

COLORADO OFFICE OF PUBLIC GUARDIANSHIP

November 14, 2018 – Meeting Materials

**NOTE: CERTAIN MATERIALS DISTRIBUTED WILL BE POSTED
ONCE THEY ARE IN FINAL FORM.**

Please be advised that **all** the materials noted below are in **‘Draft’** form and are materials for the OPG Commission to consider.

They are **not** in final form, **nor have they been approved** by the OPG Commission.

1. **Draft** – Supplemental Budget with Exhibits A and B

COLORADO OFFICE OF PUBLIC GUARDIANSHIP

Shari Caton
Commission Chair

*FY 2018-19 Funding Request
December 31st, 2018*

**Department Priority: #1 - Supplemental/Budget Amendment
Request Title: Funding the Office of Public Guardianship**

Office of Public Guardianship	Fund	Actual FY18	Approp FY19	YTD Exp 11/30/13	FY19 Supplemental Request	FY19 Revised Need	FY20 Nov 1st Request	FY20 Budget Amendment	FY20 Revised Request
Total All Line Items	Total	\$66	\$1,718,786	\$0	\$565,469	\$2,284,255	\$1,748,786	\$0	\$1,748,786
	FTE	-	14.0	-	-	14.0	14.0	-	14.0
	GF	-	-	-	565,469	565,469	-	1,748,786	1,748,786
	CF	66	1,718,786	-	-	1,718,786	1,748,786	(1,748,786)	-
	RF	-	-	-	-	-	-	-	-
	FF	-	-	-	-	-	-	-	-
(11) Office of Public Guardianship	Total	66	1,718,786	-	565,469	2,284,255	1,748,786	-	1,748,786
	FTE	-	14.0	-	-	14.0	14.0	-	14.0
	GF	-	-	-	565,469	565,469	-	1,748,786	1,748,786
	CF	66	1,718,786	-	-	1,718,786	1,748,786	(1,748,786)	-
	RF	-	-	-	-	-	-	-	-
	FF	-	-	-	-	-	-	-	-

Request Summary:

This request seeks \$565,469 General Fund to provide funding to establish the Office of Public Guardianship (Office) in FY19 and \$1,748,786 General Fund in FY20 to fulfill the requirements of the enabling legislation HB 17-1087. Thus far, Commission has been unable to raise the \$1.7 million from gifts grants or donations as required by the legislation. Only approximately \$2,000 has been raised to date, and the only viable means of funding this Office is through a General Fund appropriation. This request seeks funding to establish the Office with a Director, staff assistant, and other personnel so that public guardians could be in place by July 1, 2019, and begin work in three judicial districts per HB 17-1087.

Background:

HB 17-1087 creates a pilot program housed within the Judicial Department to provide legal guardianship services for incapacitated and indigent adults in the Second, Seventh, and Sixteenth judicial districts, conditional upon the receipt of sufficient gifts, grants, or donations. To administer the program, the bill creates a five-member Public Guardianship Commission, which was appointed in October 2017.

The legislation states that not more than one month after receiving at least \$1.7 million in gifts, grants, or donations, the Commission must appoint a director to establish, develop, and administer the Office, to provide legal guardianship services to indigent and incapacitated adults with no family or friends available and appropriate to serve as the guardian, and who lack the resources to compensate a private guardian. The Office must

operate as an independent program of the Judicial Department, developing its own personnel rules but following Judicial fiscal rules.

The Office is required to coordinate its efforts with county departments of human and social services in providing guardianship services. Not more than five months after receiving at least \$1.7 million in gifts, grants, or donations, it must provide the following services:

- A review of referrals;
- Eligibility criteria and prioritization to ensure it serves the individuals with the greatest needs;
- Appointment and post-appointment public guardianship services of a guardian-designee for each incapacitated and indigent adult in need, including the recruitment, training, and oversight of guardian-designees;
- Support for modification or termination of public guardianship services;
- Development of a process for receiving, considering, and responding to complaints against the Office, including investigation when necessary;
- Implementation of a data management system;
- Office management, financial planning, and budgeting;
- Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct-care providers to provide services within the financial constraints established for the office;
- Identification and establishment of relationships with local, state, and federal agencies so that guardians and guardian-designees may apply for public benefits on behalf of their clients;
- Public education and outreach regarding the role of the Office

On or before January 1, 2021, the director of the Office must submit a report to the General Assembly describing the unmet need for services, costs, benefits, efficiencies, obstacles, and other analysis. The director must also develop a strategy for the discontinuation of the Office in the event that the General Assembly chooses not to continue or expand it. Without such a decision by the General Assembly, the pilot program repeals June 30, 2021.

Thus far, the Office has only been able to raise \$1,943.00. The Interim Report from the Commission, attached as EXHIBIT A, details the community outreach and fundraising efforts by the members and highlights the challenges and obstacles they face from the private and nonprofit sectors to obtain funds to begin implementation of the pilot program. In short, while potential donors are fully supportive of the Office and its mission, Commission members have encountered a near universal belief among founding sources that the services provided by this Office should be publicly funded. Consequently, while the Commission members continue to seek funding from gifts, grants or donations, there is a real possibility that without general appropriations, the pilot program will not be able to be implemented pursuant to HB 17-1087.

Anticipated Outcomes:

Anticipated donations to fund this office have not materialized, and it is apparent that without state funding, this Office will not be able to fulfill its statutory obligations. This request for \$565,469 General Fund in FY19 and \$1,748,786 General Fund in FY20 will provide funding for the Office. In FY19, the funds will

pay the salary of an Executive Director, Controller and Staff Assistant beginning March 1, 2019 which will enable them to lease space, develop a case management system, and establish office procedures so that public guardians can be hired July 1, 2019.

Assumptions for Calculations:

- That the Office of Public Guardianship is unable to raise the necessary gifts, grants and donations to fund this program
- That this request is for funding three positions beginning March 1, 2019 for the balance of the fiscal year: Executive Director; Controller; and Staff Assistant
- That operating, and capital outlay is calculated based on common policy standards per FTE
- That these three positions are necessary to get the Office of Public Guardianship operational. This includes lease space \$77,828; case management system \$300,000 and other requirements necessary to have the Office fully operational by July 1, 2019.
- That an IT consultant will be hired (\$60,000) to assist with implementation of the Case Management system and other IT needs
- That the 10.0 Public Guardians would be hired July 1, 2019
- That this request includes funding for H/L/D; STD; AED; SAED
- That funding for FY20 is based on the fiscal note published by legislative council for HB17-1087

Public Guardian Staff FY2019				
	Exec	Staff	Controller/	Total
	Director	Assistant	Budget	
FTE	1.00	1.00	1.00	3.00
Mo Salary	\$10,645	\$4,447	\$9,396	
No. of Months	4	3	3	
Annual Salary	42,580	13,341	28,188	84,109
PERA (10.15%)	4,322	1,354	2,861	8,537
Medicare (1.45%)	617	193	409	1,220
TOTAL PS	47,519	14,889	31,458	93,866
Operating	950	950	950	2,850
Case Mgt System				300,000
IT Consultant				60,000
Lease Space				77,828
Capital Outlay	4,703	4,703	4,703	14,109
Subtotal				\$548,653
Benefits (Non-Add)				
Health/Life/Dental	2,754	2,754	2,754	8,262
Short-Term Disability	72	23	48	143
AED/SAED	4,258	1,334	2,819	8,411
Total Benefits	7,084	4,111	5,621	\$16,816
Total Cost				\$565,469

Consequences if Not Funded:

The Commission was appointed in October of 2017, and to date, have received less than \$2,000 in donations to the Office of Public Guardianship Cash Fund. HB 17-1087 requires that a minimum of \$1.7 million be donated before a Director can be hired by the Commission. It is apparent that without State funding of this program, it will be unable to fulfill the intent of legislation to serve indigent and incapacitated adults in need of guardianship in the Second, Seventh and Sixteenth Judicial Districts.

Impact to Other State Government Agencies:

N/A

Cash Fund Projections:

\$2,000.00

Current Statutory Authority or Needed Statutory Change:

HB 17-1087 – C.R.S. 13-94-101 thru 13-94-111

Although the legislation envisioned the receipt of gifts, grants and donations sufficient to fund the Office, the legislation does not prohibit the receipt of general funding. The Commission anticipates that minor legislative fixes are needed to extend the period of the pilot program in consideration of the delay in the program's implementation. The Commission also anticipates a legislative amendment that provides for a wind-down period of the pilot program, to the extent the program is not extended or made permanent, of at least one year. This wind-down period would allow the Executive Director to find suitable replacement guardians for the incapacitated and indigent adults and file the necessary papers with the court to obtain adequate and appropriate resolution.

The Commission has provided a redline of the minor proposed legislative amendments to this budget submission, as EXHIBIT B, but would anticipate legislative drafting is needed for appropriate language for the wind-down provision, discussed above.

Supplemental, 1331 Supplemental or Budget Amendment Criteria:

This request meets supplemental/budget amendment criteria as data that was not available at the time of appropriation. This request fulfills that criteria.

Chair, The Public Guardian Commission

SHARI CATON

Date

Colorado Office of Public Guardianship

Commissioners

Shari Caton, Chair
Deb Bennett Woods, Vice Chair
Marco Chayet
Kelsey Lesco
Karen Kelley



1300 Broadway, Suite 1250
Denver, CO 80203

(720) 625-5130
OPGCommission@gmail.com

INTERIM REPORT OF THE OFFICE OF PUBLIC GUARDIANSHIP COMMISSION

September 7, 2018

**To: Members of the Joint Judiciary Committee and
Members of the Joint Budget Committee**

Submitted herewith is an Interim Report of the Office of Public Guardianship Commission that is intended to apprise the Judiciary and Joint Budget Committees of Commission activities and challenges since appointment in October 2017.



Shari D. Caton, Esq. Chair

Dr. Deb Bennett-Woods, Vice Chair

Marco Chayet, Esq., Commissioner

Karen Kelley, Commissioner

Kelsey Lesco, Esq., Commissioner

EXHIBIT

A

EXECUTIVE SUMMARY

This interim report is submitted to the General Assembly for the following purposes: (1) to provide information about the Office of Public Guardianship Commission's activities from October 2017 to present; (2) to highlight the challenges and inability to obtain funding as contemplated by the enabling legislation to implement the pilot program established by HB17-1087; (3) to request general appropriation funding for the current fiscal year to begin implementation of the pilot program; and (4) to recommend that given the funding challenges, that general appropriation funding be provided for the remainder of the pilot program.

In 2017, the General Assembly determined that there was a need for public guardianship services for certain indigent and incapacitated adults. This need was based on intensive review by committees and task forces charged with looking at the issues surrounding guardianship. As a result, the General Assembly passed HB17-1087 that was signed by Governor Hickenlooper in June 2017 to establish the Office of Public Guardianship Pilot Program ("Office"). The enabling legislation for the pilot program contemplates funding for the Office through the receipt of gifts, grants, and donations. The five-member Office of Public Guardianship Commission ("Commission"), established as part of the enabling legislation, is charged with raising at least \$1.7 million from gifts, grants or donations for appointment of the Director to oversee the Office. The Director, in turn, is charged with hiring the necessary public guardians and other staff for the Office to provide guardianship services in three target judicial districts to indigent and incapacitated adults. Additional fundraising would be necessary by the Director and Commission members from the receipt of gifts, grants, and donations to maintain the pilot program through 2021.

As of August 2018, after extensive fundraising efforts and community outreach by the Commission members, the Office has raised only \$1,943.00 of the \$1.7 million initial target amount. The funding sources contacted by the Commission generally support the concept of public guardianship services, but believe such services should be publicly funded. Other fundraising challenges include, but are not limited to, the lack of professional grant or fundraising expertise and the failure to meet criteria for specific grant or nonprofit programs. The pilot program's implementation is already delayed from the timetable contemplated by the enabling legislation and fiscal note due to lack of funding from gifts, grants, and donations. Without the receipt of general appropriations, it is unlikely the Commission will raise the necessary funds to implement the public guardianship pilot program. Thus, a general appropriation request for the current fiscal year and future general appropriations are recommended for the remainder of the pilot program.

I. BACKGROUND PRECEEDING HB17-1087

Colorado courts and legal experts in the areas of probate and guardianship have extensively studied and analyzed the need in our state for public guardianship services. This extensive review resulted in the issuance of three reports, including the Final Report of the Elder Abuse Task Force (2013) and two reports by the Office of Public Guardianship Advisory Committee (2014). The need for public guardianship services nationwide is established and the scope of the need only increases. As of 2018, at least 45 states have statutory provisions for public guardianship services, with the majority of those programs employing the model of a state-funded office serving the entire state. This is a 10-state increase from just 2016, when the American Bar Association reported 35 states having statutory provisions offering public guardianship services.¹

Based on the experience of other state programs, it is anticipated that Colorado will realize cost/benefit savings in areas including Medicaid, Adult Protective Services, and law enforcement. As a result of these expert reports, legislation was passed by the Colorado General Assembly in 2017 – HB17-1087 – establishing a public guardianship pilot program. While the legislation authorized for a Commission and Office to begin providing public guardianship services in three target judicial districts, funding to implement the pilot program and begin providing services currently depends solely on the receipt of gifts, grants, or donations.

II. OVERVIEW OF HB17-1087

On June 5, 2017, Governor Hickenlooper signed HB17-1087, creating the Office of Public Guardianship Pilot Program. This Office, once funded, will provide guardianship services to indigent and incapacitated adults who meet at least two criteria:

- The adults have no responsible family members or friends who are available and appropriate to serve as a guardian; and
- The adults lack adequate resources to compensate a private guardian and pay the costs and fees associated with an appointment proceeding.

The pilot will provide guardianship services for incapacitated and indigent adults in the Second, Seventh, and Sixteenth Judicial Districts. At the end of the three-year pilot, the Office will also issue a report to the legislature quantifying Colorado's unmet need for public guardianship services and the average annual cost of providing these services to Coloradans. The Office's report will also include the net cost or benefit to the state that may result from providing these needed services. Ultimately, the Office will assess whether an independent statewide office of public guardianship is needed.

In order to implement the pilot, \$1.7 million in gifts, grants and donations must be raised. The Commission, despite best efforts, has been unable to secure the funds necessary to carry out its

¹ The ABA Chart listing the states with public guardianship statutes as of 2016 is available at https://www.americanbar.org/content/dam/aba/administrative/law_aging/CHARTStatePublicGuardianshipStatutes.authcheckdam.pdf (last accessed September 4, 2018)

charge. As a result, the Commission submits this *Interim Report* with a budget request to advise the General Assembly as to the Commission's administrative activities, fundraising activities, and funding challenges. The Commission seeks general appropriations to establish and fully fund the Office of Public Guardianship Pilot Program.

III. FUNDRAISING REQUIRED TO APPOINT DIRECTOR

The Commission was created pursuant to § 13-94-104(1), C.R.S. As required by statute, the Colorado Supreme Court appointed three Commissioners and the Governor appointed two Commissioners. Members of the Commission serve at the pleasure of his or her appointing authority and are not compensated for services.

The Commission is charged with appointing an Office of Public Guardianship ("Office") Director to establish, develop, and administer a pilot program that will provide legal guardianship services for incapacitated and indigent adults in the Second, Seventh and Sixteenth judicial districts.

The pilot program received no general appropriations, and is currently solely dependent upon the receipt of gifts, grants and donations. Appointment of the Director must occur not more than one month after the Office receives at least \$1.7 million in gift, grants, and donations. Not more than five months after receiving at least \$1.7 million, the Director shall administer the pilot program.² But until funding is obtained, the Office and services to the targeted judicial districts cannot occur.

IV. COMMISSION FUNDING CHALLENGES

As of the monthly report from the August 29, 2018 Commission meeting, the Office holds a balance of 1,877.00. Gifts and donations have totaled \$1,943.00, and of which these funds were received from a mere five donors. Office funds have been used to cover the basic expenses associated with direct mailings to stakeholders and potential funding sources. Commission members have personally covered expenses associated with reproduction of educational and informational materials and refreshments for fundraising events. With the minimal funds available, the Commission is unable to hire a professional grant writer or fundraiser to seek additional funding. Without the necessary operational funds, the Commission is unable to hire a Director to establish, develop, and administer the OPG pilot program ("OPG").

Numerous fundraising challenges have been encountered. The lack of seed funding for basic supplies or to contract with a professional fundraiser and grant writer is mentioned above. In addition, major grant sources, such as the Colorado Health Foundation, advised the Commission that the project does not align with their current funding priorities and/or technical eligibility criteria. For example, many grants have very specific restrictions regarding use of grant funds for capital expenditures or salaries, disallow funding of state agencies, or require an established track record of services before funding new initiatives. Community stakeholders, while uniformly in support of the project, have consistently expressed the strong opinion that public

² The duties of the Director, once appointed, are discussed in the Appendix.

guardianship services are a public need and should be publicly funded. Finally, requesting non-refundable donations from individual private donors for a program that may fail to meet necessary funding targets, and as a result may never be enacted, presents a particularly difficult sell to potential donors.

To demonstrate Commissioners efforts to educate and solicit funds for the project, the Commission provides the following list of activities that members have engaged in since appointment in October 2017 to present:

- The Commission contacted eighty-seven statewide entities / individuals by direct mailing, provided informational materials regarding the pilot, and asked for financial support. The extensive recipient list compiled for this direct mailing and invitation included stakeholders supportive of the OPG legislation, a large cross-section of the Colorado health care community, professional fiduciaries, non-profits, and bar associations.
- The Commission held an informational and fundraising meeting for stakeholders at the Colorado Bar Association. Attendees included representatives from hospitals, bar associations, and non-profits.
- The Commission prepared and submitted a grant request to the NextFifty Initiative, an independent, Colorado-based, non-profit organization, dedicated to funding mission-driven initiatives that improve community services for the elderly population and caregivers. The grant request was denied for failing to meet technical criteria. The Commission submitted another grant request to this organization on August 31, 2018.
- Commissioner Caton presented an educational seminar for the Colorado Guardianship Association and requested financial support. Attendees of this seminar included guardians, conservators, care-managers, and fiduciaries serving the State. Members of this non-profit organization are acutely aware of issues faced by indigent and incapacitated individuals who have no appropriate family to serve as guardian.
- Commissioner Caton established a meaningful dialogue with representatives of the Colorado Department of Human Services regarding the status of the OPG and its funding challenges.
- Commissioner Caton established a meaningful dialogue with a representative of the Colorado Strategic Action Planning Group on Aging. The Colorado General Assembly and Governor formed this group to develop a long-term strategic plan and one of its recommendations was establishing an OPG.
- Commissioners Caton, Lesco, and Chayet established a meaningful dialogue with the Elder Law Section of the Colorado Bar Association. The Section is supportive of OPG efforts, and made a nominal donation.

hospitals and data gathering. Although supportive, the Colorado Hospital Association is not able to provide financial support and does not see a path to funding from individual health care systems or other health care services providers.

- Commissioner Bennett-Woods conducted a phone conference with three representatives of the local Veteran's Administration hospital, who offered to attempt to locate contacts, both locally and nationally, that might be of assistance in securing funding.
- Commissioner Bennett-Woods has maintained a meaningful dialogue with Representative Dave Young regarding the status and challenges that the OPG experiences.
- Commissioner Bennett-Woods has engaged in outreach with the Center for Improving Value in Health Care to discuss OPG and the net cost-benefit for Colorado.
- Commissioner Kelley spoke with local area aging offices regarding grant-writing assistance.
- Commissioner Kelley, in cooperation with the local Human Services office, coordinated a town meeting to educate stakeholders in the 16th Judicial District.
- Commissioner Kelley spoke with several stakeholder groups in the 16th Judicial District and delivered written OPG materials to these organizations in an effort to raise awareness and generate funds.
- Commissioner Kelley contacted a member of the judiciary in the 16th Judicial District to coordinate a stakeholder meeting.
- Commissioner Kelley is preparing presentations for the Bent and Crowley County Commissioners.
- Commissioner Lesco researched and made inquiries regarding funding through Robert Wood Johnson Foundation, Kaiser Permanente Colorado, The Colorado Health Foundation, and Rose Community Foundation. The OPG does not appear to be a fit at any of these foundations.
- Commissioner Lesco researched funding opportunities through numerous Colorado foundations including Caring for Colorado Foundation, the Anschutz Foundation, and others. For a variety of reasons including the grant makers' priorities and the OPG status, the OPG is either ineligible or a poor fit to receive funding from these foundations.
- Commissioner Lesco researched funding opportunities from the federal government through repeatedly and regularly exploring posted funding opportunities from the

Administration of Community Living and the Centers for Medicare and Medicaid Services, and searched for grant opportunities on grants.gov. An applicable funding opportunity has not been located.

- Commissioner Lesco reached out to the Colorado Trust Foundation for a meeting with the Executive Director.
- Commissioner Lesco approached Zim Consulting, a development, fundraising and grant writing consulting firm for additional ideas on fundraising. An in-person meeting with the founder of Zim Consulting has been scheduled.
- Commissioner Lesco has spoken to the Executive Director of Disability Law Colorado who has thirty-five years of fundraising experience, as well as an experienced grant writer and experienced development director for additional fundraising ideas, foundations, or other avenues to pursue to raise gifts, grants and donations. These professionals do not have any additional thoughts or direction for fundraising.
- Commissioner Lesco attended the Jefferson County Senior Law Day, an elder law public education event attended by nearly 500 members of the public. She distributed approximately 40 OPG fact sheets and spoke to 15 to 20 individuals. Donations forms were also available, but only three were taken and no donations were made. Outreach at the Jefferson County Senior Law Day was primarily aimed at increasing awareness of the Office and fundraising was a secondary consideration. However, it should be noted that while many members of the public expressed support for the Office, none indicated a willingness to financially contribute in support of the office.
- Commissioner Lesco has conducted outreach in the 7th Judicial District, made a presentation to the Montrose Memorial Hospital Ethics Committee on the history, goals, future operations and needs of the OPG Pilot program. This presentation was effective at increasing awareness of the OPG in the 7th Judicial District.
- Commissioner Lesco presented on the OPG at the Colorado Senior Lobby Board Meeting and the Colorado Senior Lobby Legislative meeting. Colorado Senior Lobby is a nonpartisan senior advocacy organization. In total, the Commissioner estimates presenting to 75 individuals on the OPG. Colorado Senior Lobby is highly supportive of the OPG and will make supporting the OPG one of their top legislative and public policy priorities for the coming year.
- Commissioner Lesco is presenting at an outreach event in the 7th Judicial District.
- Commissioner Lesco spoke to a member of the judiciary in the 7th Judicial District to pursue additional outreach efforts.

- Commissioner Chayet marshaled and reviewed his personal list of contacts for potential communications and outreach for funding from public and private sources from his personal sphere of influence.
- Commissioner Chayet attended Colorado Bar Association events and discussed the OPG and need for funding.
- Commissioner Chayet attended networking events and discussed OPG and funding needs with various stakeholders in the community.
- Commissioner Chayet met with a member of the 2nd Judicial District judiciary to discuss OPG and funding possibilities with stakeholders known to the judiciary member of the 2nd Judicial District.
- Commissioner Chayet participated in meetings or conversations with judges, lawyers, Adult Protection Services workers, community advocates outside of the 2nd Judicial District to convey the message of OPG and need for funding.
- Commissioner Chayet presents educational seminars on estate planning and guardianship throughout Colorado and has integrated OPG into his presentations.
- Commissioner Chayet drafted educational materials on guardianship to the commission for use in networking and fundraising.
- Commissioner Chayet attends many meetings on behalf of OPG at community wide stakeholder meeting to review the proposed Uniform Guardianship Act.
- Commissioner Chayet met with stakeholders providing guardianship services about potential collaboration and inquiries on funding sources.
- Commissioner Chayet spoke with several private citizens about OPG with zero to little interest in giving “private money” to a perceived public or governmental entity.

V. COMMISSION ACTIVITIES SINCE PASSAGE OF HB17-1087

The Commission has not just been attempting to secure funds, but also has worked to build the legal foundation for the Office. Since appointment in late October 2017, the Commission has held thirteen public meetings and created the following governing instruments:

- Office of Public Guardianship Memorandum of Understanding with the Judicial Department;
- Commission Guardianship Bylaws;
- Commission Document Retention Policy;

- Commission Public Comment Policy; and
- Commission Fundraising Guidelines and Materials.

The Commission has also completed the following administrative tasks:

- Worked with the State Court Administrators Office (“SCAO”) to create letterhead, telephone access with voice messaging, e-mail address, and a website;
- Worked with SCAO to submit a supplemental budget request and obtain spending authority;
- Obtained a tax identification number and tax-exempt status from the Internal Revenue Service;
- Registered with the Colorado Secretary of State as a charitable entity;
- Participated in stakeholder, community, non-profit, and public agency outreach and fundraising;
- Worked with SCAO to develop procedures to create job descriptions / qualifications, compensation ranges, and recruitment of Office Director and staff; and
- Developed a protocol for maintaining a donor list.

In an effort to assist and educate the pilot districts, Commission members agreed to serve as representatives in specific regions. Specifically, Commissioner Chayet assists in the Second, Commissioner Lesco assists in the Seventh, and Commissioner Kelley assists in the Sixteenth. The Chair and Vice Chair provide support for the Commissioners and oversee statewide efforts.

VI. COMMISSION REQUEST FOR APPROPRIATIONS

Because the Commission has been unable to raise the \$1.7 million initial amount from gifts, grants, or donations as required by the legislation, and potential funding sources do not appear to be available, the only viable means of funding the Office pilot is through a General Fund appropriation. Accordingly, the Commission is submitting a *Supplemental Funding Request* seeking \$657,482 general funding for FY 2019, to establish the Office of Public Guardianship and fulfill the requirements of the enabling legislation. To ensure successful completion of the pilot project, the Commission further recommends full funding for the duration of the pilot program, as well as an extension of one year for the pilot program due to the delay experienced from the lack of funding to initiate the pilot in 2018 as assumed in the enabling legislation. The Commission understands that legislation will need to be enacted to extend the length of the pilot program beyond 2021, but HB17-1087 contemplates the potential that the Office’s cash fund may receive general appropriation funding.

APPENDIX

Once funded and pursuant to HB17-1087, the Director shall ensure that the Office will provide the following services in the designated judicial districts:

- Review of referrals to the OPG;
- Adoption of eligibility criteria and prioritization of individuals with the greatest need;
- Appointment and post-appointment of public guardianship services of a guardian-designee for each indigent and incapacitated adult in need of public guardianship;
- Support for modification or termination of public guardianship services;
- Recruitment, training and oversight of guardian-designees;
- Development of a process for receipt and consideration of, and response to, complaints against the OPG;
- Implementation and maintenance of a public guardianship data;
- Management, financial planning, and budgeting for the OPG;
- Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct care providers necessary to provide services;
- Identification and establishment of relationships with local, state and federal agencies to apply for public benefits on behalf of wards; and
- Public education and outreach regarding the role of the OPG and Guardian-Designees.

On or before January 2021, the Director shall submit to the Judiciary Committees of the Senate and House of Representatives, a report concerning the activities of the Office. The report, at a minimum, must:

- Quantify, to the extent possible, Colorado's unmet need for public guardianship services for indigent and incapacitated adults;
- Quantify, to the extent possible, the average annual cost of providing guardianship services to indigent and incapacitated adults;
- Quantify, to the extent possible, the net cost or benefit, if any, to the state that may result from the provision of guardianship services to each indigent and incapacitated adult in each judicial district of the state

- Identify any notable efficiencies and obstacles that the office incurred in providing public guardianship services;
- Assess whether an independent statewide office of public guardianship or a non-profit agency is preferable and feasible;
- Analyze costs and off-setting savings to the state from the delivery of public guardianship services;
- Provide uniform and consistent data elements regarding service delivery in an aggregate format that does not include any personal identifying information of any person; and
- Assess funding models and viable funding sources for an independent office of public guardianship or a nonprofit agency, including the possibility of funding with a statewide increase in probate court filing fees.

After reviewing the report submitted by the Director, the General Assembly shall consider whether to enact legislation to continue, discontinue, or expand the Office.

The enabling legislation is repealed effective June 20, 2021.

**PROPOSED LEGISLATIVE AMENDMENTS
BY THE OFFICE OF THE PUBLIC GUARDIANSHIP COMMISSION
FOR THE 2019 SESSION OF THE GENERAL ASSEMBLY**

§ 13-94-101, C.R.S.

The short title of this article 94 is the “Office of Public Guardianship Act”.

§ 13-94-102, C.R.S.

(1) The general assembly finds and declares that:

(a) Due to incapacity, some adults in Colorado are unable to meet essential requirements for their health or personal care;

(b) Private guardianship is not an option for such an adult when:

(I) No responsible family members or friends are available and appropriate to serve as a guardian; and

(II) He or she lacks adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding;

(c) Volunteer and public service programs are currently inadequate to provide legal guardianship services to indigent and incapacitated adults in Colorado;

(d) Colorado courts struggle to address the needs of indigent and incapacitated adults who lack the resources to provide for their own guardianship needs; and

(e) Without a system providing legal guardianship services to indigent and incapacitated adults, the courts are left with few options for addressing these adults’ needs.

(2) In establishing the office of public guardianship, the general assembly intends:

(a) That the office will:

(I) Provide guardianship services to indigent and incapacitated adults who:

(A) Have no responsible family members or friends who are available and appropriate to serve as a guardian;

(B) Lack adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding; and

(C) Are not subject to a petition for appointment of guardian filed by a county adult protective services unit or otherwise authorized by section 26-3.1-104; and

(II) Gather data to help the general assembly determine the need for, and the feasibility of, a statewide office of public guardianship; and

(b) That the office is a pilot program, to be evaluated and then continued, discontinued, or expanded at the discretion of the general assembly in 2021.

(3) In creating the office of public guardianship, it is also the intention of the general assembly to:

(a) Treat liberty and autonomy as paramount values for all state residents;

(b) Authorize public guardianship only to the extent necessary to provide for health or safety when the legal conditions for appointment of a guardian are met;

(c) Permit incapacitated adults to participate as fully as possible in all decisions that affect them;

(d) Assist incapacitated adults to regain or develop their capacities to the maximum extent possible;

(e) Promote the availability of guardianship services for adults who need them and for whom adequate services may otherwise be unavailable;

(f) Maintain and not alter or expand judicial authority to determine that any adult is incapacitated; and

(g) Maintain and not alter or expand any authority vested in the state department of human services and county departments of human or social services.

§ 13-94-103, C.R.S.

(1) Except as otherwise indicated in this section, the definitions set forth in section 15-14-102 apply to this article 94.

(2) As used in this article 94, unless the context otherwise requires:

(a) “Commission” means the public guardianship commission created pursuant to section 13-94-104.

(b) “Direct care provider” means a health care facility, as defined in section 15-14-

505(5), or a health care provider, as defined in section 15-14-505(6).

(c) “Director” means the director of the office appointed by the commission pursuant to section 13-94-104.

(d) “Guardian” or “guardian-designee” means an individual employed by the office to provide guardianship services on behalf of the office to one or more adults.

(e) “Office” means the office of public guardianship created in section 13-94-104.

(f) “Public guardianship services” means the services provided by a guardian appointed under this article 94 who is compensated by the office.

§ 13-94-104, C.R.S.

(1) The public guardianship commission is hereby created within the judicial department. The commission includes five members, to be appointed as follows:

(a) On or before November 1, 2017, the Colorado supreme court shall appoint three members, no more than one of whom is from the same political party. Two of the supreme court’s appointees must be attorneys admitted to practice law in this state, and one must be a resident of Colorado not admitted to practice law in this state.

(b) On or before November 1, 2017, the governor shall appoint two members. One of the governor’s appointees must be an attorney admitted to practice law in this state, and one must be a resident of Colorado not admitted to practice law in this state.

(c) In making appointments to the commission, the supreme court and the governor shall consider place of residence, sex, race, and ethnic background; and

(d) No member of the commission may be a judge, prosecutor, public defender, or employee of a law enforcement agency during his or her service on the commission.

(2) Each member of the commission serves at the pleasure of his or her appointing authority, except that each member’s term of service concludes with the repeal of this article 94 pursuant to section 13-94-111.

(3) ~~Not more than one month after receiving at least one million seven hundred thousand dollars in gifts, grants, and donations to the office of public guardianship cash fund created in section 13-94-108,~~ The commission shall appoint a director to establish, develop, and administer the office of public guardianship, which office is hereby created within the judicial department. The director serves at the pleasure of the commission.

(4) The office and the judicial department shall operate pursuant to a memorandum of understanding between the two entities. The memorandum of understanding must contain, at a minimum:

- (a) A requirement that the office has its own personnel rules;
- (b) A requirement that the director has independent hiring and termination authority over office employees;
- (c) A requirement that the office must follow judicial fiscal rules; and
- (d) Any other provisions regarding administrative support that will help maintain the independence of the office.

§ 13-94-105, C.R.S.

(1) The director shall establish, develop, and administer the office to serve indigent and incapacitated adults in need of guardianship in the second, seventh, and sixteenth judicial districts and shall coordinate its efforts with county departments of human services and county departments of social services within those districts.

~~Not more than five months after receiving at least one million seven hundred thousand dollars in gifts, grants, and donations to the office of public guardianship cash fund created in section 13-94-108,~~ The director shall administer the office in accordance with the memorandum of understanding described in section 13-94-104(4).

(2) In addition to carrying out any duties assigned by the commission, the director shall ensure that the office provides, at a minimum, the following services to the designated judicial districts:

- (a) A review of referrals to the office;
- (b) Adoption of eligibility criteria and prioritization to enable the office to serve individuals with the greatest needs when the number of cases in which services have been requested exceeds the number of cases in which public guardianship services can be provided;
- (c) Appointment and post-appointment public guardianship services of a guardian-designee for each indigent and incapacitated adult in need of public guardianship;
- (d) Support for modification or termination of public guardianship services;
- (e) Recruitment, training, and oversight of guardian-designees;

(f) Development of a process for receipt and consideration of, and response to, complaints against the office, to include investigation in cases in which investigation appears warranted in the judgment of the director;

(g) Implementation and maintenance of a public guardianship data management system;

(h) Office management, financial planning, and budgeting for the office to ensure compliance with this article 94;

(i) Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct-care providers to provide services within the financial constraints established for the office;

(j) Identification and establishment of relationships with local, state, and federal governmental agencies so that guardians and guardian-designees may apply for public benefits on behalf of wards to obtain funding and service support, if needed; and

(k) Public education and outreach regarding the role of the office and guardian-designees.

(3) The director shall adopt professional standards of practice and a code of ethics for guardians and guardian-designees, including a policy concerning conflicts of interest.

(4) On or before January 1, 2023³¹, the director shall submit to the judiciary committees of the senate and the house of representatives, or to any successor committees, a report concerning the activities of the office. The report, at a minimum, must:

(a) Quantify, to the extent possible, Colorado's unmet need for public guardianship services for indigent and incapacitated adults;

(b) Quantify, to the extent possible, the average annual cost of providing guardianship services to indigent and incapacitated adults;

(c) Quantify, to the extent possible, the net cost or benefit, if any, to the state that may result from the provision of guardianship services to each indigent and incapacitated adult in each judicial district of the state;

(d) Identify any notable efficiencies and obstacles that the office incurred in

providing public guardianship services pursuant to this article 94;

(e) Assess whether an independent statewide office of public guardianship or a nonprofit agency is preferable and feasible;

(f) Analyze costs and off-setting savings to the state from the delivery of public guardianship services;

(g) Provide uniform and consistent data elements regarding service delivery in an aggregate format that does not include any personal identifying information of any adult; and

(h) Assess funding models and viable funding sources for an independent office of public guardianship or a nonprofit agency, including the possibility of funding with a statewide increase in probate court filing fees.

(5) In addition to performing the duties described in this section, the director, in consultation with the commission, shall develop a strategy for the discontinuation of the office in the event that the general assembly declines to continue or expand the office after 2023³¹. The strategy must include consideration of how to meet the guardianship needs of adults who will no longer be able to receive guardianship services from the office.

§ 13-94-106, C.R.S.

The court shall waive court costs and filing fees in any proceeding in which an indigent and incapacitated adult is receiving public guardianship services from the office.

§ 13-94-107, C.R.S.

(1) The director shall develop rules to implement this article 94. The rules, at a minimum, must include policies concerning:

(a) Conflicts of interest for guardians and guardian-designees employed pursuant to this article 94; and

(b) The solicitation and acceptance of gifts, grants, and donations pursuant to section 13-94-108(3).

§ 13-94-108, C.R.S.

(1) The office of public guardianship cash fund, referred to in this section as the “fund”, is created in the state treasury. The fund consists of any money that the

office receives from gifts, grants, or donations, as well as any other money appropriated to the fund by the general assembly.

(2) The money in the fund is annually appropriated to the judicial department to pay the expenses of the office. All interest and income derived from the investment and deposit of money in the fund is credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and not be credited or transferred to the general fund or any other fund; except that any money remaining in the fund on June 30, 2023³¹, shall be transferred to the general fund.

(3) The office may seek and accept gifts, grants, or donations from private or public sources for the purposes of this article 94; except that the office may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this article 94 or any other law of the state. The office shall transmit all private and public money received through gifts, grants, or donations to the state treasurer, who shall credit the same to the fund.

§ 13-94-109, C.R.S.

Public guardianship services are dependent upon the availability of funding, and nothing in this article 94 creates an entitlement.

§ 13-94-110, C.R.S.

As an agency of the judicial department, the office is a public entity, as defined in section 24-10-103(5), for the purposes of the “Colorado Governmental Immunity Act”, article 10 of title 24.

§ 13-94-111, C.R.S.

This article 94 is repealed, effective June 30, 2023³¹. Prior to such repeal, the general assembly, after reviewing the report submitted by the director pursuant to section 13-94-105(4), shall consider whether to enact legislation to continue, discontinue, or expand the office.