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RECENT DEVELOPMENTS IN GUARDIANSHIP PRACTICE

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Hon. Richard I. Horowitz-Biography

Richard Horowitz was appointed to the Court of Claims by Governor Andrew Cuomo in 2015. He currently sits as an Acting Supreme Court Justice in the dedicated Guardianship Part of Suffolk County. Judge Horowitz's prior judicial positions include District Court Judge, Acting County Court Judge and Supervising Judge of the District Court. He has presided in virtually all of the various civil and criminal parts of the District Court, including the Drug Treatment Court and the Mental Heath Court. In 2013 he was tasked with creating and presiding over the Human Trafficking Intervention Court.

Judge Horowitz began his legal career as a public defender at the Legal Aid Society of New York. He served as a Senior Staff Attorney for nineteen years and specialized in working with defendants living with mental illness and chemical addiction.

During a hiatus from the bench in 2014 and 2015, Richard Horowitz served as the Deputy Bureau Chief of the Special Investigations Bureau of the Suffolk County District Attorney's Office. His Bureau was responsible for combatting gang and gun violence, animal cruelty and human trafficking.

Judge Horowitz enjoys teaching. He is a Special Professor of Law at Hofstra University School of Law, where he teaches a course, of his own design, entitled *Mental Health Issues in the Criminal Justice System*. He also serves as guest lecturer at Touro Law Center and at the Suffolk Academy of Law.

He is a Past President of the Suffolk County District Court Judges Association and a Past Vice-President of the New York State District Court Judges Association. He currently serves as a Co-Chair of the Neuroscience and the Law Committee of the Suffolk County Bar Association.

Judge Horowitz is the recipient of the Suffolk Criminal Court Bar Association's Judge of the Year Award, Hofstra University's George M. Estabrook Distinguished Service Award and the Long Island Business News' 50 Around 50 Award.

He is a graduate of Binghamton University and Hofstra University School of Law.

Maeghan H. O'Keefe, Esq., is the Principal Law Clerk to Acting Justice Richard I. Horowitz in the Guardianship Department of Suffolk County Supreme Court. Prior to joining Judge Horowitz, Maeghan was in private practice where she focused in the areas of Elder Law/Elder Justice, Estate Planning and Article 81 Guardianship matters. In the Guardianship arena, she served in several different role including, Petitioner's Counsel and was previously appointed by the Court as Counsel to the AIP, Court Evaluator and Court Examiner.

Before returning to private practice, Maeghan was the Principal Law Clerk to the Hon. Martha L. Luft and the Hon. Sanford N. Berland in Riverhead. Maeghan also has extensive Municipal Law experience having worked in the Town Attorney's Office for both Babylon and Islip townships. While working for the County Attorney's Office, she prosecuted child abuse and neglect matters in the Family Court Bureau.

Maeghan earned her law degree from Touro Law Center in Huntington, New York. Maeghan is married with three children.



TheGuardianshipProject

Incapacitated, Indigent, and Alone: Meeting Guardianship and Decision Support Needs in New York

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Report to the New York Community Trust

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TheGuardianshipProject

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The Center for Gerontology serves as the organizational unit and focal point for aging-related activities at Virginia Polytechnic Institute (Virginia Tech). The center's primary mission is to foster and facilitate multidisciplinary research that enhances the quality of life of older adults. In support of this mission, the center focuses primarily on three streams of coordinated research: Family Gerontology, Health and Aging, and Elder Rights. Although the center is part of the College of Liberal Arts and Human Sciences, it has a university-wide purview, with more than 80 faculty affiliates representing seven colleges and 28 departments or units across campus.

The mission of the American Bar Association Commission on Law and Aging is to serve as a collaborative, interdisciplinary leader of the association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

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Executive Summary

In 2005, the Vera Institute of Justice (Vera) and New York State's Office of Court Administration launched The Guardianship Project (TGP) to serve as court-appointed agency guardian to a vulnerable, largely indigent population—elders and persons with disabilities lacking family or other support—enabling them to live as independently as possible. In launching TGP, Vera sought to cast a spotlight on a desperately missing element of the social safety net and to provide an approach that humanely addressed critical needs for individuals in a way that allowed key institutions to operate in concert and more effectively.

TGP offers a comprehensive guardianship model available in New York City and employs attorneys, social workers, and financial and property managers and partners with investment advisors, volunteers and, when necessary, pro bono counsel, to provide guardianship services for those under its care. TGP's clients are referred to the program due to a wide variety of issues, including dementia, serious medical problems, pending evictions, elder abuse, and placement in institutional settings against their will. As of 2018, TGP serves 180 clients year-round.

The question is: what happens to other individuals in New York City and New York State who are indigent, whom the court determines are "incapacitated," and who have no one to serve—individuals who are among the neediest in society, who may be taxing to serve, and whose voice is not heard. With a rising population of older persons, increasing dementia, increasing longevity for individuals with disability, and a likelihood that family members will be spread out geographically, there is a continued and escalating need for guardians as well as other decisional options.

This study aimed to analyze ways to increase and improve guardianship and decision support services for this challenging and often overlooked population—people, formerly called "unbefriended" individuals, who are alone, with no one to help, and few or no resources. The study objectives were to: (1) document the need for guardianship and decision support services for the population, (2) assess the current local and state ability to meet that need, (3) understand the best practices of states providing comparable guardianship and decision support services, (4) assess the TGP model of guardianship to ascertain if it is an appropriate model for expansion to meet the increased need in New York City and in other parts of the state, and (5) highlight barriers in court guardianship processes in New York City and state and improvements that might be made.

Who needs guardianship and decision support services?

While data are lacking, our study's surveys and interviews uncovered a compelling and undeniable unmet need for guardianship and related services for individuals in New York who are indigent, have been named by a court as "incapacitated," and who have no one to serve.[1]

The cases are often urgent and concern the neediest in our society, with an alarming mix of Medicaid, housing, mental health, long-term care, and social services issues—frequently with no one to help. The need is especially intense for nursing home residents and for individuals at risk of eviction from housing.

Guardianship databases would help to confirm, clarify, and focus the unmet needs and suggest solutions. Clearly, there is great and equal demand for more available and skilled guardians and for more attention to less-restrictive options—as well as a greater emphasis on the social work skills required to sort out the pressing human needs.

The cases are often urgent and concern the neediest in our society—frequently with no one to help.

In response to these findings, our study makes the following recommendations:

- **Data.** New York should continue and intensify its collection of basic guardianship data to better inform estimates of unmet need and strategies for meeting the need.
- **Supportive services.** New York should provide adequate funding for home and community-based care and affordable housing for indigent individuals at risk of, or subject to, guardianship—especially congregate housing for older adults where people can age in the community and easily access support services.
- **Social work skills.** New York should find ways to increase the number of professionals with social work and nursing skills to act as guardians for individuals with no family or friends to serve.
- **Less-restrictive options.** New York should provide judicial and legal training on screening for less-restrictive options—including a range of decision supports and supported decision making, the use of forms that emphasize screening for such options, and tracking the use of these options in avoiding unnecessary appointments.
- **Restoration of rights.** New York court procedures should ensure access for petitions for modification or termination of guardianship orders and restoration of rights when guardianship is not needed.
- **Increased number of clerks.** New York should provide funding for an increased number of clerks to assist judges with the high volume and complexity of guardianship cases.

1 Unless New York City is specified, "New York" refers to the state throughout this report.

- **Increased number of guardians.** New York should pursue multiple approaches toward increasing the number of available and skilled guardians to serve indigent individuals in need as a last resort after less-restrictive options, including supported decision making, have been examined.

Who serves as guardian for the target population?

New York has four "guardian of last resort" schemes for individuals who are indigent, have been judicially deemed "incapacitated", and who have no family or friends to serve. Each contributes to meeting the need for these persons in important ways. Each is stretched. Taken together, they fall markedly short of meeting the compelling need.

New York law and regulations provide for local commissioners of social services to act as the guardian of last resort. In some but not all areas of the state, the commissioner names adult protective services (APS) to fulfill guardianship responsibilities. APS guardianship practices vary throughout the state. However, APS as guardian is clearly a conflicting role because APS is responsible for petitioning for guardianship. APS also is responsible for investigating reports of abuse, neglect, and financial exploitation—although in practice, APS generally does not investigate suspected abuse by guardians, thus barring an essential safeguard. Additionally, APS staff often are overburdened, and the system is underresourced.

New York law also provides for community guardian programs funded by local social services offices. New York City has three such programs. Community guardian programs must relinquish cases when a person enters a nursing home or similar residential facility, leaving a serious and sometimes life-threatening void where there is no one to make health and personal decisions and oversee facility care. Moreover, the programs are overwhelmed with cases.

New York Judicial Rules, Part 36, provides for appointments by the court, including appointments of guardians. The Part 36 list is predominantly composed of lawyers, whereas it is often social work skills that are needed. Additionally, the number of professionals on the list willing to serve as guardians (as opposed to court evaluators, court examiners, or other roles) has dwindled. Many cannot afford to take no-fee/low-fee cases because of the enormous complexity and time intensity required. Even though the cap on compensation recently was raised, judges cannot rely on the list to fully meet the growing number of cases.

New York has scattered not-for-profit agencies that take guardianship cases, generally using meager funds from the estates or small Medicaid-exempt stipends. Such agencies are vastly underfunded to serve as guardian and do not exist throughout the state. Individuals we interviewed agreed that funding for additional nonprofits, especially those with a multidisciplinary team model, would help to staunch the unmet need.

There was widespread recognition by those we surveyed and interviewed that there is a marked need for increased funding to provide for guardians in low-fee/no-fee cases where there is no one else to serve. Many, but not all, supported a statewide public guardianship system with flexibility to meet local needs. Two pilot programs are underway, and evaluation of their experiences will offer critical input toward addressing the unmet need in other areas of the state.

There is a marked need for increased funding to provide for guardians in low-fee/no-fee cases where there is no one else to serve.

In response to these findings, our study makes the following recommendations:

- **Funding for diversity of services.** New York should provide additional funding for a diverse pool of guardianship and decision support services. Funding for such services should prioritize living in the community as a primary goal. Funding should come from a variety of sources, including fees excluded from the calculation of Medicaid "net available monthly income" payment in nursing home cases.
- **APS role in guardianship.** New York should identify other approaches for guardianship services instead of relying on APS through departments of social services to serve as guardian of last resort. This would avoid an inherent conflict of services. Additionally, it could free up APS resources for its other important protective roles, including a critical role in investigating suspected guardianship abuse.
- **Community guardian programs.** New York City and/or state should provide additional funding to community guardianship programs to meet the pressing needs, ensure quality services, and seek less-restrictive options, with consideration to a reasonable staff-to-client ratio (as recommended by the national public guardianship study by Teaster et al. (2010)).
- **Guardianship for nursing home residents.** While recognizing that not all nursing home residents need guardians, at the same time, New York should address the current gap that occurs when community guardian programs must relinquish cases in which an individual requires nursing home care. Guardians can be needed advocates for quality of care. Extending the role of the community guardian programs to selected nursing home cases would prevent unnecessary burden on the court in finding another guardian and ensure continuity in the guardian's care and decision making—thus allowing the guardian to best identify and support individual wishes and needs.
- **Incentives for serving in low-fee/no-fee cases.** New York should provide incentives such as free continuing education courses for professionals on the Part 36 list, provide incentives for social workers and nurses to agree to serve as guardians in low-fee/no-fee cases, and encourage their appointment by judges in appropriate cases where there is no less-restrictive option.
- **Evaluation and expansion of pilot projects.** New York should continue the two 2018–2019 pilot programs to allow for additional time to measure effectiveness. Based on experience of the initial pilot demonstration projects, New York should fund additional projects, building in a formative evaluation process and moving toward addressing the unmet need for guardianship and less-restrictive decisional options, including supported decision making, throughout the state.

Do New York court processes act as barriers to effective service and oversight?

Complicating attempts to address unmet needs are barriers in court guardianship processes that may needlessly hamper efforts to get people the help they need. In the development of Article 81, maximizing self-determination and expediting guardianship cases were both prominent features. While it is important to comply with time deadlines set out in the law, it is also important to focus on the individual and support his or her rights. The balance may be challenging. Our study examined issues of timing in court processes and in the monitoring to identify solutions that streamline procedures yet preserve rights.

A study in 14 counties by the Brookdale Center for Healthy Aging at Hunter College found that, on average, it takes 211 days—significantly longer than the Article 81-mandated 50 days—from the filing of a petition for guardianship to the commissioning of a guardian. Guardianship cases are complicated and require sufficient time and attention to individual needs and rights—and this is especially so for no- or low-fee cases with scant resources at hand and no one to serve. Yet some delays may stem from systemic inefficiencies that result in wasted efforts and higher costs. Our surveys and interviews sought reasons for the delays and possible solutions.

While Article 81 provides 28 days from the filing of the petition to the first hearing, the Brookdale study found it takes an average of 63 days. Some delays are inherent in the very nature and complexity of the cases—time for needed accommodations, investigation, and evaluations. Other delays may be addressed through solutions such as a uniform, plain-language petition, as well as additional court clerks to move the process ahead.

While it is important to comply with time deadlines set out in the law, it is also important to focus on the individual and support his or her rights.

Article 81 specifies that the judge should issue an order within seven days after the hearing, unless for good cause shown, yet the Brookdale study showed it took an average of 82 days. Sometimes judges need extra time to find the best and least restrictive answer in difficult cases. Mediation may be helpful, especially with family disputes. However, several of our survey respondents cited "bottlenecks" concerning the proposed order and offered practical solutions.

Article 81 specifies 15 days from the date of the order to the guardian's commission, yet the Brookdale study found it took an average of 66 days. This may be due to court backlogs and attorney delays, but also lay guardians frequently don't realize that their authority depends on getting not just an order but also a commission. Survey respondents proposed ways to help guardians and to simplify and streamline the commission process. Our survey also found bonding

practices uneven and that bonding guidelines might be useful.

Article 81 requires the guardian to file an initial report after 90 days and an annual report thereafter. The Brookdale study found the average time to the filing of a first report is 237 days. Our study confirmed that a substantial number of reports and accountings are not submitted on time. Often lay guardians lack experience and training in filing a timely and complete report and accounting; survey respondents urged ways of making filing easier. Other delays may be due to the lack of banks understanding of a guardian's authority. Survey respondents emphasized the need for a uniform statewide template for initial and annual reports. An additional issue pointed out by interviewees was the need for a guardianship complaint procedure or ombudsman function.

In response to these findings, our study makes the following recommendations:

- **Develop uniform documents.** New York courts should create uniform documents for the petition, order to show cause, initial report, and annual report.
- **Facilitate filing of reports to enhance monitoring.** New York courts should generate reminders of filing deadlines, provide reporting instructions and samples, and offer electronic filing options. There is also a need to educate banks about guardian authority to avoid unneeded delays.
- **Expedite guardian commission process.** New York courts should educate lay guardians about the need to get a commission and consider ways to combine or streamline the order/commission process.
- **Employ additional clerks.** New York should provide funding for the addition of administrative staff trained to move the guardianship process forward in a timely way.
- **Consider complaint resolution approaches.** New York should explore complaint procedures from other states so that problems can readily be brought to the attention of courts and consider dispute resolution options such as mediation and ombudsman functions.

How do other states provide comparable services?

As part of our study, we invited programs from other states that had participated in the national public guardianship study by Teaster et al. (2010) to complete a brief update in order to inform efforts in New York. We were able to gather information from five sites in five states: the Pima County Public Fiduciary (Arizona); the Office of the Public Guardian (Los Angeles County, California); the Office of the Public Guardian (Delaware); the Office of Public and Professional Guardians (Florida); and the Cook County Office of the Public Guardian (Illinois). Highlights of our findings and recommendations for New York included the following:

- **Array of funding.** New York programs must have adequate funding from a stable set of funding sources. Most of the public guardian programs in the other states we looked at have funding derived from an array of sources, including state funds, county funds, grants/foundations, client fees, and estate recovery. Only Delaware had one funding source.

- **Scope of authority.** New York programs should have authority to make decisions about financial and personal affairs if the court order has such a scope of authority. All the programs make decisions about people's personal and financial affairs.
- **Advocate, arrange, monitor.** New York programs should advocate for, arrange, and monitor service delivery to the people served by the program. Public guardian programs advocated for, arranged, and monitored services. The Cook County Office of the Public Guardian (Illinois) also had responsibility for directly providing some services.
- **Representative payee and supported decision making.** New York programs should serve as representative payees and provide supported decisions. Programs serve as representative payees, personal representatives of decedents' estates, private guardians, and providers of supported decision making.
- **Live at home.** New York programs should work to keep people in their own homes as much as possible. Primary residences of people under guardianship varied across the programs.
- **1:20 staff-to-person ratio.** New York programs should comport to a 1:20 staff-to-person ratio. Staff-to-protected-person ratios ranged from 1:30 to 1:80. In the most recent national study of public guardianship, Teaster et al. (2010) recommended a staff-to-person ratio of 1:20.

Is the TGP model considered to be effective and replicable by staff and stakeholders?

The TGP model is supported both internally by the staff members and externally by stakeholders we surveyed and interviewed. TGP's team approach is a holistic "one-stop shopping" approach to the provision of guardianship and related services, and the low ratio of staff to individual affords high quality, person-centered services.

Program strengths included dedicated staff members, financial management programs, licensure of guardians, an asset recovery program, and attention to the needs and wishes of the people under guardianship.

Program challenges included difficulties obtaining public benefits, lack of mental health services, staff reductions in the face of a rising population of persons needing guardianship, confusion concerning the role of a public guardian, insufficient resources, and high staff turnover due to inadequate compensation of staff members.

TGP is considered especially outstanding in its efforts to either keep people living in community settings or to return people to community settings as appropriate. TGP's quality of service is not without costs. The program struggled for many years to find a sustainable funding model until, most recently, it obtained a sizable, multi-year contract from the Office of Court Administration. Also, unlike other Vera-initiated programs, it has not yet "spun off" independently, partly due to funding and partly due to several changes in leadership since

its inception. TGP's struggle to sustain itself is not due to its programmatic model, however, but rather, due to its mix of high-fee, low-fee, and no-fee cases that the court orders TGP to take. Often, it is the most resource-intensive cases that are very low or no fee. Hence the need for programs (and alternative funding sources) specifically to serve indigent persons.

Often, it is the most resource-intensive cases that are very low or no fee. Hence the need for programs (and alternative funding sources) specifically to serve indigent persons.

Although the model is a promising one, it is a costly one, and stakeholders raised this important point. While TGP is successful in a city with a high-density population such as New York City, it would likely need to be modified if it were to be replicated in more rural areas. Its replication and adaptation should be piloted to determine feasibility, including requirements for technology, training, oversight, and partnerships to access services.

In response to these findings, our study makes the following recommendations:

- **Increase ease of information access.** TGP's reports should be combined and retrievable in one place; this is possible because the accounting system is structured to have data all in one place. Throughout the year, the program examines case records; however, staff could go deeper via more routinized and sustained efforts by the whole staff.
- **Optimize mix of cases and caseloads.** Case managers' caseloads should be reviewed regarding staff-to-client ratios as well as mix of cases given to each case manager.
- **Improve funding model.** The original funding model of cases with estates and no-fee cases should be maximized so that TGP can have greater sustainability.
- **Increase funding.** TGP should have more funding in order to take on more cases.
- **Continue outreach efforts.** TGP should continue efforts at outreach and involvement in policy discussions.
- **Replicate the TGP model.** The TGP model should be replicated and evaluated. The evaluation should be a formative, process and summative evaluation.

Section 1: Introduction

In 2005, the Vera Institute of Justice and New York State's Office of Court Administration initiated The Guardianship Project (TGP) to serve as court-appointed agency guardian to a vulnerable, largely indigent population—elders and persons with disabilities lacking family or other supports—thus enabling them to live as independently as possible. In launching TGP, Vera sought to cast a spotlight on a desperately missing element of the social safety net and to provide an approach that humanely addressed critical needs for individuals in a way that allowed key institutions to operate in concert and more effectively. Guardianship is one among an array of mechanisms (e.g., supported decision making, agent under power of attorney for healthcare, power of attorney for finances, healthcare proxy, advance directive, living will) to help people with decision making when they are unable to do so in part or completely—temporarily or permanently.

TGP offers a comprehensive guardianship model available in New York City and employs attorneys, social workers, and financial and property managers and partners with investment advisors, volunteers and, when necessary, pro bono counsel, to provide guardianship services for those under its care. TGP's clients are referred to the program due to a wide variety of issues, including dementia, serious medical problems, pending evictions, elder abuse, and placement in institutional settings against their will.

Under New York law, there are two kinds of guardians for adults. Under Article 81 of the New York Mental Hygiene Law, a Supreme Court, Civil Branch or a county court, may appoint a guardian for an adult to manage the adult's personal and/or financial affairs when the court finds the individual is not able to do so. Under Article 17A, a Surrogate's Court may appoint a guardian for an adult with an intellectual or developmental disability. This report concerns appointments under Article 81. According to the statute, such Article 81 appointments are only warranted when there has been a showing to a judge that a person has functional limitations, is unable to recognize the extent of those limitations, is likely to come to harm as a result, and there are no less-restrictive options.

Nationally, while data are scant, the number of persons who need help with decision making through guardianship or a less-restrictive option appears to be growing. This growth is attributable to an aging population (the graying of the Baby Boomers), increased longevity, increased awareness of mental illnesses and developmental disabilities, military service-related disabilities, advances in medical treatment, the aging of caregivers, the rising awareness of elder abuse, and the occurrence of blended families and their increasing mobility. Although there are few statistics on adult guardianship filings and caseloads, it is clear that the demand for adult guardianship services is increasing across the country (Teaster et al., 2010). For example, in New York, from 2007–2011, the average number of initial New York State guardianship filings under Mental Health Law Article 81, as reported by the Office of Court Administration, was almost 2,400 cases per year. Because accurate data collection is lacking, as yet there is no way to determine exactly how many cases, and thus, types of guardians, are currently still active in the system from previous years.

Types of guardians

When classifying guardians who are appointed to assist people who are in need of this type of surrogate decision maker, it is necessary to distinguish between private guardians and public guardians. Most guardians are private guardians and typically family members or friends, although attorneys, corporate trustees, agencies, or even volunteers also serve in this role. Attorneys, corporate trustees, agencies, and volunteers generally have the discretion to choose cases for which they wish to serve. While there are a number of factors that affect their determination, the intensity of services needed and availability of payment are two strong incentivizing factors. Unlike persons with family and friend connections, it can be difficult to find guardians for at-risk people and/or people with low incomes and high needs. Attempts to locate a suitable surrogate decision maker can lead to delays in selecting a guardian and/or the appointment of a guardian who is ill equipped to meet the needs of the person needing the services of a guardian. As a result, those with low incomes may fail to receive needed services; fall prey to third-party interests; become victims of abuse, neglect, and exploitation; have inappropriate or insufficient health care;

and receive inappropriate placement in facilities. To fill this gap, for people who are aging alone and without resources, as a last resort, there are public guardians.

Public guardians

Public guardians, such as TGP, represent a small but highly important subset of guardians. Public guardianship, sometimes called guardianship of last resort, refers to the appointment of a public official or publicly funded entity as guardian in the absence of willing, able, and responsible family members and friends to serve, or without resources to employ a private guardian (Schmidt et al., 1981; Teaster et al., 2010). All states have either implicit or explicit public guardianship—that is, in an explicit scheme, the state establishes a public guardianship program; whereas in an implicit scheme, a state designates a state agency to serve (public guardian programs are funded through state appropriations, Medicaid funds, county monies, legislated fees from the individual under guardian, or some combination). Among the populations that public guardian programs often serve are people with mental illness, traumatic brain injury, intellectual disability, or developmental disabilities; the homeless; substance abusers; and persons with chronic diseases, such as dementia.

The purpose of this project was to analyze ways to increase and improve guardianship and decision support services for individuals in New York City and statewide whom the court has deemed "incapacitated" and who are alone with no one to help. Its objectives were to: (1) document the need for guardianship and decision support services for the population; (2) assess the current local and state ability to meet that need; (3) understand the best practices of states providing comparable guardianship and decision support services; (4) assess the TGP model of guardianship to ascertain if it is an appropriate model for expansion to meet the increased need in New York City and in other parts of the state; and (5) highlight barriers in court guardianship processes in New York City and state and improvements that might be made.

The Guardianship Project

In 2004, in the wake of studies and news reports documenting abuses committed by overwhelmed, ill-trained, and/or nefarious guardians in New York State (including a guardian who stole approximately $2.1 million from 17 clients [Worth, 2003]), the Vera Institute recognized the lack of available, appropriate guardians as an access to justice issue that warranted intervention to help ensure that all New Yorkers, regardless of their resources, could have high-quality, trustworthy guardians to meet their needs. Working in collaboration with the New York Office of Court Administration, Vera designed and launched TGP to test an innovative, cost-effective model of guardianship. The TGP model consists of a multidisciplinary team of social workers, lawyers, and financial professionals who are capable of providing wraparound support for client needs in the least restrictive setting possible. In launching TGP, Vera sought to cast a spotlight on a desperately missing element of the social safety net and to provide an approach that humanely addressed critical needs for individuals in a way that allowed key institutions to operate in concert and more effectively. Like all Vera demonstration projects, the goal was not to run TGP in perpetuity but rather to fully develop the model, thoroughly assess its effectiveness, and once the operational framework had been refined, if appropriate, to spin it off into an independent nonprofit.

TGP offers a comprehensive guardianship program available in New York City to ensure quality representation, employing attorneys, social workers, and financial and property managers. TGP partners with investment advisors, volunteers and, when necessary, pro bono counsel, to provide guardianship services for those under its care. TGP's clients are referred to the program due to a wide variety of issues, including dementia, serious medical problems, pending evictions, elder abuse, and placement in institutional settings against their will. TGP currently accepts guardianship appointments in New York City only; its clients live throughout the boroughs of Brooklyn, Manhattan, Queens, and the Bronx. TGP accepts cases regardless of the client's ability to pay and tries to take complex cases where its multidisciplinary team model can be most effective in serving clients with difficult and complicated needs. Courts have found it increasingly difficult to find

professional guardians willing to serve in cases where there are little to no assets that can generate fees, particularly where those cases are presenting with complicated issues that will require a great deal of effort and expertise to successfully address and resolve. Consequently, courts in the jurisdictions where they practice will often seek TGP to be appointed on cases for this population.

TGP cases usually involve the coordination of complex legal, health care, case management, and property issues that would be difficult for an individual guardian to effectively manage due to the resource intensive nature of these cases and the breadth of knowledge needed to adequately address the diversity of issues faced by the client. Individual cases are handled by a team of TGP staff. TGP lawyers manage all legal matters, including litigating on collateral issues. Case managers offer intensive social services and discharge planning. A benefits specialist coordinates any and all public benefits for which clients are eligible, including Medicaid, food stamps, Supplemental Security Income, rental supplement, etc. The financial team offers assistance supervising assets, including marshaling bank accounts and overseeing investments, budgeting, and bill payment. TGP's property manager works with landlords, tenants of clients who own property, and the clients themselves, in order to keep homes safe and secure for residents.

TGP staff members navigate issues that their at-risk clients face, including but not limited to entitlements, budgeting, health care, housing, as well as those in the legal, financial, and medical systems. From July 1, 2014, to November 30, 2018, TGP served as court-appointed guardian for 257 living clients and performed work in furtherance of discharge of TGP as guardian for an additional 111 clients who passed away before or during that time period. As of November 1, 2018, TGP was actively commissioned on 160 living clients. In addition to these clients, TGP is working on 55 cases where an application for discharge has been made, mostly in response to a client's death.

TGP's clients are demographically diverse. Based on who was served in calendar year 2017, they are approximately 52 percent white/Caucasian, 27 percent black/African American, 15 percent Latino or Hispanic, 3 percent Asian or Middle Eastern, and 2 percent of multiple races or ethnicities. Seventy percent of its clients are women. Of the clients whose finances are managed by TGP, 83 percent are living on less than the median annual per

capita income in New York City ($66,800) (U.S. census 2017). Nearly half (42 percent) are living at or below the poverty threshold for 2018 ($12,060 for a single-family household) (Health and Human Services, 2018). Over three-fourths (81 percent) of all clients are Medicaid recipients. Over this period, TGP has been able to maintain approximately 57 percent of its clients in community settings. Although most of TGP's clients are older adults and poor, all its clients have one thing in common—they have no one else to reliably take care of them at a time in their lives when they are deeply, and in many cases, dangerously vulnerable.

Once appointed, TGP strives to help its clients return to or remain in their homes and avoid unnecessary and costly nursing home admissions, hospital stays, and other types of institutionalization. In fiscal year (FY) 2018, TGP returned or maintained approximately 57 percent of its clients in deinstitutionalized settings. Although TGP attempts to keep as many of its clients as possible in the community, its goal is to provide every client, regardless of his or her habilitation status, as much self-determination and agency as each situation allows.

Section 2: Methods

This project examined ways to increase and improve New York's guardianship system and other ancillary decision support services for a growing population of indigent individuals adjudicated by the court as "incapacitated," and who have no family or friends able or willing to serve. The project also assessed the TGP model to determine whether it is considered effective, efficient, and sustainable by a variety of stakeholders and staff. Evaluation of the TGP model helps inform the scalability of the project in other areas as well as serves as an impetus for a system of guardianship in the state of New York.

The project first analyzed previous national research as well as research conducted by the New York City-based Brookdale Center on Aging that attempted to quantify the current and future need for guardianship services in New York. Second, the project, a joint effort with TGP and the evaluation team of Teaster and Wood, also included a statewide "unmet need" survey to ascertain, categorize, and quantify current efforts in New York for indigent, unbefriended, incapacitated individuals under guardianship.[2] Third, we surveyed national contacts to learn about the most up-to-date, cutting-edge guardianship practices in order to guide efforts in New York. Fourth, we examined current New York City and statewide judicial guardianship processes to determine potential efficiencies that can make representation of this population easier to achieve. Fifth, we conducted a formal assessment to ascertain stakeholders' views on the effectiveness of TGP in serving adults who may need decision making help, as well as on sustainability of the TGP model. We attempted to understand persons and populations in need of services, who was serving them, and improvements that might be made in court processes.

2 Originally, the project team also included Winsor C. Schmidt, JD, LLM, Metrolina Medical Foundation Distinguished Professor of Public Policy on Health, University of North Carolina at Charlotte. Professor Schmidt, a longtime colleague of Wood and Teaster, died on May 18, 2018. Professor Schmidt had a special interest in guardianship in New York, as he was a native of New York.

Specifically, our research included both online surveys and telephone interviews. Online surveys were developed in conjunction with staff at TGP. Protocols for research were approved by the Institutional Review Board of Virginia Tech. Table 1 summarizes the numbers of individual respondents in each category; findings from the surveys are reflected in sections 3, 4, and 5 of this report. We attempted to survey guardianship agencies, departments of social services, court clerks, and bar associations, but the response numbers were either none or too low to report.

TABLE 1. THE NEW YORK GUARDIANSHIP STUDY SURVEY SUMMARY

ONLINE SURVEYS	TOTAL RESPONSES
Guardians	33
Judges	23
Court evaluators	66
Court examiners	18

We also surveyed public guardians nationally using an online survey platform. We used respondents for the national survey by Teaster et al. (2010), surveys that yielded five responses (i.e., Pima County Public Fiduciary (Arizona), Office of the Public Guardian, Los Angeles County (California), Office of the Public Guardian (Delaware), Office of Public and Professional Guardians (Florida), and Cook County Office of the Public Guardian (Illinois). Additionally, the project investigators Teaster and Wood conducted telephone interviews with both stakeholders in the guardianship process in the state of New York as well as staff of TGP. The number of interviews and categories of individuals whom we interviewed is shown in Table 2 and is explained in greater detail in Section 7.

TABLE 2. THE NEW YORK GUARDIANSHIP STUDY INTERVIEW SUMMARY

TELEPHONE INTERVIEW	TOTAL RESPONSES
Guardianship stakeholders	Judges: 5 Court examiners: 1 Mental hygiene legal services: 4 Misc.:4
TGP staff	8

Note: TGP staff included the interim executive director, director of legal services and former director of legal services, former director of finance, director of case management, the legal department, the finance department, and the case management department.

The methods above allowed us to use mixed methods in determining the need for guardianship and the replicability of the TGP model. Section 3 (Who Needs Services?), Section 4 (Who Serves as Guardian?), Section 5 (New York Court Processes), Section 6 (The National Landscape), and Section 7 (The TGP Model), which follow, provide answers to the issues of need and program replication for the state of New York .

Section 3: Who Needs Services?

In this section, we describe our findings on the need for guardians and the extent of the need. In Section 4, we examine who serves as guardian for this high-risk population. Read together, the two sections paint an urgent picture of the New York guardianship landscape with some gaping gaps in services that greatly endanger the safety and well-being of these incapacitated persons.

Who needs services?

The demographics. New York State currently has 3.7 million individuals aged 60 and older and ranks fourth in the country in the number of older adults. The state population is projected to be over 24 percent older people in 2025. Between 2010 and 2020, the minority population aged 60 plus will increase by 51 percent. The poverty rate for older New Yorkers is slightly over 11 percent with "pockets of poverty … for example, among older women living alone" (New York State Office for the Aging, 2015). New York has 380,000 people with an Alzheimer's diagnosis, with an expected increase of 21.1 percent by 2025 (Alzheimers.net).

Converging with the aging of the population is an increase in the number of "oldest old" people over 85, a rising lifespan of individuals with disabilities, and increased mobility of family members—adding up to a greater need for decisional support, including a need for guardianship. A court examiner we surveyed stressed: "With the increase in the number of people over 65, the trend that family members move away from parental homesteads, and the increase in life expectancy along with the potential for dementia … I believe there will be an increase in the number of guardians assigned." One judge we interviewed pointed out that a lot of people have no one and have outlived their children and relatives. Another judge observed that older people have worked hard in their community and should be respected and have a roof over their head.

Converging with the aging of the population is an increase in the number of "oldest old" people over 85, a rising lifespan of individuals with disabilities, and increased mobility of family members.

The cases. The cases show a tangled and acute mix of mental health problems, dementia, abuse, exploitation, and problematic family dynamics. There is often no money, no available housing or long-term supports and services, and no one to serve when a surrogate decision maker is needed. In our interviews, we learned the fact patterns of many challenging cases, for example:

- A sister was caring for her brother with developmental disabilities, who was in a nursing home. As time went on, the sister stopped cooperating, the brother needed additional assistance, and there were decisions to be made, but there was no one to serve.
- An older woman was being abused by her grandson, who was using all her money and had taken over her house, forcing her to sleep in the living room, without medical treatment. The landlord complained that the rent was not being paid.
- A nursing home resident fell, and her daughter petitioned for guardianship. The daughter planned to shelter the settlement money illegally and was not aware of Medicaid regulations.
- A nursing home resident with developmental disabilities refused to eat, and the facility said he was not a candidate for a feeding tube. The not-for-profit guardianship agency had a high caseload and had no time to examine the situation and suggest solutions. When the judge inquired about feeding the resident by hand, the facility responded, and the resident began eating.

The unmet need. Like most states, New York has no statewide database showing the number and characteristics of open guardianship cases. Thus, it is difficult to quantify increases in the caseload and even more difficult to estimate the extent of unmet need. The Office of Court Administration (OCA) has recognized the need for guardianship data and has begun in mid-2018 to collect case-level information. OCA has asked that judges, after issuing an Article 81 Order appointing a guardian, complete a data sheet recording information about the petitioner, guardian, individual subject to guardianship, and the order. The request includes two specific questions on the unmet need for guardians: whether the individual's lack of assets limits the choice of available guardian; and whether the assets and/or income is sufficient to adequately compensate a guardian (New York Office of Court Administration, 2018).

Given the lack of data, our survey asked judges to estimate unmet need for guardianship services for individuals deemed incapacitated but with no available family members or others to step in. Some 55 percent of responding judges said this population makes up 21 to 40 percent of their guardianship caseload. When asked about cases where there are limited financial resources, one third said "low-fee or no-fee" cases involving this population make 21 to 40 percent. **One New York City judge we interviewed estimated that these cases make up over 60 percent of his caseload.**

Over half the responding judges said that there are not enough resources to handle their current, active caseload involving these no-fee or low-fee cases and named an increased number of guardians and increased number of clerks as resources that would help. Over 80 percent indicated it can be difficult to find an appropriate guardian to serve for the no-fee or low-fee cases—and over 55 percent said this occurs "most of the time." When asked whether there are a sufficient number of guardians with skills to take the no-fee/low-fee cases, 60 percent said no, but 40 percent said yes. Comments attributed the difficulty of finding qualified guardians to the fact that the work required exceeds available payment.

The judges described a somewhat different situation for fee-generating cases involving those with no available family or friends. Over 76 percent said that such cases comprise 0–20 percent of their active guardianship caseload,

and over 70 percent reported they had enough resources to handle the cases, although many said that an increased number of available guardians and an increased number of clerks would enable them to better handle the cases. Just over half of responding judges said that it is sometimes even difficult to find an appropriate guardian for fee-generating cases, noting that attorneys are reluctant to take on the responsibility and that they seek a higher rate than is approved—and that it is hard to match the needs of the individual with the skills of a potential guardian.

Over half the responding judges said that there are not enough resources to handle their current, active caseload involving these no-fee or low-fee cases.

Other survey and interview responses confirmed this perception of unmet need. We interviewed attorneys from Mental Hygiene Legal Services, a New York State agency responsible for representing, advocating and litigating on behalf of individuals receiving services for a mental disability. They said the vast majority of their clients are those with low incomes, and it is difficult to find guardians for them (especially if social services does not petition, as explained in Section 4). A referee observed that it is getting more difficult to find effective and skilled guardians. We also surveyed and interviewed "court examiners"—who are statutorily required to examine guardian reports before they are filed—and many agreed. One examiner remarked that there are difficulties dealing with people who may have limitations and impairments, and it is hard to find those who can do it.

Within the overarching unmet need, there are two specific situations in which the gap is especially harsh:

- **Community guardian clients who are institutionalized.** As explained in Section 4, Adult Protective Services (APS) and

Community Guardian Programs are focused on serving as guardians for individuals in the community and must relinquish a case if the person subject to guardianship goes into a nursing home or similar residential setting. This situation leaves the person unserved and puts the judge in a bind to find someone. As one judge explained, this is "a big problem because there is no money, as the person's assets likely were spent down for Medicaid—no family, no decisional ability. They need someone to make medical decisions and to be a strong advocate to ensure good care and often there is no one."

- **Cases in which APS was not the petitioner.** As noted in Section 4, while Adult Protective Services is the state's guardian of last resort, APS generally service only in cases in which it petitioned—leaving a huge need for instances in which a nursing home, hospital, or other interested party brought the case. When there is no agency contractually obligated to take a case, there is no guarantee any private or nonprofit guardians will be willing to take a case.

What services are needed?

If in fact there is an unmet need as established above, precisely what services are needed? Although our study focused on the need for guardianship services—both personal needs and property guardians—the question of how to provide those services presented complicated questions of ways to best match the varied, intersecting needs of those subject to guardianship with the skills and resources of those available to serve.

Complex legal–social services. Attorneys make up a substantial portion of guardians appointed by the court for low-income individuals with no one else to serve and no less-restrictive options available (see Section 4). Yet a repeated theme in our surveys and interviews was that, while guardianship is a legal appointment, the needs that guardians meet are not strictly legal in nature. Indeed, the needs represent an intricate mix of legal, financial, and social services. Respondents said the following:

- "More time needs to be spent on the social work aspects of these cases."

- "We're dealing here with people who don't fit the typical lawyer–client relationship, and they need help from those who are well versed in not only Medicaid, but supportive housing and community services, and mental health services."
- "Often it is not lawyer's work—we need nurses and social workers."

Services that keep people in community settings. We heard that a frequent pattern in guardianship is for the guardian to spend down the person's assets, prepare a Medicaid application, and get the person into a nursing home, where it is thought that there is less need for regular supervision and for financial management. Maintaining or returning a person to the community is often an incredibly time-consuming and difficult proposition that involves qualifying individuals for and securing varied benefits (including home care), the coordination of community-based health care, close monitoring and active control of finances, accessing appropriate social services and improving quality of life, managing real property, and protecting against exploitation and abuse, often all while operating under extreme financial constraints for a population largely dependent on fixed incomes.

A repeated theme in our surveys and interviews was that, while guardianship is a legal appointment, the needs that guardians meet are not strictly legal in nature.

Most people want to stay in their home and community. Ideally, guardians would facilitate this strong desire if possible. One judge interviewee lamented this predominant "pipeline to nursing home pattern," noting that the way the system is set up around asset spend-downs for nursing home placement, there is a disincentive for guardians to do the right thing by trying to keep people in the community. Another said that it is critical to put money toward

"good guardianship," not just guardianship to fill a gap, and noted that poor guardianship can be extremely costly.

Less-restrictive decisional options. Under Article 81 and as a moral imperative to preserve individual rights and self-determination, guardianship should be a last resort. Less-restrictive decisional options might include financial powers of attorney, health care powers of attorney and advance directives, trusts, use of representative payees, surrogate health care decisions made under the Family Health Care Decisions Act, and supported decision making. In supported decision making, people with a disability make and communicate their own choices about their lives with support from others (National Resource Center; Supported decision making New York; Blanck & Martinis, 2015; Diller 2016).

Little information exists on the extent to which guardianship petitions are screened for less-restrictive options. We surveyed "court evaluators," who are professionals appointed by the judge during the initial guardianship hearing. Court evaluators are to interview individuals alleged to need a guardian, the nominated guardian, and any other party who may have relevant knowledge regarding the need for a guardianship. The court evaluator is to use the gathered information to make a report to the court recommending whether the appointment of a guardian is necessary and if there are less-restrictive interventions.

Under Article 81 and as a moral imperative to preserve individual rights and self-determination, guardianship should be a last resort.

In our survey, the responding court evaluators said that they recommend such options in only 0 to 20 percent of their cases, and most recommend it "seldom." They recommended limited guardianship orders in only 0 to 20

percent of their cases as well. It was not clear if the reported low usage was because by the time the cases reach the evaluator, the needs are too great and there are simply no workable options.

Some interviewees commented on the importance of earlier intervention with critical services to meet daily needs—the front-end need for supportive services in avoiding guardianship. A judge said, "A number of people in New York City could avoid guardianship if services were available beforehand. There should be more attention to preventing guardianship. More aggressive case management and supported decision making." Others remarked that a large number of petitions stem from family disagreements and do not necessarily involve functional limitations that would make guardianship an appropriate intervention. One judge commented that "Many petitions—in fact almost all of them—should never have been brought as they are not motivated by concern for the [individual].[3] Frequently, they are products of fights between family members for assets. Some filtering mechanism would be helpful—one which investigated whether the person had need of the court's protection."

However, we also heard about successful use of less-restrictive options instead of guardianship. In our judge's survey, we asked respondents about reasons a petition might not result in appointment of a guardian. Finding of an appropriate alternative to guardianship was rated as a mean of 2.40 on a 1–6 scale in which number 1 was the most common reason—showing a reasonably strong use of screening for options other than guardianship.

Respondents described specific cases in which less-restrictive options sufficed. One judge described a case in which an older woman had early onset dementia, and while a petition for guardianship was pending, she appointed her son as agent under a power of attorney. He put a support network in place, and so the petition was withdrawn. A court evaluator described a case concerning a petition for a woman with limited English skills and a difficult personality. The woman was able to secure for herself social services and

3 This observation was made in the most recent study of public guardianship by Teaster et al. (2010).

rental subsidies, showing an ability to navigate the system, and once these were in place, she did not need a guardian.

The goal of limiting guardianship does not end with the appointment of a guardian, but also must take into account the changes in functional status and available supports that occur post-adjudication, something that seems to rarely occur in the current system in New York. Our survey asked judges about the percentage of cases in which they had terminated a guardianship and restored rights to the individual. Close to 47 percent of judges reported they terminated a guardianship order and restored rights in less than 1 percent of their cases, 20 percent said they took such actions in 1 to 2 percent of cases, and the remainder did so in either 3 to 5 percent or 6 to 10 percent of their cases. This confirms the findings in a 2017 national report about restoration of rights, finding it very rare—and not even tracked by most court systems. A recent news story profiled the poignant case of a New York resident seeking termination of a guardianship and restoration of rights (Leland, 2018).

Housing and mental health services. Another recurring theme we heard is that housing plays a huge role in guardianship cases, and that eviction is a gateway to guardianship. "What worries me most," one judge interviewee explained, "is the effort needed to prevent seniors from being evicted. If the person had these services earlier, they would not need guardianship."

"What worries me most," one judge interviewee explained, "is the effort needed to prevent seniors from being evicted.

To protect against eviction, the court will appoint a guardian *ad litem*, and that appointment may lead to a guardianship petition. However, according to a court evaluator, often the person "is just poor and no judge wants to put them out on the street. You wind up with a lot of cases where the person is adjudicated as incapacitated, but actually has a personality disorder, and the

landlord does not want to continue renting to them. These cases are difficult for the court examiner because the person does not want or need a guardian—needs help but it might not be a guardian."

Several judges confirmed that common gateways into the guardianship system in New York City are evictions and foreclosures. One judge explained a domino effect in which an eviction can lead to a guardianship petition and then a defaulting of a landlord's mortgage, adding to the housing crisis. A judge in a more rural area of the state sees housing problems as well, but they are more likely to concern people who own their homes but are living in squalor, people who can no longer afford to stay in their own homes, or family squatter situations. Hence, housing may be the real service needed, not guardianship.

Section summary

With a rising population of older persons, increasing dementia, increasing longevity for individuals with disability, and a likelihood that family members will be spread out geographically, there will be a continued and escalating need for guardians as well as other decisional options. While data are lacking, our study uncovered a compelling and undeniable unmet need for guardianship and related services for individuals who are indigent, have been named by a court as "incapacitated," and who have no one to serve.

The cases are often urgent and concern the neediest in our society, with an alarming mix of Medicaid, housing, mental health, long-term care, and social services issues—and often, with no one to help. The need is especially intense for nursing home residents and for individuals at risk of eviction from housing.

Guardianship databases would help clarify and focus the unmet needs and suggest solutions. Clearly, there is great demand for more available and skilled guardians as well as more attention to less-restrictive options and a greater emphasis on the social work skills required to sort out the pressing human needs.

Recommendations

- **Data**. New York should continue and intensify its collection of basic guardianship data to better inform estimates of unmet need and strategies for meeting the need.
- **Supportive services**. New York should provide adequate funding for home and community-based care and affordable housing for indigent individuals at risk of, or subject to, guardianship—especially congregate housing for older adults where people can age in the community and easily access support services.
- **Social work skills.** New York should find ways to increase the number of professionals with social work and nursing skills to act as guardians for individuals with no family or friends to serve.
- **Less-restrictive options.** New York should provide judicial and legal training on screening for less-restrictive options—including a range of decision supports and supported decision making, the use of forms that emphasize screening for such options, and tracking the use of these options in avoiding unnecessary appointments.
- **Restoration of rights.** New York court procedures should ensure access for petitions for modification or termination of guardianship orders and restoration of rights when guardianship is not needed.
- **Increased number of clerks.** New York should provide funding for an increased number of clerks to assist judges with the high volume and complexity of guardianship cases.
- **Increased number of guardians.** New York should pursue multiple approaches toward increasing the number of available and skilled guardians to serve indigent individuals in need as a last resort after less-restrictive options, including supported decision making, have been examined.

Section 4: Who Serves As Guardian?

New York has four "guardian of last resort" schemes for individuals who are indigent, have been judicially deemed "incapacitated," and have no family or friends to serve. Each of these schemes contributes to meeting the surrogate decision making needs of this high-risk population in important ways. Each is stretched thin. Taken together, they appear to fall markedly short of addressing the compelling need for surrogate decision makers for adults when there is no one willing or appropriate to help. They make up a patchwork approach that includes: (1) adult protective services, (2) community guardian programs, (3) attorneys and others on the judicial appointment list, and (4) nonprofit organizations. This section illuminates the portions of our surveys and interviews that reflect the roles, perceptions—and identified strengths, weaknesses and gaps—for each provider.

Adult Protective Services

Adult Protective Services (APS) is "a social services program provided by state and local governments nationwide serving older adults and adults with disabilities. APS is charged with receiving and responding to reports of maltreatment and working closely with clients and a wide variety of allied professionals to maximize clients' safety and independence" (Administration for Community Living, 2016). In New York, oversight of Adult Protective Services is through the Office of Children and Family Services, Bureau of Adult Services. APS is a mandated service provided by the state's local social services districts. It "involves intake, investigation and assessment of referrals of abuse, neglect, and financial exploitation" of adults age 18 and older who "due to physical or mental impairment are unable to protect themselves ...or have no one available who is willing and able to assist responsibly" (Office of Children and Family Services).

APS has a triple role in the state's guardianship system. First, if APS identifies abuse, neglect, or exploitation, the commissioner of the local department of social services may petition for guardianship to protect an individual from

harm. Thus, APS is a major gateway into guardianship. Second, theoretically, APS may investigate instances in which there is a report of abuse or exploitation by guardians and ask the court to remove a guardian who breaches fiduciary duties. However, we did not hear about such investigations in our study. Third, in some areas of the state outside of New York City, APS also serves as guardian if no one else is available. This role is authorized by New York statute and regulations:

- Mental Hygiene Law Article 81 includes "a local department of social services" in the definition of "guardian" [Article 81.03(a)].
- Article 81 specifies that eligibility to serve as guardian includes "a social services official, or public agency authorized to act in such capacity which has a concern for the incapacitated person" [Article 81.19(a)(2)].
- New York Social Services Law on Adult Protective Services states that APS services include: "Arranging, when necessary, for commitment, guardianship, or other protective placement for [eligible] individuals either directly or through referral to another appropriate agency..." [Article 9B, Title 1, 473(c)].
- APS regulations state that APS services include "functioning as a guardian...where it is determined such services are needed and there is no one else available or capable of acting in this capacity [18 New York Code of Rules and Regulations, Sec. 457(d)].

Thus, in New York, APS is the designated "guardian of last resort." The national public guardianship study (Teaster et al., 2010) called such an agency designation an "intrinsic" form of public guardianship—that is, there is no established program devoted to the function, but if there is no one else to serve, an executive agency is named by the court, and the head of the agency then selects staff to manage cases. The 2017 APS Guardianship Map (Appendix B, Bureau of Adult Services, Office of Children and Family Services) shows the number of cases in which the local commissioner of social services was appointed by the court to serve as guardian, designating APS staff or a contracting agency (see below, section on "community guardian programs") to fulfill responsibilities. The map shows that in 2017, there were 3,023 cases (as compared with 2,886 in 2016). A striking pattern shown in the map is that

in most upstate counties, there are very few active adult guardianship APS/department of social services cases, but the number increases in the midstate area and spikes dramatically downstate, particularly in New York City (where contracting community guardian programs serve).

Our interviews of New York guardianship stakeholders revealed that while the Bureau of Adult Services provides uniform statewide training on guardianship to APS staff, practices vary significantly throughout the state in a number of aspects:

- **Petitioning vs. serving.** In some areas, such as New York City, APS petitions but does not serve as guardian (due to the presence of the community guardian programs). In many mostly upstate areas, APS both petitions and serves.
- **APS as petitioner.** In some areas, APS serves as guardian only if APS has already petitioned, but in other areas, APS may serve regardless of who petitioned (for example, a nursing home or hospital).
- **Finding other options.** In some areas, APS appears to be more attuned than in other areas to identifying less-restrictive options and other means of supporting individuals, thus avoiding guardianship.
- **Designated staff.** In some areas, APS has designated experienced staff to fulfill the responsibilities of serving as guardian, while in others, staff with a range of duties and skills in this arena may manage the cases.

As noted above, a responsibility of APS is to investigate and monitor services provided to individuals with guardians, as well as reports of possible abuse, neglect, or exploitation by guardians. APS therefore is an essential safeguard in the guardianship system for monitoring the conduct of the guardian. Thus, an issue is whether there is a conflict of interest to have APS serve as guardian—securing social services, making end-of-life and other health care decisions, and making financial and Medicaid decisions. Indeed, the national public guardianship study found that there is an inherent clash in such competing roles, and therefore, "states should avoid a social services agency model" of public guardianship, as it can hamper effective advocacy for clients (Teaster et al., 2010). New York Mental Hygiene Law at Article 81.19(e)

addresses conflict of interest, barring creditors and direct service providers from appointment, but it does not refer to APS. Moreover, as stated above, APS eligibility for appointments is recognized in other statutory provisions. Interviewees generally supported the role of APS serving as guardian but only as a true last resort, observing that the need is critical, but the conflict is only potential—and that in some cases, APS may be named temporarily while a search for someone else is underway.

Our surveys and interviews revealed that most courts and stakeholders in the system are grateful that APS may be appointed if there is no one else and that caseworkers generally have the expertise and services needed. APS has contacts and knowledge to manage care and finances. However, appointing APS as guardian is perceived by some as not ideal, due to the conflict, and it in no way fully meets the glaring need for guardians as last resort. Additionally, it pulls APS away from performing its other important functions of adult protection. Our respondents said, in sum:

- Serving as guardian is not the primary role of APS. APS staff have a heavy load of tasks to detect and address adult abuse across a broad range of settings and must engage with clients, often under trying circumstances. Serving as guardian "diverts resources from their other mandated services."
- APS is intended by law to be the guardian of last resort but often becomes a rote default.
- In smaller counties, APS often struggles to fulfill obligations of a guardian, especially for property.
- APS is underresourced and overburdened, requiring additional funds to meet guardianship and related needs. There are simply more cases than they can handle. While they don't always accept cases, in other instances, they may feel they cannot turn down cases even though they lack needed support to do the job. And these are only APS-eligible cases—what about the others?

We also learned that generally if APS, in responding to a report of suspected abuse, finds that a guardian has been appointed, APS generally closes the case.

This closes off an essential outside eye on guardianship and prevents investigations that would be useful to the court in monitoring.

Community guardian programs

In some areas of the state, instead of designating APS to fulfill the statutory duty as guardian of last resort, the commissioners of local social services may contract with statutory "community guardian programs" authorized under Social Services Law. The law specifies that "a social services official may bring a petition to appoint a community guardian program…for an individual who is eligible for adult protective services, without a capable friend or relative willing and able to serve, and living outside a hospital or residential facility" (Article 9-B, Sec. 473-D).

New York City has three community guardian programs—New York Foundation for Senior Citizens, Self-Help Community Services, and the Jewish Association Serving the Aging. On the APS Map (Appendix B), the 2,117 open cases, including the 257 new appointments in 2017, are all community guardian cases.

As the name implies, community guardian programs are to serve individuals in the community and, according to the law, must relinquish the case when a person enters a nursing home. This leaves a disturbing and, in some cases, potentially life- or health-threatening gap, as there could be a significant delay in appointing a successor guardian. It also creates a judicial resource problem because a successor guardian must be located. Nursing homes are likely to provide better care if a guardian is there to advocate for a resident, who otherwise would have no voice. Some judges recognize the problem, and despite the statutory limitation, name a community guardian program to serve—or fail to discharge such a program upon nursing home admission—as there may be no other viable solution.

Nursing homes are likely to provide better care if a guardian is there to advocate for a resident, who otherwise would have no voice.

At the same time, some interviewees stated that the community guardian programs, while knowledgeable, are overwhelmed, have significant staff turnover, sometimes turn in incomplete reports, and cannot handle the pressing need in a timely way. Simply put, they are beyond their capacity.

Part 36 judicial appointment list

New York Judicial Rules, Part 36 (New York Courts) provides for appointments by the court, including appointments of guardians. If there is no one willing and appropriate to serve, the courts can identify an attorney or other professionals on the list to serve as guardian of the person, guardian of the property, or guardian of both, taking compensation from the individual's estate if there is one. The rule provides for a cap on compensation to spread out fee-generating cases fairly:

- "(1) No person shall be eligible to receive more than one appointment within a calendar year for which the compensation anticipated to be awarded to the appointee in any calendar year exceeds the sum of $15,000.
- (2) If a person has been awarded more than an aggregate of $100,000 in compensation by all courts during any calendar year, the person shall not be eligible for compensated appointments by any court during the next calendar year" (Part 36.2(d)).

The cap was recently raised to the $100,000 level to expand the number of professionals on the list who will take cases.

The court makes some appointments as pro bono guardians in no-fee or low-fee cases. Interviewees noted it is an unfair option for professionals on the list. One judge explained it might be asking an attorney to spend 20 hours

a week on a complex housing case, with no expectation of payment. There is no data on the frequency of such pro bono or low-fee appointments. Judicial survey respondents said "Many attorneys will only take fee-generating cases," but one noted that some attorneys "will handle pro bono over the year."

Themes concerning Part 36 appointments

Our surveys and interviews highlighted several themes concerning Part 36 appointments.

Multiple appointment roles. The list includes appointments of guardians ad litem, court evaluators, court examiners, attorneys for an alleged incapacitated person and others. Those willing to take on the tough and time-consuming tasks involved in serving as guardian are a minority, and some respondents said a dwindling minority, especially among attorneys. "Many attorneys have taken themselves off the Part 36 list. Those who continue to serve as guardians are overwhelmed."

Complexity of cases. The cases are challenging and frustrating. They require knowledge of public benefits, subsidized housing, discharge planning, health and long-term care, property management, Medicaid, and mental illness. Survey respondents characterized the cases as "high maintenance" and "time-intensive" appointments that cause "burnout." One interviewee likened taking such as case to taking on another family member. Legal practitioners said:

- "I am not comfortable making health care decisions."
- "I am often the person who has to make unpopular decisions, and the person I am helping rarely understands the help I provide."
- "I do not believe judges understand the amount of time, energy, and expenses that go into managing someone's affairs when entering a situation already in disarray."
- "Property management is extremely difficult, especially if reality is involved."

- "The current system leaves judges scrambling to find guardians when the individual has few assets or various issues and problems that are time critical."

Limitations on payment. Our surveys found that the cap, even with the recent raise, can "eliminate good guardians" and that the scant compensation "generally overcomes the time-consuming responsibilities." Several survey and interview respondents said there is an informal quid pro quo for better paying cases, but this is not written anywhere, can't be relied on by attorneys, and is problematic for judges. One judge we interviewed said, "I would like to know that when I am presiding in a case where the [individual] will need a guardian who won't get fees that I don't need to make deals with those on the Part 36 list for them to be appointed." A legal practitioner stated, "More people including myself would be more apt to take a low paying case if there was some guarantee" of better payment or a fee-generating case.

Many practitioners simply said they could not keep up their solo practice with high-input, low-fee, or pro bono cases. However, a few noted they felt "an obligation to accept no-fee/low-fee cases" and that it was "gratifying" to help the people involved. One judge emphasized the "compassion" of some on the list, particularly knowledgeable elder law attorneys who are dedicated to their service.

Legal vs. social work needs. A related issue is whether the payment for attorneys is or should be at their rate for legal work, or at a lower rate for guardianship services, many of which are not law-related. One judge commented, "the issue of fees is the elephant in the room as there is no rule on fees for lawyers who serve as guardian."

Several respondents remarked that what is really needed in many of the Part 36 cases is less legal work than social work. Another judge stated that what is often required is "social, not legal support. Lawyers do not make the best guardians for those individuals, but they make up a large majority of the Pat 36 list." While there are some nurses and social workers on the list, it is not clear how many are taking guardianship cases as opposed to serving as court evaluator.

Many practitioners simply said they could not keep up their solo practice with high-input, low-fee, or pro bono cases.

Varying levels of expertise. While several respondents lauded the expertise and dedication of those on the list willing to serve as guardians, others said the quality was not uniform. One judge explained that there is no way of knowing how those listed have managed the affairs of their clients. Another said, "You see 200 lawyers' names. None of them want to do this anymore because it's not cost effective for them."

Nonprofit agencies serving as guardian

In addition to community guardian programs, which are paid by the local departments of social services, there are a few additional agencies scattered throughout the state that take guardianship cases but are not under a contract with social services and have no steady income stream. There is little income from estates, as most individuals in need are indigent. Some of the agencies are able to secure small monthly fee payments (typically $450 to $500) for clients on Medicaid in nursing facilities, which are excluded from the calculation of the net available monthly income (NAMI) that Medicaid recipients are typically required to pay towards the cost of care. These fees are not always available, for example, when the sole source of income is Social Security and are solely at the discretion of the Department of Social Services' approval during the Medicaid budgeting process.

We discovered that no complete list of such agencies existed, and our study sought to compile a list through queries to interviewees (see Appendix C). Though it may not be fully complete, it offers the best compilation to date and invites additions.

Overwhelmingly, our survey and interview respondents all highlighted the dire need for funding for such for-profit and nonprofit agencies. They recognized that TGP offers the Cadillac model (see Section 7), but it has not been self-sustaining—i.e., court fees and NAMI payments alone are not enough to support the services and significant additional funds are needed. Respondents said:

- "We have insufficient nonprofits handling these cases."
- "Create more Vera projects!"
- "We have one service provider, but when they have a conflict or reach their limit of cases they can take, it is difficult to find an alternative."
- "Many of these cases are assigned to nonprofit guardianship organizations which have a limit to how many pro bono cases they will take."
- "We do have an available not for profit which will act as guardian, but they require a minimum monthly stipend which many incapacitated individuals cannot afford."
- "We need more nonprofit organizations."
- "We need more and better trained nonprofit guardianship organizations which have more personnel to handle dysfunctional families and psychologically impaired persons as opposed to a solo practitioner."
- "We need more funds for agencies to serve as guardians or funds for those appointed to draw from to compensate them."
- "There are only two nonprofits in the county, and one has stopped taking cases."

Is public guardianship the solution? Testing in two pilots

With the substantial gaps outlined above for indigent individuals named by the court as "incapacitated" but with no one to serve, the need for a statewide public guardianship program has been a focus of discussion in New York for

many years. As early as 1996, an article in an elder law publication set out "public guardianship issues for New York" (Schmidt, 1996). In 2001, the New York Courts' Commission on Fiduciary Appointments recommended that "public funds should be available to compensate Article 81 guardians in cases involving minimal or no assets" and noted that "one option is the creation of a public guardian office..."(Commission, 2001). In 2004, the Second Judicial Department Guardianship Task Force maintained that "the only real solution... is to establish an Office of Public Guardianship" (Supreme Court, Second Judicial Department, 2004). In 2016, the Brookdale Center for Healthy Aging study supported "development of publicly funded guardianship programs that can provide comprehensive case management to eligible clients in need of services."

Our study found high support for increased funding, with many referencing the potential of a public guardianship program. Close to 90 percent of responding judges and all of our interviewees said there is a significant need for increased funding in New York State to provide guardians in these no-fee and low-fee cases. Comments included the following responses:

- "Provide an incentive for persons to spend time with issues of strangers."
- "This should be a Medicaid cost."
- "We need a public guardianship program, and even more than that, we need the computer tools to enforce compliance."
- "Public guardianship is not a panacea, but would greatly diminish the problem cases, especially where family members are induced to take cases where they lack the ability to handle and which they undertake only reluctantly with predictable results."

In 2018, the New York legislature took a first step toward recognizing the unmet need for guardianship service. The legislature provided a $500,000 appropriation for two pilot projects—one in Suffolk County and one in Nassau County. New York State Senate appropriations language specified that the funding was "to facilitate the use of non-attorneys to serve as guardians appointed by a court under Article 81" (New York State Senate, 2018).

- **Suffolk County pilot.** The Hon. Richard Horowitz of Suffolk County is coordinating a one-year pilot project that will establish a not-for-profit organization to serve as guardian, using Retired Senior Volunteer Program members, nursing students, social work students, and law students to be assigned to manage cases with supervision, work as a team, and enter information into a database.
- **Nassau County pilot.** The Hon. Arthur Diamond of Nassau County is coordinating a one-year pilot project that will use geriatric social workers as guardians compensated at a rate of $125 per hour.

The judges, as well as several interviewees, explained that the different models could be evaluated and adapted to meet needs in other areas of the state. One viable strategy, used successfully in Virginia, is to expand coverage using similar pilots, moving incrementally toward a statewide public guardianship system. Indeed, the 1996 article on New York public guardianship cited above noted that in view of the state's size and diversity, "demonstration projects could test [various] models' effectiveness" (Schmidt, 1996).

Section summary

New York has four "guardian of last resort" schemes for individuals who are indigent, have been judicially deemed "incapacitated," and have no family or friends to serve. Each contributes to meeting the need for these persons in important ways. Each is stretched. Taken together, they fall markedly short of meeting a compelling need.

New York law and regulations provide for local commissioners of social services to act as guardian of last resort. In some but not all areas of the state, the commissioner names Adult Protective Services (APS) to fulfill guardianship responsibilities. APS guardianship practices vary throughout the state. However, APS as guardian is a clearly conflicting role, staff is often overburdened, and the system is underresourced.

New York has four "guardian of last resort" schemes for individuals who are indigent, have been judicially deemed "incapacitated," and have no family or friends to serve.

New York law also provides for community guardian programs funded by local social services offices. New York City has three such programs. Community guardian programs must relinquish cases when a person enters a nursing home or similar residential facility, leaving a serious and sometimes life-threatening void where there is no one to make health and personal decisions and oversee care by the facility. Moreover, the programs are overwhelmed with cases.

New York Judicial Rules, Part 36, provides for appointments by the court, including appointments of guardians. The Part 36 list is predominantly lawyers, though the skills required of the guardians usually extend well beyond the legal arena and are so diverse as to make it difficult to find a single individual appointee well equipped to meet all needs. Additionally, the number of professionals on the list willing to serve as guardians (as opposed to court evaluators, court examiners, or other roles) has dwindled and may of the best are capped out, even with the recent increase in the cap, and cannot take additional cases. Many cannot afford to take no-fee/low-fee cases of the enormous complexity and time-intensity required.

New York has scattered not-for-profit social service agencies that, among other services, take guardianship cases using meager funds from the estates or small Medicaid stipends where there is any income to be managed. Such agencies are vastly underfunded to serve as guardian and do not exist throughout the state. There was agreement by those we interviewed that funding for additional nonprofits, especially those similar to the TGP model, would help to staunch the unmet need.

There was widespread recognition by those we surveyed and interviewed that there is a marked need for increased funding to provide for a diverse pool of guardians in low-fee/no-fee cases where there is no one else to serve. Many, but not all, supported a statewide public guardianship system with flexibility to meet local needs. Two pilot programs are underway which may provide a model to address some of the unmet needs across the state.

Recommendations

- **Funding for diversity of services.** New York should provide additional funding for a diverse pool of guardianship and decision support services. Funding for such services should prioritize living in the community as a primary goal, similar to TGP (see Section 7). Funding should include Medicaid payment in nursing home cases.
- **APS role in guardianship**. New York should identify other approaches for guardianship services instead of relying on APS through departments of social services to serve as guardian of last resort. This would avoid an inherent conflict of services. Additionally, it could free up APS resources for its other important protective roles, including a critical role in investigating suspected guardianship abuse.
- **Community guardian programs**. New York should provide additional funding to the community guardianship programs to meet the pressing need and ensure quality services, with consideration to a reasonable staff-to-client ratio (as recommended by the national public guardianship study, see Section 6).
- **Guardianship for nursing home residents.** While recognizing that not all nursing home residents need guardians, at the same time, New York should address the current gap that occurs when community guardian programs must relinquish cases in which an individual requires nursing home care. Guardians can be needed advocates for quality of care. Extending the role of the community guardian programs to selected nursing home cases would prevent an unnecessary burden on the court in finding another guardian and ensure continuity in the guardian's care and decision making—thus allowing the guardian to best support individual wishes and needs.

- **Incentives for serving in low-fee/no-fee cases.** New York should provide incentives such as free continuing education courses for professionals on the Part 36 list, provide incentives for social workers and nurses to agree to serve as guardians in low-fee/no-fee cases, and encourage their appointment by judges in appropriate cases where there is no less-restrictive option.
- **Evaluation and expansion of pilot projects.** New York should continue the two 2018–2019 pilot programs to allow for additional time to measure effectiveness. Based on experience of the initial pilot demonstration projects, New York should fund additional projects, building in a formative evaluation process and moving toward addressing the unmet need for guardianship and less-restrictive decisional options throughout the state.

Section 5: New York Court Processes—Barriers to Effective Service and Oversight

New York State Mental Hygiene Law Article 81 was enacted in 1992 with a stated purpose of "establishing a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person, which takes in account the personal wishes, preferences and desires of the person, and which affords the person the greatest amount of independence and self-determination and participation in all the decisions affecting such person's life" (NYS Mental Hygiene Law Article 81.01, 1992).

Since the enactment of Article 81, reviews have sought to determine how well practice is carrying out the law's intent—including a 2001 New York Courts report on fiduciary appointments (Commission, 2001), a 2004 Second Judicial Department Guardianship Task Force Report (Supreme Court, 2004) and others. The Brookdale Center for Healthy Aging at Hunter College completed an in-depth file review in 14 New York counties, examining a total of 2,414 Article 81 guardianship case files (Callahan et al., 2016). Along with TGP, the Office of Court Administration assisted the project in accessing the files. The Brookdale project examined basic demographic data on individuals served, petitioners, and guardians; reasons for guardianship; length of the process; monitoring; and outcomes in terms of social services and public benefits secured.

There are many aspects of Article 81 implementation that affect individuals alleged to need a guardian—including those in our target population of indigent individuals with no one to serve. While some aspects of implementation were outside the scope of our study, we sought to build on the Brookdale findings concerning both timeliness of court processes and court monitoring.

Shortly after the enactment of Article 81, a law review article noted that:

"Expeditious timing is a feature of the new legislation designed to cure a system 'plagued with unconscionable delays.' The legislation states that '[a] proceeding under this article is entitled to preference over all other causes in the court,' and sets forth a timetable...These provisions respond to the urgency of the matters involved where the previous statutes left the fate of scheduling the hearing or trial to the court system." (Von Stange, 1993)

Article 81 provides for 50 days to complete a full guardianship proceeding. However, the Brookdale study found an average time of 211 days from the petition until the guardian's commission. The Brookdale report named many potential reasons for delays in court processes, often inherent in the very nature and complexity of the cases. Other delays, however, may stem from systemic inefficiencies that result in wasted efforts and higher costs—and that could be streamlined to better meet the needs of individuals and families. Our surveys and interviews asked stakeholders what "bottlenecks" they saw and what remedies might work.

Not all of our survey and interview respondents perceived any bottlenecks in the system—including 40 percent of judges surveyed, almost 37 percent of court evaluators, 53 percent of court examiners, and 29 percent of practitioners. Others saw delays but reported that while the processes are lengthy, they appropriately allow for attention to needs and rights, observing that the 50-day statutory timeframe is simply unrealistic and even unfair: "Frankly, 50 days is a ridiculous number. No one's rights should be infringed upon with such a rushed judicial process." Many, however, described various unnecessary roadblocks in three phases of the process, as summarized below.

Delays from the petition to the first hearing

Article 81 provides 28 days from the date the petition is filed until the first hearing; yet the Brookdale study found it takes an average of 63 days. Most of the respondents in our study did not perceive bottlenecks at this stage of the process—only 20 percent of judges, less than 8 percent of court evaluators,

6 percent of court examiners, and 13 percent of practitioners said there are bottlenecks.

Some respondents perceived delays that were mostly predictable with guardianship cases, especially contested cases. For instance, many parties need to be notified; arrangements may need to be made for proceedings outside of court if the individual cannot come to the courthouse, or other accommodations may be required; and the evaluation may take longer than anticipated, especially if the individual refuses to participate (Callahan, 2016). Court evaluators and court examiners pointed out that it simply takes time to investigate and secure relevant financial and medical records—and that sometimes conflicting schedules make it hard to find a hearing date that works for everyone. They explained:

- "Indigent alleged incapacitated individuals can be difficult to serve, requiring adjournments or continuations. It can be difficult to complete an investigation and produce a thorough report in time. It can be very difficult to get in touch with doctors and caseworkers. The alleged incapacitated person will often cancel meetings. Some cannot be reached by phone. Tracking down family members takes time. Obtaining financial information from third parties can take weeks."
- "There can be significant delays in the petitioner's obtaining personal jurisdiction over uncooperative alleged incapacitated persons. People rarely move quickly enough."
- "Attorneys for the parties often need to investigate issues like mental illness, which require time and effort and contacting third parties. Additionally, it seems like the pro bono cases sometimes take a back seat in many attorneys' caseload" see Section 6.

There can be significant delays in obtaining personal jurisdiction over uncooperative alleged incapacitated persons.

Other delays, though, may be fixable:

- **Petition forms.** The petition is the entry into the system. It can set the case off on the right track or hold things up unnecessarily right away. One judge commented, "our clerks reject many petitions due to errors in form and substance." Family members and other nonprofessionals often find it challenging to fill out a petition form. Another judge remarked that often petitioners fail to tell the court—and it may not be elicited in the form—that the person does not speak English, or cannot read English, and that a translator is needed. A uniform, plain-language, accessible petition form could reduce time-consuming errors in the petition and make sure that all needed information is included. Clear instructions and samples can be helpful as well. Uniformity could also help clerks to review the form more expeditiously.
- **Court staffing.** Judges and court examiners repeatedly noted that courts are understaffed and stretched thin: "Courts are overburdened and cannot always get the first hearing scheduled within the statutory time." A recurrent statement throughout the judicial survey was the need for more clerks to perform the range of administrative chores necessary to move the process ahead in a timely way.

Finally, court evaluators suggested other practical solutions as well, such as the following:

- Court evaluators should be provided with signed subpoenas for medical and financial information when they accept appointment.
- The court should contact the parties before sending out the order to show cause to see if they are available on the date shown.

Delays from the first hearing to the order and judgment

Article 81 specifies that the judge should issue an order within seven days after the hearing, unless for good cause shown. The Brookdale study showed this phase of the process took an average of 82 days. In our survey, while the

majority of respondents did not perceive bottlenecks from the first hearing to the order and judgment, some did—almost 27 percent of judges, almost 37 percent of court evaluators, and close to 12 percent of court examiners.

Some survey respondents reported delays due to scheduling issues, the sheer number of administrative steps involved—and often multiple hearings. One court evaluator highlighted "transcript delays, backlogs in the clerk's office, Part 36 appointees submitting affirmations of service, getting signed orders to the guardian." Another lamented that "there are too many continuances and also hearings that proceed with the intent of another hearing because not all parties can attend—a big waste of time, energy and effort." Some stated that appointment of a temporary guardian can be useful while the process is unfolding—and may turn out to suffice, avoiding the need for a permanent appointment.

Finding solutions short of permanent guardianship. Sometimes, however, a judge may take extra time to find the right—and least restrictive—solution in challenging cases. A court examiner remarked that "Many judges prefer to settle than try the case, or spread the hearing out over a longer period of time, particularly in difficult cases." A judge noted that "we have had some success in slowing down certain cases where a permanent guardian is not necessarily needed. Over time, families may resolve their conflicts, individuals may execute powers of attorney or make use of other less-restrictive options." Another stated that "sometimes a short-term appointment to complete a Medicaid application, facilitate a discharge or deal with other immediate needs is sufficient." Thus, taking some extra time can be beneficial and can result in finding solutions short of permanent guardianship. One tool increasingly used throughout the country is guardianship mediation—which can help to sort out particularly tangled cases, especially involving family disputes (Radford, 2002).

Proposed order. Several court examiners mentioned time consumed with the proposed order itself: "It may take weeks for the petitioner's attorney to prepare an order and weeks for the court to review and sign, leaving everyone in limbo during that period." They suggested solutions:

- "It would expedite the process if the court staff could print an order and judgment right at the hearing rather than wait for one of the

parties to submit it to court—such delays allow for the possibility of omissions and mistakes. “

- “A short form order gets the guardian in place immediately so he or she can begin to get the job done.”

Of course, flexibility to tailor the order to the individual needs of the person, as required by Article 81, is important. But a uniform order template with selected options could be both efficient and individualized (Frolik, 2002). A uniform order and judgment form was recommended by the Second Judicial Department Guardianship Task Force Report as early as 2004 (Second Judicial Department, 2004).

Delays from the order and judgment to the commission

Guardian commission. Article 81 provides that the court should issue a commission to the guardian within 15 days from the decision. The Brookdale study found it took an average of 66 days. Several respondents in our study named this as an unnecessary bottleneck—over 53 percent of judges, 19 percent of court evaluators, 29 percent of court examiners, and 25 percent of practitioners. Repeated comments pointed out that there are court backlogs and attorney delays, but also that lay guardians frequently don’t realize that their authority depends on getting not just an order but a commission, and they end up in a bind when they need to take action and cannot:

- “The procedure is antiquated and relies entirely on the speed of the clerk.”
- “Many guardians are not fully educated and need help to get their commissions.”
- “In many counties, it takes an eternity for the clerk to record the notices of entry. I have waited weeks…before I or my clients could obtain commissions.”
- “The petitioner’s attorney fails to adequately assist the designated guardian.”

Our survey respondents offered practical solutions:

- "Use a simple commission that is attached to a copy of the order, incorporating it."
- "A certified copy of the final order should serve as temporary commission."
- "Make the order the commission."
- "At the hearing, give all lay guardians a handout explaining the commission process."
- "Hire additional clerks."

Bonding. Another critical and sometimes problematic issue is bonding. While not a factor in indigent cases, bonding practices may affect some low to moderate income or higher asset cases. Failure of a proposed guardian of property to get a bond might or might not cause delay (over 73 percent of judges said it did not). One court examiner suggested that there should be bonding services in the court to help family or other lay guardians.

Our survey asked judges to name criteria they use in determining whether a bond should be set. They named asset amounts, results of background checks, monthly income, and whether the guardian is a professional. In the survey, 40 percent of judges said they set bonds in less than half of cases, and one-third said they set bonds between 50 percent and 65 percent of cases. Guidelines on bonding may be helpful to judges and clerks, to create more uniformity of practice.

Court monitoring of guardian reports

Filing of reports. Article 81 requires the guardian to file an initial report 90 days after the commission and an annual report thereafter. Annual reports are due May 31 for the preceding year. The Brookdale study found that the average time between the filing of the commission and the first report (whether initial or annual) was 237 days—with longer averages in New York County and Kings County, and shorter averages in the other counties studied.

Our survey confirmed that a substantial portion of guardian reports and accountings are not submitted on time. Just over 31 percent of the responding court examiners said the accountings are submitted on time in 61 to 80 percent of cases, and almost 44 percent said the accountings are on time 41 to 60 percent of the time. None of the responding court examiners said annual accountings are submitted on time in 81 to 100 percent of cases. (The remaining 25 percent specified on time filings 0 to 40 percent of the time.) Of the responding judges surveyed, over 28 percent named "failure of guardian to file reports in a timely manner" as a barrier that prevents the court from identifying problems in a low- or no-fee case, and over 46 percent in fee-generating cases.

Without a timely report the court has no way of assessing the well-being of the individual or the extent to which the guardian is carrying out fiduciary duties.

Reports and accountings are the primary way in which the court learns of problems in the guardianship. Without a timely report (or with a failure to report at all), the court has no way of assessing the well-being of the individual or the extent to which the guardian is carrying out fiduciary duties. One judge commented that "It is hard to know if the guardian is actually doing visits they should be doing and whether they are doing the best for the person with the resources at hand."

Court examiners attributed the delays in submission of reports and accountings to lack of lay guardian experience and training. Moreover, many family guardians are full-time caregivers. Legal practitioners said guardians need time at the beginning of a case to address pressing concerns "as opposed to paperwork." Ways to make filing easier, including options for electronic filing, would help. The National Association for Court Management states that

"Ideally, [reporting] forms should be available online and filed electronically… to reduce paper logistics, offload costly data entry, and reduce errors and redundancy" (National Association, 2014). Our study respondents suggested several solutions to promote more timely reporting:

- Develop uniform initial and annual report forms.
- Email reminders to the guardian about the report deadline.
- Provide specific plain-language instructions about how to complete the report, with samples.
- Make electronic filing options available.

Also, one legal practitioner observed that banks do not always recognize the authority of a guardian, accounting for additional effort and delay. The practitioner suggested that the court offer education for banks on guardianship and develop a form letter stating that the commission grants the guardian the power to access financial information.

Review of report. Article 81 requires all reports to be reviewed by a court examiner within 30 days of filing, yet the Brookdale study found an average of 210 days before a report is examined. The Brookdale study also found that "some counties only require the review of reports every other year in low asset cases, although the statute does not permit anything less than annual reports."

Of the judges responding to our survey, over 30 percent named "lack of court resources to review reports" as a barrier in the annual reporting process. All 100 percent of the judges agreed that "uniform statewide templates for guardianship annual and final reports would make the process more efficient for all involved. One judge explained, "I think uniformity would make the job of reporting simpler for lay guardians. I also believe it would simplify the work of the court examiners and the court staff reviewing the reports." Another judge noted that the third department already has such standardized templates, and they are on the court's website.

Other critical aspects of report review and court monitoring—such as court examiner practices and court investigative and sanctioning actions—were outside the scope of our survey, but some came up on our interviews.

Notably, one judge urged the creation of an ombudsman for the guardianship process—a recommendation that was made as early as 2001 by the Commission on Fiduciary Appointments. The commission found that "laypersons believe they have nowhere to go with questions and complaints" and urged that the court system "designate an ombudsman to provide information and field complains about the fiduciary process" (Report of the Commission, 2001).

Section summary

In the development of Article 81, maximizing self-determination and expediting guardianship cases were both prominent features. While it is important to comply with time deadlines set out in the law, it is also important to focus on the individual and support his or her rights. The balance may be challenging. Our study examined issues of timing in court processes and monitoring to identify solutions that streamline procedures yet preserve rights.

A 2016 file review in 14 counties by the Brookdale Center for Healthy Aging at Hunter College found that on average, it takes 211 days—significantly longer than the Article 81 mandated 50 days—from the filing of a petition for guardianship to the commissioning of a guardian. Guardianship cases are complicated and require sufficient time and attention to individual needs and rights—and this is especially so for no- or low-fee cases with scant resources at hand and no one to serve. Yet some delays may stem from systemic inefficiencies that result in wasted efforts and higher costs. Our surveys and interviews sought reasons for the delays and possible solutions.

While Article 81 provides 28 days from the filing of the petition to the first hearing, the Brookdale study found it takes an average of 63 days. Some delays are inherent in the very nature and complexity of the cases—time for needed accommodations, investigation, and evaluations. Other delays may be addressed through solutions such as a uniform, plain-language petition, as well as additional court clerks to move the process ahead.

Article 81 specifies that the judge should issue an order within seven days after the hearing, unless for good cause shown, yet the Brookdale study showed it took an average of 82 days. Sometimes judges need extra time to find the best and least restrictive answer in difficult cases. Mediation may

be helpful, especially with family disputes. However, several of our survey respondents cited bottlenecks concerning the proposed order, and offered practical solutions.

Article 81 specifies 15 days from the date of the order to the guardian's commission, yet the Brookdale study found it took an average of 66 days. This may be due to court backlogs and attorney delays, but also lay guardians frequently don't realize that their authority depends on getting not just an order but a commission. Survey respondents proposed ways to help guardians and to simplify and streamline the commission process. Our survey also found bonding practices uneven, and that bonding guidelines might be useful.

Article 81 requires the guardian to file an initial report after 90 days and an annual report thereafter. The Brookdale study found the average time to the filing of a first report is 237 days. Our study confirmed that a substantial number of reports and accountings are not submitted on time. Often lay guardians lack experience and training in filing a timely and complete report and accounting; and survey respondents urged ways of making filing easier. Other delays may be due to lack of bank understanding of a guardian's authority. Survey respondents emphasized the need for a uniform statewide template for initial and annual reports. An additional issue that came up in the interviews was need for a guardianship ombudsman mechanism.

Recommendations

- **Develop uniform documents**. New York courts should create uniform forms for the petition, order to show cause, initial report, and annual report.
- **Facilitate filing of reports to enhance monitoring**. New York courts should generate reminders of filing deadlines, provide reporting instructions and samples, and offering electronic filing options. Educate banks about guardian authority, to avoid unneeded delays.
- **Expedite guardian commission process.** New York courts should educate lay guardians about the need to get a commission and consider ways to streamline the process.

- **Employ additional clerks.** New York courts should provide funding for the addition of court administrative staff trained to move the guardianship process forward in a timely way.
- **Consider complaint resolution approaches**. New York courts should explore complaint procedures from other states so that problems can readily be brought to the attention of courts and consider dispute resolution options such as mediation and ombudsman functions.

Section 6: The National Landscape—Public Guardianship and Decision Making Services

The first national study of public guardian programs was conducted by Schmidt, Miller, Bell, and New in 1981. Nearly 30 years later, the second national study was published by Teaster, Schmidt, Wood, Lawrence, and Mendiondo (2010). Because over 10 years had elapsed since we gathered data from the programs, we conducted a truncated survey of the programs we studied earlier to discern important aspects of program functioning, specifically those that might guide the development of a statewide system in New York. From July–September 2018, as part of the study, we invited guardian programs that had participated in the national study of public guardians by Teaster et al. (2010) to complete a brief update of their programs in the United States.

After multiple attempts to solicit responses, we were able to gather information from five sites in five states:[4]

- Pima County Public Fiduciary (Arizona)
- Office of the Public Guardian, Los Angeles County (California)
- Office of the Public Guardian (Delaware)
- Office of Public and Professional Guardians (Florida)

4 The following ten participants from the previous study were all invited to participate: Pima County Public Fiduciary (Arizona), Maricopa County Public Fiduciary (Arizona), Office of the Public Guardian, Los Angeles County (California), San Bernardino County Public Guardian (California), Office of the Public Guardian (Delaware), Office of Public and Professional Guardians (Florida), Office of the State Guardian (Illinois), Cook County Office of the Public Guardian (Illinois), Public Guardianship Services, Senior Legal Assistance, and Elder Abuse Prevention, Maryland Department on Aging, and Adult Public Guardianship and Office of Adult Services, Maryland Department of Human Services (Maryland).

- Cook County Office of the Public Guardian (Illinois)

The following definitions guided the answers to the questions asked:

- Guardian: A person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person considered incapable of administering his or her own affairs.
- 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.
- Public guardianship program: The entity responsible for exercising public guardianship duties.

Information gathered from the five participating programs

Budgets for fiscal year 2017 were influenced by the overall need for guardians as well as population size.

TABLE 3. BUDGETS BY PROGRAM FOR FISCAL YEAR 2017

PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
$2,420,000	$21,560,000	$680,000	$7,000,000	$7,000,000

Funding sources were derived from an array of sources, including state funds, county funds, grants/foundations, client fees, and estate recovery. Only Delaware had one funding source.

TABLE 4. FUNDING SOURCES FOR THE PROGRAMS

FUNDING SOURCES	PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
Federal					
State		X	X	X	
County	X	X		X	X
Medicaid					
Grants/foundation				X	
Private donations					
Client fees	X				
Estate recovery				X	X
Other					

All the programs were empowered to make decisions about people's personal and financial affairs. All the programs had the following roles: monitoring the delivery of services, arranging for the delivery of services, and advocating for services. The Cook County Office of the Public Guardian (Illinois) also had responsibility for directly providing some services. In their role as surrogate decision maker, programs also serve as representative payees, personal representatives of decedents' estates, private guardian, and providers of supported decision making.

TABLE 5. OTHER SURROGATE DECISION AND DECISION SUPPORT FUNCTIONS

PROGRAM ROLES	PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
Representative payee		X	X	X	
Personal representative of decedents' estates	X				
Private guardianship services				X	
Supported decision making		X		X	

Petitioning function. The Pima County Public Fiduciary, Arizona; Office of the Public Guardian, Los Angeles County, California; and Cook County, Office of the Public Guardian, Illinois Office of the Public Guardian programs petition for adjudication of legal incapacity. These programs also petition for appointment of themselves as guardian.

For fiscal year 2017, Table 6 shows the cumulative total of public guardian clients served by each program.

TABLE 6. TOTAL NUMBER OF PEOPLE SERVED IN FISCAL YEAR 2017

PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
370	3,300	270	3,200	700

We asked the programs to provide for us, for fiscal year 2017, the approximate number of people served in the following age groups.

TABLE 7. TOTAL NUMBER OF PEOPLE SERVED IN FISCAL YEAR 2017 BY AGE GROUP

AGE GROUPS	PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
People 65+	50% (185)	Don't know	45% (122)	50% (1600)	66% (462)
People 18-64	50% (185)		39% (107)	50% (1600)	33% (231)
People under age 18	23 conservatorships only				

We also asked the programs to provide staff-to-client ratios, which ranged from 1:30 to 1:80 (Table 8). Teaster et al. (2010) recommended a staff-to-client ratio of 1:20.

TABLE 8. STAFF TO CLIENT RATIOS

	PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
Staff to protected person ratio	1:30	1:80	1:60	1:40	1:40

For fiscal year 2017, we asked programs to describe the primary residence clients (Table 9). Residences varied widely across the programs.

TABLE 9. PRIMARY RESIDENCE OF THE PEOPLE UNDER GUARDIANSHIP

PRIMARY RESIDENCE	PIMA COUNTY (AZ)	LOS ANGELES COUNTY (CA)	DELAWARE (STATE PROGRAM)	FLORIDA (STATE PROGRAM)	COOK COUNTY (IL)
Own home or apartment	X	X			X
Assisted living	X	X			X
Nursing home	X	X	X		
Mental health facility	X	X			
Group home	X	X	X		
Acute hospital	X	X	X		
Jail	X	X			X
Missing or whereabouts unknown		X			
Other					X

Restoration of rights. For fiscal year 2017, one person subject to guardianship was restored to partial legal capacity in Delaware, and 10 people were restored to full legal capacity in Cook County, Illinois, which has a significant population of younger clients.

We asked the guardian programs to provide examples of cases that were successful and cases that were challenging. We also asked about strengths and challenges faced by the programs. Their responses are below.

Examples of successful cases

Pima County Public Fiduciary (Arizona). "Remarkably, even the worst cases have successful components. I attribute this to our thorough intake process,

which includes a weekly triage of new referrals, current investigations, and ongoing challenges."

Office of the Public Guardian Los Angeles County (California). "Client within the one year of a mental health conservatorship was able to move from acute inpatient to a long-term locked special-treatment center and then to a board-and-care setting. Client has an important and healthy relationship, which led to a proposal for marriage. The fiancé was named as conservator to ensure ongoing treatment compliance."

Office of the Public Guardian (Delaware). "Contacted by hospital to act as guardian for an elderly lady with advanced dementia whose son was attempting to retitle her home in his name and transfer all her funds to himself. Office of the Public Guardian (OPG) prevented the retitling of the home and prevented the wayward son from taking possession after a review of whether or not she was able to return home with community and family supports. After determining there was not a safe way for client to remain in home, the home was sold and client was placed safely in a facility. OPG prevented financial exploitation and found a safe placement for client. Her wayward son was keeping her in the home in order to collect her income and was not providing appropriate care, resulting in multiple hospitalizations and near death."

Cook County Office of the Public Guardian (Illinois). "Many successes. Some examples include: 1. We had someone with a once-thriving, then-dilapidated bar and restaurant in the Wrigley Field neighborhood. We rehabbed the bar and restaurant, had the food and liquor licenses reinstated, obtained an excellent tenant, and then sold the bar/restaurant for a tidy sum for the person under our guardianship. 2. Every restoration is a successful case. 3. Every individual we are able to assist in exercising the right to vote is a success. 4. We believe our financial recovery program to be the largest of its kind in the country. We have recovered more than $50 million over the last 10 years for the people we serve. 5. Last year we took a person under our guardianship, a life-long Cubs fan, to the World Series! Seeing the Cubs in the World Series was something she dreamed of doing her entire life. Tickets were very expensive, and she needed a companion, but she had adequate resources so we were able to achieve this."

Examples of challenging cases

Pima County Public Fiduciary (Arizona). "Appointed as a successor guardian for an adult male whose primary issue is noncompliance with services and dialysis treatments. He was moved to our county from another jurisdiction secondary to lack of services available in that area. He continues to be noncompliant and frequently ends up in the hospital. He has only recently been found eligible for long-term care benefits, but placement continues to be an issue secondary to his behaviors."

Office of the Public Guardian (PG), Los Angeles County (California). "Older adult living in a condominium owned jointly with brother (but brother not living in the condo) and condo is in a senior complex. Conservatee has longstanding relationships with "kids" in the neighborhood, but unfortunately, these individuals are all in gangs. They terrorize the neighbors of the senior complex and take advantage of the older adult. They have "moved into" the condo and use it for prostitution and drug use. Law enforcement unable to stop the criminal activity because conservatee keeps bringing the gang members and others back into his home. Moved conservatee, but gangs managed to find him, and they broke into the condo that PG had re-keyed and secured. Court has not authorized a secure placement, so every placement PG arranges, he continues to leave, or the gang finds him to bring him back home."

Office of the Public Guardian (OPG) (Delaware). "A client with mental health issues and dementia was unable to remain in her home with supports. OPG placed her, as she wished, in an assisted living while trying to private pay for the required amount of time and transition to Medicaid. Client is really only happy at her home in the community, but she was having delusions and repeatedly calling the police and other emergency responders. She became depressed in the assisted living facility and began acting out. The assisted living facility became unhappy with her being there and attempted to force her eviction by insisting on 1:1 supervision, exhausting her funds, sending her to an acute mental health care placement, and then refusing to accept her back.

OPG attempted to find a better placement by working with departments of aging and mental health. Unfortunately, state agencies serving these populations do not combine care for physical and mental health issues, forcing a determination of the primary issue for placement at the expense of the other. Treatment for paranoid schizophrenia at the expense of treatment of physical disabilities. Client is currently at a long-term acute mental health care facility because the state refused to admit her to a long-term care facility, and she had no private options for that service. OPG thinks it might be in her best interest to accept primary placement based on treatment of her mental health. Mental health issues are the largest obstacle to community placement, which is preferred."

Cook County Office of the Public Guardian (Illinois). "1. The bar/restaurant in Wrigleyville discussed earlier. 2. We have many challenging hoarding cases including cases with severe environmental hazards, such as mold and chemical contaminants. 3. Some of our financial exploitation recovery cases are very complex, challenging, and resource intensive, especially those with financial institutions as defendants. 4. We have people going through difficult divorces, which are resource intensive cases."

Strengths of the programs

Pima County Public Fiduciary (Arizona). "Smaller city where most of our wards and protected persons reside in the metropolitan area rather than in rural areas. All Guardian/Estate Administrators are currently licensed. Arizona requires licensure for nonfamilial appointments."

Cook County Office of the Public Guardian (Illinois). "1. Our outstanding, caring, compassionate, smart, hardworking, passionate, tenacious interdisciplinary staff. 2. Our financial recovery program. 3. Our home care program. 4. Our sophisticated asset management and collection practice. 5. We implemented one of the first digital asset-collection programs. 6. Our access to top consults in virtually all professions due to our location in Chicago."

Office of the Public Guardian (Delaware). "OPG has excellent case managers and focuses on providing consents that reflect what the client wants for themselves and will advocate strongly for the clients' desires, despite being guardian."

Office of the Public Guardian, Los Angeles County (California). "Flexibility and resilience. Staff willingness to do whatever it takes to meet the needs of the conservatee."

Challenges that programs face

Pima County Public Fiduciary (Arizona). "Public benefits are increasingly hard to obtain. Mental health issues and services continue to be an issue. Increasing pressure from county, state, mental health, and hospital providers to petition on cases that do not meet criteria and fail to have realistic outcomes. In the past seven years, staff reduction of 25 percent.

We are continually challenged by the misunderstanding of what our program can do and what is simply impossible due to the lack of community funding to safeguard vulnerable adults and provide for post-acute care, as well as on-going custodial supervision and care."

Cook County Office of the Public Guardian (Illinois). "By far, our biggest challenge is resources. Our resources have been going down every year while our caseloads, and the complexity of the cases, continue to increase. Last year, Cook County had a $200 million deficit to fill, and next year, it is expected to be another $80 million."

Office of the Public Guardian (Delaware). "Funding. Our resources are inadequate to meet the needs of guardianship across the state. Second, our Judicial Branch considers us an outside program and does not actively engage, without us, to make needed improvements to guardianship processes, such as statutorily requiring less-restrictive alternatives being exhausted or only imposing limited guardianship. To be fair, the court has edged toward these things but not embraced any reform efforts, which are desperately needed to meet the needs of citizens and health care providers.

I think we are making progress in Delaware, but I think there is work remaining, and I am hopeful we can find way (more ways) to bring people to the table and to educate the public. It is difficult without resources."

Office of the Public Guardian, Los Angeles County (California). "Program is considered an entry-level position and is not appropriately classified and compensated, so we are unable to retain employees. There have been

significant vacancies and turnovers which impacts service delivery and ability to meet legal and fiduciary mandates."

Section summary

While the mix of information from county and state programs around the country are not representative of all programs, information from each paints a picture of public guardianship that is illuminating in its own right and instructive for New York as it contemplates the replication of TGP and the expansion of public guardianship programs across the state.

Recommendations

- **Array of funding.** New York programs must have adequate funding from a stable set of funding sources. Funding derived from an array of sources, including state funds, county funds, grants/foundations, client fees, and estate recovery. Only Delaware had one funding source.
- **Scope of authority**. New York programs should have authority to make decisions about financial and personal affairs if the court order has such a scope of authority. All the programs make decisions about people's personal and financial affairs.
- **Advocate, arrange, monitor.** New York programs should advocate for, arrange, and monitor service delivery to the people served by the program. Public guardian programs advocated for, arranged, and monitored services. The Cook County Office of the Public Guardian (Illinois) also had responsibility for directly providing some services.
- **Representative payee and supported decision making.** New York programs should serve as representative payees and providers of supported decisions. Programs serve as representative payees, personal representatives of decedents' estates, private guardians, and providers of supported decision making.

- **Live at home.** New York programs should work to keep people in their own homes as much as possible. Primary residences of people under guardianship varied across the programs.
- **1:20 staff-to-person ratio.** New York programs should comport to a 1:20 staff-to-person ratio. Staff-to-protected-person ratios ranged from 1:30 to 1:80. In the most recent national study of public guardianship, Teaster et al. (2010) recommended a staff-to-person ratio of 1:20.

Program strengths included dedicated staff members, financial management programs, licensure of guardians, an asset recovery program, and attention to the needs and wishes of the people under guardianship.

Program challenges included difficulties obtaining public benefits, lack of mental health services, staff reductions in the face of a rising population of persons needing guardianship, confusion concerning the role of a public guardian, insufficient resources, and high staff turnover due to inadequate compensation of staff members.

Section 7: The TGP Model—Staff and Stakeholders' Assessment of Effectiveness and Replicability

An important component of this project was the external assessment of TGP. For this component of our report, we used a two-pronged evaluation approach using interviews conducted by telephone. The project investigators Teaster and Wood interviewed staff members at TGP either one-on-one or as a department. We referenced the organizational chart (Appendix A) and interviewed the following staff members/departments (see Table 2 above). In addition to interviewing TGP staff members, we interviewed stakeholders identified as working with the program as suggested by TGP as well as stakeholders from the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) group in New York (see Table 2 above).

Interviews were pre-arranged and approximately one hour in duration. Questions were tailored to the expertise of the person/department. Questions included position and time in position, experience with public guardianship, funding and funding sources, administrative structure (e.g., costs and cost savings, challenges), functions of the department or program (e.g., protocols, staffing, community education); characteristics of the clients served (e.g., client visits, decision making and supported decision making, clients in facilities, diversity, search for other appropriate guardians, search for less-restrictive options, restoration); and monitoring, experience, and assessment of TGP.

After presenting an overview of TGP, we discuss findings relating to its administrative structure, least restrictive alternative principle, program functioning, outreach, staff reflections on TGP's reputation, staff perspectives on challenges and opportunities, project replicability, TGP's strengths, TGP's weaknesses, threats to TGP, section summary, and recommendations.

Description of The Guardianship Project

TGP is a demonstration project of the Vera Institute of Justice (Vera) begun in April 2005 with support from the New York State Office of Court Administration (OCA) and The Fan Fox and Leslie R. Samuels Foundation (Samuels). TGP serves as court-appointed agency guardian to a vulnerable, largely indigent population of persons with disabilities and older people who may lack family or other supports that enable them to live independently as possible. In launching TGP, Vera, OCA, and Samuels sought to cast a spotlight on a missing element of the social safety net, to provide an approach that humanely addressed critical needs for these people, and allowed key institutions to operate and collaborate more effectively on their behalf. In addition to providing high quality direct services, TGP actively works to further guardianship policy in New York State by crafting model policies and procedures, exploring expansion or replication of its model statewide, assessing the model's cost effectiveness, and participating in reform discussions with other stakeholders in New York and nationwide. The Vera Guardianship Project is the last Vera demonstration project and, at its inception, was anticipated to become self-sustaining within five to eight years.

TGP sought to cast a spotlight on a missing element of the social safety net, to provide an approach that humanely addressed critical needs for people, and allowed key institutions to operate and collaborate more effectively.

Vera, OCA, and Samuels originally planned to have TGP clients at all levels of income and assets, and to fund the program appreciably with fees from the

one-third of clients who were expected to have significant income and assets. However, TGP ended up with appointments of mostly indigent clients and a relatively low percentage of clients with the ability to pay fees. This, therefore, necessitated an important shift in TGP's business model and greater reliance on government contracts and foundation support. (See Budget section below for more detail on TGP's funding sources.)

TGP currently provides services in Brooklyn, Manhattan, Queens, and the Bronx and accepts cases regardless of the client's economic status. TGP's services are largely for very complex cases; the program offers a holistic guardianship services model. TGP's model involves the coordination of services through a multidisciplinary workforce of staff attorneys, social workers, finance and property managers, and outside experts working together to address the complex legal, health, case management, and property issues its clients face. When appropriate, TGP partners with investment advisors, skilled volunteers, and pro bono counsel to address specific issues required to maintain clients in the least restrictive environment possible.

TGP receives its referrals directly from the appointing courts and is typically called upon to serve in cases where there are limited resources and the complexities of the case put the incapacitated person at risk of being unnecessarily institutionalized in an overly restrictive setting. Some of the common presenting issues include difficulty securing adequate home care, need for effective real property management, instability caused by severe mental illness, elder abuse and exploitation, and adversarial landlord tenant issues arising from client behaviors such as extreme hoarding.

Client census

In calendar year 2017, TGP served a total of 190 clients. TGP clients were 70 percent female, of whom 17 percent were 60 years or younger, 41 percent were 61 to 80 years, 27 percent were 81 to 90 years, and 15 percent were 91 or older.[5] TGP serves an ethnically diverse population: 52 percent white/Caucasian, 27 percent black/African American; 15 percent Hispanic; 3 percent Asian; and 3 percent other/unknown. Clients' living arrangements are such that 60 percent resided in their homes or communities, 37 percent resided in a nursing home, and 3 percent were hospitalized. Over three-fourths (83

percent) lived below the New York City median annual income ($66,800), 42 percent lived at or below the poverty threshold ($12,060), and 87 percent had active Medicaid.[6] In addition to serving as guardian, TGP serves as Social Security Administration representative payee for 98 percent of its clients.

Administrative structure

TGP staff visit clients at least once a month, even though the law mandates only four visits per year, in order to prevent or proactively address challenging issues that its clients face (e.g., dementia, serious medical problems, eviction, elder abuse, and placement in institutional settings against their will). An essential component of the work of TGP is accepting cases where a client is languishing needlessly in a hospital or nursing home because no one will take on the challenges of transitioning him or her back to their homes or to a less-restrictive setting with proper oversight. TGP recognizes that keeping as many individuals as possible in the community can save Medicaid dollars. For example, a 2015 cost-benefit analysis shows that TGP was able to save over $3.1 million in Medicaid dollars (the majority of which was from nursing home avoidance for clients), which improved the quality of life for clients and recognizes and respects each person's autonomy and dignity (TGP, January 2018). Incorporated into TGP case standards is language mirroring that of the National Guardianship Association, including that the program is client-centered and maximizes autonomy.

A unique aspect of the program is that TGP is able to access funding streams beyond fees that allow the agency to maintain a low client-to-staff ratio allowing the staff to spend more time on individual cases, identify and take actions on what is best for client, and not have to factor in the number of other clients waiting. In addition, but difficult to quantify, is the TGP ethos, which is a unique culture dedicated to this particular type of work. TGP receives a subset of cases from the court that are very difficult cases, cases that need special

5 Demographic information is for the 151 clients for whom TGP was actively serving as guardian on June 30, 2017.

6 New York City and federal income statistics and thresholds are for 2017.

people brought in to handle complex and sensitive issues. It is critical to select people who are a good fit for the program, because their acumen leads to good outcomes for clients, which is something that sets TGP apart.

An essential component of the work of TGP is accepting cases where a client is languishing needlessly in a hospital or nursing home because no one will take on the challenges of transitioning him or her back to their homes or to a less-restrictive setting.

Budget. The annual TGP budget is growing: it was over $1.8 million in fiscal year (FY) 2016, almost $2.3 million in FY 2017, and projected to be $2.6 million in FY 2018. Seventy-five percent of the $2.6 million is from the Office of Court Administration contract mentioned earlier. In addition, 5 percent of the budget is from a second state contract, 10 percent from a city contract, 5 percent from foundation grants, and it is estimated that 5 percent will come from court fees and Medicaid exempt payments. The court fees are generally calculated as a percentage of each financial transaction and requested at the time of filing of the annual or final account, are paid for with client assets upon approval by the court, and are awarded and paid often years after the services are rendered. The FY 2018 budget amount is therefore mainly income received in FY 2018 for services rendered in prior years, the main exception being the monthly Medicaid exempt payments. The Medicaid exempt payments (i.e., NAMI), as mentioned earlier, are $450–$500 per month and subtracted from what the client owes Medicaid to be paid to the guardian contemporaneously with the rendering of services. Currently, TGP collects about $55,000 a year in NAMI fees from approximately 10 clients on Medicaid living in nursing homes.

Staffing model. TGP has an executive director to whom all of TGP's senior management staff directly report. There are four departments (legal, case management, finance, and development/communications) and two specialties (property management and benefits coordination). The Legal Department consists of a director, a deputy director and two staff attorneys. The Case Management department consists of a director, eight case managers, and a benefits coordinator. The Finance Department consists of a director and six finance associates. A real property manager also directly reports to the executive director. The Development/Communication Department consists solely of a director of development/communication. TGP also has an administrative coordinator who oversees two part-time employees who provide clerical and receptionist support, both of whom are paid by the New York City Department for the Aging.

Also assisting TGP in its work are various interns, volunteers, fellows, and temporary staff members who work with the program at any given time. Human resources and information technology functions are performed by the central office at the Vera Institute and the New York Unified Court System, respectively.

Staffing ratios. TGP attempts to keep case management to client ratios at about 1:25; for attorneys, the ratio is 1:50; for finance associates, it is 1:29; for benefits coordination, it's 1:200; and for property management, it is about 1:20. The total staff providing direct services to client ratio is 1:9. As described, there are several different ratios, depending on the department as well as the longevity of the client; TGP values consistency and attempts to have the same staff members or teams working with the clients over time.

Training. Every new staff member takes Article 81 training provided by the Guardianship Assistance Network. Legal training is also provided (Part 36, Fiduciary Training). TGP is working to set up more cross-training, such as with APS on elder abuse.

Volunteers. As early as 2005, the program began using volunteers. The volunteers are a supplement to case management and provide clients with increased socialization. The coordinator matches people who are peers with each other. Examples of volunteers are a retired police detective who was

connected with a retired corrections officer. The program has matched about 15 volunteers with clients.

Attrition. TGP is limited as to the salaries it can pay. If staff members move on, then TGP replaces them by recruiting qualified candidates. TGP conducts rigorous background checks on its prospective employees. Turnover seems to come in waves. Case managers are the cornerstone of services, which are stable when people have remained for two or more years. Turnover, according to one former executive director, is no higher than other legal services or social work positions. The work is difficult, and so people leave due to burnout and licensing requirements. John Holt is the longest standing member of TGP, having been with the organization as a full time-staff member since 2010 and having worked as a legal intern since 2009. There has been significant turnover of executive directors, with four permanent and three interim directors from 2005 to 2018.

TGP's least restrictive alternative principle

TGP uses a least restrictive alternative model that is a driving force of everything the organization does. First, although guardianship powers are crafted by the courts, TGP chooses how to interpret and use its powers as narrowly as possible while also keeping the client safe. Second, TGP works to employ robust and inventive strategies for maintaining its clients in the community, from pulling together a myriad of community supports to create a sustainable and safe care plan to accessing the equity in real property to provide for a client's cost of living. When a person is unable to be safely maintained in the community due to a lack of financial resources, appropriate place of abode, or because their care needs are too high, TGP continues to work to ensure clients are in the least restrictive setting, for example finding a facility in a familiar neighborhood, with staff who speak a client's primary language and access to religious services and culturally familiar foods.

TGP uses a least restrictive alternative model that is a driving force of everything the organization does.

TGP fosters supported decision making in a variety of ways. Where clients are able to execute advance directives, TGP assists them in preparing these documents and making sure their wishes are understood and articulated accurately. Even when the ability to sign formal documents may be lacking, TGP strives to understand and incorporate the wishes of a client into its day-to-day decision making. These efforts help empower the client and scale back unnecessary power over them so that clients are given autonomy to the extent possible. Even with this approach, the complete restoration of rights and termination of guardianship remains relatively rare because of the types of clients for whom TGP is a guardian (e.g., persons with progressive diseases, traumatic brain injury, or development disabilities) (Leland, 2018).

Program functioning

Collaboration amongst TGP's teams is at the heart of program functioning because of the organizational structure and model. Once TGP is appointed the guardian, the program determines the extent to which the client can participate in decision making. Case managers do an initial assessment and get a sense of the clients' needs and wants; finance investigates what income, expenses, and assets they have; the property manager assess their home, if applicable; and then staff meet as a team (i.e., representatives from the departments of case management, legal, and finance department) to develop a plan with which they are constantly balancing autonomy versus safety. During the team meetings, they determine if there are family or friends that are or can be supports for the client, though unfortunately, that is not possible for about half of TGP clients, as they are persons aging alone. In addition to the client-centered approach that strives to maximize client autonomy in decision making, TGP must operate within in the boundaries prescribed by

the appointing court in the order and judgment and the statutory framework of Article 81. Within the authority granted by the courts, daily decisions usually flow from the case managers because they have the most contact with the clients and often need to make decisions quickly. When complicated situations arise—such as ones that involve financial decisions, moving a client, repairing or selling a property, protecting a client from abuse, addressing uncleanliness and hoarding, preventing eviction and/or homelessness, etc.—the client's entire team is engaged. If further input is needed regarding a specific client, the team is enlarged to include the executive director so that a strategy can be put in place. Some specific cases, such as end-of-life decisions, or using the Family Healthcare Decisions Act, are those for which the director of TGP makes the final call. Some decisions, for example permanent placement in a nursing facility or sale of real property, require court oversight and judicial approval.

Quality assurance. TGP accomplishes quality assurance in a number of ways. There is general oversight by each department, including a number of cross checks. Formally, there are two documents—a best-practices manual, which is expression of what the team should strive to do, and an operating manual, which details procedures for each department—legal, finance, and case management. For example, when TGP gets a new client, the program has developed a procedure for marshaling a client's assets so that they can discover the clients' estate to the greatest extent possible. There is also direct oversight from the appointed court examiners, generally through the review of submitted reports, and the appointing court. Also, the program refers to guidelines promulgated by the National Guardianship Association.

For each client, TGP keeps case notes, including notes by case managers and notes by the legal team. For the most part, the finance department does not use the case notes function of the database, but finance keeps a book balance in the same database. The goal is for the tracking system to be structured so that all data are in one place. Currently, there is a central database, but it does not have fields for everything that needs to be tracked. Each department therefore also maintains its own Excel spreadsheets. TGP is currently in the process of hiring an expert to upgrade its database, consolidating all tracking into the central system and creating canned reports for easier analysis of data. Also, the current system includes a shared calendar documenting

reminders and activities so that the location of coworkers is retrievable at any given moment. TGP must also prepare reports to its funders, though a staff remarked that some information is not shared as much as it should be. Relatedly, one staff member acknowledged that throughout the year, the program examines case records, but recommended that staff go deeper via more routinized and sustained effort of by the whole staff.

Preparation of annual reports. Staff members spend focused time preparing a rigorous annual report as required by Article 81, an important check on the work TGP does for its clients. Each finance staff member is assigned 25 to 30 clients. The staff member completes the inventory, initial report, annual reports, and final report. On May 31 of each year, all annual reports are due for activities of the prior year. The reports account for all of the financial activities undertaken on behalf of the client and must be reviewed by a court examiner prior to approval by the court. Finance staff works the entire year preparing for the submission of annual reports by keeping timely records of financial activities, aggregating backup documentation, and preparing a schedule of accountings to keep on track for the 160-plus accountings that will have to be prepared, reviewed, and filed this year. The finance team has worked over the past several years to increase the automation of the reports from the existing data in its accounting system and will continue to streamline that process to improve efficiency and accuracy of reporting.

The activities recorded and tracked by the finance team are also used in real time throughout the year by all teams to inform decision making for the clients. Every transaction is recorded, back up documentation is scanned, and bank statements are monitored and reconciled to the system. The finance team is also responsible for submitting reports to outside entities, such as the Social Security Administration, for clients for whom the program serves as representative payee, which is about 98 percent of TGP clients.

Supported decision making. TGP makes a concerted attempt to support the decisions for clients who are able to make them (e.g., clothes, furniture, various items that they might need, advance directives, end-of-life decisions). Respecting and attending to clients' wishes is a TGP priority. In many instances where the court grants TGP broad powers, the organization has chosen to narrowly exercise them to afford clients greater agency.

TGP also works to establish and maintain relationships with clients in care facilities and visits them on a monthly basis just as the organization does for those in living in the community. TGP works with clients to make sure to meet client needs and respect client wishes. To do this, TGP staff members work closely with facility staff, including nurses. TGP faithfully attends care-plan meetings to ensure that all aspects of clients' lives are monitored and addressed.

Cultural diversity and sensitivity. TGP has diverse staff members, including Spanish-speaking staff to help clients with language needs and to reach out to families. Staff are mostly women and one-quarter white. Staff also include people who are LGBTQ. Staff try to account for religious identities of clients and try to keep cultural diversity and sensitivity in the front of their minds, including their dietary needs. Staff acknowledged that sensitivity and communication needs filters into health care and end-of-life needs and preferences. Said one staff member, respect for each individual "creates a better situation for everyone when they respect their wishes, and it makes things less antagonistic."

We were not made aware of any cultural diversity training. One staff member observed that TGP has had non-English speaking Asian clients and has experienced challenges in serving them due to language barriers, despite attempts to seek outside translation services.

End-of-life decision making. For end-of-life decisions, TGP is guided by the New York State's Family Health Care Decisions Act, which, among its other provisions, allows guardians with health care decision making authority granted by the court to make end-of-life decisions and provides a patient-centered framework for those decisions, particularly if a client is in a hospital setting. The staff tries early on to build a rapport with its clients because, as one staff member stated, it facilities an understanding of a client's wishes, which can be critically important when the time comes to make a decision as important as those made under the Family Health Care Decisions Act. Absent the known wishes of a client, and in order to make the best decisions possible in end-of-life situations, TGP staff reaches out to family and friends to find out what clients have verbalized or to speak with persons who might be able to provide information that could help TGP understand a person's personal

beliefs, including reaching out to clients' religious leaders if and when possible.

For end-of-life decisions, TGP is guided by the New York State's Family Health Care Decisions Act.

Responsive to its duties under Article 81, TGP also prioritizes the establishment of a pre-need funeral contract as early in the guardianship as possible, to help ensure there are adequate resources to fund it and to maximize the likelihood that clients are able to participate in the planning. Upon the death of a client, TGP case managers make funeral arrangements and, as required by Article 81, inform relevant people, such as family members. Staff make sure that the client is buried with dignity, informed by work done before death, including a pre-need funeral contract and, when possible, discussion about wishes.

TGP has protocols concerning securing property and other assets after death. TGP is usually granted authority to pay for outstanding expenses (e.g., charge accounts or electric bills) post-death if said authority existed and the bills accrued before death. TGP is responsible for filing final accounting to the court and distributing funds to the estate. TGP involves the public administrator as quickly as possible, as the majority of its clients do not have a last will and testament or family members available to seek letters of administration.

Outreach

TGP maintains relationships with legal services, APS, or other entities as needed, reaching out for additional expertise as needed in order to best serve its clients. In the beginning of the program, TGP assembled an advisory committee from New York as well as around the country to guide its programmatic structure, data collection, and outreach. In addition to helping shape

TGP's model and services, the advisory committee introduced TGP to key players and helped TGP become known nationally.

Acknowledging that a general lack of understanding about guardianship exists, TGP is actively involved in community engagement and works with the courts, helps lead education efforts to educate families, and attends city council meetings (TGP attends council meetings for the purposes of lobbying). TGP also reaches out to AARP and APS. TGP initiated the Guardian Assistance Network (GAN), which was later moved to the Office of Court Administration, which continues to provide training to lay guardians. John Holt, a staff member from TGP, is one of the presenters at GAN's quarterly in-person training, where there are typically 20–30 people in attendance. Mr. Holt also developed an online version that may be accessed by guardians across the state. During the year, there are also various panels and informational sessions that TGP staff attend, as well as posting materials available on the TGP website www.vera.org/guardianship and in the TGP newsletter. TGP was featured in the *New York Times* (2008) and on NPR *Marketplace* focusing on cost savings (2006–2007).

Staff reflections on TGP's reputation

Staff members believe that TGP is well regarded in New York City and has a good reputation with judges who are sending them cases that are more difficult than most guardianship cases. Sending them these cases reflects the judges' belief that they can handle complex cases as well as abide by their maximum caseloads. Said one case manager, "We have a good reputation, in my opinion." TGP is also a point of contact related to issues of public policy; TGP staff are involved in WINGS and the New York State Office of Court Administration Guardianship Advisory Committee.

Staff perspectives on challenges and opportunities

The TGP model has both challenges and opportunities. The Vera Institute identifies gaps in the justice system and works with community partners to design a programmatic response. TGP was formed in response to the number

of people in need of high quality guardianship services. Since inception, the plan has been that, if successful and sustainable, TGP will eventually spin off as a nonprofit or part of government. Though delayed, the goal remains for the TGP model to become sustainable and independent from the Vera Institute. Still a demonstration model, the Vera Institute launched TGP because it saw that New York had a lack of guardians with full skill sets to handle highly complex cases. Being part of Vera unlocks doors, such as resources and access to data analysis. A challenge is that being a part of Vera creates another layer of bureaucracy to navigate. Also, opportunities for branding, strategic planning, and raising public awareness of guardianship may also be missed due to Vera's many other focus areas and priorities.

Opportunities for the program would be to increase funding and staff so that the program can take on more cases and expand the model. Another opportunity would be to examine case mix for the staff, reducing some for case managers. Still another opportunity would be to conduct a deep and annual review of clients' cases.

There are often significant challenges in managing client finances. For example, TGP staff pointed out that banks and financial firms often do not understand the role and powers of a guardian, even after presentation of the court order, and not infrequently, the front line staff at the financial institution are completely unfamiliar with the concept of guardianship as distinct from other fiduciary appointments such as power of attorney. As a result, the team does not get responses right away and is sometimes prevented from exercising their duly granted authority. The finance team recommended that the banks should adopt a model that works. Some banks have a guardianship department and can respond promptly.

Examples of TGP cases

Teaster and Wood asked TGP for examples of cases that highlight some of the complex situations that TGP is asked to remedy in order to make its clients safe (physically, emotionally, and financially) and as independent as possible. The examples below illustrate how TGP's structure and guiding principles, described above, combine to create successful case outcomes.

When asked about activities related to individual cases, one TGP staff member observed, "TGP spends an enormous amount of time on these [client] functions. There is no such thing as an average client."

Case example 1. TGP was appointed as a guardian for a 79-year-old bedbound client who was living with congestive heart failure in a basement apartment in the brownstone that she owned. Her reverse mortgage was in default and pending foreclosure because a previous guardian, her niece, had taken the proceeds intended to make home repairs and pay the carrying costs of the property and instead fled with the money. The client was left with a reverse mortgage in default due to her inability to pay taxes, insurance premiums, and utility arrears totaling thousands of dollars, and was unable to repair a home with manifestly unsafe conditions—electric outlets dangling from walls, unstable staircases, and water damage. The client wanted nothing more than to remain in her home of 40 years, and TGP worked to settle the foreclosure action with the mortgage company, set up payment plans to "keep the lights on", and began making repairs to keep her and the other tenants safe. TGP also reported the niece's fraud to the Kings County district attorney and brought an action in guardianship court to retrieve the misappropriated funds. TGP staff worked on this case for dozens of hours, but before justice could be done, the client unexpectedly died in her sleep. While this was heartbreaking to everyone who had worked so hard for her, one very important solace remained—the client was able to remain in her home until the day she died.

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Case example 2. TGP became the guardian of a 94-year-old Holocaust survivor living in a nursing home. The gentleman desperately wanted to return home, but he was not able to make the needed care plan. TGP developed a safe discharge plan with home care in place so that he could return home. The client's Holocaust reparation payments had lapsed, and TGP successfully restored them and put in place a sustainable financial plan to ensure that the man could remain home for as long as possible. When the client's physical condition declined and increased home care services were denied, TGP successfully appealed and secured the needed home care hours. TGP also advocated with the man's landlord to install a ramp outside his building so that his caregivers and he could more easily access his community. TGP made sure that the man had access to kosher meals, had special dinners delivered for the holidays, and matched him with a friendly visitor who could spend time with him in his home.

Case example 3. TGP became the guardian for an undocumented gentleman. A construction worker, he was hit by a car and taken to a local hospital where he remained in a comatose state. The hospital wanted to discharge him, as he had no source of insurance beyond the small portion of his care paid by emergency Medicaid, but no long-term care facility would accept him. The client's family had attempted to obtain visas to visit him in the United States but were denied. TGP met with consulate staff from the client's home country and discovered that it had a program designed to help repatriate

injured citizens and train their families to provide care. After weighing the options, TGP felt that a return to the home country would be in the client's best interest, as it would allow him to be with his family. TGP negotiated with the hospital to pay for the cost of having the client take a Medivac plane to his home country and sought the requisite authority from the court to effectuate the discharge. TGP was later notified that the client died, surrounded by his mom and sister.

Case example 4. TGP became guardian for a woman with severe, untreated paranoid schizophrenia. At the time of appointment, she was involved in an eviction proceeding, was behaving erratically by calling hundreds of times to complain about the condition of her apartment, and was barred from interacting with members of her family by an order of protection issued in a recently resolved criminal matter. TGP was able to resolve the eviction proceeding, even negotiating a reduction of the rent owed due to issues with the condition of the apartment. Unfortunately, the client's mental illness remained untreated, and in a delusional state, she violated the order of protection, was arrested, and sent to Rikers Island. TGP advocated for her to be placed in its psychiatric unit, where she would be better monitored and protected, and she was able to secure funds to make her bail. When she was released, she acted increasingly erratically until, fearing for her safety, TGP successfully petitioned for her to be involuntarily admitted to a psychiatric hospital. While she was hospitalized, TGP made arrangements for her dogs to be boarded, worked with the hospital to put a sustainable care plan in place, and worked with counsel to defend the new criminal charges that she was facing. Upon her release from the hospital, TGP helped the client remain as compliant as possible with her medication, therapies, and court mandated probation. Working together with her criminal defense counsel, TGP reached a plea agreement that avoided a felony conviction and the possibility of jail time. Though much progress was made, the client continues to require active intervention to prevent her from lapsing into behaviors that put her at risk of institutionalization.

TGP became the guardian for an undocumented gentleman. A construction worker, he was hit by a car and taken to a local hospital where he remained in a comatose state.

Case example 5. A person living in supportive housing with a diagnosis of schizophrenia was able to live independently until the system broke down for him, and he landed in a hospital. He had bed bugs, suffered a mental breakdown, and was moved to a nursing home where he hurt his knee and could not return to supportive housing. A TGP case manager helped him have simple things he enjoyed, such as a honey bun. Still, the client's health was failing, and he went into renal failure. The doctors suggested that the client would need to have a feeding tube inserted. Before that happened, the TGP case manager brought him a honey bun, which he ate. Eventually, he was able to eat oatmeal, and later, solid food. Although he is no longer living independently, he is happier in the nursing home than when he was originally admitted, knowing it is the best place for him to get the care he needs. The case manager who intervened in this case remarked, "A little bit of attention sometimes goes a long way."

Case example 6. A client suffered a traumatic brain injury because of an abusive husband. Though the woman presents well and is highly intelligent, she has cognitive limitations because of the brain injury, five kinds of arthritis, and pain management problems. She lives in the same apartment she had shared with her husband before he was removed and an order of protection put in place. She had been sleeping on the same mattress for 30 years. TGP made it possible to purchase a new mattress that reduced her emotional and physical pain.

Case example 7. A client with developmental disabilities who was unhappy residing in a group home was given an opportunity to assert his independence in a private residence run by the New York State Office for People with Developmental Disabilities (OPWDD). Unfortunately, the client did not do well without the structure of a group home, and he allowed strangers to use his new apartment for a variety of inappropriate purposes and engaged in behavior that resulted in his arrest and incarceration. TGP worked with the client and his counsel to ensure that he was kept in as safe an environment as possible while he was in jail and brought about the best possible disposition of his case. While he was incarcerated, the service provider who contracted with OPWDD for his apartment and support services cancelled its services and TGP attempted to work with OPWDD to arrange an appropriate residence that he could enter upon release from jail. When the client's criminal case was resolved, an alternative residence had not been located. TGP staff worked closely with jail staff to plan the man's discharge to an appropriate shelter to avoid street homelessness. Initially, the Department of Homeless Services (DHS) attempted to deny him services, stating that because of his mental health and developmental disabilities, he was inappropriate for the shelter system and could not go through intake. TGP worked with a homeless advocacy organization to reach staff higher in DHS's organizational structure and, eventually, helped him receive a bed in a shelter, thus preventing him from being street homeless.

Stakeholders' comments

Use of Medicaid funds. Mentioned above, the project investigators Teaster and Wood interviewed 14 stakeholders, including judges, representatives from New York State Mental Hygiene Legal Services, court examiners, and other individuals who were presently or had recently worked with members of TGP. Interviews of most stakeholder lasted about an hour. Participants were asked if TGP used Medicaid funds appropriately and effectively. Respondents all agreed that TGP did so. Said one respondent, "Absolutely. [They are using funds appropriately] In keeping people out of nursing homes, which is what Vera is doing. Money is very effectively spent. They are saving the state money if they keep people in the community."

Performance. Stakeholders were asked for their impressions of TGP's performance, and most had a very favorable impression of the program. TGP was regarded as responsive to questions, and their response rates to telephone calls were regarded as better than other providers with the same client case mix.

One stakeholder remarked, "Of all the community guardians in my inventory, they are on top of things more than others and are much, much more detailed in reporting and responses." However, a stakeholder also remarked, "Their initial reports are so incredibly detailed, almost overly detailed. They even specified that the client preferred 'Peter Pan' peanut butter." Another stakeholder remarked that TGP did not mind serving as a temporary guardian and saw this openness as a positive attribute.

Project replicability. Participants were asked if they would support a New York public guardianship program based on the TGP model. Most were in support of such a program. One person stressed to have the model located in a place with the greatest need and recommended demonstrating what kind of model proved to be the most cost effective. TGP was regarded as an outstanding model program because of its focus on keeping people in the community. Most stakeholders would support replication of the model if it were funded properly. They acknowledged that TGP remains a model program. One respondent observed, "The people who would save money using this model are the feds, not the state."

One respondent emphasized, "It was always a focus for TGP—maintaining people in the community was a gold standard. The Vera Institute thought it would be expensive and knew it was a high-end model. Staff at TGP thought the judges would give them some high-fee cases, but there were two problems. One, it is hard to buck the system. For the private bar, guardianship was a source of revenue, with the money being in petitioning. Secondly, if a judge came to probate from the criminal court, he or she did not have ties to TGP."

There was general agreement that the model of having a mix of cases that include both poor people and people with assets would have worked if there was a way to control the mix of cases, reliably predict fee amounts, and collect payments in a timely fashion. Theoretically, TGP would have been able to offset the cases that brought in nothing with fee-generating cases.

Unfortunately, the income generated from the cases with assets has not been nearly enough to offset that no asset cases combined with the complex, resource-intensive cases that TGP receives.

TGP discovered that its work produces not only greater autonomy related to living in the home but also a cost savings from moving people out of nursing homes and keeping them in the community with a level of care more suited to their particular functional abilities. For example, a client who was independent with most activities of daily living, but was prevented from returning from a nursing home to an apartment due to the condition of the apartment, was able to safely live in the community with a minimal amount of homecare after the apartment conditions were improved. Home improvement services are much more cost effective than incurring the expense of a nursing home bed and would likely result in significant savings to Medicaid.

Other people interviewed thought the model would be replicable with the caveat that the program should make sure that all alternatives to guardianship were fully explored. As a stakeholder remarked, a number of people in New York City could avoid guardianship if services were available before the filing of a petition.

Finally, one stakeholder had this to say about the TGP model: "If you can make it here, you can make it anywhere," while another stakeholder said, "Please create as many Veras [TGPs] as possible."

Support for public guardianship in New York. People we interviewed were also asked if they would support a geographically limited pilot public guardianship program (any model) with public funds to be evaluated for replication. Most were supportive of public guardianship when used as a last resort intervention. The New York WINGS group is especially hopeful regarding this outcome.

TGP discovered that its work produces not only greater autonomy related to living in the home but also a cost savings from moving people out of nursing homes and keeping them in the community.

Strengths, weaknesses, challenges, and opportunities of the TGP model. Stakeholders regarded that a major strength of TGP was that the staff were experts in their area of guardianship. While many guardians have far-ranging issues with which to deal, TGP tries through many approaches to keep clients in their homes. Said one stakeholder, "TGP places an emphasis on keeping people in the community. The holistic services they provide are great for helping people and is critical. [Their approach] Makes a big difference for their clients—one that other programs do not have for their clients." Similarly, another stakeholder had this to say, "Their team approach is what distinguishes it. They can provide a full range of services for the individuals under guardianships. Their attorneys, social workers bring expertise on behalf of the individual." Many stakeholders regarded that TGP is in a category of their own.

Stakeholders also pointed out a number of limitations of the program. One was that TGP is limited in how many cases they can take. One judge requested to "see if you can get us more [TGPs]." One stakeholder suspected that TGP is overburdened and underfunded, though not due to any fault of its own. The stakeholder observed that funding issues have probably stretched them due to funding structure.

One stakeholder was unhappy with the way TGP marshaled assets. Most guardians go to the bank, marshal assets, and open a guardianship account. TGP used to keep all money in one account and track a running balance for all clients. Thus, TGP could not show a bank statement with the exact amount of

money by client. This stakeholder thought that there should be one account that is individual to a single person, thus limiting problems. Instead, TGP marshaled funds together in all one big account. (Note, this scenario was true three years ago but was changed. TGP now opens individual guardianship accounts for each client and manages over 400 separate bank accounts.)

Stakeholders regarded that the major threat to TGP was inadequate funding and large caseloads. One stakeholder remarked that, "there was a time when they were behind on their reporting." You want to be a model in all respects. One stakeholder asked, "Would a scaled down version be less costly?"

Stakeholders, at the same time, believed that the TGP model "has gained traction and that in New York City there is a growing acceptance of what standards should be in terms of keeping people at home." Opined one stakeholder, "I am not sure that that this administration recognizes this, but you can save dollars by supporting people in the community."

Another stakeholder suggested that TGP should expand and be able to take on more cases. To do so, TGP should continue to engage in policy discussions. Finally, one stakeholder suggested developing a mediation project of some kind: "Some new cases, such as self-petitions, or pro se petitions, which are difficult and time consuming, could use mediation. If we could get TGP involved and work out family guardians, that would be good."

Section summary

The TGP model is supported both internally by the staff members and externally by stakeholders. TGP's team approach is a holistic "one-stop shopping" approach to the provision of guardianship services, and the low ratio of guardian-to-protected person affords persons in need of services high-quality guardianship. TGP is especially outstanding in its efforts to either keep people living in community settings or to return people to community settings as appropriate. TGP's quality of guardianship service is not without costs, and so the program was previously unable to attain a level of sustainability that would enable it to spin off from the Vera Institute. TGP's inability to spin off from Vera is not due to its programmatic model, however, but rather due to the need to find additional funding streams because the mix of high-fee and

low-fee/no-fee cases that TGP is appointed does not balance out to cover the cost of providing the services.

Although the model is a promising one, it is a costly one, and stakeholders raised this important point. While TGP is successful in a city with a concentration of people, such as New York City, and is likely possible in other cities across the country with sufficient population density, it would likely need to be modified if it were replicated in more rural areas and should be piloted to determine its feasibility, including requirements for technology, training, oversight, and provision and partnership in order to access services.

Recommendations

- **Increase ease of information access.** TGP's reports should be combined and retrievable in one place; this is possible because the accounting system is structured to have data all in one place. Throughout the year, the program examines case records; however, staff could go deeper via more routinized and sustained efforts by the whole staff.
- **Optimize mix of cases and caseloads**. Case managers' caseloads should be reviewed regarding staff-to-client ratios as well as the mix of cases given to each case manager.
- **Improve funding model**. The original funding model of cases with estates and no-fee cases should be maximized so that TGP can have greater sustainability.
- **Increase funding**. TGP should have more funding in order to take on more cases.
- **Continue outreach efforts.** TGP should continue efforts at outreach and involvement in policy discussions.
- **Replicate the TGP model.** The TGP model should be replicated and evaluated. The evaluation should be a formative, process, and summative evaluation.

Section 8: Summary of Recommendations

Who needs services

- **Data.** New York should continue and intensify its collection of basic guardianship data to better inform estimates of unmet need and strategies for meeting the need.
- **Supportive services.** New York should provide adequate funding for home and community-based care and affordable housing for indigent individuals at risk of, or subject to, guardianship—especially congregate housing for older adults where people can age in the community and easily access support services.
- **Social work skills.** New York should find ways to increase the number of professionals with social work and nursing skills to act as guardians for individuals with no family or friends to serve.
- **Less-restrictive options.** New York should provide judicial and legal training on screening for less-restrictive options—including a range of decision supports and supported decision making, the use of forms that emphasize screening for such options, and tracking the use of these options in avoiding unnecessary appointments.
- **Restoration of rights.** New York court procedures should ensure access for petitions for modification or termination of guardianship orders and restoration of rights when guardianship is not needed.
- **Increased number of clerks.** New York should provide funding for an increased number of clerks to assist judges with the high volume and complexity of guardianship cases.
- **Increased number of guardians.** New York should pursue multiple approaches toward increasing the number of available and skilled guardians to serve indigent individuals in need as a last resort after

less-restrictive options, including supported decision making, have been examined.

Who serves as guardian for the target population

- **Funding for diversity of services**. New York should provide additional funding for a diverse pool of guardianship and decision support services. Funding for such services should prioritize living in the community as a primary goal. Funding should come from a variety of sources, including fees excluded from the calculation of Medicaid "net available monthly income" payment in nursing home cases.
- **APS role in guardianship**. New York should identify other approaches for guardianship services instead of relying on APS through departments of social services to serve as guardian of last resort. This would avoid an inherent conflict of services. Additionally, it could free up APS resources for its other important protective roles, including a critical role in investigating suspected guardianship abuse.
- **Community guardian programs.** New York City and/or state should provide additional funding to community guardianship programs to meet the pressing needs, ensure quality services, and seek less-restrictive options, with consideration to a reasonable staff-to-client ratio (as recommended by the national public guardianship study by Teaster et al., 2010).
- **Guardianship for nursing home residents.** While recognizing that not all nursing home residents need guardians, at the same time, New York should address the current gap that occurs when community guardian programs must relinquish cases in which an individual requires nursing home care. Guardians can be needed advocates for quality of care. Extending the role of the community guardian programs to selected nursing home cases would prevent unnecessary burden on the court in finding another guardian and ensure continuity in the guardian's care and decision making—thus allowing the guardian to best identify and support individual wishes and needs.

- **Incentives for serving in low-fee/no-fee cases.** New York should provide incentives such as free continuing education courses for professionals on the Part 36 list, provide incentives for social workers and nurses to agree to serve as guardians in low-fee/no-fee cases, and encourage their appointment by judges in appropriate cases where there is no less-restrictive option.
- **Evaluation and expansion of pilot projects.** New York should continue the two 2018–2019 pilot programs to allow for additional time to measure effectiveness. Based on experience of the initial pilot demonstration projects, New York should fund additional projects, building in a formative evaluation process and moving toward addressing the unmet need for guardianship and less-restrictive decisional options, including supported decision making, throughout the state.

New York court processes—barriers to effective service

- **Develop uniform documents.** New York courts should create uniform documents for the petition, order to show cause, initial report, and annual report.
- **Facilitate filing of reports to enhance monitoring.** New York courts should generate reminders of filing deadlines, provide reporting instructions and samples, and offer electronic filing options. There is also a need to educate banks about guardian authority to avoid unneeded delays.
- **Expedite guardian commission process.** New York courts should educate lay guardians about the need to get a commission and consider ways to combine or streamline the order/commission process.
- **Employ additional clerks.** New York should provide funding for the addition of administrative staff trained to move the guardianship process forward in a timely way.
- **Consider complaint resolution approaches.** Explore complaint procedures from other states so that problems can readily be brought to the

attention of courts, and consider dispute resolution options such as mediation and ombudsman functions.

National public guardianship programs

- **Array of funding.** New York programs must have adequate funding from a stable set of funding sources. Funding derived from an array of sources, including state funds, county funds, grants/foundations, client fees, and estate recovery. Only Delaware had one funding source.
- **Scope of authority.** New York programs should have authority to make decisions about financial and personal affairs if the court order has such a scope of authority. All the programs make decisions about people's personal and financial affairs.
- **Advocate, arrange, monitor.** New York programs should advocate for, arrange, and monitor service delivery to the people served by the program. Public guardian programs advocated for, arranged, and monitored services. The Cook County Office of the Public Guardian (Illinois) also had responsibility for directly providing some services.
- **Representative payee and supported decision making.** New York programs should serve as representative payees and provide supported decisions. Programs serve as representative payees, personal representatives of decedents' estates, private guardians, and providers of supported decision making.
- **Live at home.** New York programs should work to keep people in their own homes as much as possible. Primary residences of people under guardianship varied across the programs.
- **1:20 staff-to-person ratio.** New York programs should comport to a 1:20 staff-to-person ratio. Staff-to-protected-person ratios ranged from 1:30 to 1:80. In the most recent national study of public guardianship, Teaster et al. (2010) recommended a staff-to-person ratio of 1:20.

The TGP model—assessment of effectiveness and replicability

- **Increase ease of information access.** TGP's reports should be combined and retrievable in one place; this is possible because the accounting system is structured to have data all in one place. Throughout the year, the program examines case records; however, staff could go deeper via more routinized and sustained efforts by the whole staff.
- **Optimize mix of cases and caseloads.** Case managers' caseloads should be reviewed regarding staff-to-client ratios as well as mix of cases given to each case manager.
- **Improve funding model**. The original funding model of cases with estates and no-fee cases should be maximized so that TGP can have greater sustainability.
- **Increase funding.** TGP should have more funding in order to take on more cases.
- **Continue outreach efforts.** TGP should continue efforts at outreach and involvement in policy discussions.
- **Replicate the TGP model.** The TGP model should be replicated and evaluated. The evaluation should be a formative, process, and summative evaluation.

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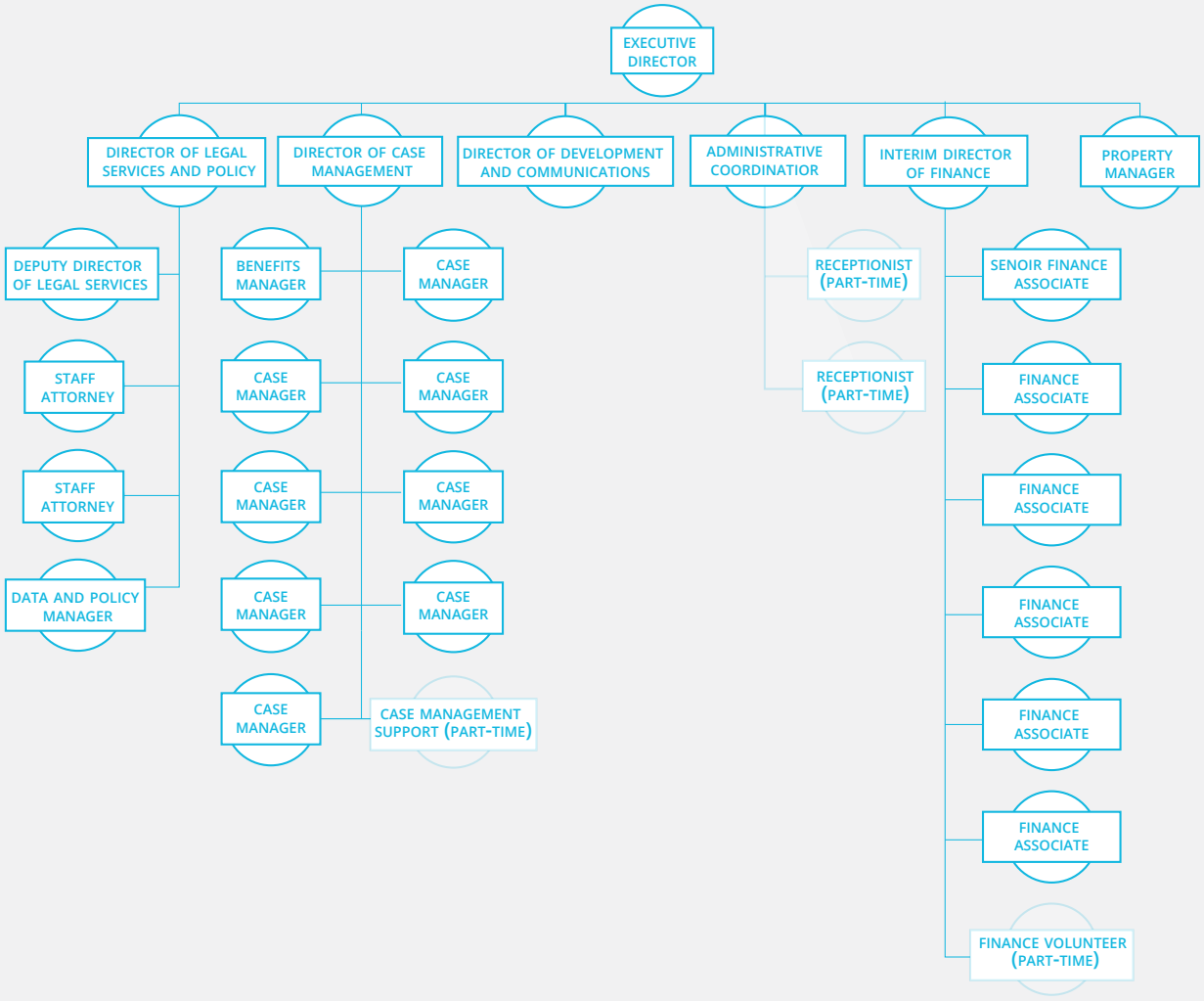
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APPENDIX A.

TGP Organizational Chart



APPENDIX B. APS MAP

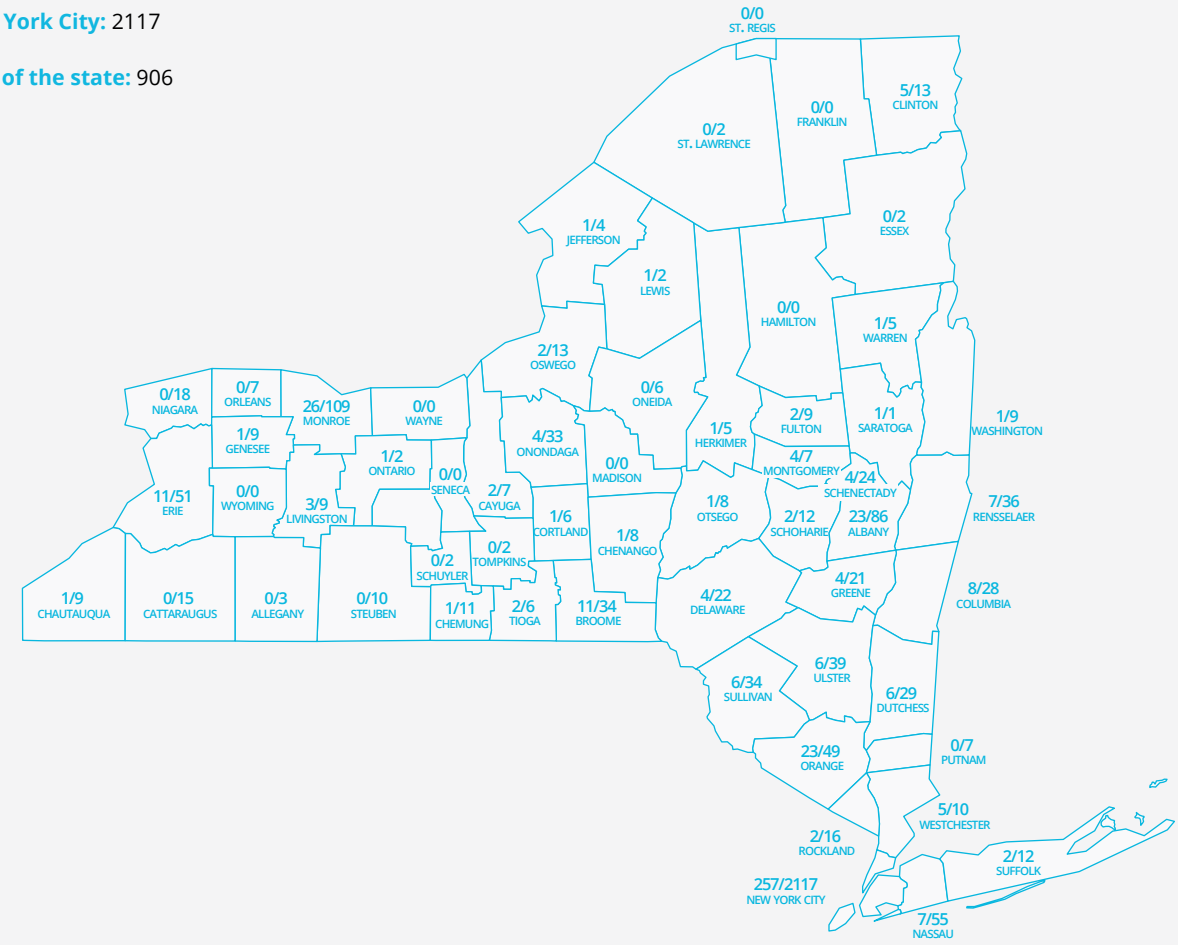
2017 GUARDIANSHIP FOR ADULTS—COMMISIONER OR DESIGNEE (CONTRACT AGENCY)

New appointments in 2017/ Total cases in 2017
(self-reported data)

Statewide total: 3023 cases in 2017 compare with 2886 in 2016.

New York City: 2117

Rest of the state: 906



Please note: this map only shows cases in which Adult Protective Services is guardian or contracts with a community guardian. It does not include family, private, or other nonprofit guardianship cases.

APPENDIX C. EXPLORATORY LIST OF NEW YORK NONPROFIT AGENCIES SERVING AS GUARDIAN[7]

AGENCY	COUNTIES SERVED
Bronx Community Guardianship Network, Inc.	Bronx
Catholic Family Center	Monroe
Center for Elder Law & Justice	Erie
Empower Assist Care Network	Montgomery, Nassau, Steuben, Suffolk
Family Service Society of Yonkers	Bronx, Ontario, Rensselaer, Washington
Integral Guardianship Services	Bronx, Jefferson, New York, Putnam, Queens
Jewish Association Serving the Aging[8]	Bronx, Kings, Nassau, New York, Queens
LCG Community Services—United Guardianship Services	Bronx, Kings, Nassau, New York, Queens, Suffolk
Lifespan of Greater Rochester	Monroe
New York Foundation for Senior Citizens[9]	New York
New York Guardianship Services, Inc.	New York
Self-Help Community Services, Inc.[10]	Bronx, Kings, Nassau, New York, Queens, Wayne
Vera Institute of Justice—The Guardianship Project	Bronx, Kings, New York, Queens

7 Note: Vera/TGP staff compiled the initial list for the New York Community Trust study, with additional input from the Office of Children & Family Services, as well as study interviewees. It does not represent a complete, final, or official list. Rather, it is an exploratory list as a basis for further confirmations and additions.

8 New York City Community Guardian Program

9 New York City Community Guardian Program

10 New York City Community Guardian Program

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E31



LINDA ROSIER

Lois Byalick, an RSVP volunteer working with Guardianship Corp, checks on the welfare of a client at the Gurwin Jewish Nursing and Rehabilitation Center in Commack.

Weaving a new safety net

RSVP volunteers partner with Guardianship Corp to improve the lives of older, vulnerable adults

BY RON MARGE
Special to Newsday

The 62-year-old developmentally disabled man is unable to care for himself and he cannot speak. According to his care monitor, Lois Byalick, 72, a retired social worker, he spends most of the day in his bed at Island Nursing and Rehabilitation Center in Holtsville. He has no family or friends to help oversee his needs nor the assets to hire a legal guardian, so Byalick visits him as part of a new program to improve the care of people supervised by state-appointed guardians.

Before 2018, Suffolk County judges would generally appoint lawyers to take on such guardianship cases pro bono, making those attorneys companions for life with many wards, who they were required to visit every three months.

"The single greatest obstacle to ensuring that our most vulnerable citizens are protected is a lack of individuals willing and able to serve as guardians," says Judge Richard I. Horowitz, 56, of Smithtown, a state Court of Claims judge and acting justice of the state Supreme Court of Suffolk County.

"While the law provides for the appointment of guardians, New York State does not have a statewide Community Guardianship Program," Horowitz says, referring to New York City's New York Foundation for Senior Citizens, which serves as guardian for incapacitated adults in the five boroughs.

"Judges have been forced to weave together a patchwork quilt to create a safety net," he explains. "The most significant need is for people who are indigent and/or those with no family support."

On the judge's recommendation, a meeting was convened at his Central Islip office last March with Robert Heppenheimer, 58, who has 30 years' experience as an advocate for senior citizens, and Pegi Orsino, 67, of the volunteer organization RSVP Suffolk, to brainstorm how to increase the pool of individuals willing and

See GUARDIANS on E26

Checking on infirm, vulnerable

GUARDIANS from E25

able to serve as guardians in the county.

Heppenheimer, of Northport, and Orsino, who lives in Bellport, have worked together for 20 years at RSVP, the 850-volunteer group Retired Senior Volunteer Program — Heppenheimer as a board member and Orsino as the executive director. RSVP has been serving residents in Suffolk since 1972, connecting those 55 and older with an array of volunteer opportunities.

"Pegi and I have known Judge Horowitz for years and his great work for the less-fortunate in the county, and were extremely interested in how we could all come to a solution for this problem," Heppenheimer says.

Horowitz's idea initially was that the senior volunteers at RSVP could be a solution. Yet, says Orsino, guardianship itself would likely prove too great a task for the volunteers; instead, she suggested the volunteers be trained as care monitors, "the eyes and ears" of the official guardian.

In the days after that March 2018 meeting, Heppenheimer drafted a proposal to create a nonprofit to act as the responsible entity for people in need of guardians, effectively reducing the need for attorneys to take on the role. Guardianship Corp, with Heppenheimer as its chief executive and assistance from the Senior Law Project at Touro Law School in Central Islip, partnered with RSVP to tap a pool of potential volunteers.

The group also considered what other Long Island entities might offer support. For example, Stony Brook University nursing students have also begun volunteering as interns for additional support.

A pilot grant of $250,000 to Guardianship Corp, which became an operating organization in October, will fund the program for fiscal year 2019 (April to March), to manage and make decisions for the wards and to provide progress reports to the county. The grant is funded by the state Department of Health and managed by the state's Office of Court Administration.

The services provided by Guardianship Corp can include arranging for food, clothing, shelter and safety; supporting each ward's well-being, medical stability and mental health; coordinating doctor appointments and related health care and social needs; and managing the individual's property and financial affairs.

"The bottom line is that through this pilot program, we can help develop the most effective care monitoring, training and working models of using an agency as the guardian with hopes of expanding into the next fiscal year," says Heppenheimer, who has managed and owned nursing homes in Suffolk.

The problem is more significant on Long Island because its senior population over age 65 increased 33 percent between 2000 and 2016, higher growth than other metropolitan areas in New York State, according to the Rauch Foundation's Long Island Index 2018 Report.

BECOMING A CARE MONITOR

In November 2018, the call for volunteers to serve as care monitors began at RSVP. In December, RSVP screened an initial group of 10 volunteers, three of whom later opted out of the program because of personal or family issues.

The volunteers took a two-day training program, led by Heppenheimer and Orsino, to build awareness of issues like safety, medical and behavioral concerns, and recognizing when attention is urgently needed for the person in their care.



Rita Kavanagh, left, attends training facilitated by RSVP executive director Pegi Orsino, center, at Touro Law School in Central Islip.

The training also covered chronic disease, infection control, clinical concerns; the role and responsibilities of Guardianship Corp Care Monitors; Alzheimer's and dementia; levels of care: home care, assisted living, nursing home; and patient reimbursement systems.

Orsino tells the volunteer care monitors that they will be helping an individual lead the highest, viable independent living by visiting them twice a month and checking on their well-being, although the state requires visits only every three months. After the visit, the RSVP volunteers must write a report, consisting of a paragraph or two, for the Guardianship Corp personnel.

"You are the care monitor and not the guardian, but you are the eyes and ears to the elder's situation, whether they live at home or in a nursing facility," Orsino says she tells RSVP volunteers. The care monitors are not responsible for court proceedings or reporting, but they are the first line in assessing how well the clients appear to be doing.

Guardianship Corp had 10 clients as of late February. Individual volunteers determine how many clients they can help; eventually, Heppenheimer hopes two volunteers will visit a client together.

"On my first visit with my first ward, Bob Heppenheimer joined me," explains RSVP volunteer Byalick, who has three clients. "He helped me assess the ward's situation and needs. Although I was a social worker by trade, I learned a lot during the training program."

Byalick, who lives in Lake Grove, explains that when she first met the client at Island Nursing and Rehabilitation, she saw he was almost completely incapacitated. He couldn't speak, so Byalick asked him to point to items on a paper to see how he was feeling and indicate if he needed anything.

"He can't give me details. But after you spend time with someone, you can tell if they are happy or agitated or if they need immediate attention to something bothering him," Byalick says. "It is hard work, but I enjoy helping people."

Says Heppenheimer, "I volunteered at a nursing home when I was 13 years old. You know there is a dirty little secret in the industry concerning volunteers: They get more out of the experience than the patient."

FILLING A VOID

Since October 2018, when Guardianship Corp partnered with RSVP, the volunteers have received more than 100



JOHNNY MILANO

Want to help?

For more information on becoming a care monitor or taking part in RSVP's volunteer opportunities in Suffolk, contact Pegi Orsino, at 631-979-9490, ext. 11, or Betty DeSimone, at 631-979-9490, ext. 12.; or visit rsvpsuffolk.org. Robert Heppenheimer of Guardianship Corp can be contacted at 631-650-2325 or via email at guardianshipcorpsceo@gmail.com.

— RON MARGE

hours of training at both the RSVP offices and at Touro College.

They join about 850 other RSVP volunteers who do a range of volunteer work through RSVP's partnering with nonprofit organizations. From soup kitchens, schools and hospitals to Head Start programs, national parks, museums and more, the volunteers, who mostly are 55 and older, have collectively rendered more than 103,567 hours of service to make their communities stronger.

"Unfortunately, no hard statistics exist for the number of unassigned incapacitated adults in need of guardianship throughout Suffolk County or even New York State for that matter," Heppenheimer says.

But he and Orsino hope that the pilot program will have data at the end of its grant year to evaluate its cost-effectiveness to the guardian and court system and the benefit to the community being assisted.

Heppenheimer credits Horowitz, the judge, as being a true advocate for the less fortunate: "He saw the increasing need for guardianships for those without funds and sought solutions for this intractable problem. His increasing reliance on pro bono patchwork solutions was driving his motivation for solutions."

"The creation of Guardianship Corp has filled a huge void and allowed the court to appoint compassionate professionals, volunteers and students whose primary focus is the care, safety and comfort of incapacitated persons," Horowitz says. "The hope is that this pilot project will serve as a model for other communities and be adopted throughout the state."



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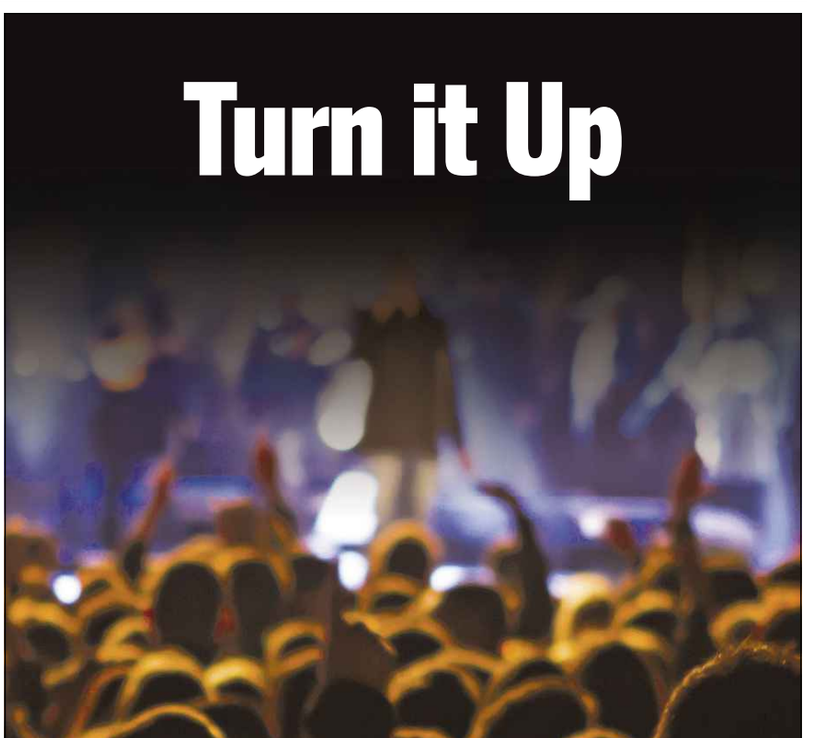
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