

ASSESSING THE POTENTIAL NEED FOR PUBLIC GUARDIANSHIP SERVICES IN WASHINGTON STATE

The Public Guardianship Taskforce of the Washington State Bar Association published a report in 2005 estimating that 4,500 individuals in Washington State may not have sufficient resources to obtain the services of a court-appointed guardian.¹ The report cited research stating that individuals who are unable to pay for a guardian may cost a state more money because no responsible adult is identified to make appropriate care decisions on their behalf. Following the report of this taskforce, in 2007, the Legislature funded a new entity, the Office of Public Guardianship (OPG), as a pilot program in seven counties throughout the state. The Washington State Institute for Public Policy (Institute) was directed to evaluate the program and “analyze the costs and off-setting savings to the state from the delivery of public guardianship services.”²

A companion to this report examines the cost-effectiveness of providing public guardianship services.³ This report discusses two approaches to estimating the number of individuals potentially needing public guardianship services. The first approach (Part One) relies on census data and court records to calculate the number of “low-income allegedly incapacitated persons” (AIPs) potentially eligible for guardianship services. In the second approach (Part Two), we surveyed providers in locations such as hospitals or nursing homes and asked that they identify any individuals currently in their care whom they would refer to a guardian if one were available.

¹ Washington State Bar Association. (2005, August 22). *Report of the Public Guardianship Task Force to the WSBA Elder Law Section Executive Committee*. Seattle, WA: Author.

² RCW 2.72.030 (13)

³ Burley, M. (2011). *Public guardianship in Washington State: Costs and benefits* (Document No. 11-12-3902). Olympia: Washington State Institute for Public Policy

Summary

In 2007, the Washington State Legislature passed Substitute Senate Bill 5320, establishing an Office of Public Guardianship (OPG) within the Administrative Office of the Courts. This new pilot program provides state-paid guardians for legally incapacitated individuals in cases where a volunteer guardian was unavailable and the individual lacks financial resources.

The pilot program started in five counties throughout Washington State, and now provides services in ten counties. While a limited number of incapacitated individuals were served during this pilot period, initial estimates (completed in 2005) found that 4,500 individuals may be eligible for a public guardian in Washington. This estimate, however, was based on research conducted over 20 years ago in different states.

This report uses two different sources – 2009 census data, and a 2011 survey of care providers – to estimate the need for public guardianship services in Washington State. Based on this analysis, we found that between 4,000 and 5,000 individuals may be potentially qualify for a public guardian. The need for these services is also classified according to region and type of care setting.

Suggested citation: Mason Burley. (2011). *Assessing the potential need for public guardianship services in Washington State* (Document No. 11-12-3901). Olympia: Washington State Institute for Public Policy.

Assessing the Need for Guardianship

Identifying low-income state residents who potentially need guardianship services is a challenging undertaking for two reasons. First, the courts ultimately determine the need for a guardian advocate, and these decisions are difficult to predict outside the legal setting. Second, allegedly incapacitated persons who may need a guardian are distributed across the state, are not routinely identified in any information system, and cannot be accessed using common survey techniques.

As mentioned earlier, the Washington State Bar Association estimated this unmet need for guardians in 2005. They relied on an assessment conducted in Florida in 1983⁴ and a study of Tennessee nursing home residents completed in 1990.⁵ Estimates from these studies were applied to population rates in Washington State to approximate the need for guardianship services in this state. These studies, however, were conducted over 20 years ago, and it is not clear if the experiences of Florida and Tennessee reflect those of Washington State.

Estimating the need for guardianship services requires two pieces of information that are not easily obtained. First, we must estimate the number of *allegedly incapacitated persons* (AIPs) who may be eligible for guardianship. While state law defines incapacity,⁶ we cannot say definitively if a person is incapacitated until a court determines this issue.

⁴ Schmidt, W. C. & Peters, R. (1987). Legal incompetents' need for guardians in Florida. *Bulletin of the American Academy of Psychiatry and the Law*, 15, 69-83.

⁵ Hightower, D., Heckert, A., & Schmidt, W. (1990). Elderly nursing home residents' need for public guardianship services in Tennessee, *Journal of Elder Abuse and Neglect*, 2, 105-122.

⁶ RCW 11.88.010.

Second, we must determine the type and extent of guardianship need among allegedly incapacitated persons. For a majority of incapacitated persons, a family member or friend takes the role of lay guardian and assumes decision-making responsibility. Other times, the AIP is able to pay for a certified professional guardian. For this project, we are interested in identifying AIPs who do not have family, friends, or the financial resources necessary to obtain guardianship services.

In Washington State pilot counties, individuals may be eligible for public guardianship services if their income is less than 200 percent of the federal poverty level, and they have no one willing or able to serve as a guardian. To gauge the total number of individuals who could be referred for a potential public guardian, we relied on two methods of estimation.

Part One of this paper describes the first method—Population-Based Estimation. Using newly available census data from the American Community Survey (ACS),⁷ we were able to determine the number of low-income individuals in the state with incapacities that could interfere with independent decision making. Then, we examined current filing rates for private guardianship cases to estimate potential need for public guardianships.

Part Two of this paper—Survey-Based Estimation—discusses a survey that we conducted among providers who could potentially refer individuals to the Office of Public Guardianship. In the spring of 2011, we surveyed staff at community hospitals, nursing and boarding homes, and adult family homes, as well as contractors for the state's Department of Social and Health Services Division of Developmental Disabilities. The survey responses were used to determine the type and extent of need for guardianship services throughout the state.

⁷ See: <http://www.census.gov/acs>

Part One: Population-Based Estimation of Guardianship Need

In 2005, the United States Census Bureau started the new “American Community Survey” (ACS). The ACS is an ongoing, annual survey of individuals from communities throughout the country.⁸ This survey replaces the Census Long Form and provides more current information about populations in states, counties, and local regions.

The Census Bureau modified the questions on the ACS related to disabilities in 2008. These revisions helped better identify subpopulations of individuals with disabilities and provided more accurate estimates of those with long-term disabilities by drawing a clearer distinction between a disability and an underlying health condition or physical limitation.⁹

For this analysis, two questions were used to identify individuals with incapacities that could prevent independent decision making and require a guardian. The following questions were answered by ACS respondents about each person in the household:

- **Cognitive Difficulty (17a):** “Because of a physical, mental, or emotional condition, does this person have serious difficulty concentrating, remembering, or making decisions?”
- **Independent Living Difficulty (18):** “Does this person have difficulty doing errands alone such as visiting a doctor’s office or shopping?”

For the purpose of this analysis, if a person was identified as having both cognitive difficulty *and* difficulty with independent living, the person was considered as potentially eligible for guardianship services. Using the most recent data from the 2009 ACS, we estimated the number of individuals in each county who met these criteria. Because we relied on national census samples, we could generate estimates for counties or regions with a population of 65,000 or greater, but not for counties with smaller populations. Counties with smaller populations are grouped together into one estimate.

Step one: We first estimated the number of individuals with a disability that might interfere with independent decision making, but who also have the financial resources available to pay for a professional guardian. Exhibit 1 (next page) includes the number of adults in 2009 with both a cognitive and independent living disability who had household incomes *above* 200 percent of the federal poverty level (Column A).

It is important to recognize that only a fraction of the individuals identified with a potential incapacity would require the assistance of a guardian. Many will have the assistance of family and friends and have their needs served through options like a power of attorney, trust, or joint bank account. Other adults may have varying degrees of capacity that would permit decision making in some areas (e.g., personal, medical) and not others (e.g., financial).

However, a certain percentage of the population with disabilities affecting decision making will require the services of a professional guardian. This percentage could be estimated based on the number of open guardianship cases and persons who are able to pay for a *private*, court-appointed guardian. This “guardian participation rate” is shown in Exhibit 1.

⁸ Ibid.

⁹ http://www.census.gov/acs/www/Downloads/methodology/content_test/P4_Disability.pdf

Exhibit 1
Estimating Private Guardianship Participation of Disabled Adults* With Incomes
Above 200 Percent Federal Poverty Level
Washington State, 2009

Column	(A)	(B)	(C)	(D)
County/Region	Disabled Adults Over 200% FPL	Open Guardianship Cases	Estimated Professional Guardian Cases	Guardianship Participation Rate
Benton/Franklin	3,183	672	114	3.6%
Clark	5,009	1,275	216	4.3%
King	14,858	5,199	881	5.9%
Kitsap	2,815	1,164	197	7.0%
Pierce	7,049	3,892	660	9.4%
Snohomish	7,329	1,336	226	3.1%
Spokane	4,236	1,862	316	7.5%
Thurston	3,398	509	86	2.5%
Whatcom	1,666	763	129	7.8%
Yakima	1,731	79	13	0.8%
Small Counties	14,144	3,550	602	4.3%
Total	65,418	20,301	3,440	5.3%

Source: 2009 American Community Survey [Washington State]/prepared by the U.S. Census Bureau, 2011 and Washington State Administrative Office of the Courts, 2009.

* Disability includes reported difficulties with both cognition and independent living.

Step two: The Washington State Administrative Office of the Courts (AOC) reports there were 20,301 open adult guardianship cases in 2009. Exhibit 1 also shows the number of open guardianship cases in each county or region listed in the ACS (Column B).

For the second step in this analysis, we need to determine how many open guardianships are filled by professional certified guardians (paid) and by friends or family members (volunteer). The Washington State Certified Professional Guardian Board reports that during this period, professional guardians represented 3,440 clients, or an estimated 17 percent of all open cases. Using this rate, we estimated the number of open cases with a paid guardian in each region (Column C).

Based on the number of disabled adults with incomes over 200 percent FPL and the estimate of open guardianship cases, we can calculate a guardianship participation rate (Column D). Statewide, there were 65,418 disabled adults, including the potentially eligible population. From this population, 3,440 individuals (5.3 percent) had an open case with a professional guardian in 2009.

Step three: Given the calculated participation rate for professional (paid) guardians, we can assess the potential guardianship need for incapacitated individuals who would be eligible for *public* guardianship services. Exhibit 2 (next page) includes the eligible population for this analysis—adults with both a cognitive disability and difficulty with independent living, and with incomes *under* 200 percent FPL (Column E).

According to the 2009 ACS, an estimated 76,772 low-income adults in Washington State had serious disabilities that could interfere with decision making. If we assume these low-income disabled adults were not served by professional (paid) guardians, we could estimate the potential need for public guardianship services.¹⁰

In this case, we can apply the same participation rate for each region (Column D) to the population of unserved low-income adults to estimate the need for guardianship.

As Exhibit 2 shows, the potential need for public guardianship, based on this approach, would include **4,318 adults**, (Column F). Taking into account the survey margin of error, this estimate could range from 3,622 (Column G) to 5,015 (Column H).

While this number remains consistent with previous calculations about guardianship needs, a more direct methodology could provide a level of detail not available from census data. Part Two of this report discusses the results from a survey designed to assess the need for guardianship services in Washington State.

Exhibit 2
Estimating Public Guardianship Participation of Disabled Adults*
With Incomes Below 200 percent Federal Poverty Level
Washington State, 2009

Column	(D)	(E)	(F)	(G)	(H)
County/Region	Guardianship Participation Rate	Disabled Adults Under 200% FPL	Estimate of Need	Low Estimate	High Estimate
Benton/Franklin	3.6%	1,686	60	38	82
Clark	4.3%	7,646	330	279	381
King	5.9%	18,225	1,081	948	1,213
Kitsap	7.0%	1,330	93	63	124
Pierce	9.4%	11,296	1,057	892	1,222
Snohomish	3.1%	6,289	194	150	239
Spokane	7.5%	7,835	584	483	684
Thurston	2.5%	1,264	32	19	45
Whatcom	7.8%	1,670	130	80	180
Yakima	0.8%	2,107	16	13	20
Small Counties	4.3%	17,424	741	657	825
Total	5.6%	76,772	4,318	3,622	5,015

Source: 2009 American Community Survey [Washington State]/prepared by the U.S. Census Bureau, 2011 and Washington State Administrative Office of the Courts, 2009.

* Disability includes reported difficulties with both cognition and independent living.

¹⁰ In some cases, low-income individuals may be able to pay for guardians through Medicaid cost-sharing, called "participation." DSHS estimates that between 600 and 800 persons have Medicaid participation for guardian services in a year. This represents less than 5 percent of the approximately 20,000 active guardianship cases in the state.

Part Two: Survey-Based Estimation of Guardianship Need

Very little research has been conducted that provides reliable estimates of the need for public guardianship services. Research studies in Florida (1987) and Tennessee (1990), mentioned earlier, formed the basis for the establishment of the Office of Public Guardianship in Washington State. These studies derived estimates of need by surveying staff at locations that might refer individuals to a public guardian. In 2004, a new survey was conducted by the Department of Elder Affairs in Florida.¹¹ This survey effort involved contacting long-term care workers, hospital social workers and discharge planners, as well as adult protective service investigators. According to respondents from this survey, an estimated 10,000 individuals could be referred to public guardianship services in the state of Florida.

For this project, we followed a similar approach by surveying a range of providers who could potentially encounter individuals who may be in need of public guardianship services. This survey provides an estimate of the number of adults in various settings who currently have a guardian or substitute decision maker and highlights the concerns of providers regarding guardianship services in the state.

We included providers from the following organizations in this survey:

- Community Hospitals
- Nursing and Boarding Homes
- Adult Family Homes
- State Psychiatric Hospitals
- Division of Developmental Disabilities (DDD) facilities and contracted providers
 - ✓ Residential Habilitation Centers
 - ✓ Community Intermediate Care Facilities for the Mentally Retarded
 - ✓ Group Homes
 - ✓ Supported Living Providers

In developing the survey, we met with membership organizations that represent the following providers: the Washington State Hospital Association, Washington Health Care Association, Aging Services of Washington, Washington State Residential Care Council, and Department of Social and Health Services.

Based on feedback from these organizations, we modified the survey to make it more understandable. The survey was pretested with several of the organizations prior to release. A final version of the survey is included in the Appendix to this report. The survey did not ask for information about individual persons or cases, but rather requested summary information for the number of individuals served by the provider who met different criteria.

¹¹ Florida Department of Elder Affairs, Office of Program Evaluation and Planning. (2004, December). *Public guardianship: An assessment of need 2004*. Tallahassee, FL: Author.

Survey Design and Responses

This survey was brief (two pages) and included the following questions:

- Among the adults served by your program, how many have a court-appointed guardian?
- Of those without a guardian, how many do you believe may need some type of decision maker?
- How many could have needs met with an alternative decision maker (other than guardian)?
- Of those who may need a guardian, how many have friends or family available?
- How many adults needing a guardian have financial resources available?
- Among those without family, friends, or financial resources, how many would you refer for public guardianship services?

Provider facilities and agencies were surveyed in April 2011. Exhibit 3 displays the number of facilities/providers for each organization along with survey response rates. Based on the recommendations from the member associations, we distributed the survey by postal mail, email attachment, or through a link to an online survey.

The survey was distributed to every provider and facility in the state (100 percent sample), except for one group—we mailed a survey to roughly 1,000 of the 2,868 adult family homes in Washington State (a 35 percent sample). We stratified this sample, based on DSHS region (six regions total), and licensed facility specialty (mental health, developmental disabilities).

The response rate for other facilities in the survey ranged from 24 percent for assisted living/boarded homes to 100 percent for the DDD residential habilitation centers and state psychiatric hospitals. The response rate for adult family homes in the survey was the lowest, with 10 percent of surveyed facilities responding. The low response rate for this group may be because we were unable to mail follow-up reminder letters or postcards to non-respondents due to budgetary constraints.

After collecting completed surveys, we looked for potential non-response bias that could influence results. If those facilities that did not return a survey did not represent survey respondents, for example, our results may be misleading. Among boarding homes, community hospitals, and DDD providers, however, there were no statistically significant differences among key characteristics between survey responders and non-responders.¹² The characteristics we examined included DSHS region and contracted beds. Survey weights were constructed to allow us to draw representative population estimates from our results.

¹² The only differences detected were found with nursing homes (Region 4, King County, was slightly underrepresented) and adult family homes (Region 5, Pierce County, was overrepresented).

Exhibit 3
Guardianship Needs Assessment Survey: Groups and Response Rates

Survey Group	Contact Organization	Surveyed Facilities/ Providers	Survey Responses (Rate)
Community Hospitals ¹	Washington State Hospital Association	94	39 (41%)
State Psychiatric Hospitals ²	DSHS Division of Behavioral Health and Recovery	2	2 (100%)
Nursing Homes ³	Washington Health Care Association Aging Services of Washington	235	60 (26%)
Assisted Living Facilities (Boarding Homes) ⁴	Washington Health Care Association Aging Services of Washington	510	123 (24%)
Adult Family Homes ⁵	DSHS Home and Community Services WA State Residential Care Council	1,011	98 (10%)
Residential Habilitation Centers ⁶	DSHS Division of Developmental Disabilities (DDD)	5	5 (100%)
Community Intermediate Care Facilities for the Mentally Retarded ⁷		8	6 (75%)
Group Homes ⁸		46	12 (26%)
Supported Living Providers ⁹		140	64 (46%)

¹ “All nonfederal, short-term general, and special hospitals whose facilities and services are available to the public.” (American Hospital Association)

² State-owned psychiatric hospitals for adults (Western State Hospital and Eastern State Hospital).

³ “Nursing Homes provide 24-hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board and laundry.” (www.aasa.dshs.wa.gov/pubinfo/housing/other)

⁴ “Boarding Homes are facilities in a community setting where staff assumes responsibility for the safety and well-being of the adult. Many boarding homes call themselves ‘Assisted Living’ facilities. Housing, meals, laundry, supervision, and varying levels of assistance with care are provided. Some provide nursing care. Some offer specialized care for people with mental health issues, developmental disabilities, or dementia.” (www.aasa.dshs.wa.gov/pubinfo/housing/other)

⁵ “Adult Family Homes are regular neighborhood homes where staff assumes responsibility for the safety and well-being of the adult. A room, meals, laundry, supervision, and varying levels of assistance with care are provided. Some provide occasional nursing care.” (www.aasa.dshs.wa.gov/pubinfo/housing/other)

⁶ “RHCs are state-operated residential settings that provide re-habilitation training, 24-hour supervision, and medical/nursing services for clients who meet Medicaid eligibility and need active treatment services.” (<http://www.dshs.wa.gov/ddd/services.shtml>)

⁷ “ICF/MRs [Intermediate Care Facilities for the Mentally Retarded] are residential settings that provide re-habilitation training, 24-hour supervision, and medical/nursing services for Medicaid eligible clients who are in need of the active treatment services provided in these facilities.” (<http://www.dshs.wa.gov/ddd/services.shtml>)

⁸ “Group Homes are community-based residences serving 2 or more adult clients and are licensed as either a boarding home or an adult family home. Group Homes contract with DDD to provide 24-hour instruction and support.” (<http://www.dshs.wa.gov/ddd/services.shtml>)

⁹ “Supported Living Services offer instruction and support to persons who live in their own homes in the community. Supports may vary from a few hours per month up to 24 hours per day of one-to-one support. Clients pay for their own rent, food, and other personal expenses.” (<http://www.dshs.wa.gov/ddd/services.shtml>)

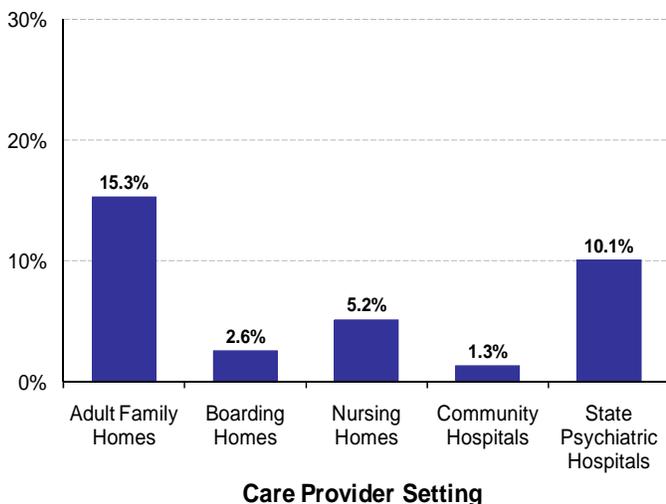
Survey Results

Before asking about the need for guardianship services, this survey included questions about the number of adults currently served by a court-appointed guardian. The extent of guardianship activity varies across the types of providers included in the survey. In facilities like community hospitals, for example, relatively few adult patients had a guardian at the time of the survey (1.3 percent). Since patients are generally in the hospital for a short time and relatively few would have issues related to decision-making capacity, we would expect a lower rate of guardianship services in this setting. Exhibit 4 shows the percentage of adult residents in each care setting who had a court-appointed guardian. Adult family homes made up the group with the highest level of guardianship activity, with 15.3 percent of residents currently having a court-appointed guardian.

A large percentage of adults living within residential facilities for the Division of Developmental Disabilities currently have a court-appointed guardian, as shown in Exhibit 5. These facilities include Intermediate Care Facilities for the Mentally Retarded (ICF/MR, 73 percent), group homes (78 percent), and residential habilitation centers (93 percent). The state also contracts with “Supported Living” providers to help DDD clients live in their own homes. These contracted providers reported that 48 percent of the clients they currently serve had a court-appointed guardian.

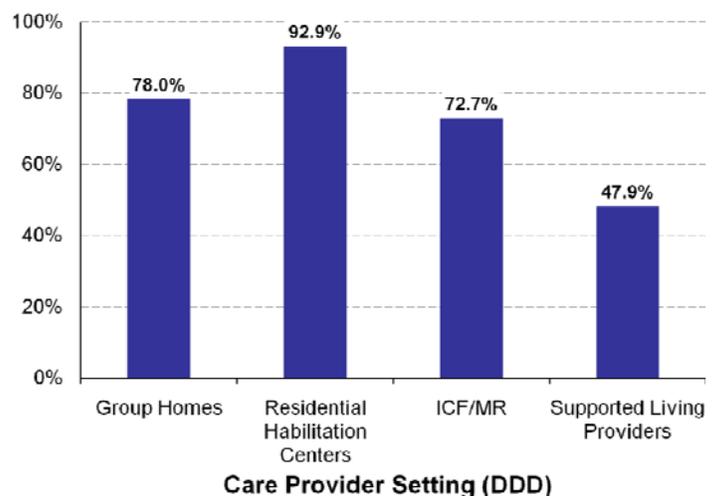
According to the survey results, an estimated **6,780 adults** receiving care in one of these settings had a court-appointed guardian. While this number reflects the current level of service, we are left with the question of how many individuals may still require a guardian. The next section explores this question in more detail.

Exhibit 4
Rate of Guardianship by Care Provider Setting



WSIPP, 2011

Exhibit 5
Rate of Guardianship by Care Provider Setting (DDD)



WSIPP, 2011

Guardianship Need

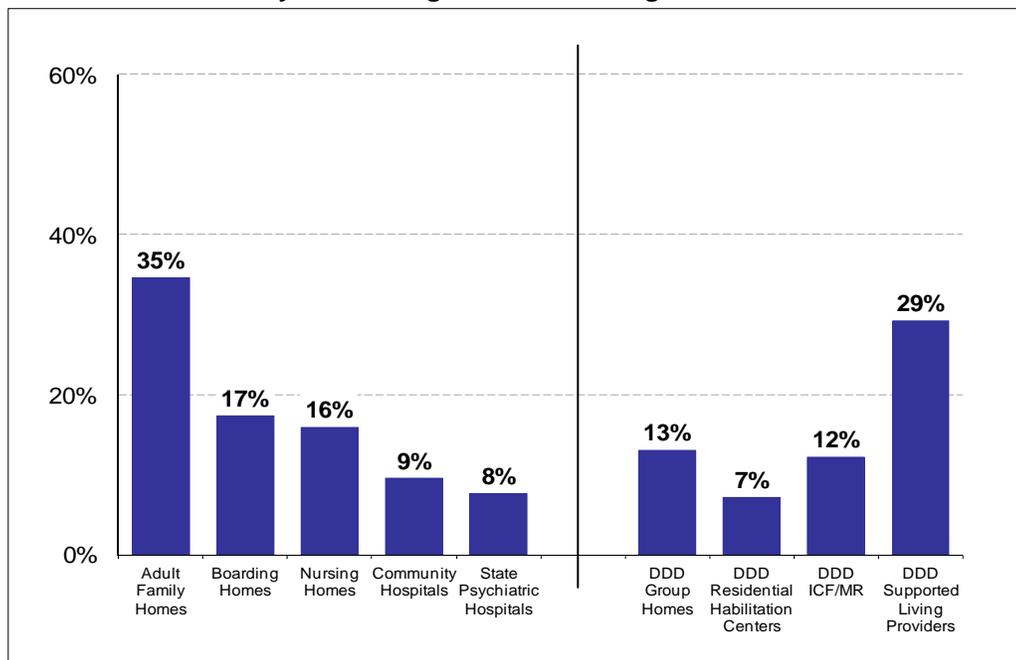
Exhibits 4 and 5 demonstrate the current level of guardianship representation among surveyed providers. The primary purpose of this survey effort, however, was to examine the extent to which individuals in these care settings need a guardian or other substitute decision-maker. In discussing the concept of need, it should be noted that not all individuals requiring decision-making assistance will require full guardianship. Both federal and state law recognize the individual's right to self-determination and autonomy. In Washington State, a guardianship can be established only when a person is found incompetent and at "significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety."¹³

A substitute decision maker, therefore, could be a representative payee (for managing funds and bill payments), or a court-appointed guardian responsible for decision making only in areas specified by the court (health care, financial, etc.). Given the range of individual circumstances for the residents and clients served by these providers, we first asked the general question:

"Of those *without* a court-appointed guardian, how many adults do you believe may need the assistance of some type of decision maker?"

Exhibit 6 displays results of the reported number of individuals in each setting needing some type of decision-making assistance.

Exhibit 6
Percentage of Clients/Residents Identified in Survey as Needing Decision-Making Assistance



WSIPP, 2011

¹³ RCW 11.88.010 (a).

For residents of DDD facilities, the reported need for decision-making services was low, presumably since most of these individuals already had a guardian (see Exhibit 7). As Exhibit 8 indicates, about one third of residents in adult family homes and DDD clients served by supported living providers had a need for decision-making assistance. In nursing/boarding homes, 16 to 17 percent of residents may be in need of a decision maker.

In the context of this survey question, a “decision maker” was intended to encompass a range of non-guardian options, including informal advocates (natural support), a formal arrangement not involving the court (representative payee), or a court-appointed health care decision maker.

As illustrated in Exhibit 7, part of the need for decision makers in many of these areas could be met through alternatives to guardianship. Among residents of adult family homes or nursing/boarding homes, for example, between 49 and 78 percent could have their decision-making needs met with “natural support” (informal assistance, advocate, or friend). In many cases, the identified need involves financial arrangements, and a representative payee could address these issues. Finally, those in need of decision-making assistance may lack an attorney-in-fact for health care decisions. A court appointed decision maker for medical decisions was reported to be needed in 16 to 18 percent of cases within nursing and boarding homes and 33 percent of cases within adult family homes.

Exhibit 7
Non-Guardian Alternatives for Meeting Decision-Making Needs of Clients/Residents

Survey Group	Number Needing Decision Making Assistance (weighted)	Natural Support	Representative Payee	Court-Appointed Health Care Decision Maker
Adult Family Homes	5,006	2,469 (49%)	3,150 (63%)	1,654 (33%)
Boarding Homes	5,706	3,827 (67%)	1,713 (30%)	907 (16%)
Nursing Homes	2,672	2,089 (78%)	605 (23%)	490 (18%)
Community Hospitals	667	N/A	N/A	N/A
State Psychiatric Hospitals	61	N/A	N/A	N/A
DDD Group Home Centers	51	0 (0%)	0 (0%)	13 (25%)
DDD Residential Habilitation Centers	50	0 (0%)	8 (16%)	8 (16%)
DDD ICF/MR	5	0 (0%)	0 (0%)	0 (0%)
DDD Supported Living Providers	1,073	347 (32%)	612 (57%)	424 (40%)

N/A = Questions not included in version of survey sent to these providers.

Note: Results do not add to 100 percent since individuals can be included in more than one category.

When available and willing, a friend or family member can serve as either a court-appointed guardian or other type of alternative decision maker. According to our survey results, one in four (25 percent) of the 14,563 individuals needing a substitute decision maker had a friend or family member who could likely serve in this capacity (Exhibit 8).

In many settings, the potential for friends or family to provide these services was even higher. In adult family homes, for example, 43 percent of the 5,006 residents needing decision-making assistance could likely receive assistance from a friend or family member. As the level of care increased, fewer family members were available to fill this role. For example, 18 percent of boarding home residents and 8 percent of nursing home residents had family or friends available to fill this role.

Exhibit 8
Availability of Friends/Family to Assist in Decision Making

Survey Group	Number Needing Decision Making Assistance (weighted)	Have Family/Friends to Assist (Percent)
Adult Family Homes	5,006	2,165 (43%)
Boarding Homes	5,706	1,031 (18%)
Nursing Homes	2,672	205 (8%)
DDD Group Homes Centers	51	49 (96%)
DDD Residential Habilitation Centers	50	11 (22%)
DDD ICF/MR	5	4 (80%)
DDD Supported Living Providers	1,073	136 (13%)
Total	14,563	3,601 (25%)

Note: This question was not included for hospital respondents.

After asking providers to consider the availability of volunteer (friend/family) surrogate decision makers or the suitability of other non-court alternatives, we included questions about the need for court-appointed guardians. Specifically, we asked respondents to identify the number of individuals needing a court-appointed guardian, but “were without family, friends, or financial resources to help meet this need.” For those in need, providers reported the number of individuals they would refer to a public guardian. The reported results (by care setting) are listed in Exhibit 9.

Exhibit 9
Reported Number of Individuals Who Could Be Referred to a Public Guardian

Survey Group	Potential Public Guardian Referral
Adult Family Homes	1,120
Boarding Homes	800
Nursing Homes	519
Hospitals	283
State Hospitals	14
DDD Group Homes	33
DDD Residential Habilitation Centers	11
DDD ICF/MR	36
DDD Supported Living Providers	378
Total	3,194

According to these survey results, 3,194 individuals in these settings could be referred to a court-appointed public guardian. The largest group of referrals would potentially come from adult family homes (1,120). Boarding homes and nursing homes could refer 800 and 519, respectively. While many of the residents of DDD facilities already have a guardian representative, there was still a reported need within these settings. In addition, supported living providers reported that there were 378 potential public guardian referrals among the DDD clients they served in the community.

This survey estimate of 3,194 individuals needing public guardianship services is lower than the 4,319 estimated from the American Community Survey/census analysis (Part One). It should be remembered, however, that this survey only covers the population that currently lives in a licensed care facility.¹⁴ Unlike the census results, this survey could not gauge the potential need for guardianship services among individuals living with family members or spouses in an informal care setting, or for those who may be homeless.

¹⁴ DDD-supported clients live in the community, not in a licensed facility. We surveyed the supported living contracted caregivers along with other DDD providers. There are a large number of other assisted/supported living caregivers (for non-DDD clients) whom we were unable to survey.

Conclusion

Within the seven pilot counties, 53 percent of individuals referred to a public guardian were living in one of the care settings covered in this survey; the remainder were living in their own homes, a friend or family members' homes, or were homeless at the time of the referral. Given this ratio, we might expect that in addition to the 3,194 potential referrals originating from these facilities, 2,832 individuals living outside a licensed care setting may be referred to a public guardian. Taken together, this survey-based estimate of the need for public guardianship includes 6,026 individuals statewide.

The goal of this analysis was not to find the exact number of individuals who may be without guardianship services, but to estimate the number potentially needing public guardianship services. The decision to appoint a legal guardian for an incapacitated individual is complicated and involves an array of factors. Furthermore, determining the unmet need for guardianship services involves making assumptions about the availability of social and financial resources that also presents challenges.

We used two approaches to determine the potential need for public guardianship services and have developed a reasonable estimate of the number in this state who could be referred. Using both census- and survey-based methods, we estimate that between 4,000 and 6,000 individuals in Washington may be unable to obtain a needed guardian. Further research will examine whether providing a legal guardian to these individuals could result in cost savings to the state.

APPENDIX: Washington State Guardianship Needs Assessment Survey

To assess the need for guardianship and decision-making services for incapacitated persons throughout Washington State, we would appreciate your help completing this survey. Agencies with multiple locations should include a separate survey for each home.

Contact Information

Adult Family Home Name:	«FacilityName»				
Contact Person:	«First» «Last»	Phone:		Email:	

Background

The appointment of a guardian occurs in Washington when the court has determined that an individual is at serious risk of harm based on an inability to care for him or herself or manage his or her affairs (RCW 11.88.010). A guardian can only be assigned if it is determined that an individual is incapacitated and at risk. Guardians are often family or willing friends, but can also be attorneys, agencies, or hired individuals trained in providing representation and assistance for incapacitated individuals.

Adults Served

1)	How many adults lived in this home on March 31, 2011?	<input type="text"/>	(a)
2)	Of the adults who lived in this home on this date, how many had a court-appointed guardian? (Do not include durable power of attorney or representative payee.)	<input type="text"/>	(b)
	Of the adults who had a court-appointed guardian, how many had incomes under 200 percent of the federal poverty level and had difficulty paying guardian fees?	<input type="text"/>	(c)
3)	How many of these adults did not have a court-appointed guardian? [<i>box (a) minus box (b)</i>]	<input type="text"/>	(d)

Need for Guardianship

4)	Of those without a court-appointed guardian [<i>box (d)</i>], how many adults do you believe may need the assistance of some type of decision maker?	<input type="text"/>	(e)
5)	Some individuals may need decision-making assistance in only some areas and would not require a full guardian. Of the adults identified in box (e), how many could have their needs met with one of the following? (Indicate number of individuals; if more than one option applies, select the best option.)		
	Non-guardian decision maker:		
	Natural Support (<i>may benefit from the informal assistance of an advocate or friend</i>)	<input type="text"/>	(f)
	Representative payee (<i>for managing funds and bill payment</i>)	<input type="text"/>	(g)
	Someone appointed by the court for the sole purpose of making health care decisions	<input type="text"/>	(h)
	Court-appointed guardian:		
	Limited guardian (<i>for decision making only in areas specified by the court</i>)	<input type="text"/>	(i)
	Full guardian (<i>for decision making in all areas</i>)	<input type="text"/>	(j)
	Adults living in this home who need a court-appointed guardian: [<i>box (i) plus box (j)</i>]	<input type="text"/>	(k)

- 6) For all adults who may need a court-appointed guardian [box (k)], how many **have** family or friends who might be available and willing to act as a guardian? (l)
- Adults who may need a court-appointed guardian, and **do not have** family or friends available or willing to serve: [box (k) minus box (l)]* (m)
- 7) Of those adults who may need a court-appointed guardian and *do not* have family or friends available and willing to serve [box (m)], how many have the following types of funds available to pay for a private guardian?
- Private financial resources (n)
- Federal assistance (*Medicaid participation*) (o)
- Adults who may need a court-appointed guardian and are **without** family, friends, or financial resources: [box (m) minus box (n) minus box (o)]* (p)

Public Guardianship

In 2007, the Washington State Legislature created the Office of Public Guardianship within the Administrative Office of the Courts to run pilot programs in six counties throughout the state. The office currently contracts with one individual or organization in each county. To be eligible for a public guardian, an individual must have an income under 200 percent of the federal poverty level or be receiving long-term care services through DSHS. A public guardian can be appointed when there is no one else qualified, willing, and able to serve.

- 8) Of those adults in this home on March 31, 2011, some had a guardian but have had difficulty paying guardian fees [box (c)]. Other adults may have needed a court-appointed guardian but were without family, friends, or financial resources to help meet this need [box (p)]. Of these adults you have identified [box (c) plus box (p)], how many would you refer to a public guardian? (q)

Decision Making

- 9) Based on your experience, about how often is your business faced with the following decisions that are impacted by the absence of a guardian? (*Select one option for each decision.*)

Decision:	Seldom/Never	Once a year	Once a month	Once a week
Discharge planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consent for medical procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Processing payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transfer authorization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments

Please complete this survey by May 9, 2011. Surveys can be returned in the self-addressed stamped envelope.

For more information about the Office of Public Guardianship, please see <http://tinyurl.com/opginfo>. More detail about the Washington State Institute for Public Policy can be found at <http://www.wsipp.wa.gov>, or on the attached information sheet.

For further information, contact Mason Burley at (360) 528-1645 or mason@wsipp.wa.gov

Document No. 11-12-3901



Washington State
Institute for
Public Policy

The Washington Legislature created the Washington State Institute for Public Policy in 1983. The Institute is governed by a Board of Directors that represents the legislature, governor, and public universities. The Board guides the development of all Institute activities. The mission of the Institute is to assist policymakers, particularly those in the legislature, in making informed judgments about important, long-term issues facing Washington State.