United States Government Accountability Office

GAO

Report to the Chairman, Special Committee on Aging, U.S. Senate

September 2010

GUARDIANSHIPS

Cases of Financial Exploitation, Neglect, and Abuse of Seniors

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GAO-10-1046

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Highlights

Highlights of GAO-10-1046, a report to the Chairman, Special Committee on Aging, U.S. Senate

September 2010

GUARDIANSHIPS

Cases of Financial Exploitation, Neglect, and Abuse of Seniors

Why GAO Did This Study

As individuals age, some become incapable of managing their personal and financial affairs. To protect these individuals, state laws provide for court appointment of guardians, who may be professionals or family members, to protect the incapacitated person's personal and/or financial welfare. State and local courts are responsible for overseeing guardians. In addition, federal agencies may appoint a representative payee, in some cases, the guardian, to manage federal benefits on behalf of incapacitated adults. Previous GAO reports have found that poor communication between state courts and federal agencies may allow guardians to continue abusing their victims.

GAO was asked to (1) verify whether allegations of abuse by guardians are widespread; (2) examine the facts in selected closed cases; and (3) proactively test state guardian certification processes. To verify whether allegations are widespread, GAO interviewed advocates for seniors and reviewed court documents. To examine closed criminal, civil or administrative cases with a finding of guilt or liability in the past 15 years, GAO reviewed court records, interviewed court officials, attorneys and victims, and reviewed records from federal agencies. To test state guardian certification, GAO used fictitious identities to apply for certification in four states. GAO's results cannot be projected to the overall population of guardians or state certification programs.

View GAO-10-1046 or key components.
For more information, contact Gregory D. Kutz at (202) 512-6722 or kutzg@gao.gov.

What GAO Found

GAO could not determine whether allegations of abuse by guardians are widespread; however, GAO identified hundreds of allegations of physical abuse, neglect and financial exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. In 20 selected closed cases, GAO found that guardians stole or otherwise improperly obtained $5.4 million in assets from 158 incapacitated victims, many of whom were seniors. In some instances, guardians also physically neglected and abused their victims. The guardians in these cases came from diverse professional backgrounds and were overseen by local courts in 15 states and the District of Columbia. GAO found several common themes. In 6 of 20 cases, the courts failed to adequately screen potential guardians, appointing individuals with criminal convictions or significant financial problems to manage high-dollar estates. In 12 of 20 cases, the courts failed to oversee guardians once they were appointed, allowing the abuse of vulnerable seniors and their assets to continue. Lastly, in 11 of 20 cases, courts and federal agencies did not communicate effectively or at all with each other about abusive guardians, allowing the guardian to continue the abuse of the victim and/or others. The table below provides examples of guardianship abuse cases.

Examples of Cases of Abuse by Guardians

Victim	Guardian/ state	Case details
87 year old man with Alzheimer's disease	Former taxi cab driver / Missouri	• Guardian embezzled more than $640,000, which included the purchase of a Hummer and checks written to exotic dancers. • County workers found the victim living in the guardian's filthy basement wearing an old knit shirt and a diaper. • Guardian was sentenced to 8 years in prison and ordered to pay $640,000 in restitution.
At least 78 victims	Private agency / Alaska	• Agency management stole at least $454,000 over 4 years. • Executive director used wards' funds to pay for his credit card bills, medical expenses, mortgage payments, and camp for his children. • Victims received partial repayment, but no criminal charges were filed.
20 victims of various ages with mental incapacities	Licensed social worker, registered nurse / Kansas	• Guardian and his wife sexually and physically abused residents of their unlicensed group home and billed Medicare for this "therapy." • Residents lived in a house described by the prosecutor as "dirty and bug-infested" and were videotaped engaged in forced sexual activities. • Guardian sentenced to 30 years in prison; wife sentenced to 15 years.

Source: GAO summary of closed cases of abuse, neglect and financial exploitation by guardians.

Using two fictitious identities—one with bad credit and one with the Social Security number of a deceased person—GAO obtained guardianship certification or met certification requirements in the four states where we applied: Illinois, Nevada, New York, and North Carolina. Though certification is intended to provide assurance that guardians are qualified to fulfill their role, none of the courts or certification organizations utilized by these states checked the credit history or validated the Social Security number of the fictitious applicants. An individual who is financially overextended is at a higher risk of engaging in illegal acts to generate funds. In addition, people with criminal convictions could easily conceal their pasts by stealing a deceased person's identity. The tests raise questions about the effectiveness of these four state certification programs.

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United States Government Accountability Office
Washington, DC 20548

September 30, 2010

The Honorable Herb Kohl
Chairman
Special Committee on Aging
United States Senate

Dear Mr. Chairman:

According to the U.S. Census Bureau, by the year 2025, the number of Americans aged 65 and older will increase by 60 percent.[1] As citizens age, they may become physically or mentally incapable of making or communicating important decisions for themselves, such as those required to handle finances or secure their possessions. Compared to the general population, adults over the age of 65 are more likely to live alone than those of younger ages.[2] Given these statistics, it is important to ensure that systems designed to protect seniors[3] from abuse and neglect function properly.

Courts may appoint a family member, a professional guardian, a nonprofit social service agency, or a local or state agency[4], to care for an incapacitated person.[5] While many guardians[6] serve the best interests of the incapacitated people they are appointed to protect, others have taken

[1]In 2009, the U.S. Census Bureau projected that the population of adults 65 and older will increase from 40.3 million in 2010 to 64.3 million in 2025.

[2]According to U.S. Census, in 2008, 1 in 3 adults aged 65 and older lived alone compared to 1 in 10 adults between the ages of 15 and 64.

[3]We define "seniors" as adults aged 50 and older, the population served by AARP, formerly known as the American Association of Retired Persons.

[4]State and local agencies include a Public Guardian, which is a publicly-funded state or county office that may be appointed to serve as guardian, and state and local Offices of Aging, which provide a variety of services to seniors and may be appointed to serve as a guardian.

[5]Incapacitated persons may include both seniors and younger adults, but this report focuses on cases involving seniors.

[6]For convenience, we use the term "guardian," even though some states use other terms or differentiate between an individual or group that controls only the finances and one that controls the ward's personal affairs, including health decisions. Court-appointed guardians may be family members or professionals.

advantage of these vulnerable individuals, according to our previous reports.[7] Given our prior findings of guardianship abuse, you asked us to (1) verify whether allegations of abuse, neglect, or exploitation by guardians are widespread; (2) examine the facts and circumstances surrounding selected cases of abuse by guardians, including whether inadequate communication between courts and federal agencies placed these victims at further risk; and (3) proactively test selected state guardian certification processes.

To verify whether allegations of guardian abuse, neglect, or exploitation are widespread, we interviewed state investigators, attorneys, advocates for seniors, and family groups nationwide. We also reviewed federal and state court documents. The abuse alleged by these sources occurred in 45 states plus the District of Columbia; however, this should not be taken to mean that alleged abuse by guardians is limited to these states. Allegations should not be considered proof of abuse. To select our case studies, we searched for instances of guardianship abuse in which there was a criminal conviction or finding of civil or administrative liability in the last 15 years, although in some cases the abuse began much earlier. As part of the selection process, we focused on cases involving professional guardians, guardianship agencies caring for multiple incapacitated people or cases of abuse by family members or other individuals involving significant financial loss by the victim. In addition, we considered factors such as geographic location, number of victims affected and whether the financial abuse involved federal funds. Ultimately, we selected 20 cases from 15 different states and the District of Columbia for further review. To determine whether these guardians continued to receive federal benefits on behalf of their victims or others after the abuse was discovered, we analyzed databases and case files from the Social Security Administration (SSA), the Department of Veterans Affairs (VA), and the Office of Personnel Management (OPM).[8] We did not examine whether state laws and regulations have changed since the abuse in our closed case studies occurred. To test the guardianship certification process, we posed as prospective professional guardians and made calls to state agencies and nonprofits to determine certification requirements. From the 13 states with certification programs, we selected 4 states that did not require

[7]GAO, *Collaboration Needed to Protect Incapacitated Elderly People*, GAO-04-655 (Washington, D.C.: July 13, 2004); and *Little Progress in Ensuring Protection for Incapacitated Elderly People*, GAO-06-1086T (Washington, D.C.: September 7, 2006).

[8]OPM manages retirement programs for federal employees.

fingerprint background checks or time-intensive training courses.[9] Investigators created two fictitious identities and completed certification requirements in these states. We later interviewed state officials and representatives of the nonprofits to gather additional information on the certification process. Case study findings and undercover test results cannot be projected to the overall population of guardians or controls over guardian certification programs. See appendix I for additional details on our scope and methodology. We conducted our investigation from August 2009 through September 2010 in accordance with standards prescribed by the Council of the Inspectors General for Integrity and Efficiency (CIGIE).

Background

When an adult is found to be incompetent, a court can appoint a guardian to oversee the individual's personal and financial well-being. [10] Depending on the incapacitated person's needs, the court may appoint the following: a "guardian of the estate," also called a conservator, who makes decisions regarding the incapacitated person's finances; a "guardian of the person," who makes nonfinancial decisions; or a guardian who performs both functions. The appointment of a guardian typically means that the incapacitated person loses basic rights, such as the ability to sign contracts, vote, marry or divorce, buy or sell real estate, or make decisions about medical procedures.

State requirements for guardians vary. Thirteen states offer guardianship certification, including 11 states that require certain professional guardians to undergo certification[11] before they can be appointed but generally exempt family members from such directives. In 2 other states, certification is optional for all guardians. Certification programs in 5 states[12] require applicants to complete guardianship training, while 9 others order them to pass a national guardianship exam, a state exam, or both. Three states require applicants to complete both guardianship training and pass a competency exam before they can obtain certification.

[9]A fingerprint background check could potentially have identified our investigators

[10]The court can also appoint a guardian for incapacitated minors or adults less than 50 years of age, but we have limited our investigation to cases where at least one victim was 50 years or older at the time of the abuse.

[11]For convenience, we use the term "certification," even though some states require their guardians to register or become licensed prior to appointment.

[12]Two additional states require guardians to complete training after they are appointed by the court. However, these states do not require a guardian to obtain certification.

In addition, some states conduct background checks using fingerprints. Three of the 13 states offering certification also conduct credit checks on applicants. Once guardians become appointed, most states demand that they report on the well being of the incapacitated person and provide an accounting of their ward's finances; however, the reporting frequency is left up to the court. See appendix II for detailed information on state guardianship laws. The federal government does not regulate or directly support guardians.

Representative payees[13] are appointed by SSA, VA, and OPM to handle the federal benefit payments they remit to an incapacitated person. For beneficiaries older than 50 years of age, court appointed guardians also serve as federal representative payees in 1 percent of cases at SSA, 13 percent of cases at VA, and 34 percent of cases at OPM. The agencies all provide oversight of representative payees, but agencies differ in how they screen and monitor them. For example, according to SSA, it compares the names and Social Security numbers of prospective representative payees against lists of prisoners, fugitive felons and parole violators; VA and OPM do not. SSA, VA, and OPM are required to oversee how representative payees manage federal benefits on behalf of their wards; however, agencies differ in the kinds of information they collect from court appointed guardians. For example, SSA officials said they require most representative payees, including court appointed guardians, to submit a standard accounting form.[14] According to VA, they ask for a two page accounting report, but also ask payees that are court-appointed guardians to submit whatever accounting the guardian submitted to the local courts. According to OPM, it sends out a brief survey asking for similar information, but OPM leaves the local courts to monitor these payees and does not require them to complete the survey. While federal agencies and state courts often share responsibility for protecting many of the same incapacitated seniors, their collaboration is often limited, according to our prior report. With few exceptions, federal agencies and state courts neither notify other oversight entities when they declare an individual to be incapacitated, nor share information with each other in instances in which a guardian or a representative payee has abused a ward.

[13]We defined "representative payees" to include VA fiduciaries, OPM representative payees, and SSA representative payees who receive federal benefits on behalf of incapacitated beneficiaries.

[14] SSA officials said that on-site state mental heath facilities that serve as representative payees are not required to file this form.

Allegations of Abuse, Neglect, and Financial Exploitation by Guardians

Although we could not determine whether allegations of physical abuse, neglect, and financial exploitation by guardians were widespread, we reviewed hundreds of allegations of abuse occurring nationwide between 1990 and 2010. In addition, eight individuals that we interviewed, including prosecutors, attorneys, investigators and others involved with six of the closed cases we examined, told us that they knew of other cases of guardianship abuse, or believed that the current system of guardian oversight needs to be strengthened in order to protect incapacitated persons. While the alleged abuse identified through our own research, and reported to us in interviews with investigators, attorneys and others, occurred in 45 states and the District of Columbia, this should not be interpreted as evidence that guardianship abuse is actually occurring on a widespread basis. Most of the allegations we identified involved financial exploitation and misappropriation of assets. Specifically, the allegations point to guardians taking advantage of wards by engaging in schemes that financially benefit the guardian but are financially detrimental to the ward under their care. Also, the allegations underscore that the victim's family members often lose their inheritance or are excluded by the guardian from decisions affecting their relative's care.

Although we continue to receive new allegations from family members and advocacy groups, we could not locate a single Web site, federal agency, state or local entity, or any other organization that compiles comprehensive information on this issue. We attempted to identify entities compiling this information by contacting state courts, federal agencies, advocacy groups, and a professional guardian association. We also searched the Internet. Our research did not identify any public, private, or non-governmental organization that systematically tracks the total number of guardianships or allegations of abuse, neglect, and exploitation by guardians. GAO previously found that many of the courts we surveyed did not track the number of guardianships that they were responsible for monitoring.[15] Our work also identified differences in the way courts track guardianships. For example, in some jurisdictions, records of guardianship appointments were available online, but in many areas they were not. Some federal agencies identify guardians who also serve as representative payees for federal beneficiaries, but they do not keep a list of all court appointed guardians. Some states maintain lists of certified guardians, but these lists understate the number of guardians because often family

[15] See GAO-06-1086T and GAO-04-655.

members and certain other guardians are exempt from certification requirements.

We also discovered that information about complaints or disciplinary action taken against guardians may not be publicly available. In addition, we found that state and local enforcement may consist of measures not specific to guardians, such as discipline by a bar association for lawyers or by a regulatory board for Certified Public Accountants. Thus, the exact number of allegations about abuse, neglect or exploitation by guardians remains unknown.

Allegations should not be considered proof of actual abuse. However, the hundreds of allegations we discovered came from a number of sources, including our own research on closed criminal and civil cases,[16] advocacy groups, news reports, family members, concerned citizens, and legal professionals. Frequently, we identified multiple allegations from each of our sources. For example, an attorney who belongs to the National Guardianship Association provided us information on over 300 cases of alleged abuse, neglect, and exploitation by guardians between 1990 and 2009. Examples of potential abuse, neglect, and exploitation appear below:

- Public guardians appointed to care for an 88-year-old California woman with dementia allegedly sold the woman's properties below market value to buyers that included both a relative of the guardian and a city employee. One of the public guardians also moved the ward into various nursing homes without notifying family members, who had to call the police to help them find their relative. The woman developed bed sores during this time that became so serious her leg had to be amputated at the hip.
- In Nevada, a former case manager in the public guardian's office who started her own guardianship business is accused of using her position to take at least $200,000 from her wards' accounts, in part, to support her gambling habit.
- A New York lawyer serving as a court appointed guardian reportedly stole more than $4 million from 23 wards, including seniors suffering from mental and physical impairments as well as children suffering from cerebral palsy due to medical malpractice. Some of the stolen

[16] Closed criminal and civil cases with a finding of liability would be considered proven instances of abuse by guardians; however, we did not examine the facts and circumstances surrounding all closed cases we identified. Those that we did not examine are included in this section.

funds were part of a court award intended to pay for the children's medical and developmental needs.

- In Arizona, court-appointed guardians allegedly siphoned off millions of dollars from their wards, including $1 million from a 77-year-old woman whose properties and personal belongings, such as her wedding album, were auctioned at a fraction of their cost.
- A Texas couple, ages 67 and 70, were declared mentally incompetent and placed in a nursing home after the husband broke his hip. Under the care of court-appointed guardians, their house went into foreclosure, their car was repossessed, their electricity was shut off, and their credit was allowed to deteriorate. The couple was allegedly given a $60 monthly allowance and permitted no personal belongings except a television.
- In 2001, a Texas probate judge was appointed a guardian for a 91-year-old woman who displayed signs of senility. She later changed her will for the first time in 40 years, bequeathing $250,000 to the probate judge, the court appointed guardian, the judge's personal accountant, and the court-appointed attorney associated with her case.
- A 93-year-old Florida woman died after her grandson became her temporary guardian by claiming she had terminal colon cancer. He then moved her to hospice care, where she died 12 days later from the effects of morphine. The woman's condition was later determined to be ulcerative colitis, and the guardian's claims that she had 6 months to live were false. In addition, the guardian is accused of stealing $250,000 from the woman's estate.
- In Michigan, two former public guardians allegedly embezzled $300,000 from at least 50 clients between 1999 and 2009. One of the reported embezzlers used the wards' funds to buy animal feed and other supplies for her farm.

Cases of Abuse, Neglect, and Financial Exploitation by Guardians

We examined 20 cases in which guardians stole or otherwise improperly obtained more than $5.4 million in assets from 158 incapacitated victims. In some of these cases, the guardians also physically neglected and abused the people they had been appointed to care for. We obtained our information from court documents, disciplinary records, and our own interviews and research. The guardians in these cases possessed diverse professional backgrounds and were located in 15 states and the District of Columbia, however, we observed several common themes: (1) state courts failed to adequately screen potential guardians, appointing individuals with criminal convictions and/or significant financial problems to manage estates worth hundreds of thousands or millions of dollars; (2) state courts failed to adequately oversee guardians after their appointment, allowing the abuse of vulnerable seniors and their assets to continue; and (3) state

courts failed to communicate with federal agencies about abusive guardians once the court became aware of the abuse, which in some cases enabled the guardians to continue to receive and manage federal benefits.

State Courts Failed to Adequately Screen Potential Guardians. In 6 of our 20 case studies, state courts failed to adequately review the criminal and financial backgrounds of prospective guardians, leading to the appointment of individuals or organizations whose past should have raised questions about their suitability to care for vulnerable seniors. For example, in one case, a federal tax lien worth $25,783 had been filed against a prospective guardian, yet 5 years later, an Iowa court appointed him to serve as a guardian for an estate worth hundreds of thousands of dollars. In another case, a New York attorney had declared bankruptcy just 3 years prior to being appointed by a court to serve as guardian over a senior's estate. In yet another case, a guardian certified in the state of Washington passed a criminal background check, but had $87,000 in federal and state tax liens filed against her. The court did not conduct a credit check before appointing her to serve as a guardian over one senior's estate.

State Courts Failed to Adequately Oversee Guardians after Their Appointment. In 12 of our 20 case studies, state courts failed to oversee guardians after their appointment, allowing the abuse of vulnerable seniors and their assets to continue. Courts ignored criminal and/or financial problems of guardians who served multiple roles with conflicting fiduciary interests. They also failed to review irregularities in guardians' annual accountings or sanction delinquent guardians. In one case, a federal tax lien of $31,000 was filed against a Washington state guardian just one month after she was appointed to care for a senior. Yet, a Washington court allowed her to continue serving as the man's guardian. In another case, a Kansas social worker served as a guardian, conservator, federal representative payee, therapist, landlord, and service provider to at least one senior victim. This enabled him to make payments to himself from the senior's estate and avoid the oversight, checks, and balances that might have existed if all these roles were performed by different individuals. In a third case, a Colorado conservator failed to file any interim financial reports over the course of 3 years to inform the court of the fees he was charging to the ward's estate. Despite this repeated failure, the court examiners did not investigate the conservator or make any other inquiries about the missing reports, telling the victim's family members that they had neither the time nor the knowledge to deal with the case.

State Courts Failed to Communicate with Federal Agencies about Abusive Guardians. In 11 of our 20 case studies, state courts failed to communicate with federal agencies about ongoing abuse committed by guardians. For example, in one case, a District of Columbia guardian continued to serve as the victim's SSA representative payee for four years after the court was alerted to thefts by her secretary. In another case, an Arizona court appointed a senior's niece to manage her aunt's affairs as her guardian. The aunt was 90 years of age, and suffered from dementia. The guardian also served as a representative payee for her aunt's Social Security benefits, and the SSA continued sending the guardian federal benefits during the abuse. This permitted the guardian to gain access to over $18,000 of the victim's Social Security benefits in a single year. In the end, an Arizona court discovered that the guardian misappropriated more than $200,000 from her aunt's estate and used the money to give loans to and pay for unauthorized gifts for her children. Some of these funds might have included the victim's Social Security benefits. The SSA did terminate the niece as the aunt's representative payee, but the SSA told us that it did not terminate her for misusing the aunt's funds. The SSA determines that misuse occurs when a payee does not use or conserve the beneficiary's Social Security benefits in such a way that benefits the beneficiary's current and foreseeable needs. The SSA was apparently unaware of the extent of abuse that the court determined the guardian committed against the aunt's estate, and possibly her Social Security benefits. In a third case, the VA suspended a North Carolina guardian as a representative payee when he failed to file annual accountings 2 years in a row. However, once the guardian submitted the accountings, the VA reinstated him as the victim's representative payee and resumed sending him federal benefits. The VA did not notify the local court of problems with the guardian, who eventually misappropriated $332,730 from the victim over a 14-year period.

Table 1 below provides a summary of the 10 cases in which guardians abused, neglected or financially exploited their victims, followed by a more detailed narrative on each of the first five cases. Table 2 contains details on an additional 10 cases we reviewed.

Table 1: Summary of the 10 Cases in Which Guardians Abused, Neglected, or Financially Exploited Their Victims

Case	Victim(s)	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
1	Two seniors and 18 other victims with dementia and mental illnesses	November 2005	Licensed social worker and his wife, a registered nurse / Kansas	• The guardian and his wife sexually and physically abused their victims and billed Medicare for the cost of this "therapy." • Victims lived in an unlicensed group home described by the prosecutor as "dirty and bug-infested." They were kept in isolation and videotaped while engaging in forced sexual activities and nude farm work. • According to a federal court order, the guardian paid himself more than $102,000 from one senior's inheritance and used some of those funds for purported "therapy" that he provided to her. • The federal court found that guardian failed to file any required accountings with the court. It also found that the guardian wrote checks as payments off the victim's estate, which bore notations that did not sufficiently note their legitimacy. Further, the guardian never filed required accountings with the SSA. • A federal court sentenced the guardian to 30 years in prison and his wife to 15 years in prison for involuntary servitude and fraud. The federal court ordered the couple to pay six victims, Medicare, and the Mennonite Mutual Aid a total of $534,806 in restitution. The remaining restitution balance is $364,511.
2	87 year old man with Alzheimer's disease	March 2008	Taxi cab driver / Missouri	• Guardian was a felon convicted of armed robbery and other crimes, yet became the victim's legal representative, conservator, co-trustee, and beneficiary. • Guardian embezzled over $640,000 from the victim, which he used in part to purchase a Hummer and a Chrysler as well as gift payments to himself and others, including exotic dancers. • Victim was discovered in the guardian's basement wearing an old knit shirt and a diaper, extremely dehydrated and confused. • Guardian was sentenced to 8 years in federal prison without parole, and ordered to pay $640,820 in restitution No part of this amount had been paid by February 2010, according to the prosecutor.

Case	Victim(s)	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
3	At least 78 victims	November 2004	Professional guardian agency / Alaska	• Company officers mismanaged or stole an estimated $454,416 from their wards between about 1998 and 2002, according to the information provided to Alaska's U.S. Bankruptcy Court by a trustee. • Executive director used company checks to pay for his utility bills, mortgage payments, credit card bills, medical expenses, and church camp for his children. • One mentally ill veteran's inheritance was depleted from $90,000 to almost nothing over 3 years in the early to mid 1990s in part because the company purchased mental health services at rates 1,500 percent higher than necessary, made improper travel charges, and charged twice for the same services. • Victims received partial restitution through bankruptcy proceedings, but no criminal charges were filed.
4	20 senior and disabled victims	January 2006 / October 2008	Office of the Public Guardian / California	• Two staff in the office of the public guardian stole a combined total of $97,000 from senior and disabled public wards with no one else to care for them. • One woman admitted stealing $90,000 by cashing victims' pension and Social Security checks while working temporarily in the public guardian's office. She testified that a permanent staff member had taught her to steal and split the proceeds with her. • The permanent guardian used victims' funds to buy herself jewelry, clothing, and electronics and stole valuables from their homes. • The prosecutor and nursing home staff said that the permanent guardian placed clients in her friend's nursing facility, described by the investigator as "a complete hellhole" and was convicted of taking kickbacks from a worker she hired to clean victims' homes. • The temporary guardian was sentenced to 5 years, 4 months in prison and $93,000 in restitution, of which she had paid $70,000 as of July 2010. The permanent guardian was sentenced to 9 months in prison, 5 years probation and $9,880 in restitution, of which she had paid $2,420 as of July 2010.

Case	Victim(s)	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
5	71 year old with dementia, schizophrenia, and alcohol dependency; 83 year old with mental incapacitation	November 2005	Attorney / District of Columbia	• A guardian's negligence allowed her secretary to embezzle nearly $50,000 from two elderly victims. Also, the guardian neglected to collect $39,000 of rental income for over four years on behalf of one victim. • The court found that the guardian's secretary embezzled funds from two victims' accounts by writing checks to herself and to a high-end department store. • The guardian's failure to pay taxes for one victim led to her house being confiscated and sold by tax authorities, according to a probate court complaint. The victim was rendered homeless, but the guardian claimed in a letter to the court that the woman preferred to live in city shelters. • The guardian continued to be the victim's representative payee for 4 years after the scheme was uncovered, according to SSA data. • The secretary disappeared with the embezzled money. Neither the secretary nor the guardian faced criminal charges, although the guardian was suspended from legal practice. The probate court ordered $97,000 in restitution, which was paid by bond companies, except for $27,000 still owed to the one victim's estate, as of August 2010.
6	85 year old woman and 79 year old man	June 2005 / January 2006	Certified Public Accountant / Iowa	• A CPA with known financial problems was appointed as conservator of two seniors and used his position to misappropriate $167,325. • The court found that the guardian wrote himself 21 checks ranging from $2,000 to $25,000 from one victim's estate, while failing to pay for her rent and prescription drugs. • The guardian refused to bring clothes and other belongings to the victim's nursing home, according to her guardian ad litem.[a] He also disposed of the victim's personal belongings, leaving her without her wedding band, personal papers and family photos. • The court found that the guardian misappropriated $15,000 from another victim by writing checks to his business and fraudulently altering the payee to make the checks appear legitimate. • The guardian repaid the misappropriated amounts and $3,014 in fines, so the court did not order restitution. The guardian worked at a CPA firm as of September 2010, although he lost his CPA license and served 150 days in prison with 5 years probation.

Case	Victim(s)	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
7	82 year old with Alzheimer's disease	June 2008	Attorney / New York	• Under court appointed guardians' watch, the value of a retired judge's estate dropped from several million dollars to almost nothing in 6 years and accrued $1 million in taxes, interest, and penalties. • The guardian had declared bankruptcy just three years prior to her appointment, accumulated $119,500 in debt just two years prior to her appointment, and accumulated $4,917 in debt during the guardianship, yet the court repeatedly renewed her appointment six times in 3 years. • Court judgments and accountings show that the guardian misappropriated at least $327,000 to pay herself, family, and friends for purported caretaking and home improvement services. She personally misappropriated $200,000 and some of the misappropriated funds were used to pay her mortgage and other expenses. • The attorney spent $120,000 of the victim's money to renovate a property that he no longer owned. Title had been transferred to a new owner for almost a year, but the attorney was apparently unaware of the status of a property she had been appointed to protect. • The guardian never faced criminal charges but was suspended from legal practice by a New York court and was later ordered to pay the estate $403,149. The court decision was affirmed on appeal. As of June 2010, the guardian had paid nothing toward the judgment.
8	101 year old with Alzheimer's	July 2005	Certified Public Accountant / Colorado	• The guardian stole $2 million from the victim's estate, forcing her family to mortgage her house to pay her bills, according to her niece. • The guardian funneled $1 million of the victim's funds to his company, then purchased an athletic club specializing in handball, according to the investigator's report and interviews. • The guardian also made a series of improper and bogus loans to family and friends totaling almost $1 million. • The court apparently failed to communicate the guardian's removal, so he continued to be listed as payee for OPM benefits. Also, SSA did not monitor the guardian because the guardian avoided SSA oversight by never applying to be a representative payee. • Due to the thefts, the victim's niece said they had to mortgage the victim's house to meet monthly bills, including $6,000 in nursing home fees. • The CPA was sentenced to 12 years in prison and was ordered to pay restitution of over $2.5 million, of which he had paid $4,366 as of June 2010.

Case	Victim(s)	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
9	Four victims over 70 years of age with dementia or Alzheimer's disease	November 2005	Attorney / Connecticut	• The conservator stole more that $120,000 from the estates of four seniors. • According to a state inspector's affidavit, the conservator used $24,500 from two seniors' estates to pay a housekeeper to clean and garden her home in Connecticut. A state prosecutor described the house as "magnificent." According to a real estate Web site, the home has five bedrooms and three baths, and was on sale for $1.2 million as of December 2009. • The state prosecutor contended that the conservator manipulated one victim's tax forms by increasing her tax withholdings so that the victim would receive $87,000 in refunds. The prosecutor said that it was reasonable to infer that the conservator pocketed the money for her personal use. • According to SSA data, the conservator served as a representative payee for at least three of the four senior victims. • In February 2006, the conservator was sentenced to 15 months in prison based on a "calculated continued pattern of deception for a lengthy period of time." After this sentence, she was scheduled to serve 5 years of probation. She was ordered to pay more than $120,000 in restitution to four victims and agreed to resign from the Connecticut Bar. According to the court's probation office, as of June 2010, she still owed $48,557 in restitution to at least one senior's estate. • According to a police report and sentencing documents, in May 2009, while the conservator was on probation, she was arrested for stealing from a friend's purse and shoplifting purses worth thousands of dollars from a Connecticut department store. This occurred after she served 15 months in prison for her previous crimes. She pled guilty in November 2009 for the thefts, and was sentenced to a total of 20 months in jail. It wasn't until January 2010, that the SSA terminated her as representative payee for another individual.

Case	Victim(s)	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
10	81 year old man with dementia; 77 year old man with dementia and seizures	September 2004 / February 2008	Professional Guardian / Washington	• A certified professional guardian used one ward's estate to generate tens of thousands in unnecessary fees and failed to visit another ward for nearly 8 months, yet she continues to serve as a guardian. • The court appointed the guardian to oversee one victim, even though $87,000 in tax liens had been filed against her during the previous 6 years. Another federal tax lien of $31,000 was filed against her just 1 month later. • The guardian hid the man's will from the court and family members, and continued filing motions contrary to his written wishes in order to generate $20,000 in legal fees for herself. • In another case, a court appointed attorney found that the guardian failed to visit the ward for 8 months and was 9 months delinquent in filing a personal care plan and asset inventory for the ward. • The guardian received disciplinary letters for both cases, but continues to serve as guardian for 86 incapacitated adults. She is also a representative payee for 69 beneficiaries at SSA, 3 beneficiaries at VA, and 2 beneficiaries at OPM.

Source: GAO.

[a] A guardian ad litem is appointed by the court to represent the interests of the ward for a limited time or in a single court action. For example, a guardian ad litem may investigate wrongdoing by a court appointed guardian or may be appointed as a temporary guardian while a more suitable guardian is found.

Case 1: A Kansas husband and wife, who owned an unlicensed group home for mentally ill adults, abused and financially exploited a 50-year old woman in their care. The husband served as the victim's guardian and conservator, enabling the couple to convert the victim's funds for their own use, and amass nearly $250,000 from the woman. In addition, they forced her and other residents to perform sexual acts for almost two decades as part of the fraudulent therapy treatment that they billed to Medicare, a federal court and jury found. At least 20 chronically and severely mentally ill adults, including at least one with schizophrenia, resided at the home—described by federal prosecutors as "dirty, bug-infested, and run down." The husband, a licensed clinical social worker, and the wife, a licensed nurse, served the residents in multiple capacities: landlord, caregiver, representative payee and, in the case of the 50-year old woman, the husband served as guardian. Federal prosecutors successfully argued that this helped the couple conspire to control their victims, and to

fraudulently gain access to their Social Security benefits and bill Medicare for $216,906 in purported therapy. The husband also videotaped the sexual activities, nudity, and farm work that he forced victims to do as part of their "therapy" for his own viewing. One resident testified that the husband established and enforced a code of silence and secrecy in order to control and exploit them, creating what he called "a secluded, small, cult-like organization."

The state court that appointed the guardian was either unaware of the multiple roles that he served in the victim's life or failed to question the conflicts between them. According to a federal court order, the guardian paid himself more than $100,000 from one senior's inheritance, using some of those funds for the purported "therapy," and converting the rest for his own personal use. The guardian accounted for a portion of the money he disbursed and provided no supporting documentation. The guardian, under state law, was required to file annual reports on the condition of the victim's estate and well being. The couple also forced the victim to work on their farm nude and participate in nude massages while the pair watched.

After the abuse was discovered by children on a school bus who saw the residents working in the nude on the couple's farm, the local authorities and the Health and Human Services Office of Inspector General launched an investigation. Subsequently, a Kansas court removed the husband as the woman's guardian and the Kansas State Board of Nursing suspended the wife's nursing license. In addition, SSA terminated the couple as representative payees for the six victims receiving Social Security benefits. In 2006, a federal court sentenced the husband to a prison term of 30 years for the crimes of involuntary servitude, forced labor and health care fraud. In 2009, the wife was sentenced by the same court to a prison term of 15 years for the same three crimes. At the husband's sentencing, the judge compared conditions at the house to those of a third world prison, and concluded at the wife's sentencing that "…but for the sighting by the children on the school bus, I am firmly convinced that [the group home] would be in business today."

The federal court ordered the couple to pay six victims, Medicare, and the Mennonite Mutual Aid a total of $534,806 in restitution, including $250,000 to be paid to the guardian's former ward. As of May 2010, the court had received a total of $170,246 from the couple's seized and forfeited group home and $51 that the wife had earned by making license plates while in prison. The husband, however, had not paid any restitution directly as of May 2010.

Case 2: A Missouri taxi cab driver who became the guardian of a retired, Kansas City antiques dealer with Alzheimer's disease embezzled more than $640,000 from his ward and kept him confined in what federal prosecutors described as a filthy basement wearing a diaper until shortly before his death. The cab driver became acquainted with the senior while regularly transporting him from his home to various destinations, including restaurants and a bank. In July 2003, the antiques dealer fell and hit his head, requiring a surgically implanted shunt to be put in his head to control fluid in his brain. Due to his medical condition, he was admitted to the skilled care section of a nursing home and later transferred to an independent-living apartment. The cab driver presented himself to nursing home management as the senior's caretaker. Federal and local law enforcement officials, however, depicted the relationship between the cab driver and antiques dealer as improbable based on the background, appearance, and values of the two men. They described the cab driver as a large, foul-mouthed felon convicted of armed robbery and other crimes. They portrayed the antiques dealer, meanwhile, as a small, fastidious dresser who hailed from a wealthy family, lived in an exclusive neighborhood, and kept well-to-do friends. Nevertheless, they said that with the help of lawyers, the cab driver over time became the legal representative, guardian, conservator, co-trustee (along with a bank), and beneficiary of the antiques dealer and his assets. He assumed this control through the power vested in the legal documents that the parties signed, although the federal prosecutor said he saw indications that many of the signatures did not appear to belong to the antiques dealer. Federal and local law enforcement officials said in an interview that a probate hearing did not occur because the victim was not a ward of the state and he appeared to consent to the changes.

The cab driver removed the antiques dealer from the nursing home to the cab driver's residence in 2004. About a year later, a Kansas City Police Department detective received a tip that the antiques dealer was being exploited. The detective said in her investigative report that she and other law enforcement officials visited the cab driver's residence to check on the antiques dealer. They found him wearing an old knit shirt and a diaper, confined to a basement isolated from the remainder of the house except by surveillance camera. He was bedridden, covered with a dirty blanket, and unable to leave the room. He had no access to a telephone or water. He was also extremely dehydrated and confused. He died of natural causes 12 days after being removed from the basement at the age of 87. A subsequent search of the cab driver's residence revealed new furniture in almost every room of the home, two large-screen television sets, new silverware, and new accessories. The detective noted that this area of the

house was relatively clean. Figure 1 below is a photograph of the half bathroom the victim was forced to use.

Figure 1: Bathroom Used By Guardianship Abuse Victim

Source: United States Attorney's Office, Western District of Missouri.

An investigation by federal and local law enforcement officials determined that the cab driver had used his personal and legal guardianship relationship with the antiques dealer to enrich himself and others. For example, he purchased a $35,000 Chrysler 300 and a $52,000, burnt orange Hummer H2 with "Bad to the Bone" emblazoned across the windshield. He also secured checks to himself and others, some of whom were exotic dancers. The cab driver was indicted on 16 counts, including felony bank and mail fraud. In a plea agreement, he admitted to making material false representations, possessing and negotiating unauthorized forged checks and instigating improper money gift payments to himself and others. He also admitted to defrauding financial institutions by misrepresenting or forging either his authority to write checks or his authority to withdraw the elderly man's trust account funds, and/or misrepresenting the use and purpose of those funds. He was sentenced in October 2008 to 8 years in federal prison without parole and ordered to pay restitution of $640,820—none of which has been paid, said the U.S. assistant attorney that prosecuted the case.

Case 3: A mentally ill veteran saw his $90,000 inheritance rapidly depleted in the early to mid 1990s while under the care of an Alaskan professional guardianship company that later declared bankruptcy amid allegations that it mismanaged, converted, stole or embezzled at least $454,416 from its wards. The veteran had served four years in the U.S. Navy before being honorably discharged in 1966. He developed schizophrenia after leaving the service, experiencing more than a dozen hospitalizations in Alaska and stays in a number of VA hospitals in Wisconsin and Illinois. From 1976 onward, however, he participated in various community health programs in Alaska. After he received his inheritance in 1992, the Alaska Superior Court appointed a private guardianship company as his conservator. By 1995, the inheritance was gone, but the veteran continued to receive Social Security benefits and a VA pension. After the veteran intentionally cut his left wrist, the private company was appointed to be his guardian in February 1996 as well. The state court held that he was unable to physically care for himself or manage his money and would always need supervision.

In December 1996, the Alaska Superior Court ordered a court visitor[17] to report on the company's handling of the veteran's assets. The court visitor found a "disturbing breakdown" of costs and called some of the fees charged "unheard of," concluding that the money had been managed in a "spend down" fashion rather than in a frugal and conscientious manner. For example, she noted that the company had purchased mental health support services for the veteran at a rate that was 1500 percent higher than necessary. She also found improper travel charges, "vague charges for 'case management services'," and multiple staff charging for the same service. The veteran's conservatorship and guardianship were transferred to a new private company formed by former employees of the first one, but after concerns arose about it as well, the Alaska Superior Court made the veteran a ward of the state's Office of Public Advocacy (OPA). In 1999, OPA filed a complaint in state court on behalf of the veteran to recover money from both private guardianship companies.

[17] In Alaska, a court visitor is appointed when a petition for guardianship or conservatorship is filed to investigate involved persons and the situation and recommend to the court an appropriate resolution. Court visitors are also reappointed every 3 years to review and report to the court regarding existing guardianship and conservatorship cases. The state's Office of Public Advocacy is required by Alaska statute to provide court visitor services.

The private company that served as the veteran's first conservator and guardian filed for bankruptcy in May 2002. An attorney for the veteran negotiated a settlement with the bankruptcy trustee for a payment of $42,500, or less than half of his inheritance. The trustee, however, also determined that corporate officers and directors mismanaged, converted, stole, embezzled, over-billed and took through other means an estimated $454,416 from other wards between about 1998 and 2002. A wards claim fund was established for that amount to help restore the assets of the company's clients. The trustee noted at the time that critical records were suspiciously destroyed by a fire and a final accounting of the wards' losses might never be known. An investigation conducted by a company official found that the group's former executive director at the time and an employee stole from wards in number of ways: writing checks payable to the company that investigators labeled as "direct theft"; writing checks to themselves; withdrawing cash; paying corporate credit card bills; and charging for services not rendered, among other actions.

Case 4: Two women working as public guardians for a county government in California stole over $97,000 from 20 senior and disabled victims, and one further used her authority to collect kickbacks from a man she hired to clean out victims' homes. [18] The victims were placed by the court in the care of the county public guardian's office, which serves as the guardian of last resort for individuals who have no family members willing or able to take care of them. One of the guardians involved in the theft was a temporary employee of the office, while the other guardian had worked there for 22 years. The temporary guardian was responsible for removing checks from the mail for deposit into wards' accounts, but over a 2 year period, she stole $90,000 in checks from six clients. The temporary guardian testified that she stole the funds at the direction of the permanent guardian, and split the proceeds with her. Among the thefts were $58,470 in monthly pension checks from a retired public school teacher and $2,034 from a retired cook with Alzheimer's. Even after the temporary guardian transferred out of the office in June 2004, she continued to cash checks. Local prosecutors said they were not able to determine whether she obtained the checks with the assistance of her former co-worker or by returning to the office to steal from the mail pile, which was kept in an open area. In January 2006, the temporary guardian pled guilty to felony

[18] Staff employed by the Public Guardian's Office are responsible for making medical and financial decisions for wards, serving as a representative payee for the wards' federal benefits, and taking care of the wards' personal needs.

theft from an elder, tax fraud, and embezzlement by a public officer and was sentenced to five years, four months in prison and ordered to pay $93,344 in restitution. As of July 2010, she had made $70,000 in restitution payments. The permanent guardian, whose name was not on the cashed checks and who denied involvement, was not charged with these crimes.

However, the investigation subsequently broadened to include other potential charges against the permanent guardian who was convicted in October 2008 of bribery, theft of public funds, receiving stolen property and theft from a dependent person. She was sentenced to 9 months in jail and ordered to pay $9,879 in restitution, but as of July 2010, she had repaid just $2,420. According to the local prosecutor's trial brief, the permanent guardian used clients' funds to buy herself jewelry, clothing, wigs, cosmetics, perfume, CDs, and electronic equipment worth $7,000. For example, using the funds of a wheelchair-bound woman living in a nursing home, the permanent guardian bought herself $600 of perfume in one month, depleting the account of a woman who had just $3,000 in assets. One month later, she was reimbursed for $225 she claimed to have spent on jewelry for the client, including three pairs of long, dangling pierced earrings. However, the elderly woman did not have pierced ears and the earrings were later found in the guardian's home. Searches of her home also revealed coins, stamps, televisions, and a DVD player that she had stolen from other clients, both living and deceased.

In addition to the thefts, the permanent guardian used her position to enrich herself in other ways. A jury found that the guardian had taken kickbacks from the man she hired to clean out the houses, in one case instructing him to bill for a fictitious employee so that she could collect an additional $1,500. According to the prosecutor and grand jury testimony, the permanent guardian also used her authority to place several clients in facilities owned and operated by her friends, even though the facilities were located almost an hour away and the guardian had previously been investigated but not charged for taking kickbacks from one of the friends. The investigator described one of the friend's nursing homes as "a complete hellhole" with a stench. When her clients moved into a nursing facility, the permanent guardian would throw away everything in their houses, according to the prosecutor, because it was easier than putting the client's property in storage. One woman returned from a stay in the hospital to find that the permanent guardian had disposed of all her belongings, including her photographs, according to the investigator's testimony.

The thefts and abuse of power in this case were allowed to continue in part because of poor court oversight of guardianship cases managed by the Public Guardian's Office. For example, the office was several years late in filing annual accountings for some guardianship cases, but a probate court official told the prosecutor that the court did not have enough staff to review accountings or even track all its cases. Given the lack of oversight, it is possible that the thefts extended beyond the 20 identified victims, but no audit was done to determine whether funds had been stolen from any of the hundreds of other Public Guardian clients.

Case 5: A District of Columbia guardian breached her fiduciary duty by delegating her responsibilities to her secretary, who embezzled nearly $50,000 from two elderly wards—one of whom lost her home because of the guardian's failure to pay property taxes. The oldest victim was an 83-year-old who worked for the Merchant Marine during World War II and spent the rest of her career as a civil servant at the District of Columbia Department of Human Services, according to federal employment records. After a probate court determined her to be mentally incapacitated, an attorney was appointed as both her guardian and conservator. Although the elderly woman received $1,170[19] monthly income from both her federal pension and Social Security benefits, the attorney never applied to become a representative payee, effectively shielding herself from federal oversight, SSA and OPM data show. Assisting with the conservatorship was a woman that the attorney hired as her secretary after representing her in court on theft charges. The attorney gave most of her conservator responsibilities to the secretary, including writing and receiving checks on estates, which a DC court found to be inappropriate. The secretary forged the attorney's signature on 34 checks drawn on the victim's estate account, totaling more than $42,000 over the course of a year. One of the checks was made out to a high-end department store; the rest were payable to the secretary herself.

The secretary embezzled from another victim under the attorney's care during the same period, a DC court also found. The 71-year-old-woman was suffering from alcohol dependency, mild dementia, and schizophrenia. The attorney served as the court-appointed conservator and the representative payee for her Social Security benefits. The secretary forged the attorney's signature on two checks drawn on the victim's estate

[19] The $1,170 represents an averaged total of monthly federal pension and Social Security benefits for the elderly woman.

account totaling $5,150, according to a court judgment and a probate clerk's memo. One of the checks, in the amount of $3,000, was deposited into the Merchant Marine's account, the judgment and memo show, in an apparent attempt to hide her previous embezzlement. The secretary made the other check for $2,150 payable to herself. Also, according to a court judgment, the guardian neglected to collect $39,000 of rental income on behalf of the victim for over 4 years. In addition, the attorney failed to pay property taxes on the elderly woman's home, a probate court complaint stated, prompting local authorities to auction it and causing her ward to become homeless. The attorney wrote a letter to probate court officials prior to the move saying the woman preferred to reside in city shelters. The attorney also claimed to have hired a social worker to help find her ward housing, but an attorney for the successor guardian said there was no evidence that a social worker was ever hired. The guardian also failed to file the last two required reports with the probate court, and submitted each of the prior required reports late to the probate court, according to the successor guardian's attorney and to the DC probate court.

The secretary later vanished and the attorney said she never saw her again, according to a DC court judgment. The disappearance did not cause the attorney to suspect her secretary of any wrongdoing, nor did it lead her to examine the bank statements that the secretary had maintained. In the opinion of the court, had the attorney reviewed the bank statements, she likely would have noticed her secretary's misappropriations. Subsequent secretaries identified problems with the account, but the attorney said she thought they were all incompetent and fired them one after the other. In letters to the court and the bar, the attorney said the secretary had been a good, trusted employee and blamed the ward's bank for negligence. By the time the court discovered the embezzlement from the Merchant Marine, the victim had already died. Four years later, the attorney was finally replaced as representative payee for the other victim's Social Security benefits, SSA data show.

In November 2005, a DC court suspended the attorney for violating professional conduct standards and engaging in misconduct as a result of her repeated failures to cooperate with disciplinary investigations by Bar Counsel. The probate court ordered $97,000 in restitution for the two victims, which was paid by the bond companies that insured the attorney, except for $27,000 still owed to the latter victim's estate. The attorney was not criminally charged but was ordered to comply with Bar Counsel's information requests, to show rehabilitation as well as fitness to practice law, and to reimburse the estates before she could be reinstated to the DC Bar. Bar records show the attorney was still suspended as of June 2010,

thus indicating her continued failure to meet the full conditions of reinstatement.

Undercover Tests Reveal That Four States Offering Certification Failed to Adequately Screen Potential Guardians

Many of the guardians in our case studies had a poor track record of managing finances or a criminal background, yet courts failed to identify these warning signs before appointing them to care for vulnerable seniors. Certification programs are intended to provide assurance that a guardian is qualified to fulfill their role or, according to one certifying organization, is "worthy of the responsibility entrusted to him or her." Thirteen states have a guardian certification program. In 11 states, certification is mandatory for some professional guardians and in two states, certification is optional for professional guardians. However, our investigation found that an individual with a poor credit history or a criminal using a fake identity can easily gain certification in the four states we tested. Utilizing two fictitious identities, we obtained guardianship certification from New York and North Carolina and met guardianship certification requirements for Illinois and Nevada.[20]

One of our fictitious applicants had a credit report that showed $30,000 in outstanding debt, a repossessed car and a credit score of 528. None of the courts or certification organizations in our tests; however, checked the applicant's credit history. Some states require a guardian to obtain a bond to protect against the misappropriation of a ward's assets. According to one official, many bonding companies check the applicant's credit history before the guardian can obtain the bond. However, as our case studies demonstrate, the courts do not always verify that the guardian is bonded. An individual who is financially overextended is at higher risk of engaging in illegal acts to generate funds. In addition, none of the certifying organizations verified our applicants' fingerprints or discovered that the Social Security number used by one fictitious applicant belonged to a dead person. This creates the risk that people with criminal convictions could steal a Social Security number and conceal their pasts to become certified guardians.[21] The certification organizations we tested also did not verify the academic and professional credentials submitted by our fictitious

[20] These certification programs were administered by the nonprofit Center for Guardianship Certification (Illinois, Nevada), the nonprofit North Carolina Guardianship Association, and the New York Office of Court Administration.

[21] Certification programs in 6 of the 13 states conduct fingerprint background checks to verify an applicant's identity.

applicants. Our undercover tests call into question the ability of these state certification programs to effectively prevent criminals and individuals with bad credit from gaining control over the lives and assets of vulnerable seniors. Table 2 summarizes the results of our investigation.

Table 2: Results of Undercover Tests of State Certification Processes

State	Certification steps	Results of undercover tests
Illinois	In Illinois, only politically appointed guardians are required to obtain certification; however, any prospective guardian is eligible to be certified. To obtain certification, guardians must: • Register with the Center for Guardianship Certification • Pass National Certified Guardian Examination	• We applied for guardianship certification from a national association using fictitious names and background information. Certifying organization did not require Social Security numbers or other identifying information. • Certifying organization did not verify the educational or professional credentials we claimed and did not conduct background checks or credit checks on our fictitious applicants. • Our fictitious applicants passed the National Certified Guardian Examination in March 2010. Exam proctor asked to see photo identification, but did not identify our bogus driver's licenses. • Illinois court officials told us they do not generally conduct criminal background checks on guardians.
Nevada	In Nevada, only private professional guardians with 3 or more unrelated wards are required to obtain certification; however, any prospective guardian is eligible to be certified. To obtain certification, guardians must: • Register with the Center for Guardianship Certification • Pass National Certified Guardian Examination	• We applied for guardianship certification from a national association using fictitious names and background information. Certifying organization did not require Social Security numbers or other identifying information. • Certifying organization did not verify the educational or professional credentials we claimed and did not conduct background checks or credit checks on our fictitious applicants. • Our fictitious applicants passed the National Certified Guardian Examination in March 2010. Exam proctor asked to see photo identification, but did not identify our bogus driver's licenses. • Nevada court officials told us they do not generally conduct criminal background checks on guardians.
New York	In New York, all professional guardians must obtain certification prior to appointment. To obtain certification, guardians must: • Register for training • Attend a 1 day training course • Complete an application listing Social Security number, educational and professional background	• We registered for the training course using fictitious names. We were not asked to prove our identity before training began. • In April 2010, we successfully completed the training, which did not include any tests to assess our comprehension of the subject matter. • We submitted a four page form that included Social Security numbers and other identifying information for our fictitious applicants, but New York courts did not conduct background or credit checks on them. • Courts also did not verify fictitious educational and professional credentials of our fictitious applicants. • Both of our fictitious applicants became certified guardians in New York.

State	Certification steps	Results of undercover tests
North Carolina	North Carolina does not require guardians to obtain certification; however, the North Carolina Guardianship Association (NCGA) offers a state certification exam. To obtain certification from NCGA, guardians must: • Register with NCGA • Pass North Carolina Guardianship Competency Exam	• We registered to take the state exam using fake educational and professional backgrounds and North Carolina addresses. • Certifying organization did not require Social Security numbers or other identifying information and did not conduct background checks or credit checks on our fictitious applicants. • Certifying organization did not verify the educational or professional credentials we claimed. • Exam proctor verified the photo identification of one applicant, but did not ask to see photo identification for the other. • We passed the North Carolina state exam in May 2010 and our fictitious applicants received badges attesting to their status as certified guardians 2 weeks later. • Certifying organization officials told us they do not conduct criminal background checks on their guardians.

Source: GAO.

Illinois and Nevada. Illinois and Nevada require certain guardians[22] to obtain certification through the Center for Guardianship Certification (CGC), a private nonprofit that offers national guardian certification. We submitted applications to the organization using two fictitious identities with driver's licenses from Virginia. We also listed fake educational and professional backgrounds for our applicants, which the certifying organization did not verify. For example, one applicant claimed to have a law degree and almost 3 years experience as a guardian, while the other claimed 3 years of experience as a guardian at a nonexistent guardianship firm. Both applicants studied for and passed the National Certified Guardian Examination, which covers guardianship ethical principles and best practices. After the exam, a proctor asked to see the photo identifications of our fictitious applicants, but failed to recognize them as bogus driver's licenses. Once we passed the test, the names of our fictitious applicants were listed on the organization's website as nationally certified guardians. Passing the national exam is the sole requirement to be a certified guardian in Illinois and Nevada. Officials in both states told us that local courts do not conduct background or credit checks, indicating that each of the two fictitious guardians could have been appointed by a court in those states with no further screening.

[22] Illinois requires politically appointed guardians to obtain certification. Each county in Illinois has a public guardian appointed by the governor to serve wards in that county if appointed by the court. With the exception of Cook County, public guardians are not state employees and may make their living as a guardian or in some other line of work. Nevada requires guardians with three or more unrelated wards to obtain certification.

New York. In New York, applicants for certification are required to attend a 7-hour training course. We registered for the training course using the same two fictitious identities we did for CGC, which the training provider did not verify by requiring participants to present picture identification. The training class covered topics such as legal duties and responsibilities, ethics, and mandatory visits, but did not include a test to determine whether students understood the material. At the end of the course, both of our fictitious applicants received a Certificate of Attendance, enabling them to register with the New York Office of Court Administration (OCA). We registered using fictitious names, addresses, and Social Security numbers of our fictitious applicants, but OCA did not use this information to conduct a criminal background or credit check. In addition, OCA did not verify the personal, educational, and professional backgrounds of our fictitious applicants before listing them on the New York Unified Court System's Web site as certified guardians eligible to be appointed in up to five counties. New York law prohibits an individual who has a prior felony conviction or has been convicted of a misdemeanor in the past 5 years from serving as a guardian. However, court officials told us that courts do not conduct a criminal background check on certified guardians before they are appointed and instead rely on the guardian to disclose their prior convictions.

North Carolina. North Carolina does not require guardians to be certified; however, the North Carolina Guardianship Association (NCGA) offers certification to North Carolina guardians. To obtain certification, applicants must pass the North Carolina state guardianship exam. We applied to NCGA using the same fake educational and professional backgrounds as in the other states and North Carolina addresses. NCGA did not conduct a criminal background or credit check, and did not verify our applicants' professional credentials. We studied for and passed the North Carolina Guardian Competency Exam, which covers guardianship laws and regulations in North Carolina, under the names of our fictitious applicants. Before the start of the exam, the proctor asked to see the photo identification for one of our fictitious applicants, but failed to recognize it as bogus Virginia driver's license. Additionally, the proctor failed to check the photo identification of our second fictitious applicant. Once we passed the test, the names of our fictitious applicants were listed on the NCGA's Web site as certified guardians. They also received identification badges attesting to their status. While North Carolina does not require guardians to be certified, according to NCGA officials, certification is held in high regard by the courts because it helps the guardian prepare for their role. However, NCGA officials told us that they

do not perform criminal background checks or credit checks on applicants.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. We will then send copies of this report to the Commissioner of Social Security, the Director of the Office of Personnel Management, and the Secretary of Veterans Affairs. In addition, the report is available at no charge on the GAO Web site at http://www.gao.gov.

Please contact me at (202) 512-6722 or kutzg@gao.gov if you have any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,

Gregory D. Kutz
Managing Director
Forensic Audits and Special Investigations

Appendix I: Scope and Methodology

To verify whether allegations of guardian abuse, neglect, or exploitation are widespread, we interviewed state investigators, attorneys, advocates for senior citizens, and family groups; reviewed past cases of abuse disclosed publicly on databases such as WestLaw, Public Access to Court Electronic Records (PACER) and LexisNexis; reviewed federal and state court documents related to criminal and civil litigation; and sought leads from state investigators, attorneys, and senior citizen advocacy groups. Except for the case studies discussed below, we did not attempt to verify the facts related to the allegations we reviewed nor can we use information gathered from the case studies to project to or characterize all court appointed guardianships.

To select our case studies, we searched for instances of guardianship abuse in which there was a criminal conviction or finding of civil or administrative liability in the last 15 years, though in some cases the abuse began much earlier. As part of the selection process, we focused on cases involving professional guardians, guardianship agencies caring for multiple incapacitated people or egregious cases of abuse by family members or other individuals serving as guardians. In addition, we considered factors such as geographic location, number of victims affected and whether the financial abuse involved federal funds. Ultimately, we selected 20 cases from 15 different states and the District of Columbia for further review. To the extent possible, we conducted interviews with related parties, including state and local court officials, victims, family members of victims, advocacy groups, and professional guardian certification organizations. Further, where applicable, we reviewed police reports, court investigations, financial records, and professional guardian disciplinary files. We also conducted searches to determine whether the abusive guardians in our case studies had previous criminal histories or financial problems, and we contacted probate courts to determine whether they are still serving as guardians today. In our case studies, we identified vulnerabilities in court oversight of guardianships, but we did not examine whether state laws and regulations have changed since the abuse occurred. To determine whether these guardians continued to receive federal benefits on behalf of their victims or others, we analyzed databases and case files from the Social Security Administration (SSA), Department of Veterans Affairs (VA), and the Office Performance Management (OPM). Further, we conducted interviews with the SSA, VA and OPM officials responsible for oversight of representative payees to gather information about the agencies' policies and procedures for appointing, overseeing and disciplining representative payees.

To test the guardianship certification process, we identified states that have certification programs or require their guardians to obtain certification. Once we identified these states, we reviewed the current state statutes and legislation and the requirements necessary for obtaining certification. Using counterfeit documentation and fictitious educational and professional histories, GAO investigators created two fictitious identities. One identity used the Social Security number of a deceased individual and the other had a credit history showing thousands of dollars of debt and a very low credit score. Using these two identities, we applied to take the guardianship competency exams required for Illinois, Nevada, and North Carolina and guardianship training in New York in order to complete the certification requirements in these four states. We selected these four states based on potential vulnerabilities in the states' background checks and our ability to complete certification requirements within the timeframe of our investigation. For example, we selected states that did not conduct background checks with fingerprints, which provide more assurance of an applicant's identity than background checks without fingerprints. In addition, a fingerprint background check could potentially have identified our investigators. We did not test states in which applicants were required to spend multiple days attending training classes or states that had no scheduled examinations for guardians between December 2009 and May 2010. To meet the different states' requirements for certification, we took the National Certified Guardian Exam, a state-based certification exam, and completed a one-day guardianship training. We posed as family members and sent emails to court officials to determine what background or credit checks courts conduct on applicants for certification.

Appendix II: Summary of State Laws Related to Guardianships

The following list provides an overview of specific issues involving state laws in the 15 states and the District of Columbia, in which our case studies occurred.

Alabama

- Provides - "The court shall exercise [its'] authority … so as to encourage the development of maximum self-reliance and independence of the incapacitated person…" Ala. Code § 26-2A-105, (2009).
- Provides - guardian required to report the condition of the ward and the ward's estate as ordered by the court on petition of any person interested in the ward's welfare. Ala. Code § 26-2A-78(b) (5), (2009).

Alaska

- Provides - that a full guardian of an incapacitated person has the same powers and duties respecting the ward that a parent has respecting an unemancipated minor child. Alaska Stat. § 13.26.150(c), (2009).
- Provides - guardian is to file a report with the court 90 days after appointment and then annually. The report is to include the wards present mental and physical condition, changes in capacity, services being provided and any significant actions taken by the guardian as well as a financial accounting. Guardian is to file an additional report should the court order it, the guardian is removed or terminated or there is a significant change in the wards condition. Alaska Stat. §§ 13.26.117 & 13.26.118, (2009).
- Provides - incapacitated person retains all rights except those expressly limited by court order. Alaska Stat. §§ 13.26.090 & 13.26.150(c) (4), (2009).

Arizona

- Provides -"In exercising its appointment authority … the court shall encourage the development of maximum self-reliance of the incapacitated person." Ariz. Rev. Stat. Ann. § 14-5304, (2009).
- Provides - the guardian is to submit a written report to the court annually that addresses any major changes in the wards physical or mental condition, a summary of the services provided by the guardian and the date the ward was last seen by a doctor or nurse practitioner. Ariz. Rev. Stat. Ann. § 14.5315, (2009).

California

- Provides - a distinction between guardians and conservatorships, generally limiting guardians to unmarried minors. As to conservatorships California provides "A limited conservatorship …shall be designed to encourage the development of maximum self-reliance and independence of the individual..." Cal. Civ. Prac. & Trust Proc. § 25:14, (2009) and Cal. Prob. Code § 1801(d), (2009).

	• Provides - court shall review six months after appointment of conservator and also one year after appointment, thereafter annually. Cal. Prob. Code. § 1850(a) (1) & (2), (2009). • Provides - conservator recommends for or against disqualification from voting. Cal. Welf. & Inst. Code § 5357(c) (2009).
Colorado	• Provides - "The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence." Colo. Rev. Stat. Ann. § 15-14-311(b)(2), (2009). • Provides - within 60 days after appointment guardian is to report to the court in writing on the condition of the ward, guardian's personal care plan for the ward, accounting of money and assets in guardian's control. Thereafter guardian is to report annually. Colo. Rev. Stat. Ann. § 15-14-317, (2009).
Connecticut	• Provides - "The court may assign to a limited guardian the custody of the ward for the purpose of exercising any, but not all, of the following limited duties and powers, in order to assist the ward in achieving self-reliance: (1) To assure and consent to a place of abode outside the natural family home, (2) to consent to specifically designed educational, vocational or behavioral programs, (3) to consent to the release of clinical records and photographs, (4) to assure and consent to routine, elective and emergency medical and dental care, and (5) other specific limited powers to assure and consent to services necessary to develop or regain to the maximum extent possible the ward's capacity to meet essential requirements." Conn. Gen. Stat. Ann. § 45a-677(d), (2009). • Provides – such annual reports shall include significant changes in the capacity of the ward, services provided to the ward, significant actions taken by the guardian, significant problems encountered by the guardian and whether such guardianship should continue. Conn. Gen. Stat. Ann. § 45a-677(f)&(g), (2009). • Provides - no patient hospitalized or treated in a public or private facility for psychiatric disabilities shall be deprived the right to vote unless such patient has been declared incapable. Conn. Gen. Stat. Ann. § 17a-541, (2009). A guardian or conservator may file a petition to determine such individual's competency to vote. Conn. Gen. Stat. Ann. § 45a-703, (2009).
District of Columbia	• Provides - "The court shall …encourage the development of maximum self –reliance and independence of the incapacitated individual." D.C. Code Ann. § 21-2044, (2009).

	• Provides - guardian to report in writing to the court semi-annually on the condition of the ward and of the ward's estate. D.C. Code Ann. § 21.2047(a)(5), (2009).
Iowa	• The law is silent on how much self-reliance to place with the ward. • Provides - guardian to file initial report within 60 days of appointment thereafter annually. Report to include condition of the ward, activities, living arrangements, services, visits, etc. Iowa Code Ann. § 633.669, (2009). • Provides - if court appoints a guardian based on mental incapacity court shall make separate determination as to ward's competency to vote. Iowa Code Ann. § 633.556, (2009).
Kansas	• Provides - "A guardian shall exercise authority only as necessitated by the ward's limitations." Kan. Stat. Ann. § 59-3075, (2009). • Provides - guardian to file written report annually in such form as the court may require. Kan. Stat. Ann. § 59.3083, (2009).
Missouri	• Provides - The court "shall design the guardianship so as to encourage the development of maximum self-reliance and independence in the individual." Mo. Ann. Stat. § 475.080, (2009). • Provides - guardian to file report annually addressing number of contacts with the ward, date last seen by a doctor and the purpose, any major changes in the physical or mental condition of the ward and the need for continuation of guardianship. Mo. Ann. Stat. § 475.082, (2009). • Provides – no person who has a guardian of his estate or person by reason of mental incapacity shall be entitled to vote. Mo. Const. art.VIII, § 2.
New Hampshire	• Provides - "No person shall be deemed incompetent to manage his affairs, to contract, to hold professional, occupational, or motor vehicle driver's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of that person's admission to the mental health services system." N.H. Rev. Stat. Ann. § 135-C:56, (2009). • Provides - guardian to file an annual report with the court within 90 days after the anniversary date of the guardian's appointment addressing medical condition, major hospitalizations, care and treatment, services, and living conditions of ward and need for continuation of guardianship. N.H. Rev. Stat. Ann. § 464-A:35, (2009). • Provides – no deprivations "except as provided by law," which includes the right to vote. N.H. Rev. Stat. Ann. §135-C:56, (2009).
New York	• Provides - "Any guardian appointed under this article shall be granted only those powers which are necessary to provide for personal needs and/or

	property management of the incapacitated person in such a manner as appropriate to the individual and which shall constitute the least restrictive form of intervention…" N.Y. Mental Hyg. Law § 81.02, ((2009). • Provides - guardian to file initial report within 90 days of appointment by the court, thereafter annually in the month of May. The report shall be in a form prescribed by the court and shall include any major changes in the physical or mental condition of the ward, statement by a physician, psychologist, nurse clinician, or social worker or other person who last examined the ward, resume of activities and need to continue. N.Y. Mental Hyg. Law §§ 81.30 & 81.31, (2009).
North Carolina	• Provides - "To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will affect him." N.C. Gen. Stat. 35A-1201. • Provides - "If the clerk determines that the nature and extent of the ward's capacity justifies ordering a limited guardianship, the clerk may do so." N.C. Gen. Stat. 35A-1212. • Provides that the guardian shall file an initial status report within 6 months after being appointed followed by a second status report within one year, thereafter annually. N.C. Gen. Stat. 35A-1242.
Oklahoma	• Provides - "[T]he court shall … encourage the development of maximum self-reliance and independence of the incapacitated or partially incapacitated person…".Okla. Stat. Ann. tit. 30, § 1-103, (2009). • Provides - guardian to file at least annually and address significant changes in the capacity of the ward, services provided, significant actions taken by guardian, problems encountered, and should appointment be continued. Okla. Stat. Ann. tit. 30, §§ 4-303, 4-305 & 4-306, (2009). • Provides – person adjudged incapacitated shall be ineligible to register to vote. Okla. Stat. Ann. tit. 26, § 4-101, (2009).
Texas	• Provides - "[T]he court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person." Tex. Prob. Code Ann. § 602, (2009). • Provides - guardian to file written report annually that addresses living arrangements, guardian visits, physical and mental health, unmet needs of the ward. Texas Prob. Code Ann. § 743, (2009).
Washington	• Provides - "The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted

through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs." Wash. Rev. Code Ann. § 11.88.005, (2009).

- Provides - guardian to file report with court annually that addresses ward's medical and mental status, activities, changes in functional abilities, and identifies professionals who have assisted. Wash. Rev. Code Ann. § 11.92.043, (2009).
- Provides - assignment of guardianship for incapacitated person does not result in loss of voting rights unless court determines person incompetent for purposes of voting. Wash. Rev. Code Ann. 11.88.010(5), (2009).

Appendix III: Additional Cases of Abuse, Neglect, and Financial Exploitation by Guardians

Table 3 provides a summary of ten additional case studies in which guardians abused, neglected or financially exploited their victims.

Table 3: Additional Cases of Abuse, Neglect and Financial Exploitation by Guardians

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
11	80 year old man	February 1998	Attorney / Oklahoma	• An attorney took $37,000 from the victim's account, using some of the funds to buy into a get-rich-quick scheme with a bank in Nigeria. • According to the Oklahoma Supreme Court ruling, the attorney shared a law practice with his father, who had become incapacitated. • The attorney had borrowed money to pay his debts. When he heard about a bank in Nigeria promising $28 million for assistance setting up a corporation, he believed it was the solution to his financial problems. • When the Nigerian scammers asked him to send money, the attorney took his incapacitated father to the bank and had him withdraw money from the account of one of his wards. The attorney sent the funds to Nigeria. • The attorney resigned from the Oklahoma Bar in 1998 after it was discovered that he taken funds from a guardianship account for his own use. • In 2007, he applied for reinstatement to the Bar, claiming to have been rehabilitated through an organization he founded to help lawyers with character problems. He was readmitted and is now free to practice law and accept guardianship cases in Oklahoma.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
12	71 year old woman with Alzheimer's	August 1996	Attorney / Oklahoma	• An attorney converted $175,000 from an elderly woman's estate, but later testified that he had caused her no harm. • According to relatives, the victim had no children and lived frugally all her life. She asked a partner in a local law firm to be her conservator because she did not trust her brother, who had a gambling problem, to protect her assets. • An audit found that the attorney converted $44,600 for his income taxes, $39,000 in checks payable to himself and $1,600 for his international phone bills. • The audit also showed monthly payments of between $225 and $630 to the victim's brother and his wife for 7 years. Relatives said the attorney allowed the brother to move into the victim's house and paid his bills out of the victim's estate, even though the victim had sought a conservator to protect her estate from her brother. • Court records show that the attorney did not file a single annual accounting with the courts in ten years as conservator, and his final accounting omitted numerous unauthorized payments to himself. He admitted to the woman's relatives that he had paid himself whatever he felt he deserved in conservator's fees. • In 1996, the attorney received a 5 year deferred sentence for embezzlement by a trustee, an unusually light sentence for such a large loss, according to the prosecutor. • The attorney only paid $7,000 in restitution himself; his father, and later his fiancée, paid a total of $78,000 on his behalf. The remaining $90,000 identified by the audit had not been repaid by 2007, when he applied for reinstatement to the Bar. • The guardian's petition for reinstatement to the Bar was denied in October 2007. The court disagreed with his contention that the victim never suffered because "she always was provided for," finding that the attorney had violated her trust "when it mattered most."

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
13	84 year old WWII veteran	April 2004	Attorney / North Carolina	• A federal indictment accused the guardian of embezzling $332,730 over a 14 year period, during which he was allowed to continue serving as a guardian despite clear indicators of fraud. • The victim had been a ward of the court since his discharge from the military in 1946, according to the indictment. The guardian was the former president of the county bar association • The guardian wrote checks to himself from the victim's estate and cashed a CD worth $163,000 for his personal benefit, according to the indictment. He also filed false accountings with the court and the VA to cover up his misappropriations. For example, he certified that the victim's bank balance was $356,142, when in fact the account had been depleted to $21,792. • The guardian also deposited the victim's funds into guardianship accounts for other wards to disguise his misappropriations from these individuals, according to the federal indictment. • Despite two suspensions of VA benefits for failure to file accountings, he was allowed to continue serving as the victim's guardian and representative payee. • After pleading guilty, the guardian served a 51 month prison sentence with 3 years parole according to his federal sentencing. As of June 2010, he had paid $3,112 of the $467,000 in court ordered restitution.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
14	81 year old man, mentally incapacitated	May 2008	Court appointed guardian / Texas	• The guardian, who was the victim's son, admitted to misappropriating some of his father's veterans' benefits for his own benefit, which a federal prosecutor contended was more than $300,000. • For example, according to the federal prosecutor, within a two-year period, the guardian used his father's estate to write himself $32,130 in "business loans" and $201,483 in promissory notes. He used the proceeds of these supposed loans for his own personal benefit. • In 2006, the local county court that appointed the guardian filed a court motion seeking to remove the guardian for failing to reimburse the funds that he took from the victim's estate. The motion was later transferred to a local district court, which ultimately dismissed this motion in 2008 for lack of prosecution. As of June 2010, neither the county nor district courts have formally terminated the guardian. • In 2008, a federal court sentenced the guardian to 2 years and 6 months in federal prison, 3 years supervision upon his release, and ordered him to pay more than $272,800 in restitution. As of June 2010, the guardian had only paid back $17,689 in restitution, according to a federal court, and still owes $255,112 in restitution.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
15	90 year old woman with dementia	February 2000	Licensed healthcare practitioner / Arizona	• A niece misappropriated $235,561 from her aunt's estate, according to an Arizona court. Although a plea agreement prohibited her from managing the victim's finances as a guardian in Arizona, the agreement stated that she would be allowed to continue to manage the victim's well-being as a guardian in California. • An Arizona court found that within a three-year period, the niece took hundreds of thousands of dollars from aunt's estate to give loans and pay for unauthorized gifts to her children. • The niece's attorney documented these transactions in two annual accountings that were submitted to the court, but the attorney never attempted to stop her or notify the court about her improprieties. • One annual accounting filed with the Arizona court documents that she managed $18,000 of the victim's SSA benefits in just one year. According to SSA data, the guardian was terminated as the victim's payee, but not for misuse, indicating that the abuse was not communicated to the SSA. • The niece was given 3 years probation and ordered to make full restitution. However, she only repaid $45,561 and her insurance company paid the remaining $190,000. • A state prosecutor stated that the victim moved to California, where she had no other relatives to care for her. Because of this, the niece's plea agreement stated that she would be permitted to serve as the victim's guardian in California, provided she had no authority over the victim's finances there.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
16	74 year old mentally incapacitated man	October 2007	Victim's son / New Hampshire	• The victim's son misappropriated $137,206 from his father, fled to American Samoa and escaped punishment for his actions. • Despite criminal charges of marijuana possession and disobeying a police officer, he was allowed to continue as guardian. • After the guardian quit his job and divorced his wife, he sought court permission to relocate his father to American Samoa and borrow $90,000 from the estate to finance a new business and marry his Samoan girlfriend, according to a court judgment and interviews. The court denied both requests. • The court removed him as guardian and ordered him to file a final accounting. Instead, the guardian fled the country with thousands from his father's estate. The bond company repaid the estate and obtained a default judgment against the guardian totaling $203,510. • According to the bond company's attorney, the guardian never faced criminal charges. Investigators hired by the company said they tracked the guardian to Pago Pago, American Samoa where he draws Social Security disability due to an injury sustained from falling out of a banana tree. In July 2009, a Samoan court ordered the guardian to pay back the bond company in $300 monthly payments. As of June 2010, the guardian has paid $3,300.
17	89 year old incapacitated woman	July 1995	Court appointed guardian / Alabama	• An Alabama court found that a guardian's negligence enabled her attorney to embezzle almost $53,000 from the ward's estate. • The guardian testified that her attorney directed her to use a cashier's check to withdraw all the funds in the victim's account, approximately $53,000, and endorse the check over to him. He claimed that he would deposit the sum into an account with a higher interest rate. • After the attorney's death, the guardian said that she discovered that he had taken the funds for his own personal use. • In July 1995, the Alabama court held the guardian liable for the attorney's actions because she never demanded to see the attorney's bank statements, but instead believed that the attorney was taking care of all the guardianship duties for which she was responsible. • As a result of the guardian's negligence, the guardian's surety paid $61,472 in restitution, and the guardian paid nothing.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
18	80 year old woman with dementia	September 2008	Victim's niece / Arizona	• A niece misappropriated more than $150,000 from her elderly aunt's estate. • The niece was appointed as guardian less than 5 years after filing for Chapter 13 bankruptcy twice and being arrested numerous times for and pleading guilty to issuing numerous bad checks. Further, the court appointed her despite the victim's attorney's objection due to his belief that the guardian was not close to her aunt. • Further, the guardian received court permission to sell the victim's ranch to pay for her medical bills, provided that she would obtain a bond to protect the victim's estate. The guardian, however, was unable to obtain the required bond due to poor credit and a prior bankruptcy, information she had disclosed to the bonding company before. • After the sale, the guardian misappropriated $150,000 from the victim's estate, according to an Arizona court, leaving the victim in danger of losing her housing and medicine, according to her court-appointed attorney. • SSA data shows that the niece served as the aunt's representative payee, giving her access to the victim's Social Security benefits. In 2005, an Arizona court held the niece's insurance company liable for her actions. • The court ordered $198,721 in restitution against the guardian, for which the surety was held liable and paid. In addition, the court ordered that "treble damages" be awarded because the guardian breached her fiduciary duties to the victim, thereby increasing the total restitution amount to $596,165, amounting to three times the amount for which the surety was held liable. As of May 2010, the guardian has failed to pay the remaining $397,443 in restitution that is due.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
19	92 year old victim, with significant memory loss and limited judgment	May 2009	Attorney / New York	• A New York attorney manipulated his elderly and mentally incapacitated client into revoking her trust in order to generate nearly $74,000 in excessive fees for himself. • The New York Supreme Court found that the guardian convinced the victim to appoint him as her trustee, power of attorney and health care proxy. Just two months later, her doctor found that she had limited judgment due to memory loss and was vulnerable to financial exploitation. • The attorney had the victim to revoke her trust, generating $74,000 in excessive commissions and fees for himself, and convinced the court that the victim had revoked the trust voluntarily, despite the doctor's diagnosis that she had impaired judgment. • The court recommended that it could either appoint the attorney to serve as the victim's guardian, or allow the attorney to continue to serve as the victim's trustee instead. However, in the end, it allowed both to occur, appointing the attorney to serve as the victim's guardian, and permitting the revocable trust to continue. • Then, the attorney had the victim to revoke her trust, generating $74,000 in excessive commissions and fees for himself, and convinced the court that the victim had revoked the trust voluntarily, despite the doctor's diagnosis that she had impaired judgment. • He later sought to terminate the guardianship, requesting more than $27,000 in additional guardianship commissions and legal fees, which the court denied as excessive. In May 2009, the court denied these fees because he had already "collected nearly every conceivable fee" from the woman's estate. • According to the guardian's final accounting, the SSA, unlike the court that appointed the guardian, was not made aware of the victim's death before it had already paid hundreds of dollars in Social Security benefits to the guardian, months after the victim died.

Case	Victim	Date of conviction, settlement, plea agreement, or finding of liability	Guardian / state	Case details
20	15 elderly victims	December 2001	Professional guardian agency / Washington	• A professional guardianship agency responsible for 59 incapacitated wards was found to have committed "persistent and repeated" guardianship reporting violations. • A court appointed guardian ad litem found that the professional guardian agency failed to notify the court that 7 of its wards had passed away, and in one of these cases the court was not notified until 2 years after the ward's death. • In addition, the agency had no system in place to remind them when mandatory annual accountings were due and instead waited for an overdue notice from the court to submit reports. • The agency was found to be non-compliant in 15 cases. The guardian ad litem recommended the agency to continue to limit the number of wards under its care and regain compliance within 30 days. • The agency came into compliance and Certified Professional Guardian Board records indicate that the guardian agency continues to operate today with 42 wards. • The agency currently acts as representative payee for 28 wards.

Source: GAO.

Appendix IV: Summary of State Certification Requirements

Table 4 below provides a summary of the state certification requirements.

Table 4: Summary of State Certification Requirements

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
Alaska	• License • Private Professional Guardian / Conservator	• Yes • No	• National exam[a] • No	Professional Guardians / Conservators must: • Be 21 years of age • Have two or more years of professional client casework experience or a least an associate degree in human services, social work, psychology, sociology, gerontology, special education; or has six months' employment experience in a position involving financial management, or has at least an associate's degree in accounting • Must be certified by the Center for Guardianship Certification

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
Arizona	• License • Fiduciaries (Guardians and Conservators)	• Yes • Yes	• State exam • Must attend and complete a session on the roles and responsibilities of the certified professional fiduciary	Fiduciaries must: • Be 21 years of age • Be US citizens • Not be a convicted felon • Not have been civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, theft or conversion; • Must possess one of the following: a high school degree or GED equivalent and 3 years experience as a guardian, conservator or personal representative; a bachelor degree and 1 yr of experience as a guardian, conservator, or personal representative, a high school degree or GED equivalent and a certificate of completion from a paralegal program and 2 years experience as a guardian, conservator, or personal representative; a high school degree or GED equivalent and a certificate of completion from an accredited educational program designed to qualify a person as a fiduciary and 2 years work experience as a guardian, conservator, or personal representative; a juris doctorate degree and currently admitted to practice law, active and in good standing; a high school degree or GED equivalent with evidence of an appointment as a foreign fiduciary and 3 years experience as a guardian, conservator, or personal representative; a high school degree or GED equivalent and certified as a registered master guardian by the National Guardianship Association

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
California	• License • Fiduciaries (Guardians and Conservators)	• Yes • Yes	• State exam • Must complete 30 hours of prelicensing education courses provided by an educational program.	To become licensed, fiduciaries must: • Be at least 21 years of age • Be a US citizen, or legally admitted to the US • Not have been convicted of a crime substantially related the qualifications, functions, or duties of a fiduciary • Not have engage in fraud or deceit in applying for license • Not have engaged in dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary • Have not been removed as a professional fiduciary by a court for breach of trust • Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations • Must possess at least one of the following; a baccalaureate degree from a college or university accredited by a nationally recognized accrediting body or a higher level of education; an associate's degree from a college or university accredited by a nationally recognized accrediting body or a higher level of education and at least three years experience working as a professional fiduciary or working with substantive fiduciary responsibilities; or at least 5 years of experience working as a professional fiduciary or working with substantive fiduciary responsibilities

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
Florida	• Registration • Professional Guardianship	• Yes • Yes	• State exam • Must obtain 40 hours of instruction and training within 1 year of appointment	To become licensed, professional guardians must: • Be competent • Be a resident of Florida • Not have been convicted of a felony, judicially determined to have committed abuse, abandonment, or neglect against a child. • Must pass a Florida Professional Guardian competency exam • Must obtain 40 hours of instruction and training within 1 year of appointment • Must register with Statewide Public Guardianship Office within 30 days of bond anniversary date • Must show proof of a $50,000 blanket bond
Illinois	• Certification • Politically Appointed Guardians	• No • No	• National exam • No	Must be appointed by the Governor
Nevada	• Certification • Professional Guardians	• No • No	• National exam • No	A professional guardian must: • Be competent • Must be a resident of Nevada • Have not been convicted of a felony, unless the court determines that such conviction should not disqualify the person from serving as the guardian of the ward • Have not been judicially determined to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult • Have not been suspended for misconduct or disbarred from the practice or law; the practice of accounting, or any other professional which involves the management or sale of money, investments, securities or real property and requires licensure from the state • Must have three or more unrelated wards

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
New Hampshire	• Certification • Professional Guardians	• No[b] • No	• National exam • No	A professional guardian must: • Be a national certified guardian or national master guardian with the Center for Guardianship Certification (CGC) and maintain this status • Be a resident of New Hampshire or have a resident agent • Adhere to the Standards of Practice published by the National Guardianship Association (NGA) • Adhere to the Model Code of Ethics published by NGA • Provide a bond that is acceptable to the court • Carry malpractice insurance and provide proof of insurance on an annual basis to the administrative judge of the probate court • Comply with all requirements of applicable statutes, regulations, and court rules and orders • Disclose to the court any conflicts of interest upon discovery of such conflict • Provide necessary and appropriate quality guardianship services as dictated by ward's needs • Certify that the guardian will maintain generally accepted standards of accounting on all funds of all wards in their custody or their control • Adhere to billing and annual report requirements • Consult with a national certified guardian or national master guardian that has been approved by Probate Court Administrative Judge for a least the first two cases • Be approved by Probate Court Administrative Judge • Be subject to removal from the list of approved guardians for non-compliance

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
New York	• Certification • Professional and Nonprofessional Guardians	• No • No	• No exam • Must complete a one-day 6 hour training course.	To apply the guardian must: • Be 18 years of age • Not have a prior felony conviction, or have been convicted of a misdemeanor within the last 5 years • Not be a an active or former judge of the Unified Court System of the State of new York, or a spouse, sibling, parent or child of such judge within two years from the date that the judge left judicial office • Not be an employee of Unified Court System of the State of New York or a spouse, sibling, parent, or child of an employee who hold a position of salary grade JG24 or equivalent • Not be a person who has served as a campaign chair, coordinator, manager, treasurer or finance chair for a candidate for judicial office, or the spouse, sibling, parent or child of that person, or anyone associated with the law firm of that person for a period of two years following the judicial election • Not be an attorney currently disbarred or suspended from the practice of law
North Carolina	• Certification • N/A[c]	• No • No	• State exam • No	To apply the guardian must: • Disclose misdemeanor or felony convictions • Disclose actions of fraud, misrepresentation, material omission, misappropriation, theft, or conversion where the guardian has been found civilly or criminally liable • Must have at least 5 years of guardianship services experience

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
Oregon	• Certification • N/A[d]	• No • No	• National and State exam • Must complete 32 hours of education/training with at least 3 hours in the areas of legal, ethics, health/medical, social and financial services.	A professional guardian / conservator must: • Be 21 years of age • Have a Bachelor's degree from an accredited educational institution with a minimum of 1 year experience as a fiduciary or court-appointed trustee with 2 or more clients that are unrelated to you or be the person primarily responsible for fiduciary duties under the direction of an Oregon Certified Professional Fiduciary or have an Associate's degree from an accredited educational institution with 3 years relevant experience in the field of legal, health, social, or financial services with 1 year experience as a fiduciary or court-appointed trustee with 2 or more clients that are unrelated to you or be the person primarily responsible for fiduciary duties under the direction of an Oregon Certified Professional Fiduciary • Must not have been convicted, plead guilty, or no contest to a felony • Must not have been found civilly or criminally liable for an action of fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, or conversion • Must not have been relieved of responsibilities as a guardian or conservator • Must not have been found liable of subrogation action by an insurance or bonding agent • Must be bonded in accordance with state statutes and local practice • Must review and understand the Oregon Revised statutes (ORS), the GCA of Oregon Standards of Practice, The NGA Standards of Practice, and NGA Code of Ethics

State	Type of program offered / requirements apply to	Fingerprint background check / credit checks	Exam / training requirements	Other requirements
Texas	• Certification • Professional guardians and public guardians	• Yes • No	• State exam • No[e]	A guardian must: • Be 21 years of age • Must have a high school diploma or GED equivalent • Must have two years of relevant experience related to guardianship or have at least a four-year degree in a field related to guardianship.
Utah	• Certification • Specialized Care Professional	• No • No	• National exam • No	A specialized care professional must: • Be certified or designated as a provider of guardianship services by a nationally recognized guardianship accrediting organization • Licensed by or registered with the Division of Occupational and Professional Licensing as a health care provider including, but not limited to, a registered nurse, a social service worker, certified social worker, or clinical social worker, a marriage and family therapist, a physician, or a psychologist, or has been approved by the court as one with specialized training and experience in the care of incapacitated persons
Washington	• Certification • Professional Guardians	• Yes • No	• No exam • Must complete a 6 month program that includes 56 hours of classroom sessions and 34 hours of online distance learning	A professional guardian must: • Be 18 years of age • Have an Associate's degree from an accredited institution and have 4 years experience working in a position relevant to guardianship services or have a Bachelor's degree from an accredited institution and two years experience working in a position relevant to guardianship services. • Be competent • Have not been convicted of a felony or misdemeanor involving moral turpitude • A resident of Washington

Source: GAO.

[a] Center for Guardianship Certification requires applicants to be at least 21 years of age, possess a high school degree or GED equivalent; have one year of relevant work experience related to guardianship or the following educational requirements: (1) a degree in a field related to guardianship, or (2) completion of a course curriculum or specifically related to guardianship approved by the CGC; not been convicted on a felony; not been civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion; not been relieved of responsibilities as a guardian by a court, employer, or client for actions involving fraud, misrepresentation, material omission, misappropriation, theft, or conversion; must be bonded in accordance with state statutes and local practice; and not found liable in a subrogation action by an insurance or bonding agent.

[b] New Hampshire conducts a criminal background check on professional guardians, but does not include fingerprints.

[c] The North Carolina Guardianship Association offers guardianship certification; however, certification is optional and is not required by law.

[d] The Oregon Guardian / Conservator Association, through the Center for Guardianship Certification, offers guardianship certification; however, certification is optional and is not required by law.

[e] Certified guardians must complete 12 hours of continuing education during the two-year certification period. Provisionally certified guardians are bound by the same continuing education rules as certified guardians

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