

**Office of Public Guardianship**  
**Advisory Committee Recommendations**

THE PUBLIC GUARDIANSHIP ADVISORY COMMITTEE’S REPORT  
TO THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT

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Hon. Michael Singer	13 <sup>th</sup> Judicial District
Hon. Mark MacDonnell	16 <sup>th</sup> Judicial District
Hon. Mary Deganhart	7 <sup>th</sup> Judicial District
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Nancy Sharpe	Arapahoe County Commissioner
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Mary Catherine Rabbitt	Legal Center for People with Disabilities and Older People
Arlene Miles	Colorado Health Care Association

Date of Recommendation: \_\_\_\_\_, 2014

## Acknowledgements

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## Definitions and acronyms

**PUBLIC GUARDIANSHIP:** The appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian.<sup>1</sup>

**PUBLIC GUARDIAN:** the Director of the Office of Public Guardian or their designee.

**GUARDIANSHIP:** a legal arrangement where a person or institution is appointed as a guardian to make decisions for an incapacitated person which may include decisions about housing, medical care, legal issues, and services. In Colorado, a guardian may also manage certain of the Ward's funds without the appointment of a conservator. §15-14-314, C.R.S.

**GUARDIAN:** an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem. §15-14-102(4), C.R.S.

**CONSERVATORSHIP:** a legal arrangement where a person or institution is appointed to handle the financial affairs for another person. The conservator collects and deposits any income, pays any debts or bills, secures all assets, and handles taxes and insurance. A person appointed as guardian may also be appointed as conservator, or a separate conservator can be appointed.

**CONSERVATOR:** a person at least twenty-one years of age, resident or nonresident, who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator. §15-14-102(2), C.R.S.

**PROTECTED PERSON:** an individual for whom a conservator has been appointed or other protective order has been made. §15-14-102(11), C.R.S.

**WARD:** an individual for whom a guardian has been appointed. §15-14-102(15), C.R.S.

**OCR:** The Office of the Child's representative (OCR) is the state agency mandated to provide competent and effective best interests legal representation to children involved in Colorado court system. §§13-91-104 *et seq.*, C.R.S.

**GUARDIAN- DESIGNEE:** An individual who is appointed as a guardian by the Court through the Office of the Public Guardian.

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<sup>1</sup> Teaster, P., Wood, E., Karp, N., Lawrence, S, Schmidt, W., Mendiondo, M. *Wards of the State: A National Study of Public Guardianship*. The Retirement Research Foundation, (2005), p. 31.

## Section 1. Introduction

SUPREME COURT OF COLORADO  
OFFICE OF THE CHIEF JUSTICE

**ORDER**

**Establishing the Public Guardian Advisory  
Committee and Charge to the Committee**

Colorado lacks sufficient systems to protect incapacitated adults who do not have appropriate family or friends available to act as guardian. For high-risk, low-income persons there is no money to hire a professional fiduciary. Additionally, the State of Colorado does not have a public guardianship program or other resources that could address the needs of these vulnerable people.

In its final report to the General Assembly, the Elder Abuse Task Force, created by Senate Bill 12-078, recommended further study of the need for and implementation of a public guardianship system in Colorado. In order to better understand the approaches to public guardianship that may work best in Colorado, the Public Guardian Advisory Committee is hereby established and charged with the following tasks:

- **Assess the current system and the unmet need for public guardianship services in Colorado**
- **Identify workable options and models to address the need for public guardianship services**
- **Analyze the options identified including the cost, availability of viable funding sources, potential staffing needs, ethical considerations, and unintended consequences**
- **Recommend a model and implementation strategies that best address statewide public guardianship needs in Colorado**

The Public Guardian Advisory Committee shall report back to the Chief Justice with their findings and recommendations on or before April 30, 2014.

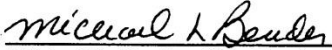
The following persons are appointed to serve as members of the Public Guardian Advisory Committee:

<u>Name</u>	<u>Affiliation</u>
Hon. Elizabeth Leith (Chair)	Denver Probate Court
Hon. Stephen Munsinger	1 <sup>st</sup> Judicial District
Hon. Michael Singer	13 <sup>th</sup> Judicial District
Hon. Mark MacDonnell	16 <sup>th</sup> Judicial District
Hon. Mary Deganhart	7 <sup>th</sup> Judicial District

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Kelly Perez	Policy Advisor, Office of the Governor
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Nancy Sharpe	Arapahoe County Commissioner
M. Carl Glatstein	Elder Law Bar
Sarah Solano	Guardianship Alliance of Colorado
Amy Nofziger	AARP Foundation
Dr. Deb Bennett-Woods	Colorado Collaborative for Unrepresented Patients
Darla Stuart	ARC of Aurora
Dr. Rebecca Paskind	NASW Colorado
Mary Catherine Rabbitt	Legal Center for People with Disabilities and Older People
Arlene Miles	Colorado Health Care Association

Additional persons may be asked to serve as sub-committee members when deemed appropriate by this advisory committee as related to the goals and objectives assigned in this charge.

Done at Denver, Colorado this 3<sup>rd</sup> day of July, 2013.

  
 Michael L. Bender, Chief Justice

**Challenge:**

Colorado lacks sufficient systems to protect incapacitated adults who do not have appropriate family or friends available to act as guardian, or the financial resources to hire a professional fiduciary. Additionally, the State of Colorado does not have a public guardianship program that could address the needs of vulnerable people.

**Scope of Work:**

In its final report to the 2013 General Assembly the Elder Abuse Task Force, created by Senate Bill 12-078, recommended further study regarding the need for the implementation of a public guardianship system in Colorado. In order to better understand the approaches to public guardianship that may work best in Colorado, the Public Guardian Advisory Committee was established by the Chief Justice of the Colorado Supreme Court and charged with the following tasks:

- **Assess the current system and the unmet need for public guardianship services in Colorado**
- **Identify workable options and models to address the need for public guardianship services**
- **Analyze the options identified including the cost, availability of viable funding sources, potential staffing needs, ethical considerations, and unintended consequences**
- **Recommend a model and implementation strategies that best address statewide public guardianship needs in Colorado.**

**Process:**

The Public Guardian Advisory Committee (PGAC) reviewed models for Offices of Public Guardianship within the United States. The PGAC has attempted to ascertain the level of need within the State of Colorado for the appointment of guardians for adults, as well as the practical considerations attendant to such appointments. The PGAC enjoys a broad membership which has allowed an expansive review including many different points of view. Individual Committee members contributed their direct observations, data from groups affected by this issue, public data, review of relevant publications, and review of a model developed by Professor Winsor Schmidt, Endowed Chair/Distinguished Scholar in Urban Health Policy, which is intended to project the unmet need for public guardianship.

Through extensive discussion, review of surveys from various interest groups, and analysis of the existing models, the PGAC has determined what it believes are viable options for implementation of an office of public guardian in Colorado. Members of the PGAC are united in

their determination that a definite need exists in Colorado for a public guardian. Due to the unavailability of definite numerical information or statistics, the PGAC strongly recommends the creation of a legislative study to further define and ascertain the cost for an Office of Public Guardian, as well as to determine where such an office would be housed. Viable options that have been discussed include creating a new and separate office modeled after the Office of the Child's Representative (OCR) within the Judicial Branch, an extension of the OCR, or an agency within the Department of Human Service in the Executive Branch. The PGAC has determined guardians appointed through an office of public guardian should be paid, as should the director and staff for such an office. These costs require further study which could best be provided through the legislative study process.

## **Section 2. Summary of Recommendations**

### **The Committee recommends:**

- The 2014 General Assembly initiate a legislative study to quantify Colorado's unmet need for public guardian services for incapacitated, indigent and isolated populations, to assess the average cost associated with these services, and to determine funding for such a program
- The study should include a determination as to whether an OCR-LIKE model is preferable and feasible statewide
- Alternatively, the study should include a determination as to whether the OCR could, or should, be expanded to include the Office of the Public Guardian
- The study should include a determination as to whether the Office of the Public Guardian should be a part of the Department of Human Services
- The study should include a determination as to how the public guardian or guardian-designees would be paid

### **Narrative:**

The Committee unanimously agrees a definite and expanding need exists for the services of an Office of the Public Guardian. However, the scope of the need remains undefined. Experts vary too widely regarding the unmet need in Colorado, from several hundred to several thousand individuals. Therefore, a legislative study should be initiated to quantify Colorado's unmet need for public guardianship services for the incapacitated, indigent and isolated population, as well as to assess its corresponding cost. The Committee recommends an interim/legislative committee be formed to further support the work of this task force and to implement recommendations from the legislative study. The task force members offer their willingness to continue to serve and/or support such committee.



Based upon its study of the issue of public guardianship needs in Colorado, the PGAC has determined there is no one program or agency in Colorado that provides guardianship services for incapacitated, indigent and isolated individuals statewide. Colorado volunteer organizations, on their own, have been unable to meet all of the current incapacitated, indigent and isolated individual guardianship needs. At any given time, there remains a shortage of volunteer guardians.

The PGAC has further determined that the Department of Human Services, through its Adult Protection Units (APS), has an inherent conflict of interest in acting as public guardian for several reasons. APS caseworkers receive reports of suspected elder abuse, self-neglect and exploitation, and investigate those reports. For appropriate cases in certain Colorado counties APS will initiate, through the county attorney, a petition for appointment as guardian with the APS caseworker as the guardian-designee. The caseworker also locates and obtains appropriate services for the ward. Most Colorado counties are unable to provide these services due to funding constraints. Current regulations prohibit APS from solely making medical decisions for the wards. For these reasons, the PGAC has determined the APS should not be mandated to be the public guardian of last resort. The analysis of the Social Agency Model assumes a public guardianship office that would be separate and distinct from the APS, although still included within the Department of Human Services.

Through its analysis of current volunteer programs available in Colorado and the State of Kansas public guardianship program, all of whose guardians are volunteers, the PGAC has determined an all-volunteer organization is insufficient to meet any demand for guardianships. The PGAC has determined the Kansas public guardianship program, although volunteer in substance, receives subsidies from the state's general funds. Volunteer guardians do not appear to be available in all areas of Colorado and there are waiting lists for guardians in the metropolitan areas where volunteer guardians are available. The PGAC did not find any state which uses a private company for public guardianship services, as the population intended to be served by a public guardian by definition has no funds available other than some form of public assistance benefits, which are primarily used for the individual's food, clothing and shelter needs.

### **Section 3. Models Studied and Committee Methodology for Developing the Recommendations**

#### **Public Guardianship Models:**

The Committee adopted the statutory classification of the public guardianship, as developed originally by (Regan and Springer, 1977), with some modifications. The traditional four governmental administrative structure options are:

- (1) COURT MODEL – the formation of the public guardianship function in the court system;

(2) INDEPENDENT MODEL – the formation of the public guardianship office as an independent agency in the executive branch;

(3) SOCIAL AGENCY MODEL – the placement of public guardianship in an agency that provides direct service to the ward, either at the state or county level;

(4) PRIVATE SECTOR MODEL – created by subsidy or public charities on moral or religious grounds.

Option (4) PRIVATE SECTOR MODEL was dropped from further consideration because the committee is unable to find any state using a private model. There are simply not enough incentives to create a market condition for this population. Even volunteer guardianship states, such as Kansas, depend upon administrative governmental funds and have been unable to meet current incapacitated, indigent and isolated individual guardianship needs.

### **Colorado’s Limited Public Guardianship Models:**

The Social Agency Model (Option 3) has been administered by the State Department of Human Services Adult Protective Services in a limited capacity.

The Court Model (Option 1) is subdivided into two separate options:

(1.a) Court Model, and a hybrid

(1.b) OCR-Like Model – the placement of the Office of Public Guardianship as a limited, quasi-independent department in the Judicial Branch, modeled after the presently-existing OCR

## **Criteria Used to Assess Public Guardianship Options and Recommendations**

The four combined options considered by the PGAC for Colorado are:

(1.a) COURT MODEL

(1.b) OCR-LIKE MODEL

(2) INDEPENDENT MODEL

(3) SOCIAL AGENCY MODEL

In recommending an option, the following categories of criteria were used:

SUBSTANTIVE CRITERIA identifies the particular *values* preferred in each option.

The substantive criteria consisted of:

- Timely provision of services
- Simple application, avoiding complexity
- Respectful of those in need
- Has local application/good community connection

- Aims toward the least intrusive measures
- Increases number/quality of private guardians available
- Meets needs in both urban and rural areas
- Encourages volunteerism.

ORGANIZATIONAL CRITERIA demonstrates how *effective* an organization will be in achieving the outcomes intended.

The organizational criteria consisted of:

- Meets applicable ethical standards
- Can produce evidence-based results
- Can have political buy-in
- Can be appropriately staffed
- Engages the private sector/civil society
- Appropriately uses standard processes
- Effectively addresses conflicts of interest

RESOURCE CRITERIA makes tradeoff possible - within the options - rather than considering the full range of every parameter.

The resource criteria consisted of:

- Appropriate overhead/administrative cost
- Reasonable expectation of funding
- Appropriate staffing costs
- Ability to generate revenue via training programs
- Is sustainable in anticipated growing need
- Expansion and use of existing resources

A commonly-used matrix approach was used in the decision-making process listing the four Colorado options against the three criteria. The idea of the matrix was not a mechanistic one, but as a tool to rank the success of each option against each other and to sharpen the deliberation process. The values were ranked on a scale from very high to very low.

## Section 4. PGAC Evaluation of Public Guardian Models and Recommendations

**Recommendations:** in sequential ranking of importance and preference

1. OCR-LIKE MODEL
2. SOCIAL AGENCY MODEL
3. INDEPENDENT MODEL
4. COURT MODEL

The preferred structure for the office of a public guardian is an OCR-LIKE model, either as a direct extension to the existing OCR Model or as a newly and separately-created department within the Judicial Branch. The committee prefers an extension to the existing OCR, based upon the matrix criteria evaluation, but would also support the creation of an independent office. The second best structure for the office of public guardian is placed within the Social agency for its consistency and traditional perceived function. The final two models were tied in last place because they are neither sustainable nor resolve the core issues of need.

### **Substance Criteria Evaluation:**

(1.b.) OCR-LIKE MODEL was rated the highest (HIGH – VERY HIGH), followed by (2) INDEPENDENT MODEL rated (MODERATE– HIGH), followed by (3) SOCIAL AGENCY MODEL and (1) COURT MODEL, rated (MODERATE).

### **The most distinguishing factors were:**

- OCR-LIKE Model would have most substantive criteria already met, if annexed as an expansion to the present OCR
- OCR-LIKE Model encourages volunteerism unlike other models that are inherently constrained by statutory or ethical obligations
- While the INDEPENDENT Model may be considered a better model with respect to substance, the practical aspects of implementing this model in Colorado are significantly hampered by its cost, lack of consistency and political buy-in
- While the COURT Model may accomplish all the substance criteria both in rural and urban areas, its success is hampered by the underlying inherent ethical and statutory limitations
- The SOCIAL AGENCY Model in Colorado would follow similar offices using a state supervised, county administered scheme. There would be both pros and cons to establishing an office of public guardianship within the Department of Human Services, as described below

### **Further Study Needed:**

- Expansion of Colorado's present OCR-model is feasible or whether a new agency within the judiciary can or should be established based on the OCR-model
- Whether a public guardianship office can or should be established within the Department of Human Services

### **Narrative:**

The OCR was created by the General Assembly in 2000 to improve representation for Colorado's most vulnerable *children* by establishing minimum practice standards and providing litigation support, accessible high-quality statewide training and oversight of the practices. The OCR oversees attorneys that provide legal representation as guardians ad litem. In its structure, it provides timely services, is simple in application and avoids complexity, is respectful of those in need, has good community connections, aims toward the least intrusive measures, increases the number of qualified providers, and encourages volunteerism. OCR not only partners with volunteers, but it finds and trains them, thereby creating an eligibility list for the courts of who can be appointed.

The Committee envisions the expansion of the present OCR model by annexing the public guardianship to include not only Colorado's most vulnerable children but also Colorado's most vulnerable adults. Therefore, this possibility should be explored, if an expansion to the present OCR model is feasible or if the establishment of a new office is preferable.

The OCR-LIKE Model may have a weakness exhibited from the OCR rural experience. The OCR model had a difficult time meeting the needs of the rural communities due to a lack of qualified individuals in certain areas. However, the training requirements to become eligible for OCR may be more stringent than the training requirements for a public guardianship. The need for public guardianship services may also be proportional to qualified contractors in certain areas. The committee determined there is a possibility of providing guardianship services in rural areas of the state with the assistance of the county social worker staff, which would allow the guardian-designee to live in a different area of the state.

While some members considered the INDEPENDENT Model – on substantive criteria - to be a better academic model because of its independence, the practical aspects of implementing this model in Colorado are significantly hampered by the perceived cost and lack of political buy-in. This model was rated lower in organizational and resource criteria. Even though a few states have successfully implemented this model in their states, the same success story may not necessarily translate well in Colorado's political and financial climates. In the end, this model was not consistently reliable in addressing all the needs reviewed, due primarily to the scarcity of financial resources. Therefore, the committee did not invest more time and energy to explore the finer details of this model, but recognizes its potential appropriateness as a model for a public guardianship office.

While the COURT model may accomplish all the substance criteria both in rural and urban areas, its success is hampered by the underlying ethical and statutory limitations.

The SOCIAL AGENCY model could accomplish all of the substance criteria both in rural and urban areas, although this model is also hampered by an inherent conflict of interest with having DHS programs identify persons in need of guardianship, establish evidence of need, petition and then be appointed as guardian.

#### Cons to placing the OPG within the Department of Human Services

If the recommendation is for a state supervised, county administered model:

- Lack of expertise with elderly and disabled populations in some counties
- Limited resources to support new office and need for infrastructure and overhead
- Low population centers would have limited opportunity to develop expertise
- 36 counties do not hold guardianship through the APS program and so have very limited experience with probate court/laws
- Inherent conflict of interest in having DHS programs identify persons in need of guardianship, establish evidence of need, petition and then be appointed as guardian
- DHS programs likely to refer to OPG would include Mental Health Centers, State hospitals, Regional Centers, Long Term Care Ombudsman, Adult Protection Services, Single Entry Point Agencies, Area Agencies on Aging. Counties are an extension of the Executive Branch and would likely also refer to the OPG, including hospitals and long term care facilities

#### Pros to placing the OPG within the Department of Human Services

If the recommendation is for a state supervised, county administered model:

- The Department of Human Services (DHS) is already an established entity for administering programs
- 28 counties already hold guardianship through the APS program
- DHS has a good understanding of and relationship with programs and service providers/resources available in the community on a state-wide basis
- The courts and state office of the OPG would provide two layers of oversight

### **Organizational Criteria Evaluation:**

(1.b.) OCR-LIKE MODEL was rated the highest (HIGH – VERY HIGH), followed by the INDEPENDENT model rated (MODERATE). All other models were rated (VERY LOW – LOW – MODERATE).

### **The most distinguishing factors between**

- OCR-LIKE Model would have most organizational criteria met, if annexed as an expansion to the present OCR
- OCR-LIKE Model meets its applicable ethical standards
- The INDEPENDENT Model lacks in organizational criteria
- The COURT model may accomplish all the organizational criteria both in rural and urban areas, but its success is hampered by the underlying inherent ethical and statutory limitations
- The SOCIAL AGENCY model has an inherent conflict of interest with having DHS programs identify persons in need of guardianship, establish evidence of need, petition and then be appointed as guardian

### **Further Study Needed:**

- Whether expansion to the present OCR-model is feasible or if a new office can be established similar to the OCR

### **Narrative:**

The OCR-LIKE model, as an extension of OCR, meets its applicable ethical standards by the nine-member representative board appointed by the Colorado Supreme Court. The diverse and experienced board represents all seven congressional districts and has a balance of Republican and Democratic members. The Board must consist of three attorneys, three advocates for children in the court system, and three citizens. There must be no more than five members of one political party and six of the seven congressional districts must be represented on the Board. The Board serves without compensation and works cooperatively with OCR's Executive Director to provide fiscal oversight, participate in policy and funding decisions, and assist in guardian ad litem (GAL) and court appointed special advocate (CASA) training, as needed.

The OCR-LIKE model, as an extension of OCR, can produce evidence-based results, has existing political buy-in, can be expanded and appropriately staffed using existing OCR resources, and has established standards of processes.

While the INDEPENDENT model meets the applicable ethical standards, it lacks in most organizational criteria, because of the underlying need for funding that has a low to moderate expectation of success. Proposal of a newly-created independent agency does not expand upon existing resources or guarantee political buy-in. It will cost additional money and resources to

develop and to administer. However, from a consumer point of view, this model may be seen as less hierarchical and have the ability to respond more quickly to various needs. Even though a few states have successfully implemented this model, the same success story may not necessarily translate well in Colorado's political and financial climates. In the end, this model was not consistently reliable in addressing all the needs requested due to the scarcity of financial resources and political uncertainty.

While the COURT model may accomplish all the organizational criteria both in rural and urban areas, its success is hampered by the underlying ethical and statutory limitations. The COURT model was rated lower, because of its inherent difficulties with the organizational criteria. Judges must avoid all impropriety and appearance of impropriety. Soliciting aid and support are specifically prohibited. The public confidence in the judiciary is eroded by the appearance of improper conduct and conflict of interest. The avoidance of unethical perception was a significant factor in evaluating this category of criteria.

The SOCIAL AGENCY model at first blush, might seem the most logical placement for public guardianship in the general public's perception; however, the Committee has determined the Department of Human Services Adult Protection has a conflict of interest in acting as public guardian and should not be mandated to be the public guardian of last resort.

The social agency model was also rated lower, because of its inherent conflict of interest whereby one division of the DHS would accept and investigate referrals through APS and then refer those cases to another division (OPG) for the establishment of a guardianship and on-going guardianship services. Under this model, the agency would serve as both guardian and service provider. This creates an inherent conflict whereby the guardian is unable to zealously advocate for the interests of the incapacitated person, including lodging complaints about the services provided. The filing of an administrative action or a lawsuit may be stymied or prevented entirely.<sup>2</sup>

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<sup>2</sup> P. Teaster, W. Schmidt, E. Wood, S. Lawrence & M. Mendiondo, *Public Guardianship: In the Best Interests of Incapacitated People*, Praeger Publishers (2010), at 124.



## **Resource Criteria Evaluation**

(1.b.) OCR-LIKE model was rated the highest (HIGH – VERY HIGH), followed by the COURT model rated (HIGH), the INDEPENDENT model rated (LOW – MODERATE), and SOCIAL AGENCY model.

### **The most distinguishing factors were**

- OCR-LIKE funding requirements would be identical to the COURT model
- OCR-LIKE model, as an annexation to the present OCR, would be the least expensive model
- OCR-LIKE model is a contract-based cost model where no additional contract is signed without an additional existing need
- The INDEPENDENT model may moderately attract a bigger share of the budget funds without internal office competition
- The COURT funding requirements would be identical to the OCR-LIKE model
- SOCIAL AGENCY model “unfunded” task may be detrimental to the purpose and need the public guardianship office might meet

### **Further Study Needed:**

- A legislative study should be initiated to assess the average cost associated with the provision of services

### **Narrative:**

Establishing a new office is inherently more expensive than expanding a presently existing office, because of the existing economy of scale factor. For example, with expansion of an existing office no additional Director would need to be hired, present existing infrastructure could be used and expanded as needed, and existing goodwill could be utilized in support of the office.

The OCR-LIKE model is rated very high, because it is perceived as more flexible compared to the COURT model. Both have the same funding requirements, but the OCR-LIKE model allows recruitment of volunteers in addition to paid guardian-designees, as compared to the court’s fixed paid structures. It also can be expanded, is sensitive to community needs and is flexible about utilization of community resources.

The OCR-LIKE model, as an extension of OCR, creates an eligibility list for the appointment of public guardian-designees. The individual designee would contract directly with the Office of the Public Guardian. Emerging need is addressed by additional contracts rather than by a fixed number of paid employees to handle a given work load, which is also an issue under the SOCIAL SERVICES model. The emerging need creates new contractual opportunities and minimizes the cost on a need-to-pay basis as compared to requesting additional FTE as the workload increases. No two guardianship cases are identical in need and complexity, and the

OCR-LIKE model addresses this need best. Therefore, a contract-based OCR-LIKE model, reduces cost and possible waste within appropriate staffing ratios while remaining flexible enough to sustain anticipated growth or reduction over time.

The OCR-LIKE model may have a higher chance of success for funding than the COURT model because people may feel as though they are helping the needy rather than paying for a judicial institution.

Whether or not an INDEPENDENT model provides a better allocation of funding is difficult to assess in the political vacuum. While this model may not face the same competing “internal” demands with other models, it may compete with the other models for a share of General Funds. Nevertheless, other states that applied this model demonstrate a shortage of funds and therefore fail to address the core need of this model.

The Committee concluded that the OCR-LIKE model is more cost effective than the COURT model, the INDEPENDENT model, and the SOCIAL AGENCY model with its hierarchal structure and detailed rules and prohibitive regulations.

The Committee questions whether or not the SOCIAL AGENCY model is already stretched to its limits within the present economic climate. By asking to provide additional services without significant additional funds, the Committee would add a complex charge to an already “fragile” system and thereby jeopardize the core need of this study.

## **Explanation of Recommendations**

### **The Committee recommends:**

- Legislative study be initiated to quantify Colorado’s unmet need for public guardian services for the incapacitated, indigent and isolated population, as well as to assess the average cost associated with providing these services

### **Narrative:**

The Office of Public Guardianship Advisory Committee recognizes a real need for services of an Office of the Public Guardian in Colorado, even though the Committee is presently unable to quantify the exact need for services with scientific or firm data.

The PGAC recognizes that public guardianship data is elusive and difficult to ascertain.

To arrive at a scientific quantitative assessment of the actual need of services of public guardianship would likely involve the engagement of a resource team or firm to undertake a systematic evaluation of the unmet need. Without allocated funding, this task is beyond the current charge and may inevitably prove to be elusive.

Other states have grappled with the same dilemma. In 1987, Schmidt and Peters studied the unmet need for guardians in Florida and developed a “population-based extrapolation model” to

assess a projected total need for plenary public guardian services based upon the state's population.<sup>3</sup> It extrapolates the need for public guardian services based upon a calculated proven percentage.

The extrapolation model was successfully applied in various states, most recently in the State of Washington. The need for public guardianship services in the State of Washington was subsequently independently validated by the Washington Institute for Public Policy from two different sources and methods.<sup>4</sup>

For Colorado, the developed population-based extrapolation model projects a need for plenary public guardian services to be 5,792 individuals. This number should be reduced by the number of individuals provided guardianships by the Colorado county departments of social services, reportedly 400 in 2006. For the 2012 Colorado population of 5,187,582, this would mean 934 incoming adult guardianship cases per year. Uekert and van Duizend report an estimated mean of 664 open adult guardianship cases per 100,000 adults nationally (albeit with high variance between states).<sup>5</sup> For the 2012 Colorado population of 5,187,582, this would mean 34,446 open adult guardianship cases. Currently Colorado has 934 incoming adult guardianship cases per year, and 34,446 open adult guardianship cases; therefore, the projected total population-based need for plenary public guardian services in Colorado of 5,792 individuals seems to be within parameters established by the model.

Some committee members expressed skepticism at the population-based extrapolation numbers for Colorado in light of their personal experiences with guardianship cases. Despite its track record, some committee members believe that the numbers are too high. Perhaps the best additional insight to overcome skepticism is the realization of the substantial costs and harms incurred by the 5,792 people without legal guardians waiting for timely and appropriate guardian services in Colorado.<sup>6</sup>

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<sup>3</sup> Winsor Schmidt, Kent Miller, William Bell, & Elaine New, *Public Guardianship and the Elderly*, (Ballinger 1981).

<sup>4</sup> Mason Burley, *Assessing the Potential Need for Public Guardianship Services in Washington State*, Olympia: Washington State Institute for Public Policy (Dec. 2011), p. 5.

<sup>5</sup> Brenda Uekert & Richard van Duizend, "Adult Guardianship: A 'Best Guess' National Estimate and the Momentum for Reform," in *Future Trends in State Courts 2011*, National Center for State Courts, p. 108.

<sup>6</sup> See, e.g., pp. 15-17 of W. Schmidt, *Final Report: A Study of Guardianship Services for Vulnerable Adults in North Dakota*, Human Services Committee, North Dakota Legislature (May 30, 2012) citing guardianship cost effectiveness studies:

*Without sufficient appropriate guardianship services, significant health care costs are incurred through inappropriate institutionalization, insufficient deinstitutionalization, excessive emergency care, and lack of timely health care. Guardianship studies from Florida, New York, and Virginia report annual savings by guardianship programs ranging from \$3.9 million to \$13 million. Half of the legally incapacitated public mental hospital patients without guardians in a Florida study could have been immediately discharged if a public guardian was available. The Greater New York Hospital Association lost \$13 million in nine months awaiting appointment of guardians for 400 un-discharged patients. Virginia saved \$5.6 million in health care costs in one year with appropriate public guardian services for 85 patients. Florida saved \$3.9 million in health care costs in one year with appropriate public guardian services. Washington State concluded that: the decrease in average costs of residential settings exceeded the cost of providing a guardian within 30 months in 2008-2011; clients with a public guardian had a decrease of an average 29 hours in*

The State Court Administrator's Office ran independent queries which show an average of 1,000 new adult guardianship cases filed annually over the last 25 years. Of those 25,000 cases initially filed, 6,204 remain open for on-going monitoring in October 2013.

While Professor Schmidt's "population-based extrapolation model" fairly closely predicts the annual incoming adult guardianship cases, a large discrepancy exists between the predicted adult guardianship population model (34,446) and the actual monitored adult population (6,204) cases in Colorado.

Looking more closely at the 1,000 annual incoming adult guardianship cases, the State Court Administrator's Office reports that the majority of cases are closed within the first five years after the initial filing, even though the population distribution characteristics of adult guardianship cases are evenly distributed among the different age groups in Colorado.

Four additional informal surveys were conducted to estimate the general need for services of public guardianships in particular specific settings: 1. Adult Protective Services 2. Denver Health (Hospital) 3. Number of patients at CMHIP without a guardian, and 4. The Arc of Aurora, an association that promotes the human rights of people with intellectual and developmental disabilities.

- A survey of County Department Adult Protective Services Supervisors (30 responses) estimates the current unmet need for services to be 100 guardians for persons who are already APS clients. (see Appendix)
- Denver Health reports a current unmet need for services to be 2-3 persons at any given time. (see Appendix)
- A list of the number of patients at CMHIP who are in need of a guardian (332 persons). (see Appendix)
- A survey conducted by The Arc<sup>7</sup> of Aurora reported that 70.1% (80/114) are aware of people with disabilities who need a guardian but did not have a family member or friend to accept that role. (see Appendix)

## **THE OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)**

OCR was created by the General Assembly in 2000 to improve representation for Colorado's most vulnerable children by establishing minimum practice standards and providing

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*personal care hours needed each month, compared with an increase in care hours for similar clients; 21% of clients with a public guardian had a reported improvement in self-sufficiency in the previous three months. The Vera Institute of Justice Guardianship Project in New York City saved a reported net Medicaid cost-savings of \$2,500,026 for 111 guardianship clients in 2010.*

<sup>7</sup> The Arc of Aurora provides individual and systems change advocacy through information and referral, community education, and individual and family support for people with intellectual and developmental disabilities, (I/DD).

litigation support, accessible high-quality statewide training and oversight of the practices. The OCR oversees attorneys that provide legal representation as guardians ad litem (GAL), counsel for children in dependency and neglect proceedings, child legal representatives (CLR), as well as attorneys appointed to serve as state-paid Child and Family Investigators (CFI).

OCR attorneys represent the interests of children in dependency and neglect (child abuse), delinquency, domestic relations, adoption, truancy, probate, mental health, and paternity cases. The attorney's responsibilities are dependent upon the case type in which the attorney is appointed and the role the attorney serves in that case. An attorney appointed as GAL and CLR must independently investigate, make recommendations that are in the best interests of the child, and advocate on that child's behalf. An attorney appointed as counsel for children in dependency and neglect proceedings is limited to direct representation in contempt proceedings and/or involving therapeutic privilege issues. Attorneys appointed as state-paid CFIs must independently investigate the matter and report to the court. OCR trains all of its attorneys on the law, social science research, child development, mental health and education issues, and best practices relating to issues impacting children involved in court proceedings.

The Colorado Supreme Court appoints the nine-member OCR board (Board) in accordance with the requirements and qualifications found in Colorado Revised Statutes §13-91-104(2). The Board must consist of three attorneys, three advocates for children in the court system, and three citizens. There must be no more than five members of one political party and six of the seven congressional districts must be represented on the Board. The Board serves without compensation and works cooperatively with OCR's Executive Director to provide fiscal oversight, participate in policy and funding decisions, and assist in GAL and CASA training, as needed. The diverse and experienced Board represents all seven congressional districts and has a balance of Republican and Democratic members.

In FY 2013, OCR spent 95.25% of its budget on attorney services, training, and CASA support and only 4.75% on central administration. \$17,657,295 was spent on attorney services for children. \$520,000 was passed directly through to CASA of Colorado. OCR used \$38,000 of its budget to provide training to GALs and other stakeholders throughout Colorado.

OCR paid attorney services in 13,778 case appointments, a 6% increase over FY 12. The average cost of an OCR case was \$1,162 in FY 13. OCR spent 81% of attorney services expenditures on dependency and neglect cases.

The OCR has struggled to meet the needs for GAL representation in rural communities, due to the lack of qualified attorneys in certain areas. A guardian-designee is not required to be an attorney. Additional studies are needed to ascertain if the OCR-model could be used to create a central office that is able to recruit and train individuals statewide.

## Appendices

### Meeting Dates and Activities

- September 5, 2013 (all day)
- September 27, 2013 (all day)
- November 8, 2013 (all day)

### List of Relevant documents

	<b><u>Appendices</u></b>
• 1. Survey of APS (Sups) (Peggy Rogers).....	page 1
• 2. Letter Size Strategic Framework (Joe McMahon) .....	page 5
• 3. Research on Alaska’s Medicaid Program and Allowance for Payment of fees to Office of Public Advocacy (Mary Catherine Rabbitt) ....	page 6
• 4. APS G-ship Data (Peggy Rogers) .....	page 8
• 5. GAC overview (Sarah Solano) .....	page 9
• 6. Unmet need for public guardianship in Colorado (Prof. Schmidt) ...	page 23
• 7. Final Report (North Dakota Schmidt) .....	page 25
• 8. Guardian Info Pueblo MH Hospital at CMHIP (Peggy Rogers) .....	page 104
• 9. OPG Success Criteria Ver2 (Joe McMahon) .....	page 105
• 10. Framework-Advisory Committee Recommendation (Joe McMahon)	page 106
• 11. Guardianship in Colorado Schmidt (Prof. Schmidt) .....	page 108
• 12. APS as Guardian Guidance by state.....	page 113
• 13. Assessment Framework (Joe McMahon) .....	page 122
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• 15. Public Guardianship and PWD raw outcome (Darla Stuart) .....	page 126
• 16. Public Guardianship by State Questionnaire Nov 2013 (Darla Stuart)	page 139
• 17. Flow chart of guardianships.....	page 148
• 18. 160 P 3d 356 in re: Morgan.....	page 149

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