

Vermont Office of Public Guardian Annual Report for State Fiscal Year 2017

Developmental Disabilities Services Division
Department of Disabilities, Aging and Independent Living
Agency of Human Services
State of Vermont
Published: January 2018

Purpose of the Office of Public Guardian (OPG)

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

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

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

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

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

- Adults (18 or older) with **developmental disabilities (DD)**, or
- Persons **60 years of age or older (elders)** with disabling cognitive impairment, and
- Who require **assistance with basic life decisions**, and
- For whom a suitable and willing **private guardian cannot be found**.

Guardianship Powers

Family Court orders of guardianship can include the following areas:

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

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

- **Sell or Encumber Personal or Real Property** (as a separate power)
- **Exercise Supervision over Income and Resources**

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

Philosophy and Principles of OPG

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

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

Other Functions of the OPG

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

- Serves as **representative payee**- receive and manage Social Security or Supplemental Security Income for **348** individuals in SFY '17, many of whom are under public guardianship; one third of whom do not have a guardian and service is an effective alternative to guardianship.
- Provides **case management**- assisting individuals to gain access to services and monitoring those services and supports when this can provide a less restrictive alternative to guardianship.
- Provides **public education** on guardianship and alternatives to guardianship.
- **Recruits and assists private guardians** and assists in developing **individualized alternatives to guardianship**.
- Arranges **court-ordered evaluations** for both public and private guardianship proceedings (**276** in SFY '17).

OPG Staff

During SFY '17, the Office of Public Guardian was staffed by **26 full-time employees**, including:

- 22 Guardians with caseloads ranging from 24-42 individuals
- 1 Program Technician
- 1 Financial Specialist (representative payee) for 348 Individuals
- 1 Intake and Diversion Specialist with partial caseload
- 1 Director with partial caseload

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

People Served by the OPG

During State Fiscal Year 2017, the Office of Public Guardian served the following number of people (current and terminated):

• Guardianship (DD/Family & Probate Court)	627
• Guardianship (60+/Probate Court)	99
• Case management	10
TOTAL ASSIGNED to GUARDIAN CASELOADS	736
• Rep Payee not in guardianship	69
(Total served Rep Payee 348)	
Unduplicated Total Served by OPG	805

New People Served in SFY 17:

People with DD	39
Elders	26
Case Management	8
Total	73

People Terminated from OPG Services in SFY 17:

People with DD	33 (Deceased 16, Powers Returned 15, Private 2)
Elders	30 (Deceased 27, Powers Returned 1, Private 2)
Case Management	4 (Independent 2, Private 2)
Total	67

Reasons for Public Guardianship

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

In SFY'17, 65 people were placed on Public Guardianship for the following reasons:

- **24** people transferred to public guardianship when their **private guardians resigned, died or were removed by the court;**
- **21** people were placed on public guardianship due to **risk of harm, poor/dangerous decisions, self-neglect, need for support services, urgent need for medical care, and declining abilities and other issues associated with aging;**
- **10** people were placed on public guardianship because they needed emergency medical care or needed to be **discharged from the hospital** and couldn't be placed without a guardian;
- **8** people were placed on public guardianship as a result of an investigation of **abuse, neglect or exploitation by Adult Protective Services;**
- **3** people **aged out of custody from the Department for Children and Families (DCF)**. This happens when a young adult turns age 18 and is no longer eligible for DCF custody. Often, people who are placed on public guardianship from DCF custody come with backgrounds of severe abuse, neglect, exploitation, and serious emotional/behavioral issues;

Petitions which resulted in public guardianship in SFY 17: In descending order of frequency, public guardianship was successfully sought by the following petitioners:

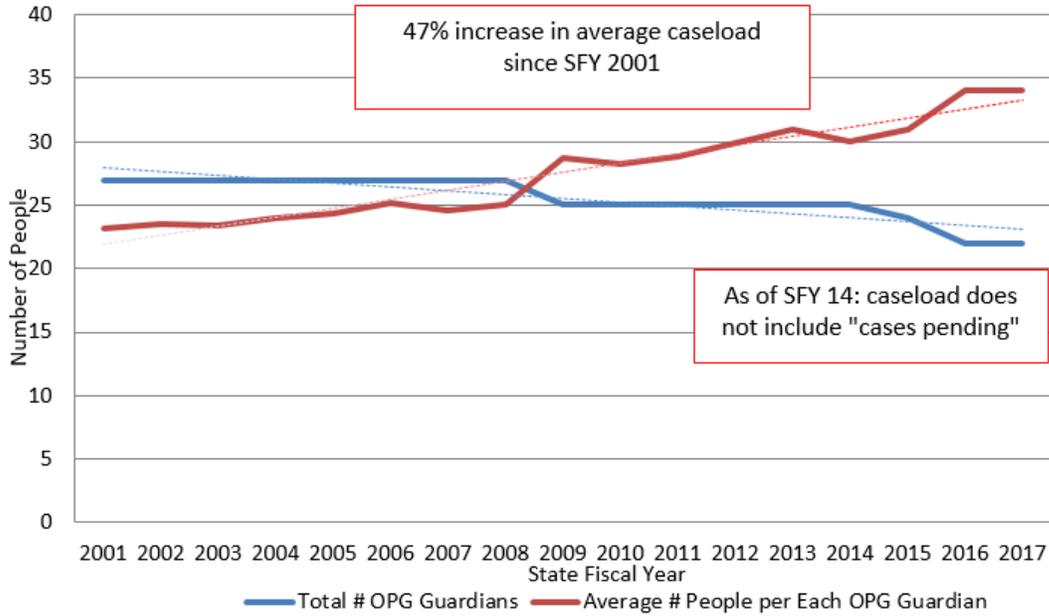
- Family members
- Community Developmental and Mental Health Agencies
- Hospitals or doctors
- APS
- DCF
- Direct orders from the court
- Area Agencies on Aging
- Nursing homes
- Teachers

Challenges: OPG faces several challenges, but there are 3 core issues causing pressure on the program- caseload numbers, severity of need, and a growing number of individuals who disregard and reject assistance of the guardian.

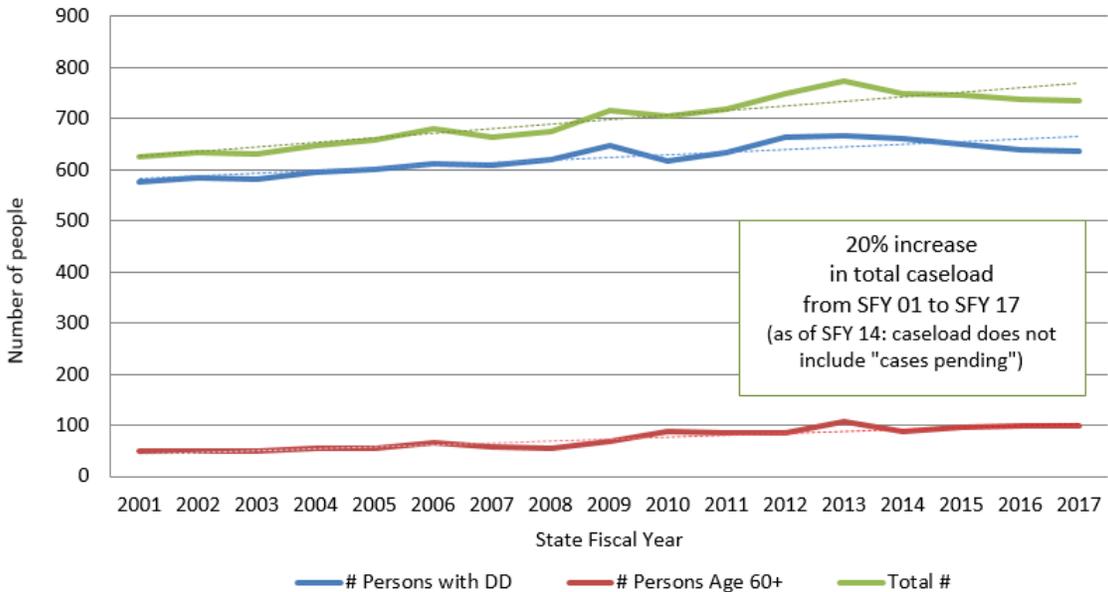
Caseload Numbers- A significant challenge facing OPG is the increasing number of people under our guardianship as compared to the number of guardianship positions that remain. The charts below illustrate the change in caseload numbers over time. From 2001 to 2017, total caseload increased 18%, from 626 people served in 2001 to 736 people served in 2017. At the same time due to a decrease in full time equivalent guardians from 27 in 2001 to 22 in 2017, the average caseload per guardian has increased 47%, from 23 in 2001 to 34 in 2017.

The Vermont guardianship statutes require that guardians maintain close contact with persons under guardianship, regardless of where they reside in the state. This is necessary to be as knowledgeable as possible about the person's wishes and desires, monitor their safety and well-being, and advocate on their behalf. This requires regular personal contact due to the communication difficulties experienced by many individuals with cognitive impairments and the complexity of people's needs. As the average caseload per guardian increases to 1.5 to 2 times the nationally recommended limit of 20 individuals, the guardians' ability to meet the requirements and expectations become greatly diminished. At minimum, this over-extension may unduly tax the guardians and dilute the quality of service provided by OPG; at worst, it may place the individuals, guardians, and ultimately the Department of Disabilities, Aging and Independent Living at risk if important factors are overlooked due to the shortage of time to spend on each individual under guardianship.

Office of Public Guardian Average Caseload SFY 2001 - SFY 2017



Office of Public Guardian (OPG) Total Caseload SFY 2001 - SFY 2017



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

- Obtaining and maintaining residential supports for some *elders with mental health issues or challenging behaviors* whose needs are not being met at home, in a residential care home, or in a nursing home. Some of these individuals remain at the emergency room, hospital or even jail for lack of an alternative for an extended period of time. In fact, some elders who present with seriously challenging behaviors and/or reputations, are refused admission to every nursing home in the state of Vermont, and are placed in out of state facilities who will accept them. The guardian must then travel out of state to maintain contact and must contend with the complications of registering VT guardianships in another state, or complying with the regulations of other states.
- Many nursing homes refuse to admit people without advance directives or guarantee of payment and as a result guardianship is sought to secure admission.
- Young adults leaving *DCF custody* who have experienced years of family dysfunction, abuse and neglect and then multiple placements. Some come directly to OPG from in state and out of state institutions, psychiatric hospitals, or jail. Despite concerted efforts to improve the process, the transition from DCF custody and services into adult guardianship and services is rarely smooth, and young adults often turn 18 without their benefits, services and guardianship in place.
- Emergency guardianship for people referred by *Adult Protective Services* who have experienced abuse, neglect or exploitation. Often these individuals wish to remain living with or supported by the perpetrators and the guardian must balance risk of harm with the person's wishes.
- Individuals with *dual-diagnoses* (a developmental disability and serious mental health or substance abuse disorder).
- Individuals who display *dangerous criminal behavior*.
- Individuals placed in public guardianship that *are not statutorily eligible* for public guardianship and are also not eligible for home and community based services. The guardian is responsible for the individual's well-being and community safety, yet there are limited support services available.

- Providing guardianship to women who have children presents multiple issues and challenges.

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

Accomplishments in SFY 17

1. Continued provision of high quality guardianship services despite the high caseloads.
2. Continued work on revision of the OPG Regulations.
3. Participated in the establishment of 2 pilot projects on Supported Decision Making and assisted in the creation of the Vermont’s first court-recognized Supported Decision-Making Plan.
4. Initiated an effort to re-design and improve the guardianship evaluation process.
5. Initiated work on assessment of decision making skills and compilation of training materials so that people can learn the necessary skills to become their own guardian.
6. Participated in work group to improve the mechanism for reimbursing the Designated Agencies for completing guardianship evaluations.
7. Provided trainings to a variety of stakeholders regarding guardianship and its alternatives.

Goals for SFY 2018

- Work collaboratively with stakeholders towards Supported Decision Making through a variety of Pilot Projects and individual efforts
- Continue to develop additional strategies for helping people learn skills required to be their “own guardian”
- Increase our assistance and training to private guardians
- Develop more online resources
- Update OPG Manual
- Increase safety and security practices and procedures for guardians
- Complete process of revising Regulations

