

# Vermont Office of Public Guardian Annual Report

State Fiscal Year (SFY) 2023



Developmental Disabilities Services Division  
Department of Disabilities, Aging and Independent Living  
Agency of Human Services | State of Vermont

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## Purpose of the Office of Public Guardian (OPG)

The Office of Public Guardian (OPG) operates within the Vermont Developmental Disabilities Services Division in the Department of Disabilities, Aging, and Independent Living (DAIL). Individuals receiving guardianship from OPG are in the custody of the Commissioner of DAIL and the assigned guardians act as designees of the Commissioner.

Public guardians are appointed by the Family Court (Title 18 Chapter 215) and Probate Court (Title 14 Chapter 111 § 3091) to assist individuals to make major life decisions when the court finds that they are not able to make certain decisions independently, that alternatives to guardianship are insufficient, and there are no suitable and willing private guardians.

According to the policy and laws of the State of Vermont, guardianship shall be used only as necessary to promote an individual's safety and wellbeing and to protect the individual from violations of his or her human and civil rights.

Guardianship shall encourage maximum self-reliance and independence and only the least restrictive form of guardianship shall be ordered based on the individual's abilities and needs. Public guardianship is only intended to be used when the court is unable to appoint a suitable and willing private guardian and the individual lacks the financial resources to pay for a professional private guardian.

Under Vermont law, OPG is authorized to provide guardianship for:

- Adults (18 or older) with developmental disabilities (DD), or
- Persons 60 years of age or older (older Vermonters) with significant cognitive impairments, and
- Who require assistance with major life decisions, and
- For whom a suitable and willing private guardian cannot be found.

## Philosophy and Principles

When making decisions on behalf of a person under guardianship we consider the following:

- Is this decision within the powers granted by the court?
- Does this decision require court approval?
- What does the person prefer?
- Will this decision put the person at a risk of harm that is too high?
- Will this decision promote the person's independence and self-reliance?
- Does this decision promote and protect the civil and human rights of the person?
- Do we need more information and opinions?

## Guardianship Powers

Family Court orders of guardianship can include the following areas:

- **General supervision** - Decisions about where someone lives, types of services and supports, school, work, and sale or encumbrance of real property.
- **Contracts** - Decisions about approving or withholding approval for formal agreements such as rental/lease arrangements, cell phones, and car loans.
- **Legal** - To obtain legal advice and to commence or defend against judicial actions.
- **Medical and dental** - To seek, obtain, and give consent to initiate or discontinue medical and dental treatments.

Probate Court orders of guardianship can include the above, plus the powers to:

- **Sell or Encumber Personal or Real Property** - This power authorizes the approval of the sale or encumbrance of real property, such as buying or selling real estate.
- **Exercise Supervision over Income and Resources** - This power addresses the day-to-day management of the individual's finances and grants the guardian authority over income and spending of the individual.

It should also be noted that, although the court authorizes a guardian to exercise these powers and make decisions on behalf of people, guardians cannot force people under guardianship to comply with those decisions.

#### Other Functions

In addition to serving as guardian, the Office of Public Guardian:

- Serves as **representative payee** receiving and managing Social Security or Supplemental Security Income for 314 individuals in State Fiscal Year 2023 (SFY 2023).
  - Many of these individuals are also under public guardianship.
  - One fourth of these individuals do not have a guardian and the rep payee service is an effective alternative to guardianship.
- Provides short-term **consultation** to individuals or teams when this can provide a less restrictive alternative to guardianship or ease the transition out of guardianship.
- Provides public education on guardianship and alternatives to guardianship.
- Recruits and assists **private guardians**, who are usually adult family members or friends of a person who has lost or has not developed decision-making capacity, and assists in developing individualized alternatives to guardianship.
- Arranges and manages court-ordered evaluations for both public and private guardianship proceedings (309 ordered in SFY 2023, of those 15 were withdrawn or individual died before completion).

## Office of Public Guardian Staff

During SFY 2023, the Office of Public Guardian was staffed by 29 full-time employees and 1 part-time temporary employee, including:

- 19 Guardians and 5 Supervisors with caseloads ranging from 21-32 individuals
- 1 Administrative Services Coordinator
- 1 part-time Administrative Services Coordinator
- 2 Community Financial Specialists (representative payee)
- 1 Intake and Diversion Specialist with partial caseload
- 1 Director with partial caseload

During SFY 2023, 2 OPG staff resigned, and 1 person passed away. This resulted in 1 person moving from an interim to a permanent position and 2 new hires.

Guardians are available to respond to emergencies 24 hours a day, 7 days per week. The strength of the program is a result of the depth of experience of the guardians, the strong relationships that are formed with people under guardianship and with service providers, and a strong commitment to advocacy for vulnerable adults.

## People Served

During State Fiscal Year 2023, the Office of Public Guardian served the following number of people (current and terminated orders):

Guardianship (DD/Family& Probate Court)	593
Guardianship (60+/Probate Court)	136
Consultation	3
Total Assigned to Guardian Caseloads	732
Rep Payee not in guardianship	70

(Total served Rep Payee 314)	
Unduplicated Total Served by OPG	802

New People Served in SFY 2023:

People with DD	22
Older Vermonters	39
Consultation	1
Total New People Served in SFY 2023	62

People Terminated from Services in SFY 2023:

People with DD (Deceased 17, Powers Returned 18, Private 3)	38
Older Vermonters (Deceased 17, Powers Returned 3, Private 1)	21
Consultation (Independent)	1
Total People Terminated from Services in SFY 2023	60

### Reasons for Public Guardianship

The over-arching reason why people who need guardianship and come into public guardianship is the lack of suitable and willing family or friends to assume this responsibility. Within that context, there are numerous variables associated with each referral that may be instructive to consider.

In SFY 2023, 61 people were placed on Public Guardianship for the following reasons:

- 30 people were placed on public guardianship due to risk of harm, which could be attributed to: poor/dangerous decisions, self-neglect, declining abilities, and other issues associated with aging.
- 16 people transferred to public guardianship when their private guardians resigned, died, or were removed by the court.

- 5 people were placed on public guardianship because they needed emergency medical care and/or needed to be discharged from the hospital and couldn't be placed without a guardian.
- 5 people aged out of custody from the Department for Children and Families (DCF). This happens when a young adult turns age 18 and is no longer eligible for DCF custody. Often, people who are placed on public guardianship from DCF custody come with backgrounds of significant abuse, neglect, exploitation, and serious emotional or behavioral challenges.
- 5 people were placed on public guardianship because of an investigation of abuse, neglect, or exploitation by Adult Protective Services.

Petitions which resulted in public guardianship in SFY 2023:

In descending order of frequency, public guardianship was successfully sought by the following petitioners:

- Family members/friends/private guardians: 19
- Hospitals: 11
- Nursing homes/Residential care homes: 8
- Developmental and Mental Health/TBI Agencies: 5
- DCF: 5
- Direct orders from the Court-5
- APS: 4
- Attorneys: 3
- Self: 1

### Challenges of SFY 2023

In addition to more typical challenges facing OPG in the past and present, SFY 2023 was another year of operations during the COVID-19 pandemic. However, on May 11, 2023, the federal COVID-19 Public Health Emergency (PHE) declaration ended. The end of the PHE did not affect OPG operations



as vaccines, testing, treatments, and preventative measures remained. OPG continued to utilize a hybrid model of virtual and in-person visits, particularly in situations when the person, guardian, and/or team member was sick.

In SFY 2022, the labor shortages in both the developmental disability and aging fields reached a crisis level and this has unfortunately continued through SFY 2023. Prior to the COVID-19 pandemic, staffing was a problem, and the pandemic only exacerbated the issue. Because of these staffing shortages, people under guardianship were left with little to no community supports and many have remained without them or with drastically reduced services. The statewide shortage of housing options for people with developmental disabilities and older Vermonters has also reached critical levels. Due predominately to staffing shortages, at least eight Residential Care Homes in Vermont closed their doors in SFY 2023, leaving many older Vermonters with little to no options in-state.

OPG continued to face the ongoing challenges to its capacity in five areas:

1. Atypical caseload numbers
2. Severity of need
3. A growing number of individuals who disregard and reject assistance of the guardian.
4. A growing number of older Vermonters placed in out of-state skilled nursing facilities due to a lack of capacity within Vermont.
5. Increasing referrals to the OPG Representative Payee program due to some Designated and Specialized Service Agencies no longer offering this service.

#### Caseload Numbers

A significant challenge facing OPG is the increasing number of people under public guardianship as compared to the number of guardians assigned to support them since 2001. As part of overall cuts in positions within the Developmental Disabilities Services Division (DDSD) in 2009, OPG went from

having 27 full-time guardians to 25. As of SFY 2023, that number has decreased by 1, leaving OPG with 24 full-time guardians.

Since 2001, the average caseload per guardian has increased by 34%. At present, the average caseload per guardian (including supervisors) is 31, which is over 1.5 times the nationally recommended limit of 20 individuals for guardians and over 3 times the nationally recommended limit of 10 individuals for supervisors. Because of the increasing number and complexity of individuals served, the guardians' ability to meet requirements and expectations are more and more constrained.

The Vermont guardianship statutes require that guardians maintain close contact with persons under guardianship. This is necessary to be as knowledgeable as possible about the person's wishes and desires, to monitor their safety and well-being, and to advocate on their behalf. Because of the grossly high caseloads, guardians are not able to always maintain close contact with each individual on their caseload. This impinges upon the quality of services that OPG is able to provide. Left unaddressed, this strain is likely to place the individuals, guardians, and ultimately DAIL at risk due to important factors that will be overlooked with the shortage of time spent with each individual under guardianship.

#### Severity/Complexity of Need

Another main challenge for OPG is the increasing level of complexity that individuals coming into guardianship present. This includes the following issues:

- The proportion of older Vermonters in OPG's guardianship (as compared to people with developmental disabilities) has been steadily increasing as the population of the state ages. Guardianship duties and responsibilities are often broader and more time-consuming for older Vermonters, as they tend to have possessions, real estate, and complicated financial situations that guardians must resolve. It is also increasingly difficult to find appropriate services or placements, as

there is no designated system which is obligated to serve this population.

- Obtaining and maintaining residential supports for older Vermonters experiencing mental health and/or behavioral challenges, whose needs are not being met at home, in a residential care home, or in a nursing home is particularly challenging. Some of these individuals remain at the emergency room, hospital or even jail for lack of an appropriate placement for an extended period of time.
- Many nursing homes refuse to admit people without advance directives or guarantee of payment and as a result guardianship is sought to secure admission.
- Young adults leaving DCF custody who have experienced years of trauma due to abuse and neglect. Some come directly to OPG from in-state and out-of-state institutions. Despite concerted efforts to improve the process, the transition from DCF custody and services into adult guardianship and services is rarely smooth, and young adults often turn 18 without their benefits, services, and guardianship in place.
- Emergency guardianship for people referred by Adult Protective Services who have experienced abuse, neglect, or exploitation. Often these individuals wish to remain living with or supported by the perpetrators and the guardian must balance risk of harm with the person's wishes.
- Individuals with **dual-diagnoses**, a developmental disability and serious mental health or substance abuse disorder.
- Individuals who engage in dangerous criminal behavior.
- Individuals placed in public guardianship who are not statutorily eligible for public guardianship and are also not eligible for home and community-based services. The guardian is responsible for the individual's well-being and community safety, yet there are limited support services available.
- Providing guardianship to parents who have minor children presents multiple issues and challenges.

## Refusal of Assistance

Individuals who actively resist supports from a guardian and have the capacity to make other choices which may not be in their best interest require a tremendous amount of time and effort from a guardian but benefit very little from guardianship. These individuals do make and follow their own choices and decisions, such as leaving or refusing needed services, moving, being homeless, driving without a license, misusing substances, refusing medical treatment, and committing crimes. Sometimes people under guardianship go for long periods of time evading contact with the guardian. The evolution of social media has also complicated guardianship. Even if a vulnerable person is “hooking up” with people online and then meeting them in person for sex or other activities that may not be safe or desired by the person, making illegal threats, or posting pornographic images of themselves on social media, it is often not feasible or legal to restrict that person’s access unless there is a court order restricting them. Other team members often expect the guardian to authorize a restriction which is not court ordered and/or cannot be enforced.

## Older Vermonters Placed in Out-of-State Nursing Homes

Because of staffing shortages, which have resulted in the closure of Residential Care Homes and Skilled Nursing Facilities in Vermont, there is insufficient capacity for those who require this level of care.

Older Vermonters who present with intensive behavioral challenges are more often than not, refused admission to every nursing home in Vermont. Consequently, they are then referred to out-of-state facilities and ultimately placed there once accepted. These facilities are often several hours away from Vermont, which presents serious challenges for guardians with already high caseloads to maintain close contact. Additionally, OPG must contend with the complications of registering Vermont guardianships in another state or complying with the regulations of other states.

## Increasing Referrals to the OPG Representative Payee Program

Due to Home and Community Based Services Conflict of Interest regulations, a DA/SSA providing case management services cannot also provide

Representative Payee services. Therefore, DAs/SSAs have begun exploring alternative options, namely a third-party entity, Balanced Care, to provide these services for a monthly fee. The OPG provides free Representative Payee services to people under public guardianship when there are no other options; and to people not under public guardianship as a less restrictive alternative. The first DA to make the switch to Balanced Care during SFY 2023 was the Howard Center. As a result, the OPG Representative Payee program took on an additional 39 cases. Based upon current staffing, the OPG Representative Payee program will reach capacity around 350 people served. This means that the program can only take on about 35 new people. Once the program reaches capacity, this will result in people under public guardianship transferring to Balanced Care and paying the monthly fee.

### Accomplishments in SFY 2023

- Updated the OPG Procedure Manual.
- Created the Older Vermonters Complex Case Staffing's Team, which includes staff from OPG, Agency of Human Services, Department of Mental Health, and DAIL Adult Services Division. The team helps guardians brainstorm solutions/ideas for older Vermonters who are under public guardianship and have complex needs.
- Worked with the Unclaimed Property Division of the Office of State Treasurer to develop a process to transfer the unused funds of deceased clients.
- Transferred the oversight/management of client State Treasury Achieving a Better Life Experience (STABLE) accounts from OPG regional teams to the OPG Representative Payee program, which resulted in a more streamlined process. STABLE accounts allow individuals with disabilities to save and invest money without losing eligibility for certain public benefits programs, like Medicaid or SSI/SSDI.
- Supported clients at end-of-life by ensuring the person's wishes were followed and by seeking review from the DAIL Ethics Committee and/or the Probate Court.
- Strongly advocated for COVID-19 vaccinations/boosters for clients.

- Onboarded 2 staff into new positions.
- Continued work on increasing the use of **Supported Decision-Making** as it allows an individual with a disability to retain the final say in her or his life. Under supported decision-making models, adults with a disability get help in making and communicating decisions, while retaining control over who provides that help.
- Provided trainings to a variety of stakeholders regarding guardianship and its alternatives.

### Goals for SFY 2024

- Continue work on increasing the use of Supported Decision-Making and provide Supported Decision-Making handouts.
- Continue to develop additional strategies for helping people learn skills required to make their own decisions and no longer have a need for a guardian.
- Advocate for new Public Guardian positions so caseload ratios decrease and align closer to the nationally recommended averages.
- Advocate for a new Administrative Services Coordinator position and Community Financial Specialist position in order to increase the capacity of the OPG Representative Payee program due to DAs/SSAs no longer offering Representative Payee services.

