appropriate. If the circumstance which caused the person to be declined for services, or removed from services, in the past have not changed substantially, the Program Director may screen out the referral, keeping a written record of the referral and the reason for the Program Director's decision. (PGP Contract, Attachment D § V.D.)

8.9 IN-PROCESS STATUS

An individual who has officially been offered an open Unrestricted Slot or MI/ID Slot but who has not yet received a court order appointing the PGP Contractor as the Public Guardian is considered to be "In-Process." An individual referred to the Local PGP for consideration for an open DBHDS-ID/DD Slot or an open DBHDS-MH Slot is considered to be "In-Process" as soon as the Local PGP receives notice from DARS of the referral, even though the referral has not yet been considered by the MDP. This is because in each case, the Slot is "reserved" for that person. "**In-Process**" means that the person is holding a Slot that cannot be offered to anyone else but has not yet received a court order appointing the PGP Contractor as its Public Guardian.

A person's In-Process status will always end. Typically, it will end because a court order is issued naming the PGP Contractor as the Public Guardian. At that point, the person will become a Public Client (aka an active Public Client).

Sometimes, however, a person may lose their In-Process status without ever becoming an actual Public Client. This could happen for a number of reasons, including the death of the proposed client, retraction of the offered Slot by the Local PGP, notification by the person or entity that made the referral of their decision not to move forward with the Guardianship proceeding in circuit court, the appointment of a Guardian other than the PGP Contractor by the circuit court, or a decision by a circuit court that the individual is not incapacitated or is not eligible for Public Guardianship. In the case of DBDHS-ID/DD

and DBHDS-MH referrals, it also may occur because the person is found to be ineligible by the MDP for Public Guardianship Services through the Local PGP, or the Local PGP may decline to serve following MDP consideration of the referral.

If a person's In-Process status with a Local PGP ends for any reason other than PGP Contractor's appointment as the Public Guardian, the Local PGP must report the person's removal from the Local PGP's In-Process list using the Removal Notification Form.