



**STATE OF DELAWARE
OFFICE OF THE PUBLIC GUARDIAN**

Kent County Courthouse
38 The Green
Dover, DE 19901

(302) 674-7460
Fax: (302) 674-7461

Attached please find the 2024 Annual Reports for the Office of the Public Guardian and the Delaware Guardianship Commission. These reports provide a comprehensive overview of our activities, achievements, and ongoing commitment to serving the public.

Thank you for your time, attention, and continued support in reviewing these documents. Please feel free to contact me if you have any questions or require additional information.

Respectfully,
Alexandra McFassel, Esq.
Public Guardian



ANNUAL REPORT - 2024

OFFICE OF THE PUBLIC GUARDIAN



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A Letter from the Public Guardian:

On behalf of the Office of the Public Guardian, I submit the Annual Report for the office for the year 2024. I would like to thank the Delaware Guardianship Commission for the assistance in finalizing this report, and I would like to thank my staff at the Office of the Public Guardian for their unending advocacy and work on behalf of the citizens of Delaware.

Alexandra McFassel, Esq.
Public Guardian

ANNUAL REPORT 2024
THE OFFICE OF THE PUBLIC GUARDIAN

I. INTRODUCTION

The Office of the Public Guardian (OPG) was created in 1974 and serves as interim and permanent guardian for persons with disabilities which interfere with their ability to make decisions, due to a lack of capacity, pursuant to 12 Del.C. §§3981 – 3989. Creation was spurred by major gaps in the law and service systems of Delaware to protect populations who might be in danger of neglect or abuse due to physical or mental infirmity, and no law (at that time) providing for guardianship of the person. A committee of interested individuals, including doctors, lawyers, police, and agency administrators participated in an effort to expand existing guardianship laws to include guardianship of the person, and to expand the availability of guardianship by creating the Office of the Public Guardian (OPG) to assist those who did not have friends or family to provide support.

II. AGENCY FUNCTION:

OPG provides quality, comprehensive, protective guardianship services to adult citizens of Delaware who are severely mentally or physically disabled, are unable to manage their personal and financial affairs, are at risk for neglect, abuse and victimization and have no one else able or willing to serve as a guardian. The Office of the Public Guardian is currently a part of the Judicial Branch, with administrative support provided by the Administrative Office of the Courts, and acts in accordance with the Judicial Branch Rules, Court Rules, statute, and the Standards of Practice set by the National Guardianship Association.

Agency staff receive referrals from state agencies and hospitals in the state seeking assistance with providing care and managing the resources of individuals who need assistance with managing their finances, applying for benefits, and negotiating care needs, from living in the community to receiving care at a skilled level.

In addition to providing guardianship services, OPG strives to provide educational materials, and presents at conferences and seminars upon request.

III. CURRENT AGENCY STRUCTURE

The office consists of a Public Guardian, a Deputy Public Guardian, the Guardianship Advocacy Director, and three units: the financial unit, the guardian case management program for person, and the Guardianship Monitoring Program. The financial unit is comprised of a Fiscal Advisor II, two Fiscal Associate II's, and two Social Service Specialist II's. It is responsible for locating and securing assets, Medicaid qualification, sale of real estate, necessary spend-down of assets or private pay arrangements, trust management of both Miller and Special Needs Trusts, payment of cost-of-care, and provision of personal needs amounts. The office also manages personal needs monies for individuals both in facilities and in the community. OPG is recognized by the Social Security Administration as an Organizational Representative Payee.

The guardian case management program of the person provides consents for health care treatment and placement with a team of three Guardianship Case Managers, and the support of higher-level management and support staff.¹. Current priorities are emergent cases and cases involving financial exploitation.

The Office of the Public Guardian maintains a hotline to provide consent and healthcare management 365/24/7. At all times there is a nationally certified

¹ The Public Guardian, the Deputy Public Guardian, and the three Guardians Case Managers are all Nationally Certified Guardians and receive annual training of up to 24 hours in areas related to guardianship. The Fiscal

guardian on-call to respond to the care needs of individuals for whom OPG has been appointed. This hotline is staffed by Senior Guardian Case Managers, the Guardianship Advocacy Director, the Deputy Public Guardian and the Public Guardian, and is supported by the use of mobile technology which allows the hotline to direct the messages to staff on-call, and allows the Staff Member to remote in to records and case notes for information necessary to provide the best response to the emergency calls. Currently, there are five staff members qualified to take on-call duties. On-call duties are 24/7 for one week, and each on-call qualified staff member spends approximately 10 weeks on-call each year.

As in all guardianships, the consent of the office is required to file for the appointment of OPG. Consent is obtained by providing OPG with a referral which contains necessary information to assess the circumstances of the case and the level of need the individual has for a guardian. Many referrals come to OPG from the hospitals who need a guardian to provide essential medical services in an acute setting that are non-emergent but necessary for the health and welfare of the individual, and to facilitate placement. Private entities must file petitions through outside counsel for the appointment of the office, whereas state agencies utilize the Department of Justice. The Public Guardian may petition for the appointment of the office but does so rarely, to avoid the appearance of impropriety.

The Guardianship Monitoring Program is located within the OPG. Originally located within the Court of Chancery, it was relocated to provide staffing support for the Guardian Advocacy Director and on-site investigations. The Guardianship Monitoring Program reviews guardianship of the Court of Chancery pursuant to Rule 180-D, which includes both routine and investigative review. Routine review is ongoing of all the cases in which a guardian is appointed, while investigative review is by order of the Court of Chancery in cases in which a concern arises which involves the safety and welfare of the person with

a disability. The investigative aspect of this program requires DELJIS access, which was obtained through application and with the support of the Court of Chancery when the Guardianship Monitoring Program moved to OPG.

The Public Guardian acts as attorney for the office in guardianship matters before the Court, providing consents and other forms, participating in non-routine matters, or matters in which the Court requests the presence of the office. The Public Guardian is responsible for filing all reports and necessary pleadings on behalf of the individuals it serves, including annual reports, inventories, accountings, motions for appraisers, and petitions to sell real estate for Medicaid purposes, or petitions for special instructions or terminations. As noted above, the Public Guardian also files on behalf of the Guardianship Monitoring Program. In FY23 the Public Guardian filed approximately 820 pleadings.

The Public Guardian also assists in case management of the person and financial case management, reconciliation, budget preparation according to statute, preparation of the annual GAAP report, staff management, training and supervision, and responding to requests for assistance from outside entities and individuals regarding assistance or educational programs.

IV. PERFORMANCE MEASURES:

	<u>2024</u>	<u>2023</u>
Referrals:	98	94
Referrals Accepted :	34	37
Source of referral/appointments:		
Hospitals		22
Court of Chancery		7
Nursing Facility		3
State Agency		5

Current Year Guardianships:	246	226
Financial Appointments:	190	172

Guardianship Monitoring Program (GMP):
(GMP) appointments:

Reports of the Director:	35	32
Analyst Reports:	251	303

Legal Case Management

Total OPG/GMP legal filings:	819
Reports Filed:	219 205
Accountings:	138 153

Financial Case Management

Accounts Managed	299	(CY23) 242 ²
Resources Managed	\$2,239,087.67	(CY23) \$1,601,374.00
Income Managed	\$4,354,430	(CY23) \$3,456,995.00

V. OVERVIEW OF ACTIVITIES;

OPG continues to act as guardian where appointed by the Court of Chancery in guardianships of person and property. OPG meets with hospitals and agencies to process ongoing referrals in an orderly matter. Due to resource limitations, OPG is currently only accepting urgent to emergent cases of medical exigency or financial exploitation, or cases in which the Court appoints the agency without referral.

² OPG manages more than one account per appointment where necessary.

OPG works on emergent medical cases where the individuals need emergent life sustaining treatment within 72 hours to 29 days, the current time period for emergent cases (generally the evaluation for an emergent case is whether the individual needs the emergent guardian prior to the hearing to appoint a permanent guardian).

Current caseloads for Guardian Case managers are over 60 cases per dedicated case manager. The majority of our clients receive services in skilled nursing facilities or group homes, with approximately 50% of clients receiving services from the Delaware Division of Developmental Disabilities Services (DDDS). A small percentage of clients receive serves in the community.

VI. GOALS AND OBJECTIVES

Current goals of the Office of the Public Guardian are:

1. To transition the financial case management system to a web-based (internet available) case management system as the current machine-based software is being phased out. Request made as part of FY26 Budget requests.
2. To obtain funding and resources to support another FTE Guardian Case Manager to assist with person case management, and another Fiscal Advisor II, or an accountant FTE. More support for case management is vitally needed as current Guardian Case Managers have three times the recommended number of cases. To obtain funds to create a full-time position in the Guardianship Monitoring Program from the current casual/seasonal position.
3. To produce and publish educational materials for the public on elder records management, Medicaid services, guardianship, and less restrictive decision-making processes to reduce the use of the guardianship process.
4. To work with the Guardianship Commission to create a Guardianship Bill of Rights.

VII. CHALLENGES AND NEEDS

OPG is in serious need of resources and funding. The last approved budget request for OPG was over six years ago. OPG continues to work to identify means of expanding services to individuals in need. Adult guardianships are often lifelong cases, and there are several guardianships in the office where OPG has been the acting guardian for over ten years. Where possible, OPG seeks less restrictive alternatives, or encourages family to step into the role as successor guardian. In financial cases, an alternative representative payee may be found after Medicaid qualification is settled, allowing OPG to step out of the role in cases where social security is the sole income. OPG does its best to investigate and support less restrictive alternatives.

VIII. CONCLUSION

The population growth in the over 65 age-group and the continued impacts of dementia on the elderly populations create increasing needs in elderly populations, and there continue to be urgent cases across the spectrum due to medical urgency or financial management needs. OPG looks forward to meeting these challenges and working to achieve our goals in 2025.



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**ANNUAL REPORT 2024
DELAWARE GUARDIANSHIP COMMISSION**

I. INTRODUCTION

The Delaware Guardianship Commission was formed in 2011 as part of a legislative package enacting reforms of the Office of the Public Guardian (OPG). This Commission brings the stakeholders in the protection of the elderly and persons with disabilities together to work toward the betterment of that protective mission. The Commission exists in response to concerns in the state and the Nation about the quality of process and procedure in the Court of Chancery regarding adult guardianships.

There is a genuine public need to have an organized meeting, open to the public, of vital stakeholders to the guardianship process where the meetings are held on a regular basis, and a record is kept of the proceedings. There is no doubt that if the Commission did not exist, these conversations would still occur, but there would be less public access to them.

The Commission is currently staffed solely by the OPG, and during this reporting period, did not have an elected Vice-Chair or Secretary. The Public Guardian chaired the meetings as “Acting Chair” by consent of the Commission. There is not currently a fiscal note attached to support for the Commission. The Administrative Officer for the OPG curates the ZOOM Meetings, develops the

minutes, does FOIA compliance and participation in the Public Meetings Calendar, and makes certain Agendas and Minutes are available.

Members of the Commission shall serve without compensation, but may be reimbursed, upon request, for reasonable and necessary expenses incident to their duties as members of the Commission to the extent funds are available through the Office of the Public Guardian.

II. COMMITTEE MEMBERS

Title 12, Chapter 3991 if the Delaware Code states:

The Commission shall consist of 12 members and shall be staffed by the Office of the Public Guardian. The Guardianship Commission shall be comprised of the following:

- (1) One member from the Court of Chancery, designated by the Chancellor;
- (2) A representative from the Department of Justice, designated by the Attorney General;
- (3) The Director of the Guardianship Monitoring Program, or the Director's designee,
- (4) One member of the House of Representatives, designated by the Speaker of the House;
- (5) One member of the Senate, designated by the President Pro Tempore of the Senate;
- (6) The Director of the Division of Services for Aging and Adults with Physical Disabilities, or the Director's designee;
- (7) The Director of the Division of Substance Abuse and Mental Health, or the Director's designee;

- (8) The Director of the Division of Developmental Disabilities Services, or the Director's designee;
- (9) The Secretary of the Department of Health and Social Services, or the Secretary's designee;
- (10) A representative from the Disability Community, designated by the Secretary of Health and Social Services;
- (11) A representative from the Senior Citizen Community, designated by the Secretary of Health and Social Services, currently Eric Merlino, Supportive Cares Solutions;
- (12) A representative from the hospital community, designated by the Delaware Healthcare Association;
- (13) The Chair of the Elder Law Section of the Delaware Bar Association, or the Chair's Designee;

Membership is currently under review by the Joint Legislative Oversight & Sunset Committee. Based on previews, it is expected the Commission will have growth in membership which will include care providers and other impacted by guardianship, guardianship policies, and less restrictive options.

III. GOALS AND OBJECTIVES

According to 12 Del.C. §3992, the Delaware Guardianship Commission acts:

- 1) In an advisory capacity to the Office of the Public Guardian, providing assistance to the Public Guardian in establishing administrative policies and procedures in the Office of the Public Guardian, and assistance in developing case acceptance priorities for the Office of the Public Guardian;

(2) Examine and evaluate the policies, procedures and effectiveness of the guardianship system, and make recommendations for changes therein, including establishing statewide standards and regulation of public and private guardianships;

(3) Conduct an annual statewide needs assessment relating to the number of individuals currently and predicted to be in need of a decision maker due to incapacity, the resources available or needed to meet that need, and to the processes utilized to meet the need;

4) Advocate for legislation and make legislative recommendations to the Governor and the General Assembly;

(5) Develop public and professional education programs on issues relating to guardianship, alternatives to guardianship, and concerns relating to the abuse, neglect, and exploitation of individuals who are incapacitated.

IV. OVERVIEW OF ACTIVITIES

In 2024, the Joint Legislative Oversight and Sunset Committee (JLOSC) continued to work on the Statute Revisions in Recommendation #2 of the report. Similarly, an assigned sub-committee in the Commission is dedicated to working on the revision of the by-laws. Throughout January to June, work and discussion continued.

January 2024 saw the start of a new year and anticipation of the legislative session. The discussion of the by-laws revision was tabled until there was resolution to the statutory development and enactment related to the Commission.

The development of the Annual Report was discussed, as was a physical location for meeting, and unearthing a FOIA expert.

The April meeting focused on efforts by Senator Kyra Hoffner to develop a “Guardianship Bill of Rights”. Different samples of such “Bill of Rights” were reviewed and there was discussion on selected additions, such as the right to retain counsel and the right to request an updated Physician’s Affidavit. It was requested that further suggestions be forwarded to Senator Hoffner for consideration.

The meeting in July focused on legislative progress of the “Guardianship Bill of Rights” and the recommendations and statutory changes recommended by the JLOSC. It transpired that statutory revisions did not move forward and discussions continue, as was the case with the “Guardianship Bill of Rights”. It was also discussed that the move of the Judicial Branch to remove the non-judicial agencies to another location had not succeeded.

In October of 2024, the DGC presented to members an informative session on the newly enacted Uniform Health care Decisions Act 2023, which at that time had passed, and has a scheduled enactment date of September 30, 2025. Then Senator Kyle Evans Gay graciously introduced the discussion, which involved a slideshow and post-presentation discussion.

V. PLANNED FUTURE ACTIVITIES

Planned future activities include continued focus on the review of the by-laws, at which time the Commission will proceed with the election of officers.

Commission work will continue as needed to support the legislative initiatives and needs, with specific support for Senator Hoffner and the JLOSC as noted above. CLASI volunteered to assist with a review of other states and versions of a “Guardianship Bill of Rights”. The Joint Legislative Oversight and

Sunset Committee continues to work on the structure of the DGC, and the goal of reforming it into a WINGS group.

VI. CONCLUSION

The Delaware Guardianship Commission looks forward to structural changes and new leadership as the JLOSC recommendations and statutory changes come into being more fully. The work on the by-laws and electing new officers should also complete as those changes move forward.

It is a very exciting time for the Commission as it looks towards expansion and moving forward.

Alexandra McFassel, Esq.

Public Guardian

Acting Chair of the Delaware Guardianship Commission

Report approved by vote on: _____.