



# **Public Guardianship: A Limited Review of the Literature**

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## Introduction

**“These unbefriended incapacitated people are the clients of public guardianship programs. The unbefriended are persons who are unable to care for themselves and are typically poor, alone, and ... persons with no other recourse than to become wards of the state. Serving them well is a challenge for any government, especially one under budgetary constraints. Their lives have remained largely unexamined, a part of the backwater of the governmental social service and welfare machinery.”<sup>1</sup>**

It is well-established that the state can establish a legal relationship whereby persons deemed incapacitated, unable to make decisions for themselves, can have a court-appointed person or entity<sup>2</sup> (guardian) make decisions regarding their person or property. While there may be natural incentives for family, friends, or other entities to assume a guardianship role for an incapacitated person (especially if the incapacitated person has financial resources), the situation is much more difficult when the incapacitated person has no family, friends, or other entities willing to assume a guardian role.

Converging demographic, medical, and socio-economic trends heighten the need to examine the development of public guardianship: the “graying” of the general population; the aging of people with disabilities and their caregivers; incidents of elder abuse and exploitation; and social trends that have “pulled families apart” (Teaster et al, 2005). People with disabilities are impacted by many if not all of these trends. The American Community Survey<sup>3</sup> estimates that thousands of Nebraskans experience a disability and many thousands of them live below the poverty line (see Appendix H).

Not all incapacitated people will have the resources or the social/family connections for interested or willing individuals to serve as guardian. This is especially true for people with disabilities.

Incapacitated persons who lack these financial or social resources touch on an important subsection of guardianship, “Public Guardianship”, which “provides a last resort when there is no one willing or appropriate to help—usually for some at-risk, low-income incapacitated adults” (Teaster et al, 2010). Prompted by the realization that incapacitated individuals who are in this latter category often “fall through the cracks” of the guardianship process, states included the development of public guardianship programs in the reforms of guardianship laws from the 1980’s to the present (Teaster et al, 2010).

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<sup>1</sup> Teaster et al (2010), p. 2

<sup>2</sup> See Neb. Rev. Stat 30-3902

<sup>3</sup> Erickson, W., Lee, C., von Schrader, S. (2013). Disability Statistics from the 2011 American Community Survey (ACS). Ithaca, NY: Cornell University Employment and Disability Institute (EDI). Retrieved Oct 31, 2013 from [www.disabilitystatistics.org](http://www.disabilitystatistics.org).

Guardianship involves significant stakes as it directly involves the most significant aspects of an individual's life and a person's civil rights. As Teaster et al (2010) note, guardianship can be a "double-edged sword"<sup>4</sup> as it "protects legally incapacitated individuals and provides for their decisional needs while simultaneously removing fundamental rights" (p. 3).

This document is intended to provide a brief survey of the literature surrounding public guardianship programs throughout the country. It is not an exhaustive list of the conclusions of the academic research into state/local public guardianship programs. However, its purpose is to highlight fundamental areas that will need to be addressed in order to develop an effective public guardianship program and to provide a focused starting point for future discussions about public guardianship.

## **Public Guardianship: Research, Definition, and Scope**

### *Research History*

Few published studies exist on the need and operation of public guardianship programs (Teaster et al, 2010). When Winsor C. Schmidt and colleagues conducted their landmark national study<sup>5</sup> of public guardianship in the late 1970s, public guardianship was a fairly new phenomenon and state practices were highly irregular. The study focused on individuals served, staff size and qualifications, legal basis, procedural safeguards, oversight, funding, and other areas. The study concluded that "public guardianship offices seem to be understaffed and under-funded, and many of them are approaching the saturation point in numbers". Consequently, many individuals under public guardianship received little personal attention, and Schmidt noted that there were identified instances of abuse. Using John Regan and Georgia Springer's 1977 taxonomy, Schmidt classified public guardianship programs into four models: (1) court; (2) independent state office; (3) division of a social service agency; and (4) county. The study maintained that naming social service agencies to act as public guardians represented an inherent conflict of interest, cautioned programs that petition for adjudication of incapacity not also to serve as guardians, and called for strict procedures to accompany public guardianships (Teaster et al, 2007b).

No further study on a national level was conducted and published until Pamela B. Teaster and her colleagues in 2005.<sup>6</sup> The 2005 national public guardianship study included an extensive analysis of public guardianship law as well as a comparison with

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<sup>4</sup> See Regan, J. and Springer, G (1977), U.S. Senate Special Committee on Aging, *Protective Services for the Elderly: A Working Paper*. (Washington, D.C.: GPO, 1977), p. 27

<sup>5</sup> Winsor Schmidt, Kent Miller, William Bell & Elaine New (1981) *Public Guardianship and the Elderly* (Ballinger Publishing). The study sought to assess the extent to which public guardianship assists or hinders older persons in accessing their "rights, benefits, and entitlements". The study reviewed existing and proposed public guardianship laws in all states and focused intensively on the most active and experienced states: Maryland, Delaware, Illinois, Arizona, California, and Florida one state without public guardianship at the time. See Teaster et al (2007b) and Teaster et al (2010) for a discussion of the study.

<sup>6</sup> Other studies on a state level were conducted. See (Teaster et al, 2010) for a discussion of those studies.

the law existing at the time of the 1979-1981 Schmidt review<sup>7</sup>. The study ran from 2004-2007 (survey disseminated in 2004, reported results in 2005) and identified state statutory provision for public guardianship and examined relevant caselaw. Similar to the 1981 Schmidt study, Teaster et al's 2005 study used multiple case studies to clarify public guardianship, replicated (with refinements) the survey tool used in Schmidt's 1981 study, and utilized site visits of eight state/county public guardianship programs<sup>8</sup>. The 2005 study was reviewed again in 2007 (Phase II) to check for any updated information.

### *Definition*

The Teaster et al review of public guardianship programs nationwide defines public guardianship as "...the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian" (Teaster et al, 2007a, p. 4). Furthermore public guardians are described as an entity that "receives most, if not all, of its funding from a governmental entity. Public guardianship programs are funded through state appropriations, Medicaid funds, county monies, legislated fees from the [incapacitated person] or some combination of these." (Teaster et al, 2010, p. 5)

### *Scope*

Public guardians serve distinct populations, typically including older incapacitated persons who have lost decisional capacity, individuals with intellectual and/or developmental disabilities who lack decisional capacity, and adults with mental illness or brain injury (Teaster et al, 2010, p. 6).

Services provided by public guardians can vary, including serving as a guardian of the person and/or property, a representative payee, or other surrogate decision maker (Teaster et al, 2010, p. 6). Public guardianship programs can also provide case management, financial planning, education and other social services, adult protective services, guardian *ad litem*, court investigators and/or advisers to private guardians (Teaster et al, 2010).

### ***Olmstead's integration requirement and public guardianship***

The 1999 U.S. Supreme Court *Olmstead* decision<sup>9</sup> provides a strong impetus to develop and support a public guardianship system. The *Olmstead* decision requires states to integrate people with disabilities fully into community settings when appropriate rather than relying on institutional placements.

The Court ruled that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the ADA. Public entities must provide community-based services to persons with disabilities when: (1) such services are appropriate, (2)

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<sup>7</sup> Pamela Teaster, Erica Wood, Naomi Karp, Susan Lawrence, Winsor Schmidt & Marta Mendiondo (2005) *Wards of the State: A National Study of Public Guardianship*, [www.abanet.org/aging/publications/docs/wardofstatefinal.pdf](http://www.abanet.org/aging/publications/docs/wardofstatefinal.pdf)

<sup>8</sup> The sites were: Arizona (Maricopa and Pima counties), California (Los Angeles and San Bernadino counties), Delaware, Florida, Illinois, and Maryland. For a fuller description of the study design and implementation, see Teaster et al (2010) p. 8-9.

<sup>9</sup> *Olmstead v. L. C.* (98-536) 527 U.S. 581 (1999) 138 F.3d 893

the affected persons do not oppose community-based treatment, and (3) affording community-based services would not fundamentally alter a state's service system.

Teaster et al (2010) note that lack of a surrogate decision maker may force people to be (or remain) unnecessarily institutionalized and consequently be denied an appropriate community placement under *Olmstead*:

*“Often, individuals require surrogate decision makers to prevent institutionalization or to facilitate discharge and establish community supports. People with disabilities may languish unnecessarily in mental hospitals, in intermediate care facilities for people with developmental disabilities, or in nursing homes because they lack the assistance of a guardian. Thus, Olmstead serves as an impetus for states to address the unmet need by establishing and more fully funding public guardianship programs. For example, Virginia's 2007 Strategic plan for Olmstead implementation includes ‘surrogate decision making’ as one of seven ‘critical success factors’ in advancing community integration of people with disabilities.”* (p. 130).

## Issues to Consider

### 1. *Implicit versus Explicit Programs*

**“In 1981, the Schmidt study found that 34 states had public guardianship provisions. The 2007 study found that all of the states except Nebraska have some form of public guardianship. In most cases, there is statutory authority for these programs...but some states have developed programs or expended funds for public guardianship without explicit public guardianship statutes.”** <sup>10</sup>

Schmidt's 1981 study of public guardianship programs distinguished between “explicit” and “implicit” public guardian systems:

*“One can distinguish between explicit public guardianship statutes that specifically refer to a ‘public guardian’ and implicit statutes that seem to provide for a mechanism equivalent to public guardianship without actually denominating the mechanism as ‘public guardian’.”* (Schmidt et al, 1981, p. 26)

Implicit schemes often name a state agency or employee as a “guardian of last resort” when no willing and responsible family members or friends are able to serve as guardian. Explicit schemes generally provide for an office and the ability to hire staff and contract for services. (Teaster et al, 2007b, p. 206). Over time, states<sup>11</sup> have shifted markedly toward enactment of explicit public guardianship schemes:

- 1981 study (Schmidt):
  - 26 implicit statutory schemes in 26 states
  - 14 explicit schemes in 13 states

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<sup>10</sup> Teaster et al (2010), p.124

<sup>11</sup> Teaster (2010), p. 23 note that states such as Delaware, Florida, Virginia, New Jersey, and Utah, who have enacted a public guardianship office have detailed statutory provisions on powers and duties, staffing, funding, record keeping, and review.

- Some states had more than one scheme
- 2005 study (Teaster):
  - 20 implicit schemes in 19 states
  - 23 explicit schemes in 22 states
- 2007 study update (Teaster):
  - 18 implicit schemes in 18 states
  - 28 explicit schemes in 27 states

## 2. Location Within Government

**“Perhaps the most fundamental issue that arises in analyzing public guardianship statutes is: where in the governmental administrative structure is the public guardianship function placed?”** <sup>12</sup>

Both the Schmidt and Teaster research on public guardianship divide public guardianship programs into 4 models:

- **Court Model**—establishes the public guardianship office as an arm of the court that has jurisdiction over guardianship and conservatorship.
  - 1981: 6 states approximate this model
  - 2007<sup>13</sup>: 5 states approximate this model<sup>14</sup>
- **Independent Agency Model**—the public guardianship office is established in an executive branch of the government which does not provide direct services for incapacitated persons.
  - 1981: 3 states approximate this model
  - 2007: 4 states approximate this model<sup>15</sup>
- **Social Service Agency Model**—the public guardianship functions in an agency providing direct services to incapacitated persons.
  - 1981: Over half of the states analyzed approximate this model
  - 2007: 32 states approximate this model<sup>16</sup>
- **County Model**
  - 2007: Approximately 13 states approximate this model, and a number of others have programs coordinated at the state level, but carried out administratively or by contract at the local/county level.<sup>17</sup>

<sup>12</sup> Teaster et al (2010), p. 22-23

<sup>13</sup> The 2007 data is used here as the data was reviewed and updated from the 2005 Teaster study.

<sup>14</sup> Delaware, Hawaii, Mississippi, Washington, and Georgia

<sup>15</sup> Alaska, Illinois, Kansas, and New Mexico

<sup>16</sup> “More than half of the 44 states with public guardianship statutory provisions name a social service, mental health, disability, or aging services agency as guardian, or as the entity to coordinate or contract for guardianship services”, p. 24. The examples cited include: Connecticut, New Hampshire, Vermont, Virginia, and Florida.

<sup>17</sup> Teaster et al (2010), p. 24: “In Arizona the county board of supervisors appoints a public fiduciary, and in California, the county board creates an office of public guardian. In Idaho, the

### 3. Funding and Staffing

“Virtually all states reported that lack of funding and staffing is both their greatest weakness and their greatest threat.”<sup>18</sup>

#### Funding

In Schmidt’s 1981 study, state statutes were “typically silent on public guardianship funding”<sup>19</sup>. However, Teaster et al (2010) report that almost half of the state statutes regarding public guardianship reference authorization for state or county funds.

“Public guardianship clients need basic services, as well as surrogate decision making. Public guardians can advocate for client needs, but without funding for community services...public guardianship is an empty shell.”

--Teaster et al (2010), p. 133

Teaster et al (2007b) warn: “Some 14 states include reference to specific state appropriations, while others have not made any provision statutorily, leaving the public guardianship function financially **at risk**.” (p. 213, emphasis added)

“Funding levels are egregiously and unconscionably low for a population of [incapacitated persons] that... is growing increasingly complex and includes persons with greater incidences and combinations of physical and mental health problems. Even if funding and staffing levels remain static, as have those of many programs, they are actually operating in a deficit mode.”

–Teaster et al (2010), p. 143

Teaster et al (2010) further note that funding for public guardianship often comes from a patchwork of sources including state appropriations, fees assessed on clients with assets, grants, etc. However, they report that 7 states used Medicaid dollars to fund the establishment of guardianship or for guardianship services<sup>20</sup>; some have even put guardianship in their state Medicaid plans<sup>21</sup>. Teaster et al (2010) recommend that states should explore approaches to utilize Medicaid funding for public guardianship programs<sup>22</sup>. They go on to warn that, “Without sufficient funding, programs are stretched to the breaking point and fail to provide any real benefit to the individuals they are obligated to serve.” (p. 129)

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board of county commissioners creates a ‘board of community guardian’. In Missouri, the county public administrators serve as public guardian”.

<sup>18</sup> Teaster et al (2010), p. 128

<sup>19</sup> Teaster et al (2010) p. 129

<sup>20</sup> Teaster et al (2010), pp. 129-130: “Illinois uses an administrative claiming model to access Medicaid funds in which the federal government provides a match for the state funds used to pay for the guardianship. Services that help incapacitated individuals to apply for Medicaid funds...Kentucky bills Medicaid for guardianship services under its targeted case management program. Washington uses Medicaid dollars to supplement funding for guardians...”

<sup>21</sup> Teaster et al (2010), p. 129

<sup>22</sup> p. 142: “The extent and creative use of various Medicaid provisions for guardianship merits further examination and would be a useful resource for public guardianship programs.”

## Staffing

Teaster et al (2010) note some public guardianship programs use staffing ratios to cap the number of clients. However, most programs serve as guardians of last resort without any restrictions on

“The study identified ratios as high as 1:50, 1:80, and even 1:173. Caseloads are increasing, yet program budgets are not rising commensurately, and in some cases, staff positions are frozen.”

--Teaster et al (2010), p. 128

number of individuals they serve. Since most public guardianship programs serve as last resort and must accept individuals needing public guardianship, regardless of staffing levels, these public guardianship programs are put in a position which “places clients in jeopardy”<sup>23</sup>. Teaster et al (2010) explain that chronic understaffing threatens the ability of the system to truly look out for the best interests of the individual.

The results of the 2005 study indicate that the staffing ratios are still too high, despite being lower than those 25 years ago. Only 2 states were found to have a specified 1:20 guardian-to-individual ratio (Washington and Virginia). They caution that this ratio is still at risk in Virginia, as it has not been written into statute, but rather left to inclusion in regulations, “the approval of which was pending nearly 10 years after the programs were statutorily authorized.” (Teaster et al, 2010, p. 143)

Based on their site visits and observations made in their study Teaster et al recommend that staffing ratios be set—either mandating a specific ratio in statute or requiring an administratively specified ratio— of no more than 1:20<sup>24</sup>. This level is also consistent with the recommendation from the 1981 Schmidt study.

## 4. Oversight

**The public guardian has legal authority over an individual whose basic rights are severely compromised, and who, therefore, deserves the state’s highest level of knowledge and attention.”<sup>25</sup>**

Teaster et al (2007b) identify an uneven oversight system for public guardianship programs. State public guardianship programs responsible for local or regional offices showed great variability in terms of their monitoring, uniform internal reporting forms were generally lacking, and in many states there was no state-level public guardianship coordinating entity.

Public guardianship programs are subject to the same provisions for guardianship accountability and monitoring as other guardians<sup>26</sup> but in nearly 20 states, the public guardianship statute specifically requires the public guardian program to report to the court and conform to state requirements for guardian review, or provides for special additional oversight. Teaster et al (2010, p. 27) report several examples:

<sup>23</sup> Teaster et al (2010), p. 129

<sup>24</sup> Teaster et al (2010), p. 138

<sup>25</sup> Teaster et al (2010), p. 138

<sup>26</sup> Teaster et al (2010), p. 27



- **Maine, Minnesota, and New Hampshire:** an annual report require to the court on each public guardianship case is required
- **Delaware:** court review of public guardianship cases every 6 months is required
- **Florida:** the public guardianship office must report to court on efforts to locate an alternative/successor guardian and on potential restoration within 6 months of guardianship appointment

Teaster et al (2010, p. 27) also note that several states have statutes that call for annual reports on the program or on cases to governmental agencies in addition to court reports:

- **Hawaii:** the office must submit an annual report to the chief justice
- **Kansas:** program must report annually to the governor, legislature, judiciary, and the public
- **Florida, Indiana, Kansas, Tennessee, and Vermont:** an annual audit of the program is required
- **Maryland:** county review boards conduct biannual reviews of each public guardianship case, including face-to-face hearings by volunteer interdisciplinary panels
- **Utah and Virginia:** an independent evaluation of the public guardianship program is required

Teaster et al (2010) state that independent financial monitoring, in addition to court oversight, is critical to public guardian accountability. They recommend that increased oversight measures be included in the public guardian system—additional monitoring procedures for public guardians beyond the established reporting requirements of all guardians.

They also press for the inclusion of a public guardianship review board, akin to Maryland (where local review boards have operated for over 20 years) or Virginia (where multi-disciplinary panels review cases handled by the public guardian):

*“Review boards or screening committees could serve as important checks on the office as well as aids for judicial review, and could represent important resources for the office, especially regarding complex and ethically challenging cases. A review board or panel is an innovative practice with promise that merits further evaluation.”<sup>27</sup>*

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<sup>27</sup> Teaster et al (2010), p. 155

## 5. Use of Limited Guardianships

**“Given the high volume of cases, courts should use public guardianship programs to implement forward-looking approaches, including the regular use of limited orders to maximize the autonomy of the individual and implement the least restrictive alternative principle.”<sup>28</sup>**

Courts rarely appoint public guardians as limited guardians<sup>29</sup>. The 2005 study identifies that there were 11 times more plenary than limited guardianships of property and 4 times more plenary than limited guardianships of the person (Teaster et al, 2010, p. 131). In focus groups and interviews conducted by Teaster et al, estimates of the proportion of limited guardianships ranged from 1% to 20%, “with many reporting that plenary appointments are made as a matter of course.”<sup>30</sup>

Teaster et al (2010) report that in 9 states the statutory language specifically mentions the public guardian may serve as a limited guardian. They note that Washington requires that the public guardianship providers annually certify that they have reviewed the need for continued public guardianship and the appropriateness of limiting or further limiting the scope.

## 6. Data Collection

**“Without uniform, consistent data collection, without the evidence-based practice that exists in other fields, such as medicine, practitioners and policymakers are working in the dark.”<sup>31</sup>**

Results of the 2005 study indicate that very little data exists on public guardianships, such as client characteristics, referral sources, costs, actions taken, and time spent by staff. Teaster et al report that a significant number of the states could not respond to the questions on the 2004 national survey and no state maintained outcome data on changes in individuals over the course of the guardianship. They state in 2010 that “the majority of the states were unable to produce any meaningful data...some states admitted that they had data systems, but they were unable to readily retrieve a range of data queries.” (p. 143). They recommend: “At a minimum, states should enhance their data systems to produce answers to the relatively simple questions asked in the national survey for the 2005 report....”

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<sup>28</sup> Teaster et al (2010), p. 141

<sup>29</sup> Teaster et al (2010), p. 131

<sup>30</sup> Teaster et al (2010), p. 131

<sup>31</sup> Teaster et al (2010), p. 131

## General Recommendations and Areas of Further Research

Our review of the major studies of public guardianship programs has provided general guidance about effective structure and operational policies of these programs; and in effect issues that merit further study.

### **1. Public guardianship programs should be “explicit” programs and created statutorily**

Teaster et al (2007b) note that explicit public guardian systems are “more likely to have greater oversight than is required for private guardians or for guardians under an implicit scheme” (p. 206).

Teaster (2010) conclude that an explicit public guardian scheme offers more advantages than implicit schemes: “Explicit provisions provide for an actual program, rather than a governmental entity to serve as guardian of last resort, and can articulate standards with much greater specificity. These explicit provisions are more likely to provide for budgetary appropriations and to establish greater oversight than that required for private guardians.” (p. 29)

However, as Schmidt et al (1981) admits, the distinctions between explicit and implicit systems are “nominal at best”, and “although an explicit scheme often indicates a progressive trend in this field, this is not always true. Indeed, several of the implicit schemes are even more progressive than the typical explicit statute” (Schmidt et al, 1981, p. 26).

### **2. Public guardianship programs should not be based on the social services model**

Schmidt (1981) and Teaster (2010) warn that the Social Services Agency model seems logical, given the linkages between an incapacitated person’s needs and the service provider, but carries an inherent conflict of interest between the guardian and the incapacitated person. As Schmidt (1981) explains:

*“The agency’s primary priority may be expedient and efficient dispersal of its various forms of financial and social assistance. This can be detrimental to the effectiveness of the agency’s role as guardian. If the ward is allocated insufficient assistance, if payment is lost or delayed, if assistance is denied altogether, or if the ward does not want mental health service, it is unlikely that the providing agency will as zealously advocate the interests of that ward”<sup>32</sup>.*

Teaster et al (2010) recommend that this model be avoided due to a compromised ability of the public guardian to “advocate for, or objectively assess, services” (p. 133), including “lodging complaints about the services provided” (p.124). Furthermore, Teaster et al (2010) report that focus group respondents confirmed the deficits of this model:

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<sup>32</sup> Schmidt et al (1981), *Public Guardianship and the Elderly*, p. 38

*“Interview and focus group respondents were repeatedly asked if they regarded such a placement a problem, and most did...the advocacy needs of the [incapacitated person] are severely compromised when the program serves as both guardian and service provider. The ability to zealously advocate for the [incapacitated person’s] needs and to objectively assess services is gravely diminished, and the ability to sue the agency if necessary is effectively nonexistent. As a result, the person’s physical and mental outcomes may be adversely affected.” (p. 124-125)*

Schmidt noted in 1981 that a number of states had crafted mechanisms to work around the inherent conflict of interest in this model such as stating that the agency is not to serve as guardian unless there is no alternative. Teaster et al (2010) note that the majority of states include such language today. Most states specify that a fundamental duty of the public guardian is to find suitable alternative guardians<sup>33</sup>.

Schmidt (1981) concludes: “There could not be a worse location for the office of the public guardian than the very agency that often fosters the need for advocacy and protection of the ward.” (p. 183)

### **3. Public guardianship programs should be prohibited from petitioning for their own wards**

*“The 1981 study observed that public guardianship programs that petition for their own appointment are subject to clear conflicts of interest. On one hand, they may have an incentive to self-aggrandize by petitioning in cases where there may be another alternative. On the other hand, programs may decline to petition when they have an overload of cases, or when the case presents difficult behavior problems that would require a great deal of staff time. They may have an incentive to cherry pick the more stable cases. However, if the public guardianship program may not or does not petition, frequently, there is a backlog of cases in which at-risk individuals in need are simply not served, or in which preventable emergencies are not avoided.” (Teaster et al 2010, p. 126)*

*“Because of the inherent conflicts involved, public guardianship programs should not serve as both petitioner and guardian for the same individuals. Petitioning is an important potential role for the attorney general’s office. Indeed, under the concept of *parens patriae*, on which guardianship is historically based, the state has a duty to care for those who are unable to care for themselves, and this could include bringing a petition for the court to appoint a guardian.” (Teaster et al 2010, p. 135)*

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<sup>33</sup> Teaster et al (2010), p. 24: “In Florida, the statewide Office of Public Guardian must report on efforts to find others to serve within 6 months of appointment; Illinois Office of State Guardian may not provide direct residential services to legally [incapacitated persons]; North Dakota allows the appointment of any appropriate government agency unless the agency provides direct care and has custody of the [incapacitated person]...; Indiana requires that regional guardianship programs have procedures to avoid conflict of interest in providing services; Montana prohibits the appointment of guardians who provide direct services to the [incapacitated person], but makes an exception for the agency serving in the public guardianship role.”

**4. Public guardianship programs should explore guardianship alternatives before the use of guardianships**

*“Since guardianship involves significant restrictions on the activities, actions, and rights of incapacitated individuals, they should not be entered into lightly...no guardianships are ‘small’; they directly involve the most significant aspects of an individual’s life and a person’s civil rights.” --Testimony of Disability Rights Nebraska on Nebraska Legislative Bill 615 (2003)*

**5. Public guardianship should prefer the application of limited guardianships within existing state law**

*“Given the high volume of cases, courts should use public guardianship programs to implement forward-looking approaches, including the regular use of limited orders to maximize the autonomy of the individual and implement the least restrictive alternative principle. The routine use of limited orders could be enhanced by check-off categories for authorities on the petition form, directions to the court investigator to examine limited approaches, and templates for specific kinds of standard or semi-standard limited orders.” (Teaster et al 2010, p. 140)*

**6. Public guardianship programs must be given adequate and stable funding to successfully carry out its goals, without using a fee-for-service structure as a means of funding**

*“Public guardianship clients need basic services, as well as surrogate decision making. Public guardians can advocate for client needs, but without funding for community services, such as transportation, in-home care, home-delivered and congregate meals, attendant care, and care management, as well as supportive housing, public guardianship is an empty shell. The Olmstead case offers a powerful mandate for funding such services to integrate individuals with disabilities into the community.” (Teaster et al 2010, p. 133)*

*“Each state should establish and periodically revise a minimum cost per [incapacitated person]. State funding should enable public guardianship programs to operate with specified staff-to-client ratios. Funding for public guardianship can result in significant cost savings for the taxpayer through sound management of client finances, the prevention of crises, timely and appropriate medical care, the use of the least restrictive alternative setting, avoiding the use of unnecessary emergency services, and the identification of client assets and such incipient benefits as federal entitlements...” (Teaster et al 2010, p. 139)*

**7. Public guardianship programs should explore utilizing Medicaid funds to the greatest extent possible**

*“...an increasing number of states are using Medicaid funds to help support public guardianship services... states use different mechanisms to access Medicaid funds. Medicaid is a complex federal-state program with wide variations in state plans and policies within the bounds of federal guidance. The extent and creative use of various Medicaid provisions for guardianship merits further*

*examination and would be a useful resource for public guardianship programs.”*  
(Teaster et al 2010, p. 142)

**8. Public guardianship programs should build in staffing ratios adequate to maintain quality services**

*“The recommendation for a staff-to-client ratio is as important today as it was 25 years ago. At some tipping point, chronic understaffing means that protective intervention by a public guardianship program simply cannot be justified as being in the best interests of the vulnerable individual. Based on the site visits and observations of Phase I and Phase II, a guardian-to-client ratio of no more than 1:20 is recommended. States could begin with pilot programs to demonstrate the client outcomes achieved through such a specified ratio, and the costs saved in terms of timely interventions that prevent crises, as well as to demonstrate the increased use of community settings.”* (Teaster et al 2010, p. 138)

**9. Public guardianship programs should exercise substantive *internal* oversight— for example frequent visits with wards to continually assess needs, preferences, and to update guardianship plans**

*“Because the capacity and needs of [incapacitated persons] can change rapidly, programs should have internal protocols for regular, functional re-evaluation of client capacity, addressing whether a guardianship continues to be necessary, whether the scope of the order should be limited, and whether the program's plan for services should be changed.”* (Teaster et al 2010, p. 135)

*“Some state laws (such as those of Alaska and Florida) require quarterly visits and Washington requires monthly visits, but most laws are silent regarding the frequency of visits. Because needs and circumstances can change rapidly, because [incapacitated persons] are by nature dependent and vulnerable, and because guardians are charged with the high fiduciary duty of ‘living the decisional life of another,’ this study recommends bimonthly visits. In addition, this will promote the regular participation of guardians in nursing home and assisted living care planning meetings for clients, as well as in other key facility events.”* (Teaster et al 2010, p. 136)

**10. Public guardianship programs should have substantive *external* oversight— for example data-driven program evaluations, audits, and annual reports to the legislature**

*“Public guardianship is a basic public trust. Yet, many public guardianship programs are underfunded and understaffed, laboring under high caseloads that may not permit the individual attention required. Courts should establish additional monitoring procedures for public guardianship beyond the regular statutorily mandated review of accountings and reports required of all guardians. For example, courts could require an annual program report (as currently required by at least four states), conduct regular file reviews (such as in Delaware, where court review of public guardianship cases is statutorily required every six months), and meet periodically with program directors.”* (Teaster et al 2010, p. 140)

*“Some states (i.e., Utah, Virginia, and Washington) and some localities (i.e., Washoe County, Nevada) have incorporated periodic evaluation into their statutes and settlement agreements, respectively. Several states have undergone one-time audits by outside entities when practices have come into question. Information from more than one site visit revealed that such audits, in addition to achieving fact-finding, are sometimes politically motivated. Thus, the auditing entity may slant the manner in which the audit is conducted to encourage the removal of an official or the closure of a program. Regular audits over time may serve as a defense against a one-time, and potentially troubling, audit (such as the one that was in progress in Los Angeles during the site visit).”*

*Public guardianship involves a highly complex function of government. Audits conducted by individuals or entities that are not highly knowledgeable of the system and its requirements may produce more harm than good. Thus, periodic external evaluations are recommended to encourage input from guardianship stakeholders and evaluators alike.”* (Teaster et al 2010, pp. 137-138)

#### **11. Public guardianship programs should dedicate significant attention to data collection and dissemination as well as developing standardized reporting forms, instruments, and requirements**

*“An excellent place to implement uniform data collection is public guardianship, where data are inconsistently maintained. Much of this information is not captured and yet is necessary for program operation, and, more importantly, for the provision of excellent services for [incapacitated persons]. The establishment of a uniform standard of minimum information for data collection is recommended, using the information requested for this national public guardianship study as a baseline and guide. Even in an age where failing to keep computerized records is inexcusable, some states are, in fact, not doing so. Computer records are necessary for all public programs, and data should be entered, checked, and aggregated regularly. Data on guardianship will facilitate much-needed accountability and will bolster arguments for necessary increases in staffing and funding, as well.”* (Teaster et al 2010, pp. 139-140)

*“Regular internal and external program evaluation requires the consistent collection and aggregation of key data elements, including at least the annual number of guardianship and conservatorship cases for which the office was appointed as guardian or conservator, the total number of open cases, the number of cases terminated and their disposition, the age and condition of clients, and the number institutionalized. Other data elements, such as the number of limited guardianships, size of the estates, paid professional staff time spent on each client, referral sources, and more, would shed additional light on the operation of the program. The state court administrative office, state public guardianship program, or similar entities should ensure the uniformity of local program data collection, perhaps through the same computerized database...”* (Teaster et al 2010, p. 137)

*“To achieve consistency and accountability, state public guardianship programs should design, and require local entities to use, uniform forms (e.g., intake, initial client assessment and periodic reassessment, care plans, reports on the*

*personal status [incapacitated persons], staff time and activity logs, and values histories) and should provide for the electronic submission of this information for periodic compilation at the state level. These standardized forms have long been used in mental health treatment plans, social services, and educational plans.”* (Teaster et al 2010, p. 134)

## **12. Public guardianship programs should adopt minimum standards of practice**

*“Some, but not all, public guardianship programs have written policies and procedures. Programs need written standards on the guardian's relationship with the incapacitated individual, decision making, using the least restrictive alternative, confidentiality, medical treatment, financial accountability, property management, and more. Written policies, as well as training on these policies, will provide consistency over time and across local offices. A clearinghouse of state policies and procedures manuals will encourage replication and raise the bar for public guardianship performance.”* (Teaster et al 2010, p. 135)

## **13. Public guardianship programs should develop and monitor a written guardianship plan setting forth short-term and long-term goals for meeting the needs of each ward**

*“This recommendation is taken from the [National Guardianship Association] Standards of Practice (Standard #13). In addition, a number of State laws include requirements for the submission of guardianship plans to the court. Such a plan should address medical, psychiatric, social, vocational, education, training, residential and recreational needs, as well as financial plans within the scope of the order.”* (Teaster et al 2010, p. 135)

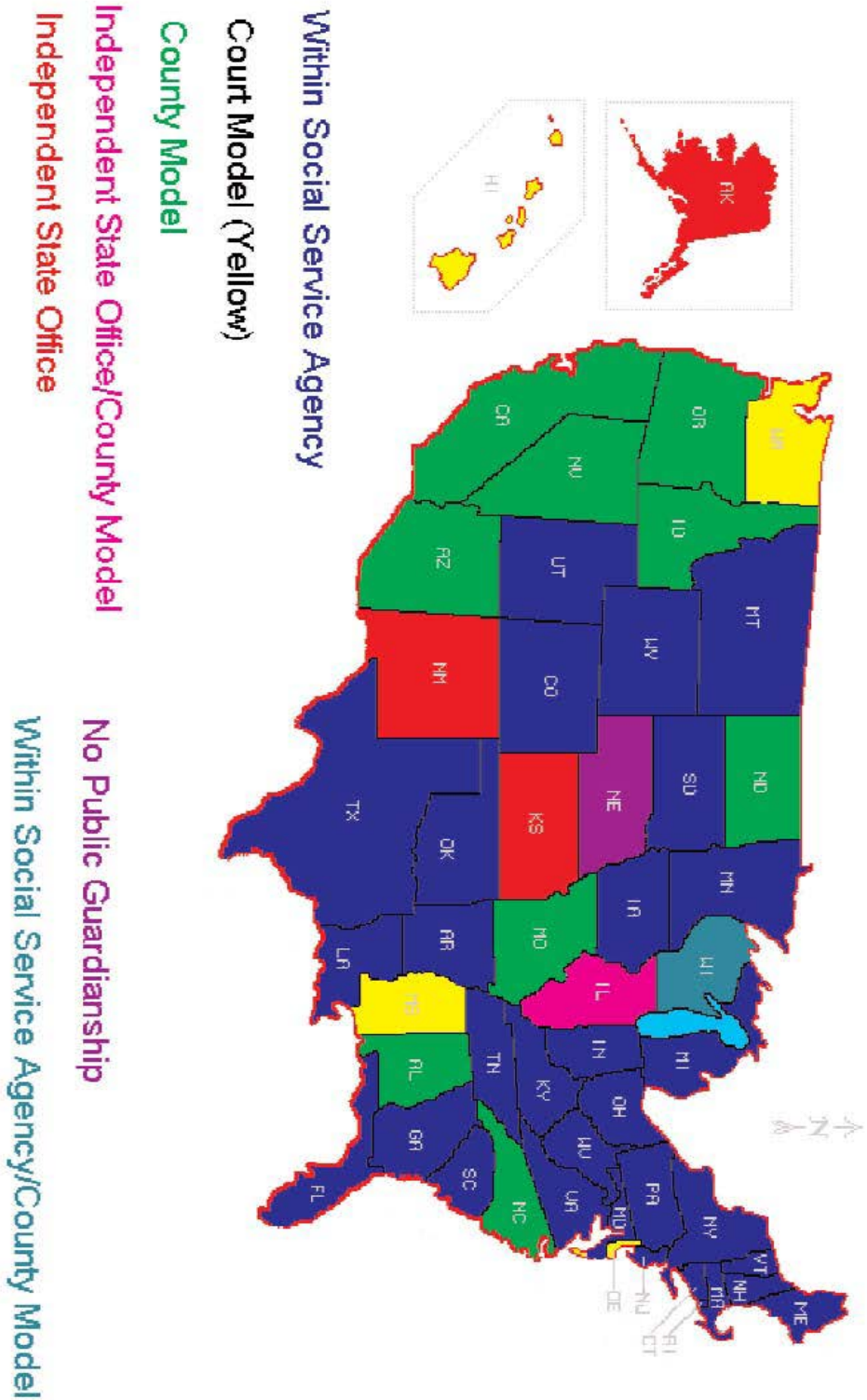


## Appendices

- A. Map of States with Public Guardianship (2007)**
- B. List of States by Governmental Model (2007)**
- C. Map of States with Public Guardianship (2005)**
- D. List of States by Governmental Model (2005)**
- E. 2004 National Survey**
- F. 1981 National Survey**
- G. Conclusions from Phase II Report (2007)**
- H. Nebraska Disability Demographics (2011)**

A. Map of States with Public Guardianship (2007)

Models of Public Guardianship



Source: Public Guardianship After 25 Years: In the Best Interest of Incapacitated People? (2007)

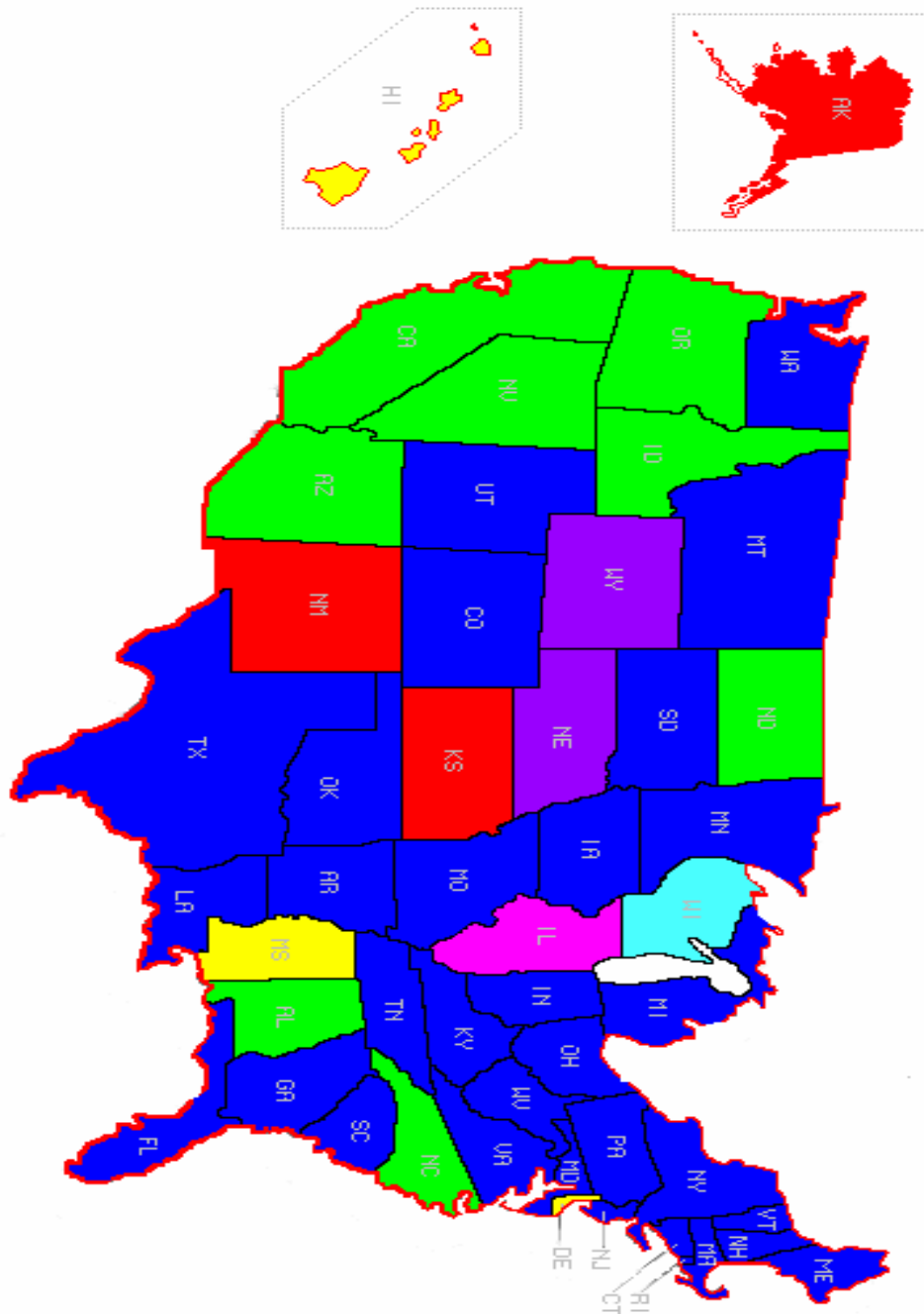
## B. List of States by Governmental Model (2007)

<b>Court Model States</b> <i>5 States / 6 Programs</i>	DE, HI (Large), HI (Small), MS, WA, D.C.
<b>Independent State Office</b> <i>4 States</i>	AL, IL, KS, NM
<b>Within Social Service Agency</b> <i>32 States</i>	AR, CO, CT, FL, GA, IN, IA, KY, LA, ME, MD, MA, MI, MN, MT, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY
<b>County Model</b> <i>11 States</i>	AL, AZ, CA, ID, IL, NV, NC, ND, OR, WI, MO
<b>No Public Guardianship</b> <i>1 State</i>	NE

\* As in the Phase I public guardianship study, the identification of public guardianship continued on a "follow the money" approach. Thus, if the public guardianship function received public funding, the study lists the state as having some form of public guardianship—which exists in 49 states and the District of Columbia. However, that fact by no means implies that those states have statewide coverage of public guardianship, or necessarily have an explicit program. The four basic models are derived from the 1981 study by Schmidt, Miller, Bell & New (*Public Guardianship and the Elderly*, 1981), based on earlier models. While the models provide a useful classification, there are many variations, and few states fit the exact organizations described in the models.

Source: Public Guardianship After 25 Years: In the Best Interest of Incapacitated People? (2007)

### C. Map of States with Public Guardianship (2005)



Division of Agency Providing Social Services

Court Model

Independent State Office

County Model

No Public Guardianship

Independent State Office/County Model

Social Services/County Model

Source: Teaster et al. (2005). *Wards of the State: A National Study of Public Guardianship: Executive Summary.*)

#### **D. List of States by Governmental Model (2005)**

Source: Teaster et al. (2005). *Wards of the State: A National Study of Public Guardianship: Executive Summary.*

### Quick Reference -- State Mini-Profiles

State	Brief Description of Public Guardianship
Alabama	Probate judge appoints a county conservator or the sheriff serves.
Alaska	Office of Public Advocacy in Department of Administration provides public guardianship services.
Arizona	County boards of supervisors appoint public fiduciaries in all counties.
Arkansas	APS may serve as legal “custodian.”
California	County boards of supervisors create county offices of public guardian.
Colorado	County departments of social services (APS) provide public guardianship.
Connecticut	Commissioner of social services authorized to serve as conservator of last resort.
Delaware	Office of Public Guardian in the court system provides public guardianship services.
District of Columbia	None
Florida	Statewide Public Guardianship Office in Department of Elder Affairs coordinates local programs.
Georgia	County departments of family and children’s services (APS) provide public guardianship services.
Hawaii	Two Programs, Large and Small: Office of Public Guardian in court system provides public guardianship services. One serves wards with estates < \$10,000.
Idaho	In some counties, board of county commissioners has created board of community guardians to serve, through largely volunteer programs.
Illinois	Office of State Guardian in Illinois Guardianship and Advocacy Commission provides services through regional offices to individuals with estates under \$25,000. Office of Public Guardianship provides services to individuals with estates \$25,000 and over through county offices.
Indiana	Division of Disability, Aging and Rehabilitative Services in Family and Social Services Administration contracts with regional non-profit providers.
Iowa	Department of Human Services authorized to create county volunteer guardianship programs, but only one exists. An additional county has created its own public guardianship program.
Kansas	Kansas Guardianship Program is a statewide volunteer-based public guardianship program.
Kentucky	Families and Adult Consultative Services Branch in Division of Protection and Permanency, Department for Community Based Services coordinates public guardianship services through offices

	in state service regions.
Louisiana	Private not for profit organization provides guardianship for 35 older adults, 90 MRDD, older adults' services paid by Governor's office of Elder Affairs.
Maine	Department of Behavioral and Developmental Services provides guardianship for individuals with mental retardation; and Department of Human Services provides guardianship services for others.
Maryland	Maryland Department of Aging coordinates guardianship services for elderly individuals through the area agencies on aging. APS provides guardianship services for others.
Massachusetts	Executive Office of Elder Affairs administers a protective services guardianship program for elders who have been abused, neglected or exploited, through contracts with non-profit agencies.
Michigan	Michigan Department of Human Services provides funding for guardianship for APS clients. In addition, some counties have county-funded public guardianship programs.
Minnesota	Minnesota Department of Human Services has Public Guardianship Office.
Mississippi	Chancery Court may appoint clerk of court to serve.
Missouri	Elected county public administrators provide guardianship services. Though it appears a county model, we determined that many public administrators are housed in the court house and receive county monies rather than a fee for service, yet they may have both public wards and their own private wards (for whom they do extract fees). Thus we placed it in a Division of Social Service Agency, or Conflict of Interest model.
Montana	APS provides guardianship services.
Nebraska	No public guardianship services.
Nevada	County boards of commissioners have established county public guardianship programs in some counties, housed as independent agencies or in public administrator's office or district attorney's office.
New Hampshire	Office of Public Guardian is a free-standing non-profit corporation to provide public guardianship services through contract with Department of Health and Human Services.
New Jersey	Office of Public Guardian for Elderly Adults in Department of Health and Senior Services provides guardianship services for elders.
New Mexico	Office of Guardianship in Developmental Disabilities Planning Council coordinates guardianship services through contracts with guardianship service providers.
New York	New York City has three community guardian programs that serve indigent persons who reside in the community. Additionally, some funding for serving indigent persons available

	from local departments of social services.
North Carolina	Clerk appoints public agent without conflict of interest.
North Dakota	None
Ohio	Department of Mental Retardation and Developmental Disabilities contracts with guardianship providers.
Oklahoma	An Office of Public Guardian was established within the Department of Human Services, to be activated when public guardianship pilot program is funded, expanded and evaluated.
Oregon	County boards of commissioners have created county public guardianship programs in a few regions of the state.
Pennsylvania	In some regions, area agencies on aging are assigned by judges to provide guardianship services; and in some regions private guardianship support agencies exist, as authorized by statute.
Rhode Island	Pilot public guardianship program is operated by Meals on Wheels of Rhode Island, Inc. through contract with the Department of Elderly Affairs.
South Carolina	Statute allows director of Mental institution to serve as guardian of last resort.
South Dakota	Department of Social Services and Department of Human Services coordinate guardianship services. ck
Tennessee	Commission on Aging and Disability coordinates guardianship services housed at the regional area agencies on aging.
Texas	At time of survey, APS provided guardianship services but 2005 legislation transferred the function to Department of Aging and Disability Services (DADS) under certain circumstances.
Utah	The Office of Public Guardian in the Department of Human Services provides guardianship services.
Vermont	The Office of Public Guardian in the Division of Advocacy and Independent Living provides guardianship services.
Virginia	The Department for the Aging coordinates guardianship services by local and regional programs.
Washington	The state Medicaid plan includes an allowance for guardianship services by professional guardians.
West Virginia	Department of Health and Human Services personnel in district offices provide guardianship services. Conservator of last resort is the local sheriff.
Wisconsin	Some counties pay individuals or state-approved corporate guardians to serve.
Wyoming	No provision for public guardianship.



### **E. 2004 National Survey**

Source: Teaster et al. (2005). *Wards of the State: A National Study of Public Guardianship: Executive Summary.*

# PUBLIC GUARDIANSHIP SURVEY

APRIL 2004

The University of Kentucky and the American Bar Association Commission on Law and Aging are conducting a joint project, funded by the Retirement Research Foundation. This project is an attempt to understand public guardianship programs in the United States. This survey represents the first phase of this study. The purpose of the first phase is to gather baseline information about your state's system of public guardianship or the lack thereof.

Should you have questions about this survey, please contact Pamela B. Teaster, Ph.D., Principal Investigator, University of Kentucky at [pteaster@uky.edu](mailto:pteaster@uky.edu) or by telephone, 859.257.1450 x80196. This survey may be returned by e-mail attachment, fax, or conventional mail. Please return it by **May 10, 2004** to [slawr53@uky.edu](mailto:slawr53@uky.edu)

## DIRECTIONS

Follow the *Instructions for Completing the Survey* provided with the e-mail message. You may wish to print the survey and complete it by hand prior to returning it via e-mail, fax, or conventional mail. If your program captures data that relate to the question but do not fit these categories, please attach a sheet that provides this information with a reference to the specific question. You may wish to include your definitions of these categories.

## DEFINITIONS

**Ward:** A person placed by the court under the care of a guardian.

**Guardian:** A person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person who is considered incapable of administering his or her own affairs.

**Public guardianship:** The appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.

**Public guardianship program:** The entity responsible for exercising public guardianship duties.

## Contact Information

*Please provide the following information:*

Name of respondent: \_\_\_\_\_

Title: \_\_\_\_\_

Agency Affiliation/Name: \_\_\_\_\_

Name of Program: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

## A. Administrative Structure and Location in Government

1. Does public guardianship exist in the state?

yes  no

• If yes, does the state have:

Independent local or regional programs

Programs coordinated at the state level

Other (Please specify):

• If no, please explain who serves as guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.

*Please continue with the survey regardless of whether the state's public guardianship program/entity is on the local, regional, or state level.*

2. When was the public guardianship program established (year)? \_\_\_\_\_  Not applicable

3. Where is the program of public guardianship housed administratively?

a. Court system

b. Independent state office (Please specify): \_\_\_\_\_

c. Division of a state agency (Please specify): \_\_\_\_\_

d. County agency (Please specify): \_\_\_\_\_

e. Other (Please specify): \_\_\_\_\_

• Please provide, to the best of your knowledge, a list of every office in the state providing public guardianship services. Also, please provide contact information for every office using the contact sheet provided. You may return the contact sheet using conventional mail, e-mail (document or internet site to access), or fax (cover sheet provided).

4. Is public guardianship available to individuals in all parts of the state?

yes  no

• If no, please explain: \_\_\_\_\_

5. Are public guardianship services contracted out in your state?

yes  no

• If yes, to whom does the program contract out? \_\_\_\_\_

6. Is your program of public guardianship established statutorily?

yes  no

• If yes, please provide the citation: \_\_\_\_\_

7. Does the public guardianship program have administrative regulations?

yes     no

- If, yes, please provide the legal citation: \_\_\_\_\_
- If yes, please provide them to us using conventional mail, e-mail (document or internet site to access), or fax (cover sheet provided).

8. To the best of your knowledge, are there any proposed changes to the public guardianship statute pending in your current legislative session?

yes     no

- If yes, please specify: \_\_\_\_\_

9. What was the budget for the public guardianship program for Fiscal Year 2003? \$\_\_\_\_\_  Don't Know

10. If the public guardianship program budget is inadequate, how much money should be added to the annual public guardianship budget to make it adequate? \$\_\_\_\_\_  Don't Know

11. If a public guardianship program standard of practice is a full-time equivalent (FTE) paid professional staff to ward ratio of 1:20, how much money should be added to the annual public guardianship budget to make it comply with this standard of practice? \$\_\_\_\_\_  Don't Know

12. From where does the public guardianship program receive budgetary funds? (*Check all that apply*).

- a. Federal funds            (*Please specify*): \_\_\_\_\_
- b. State funds                (*Please specify*): \_\_\_\_\_
- c. County funds              (*Please specify*): \_\_\_\_\_
- d. Medicaid funds
- e. Grants/Foundations
- f. Private donations
- g. Client fees
- h. Estate recovery
- i. Other (*Please specify*): \_\_\_\_\_

13. Does the program have the authority to collect a fee or charge to the ward for public guardianship services?

yes     no

14. Does the program collect a fee or charge to the ward for public guardianship services?

yes     no

- If yes, please explain how fees are determined. \_\_\_\_\_
- If yes, please provide a copy of the fee schedule.

## B. Functions of the Public Guardianship Program

1. Does the public guardianship program: *(Check all that apply)*.

- a. Make decisions about a ward's personal affairs?  
 b. Make decisions about a ward's financial (property) affairs?

2. Regarding delivery of services for the public guardianship wards (e.g., homecare, transportation, money management), does the public guardianship program serve in the following roles? *(Check all that apply)*.

- a. Monitor of delivery of services  
 b. Arranger of delivery of services  
 c. Advocate for services  
 d. Direct provider of services

3. Does the public guardianship program serve clients other than those under guardianship?

- yes  no

4. What other services does the public guardianship program provide? *(Check all that apply)*.

- a. Financial power of attorney  
 b. Health care power of attorney  
 c. Representative payee  
 d. Trustee  
 e. Personal representative of decedents' estates  
 f. Private guardianship services  
 g. Other *(Please specify)*: \_\_\_\_\_  
 h. N/A

5. Does the public guardianship program provide any of these outreach services? *(Check all that apply)*.

- a. Educate the community about guardianship  
 b. Provide technical assistance to private guardians  
 c. Monitor private guardians  
 d. Other *(Please specify)*: \_\_\_\_\_

6. a. Does the public guardianship program petition for adjudication of legal incapacity?

- yes  no

- If yes, for Fiscal Year 2003, how many times did the public guardianship program petition? \_\_\_\_\_

b. Does the public guardianship program petition for appointment of itself as guardian?

- yes  no

- If yes, for Fiscal Year 2003, how many times did the public guardianship program petition? \_\_\_\_\_

## C. Staffing

1. For your state, please provide a numeric estimate of unmet need for public guardians. \_\_\_\_\_

*“Unmet need” means persons alleged to meet legal criteria for incapacity but who have not yet been formally adjudicated as legally incapacitated.*

*In Question #2, we are using the exact date of March 2, 2004 as it is the first working day in the month and should represent a “typical day” in the life of a public guardianship program.*

2. On March 2, 2004:

a. How many wards did the public guardianship program serve? \_\_\_\_\_  Don't Know

b. How many full-time equivalent (FTE) paid professional staff did the public guardianship program include? Please include all paid professional staff on payroll (include those who were sick, on vacation, or on leave). \_\_\_\_\_  Don't Know

c. How many volunteers were assisting the public guardianship program? \_\_\_\_\_  Don't Know

*In Question #3, we are using Fiscal Year 2003 as it is the most recent year for which information would be available for the public guardianship program.*

3. For Fiscal Year 2003:

a. What was the cumulative total of wards served by the public guardianship program? \_\_\_\_\_  
 Don't Know

b. What was the cumulative total of new wards accepted by your program? \_\_\_\_\_  Don't Know

4. On average, how many hours per year does a FTE paid professional paid staff member spends working on the case of a single ward? \_\_\_\_\_  Don't Know

5. As of March 2004, what is the educational requirement for a full time equivalent professional paid staff member who makes binding decisions for wards?

- a. High school graduate
- b. Bachelor's degree
- c. Master's degree
- d. Other (Please specify): \_\_\_\_\_

6. What is the experience requirement for full time equivalent professional paid staff members who make binding decisions for wards? \_\_\_\_\_  Don't Know

7. Which of the following does the public guardianship program use in personnel management? (Please check all that apply).

- a. Public guardianship program policies and procedures, standards of practice
- b. State guardianship statutes
- c. Written personnel policies
- d. Written job descriptions
- e. Interview forms
- f. Internal staff evaluation and review procedures
- g. Ongoing training and educational materials for staff
- h. Annual or more frequent training sessions
- i. Other (Please specify): \_\_\_\_\_

**D. Wards**

1. For Fiscal Year 2003, provide the number of public guardianship cases that came from each of the following referral sources:

- a. Adult Protective Service \_\_\_\_\_
- b. Other public social service \_\_\_\_\_
- c. Private social service \_\_\_\_\_
- d. Jail/ Prison/ Police \_\_\_\_\_
- e. Mental health facility \_\_\_\_\_
- f. Long-term Care Ombudsman \_\_\_\_\_
- g. Attorney \_\_\_\_\_
- h. Legal Aid \_\_\_\_\_
- i. Nursing home \_\_\_\_\_
- j. Hospital \_\_\_\_\_
- k. Family \_\_\_\_\_
- l. Friend \_\_\_\_\_
- m. Other (Please specify): \_\_\_\_\_

Don't Know

2. For Fiscal Year 2003, how many people did the public guardianship program serve?

- a. Guardian of the person only \_\_\_\_\_
- b. Guardian of the property only \_\_\_\_\_
- c. Both guardian of the person and guardian of the property \_\_\_\_\_
- d. Limited guardian of the person \_\_\_\_\_
- e. Limited guardian of the property \_\_\_\_\_

Don't Know

3. For Fiscal Year 2003, how many people did the public guardianship program serve in each of the following genders?

- a. Female \_\_\_\_\_
- b. Male \_\_\_\_\_

Don't Know

4. For Fiscal Year 2003, how many people did the public guardianship program serve in each of the following age groups?

- a. Persons 65+ \_\_\_\_\_
- b. Persons 18-64 \_\_\_\_\_
- c. Persons under age 18 (children) \_\_\_\_\_

Don't Know

5. For Fiscal Year 2003, how many people did the public guardianship program serve with each of the following conditions as their primary diagnosis?

- a. Adults with mental illness \_\_\_\_\_
- b. Adults with mental retardation \_\_\_\_\_
- c. Adults with developmental disabilities \_\_\_\_\_
- d. Adults with head injuries \_\_\_\_\_
- d. Adults with Alzheimer's Disease or dementia \_\_\_\_\_
- e. Adults with substance abuse \_\_\_\_\_
- f. Adults with other conditions (*Please specify*): \_\_\_\_\_

\_\_\_\_\_

Don't Know

6. For Fiscal Year 2003, how many wards in the public guardianship program:

- a. Were low income \_\_\_\_\_ (*Please specify your dollar definition*): \_\_\_\_\_
- b. Died \_\_\_\_\_

Don't Know

7. For Fiscal Year 2003, how many wards were:

- a. Hispanic \_\_\_\_\_
- b. Non-Hispanic \_\_\_\_\_

Don't Know

8. For Fiscal Year 2003, how many wards were:

- a. White \_\_\_\_\_
- b. Black or African American \_\_\_\_\_
- c. American Indian \_\_\_\_\_
- d. Alaskan Native \_\_\_\_\_
- e. Asian or Pacific Islander \_\_\_\_\_
- f. Other (*Please specify*): \_\_\_\_\_

Don't Know



9. For Fiscal Year 2003, how many public guardianship wards had the following as their **primary setting**:

- a. Own home/apartment/room \_\_\_\_\_
- b. Assisted living \_\_\_\_\_
- c. Nursing home \_\_\_\_\_
- d. Mental health facility \_\_\_\_\_
- e. Group home \_\_\_\_\_
- f. Acute hospital \_\_\_\_\_
- g. Jail \_\_\_\_\_
- h. Missing or whereabouts unknown \_\_\_\_\_
- i. Other (*Please specify*): \_\_\_\_\_

Don't Know

10. For Fiscal Year 2003, how many public guardianship wards were:

- a. Restored to legal capacity \_\_\_\_\_
- b. Restored to partial legal capacity \_\_\_\_\_
- c. Transferred to a private guardian \_\_\_\_\_

Don't Know

11. For each public guardianship ward, what records are maintained? (*Please check all that apply*)

- a. Ward functional assessment
  - If yes, how often is it updated? \_\_\_\_\_
- b. Guardianship care plan
  - If yes, how often is it updated? \_\_\_\_\_
- c. Time logs or time keeping records for each specific public guardianship ward (i.e., documents how staff time is spent for each ward)
- d. Values history
- e. Advance directive (e.g., power of attorney, do-not-resuscitate order)
- f. Periodic report to the courts
  - If yes, how often? \_\_\_\_\_
- g. Periodic program review of public guardianship wards' legal incapacity
  - If yes, how often? \_\_\_\_\_
- h. Periodic review of appropriateness of public guardian to serve as guardian
  - If yes, how often? \_\_\_\_\_

12. Do you document the rationale for why and how decisions are made on behalf of each public guardianship ward?

yes       no

## **E. Additional Information**

*Use additional pages if necessary.*

1. Please state three or more strengths of the public guardianship program.
  
2. Please state three or more weaknesses of the public guardianship program.
  
3. Please state three or more opportunities for the public guardianship program.
  
4. Please state three or more threats to the public guardianship program.
  
5. Please identify three or more best practices of the public guardianship program that might serve as a model for other states.
  
6. Please identify three or more problems faced by the public guardianship program that other states should try to avoid.
  
7. Please provide any other comments that you would like to make.

*Thank you for completing this survey!*

## F. 1981 National Survey

1. How long has your system for (public) guardianship existed?
2. Is your (public) guardian system directed at the elderly? If not, what other groups?
3. What do you see as the major advantages of the (public) guardian?
4. What do you see as the major disadvantages of the (public) guardian?
5. Are there specific ways in which you think the (public) guardian law should be changed?
6. What kinds of problems do you see in the application of the (public) guardian law?
7. What objections are made by other people?
  - Who?
8. To what extent does the (public) guardian:
  - Assist in the ward's personal affairs?
  - Assist in the ward's financial (property) affairs?
  - Supervise delivery of services?
  - Explore alternatives to institutionalization?
9. What effect has the implementation of the (public) guardianship law had on the total number of guardianships? (Increase or decrease)?
10. What are the educational and professional qualifications of your public guardians?
11. How large is the staff of the (public) guardian program?
12. What is the annual budget of the (public) guardian program? Where does the money come from?
13. Is there a fee or charge to the ward for (public) guardian services? How is the fee determined?
14. On the average, how much time does a (public) guardian spend with a single ward per year?
15. What is the caseload per (public) guardian worker?
16. What is the total number of (public) guardianship cases per year?
17. What are the major sources of referral to the (public) guardian?

Proportion of cases from:

  - Jail
  - Prison
  - Mental institutions
  - Public social service agencies

- Private social service agencies courts
- Family
- Police
- Sought by ward
- Sought out by public guardian office other (please specify)

18. What proportion of the total number of (public) guardian wards are:

- over age 65
- minorities (which)
- Female
- Low income (please specify dollar definition)

19. Within a given year, please specify how many public guardian wards are:

- Institutionalized
- Die
- Are restored to competency with the guardianship removed

20. Does the (public) guardianship office have:

- Written personnel policies?
- Written job descriptions?
- Interview forms?
- Internal evaluation and review procedures?
- Training and educational materials for staff?
- Outreach materials?

Source: Teaster et al. (2005). *Wards of the State: A National Study of Public Guardianship*.

## **G. Conclusions from Phase II Report (2007)**

### Individuals Served

- Public guardianship programs serve a wide variety of individuals.
- Public guardianship programs serve younger individuals with more complex needs than 25 years ago.
- In most states, a majority of individuals under public guardianship are institutionalized.

### Program Characteristics

- Public guardianship programs are categorized into four distinct models: court, independent state office, social services agency, and county.
- All states except one have some form of public guardianship, yet major areas remain uncovered and the unmet need is compelling.
- The clear majority of the states use a social services (conflict of interest) model of public guardianship.
- Some governmental entities providing public guardianship services do not perceive that they are doing so.
- A number of states contract for public guardianship services.

### Functions of Public Guardianship Programs

- Many public guardianship programs serve as both guardian of the person and property, but some serve more limited roles.
- Public guardianship programs vary in the extent of community education and outreach performed.
- Petitioning for appointment of itself is a problematic role for public guardianship programs.
- Court costs and filing fees are a significant barrier to use of public guardianship.

### Funding and Staffing of Programs

- States have significant unmet needs for public guardianship and other surrogate decision-making services, but they frequently cannot quantify the unmet need.
- Education requirements for staff in public guardianship programs vary considerably.
- Staff size and caseload in public guardianship programs show enormous variability.

- Public guardianship programs are frequently significantly understaffed and underfunded.
- Although some public guardianship programs use ratios to cap the number of clients, most serve as guardian of last resort without limits on demand.
- Funding for public guardianship is from a patchwork of sources, none sufficient.
- Data on costs per case are sparse, but estimates are in the range of \$1,850 yearly per case in significantly understaffed environments.
- The Supreme Court *Olmstead* case provides a strong mandate to enhance public guardianship.

#### Public Guardianship As Part of a State Guardianship System: Due Process Protections and Other Reform Issues

- Very little data exist on public guardianship.
- Courts rarely appoint the public guardian as a limited guardian.
- The guardian *ad litem* system, as currently implemented, is an impediment to effective public guardianship services.
- Oversight and accountability of public guardianship are uneven.

#### Court Cases Involving Public Guardianship

- Litigation is an important but little used strategy for strengthening public guardianship programs.

### **Recommendations**

#### Individuals Served

- States should provide adequate funding for home- and community-based care for individuals under public guardianship.

#### Program Characteristics

- States should consider the characteristics in the Model Public Guardianship Act presented in this study, adopt or adapt the Model Act legislatively, and implement it rigorously.
- States should avoid a social services agency (conflict of interest) model.

#### Functions of Public Guardianship Programs

- State public guardianship programs should establish standardized forms and reporting instruments.

- Individuals should be accepted into public guardianship programs on a first come, first served basis.
- Public guardianship programs should limit their functions to best serve individuals with the greatest needs.
- Public guardianship programs should adopt minimum standards of practice.
- Public guardianship programs should not petition for their own appointment.
- Public guardianship programs should develop and monitor a written guardianship plan setting forth short-term and long-term goals for meeting the needs of each incapacitated person.
- Public guardianship programs should routinely and periodically perform client reassessment and develop an updated guardianship plan.
- Public guardianship programs should ensure that decision-making staff personally visit clients at least twice a month.
- Public guardianship programs should establish and maintain relationships with key public and private entities to ensure effective guardianship services.
- Public guardianship programs at the local and state level would benefit by regular opportunities to meet and exchange information.
- Public guardianship programs should maintain and regularly analyze key data about clients and cases.
- Public guardianship programs should track cost savings to the state and report the amount regularly to the legislature and the governor.
- Public guardianship programs should undergo regular periodic external evaluation and financial audit.

#### Funding and Staffing of Programs

- Public guardianship programs should be staffed at a specific staff-to-client ratio. The recommended ratio is 1:20.
- States should provide adequate funding for public guardianship programs.
- The public guardian (or director of the public guardianship program) has a duty to secure adequate funding for the office.

#### Public Guardianship As Part of a State Guardianship System: Due Process Protections and Other Reform Issues

- State court administrative offices should move toward the collection of uniform, consistent basic data elements on adult guardianship, including public guardianship.

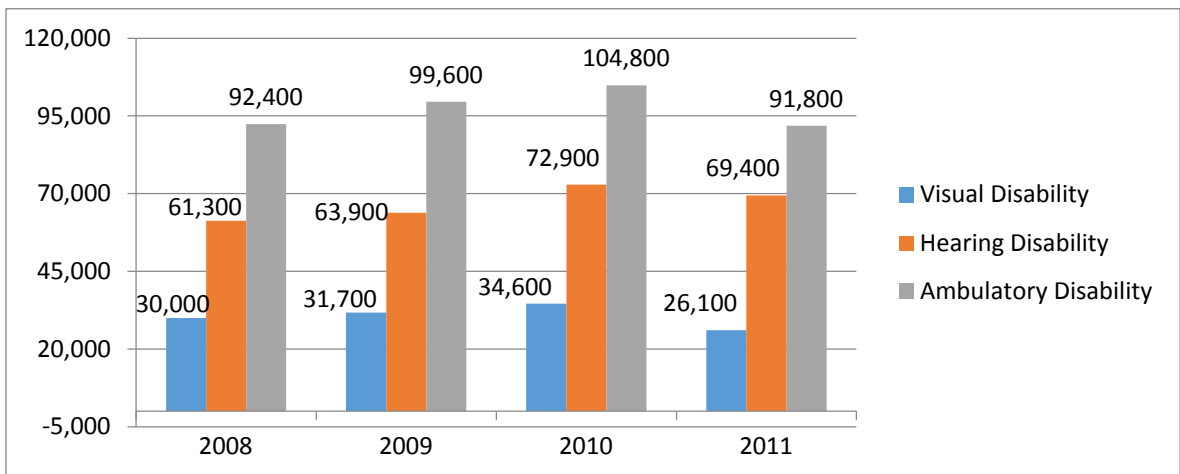
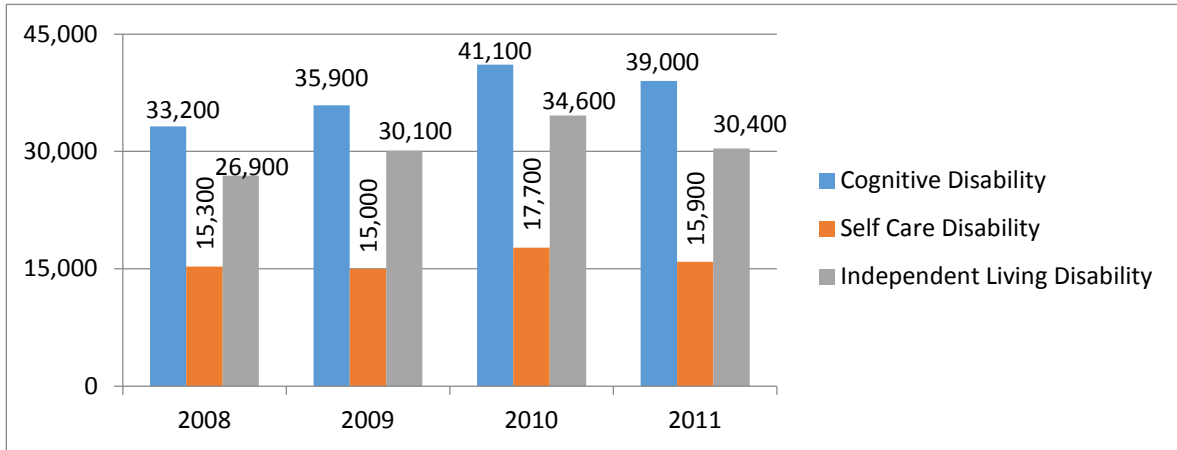
- Courts should exercise increased oversight of public guardianship programs.
- Courts should increase the use of limited orders in public guardianship.
- Courts should waive costs and filing fees for indigent public guardianship clients.

#### Recommendations for Public Guardianship Research

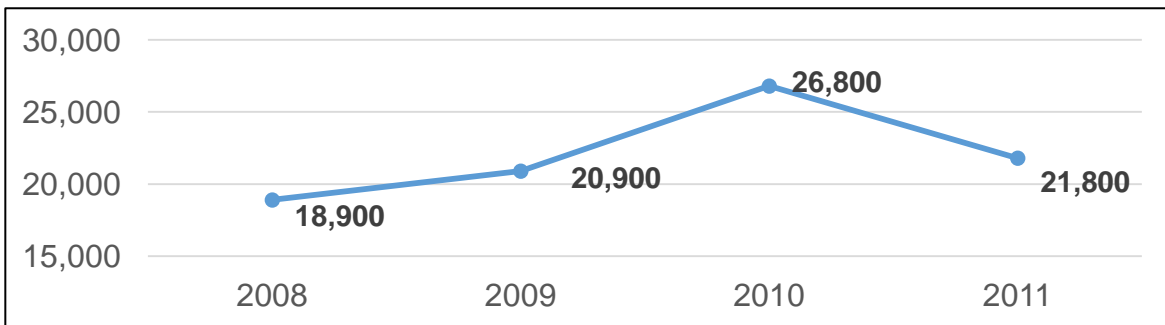
- The effect of public guardianship services on incapacitated individuals over time merits study.
- Research should examine the role of public guardianship for individuals with mental illness, and the relationship of guardianship to civil commitment.
- Research should analyze the operation, costs, and benefits of review boards or committees for public guardianship programs.
- Research should examine the costs and benefits of allowing public guardianship programs, once adequately staffed and funded, to provide additional surrogate services less restrictive than guardianship.
- Research should explore state approaches to use of Medicaid to fund public guardianship.
- Research should examine the role of guardians *ad litem* and court investigators, especially as they bear on the public guardianship system.



## H. Nebraska Disability Demographics



**Figures 1 & 2: Nebraskans by Selected Disability Type**  
(Source: American Community Survey 2011)



**Figure 3: Nebraskans with Disabilities Living Below the Poverty Line**  
(Source: American Community Survey 2011)

The American Community Survey's definition of disability is based on six questions. A person is said to have a disability if he or she or a proxy respondent answers affirmatively for one or more of these six categories.

- Cognitive Disability (asked of persons ages 5 or older): Because of a physical, mental, or emotional condition, does this person have serious difficulty concentrating, remembering, or making decisions?
- Self-care Disability (asked of persons ages 5 or older): Does this person have difficulty dressing or bathing?
- Independent Living Disability (asked of persons ages 15 or older): Because of a physical, mental, or emotional condition, does this person have difficulty doing errands alone such as visiting a doctor's office or shopping?
- Visual Disability: This disability type is based on the question (asked of all ages): Is this person blind or does he/she have serious difficulty seeing even when wearing glasses?
- Hearing Disability: This disability type is based on the question (asked of all ages): Is this person deaf or does he/she have serious difficulty hearing?
- Ambulatory Disability: This disability type is based on the question (asked of persons ages 5 or older): Does this person have serious difficulty walking or climbing stairs?

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[http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/wards\\_state\\_full\\_rep\\_11\\_15\\_07.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/wards_state_full_rep_11_15_07.authcheckdam.pdf)

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**Public Guardianship: A Limited  
Review of State Programs**

**Phase II**

**2014**

**Brad Meurrens**

**Jesse Hochheiser**

## Introduction

Following up on the literature review completed in December 2013, Disability Rights Nebraska sent a survey to selected state public guardianship offices and corresponding Protection and Advocacy organizations in those states to gather more detailed information about their corresponding public guardianship offices. The survey was not distributed to those states that according to Teaster et al (2010)<sup>1</sup> were categorized as “social service agency model” states; rather the survey was sent to those states that had established offices within their judicial system or as state agencies. This approach limited the number of states surveyed significantly. The survey was distributed via email and follow up with respondents via phone interview.

The survey borrowed questions from the surveys used by Pamela Teaster and her colleagues in their 2005 and subsequent studies<sup>2</sup>, with several questions added independently by Disability Rights Nebraska. The questions included a wide range of topics including the public guardianship office operations, funding, external relationships, demographics, types and frequency of guardianships established, and the strengths/weaknesses of the public guardianship system. To view the surveys, see:

- [https://docs.google.com/forms/d/1NWwSTtitn-W2iICD4DAtpHKO5cDIMjA\\_aKpgOzSHvBU/viewform](https://docs.google.com/forms/d/1NWwSTtitn-W2iICD4DAtpHKO5cDIMjA_aKpgOzSHvBU/viewform) (Protection and Advocacy organizations version)
- [https://docs.google.com/forms/d/1LiLt8z7cdeg3qKsi9JDn6i2U\\_qDGQCZbQEh2gaBl6g/viewform](https://docs.google.com/forms/d/1LiLt8z7cdeg3qKsi9JDn6i2U_qDGQCZbQEh2gaBl6g/viewform) (State Office of Public Guardian version)

## Results

### ***Demographics***

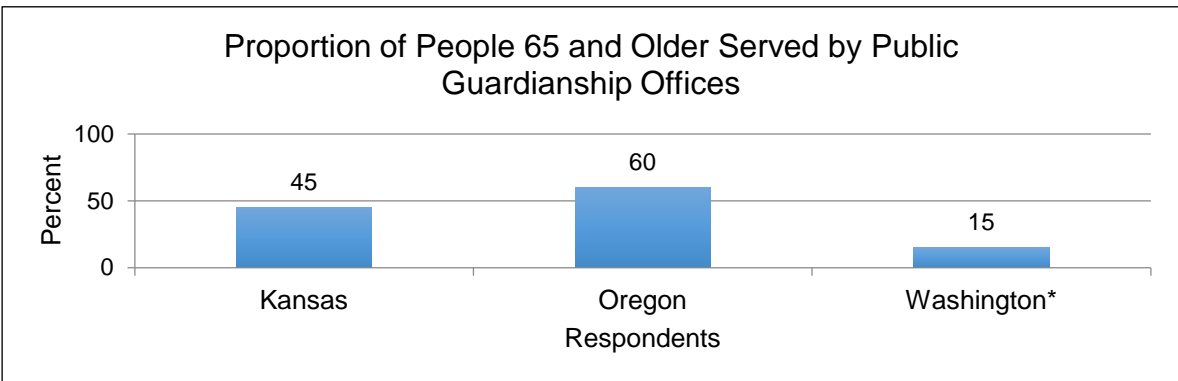
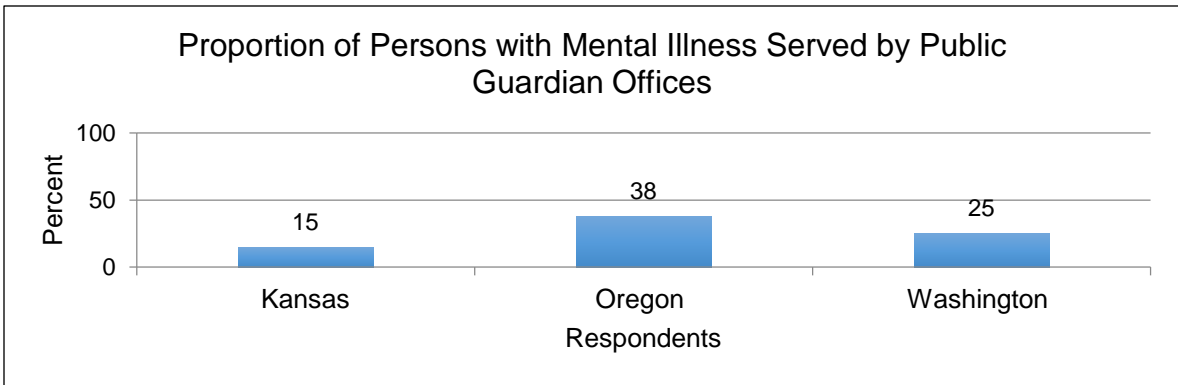
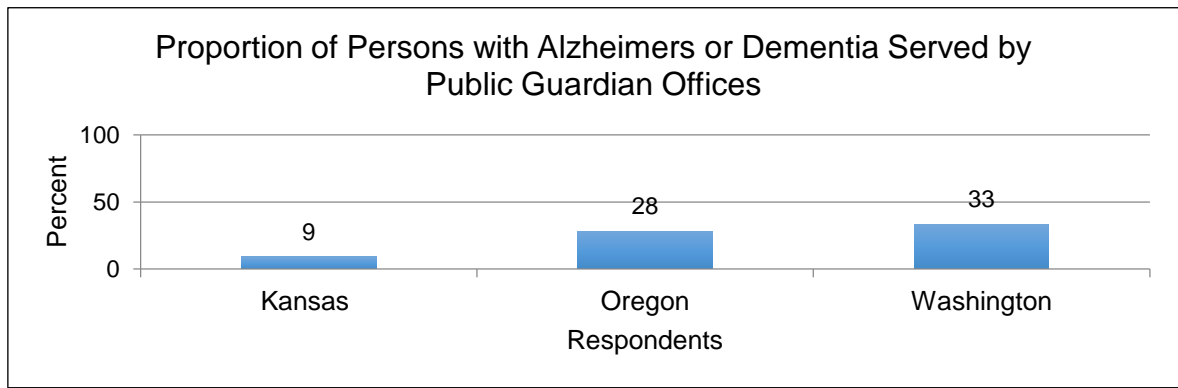
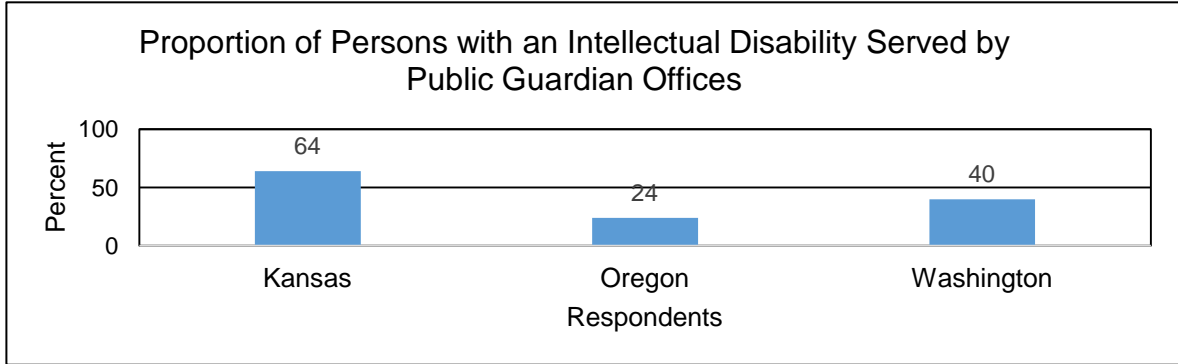
One of the areas addressed by the survey included a description of the demographic structure of the populations served by the public guardianship offices. The respondent states’ answers indicate that the people served by these offices span a range of disability, health, and ages.

It should be noted that Idaho is not included in the following charts. Idaho’s response to the demographic questions on the survey precluded incorporation into the demographic charts:

“All are low-income, other % [percent] are unknown although anecdotally most are elderly and a smaller percentage of mental illness or TBI [traumatic brain injury] persons.”

<sup>1</sup> See Teaster, Pamela, (2010). *Public Guardianship: In the Best Interests of Incapacitated People?*, ABC-CLIO, LLC, Santa Barbara, CA, see also [www.abc-clio.com](http://www.abc-clio.com)

<sup>2</sup> See “Wards of the State: A National Study of Public Guardianship”, (2005) [http://jennyhatchproject.info/sites/default/files/wards\\_of\\_the\\_state.pdf](http://jennyhatchproject.info/sites/default/files/wards_of_the_state.pdf) and “Public Guardianship after 25 Years: In the Best Interest of Incapacitated People?” (2007), see also [http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/wards\\_state\\_full\\_rep\\_11\\_15\\_07.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/wards_state_full_rep_11_15_07.authcheckdam.pdf)



### ***Types of Guardianships***

Guardianships can vary based on the need of the individual. Some individuals need more guardianship services than others. Guardianships can be limited in scope or they can be “full guardianships”. Given the lack of a public guardian and judges’ assumptions about people needing guardianship, a bias toward instituting full guardianships seems to exist in Nebraska. Survey respondents reported on the types of guardianships provided under their public guardianship offices as follows:

#### ***Are limited guardianships preferred and/or frequently used in the public guardianship program?***

Kansas: “Limited guardianships are utilized infrequently. The statutes address limited guardianship through the use of guardianship or conservatorship plans approved by the court which may limit guardianship authority.”

Oregon: “Yes, when appropriate and infrequently used due to the severity of cognitive impairment and vulnerability of clients.”

Idaho: “No, case load is extremely limited and is generally for more extreme need of guardianship.”

Washington: “Preferred but not frequently used....the program consistently serves approximately 125 persons. 85% are full guardianships.”

The answers provided by the Protection and Advocacy organization respondents (Oregon, Delaware, Arizona, and Alabama) echoed the responses from the state public guardianship programs regarding the preponderance of full guardianships versus limited guardianships. While the question posed to Protection and Advocacy organizations was not specific to the public guardianship program, the legal and judicial environment in which guardianships are created and utilized can have an impact on the public guardianship program, given the numerous public – private guardian links, shared resources, and common legal requirements/authority. For example the public guardian programs usually use the existing guardianship statutes and regulations as private guardians, public and private guardians utilize common service providers. The survey question and pertinent answers from the Protection and Advocacy organizations are as follows:

#### ***How frequently are limited guardianships used?***

Delaware: “Vast majority of guardianships are not limited guardianships.”

Alabama: “Rarely. The law only requires that 2 of Alabama's 67 counties have a probate judge who is an attorney. So, sometimes we are educating the court re: the availability of limited guardianships.”

## ***Funding***

The state respondents indicated that their budgets ranged from \$1.5 million (Kansas) to \$265,000 (Washington). The budget for the Washington office has been reduced from \$2 million. There was consensus among the state office respondents that the current funding levels for the office are inadequate. Two states reported that the funding for the public guardianship office comes from state general funds (Kansas and Washington) and two reported funds come from county general funds (Oregon and Idaho). Washington noted that since the program's funding has been reduced, new appointments have not been accepted since July 2013 (approximately 15-20 appointments were made in the prior six months). When asked to identify threats to the public guardianship system, the state office respondents uniformly stated lack of adequate funding and/or unstable funding as a major threat.

## ***Data Collection and Oversight***

Several survey questions asked for quantitative data which the state office respondents were not able to supply. Some indicated that the data is housed or collected at the county-level and not reported consistently or uniformly. While the state offices were able to provide some quantitative data to some questions, there were many gaps in the data collected/reported.

Both the state public guardianship programs and Protection and Advocacy respondents reported that increased oversight of the program and its services is needed. While the court is usually called upon to provide this programmatic oversight, as Oregon reports this is no panacea: "The Court supervises any of the public guardian's guardianships--the courts are overburdened and therefore only address issues brought to their attention."

## ***Threats, weaknesses, and opportunities***

Both the state public guardianship programs and the Protection and Advocacy organizations indicated that a lack of resources is a major barrier to providing the necessary services. In response to a question about 'threats' to their current guardianship programs, the State Offices of Kansas, Oregon, Idaho, and Washington all had similar answers. Kansas, Oregon and Washington all cited "funding", while Idaho referred to limited "financial resources". Oregon's advocacy organization concurred with its State Office that "the biggest threat has been [a lack of] funding."

A common problem resulting from insufficient funding is the size of guardian caseloads. In Idaho, the State Office noted, the "need far outweighs the resources available to care for persons in need of guardianship assistance." The Oregon office identified a "lack of program capacity" as one of their weaknesses. The Delaware advocacy organization saw a "lack of sufficient staff to meet demand." Another concern raised by the Idaho State Office and both the Oregon State Office and Protection and Advocacy organization was the limited oversight ensuring that guardians are doing their jobs.



There was substantial overlap in the recommendations provided by State Offices and the Protection and Advocacy organizations. The Washington and Idaho State Offices both said guardianship services should fall under the state. In Washington's case, guardians would become state employees, and in Idaho's the creation of a new services agency would be required. The Oregon State Office suggested making broader use of Medicaid to provide "more direct services". The Oregon Protection and Advocacy organization recommended expanding from a county-based guardian program into a state-wide program. The Idaho Protection and Advocacy organization regarded the idea of a state-run guardianship program positively, noting that major changes are needed to reform the current system in place.

## **Conclusion**

Even with the limited dataset gathered by the two surveys, the survey results do indicate that there are common issues that public guardianship programs face. While this data is not presumed to be universal, it does seem to confirm some of the conclusions from other academic studies of public guardianship programs. Despite the benefits of the programs, there are existential threats to the programs with which the programs will be forced to address vigilantly. Additionally, the limited survey data still should serve to show that effective and efficient operation of public guardianship programs requires not only a commitment to provide an adequate amount of financial support and resources, but also attention to reforms beyond financing. These programs need to be positioned to adjust successfully to increased demand and required to demonstrate efficient/effective service through better data collection, reporting, and internal/external oversight. Furthermore, public guardianship programs do not serve a specific disability type or age group but rather a varied assortment of people with differing needs and abilities. Guardianships should be tailored carefully to meet the needs of the individual and hesitancy to initiate guardianships that are unnecessarily restrictive. There are many issues faced by public guardianship programs and those will be a key determinant of program success. However, with a focus on gathering an understanding of those issues and how best to address/resolve them through collective conversations, modeling, and data collection, the issues are not insurmountable.