

Nebraska Office of Public Guardian

Annual Report

2015

Presented to

Chief Justice Michael Heavican and

The Nebraska Legislature

In accordance with Neb. Rev. Stat. § 30-4111.



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“It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.” Hubert H. Humphrey

INTRODUCTION

Nebraska Revised Statute §30-411 requires the Office of Public Guardian to report to the Chief Justice and the Legislature on the implementation of the Public Guardianship Act on or before January 1 of each year. The report is to include the number and types of guardianships and conservatorships for which the Public Guardian has been appointed, including full guardianships, limited guardianships, and temporary guardianships, the disposition of those appointments, the amount of guardianship and conservatorship fees charged and collected under the act, and the status of the waiting list for public guardianship and public conservatorship services (p 51). The following is the report with a review of the Office of Public Guardian implementation activities during 2015.

Moral test of government and the “two faces” of guardianship. This summer I visited Germany with my family; returning after 40 years of marriage to the places my husband and I had visited as newlyweds while stationed in the U.S. Army. Especially impacting was sharing with our four sons and two daughters-in-law their first direct interaction with historical sights of the Holocaust- seeing it through their eyes, as if for the first time. The places we visited included the Dachau Concentration Camp; the Topography of Terror Documentation Center (the site of the former headquarters of the Secret State Police, the SS and the Reich Security Main Office in Berlin); and the home of Dietrich Bonhoeffer (German Lutheran theologian, anti-Nazi dissident hanged by the Gestapo in 1945). The experience was deeply moving to me, especially in light of my recent appointment as the Public Guardian of Nebraska. Each location held graphic stories: families who were deceived into sending their developmentally disabled children to death in extermination facilities disguised as residential care facilities; posters haranguing the lifetime cost of caring for incapacitated individuals burdening the “productive Volk community”; the “Charitable Society for Transportation of Sick Persons”- buses that were actually for transporting patients from Eichberg State Psychiatric Hospital to Hedamar clinic, a killing center; and “Operation T4” which carried out mass murders of ill and disabled individuals. All were stark, deeply disturbing reminders of a government, actions of state entities, gone horrifically wrong.



Villa a Tiergartenstrasse 4, 1940. This was the main office of “Operation T4” which organized and carried out mass murder of allegedly ill and disabled people. Started in January 1940, it was stopped in 1941 because of protests. More than 70,000 persons had already been killed.

The paradox of guardianships, and therefore an area of potential overreach for anyone serving as a guardian/conservator, is described by author Mary Jo Quinn in her book *Guardianships of Adults, Achieving Justice, Autonomy and Safety*. Ms. Quinn writes, “A key to understanding guardianship and its history is to recognize that it is based on an inherent tension. Guardianship has always had two faces- it is protective yet oppressive, an instrument of beneficence that can at the same time bring a dire loss of rights. Guardianship can be an accommodation, an enabler helping to provide for basic needs and offer essential protections. Without guardianship, vulnerable individuals may languish unnecessarily in situations, suffer from lack of appropriate health care, or be subject to abuse and exploitation. Yet the very same institution of guardianship removes fundamental rights, restricting self-determination, freedom to choose, freedom to risk. It has been said to ‘unperson’ an individual, reducing her to the status of a child. Thus, guardianship can ‘empower’ and it can ‘unpower’.” The Nebraska Legislature in enacting LB 920 (2014), the Public Guardianship Act (Act), introduced by Senator Coash, is crafted to recognize and balance the two sides of guardianship as implemented by Nebraska’s Public Guardian. This report is provided in compliance with the Act requiring a report on the implementation of the Public Guardian and statistics on the types of guardianships and conservatorships for which the Public Guardian has been appointed.¹

Nebraska's Office of Public Guardian. Nebraska's Office of Public Guardian (OPG) is the 50th of state public guardianship offices in the country and is one of only four public guardianship offices under the judicial branch.² The OPG is directly responsible to the Supreme Court Administrator³.

APPOINTMENT OF DIRECTOR



The Supreme Court Administrator is responsible for appointing a director of the OPG known as the Public Guardian. The Public Guardian shall be hired based on a broad knowledge of human development, intellectual disabilities, sociology, and psychology and shall have business acuity and experience in public education and volunteer recruitment.⁴ The Supreme Court Administrator, with the confirmation by Nebraska Supreme Court, appointed Michelle J. Chaffee as Public Guardian in December 2014. Previous to appointment as Public Guardian, Ms. Chaffee was Legal Counsel for the Health and Human Services Committee at the Nebraska Legislature. As Legal Counsel for the Health and Human Services Committee she was involved in multiple issues involving social services including long term care, Medicaid, health care, developmental disabilities, behavioral health, legal processes and procedures and licensure. She worked with a wide array of professionals including state, local and county officials, the judiciary, County attorneys, private attorneys, provider networks, facility administrators, caregivers, social service advocates, as well as the individuals who depend on Nebraska social services to provide care and support- children, juveniles, individuals with disabilities, and the elderly. As Legal Counsel she supported the Health and Human Services Committee and Chairs, Senators Tim Gay and Kathy Campbell, as they designed policies and programs to serve vulnerable citizens of Nebraska.

Prior to the Legislature, Ms. Chaffee spent ten years in higher education administration as Dean of Students and Vice President of Student Servant Leadership Development. She acted as chief administrator for the development, coordination and implementation of services to students, which included residence life, the athletic department, the counseling office, the health center, career services, student activities and ADA services. As an administrator she oversaw the Student Services budget and student services and athletic department employees and volunteers. She was responsible for responding to student conduct violations as chief hearing officer and administrator of the discipline process to facilitate ethical conduct and personal responsibility, protect the campus community,

safeguard students, and provide development opportunities and restoration for individual students. In addition to her experiences as Legal Counsel to the Health and Human Services Committee and in higher education administration, Ms. Chaffee practiced law and utilized her law degree in a variety of different state governmental agencies. She served in the Nebraska Legislature as Legislative Aide to Senators Gene Tyson and Mike Avery. During law school she interned for the Nebraska Attorney General's Office, in the Child Protection and Drug Enforcement Division. Additionally, as a Senior Law Clerk, she researched pre-trial diversion guidelines for the Office of Juvenile Services in the Nebraska Crime Commission. Upon graduation from UNL College of Law, Ms. Chaffee served as an attorney at Legal Aid, focusing on representing the needs of indigent individuals in civil court. As an attorney in private practice, she specialized as a Guardian ad Litem representing the needs of abused and neglected children in Juvenile Court. Prior to attending law school, Ms. Chaffee served for a number of years as a 7-12th grade English and History teacher in Nebraska, Iowa, Missouri and Texas.

Under the Act, responsibilities of the Public Guardian include: to assume all duties assigned by the Administrator of the Courts; to fulfill the duties and responsibilities of guardian/conservator for appointed individuals; administer public guardianship/conservatorship⁵; serve as staff to Council⁶; with advice from the Advisory Council on Public Guardianship⁷, recommend rules to the Supreme Court⁸; designate authority to act on her behalf to deputy and associates;⁹ and report to State Court Administrator, Chief Justice and Legislature on the implementation of the Act on or before January 1 each year¹⁰. A summary of the duties completed in 2015 are included in this report.

ADVISORY COUNCIL

The OPG is assisted by an Advisory Council, appointed by the Administrator of the Courts¹¹, to advise the Public Guardian on the administration of public guardianships and conservatorships.¹² Members of the Advisory Council, shall be comprised of individuals from a variety of disciplines who are knowledgeable in guardianship and conservatorship, and be representative of the geographical and cultural diversity of the state and reflect gender fairness¹³. As required by the Act, the appointments of initial members of the Advisory Council were made within ninety days after January 1, 2015. Initial appointments were staggered terms of one, two or three years, as determined by the State Court Administrator; subsequent terms shall be for three years.

The Advisory Council membership for 2015 included:

Representing the County Judge role is **Judge Susan Bazis**, Omaha. Susan Bazis was sworn in to be a Douglas County Court Judge in April of 2007. Prior to becoming a judge, Judge Bazis worked as a lawyer in the Omaha area for 13 years. Throughout her career as a lawyer, Judge Bazis handled criminal, civil, domestic and probate cases. As a judge, Judge Bazis handles criminal, civil, protection orders and probate cases. Judge Bazis currently is co-chair of the Nebraska Supreme Court Commission on Guardianships and Conservatorships.

The four attorney positions are held by Lisa Line, Ann Mangiameli, Michael McCarthy, and John McHenry.

Lisa Line is a partner with Brodkey, Peebles, Belmont and Line in Omaha. Ms. Line's primary areas of practice includes Probate, Estate, and Trust Planning and Administration; and Administrative Law, including Social Security Disability, Medicare and Medicaid. She assists families through estate planning and asset transfer issues; working with families during the probate or trust administration process; acts as a Court appointed Special Administrator, Guardian ad Litem, or Guardian/Conservator in probate, trust or guardianship/conservatorship actions; represents individuals in the legal process to determine entitlement for benefits; works with families of individuals with disabilities through the estate planning process, which includes both third party special needs trusts and self-settled special needs trusts; and advises Bank Trustees in the administration of special needs trusts, approval of expenditures and reporting to various agencies.

Ann Mangiameli is a 1991 graduate of Creighton Law School. From 1991 to 1997 Ms. Mangiameli practiced in the areas of domestic relations, juvenile court, criminal and probate law. She has worked for Legal Aid of Nebraska from 1997 to 2002 and again from 2006 to present. Her areas of practice are Social Security Disability, Medicaid/Medicare, public benefits, powers of attorney and wills. Ms. Mangiameli has managed the Medical Legal Project at Legal Aid of Nebraska since its inception in 2009. The Medical Legal Project is a joint collaboration between Legal Aid of Nebraska, Nebraska Medicine and CHI Health designed to improve the health and welfare of patients by assisting with legal problems that interfere with the success of medical treatment. Over the last several years the Medical Legal Project has become increasingly involved in the establishment of guardianships for patients to assist with placement and treatment. Recently, the National PBS NEWSHOUR highlighted the work being done by the Medical Legal Project on [Why doctors are prescribing legal aid for patients in need](#) on PBS.

Michael J. McCarthy is a partner in the North Platte law firm of McCarthy & Moore. He earned his undergraduate degree in 1972, and his law degree in 1975, both from the University of Nebraska at Lincoln. Immediately following his graduation he joined his father in the private practice of law in North Platte. Mike practices primarily in the areas of estate planning and probate, real estate, and corporate and business planning. Mike has served on the North Platte Board of Education, and served as the Board's President; the Great Plains Regional Medical Center Board of Directors, where he also served as the Board's Chair; the Board of Directors of the North Platte Area Chamber of Commerce and Development Corporation, where he served as Chairman; the Nebraska Commission on the Unauthorized Practice of Law, where he served as Chairman from 2008 to 2012; and he presently serves as the Sixth District Representative on the Executive Council of the Nebraska State Bar Association.

John McHenry graduated from the University of Nebraska, College of Law in 1973. He is a partner in McHenry, Haszard, Roth, Hupp, Burkholder and Blomenberg in Lincoln, NE. Areas of practice include elder rights, probate, guardianship, conservatorship, estate planning and trusts. Mr. McHenry was elected in 2001 as Nebraska State Bar Foundation- Lifetime Fellow and in 2006 as an American College of Trust and Estate Counsel-Fellow.

Patricia Cottingham fills the role as aging expert on the Council. Ms. Cottingham is the Program Director of The Arc of Nebraska. For over 60 years The Arc of Nebraska has provided advocacy to people with intellectual and developmental disabilities and their families. The Arc is a non-profit, governed by a Board of Directors, with over 1,500 members across the state.

Bruce Cudly represents individuals with developmental disabilities. Mr. Cudly has worked for over 35 years in the Developmental Disability provider system in the State, and is currently the Director of Organizational Supports for Region V Services, providing supports to nearly 1000 individuals in Southeast Nebraska. He has been involved with guardianship issues for many years, meeting with Individual Program Planning teams to address individual needs for guardianship, and areas where responsible members of the community could be recruited to help provide this support for those who have no one interested or qualified. Mr. Cudly is the co-author of the UNL-Extension guardianship training curriculum, a member of the Supreme Court Commission on Guardianships and Conservatorships, and a member of the Human and Legal Rights Committee for the Beatrice State Developmental Center's Bridges program.

Russ Leavitt is the Chief Executive Officer of Finance and Technology at General Service Bureau and Early Out Services, Omaha NE. He is one of the At-Large members of the Council. Mr. Leavitt is a graduate of Creighton University, BSBA, Major in Accounting. He has served nine years as Chairman of the Nebraska Collectors Association (NCA) Education Committee. Recently, he has served on the Supreme Court Commission on Guardianship and Conservatorship, and volunteered to serve on three subcommittees (Executive, Public Guardian and Protection of Vulnerable Adults).

Dr. Dennis P. McNeilly, SJ., PsyD is a clinical geropsychologist and professor of psychiatry in the University of Nebraska Medical School's Department of Psychiatry in Omaha, NE. He also serves as the Section Chief for Geriatric Psychiatry and the Assistant Dean for Continuing Education.

Dr. McNeilly's clinical practice includes the psychotherapeutic treatment of depression, anxiety, impulse control disorders, and neuropsychological assessment of Alzheimer's and other dementias in older adults. His research interests include problem gambling in older adults, victimization of older adults, and the assessment and treatment of depression and dementia in older adults. A nationally and internationally known speaker, scholar and authority on problem gambling among older adults, Dr. McNeilly is a past President of the National Council on Problem Gambling, and past Chair of the Nebraska State Committee on Problem Gambling. He has previously served on the Nebraska Psychological Association's Ethics Committee, the board of the Association for the Behavioral Sciences and Medical Education, and the editorial board of Academic Psychiatry. A member of the American Psychological Association, the Nebraska Psychological Association, the American Directors of Medical Student Education in Psychiatry, and the Society for Academic Continuing Medical Education, Dr. McNeilly is also a member of the Creighton University Jesuit Community.

Darla Schiefelbein, Clerk Magistrate, Platte County Court represents an At Large Member of the Advisory Council. She graduated from Wayne State College in 1981, with a Bachelor's of Science degree in Human Services Counseling and Sociology. Ms. Schiefelbein began employment with the Nebraska Department of Health and Human Services from 1981-1994 working in several caseload areas: Food Stamps, Aid to Dependent Children, Aid to the Aged, Blind and Disabled and preparing home studies for Adoption and Foster Care. She was appointed as Clerk Magistrate of the Platte County Court in 1994 until the present. Ms. Schiefelbein supervises six staff in the court and is responsible for the court caseload and progression. She also audits Guardian/Conservator cases for Sarpy and Hall Counties. Ms. Schiefelbein was appointed to the Nebraska Supreme Court Commission on Guardianships and Conservatorships in 2012. In 2013 she was selected to be one of three Guardian/Conservator Specialists for the state; serving as a resource for county court staff in Nebraska. The goals of the specialists are to work to insure uniformity among the courts and to improve process and forms used for Guardianships and Conservatorships.

Julie Sebastian fulfills the role as social worker on the Council. Ms. Sebastian is a native of Omaha, Nebraska and only briefly left to attend college at Northwest Missouri State for undergraduate work before attending UNO for her Masters in Social Work with a certificate in Gerontology. After working for one year at Child Saving Institute, she became the Resident Services Director for Royale Oaks Assisted Living in the Benson area of Omaha, and later moved into the Administrator position there. She recently moved to the position of President and CEO of New Cassel Retirement Center in midtown Omaha. Her volunteer activities include the LeadingAge Nebraska Board of Directors (Vice President), Rite of Passage Uta Halee Academy Advisory Board (Secretary), the Nebraska Adult Day Services Association (Treasurer), the youth group at St. Andrew's UMC, and the Office of Public Guardian Advisory Council.

The Advisory Council has been invaluable in assisting the OPG in developing policies and protocols to carry out the intent of the Public Guardianship Act. While the statute requires the Council to meet four times a year, this dedicated group has met ten times throughout the year to provide thoughtful, insightful guidance to the OPG. The Council adopted operating principles to guide their actions. During 2015 they have advised the OPG with financial procedures, OPG policies, software, personnel, court visitor screening and report form, court rules, a sliding fee schedule, medical ethics, piloting of public

guardianship and conservatorship processes, collective account court rules, guardian and conservator education, and communication with court personnel. The next meeting of the Advisory Council is scheduled for March 2016.

OFFICE OF PUBLIC GUARDIAN STAFF

The OPG staff, outlined in statute, includes the Public Guardian as Director of the Office, a Deputy Director and twelve Association Public Guardians. In addition, the OPG has hired Peggy Graham to serve as Business Manager. Peggy has a background in accounting, finance and auditing. She previously worked for AOC finance and the Nebraska Auditor. Linda Kallhoff serves as the Outreach and Education Coordinator. Linda earned a BA in Medical Social Services from Mount Marty College in Yankton, South Dakota. She spent her professional career in developmental disability service administration, overseeing multiple programs, across north and eastern Nebraska. The Administrative Assistant for OPG Executive staff, Guardian Education and the Court Visitor Program is Kristin Williams. Kristin graduated from the University of Nebraska and has worked in social services, health care, and at the University of Nebraska - Lincoln. Jacey Gale is the Administrative Assistant Intake for OPG Guardianship and Conservatorship and Court Process¹⁴, she graduated from Doane and has experience with Lancaster County Probate Court in guardianships and conservatorships.



The Deputy Director, Marla Fischer-Lempke, was hired in January 2015.¹⁵ Ms. Fischer-Lempke received her Juris Doctor from the University of Nebraska, College of Law in 2004 and was licensed to practice law in Nebraska that same year. Since that time, she has held several positions and years of experience in advocating for and with people with disabilities and their families. Prior to coming to the Office of Public Guardian, Marla served as an Assistant Ombudsman with the Nebraska Office of Public Counsel where she addressed concerns of Nebraskans who experienced individual and systemic difficulties with programs administered by the Nebraska Department of Health and Human Services. Before Marla was with the Office of Public Counsel, she was the Executive Director for The Arc of Nebraska for five years. In this position, she provided support to thirteen local Arc chapters across Nebraska; provided advocacy in written and verbal testimony on proposed legislation within the Nebraska Unicameral in collaboration with other disability organizations; and provided information, ideas on problem solving, and action on statewide issues affecting the lives of people with developmental disabilities. In 2012, Marla joined the Nebraska Supreme Court Commission on Guardianships and Conservatorships. Marla was also the Public Information Attorney with Disability Rights Nebraska for four years, where she gained experience in developing informational materials for people with disabilities, family members, and interested citizens. She also provided several successful trainings on various topics pertinent to the lives of people with

disabilities. She is experienced in the areas of individual and systems level advocacy and has successfully collaborated with other organizations and agencies on many occasions.

The twelve Associate Public Guardians (APG) provide direct guardianship and conservatorship services to wards and protected persons. The Public Guardianship Act limits guardianships/conservatorships to an average of forty incapacitated individuals¹⁶ per APG. The Associate Public Guardians have vast experience in a wide variety of social services and legal professions, strengthening the knowledge and skills of the OPG team. The APG professional backgrounds include service coordination and direct service for individuals with developmental disabilities, counseling for individuals with mental health issues, administration of a specialized care facility for individuals with Alzheimer's, case management provision within Adult Protective Services, and professional educators. Four of the APGs, in addition to the Director and Deputy Director, have law degrees.

Brad Brake

5B East Central; Lincoln



Brad Brake originally grew up on a farm in southwest Minnesota. He attended college at Hamline University in St. Paul, MN where he majored in sociology/religious studies. During his time at Hamline, he worked at an after school program for Karen children. After graduating in 2010, Brad moved to Omaha, Nebraska in order to work on policy and development with the Nebraska Synod, ELCA. After that, he moved to Lincoln to attend law school at UNL. While at UNL, he worked at various nonprofits that included the ACLU and Nebraskans for Civic Reform. He graduated in May and is eager to start his next adventure at the Office of Public Guardian.

Irene Britt

2 West Central; North Platte



Irene Britt received her undergraduate degree from the University of Nebraska at Kearney with a Bachelor of Arts in Education. She also holds a Master of Arts Degree in Education with an emphasis in Special Education. Irene has worked with people with disabilities since 2000, which includes instruction with students in the school system, as well as providing independent living skills and advocacy for individuals living independently in the community or transitioning to independent living. Irene has worked extensively with individuals with mental health and cognitive disabilities, families, and youth in the foster care system, and also individuals in the court system. Irene is a trainer of Trauma Informed Care and Rentwise. She is also a volunteer for CASA and L2 For Kids.

Chris Casey

4 Northeast; Norfolk



Chris Casey holds a BS in Secondary Education from the University of Nebraska – Omaha with certificates in Social Sciences and History. He continues to be a certified teacher in Nebraska, and taught in the AAC (special education-learning disabilities) department at Omaha Northwest High School. The majority of his experience has been within the field of developmental disabilities. Chris worked as a Work Experience Trainer with Goodwill Industries, then moved on to become a part of DHHS-Developmental Disabilities Service Coordination. He provided ongoing case management for approximately 28 individuals and was promoted to a supervisor position within his office, where he remained until accepting his current position. Chris is in the process of placing a successor guardian for a young man that has been his ward for the past 5 years. He is an active member of the American Legion and enjoys volunteering for veterans causes.

Valerie Franssen

5A East Central; Lincoln



Valerie Franssen was born and raised in Lincoln, Nebraska. She graduated from Lincoln High School and went on to UNL to graduate with a Bachelor’s Degree in Psychology and Criminal Justice. She then moved to Washington, DC and graduated with a Master’s Degree in Forensic Psychology from Marymount University in Arlington, VA. Valerie worked for the Department of Mental Health in Washington, DC for several years before returning to Lincoln. She has over ten years of clinical experience, working with individuals with mental illness, substance abuse, and developmental disabilities. She also worked for the State of Nebraska as a Regional Ombudsman in South Central Nebraska. Valerie comes to the Office of the Public Guardian from DHHS, where she most recently worked as a Developmental Disability Behavioral Health Surveyor. Valerie is looking forward to her new placement as an Associate Public Guardian, in an effort to provide education, guidance, and advocacy for those who need assistance.

Jordan Harvey

6A East; Omaha



Jordan attended the University of Nebraska at Omaha and received a bachelor’s degree in psychology. She graduated with a Master’s in Clinical Counseling from Bellevue University. Jordan’s previous work experience includes working with uninsured individuals and assisting them with applying for state and federal programs, such as Medicaid and Social Security Disability. During her graduate internship, she provided counseling services for adults, children and families. Jordan has many years of case management experience and working with area agencies on obtaining resources for clients.

Lauren Micek
6A East; Omaha



Lauren Micek is a recent graduate of Creighton University School of Law. In 2007, she graduated from Baylor University with a degree in History. Upon graduating, she joined the national non-profit organization Teach For America. As a New York City corps member, she began her career teaching secondary special education in the Bronx. Through this experience, she developed a deep commitment to educational equity and advocating for the rights of disabled people with disabilities. While in New York, she received her graduate degree from Pace University in Secondary Special Education. In 2009, she became a Program Director at Teach For America where she managed approximately 150 special education teachers across New York City. Finding that she lacked the proper fundamental legal skills to be a strong advocate, she enrolled in Creighton University School of Law in 2012. As a law student, she worked as a law clerk in the Douglas County Public Defender's Office, served as the President of Creighton's Student Innocence Project, and was a member of the Regional Moot Court Championship team. Although, Lauren is a Southern California native, her Nebraska roots have been fostered by her large extended family throughout the state, and connections made while interning for former Senator Chuck Hagel.

Michelle Moore
3A Mid Central; Kearney



Michelle Moore was born and raised in Ogallala, Nebraska. She attended the University of Nebraska at Kearney and received her Bachelor of Arts in Education for Elementary and Early Childhood Education. She went on to teach preschool for several years, which eventually led up to teaching elementary school for 10 years in North Platte, Nebraska. During that time, Michelle worked on her Master's Degree in Curriculum and Instruction from Doane College and received her degree in 2008. Most recently, she's been employed at the Nebraska Department of Health and Human Services, working as a Child and Family Services Specialist in the Kearney, Nebraska office. Michelle was with Child Protective Services for 2 ½ years before moving over to Adult Protective Services for her final six months with the department.

Annette Scarlett

3B Mid Central; Grand Island/Hastings



Annette Scarlett has a degree in Criminal Justice and Special Education. She has been working in the field of Developmental Disabilities since she was 16 years old and has worked at all levels, including the state level as a Services Coordinator for over 9 years. She also has managed a 6-bed nursing facility for those with intellectual disabilities and was a Services Coordinator for the Office on Aging for close to two years. Her latest experience was as an extended family home provider to a 24-year-old male with developmental disabilities. She is guardian and conservator for three others on a private basis, including a family member with developmental disabilities. Annette’s passion is advocating for the rights of others when they are no longer able to do so for themselves.

Stacy Rotherham

1 Panhandle; Scottsbluff/Gering



Stacy Rotherham was born and raised in the Scottsbluff/Gering area. She received her Bachelor of Arts in Kinesiology from the University of Northern Colorado. Stacy has worked in long term care for over 12 years as the Director of Alzheimer’s Care, Certified Dementia Practitioner, and Certified Dementia Care Manager. She has loved being able to work and help those with Alzheimer’s and other Dementias, and looks forward to being able to help other vulnerable adults as the Associate Public Guardian for the Panhandle.

Andrew Schill

7 Southeast; Papillion/Falls City



Andrew Schill is a recent graduate of the University of Nebraska College of Law. He is a Nebraska native, born and raised in Omaha. Andrew loves his home city and state, and is spending most of his time this summer studying for the Nebraska Bar exam. Andrew is passionate about projects protecting the needs of the indigent, and hopes to use his law degree to defend the rights of those most vulnerable in society.

Danielle Schunk

6C East; Omaha/South Sioux City



Danielle Schunk, also known as Ellie, grew up in Omaha, Nebraska. She graduated from UNO with a Bachelor's in Secondary Education and a Bachelor's in Speech Communication. Danielle taught language arts and coached speech for two years. In the fall of 2011, she moved to Lincoln and started Law School at UNL. Danielle focused mainly on family law while in school, but was also very involved with the Women's Law Caucus, Nebraska Family Law Organization, and Student Ambassadors. After graduating, Danielle took the Nebraska Bar Exam and began practicing with a small personal injury firm in Omaha. Ultimately she knew she wanted to work in the public sector, which is what brought her to her current position.

Erin Wiesen

6D East; Omaha/David City

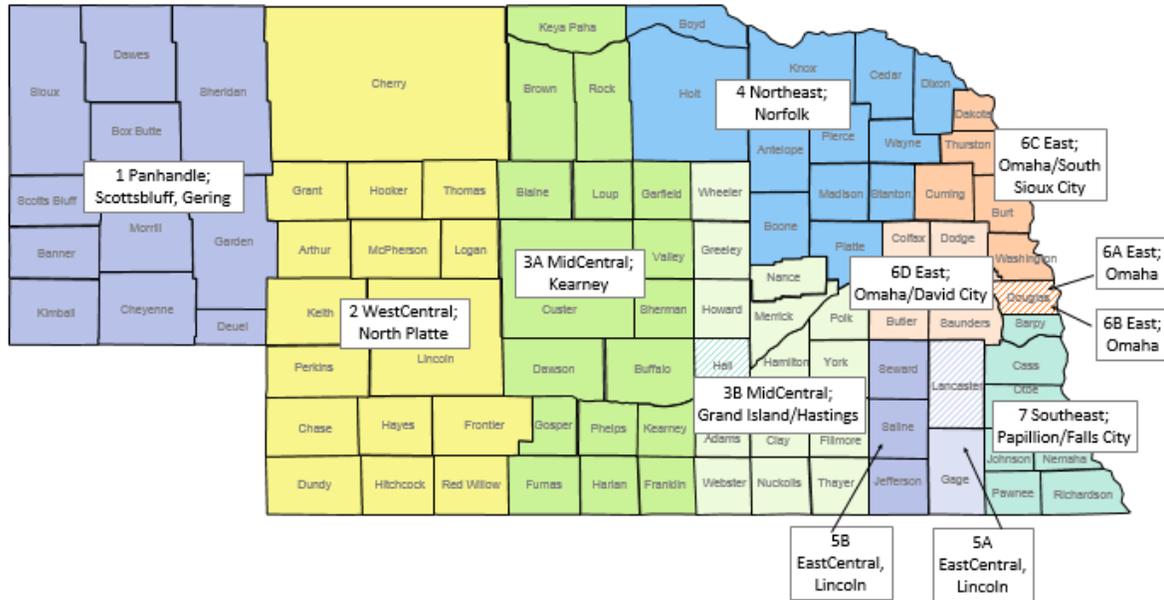


Erin M. Wiesen is a native of Fremont, Nebraska and currently resides in Omaha, Nebraska. She has a Bachelor of Arts in Applied Psychology and Human Services from College of Saint Mary in Omaha, Nebraska, and a Master's of Human Services from Concordia University in Seward, Nebraska. Erin has spent her entire professional career in nonprofit advocacy work, with extensive experience in developmental disabilities, employment readiness, mental health, substance abuse, and homelessness. She is excited to become a part of the new Office of Public Guardian where she can continue her advocacy work in service to all Nebraskans.

The OPG Service Areas were determined by looking at the guardians and conservators by county and the distance of travel required for the APG to provide service to wards and protected persons. The service areas and APG's identified are below:

Office of Public Guardian
 Administrative Office of the Courts
 1445 K Street/P.O. Box 98910
 Lincoln, NE 68509
 (402) 471-2862

Office of Public Guardian Service Areas



The counties of Hall, Lancaster and Douglas are shared between multiple Associate Public Guardians as a part of their Service Areas.

OPG Service Area 1, Stacy Rotherham– Panhandle: Scottsbluff/Gering Banner, Box butte, Cheyenne, Daves, Deuel, Garden, Kimball, Morrill, Scottsbluff, Sheridan, Sioux;

OPG Service Area 2, Irene Britt- WestCentral: North Platte- Arthur, Chase, Cherry, Dundy, Frontier, Grant Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson

OPG Service Area 3A, Michelle Moore- MidCentral: Kearney-Blain, Buffalo, Brown, Custer, Dawson, Franklin, Furnas, Garfield, Gosper, Hall*, Harlan, Keya Paha, Kearney, Loup, Phelps, Rock Sherman, Valley

OPG Service Area 3B, Annette Scarlett- MidCentral: Grand Island/Hastings- Adams, Clay, Fillmore, Greely, Hall, Hamilton, Howard, Nance, Merrick, Nuckolls, Polk, Thayer, Webster, Wheeler, York

OPG Service Area 4, Chris Casey- Northeast: Norfolk- Antelope, Boone, Boyd, Cedar, Dixon, Holt, Knox, Madison, Pierce, Platte, Stanton, Wayne

OPG Service Area 5A, Valerie Franssen- EastCentral: Lincoln- Gage and Lancaster*

OPG Service Area 5B, Brad Brake- EastCentral: Lincoln- Jefferson, Lancaster*, Saline, Seward

OPG Service Area 6A, Lauren Micek- East: Omaha- Douglas*

OPG Service Area 6B, Jordan Harvey- East: Omaha- Douglas*

OPG Service Area 6C, Danielle Schunk- East: Omaha/South Sioux City-Burt, Cuming, Dakota, Douglas*, Thurston, Washington

OPG Service Area 6D, Erin Wiesen- East: Omaha/David City-Butler, Colfax, Dodge, Douglas*, Saunders

OPG Service Area 7, Andrew Schill- Southeast: Papillion/Falls City- Cass, Johnson, Nemaha, Otoe, Pawnee, Sarpy, Richardson

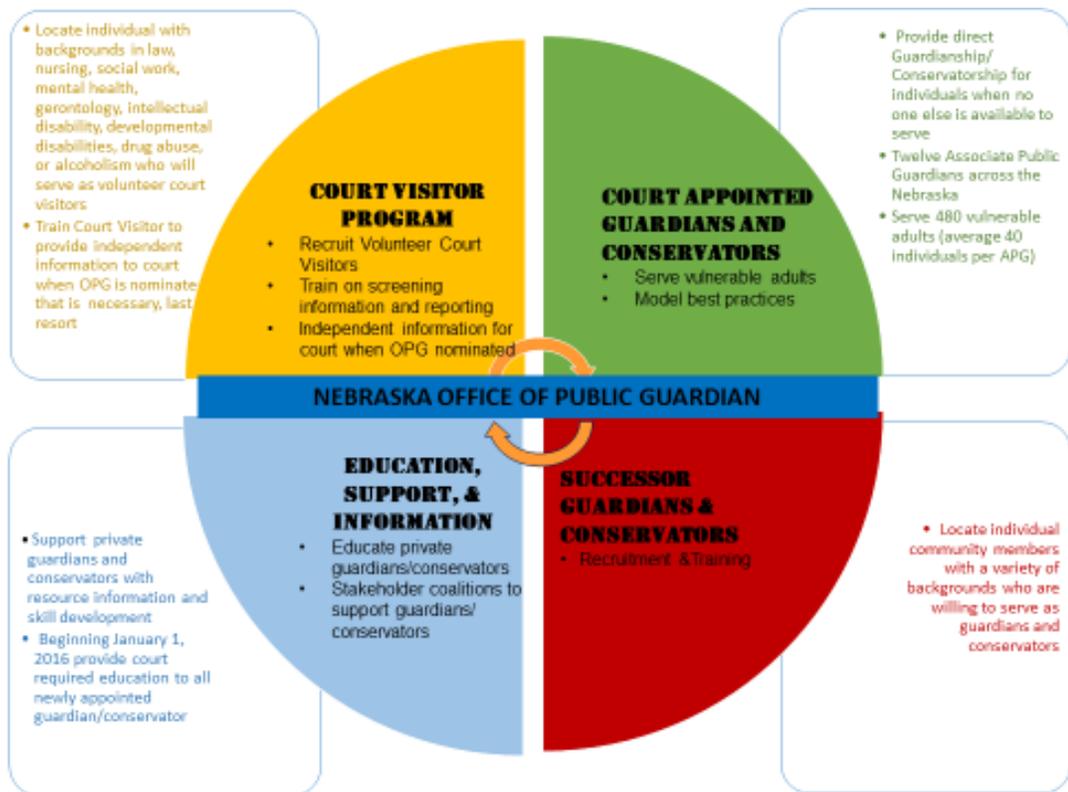
**Shared counties within Service Areas by multiple Associate Public Guardians*

Offices

There are currently two office locations for APGs. One office is in west Omaha and houses five APGs that serve the eastern area of the state. Two other Associate Public Guardians share Lancaster County and four surrounding counties; they are located in the OPG main office in the State Capitol in Lincoln. All other APGs work from home offices located near Norfolk, Hastings, Kearney, North Platte, and Scottsbluff.

DUTIES OF THE OFFICE OF PUBLIC GUARDIAN

The Public Guardianship Act, Neb. Rev. Stat. §§ 30-4101 through 30-4118 outlines the responsibilities and duties of the Office of Public Guardian. The duties of the Public Guardian can be characterized by: responsibility for equitable appointment process (provided by the Court Visitor Program); direct service as public guardians and public conservators; maximizing resources and implementing effective financial and organizational management practices; facilitating model and best practices for services to wards and protected persons; providing education, support and education to all guardians and conservators in the state; and enhancing opportunity for recruitment of successor guardians/conservators in the private sector¹⁷.



The duties of the Office of Public Guardian include:

- Provide immediate response when guardian/conservator needed in emergency situation- Neb. Rev. Stat. §30-4105(1)
- Provide an option upon resignation, removal, or discharge of guardian/conservator so no lapse in service- Neb. Rev. Stat. §30-4105(2)
- Provide equal access and protection for all individuals in need of guardianship or conservatorship services- Neb. Rev. Stat. §30-4105(3)

- Provide public education to increase awareness of duties of guardians/conservators- Neb. Rev. Stat. §30-4105(4)
- **Encourage more people to serve as private guardians/conservators- Neb. Rev. Stat. §30-4105(4)**
- **Recruit members of public and family to serve as guardians or conservators- Neb. Rev. Stat. §30-4105(5)**
- Provide adequate training and support to enhance [guardian/conservator] success- Neb. Rev. Stat. §30-4105(5)
- Act as resource to guardians/conservators for education, information, and support- Neb. Rev. Stat. §30-4105(6)
- **Safeguard the rights of individuals by supporting least restrictive manner possible and full guardianship only as last resort- Neb. Rev. Stat. §30-4105(7)**
- Model the highest standard of practice for guardians/conservators to improve performance of all guardians/conservators in state-Neb. Rev. Stat. §30-4105(8)
- **Develop a uniform system of reporting and collecting statistical data- regarding guardianship/conservatorship- Neb. Rev. Stat. §30-4109(1)**
- **Develop and adopt standard of practice and code of ethics for public guardianship/conservatorship services- Neb. Rev. Stat. §30-4109(2)**
- **Prepare a biennial budget for the implementation of the act- Neb. Rev. Stat. §30-4109(3)**
- **Develop guidelines for sliding scale of fees for public guardians/conservators- Neb. Rev. Stat. §30-4109(4)**
- Maintain a curricula for training of private and successor guardians/conservators- Neb. Rev. Stat. §30-4109(5)
- Maintain training programs statewide to offer training curricula for interested parties- Neb. Rev. Stat. §30-4109(6)
- Guardian and conservator understand disabilities and fiduciary needs of ward/protected person- Neb. Rev. Stat. §30-4109(6)(a)
- Helping a guardian encourage independence by ward as appropriate- Neb. Rev. Stat. §30-4109(6)(b)
- Helping a guardian with plans/reports and conservator with accounting/reports- Neb. Rev. Stat. §30-4109(6)(c)
- Advise a guardian/conservator on ways to secure rights, benefits, and services entitled by ward/protected person- Neb. Rev. Stat. §30-4109(6)(d)
- Promote public awareness of need and responsibilities of guardianship/conservatorship-Neb. Rev. Stat. §30-4109(7)
- **Apply for and receive funds from public and private sources for purpose of act.-Neb. Rev. Stat. §30-4109(8)**
- **Once appointed, the office shall make reasonable effort to locate a successor guardian/conservator-Neb. Rev. Stat. §30-4114(1)**
- **May accept an appointment as guardian/conservator not to exceed average of forty individuals per associate -Neb. Rev. Stat. §30-4115**

- Upon reaching the maximum the Public Guardian shall not accept appointments and ...Shall notify the State Court Administrator that the maximum has been reached- Neb. Rev. Stat. §30-4115
- Has all powers and duties of guardian in sections 30-2626 and 30-2628; and all powers and duties of a conservator in section 30-2646, 30-2647, 30-2653 through 30-2657- Neb. Rev. Stat. §30-4116(1)
- If proposed that a ward/protected person be placed outside of their home, the Public Guardian will visit the facility-Neb. Rev. Stat. §30-4116(2)(b)
- The Public Guardian shall monitor the ward/protected person and his or her care on a continuing basis-Neb. Rev. Stat. §30-4116(2)(c)
- Maintain personal contact with ward/protected person- Neb. Rev. Stat. §30-4116(2)(c)
- Public Guardian shall maintain a written record of each visit -Neb. Rev. Stat. §30-4116(2)(c)
- Public Guardian shall maintain periodic contact with all individuals, agencies, public or private, providing care or related service to the ward or protected person-Neb. Rev. Stat. §30-4116(2)(c)

APPOINTMENT CRITERIA

The intent and finding of the Legislature regarding the appointment of the Public Guardian is outlined in the Public Guardianship Act, §30-4102, “The Legislature intends that establishment of the Office of Public Guardian will **provide services** for individuals **when no private guardian or private conservator is available**. The Legislature also finds that **alternatives to full guardianship and less intrusive means of intervention should always be explored**, including, but not limited to, limited guardianship, temporary guardianship, conservatorship, or the appointment of a payee. It is the intent of the Legislature to provide a **public guardian or public conservator only to those individuals whose needs cannot be met through less intrusive means of intervention**. ..(2)(c) There are individuals in need of guardians or conservators for whom persons that have priority are **unwilling, unable, or inappropriate** to become a guardian or conservator; ...and (e) For those for whom **no person is available for appointment** as guardian or conservator, the Office of Public Guardian **may provide necessary services**.

The OPG determined that an independent screening would be required to verify that the appointment criteria for the Public Guardian that: there is no private guardian or private conservator available; alternatives to full guardianship and less intrusive means of intervention were explored; there was no individual who was willing, able or appropriate; and necessary services would be provided, was met.

COURT VISITOR- Independent Screening Option

In researching best practice for serving Nebraska’s potentially incapacitated persons in a manner that balances the “two faces” of guardianship, and in accordance with the Legislative intent and requirements of the Public Guardian Act, the OPG researched multiple models of public guardianship. Mary Jo Quinn’s *“Guardianships of Adults, Achieving Justice, Autonomy and Safety*, states “Educated, compassionate, and savvy court investigators appear to be the key to ensuring that all due process protections have been observed both in the spirit and the letter of the law. They are the linchpins to providing judges with the best possible overall information about the person with diminished capacity and his wishes.”¹⁸ Additionally, the Probate National Probate Code Standard 3.3.4 Court Visitor states that probate courts should require a court appointee to visit with the respondent upon the filing of a petition to initiate a guardianship/conservatorship proceeding to (1) explain the rights of the respondent, (2) investigate the facts of the petition, and (3) determine whether there may be a need for appointment of counsel.

“Court visitors serve as the eyes and ears of probate courts, making an independent assessment of the need for guardianship/conservatorship.” National Probate Standards Commentary 3.3.4 Court Visitor

Nebraska statutes provide for an appointment of a visitor to conduct an evaluation of the allegations of incapacity and obtain evidence relating to the allegedly incapacitated person's ability to make, communicate, or carry out responsible decisions. The visitor is to interview the allegedly incapacitated person, and other persons and agencies that may provide relevant information and visit the present place of abode of the person alleged to be incapacitated¹⁹. A visitor shall be trained in law, nursing, social work, mental health, gerontology, or developmental disabilities. The court is to select the visitor who has the expertise to most appropriately evaluate the needs of the person who is allegedly incapacitated. The court shall maintain a current list of persons trained in, or having demonstrated

expertise in, the areas of mental health, intellectual disability, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor²⁰.

The rule to require a Court Visitors/Guardian ad Litem whenever the Office of Public Guardian is nominated as a public guardian or public conservator assists the Office of Public Guardian to implement the Public Guardianship Act of model practice²¹ insuring due process by following the National Probate Code Standard 3.3.4 Court Visitor. Additionally the court visitor screening will provide the court information²² necessary to determine whether guardianship is the least restrictive option for the potentially incapacitated person. The Court Visitor screening provides for an independent investigation to whether any other potential guardians/conservators are available, therefore complying with the mandate that the OPG be the last resort. Finally, utilizing Court Visitors ensures accurate data is being reported to the legislature and Supreme Court as required by Neb. Rev. Stat. §30-4111. Specifically, having court visitors acquire information that assists the court in determining necessity of the guardianship and the appropriate level of guardians/conservatorship (limited vs. full) will provide more accurate data as the Office of Public Guardian serves individuals. Further, it will provide greater information to all regarding what needs remain for those the Office of Public Guardian cannot or is not authorized to serve.

SCREENING TOOL AND COURT VISITOR REPORT FORMS- Trained Volunteer Court Visitor: Accurate, Consistent Information for the Court

In order to assist with the potential increased need of court visitors for the Public Guardianship process the OPG has developed a Volunteer Court Visitor Program. The OPG Volunteer Visitor Program trains visitors in use of the screening tool and completion of the required Visitor or Guardian ad Litem Report when the Public Guardian is Nominated to be Appointed form. The training of court visitors: ensures the appropriate use of the screening tool and the Visitor Report form; provides for maximizing the standardization of OPG data collection; provides the ability to query information from Visitor reports; guarantees similar protocols for compliance with statutes and OPG appointment; assures equitable, fair resource utilization for OPG appointments and waiting lists; and provides enhanced information to the court regarding cases and persons.

The **screening tool** was developed, with assistance of the Advisory Council, for the Trained Court Visitor when the OPG is nominated for appointment. The following resources were utilized in constructing the screening tool:

- Nebraska Guardianship and Conservatorship statutes²³
- Nebraska Public Guardianship Act statutes²⁴
- Capacity Assessment for Self-Care and Financial Management Tool²⁵
- State of Minnesota Visitor's Report²⁶
- Six Pillars of Capacity²⁷
- Maricopa County Superior Court Office of Probate Investigations Probate Evaluation Tool²⁸
- Mini Mental State Examination (MMSE)²⁹

The *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges* (hereinafter *Handbook*), offered information as to the purpose of reports from visitors and a model court investigation report that was useful in implementing the screening tool.³⁰ The handbook offers materials to guide judges in ascertaining what expertise might be needed to determine a person's

capacity. The categories of capacity that may be at issue include: medical condition, cognition, everyday functioning, values and preferences, risk and level of supervision, and means to enhance capacity.³¹

Without outside information to advise the court, it would be difficult to precisely pinpoint what level of intervention may be needed and whether the appointment of the Office of Public Guardian is necessary, or if necessary, to what extent. In addition to assisting in providing information regarding capacity, court visitor screening information also assists to “identify the [proposed ward’s/proposed protected person’s] wants, needs, and values”.³² The Court Visitor Screening Tool utilized by Voluntary Court Visitors who are trained by the OPG, uses the statutory language for topics of decision-making that appear on the Letters of Guardianship and Conservatorship.³³ This ensures that the screening tool provides information specific to the types of decisions a potentially incapacitated person may require assistance by statute. Mirroring the language used in the statute and letters is meant to assist the court in determining exactly what level of support is needed, who the best person to provide the support is, and the appropriate duration for the support.

The Visitor or Guardian ad Litem Report when the Public Guardian is Nominated to be Appointed form was developed, with the assistance of the Advisory Council, in compliance with:

Neb. Ct. R. § 6-1433.01 (E) “The visitor or guardian ad litem report shall comply with Neb. Rev. Stat. § 30-2619.03, and to assist the Office of Public Guardian fulfill its duties mandated by the Public Guardianship Act, the report will include a standard form approved by the State Court Administrator’s Office to include information required by Neb. Rev. Stat. § 30-2619.01” and

Neb. Ct. R. § 6-1433.02 (H) An appointed visitor and/or guardian ad litem is to conduct an evaluation of the allegations of incapacity and whether there is an appropriate private guardian and/or private conservator to serve in the case. The visitor or guardian ad litem shall provide a written report to the court, on a form approved by the State Court Administrator’s Office, and allow for the filing of responses to the report in accordance with Neb. Rev. Stat. §§ 30-2619 through 30-2619.04.

The form provides for collateral information gathering from the allegedly incapacitated person, the person seeking appointment as guardian, the agencies providing services to the allegedly incapacitated person, and other persons and agencies that may provide relevant information. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and, if any change of residence is anticipated, the place it is proposed that he or she will be detained or reside if the requested appointment is made, and submit his or her report in writing to the court.³⁴ The form provides information regarding , the potential incapacitated persons’ ability to make, communicate, or carry out responsible decisions concerning his or her person with regard to: Selecting his or her place of abode within or without this state; Arranging for his or her medical care; Protecting his or her personal effects; Giving necessary consents, approvals, or releases; Arranging for training, education, or other habilitating services appropriate to him or her; Applying for private or governmental benefits to which he or she may be entitled; Instituting proceedings to compel any person liable for the support of the proposed ward to support him or her if no conservator has been appointed for the proposed ward; Entering into contractual agreements if no conservator has been appointed for the proposed ward; Receiving money and tangible property deliverable to him or her and applying such money and property to his or her expenses for room and board, medical care, personal effects, training, education, and habilitative services; and Any other area of inquiry which the court may direct.³⁵ Under each component

of decision-making capacity, the Visitor Report Form identifies whether it is a disputed issue, what capacity is evident and any recommendation identified by contacts and documentation.

Additionally the Visitor Report Form requires the Court Visitor to determine, based upon his or her contact with the potentially incapacitated individual, contact with others, review of documents and based upon all the files, records, and proceedings related to the case that, if the court determines guardianship and/or conservatorship is appropriate, whether there is a potential private guardian and/or private conservator to serve in the case, and provide the court the identity of the individual(s).

The Visitor Report Form, provides the option for the court to request other potential information as outlined in Neb. Ct. R. § 6-1433.02 (l) “The court should consider utilizing a multi-disciplinary screening to determine diminished capacity. The multi-disciplinary screening shall include, but is not limited to, the individual’s: (1) medical condition; (2) cognitive functioning; (3) daily living functional abilities; (4) consistency of functioning with his/her values, preferences, and lifetime patterns; (5) risk of harm in the context of his/her social and environmental supports; and (6) means to enhance capacity through accommodations and effective communication techniques. This screening may be done by a trained visitor or trained guardian ad litem that is appointed by the court.” These categories of capacity are the model capacity outlines in the *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges*.

RECRUITMENT- Volunteer Court Visitors

Neb. Rev. Stat. §30-2624, in the Nebraska current Probate Code requires, “The court shall maintain a current list of persons trained in or having demonstrated expertise in the areas of mental health, intellectual disability, drug abuse, alcoholism, gerontology, nursing, and social work, for the purpose of appointing a suitable visitor.” and “The court shall select the visitor who has the expertise to most appropriately evaluate the needs of the person who is allegedly incapacitated.” In March through June of 2015, the Director and Deputy Director met with county court personnel across Nebraska, including County Court Judges, Clerk Magistrates, the Advisory Council, and the Supreme Court Commission on Guardianship and Conservatorships. Part of the discussion entailed the use of court visitors in Nebraska. Despite the statute requiring the court to maintain a list of court visitors, discussions indicated that court visitors were rarely used and when one was utilized it was on a case by case basis and a visitor was determined when the need arose. While the mechanism of visitors was available under Nebraska statute to assist the OPG in complying with the Public Guardianship Act regarding the appointment of the Public Guardian only when “least restrictive, last resort, necessary services” and to “model practice, system of data collection, provide equal access and protection³⁶”; the cadre of trained visitors did not exist in Nebraska. There was no program for recruiting, screening, or training visitors nor Guardians ad Litem in Probate Court. Court rules to require the appointment of a Visitor or Guardian ad Litem whenever the OPG is nominated for appointment as a guardian or conservator³⁷; and rules to require that the Visitor or Guardian ad Litem report will “include a standard form approved by the State Court Administrator’s Office to include information required by Neb. Rev. Stat. § 30-2619.01.” These measures would ensure the appropriate use of the Public Guardian and provide independent verification that the Public Guardian is utilized as the Act requires. However, they would also require recruitment and training. The OPG devised a way in which to provide the opportunity for recruitment and training. The courts would have the option regarding who was appointed as a visitor or guardian ad litem, but the

OPG would work to begin to provide individuals trained in the screening tool and Visitor or Guardian ad Litem Report form.

As an added benefit of using these well-trained volunteers will reduce the cost to counties, who are required to pay for visitors and guardians ad litem³⁸. The *Adult Guardianship Guide*³⁹ points out, “In light of budget restrictions, volunteer monitor and visitor programs are becoming more commonplace, as the courts look to their local community to help provide oversight.”

To recruit volunteer court visitors for the Volunteer Court Visitor Program, the OPG has developed recruitment materials including flyers, handouts, and PowerPoint presentations describing the Volunteer Court Visitor responsibilities.

The OPG created a Volunteer Court Visitor job description outlining the responsibilities and expectation of Volunteer Court Visitors. Additionally, a process including an application, background check, applicant interview form and applicant interview evaluation has been developed.

Additionally, the OPG staff have met with community providers, stakeholders, higher education programs training professionals, and advocates of adults with incapacity due to: cognitive impairment, mental health issues, developmental disabilities, medical issues, and substance abuse. These public events in each of the twelve OPG service areas were held to introduce the Volunteer Court Visitor program and the opportunities available to serve as a Volunteer Court Visitor.

The chart below identifies the number of community group contacts by OPG service area (Region) and, more specifically, the communities in which the contacts were located.

SERVICE AREA	REGION	COMMUNITIES	# OF COMMUNITY GROUP CONTACTS
1	Panhandle	Scottsbluff	75
2	West Central	North Platte	56
3 A	Mid Central	Kearney	130
3 B	Mid Central	Grand Island/Hastings	58
4	Northeast	Norfolk	34
5 A	East Central	Lincoln/Beatrice	33
5 B	East Central	Lincoln/Seward/Crete/Fairbury	37
6 A	East	Omaha	5 + 66*
6 B	East	Omaha	5 + 66*
6 C	East	Omaha/South Sioux City	37+66*
6 D	East	Omaha/David City	26+66*
7	Southeast	Papillion/Falls City	41+66*
*6 A-D, 7	*Group presentations by all East & Southeast APGs		66*
Totals	Groups Addressed	Statewide-Nebraska	603

TRAINING- Volunteer Court Visitor

While recruitment, in and of itself, is imperative to the success of the OPG Court Visitor Program, the actions of those recruits as they serve as court visitors could only be as good as the training they receive in order to be prepared for the task at hand. As such, the OPG developed 12 on-line Court Visitor training modules with test-out quizzes covering:

MODULE	TOPIC
#1	Introduction to Guardianship
#2	Guardianship Authority
#3	Surrogate Decision Making
#4	Conditions of Potentially Incapacitated Persons, or Wards
#5	Living Arrangements of Potentially Incapacitated Persons
#6	Common Problems
#7	Abuse, Neglect, Self-Neglect, Sexual & Financial Exploitation
#8	The Interview – Inquire & Observe
#9	Effective Communication
#10	Community Resources
#11	Directory of Legal & Medical Terms
#12	Court Visitor Screening Tool

To develop the training modules, the OPG collaborated with Judicial Branch Education (JBE) and the OPG Administrative Assistant to upload the training modules to the JBEs On-line Moodle software system where it can be accessed remotely by Volunteer Court Visitors during their initial training phase. Additionally, the OPG developed a six-hour live training series to be conducted on the use of the Visitor Screening Tool and the Visitor or Guardian Ad Litem Report When the Public Guardian is Nominated to be Appointed.

To ensure greater participation and interest in serving as court visitors, the OPG collaborated with the Nebraska Bar Association and Judicial Branch Education to offer Continuing Legal Education (CLE) credits for attorneys who complete both the online and live Volunteer Court Visitor training offered by the OPG. As an incentive, attorneys who agree to serve as a Volunteer Court Visitor on a number of court cases where the OPG has been nominated for appointment will receive 11 CLE credits with the course fee waived. Attorneys who wish to become Court Visitors and charge courts for this service, are assessed \$175.00 for the course and training. To date, three private attorneys have completed the training and are available to serve as Volunteer Court Visitors. Each have agreed to serve the court in an OPG nominated case pro bono. In other recruitment efforts, the OPG collaborated with the University of Nebraska-Lincoln, University of Nebraska-Omaha, Nebraska Wesleyan University in Lincoln, and Morningside College in Sioux City, Iowa to assess interest in, and offer volunteering opportunities as, Court Visitors. As a result, one law/gerontology graduate student from UNL/UNO served as an intern in the OPG offices contributing to the development of the Court Visitor screening process. Additionally, one pre-law student from UNL is currently completing the Court Visitor training process.

Another recruitment approach to assist with initial cases, include OPG collaboration with Legal Aid of Nebraska to partner with attorneys in Omaha to serve as Volunteer Court Visitors on cases where the OPG has been nominated to be appointed as guardians and/or conservators during the OPG start-up phase. To date, six Legal Aid attorneys have completed the Court Visitor training process and are available to courts in Douglas and Sarpy counties during the first months of the Pilot Phase of the OPG process. The OPG facilitated several live Court Visitor Training sessions across the state.

The chart below identifies the date on which trainings were held, the location for the training, and the number of participants.

DATE	SITE	# of PARTICIPANTS
9/16/15	Norfolk	1
9/18/15	Lincoln	1
10/2/15	Omaha	1
10/7/15	Grand Island	2
10/14/15	Hastings	1
10/20/15	Scottsbluff	1
10/21/15	Kearney	1
10/29 & 11/3/15	Omaha	8
11/10/15	Kearney	2
12/1 & 8/15	Omaha	2
Total	Statewide	20

Upon completing the training process, new Court Visitors have indicated the courts in each OPG service area where they will be willing to serve. This list and contact information has been made available to Clerk Magistrates across the state.

In addition to these initial efforts, recruitment and Training of Volunteer Court Visitors will continue be provided by OPG. The ultimate goal of the OPG is to collaborate with private stakeholders to initiate an independent Volunteer Court Visitor organization. The OPG would still be available to offer initial training but an ongoing organization for Volunteer Court Visitor support and continuing education would be independently provided.

PUBLIC GUARDIANSHIP AND PUBLIC CONSERVATORSHIP NOMINATION AND APPOINTMENT

Office of Public Guardian Court Rules

The Office of Public Guardian, in consultation with its advisory council, and in conjunction with the Forms, Court Rules and Statutes Subcommittee of the Commission on Guardianships and Conservatorships, worked together to develop and submit proposed amendments to the Uniform County Court Rules of Practice and Procedure and four new rules in accordance with Neb. Rev. Stat. § 30-4110 (2014).

The proposed rules were, for the most part, offered separately from other court rules regarding guardianship and conservatorship to correspond with the creation and implementation of the OPG under a separate act from that of the statutes governing private guardians and conservators.⁴⁰ To follow the intent of creating the Office of Public Guardian as well as to ensure good stewardship of public funds, it became apparent that the Office of Public Guardian may need to follow a somewhat different process from that of the current appointment process of private guardians and conservators.

Specifically, the creation of the proposed rules followed the intent language:

The Legislature intends that establishment of the Office of Public Guardian will provide services for individuals when no private guardian or private conservator is available. The Legislature also finds that alternatives to full guardianship and less intrusive means of intervention should always be explored, including, but not limited to, limited guardianship, temporary guardianship, conservatorship, or the appointment of a payee. It is the intent of the Legislature to provide a public guardian or public conservator only to those individuals whose needs cannot be met through less intrusive means of intervention.⁴¹

The following information is organized by topic to offer further explanation for the changes involving the Office of Public Guardian in Court Rules §§ 6-1441 and 6-1443 and in the additional proposed rules specific to the Office of Public Guardian §§ 6-1441.01 and 6-1443.02.

Interested Person:

Interested persons can become involved in a guardianship or conservatorship case to better ensure the welfare of the ward is protected. The Office of Public Guardian is included as such, but was not included *per se* in statute. Thus, for clarity, the OPG believed it was necessary to ensure the Court Rule includes such language. Neb. Rev. Stat. § 30-4116 (2)(a) specifically states that “The Public Guardian shall be considered as an interested person in the welfare of the ward or protected person for purposes of filing a motion for termination or modification of public guardianship or public conservatorship.” While this seemed to imply the interested person status occurs after appointment, it should be available to the Office of Public Guardian prior to appointment as allowed by the expansive definition of interested party under Neb. Rev. Stat. §30-2601 (10), “...the meaning of interested person as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.”

Financial Accountability:

The Office of Public Guardian “shall model the highest standard of practice for guardians and conservators to improve the performance of all guardians and conservators in the state.”⁴² As such, the Office of Public Guardian suggested rule changes to existing Court Rules § 6-1441 to add regulatory requirements in accordance with Nebraska statutes governing guardianships and conservatorships generally and with the Public Guardianship Act. Guardian and conservator statutes have been revised to guide the exception to posting bond when the Office of Public Guardian is appointed as guardian and/or conservator.⁴³ To meet the intent of model practice as discussed in the Public Guardianship Act, the Office of Public Guardian offered the amendment to Court Rule § 6-1443. It ensures appropriate checks and balances and proper controls, as the Office of Public Guardian under the rule amendment would not be permitted to use ATM cards to make withdrawals or to receive cash back on transactions.

The Office of Public Guardian also proposed new rules to more clearly specify how the Office of Public Guardian would implement model practice in its fiduciary responsibilities. The rule requires the Office of Public Guardian to file a budget when submitting the initial inventory to the court. The National Guardianship Association Standards of Practice manual states, “The guardian [or conservator] shall prepare a financial plan and budget that correspond with the care plan for the ward.”⁴⁴ Creating and filing a budget is an initial first step that will better ensure the prudent investor standard is being applied. It was believed that requiring a budget would create a better overall picture for entities working with the Office of Public Guardian to assist with oversight to ensure best practices are being applied and that funds are not being misspent.⁴⁵

Upon filing a budget, a guardian/conservator may no longer be required to file an annual accounting, per existing court rule §6-1442.01, however, this exception does not apply to the Office of Public Guardian. For the Office of Public Guardian, the budget will be filed with the court for informational purposes only. The process of filing the budget is to align with best practices, demonstrate transparency with expected expenditures, and assist with facilitating oversight within the Office of Public Guardian and in the court. While other internal controls are in place to ensure funds are being handled appropriately, continuing to require the annual filing will add another layer of oversight for cases assigned to the Office of Public Guardian.

Similar to the revision to existing Court Rule § 6-1443, rules ensuring appropriate checks and balances and proper controls, the Office of Public Guardian is not permitted to use ATM cards to make withdrawals or to receive cash back on transactions. ATM and cash withdrawals create difficulties in tracing exactly how money is spent and result in a lack of appropriate oversight; therefore the rule amendment was initiated.⁴⁶

Due Process:

The Office of Public Guardian’s role in following due process and in the statutory requirement that the Office of Public Guardian is serving when a person’s “needs cannot be met through less intrusive means of intervention is, also, a part of the new rule amendments.”⁴⁷ *In re Guardianship & Conservatorship of Larson* states, “the rule that a true evidentiary hearing is required to support a finding of incompetency cannot be circumvented by continuous extensions of a temporary guardianship, nor are numerous reports by a guardian ad litem a substitute for an evidentiary hearing.”⁴⁸ Thus, even if the Office of Public

Guardian is appointed in a temporary capacity, this is not a position that will be able to continue for the Office of Public Guardian. To be consistent with legislative intent, the Office of Public Guardian must ensure that if/when a more permanent appointment is made, an evidentiary hearing supports a finding of incapacity (or not) and to what extent the person is incapacitated. Per statute, this must be by clear and convincing evidence, a higher burden of proof than that required to appoint a temporary guardian or conservator. *In re Guardianship and Conservatorship* supports this by stating, “a court may appoint a guardian when clear and convincing evidence establishes (1) that the person for whom a guardian is sought is incapacitated and (2) that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person alleged to be incapacitated.”⁴⁹

National Probate Code Standards conform to this practice as well. Standard 3.3.4 Court Visitor states:

- A. Probate courts should require a court appointee to visit with the respondent upon the filing of a petition to initiate a guardianship/conservatorship proceeding to:
 - (1) Explain the rights of the respondent and the procedures and potential consequences of a guardianship/conservatorship proceeding.
 - (2) Investigate the facts of the petition.
 - (3) Determine whether there may be a need for appointment of counsel for the respondent and additional court appointments.
- B. The visitor should file a written report with the court promptly after the visit.⁵⁰

Nebraska statutes are in place to be able to use visitors and/or guardians ad litem when appointing guardians and/or conservators for potential protected persons/wards. This practice, when the Office of Public Guardian will potentially be appointed, will ensure compliance with the Public Guardianship Act requiring that the guardianship/conservatorship is necessary, the extent of the powers of the guardian/conservator are necessary, and there is no one else to serve for the potential ward in this capacity but the Office of Public Guardian.⁵¹

Commentary included to address the above standard 3.3.4 explains that the term “visitor” in this context also applies to other designations, such as a guardian ad litem. Nebraska statutes provide for both the possibility of appointing a visitor and/or a guardian ad litem to serve in this role.⁵² So long as either a visitor or guardian ad litem is utilized, the intent and purpose of this rule would be fulfilled. Utilizing visitors essentially takes some of the burden off of attorneys who are typically appointed in the guardian ad litem, guardian, or conservator role. Further, it offers the court more specialized expertise that attorneys may not be able to provide, such as social work, psychology, medicine, nursing, or counseling.⁵³ Additionally, the role of the visitor is more finite by nature than that of the guardian ad litem whose role, without clear instructions from the court, may continue indefinitely as an interested person.

Commentary to 3.3.4 further states that, “Court visitors serve as the eyes and ears of probate courts, making an independent assessment of the need for guardianship/conservatorship.” Again, without anyone bringing forth this specialized knowledge, the court is not able to consider any of these factors

unless brought to light in some other way. Using a mechanism, such as visitors and/or guardians ad litem ensures this information is presented and analyzed to produce the best outcome possible.

In addition to determining diminished capacity, visitors can also be utilized to demonstrate model practice as they work to “identify the [proposed ward’s/proposed protected person’s] wants, needs, and values”.⁵⁴ Additionally, the use of visitor/ guardian ad litem screening will provide a process to determine Public Guardian capacity and an equitable, fair allocation for public guardian appointments and acceptance to waiting lists.

It may be of concern to some courts and counties that utilization of court visitors may increase the expense of the case to counties; however, the *Adult Guardianship Guide* states that a visitor “review ensures that all of the information required to initiate the guardianship proceeding is provided in the petition.”⁵⁵ It may also be done by volunteers, thus helping to minimize court costs. In its work and in compliance with Nebraska statutes, the Office of Public Guardian has worked to recruit volunteers for guardianship and believes the recruitment of potential court visitors works hand-in-hand with the same legislative intent that formed the Office of Public Guardian.⁵⁶

Finally, utilizing visitors is a tool that ensures accurate data is being reported to the legislature and Supreme Court as required by Neb. Rev. Stat. §30-4111. Specifically, having visitors acquire information that assists the court in determining necessity of the guardianship and the appropriate level of guardianships/conservatorship (limited vs. full) will provide more accurate data as the Office of Public Guardian serves individuals. Through this process, the Office of Public Guardian will be able to identify which cases it nominated, but upon further analysis from the visitor find that other alternatives to guardianship/conservatorship a more appropriate and/or that a more limited version of guardianship/conservatorship is more appropriate than a full guardianship. Accessing this information at the forefront of a case will ensure the appropriate level of service to the ward and will ensure greater efficiency within the Office of Public Guardian itself. Further, it will provide greater information to all regarding what needs remain for those the Office of Public Guardian cannot or is not authorized to serve.

Court Process

The Public Guardian; Trial Court Services of the Administrative Office of the Courts; Forms Coordinator; Forms, Court Rules and Statutes Subcommittee of the Commission on Guardianships and Conservatorships; Informational Technology (IT) in the Administrative Office of the Courts (AOC), including JUSTICE and eFiling; and the Guardianship and Conservatorship Specialists worked together to identify the logistics for processing the nomination and appointment process of the Public Guardian. The coordination of the court rules, court process, forms, JUSTICE documentation, eFiling and the communication of the changes to the courts and clerk magistrates was a large undertaking and would not have happened without the dedication, cooperation and diligence of many individuals who worked to coordinate the multiple systems supporting the court process. There were multiple meetings of the APG and clerk magistrates in their service areas. Meetings with OPG administrative staff, county judges and clerk magistrates also occurred around the state. Training webinars were developed with and provided by Trial Court Service Director, Sheryl Connolly and the Guardianship and Conservatorship

Specialists, Cathy Reiman, Clerk Magistrate for Boyd and Rock County Courts, Darla Schiefelbein, Clerk Magistrate in Platte County Court, and Linda Hanak, Records Clerk in Dakota County Court.

eFiling

The Public Guardian is one of the first organizational entities to have the capability to eFile. Thanks to the work of the IT Division of the AOC, and especially the work of Sherri Dennis, JUSTICE Business Analyst Supervisor, the Office of Public Guardian has been able to centralize all of the court processes and files court documents electronically. This centralization and electronic process has allowed the APGs to work from home offices, without the expense and document security issues of individual offices if all APGs were required to file their own court documents. The centralization of court processes in Lincoln also leverages the resources of the OPG through the Administrative Assistant of Intake, Jacey Gale, and the Deputy Director, Marla Fischer-Lempke who manage and supervise court filings, forms and the initial entry of the OPG financial and case management system for cases. This has also allowed for the electronic storage of OPG case management and court documents on shared drives. Additionally, with access to JUSTICE, the electronic processes provides APGs with 24/7 access to court and case information on wards and protected persons. EFileing will save the OPG thousands of dollars in postage and document preparation expenses compared to the costs if all documents had to be processed in hard copy and mailed statewide to courts, attorneys, and interested parties.

Forms

The Public Guardian; Trial Court Services of the Administrative Office of the Courts, especially the Forms Coordinator, Christina Werner; Forms, Court Rules, and Statutes Subcommittee of the Commission on Guardianships and Conservatorships; and the Guardianship and Conservatorship Specialists worked together to develop and provide the Court Forms required to process the nomination and appointment process of the Public Guardian. The following list provides the titles of the developed forms now utilized for OPG appointments.

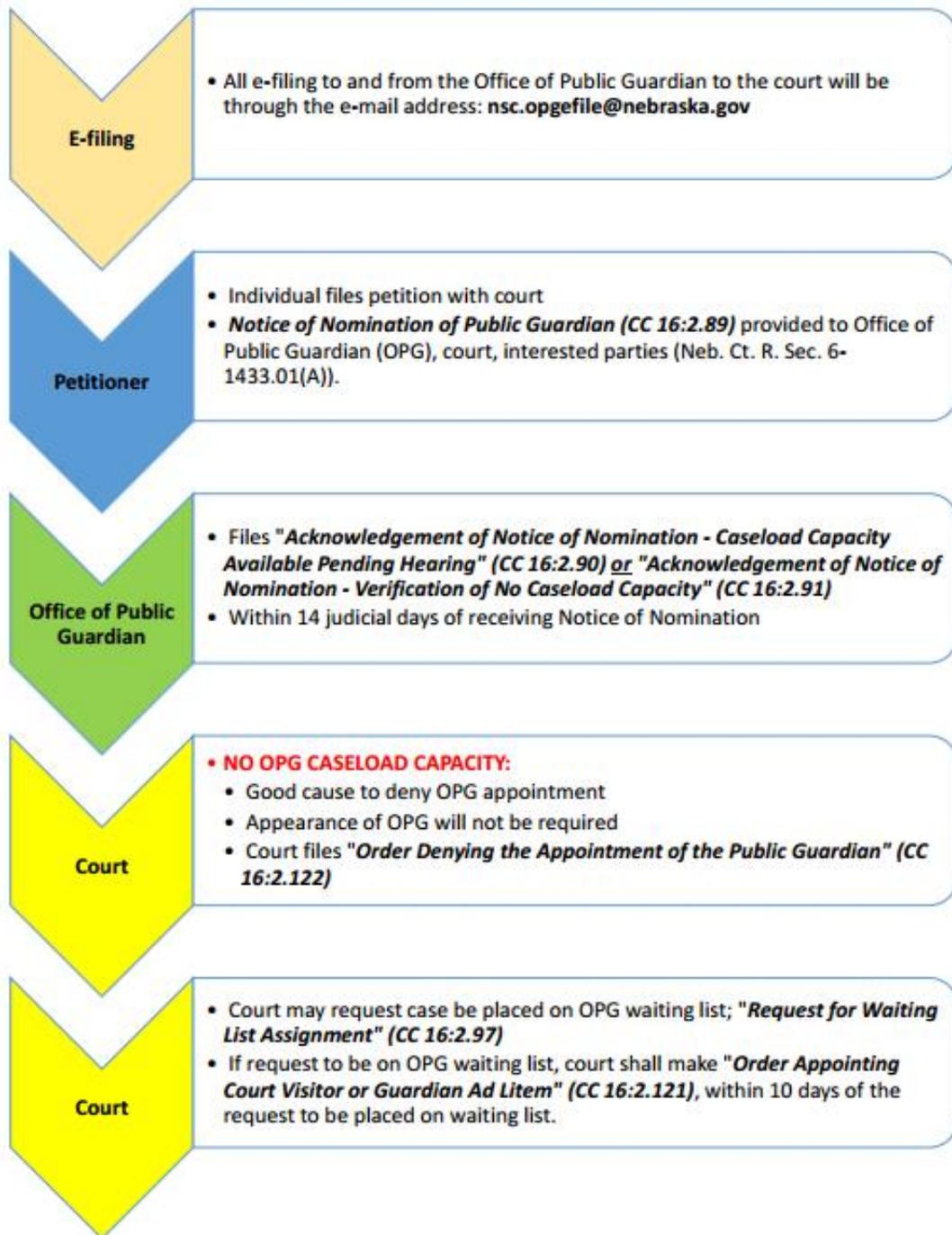
- CC 16:2.218 Acceptance of Appointment of Conservator by the Public Guardian- Restricted (Updated November 2015)
- CC 16:2.214 Acceptance of Appointment of Conservatorship by the Public Guardian (Updated November 2015)
- CC 16:2.211 Acceptance of Appointment of Guardian by the Public Guardian (Updated November 2015)
- CC 16:2.216 Acceptance of Appointment of Guardianship and Conservatorship by the Public Guardian (Updated November 2015)
- CC 16:2.229 Acceptance of Appointment of Temporary Conservator by the Public Guardian (Updated November 2015)
- CC 16:2.227 Acceptance of Appointment of Temporary Guardian and Temporary Conservator by the Public Guardian (Updated November 2015)
- CC 16:2.228 Acceptance of Appointment of Temporary Guardian by the Public Guardian (Updated November 2015)

- CC 16:2.92 Notice of Availability of the Court Visitor or Guardian Ad Litem Report (Updated October 2015)
- CC 16:2.128 Notice of Emergency Nomination of the Public Guardian (Updated November 2015)
- CC 16:2.89 Notice of Nomination of the Public Guardian (Updated October 2015)
- CC 16:2.88 Objection to Court Visitor or Guardian Ad Litem Report (Updated October 2015)
- CC 16:2.121 Order Appointing Court Visitor or Guardian Ad Litem When the Public Guardian is Nominated to be Appointed (Updated November 2015)
- CC 16:2.119 Order Appointing Public Guardian as Conservator (Updated November 2015)
- CC 16:2.117 Order Appointing Public Guardian as Guardian (Updated November 2015)
- CC 16:2.115 Order Appointing Public Guardian as Guardian and Conservator (Updated November 2015)
- CC 16:2.120 Order Appointing Public Guardian as Temporary Conservator (Updated November 2015)
- CC 16:2.118 Order Appointing Public Guardian as Temporary Guardian (Updated November 2015)
- CC 16:2.116 Order Appointing Public Guardian as Temporary Guardian and Temporary Conservator (Updated November 2015)
- CC 16:2.122 Order Denying the Appointment of the Public Guardian (Updated November 2015)
- CC 16:2.131 Order Denying the Emergency Appointment of the Public Guardian (Updated November 2015)
- CC 16:2.97 Request for Waiting List Assignment (Updated November 2015)
- CC 16:2.93 Visitor or Guardian Ad Litem Report When the Public Guardian is Nominated to be Appointed (Updated November 2015)

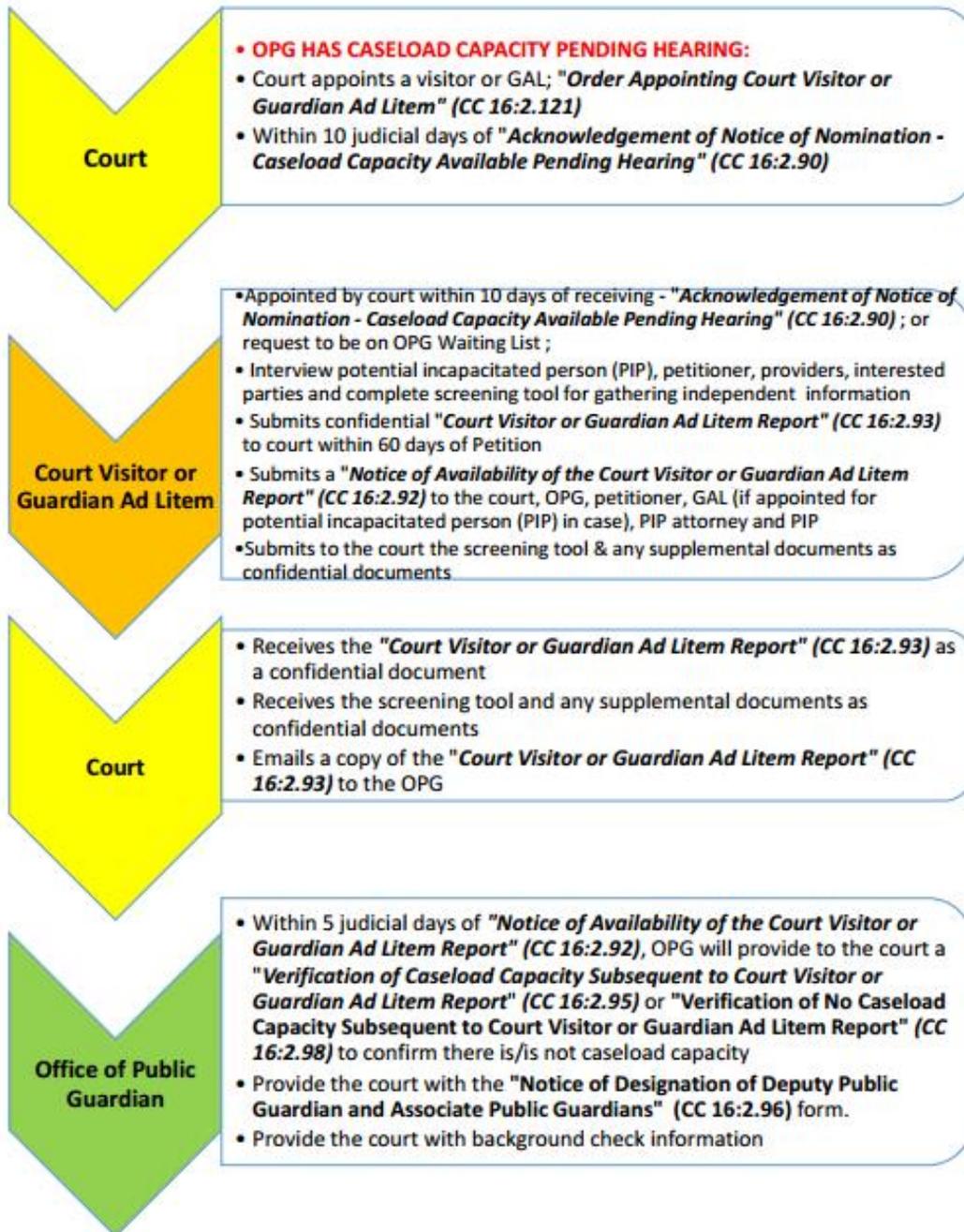
Intake Process-Flowchart

The flowchart below offers a visual format to the Public Guardian nomination process. This flowchart was widely distributed to all clerk magistrates and county judges to assist in understanding the nomination, appointment, and acceptance process for cases in which the Public Guardian is nominated. Flowcharts for both non-emergency and emergency cases were developed. Both flowcharts are accessible in electronic format as forms on the Supreme Court website.

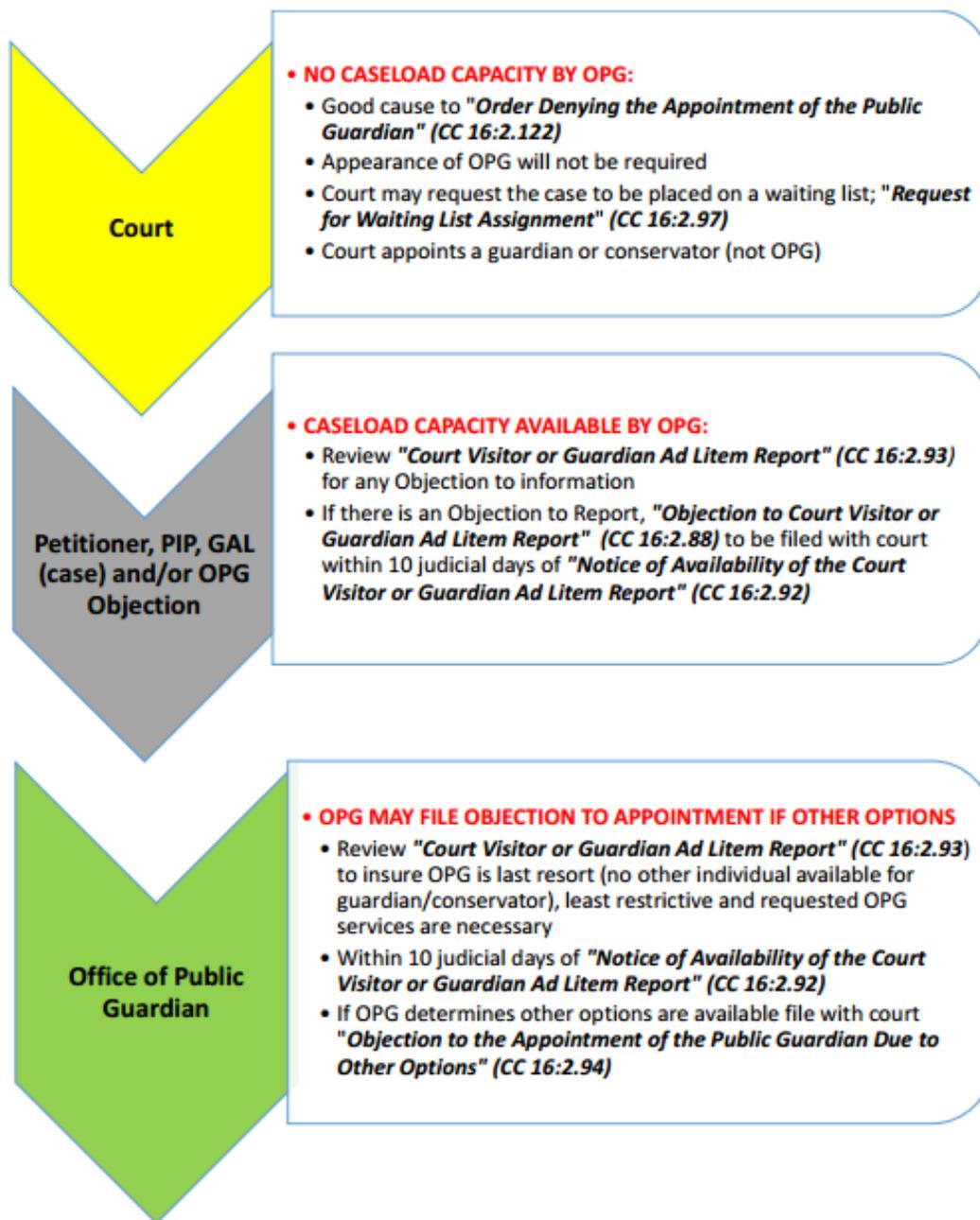
Nebraska Public Guardian Nomination Process



Nebraska Public Guardian Nomination Process



Nebraska Public Guardian Nomination Process



Nebraska Public Guardian Nomination Process



• HEARING

- Scheduled between 70-90 days after petition;
- Court to review:
 - If petition is for initial PIP capacity, court will make determination of need for g/c;
 - If petition is for a successor g/c, court shall determine appropriateness of g/c;
 - Court to determine whether Public Guardian is appropriate:
 - If OPG has no caseload capacity, good cause exists for the denial of OPG appointment; and the appearance of OPG shall no longer be required.
 - If OPG has no caseload capacity, the court may request for PIP to be placed on waiting list;
 - If OPG has caseload capacity (or OPG has no caseload capacity but court request to be placed on waiting list is pending) and OPG Objects to Appointment due to Other Options Available, court is to determine if other options are available and if good cause exists to deny OPG appointment;
 - If OPG has caseload capacity and OPG does not Object to Appointment (or court determines, despite Objection to the Appointment, that the appointment meets statutory and court rule requirements), the court may appoint the Public Guardian as a guardian or conservator. In addition to the statutory requirements, the order of appointment shall provide:
 - 1) Proper notice has been given to the OPG;
 - 2) The petitioner has acted in good faith and due diligence to identify a guardian or conservator who would serve in the best interest of the alleged incapacitated person;
 - 3) The appointment of the Public Guardian is necessary and does not exceed the caseload limitations as set forth by statute;
 - 4) The visitor or guardian ad litem report has provided supporting evidence that no person is available for appointment as guardian or conservator, all options available to support the individual in the least restrictive manner possible has been explored, and guardianship is a last resort; **and**
 - 5) There is no other alternative than to appoint the Office of Public Guardian.

PILOT OF OFFICE OF PUBLIC GUARDIAN APPOINTMENT PROCESS

Beginning in mid-November, the Office of Public Guardian began to pilot the Public Guardian appointment process. During the Pilot program, the OPG offered to take two “regular” cases and one emergency case per Associate Public Guardian (APG) per month through November, December and January. As soon as the OPG can get the case management software, bank account, and court processes integrated the goal is to have each APG accept five cases per month per service area.

As discussed earlier in the report, the Public Guardianship Act allows the Public Guardian to be appointed as a last resort, in the least restrictive manner, for necessary services, when there is no one else available to serve as guardian or conservator. The court rules require that, whenever the Public Guardian is nominated, a visitor or guardian ad litem be appointed to make an independent screening and provide information to the court through a Visitor/GAL Report form as developed by the AOC. In mid- October, to begin the data gathering process for the Pilot, the OPG asked the clerk magistrates to review cases and provide to the OPG, by October 31st, the number of cases that might fit under the following categories:

- Level One: Seems to qualify for potential immediate OPG nomination, based on the criteria and process;
- Level Two: Would benefit and might qualify for nomination, but the need is not immediate; and
- Level Three: May or may not qualify for OPG appointment, no immediate need, but interest exists for consideration.

As a result of that data, the OPG contacted clerk magistrates, who indicated having Level One cases, to inform them of the number of cases the OPG could take. The OPG provided names of trained Volunteer Court Visitors available to the court to begin the process.

The goal of the Pilot program was to implement the OPG appointment process in a way that would bring any concerns, question, or changes to light to improve the process. The APG’s continued to meet with judges and clerk magistrates to answer questions, gather information, and suggestions.

OPG PILOT- INITIAL DATA

The information below lists data gathered for both non-emergency and emergency OPG nomination cases. The cases are for nominations received from November 16, 2015 through December 29, 2015.

Non-Emergency cases:

The OPG has been nominated for a total of 11 non-emergency cases so far. To date, no non-emergency appointment have been made to the OPG.

The following table represents the 11 non-emergency appointments by service area and county. The status of the type of nomination (full vs. limited, guardianship, conservatorship, or both guardianship and conservatorship).

Service Area	County	Full	Limited	Guardianship	Conservatorship	Both Guardianship & Conservatorship
1 Panhandle – Scottsbluff/Gering	Box Butte	X		X		
2 West Central – North Platte	Lincoln	X		X		
3A Mid-Central – Kearney	Harlan	X		X		
3B Mid-Central – Grand Island	Hall	X		X		
4 Northeast – Norfolk	Pierce	X		X		
6A East – Omaha	Douglas	X				X
6A East – Omaha	Douglas	X		X		
6C East – Omaha – South Sioux City	Douglas	X		X		
6C East – Omaha – South Sioux City	Douglas	X		X		
6D East – Omaha/David City	Dodge	X				X
6D East – Omaha/David City	Dodge	X				X
Totals		11		8		3

The 11 non-emergency cases above can also be categorized by the types of diagnoses, residence type, and criminal involvement. The charts below identify each of these situations.

Diagnoses	Number of nominations with individuals with this condition
Cognitive Impairment	5
Mental Health Diagnosis	4
Developmental Disability	5
Substance/Alcohol Abuse	2

From the chart above, one can clearly note that the total is greater than the total number of wards/protected persons. This information shows that wards/protected persons nominated to the OPG thus far in non-emergency cases have co-occurring conditions in some circumstances.

Residence Type	Number of nominations with individuals in this type of residence
Nursing Home	3
Boarding House	1
Independent Living	3
Extended Family Home	1
Assisted Living	1
Hospital	1
Rehabilitation Facility	0
Unknown	1

History of Interaction with the Criminal Justice System	Number of nominations with individuals involved with the criminal justice system
None	8
Current	0
Past	1
Unknown/Unclear	2

Emergency cases:

The OPG has been nominated for a total of 13 emergency cases so far and, as a result, has been appointed as temporary guardian and/or conservator in each of those 13 cases.

The following table represents the 13 emergency nominations/temporary appointments by service area and county. The status of the type of nomination (guardianship, conservatorship, or both guardianship and conservatorship) is depicted in the chart. Emergency appointments are limited to address the emergency situation.

Service Area	County	Temporary Guardianship	Temporary Conservatorship	Temporary Guardianship & Conservatorship
1 Panhandle – Scottsbluff/Gering	Scottsbluff	X		
1 Panhandle – Scottsbluff/Gering	Scottsbluff	X		
1 Panhandle – Scottsbluff/Gering	Scottsbluff	X		
4 Northeast – Norfolk	Madison	X		
5A East-Central – Lincoln	Lancaster	X		
5A East-Central – Lincoln	Lancaster	X		
5B East-Central – Lincoln	Lancaster	X		
6A East – Omaha	Douglas			X
6B East – Omaha	Douglas	X		
6B East – Omaha	Douglas	X		
6C East – Omaha – South Sioux City	Douglas			X
6C East – Omaha – South Sioux City	Douglas			X
6D East – Omaha/David City	Dodge	X		
Totals		10		3

The 13 emergency cases can also be categorized by the types of diagnoses, residence type, and criminal involvement. The charts below identify each of these situations.

Diagnoses	Number of nominations with individuals with this condition
Cognitive Impairment	5
Mental Health Diagnosis	8
Developmental Disability	2
Substance/Alcohol Abuse	4

From the chart above, one can clearly note that the total is greater than the total number of wards/protected persons. This information shows that wards/protected persons appointed to the OPG thus far in temporary cases have co-occurring conditions in some circumstances.

Residence Type	Number of nominations with individuals in this type of residence
Nursing Home	3
Boarding House	0
Independent Living	7
Extended Family Home	0
Assisted Living	1
Hospital	1
Rehabilitation Facility	1
Unknown	0

History of Interaction with the Criminal Justice System	Number of nominations with individuals involved with the criminal justice system
None	8
Current	0
Past	3
Unknown/Unclear	3

Court Visitor appointments:

- 10 Volunteer Court Visitors trained by the OPG appointed visitors
- 1 Guardian ad Litem, not trained by the OPG appointed visitor

Mental Health Board Commitment involvement: 2

Time and Expenses Total:

○ Financial Central Administrative (General)	11/16-12/29	134 hours
○ Client A		1 hour
○ Client B		12 hours
○ Client C		178 hours
○ Client D		5 hours
○ Client E		5 hours
○ Client F		18 hours
○ Client G		15 hours
○ Client H		10 hours
○ Client I		64 hours
○ Client J		13 hours
○ Client K		1 hour
○ Client L		1 hour
○ Client M		48 hours
○ Client N		5 hours
○ Client O		4 hours
○ Client P		2 hours
○ Client Q		1 hour
○ Client R		12 hours
○ Client S		14 hours
○ Client T		3 hours
○ Client U		4 hours
○ Client V		5 hours
○ Client W		1 hour
○ TOTAL: 23 clients	6 weeks	495 hours
○ Average: 1 client	1 week	3.6 hours

Future Work Load Projections for Direct Guardianship and Conservatorship Duties:

40 (average client caseload per Public Guardian Act) × 12 APG (per Public Guardian Act) = 480 total clients
 480 clients × 3.6 hours per client = 1,728 hrs./wk.
 1,728 hrs. per week ÷ 14 staff (12 APG, Business Mgr., Deputy Dir) = **123 hrs./wk. per staff**

While this data is very preliminary, the average between “high” need and “low” need clients looks to be reasonable. The 123 hours a week per OPG staff member (projected by the required 40 client to 1 APG for a total of 480 clients) reflects the work hours for **only** completing the direct service provided as a public guardian and a public conservator (see green on graphic page 23 of this Annual Report). Additional duties required of the Office of Public Guardian under the Public Guardianship Act (see pages 23-25 of this Annual Report) are outlined in light blue, dark blue, gold, and red. It is very evident that the 40 clients per APG required under the Public Guardianship Act, **which is twice the 20 clients per staff member under National standards**, is not a realistic, nor attainable requirement.

Excerpts of Case Comments

Research of other Public Guardianship programs indicates that the populations served by Public Guardians are individuals with the most difficult issues. A large percentage are under the poverty limit, with co-occurring medical, mental health, cognitive, and disability conditions, many with interactions with the criminal justice system both as perpetrators and victims. That is certainly true as reflected by the wards and protected persons nominated currently to the Associate Public Guardians. A brief excerpt of case management comments reflect this:

- Chief of police informed APG that ward has called the police 14 times since the beginning of December and has made 51 calls to the County Sheriff.
- Upon receiving a box of personal belongings from the ward's previous residence we noticed the box was covered in feces. After obtaining appropriate cleaning supplies, we cleaned the box to make sure it could be stored appropriately.
- The ward had been found non-responsive on the floor of her bathroom.
- The ward is currently under a Board of Mental Health (BMH) commitment; however, the ward has burnt so many bridges that it is exceedingly difficult to find a service provider.
- The ward's multiple hospitalizations come about when someone finds the ward drunk, the police EPC the ward, or when the ward arrives drunk at the Emergency Room.
- When the ward has agreed to go to treatment, the ward willingly discharges from the hospital to the treatment facility, but then signs self out and arranges to be picked up from the facility the same day.
- The ward has had at least 30 hospitalizations over the past 2 years.
- Upon an initial visit where two wards were living together, the APG had some concerns that systems are not sufficient to ensure that medications are being taken appropriately. A visiting nurse comes once every two weeks to fill the medication containers for both wards. However, the medications are stored in plastic grocery bags. Several of one ward's bottles were in the other ward's bag and vice versa.
- Emailed the Public Defender to discuss the ward's existing Bench Warrants. The public defender is bilingual and has represented the ward on several cases; found out the ward does not speak English.
- I met with the ward via video conference at the jail today.
- The ward has schizoaffective disorder, memory disturbance, cannabis use disorder in sustained remission, a mild intellectual disability and is a registered sex offender.

- The ward's mother is listed as interested party but is currently incarcerated.
- Three days after the Public Guardian was appointed as temporary guardian the ward was transferred to a rehab facility to recover from a stroke. The neurologist and treating physician concurred that the ward "has regained capacity for medical decisions."
- The ward has been hospitalized multiple times as a result of poorly controlled diabetes.

ANNUAL REPORT DATA

The Public Guardianship Act requires the OPG to “Report to State Court Administrator, Chief Justice and Legislature on the implementation of the Act on or before January 1 each year”⁵⁷

The following information is current as of December 29, 2015. (*The statute states “appointed”, the data includes nominations and appointments currently being served in the OPG Pilot program that began November 9, 2015)

Number and types of guardianships/conservatorship OPG has been appointed*

Full guardianships-7 non-emergency nominations

Full conservatorship-0

Full guardianship/conservatorship-3 non-emergency nominations

Limited guardianship-0

Limited conservatorship-0

Limited guardianship/conservatorship-0

Temporary guardianship/conservatorship-13 appointments via emergency nomination (10 guardian and 3 guardian/conservator)

Disposition of appointments

Nominated 24

Appointed-0

Termination of Wards/Protected Person’s Guardianship/Conservatorship-0

Termination of OPG- Successor Guardian/Conservator appointed-0

Fees

Charged-\$0

Collected- \$0

Status of waiting list for services

Waiting list- 0

Volunteer Private Guardians-Successor Private Guardians

The Office of Public Guardian has not yet transferred a case to a successor guardian, however the OPG has facilitated volunteers **to act as guardian for three individuals** even prior to OPG taking cases. One individual was a graduate student in gerontology and law who served as a summer intern with the OPG. In response to a request from the OPG, she agreed to serve as a guardian for an individual in Lancaster County. After a presentation by the Director of the OPG on the need for volunteers a women volunteered for a case for a women, in Lincoln, who was in the hospital and needed a guardian to assist with medical decisions. Finally, after being approached by an APG inquiring of her interest, a women in York volunteered and took on the responsibilities for a ward in Beatrice.

OFFICE OF PUBLIC GUARDIAN ADMINISTRATION AND MANAGEMENT SYSTEMS

The goals of the systems implemented to administer and manage the Office of Public Guardian have been to maximize and leverage the resources provided to effectively fulfill the mandate of the Public Guardianship Act in an efficient, transparent manner that reflects the highest degree of accountability for, and commitment to, the vulnerable adults, wards, and protected persons for whom the Public Guardian is responsible.

The implementation of the Office of Public Guardian has required a MASSIVE amount of collaboration, problem solving, creativity, innovation, trial and error, and just plain hard work, by many, many individuals- primarily by the amazing staff of the Office of Public Guardian, but, also by a great deal of partners across many different state, federal, corporate, stakeholder and advocacy systems. The following is a brief summary of the systems that have been implemented.

Case-management Software (EMS System)

The OPG is utilizing software for personal, medical, and financial case management that is web based. The OPG first contacted representatives from SEM Applications in February 2015 and subsequently signed a contract with them to provide a case management/financial management application – called Estate Management Software (EMS) – for a monthly fee with no upfront purchase cost. The monthly fee includes unlimited tech support, online training, server maintenance and data backups, and system enhancements. The EMS web edition provides 24/7 database access 365 days per year. With EMS, data can be accessed from any computer, mobile device, or Smartphone via an internet connection and a web browser, giving OPG the freedom to work when and where needed with full access to client data.

The EMS system allows the OPG to track all case notes and time spent on cases. The system will hold all the personal, medical, and demographic information for wards, including addresses, important numbers and dates (e.g. SSN and date of birth, etc.), guardian status and ward status, insurance information, residence history, and support organizations (e.g. attorney and doctor's name), etc. The system will allow OPG to manage wards' finances, including receipts and disbursements, and maintain separate financial records (ledgers) for each ward using the organizational collective account. The OPG can export positive pay and ACH files from the EMS system to import into the bank.

SEM also offered OPG the option to customize the application to meet our needs. We worked with developers to produce reports such as the initial inventory and annual accounting. We developed court forms in the EMS system which can be populated with ward information in a court approved format. We have worked with SEM developers to develop an ACH file export process for us, which was a feature they did not previously offer. This will facilitate payments between the EMS system and a vendor's bank, without having to write checks, which will result in cost savings for the OPG. The business manager developed an ACH Authorization form to use in gathering the required information from vendors in order for them to receive ACH payments.

SEM representatives initially provided online and in-person training sessions to a group of 'super users' within the OPG. Those 'super users' provided training to other OPG employees. An EMS Web Training Manual was provided to all employees and additional procedures specific to our office have been written by the business manager. The business manager also wrote a process for the export of files from the EMS system.

The work completed with EMS and Union Bank and Trust (UBT) will allow for centralized court filings and financial case management from the OPG Lincoln office and provide added layers of financial oversight. The centralization of finances and court filings will maximize the time available to APGs to focus on direct, interpersonal interactions with wards and protected persons. Additionally, the OPG's goal, after piloting the process, is to allow EMS to provide to Nebraska private guardians the use of the unified software/finance/court process and forms under their subscription fee, approximately \$10 per ward per month. This opportunity for software and case management should make the financial tracking and court reporting requirements much easier for private guardians and private conservators.

Centralized finances

All financial transactions related to wards' funds will be handled out of the central Lincoln business office in order to maintain an adequate system of internal control.

The Public Guardian shall make deposits of checks or currency payable to the ward, as the ward's guardian, as soon as possible. Receipts of checks will be carried out in the business office via a check scanner. Whenever possible, recurring receipts (e.g. monthly Social Security benefits, VA benefits, etc.) will be set up as automatic (ACH) receipts into the Public Guardian's organizational collective bank account and funded to the protected person's account.

The Associate Public Guardian (APG) is responsible for investigating the facts and determining what disbursements should be made to pay claims and/or meet the needs of the ward. As required by court rules, the APG will provide the court with a budget for the ward. Additionally, the APG prepares a monthly budget and sends it to the Business Manager so payments can be generated from the EMS system. Each month, the APG reviews all disbursements recorded in the wards' ledgers and compares the disbursements to the original invoices to ensure the completeness and accuracy of charges to beneficiary accounts. In addition, the APG conducts a monthly reconciliation between each ward's proposed budget and actual receipts/disbursements.

A monthly reconciliation between the EMS ledger and the organizational collective account bank statement will help to achieve the goals of completeness and accuracy.

Organizational Collective Account

The OPG performed extensive research into the pros and cons of holding wards' funds in individual bank accounts vs. one collective bank account. The Social Security Administration allows Social Security funds to be deposited into an organizational collective bank account within established guidelines. OPG representatives contacted numerous banks in the Lincoln and Omaha area, as well as an online banking option, but were unable to find a bank that would offer individual bank accounts without fees to the account holder. Some banks that offered free checking weren't willing to offer the OPG individual bank accounts because of the nature of the organization and/or the sheer volume of accounts that would be opened. The bank fees for individual accounts (thousands of dollars total annually) that would be charged to the OPG for each protected person was simply untenable given the OPG client's level of poverty or, alternatively, the cost to the OPG general fund should the OPG pay the fees.

In addition to the consideration of the costs of individual account bank fees, another issue that impacted the decision between individual accounts and an organizational collective account was the fiduciary responsibility of the OPG and the challenge of keeping the accounts of protected persons' secure with

electronic banking options. Most Nebraska banks provided electronic banking; in fact most Nebraska banks do not have the option to NOT have electronic banking for individual bank accounts. Most Nebraska banks contract for electronic banking through a third party contractor, such as Fiserv, rather than have their own software system.

Funds in an individual protected person's bank account belong to the protected person, even as they are managed by the conservator. As such, individual bank accounts for the protected person are opened with the protected person's social security number, birthdate, etc. In many instances with "brick and mortar" banking, the account is secure because access to the account is limited to the conservator. However, with electronic banking if a protected person provides their social security number, name and birthdate, they can gain electronic access to their account. When a third party software entity is providing the electronic access, the bank does not have the means to shut off electronic banking for individual accounts, or limit an owner's access to the account.

As a result of this information, the OPG looked into a few banks that offered no electronic banking; but this choice would have resulted in every expenditure being by check. The cost for printing and mailing the checks for every expenditure each client had to have paid was prohibitive and seemed to be an unsustainable option for the long term.

After much consideration, the OPG decided to open an organizational collective bank account that does allow for electronic banking, and for the use of ACH payments generated through EMS. Because the OPG is fiduciary manager of the organizational collective account no protected person would be able to access the account electronically, as opposed to the individual accounts.

There was much discussion within the AOC and the Advisory Council regarding the organizational collective account. Many months of researching options and hours of discussion were expended before determining to go forward with the organizational collective account. Because there are no individual monthly bank account statements to provide for the annual report, the OPG will be seeking a Supreme Court rule change. It is the position of the OPG that financial procedures enacted by the OPG utilizing the organizational collective account are, essentially, superior to most guardianship/conservatorship financial processes. First, APGs will have no access to protected persons' funds; there is a separation of the identified expenditure and the actual disbursement. Second, there will be monthly reconciliation between what is budgeted and what is spent. Third, each client will have a separate ledger tracking their account within the organizational collective account.

The procedures and financial processes will be organized so that 1) an individual client ledger exists for each separate matter in which the Public Guardian holds funds for the ward or protected person. This ledger shall give the name of the ward or protected person, detail all money received and paid out on behalf of the ward or protected person, and show the ward's or protected person's balance following every receipt or payment; 2) disbursements from the protected person's individual ledger shall not exceed the funds received from, or on behalf of that individual; 3) a clear description of each disbursement, including the identity of the ward's or protected person's individual ledger to be charged and the reason for the transaction, shall be documented prior to any disbursement; 4) documentation reporting monthly receipts and disbursements and interest for each protected person's and ward's funds will exist from the ward's and protected person's individual ledger, which shall be attached to the annual report of the ward or protected person; 5) documentation comparing the monthly prospective budget of the ward and protected person, reconciled by the Associate Public Guardian to the record of

the actual monthly expenditures disbursed from the ward and protected person's funds, shall be attached to the annual report for the ward and protected person; and 6) the account shall be tracked through the EMS software accounting system. The software system shall maintain the organizational collective account record electronically but will be able to produce all financial reporting in a form that can be reproduced in printed hard copy for annual reporting to the courts.

Union Bank and Trust (UBT)

Union Bank and Trust (UBT) has provided excellent service and support to the OPG in developing both the costs for the organizational collective account and the collaboration and communication with EMS. The OPG first met with UBT in August 2015 and has held several meetings with UBT representatives since then and opened the organizational collective bank account with UBT in October 2015. The OPG has ordered a check printer, blank check stock, and envelopes for check disbursements. Incoming checks will be deposited in the business office via UBT's Business Banking Online website. An endorsement stamp and check scanner have been obtained to complete the process.

The OPG has successfully imported positive pay transactions from the EMS system into UBT's online site. This file will alert UBT of any checks that have been written from the collective account, an UBT will match the file against any checks presented for payment.

The OPG is currently testing the import of ACH (automated) transactions from the EMS system into UBT's Web Cash Manager application. This file will allow transactions to be processed via ACH and provide a less expensive option than writing and mailing checks. UBT also offers an online bill pay option for limited use.

Social Security

The OPG first met with regional and local Social Security representatives in April 2015. Topics discussed included correct titling of a fiduciary account, individual accounts vs. a collective account, co-mingling of funds, fee for service, oversight of organizational payees, strict accounting rules, wards' personal needs funds, prepaid debit cards, conserved funds, application and approval processes, etc. It was determined, during the meeting that Social Security applications and management would be centralized in the Lincoln Social Security Office, rather than the offices throughout Nebraska. In September 2015, several OPG staff attended a Social Security training workshop in Omaha to learn more about becoming an organizational representative payee for Social Security. The OPG completed their first application to become an organizational representative payee in November 2015 in a face-to-face interview at the Lincoln Social Security office. As a result of the meetings and discussions with Social Security, subsequent applications will be allowed to be completed in the OPG business office and mailed to the Lincoln Social Security office, rather than mandating a face-to-face meeting for each application.

Veterans Administration

The OPG met with a VA representative to review the guidelines for VA fiduciaries. Procedures were included in the OPG's procedures manual.

Income Tax

The Public Guardian shall prepare and file any federal and state income tax returns required by law for wards served by the Public Guardian as guardian of the estate or for those wards for whom the Public Guardian held or otherwise controlled or managed assets which generated income. The Associate Public Guardian (APG) assigned to the case will investigate and obtain all information necessary to facilitate the

preparation of the ward's tax returns. The business manager will analyze the information and determine the necessity of filing tax returns for wards referred by the APGs, compute any tax liability or refund due, and file the completed returns to the IRS and/or Nebraska Department of Revenue by the April 15 deadline.

U.S. Bank ReliaCard

The OPG first met with U.S. Bank representatives in May 2015 regarding the U.S. Bank ReliaCard, a reloadable prepaid card that replaces paper checks for government agency payments. ReliaCard gives the OPG the ability to deposit funds to wards' and protected persons' cards through standard ACH funding. It reduces costs associated with paper checks, postage, reconciliation or replacement of lost checks, etc. Cardholders can access real-time account information by calling Cardholder Services or going online. Because the program falls under the State's contract with U.S. Bank, it offers a no-cost option for providing personal needs allowances and funds to OPG's clients.

The OPG has been participating in weekly implementation calls with U.S. Bank representatives to discuss card program limits, client funding account numbers, user roles and access for employees, training and marketing, shipping methods, reporting requirements, etc. The OPG is working with representatives from U.S. Bank, Union Bank and Trust, and SEM to set up the card funding process, which we hope to have available in February.

OPG Office/General Fund Finances

The OPG Director and business manager monitors the OPG's office finances. Invoices are approved by the OPG Director before being sent to the AOC Finance Office for payment. The business manager runs monthly general ledger reports from EnterpriseOne, the State's accounting system. The business manager and OPG Director review the general ledgers to ensure all receipts and disbursements are appropriate.

The business manager prepares ACH invoices for receipting payments from Nebraska Interactive, the event registration site vendor for private guardian education. Any checks or money orders received for event registration fees are deposited promptly. The business manager maintains an adequate tracking system to ensure payment is received for all event registrations.

Audit

The Public Guardian shall perform periodic audits of financial and bank records to ensure funds are not used for the benefit of someone other than the ward or protected person and loans of any type are not made from funds. This shall be completed during the monthly bank reconciliation, when the reconciler reviews all cleared checks on the bank statement for propriety and investigates any unusual transactions. In addition, the business manager shall periodically run and review receipt/disbursement reports in the Public Guardian financial case management software and investigate any unusual transactions. At least every three years, an external audit of client financial records will be conducted. If the Public Guardian is audited by a governmental or funding entity, that audit may be considered to meet this requirement, as long as the entity is independent of the agency managers or advisory council.

OPG POLICY IMPLEMENTATION

Personnel

The OPG is created within the judicial branch of government and is directly responsible to the State Court Administrator. Accordingly, the OPG is governed by the policies of the Administrator of the Courts. In addition, the OPG has developed policies, in conjunction with the AOC, for issues specific to the OPG including credit checks, telecommuting, and emergency on-call rotations. The OPG staff has undergone extensive education, skill development, and Nebraska Guardianship Certification. They have participated in 17 days of OPG training, a day of AOC orientation and a day of joint training with the State Unit on Aging and Long-term Care Ombudsmen. Education has included, but not been limited to: best practices for guardian and conservators; OPG policy manual and procedures; court visitor training; resource development; legal issues; EMS case management; court processes with Clerk Magistrates; surrogate decision making; person centered planning; Competency and Ethics equal Outcomes for Director Support Professions; social services and government benefits and resources; abuse and neglect detection, intervention and prevention; Real Colors workshop; improving communication skills and promoting professional development; DHHS-Interpersonal Conflict Resolution; guardianship and conservatorship curriculum development and instruction, and guardianship and conservatorship code of ethics and standards of practice. APGs are members of the National Guardianship Association and will be working on National Guardianship Certification through the Center for Guardianship Certification.

Credit Checks

The Associate Public Guardian for the Office of Public Guardian are required to have and maintain the standard of a public fiduciary. The credit report of the Associate Public Guardian must reflect a history of responsible financial management and status that is free from financial pressure that would be susceptible to financial misfeasance. The standard of practice of a fiduciary as the Associate Public Guardian (APG) is outlined in the Public Guardianship Act that states that the Office of Public Guardian (OPG) “model the *highest* standard of practice...and code of ethics”. Additionally, all Nebraska guardians/conservators are guided by the Supreme Court and Administrative Office of the Courts commitment to “*protect* the well-being and assets of vulnerable adults”; Neb. Rev. State §§ 30-2601-2661; and Uniform County Court Rules of Practice and Procedure § 6-1401 to 1465.

Nebraska court rule, §6-1441(A) (1), requires a credit report be completed through a process approved by the State Court Administrator Office, completed by a national credit registry. Credit scores are designed to measure the risk of default by taking into account various factors in a person's financial history. FICO is the credit score utilized by 90% of credit reporting registries; the factors for determining the score includes looking at financial history that includes payment history, credit to income ratios, type of credit utilized, length of credit, etc.

Once the credit report has been obtained factors reviewed include the ability to obtain a surety bond to serve as a guardian/conservator; no bankruptcies within five years; no unpaid judgements within three years; a history of credit improvement and a credible credit repair plan; payment history may include the presence or lack of derogatory information including bankruptcy, liens, judgments, settlements, charge offs, repossessions, foreclosures, and late payments; debt burden review may include a number of debt specific measurements such as debt to limit ratio, the number of accounts with balances, the total amount owed across different types of accounts, and the amount paid down on installment loans;

the length of credit history, or time in file may be measured by two metrics: the average age of the accounts on a report and the age of the oldest account; types of credit used may include a review of installment, revolving, consumer finance, and mortgage; and the number of recent searches for credit.

Emergency On-Call

The OPG is available for emergency response 24 hours 7 days a week 365 days a year. APGs are available during business hours and Monday through Thursday evening, they will handle emergency calls for their own cases after hours. On weekends and holidays the OPG has contracted with a call system, Ring Central, that allows an individual to call the OPG emergency number- 402.302.0445 and be routed to the APG taking emergency calls. The management of the system is web based, can be set up in advance and changed/updated centrally for ease of management. Emergency on-call assignments have been scheduled with APGs through the end of 2016. Additionally, to ensure adequate support of APG's on-call, at least one supervisor is scheduled for backup consultation at all times for situations in which complicated decisions may arise.

Policy Manual

The Nebraska Office of Public Guardian has developed and utilizes policies and procedures that reflect a commitment to national court standards, guardianship and conservatorship model standards, incorporate the Nebraska Supreme Court and the Administrative Office of the Courts' strategic goals, and comply with the Public Guardianship Act. OPG employees shall demonstrate a working knowledge of the "Model Code of Ethics for Guardianship" and the National Guardianship Association [NGA] Standards of Practice.

The guardian and/or conservator shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward and protected person.

The guardian and/or conservator shall protect the personal and pecuniary interests of the ward or protected person and foster the ward or protected person's growth, independence, and self-reliance to the maximum degree.

The guardian and/or conservator shall treat all professionals and service providers with courtesy and respect, and shall strive to enhance cooperation on behalf of the person.

The OPG Policy manual was developed by the Director and Deputy Director of the OPG, the Advisory Council and the AOC. It reflects the National Guardianship Association Model Code of Ethics and the Standards of Practice and the requirements for National Guardianship Certification. The Policy Manual is in compliance with the Public Guardianship Act, Nebraska Probate statutes and Nebraska court rules. The outline of manual contents is as follows:

1. PROFESSIONAL PRACTICES

Knowledge and application of guardianship principles as they relate to the professional roles of the guardian (includes but not limited to):

- 1.1 Ethics/Standards/Professional Conduct
- 1.2 Conflict of Interest
- 1.3 Confidentiality

- 1.4 Quality Assurance
- 1.5 Business Practices / fees
- 2. KNOWLEDGE OF WARD**
Knowledge of the personal aspects of a ward's life and ability to address those special situations or circumstances affecting a ward (includes but not limited to):
 - 2.1 Family Dynamics / diversity
 - 2.2 Social History, Values and Beliefs
 - 2.3 Abuse, Neglect, Exploitation
 - 2.4 Difficult Clients
 - 2.5 Special Populations (DD/Aging/MI/Others)
 - 2.1 Person-centered planning
- 3. APPLICATION OF SURROGATE DECISION-MAKING**
Knowledge of theory and application of decision making principles and limitations in making surrogate decisions (includes but not limited to):
 - 3.1 Decisional Standards Alternatives (Substituted Judgment/Best Interests)
 - 3.2 Informed Consent
 - 3.3 Capacity
 - 3.4 Guardianship Alternatives
 - 3.5 Least Restrictive Alternatives
 - 3.6 Wards' Rights
- 4. KNOWLEDGE OF LAWS, COURTS AND LEGAL PROCESSES**
Knowledge of laws, courts and legal processes governing guardianship and the guardian's responsibility to modify, terminate or limit a guardianship (includes but not limited to)
 - 4.1 Guardianship Procedures (Laws and Practices)
 - 4.2 Types of Guardianship (Including Limited Guardianship)
 - 4.3 Compliance with Court Monitoring and Supervision
 - 4.5 Guardian Authority
 - 4.6 Due Process
- 5. PERSONAL MANAGEMENT**
Knowledge and application of the responsibilities of the guardian of the person including planning for and overseeing supports and services (includes but not limited to):
 - 5.1 Guardianship Plan
 - 5.2 Residential Options/Least Restrictive Alternatives
 - 5.3 Well-being Oversight and Monitoring
 - 5.4 Functional Assessment
 - 5.5 Knowledge of Resources, Supports and Services
- 6. FINANCIAL MANAGEMENT**
Knowledge and application of the responsibilities for financial management of a ward's estate and assets (includes but not limited to):
 - 6.1 Inventory/Marshal Resources/Estate Plan
 - 6.2 Personal & Real Property Management
 - 6.4 Public Benefits (SSA, VA, Railroad, Medicare, etc.)
 - 6.5 Investing and Protecting Assets
 - 6.6 Accountings (Reporting Requirements)

7. MEDICAL DECISION-MAKING

Knowledge and application of the principles and responsibilities surrounding surrogate medical decisions, including the ability to identify issues that have legal and ethical consequences for both the guardian and the ward (includes but not limited to):

- 7.1 Making Medical Treatment Decisions
- 7.2 End-of-Life Care
- 7.3 Special Medical Decisions/Conditions
- 7.4 Medical Advocacy
- 7.5 DNR/Withhold/Withdraw
- 7.6 Power of Attorney for Health Care

Procedures manual

The OPG developed a procedures manual which outlines the duties and responsibilities of the Office of Public Guardian. The manual covers topics such as our mission and organizational structure, personnel and program services standards, fiscal policies, processes for intake/referral/objection/waiting list/emergency appointment, guardianship plan procedures, document storage, records retention, disaster recovery, etc. The manual includes procedures for creating forms within the EMS system, and outlines several EMS procedures specific to our office. The OPG has developed flow charts for the appointment and emergency appointment processes, and those flowcharts have been provided to Court staff and posted on the Supreme Court's website.

Sliding Fee Policy

The Public Guardianship Act requires the Office of Public Guardian to develop guidelines for sliding scale of fees for public guardians/conservators.⁵⁸ The Advisory Council and the OPG developed the following sliding fee policy:

Ward, within the Public Guardian Sliding Fee Scale document, means a minor, protected person or an incapacitated person.

All Public Guardian wards shall be evaluated by the OPG to determine fee eligibility. Evaluation of each ward's estate shall be done prior to the filing of the initial inventory in their case.

The Public Guardian shall petition the court with jurisdiction of the guardianship and/or conservatorship for assessment of fees.

The Public Guardian shall not petition for fees where financial hardship to the ward would result. Financial hardship means that the total value of liquid assets of a living ward would fall below \$5,000 or the ward's estate would otherwise be inadequate to provide or obtain care, assistance, education, training, sustenance, housing, treatment or other goods or services vital to the wellbeing of the ward or his dependents, resulting in the risk of harm to the ward or the ward's dependents.

Liquid Assets means the portion of a ward's estate comprised of cash, negotiable instruments, or other similar property which is readily convertible to cash and has a readily ascertainable fixed value, including savings accounts, checking accounts, certificates of deposit, money market accounts, bonds, publicly traded stocks, or other negotiable securities, and mutual fund shares.

No fees for guardianship and conservatorship services shall be assessed on estates smaller than \$5,000. If the wards estate is \$5,000 or more at any time during the month the Public Guardian is entitled to their fee unless it would create a financial hardship for the ward.

Any time, based on exigent circumstances, the Public Guardian may petition the court for additional fees.

Fees shall not be assessed on income or support derived from Medicaid, Supplemental Security Income, or Public Aid. Income or support derived from Social Security and Medicare shall be subject to Public Guardian fee assessment unless the funds have been expressly earmarked for another purpose.

The Public Guardian may waive fees where no substantial guardianship and/or conservatorship services have been provided to the ward.

Notice of the Request for Fees shall be given to the ward and all interested persons at least 14 days prior to the hearing. The notice shall advise the ward that his/her estate will be charged for guardianship and/or conservatorship services.

All wards with liquid assets valued at five thousand dollars (\$5,000) or more on the date that the Office of Public Guardian is appointed shall be assessed a one-time case opening fee for establishment of the case by the Office of Public Guardian. The rate of the case opening fee shall be:

Opening fee for Guardianship	\$100.00
Opening fee for Conservatorship	\$200.00
Opening fee for Guardianship and Conservatorship	\$300.00

Guardianship and Conservatorship Monthly fee based on Total Value of Liquid Assets shall be:

\$5,000 - \$9,999	\$40.00
\$10,000 - \$14,999	\$45.00
\$15,000 - \$19,999	\$50.00
\$20,000 - \$24,999	\$55.00
\$25,000 - \$29,999	\$60.00
\$30,000 - \$34,999	\$65.00
\$35,000 - \$39,999	\$70.00
\$40,000 - \$44,999	\$75.00
\$45,000 - \$49,999	\$80.00
\$50,000 - \$54,999	\$85.00
\$55,000 - \$59,999	\$90.00
\$60,000 - \$64,999	\$95.00
\$65,000 - \$69,999	\$100.00
\$70,000 - \$74,999	\$105.00
\$75,000 - \$79,999	\$110.00
\$80,000 - \$84,999	\$115.00
\$85,000 - \$89,999	\$120.00
\$90,000 - \$94,000	\$125.00

\$95,000 - \$99,000	\$130.00
\$100,000 and above	\$135.00

OPG PRIVATE GUARDIAN AND PRIVATE CONSERVATOR SUPPORT

The Public Guardianship Act requires that the OPG act as resource to guardians/conservators for education, information, and support⁵⁹. The goal for each APG is to provide a “hub/connector” for education, support and information for private guardians and conservators in Nebraska. Toward that end, each APG will implement training curricula with private guardians and conservators as required in statute. In so doing, APG’s will assist private guardians and conservators to connect with resources. APG’s will also build relationships and, through modeling the highest standard of practice for guardians/conservators, will assist in the improvement of the performance of all guardians/conservators in the state. ⁶⁰

During the last six months, APGs have been meeting and building networks with advocates, stakeholders, providers and social service agencies in their service areas (see list below) for resource development. The goals have been to identify resources that the APG’s wards and protected persons might utilize; help build coalitions to minimize silos and encourage service cooperation within their service areas; and gain knowledge of resources to connect and support private guardians and private conservators.

Statewide Resource Development Total: 760

Total Organizations Connected with: 622

Advocacy orgs: 147

Aging: 139

Assisted Living Facilities: 59

Behavioral health: 55

Collegiate or University: 35

Courts: 35

Developmental Disabilities: 94

Educational Organizations: 1

Health Centers: 17

Homeless Services: 19

Hospitals: 30

Legal Centers: 16

Misc.: 107 (vocational assistance, food pantries, etc.)

Nursing Homes: 51

Substance Abuse: 12

Support Groups: 1

TBI: 1

Volunteer Groups: 2

Youth/Transition: 9

(This total will not equal 622 as some are listed in more than one location)

OPG EDUCATION CLASSES

Beginning January 2016, the OPG will provide the certification and education required for newly appointed private guardians and conservators.⁶¹ The Public Guardianship Act requires the OPG to maintain training programs for private guardians, successor guardians, and interested parties to insure successful guardians/conservators⁶². The curriculum is to include: assisting guardians to understand

ward disabilities; encouraging independence of ward as appropriate; helping with guardian plans and reports; supporting conservators to understand fiduciary duties and accountings; and advising on ways to secure rights, benefits and services for wards and protected persons. Previously, the training has been provided by UNL Extension and Volunteers Assisting Seniors. They have done an excellent job, providing training to over 10,000 guardians and conservators in Nebraska. Now, private guardian/conservator education will be provided by the APGs in each service area. The goal of changing the training process for private guardians, at this time under the OPG, is to develop an ongoing supportive relationship for private guardians through the local Associate Public Guardians.

In implementing the change in education the OPG has:

- Met with representatives from UNL Extension and Volunteers Assisting Seniors in Omaha, who have been responsible for Guardian/Conservator education, to plan the transfer of responsibilities.
- Through a committee of OPG staff and APGs, re-designed the Guardian/Conservator Education curriculum to insure that the training covered all statute requirements.
- In conjunction with the 12 Associate Public Guardians, designed a guardian/conservator training schedule with dates and sites for 2016 covering all service areas across the state.
- Held a train-the-trainer event for Associate Public Guardians who will be conducting the guardian and conservator education in the service areas across the state.
- Collaborated with the JBE to plan for the interpreter requirements of private guardians and conservators whose primary language is not English.
- The Deputy Director, Administrative Assistant, and business manager collaborated with Nebraska Interactive to design an on-line system to handle the state wide registration process for Guardian/Conservator Education in all 12 service areas (see below).
- Uploaded the 2016 Guardian/Conservator Education schedule information the Supreme Court website at <http://ne.gov/go/guardianeducation>
- Distributed guardian and conservator education information throughout the Clerk Magistrate network statewide.

Event Registration for OPG Guardian Education

After researching several options for registering individuals for the Guardian/Conservator Education to be provided by the OPG, we selected an online event registration module provided by Nebraska Interactive. Individuals wishing to register for an upcoming class will find the class offerings on the Supreme Court's website, select a class, and click on the registration link which takes them directly to the event registration website. Any fees required for the class can be paid online via credit card or electronic check. Fees collected by Nebraska Interactive are sent to the Nebraska State Treasurer and a subsequent entry is made by the OPG business manager to transfer those funds to the OPG's cash fund. The online option allows for ease of registration for private guardians in the state and frees up OPG staff time, which would otherwise be spent creating and collecting registration forms and payments. If this is not a suitable option for registrants, registrations may be done over the phone, and mailed payments will be accepted.

Classes for Guardian and Conservator Education



The Office of Public Guardian provides Guardian and Conservator Education to meet Court Requirements for 2016

- **Schedule:** Training dates, sites, and times are located on the Office of the Public Guardian's website at <http://ne.gov/go/guardianeducation>
- Associate Public Guardians provide monthly education in the Office of Public Guardian service areas across the state. Each class is a 3 hour live session.

- **Registration:**

Online: <http://ne.gov/go/guardianeducation>

By phone: 402.471.2862

- **Fee:** \$35 per person

Electronic payment available with online registration

OR Mail payment option available AFTER phone registration to:
OPG Education, P.O. Box 98910, Lincoln NE 68509-8910

****Registration AND Payment required ONE Week prior to class date**

Contact the Office of Public Guardian at 402.471.2862 for limited English-proficient attendees

For more information on NE guardianship and conservatorship:

- Court forms, general information: <https://supremecourt.nebraska.gov/guardians-and-conservatorship>
- Office of Public Guardian: <http://ne.gov/go/publicguardian> or 402.471.2862
- Guardianship Education: <http://ne.gov/go/guardianeducation>



Recruitment and Support for Successor Guardians In addition to providing direct services as guardian/conservator and providing education to private guardians and conservators, the Office of Public Guardian is also tasked with recruiting Nebraskans to serve as guardians and conservators, and successor guardians and conservators for the Public Guardian. Due to the potential of reaching the 480 client maximum capacity, the Public Guardian Act requires the OPG to seek to find replacements, as successor guardians/conservators, within six months of the appointment of the Public Guardian. As discussed above, the OPG is committed to building hubs of information, education and support for private guardians and conservators through relationships with APGs in each service area. It is hoped that through the development of resource assistance, including computerized and electronic support, current guardianships and conservatorships will benefit and be less apt to end their participation with their wards and protected persons. Also, to encourage volunteers to serve as guardians and conservators, the OPG believes it is important that volunteers be supported. Accordingly, the OPG and APGs will continue to work towards collaboration, education, and resource development for all guardians and conservators in OPG service areas; such support will be a crucial component in recruitment efforts.

COMPILATION OF SYSTEMS ISSUES OBSERVED OR ENCOUNTERED BY THE OPG

During our first year of implementation, the OPG has provided hundreds of forums for discussions. There are a variety of issues that the OPG has either encountered or observed regarding guardianships and conservatorships in Nebraska. We have encouraged dialogue with the commitment that the OPG will work together towards better processes and improvements for vulnerable adults in Nebraska and those family members and citizens who seek to assist them. In the spirit of the Public Guardianship Act that directs the OPG to: provide equal access and protection for all individuals in need of guardianship or conservatorship services;⁶³ encourage more people to serve as private guardians and conservators;⁶⁴ recruit members of the public and family to serve as guardians or conservators;⁶⁵ act as resource to guardians and conservators for education, information, and support;⁶⁶ safeguard the rights of individuals by supporting least restrictive manner possible and full guardianship only as last resort;⁶⁷ model the highest standard of practice for guardians and conservators to improve performance of all guardians and conservators in state;⁶⁸ and develop and adopt standard of practice and code of ethics for public guardianship and conservatorship services,⁶⁹ the OPG shares some of the observations below.

Court Visitors

- **Recruitment**

The OPG is tasked with the recruitment and training of individuals to serve as court visitors when the OPG is named as guardian and/or conservator in a petition for guardianship and/or conservatorship. The individuals recruited as court visitors must “be trained in law, nursing, social work, mental health, gerontology, or developmental disabilities.”⁷⁰ However, recruitment of trained professionals, retirees, and a lack of personal interest in working with potentially incapacitated adults has proven such efforts somewhat difficult. Additionally, there exists a perception of conflict of interest among some DHHS workers regardless of the area of service in which they work. Such a perception eliminates a very large pool of potential court visitor volunteer base who have the training and knowledge the position requires.

OPG Action Taken & Current Status of Issue: The OPG has followed an extensive recruitment effort targeting professionals, retirees, family members of persons already under guardianship or conservatorship, and others to serve in this role such efforts have yielded 18 trained court visitors thus far. Over 600 service provider and/or community organizations were contacted to recruit volunteer court visitors and every county court in Nebraska has at least one court visitor who is willing to cover when the OPG is named in a petition for guardianship and/or conservatorship. However, many counties will require additional court visitors to ensure that statutory requirements regarding a petition which names the OPG as guardian and/or conservator are being met by local courts. Conceptually similar volunteer programs such as the CASA program report massive success through the use of media outreach and advertising. These results may potentially be duplicated through a similar effort by the OPG. However, as of the date of this writing, there is no cohesive plan or funding for an extended media outreach.

The OPG has also reached out to colleges and universities to possibly recruit students to serve as court visitors. In further consideration of undergraduate programs, it was mutually decided that this may not be a good fit at this time. The educational institutions with which we met were looking for more internship opportunities, whereas court visitors would be serving on a very limited, short term basis. There was interest, however, from law colleges at the University of Nebraska and Creighton that the OPG will be able to explore and pursue further at a later time.

To address the perceived conflict of interest issue, the OPG has met with and will continue to meet with DHHS division directors to see how court visitor duties and the professional duties of DHHS workers will not overlap so that this pool of expertise may be tapped to serve if an individual employee chooses to do so on their own time.

- **Court visitor expenses**

Another barrier voiced from potential court visitor recruits is whether they will be able to have expenses covered. For example, in the western part of the state, travel may be significant when visiting the potentially incapacitated person, service providers, and others to gather information that will be important for the court to have in determining whether the OPG should be appointed. Additionally, some Assisted Living Homes and Hospitals charge for medical records. One Assisted Living required \$25 plus .50 per page; the court visitor program did not have the ability to fund this need and therefore the medical records were not a part of the document review for the court.

OPG Action Taken & Current Status of Issue: Part of the development of the court visitor program was to lessen the cost that are likely to incur in particular counties when appointing a guardian ad litem to a guardianship case. While the OPG wanted to ensure the court had adequate information to understand whether the OPG was necessary to appoint to an individual, we recognized this should not become financially burdensome to counties. Instead, we identified volunteer court visitors as a way to gather the information needed and to assist in saving county funds. While we worked on these aspects, we also recognized volunteer court visitors should have the opportunity to be reimbursed for reasonable expenses related to their duties in serving as a court visitor. As such, the OPG has worked with counties to have them reimburse volunteer court visitors for these reasonable expenses, such as mileage, postage, etc. The OPG only holds this expectation for volunteer court visitors. Court visitors who wish to be paid or guardians ad litem will be paid by county funds as required under Neb. Rev. Stat. § 30-2620.01.

- **Expansion of Court Visitor Program**

In building the court visitor program, the OPG foresees a potential conflict of interest in continued support to court visitors as they complete their duties. While the OPG is comfortable recruiting and training court visitors, once they begin their work to gather information as to the necessity and appropriateness of OPG involvement, the potential for conflict becomes greater if the court visitor needs technical assistance in their role.

OPG Action Taken & Current Status of Issue: The OPG has connected with several stakeholder organizations to brainstorm ideas about how to sustain and support the court visitor program. The OPG recognizes that an independent organization may be necessary to provide support to court

visitors as they perform their role. As such, the OPG is working to locate funding sources to launch efforts to develop an independent oversight entity for the Court Visitor Program and perhaps develop a Nebraska Guardian/Conservator Association.

- **Access to records**

One Court Visitor reported they were required to provide a signed release of information from the GAL in the case in order to learn more about the DHHS services the potentially incapacitated person was receiving. This slowed the process and could be an issue in the future when the release may not be so quick to obtain.

OPG Action Taken & Current Status of Issue: The OPG understands there may need to be some communication with DHHS regarding the role of court visitors. The Director of the Office of Public Guardian is in the process of arranging meetings with Directors of Divisions within DHHS and with the CEO of DHHS to see what may be able to work to ensure confidentiality of information and that court visitors are able to access the information they need in order to conduct their screening and reporting processes. Additionally, the Advisory Council has discussed the option of standard court order language to facilitate information for the court.

General practice of guardianship appointments in Nebraska

Through its meetings across the state with several county court judges, the OPG has learned that a vast majority (likely over 95%) of the 10,000+ guardianships and conservatorships in the state are full guardianships. Neb. Rev. Stat. § 30-2620 (a) states, “If the court finds that a guardianship should be created, the guardianship shall be limited unless the court finds by clear and convincing evidence that a full guardianship is necessary.” Without specific data, it is hard to identify the cause for the high percent of full guardianships. It may be that Nebraskan’s avail themselves of other options until full guardianships are the last option, or it may be that full guardianships are requested by petitioners and potentially incapacitated persons do not present evidence to contradict the claims. It does seem that there is a lack of knowledge about the option or the parameters available through limited guardianships. In OPG conversations with judges, we learned there is little information to which judges have access that would allow them to tailor each guardianship to the needs of the individual. The effect of this practice is arguably a “one size” fits all approach that potentially overreaches in its effect of the individual rights of potentially incapacitated persons.

OPG Action Taken & Current Status of Issue: The OPG under the Public Guardianship Act is required to safeguard the rights of individuals by supporting least restrictive manner possible and full guardianship only as last resort;⁷¹ provide equal access and protection for all individuals in need of guardianship or conservatorship services;⁷² and model the highest standard of practice for guardians/conservators to improve performance of all guardians/conservators in state.⁷³ Accordingly, the OPG has committed to working towards assisting in crafting processes for determination of guardianships and conservatorships that are tailored toward the best “fit” for the necessary interventions to protect the potentially incapacitated person without overreach. The court visitor program is geared to provide the best information to the court so the potentially incapacitated person obtains a limited guardianship if that is all that is needed. APGs are educating and emphasizing the options of limited guardianships to private

guardians as they go through the training in 2016. Additionally, the modeling provided by the OPG's practices is meant to impact and improve practice.

OPG appointments as a new court process

The statutory process for naming the OPG in a petition for the guardianship or conservatorship of an individual was designed with several 'checks' and safeguards on the guardianship process that were codified in law and court rules including, but not limited to: the required appointment of a court visitor in every case nominating the OPG as potential guardian and/or conservator, the requirement that the OPG seek the least restrictive alternatives to guardianship before pursuing full guardianship, and the requirement that the OPG seek members of the public to serve as successor guardians and/or conservators. During the Pilot program, there have been instances when the OPG procedures have not been followed as written. In some situations, the OPG was named guardian prior to a hearing on the potentially incapacitated person's capacity or need for a guardian, the OPG has received letters of temporary guardianship that do not detail the duties of guardian, and the OPG has been named temporary guardian with full legal authority over all decisions of an individual without any information being provided to the Court.

OPG Action Taken & Current Status of Issue: The OPG recognizes the appointment process is new for everyone. The ability to have direct communication between county courts and the OPG, has been very helpful in addressing the situations that would directly conflict with the requirement that the OPG seek the least restrictive means for an individual. Whenever the OPG recognizes an error in the process, the county court is contacted to remedy the situation. Through open dialogue, all of the above issues were able to be resolved. During this time of new processes, the Clerk Magistrates have been very cooperative and responsive to issues when raised. Also, the OPG has invited county courts to contact the OPG whenever questions arise about the process. Several clerk magistrates have done so proactively and continue to do so throughout the process. We are pleased they are comfortable, as this will increase the likelihood of procedural compliance in the future. This constant contact with county courts will make it more likely they will continue to adopt compliance to the process to ensure that the least restrictive alternatives remain the first option for a potentially incapacitated person.

Reporting issues with private guardians/conservators

A repeated concern from direct service providers, court clerks, and other private guardians is the lack of oversight and/or investigation into private guardianships. Many individuals and organizations are under the mistaken belief that the OPG will assist in monitoring private guardians and conservators. When the OPG explains this is not within our statutory authority, the reaction is disappointment. We are told people are interested in monitoring issues including, but not limited to: lack of information/lack of use of the "Application and Affidavit for Intervention on behalf of the Welfare of the Ward"; no statutory number of visits and/or amount of time spent with ward to ensure appropriate monitoring or that the guardian/conservator is accessible to the ward; lack of central registry of guardians/conservators to ensure that direct service providers, financial institutions, law enforcement and/or medical facilities are informed of the status of a guardianship/conservatorship and the role of a guardian/conservator; and reports of undefined problems stemming from long term guardianships in place before statewide reform of guardianship circa 2011.

OPG Action Taken & Current Status of issue: Many of the systemic problems in this field will require policy makers to review issues and address concerns. However, the OPG has become aware of these current problems and has disseminated this information to every channel possible. Additionally, the OPG continues to educate as to the duties of guardians and conservators, has worked to encourage more individuals to serve as private guardians and conservators, to expand the pool of qualified candidates. Some of the other components of the issue and OPG actions are noted below.

- **Reluctance to use Form CC 16:2.21, “Application and Affidavit for Intervention on Behalf of the Welfare of the Ward”**

Numerous entities have asked for an avenue to report issues with guardianships. The OPG has provided resource information, including form CC 16:2.21. The agencies are used to reporting issues through APS in which they remain anonymous. They are reluctant to utilize the form provided to report to the court. Because of this reluctance, there may be many issues about which the court is not being informed.

OPG Action Taken & Current Status of Issue: The OPG has specifically promoted the use of the ‘affidavit for intervention’ and encouraged those with direct contact with guardians and/or conservators to file this affidavit with their local court. As a direct result of this effort, several affidavits have been filed or are in the process of being filed with the court, which will allow the court to become aware of issues and take appropriate action.

Additionally, the OPG has made arrangements to meet with DHHS Legal to discuss what actions are available to DHHS employees. This includes how information about concerns that come to light during an APS review- but do not raise to APS intervention- can be appropriately provided to the court. Understanding there is a limited scope to the cases in which Adult Protective Services (APS) are able to investigate, alternative mechanisms need to be available to inform courts of concerns that do not rise to the level of APS intervention. Without the ability to convey such concerns, courts are denied access to sources most likely to have critical and pertinent guardianship/conservatorship case information.

- **Education of guardian duties needed**

Many organizations have raised issues they have with current private guardians and/or conservators. There is no minimum requirement for the number of times a guardian or conservator must visit their ward or protected person. Further, many guardians or conservators do not participate in their ward’s or protected person’s life. Some providers have suggested on-going education requirements for private guardians and/or conservators.

OPG Action Taken & Current Status of Issue: Under Neb. Rev. Stat. § 30-4105, the OPG is required to “promote or provide public education to increase the awareness of the duties of guardians and conservators...” Under Neb. Rev. Stat. § 30-4109, the Public Guardian has a duty to “maintain...a curricula for training sessions to be made available for successor guardians and successor conservators and private guardians and private conservators.” In accordance with both of these statutory requirements, and to address the issue as stated above, the OPG has developed a training

curricula that will be implemented statewide beginning January 2016. The curricula offers a comprehensive explanation of the guardianship and conservatorship processes, reporting requirements, approaches to decision-making, and models of best practice. With this consistent curricula utilized statewide, the OPG is hopeful private guardians/conservators will gain an understanding of their duties with a person centered emphasis. Further, these trainings will be conducted by the Associate Public Guardians in each service area to ensure consistency in delivery and continued support of private guardians/conservators as they serve in their role. In the long-term, the OPG envisions on-going educational opportunities for private guardians/conservators who may wish to further understand model practices, be connected to helpful resources, etc.

Access to Legal Services

- **Right to counsel for those who are the subject of guardianships/conservatorships**

Under Nebraska law, an individual has the right to counsel when under consideration for guardianship in order to contest the proposed guardianship. However, service providers have stated that in many situations, wards were either unaware of this right or moreover, unable to obtain counsel either due to limited funds for private legal representation or a lack of access to free or reduced legal representation. This issue arises again if/when the protected person is already the subject of a guardianship and/or conservatorship and desires a less restrictive option, yet cannot afford the legal representation to pursue it.

OPG Action Taken & Current Status of Issue: The OPG recognizes the particular importance of equal access to justice for potentially incapacitated individuals and individuals currently under guardianship and/or conservatorship. Thus far, the OPG has approached this issue from two different angles. First, the OPG has designed a volunteer court visitor training curriculum, which brings the importance of this issue to light. As part of the screening/interviewing process the court visitor is to discuss whether the potential ward/protected person understands their rights. If during this process, the court visitor learns the potential ward/protected person wishes to have an attorney, this is helpful information to the court who may then appoint counsel to the proposed ward/protected person if he/she is unable to secure their own representation.

Second, the OPG in its creation and presentation of training curricula to private guardians and conservators, informs participants of the ward's/protected person's right to legal counsel even when they are under guardianship and/or conservatorship and even when such representation may be adversarial to their appointed guardian and/or conservator.

- **Filing petitions**

As a separate but related issue, a repeated and systemic problem is the lack of initial access to free or low cost legal representation to seek a guardianship and/or conservatorship for another individual. Many individuals and organizations have voiced disappointment when they learn this is not within the statutory authority of the OPG. This issue can be compounded by the rejection of the *pro se* filing of petitions and the uneven distribution of free and/or low cost legal services in the state.

OPG Action Taken & Current Status of Issue: The OPG has recommended and directed individuals towards free or low cost legal services such as Legal Aid, the Volunteers Lawyers Project through the Nebraska State Bar Association, and/or the legal clinics sponsored by the University of Nebraska Law School and Creighton Law School. However, access to these services is inherently limited and sporadic due to the demand for free or low cost legal services, and therefore, they provide neither a long-term nor a cohesive solution. The OPG does not believe the solution is to grant the authority of filing petitions to the OPG. The OPG strongly believes the ability to file petitions would be a severe overreach of state power and would be detrimental to those proposed to be incapacitated. In effect, if such authority were granted to the OPG, state actors (service agencies or contracted providers) could state the need for guardianship, work with the OPG to file a petition for guardianship, and the OPG would name itself as guardian, thus usurping decision-making powers from individuals on a nearly unilateral basis.

Social Service Needs

- **Access to affordable housing**

In the few cases the OPG has received so far, a number of individuals are in need of affordable housing. There is a long waiting list for low-income and section 8 housing. Douglas County took applications this year for the first since 2013 but the waiting list is still 1,200 people long.

Additionally, in southwest Nebraska, there is lack of access to affordable housing for individuals due to waiting lists for subsidized housing and the inability to pass background checks to qualify for this type of housing. These issues not only affect individuals, but also families, as if one of the household adults can't pass the background checks, then the family wouldn't be able to move into subsidized housing. While most often it is assumed that a person in need of OPG services would be alone, this is not always true. In one OPG case in another part of the state, a mother and son, both under OPG guardianship reside in the same home. If one of them were not able to pass a background check, this would eliminate the housing option for the other person as well.

Some individuals utilize temporary housing situations through locally owned long term stay hotels that are expensive and generally range in price from \$500 and up. There currently isn't transitional housing in the Southwest Nebraska area for those that require help with the rental process or are wanting to go from being homeless to obtaining a residence in the community.

OPG Action Taken& Current Status of Issue: To assist in addressing the housing issues in Southwest Nebraska, OPG staff is part of the Opportunity Passport Core Committee. OPG staff also participates in the Sober Living Committee that is planning to start a transitional housing program for men. This group also is also planning to provide case management assistance to women and children which includes looking at housing options in the community. It's possible that if these programs are successful in the southwestern part of the state, they may be replicated in other areas as well.

- **Permanent supportive housing for people with mental illness**

There is a lack of permanent supportive housing available in the community. Individuals with mental health issues are in desperate need so that they do not end up homeless. The OPG is already seeing

that people with mental illness are going to be a group of the population who will be needing our services. We are also seeing how limited the options are for supportive housing for people with mental illness. Generally, there appears to be a lack of intensive treatment for those who are trying to avoid in-patient hospitalizations or those who are just being discharged. There is also no follow up for those who come out of hospitalization. One ward with the OPG was going to be sent from her home in Omaha to Fullerton, NE due to lack of beds available to serve elderly individuals with mental health problems. The APG and the hospital social worker put in several hours to ensure that the ward was able to stay in Omaha, which has been her home for many years and was the community in which she desired to stay.

OPG Action Taken & Current Status of Issue: The OPG has observed a growing movement to advocate for change. Community meetings have been taking place that have included providers, policy makers, state agencies, and advocacy groups. Disability Rights Nebraska and Nebraska Mental Health Association have been the catalyst for these meetings. The OPG has been in communication with these groups and will continue to monitor this issue, as it will greatly impact the wards and protected persons the OPG does and will serve.

- **Access to Inpatient Rehabilitation Services**

There appears to be little help across the state for people with co-occurring mental illness and substance abuse issues. Lack of programs available to serve these individuals and lack of staff trained to treat them create ongoing problems with repeat hospitalization, homelessness, and involvement with the criminal justice system.

In the Southwest area of Nebraska, including the communities of North Platte, McCook, and Ogallala, there is not an inpatient rehabilitation facility for drug and alcohol treatment. The closest treatment center is located in Grand Island, Nebraska – a 4-hour round trip. Families with limited income are often unable to help support their family members that are in these rehabilitation facilities. Once an individual is discharged, there are no half-way houses or programs available for them to attend. There are outpatient services in the area, however these services require individuals to independently find transportation and attend the program. Without the transitional supported services provided by half-way houses, there may not be sufficient follow-up service provision.

OPG Action Taken & Current Status of Issue: The OPG recognizes the importance of collaboration with other organizations and individuals when resources are scarce. As such, OPG staff serves on a Sober Living Committee that is trying to get half-way house services into the southwestern area of the state. The Committee envisions services to include a two-year transitional housing program that focuses on sobriety, treating mental health issues, employment, community inclusion, money management, and understanding the rental process.

- **Transportation**

Transportation continues to be an issue for individuals in rural Nebraska. Residents from small communities need to get to larger communities in order to access health care services as well as purchase basic necessities such as food. While there are transportation services available for those that qualify for medical and nonmedical transportation services through DHHS, this doesn't provide transportation for individuals that don't qualify for DHHS programs. In larger populated areas, such

as North Platte, there are some public transportation services, however this can be cost prohibitive for some individuals.

OPG Action Taken & Current Status of Issue: The OPG realizes it is a partner in assisting to identify and formulating solutions to address such needs, as wards attempt to access necessary transportation. As a part of this effort, OPG staff participates in the Opportunity Passport Core Committee, which is made up of agencies that serve Southwest Nebraska, to try to create a one-stop-shop for individuals needing services. This Committee is addressing the issue of rural and community transportation as part of the gaps in service needs in the area.

- **Access to Emergency Services for Persons under Temporary Guardianship**

The OPG has been named as temporary guardian and conservator in several cases, which requires the OPG, acting as guardian, to ensure the ward's basic needs are being met. This may require enrollment in Medicaid/Medicare, Social Security, and/or services provided through the Department of Health and Human Services, in addition to securing financial assets and personal effects. However, both private guardians and members of the OPG have reported difficulty in accessing social services and financial institutions in temporary emergency guardianship situations. This lack of access may stem from a lack of familiarity among social service providers and financial institutions with temporary guardianship. In particular, the OPG has heard from private guardians the need for additional documentation beyond the letters of guardianship when interacting with financial institutions, which then restricts the potentially incapacitated person's access to funds that should be used on their behalf.

OPG Action Taken & Current Status of Issue: The OPG has met with representatives from Social Security and Medicaid to coordinate efforts to provide services to persons served by the OPG as efficiently and quickly as possible. In addition, the OPG has developed a good working relationship with the Nebraska and Regional Social Security offices to ensure that benefits due to persons served by Social Security are properly accounted for and distributed. By continuing to interact with social service providers in the state, it is possible that these providers will become more familiar with the duties and role of a temporary guardian, which in turn will benefit private guardians who also interact with the same social service providers.

- **Lack of services/supports may cause filing for guardianship**

Several appointments have come to the OPG as emergency cases in which the person has co-occurring conditions, such as mental illness, a medical condition, substance abuse, etc. Often individuals have a past or current encounter with the criminal justice system as well. As such, it is often difficult to know where to begin to assist someone and to find appropriate services if they are available at all. This is likely an indicator of many years of neglect within and among social services systems. This is not likely something a guardianship will remedy, but instead is indicative of a lack of social work and service coordination that will be imperative to establish and keep stability in the lives of people who could easily (and do) encounter chaos.

OPG Action Taken & Current Status of Issue: The OPG has readied itself with Associate Public Guardians (APG's) networking around the state to understand the needs of the wards for whom we

are appointed, and the resources they will likely need to access. APG's have met with over 600 organizations and individuals to prepare for connecting wards with the services and supports they will need to access. They continue to build and foster relationships to better ensure proper supports can be found in a timely manner.

The OPG continues to meet with community resources and with state agencies to keep an ongoing dialogue. Agencies, organizations, nor the OPG alone, can be successful in building, implementing, and navigating systems. Rather, it will take a concerted effort for all to keep an ongoing dialogue to facilitate better outcomes. This, in turn, will ensure the OPG is used as a last resort. It will also increase the likelihood for successor guardians to take cases because they will feel confident of what the OPG has worked to put in place for people to become stabilized and to remain so as much as possible.

The OPG is in a unique position to be able to gain access to systems for wards and to understand how various systems interrelate, where gaps in services lie, and how certain conditions and criminal status impact the availability of services including housing, employment, and benefits to name a few. Being in such a position can be a catalyst for systems change so that wards and protected persons, and generally those who navigate systems, can be better served. Anecdotally, individuals have voiced frustration with navigating systems and gaining access to needed benefits for themselves and forwards. However, without any way in which the information can be gathered on a systemic level, there has been little comprehensive understanding of where the gaps lie and how they might be addressed. The OPG has the benefit of serving as a repository of information as it serves its own individuals.

- **Guardians as social workers/providers**

Several individuals in the cases we've accepted and begun working thus far need significant intervention to get basic supports in place. This has resulted in guardians providing direct services and/or supports to wards until benefits are applied for (by the guardian) and services/supports accessed through appropriate channels in systems and providers within those systems. This has resulted in a large amount of time involved in the front-end of each case. While each Associate Public Guardian (APG) only has a handful of cases thus far, if each case the OPG receives is similar to those we have already, the intake/acceptance process will be much slower than anticipated and the waiting list will likely develop sooner than later. Functional capacity as it currently stands in terms of human and monetary resources will be reached long before the overall 480 capacity allowed by statute.

OPG Action Taken & Current Status of Issue: The OPG staff have meticulously tracked hours and time spent on cases within the EMS software system. In one case, several APG's spent nearly 156 hours in one week to assist a ward with her new placement and obtaining the benefits she required for stabilization. This was unique as it was a first case and several APG's did not yet have cases of their own. However, if the OPG is to continue to demonstrate model guardianship practice, this type of effort may be the rule rather the exception. We understand that resources will not (nor should they) allow for APG's to perform social work and/or direct service provision. However, without any (or very little) of these in place when the ward comes to the OPG, that is the role we find ourselves in. APG's have been trained to access others whose job it is to coordinate services, find placement, etc. and are doing so. However, this still does not eliminate such roles for the APG. In one instance

where a gentleman receives services and has a service coordinator, the service coordinator told the APG they would not assist with accessing/navigating any other services. Because this is true, the APG needed to navigate other available benefits and services to access for the ward, including food, etc. It is one thing to be a part of the safety net for individuals, quite another to have to piece together a semblance of one from frayed, separated portions!

This issue will likely continue to be a work in progress. The OPG will continue to work with agencies and providers to expand collaboration and appropriate system responses to the needs of wards and protected persons. We have been encouraged by the attitude and dedication to improve systems that we have found in our conversations with DHHS and look forward to continue to participate in the dialogue, but more so, being a part of actually addressing the problems.

CONCLUSION

As this report demonstrates, the first year of Nebraska's Office of Public Guardian has been active and productive. It would be impossible to recognize the hundreds of people who have lent their skills and service to helping implement the Office of Public Guardian during this year. The best we can do is to say "you know who you are" and we are deeply appreciative.

It is imperative, as we continue to implement the Office of Public Guardian, to keep in the forefront, and as a core value of the Public Guardian, the necessity to balance the tension inherent in the "two faces" of guardianship. We must continue to maximize the protection and minimize the oppression to the potentially incapacitated persons within the system by absolute commitment: to the rule of law, especially individual civil rights; to the quality of character and professionalism of those who serve in the system; and to the appropriately "right sizing" the intervention and services available. The Office of Public Guardian is dedicated to continuing to implement the Public Guardianship Act in a manner that both protects and serves vulnerable adults in Nebraska. It will diligently seek to fulfill its responsibilities as Nebraska's Public Guardian, as an essential component in the safety net for vulnerable Nebraskans; a fulcrum to provide support, information, resources and direct services for those who have no other options. However, serving Nebraska citizens who are vulnerable, incapacitated adults in need of assistance will continue to require the joint collaboration, cooperation, commitment and oversight of private individuals, communities, providers, medical practitioners, courts, and the legal profession to assure the Nebraska guardianship/conservatorship system is one of integrity and quality. It will continue to take all of us, together, to secure the highest degree of moral government and pledge that vulnerable adults in Nebraska are not "unpersoned" through guardianships but, rather, their lives continue to be "empowered" despite their incapacities.

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- ¹ Neb. Rev. Sec. § 30-4111
- ² Neb. Rev. Stat. § 30-4104
- ³ *Id.*
- ⁴ *Id.*
- ⁵ *Id.*
- ⁶ Neb. Rev. Stat. § 30-4104
- ⁷ Neb. Rev. Stat. § 30-4108(1)
- ⁸ Neb. Rev. Stat. § 30-4110
- ⁹ Neb. Rev. Stat. § 30-4104
- ¹⁰ Neb. Rev. Stat. § 30-4111
- ¹¹ Neb. Rev. Stat. § 30-4106
- ¹² Neb. Rev. Stat. § 30-4108
- ¹³ Neb. Rev. Stat. § 30-4106
- ¹⁴ *Id.*
- ¹⁵ Neb. Rev. Stat. Sec. § 30-4104
- ¹⁶ Neb. Rev. Stat. § 30-4115
- ¹⁷ Neb. Rev. Stat. §§ 30-4105 (5), 30-4109 (7)
- ¹⁸ Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* 146-147 (Springer Publishing Company 2005).
- ¹⁹ Neb. Rev. Stat. § 30-2619.01 - 30-2619.03
- ²⁰ Neb. Rev. Stat. § 30-2624
- ²¹ Neb. Rev. Stat. § 30-4105(8)
- ²² Neb. Rev. Stat. § 30-2619.01.
- ²³ Neb. Rev. Stat. § 30-2601 et seq.
- ²⁴ Neb. Rev. Stat. §§ 30-4101 – 30-4118
- ²⁵ Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* 279-290 (Springer Publishing Company 2005).
- ²⁶ State of Minnesota Visitor's Report <<http://www.mncourts.gov/forms>> (2005).
- ²⁷ ABA Comm. on Law & Aging, Am. Psychological Assn., Natl. College of Probate Judges, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges* 4 (ABA 2006).
- ²⁸ Maricopa County Superior Court Office of Probate Investigations, *Probate Evaluation Tool*, 34 – 45 (2012).
- ²⁹ Joseph J. Gallo, *Handbook of Geriatric Assessment* 130 – 135 (2006).
- ³⁰ ABA Comm. on Law & Aging, Am. Psychological Assn., Natl. College of Probate Judges, *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges* 8 (ABA 2006).
- ³¹ *Id.*
- ³² Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety*, app. A, 256 (2005).
- ³³ Neb. Rev. Stat. § 30-2628.
- ³⁴ Neb. Rev. Stat. § 30-2619.01
- ³⁵ *Id.*
- ³⁶ Neb. Rev. Stat. § 30-4105(3)
- ³⁷ Neb. Ct. R § 6-1433.01(D)
- ³⁸ Neb. Rev. Stat. § 30-2619.01
- ³⁹ National Association of Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program* 15, (National Association for Court Management 2013-2014).
- ⁴⁰ Neb. Rev. Stat. §§ 30-4101 to 30-4118
- ⁴¹ Neb. Rev. Stat. § 30-4102
- ⁴² Neb. Rev. Stat. § 30-4105 (8)
- ⁴³ Neb. Rev. Stat. § 30-2640
- ⁴⁴ National Guardianship Association, *Standards of Practice* 14-15 (2007).
- ⁴⁵ National Guardianship Association, *National Guardianship Association Standards for Agencies* 7 -8 (2007).
- ⁴⁶ National Guardianship Association, *National Guardianship Association Standards for Agencies* 6 - 8 (2007).
- ⁴⁷ Neb. Rev. Stat. § 30-4102
- ⁴⁸ *In re Guardianship & Conservatorship of Larson*, 270 Neb. 837, 708 N.W.2d 262 (2006).
- ⁴⁹ *In re Guardianship and Conservatorship of Hartwig*, 11 Neb. App. 526, 656 N.W.2d 268 (2003).
- ⁵⁰ Richard Van Duizend, *National Probate Court Standards* § 3.3.4, 49-50 (National Center for State Courts 2013).
- ⁵¹ Neb. Rev. Stat. § 30-4102
- ⁵² Neb. Rev. Stat. §§ 30-2619 and 30-2619.01
- ⁵³ See commentary, Richard Van Duizend, *National Probate Court Standards* § 3.3.4, 49 (National Center for State Courts 2013).
- ⁵⁴ Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety*, app. A, 256 (2005).
- ⁵⁵ National Association of Court Management, *Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program* 9, (National Association for Court Management 2013-2014).
- ⁵⁶ Neb. Rev. Stat. §§ 30-4102, 30-4103(8)
- ⁵⁷ Neb. Rev. Stat. § 30-4111

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- ⁵⁸ Neb. Rev. Stat. §30-4109(4)
⁵⁹ Neb. Rev. Stat. §30-4105(6)
⁶⁰ Neb. Rev. Stat. §30-4105(8)
⁶¹ Neb. Rev. Stat. §§ 30-4105 (4), 30-4109 (5), 30-4109 (6)
⁶² Neb. Rev. Stat. § 30-4105 (5)
⁶³ Neb. Rev. Stat. §30-4105(3)
⁶⁴ Neb. Rev. Stat. §30-4105(4)
⁶⁵ Neb. Rev. Stat. §30-4105(5)
⁶⁶ Neb. Rev. Stat. §30-4105(6)
⁶⁷ Neb. Rev. Stat. §30-4105(7)
⁶⁸ Neb. Rev. Stat. §30-4105(8)
⁶⁹ Neb. Rev. Stat. §30-4109(2)
⁷⁰ Neb. Rev. Stat. §30-2624.
⁷¹ Neb. Rev. Stat. §30-4105(7)
⁷² Neb. Rev. Stat. §30-4105(3)
⁷³ Neb. Rev. Stat. §30-4105(8)