



2020 ANNUAL REPORT

PROTECTING NEBRASKA'S MOST VULNERABLE

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INTRODUCTION

Nebraska Revised Statute §30-4111 requires the Nebraska Office of Public Guardian (OPG) to report to the Chief Justice and the Legislature on or before January 1st of each year. This is the sixth report by the OPG providing updated, annual information covering November 1, 2019 through October 31, 2020. In addition to the specific data required by the statute regarding the number of wards, types of guardianship/conservatorship cases, capacity of the OPG to serve, and the status of OPG waiting list, this report provides information about the OPG's people and programs.

As with the rest of the world, the COVID-19 pandemic has been the greatest challenge for the OPG during the past year. A core responsibility for Associate Public Guardians (APGs) is to make medical decisions for their wards. To fulfill this responsibility a guardian must be informed of each ward's health conditions, medical history, current health status, and be prepared to provide informed consent for treatment in order to advocate for appropriate care. Under the best of circumstances, this is a monumental duty for any individual to provide for another. During a pandemic from a new, deadly disease, for incapacitated individuals who are disabled and elderly and at the highest risk of death, with systems that are not prepared, not responsive, lacking critical services, staffing, and resources, medical decision-making becomes a living nightmare. Within this report, the OPG strives to give voice to what life, and death, has been like for Nebraska's most vulnerable during this pandemic, through observations from APGs about their, and their wards', experiences.

Despite the stress and difficulties APGs had in responding to the pandemic, it is evident APG oversight and commitment to ward care had positive results. As a result of APG oversight and advocacy, wards have received testing, appropriate level of care and monitoring, have qualified for experimental treatment, and have been hospitalized when needed. Due to APGs' involvement, wards' lives have been saved. Additionally, during the past year, their advocacy for changes in facility policies and treatment protocols resulted in better health outcomes for all residents in the facilities, not just OPG wards.



**MICHELLE
CHAFFEE,
PUBLIC
GUARDIAN**



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Public Guardian

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Alicia Husted
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Guardian

Kimmie Fox
Associate Public
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Associate Public
Guardian

Thomas Holdt
Associate Public
Guardian

Susan Mitchell
Associate Public
Guardian

Emily Dolinski
Associate Public
Guardian

OFFICE OF PUBLIC GUARDIAN STAFF

COVID-19 PANDEMIC

The COVID-19 pandemic has intensified the work required by the Office of Public Guardian staff, especially Associate Public Guardians responsible for the safety and wellbeing of wards. The OPG began pandemic planning in early March 2020, which provided vital guidance as wards were diagnosed with the virus.

Pandemic planning sought to ensure all APGs were prepared to make COVID-19 related decisions at a moment's notice. This planning process involved APGs developing a plan of action with each ward and care team. Conversations included discussions of desired medical treatment, including end of life care. Additionally, APGs planned for shortages or stoppages of access to basic services, including food, medications, medical appointments, transportation, and access to funds for personal spending needs.

5,825

**ENTRIES IN CASE MANAGEMENT SOFTWARE
(EMS) SPECIFIC TO COVID-19 PANDEMIC**

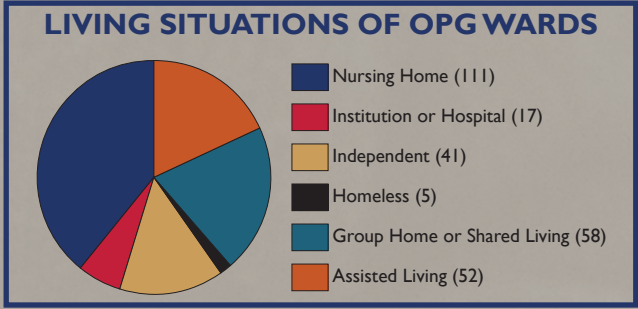
2,287

**HOURS DEDICATED TO COVID-19 RELATED
ACTIVITIES BY OPG STAFF (EQUIVALENT TO 57
WEEKS OF WORK FROM ONE FULL TIME EMPLOYEE)**

122

**AVERAGE HOURS
PER STAFF ON
COVID-19
ACTIVITIES**

5
AVERAGE
NUMBER OF
COVID-19 TESTS
PER WARD



156
RESIDENTIAL
FACILITIES CARING
FOR OPG WARDS
WITH COVID-19
OUTBREAKS

58
WARDS TESTED
POSITIVE FOR
COVID-19

30%
COVID-19
POSITIVITY RATE FOR
OPG WARDS
LIVING IN
NURSING HOMES

27%
COVID-19
POSITIVITY RATE FOR
OPG WARDS IN
ASSISTED LIVING

3
OPG WARDS HAVE DIED FROM
COVID-19

PLANS MADE, AND PLANS CHANGED

Working as an Associate Public Guardian since the office's inception back in 2015, I learned quickly that **a day in the life of an APG was never boring and never seemed to go as planned.** As an APG, you have to be ready for anything, but nothing quite prepared me for what happened in March of 2020, when COVID-19 reared its ugly head and became the topic of everyday conversation. Fortunately or unfortunately (I am not sure which), one of the OPG's clients was one of the first Nebraskans to test positive for COVID-19. While this individual was not my client, it gave all of us a window-seat view into what was to come. It was a scary time, but it was also time to get busy and prepare for my caseload.

I took the time to talk to each of my clients and each of my facilities, to make plans in the event that one of them were to test positive for COVID-19 or if I were to test positive for COVID-19. I also had end-of-life discussions with each client to determine if they wanted to be placed on a ventilator or not. This is a difficult conversation to have, especially with individuals who are incapacitated. It was difficult at that time to explain the "what ifs" with the individuals when I, myself, did not quite understand the "what ifs." **Plans were made, and plans were changed.** I took time to watch videos and learn everything I could about COVID-19. I am grateful now that all of those preparations were made well in advance.

Thankfully, I have only had three clients test positive for COVID-19. One of them was asymptomatic. One of them had symptoms but recovered without the need for hospitalization. The third individual was already on comfort care, and he passed away about nine days after testing positive for COVID-19. Deaths are never easy, but they are part of the job. This death was the most difficult because I was unable to be with him, and he was alone when he passed. **My belief is that nobody should be alone when they die, but COVID-19 kept me from being there, and I am not sure I will ever be able to get over that guilt.**

-Greater Nebraska APG

NOT IF, BUT WHEN

As soon as the pandemic hit the state of Washington, exposing the extreme danger and vulnerability of nursing home residents, the OPG began preparing for COVID-19. We began a pandemic plan for each ward to meet the “what ifs” of COVID-19 infecting their community. We spoke with every ward about their wishes and plan for end-of-life care, should those decisions become necessary. **We requested emergency response plans from every facility (few had them).** All APGs developed contingency plans for every “what if” for each ward.

It was a very good thing we started early to plan for contingencies, because **one of my wards was one of the first persons in Nebraska to be diagnosed and hospitalized with COVID-19.** She was one of the first patients to be a part of an UNMC medical trial for Remdesivir. The experimental treatment required face-to-face meetings with the medical team, myself, the Public Guardian, and in-depth, informed-consent discussions about the risks/benefits of participation in the trial. In those first days, medical staff called at all hours of the day and night for consent to provide expanding medical responses. As a result, various medical interventions, including PICC lines, were placed to deliver medications into her system as fast and efficiently as possible. She had high-risk medical needs even before COVID-19, including respiratory issues, and she was eventually put on a ventilator to help her breathing. Preparations were made for potential complications including kidney failure, tracheal atrophy, and lung damage. **Because of the unknowns of the virus so early on, her medical team could not confidently predict outcomes for each intervention.** Approximately 30 days later, after many ups and downs in her condition, my ward was healthy enough to go home. She is one of the lucky ones: she eventually recovered!

The experience, though stressful, resulted in shared COVID-19 education among the OPG staff. Accordingly, early in the pandemic, the **OPG staff was uniquely informed about the COVID-19 disease process:** exposure, symptoms, complications, crisis response, treatment protocols, and medications. This early knowledge helped APGs understand various treatments, know what questions to ask, be aware of the risks, and what medical interventions were available. As a result, APGs strongly advocated with facilities and providers for the best interests of, and appropriate medical care for, OPG wards. **There is no doubt that APGs, through their advocacy and actions, have saved the lives of many wards!**

-Omaha Ward

SERVICE AREAS

Panhandle (Scottsbluff/Gering)

Banner, Box Butte, Cheyenne, Dawes, Duel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux

West Central (North Platte)

Arthur, Chase, Cherry, Dundy, Frontier, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, Thomas

Mid Central (Kearney)

Blaine, Brown, Buffalo, Custer, Dawson, Franklin, Furnas, Garfield, Gosper, Harlan, Kearney, Keya Paha, Loup, Phelps, Rock, Sherman, Valley

Mid Central (Grand Island/Hastings)

Adams, Clay, Fillmore, Greeley, Hall, Hamilton, Howard, Merrick, Nance, Nuckolls, Polk, Thayer, Webster, Wheeler, York

Northeast (Norfolk)

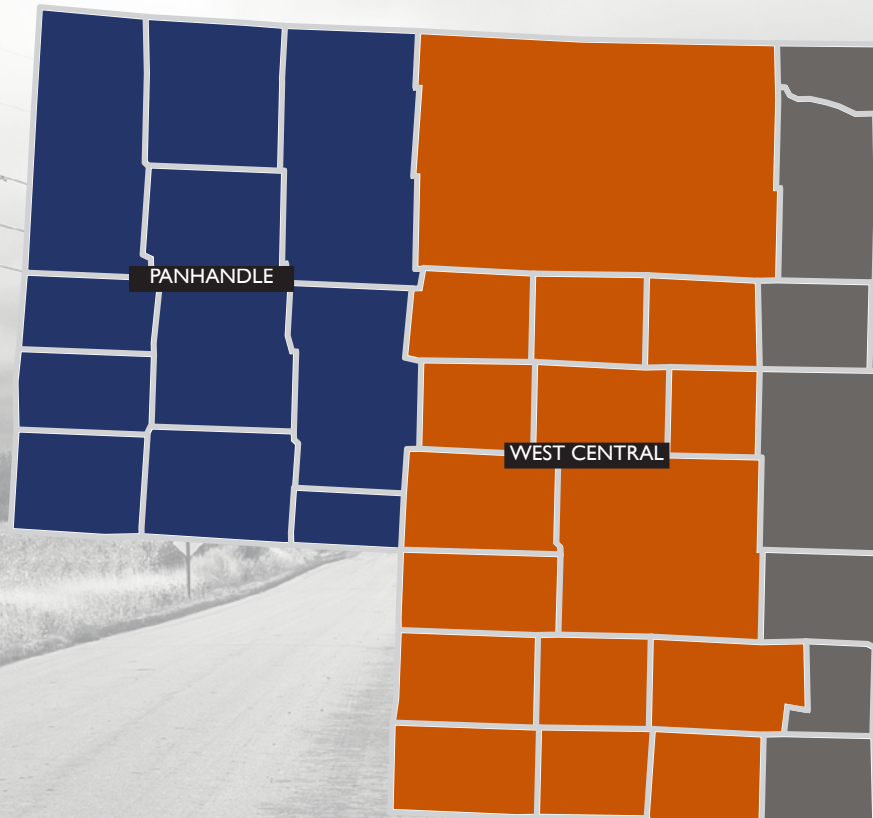
Antelope, Boone, Boyd, Cedar, Dixon, Holt, Knox, Madison, Pierce, Platte, Stanton, Wayne

East Central (Lincoln)

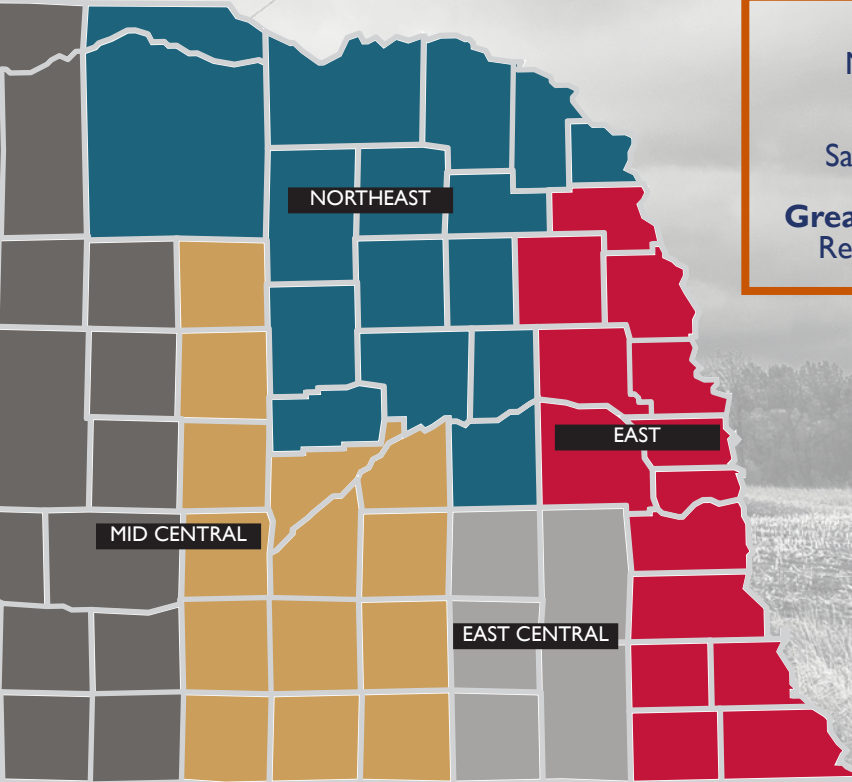
Gage, Jefferson, Lancaster, Saline, Seward

East (Omaha)

Burt, Butler, Cass, Colfax, Cuming, Dakota, Dodge, Douglas, Johnson, Nemaha, Otoe, Pawnee, Richardson, Sarpy, Saunders, Thurston, Washington



OFFICE LOCATIONS



NORTHEAST

EAST

MID CENTRAL

EAST CENTRAL

Lincoln
Main Office

Omaha
Satellite Office

Greater Nebraska
Remote Offices



THE MASKED GUARDIAN

As a relatively new APG, I did not experience much of the “first wave” of COVID-19 within the OPG. I had quite a bit of experience coming from public health, but in a different capacity. I have experienced some of the effects of COVID-19 through osmosis. Each time I hear of another person that has passed away from COVID-19 or one of our team members experiencing the illness, I have an empathetic response to how horrible this pandemic has been for everyone. On a more personal level, it has not escaped me that **none of my wards know what I look like without a mask on, nor I them.** Meeting people through glass or on a computer screen is not ideal.

- Greater Nebraska APG

LIVING IN UNCERTAINTY

The ongoing pandemic has caused feelings of irritation, depression, and isolation. The pandemic has ruined birthdays, holidays, and so many other days. My ability to continue to provide the best care for my wards has definitely been a challenge. Relying on providers is not always best practice. Trying to address and meet my wards' needs sometimes became impossible due to restrictions. **It is unsettling not be able to do anything, to feel as though I am just waiting around to see how many of my wards end up with COVID-19.** I am always trying to think through how I would handle multiple people with COVID-19 diagnoses at the same time, and how I would be able to cope with that myself. The past eight months have been constant stress, fear of the unknown, fear of death, and fear of getting sick myself so that I cannot take care of my wards. If I get sick, how will another APG cover my wards and theirs? Who is going to walk my dog? What am I going to do if I run out of food? **Every day, we wake up with more uncertainty than we have ever had before.** This has taught me to learn how to embrace the unknown, keep pushing when I no longer want to, and to be grateful my wards have been relatively healthy so far.

-Omaha APG

EXISTING RURAL CHALLENGES HEIGHTENED

One of my wards has a developmental disability, is nonverbal, and resides in a group home for people with disabilities. She lives in a small, rural town in western Nebraska. **She thrives on routine, but COVID-19 has changed her entire life.** Instead of going to the workshop, sitting at her table, performing tasks she enjoys, purchasing her favorite soda at break time, and eating the snack she chose, she is now limited to her group home. She does not seem to understand why her routine is gone, and she cannot ask why, or voice her feelings. **Her very routine-oriented and limited life has shrunk even more because of COVID-19.**

Staffing has been an issue at her group home as well. Backup resources were slim even prior to the pandemic. **The lack of backup resources available to small town, rural Nebraska, is disheartening and startling.** Staff have nowhere to turn for backup now, so if they or their own families get sick, there will be no one available to staff the group home.

Access to appropriate medical care has also been an issue due to a **lack of accommodations in testing for COVID-19**, as her disabilities do not allow her to tolerate the test. Her dental exam had to be postponed indefinitely, as the dental office requires a negative COVID-19 test before they will examine her.

- Greater Nebraska APG

THE OFFICE OF PUBLIC GUARDIAN SERVES AT LEAST TWO INDIVIDUALS WHO CANNOT PHYSICALLY TOLERATE A COVID-19 TEST. THE ABSENCE OF REASONABLE ACCOMMODATIONS FOR TESTING HAS RESULTED IN A LACK OF ACCESS TO MEDICALLY NECESSARY SERVICES.

STATUTORY DUTIES

DIRECT SERVICES

- Serve as guardian and/or conservator
- Respond to emergency needs for wards and protected persons
- Maintain an average caseload of 20 wards per APG
- Model best practices for guardians and conservators
- Visit wards monthly in their homes or facilities
- Communicate regularly with service providers
- Maintain records of financial and case management services
- Develop and maintain a sliding fee scale

PUBLIC EDUCATION

- Support and train private guardians in Nebraska
- Develop and maintain curricula for private guardians and conservators
- Support private guardians in promoting the dignity and autonomy of wards and protected persons
- Collect and report statistical data on guardianship and conservatorship in Nebraska

VOLUNTEER PROGRAMS

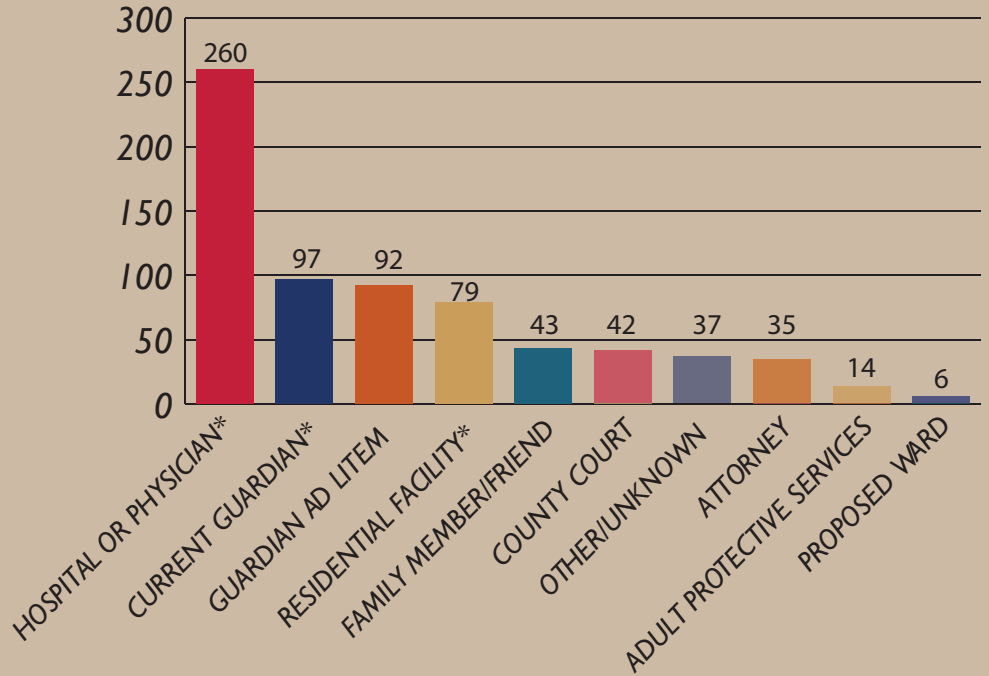
- Make reasonable efforts to recruit volunteer successor guardians
- Encourage more people to serve as private guardians and conservators
- Develop programs to enhance quality of life for OPG wards and protected persons
- Safeguard the rights of individuals by supporting least restrictive alternatives and full guardianship as a last resort

NOMINATION DATA

The Office of Public Guardian began accepting nominations in December 2015. As of October 31, 2020, the OPG has been nominated 705 times. Nominations come from a variety of sources, including hospitals, attorneys, courts, residential providers, and others.

705
nominations
since 2015

111
nominations from
November 1, 2019 to
October 31, 2020

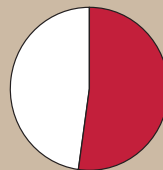
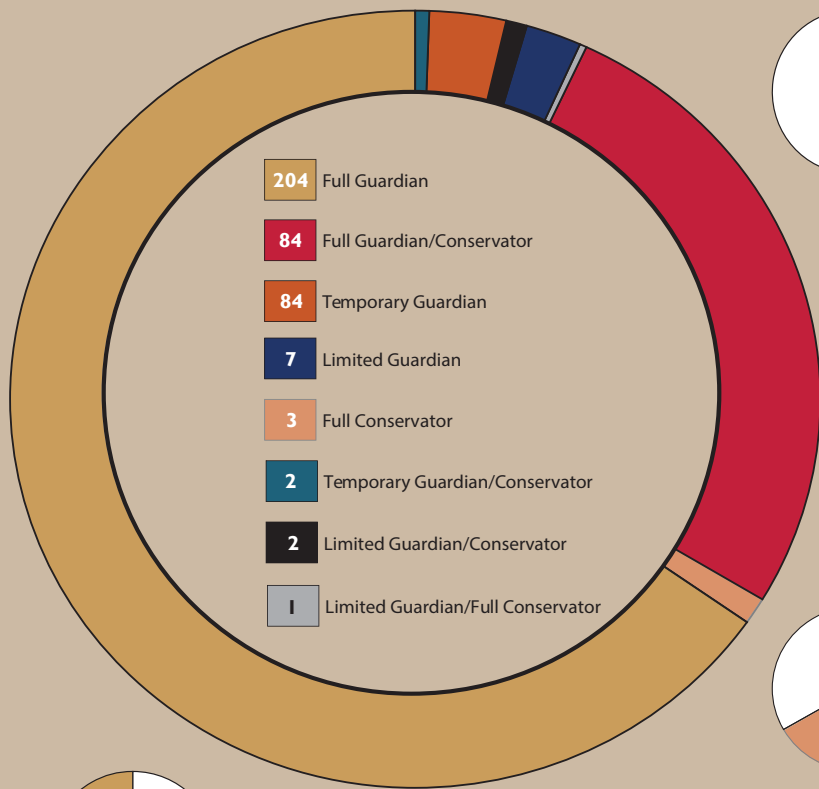


Hospital referrals (249) have far outweighed physician referrals (11).

Current guardian is further identified as attorney (40), a family member (27), or a non-family member (30).

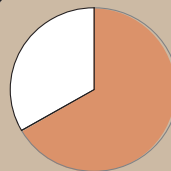
Residential facilities include state-operated institutions (19), nursing homes, and group homes.

CASE DISTRIBUTION

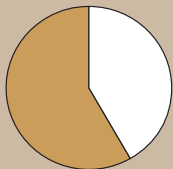


■ Full Guardian/Conservator (40)
■ Full Successor Guardian/Conservator (44)

CASES TERMINATED DUE TO DEATH OF WARD: **20**
 CASES DISMISSED BEFORE PERMANENT APPOINTMENT: **3**
 CASES TERMINATED DUE TO REGAINED CAPACITY: **4**
 CASES TRANSFERRED TO SUCCESSOR GUARDIAN: **5**



■ Full Conservatorships (1)
■ Full Successor Conservatorships (2)



■ Full Guardianship (119)
■ Full Successor Guardianship (85)

Reporting Period: November 1, 2019 - October 31, 2020

CASE DISPOSITION

NEW CASES ACCEPTED

25

During this reporting period, the Office of Public Guardian was nominated 111 times. Emergency cases accounted for 67 of those nominations. The OPG did not initially accept 86 of the 111 nominations, and resolutions included but were not limited to the following:



The proposed ward passed away before the OPG could serve them



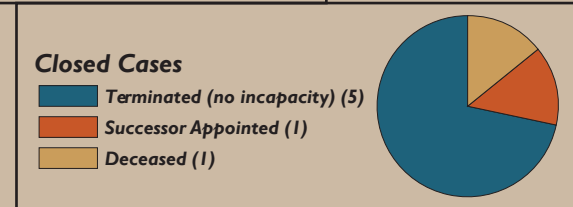
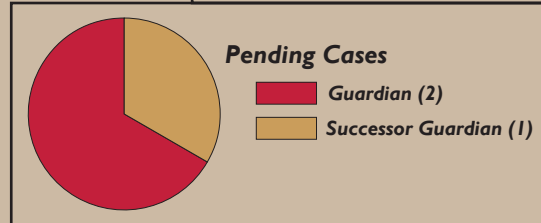
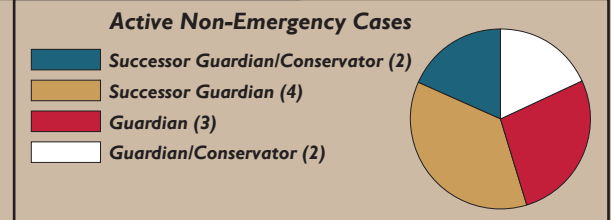
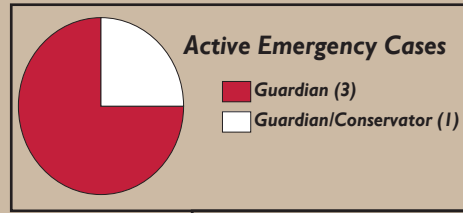
The OPG had no capacity to serve, and the individual was referred to the waiting list



The proposed ward regained capacity



An alternative to the OPG was identified and appointed as guardian and/or conservator



FIGHTING THE GOOD FIGHT

My job has become exponentially more challenging because of COVID-19. Out of my twenty wards, eleven of them have had COVID-19. **I feel helpless, useless, and completely broken.** I am trying to pull the pieces together and continue to fight, but there is no light at the end of the tunnel right now. **I am drained mentally, emotionally, and physically from eight months of arguing with providers to get them to do their jobs.** I have had to pick up many of the responsibilities people used to do in support of my wards.

Before COVID-19, nursing homes were already staffed skeleton-thin. Now, they cannot afford or do not want to pay for the extra costs of staffing. I have had to advocate for my wards to get meals, water, and medications on time, for toileting and bathing assistance, access to medical appointments, and even hospice services. **I am constantly fielding calls from my wards who are desperate for human connection.** They call me to tell me they cannot live like this anymore, and that they just want to die. I cannot see them in person, or do anything to make it better.

Even for the most resilient APGs who have years of experience, the best self-care practices, and the best moral support, this job will wear you down. **I am sleep-deprived, hungry, and have not had a full day off, without a phone call about someone's medical needs, in months.** I miss spending time with my family. I had to tell my children, on Mother's Day, that I did not know when I would be done working so that we could spend time together. However, I keep fighting because, as a guardian of last resort, I am the best person to manage their needs. I know them, and I know their preferences. I will fight relentlessly to ensure they receive the treatment they deserve.

- Omaha APG

AMENDS FINALLY MADE

For one of my wards, COVID-19 was especially difficult. **Not only was she isolated to her nursing home room, but also she was isolated within her own body due to dementia and limited sight.** Virtual visits were agitating and ultimately unsuccessful. I was able to begin “window visits” with her. She was excited to have me there in person and to talk with her for a while. She voiced that she was lonely and asked repeatedly when I would be able to come in and visit her.

Because she was limited in her ability to turn on her radio and television, I ordered her an Alexa for her room. She was able to talk to Alexa and turn on her radio station and music through verbal commands. **She was so happy and thankful that we were able to figure out a way for her to do this on her own, to have some joy and comfort in her life.**

Tragically, in October 2020 she tested positive for COVID-19 and passed away due to complications. **She had an estranged relationship with her two children and never had the opportunity to make amends with them in-person due to the visitor restrictions.** Even though the children were not able to mend their relationship with their mother before her passing, they did attend her funeral service. They, also, accepted their mother’s ring and the family photo albums. She would have been glad to know her children, finally, forgave her and reached out to connect - in some way - at the end.

- Greater Nebraska Ward

**“ENDINGS MATTER, NOT JUST FOR THE PERSON, BUT,
PERHAPS EVEN MORE, FOR THE ONES LEFT BEHIND.”**

-Atul Gawande

WAITING LIST

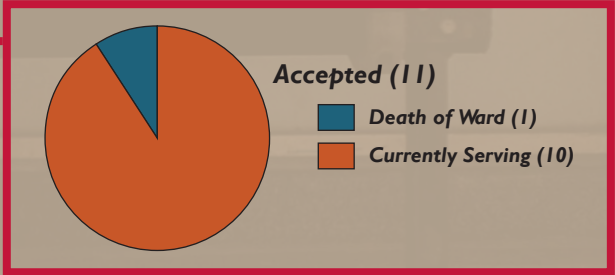
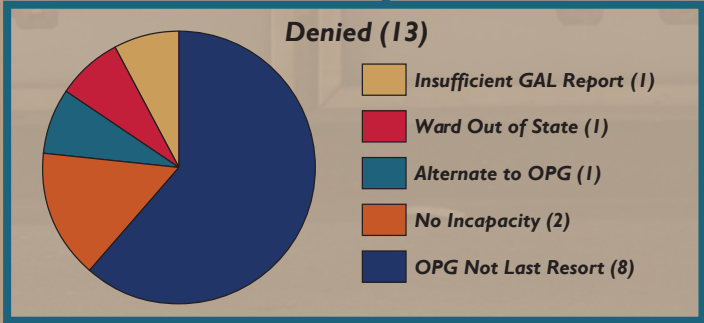
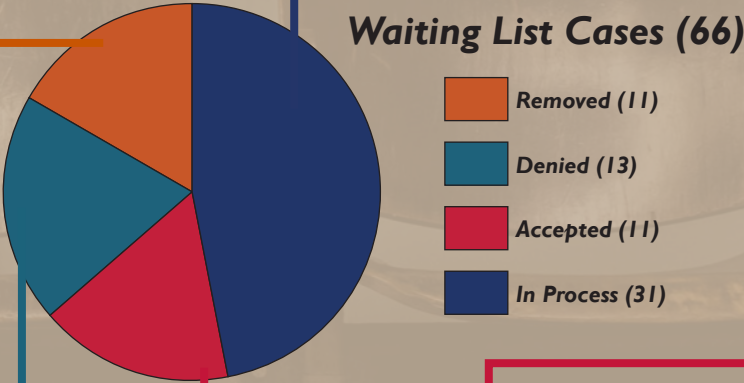
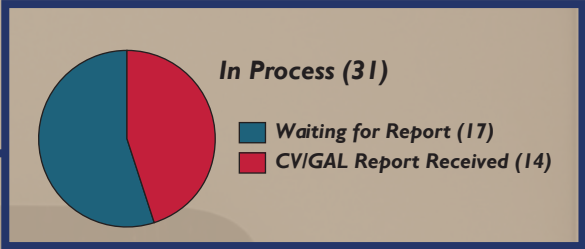
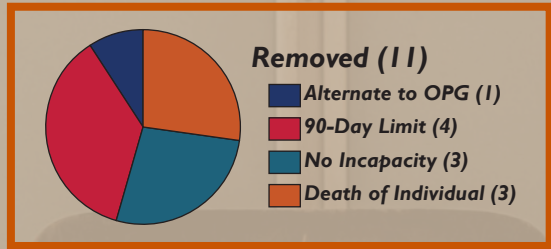
The Office of Public Guardian may accept cases for an average ratio of twenty cases per multidisciplinary team member. During this year's reporting period, the OPG operated at capacity in many service areas. Accordingly, referrals to the OPG Waiting List (WL) continued until an OPG guardian/conservator opening might occur.

During the WL referral process, a Court Visitor or Guardian ad Litem (GAL) is appointed to provide the court with a report detailing the qualifications of the case to be served by the OPG. Based on this report, the OPG will either approve or deny placement to the WL. If approved, the case remains on the WL for a 90-day period. If an opening becomes available, cases are selected from the waiting list based on a level of need determination. If the case is not chosen within the 90-day period, the OPG will then remove the case from the WL.

Difficulties with the process, as reported in previous years, have continued during this reporting year. Receiving updated GAL reports for information unique to OPG WL cases remains a serious issue. Updated information assists the OPG in making a level of need determination on who is most at-risk, and most in need of OPG services. Another issue is the lack of openings in particular service areas, which has resulted in cases being referred to the WL multiple times. The OPG continues to work with stakeholders to improve the OPG's WL process.

66

**CASES REFERRED TO THE WAITING LIST
DURING THIS REPORTING PERIOD**



Reporting Period: November 1, 2019 - October 31, 2020

SYSTEMIC ISSUES

BANKING AND FINANCE ISSUES

- Banks refusing to provide access to accounts despite court orders
- Joint bank accounts between wards and individuals who have exploited OPG wards are extremely problematic; closing accounts can result in a stoppage of incoming funds for wards on tight budgets; perpetrators can withdraw and overdraw funds without consent of wards and guardians/conservators to the detriment of the ward without recourse
- Pension deposits into widowed ward accounts are difficult to change to bring funds under guardian/conservator control
- Security questions, including PIN, are difficult to obtain for incapacitated people in order to bring assets under control of guardian/conservator

MEDICAL ISSUES

- Lack of service options for individuals who don't fit squarely into the eligibility definitions for developmental disability and/or behavioral health services
- Hospitals and inpatient facilities discharge wards without discharge planning, resulting in a lack of adequate wraparound services, which puts wards at risk for re-hospitalizations and decreased health outcomes, including suicide and other causes of death
- Medical treatment and discharge of wards by hospitals without obtaining consent of the guardian
- Hospitals admitting wards under observation only, sometimes for days, shielding the hospital from the obligation to provide discharge planning services
- Difficulty obtaining medical and mental health evaluations

ASSISTED LIVING AND NURSING HOME FACILITY ISSUES

- Refusals to admit wards with mental health diagnoses due to behavioral issues
- Licensure and regulation issues
- Confusion regarding medical treatment protocols under Do Not Resuscitate and Hospice orders
- Facility closures

NEBRASKA GUARDIANSHIP ISSUES

- Lack of legal representation for potentially incapacitated persons
- Petitions with incomplete medical information regarding functional capacity, resulting in full guardianships rather than appropriately limiting guardianship
- Difficulty accessing financial accounts with banks, financial institutions, and credit agencies despite court orders
- Appointed to cases where hospitals nominated the OPG but the potential ward discharged and cannot be located
- Community's lack of awareness on surrogate decision-making options as less restrictive options to guardianship

OFFICE OF PUBLIC GUARDIAN CHALLENGES

- OPG is appointed as successor guardian/conservator, yet prior guardians continue to try and direct/challenge OPG decisions
- Lack of updated, accurate information for waiting list cases makes it difficult to identify the ward's risk of harm and make a level of need determination
- Increasing numbers of former foster care youth appointed as wards of the OPG

BENDS AND CURVES IN THE ROAD

My experience as an APG during this pandemic has been difficult! In the rural areas that I cover, I was used to spending a lot of time on the road visiting my wards. When that was no longer permitted, it was such an interesting transition. Working from home was no adjustment for me since I had been doing it for so long already. However, having children home from school doing e-learning was an adjustment because I was used to being home alone while I worked.

Trying to set up virtual visits with wards in facilities was difficult enough due to them not having the equipment or knowing how to run the programs. **However, trying to set up virtual visits with wards that live independently and do not have the equipment, the desire to learn, or a willingness to meet with me virtually, has been more challenging!** Meeting with them in any way other than in-person has left an unsettled feeling. Virtual visits just are not the same. Once things started to open up again with modifications, it was more rewarding than anyone would ever think. Getting in a car, driving several hours to meet with someone on their porch, standing six feet away, and wearing a mask was exciting! To say it has been therapeutic is an understatement! **Being able to see them in person, to have a meaningful conversation, and to see their eyes light up when they see you was food for my soul!** I never realized, or even fathomed, that I would miss driving for hours on end, but having that time on the road has been welcome as it provides some semblance of normalcy!

-Greater Nebraska APG

THE NEW NORMAL

I have been very fortunate not to have any of my wards contract COVID-19 so far. **However, the impact of the virus on my wards has been very evident.** One of my wards, who lives independently, is extremely social. Prior to COVID-19, she attended her local senior center five days per week, and met with friends in her apartment building on a daily basis. She thrives on this social interaction and the ability to navigate her community independently. **When the pandemic started, all of these activities were taken away from her.**

Being elderly and having some health issues, however, she became very afraid of catching the virus. Her mental health declined due to the absence of all social contact and the support she was accustomed to having on a daily basis. She began isolating herself in her apartment, and was noticeably afraid to connect with others. **She often refused to let home health services come into her home, for fear of getting sick.**

It took a lot of education and work to get her comfortable with the “new normal” of life. Now, she is more social and spends some time with her friends at safe distances and with precautions in place. She is also allowing home health staff to come into her home with precautions.

- Lincoln Ward

LEGAL COUNSEL

Office of Public Guardian Legal Counsels provide representation regarding ward issues involving the guardianship and conservatorship case, in accordance with the Public Guardianship Act. Legal Counsels have regular communications with stakeholders of OPG guardianship cases, including attorneys, Guardians ad Litem, Court Visitors, court staff, and interested parties. OPG Legal Counsels attend most court hearings involving APGs and OPG wards. Legal Counsels attended 351 hearings throughout the current reporting year. Appearances by phone or WebEx increased during this reporting year due to the COVID-19 pandemic.

Additionally, Legal Counsels monitor policy and regulation issues affecting OPG wards, conducting additional legal research as necessary for specific circumstances. Legal Counsels provide support and advice to Associate Public Guardians when situations involve potential legal liability for wards. These situations can range from contract negotiations, resolving disputes with providers, filing Medicare or Social Security appeals, and consultation with Medicaid Estate Recovery after a ward passes away. The Public Guardian retains outside counsel as necessary to represent OPG wards in matters relating to divorces, child support enforcement, criminal charges, real estate transactions, etc.

351
**HEARINGS ATTENDED BY OPG LEGAL
COUNSEL DURING THIS REPORTING PERIOD**

Reporting Period: November 1, 2019 - October 31, 2020

COURT-RELATED DUTIES

Motion for Psychological Evaluation
Motion to Proceed In Forma Pauperis
Motion to Make More Definite and Certain
Motion to Dispose or Sell Real Property
Motion to Dispose or Sell Automobile (Mobile Home)
Motion to Attend Hearing by Phone or WebEx
Motion to Terminate Guardianship/Conservatorship
Motion for Approval of Annual Accounting and/or Fees
Request by Alleged Incapacitated Person to Appoint Counsel
Motion to Terminate Powers of Attorney
Motion for Intrastate Transfer
Motion to Appoint Personal Representative/Special Administrator
Motion to Appoint Successor Guardian
Motion to Amend Order
Motion to Limit Guardianship

ADDITIONAL RESPONSIBILITIES

Communication with Attorneys, Guardians ad Litem, Court Visitors, and Interested Parties
Complaint procedures against hospitals and facilities
Review, negotiate, and enforce contracts including room and board agreements
Determination of need for outside legal counsel for specific ward circumstances
Determination of need to file for protection order on behalf of a ward
Communication with facilities and financial institutions regarding ward funds
Administrative appeals and waivers for ward's federal and state benefits
Navigate insurance claims and settlements for wards
Medicaid Estate Recovery process
Review initial, annual, and final annual reports for wards
Research various state and federal case law, statutes, regulations, guidelines, etc.

AN EIGHT-MONTH NIGHTMARE

My experience over the past eight months dealing with COVID-19 has been very stressful and demanding. There is a fear of exposure, as well as the major disruption in everyone's daily life. The continued anxiety, worry, and isolation have been very demanding for everyone. **There are increased phone calls from my wards due to boredom, fear, and anxiety about being sick, or dying from COVID-19.** I have also increased the number of phone or video contacts I have with wards, whether they are in 24/7 care or on their own, to determine how they are doing both mentally and physically.

Some of my wards, who have never presented any mental health needs, are experiencing depression. Many are also expressing new forms of rebellion to their living situations, which destabilizes their placement and alienates staff that work with them. **Wards with addictions have escalated their use to cope, and in one example, a ward went from being a meth addict to using heroin.** My wards who experience homelessness are increasingly without options, and this makes the task of locating housing for them much more challenging. **When the shelters close due to an outbreak, it puts my wards at risk to the elements of Nebraska winters.** This job was already very difficult, but COVID-19 never lets you relax or take a break. **It is a nightmare.**

- Omaha APG

“IT’S A CALAMITY. IT’S OUR WORST NIGHTMARE. IT’S AN ENORMOUS CRISIS SUPERIMPOSED ON AN EXISTING CRISIS.”

-Margot Kushel, UC San Francisco

(speaking on people experiencing homelessness during the COVID-19 pandemic)

ADVOCATING THROUGH ADVERSITY

One of my wards is 89 years old and lives in a nursing home. She has diagnoses of obsessive-compulsive disorder, hypothyroidism, osteoarthritis, and depression. **Her medical needs require the service of a podiatrist, which the facility refused to address over a three-month period** after instituting visitor restrictions. Upon learning of the delay, I requested staff to respond to her need. Despite the request, it took nearly two weeks for a nurse from the facility to examine her toenails (and the only reason she was examined was that I, again, called to follow up). Finally, her need for a podiatrist was acknowledged.

Notwithstanding the three-month delay, and two more weeks of ignoring my concerns, it took another two-and-a-half months before she received the podiatry care. **During that time, I made repeated attempts to advocate for her to receive these necessary services.** While I understood the difficulty of the quarantining and isolation, this individual's podiatry issue can be extremely serious and life threatening. This experience was stressful and frustrating to my ward due to her anxiety and fear of COVID-19 and her physical discomfort.

Subsequently, my ward did test positive for COVID-19 and was transferred to the COVID-19 unit. **She missed several doses of her medications, which was not corrected until I followed up with the facility.** She also had a roommate placed in her room without my consent, which I addressed. Not too long afterward, I was informed that the facility had contacted my supervisor to complain about my attitude and difficulties with me, making critical comments about my advocacy and behavior as a guardian. My supervisor coordinated a conference call with me and the facility to address OPG care concerns and communication. It was a constructive conversation about improving communication and the role of APGs as advocates for wards and my responsibility for medical decision making and her care. **I continue to advocate for her to obtain proper care.**

-Greater Nebraska Ward

FINANCIAL OPERATIONS

The Office of Public Guardian continues to use a web-based case management system, EMS, which tracks ward information including medical documentation and financial oversight. EMS manages ward finances including receipts, disbursements, and maintenance of separate records for each ward or protected person served. The OPG also continues to utilize Union Bank & Trust's (UBT) online positive pay site. The use of positive pay prevents fraudulent checks from being processed from the collective account. A file is uploaded from EMS daily with the amount of the check, payee, and check number. If any of these items do not match the check presented, the bank sends an email to OPG to verify the information. The OPG then directs the bank to pay or return the check. Automated Clearing House (ACH) transactions are also uploaded from EMS to UBT. Using ACH provides a less expensive option than printing and mailing physical checks.

During this reporting period, Social Security continues to be the highest source of receipts for OPG wards. The OPG manages ward benefits coming from Social Security, Supplemental Security Income, Veterans benefits, state benefits, and wages.

The OPG also continues to receive guardianship fees from its sliding fee scale. The Nebraska Public Guardianship Act requires the use of a sliding fee scale, which allows the OPG to collect fees from wards and protected persons who meet criteria. The sliding fee scale is assessed on an annual basis at the time of the ward's annual court report. Wards or protected persons with over \$5,000 in liquid assets are assessed a monthly fee. The OPG seeks approval for these fees on an annual basis, in conjunction with the ward's annual report, from the court.



18,800 TOTAL TRANSACTIONS



**5,700+ RECEIPTS TOTALING
NEARLY \$4 MILLION**



**COLLECTED FEES FROM 57 OPG
WARDS/PROTECTED PERSONS
TOTALING \$26,300**



**13,000+ DISBURSEMENTS
TOTALING NEARLY
\$3.9 MILLION**



**40 NEW APPLICATIONS TO
SERVE AS REPRESENTATIVE
PAYEE FOR SOCIAL SECURITY**



**5,400 DISBURSEMENTS VIA
EMS CHECK TOTALING
\$2.2 MILLION**



**SERVED AS REPRESENTATIVE
PAYEE FOR 271 SOCIAL
SECURITY BENEFICIARIES**



**7,700 DISBURSEMENTS VIA
ACH TOTALING
\$1.7 MILLION**



**57 WARDS HAVE ENABLE
SAVINGS PLAN ACCOUNTS
WITH OVER \$294,000 IN ASSETS**

Reporting Period: November 1, 2019 - October 31, 2020

THE CONTRAST OF COVID-19

I returned to work after having COVID-19, only to have one of my wards become ill and die eleven days later of the same disease. With the constant ups and downs in his condition, I was anxious, always wondering what the next call would bring for him. I kept my phone close and remained on-call for the duration of his illness, **always planning for the next potential decisions I might need to make with only a moment's notice.**

I felt the hospital did a wonderful job of keeping me informed on his condition. His attending physician took the time to answer my questions and gave me her honest assessment. I was also satisfied with the nursing home and hospital's attention to his care as he went through this horrible disease. Finally, I was comfortable with the decisions I made, with assistance and guidance from my supervisors, to advocate for his care throughout the entire experience.

After having had COVID-19 myself and suffering badly from its symptoms at my age, I always knew that my ward was in for a struggle. It seemed like at the end he was really fighting it and holding on. When he passed away, I was sad, but relieved to know he was no longer suffering.

- Omaha APG

“MOSTLY IT IS LOSS THAT TEACHES US ABOUT THE WORTH OF THINGS.”

-Arthur Schopenhauer

LAPSES IN CARE

By some miracle, none of my wards have tested positive for COVID-19 during this annual reporting period. However, a large majority of my wards live in skilled nursing facilities where there were numerous active COVID-19 cases. Because of this, outside agencies have not been allowed inside the facilities, including mental health therapists. **Facilities are supposed to coordinate telehealth sessions with mental health therapists, but due to the influx of positive cases in the buildings, and being short-staffed, most of my wards have unaddressed mental health needs.**

One of my wards in particular, has struggled with major depression because he is not allowed to leave his room, he does not have a phone, and the facility does not allow their phone to be used for fear of cross contamination. Additionally, **he has not seen his mental health therapist in two months.** This ward may not have tested positive for COVID-19, but because of this virus, he has been completely isolated from everyone in his support network, including his mental health therapist, family members, and me (with the exception of monthly Zoom visits).

- Lincoln Ward

RED ZONES AND HOSPITALS

One of my wards resides in a nursing home that faced a COVID-19 outbreak. He tested positive and was moved to the facility's "Red Zone." After one day in the "Red Zone," he was transferred to the hospital without my consent. This transfer was not due to any of his medical needs, but rather because the facility did not have adequate staffing. **He was hospitalized for eighteen days due to lack of staffing at the nursing home.** He was asymptomatic the entire time he was in the hospital and did not need that level of care.

- Lincoln Ward

WARD CONDITIONS

310
OPG wards
served during
reporting
period

OPG Wards with
Medical Conditions:

226



960
complex issues
experienced by
OPG wards

OPG Wards with
History of Board of Mental Health
Commitment

37



OPG Wards with
Mental Health Diagnosis:

251



OPG Wards with
Substance Abuse Diagnoses:

92



OPG Wards with
History of Criminal Involvement:

87



OPG Wards with
Cognitive Impairment:

184



OPG Wards with
Developmental Disabilities:

83



PRIVATE GUARDIAN EDUCATION

The Office of Public Guardian provides training and support for new guardians and conservators in Nebraska. Survey data provides key findings for future training and support needs, as well as demographic information. Demographic information and survey findings guide the OPG in making changes to curriculum, course delivery format, language access, and other accommodations to meet the needs of private guardians as adult learners. During this annual reporting year, the Office of Public Guardian provided education to **1,435** new private guardians. Online education accounted for **83%** of the total courses taught. An online class taught entirely in Spanish is currently in development. Additionally, in April 2020, the OPG transitioned in-person classes into phone conferences due to the COVID-19 pandemic. The OPG remains dedicated to providing guardian education in a variety of formats to reach all learners.



64%

of new private guardians and conservators were women



554

people became guardian and/or conservator for an ADULT



356

people became guardian and/or conservator for a MINOR



97%

of new guardians and conservators are volunteers



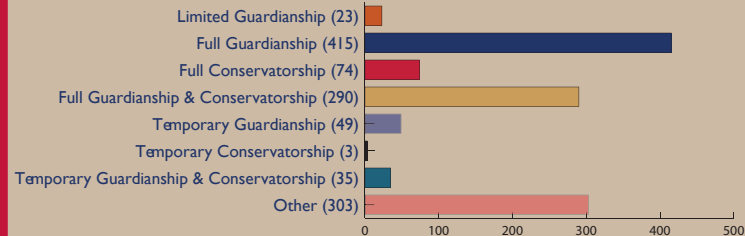
95%

of new guardians and conservators felt prepared to serve after completing their training



66%

of new adult cases did NOT attempt less restrictive alternatives before pursuing full guardianship



Private Guardian Case Distribution

PRIVATE GUARDIAN SUPPORT

The Office of Public Guardian provides support to private guardians outside of the formal education process. Outreach to private guardians was greatly enhanced this reporting year with the addition of an Office of Public Guardian Facebook page, several webinars, and the launch of a biannual newsletter. All three of these new outreach efforts have enhanced the OPG's ability to provide valuable support for private guardians, in addition to individualized, one-to-one phone/email support.

During this reporting period, OPG staff assisted private guardians and conservators in various ways:



Assisting with initial, annual, and final accounting and related court reports



Identifying resources for housing, mental health, aging, and disability services



Locating resources for breaking through systems barriers and other issues



WEBINARS



FACEBOOK



NEWSLETTER

Hours spent educating private guardians in-person or by phone:

149

Hours spent supporting private guardians outside of a formal classroom setting:

34

COURT VISITORS

The Office of Public Guardian's court rules require appointment of a Court Visitor or Guardian ad Litem (CV/GAL) to each nominated case. The purpose of a CV/GAL appointment is to investigate the claims in the Petition and to provide the court with evidence. The CV/GAL report provides information about the proposed ward, and specifically must demonstrate that the potentially incapacitated person is in need of a guardianship, that less restrictive alternatives are not appropriate, and that no one else is available to serve in the guardian and/or conservator role (e.g. the OPG must be the last resort). Court Visitors are crucial volunteers that assist the OPG in achieving its statutory duties.



57

Court Visitors trained
from 2015-2020



11.5

Volunteer Hours per
Case by Court Visitor
(average)



5

Private guardians identified
by Court Visitors
(after OPG nomination, but
prior to appointment)



32

CV/GAL Education Materials
Emailed to Attorneys



46.5

Volunteer Travel Hours
per Case by Court Visitor
(average)

35

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SUCCESSOR GUARDIANS

The OPG makes reasonable efforts to locate a successor guardian for all OPG cases, in accordance with its statutory duties. Recruiting successor guardians remains a difficult process, as guardianship requires a great deal of responsibility for complex decision-making on behalf of incapacitated individuals. The OPG continues to pursue volunteer successor guardians through existing private guardian education, existing private guardian support, and in its social media outreach efforts. Associate Public Guardians also seek successor guardians within a ward's natural support system. During this reporting year, a total of five OPG cases were transferred to successor guardians.



1,435+

Individuals educated on the need for volunteer successor guardians

ONGOING SUCCESSOR GUARDIAN RECRUITMENT INITIATIVES



outreach to private guardians through education and support efforts



outreach to the general public via Facebook and biannual newsletter



Associate Public Guardians pursued potential successor guardians as identified in the ward's personal support network



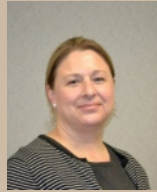
5

OPG cases transferred to volunteer successor guardians

ADVISORY COUNCIL



Corey Steel
State Court
Administrator



Dianne DeLair, JD
Attorney
(Council Chair)



Hon. Todd Hutton
County Judge



Lisa Line, JD
Attorney



Julie Masters, PhD
Professor of
Gerontology



Amanda Duffy
Randall, PhD, LICSW
Professor of Social
Work



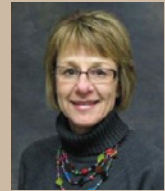
Kevin Ruser, JD
Director of Clinical
Programs, Nebraska
College of Law



Russ Leavitt
Member At-Large



Darla Schiefelbein
Clerk Magistrate



Beth Baxter
Administrator, Region
3 Behavioral Health

The Advisory Council assists and advises the Public Guardian in carrying out the Public Guardianship Act, meeting at least four times per year. The Advisory Council is comprised of individuals from a variety of disciplines, who are knowledgeable in guardianship and conservatorship. At minimum, there is representation from the Nebraska County Judges Association, attorneys, social workers, mental health professionals, and other professionals with expertise in aging, developmental disabilities, or related fields. Members of the Advisory Council are appointed by the State Court Administrator and serve three-year terms. Appointments to the Advisory Council are reflective of the geographical and cultural diversity of the state of Nebraska, including gender fairness.

FINDING STRENGTH IN THE STRUGGLE

As an Associate Public Guardian, COVID-19 has definitely brought new challenges and surprising benefits. One of the most difficult parts of COVID-19 has been determining how to see my wards safely. **Every part of me as a guardian wants to make sure my wards are healthy and safe.** I want them to know that I am available to them, and that they are important to me. I also do not want to give COVID-19 to my wards (or their staff), get it myself, or give it to my coworkers and family.

I serve many wards of different ages and with different health concerns. On top of that, I am going into facilities that have other clients with their own needs. Many of my wards have no boundaries. **On multiple occasions during this pandemic, I have been in situations where I am sitting in confined spaces with people not wearing masks.** I have had wards and others get in my face without masks, hug me without warning, etc. I feel guilty that I have to pull away from people in those situations and it makes it difficult to build rapport and maintain trusting relationships.

On the other side of things, not all changes brought on by the pandemic have been negative. I have been forced to make changes to my normal routine, especially changes in my work environment and how I visit my wards. **By working from home, I am able to start my workday earlier, and therefore be more available to my family in the evenings (barring emergency calls).** I surprisingly find my home less distracting than the office much of the time, and since I have shifted how I do my visits, I have actually become even more efficient in completing my work tasks. Oprah Winfrey said, “**Where there is no struggle, there is no strength,**” and I continue to hope that when we all come out of this season of COVID-19, we will find that we have become better and stronger.

- Lincoln APG

FROM PERIL TO MIRACLE

One of my coworkers was out on leave, so I was covering some of her cases. One particular ward was hospitalized for three weeks with COVID-19. This particular ward is a prime example of a **high-risk patient, with diagnoses of COPD, vascular dementia, schizophrenia, and depression**. She has a history of life-threatening illnesses, and I was quite worried about her. She had contracted COVID-19 due to community spread in the nursing home where she resides.

During her hospitalization, I was told **she was nearing the end of her life, likely with just days to live**. The treating physicians believed her body would not be able to handle CPR or other life-saving measures. After consultation with medical personnel and OPG Administration, I consented to change her code status to “Do Not Resuscitate,” or DNR. Her condition continued to change from day to day.

But, one week later, she returned to baseline consistently enough that she was safe to discharge back to her nursing home. **With all of her pre-existing conditions and risk factors, no one expected her to survive, but she did!** It was a joyous day when she discharged from the hospital.

- Omaha Ward

“THERE ARE ONLY TWO WAYS TO LIVE YOUR LIFE. ONE IS AS THOUGH NOTHING IS A MIRACLE. THE OTHER IS AS THOUGH EVERYTHING IS A MIRACLE.”

- Albert Einstein



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including past Annual Reports, visit our website:**

<https://supremecourt.nebraska.gov/programs-services/office-public-guardian>