

GUARDING FROM THE GUARDIANS



› INTRODUCTION:

Nebraskans with widely differing life circumstances may find themselves under guardianship. A retired rancher with memory issues needs help to ensure his bills are paid. A young adult with an intellectual disability needs a second set of eyes to ensure her apartment's lease terms are fair. An adult living with serious and persistent mental illness in an assisted living facility needs money management help as she navigates the complexities of receiving Social Security disability. Each of these Nebraskans may end up in a guardianship where someone else makes personal choices for the person with a disability including living arrangements, health care, spending money, control over whether the person may attend a social activity and whether they can get a job.

The goal of the guardianship laws is to provide "continuing care and supervision" within "the least restrictive alternative possible" while still allowing the person with a disability to "exercise personal and civil rights consistent with [their] need for services." The legislature has specifically instructed guardianships to be limited, not full guardianship, unless clear and convincing evidence proves a full guardianship is needed.¹

In Nebraska, there are over 10,000 people actively under guardianship and conservatorship.

Unfortunately, this system of care and support has deteriorated and is failing Nebraskans with disabilities. Paid guardians drop their clients into dreary assisted living facilities that offer few or no services or life skill training to allow the individual to ever achieve a move to less restricted living circumstances. Some guardians pocket exorbitant fees for clients they never visit, and understaffed county courts are unable to scrutinize any questionable financial expenditures.

Nebraska's guardianship system needs reform. Fortunately, thorough study by the Nebraska Unicameral and judicial branch has already created a roadmap of reforms to adopt. Further, we have the excellent example of our own Office of Public Guardian as well as strong successful models from sister states that show a path forward to ensure our most vulnerable residents get support rather than exploitation.

› BASICS OF GUARDIANSHIP:

Nationwide, approximately 1.3 million Americans are under guardianship. Laws vary widely from state to state on the rights retained by someone under guardianship as well as the duties required by a guardian to care for the person in their charge. In Nebraska, there are over 10,000 people actively under guardianship and conservatorship.² A court hearing must be held to decide that an individual needs assistance due to their "incapacity," and the county court

then receives statutorily required annual reports from the guardian about the individual's financial and physical wellbeing.

Our clients' experiences reveal that once a guardianship is imposed, the person with a disability has little or no autonomy in participating in the decisions made about them. If the guardian continues to file timely paperwork with the courts, the individual has little or no opportunity to have a neutral third party review their case in depth. This means there is no one to notice when a guardian is simply going through the motions without actual effort to assist their client and with no authentic collaboration with the person under guardianship. Even worse, it means no one will catch a guardian who is engaging in malfeasance.

Since 1997, Nebraska law has required each county court judge to consider less restrictive alternatives to full guardianship and made a limited guardianship the preferred default finding,³ yet full guardianships remain the overwhelming norm. We need to educate judges, lawyers, and the medical community on the need to use less restrictive solutions to aid someone struggling to manage their own life.

Resource-strapped courts lack a pool of honest, qualified people willing to serve as guardians. Once the court has named a guardian, the courts simply don't have the ability to examine each case on an ongoing basis to ensure the individuals are being cared for appropriately. This has created an opportunity for those poised to take advantage of the vulnerable.

› DOCUMENTED FAILURES IN NEBRASKA:

The most notorious example of abuse by a professional guardian occurred when Judith Widener set up a nonprofit and took court appointments to act as guardian for countless Nebraskans.⁴ Her clients rarely or never saw her as they languished in squalid, poorly-run facilities. She took client monies, paid the bare bills, and then reimbursed herself handsomely despite the fact she offered little or no actual service to the individuals. When the Nebraska Public Auditor finally exposed her misdoings in 2013, Ms. Widener had over 250 active clients spread across the state.

Guardians regularly pay themselves thousands of dollars without itemization.

Judith Widener was convicted of theft and her case sparked a legislative reform movement that ultimately created the Nebraska Office of Public Guardian ("OPG") in 2014. The OPG is now a model of how caring, effective, and responsible guardianships should be handled. The sole drawback is its limited budget and staff, which necessitates that courts must continue to look to private individuals to act as guardians.

Exposure of Judith Widener didn't mean an end to those inclined to abuse their position of authority. Recent Nebraska news reports include additional problems of financial exploitation by lawyers,⁵ by professional caregivers,⁶ and even by family members of the person with the disability.⁷ This is why Nebraska needs additional reform: the temptation to neglect or mistreat a vulnerable adult with financial assets is too keen for some people to resist. New laws and oversight will protect future victims.

For the last year, Disability Rights Nebraska has scrutinized county court guardianship files to determine the extent of guardians' fiscal reporting and judicial oversight over each report. Our findings were grim. County court staff simply lack the resources to do a line-by-line review of annual reports in every guardianship case.⁸ As a result, many red flag expenses go unexamined and unexplained. Among items we saw in our file review of current, pending guardianships:

- Attorneys acting as guardians charging the protected person their normal legal-work hourly rate even when performing routine tasks that could be done by a layperson. For example, we reviewed documents of **an attorney being paid \$225 per hour for performing tasks such as mailing the monthly rent check, calling the pharmacy to order a refill prescription, or meeting the protected person for 10 minutes to give them their monthly spending money.**
- Professional guardians with multiple clients filing claims for mileage expenses even when the sworn annual report indicated the guardian had not personally seen the client that frequently. The mileage expenses were also charged to each protected person's account, even when the guardian was at a single facility with multiple clients.
- Even in cases where the guardian's wards were all in a single city such as Omaha, we noted law firms that were solo practitioners or a two-lawyer firm acting for far more than 20 individuals at a time. These firms simultaneously appeared in multiple court filings for many other legal matters for non-guardianship cases, raising concerns about how often they have capacity to monitor their client's living conditions regularly. Nebraska state law requires the Office of Public Guardian to visit their clients once a month but currently has no such requirement for private guardians.⁹
- Guardians granted permission to take out a debit card in their own name to make it "easier" to purchase items for the protected person, but no accounting filed showing the actual purchases as long as they were under \$500.
- **Attorneys appointed as guardians or conservators regularly request—and receive—fees ranging from \$1,000 to \$15,000 without any itemized accounting of the time expended.** It is unclear to us how county court judges are determining the propriety of these applications without any showing of actual time spent, but in multiple cases we observed these same attorneys reporting they performed a single annual visit in person to meet with the protected person.

- **One guardian with 58 current clients stretching hundreds of miles across the state as shown in the map. We note that since court records for this single guardian contained an additional 31 cases for clients who had died in the last ten years, plus dozens more clients had moved out of state or were assigned a different guardian, this single individual's caseload was even larger than 58 people over the last year. (See appendix for methodology and more information about these case files.) Nebraska state law places a caseload limit of 20 individuals per guardian in the Office of Public Guardian but currently has no cap for private guardians.¹⁰**



- Non-attorney guardians frequently are receiving court approval for a lump sum guardian fee even though there was no attached accounting to demonstrate what the guardian purportedly did. Since these annual fees can range between \$1,500 to \$8,000 and come from the limited funds available to vulnerable adults, they should be clearly itemized for review by the court, the person with the disability, and any interested parties.

There are currently no limits on the number of cases a private guardian can accept.

- Incomplete or late annual reports are a consistent issue for many guardians. While some judges immediately issued a notice that demands the guardian to produce the accounting, other courts simply did not pursue or demand documentation from the guardian for a year or more past the original filing date.
- **In the vast majority of cases, the person under guardianship never appears in court to speak directly about their wishes.** We observed nearly every docket for the initial guardianship petition as well as the subsequent annual hearing were conducted without the protected person attending in person or by phone.

Given the thousands of Nebraskans under guardianship or conservatorship and the volume of paperwork, our selected review of court files cannot show a

comprehensive picture of the problematic fiscal practices, but even a cursory examination of records demonstrates there is grave cause for concern about fiscal abuse. We must create systems to ensure that guardians cannot file minimal documentation that is rubber stamped and allows them to pocket money for services that were never performed or were performed in bad faith.

› STORIES FROM NEBRASKANS UNDER GUARDIANSHIP:

EDWARD'S STORY: "I've never laid eyes on this person who has control over every aspect of my life," Edward¹¹ told us recently. He has struggled with addiction and has a mental health diagnosis, which resulted in being placed under guardianship. "I used to live in Omaha, but **my guardian had me relocated to this town over a hundred miles away [population 3,000] where I don't know anybody. There are no jobs here, there's nothing to do, there's no hope.**

"I've never laid eyes on this person who has control over every aspect of my life."

How am I supposed to get sober and get on my own two feet when I'm just being warehoused and dictated to by a total stranger?" The assisted living facility Edward's guardian placed him in has been a repeated source of complaints to our agency, including a lack of working air conditioning, failures in hot water, bed bugs and assaults. "If my guardian actually showed up and saw this place, they'd see just what a crummy place is getting my Social Security check."

VIRGINIE'S STORY: Virginie¹² is now in her 60's and has been under guardianship since her teens with a revolving door of court appointed guardians who are all strangers to her. Her current guardian is an attorney who receives no fee for his work with her—but he also has not seen her in years. "I googled it," Virginie told us sadly. "From his front door to mine is seven and a half miles. **But I haven't seen him in years and he won't take my calls. How can he say he knows what's best for me? He wouldn't even recognize me if I walked smack into him.**" Review of Virginie's court records proved her right: both pre-pandemic and post-pandemic, each year, the attorney answers the question about how often he sees Virginie: "I don't visit her."¹³

5. How often do you visit the ward? ☐ Daily ☐ Weekly ☐ Monthly
☒ Other (describe) I don't visit her

PEARL'S STORY: One advocate told us "My client Pearl¹⁴ was born with an intellectual disability and unfortunately had early difficult life experiences that included surviving sexual trauma that gave her PTSD. She lives on public benefits and needs support to remind her to take her medication, but she could live in her own apartment if there was a service that would simply check on her daily. Instead, **she's in a coed assisted living facility that houses several males who are on the Nebraska Sex Offender Registry.** I know they need a place to live too, but why do they have to be in the same home as my vulnerable client?" In the absence of any less restrictive housing than the assisted living facility model of congregate care, the advocate continues to seek another placement where Pearl could socialize safely without concern for potential predators but finds long wait lists as well as costs that exceed Pearl's income.

JOSHUA'S STORY: Joshua¹⁵ is in his 30's and living in assisted living after a car accident left him with a traumatic brain injury. His mother has been his guardian since the accident and she has decided Joshua shouldn't work at all. "I know she loves me but I'm not her little boy anymore. **I had a good part time job at a convenience store where I made friends and I felt like I was getting back to normal even though I know I need help with my meds and I'm not ready to live alone yet. My mom freaked out—she thinks someone will take advantage of me, so she told them I couldn't come in anymore.** I can't just sit around the facility all day. I need independence and pride in myself, but she just doesn't get it."

ABBY'S STORY: Abby¹⁶ started life in the juvenile system, being removed from her parents when her father was convicted of sexual assault of a child and her mother was found unfit due to substance abuse. After years in foster placements and group homes, Abby aged out of the system and was diagnosed with several serious mental health diagnoses so as a very young person she was placed under guardianship. **She is transgender, takes hormones that have given her breasts, and legally changed her name to reflect her female gender. Her guardian has placed her in an assisted living facility that is solely for men with serious mental health diagnoses and where each bedroom holds two residents.** When asked whether she felt safe sleeping a few feet away from a man, Abby shrugged. "I've told my guardian that it doesn't seem like a good idea but my guardian keeps using my old male name and just seems in total denial that I'm female. It's better than being on the street, so I'm just trying to keep my head down until I can prove I'm ready to take care of my own life without a guardian."

IRIS' STORY: Iris¹⁷ is a widow whose husband's veterans benefits would have given her a very comfortable retirement. Unfortunately, as she has aged, she has developed dementia and was placed under guardianship of an individual who has been put in charge of five other widows in greater Nebraska. Iris' guardian sold her Grand Island house for a quarter of a million dollars and placed her in a nursing home 45 minutes away from Iris' neighbors and church friends. **The guardian's annual report admits she doesn't talk to Iris in person because of Iris' dementia—instead, the guardian solely "checks in with the nursing home staff." While this guardian gets paid a range of \$50-80 for her other wards each month, she charges Iris \$250 per month.** The judge has approved this payment despite the admission there is no consultation with Iris in person or by phone, and no friend or family member seems to be aware of the finances draining out of the account each month.

MIKAL'S STORY: Mikal¹⁸ has been under guardianship since 2010 due to his diagnosis of ADHD and schizoaffective disorder. His first guardian moved him to an assisted living facility away from his home town. That facility has since closed due to licensure problems with its extremely poor conditions. Mikal tried to follow all instructions from the facility staff and his guardian. In 2013, he sent a letter to the judge outlining his progress that included the fact he had learned to "cook food, do chores, get my own groceries, make a budget spreadsheet, make and keep appointments with my counselor, and pay my bills." He wrote, "I have learned from my mistakes in the past. I plan on taking care of myself and making a life for myself. So please, I can't continue my life with someone else as my guardian. If you ask my friends and staff here at the assisted living facility, they would say I'm as financially competent as the average person living alone and working. Thank you and I hope you will help me."

There was no hearing on Mikal's request, but the court records include a one paragraph letter informing him "In reviewing your request to dismiss X as guardian, it is the decision of the court that the guardianship should continue at the present time. However, your request can be reviewed again next year for consideration upon your request."

In 2019, Mikal wrote again to ask for his guardianship to be ended. The court docket says "Reviewed by Judge / no action taken." Since Mikal hadn't heard a response, he waited five months and wrote again to ask for his freedom. On this second request made in late 2019, the court finally appointed a local attorney to act as Court Visitor / Guardian ad Litem to interview Mikal and investigate whether he was suitable for independent living. Despite the entry of this order, the court file does not indicate any report was ever submitted by the appointed GAL, and all hearings held subsequently lack any mention of service or notice to the GAL. In the spring of 2020, the annual reporting of how Mikal's money was spent was accepted and approved by the judge as usual and the GAL is not listed as an interested party. In September 2023, Mikal submitted one more handwritten note to the judge, writing "Dear Judge, my name is Mikal. X used to be my guardian but she apparently changed offices. I was told by her to get a job for six months and get a roommate. I just had my first day at Casey's today. Y is my guardian now. And I'd like to be my own guardian. I wrote you a letter before stating why and what I would do. Thank you so much for the opportunity of a Guardian ad Litem. I really appreciate it. Sincerely, Mikal." The court docket reads: "Letter sent to guardian, no other action."

"I can't continue with someone else in charge of my life. If you ask the staff at the assisted living facility, they would say I'm as financially competent as the average person."

09/11/2023 Email Registration Sent

09/11/2023 Letter

This action initiated by party

Sent to Guardian, no other action

Image ID [000703176C08](#)

FILED

2023/5/23

SEP 11 2023

CLERK MAGISTRATE
HALL CO COURT

Dear

So, for starters, my case no. is PR10-176, and my name is [redacted] use to be my Guardian Ad Litem. But, she apparently changed offices. I was told by her to get a job for six months. (I just had my first day @ Casey's today.) And, get a roommate. I want to live in Grand Island, NE still.

[redacted] from [redacted] NE, is my Guardian. And I'd like to be my own Guardian. I wrote you a letter before stating why & what I would do. Thank you, so much for the opportunity of a Guardian Ad Litem. I really appreciate it.

Sincerely,

› HOW THESE INDIVIDUAL STORIES HIGHLIGHT THE PROBLEMS WITH NEBRASKA’S GUARDIANSHIP LAWS AND PRACTICES:

The stories above illustrate that some guardians are well intentioned and are trying hard to provide assistance to people in difficult situations, but there are other guardians simply making no effort to connect with their client at all to determine their needs, preferences, and goals in a people-centered manner. Nebraska has been moving towards the national trend of “supported decision making,” a system where the person with a disability works alongside their guardian, family, and friends to make decisions and express their preferences.¹⁹ This replaces an older patronizing viewpoint that believes all people with disabilities need to be controlled and shows a laudable public policy shift. Similar good news is that in 2020, the Nebraska legislature created mental health advanced directives to permit people to give instructions in the event of a future psychiatric episode.²⁰

While state law requires the Office of Public Guardian to visit clients monthly,²¹ **there is no current requirement that non-OPG guardians ever visit or speak with their client.** While each guardian must file an annual report with the original county court about the amount of their interaction with the person under guardianship, there is no accountability if a guardian openly admits to no contact. Guardians who don’t visit or interact with their client will never know if there is abuse or neglect occurring in their ward’s living situation. Without regular contact, the guardian will also never know if the protected person has improved and is ready to resume an independent life without being under guardianship.

Although the Office of Public Guardian has a statutory limit of 20 clients per staffer, there are currently no limits on the number of cases a non-OPG guardian may accept.²² Best practices require caseload limits to ensure the guardian can thoroughly and robustly provide service to the person under guardianship while also avoiding burnout. In our research, we discovered that the lesson of Judith Widener’s excessive caseload has not been learned. There are still Nebraska guardians carrying extremely high numbers of clients who purport to be providing individualized service across hundreds of miles. See Appendix with list of current active guardianship cases with just one example of an individual making a living as a professional guardian. This guardian resides just outside of North Platte but has a current caseload of 58 people living hundreds of miles away from them. Even the 29 clients currently living in North Platte near the guardian far exceeds the best practices set by state law for the Office of Public Guardian. Note that this guardian is merely one example and should not be the sole focus of reform, as a cursory review of court files revealed other private individuals—including licensed attorneys—who are serving as paid guardians for more than 20 people at a time.

Paid guardians have an incentive to continue the guardianship into perpetuity.

Guardians who are primarily in the business of making money have a business incentive to see that the guardianship is continued into perpetuity. In the absence of a truly person-centered guardian, one would hope that the judicial branch would be the safety net for people seeking to terminate the guardianship. In cases such as Mikal, above, it is entirely possible that he needs an ongoing guardianship

despite his wishes, but it is painful to read his repeated handwritten attempts to ask to be heard on his plea for independence without any meaningful response. The Nebraska Supreme Court has noted the ethical considerations that arise when a judge receives an ex parte communication and further noted the need to amend current law to both ensure aid to the vulnerable adult and permit judges to comply with their ethical responsibilities.²³ This problem has recently been addressed by **Texas' new law requiring that even an informal letter from a ward sent to the court must be responded to with appointment of a Guardian ad Litem and a hearing date to learn of the investigator's conclusions regarding the ward's wishes.**²⁴

Concerns about private individuals representing vulnerable adults as an income source may lead some to increase the appointment of family members as guardians instead. There has even been some suggestion that family members could become state-funded caregivers for their loved one who has a disability because—surely—a family member would be honest and thorough in their duties.²⁵ Our clients' experiences unfortunately do not reflect this hope. As Joshua's story above shows, parents can infantilize an adult child with disabilities and try to prevent them from normal activities such as working, traveling, dating or having hobbies.

Guardians—whether it is a stranger receiving a fee or a family member volunteering to act—need up-to-date training on the principles of supported decision making. **While Nebraska currently requires all guardians to take a training prior to appointment,²⁶ there is no continuing education requirement. The professional guardian in Lincoln County who is described above received their training and certification in 2012.**

Nebraskans with disabilities deserve guardians who have been trained in the principles of supported decision making so they can participate in the choices that affect their daily lives. They deserve guardians who are up to date on the responsibilities and duties of being a guardian. They also deserve oversight and a clear statutory framework that protects their basic rights. As the United States Supreme Court found in *Olmstead*, every person with a disability has the right to live in the least restrictive setting possible. Inattentive guardians who place people in poor congregate facilities and control every aspect of their affairs are not meeting the promise of the law.

› **LEGISLATION NEEDED TO PROTECT NEBRASKANS NOW:**

1. Adopt the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act ("UGCOPAA").²⁷ This package of model legislation has been approved by the American Bar Association,²⁸ the National Disability Rights Network, AARP, and the U.S. Senate Special Committee on Aging (including member U.S. Senator Deb Fischer).²⁹ While Nebraska state law currently is framed as discussing the powers and rights of guardians, the UGCOPAA further implements the duties and responsibilities of guardians and sets forth a bill of rights for people under guardianship. The provisions of the UGCOPAA would resolve many of the issues identified in this report by including reforms such as:

- Limit on number of people each guardian may serve. Nebraska could also simply extend the Office of Public Guardian caseload limit to all guardians.³⁰

- Require regular contact in person by the guardian to become familiar with the protected persons' preferences and wishes and to monitor their wellbeing. Nebraska could also simply extend the requirement of monthly visits currently in place for the Office of Public Guardian.³¹

State law requires limited guardianships but over 90% are currently full guardianship.

- Require the physical attendance of the protected person at the annual hearing whenever possible to ensure their voice is heard by the judge. When travel is difficult or physically demanding, the individual should be attending by phone to ensure their questions or concerns can be heard.
- The right to appointed counsel, particularly at the initial filing of a petition for guardianship and upon any request by the protected person to end the guardianship. Vulnerable people whose lives and rights are being debated by the court and third parties deserve to have their own lawyer appointed to vigorously examine whether guardianship is necessary or whether a less restrictive solution could be used to address any concerns.
- Revise the state statutes to make it easier to restore people's rights and end guardianship. Texas has been the leader in this movement with a legal test that the individual may show he or she has capacity to manage their own affairs by a preponderance of the evidence. Texas judges also automatically review the necessity of continuing the guardianship prior to appointing successor guardians.³²

2. Expand education and training for guardians and judges.

Nebraska law requires limited guardianships to be ordered unless the court takes extra steps to find a full guardianship is needed, yet our examination reveals that well over 90% of current guardianships in Nebraska are full guardianships. Clearly, we need robust training for judges to understand the range of less restrictive options. Supported decision making is an emerging solution working well in other jurisdictions but guardians and judges will need more training to understand the concepts of people-centered planning in place of the old models.

- Continuing education is currently not required in Nebraska for guardians. The professional paid guardian with the large caseload mentioned above received her certificate of training in 2012, although there have been significant changes in the law since that time. A periodic retraining of all guardians, whether family or professional, will ensure they are familiarized with new laws and emerging best practices.
- Certification of all guardians through national standardized training would ensure each guardian has learned best practices and that they have access to helpful materials if questions arise. Nine states (Alaska, Idaho, Illinois, North Dakota, New Hampshire, New Mexico, Nevada, Oregon and Utah) now require national certification by the Center for Guardianship Certification.³³ National certification is encouraged as best practice by the National Guardianship Association.³⁴
- Periodic refresher training for judges on the standards for imposing a limited guardianship versus a full guardianship as well as the appropriate standard

to end a guardianship is needed. If people have achieved competency and are ready to resume an independent life, judges should be poised to evaluate and order an end to the guardianship.

Forensic accountants reviewing guardianship files in other states have recovered more assets than the program cost.

3. Increase oversight and scrutiny of financial reports by guardians.

As discussed above, too many guardians fall prey to the temptation to profit from the extremely limited funds of the people with disabilities. While we saw very large amounts of money being paid out to guardians, every amount was, in fact, approved by the presiding judge. County court judges and staff have high caseloads so that line-by-line scrutiny of financial reports are simply not feasible, but we cannot allow dubious expenditures to be rubberstamped.

- Examine unnecessary and unreasonable fees by attorneys. As discussed above, our review of court files revealed that some attorneys acting as guardians charge the same hourly rate for routine non-legal business as the attorney charges for attending court or preparing legal documents.
- Adopt a court rule requiring all accountings be reviewed by auditors. This reform has been pending since the Nebraska Supreme Court made it in 2010 in recognition of the problems of financial exploitation.³⁵ Even if there is not adequate funding to permit audit of every accounting, then a random selection of files could be audited each year or volunteer auditors could be recruited as have been used in other states with great success. According to the American Bar Association,³⁶ Palm Beach County, Florida, employed forensic accountants to screen financial accountings so successfully that they have recovered more in assets than the program cost. Similarly, Cook County, Illinois, identified millions of dollars of stolen assets—the thieves were sometimes family members, sometimes private paid guardians, sometimes the facility operators. By recouping such significant funds, these court systems are allowing some vulnerable adults to remain in their homes while ensuring many more citizens do not need to receive public benefits.

4. Recruit new potential guardians, court visitors and Guardians ad Litem.

The problem of private individuals accepting far too many guardianship appointments is exacerbated by the lack of knowledgeable, honest and willing volunteers. When the Judith Widener scandal broke and the Unicameral conducted public hearings in 2014 about the need for guardianship reform, one retired county court judge explained the problem—he had suspicions about her conduct, but he had no other potential guardian to appoint instead. “I didn’t like that, but I didn’t have a choice,” Judge Curtis Evans testified.³⁷ We applaud the model set by the Office of Public Guardian for being thorough advocates for their clients, but they cannot take more cases without an expansion of more staff. In the same way that education campaigns have been used to recruit Court Appointed Special Advocates (“CASA”) volunteers, the state should create an outreach program asking people to volunteer in one of these desperately needed roles.

› AREAS NEEDING ADDITIONAL STUDY BEYOND THE SCOPE OF THIS REPORT:

The problems itemized in this report are intended to start a conversation. There are many more serious topics that are integral to reform our state's guardianship system that cannot be covered in detail here. We note, though, that the following areas must be taken into account for consideration with any of the reforms discussed above:

- Lack of community alternatives to congregate living facilities and lack of an Olmstead plan.
- Disability Rights Nebraska has been calling for the state Department of Health and Human Services to create a meaningful Olmstead plan for decades. Poorly run for-profit facilities that warehouse people with disabilities are the norm because the state has not offered safe, reliable, less restrictive alternatives. Even the best intentioned guardian in the world is frustrated by being forced to place their client in an isolated, unhygienic and understaffed facility simply because there is no other option. **The state Department of Health and Human Services has delayed making a genuine Olmstead plan for decades, and we call for them to create housing options for Nebraskans with disabilities now.**
- Due process implications for the long legal process. Advocates in the field tell us that **people often can wait as long as a year or more under a "temporary guardianship"** while the county court determines whether there are any suitable people to nominate for the role of permanent guardian. State law only permits a "temporary guardianship" to last for 90 days, but practitioners in the field say courts rarely take steps to comply with the time limit.³⁸ Another due process concern is that the current legal standard for a temporary guardianship in Nebraska is merely proof by a "preponderance of the evidence" that the petition should be granted. **Many—or most—of these people are unrepresented by an attorney during the proceedings. Under current law, judges could appoint a Guardian ad Litem or an attorney but reports indicate this is a rare practice.** The assertion of a single petitioner that someone is unable to manage their affairs is enough to initiate a long delay, which raises due process concerns and requires study. Nebraska must also examine what would be necessary to implement the UGCOPAA recommendation of appointment of an attorney alongside a GAL in every case.
- Implementation of Nebraska State Auditor recommendations for DHHS audits and case review. In the wake of the 2013 scandal involving Judith Widener's hundreds of clients, Nebraska State Auditor Mike Foley issued a 54-page report itemizing failures on the part of DHHS to identify red flags indicating the misuse of state benefits such as the Aid to the Aged, Blind or Disabled ("AABD") program.³⁹ In the intervening years, the state DHHS has had a revolving door of leadership and no substantive overhaul of the practices that allowed Widener's behavior in the first place.
- Education of hospitals and mental health providers about the guardianship system. For many Nebraskans, their hospital room is the first place where a

guardianship is proposed. Sometimes this is in a psychiatric setting where the psychiatrist wants to ensure seamless mental health medications. Sometimes this is after an elderly person has had a significant health incident. While the instinct to ask for a guardianship to be imposed may be made with the best of intentions, these medical professionals may not realize that their patient will enter a labyrinthine legal process that may never restore their independence. **Medical and mental health professionals need education about less restrictive alternatives including supported decision making, limited guardianships, powers of attorney, etc. Continuing education within their professional associations may help them decide when it is necessary to ask for legal proceedings and when other solutions can serve their purposes.**

- Education of individuals who are under guardianship. Peer-run organizations such as the Wellbeing Initiative, People First of Nebraska, the Heartland Self-Advocacy Resource Network and others have made strides towards self-advocacy for people with disabilities. Courts and advocacy organizations should create plain language packets of information that explain what happens during guardianship, what the individual's rights are, and how they can ask for help from their guardian or the court to change or end their guardianship. The Nebraska Judicial Branch already has online do-it-yourself forms and explanatory guides on many legal topics: this should be true for guardianships as well. Guardians and/or the county court should personally provide the materials in the format best suited for the individual (i.e., language other than English, in Braille, etc.) each year that the annual reporting is set for hearing.

› CONCLUSION:

Any of us—due to an accident, an illness, or age—could find ourselves experiencing a temporary or permanent disability that could subject us to guardianship. Needing help managing some or even all of our affairs doesn't mean we don't have the right to make as many decisions for ourselves as possible. Even when a guardian is required, Nebraskans with disabilities still deserve the opportunity to retain their personal freedoms to the greatest extent possible.

Guardianships allow such a potential for abuse of power that it is unsurprising our study of Nebraska court files has uncovered many concerning practices that are unchecked and unnoticed. Health experts and gerontologists have long warned us of the increasing needs of America's aging population, which will strain the guardianship system further. There are commonsense reforms that are working in other states that we can put in place in Nebraska. We must ensure every Nebraskan under guardianship has their rights and dignity safeguarded.

› ABOUT DISABILITY RIGHTS NEBRASKA:

Disability Rights Nebraska is the designated protection and advocacy system for the State of Nebraska. As part of our federal mandate, Disability Rights Nebraska monitors institutional facilities, investigates allegations of abuse and neglect, pursues administrative, legal and other appropriate remedies, and provides information, referrals and training. We use a combination of strategies to promote, protect and advocate for the legal and human rights of all people with disabilities. We support people to gain full inclusion in home, community, education, and employment beginning with those who learn, live, or work in isolated segregated or congregated settings.

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› CITATIONS:

¹ Neb. Rev. Stat. 30-2620(a)

² Nebraska Supreme Court Annual Report 2022, page 11.

<https://supremecourt.nebraska.gov/sites/default/files/AnnualReport2022.pdf>

³ <https://nebraskalegislature.gov/FloorDocs/95/PDF/Slip/LB466.pdf>

⁴ <https://nebraskapublicmedia.org/en/news/news-articles/guardianship-scam-prompts-call-for-reform-in-nebraska/> and Auditor report: https://auditors.nebraska.gov/APA_Reports/2013/SA25469-11252013-January_1_2012_Through_December_31_2012_Attestation_Report_Press_Release.pdf

⁵ <https://omahadailyrecord.com/content/attorney-charged-bilking-70-year-old-lady> and *State v. Vanderford*, 312 Neb. 580 (2022)

⁶ “Kearney caregiver charged with attempted financial abuse of dementia patient,” <https://foxnebraska.com/newsletter-daily/kearney-woman-katie-cunningham-charged-with-attempting-to-access-mans-bank-account-dementia-paralyzed-spinal-injury-capitalone-venmo-google-caregiver-buffalo-county-sheriff>

⁷ and <https://www.1011now.com/content/news/Man-accused-of-looting-ailing-mothers-bank-account-472352083.html> (*State v. Gary Vaughn*, D57 CR18-10) and *In re Guardianship of Clifford Bourn*, 2004 WL 2282314

(2004) (two adult sons failed to confer with nursing home or attend meetings related to their father’s care while making expenditures from his funds that were in their own best interests)

⁸ Note on methodology: On November 13, 2023, Disability Rights Nebraska did a case search in JUSTICE (Nebraska’s online court filing system) for this guardian by name as well as by their nonprofit corporation. This search produced over 280 results. We then examined each case file one by one to create the table below for open cases where they are the current guardian. Some people had multiple case entries because they had been moved from one county’s jurisdiction to another so we removed all but the current open file for that individual. Some cases were closed due to the death of the protected person. Some cases were active but this individual had been removed as guardian and replaced by someone else.

⁹ Neb. Rev. Stat. 30-4116(2)(d)

¹⁰ Neb. Stat. Rev. 30-4115(2)

¹¹ Names have been changed to protect confidentiality.

¹² Names have been changed to protect confidentiality.

¹³ Attorneys acting as guardians—in contrast to laypeople—raise questions of whether it is a violation of the profession’s code of ethics which requires clients be kept “reasonably apprised” of developments in their case. See, e.g., Nebraska Rule of Professional Conduct 3-501.4:

<https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-practice-law/article-5-nebraska-rules-professional-conduct/%C2%A7%C2%A7-3-5011-3-50118-client-lawyer-relationship/%C2%A7-3-5014-communications>

¹⁴ Names have been changed to protect confidentiality.

¹⁵ Names have been changed to protect confidentiality.

¹⁶ Names have been changed to protect confidentiality.

¹⁷ Names have been changed to protect confidentiality.

¹⁸ Names have been changed to protect confidentiality.

- ¹⁹ https://www.disabilityrightsnebraska.org/what-we-do/supported-decision-making/supported_decision_making.html#:~:text=Supported%20Decision%20Making%20provides%20a,limiting%20overbroad%20or%20undue%20guardianships
- ²⁰ <https://nebraskalegislature.gov/laws/statutes.php?statute=30-4415>
- ²¹ Neb. Rev. Stat. 30-4116(2)(d)
- ²² Neb. Stat. Rev. 30-4115(2)
- ²³ Joint Review Committee on the Status of Adult Guardianships and Conservatorships in the Nebraska Court System Report of Final Recommendations, page 5. (2010).
https://supremecourt.nebraska.gov/sites/default/files/guardian-rev-cmte-final-rpt_0.pdf
- ²⁴ Texas statute: <https://capitol.texas.gov/tlodocs/85R/billtext/html/SB01710F.htm>
- ²⁵ <https://www.ketv.com/article/lincoln-disability-care-parent-legal-guardian/42138576>
- ²⁶ Neb. Rev. Stat. 30-2627(d)
- ²⁷ Uniform Guardianship, Conservatorship and Other Protective Arrangements Act: <https://www.uniformlaws.org/committees/community-home?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c>
- ²⁸ https://www.americanbar.org/news/reporter_resources/annual-meeting-2023/house-of-delegates-resolutions/506/
- ²⁹ U.S. Senate Special Committee on Aging. "Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans." (2018)
https://www.aging.senate.gov/imo/media/doc/SCA_Aging%20Report-%20Ensuring%20Trust%20Guardianship2018.pdf
- ³⁰ Neb. Stat. Rev. 30-4115(2)
- ³¹ Neb. Rev. Stat. 30-4116(2)(d)
- ³² Texas Guardianship Reform: Protecting the Elderly and Incapacitated (2019). <https://www.txcourts.gov/media/1443314/texas-guardianship-reform-jan-2019.pdf>
- ³³ <https://guardianshipcert.org/become-certified/state-specific-information/>
- ³⁴ <https://www.guardianship.org/education/certification-information/>
- ³⁵ Page 7 https://supremecourt.nebraska.gov/sites/default/files/guardian-rev-cmte-final-rpt_0.pdf
- ³⁶ American Bar Association, "Innovations in Guardianship Systems," presented to the Nebraska State Bar Association in October 2023.
- ³⁷ "Guardianship reform advances after judges, victims share concerns," Nebraska Public Media (2-13-2014).
<https://nebraskapublicmedia.org/en/news/news-articles/guardianship-reform-advances-after-judges-victims-share-concerns/>
- ³⁸ Neb. Rev. Stat. 30-2626
- ³⁹ https://auditors.nebraska.gov/APA_Reports/2013/SA25469-11252013-January_1_2012_Through_December_31_2012_Attestation_Report.pdf

APPENDIX: OPEN GUARDIANSHIP CASES ASSIGNED TO ONE GUARDIAN AS OF MAY 2024

Note on methodology: On May 17, 2024, Disability Rights Nebraska did a case search in JUSTICE (Nebraska's online court filing system) for a specific guardian by name as well as by their nonprofit corporation. This search produced over 280 results. We then examined each case file one by one to create the final list of open cases where they are the current guardian. Some wards had multiple case entries because they had been moved from one county's jurisdiction to another so we removed the initial county case opening the guardianship and left only the current open file for that individual.

As of May 17, 2024, this single guardian has 58 open and active client files—nearly three times the caseload limit for the Office of Public Guardian set by statute.

The court records contained 31 more cases for wards of this guardian who died in the last ten years. There were dozens more wards who were no longer under the care of this single guardian because the ward had moved out of state, or had been assigned to a different guardian. It is therefore important to note that at any point in the past few years, this guardian's caseload was even larger than their 58 current clients.

While the names of the individuals under guardianship and their cities of residence shown in the map on page 3 are a matter of public record, we have not listed any of the individuals in order to protect their confidentiality. We believe that the breadth of geographic spread shown between these individuals is essential to understand our concerns about a single individual guardian acting for all of these vulnerable adults.