

## Profile of the Office of Public Guardianship: *Eating the Elephant One Bite at a Time*

### Office of Public Guardianship

**Mission:** To act as a conduit for the provision of qualified surrogate decision-makers.

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

During the 2007 Legislative Session, the planning and lobbying done by elder law attorneys and elder and disability advocates yielded significant results with the unanimous adoption of Senate Bill 5320, establishing the Washington State Office of Public Guardianship (OPG) within the Administrative Office of the Courts. Since its inception, the OPG has established pilot programs in six<sup>1</sup> counties with nine public guardians who have provided services to approximately 75 vulnerable adults.

While the number of people receiving direct services from OPG has thus far been small, the impact has been significant. For these individuals, OPG has been a safety net, making it possible for public guardians to assist them in repairing broken and dysfunctional lives. For a few, public guardians helped to end chronic homelessness; for others, the appointment of a public guardian made it possible for them to leave state institutions and resume their lives in the community. Sadly, a few individuals were in the last phase of their life, but their situation was ameliorated by having a public guardian to make their last days comfortable.

In keeping with its mission ***“to act as a conduit for the provision of qualified surrogate decision-makers”*** and its vision that ***“within 10 years, qualified surrogate decision-makers will be available statewide to meet the need of individuals with limited capacity, who require assistance making decisions related to individual health, safety and financial affairs”*** the OPG has collaborated with others to expand its influence, beyond the vulnerable adults being served directly, to the broader community. The following list of special projects provides a snapshot of OPG’s accomplishments to date.

In collaboration with the Certified Professional Guardian Board and the University of Washington, the OPG contributed to the establishment of the Guardian Certificate Program. This program is believed to be the most rigorous guardianship training program in the United States. Each year, OPG provides two to three scholarships to applicants interested in providing public guardianship services in underserved regions of the state. Three future public guardians are currently enrolled.

OPG participated in the Washington State Vulnerable Adult Protection Workgroup, convened by the Attorney General. In 2008, the Workgroup released a report<sup>2</sup> identifying the critical issues impacting vulnerable adults that can be addressed by lawmakers, caregivers, advocates and the community at large. Many of these issues are being addressed in legislation.

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<sup>1</sup> Clallam, Grays Harbor, King, Okanogan, Pierce, Spokane

<sup>2</sup>[http://www.atg.wa.gov/uploadedFiles/Another/Supporting\\_Law\\_Enforcement/Medicaid\\_Fraud/vulnerable\\_adult\\_report\\_10-3-08.pdf](http://www.atg.wa.gov/uploadedFiles/Another/Supporting_Law_Enforcement/Medicaid_Fraud/vulnerable_adult_report_10-3-08.pdf)

In 2009, OPG collaborated with the education committees of the associations of the Superior Court Judges, the Court Administrators and the County Clerks to deliver a series of education sessions on guardianship monitoring. At the conclusion of the education sessions, the groups had compiled a list of proposed guardianship reforms and best practices for guardianship monitoring. Many of those recommendations are in various stages of implementation.

The Guardianship and Probate Committee of the Superior Court Judges' Association convened a work group to evaluate and refine the guardianship monitoring recommendations compiled during the 2009 education sessions along with recommendations from the Guardianship Taskforce of the Elder Law Section of the Washington State Bar Association (WSBA). Soon, the workgroup will release a list of tools, based on the needs and available resources, to assist courts in monitoring guardianship cases. The Guardianship and Probate committee also worked with OPG to develop an online training program for lay guardians that will launch later this year.

OPG invited a broad-based group of stakeholders—including the Superior Court Judges' Association, the Washington Association of Professional Guardians, the Certified Professional Guardian Board, the Elder Law Section of the WSBA, the State Long-Term Care Ombudsman, Disability Rights Washington and other disability and aging advocates—to participate in an advisory committee charged with making recommendations on issues related to the provision of public guardianship services. Many stakeholders participated and the advisory committee issued its first report<sup>3</sup> in December 2009. The report proposed six recommendations on how services other than guardianship services might reduce the need for guardianship. The advisory committee has taken a brief hiatus, but will reconvene later this year to prioritize recommendations and develop an implementation plan.

OPG coordinated the research and drafting of the 2010 Conference of State Court Administrator's (COSCA) White Paper, *The Demographic Imperative: Guardianships and Conservatorships*<sup>4</sup>, which provides a roadmap for a multidisciplinary, national effort—involving a federal and state partnership—to develop a national Guardianship Court Improvement Program and to focus resources and achieve greater accountability for the well-being of vulnerable adults.

OPG serves on an Informed Consent Workgroup seeking to address the problem of health care decision-making for the patient who: 1) does not have decisional capacity to give informed consent to the treatment proposed; 2) has not executed an advance directive that addresses the treatment proposed and has no capacity to do so; and 3) has no legally authorized surrogate, and no family or friends to assist in the decision-making process. This workgroup hopes to provide guidance to families, and to provide policy recommendations and develop materials for clinicians, especially on determining competency. Related to this work, OPG has agreed to collaborate with other stakeholders to revise *Making Medical Decisions for Someone Else*<sup>5</sup>—the proxy guide drafted by the American Bar Association, Commission on Law and Aging in collaboration with the Maryland Office of the Attorney General—to create a guide that more closely reflects Washington's perspective.

As required by statute, OPG is working closely with the Washington State Institute for Public Policy (WSIPP) to analyze the costs and off-setting savings to the state from the delivery of public guardianship

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<sup>3</sup><https://www.courts.wa.gov/content/publicUpload/Office%20of%20Public%20Guardianship/AlternativestoGuardianshipsfinalwebsite.pdf>

<sup>4</sup> <http://cosca.ncsc.dni.us/WhitePapers/COSCA%20White%20Paper%20-2010.pdf>

<sup>5</sup> <http://www.abanet.org/aging/pdfs/genlproxyguide2009.pdf>

services, and to obtain a clearer picture of the unmet need for public guardians in Washington State. To assist in this, the OPG will provide WSIPP with data obtained from functional assessments, timesheets and other resources.

WSIPP has developed a comprehensive and multi-phased research plan. Initially, it will develop statewide estimates of the need for public guardians based on projected guardianship case filings extracted from multiple data sources (such as Census estimates of low-income disabled individuals and DSHS estimates on incidence of serious mental illness). This data will be used to calculate an open case rate and forecast the number of individuals with qualifying income (below 200% FPL) who are eligible to and would benefit from public guardianship.

Second, WSIPP will make projections based on estimates from other states using updated county-level data obtained from researchers who have completed related studies in other states. It will extrapolate rates for counties in Washington State and project estimates based on a telephone survey of nursing homes, adult family homes, boarding homes, community hospitals, DDD facilities and programs, state psychiatric facilities and adult protective service (APS) workers. The survey will include general attitudinal questions and some demographic information.

Third, to determine program costs and savings, WSIPP will develop a short data collection instrument to supplement the planned analysis. The plan will estimate the probability of public guardianship clients moving to a less restrictive care environment, the likelihood of hospital and emergency room visits and the receipt of income assistance compared to a similar group of incapacitated individuals who did not receive a public guardian. With this method, we hope WSIPP can come as close as possible to estimating the 'true' program effect.

Finally, working under the assumption that OPG will always need to balance capacity with demand to continue to provide quality public guardianship services, we hope to identify criteria to develop a case weighting system and guardianship payment schedule based on case acuity. Data collection for this project is ongoing.

Despite its best efforts, lack of funding continues to impede OPG's ability to provide services statewide. Each legislative session, OPG has faced budget cuts and has only managed to maintain funding because of the continued advocacy and support of a dedicated group<sup>6</sup>. Recently, OPG submitted a \$1 million budget request to the Legislature for the 2011-13 biennium. The goal is to continue providing quality, essential guardianship services to Washington's most vulnerable adults. Addressing the need for a dedicated funding stream remains high on OPG's list of priorities.

***Please direct all questions about the Office of Public Guardianship to Shirley Bondon, Manager at [shirley.bondon@courts.wa.gov](mailto:shirley.bondon@courts.wa.gov) or 360.705.5302.***

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<sup>6</sup> AARP Washington, Advisory Council on Aging & Disability Services, Seattle-King County, Alzheimer's Association, King County Bar Association, Pierce County Aging & Long Term Care Advisory Board, Puget Sound Alliance for Retired Americans, Washington Adult Day Services Association, Washington Association of Area Agencies on Aging, Washington State Bar Association Elder Law Section, Washington State Long-Term Care Ombudsman Program, Washington State Senior Citizens' Lobby, Disability Rights Washington, Peter Greenfield, David Lord, Representative Jeanie Darnielle, Pat Lantz, Retired Representative, Senator Rosa Franklin.