

OFFICE OF PUBLIC GUARDIANSHIP
House Bill 19-1045
Frequently Asked Questions

What qualifies a person to receive services from the OPG?

The need for a guardian arises when a qualified local source such as a hospital, an adult day care facility, adult protective services or other organization working with incapacitated or indigent persons, identifies and makes a referral to the OPG for a person who may be in need of guardianship. Services will be provided to adults who are *isolated*, having no appropriate family member or friend to act as guardian; who are *indigent*, lacking financial resources to pay for a professional guardian; and who are determined to be *incapacitated* by a court.

What are the types of guardianship the OPG will accept?

Emergency guardianship is necessary when there is no one with apparent authority to act on behalf of an individual, and the person is at imminent risk of harm. However, emergency guardianship is limited to 60 days. If the need for guardianship continues, then a second hearing is required for 'permanent' orders. After notice and hearing, the court may appoint a guardian with limited or unlimited authority, tailored to the needs of the individual and the situation. A guardian may be limited in duration or in scope of authority. If the need for a guardian subsides, the guardian also has the duty to ask the court to terminate the guardianship.

What is the scope of duties of a public guardian? What is not included in a public guardian's duties?

A guardian is responsible for making decisions regarding the ward's support, care, education, health and welfare, including where the ward should live, unless restricted or limited by the court. The OPG does not expand the scope of duties of a guardian. Rather, it makes guardianship services available to isolated, indigent, incapacitated, persons who have no family or friends to serve. Under existing statutes, a guardian should exercise authority only as needed by the ward's limitations and, to the extent possible, should involve the ward in the decision making process. A guardian should take into consideration the ward's preferences to the extent known, but must always act in the ward's best interest. A public guardian will not be appointed for an individual who has the assets to pay for a professional guardian or who has a family member or friend who is fit and able to serve as guardian. While guardians may manage public benefits, guardians do not otherwise manage an individual's assets. That is the role of a conservator or other financial fiduciary. Many judicial districts have a public administrator who serves as conservator when there is no one else to manage an individual's assets.

Why not use independent contractors instead of judicial branch employees?

The Supreme Court OPG Advisory Committee recommended against using independent contractors, since this would require each independent contractor to be covered by professional liability insurance. This could make attracting qualified guardians difficult and the insurance would be cost prohibitive. OPG guardian-designees would qualify as employees of the judicial branch, and as such would be covered by the Colorado Governmental Immunity Act, except for actions which are willful or wanton or fall outside the scope of their employment.

What would the case load be for guardians through OPG?

The pilot project calls for hiring 10 guardian-designees, in addition to the executive director and support staff. It is designed to serve 200 persons resulting in an average case load of 1:20 per guardian designee. Literature varies considerably as to what is an optimal caseload. State regulations require county departments of human services to make reasonable efforts to maintain a caseload average of 1:25, with the expectation that caseworkers will have face-to-face contact with their clients at least once a month. Case load may need to be weighted based on the intensity of the individual ward's needs ranging from low intensity with modest oversight to high intensity cases for complex medical, behavioral health, law

enforcement or placement challenges. One purpose of the pilot project is to assess potential costs in Colorado and collect accurate data in our state, which does not yet exist.

How were the judicial districts chosen?

Judges from the 2nd, 7th and 16th Judicial Districts were invited to participate in the Office of Public Guardianship Advisory Committee. The judicial districts were selected based upon their urban and rural population characteristics representing a large metropolitan area, a medium sized judicial district of mixed needs, resources and population; and a less populated, primarily rural district. These judges, already familiar with the issues and needs of an Office of Public Guardianship, agreed to serve as part of the pilot project.

Average costs of a private guardian?

The average cost of a private guardian can vary from \$75 to \$150 per hour. The overall cost typically depends upon the amount of time devoted to the individual's needs. High maintenance persons living in the community may require several hours per week, while individuals living in skilled nursing facilities may require a few hours each month. Conversely, some persons living in the community may simply need support services in place, while individuals in a hospital or nursing home may have medically complicated situations. Guardianship should always be tailored to the needs of the individual.

What other models were investigated?

The Supreme Court OPG Advisory Committee explored several different models, including reliance upon social agency/human services, independent government agency, private sector, and non-profit/volunteer models. Each of these models has its draw backs ranging from statutory and ethical limitations to costs and lack of sustainability. The Advisory Committee recommended a model based upon Colorado's successful Office of Child Representative. It is flexible enough to cover fluctuating needs and caseload, and it is familiar to the courts. This model provides a core administrative staff with hiring and training of guardian designees as needed to meet demands.

What are the qualifications to serve as guardian-designee in the Office of Public Guardianship?

Most professional guardians have a background in social work or nursing, although there is no official certification or licensure requirement in Colorado to be a guardian. OPG will be looking for individuals with similar skill sets or experience working with social service support organizations, health care facilities, affordable and alternative housing options. While OPG will have an attorney, the guardian-designees will not be attorneys unless they also have the desired background and skill set in social sciences.

Why Don't We Rely Upon Non-Profits and Volunteer Guardians?

This is what we are doing currently, and it does not work nor does it meet the needs of our communities. Very few non-profits take on the role of guardian, and those few which do, such as some of the ARCs of Colorado, Guardianship Alliance of Colorado and Silver Key, have long wait lists. By law, the courts cannot require county departments of human services to take on guardianship. Many professional guardians continue to serve for clients when their assets have been depleted, and accept some cases on a *pro bono* basis, but the professional community is tapped out. One retiree willing to volunteer as a guardian declined to accept a case, even if mentored by a professional paid for by the hospital stating, "There is more support and information available to me if I volunteer at the botanic gardens than if I want to be a guardian for an incapacitated adult."