



December 12, 2008

Office of Public Guardianship Annual Report 2007-2008

Background

Senate Bill (SB) 5320 (Chapter 364, Laws of 2007), signed with a partial veto by the Governor on May 8, 2007 and effective July 22, 2007, established the OPG within the Administrative Office of the Courts (AOC). The overall goal and objective of the OPG as prescribed by SB 5320 is to provide quality public guardianship services to incapacitated persons who need them and for whom adequate services may otherwise be unavailable.

The Plan and Planning Process

Following legislative creation of the OPG, the Chief Justice of the Supreme Court appointed the State Court Administrator as administrator of the OPG. With broad stakeholder input, the Administrator developed a position description for the manager of the OPG and initiated an open recruitment process. The selection of a manager involved various stakeholders in developing and scoring a written exercise and a two phase interview process. The manager officially began work September 4, 2007.

A project charter¹, prepared September 2007, formally initiated the OPG project. The plan specified issues to be addressed within 60–90 days, 12 months, and 24 months. This report provides the status of those issues.

¹ Project Charter is available upon request.

Issues Addressed within 60–90 days

Geographical Location of Pilots

In January 2008 the OPG prepared and advertised a Request for Proposal (RFP)² inviting professional guardians to submit proposals that were to be used to identify pilot locations. Two proposals were received and only one met the minimum qualifications. The limited number of proposals received is believed to be largely a result of certified professional guardians' (CPGs) inability to adhere to the 1:20 caseload restriction imposed by SB 5320.

After the unsuccessful RFP process, the OPG selected five pilot locations, Clallam, Grays Harbor, Okanogan, Pierce, and Spokane counties based on the following factors: (1) percent of the population age 18 and over living in poverty, (2) percent of the population age 65 and over, (3) disability prevalence of the population, (4) percent of adults within the population receiving Department of Social and Health Services (DSHS) long-term care services, and (5) availability of certified professional guardians willing and able to provide services.

Public guardianship contracts were executed June 2008. Cases are in process in Grays Harbor, Okanogan, Pierce and Spokane counties. In December 2008, three certified professional guardians orally presented plans to provide public guardianship services in King County to the OPG. The OPG anticipates executing a contract to provide public guardianship services in King County in January 2009.

Preferred Structure for Public Guardianship Services

Although it is too early to provide a definitive recommendation on the preferred structure of contract providers of public guardianship services, initial observations indicate that an agency structure is preferred over individuals.

Generally, an agency provides the advantage of greater internal support, both administrative and guardian, resulting in increased operational efficiency. One person doing all things generally results in a focused effort in areas of individual strength and minimal effort in areas of individual weakness.

Stakeholder Involvement in the OPG

The manager of the OPG visited with stakeholders³ individually and in group settings to obtain recommendations and suggestions related to the development of the OPG, contracts with public guardians, and the future direction of the OPG. An ad hoc stakeholder advisory committee was formed and met for the first time on November 10, 2008. The committee reviewed the work of the OPG to date and reviewed and commented on the draft strategic plan that will help guide the direction of the OPG over the next ten years.

² RFP is available upon request

³ A list of stakeholders visited is available upon request.

Structure of the Study Performed by the Washington State Institute of Public Policy (WSIPP)

The OPG consulted with Roxanne Lieb, WSIPP Director and Mason Burley, WSIPP Senior Research Associate to develop a statement of work for the study contract. The contract was executed and work is progressing. Mason Burley developed the study evaluation plan⁴, and was instrumental in identifying information used to select the pilot public guardianship sites.

Policy and Procedures Manual⁵

The OPG developed a policy and procedures manual which addresses the collection and reporting of guardianship service data elements and includes standardized forms, the process for addressing complaints against public guardians, and performance monitoring of public guardians.

Eligibility Criteria for Public Guardianship Services

SB 5320 authorized the provision of public guardianship services to incapacitated persons (1) age 18 or older, (2) whose income level does not exceed 200 percent of the federal poverty level as determined annually by the United States Department of Health and Human Services (US DHHS), or (3) are receiving long-term care services through the Washington State DSHS. In addition, because OPG is considered the guardian of last resort, OPG asks that there be no one else willing and able to provide guardianship services. The OPG also established the following priorities: (1) indigent/homeless, (2) at significant risk of harm from abuse, exploitation, abandonment, neglect or self-neglect, and (3) imminent danger of loss or significant reduction in public services that are necessary to live successfully in the most integrated and least restrictive environment that is appropriate for a specific individual.

Issues Addressed within 12 Months

Obtaining State-Level Guardianship Data

As currently collected, county-level data cannot be aggregated in a manner that makes it usable for effective guardianship case management or provide guidance for policymakers and practitioners to strengthen the guardianship system and prevent elder abuse. Therefore, the OPG has prepared a grant proposal⁶ for the Borchard Foundation with the overall goal of strengthening court collection of data on adult guardianships. Improved data collection will facilitate (1) effective case processing and monitoring (2) gauge the extent of abuse by guardians and the extent to which guardians protect incapacitated persons from abuse and (3) shape guardianship policy, practice, training, and education.

⁴ Study Evaluation Plan is available upon request.

⁵ Policy and Procedures Manual available upon request.

⁶ Grant proposal available upon request.

Guardianship Case Management

Don Horowitz, a member of the Access to Justice Technology Committee, facilitated collaboration between the OPG and the University of Washington (UW) Information Management School. Student interns working with Mike Crandall, Chair of the Master of Science in Information Management Program at the UW Information Management School will gather requirements for the development of a Guardianship Case Management System. Students are required to provide a plan by mid-February and must complete the project by June 2009. Information on the UW internship program can be found at <http://www.ischool.washington.edu/msim/capstone/default.aspx>.

The OPG in collaboration with AOC Court Education Services and a presentation team comprised of a superior court judicial officer, a superior court administrator, and a county clerk is developing a session for the spring conferences of the Superior Court Judges' Association, the Association of Washington Superior Court Administrators and the Washington State Association of County Clerks. The session will provide opportunities to dialogue about proposed best practices for managing guardianship cases to protect the welfare and autonomy of incapacitated persons; educate and help guardians to meet their legal obligations; identify potential abuses and provide as much information as possible to judicial officers, via the case file and other mechanisms.

Issues to Address within 24 Months

Concerns Unveiled During Project Implementation

Lack of CPGs Available to Provide Public Guardianship Services

In some rural counties there are either no certified guardians or those guardians in the county have reached peak capacity. In response to this concern the Washington State Bar Association Elder Law Section Executive Committee voted to support an amendment to the public guardianship law (RCW 2.72.030) to authorize the OPG to provide or pay for training and related expenses not only for individuals serving as professional guardians but also for individuals not yet certified who in the judgment of the administrator might provide services under RCW 2.72.030. This is an attempt to get people certified as professional guardians in underserved counties.

Free Legal Service for Petitioners

Petitioning is problematic when low income, at-risk, alleged incapacitated persons are involved and there is no abuse, neglect, or exploitation. While there may be many potential petitioners, family members, friends, neighbors, or facilities, research informs us that few individuals actually petition when low income people are involved.

If an individual or entity decides to file a petition, he or she has two options: (1) proceed pro se, or (2) seek the services of a private or pro bono attorney. Research indicates that often individuals and organizations will be unwilling to serve as a petitioner either due to a perceived conflict of interest (e.g., nursing homes), an unwillingness to intercede, an inability to proceed pro se due to lack of confidence or understanding of the legal system, or a lack of resources to pay for the hiring of an attorney. Regardless of the reason, a backlog of cases frequently develops, the needs of at-risk individuals are not met, and preventable emergencies arise.

This issue must be addressed before the public guardian program expands statewide. In the interim, Northwest Justice Project offices and pro bono lawyer programs in the pilot counties have agreed to provide legal services to petitioners as resources permit.

Title 11 Guardians Ad Litem

As the eyes and ears of the court, the guardian ad litem (GAL) is charged with identifying: the triggering issue, less restrictive alternatives, risk of harm, whether there is a need for clinical evaluation, whether the individual requires counsel, the family's situation, who might provide important testimony, and suggestions for limitations to guardianship and/or elements of a guardian plan, as well as evaluating capacity. Time restrictions imposed on GALs due to limited resources, in cases involving low and no income individuals, hinder the ability to perform a thorough investigation. The lack of thoroughness has the potential result of appointing a public guardian when a lay or professional guardian could serve. These mistakes result in unnecessary use of court and other public resources.

Comprehensive Assessments

*Judicial Determination of Capacity of Older Adults in Guardianship Proceedings*⁷, the work product of an American Bar Association (ABA)/American Psychological Association (APA) workgroup, describes the six pillars of capacity assessment and how they inform each judicial action step in adult guardianship proceedings. These six pillars also drive the development of a comprehensive care plan. Currently, most medical reports obtained by guardians ad litem do not address the six pillars. Guardians who provide services without a thorough assessment operate at a disadvantage, as they must begin to provide services without knowledge of what treatments, services, or habilitation should be provided based on the needs of the incapacitated person. If the public guardian program is to expand statewide, the need to obtain thorough assessments should be addressed.

Social Services

Limited availability of social service providers in rural areas creates potential problems for guardians, such as conflicts and increased costs, as they attempt to provide needed services.

Looking Beyond 24 Months

The OPG has developed a strategic plan. The Strategic Plan is the framework for decisions and actions toward continued development of the OPG. It directs the work of the manager, the use of funding, and provides a means to monitor progress.

Mission Statement

To act as a conduit for the provision of qualified surrogate decision-makers for low income individuals.

⁷ Electronic version of book available upon request.

Vision

Within 10 years, qualified surrogate decision-makers will be available statewide to meet the need of low income individuals with limited capacity, who require assistance making decisions related to individual's health, safety, and financial affairs.

Strategic Goals

- Goal 1: Commitment to client needs
- Goal 2: Improved organizational performance
- Goal 3: Informed participants
- Goal 4: Accountability
- Goal 5: Adequate funding