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

July 2004

GUARDIANSHIPS

Collaboration Needed to Protect Incapacitated Elderly People

Correction made on 7/22/04 to p. 4, line 13, revised to read "Few courts provide a basis for estimating how many incapacitated elderly people have guardians".

GAO-04-655

July 2004

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Highlights

Highlights of GAO-04-655, a report to the Chairman, Special Committee on Aging, U.S. Senate

GUARDIANSHIPS

Collaboration Needed to Protect Incapacitated Elderly People

Why GAO Did This Study

As people age, some become incapable of managing their personal and financial affairs. To protect these people, state laws provide for court appointment of guardians to act on their behalf. In many cases federal programs provide these incapacitated people financial benefits. GAO was asked to examine: (1) what state courts do to ensure that guardians fulfill their responsibilities, (2) what guardianship programs recognized as exemplary do to ensure that guardians fulfill their responsibilities, and (3) how state courts and federal agencies work together to protect incapacitated elderly people.

What GAO Recommends

GAO recommends that (1) the Social Security Administration lead an interagency/state court group to study options for prompt and systematic information sharing for the protection of incapacitated elderly people and that (2) the Department of Health and Human Services provide support to states and national organizations involved in guardianship programs in efforts to compile national data on the incidence of abuse with and without the assignment of a guardian or representative payee and to review state policies for interstate transfer and recognition of guardianship appointments. HHS, Office of Personnel Management (OPM), and VA agreed with the recommendations. SSA disagreed, citing privacy issues.

www.gao.gov/cgi-bin/getrpt?GAO-04-655.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov.

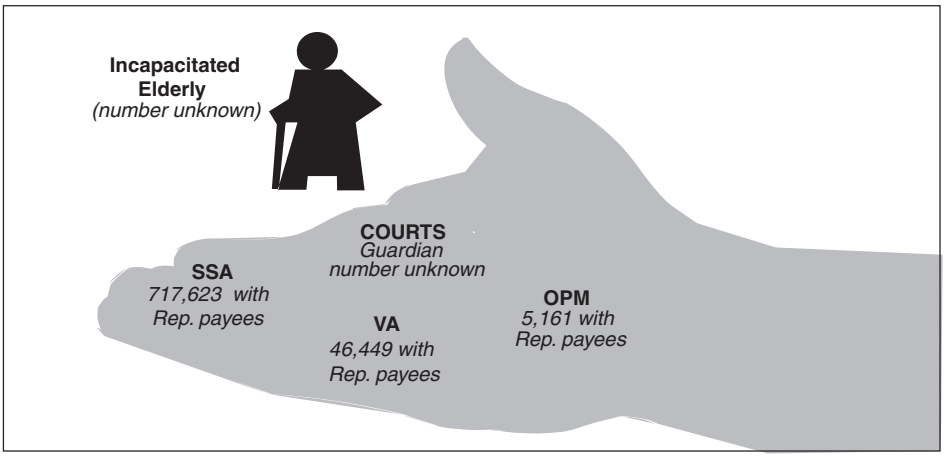
What GAO Found

All states have laws requiring courts to oversee guardianships, but court implementation varies. Most require guardians to submit periodic reports, but do not specify court review of these reports. Interstate jurisdictional issues sometimes arise when states do not recognize guardianships originating in other states. Most courts responding to our survey did not track the number of active guardianships, and few indicated the number of incapacitated elderly people under guardianship.

Four courts recognized by members of the National Guardianship Network as having exemplary guardianship programs devote staff to strong programs for guardianship training and oversight. Three of these courts offer training to guardians even though state law does not require it. Three also have programs in which volunteers or social work student interns visit people under guardianship and report on their condition.

Although state courts and federal agencies are responsible for protecting many of the same incapacitated elderly people, they generally work together only on a case-by-case basis. Some courts send notices of guardianship to the Department of Veterans Affairs and the Social Security Administration, but generally coordination among federal agencies and courts is not systematic. Federal agencies and courts do not systematically notify other agencies or courts when they identify someone as incapacitated, or when they discover that a guardian or a representative payee is abusing the incapacitated person. This lack of coordination may leave incapacitated people without the protection of responsible guardians and representative payees.

Courts and Federal Agencies Have Responsibilities for Protecting Incapacitated Elderly People



Source: SSA, VA, and OPM data and GAO analysis.

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Abbreviations

HHS	Department of Health and Human Services
OPM	Office of Personnel Management
SSA	Social Security Administration
VA	Department of Veterans Affairs

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G A O
Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

July 13, 2004

The Honorable Larry E. Craig
Chairman
Special Committee on Aging
United States Senate

Dear Mr. Chairman:

As people age, some of them become incapable of caring for themselves and must rely on a guardian—a person or entity appointed to make decisions for them. In the United States, the number of people requiring a guardian is expected to increase considerably in the years ahead. The number of elderly people (those aged 65 and older) is expected to increase substantially over the next several decades, and the number of people aged 85 and older is expected to triple by 2040 to 15 million. The Census Bureau estimates that about one-quarter of the people in this older age group has Alzheimer's disease, which may lead to dementia that is severe enough that people become incapable of caring for themselves.[1] Generally, adults are identified as incapacitated when they become physically or mentally incapable of making or communicating important decisions, such as those required in handling finances or securing possessions. In many cases, incapacitated adults are elderly, but in many other cases they are not, and generally the same laws and procedures apply to all incapacitated adults. Often, family members can provide assistance, but sometimes a state or local court needs to appoint a guardian to act on behalf of the incapacitated person.[2] The guardian becomes responsible for making decisions to protect the incapacitated person from financial and physical abuse or neglect, and the incapacitated person loses decision-making rights.

Although guardianship is a state responsibility, there are many incapacitated elderly people who receive federal benefits, and this group

[1]Alzheimer's disease is only one of the health conditions leading to dementia or other incapacity.

[2]For convenience, we use the term "guardian" though some states use other terms. California, for example, uses the term "conservator" when the incapacitated person is an adult.

of people may need federal agencies to identify a representative payee—a person or organization designated to handle those benefits on their behalf. State and local courts are responsible for oversight of guardianship appointments, and federal agencies are responsible for oversight of representative payees. Courts and federal agencies have identified instances in which guardians or representative payees have taken advantage of incapacitated elderly people by, for example, stealing from them or billing for services not provided. Such cases of abuse and neglect of elders by guardians and representative payees have prompted questions about the oversight of these programs.

As part of your committee's focus on aging issues, you asked us to study guardianships for the elderly and the representative payee programs of federal agencies such as the Social Security Administration (SSA), the Department of Veterans Affairs (VA), and the Office of Personnel Management (OPM), which manages retirement programs for federal employees. In response to your request, we examined: (1) what state courts do to ensure that guardians fulfill their responsibilities, (2) what exemplary guardianship programs do to ensure that guardians fulfill their responsibilities, and (3) how state courts and federal agencies work together to protect incapacitated elderly people. To study these topics, we reviewed state statutes and conducted surveys of courts responsible for guardianships in the three states with the largest elderly populations—California, Florida, and New York. Forty-two of 58 courts in California, 55 of 67 courts in Florida, and 9 of 12 judicial districts in New York responded to our surveys. We also visited courts in eight states and interviewed officials responsible for representative payee programs at SSA, VA, and OPM and officials at the Department of Health and Human Service's Administration on Aging. In addition, we visited 4 courts identified by members of the National Guardianship Network (a joint council representing eight national organizations involved in guardianship issues) as having exemplary guardianship programs. We conducted our work between March 2003 and May 2004 in accordance with generally accepted government auditing standards. (For details concerning our scope and methodology, see app. I.)

Results in Brief

All states have laws requiring courts to oversee guardianships, but court implementation of these laws varies. At a minimum, most states' laws require guardians of the person to submit a periodic report to the court regarding the well being of the incapacitated person and guardians of the estate to provide an accounting of the incapacitated person's finances. Many states' statutes also authorize measures that courts can use to

enforce guardianship responsibilities, such as termination of the guardianship appointment or imposition of fines for failure to fulfill guardianship responsibilities. Often states do not recognize guardianships originating in other states, which can raise jurisdictional issues. In addition to variations among states' laws, courts we studied have quite varied procedures for implementing guardianship requirements in state law. For example, most California and Florida courts responding to our survey require guardians to submit time and expense records to support petitions for compensation, but both states also have courts that do not require these reports. Some courts also take steps beyond what is required by state statutes. For example, some courts require that guardians receive more training than the minimum required by law. Although information, such as the number of people with guardians, is needed for effective oversight of guardianships, it is neither required, nor generally available from the courts. One-third or fewer of the responding courts tracked the number of active guardianships for incapacitated adults and only a few in each state provided the number of those who were elderly.

Judges for four courts widely recognized as having exemplary guardianship programs devote staff to the management of guardianships, allowing the courts to specialize and develop programs for guardianship training and oversight. For example, the court we visited in Florida provided comprehensive reference materials for guardians to supplement training. The other three courts offered training to guardians even though state law does not require it. Three of the exemplary courts have programs in which volunteers or student interns visit people under guardianship and report on their condition to the court. For example, the court in New Hampshire recruits volunteers, primarily retired senior citizens, to visit incapacitated people, their guardians, and care providers at least annually, and submit a report of their findings to court officials. Exemplary courts in Florida and California also have permanent staff to investigate allegations of fraud, abuse, or exploitation or cases in which guardians have failed to submit required reports.

Although state courts and federal agencies are responsible for protecting many of the same incapacitated elderly people, they generally work together only on a case-by-case basis. For example, some courts may send notice of guardianship appointments to SSA, allowing the federal agency to determine whether the court-appointed guardian could also act as a representative payee. Federal agencies may also provide information about incapacitated beneficiaries to courts to help assess the incapacitated person's income and whether the guardian needs to coordinate with a payee. However, coordination between federal agencies

and state and local courts does not take place systematically, nor do federal agencies systematically share information with one another. For example, if VA does not notify SSA when it identifies someone as incapacitated, SSA may not learn that one of its beneficiaries may need a representative payee. Similarly, courts identifying a guardian who has abused or neglected an incapacitated person do not automatically notify the federal agency that assigned the guardian as a representative payee. Thus, an incapacitated person may remain at risk of having an identified abuser in charge of his or her benefit payments. The extent to which this is a problem is unknown, because current efforts to compile statistical data by Adult Protective Service agencies and the Justice Department's Bureau of Justice Statistics do not identify cases of elder abuse involving guardians or representative payees. Few courts provide a basis for estimating how many incapacitated elderly people have guardians. Without such data, the extent to which improvements in guardian and representative payee oversight are needed remains unknown.

We are making recommendations to the Social Security Administration, Office of Personnel Management, the Department of Health and Human Services (HHS), and the Department of Veterans Affairs concerning interagency and state and federal collaboration in efforts to plan and implement cost-effective measures to systematically compile and share information needed to enhance the protection of incapacitated elderly people. We provided a draft of this report to each of these agencies and received written comments on the draft from all four. See appendixes IV, V, VI, and VII for their comments. VA, OPM, and HHS agreed with our conclusions and indicated their willingness to participate in the study group and other efforts we are recommending. SSA disagreed with our recommendations concerning an interagency study group, citing differences in federal agency and state court policies regarding protection of the incapacitated, the difficulties that would be involved, and requirements of the Privacy Act that it believes would preclude the kind of information sharing we recommend that SSA and the other agencies study.

Background

The number of people age 65 and older will nearly double by the year 2030 to 71 million. An estimated 6 percent of people aged 65 or older have Alzheimer's disease, a degenerative condition that may lead to dementia.[3]

[3]Other causes of dementia include strokes, brain tumors, and a variety of endocrine, metabolic, and nutritional disorders.

Over time, some elderly adults may become physically or mentally incapable of making or communicating important decisions, such as those required to handle finances or secure their possessions. In addition, while some incapacitated adults may have family members who can assume responsibility for their decision-making, many elderly incapacitated people do not. The Census Bureau predicts that in the future the elderly population will be more likely to live alone and less likely to have family caregivers. In situations such as these, additional measures may be necessary to ensure that incapacitated people are protected from abuse and neglect.

Several arrangements can be made to protect the elderly or others who may become incapacitated. A person may prepare a living will, write advance health care directives, and appoint someone to assume durable power of attorney, or establish a trust. However, such arrangements may not provide sufficient protection. Some federal agencies do not recognize durable powers of attorney for managing federal benefits. SSA, for example, will assign a representative payee for an incapacitated person if it concludes that the interest of the incapacitated beneficiary would be served, whether or not the person has granted someone else power of attorney.[4] In addition, many states have surrogacy healthcare decision-making laws, but these alternatives do not cover all cases. Additional measures may be needed to designate legal authority for someone to make decisions on the incapacitated person's behalf.

To provide further protection for both elderly and non-elderly incapacitated adults, state and local courts appoint guardians to oversee their personal welfare, their financial well being, or both.[5] The appointment of a guardian typically means that the person loses basic rights, such as the right to vote, sign contracts, buy or sell real estate, marry or divorce, or make decisions about medical procedures. If an incapacitated person becomes capable again, by recovering from a stroke,

[4]For convenience, we use the term "incapacitated," recognizing that federal agencies and states use a variety of terms and somewhat different definitions to assess whether someone is in need of a guardian or representative payee. SSA, for example, assigns representative payees to people it has determined are incapable of managing or directing the management of benefit payments. OPM and VA use the term "incompetent" but have somewhat different definitions. Most states use the term "incapacitated," but others use "incompetent," "mental incompetent," "disabled," or "mentally disabled."

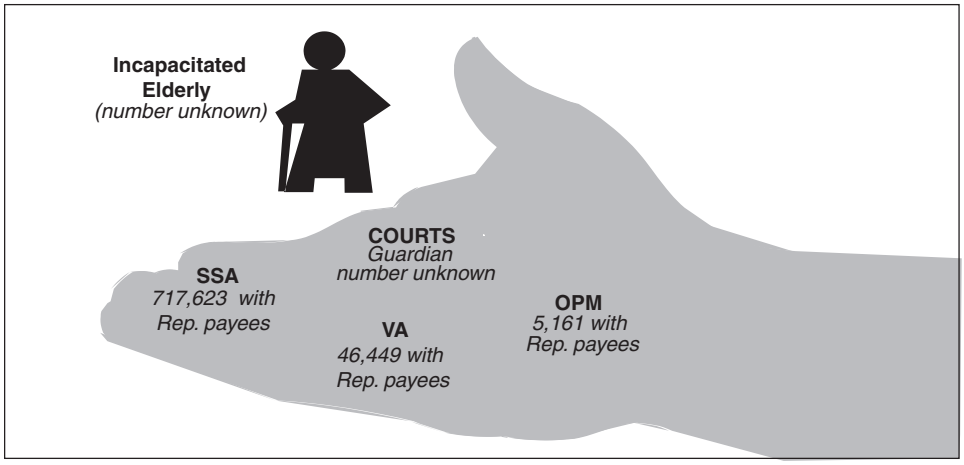
[5]Generally states also have separate provisions for guardianship of minor children, including those who are incapacitated and those who are not.

for example, he or she cannot dismiss the guardian but, rather, must go back to court and petition to have the guardianship terminated.

The federal government does not regulate or provide any direct support for guardianships, but courts may decide that the appointment of a guardian is not necessary if a representative payee has already been assigned to an incapacitated person by a federal agency. Representative payees are entirely independent of court supervision unless they also serve their beneficiary as a court-appointed guardian. Guardians are supervised by state and local courts and may be removed for failing to fulfill their responsibilities. Representative payees are supervised by federal agencies, although each federal agency with representative payees has different forms and procedures for monitoring them.

Each state provides a process for initiating and evaluating petitions for guardianship appointment. Generally, state laws require that a petition be filed with the court and notice be provided to the alleged incapacitated person and other people with a connection to the person. In nearly all states, the alleged incapacitated person is granted the right to be present at the hearing, and the right to counsel. Most states require clear and convincing evidence of a person's incapacity before a guardian can be appointed. The court may appoint a family member, friend, attorney, a paid private professional, a nonprofit social service agency, or a local public agency to serve as the guardian.

Figure 1: Courts and Federal Agencies Have Responsibilities for Protecting Incapacitated Elderly People



Source: SSA, VA, OPM data, and GAO analysis.

In many cases, both courts and federal agencies have responsibilities for protecting incapacitated elderly people, as shown in figure 1. For federal agencies, a state court determination that someone is incapacitated or reports from physicians often provide evidence of a beneficiary's incapacity, but agency procedures also allow statements from lay people to serve as a sufficient basis for determining that a beneficiary needs someone to handle benefit payments on their behalf—a representative payee. SSA, OPM, and VA ask whether the alleged incapacitated person has been appointed a guardian and often appoint that person or organization as the representative payee. In some cases, however, the agencies choose to select someone other than the court-appointed guardian. Social Security officials sometimes designate the nursing home where the incapacitated person resides as the representative payee because it provides for direct payment to the nursing home, ensuring continuity of care for the incapacitated person.[6]

Table 1: Characteristics of Selected Federal Representative Payee Programs

Characteristics	SSA	OPM	VA
Benefit programs with representative payees	Old Age and Survivors, Disability Insurance, and Supplemental Security Income	Civil Service Retirement System, Federal Employee Retirement System	VA Compensation, VA Pension, and other VA programs providing cash benefits
Beneficiaries age 65 and older with representative payee	717,623[a]	5,161[b]	46,449[c]
Beneficiaries of all ages with representative payee	6,863,785[a]	11,157[b]	100,239[c]
Estimated benefits paid in fiscal year 2003 to all beneficiaries with representative payees	$43 billion[d]	$115 million	$1 billion

Source: SSA, OPM, and VA data.

[a]As of December 2003.

[b]As of November 2002.

[c]As of September 30, 2003.

[d]Annualized estimate based on data for December 2002.

[6]In cases where a Medicaid-eligible nursing home resident has insufficient SSA benefits to cover the entire cost of the nursing care; however, the law provides that the resident shall nonetheless be provided a personal needs allowance of at least $30 each month.

In many cases, guardians are appointed with a full range of responsibilities for making decisions about the incapacitated person's health and well-being as well as their finances, but several states' laws require the court to limit the powers granted to the guardian, if possible. The court may appoint a "guardian of the estate" to make decisions regarding the incapacitated person's finances or a "guardian of the person" to make nonfinancial decisions. An incapacitated person with little income other than benefits from SSA for example, might not need a "guardian of the estate" if he or she already has a representative payee designated by SSA to act on their behalf in managing benefit payments. Sometimes the guardian is paid for their services from the assets or income of the incapacitated person, or from public sources if the incapacitated person is unable to pay. In some cases, the representative payee is paid from the incapacitated person's benefit payments.

Guardians and representative payees may have conflicts of interest that pose risks to incapacitated people. While many people appointed as guardians or representative payees serve compassionately, often without any compensation, some will act in their own interest rather than in the interest of the incapacitated person. Oversight of both guardians and representative payees is intended to prevent abuse by the people designated to protect the incapacitated people.

While the incidence of elder abuse involving persons assigned a guardian or representative payee is unknown, certain cases have received widespread attention. The following are examples of abuse by guardians and representative payees provided by courts and federal agencies:

- A guardian and an employee of the guardian's law firm brought a nursing home resident in New York a cake and flowers on her birthday and billed her $850 for the visit using hourly rates for legal services.

- Rather than using electronic direct deposit, a guardian in New York City appointed to protect an incapacitated person regularly traveled to their branch bank in another borough to deposit her monthly $50 Social Security check, charging her $300 per deposit.

- A company in Michigan acting as guardian for more than 600 incapacitated people committed felonies against them, including selling one individual's home to a relative of a company employee for $500.

- A woman in the position of Public Fiduciary at the Gila County Public Fiduciary's Office in Arizona served as guardian of incapacitated

people and in that capacity embezzled and misused a total of at least $1.2 million of public funds. The county's investigation concluded that "the Court's lack of oversight contributed to the enormous loss of public monies."

- A woman in Washington State established a nonprofit service organization that SSA designated as the representative payee for about 200 beneficiaries. One of her clients was a homeless man entitled to retroactive payment of benefits totaling about $15,000. She received the payment on his behalf, but used the money as her own, along with SSA benefits for others. She embezzled a total of approximately $107,000 of SSA benefits.

- A guardian and representative payee for veterans pled guilty to four counts of misappropriation after a joint VA and SSA Office of Inspector General investigation substantiated allegations that he had embezzled over $400,000 from the veterans' estates.

- The head of a foundation in West Virginia serving as a representative payee for 140 people (including veterans and elderly people) embezzled over $300,000 from them over a 4-year period, consisting mostly of Social Security benefits.

State Laws Provide for Court Oversight of Guardianships, but Court Procedures Vary

All 50 states and the District of Columbia have statutes providing for state or local court oversight of guardianship appointments, but court procedures for implementing these laws vary considerably. Generally, guardians submit periodic reports to the court, but courts' procedures for reviewing reports vary, as do procedures for monitoring guardianships and the penalties courts impose when guardians do not perform their duties. Jurisdictional issues, such as courts in 2 states being asked to appoint a guardian for the same incapacitated person, sometimes complicate guardianship appointments. In addition, most state courts surveyed do not maintain information needed for effective monitoring and oversight of guardianships.

State Laws Require Courts to Oversee Guardianships, but Jurisdictional Issues Complicate Oversight

State laws provide for court appointment and oversight of guardianships. Nearly all states require two kinds of reports: one regarding the personal status and well being of the incapacitated person and another regarding the accounting of the person's finances. The personal status reports usually include information regarding the condition of the incapacitated person, although many states require more specific information regarding various aspects of the incapacitated person's status. In many states, the

laws require the report to include documentation of the need for continued guardianship. Many statutory requirements are very detailed and require a physician's statement, a determination of the mental status of the incapacitated person, or in some instances, reports of any change in the condition of the incapacitated person. Other basic report elements may include living conditions, place of residence, and the number of guardian visits. Some states may allow courts to waive certain reporting requirements.

Most states require that guardians submit a financial accounting and record of expenditures for the care of the incapacitated person on an annual basis. This document may list the assets and income of the incapacitated person, including bank balances, real property holdings, and detailed expenses associated with the care and housing of the incapacitated person. State statutes usually require court approval for the sale of real estate by a guardian.

How often guardians are required to submit reports varies. Most states require guardians to submit personal status reports at least annually. Only the District of Columbia's law requires submission at least semiannually. Statutory requirements for filing financial accountings range from annually to at least once every 3 years. (See fig. 2.) In states where accounting frequency requirements are left to the discretion of the courts, the minimum requirement is that an accounting be made upon resignation or removal of the guardian. In many states, there is an explicit requirement that court personnel take action when reports are not filed on time. In Texas, if a guardian of the person fails to file a report or a guardian of the estate fails to file an annual accounting, the guardianship appointment expires.

Figure 2: How Often Guardians' Accounting Reports Must Be Submitted Varies by State

Source: American Bar Association Commission on Law and Aging.

Some state statutes require an independent party or court personnel to determine the accuracy and validity of personal status and accounting reports. However, fewer than half of the states require courts to review the reports guardians have submitted to them. Other states leave it to the court to determine who reviews the reports. For example, Texas specifies that a statutory probate[7] court must review filings as part of the annual determination of the continued need for a guardianship, but provides that courts of general jurisdiction may use any appropriate method determined by the court according to the court's caseload and resources available" in order to assess the continued need for a guardianship.

[7]Typically, probate courts are those that handle cases involving trusts, wills, estates, and guardianships.

Apart from requirements for review of the submitted reports, some states' statutes require a periodic review of the guardianships to ensure that guardians are adequately fulfilling their responsibilities and there is a continuing need for the guardianship. In some states, an investigator will visit the incapacitated person to determine whether there is a continuing need for a guardianship or if the current guardian should be terminated and a new one appointed. For example, Alaska requires courts to evaluate incapacitated persons every 3 years. Some states hold a hearing to assess the continuing need for a guardianship. For example, Connecticut law requires a hearing every 3 years to determine if any changes need to be made to the guardianship appointment.

Many states' laws authorize penalties that courts can impose to enforce guardianship responsibilities. These most frequently include termination of the guardianship appointment or imposition of fines for failure to fulfill responsibilities. Some states have statutes providing for the denial of guardianship fees while others authorize penalties against negligent or ineffective guardians, including charging the guardian with contempt of court, imprisonment, restitution for mismanagement of property, recovery of assets and surcharges, or loss of bond. Many other state statutes allow hearings at the court's discretion or in response to a petition.

Some states are reluctant to recognize guardianships originating in other states, leading to jurisdictional complications. The 1998 Uniform Guardianship and Protective Procedures Act has been adopted into many states' statutes. This act gives courts the power to exercise jurisdiction when an incapacitated person is moved or travels from one state to another. However, these provisions may not sufficiently address all complications that arise in guardianships for the elderly such as when more than one jurisdiction is asked to appoint a guardian for the same incapacitated person. For example, a guardian appointed in one state that attempts to sell an incapacitated person's real property located in another state may need to travel to that state and petition a court there in order to establish authority to act on behalf of the incapacitated person. Interstate jurisdictional issues also arise when the guardian or the incapacitated person needs to move to another state. Issues may also occur in cases involving the physical removal of an incapacitated person from one jurisdiction to another in an effort to gain control over the incapacitated person.

Courts' Procedures for Implementing State Laws Vary

While some state statutes specify minimal requirements for overseeing guardians, individual courts may set their own, sometimes more stringent, requirements and standards. The courts in the 3 states we surveyed (California, Florida, and New York) implemented their state laws through reporting and oversight procedures. (See app. III for a state-by-state compilation of survey results.)

Within the 3 states, court procedures varied for the submission and review of reports guardians are required to submit. Most courts responding to our survey require an initial inventory of assets, income, and liabilities, and courts in Florida and New York typically require annual financial statements or accountings. Most courts in Florida and New York require some or all guardians to submit a financial plan detailing how the guardian will manage the financial affairs of the incapacitated person. Most of the responding courts in California and Florida and all of the responding judicial districts in New York indicated they require some or all guardians to petition or inform the court if plans for the incapacitated person's care change. Nearly all of the courts responding to our survey in each state indicated that judges, court personnel, or court examiners review guardians' reports, and a few courts use volunteers.

In each state surveyed, when guardians receive pay for services, the pay varies. We asked courts about compensation approved in the last 12 months before responding to our survey. Most courts indicated that some guardian compensation was based on an hourly rate. In New York, rates typically ranged from $25 to $400 per hour, in California they ranged from $7 to $250 per hour, and in Florida they ranged from $8 to $85 per hour.[8] In other cases, guardians' compensation was based on the value of an elderly incapacitated person's estate but, while most judicial districts in New York had allowed this, few courts in Florida and about one-quarter of the courts in California had. In each state, most courts responding to our survey required all guardians to submit time and expense records to support petitions for compensation, but other courts in each state only require these reports for some guardians.

In all 3 states, responding courts reported a variety of measures for guardianship oversight. Most California courts indicated that court

[8]The New York State Unified Court System's Commission on Fiduciary Appointments and a Special Inspector General have raised concerns about the selection and compensation of guardians and other fiduciaries in New York, and the court has established the Office of Guardian and Fiduciary Services to help administer a new appointment system.

personnel visit all or almost all the incapacitated people, and several responding Florida courts and two New York judicial districts indicated they had court personnel visit some or most of the incapacitated people. Most responding courts reported that they ask questions raised by guardians' reports, send follow-up letters to conservators, or send notices or orders to appear in court when reports are late, incomplete, or inaccurate.

Most responding courts in each state indicated they had imposed some kinds of penalties when guardians failed to fulfill their responsibilities. The most commonly used measures included withholding or reducing guardianship compensation, terminating guardianship appointments, and contempt of court citations. Several courts indicated they had done one or more of these things more than 10 times during the past 3 years. A 1999 California State law established a statewide registry of private professional guardians and requires courts to notify the registry when a complaint against a guardian is valid. Only one court indicated it had yet notified the registry of a guardian's resignation or removal for cause.[9] Eleven responding courts in California and 9 in Florida indicated they had convicted guardians of a crime against the incapacitated person. In New York, 2 judicial districts had notified the state registry of a guardian's resignation or removal for cause and 1 had convicted a guardian of a crime against an incapacitated person.

Most Courts Surveyed Do Not Track the Number of Active Guardianships

In each state surveyed, some information needed for effective oversight of guardianships, such as the number of people with guardians, was generally not available. In each of the 3 states, one-third or fewer of the responding courts tracked the number of all guardianships for adults that they were responsible for monitoring, and only a couple of courts in each state provided us with the number of these guardianships that were for incapacitated people aged 65 and older. (See table 2.) California courts report the number of probate and guardianship filings they handle each year, including guardianships, probate of decedents' estates, and trusts—for a total of 50,786 filings in fiscal years 2001-2002. The state court administration does not, however, require a separate count of guardianship filings for adults or the elderly.

[9]Staff in the California Attorney General's office responsible for the registry indicated that as of April 2003 the registry consisted of 463 guardians, and in only one instance since the registry's establishment has a court-submitted notice of a complaint.

Table 2: Few Surveyed Courts Tracked the Number of Elderly People with Guardians the Courts Oversee

	Number of courts[a]		Number of judicial districts in New York
	California	Florida	
Provided number of people aged 65 and older with guardians[b]	2	2	2
Provided the number of people with guardians, but not number of those aged 65 and older	8	9	1
Provided neither	32	44	6
Did not respond to survey	16	12	3
Total number of courts and New York State judicial districts	**58**	**67**	**12**

Source: GAO surveys of courts in California, Florida, and judicial districts in New York.

[a]GAO sent surveys to California superior courts in each California county and to Florida circuit courts in each Florida county. GAO sent similar surveys to each New York State judicial district. The population of people 65 years of age or older was about 3.7 million in California, 2.8 million in Florida, and 2.4 million in New York as of July 2001.

[b]Includes one California court that indicated it had no elderly people with a guardian, but did not provide the number of all people (elderly and non-elderly) with guardians.

In 1999, amendments to California law established a statewide registry of private professional guardians, providing courts information about prospective guardians' experience and a record of complaints and cases in which they have had a guardianship appointment terminated for cause. (The names of people on the registry are available to the public.) Florida also maintains a statewide registry of most professional guardians, but registration is not required of nonprofessional guardians.[10] New York also maintains a list of private professional fiduciaries, including guardians. However, most of the courts responding to our survey in each state indicated that less than half of the guardians they appointed were on the state registry. Many of the guardians appointed are family members or friends of the incapacitated elderly person.

[10]Professional guardians in Florida are those who receive compensation for serving more than two incapacitated people who are not family members. Nonprofessional guardians and guardians who are trust companies, state or national banks, federal savings and loans associations, neither state, nor independent colleges or universities are required to register.

Most courts surveyed said they did not have sufficient funds for guardianship oversight.[11] Often the courts handling guardianship matters handle several kinds of cases. In each state, one-fifth or fewer of the judges who hear guardianship cases in the responding courts spend a majority of their time on them. Judges who spend little of their time on guardianship cases tend to focus on each case as it comes up on their calendar and find it difficult to devote the time and resources needed to develop an effective guardianship program, according to some officials at courts recognized as exemplary, but others disagreed saying that general jurisdiction courts can also provide good oversight of guardians. In Florida, about one-fifth of the judges in courts responding to our survey spend the majority of their time on guardianship cases. While in California and New York 17 percent and 12 percent of judges, respectively, spend a majority of their time on these cases.

Courts Recognized as Exemplary Focus on Training and Monitoring

Each of the four courts recognized as exemplary went well beyond minimum state requirements for guardianship training and oversight. Each court provides training of guardians, even though training is only required in one of the state's statutes. (See table 3.) The courts also actively utilize computerized case management, court visitor programs, in-depth review of annual reports, or investigations by court employees to oversee guardianship cases. Two court officials told us that specialization allows courts to focus on issues specific to guardianships and try new strategies to improve the court's oversight of guardians.

[11]In a December 2003 opinion, the Florida Supreme Court called for additional state judges, including 6 in Broward County, citing in part the growing number of guardianship and probate cases due to Florida's growing elderly population.

Table 3: Characteristics of Courts Recognized as Exemplary

	Broward County, Fla.	Rockingham County, N.H.	San Francisco County, Calif.	Tarrant County, Tex. Probate Court #2
Type of court	Probate court	Probate court	Probate Department of the Superior Court	Probate court
Number of people under guardianship	5,000 to 6,000[a]	679[b]	1,350[c]	978[d]
People under guardianship who are elderly	About half	More than half	About three-quarters	299[e]

Source: Court officials and documents.

[a]The court does not keep count of the number of individuals under guardianship as this is done by the Clerk of Court in Florida as an independent constitutional officer. Court officials estimate, based upon the Clerk of Court reports, that there are between 5,000 and 6,000 open guardianship cases for adults and children.

[b]As of December 31, 2003. Number includes adult cases only (minor guardianships tracked separately).

[c]Includes adult cases only (minor cases are called guardianships and are tracked separately).

[d]As of June 2004, including guardianships of adults and children.

[e]As of June 2004.

Courts Recognized as Exemplary Provide Training and Sources of Information Resources for Guardians

The courts recognized as exemplary provide training and/or information resources for guardians. (See table 4.) Of the 4 states in which the courts recognized as exemplary are located, only Florida requires guardians to receive training, but Broward County provides training beyond what is required in state law for nonprofessional guardians and provides supplemental reference materials, such as a software program for preparing guardianship reports.[12] The courts in San Francisco and Tarrant County, Texas, also provide independently developed training for guardians. For example, as of January 2004, the San Francisco court required professional and nonprofessional guardians alike to complete formal classroom training.[13] Working in partnership with a group of

[12]Parents who are appointed guardians of the property of their minor children are subject to different requirements. Each person appointed by the court to be the guardian of the property of his or her minor child must receive a minimum of 4 hours of instruction and training that covers the guardian's duties, preparation of reports, and use of guardianship assets

[13]In California a private professional guardian (conservator) is generally "a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California."

professional guardians, the court developed a required half-day training course that nonprofessional guardians must complete within 6 months of their appointment.

Table 4: Training and Information Resources for Guardians in the Four Courts

	Training requirements in state law	Court procedures exceeding state law
Broward County, Fla.	• Nonprofessional: 8 hours (4 hours parent of minor child.) • Professional: 40 hours, plus 16 continuing education hours every 2 years. • Courses must be certified by state.	• Requires 12-hour course for nonprofessional guardians and a 48-hour course for professional guardians. • Handbook, required forms, required software for preparing guardianship reports, court procedures, and answers to frequently asked questions available on Web site.[a]
Rockingham County, N.H.	• None specified	• Provides information packet and checklist. • Offers informal information sessions with judge. • Provides video explaining guardianship. • Forms, information packet, and checklist available on Web site.
San Francisco County, Calif.	• Required to provide handbook and resource supplement book for local resources.	• Nonprofessionals: must complete up to 6 hours of court-supervised training. Those appointed guardian of person must complete a 3-hour course and those appointed guardian of estate must complete another 3-hour course. • Professionals: complete certificate program at university or demonstrate equivalent experience. • Guardians are required to watch video.
Tarrant County, Tex.	• None specified.	• Court staff provides 20-30 minute training and handbook. • Training also available at local organization offering guardianship services.

Source: Court officials and documents.

[a]The court requires that guardians use this software to prepare initial inventories, initial plans, annual plans, annual accountings, and simplified accounting reports.

Courts Recognized as Exemplary Actively Oversee Guardianships

Each of the exemplary courts uses at least one means to actively oversee guardianships, and while each will penalize guardians who fail to fulfill their responsibilities, two courts dedicate extra resources to enforcement activities. These two, Rockingham County and Tarrant County, oversee guardianship cases through computerized case management systems. The system in Rockingham County automatically notifies court staff when reports are due for each guardianship case. For example, when a guardianship of the estate is established, the system prints a notice to the guardian that an inventory of the incapacitated person's assets must be submitted to the court within 90 days. If the court has not received the inventory, the system notifies court staff that an inventory default notice is needed. This system also tracks the number of new guardianship cases and the total number of active cases. Similarly, Tarrant County enters

information about each new guardianship case into a database. Each month the court generates a list of annual reports that are due and mails the guardians the required report form. The court also enters the date the report is received into the database.

Two of the courts have developed procedures for in-depth review of guardians' reports. In Florida, the state statute requires that the clerk of the court review each guardianship report to ensure that it contains the appropriate information. Broward County has implemented a three-tiered sampling system for reviewing the reports from the substantial caseload of approximately 5,000 guardianships. All reports are subject to the first level of review, which is conducted by the Audit Division of the Clerk of the Court's office. A further sample of reports is selected, and the Audit Division conducts a more intensive second level review. At the third level of review, a further sample of reports is selected, and the audit division conducts detailed in-house and field audits of supporting documentation to verify the information in the reports. If these reviews indicate any irregularities, the Audit Division sends a memorandum to the judge to review the report and the auditor's findings. Tarrant County also employs an auditor who is responsible for monitoring guardianships of the estate. The auditor uses a database to track when guardians' reports are due. Twice a month, the auditor checks this database to ensure that no reports are overdue or overlooked.

As shown in table 5, each court recognized as exemplary uses a visitor program to support guardianship oversight. Tarrant County is required by state law to have court visitors monitor the status of people under guardianship, so the court provides visitation internships to social work students who work as court visitors.[14] A licensed Master Social Worker on the court staff acts as program manager and trains and supervises the interns. The students receive course credit, and the program is of little cost to the court. There are typically 4 or 5 interns making an average of 60-70 visits each month. The visitors submit a report of the visit to the program manager for review, and the judge reviews these reports to guide his or her decision on whether to continue the guardianship for an additional year.

[14]Volunteers also conduct some court visits. The county has a volunteer coordinator who assists in finding volunteers who are interested in doing court visits. The court asks volunteers to make a 1-year commitment. Volunteers attend the 4-hour orientation and training.

Rockingham County recruits volunteers from AARP to serve as either visitors or researchers. Researchers prepare files for the court with contact information, case background, and the last annual guardian's report. The visitors then contact the guardian and arrange to visit the incapacitated person. They assess the ward's living situation, finances, health, and social activities, and recommend follow-up actions to the court. A court employee serves as the volunteer coordinator. According to the volunteer coordinator in Rockingham County, costs are minimal because volunteers use court telephones, and the state provides supplies. According to the court, the detailed, first-hand information provided about the incapacitated person's environment and condition helps the court make better decisions when the case is reviewed.

Table 5: Oversight Procedures in the Four Courts

	Requirements in state law	Court procedures exceeding state laws
Broward County, Fla.	**Monitoring:** • Court may require background investigation of nonprofessionals. • Court must require initial background investigation of professionals and reinvestigate every 2 years. • Clerk's office is required to audit guardian reports. • Registration of professional guardians. • Bond required for all. **Enforcement:** • Court may employ court monitors. • Show cause hearing, etc., for delinquent reports.	• Background investigations of all guardians required. • Background investigations required annually. • 3-tiered report review system. • Electronic reporting software. • The Office of the Public Guardian—a publicly funded agency that serves as a guardian, which is one of only a handful in the state. • Full-time court monitor on staff and part-time contractors to investigate abuse.
Rockingham County, N.H.	**Monitoring:** • Bond required for all guardians. • Criminal background check required for guardians of the person. **Enforcement:** • Court may issue show cause order, fine guardian, arrest guardian, or terminate guardianship for failure to file reports.	• Volunteer Court Visitor program. • Follow-up on court visitor recommendations.
San Francisco County, Calif.	**Monitoring:** • Court investigators visit incapacitated people 1st year then every other year. • Status reports required for guardians of estate who are also guardians of person. • Statewide registration system for professionals. • Full bond on all liquid assets required for all guardians. **Enforcement:** • Punish or remove guardian, suspend powers, appoint legal counsel, or granting a 60-day extension.	• General Plan required for all guardianships. • Status report required for all guardianships of person after first year then every other year even if no guardianship of estate exists. • Examiners review accountings. • Yearlong study on guardianship data. • More frequent investigations on troubled cases. • Investigations on all petitions for termination of guardianship.
Tarrant County, Tex.	**Monitoring:** • Court visitor program. • Annual renewal of guardianship letters. • Judge considers and approves annual accounts. • Criminal background check for professionals required. • Bond required for all guardians. **Enforcement:** • Show cause hearing, fine, or removal if necessary. • Court investigator investigates complaints. • Authority to sentence guardians to jail for misconduct.	• Court visitors are social work students. • Database system to track open cases. • Auditor reviews annual accounts. • Program Manager follows up on concerns in guardian and court visitor reports before judge's review. • Criminal background checks for nonprofessional guardians in court-initiated guardianship.

Source: Court officials and documents.

When guardians fail to fulfill their responsibilities, the courts have legal authority to penalize guardians, and two of the courts recognized as exemplary have staff dedicated to investigating these types of cases. Broward County employs court monitors to investigate abuse allegations involving guardians, or problems discovered due to annual background checks, report review, or other tips. A study of statewide guardianship monitoring practices found that Broward County conducts about 400 field investigations a year, some of which have resulted in referrals to the state attorney for prosecution.

State Courts and Federal Representative Payee Programs Serve Many of the Same Incapacitated Elderly People, but Collaborate Little in Oversight Efforts

Federal agencies and state courts' representative payee programs collaborate little to protect incapacitated people and prevent misuse of federal benefits. Although overlap is known to occur among the incapacitated populations they serve, the extent of this overlap is not known. Some state courts and federal agencies share certain information on a case-by-case basis. However, the absence of a systematic means for compiling and exchanging pertinent information may leave many incapacitated people at risk and result in the misuse of benefits and increased federal expense. State courts and federal agencies lack consistent and sustained compilations of data needed to assess options for improving oversight of guardians and representative payees.

Beneficiary Populations Overlap, but Coordination Is on a Case-by-Case Basis

The incapacitated populations served by state courts and federal agencies overlap to some extent. Because we focused on incapacitated elderly people, we did not assess overlaps between agencies' general beneficiary populations. (See table 6.) An estimated 95 percent of all people 65 and older are SSA recipients, and elderly recipients of OPM or VA benefits often also receive SSA payments. An estimated 96 percent of VA beneficiaries aged 65 and older are also SSA recipients and about 9 percent are OPM beneficiaries. Also, an estimated 82 percent of OPM elderly beneficiaries are also SSA beneficiaries. While there are no data on the number of beneficiaries who are incapacitated in each category, it is likely that a number of incapacitated people are beneficiaries from more than one federal agency, and a number could also have court-appointed guardians.

Table 6: Many Elderly People Receive Benefits from More than One Federal Agency

Agencies providing benefits[a]	Estimated number of beneficiaries aged 65 or older[a]
SSA and VA	1,164,000[b]
SSA and OPM	1,191,000
VA and OPM	109,000
SSA, VA, and OPM	100,000

Source: Census Bureau analysis of Survey of Income and Program Participation (SIPP) Data, 2001, Wave 6 survey results.

[a]Each estimate includes beneficiaries listed in other rows. For example, about 100,000 of the estimated 1,164,000 people aged 65 or older who were beneficiaries of both SSA and VA were also OPM beneficiaries.

[b]The 90 percent confidence interval for this estimate is from 1.0 to 1.3 million elderly people.

Like many courts that oversee guardianship programs, federal agencies collect certain information from representative payees.[15] SSA annually sends each representative payee (whether a court-appointed guardian or not) a two-page report form asking for certain information—for example, whether the representative payee was convicted of a felony, whether the beneficiary continued to live in the same circumstances, how much of the benefit payments were spent on the beneficiary's behalf, how much was saved, and in what kind of account the funds are held.[16] Similarly, OPM biennially sends its representative payees a brief survey asking for similar information, though those who are court-appointed guardians are not required to complete the survey. OPM leaves it to the courts to monitor these payees. VA also requires its representative payees to submit a two-page accounting report, but asks payees who are court-appointed guardians to submit the same accountings that they submit to the court. Each agency sends follow-up mailings, and SSA and VA visit payees as needed in cases where payees fail to submit a report. In addition, VA sends field examiners to visit each incapacitated beneficiary. Agency officials indicated that these efforts often help identify cases in which beneficiaries or representative payees have moved or cases where a payee may need to be replaced for a variety of reasons. For example, they may no longer be living close enough to the beneficiary or they themselves have become

[15]Each of the three agencies has its own criteria and process for identifying beneficiaries in need of a representative payee and though the three agencies use terms such as "incompetence," we use the term "incapacitated."

[16]State mental hospitals that are representative payees are subject to different accounting requirements and are subject to on-site reviews by SSA staff.

unable to handle the benefit payments. Typically, however, cases of abuse come to the agencies' attention by way of tips from individuals who know of the beneficiary rather than from report and survey follow-up efforts.

Some state courts and federal agencies share certain information about some beneficiaries on a case-by-case basis. Some state court officials that we spoke with indicated that they have established a rapport with staff in local offices of federal agencies, such as SSA and VA, and are able to obtain information concerning incapacitated beneficiaries or their representative payees. (See table 7.) For example, upon request, federal agencies will sometimes provide them with information to allow the court to determine all sources of the incapacitated person's income and whether the guardian needs to coordinate with a payee. State courts may also offer information to federal agencies. For example, some courts send occasional notices of guardianship appointment to SSA, allowing SSA staff to identify which of their beneficiaries is incapacitated and determine if the guardian can be designated as a representative payee.

While coordination is often case-by-case, some takes place more systematically and is based on previously established agreements. For example, about one-third of the states have adopted the Uniform Veterans' Guardianship Act that requires state courts to notify VA when they appoint a guardian for a veteran. According to this act, VA must receive copies of court orders and accountings related to the veteran's case. The act also gives VA the right to appear in court during guardianship proceedings involving a veteran.

Federal agencies may also establish agreements with one another to exchange information. For example, SSA allows a limited number of VA service representatives nationwide to electronically access some SSA information about veterans' SSA benefits. This SSA data system includes the amount of SSA benefits veterans receive, whether SSA has identified them as incapacitated, and the identity of a representative payee, if one has been designated. VA officials regularly look at SSA's information before conducting a field examination to help determine incapacity and choose a fiduciary, according to a VA official responsible for managing the agency's fiduciary program. VA is not, however, notified when SSA changes a beneficiary's representative payee. Many VA representative payee program staff that do not currently have access to the database see

it as a useful tool and have expressed a desire to be able to use it in order to more efficiently assess beneficiaries' needs.[17]

Lack of Systematic Coordination Weakens Oversight of Incapacitated People

The lack of systematic coordination weakens the oversight of both elderly and non-elderly incapacitated people and may leave incapacitated people at risk of not being assigned a representative payee or guardian despite having been identified either by a state or federal entity as a person who needs one. For example, if a federal agency has identified one of its beneficiaries as incapacitated and assigns a representative payee, the agency does not systematically notify the courts or other agencies. (See table 7.) The other agencies making payments to the same person may not learn that they may need to assign a representative payee to handle their benefit payments to the person. Such notification could also be useful to state courts in assessing the need for a guardian. This lack of coordination could leave the incapacitated person who needs a representative payee or guardian without one.

[17]Without the information on SSA benefits being provided to veterans, VA staff would have to find benefit and income information through other means, and they would have no way to verify the information. There is a potential for fraud, since a beneficiary could claim to not receive Social Security benefits, when in fact the person does receive a benefit and this may affect their eligibility for VA benefits. In addition, without information from SSA that may help indicate a veteran's total income, VA may recommend an inappropriately low spending allowance for the incapacitated person.

Table 7: Representative Payee Programs' Gathering and Exchange of Information

Information gathered or exchanged	SSA	OPM	VA
Ask whether incapacitated beneficiary has a court-appointed guardian?	Yes	Yes	Yes
Compile names of guardians not designated as agency's payee?	No	Not applicable[a]	No
Give other agencies/courts access to database with name of representative payee?	Yes, VA access only	No	No
Systematically notify other agencies/courts of assignment of a representative payee?	No	No	Not other agencies, courts in some cases[b]
Systematically notify other agencies/courts of the replacement of a representative payee?	No	No	Not other agencies, courts in some cases[b]

Source: GAO interviews with SSA, OPM, and VA officials.

[a]OPM's policy is to designate the guardian as the representative payee.

[b]A VA official indicated that VA typically informs the court by letter if it selects a new or successor representative payee other than one who was previously appointed by the court.

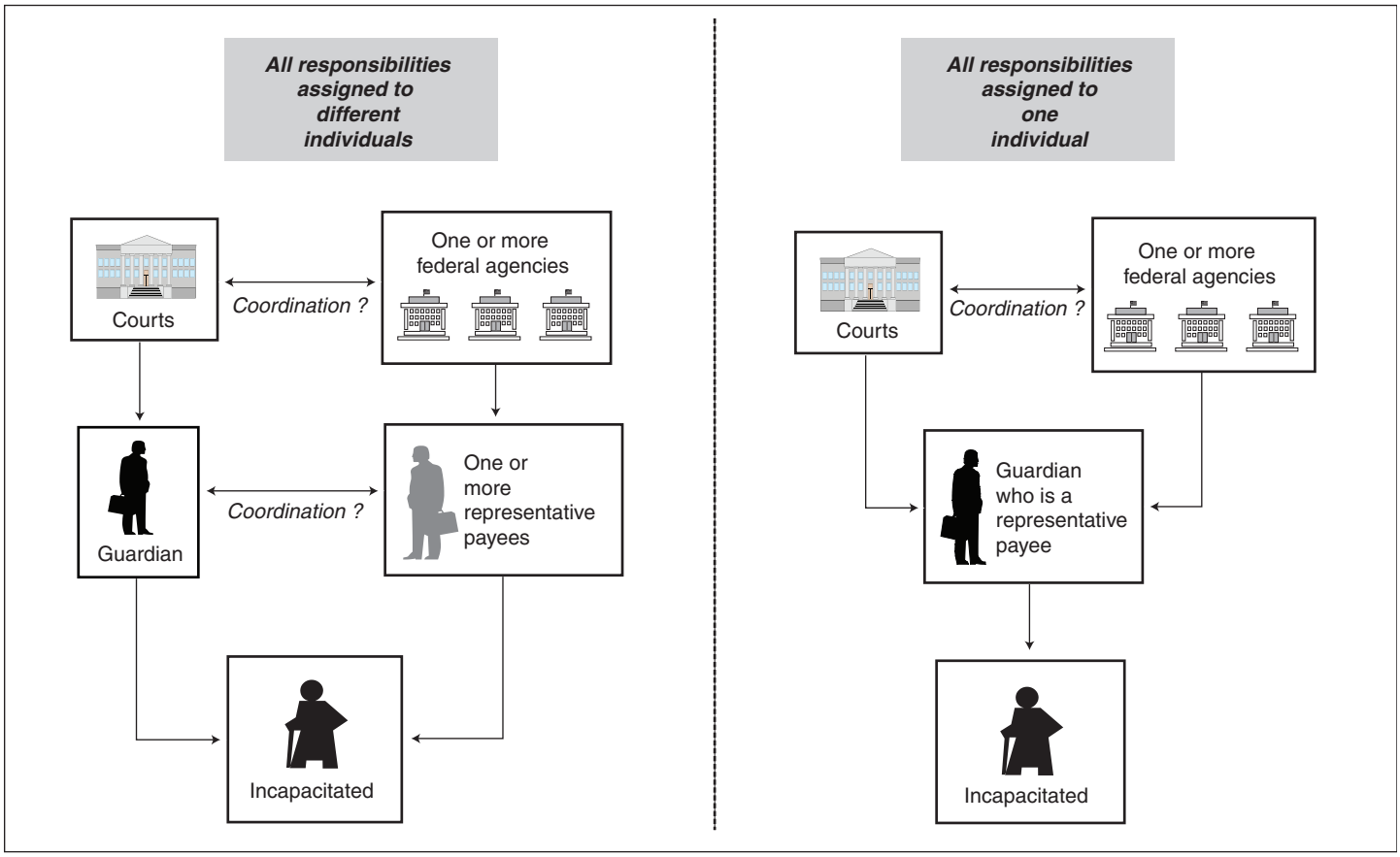
Insufficient interagency coordination may also leave incapacitated elderly people more vulnerable to abuse or neglect. For example, when an agency identifies a representative payee who is abusing or neglecting an incapacitated person, it does not automatically notify the state court or other federal agencies that have assigned a guardian or representative payee. Without such a notification, the court or other federal agency may be unaware of the need to replace an abusive or negligent guardian or representative payee.

If agencies and courts do not communicate with each other concerning incapacitated beneficiaries, they may unknowingly assign different people as representative payees or guardians with overlapping responsibilities. However, in some cases, agencies and courts intentionally select different people or organizations as representative payee or guardian. Although most Old Age, Survivor, and Disability Insurance beneficiaries with both a guardian and SSA-designated representative payee, have the same person serving in both roles, for an estimated 19 percent of these beneficiaries the guardian is not their representative payee.[18] Some guardians choose not to

[18]SSA estimated that as of December 2002, 250,000 Old Age, Survivor, and Disability Insurance beneficiaries had both an SSA-designated representative payee and a court-appointed guardian. For about 48,000 of these beneficiaries the guardian was not the designated representative payee.

be the representative payee, so SSA designates someone else. (See fig. 3.) Sometimes VA designates a nursing home as a representative payee, even though a court has appointed a family member or other person to be the incapacitated resident's guardian. The guardian and the nursing home may get into conflict over the use of the incapacitated person's benefit payments. Additional coordination among federal agencies and courts and cooperation among guardians and representative payees may be necessary to avoid conflicts and better protect the incapacitated person.

Figure 3: Federal Agencies and the Courts May or May Not Assign Representative Payee and Guardianship Responsibilities to the Same Individual



Source: Interviews with court officials and federal officials responsible for for SSA, VA, and OPM representative payee programs.

Federal officials have recognized the need for better exchange of information regarding incapacitated beneficiaries. In response to provisions in the Omnibus Budget Reconciliation Act of 1990, SSA and VA studied the feasibility of collaborating in serving veterans who were also SSA beneficiaries.[19] In 1993, several agencies participated in a discussion group on representative payee programs. Two of the agencies—SSA and VA—signed an agreement calling for each agency to notify the other when it had information that could be helpful to the other agency's oversight of its representative payee.[20] However, according to VA and SSA officials, efforts to implement the agreement failed due to changes in management personnel, concerns about costs, and issues concerning nondisclosure of confidential information.

Not only is it likely that the lack of coordination limits the protection of incapacitated people and their federal benefits, it may also result in increased federal expenditures. The recently enacted Social Security Protection Act of 2004 requires SSA to repay the benefits in certain cases of misuse.[21] For example, if a representative payee that is an organization, or an individual serving 15 or more beneficiaries misuses the benefit payments, SSA will have to reissue the misused benefits to the beneficiaries or to an alternate representative payee, resulting in increased federal expenditures. Before the passage of this act, SSA was only required to replace benefits if SSA was negligent in its oversight of a representative payee. Annually, SSA has found fewer than 1,000 cases of misuse, and only in a small percentage of those cases was SSA found to be negligent. However, according to an SSA official, the new provisions may mean that more benefits will have to be reissued.

[19]These and other federal agencies currently collaborate in the exchange of data on beneficiaries for other purposes. For example, through SSA's Death Master File federal and state agencies, including SSA, OPM, and VA, periodically match their beneficiary lists with lists of people who have died. This cooperative effort helps agencies ensure that they do not continue to send payments to people who are no longer eligible.

[20]Memorandum of Understanding between the Social Security Administration and the Department of Veterans Affairs, signed by Acting Commissioner, SSA, and Undersecretary for Benefits, October 13, 1993.

[21]Pub. L. No. 108-203 §101, March 2, 2004.

Statistical Data to Analyze Options for Improving Oversight Not Available

Certain data, such as the number of active guardianships and incidence of abuse, could help courts and agencies determine the effectiveness of efforts to protect incapacitated people but are not currently available. The courts we surveyed generally do not compile aggregate data such as the number of incapacitated people, or elderly incapacitated people, with guardians. Often the only records concerning guardianship appointments aside from a calendar of upcoming hearings and due dates for required reports are in individual paper files. Some states, however, are making efforts to compile statewide data on guardianships. In Vermont, for example, the Supreme Court compiles reports from each court on the number of open guardianship cases, but without any information on the age of the incapacitated people. In New York, the state court's Guardian and Fiduciary Services is working on the development of a statewide database on guardians, fiduciaries, and the people they were appointed to serve.

The federal agencies that we examined, SSA, VA, and OPM, do more to compile data on representative payees than most courts responding to our 3-state survey do for incapacitated people with guardians. All three of the federal agencies that we examined have databases that keep count of the different types of representative payees for incapacitated people. Neither SSA nor VA, however, consistently compiles information showing how many beneficiaries with representative payees have a court-appointed guardian who is not the representative payee.[22]

To keep these databases current, all three agencies require most of their representative payees to submit periodic reports. SSA, VA, and OPM compile and maintain basic information, such as contact information, about the representative payees they designate. They also ask whether an incapacitated beneficiary has a court-appointed guardian before designating a representative payee. They do not, however, compile and maintain more detailed information that could contribute to more effective oversight of representative payees. For example, none of these agencies consistently records information about a beneficiary's court-appointed guardian in its computerized records system or updates the information unless the agency also designates the court-appointed guardian as its beneficiary's representative payee. Although SSA compiles some information about the reasons it replaces representative payees, such as the assignment of a more suitable payee, misuse of benefits, or fraud, for

[22]OPM's policy is to designate the guardian as the representative payee.

example—OPM and VA do not. This information might be useful in making future assignments.

Sufficient data are not available to determine the incidence of abuse of incapacitated people by guardians or representative payees, nor the extent to which guardians and representative payees are protecting incapacitated people from abuse. Current efforts to compile aggregate national data on elder abuse do not identify cases when a guardian or representative payee has been assigned to the victim of abuse, or whether a guardian or representative payee commits the abuse. States compile statistics on incidence of abuse and neglect, including information on the age of victims.[23] National associations collect these statistics from Adult Protective Service agencies and Area Agencies on Aging. Generally, states track types of abuse and some of the relationships between perpetrators and victims, but they do not track instances where the victim had been assigned a guardian or representative payee or had granted a power of attorney to someone. As a result, federal agencies lack national data concerning the incidence of elder abuse by guardians and representative payees or the incidence of abuse with and without the assignment of a guardian or representative payee. Similarly, national crime statistics, such as crime victimization surveys, identify various relationships between victims and perpetrators, and the age of victims, but fail to identify cases involving guardians or representative payees. SSA tracks the number of cases in which representative payees are found to have misused benefits—fewer than a 1,000 cases each year for beneficiaries of all ages. SSA officials agreed, however, that since SSA largely relies on tips from third parties to discover cases of misuse, their records of misuse might be incomplete.

Conclusions

Although state and local courts have primary responsibility for protecting incapacitated people, including the elderly, by appointing and overseeing guardians, federal agencies also have responsibilities to help protect many of the same incapacitated people through representative payee programs. Yet, courts and federal agencies collaborate little in the protection of incapacitated elderly people and the protection of federal benefit payments from misuse. Court and agency efforts to improve protection of the incapacitated is limited by their failure to systematically compile and exchange data—by, for example, promptly notifying each other when an

[23] 42 U.S.C. §3058i.

incapacitated person is identified or a representative payee or guardian is appointed or needs to be replaced, due to their failure to fulfill their responsibilities, or for other reasons. However, the extent to which the courts and agencies leave elderly incapacitated people at risk is unknown. Neither the states nor the federal government compile data concerning the incidence of abuse of people assigned a guardian or representative payee or even the number of elderly people with guardians. Without better statistical data concerning the size of the incapacitated population or how effectively it is being served, it will be difficult to determine precisely what kinds of efforts may be appropriate to better protect incapacitated elderly people from exploitation, abuse, and neglect.

Improvements in oversight of guardians and representative payees depend in part on additional efforts by states, state and local courts, federal agencies, state area agencies on aging, and HHS. Although the focus of our review was elderly incapacitated people, state guardianship and federal representative payee programs also serve other incapacitated adults. Improvements could be of benefit to all incapacitated adults, particularly if they are designed with both the elderly and non-elderly in mind. However, certain actions that would improve oversight are not currently being undertaken. For example, the various entities responsible for oversight do not collaborate to compile, on a continuing basis, consistent national data concerning guardianships and representative payees. Without such statistical data, the extent of preventable abuse and neglect of incapacitated elderly people is unknown. Finally, the states have done little to collaborate on interstate recognition and transfer of guardianship appointments. Few states have adopted procedures for accepting transfer of guardianship from another state or recognizing some or all of the powers of a guardian appointed in another state. This can be a problem when an incapacitated elderly person needs to move to another state or the guardian needs to conduct business in another state on his or her behalf. The need to establish a new guardianship in another state because of these gaps in states' law can make it difficult for guardians and the courts that supervise them to ensure that they fulfill their responsibilities.

The prospect of increasing numbers of incapacitated elderly people in the year's ahead signals the need to reassess the way in which state and local courts and federal agencies work together in efforts to protect incapacitated elderly people.

Recommendations

To increase the ability of representative payee programs to protect federal benefit payments from misuse, SSA should convene an interagency study

group that includes representatives from HHS, federal agencies with representative payee programs, including VA and OPM, and state courts that wish to participate in order to study the costs and benefits of options for improving interagency cooperation and federal-state cooperation in the protection of incapacitated elderly and non-elderly people. Options may include:

- prompt and systematic sharing among federal agencies' representative payee programs of information such as the identity of individuals who are incapacitated, the identity of those individuals' designated guardians and representative payees, the identity of guardians and representative payees who fail to fulfill their duties, and the assignment of successor guardians and successor representative payees; and

- prompt and systematic sharing of similar information among federal agencies and courts responsible for guardianships that choose to participate.

Information-sharing initiatives must be designed in a manner that is cost-effective, respectful of privacy rights, and consistent with federal nondisclosure requirements concerning confidential information.

To facilitate state efforts to improve oversight of guardianships and to aid guardians in the fulfillment of their responsibilities, the Department of Health and Human Services should work with national organizations involved in guardianship programs, such as the those represented on the National Guardianship Network, to provide support and leadership to the states for cost-effective pilot and demonstration projects to:

- develop cost-effective approaches for compiling, on a continuing basis, consistent national data concerning guardianships to aid in the management of programs for protecting incapacitated adults, such as the age of the incapacitated person, the type of guardian appointed, etc;

- study options for compiling data from federal agencies and state agencies, such as Adult Protective Services agencies, concerning the incidence of elder abuse in cases in which the victim had granted someone the durable power of attorney or had been assigned a fiduciary, such as a guardian or representative payee, and in cases in which the victim did not have a fiduciary; and

- review state policies and procedures concerning interstate transfer and recognition of guardianship appointments to facilitate efficient and cost-effective solutions for interstate jurisdictional issues.

Agency Comments

We provided a draft of this report to SSA, OPM, VA, and HHS and received written comments on the draft from all four. See appendixes IV, V, VI, and VII for their responses.

SSA disagreed with our recommendation concerning an interagency study group. It views the study we recommend as something beyond its purview. Although SSA shares concern about incapacitated people's general welfare, it stated that its responsibility focuses on ensuring that any SSA benefits incapacitated people receive are used for their maintenance and welfare. SSA stated that systematic sharing of information among federal agencies and state courts would be extremely difficult and a study group focusing on such sharing would not be within SSA's purview. SSA also commented that efforts to coordinate with state courts must meet Privacy Act requirements, and in that regard they noted that there is currently no statement of routine use allowing SSA to share representative payee information with state courts. Because state courts, SSA, and other federal agencies have such different policies regarding representative payees and guardians, SSA believes that it is constrained by the Privacy Act in releasing information.

We believe that the systematic exchange of data could help SSA better ensure that SSA benefits are used for incapacitated people's maintenance and welfare. The interagency study group should be able to develop policies allowing for the sharing of information consistent with the Privacy Act and other applicable nondisclosure requirements. We believe that an interagency study group could identify carefully specified kinds of information that under specified circumstances could be shared among limited numbers of federal and state court officials with jurisdiction over guardianships in a manner that is consistent with the Privacy Act and other applicable nondisclosure requirements. SSA and the other federal agencies involved have the authority to develop statements of routine use to provide for such exchange of information. They currently have such agreements in place to share data with other federal agencies, such as SSA's sharing of information concerning its representative payees with a limited number of VA staff. Although exchange of data among federal agencies with representative payee programs may be easier to establish than exchange between federal agencies and state courts, further study is warranted to assess the feasibility of such exchange and the extent to which it could enable courts and federal agencies to better protect incapacitated elderly people.

VA and OPM agreed with our conclusions pertaining to their agencies, indicating that they look forward to participating in the study group we are recommending. VA noted wide variations in state guardianship laws and procedures, the need for federal agencies and state courts to share information on cases of common interest, and the current lack of systematic information sharing among federal agencies state agencies, and state courts relating to the protection of elderly beneficiaries. OPM suggested that we assert that it would be to the federal government's benefit, either in terms of efficiency or savings, to create systems for sharing information on guardians or representative payees. OPM also urged that we add to the report statistics demonstrating the efficiency of coordination with state courts. Although adding these would strengthen the report, data necessary to do so are not currently available. Our findings strongly suggest that savings and greater efficiency would result from collaboration, but the extent to which this is the case will not be known until agencies and state courts start collaborating in efforts to assess overlaps in the populations of incapacitated people they serve, incidence of abuse, and the costs and benefits of data exchange.

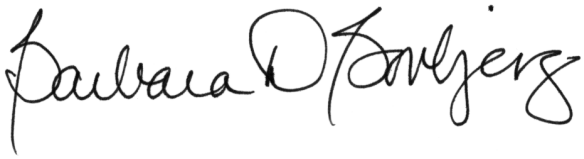
HHS agreed that guardians should be adequately trained and monitored, and that governmental agencies and courts should coordinate their efforts and share information concerning guardians and representative payees. HHS plans to carry out our recommendation to study options for compiling data from federal agencies and state agencies concerning the incidence of elder abuse in cases in which the victim had granted someone the durable power of attorney or had been assigned a fiduciary, such as a guardian or representative payee. This year the National Center on Elder Abuse will survey all state adult protective services agencies to determine the incidence of elder abuse reports and the characteristics of victims and perpetrators. The center plans to ask states to cite the number or percentage of perpetrators of elder abuse who served as the victims' powers of attorney, guardians, or representative payees. HHS also plans to explore cost-effective pilot and demonstration projects to develop approaches for compiling guardianship data and to facilitate solutions for interstate jurisdictional issues. It also agreed to serve on an interagency study group to develop options for improving interagency cooperation and federal-state cooperation in the protection of incapacitated elderly and non-elderly people.

As agreed with your office, unless you publicly announce its contents or authorize its release sooner, we will not distribute it until 30 days from the date of issuance. At that time, we will send copies of this report to the Commissioner of Social Security, the Director of the Office of Personnel

Management, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. We will also make copies available to others on request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov/.

If you have any questions concerning this report, please contact Barbara Bovbjerg or Alicia Puente Cackley at (202) 512-7215. See appendix VIII for other contacts and staff acknowledgments.

Sincerely yours,



Barbara D. Bovbjerg
Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methodology

Our review included a review of state laws on guardianship, the development and administration of surveys of state courts in 3 states, visits to 15 courts in 8 states, and interviews with federal officials at the Social Security Administration (SSA), Department of Veterans Affairs (VA), Office of Personnel Management (OPM), and the Department of Health and Human Services (HHS). In addition, one member of the team completed a 2-day training program for professional guardians in Washington State and two attended a conference of the National Guardianship Association. We conducted our review between March 2003 and May 2004 in accord with generally accepted government auditing standards.

To determine what state courts do to ensure that guardians fulfill their responsibilities, we studied both states' laws concerning guardianship and court practices, particularly those concerning court oversight of guardians. Our review of states' laws relied in part on the compilations prepared by the American Bar Association Commission on Law and Aging. To review court practices we limited our scope to courts with jurisdiction over guardianships for the elderly in the three states with the largest elderly populations (residents aged 65 and older)—California, New York, and Florida. Together these three states account for about one-quarter of the nation's elderly population. We administered similar survey instruments tailored to the courts in each of these states. We refined the survey instruments based on pretest visits to court officials at three counties in California, three counties in Florida, and two counties in New York. We sent finalized survey instruments to California Superior Courts in each of California's 58 counties, to circuit courts in each of Florida's 67 counties, and to each of New York's 12 judicial districts. We received usable survey responses from 42 California courts, 55 Florida courts, and 9 of New York's judicial districts for response rates of 72 percent, 82 percent, and 75 percent, respectively. Several courts provided responses to some items, but no responses to other items in the survey instrument. For details on the numbers of responses to each item and a compilation of responses by state, see appendix III. We reviewed courts' survey responses for consistency, but did not independently review the accuracy of the court officials' responses.

To determine what guardianship programs recognized as exemplary do to ensure that guardians fulfill their responsibilities we visited 4 courts to study their procedures. We selected the four courts by contacting

members of the National Guardianship Network and asking them which courts throughout the nation they regard as having exemplary practices.[1] The four courts we selected were each identified as exemplary by two or more members of the network. We visited each of the courts and interviewed judges, probate directors, monitoring staff, volunteers, legal staff, and others. In two of the courts, we attended guardianship hearings. We reviewed each of the court's documents concerning probate procedures including state laws, rules of court, training materials, forms, and written and Web site documents. We also examined examples of guardianship case files.

To determine to what extent do state courts and federal agencies coordinate their efforts to protect incapacitated elderly people, we interviewed court officials in each of the four courts recognized as exemplary and in several additional courts. We attended the National Guardianship Association's conference including sessions concerning guardianships and VA and guardianships and the Healthcare Insurance Portability and Privacy Act of 1996.[2] We met with a group of conference attendees, including judges, probate lawyers, and guardians, to discuss federal agencies' interactions with guardians and courts. We also reviewed documents provided by court officials concerning specific cases in which federal agencies were involved in guardianship cases. We also interviewed officials at SSA, VA, OPM, and HHS and reviewed applicable regulations and policy manuals and handbooks.

[1]The National Guardianship Network is a joint council representing the National College of Probate Judges, National guardianship Association, American Bar Association—Commission on Law and Aging, National Center for State Courts, National Academy of Elder Law Attorneys, National Guardianship Foundation, American Bar Association—Real Property Probate and Trust Section, and American College of Trust and Estate Counsel.

[2]Pub. L. 104-191, August 21, 1996.

Appendix II: GAO Surveys of Courts in California, Florida, and New York

The following are surveys GAO mailed to the California Superior Court in each of the 58 counties in California, the Florida Circuit Courts in each of the 67 counties in Florida, and the 12 Judicial Districts in New York. For summary results of the survey, see appendix III.

U.S. General Accounting Office

Survey of California Courts Concerning Conservatorships for the Elderly

Introduction

GAO is an agency of the U.S. Congress. The Senate's Special Committee on Aging asked GAO to study how courts handle conservatorships for elderly people (aged 65 and older), including the policies and programs used to oversee conservators over both property and person.

We recognize that there are considerable differences in policies and procedures among the states and among courts in some states. For this reason, we are surveying courts with jurisdiction over conservatorships in the three states with the largest elderly populations. California is one of these three states.

While most data from our survey will be reported in a summary for the state, we are interested in illustrating local practices and may use some data from individual courts.

Instructions

We ask that you coordinate with others as needed to complete the survey. Depending on your jurisdiction, this may include investigators, staff attorneys, law clerks, judges, or others.

Please return your completed survey in the enclosed envelope within two weeks of receiving it. This will help us avoid the expense of follow-up phone calls.

If you have any questions or your survey will be delayed, please call Ben Pfeiffer at 206-287-4832 (email: pfeifferb@gao.gov).

If the envelope is misplaced or missing, please return your survey to

Ben Pfeiffer
U.S. General Accounting Office
Seattle Field Office
701 Fifth Avenue, Suite 2700
Seattle WA 98104

Thank you for your help!

Background Information

1. Please provide the name(s) and contact information for the person(s) who filled out the survey in case we want to ask you more about your responses. *(If more than two people provided responses, please list others on the back page, or provide an extra page.)*

a. Primary contact's name _____

Title _____

Phone _____

Email _____

b. Name _____

Title _____

Phone _____

Email _____

Court Policies and Procedures

2. Which of the following resources are available to conservators appointed by your court? *(Check one for each resource.)*

	Yes	No
A. Summary of statutory duties of conservators		
B. List of resources and contacts for conservators (e.g., Area Agencies on Aging, county/state support agencies, etc.)		
C. Training classes		
D. Training video		
E. Conservator handbook or manual		
F. Online reporting forms		
G. Examples of model reports		
H. Other *(please specify)*		

3. Does your court require formal training (e.g., classes, videos, instructional meetings) for any of the following types of conservators? *(Check one for each row.)*

	Training required for		
	All	Some	None
A. Conservators who are family members or friends			
B. Conservators who are attorneys			
C. Conservators (not family members, friends or attorneys) who are paid from public sources (e.g., social service agencies, etc.)			
D. Conservators (not family members, friends or attorneys) who are paid from the income or assets of the conservatee			
E. Others *(please specify)*			

4. Does your court require ***conservators over property*** to submit documentation of the following items, either separately or as part of a report? *(Check one for each item.)*

Conservators over property	Required for all	Required for some	Not required
A. Initial inventory of assets, income, and liabilities			
B. Annual financial statements or accountings			
C. More frequent than annual financial statements or accountings			
D. Less frequent than annual financial statements or accountings			
E. Written financial plan			
F. Written report and/or petition when plans change			
G. Other *(please specify)*			

2

5. Does your court require ***conservators over persons*** to submit documentation of the following items, either separately or as part of a report? *(Check one for each item.)*

Conservators over persons	Required for all	Required for some	Not required
A. Initial description of personal status			
B. Annual personal status reports			
C. More frequent than annual personal status reports			
D. Less frequent than annual personal status reports			
E. Written plan for personal care			
F. Written report and/or petition when plans change			
G. Other *(please specify)*			

Monitoring Conservatorships

6. How sufficient is your court's funding for monitoring conservatorships? *(Check one.)*

A. Much more than sufficient
B. More than sufficient
C. Sufficient
D. Less than sufficient
E. Much less than sufficient
F. No funds available for this purpose

7. Do courts in your county require that ***conservators over property*** be bonded? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
Which conservators must be bonded?
_____
_____

C. Not required for conservators over property

8. Do courts in your county require background checks on ***conservators over property***? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
For which conservators are background checks required?
_____
_____

C. Not required for conservators over property

9. Do courts in your county require background checks on ***conservators over persons***? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
For which conservators are background checks required?
_____
_____

C. Not required for conservators over persons

3

10. Other than relying on reports by conservators, which, if any, of the following strategies does your court use *after the initial hearing* to assess the personal status of people who have conservators appointed by the court? *(Check one for each strategy.)*

Court strategy	All/almost all the cases	Most cases	About half the cases	Some cases	No cases
A. Personal visits by court official					
B. Personal visits by persons outside the court, other than the appointed conservator					
C. Periodic hearings on the continued need for conservatorship					
D. Other *(please specify)*					

11. Who reviews financial and personal status reports submitted by conservators appointed by your court? *(Check one for each type of reviewer.)*

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
A. A judge					
B. Court personnel other than judges					
C. Volunteers					
D. Government agencies other than the court					
E. Other *(please specify)*					

12. What steps, if any, are taken to verify information in financial and personal status reports? *(Check one for each step.)*

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
A. Information in personal status reports is verified.					
B. Information in financial reports is verified.					
C. Supporting documentation for financial information must be submitted (e.g., bank/brokerage statements).					
D. Other *(please specify)*					

4

13. Is your court required to document approval of financial and personal status reports? *(Check one.)*

A. Only required to document approval of financial reports
B. Only required to document approval of personal status reports
C. Required to document approval of both financial and personal status reports
D. No requirements for court to document approval of reports

14. Does your court use a computer(s) to track when financial and/or personal status reports are due and when they are filed? *(Check one.)*

A. Yes, for financial reports only
B. Yes, for personal status reports only
C. Yes, for both financial and personal status reports
D. No

15. About how many of the required conservatorship reports for the elderly are filed on time? *(Check one.)*

A. All or almost all
B. Most
C. About half
D. Less than half
E. Few, if any
F. Do not know

Conservator Compensation

16. In the last 12 months, has your court approved any conservator compensation that was based on a percentage of the value of an elderly conservatee's *estate*? *(Check one.)*

A. Yes→ What is the range of percentages typically approved? _____ % to _____%

B. No

17. In the last 12 months, has your court approved any conservator compensation that was based on a percentage of an elderly conservatee's *income*? *(Check one.)*

A. Yes→ What is the range of percentages typically approved? _____ % to _____%

B. No

18. In the last 12 months, has your court approved any conservator compensation based on an hourly rate? *(Check one.)*

A. Yes→ What is the range of hourly rates typically approved? $_____ to $_____

B. No

19. How does your court handle petitions from conservators for compensation? *(Check one for each row.)*

	All	Some	None
A. Court personnel review petitions.			
B. Judges review petitions.			
C. Conservators are required to submit time and expense records to support their compensation petitions.			
D. Petitions are approved by court personnel or judge unless a problem surfaces.			
E. Final approval is required by circuit or state office.			
F. Other *(please specify)*			

5

Statistical Information

20. How many judges in your court hear conservatorship petitions for the elderly? *(Enter number.)*

_____

21. Of the judges in your court who hear conservatorship petitions for the elderly, how many work more than half the time on conservatorship matters? *(Enter a number less than or equal to that given in Question 20.)*

_____

22. How frequently is the elderly respondent (aged 65 and over) to a conservatorship petition present at the appointment hearing? *(Check one.)*

A. Always or almost always
B. In most cases
C. In about half the cases
D. In less than half the cases
E. In few, if any, cases

23. Does your court keep counts of the number of people, ***elderly and non-elderly***, who have conservators appointed by the court? *(Check one.)*

A. Yes
B. No→ *Skip to Question 25*

24. Currently, how many people, ***elderly and non-elderly***, have active or continuing conservators appointed by your court? *(Please provide actual numbers, if possible. If they are not available, check the box under "Information is not available.")*

_____

Information is not available.

25. Does your court keep counts of the number of people with active or continuing conservators appointed by your court who are ***elderly*** (aged 65 and over)? *(Check one.)*

A. Yes → Currently how many ***elderly*** have conservators? _____
B. No

26. Currently, about what percentage of the people with conservators appointed by your court are elderly (aged 65 and over)? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

27. In the last 12 months, about what percentage of petitions for conservatorship of elderly people resulted in the appointment of a conservator? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

28. Does your court keep counts of the types of conservators (e.g., family members, attorneys, or other conservators who receive payment from either public sources or the income and assets of the conservatee) appointed for elderly persons?

A. Yes
B. No

6

29. How frequently does your court appoint each of the following types of conservators for elderly persons? *(Check one for each type.)*

	Few, if any, cases	Less than half the cases	About half the cases	Most cases	All or almost all the cases
A. Conservators who are family members or friends					
B. Conservators who are attorneys					
C. Conservators, other than family members, friends, or attorneys, who receive payment for services from public sources (e.g., social service agencies, etc.)					
D. Conservators, other than family members, friends, or attorneys, who receive payment for services from the income or assets of the conservatee					
E. Other *(please specify)*					

30. About what percentage of the conservators appointed by your court are on the state registry? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

7

Enforcement

31. In the last 12 months, which actions has your court taken to enforce requirements for conservators for the elderly? *(Check one for each action.)*

	Yes	No
A. Asked conservators questions raised by submitted reports		
B. Sent follow-up letters to conservators when reports are late, incomplete, or inaccurate		
C. Sent show cause order, summons, or court notice for delinquent reports		
D. Investigated complaints about conservators		
E. Held hearings on complaints from conservatees, family members, or other parties		
F. Other *(please specify)*		

32. Over the last three years, about how often has your court imposed the following penalties on conservators for the elderly for failure to fulfill their responsibilities? *(Check one estimate for each penalty.)*

	Never	1-5 times	6-10 times	More than 10	Do not know
A. Terminated appointment					
B. Reduced conservator's power over conservatee					
C. Fined or surcharged conservator for filing required reports late					
D. Surcharged bond for property mismanagement					
E. Denied conservator's petition for a new appointment					
F. Notified state registry of conservator's resignation or removal for cause					
G. Letter of reprimand					
H. Mandated additional training					
I. Withheld or reduced compensation					
J. Notified bar about attorneys who submit delinquent reports					
K. Awarded damages for civil actions against a conservator					
L. Issued contempt of court citation					
M. Convicted a conservator of a crime against the conservatee					
N. Other *(please specify)*					

33. Please provide any additional comments you may have concerning your policies and procedures for handling conservatorships or any other topic related to the survey.

8

U.S. General Accounting Office

Survey of Florida Courts Concerning Guardianships for the Elderly

Introduction

GAO is an agency of the U.S. Congress. The Senate's Special Committee on Aging asked GAO to study how courts handle guardianships for elderly people (aged 65 and older), including the policies and programs used to oversee guardians of both property and person.

We recognize that there are considerable differences in policies and procedures among the states and among courts in some states. For this reason, we are surveying courts with jurisdiction over guardianships in the three states with the largest elderly populations. Florida is one of these three states.

While most data from our survey will be reported in a summary for the state, we are interested in illustrating local practices and may use some data from individual courts.

Instructions

We ask that you coordinate with others as needed to complete the survey. Depending on your jurisdiction, this may include probate or staff attorneys, probate clerks, judges, or others.

Please return your completed survey in the enclosed envelope within two weeks of receiving it. This will help us avoid the expense of follow-up phone calls.

If you have any questions or your survey will be delayed, please call Ben Pfeiffer at 206-287-4832 (email: pfeifferb@gao.gov).

If the envelope is misplaced or missing, please return your survey to

Ben Pfeiffer
U.S. General Accounting Office
Seattle Field Office
701 Fifth Avenue, Suite 2700
Seattle WA 98104

Thank you for your help!

Background Information

1. Please provide the name(s) and contact information for the person(s) who filled out the survey in case we want to ask you more about your responses. *(If more than two people provided responses, please list others on the back page, or provide an extra page.)*

a. Primary contact's name
_____

Title _____

Phone _____

Email _____

b. Name _____

Title _____

Phone _____

Email _____

1

Court Policies and Procedures

2. Which of the following resources are available to guardians appointed by your court? *(Check one for each resource.)*

	Yes	No
A. Summary of statutory duties of guardians		
B. List of resources and contacts for guardians (e.g., Area Agencies on Aging, county/state support agencies, etc.)		
C. Training classes		
D. Training video		
E. Guardian handbook or manual		
F. Online reporting forms		
G. Examples of model reports		
H. Other *(please specify)*		

3. Does your court require formal training (e.g., classes, videos, instructional meetings) for any of the following types of guardians? *(Check one for each row.)*

	Training required for		
	All	Some	None
A. Guardians who are family members or friends			
B. Guardians who are attorneys			
C. Guardians (not family members, friends or attorneys) who are paid from public sources (e.g., social service agencies, etc.)			
D. Guardians (not family members, friends or attorneys) who are paid from the income or assets of the incapacitated person (e.g., non-attorneys on the state registry)			
E. Others *(please specify)*			

4. Does your court require ***guardians of the property*** to submit documentation of the following items, either separately or as part of a report? *(Check one for each item.)*

Guardians of the property	Required for all	Required for some	Not required
A. Initial inventory of assets, income, and liabilities			
B. Annual financial statements or accountings			
C. More frequent than annual financial statements or accountings			
D. Less frequent than annual financial statements or accountings			
E. Written financial plan			
F. Written report and/or petition when plans change			
G. Other *(please specify)*			

2

5. Does your court require ***guardians of the person*** to submit documentation of the following items, either separately or as part of a report? *(Check one for each item.)*

Guardians of the person	Required for all	Required for some	Not required
A. Initial description of personal status			
B. Annual personal status reports			
C. More frequent than annual personal status reports			
D. Less frequent than annual personal status reports			
E. Written plan for personal care			
F. Written report and/or petition when plans change			
G. Other *(please specify)*			

Monitoring Guardianships

6. How sufficient is your court's funding for monitoring guardianships? *(Check one.)*

A. Much more than sufficient
B. More than sufficient
C. Sufficient
D. Less than sufficient
E. Much less than sufficient
F. No funds available for this purpose

7. Do courts in your county require that ***guardians of the property*** be bonded? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
Which guardians must be bonded?
_____
_____

C. Not required for guardians of the property

8. Do courts in your county require background checks on ***guardians of the property***? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
For which guardians are background checks required?
_____
_____

C. Not required for guardians of the property

9. Do courts in your county require background checks on ***guardians of the person***? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
For which guardians are background checks required?
_____
_____

C. Not required for guardians of the person

3

10. Other than relying on reports by guardians, which, if any, of the following strategies does your court use *after the initial hearing* to assess the personal status of people who have guardians appointed by the court? *(Check one for each strategy.)*

Court strategy	All/almost all the cases	Most cases	About half the cases	Some cases	No cases
A. Personal visits by court official					
B. Personal visits by persons outside the court, other than the appointed guardian					
C. Periodic hearings on the continued need for guardianship					
D. Other *(please specify)*					

11. Who reviews financial and personal status reports submitted by guardians appointed by your court? *(Check one for each type of reviewer.)*

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
A. A judge					
B. Court personnel other than judges					
C. Volunteers					
D. Government agencies other than the court					
E. Other *(please specify)*					

12. What steps, if any, are taken to verify information in financial and personal status reports? *(Check one for each step.)*

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
A. Information in personal status reports is verified.					
B. Information in financial reports is verified.					
C. Supporting documentation for financial information must be submitted (e.g., bank/brokerage statements).					
D. Other *(please specify)*					

4

13. Is your court required to document approval of financial and personal status reports? *(Check one.)*

A. Only required to document approval of financial reports
B. Only required to document approval of personal status reports
C. Required to document approval of both financial and personal status reports
D. No requirements for court to document approval of reports

14. Does your court use a computer(s) to track when financial and/or personal status reports are due and when they are filed? *(Check one.)*

A. Yes, for financial reports only
B. Yes, for personal status reports only
C. Yes, for both financial and personal status reports
D. No

15. About how many of the required guardianship reports for the elderly are filed on time? *(Check one.)*

A. All or almost all
B. Most
C. About half
D. Less than half
E. Few, if any
F. Do not know

Guardian Compensation

16. In the last 12 months, has your court approved any guardian compensation that was based on a percentage of the value of an elderly incapacitated person's *estate*? *(Check one.)*

A. Yes→ What is the range of percentages typically approved? _____ % to _____%

B. No

17. In the last 12 months, has your court approved any guardian compensation that was based on a percentage of an elderly incapacitated person's *income*? *(Check one.)*

A. Yes→ What is the range of percentages typically approved? _____ % to _____%

B. No

18. In the last 12 months, has your court approved any guardian compensation based on an hourly rate? *(Check one.)*

A. Yes→ What is the range of hourly rates typically approved? $_____ to $_____

B. No

19. How does your court handle petitions from guardians for compensation? *(Check one for each row.)*

	All	Some	None
A. Court personnel review petitions.			
B. Judges review petitions.			
C. Guardians are required to submit time and expense records to support their compensation petitions.			
D. Petitions are approved by court personnel or judge unless a problem surfaces.			
E. Final approval is required by circuit or state office.			
F. Other *(please specify)*			

5

Statistical Information

20. How many judges in your court hear guardianship petitions for the elderly? *(Enter number.)*

_____

21. Of the judges in your court who hear guardianship petitions for the elderly, how many work more than half the time on guardianship matters? *(Enter number less than or equal to that given in Question 20.)*

_____

22. How frequently is the elderly respondent (aged 65 and over) to a guardianship petition present at the appointment hearing? *(Check one.)*

A. Always or almost always
B. In most cases
C. In about half the cases
D. In less than half the cases
E. In few, if any, cases

23. Does your court keep counts of the number of people, ***elderly and non-elderly***, who have guardians appointed by the court? *(Check one.)*

A. Yes→ *Please continue*

B. No→ *Skip to Question 25*

24. Currently, how many people, ***elderly and non-elderly***, have active or continuing guardians appointed by your court? *(Please provide actual numbers, if possible. If they are not available, check the box under "Information is not available.")*

_____

Information is not available.

25. Does your court keep counts of the number of people with active or continuing guardians appointed by your court who are ***elderly*** (aged 65 and over)? *(Check one.)*

A. Yes → Currently, how many ***elderly*** have guardians? _____
B. No

26. Currently, about what percentage of the people with guardians appointed by your court are elderly (aged 65 and over)? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

27. In the last 12 months, about what percentage of petitions for guardianship of elderly people resulted in the appointment of a guardian? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

28. Does your court keep counts of the types of guardians (e.g., family members, attorneys, or other guardians who receive payment from either public sources or the income and assets of the incapacitated person) appointed for elderly persons?

A. Yes
B. No

6

29. How frequently does your court appoint each of the following types of guardians for elderly persons? *(Check one for each type.)*

	Few, if any, cases	Less than half the cases	About half the cases	Most cases	All or almost all the cases
A. Guardians who are family members or friends					
B. Guardians who are attorneys					
C. Guardians, other than family members, friends, or attorneys, who receive payment for services from public sources (e.g. social service agencies, etc.)					
D. Guardians, other than family members, friends, or attorneys, who receive payment for services from the income or assets of the incapacitated person					
E. Other *(please specify)*					

30. About what percentage of the guardians appointed by your court are on the state registry? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

7

Enforcement

31. In the last 12 months, which actions has your court taken to enforce requirements for guardians for the elderly? *(Check one for each action.)*

	Yes	No
A. Asked guardians questions raised by submitted reports		
B. Sent follow-up letters to guardians when reports are late, incomplete, or inaccurate		
C. Sent show cause order, summons, or court notice for delinquent reports		
D. Investigated complaints about guardians		
E. Held hearings on complaints from incapacitated persons, family members, or other parties		
F. Other *(please specify)*		

32. Over the last three years, about how often has your court imposed the following penalties on guardians for the elderly for failure to fulfill their responsibilities? *(Check one estimate for each penalty.)*

	Never	1-5 times	6-10 times	More than 10	Do not know
A. Terminated appointment					
B. Reduced guardian's power over incapacitated person					
C. Fined or surcharged guardian for filing required reports late					
D. Surcharged bond for property mismanagement					
E. Denied guardian's petition for a new appointment					
F. Notified state registry of guardian's resignation or removal for cause					
G. Letter of reprimand					
H. Mandated additional training					
I. Withheld or reduced compensation					
J. Notified bar about attorneys who submit delinquent reports					
K. Awarded damages for civil actions against a guardian					
L. Issued contempt of court citation					
M. Convicted a guardian of a crime against the incapacitated person					
N. Other *(please specify)*					

33. Please provide any additional comments you may have concerning your policies and procedures for handling guardianships or any other topic related to the survey.

8

U.S. General Accounting Office

Survey of New York Courts Concerning Article 81 Guardianships for the Elderly

Introduction

GAO is an agency of the U.S. Congress. The Senate's Special Committee on Aging asked GAO to study how courts handle guardianships for elderly people (aged 65 and older), including the policies and programs used to oversee guardians of both property management and personal needs.

We recognize that there are considerable differences in policies and procedures among the states and among courts in some states. For this reason, we are surveying courts with jurisdiction over guardianships in the three states with the largest elderly populations. New York is one of these three states.

While most data from our survey will be reported in a summary for the state, we are interested in illustrating local practices and may use some data from individual courts.

Instructions

We ask that you coordinate with others as needed to complete the survey. Depending on your jurisdiction, this may include staff attorneys, law clerks, judges, court examiners, or others in both the County and Supreme Courts.

Please return your completed survey in the enclosed envelope within two weeks of receiving it. This will help us avoid the expense of follow-up phone calls.

If you have any questions or your survey will be delayed, please call Ben Pfeiffer at 206-287-4832 (email: pfeifferb@gao.gov).

If the envelope is misplaced or missing, please return your survey to

Ben Pfeiffer
U.S. General Accounting Office
Seattle Field Office
701 Fifth Avenue, Suite 2700
Seattle WA 98104

Thank you for your help!

Background Information

1. Please provide the name(s) and contact information for the person(s) who filled out the survey in case we want to ask you more about your responses. *(If more than two people provided responses, please list others on the back page, or provide an extra page.)*

a. Primary contact's name _____

Title _____

Phone _____

Email _____

b. Name _____

Title _____

Phone _____

Email _____

1

Court Policies and Procedures

2. Which of the following resources are available to guardians appointed by courts in your district? *(Check one for each resource.)*

	Yes	No
A. Summary of statutory duties of guardians		
B. List of resources and contacts for guardians (e.g., Area Agencies on Aging, county/state support agency, etc.)		
C. Training classes		
D. Training video		
E. Guardian handbook or manual		
F. Online reporting forms		
G. Examples of model reports		
H. Other *(please specify)*		

3. In addition to state requirements for being listed on the Part 36 Fiduciary List, do courts in your district require formal training (e.g., classes, videos, instructional meetings) for any of the following types of guardians? *(Check one for each row.)*

	Training required for		
	All	Some	None
A. Guardians who are family members or friends			
B. Guardians who are attorneys			
C. Guardians (not family members, friends or attorneys) who are paid from public sources (e.g., community guardians, social service agencies, etc.)			
D. Guardians (not family members, friends or attorneys) who are paid from the income or assets of the incapacitated person (e.g., non-attorneys on the state's Fiduciary List, etc.)			
E. Others *(please specify)*			

4. Do courts in your district require ***guardians of property management*** to submit documentation of the following items, either separately or as part of a report? *(Check one for each item.)*

Guardians of property management	Required for all	Required for some	Not required
A. Initial inventory of assets, income, and liabilities			
B. Annual financial statements or accountings			
C. More frequent than annual financial statements or accountings			
D. Less frequent than annual financial statements or accountings			
E. Written financial plan			
F. Written report and/or petition when plans change			
G. Other *(please specify)*			

2

5. Do courts in your district require ***guardians of personal needs*** to submit documentation of the following items, either separately or as part of a report? *(Check one for each item.)*

Guardians of personal needs	Required for all	Required for some	Not required
A. Initial description of personal status			
B. Annual personal status reports			
C. More frequent than annual personal status reports			
D. Less frequent than annual personal status reports			
E. Written plan for personal care			
F. Written report and/or petition when plans change			
G. Other *(please specify)*			

Monitoring Guardianships

6. How sufficient is your district's funding for monitoring guardianships? *(Check one.)*

A. Much more than sufficient
B. More than sufficient
C. Sufficient
D. Less than sufficient
E. Much less than sufficient
F. No funds available for this purpose

7. Do courts in your district require that ***guardians of property management*** be bonded? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
Which guardians must be bonded?
_____
_____

C. Not required for guardians of property management

8. Do courts in your district require background checks on ***guardians of property management***? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
For which guardians are background checks required?
_____
_____

C. Not required for guardians of property management

9. Do courts in your district require background checks on ***guardians of personal needs***? *(Check one.)*

A. Yes, for all or almost all
B. Yes, for some →
For which guardians are background checks required?
_____
_____

C. Not required for guardians of personal needs

3

10. Other than relying on reports by guardians, which, if any, of the following strategies do courts in your district use *after the initial hearing* to assess the personal status of people who have guardians appointed by the courts? *(Check one for each strategy.)*

Court strategy	All/almost all the cases	Most cases	About half the cases	Some cases	No cases
A. Personal visits by court official					
B. Personal visits by persons outside the court, other than the appointed guardian, such as the court examiner					
C. Periodic hearings on the continued need for guardianship					
D. Other *(please specify)*					

11. Who reviews financial and personal status reports submitted by guardians appointed by the courts in your district? *(Check one for each type of reviewer.)*

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
A. A judge					
B. Court personnel other than judges					
C. Court examiner or other compensated person appointed to review reports					
D. Volunteers					
E. Government agencies other than the court					
F. Other *(please specify)*					

12. What steps, if any, are taken to verify information in financial and personal status reports? *(Check one for each step.)*

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
A. Information in personal status reports is verified.					
B. Information in financial reports is verified.					
C. Supporting documentation for financial information must be submitted (e.g., bank/brokerage statements).					
D. Other *(please specify)*					

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13. Are courts in your district required to document approval of financial and personal status reports? *(Check one.)*

A. Only required to document approval of financial reports
B. Only required to document approval of personal status reports
C. Required to document approval of both financial and personal status reports
D. No requirements for court to document approval of reports

14. Do courts in your district use a computer(s) to track when financial and/or personal status reports are filed? *(Check one.)*

A. Yes, for financial reports only
B. Yes, for personal status reports only
C. Yes, for both financial and personal status reports
D. No

15. About how many of the required guardianship reports for the elderly are filed on time? *(Check one.)*

A. All or almost all
B. Most
C. About half
D. Less than half
E. Few, if any
F. Do not know

Guardian Compensation

16. In the last 12 months, have courts in your district approved any guardian compensation that was based on a percentage of the value of an elderly incapacitated person's *estate*? *(Check one.)*

A. Yes→ What is the range of percentages typically approved? _____ % to _____%

B. No

17. In the last 12 months, have courts in your district approved any guardian compensation that was based on a percentage of an elderly incapacitated person's *income*? *(Check one.)*

A. Yes→ What is the range of percentages typically approved? _____ % to _____%

B. No

18. In the last 12 months, have courts in your district approved any guardian compensation based on an hourly rate? *(Check one.)*

A. Yes→ What is the range of hourly rates typically approved? $_____ to $_____

B. No

19. How do courts in your district handle petitions from guardians for compensation? *(Check one for each row.)*

	All	Some	None
A. Court personnel review petitions.			
B. Judges review petitions.			
C. Guardians are required to submit time and expense records to support their compensation petitions.			
D. Petitions are approved by court personnel or judge unless a problem surfaces.			
E. Final approval is required by district or state office.			
F. Other *(please specify)*			

5

Statistical Information

20. How many judges in your district hear guardianship petitions for the elderly? *(Enter number.)*

_____

21. Of the judges in your district who hear guardianship petitions for the elderly, how many work more than half the time on Article 81 guardianship matters? *(Enter number less than or equal to that given in Question 20.)*

_____

22. How frequently is the elderly respondent (aged 65 and over) to a guardianship petition present at the appointment hearing? *(Check one.)*

A. Always or almost always
B. In most cases
C. In about half the cases
D. In less than half the cases
E. In few, if any, cases

23. Does your district keep counts of the number of people, ***elderly and non-elderly***, who have guardians appointed by the courts in your district? *(Check one.)*

A. Yes→ *Please continue*

B. No→ *Skip to Question 25*

24. Currently, how many people, ***elderly and non-elderly***, have active or continuing guardians appointed by the courts in your district? (*Please provide actual numbers, if possible. If they are not available, check the box under "Information is not available.")*

_____

Information is not available.

25. Does your district keep counts of the number of people with active or continuing guardians appointed by courts in your district who are ***elderly*** (aged 65 and over)? *(Check one.)*

A. Yes → Currently, how many ***elderly*** have guardians? _____
B. No

26. Currently, about what percentage of the people with guardians appointed by the courts in your district are elderly (aged 65 and over)? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

27. In the last 12 months, about what percentage of petitions for guardianship of elderly people resulted in the appointment of a guardian? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

6

28. Does your district keep counts of the types of guardians (e.g., family members, attorneys, or other guardians who receive payment from either public sources or the income and assets of the incapacitated person) appointed for elderly persons? *(Check one.)*

A. Yes
B. No

29. About what percentage of the guardians appointed by courts in your district are on the state's Part 36 Fiduciary List? *(Check one.)*

A. All or almost all
B. More than half
C. About half
D. Less than half
E. Few, if any
F. Information is not available

30. How frequently do the courts in your district appoint each of the following types of guardians for elderly persons? *(Check one for each type.)*

	Few, if any, cases	Less than half the cases	About half the cases	Most cases	All or almost all the cases
A. Guardians who are family members or friends					
B. Guardians who are attorneys					
C. Guardians, other than attorneys or family members, who receive payment for services from public sources (e.g., community guardians, social service agencies, etc.)					
D. Guardians, other than attorneys or family members, who receive payment for services from the income or assets of the incapacitated person (e.g., non-attorneys on the state Fiduciary List, etc.)					
E. Other *(please specify)*					

7

Enforcement

31. In the last 12 months, which actions have courts or court examiners in your district taken to enforce requirements for guardians for the elderly? *(Check one for each action.)*

	Yes	No
A. Asked guardians questions raised by submitted reports		
B. Sent follow-up letters to guardians when reports are late, incomplete, or inaccurate		
C. Sent show cause order, summons, or court notice for delinquent reports		
D. Investigated complaints about guardians		
E. Held hearings on complaints from incapacitated persons, family members, court examiners, or other parties		
F. Other *(please specify)*		

32. Over the last three years, about how often have courts in your district imposed the following penalties on guardians for the elderly for failure to fulfill their responsibilities? *(Check one estimate for each penalty.)*

	Never	1-5 times	6-10 times	More than 10 times	Do not know
A. Terminated appointment					
B. Reduced guardian's power over incapacitated person					
C. Fined or surcharged guardian for filing required reports late					
D. Surcharged bond for property mismanagement					
E. Denied guardian's petition for a new appointment					
F. Recommended that a guardian's certification be suspended or their name removed from the Fiduciary List					
G. Letter of reprimand					
H. Mandated additional training					
I. Withheld or reduced compensation					
J. Notified bar about attorneys who submit delinquent reports					
K. Awarded damages for civil actions against a guardian					
L. Issued contempt of court citation					
M. Convicted a guardian of a crime against the incapacitated person					
N. Other *(please specify)*					

33. Please provide any additional comments you may have concerning your policies and procedures for handling guardianships or any other topic related to the survey.

8

Appendix III: Results from GAO Surveys of Courts in California, Florida, and New York

Below are tabulations of survey responses received from 42 of the 58 superior courts in California, 55 of the 67 superior courts in Florida, and 9 of the12 judicial districts in New York. In some cases, respondents to the survey did not respond to particular items in the survey.

Court Policies and Procedures

Which of the following resources are available to guardians appointed by your court?[a] (Check one for each resource.)

	California		Florida		New York	
	Yes	No	Yes	No	Yes	No
A. Summary of statutory duties of guardians	31	5	18	30	6	2
B. List of resources and contacts for guardians (e.g., Area Agencies on Aging, county/state support agencies, etc.)	25	10	14	30	6	3
C. Training classes	2	29	30	20	7	2
D. Training video	18	19	13	33	7	2
E. Guardian handbook or manual	40	1	17	29	6	3
F. Online reporting forms	4	24	5	39	3	6
G. Examples of model reports	8	24	10	33	7	2
H. Other (please specify)	2	5	2	5	1	0

[a]Surveys to courts in California use the term “conservators.” In California guardians are appointed to protect minors and conservators are appointed to protect adults. For convenience, for the purposes of this report, we use the term “guardian” rather than “conservator.”

Does your court require formal training (e.g., classes, videos, instructional meetings) for any of the following types of guardians? (Check one for each row.)

	Training required for								
	California			Florida			New York		
	All	Some	None	All	Some	None	All	Some	None
A. Guardians who are family members or friends	10	3	27	31	16	6	4	4	1
B. Guardians who are attorneys	9	1	31	8	5	38	4	2	3
C. Guardians (not family members, friends or attorneys) who are paid from public sources (e.g., social service agencies, etc.)	6	3	31	28	9	11	3	0	5
D. Guardians (not family members, friends or attorneys) who are paid from the income or assets of the incapacitated person (e.g., non-attorneys on the state registry)	9	5	27	37	9	6	4	2	3
E. Others (please specify)	1	0	8	0	1	7	1	0	0

Does your court require guardians of the property to submit documentation of the following items, either separately or as part of a report? (Check one for each item.)

Guardians of the property	California				Florida			New York		
	Required for all	Required for some	Not required	Annual, then biennial[a]	Required for all	Required for some	Not required	Required for all	Required for some	Not required
A. Initial inventory of assets, income, and liabilities	38	3	1		53	2	0	9	0	0
B. Annual financial statements or accountings	13	11	3	15	50	5	0	9	0	0
C. More frequent than annual financial statements or accountings	0	9	30		0	15	39	0	2	7
D. Less frequent than annual financial statements or accountings	5	14	6	15	0	10	43	0	2	7
E. Written financial plan	5	9	26		18	12	24	3	5	1
F. Written report and/or petition when plans change	9	12	18		25	7	21	8	1	0
G. Other (please specify)	3	1	6		0	0	3	0	0	0

[a]California state law generally requires an accounting and report by the end of the first year following the appointment and at 2-year intervals (biennially) thereafter.

Does your court require *guardians of the person* to submit documentation of the following items, either separately or as part of a report? (Check one for each item.)

Guardians of the person	California				Florida			New York		
	Required for all	Required for some	Not required	Annual, then biennial[a]	Required for all	Required for some	Not required	Required for all	Required for some	Not required
A. Initial description of personal status	31	3	8	0	51	2	2	9	0	0
B. Annual personal status reports	9	9	18	3	46	6	2	7	2	0
C. More frequent than annual personal status reports	1	8	29	0	0	10	44	0	4	5
D. Less frequent than annual personal status reports	9	10	18	2	0	6	48	0	1	8
E. Written plan for personal care	7	8	23	1	44	6	5	7	1	1
F. Written report and/or petition when plans change	9	12	19	0	31	10	13	9	0	0
G. Other (please specify)	3	0	5	0	1	0	3	0	0	0

[a]California state law generally requires an accounting and report by the end of the first year following the appointment and at 2-year intervals (biennially) thereafter.

Monitoring Guardianships

How sufficient is your court's funding for monitoring guardianships? (Check one.)

	California	Florida	New York
A. Much more than sufficient	0	0	0
B. More than sufficient	0	0	0
C. Sufficient	7	15	2
D. Less than sufficient	13	5	1
E. Much less than sufficient	9	5	2
F. No funds available for this purpose	10	28	3

Do courts in your county require that guardians of the property be bonded? (Check one.)

	California	Florida	New York
A. Yes, for all or almost all	26	15	4
B. Yes, for some	13	36	4
C. Not required for guardians of the property	3	4	1

Do courts in your county require background checks on guardians of the property? (Check one.)

	California	Florida	New York
A. Yes, for all or almost all	15	8	2
B. Yes, for some	10	31	1
C. Not required for guardians of the property	17	13	6

Do courts in your county require background checks on guardians of the person? (Check one.)

	California	Florida	New York
A. Yes, for all or almost all	17	7	1
B. Yes, for some	8	28	2
C. Not required for guardians of the person	17	17	6

Other than relying on reports by guardians, which, if any, of the following strategies does your court use after the initial hearing to assess the personal status of people who have guardians appointed by the court? (Check one for each strategy.)

Court strategy	All almost all the cases	Most cases	About half the cases	Some cases	No cases
California					
A. Personal visits by court official	32	3	0	1	5
B. Personal visits by persons outside the court, other than the appointed guardian	3	1	0	10	23
C. Periodic hearings on the continued need for guardianship	20	5	2	8	5
D. Other (please specify)	1	0	0	1	8
Florida					
A. Personal visits by court official	0	0	0	7	44
B. Personal visits by persons outside the court, other than the appointed guardian	1	0	1	6	45
C. Periodic hearings on the continued need for guardianship	0	4	1	14	32
D. Other (please specify)	2	0	0	3	7
New York					
A. Personal visits by court official	0	1	0	1	7
B. Personal visits by persons outside the court, other than the appointed guardian	1	0	0	3	5
C. Periodic hearings on the continued need for guardianship	0	1	1	5	2
D. Other (please specify)	0	0	0	0	0

Who reviews financial and personal status reports submitted by guardians appointed by your court? (Check one for each type of reviewer.)

Court strategy	All/almost all the cases	Most cases	About half the cases	Some cases	No cases
California					
A. A judge	30	1	0	7	1
B. Court personnel other than judges	25	2	0	1	11
C. Volunteers	1	0	0	2	30
D. Government agencies other than the court	0	0	0	5	27
E. Other (please specify)	6	0	0	1	10
Florida					
A. A judge	28	2	0	6	6
B. Court personnel other than judges	47	0	0	0	4
C. Volunteers	0	0	0	1	36
D. Government agencies other than the court	4	0	0	6	28
E. Other (please specify)	7	0	1	3	5
New York					
A. A judge	5	0	0	1	3
B. Court personnel other than judges	7	0	0	0	2
C. Court examiner or other compensated person appointed to review reports[a]	8	0	0	0	1
D. Volunteers	0	0	0	0	7
E. Government agencies other than the court	1	0	0	2	6
F. Other (please specify)	0	0	0	0	0

[a]This item was included only in the surveys to New York judicial districts.

What steps, if any, are taken to verify information in financial and personal status reports? (Check one for each step.)

	All or almost all reports	Most reports	About half the reports	Some reports	No reports
California					
A. Information in personal status reports is verified.	22	1	0	5	10
B. Information in financial reports is verified.	16	3	0	11	7
C. Supporting documentation for financial information must be submitted (e.g., bank/brokerage statements).	24	2	0	8	5
D. Other (please specify)	3	0	0	1	7
Florida					
A. Information in personal status reports is verified.	19	2	1	9	18
B. Information in financial reports is verified.	29	1	0	7	11
C. Supporting documentation for financial information must be submitted (e.g., bank/brokerage statements).	48	2	0	4	1
D. Other (please specify)	5	0	0	0	5
New York					
A. Information in personal status reports is verified.	5	1	0	1	2
B. Information in financial reports is verified.	6	1	0	1	1
C. Supporting documentation for financial information must be submitted (e.g., bank/brokerage statements).	5	2	0	2	0
D. Other (please specify)	0	0	0	0	0

Is your court required to document approval of financial and personal status reports? (Check one.)

	California	Florida	New York
A. Only required to document approval of financial reports	12	11	0
B. Only required to document approval of personal status reports	0	0	0
C. Required to document approval of both financial and personal status reports	20	39	6
D. No requirement for court to document approval of reports	8	4	3

Does your court use a computer(s) to track when financial and/or personal status reports are due and when they are filed? (Check one.)

	California	Florida	New York
A. Yes, for financial reports only	4	2	0
B. Yes, for personal status reports only	2	0	0
C. Yes, for both financial and personal status reports	22	37	4
D. No	13	15	5

About how many of the required guardianship reports for the elderly are filed on time? (Check one.)

	California	Florida	New York
A. All or almost all	5	4	0
B. Most	18	16	2
C. About half	6	15	2
D. Less than half	6	14	1
E. Few, if any	3	1	0
F. Do not know	4	5	4

Guardian Compensation

In the last 12 months, has your court approved any guardian compensation that was based on a percentage of the value of an elderly incapacitated person's estate? (Check one.)

	California	Florida	New York
Yes	11	3	7
No	30	48	2

If "Yes," what is the range of percentages typically approved?

California		Florida		New York	
Lowest	Highest	Lowest	Highest	Lowest	Highest
0.75%	5%	0.5%	1.5%	0.03%	5%

In the last 12 months, has your court approved any guardian compensation that was based on a percentage of an elderly incapacitated person's income? (Check one.)

	California	Florida	New York
Yes	4	2	6
No	37	51	3

If "Yes," what is the range of percentages typically approved?

California		Florida		New York	
Lowest	Highest	Lowest	Highest	Lowest	Highest
0.9%	10%	0%	5%	1%	5%

In the last 12 months, has your court approved any guardian compensation based on an hourly rate? (Check one.)

	California	Florida	New York
Yes	31	35	6
No	11	18	3

If "Yes," what is the range of hourly rates typically approved?

California		Florida		New York	
Lowest	Highest	Lowest	Highest	Lowest	Highest
$7	$250	$8	$85	$25	$400

How does your court handle petitions from guardians for compensation? (Check one for each row.)

	California			Florida			New York		
	All	Some	None	All	Some	None	All	Some	None
A. Court personnel review petitions.	27	5	8	26	6	19	6	1	2
B. Judges review petitions.	34	7	0	46	1	2	7	2	0
C. Guardians are required to submit time and expense records to support their compensation petitions.	24	12	5	40	6	4	6	3	0
D. Petitions are approved by court personnel or judge unless a problem surfaces.	32	4	6	34	3	6	7	1	1
E. Final approval is required by circuit or state office.	0	0	34	12	2	25	3	0	6
F. Other (please specify)	0	1	7	1	0	5	1	0	0

Statistical Information

How many judges in your court hear guardianship petitions for the elderly? (Enter number.)

	California	Florida	New York
Minimum	1	1	3
Maximum	11	8	32
Mean	1.60	1.62	10.78
Median	1	1	8

Of the judges in your court who hear guardianship petitions for the elderly, how many work more than half the time on guardianship matters? (Enter number less than or equal to that given in Question 20.)

	California	Florida	New York
Minimum	0	0	0
Maximum	1	2	5
Mean	0.34	0.42	1.44
Median	0	0	1

How frequently is the elderly respondent (aged 65 and over) to a guardianship petition present at the appointment hearing? (Check one.)

	California	Florida	New York
A. Always or almost always	3	4	2
B. In most cases	5	3	3
C. In about half the cases	8	6	3
D. In less than half the cases	16	12	1
E. In few, if any, cases	8	28	0

Does your court keep counts of the number of people, elderly and non-elderly, who have guardians appointed by the court? (Check one.)

	California	Florida	New York
Yes	13	12	3
No	29	41	6

Currently, how many people, elderly and non-elderly, have active or continuing guardians appointed by your court? (Please provide actual numbers, if possible. If they are not available, check the box under "Information is not available.")

	California	Florida	New York
Minimum	103	2	1,131
Maximum	2,034	7,412	3,150
Mean	853	1,225	2,217
Median	833	590	2,370
Number of responses	9	11	3

Does your court keep counts of the number of people with active or continuing guardians appointed by your court who are elderly (aged 65 and over)? (Check one.)

	California	Florida	New York
Yes	4	4	2
No	37	50	7

If "Yes," currently, how many elderly have guardians?

	California	Florida	New York
Minimum	0	2	1,165
Maximum	103	1,073	2,520
Mean	52	538	1,842
Median	52	538	1,842
Number of responses	2	2	2

Currently, about what percentage of the people with guardians appointed by your court are elderly (aged 65 and over)? (Check one.)

	California	Florida	New York
A. All or almost all	1	4	2
B. More than half	22	10	2
C. About half	0	6	1
D. Less than half	1	8	0
E. In few, if any, cases	1	2	0
F. Information is not available	17	20	4

In the last 12 months, about what percentage of petitions for guardianship of elderly people resulted in the appointment of a guardian? (Check one.)

	California	Florida	New York
A. All or almost all	28	43	8
B. More than half	8	3	0
C. About half	0	0	0
D. Less than half	0	0	0
E. Few, if any	0	0	0
F. Information is not available	6	9	1

Does your court keep counts of the types of guardians (e.g., family members, attorneys, or other guardians who receive payment from either public sources or the income and assets of the incapacitated person) appointed for elderly persons?

	California	Florida	New York
Yes	3	4	3
No	39	50	6

How frequently does your court appoint each of the following types of guardians for elderly persons? (Check one for each type.)

	Few, if any, cases	Less than half the cases	About half the cases	Most cases	All or almost all the cases
California					
A. Guardians who are family members or friends	2	8	14	14	1
B. Guardians who are attorneys	33	3	0	1	0
C. Guardians, other than family members, friends, or attorneys, who receive payment for services from public sources (e.g., social service agencies, etc.)	12	19	6	1	1
D. Guardians, other than family members, friends, or attorneys, who receive payment for services from the income or assets of the incapacitated person	14	21	3	0	0
E. Other (please specify)	4	3	1	1	0
Florida					
A. Guardians who are family members or friends	0	3	10	20	15
B. Guardians who are attorneys	44	2	0	0	0
C. Guardians, other than family members, friends, or attorneys, who receive payment for services from public sources (e.g., social service agencies, etc.)	35	7	2	1	0
D. Guardians, other than family members, friends, or attorneys, who receive payment for services from the income or assets of the incapacitated person	23	12	7	4	0
E. Other (please specify)	1	0	0	0	1
New York					
A. Guardians who are family members or friends	0	1	1	5	1
B. Guardians who are attorneys	3	4	1	0	0
C. Guardians, other than family members, friends, or attorneys, who receive payment for services from public sources (e.g., social service agencies, etc.)	3	4	0	0	0
D. Guardians, other than family members, friends, or attorneys, who receive payment for services from the income or assets of the incapacitated person	6	1	0	0	0
E. Other (please specify)	0	0	0	0	0

About what percentage of the guardians appointed by your court are on the state registry? (Check one.)

	California	Florida	New York
A. All or almost all	0	2	2
B. More than half	0	2	1
C. About half	1	2	0
D. Less than half	13	6	4
E. Few, if any	17	12	1
F. Information is not available	10	30	1

Enforcement

In the last 12 months, which actions has your court taken to enforce requirements for guardians for the elderly? (Check one for each action.)

	California		Florida		New York	
	Yes	No	Yes	No	Yes	No
A. Asked guardians questions raised by submitted reports	35	5	43	6	8	1
B. Sent follow-up letters to guardians when reports are late, incomplete, or inaccurate	25	14	44	6	8	1
C. Sent show cause order, summons, or court notice for delinquent reports	33	7	43	7	7	2
D. Investigated complaints about guardians	30	9	27	21	7	2
E. Held hearings on complaints from incapacitated persons, family members, or other parties	32	8	35	15	8	1
F. Other (please specify)	3	2	3	4	1	0

Over the last 3 years, about how often has your court imposed the following penalties on guardians for the elderly for failure to fulfill their responsibilities? (Check one estimate for each penalty.)

	Never	1-5 times	6-10 times	More than 10	Do not know
California					
A. Terminated appointment	6	20	3	5	5
B. Reduced guardian's power over incapacitated person	11	15	1	3	10
C. Fined or surcharged guardian for filing required reports late	21	9	1	2	7
D. Surcharged bond for property mismanagement	16	11	3	3	7
E. Denied guardian's petition for a new appointment	14	15	1	1	7
F. Notified state registry of guardian's resignation or removal for cause	29	1	0	0	8
G. Letter of reprimand	31	1	0	0	7
H. Mandated additional training	33	1	0	0	6
I. Withheld or reduced compensation	9	11	4	9	6
J. Notified bar about attorneys who submit delinquent reports	32	0	0	0	7
K. Awarded damages for civil actions against a guardian	25	5	0	0	9
L. Issued contempt of court citation	15	7	4	8	6
M. Convicted a guardian of a crime against the incapacitated person	17	11	0	0	12
N. Other (please specify)	4	0	0	1	4
Florida					
A. Terminated appointment	11	20	6	6	6
B. Reduced guardian's power over incapacitated person	20	13	3	2	10
C. Fined or surcharged guardian for filing required reports late	38	3	0	2	5
D. Surcharged bond for property mismanagement	32	9	3	0	4
E. Denied guardian's petition for a new appointment	26	13	0	2	7
F. Notified state registry of guardian's resignation or removal for cause	40	0	0	0	8
G. Letter of reprimand	29	5	0	4	9
H. Mandated additional training	26	8	2	3	8
I. Withheld or reduced compensation	17	12	2	10	7
J. Notified bar about attorneys who submit delinquent reports	33	6	0	1	8
K. Awarded damages for civil actions against a guardian	29	7	0	1	10
L. Issued contempt of court citation	18	11	1	11	8
M. Convicted a guardian of a crime against the incapacitated person	31	8	0	1	8
N. Other (please specify)	4	1	0	2	4

	Never	1-5 times	6-10 times	More than 10	Do not know
New York					
A. Terminated appointment	0	4	0	2	3
B. Reduced guardian's power over incapacitated person	2	3	0	1	3
C. Fined or surcharged guardian for filing required reports late	2	3	1	0	3
D. Surcharged bond for property mismanagement	3	2	1	0	3
E. Denied guardian's petition for a new appointment	5	0	0	0	4
F. Notified state registry of guardian's resignation or removal for cause	6	1	0	0	2
G. Letter of reprimand	7	0	0	0	1
H. Mandated additional training	8	0	0	0	1
I. Withheld or reduced compensation	1	2	0	3	2
J. Notified bar about attorneys who submit delinquent reports	7	0	0	0	2
K. Awarded damages for civil actions against a guardian	7	0	0	0	2
L. Issued contempt of court citation	4	2	0	1	2
M. Convicted a guardian of a crime against the incapacitated person	6	1	0	0	2
N. Other (please specify)	1	0	0	0	1

Appendix IV: Comments from the Office of Personnel Management

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1000

OFFICE OF THE DIRECTOR

JUN 17 2004

Barbara D. Bovbjerg
Director
Education, Workforce and Income Security Issues
General Accounting Office
441 G Street, NW, Room 5968
Washington, DC 20548

Dear Ms. Bovbjerg:

I am pleased to comment on the General Accounting Office's (GAO) draft report on *Collaboration Needed to Protect Incapacitated Elderly People.* It was my pleasure to participate in discussions that led to the development of this report.

The Office of Personnel Management concurs with GAO's recommendation to establish a group, led by the Social Security Administration, that would study the roles and responsibilities of Federal Government agencies and state courts in providing effective oversight over guardianship arrangements.

An overall recommendation is to "...plan and implement cost-effective measures to systematically compile and share information." We suggest that the report specifically assert that it will be to the Government's benefit, either in terms of efficiency or savings, to create these systems that share information on guardians or representative payees.

Also, we feel that the report would be strengthened by including meaningful statistics demonstrating the efficiency of coordinating the guardian reports of state courts with Federal government payments (SSA, VA, OPM).

Please contact me if I can provided further assistance.

Sincerely,

Kay Coles James
Director

Appendix V: Comments from the Department of Veterans Affairs

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

June 18, 2004

Ms. Barbara Bovbjerg
Director, Education, Workforce and
Income Security Issues
U. S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Bovbjerg

The Department of Veterans Affairs (VA) has reviewed your draft report, ***GUARDIANSHIP: Collaboration Needed to Protect Incapacitated Elderly People*** (GAO-04-655) and agrees with your conclusions as they pertain to VA. The General Accounting Office (GAO) has illuminated concerns that have long been apparent to the Veterans Benefits Administration's (VBA) Fiduciary Program

- There are wide variances in State guardianship laws and procedures.
- There is a need for Federal agencies and State courts to share information on cases of common interest.
- There is a lack of any systematic information sharing arrangement among Federal agencies, State agencies, and State courts relating to the protection of elderly beneficiaries.

VA looks forward to being an active participant in any study groups formed as GAO recommends. These groups would study the costs and benefits of systematically sharing information about incapacitated (incompetent) individuals, existing and successor fiduciary arrangements, fiduciaries removed for cause, and other information that could be mutually beneficial. One or more VBA participants with knowledge of the Fiduciary Program, the Fiduciary-Benefits System, the Benefits Delivery Network, Privacy Act/Freedom of Information Act, and interagency data sharing procedures should be part of any group formed. A VBA representative from the Fiduciary Program staff would also be a valuable participant in any discussions concerning sharing and compiling data from Federal and State agencies, as well as reviewing individual State policies on guardianships to develop more consistent management of programs, data collection, and cooperation among states.

Thank you for the opportunity to comment on your draft report.

Sincerely yours,

Anthony J. Principi

Anthony J. Principi

Appendix VI: Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUN 21 2004

Ms. Barbara D. Bovbjerg
Director, Education, Workforce and
Income Security Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Enclosed are the Department's comments on your draft report entitled, "Guardianships: Collaboration Needed to Protect Incapacitated Elderly People" (GAO-04-655). The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

Dara Corrigan
Acting Principal Deputy Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for General Accounting Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

Comments of the Department of Health and Human Services on the General Accounting Office's Draft Report "Guardianships: Collaboration Needed to Protect Incapacitated Elderly People" (GAO-04-655)

The Department of Health and Human Services (HHS) appreciates the opportunity to comment on the GAO's draft report. Guardians play a critical role in protecting vulnerable individuals and in helping them to obtain the care and services they require. Most guardians are conscientious, but some mistreat, neglect, or exploit their wards. Guardianship must be approached with protection in mind because it can remove our most basic rights. It should be imposed only as a last resort. Nevertheless, today more Americans are in need of guardianship because more are living to old age and suffering from Alzheimer's disease or related dementias. We can expect the number of those in need of guardianship to continue to grow: the number of seniors 85 years of age and over will grow from 4.6 million today to 20.9 million in 2050, and those with Alzheimer's disease will grow from 4.5 to 11.4 million or more. Your draft report clearly outlines the challenge we face in coordinating processes to provide consistent information across the nation on the number and conditions of individuals receiving guardianship services.

The Older Americans Act (OAA) mandates that the Administration on Aging (AoA) serve as the effective and visible advocate for older Americans and their concerns. As such, AoA is committed to protecting vulnerable seniors under or in need of guardianship. We work first to provide alternatives to guardianship to enhance the continued freedom and independence of elder individuals to the extent feasible. Legal services programs funded under the OAA promote alternatives to guardianship, such as financial powers of attorney and health care advance directives. These instruments empower seniors to decide who will make their decisions when they become incapacitated, reducing their risk for victimization and limiting the number of unnecessary guardianships. Senior legal providers also advocate for alternatives to guardianship or limited guardianships when representing prospective wards before the court, and they petition the court to appoint an emergency guardian when an incapacitated senior is being abused, neglected or exploited.

AoA and the State and area agencies that administer OAA programs are also committed to program coordination as a top priority for all service domains, and this is reflected in key initiatives and efforts conducted throughout the aging network. AoA and the Center for Medicare and Medicaid Services have instituted "Aging and Disability Resource Centers" in States across the nation to better coordinate and integrate service provision and funding for long-term care services across the country. This initiative pursues the establishment of "one-stop shops" for elders and disabled individuals of other ages, specifically and especially for community-based long-term care services, such as those provided under the OAA and Medicaid.

Under AoA guidance, State and local programs that serve older Americans seek to protect the individual rights, preferences, and safety of older Americans and to enhance the quality of their lives, whether they are at home or in long-term care facilities. Long-

1

term care ombudsmen are working with the Quality Improvement Organizations and adult protective services agencies in their States on strategies to improve the quality of care and life of older people living in long-term care facilities and to protect these vulnerable consumers. To improve the consistency of "abuse" and other complaint data collected across the nation under the Long-Term Care Ombudsman Program, AoA has developed an action plan that includes consistent training in classifying cases and promotes consistency between the ombudsman and adult protective services networks in the investigation and reporting of institutional abuse.

Other programs funded under the OAA are partnering with courts to help train and monitor guardians. For example, the Indiana Long-Term Care Ombudsman provides probate judges with brochures on long-term care for distribution to newly appointed guardians, and the area agency on aging in West Palm Beach, Florida is working with the local court to recruit volunteers for a guardianship monitoring program. AoA recently disseminated information about these and other model guardianship practices to all State and area agencies on aging.

HHS supports the manner in which you have addressed this important issue. Your findings reinforce our approach to protecting those under or in need of guardianship. We agree that guardians should be adequately trained and monitored, and that governmental agencies and courts should coordinate their efforts and share information concerning guardians and representative payees.

AoA is carrying out the GAO recommendation for HHS to "study options for compiling data from Federal agencies and State agencies, such as adult protective services agencies, concerning the incidence of elder abuse in cases in which the victim had granted someone the durable power of attorney or had been assigned a fiduciary, such as a guardian or representative payee…" This year AoA's National Center on Elder Abuse will survey all State adult protective services agencies to determine the incidence of elder abuse reports and the characteristics of victims and perpetrators. This study will ask States to cite the number or percentage of perpetrators of elder abuse who served as the victims' powers of attorney, guardians, or representative payees.

AoA will explore "cost-effective pilot and demonstration projects" to develop approaches for compiling guardianship data and to facilitate solutions for interstate jurisdictional issues. We also agree that HHS should serve on the interagency study group charged with developing "options for improving interagency cooperation and Federal-State cooperation in the protection of incapacitated elderly and non-elderly people." AoA co-chairs the Federal Elder Justice Interagency Working Group. This group brings together Federal officials responsible for carrying out elder justice activities, including elder abuse prevention, research, grant and program-funding, and prosecution. Since 2001, members have met regularly to discuss emerging issues, promising practices, and ways to coordinate their efforts. National experts have addressed the group on a range of topics, including guardianship, adult protective services, and predatory lending, enabling increased awareness and opportunities for collaboration in these areas.

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Thank you again for calling attention to this important issue. Programs funded under the OAA provide legal representation to seniors under or in need of guardianship and help courts to train and monitor guardians. Your findings highlight the need for better coordination and information sharing between governmental agencies and courts, and for more data collection. HHS looks forward to working with Congress to address these and other issues that impact on the lives of vulnerable older Americans.

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Appendix VII: Comments from the Social Security Administration

SOCIAL SECURITY
The Commissioner

June 10, 2004

Ms. Barbara D. Bovbjerg
Director, Education, Workforce, and
Income Security Issues
U.S. General Accounting Office
Room 5968
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review and comment on the draft report, "GUARDIANSHIPS: Collaboration Needed to Protect Incapacitated Elderly People" (GAO-04-655). Our comments on the report are enclosed.

If you have any questions, please contact Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636. Staff questions should be directed to Trudy Williams at (410) 965-0380.

Sincerely,

Jo Anne B. Barnhart

Jo Anne B. Barnhart

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

COMMENTS ON THE GENERAL ACCOUNTING OFFICE (GAO) DRAFT REPORT, "GUARDIANSHIPS: COLLABORATION NEEDED TO PROTECT INCAPACITATED ELDERLY PEOPLE" (GAO-04-655)

Thank you for the opportunity to comment on the subject draft report. Our response to the report and to the specific recommendations is provided below.

The protection of the elderly, or others who may become incapacitated, is of significant importance, not only to our Agency, but to society in general. We support the need for vigilance in ensuring our representative payees (Rep Payees) are accountable for using Social Security benefits appropriately and that funds are not misused.

In 1998, the Social Security Administration (SSA) funded a grant for the American Bar Association (ABA) to look into a nearly identical issue; i.e., can there be better coordination between State court guardianship actions and the SSA Rep Payee program? The results of the ABA project were very similar to GAO's conclusions and recommendations with respect to SSA. The two biggest hurdles facing SSA in adopting the ABA recommendations were the Privacy Act and the fact that a statement of routine use, allowing SSA to share Rep Payee information with State courts, does not exist. A Rep payeeship is the most limited type of guardianship (restricted only to management of benefits), whereas State court guardianships are almost invariably more complicated. To the extent that SSA's policies differ from State court and other agencies' policies, SSA is bound by the Social Security Act and the Privacy Act. SSA may only disclose information to State courts or other Federal agencies in accordance with the Privacy Act and section 1106 of the Social Security Act, including SSA's regulation at 20 C.F.R. Part 401

Recommendation 1

To increase the ability of Rep Payee programs to protect Federal benefit payments from misuse, SSA should convene an interagency study group that includes representatives from the Department of Health and Human Services (DHHS), Federal agencies with Rep Payee programs, including the Veterans' Administration (VA) and the Office of Personnel Management, and State courts that wish to participate in order to: study the costs and benefits of options for improving interagency cooperation and Federal-State cooperation in the protection of incapacitated elderly and non-elderly people.

Comment

We disagree. Although we share your concern about this very vulnerable segment of our beneficiary population, we do not believe the proposed effort is within the purview of SSA. SSA receives appropriations from Congress to ensure that the benefits paid to payees are used for the maintenance and welfare of incapacitated individuals. The effort GAO has proposed goes far beyond the statutory responsibilities of SSA. Moreover, we believe that it would be extremely difficult for agencies to develop a systematic way to share information when we consider the number of State and local courts that exist and the differing laws of the State and Federal agencies regarding capability. In addition, there are privacy implications that could preclude information sharing among the many different jurisdictions.

2

Recommendation 2

To facilitate State efforts to improve oversight of guardianships and to aid guardians in the fulfillment of their responsibilities, the DHHS should work with national organizations involved in guardianship programs, such as those represented on the National Guardianship Network, to provide support and leadership to the States for cost-effective pilot and demonstration projects.

Comment

We defer our response to DHHS.

Technical Comment

Page 5, the first full paragraph, sentence 5 reads, "SSA, for example, will assign a representative payee for an incapacitated person if it concludes that the best interest of the incapacitated beneficiary would be served, whether or not the person has granted someone else power of attorney." We recommend removing the word "best" from the sentence.

Page 8, the first paragraph, last sentence reads, "Sometimes the guardian or representative payee is paid from the assets or income of the incapacitated person, or from the public sources if the incapacitated person is unable to pay." This sentence is misleading. If an SSA Rep Payee is authorized to take a fee, the fee comes from the monthly benefit payment. SSA's Rep Payees are not paid from public sources.

Page 29, the first full paragraph, sentence 3 reads, "For example, if a representative payee for 15 or more beneficiaries misuses the benefit payments, SSA will have to reissue the misused benefits to the beneficiaries or to an alternate representative payee, resulting in increased federal expenditures." The sentence should be revised to read, "For example, if a representative payee that is an organization, or an individual servicing 15 or more beneficiaries, misuses the benefit payments…"

Page 30, the second full paragraph, the penultimate sentence reads, "The agencies also do not compile information on the reasons a representative payee is replaced–due to death, relocation, voluntary resignation, or for failure to fulfill representative payee responsibilities." This statement is not entirely true. SSA keeps information on Rep Payees who are removed for misuse or Social Security fraud.

Appendix VIII: GAO Contacts and Staff Acknowledgments

GAO Contacts

Alicia Puente Cackley (202) 512-7022
Benjamin P. Pfeiffer (206) 287-4832

Staff Acknowledgments

Carolyn M. Boyce, Nicole E. Gore, Jill M. Johnson, Corinna A. Nicolaou, Daniel A. Schwimer, Derald Seid, and John E. Trubey also contributed to this report.

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