

UTAH OFFICE OF PUBLIC GUARDIAN

PROGRAM EVALUATION

FOR:

**UTAH DEPARTMENT OF HUMAN SERVICES
ROBIN ARNOLD-WILLIAMS, EXECUTIVE DIRECTOR**

**OFFICE OF PUBLIC GUARDIAN
S. TRAVIS WALL, DIRECTOR**

By

**The Center for Social Gerontology, Inc.
Ann Arbor, Michigan**

September 14, 2001

UTAH OFFICE OF PUBLIC GUARDIAN: PROGRAM EVALUATION

TABLE OF CONTENTS

EXECUTIVE SUMMARY - 1

I. INTRODUCTION 1

II. BACKGROUND 2

A. *DESCRIPTION OF EVALUATION 2*

1. **Objectives 2**

2. **Design 2**

3. **Implementation 4**

B. *DESCRIPTION OF OFFICE 5*

1. **History 5**

2. **Office Structure and Staff 7**

III. PROGRAM EVALUATION 11

A. *SUMMARY OF FINDINGS 11*

B. PROGRAM COMPONENTS 15

1. Discussion: The Office as Arbiter of Guardianship and Facilitator
of Alternatives 17

1.a. *Safeguarding Against Wrongful Guardianships and Excessive
Numbers of Guardianships 18*

1) The Office’s vision of guardianship 19

2) The size of the Office, its caseload, and eligibility guidelines 20

3) The Office’s assessment procedures 20

4) The Office’s termination of guardianships 22

1.b.	<i>Provision of Alternatives to Guardianship</i>	23
1.c.	<i>Meeting the Legitimate Need for Public Guardianship in Utah</i>	25
	1) Existence of Need for Public Guardianship in Utah	25
	2) Extent of Need for Public Guardianship in Utah	27
	3) Program Capacity to Meet Need	29
	Recommendations: The Office as Arbiter of Guardianship and Facilitator of Alternatives	31

2.	Discussion: The Office as Guardian	35
2.a.	<i>Guardians' Perspectives and Satisfaction of Providers</i>	35
2.b.	<i>The Office as Guardian: Internal Office Programmatic Components</i>	38
1)	Staffing of Office and Consultants	39
2)	Training of Staff	44
3)	Office Procedures and Protocols	48
	Recommendations: The Office as Guardian	53
3.	Discussion: The Office as Educator	60
	Recommendations: The Office as Educator	64
4.	Overall Comments on Evaluation of Program Components	67
C.	STRUCTURE OF THE OFFICE	68
1.	Discussion: Should the Office be Public or Private?	69
	Recommendations: Should the Office be Public or Private?	72
2.	Discussion: If the Office Remains Within the Department, Where Should It Be Located?	73
	Recommendations: If the Office Remains Within the Department, Where Should It Be Located?	74
3.	Discussion: Were the Office to Become Private, What Safeguards Should be Put in Place?	75
	Recommendations: Were the Office to Become Private, What Safeguards Should be Put in Place?	75
4.	Discussion: Establishing the Guardianship	76
	Recommendations: Establishing the Guardianship	80
5.	Discussion: Geographic Location of Office	82
	Recommendations: Geographic Location of Office	83
6.	Discussion: Establishment of Volunteer Model	84
	Recommendations: Establishment of Volunteer Model	86
7.	Overall Comments on Evaluation of Structure of the Office	88

D.	CONTRACTS FOR GUARDIANSHIP SERVICES: PROGRAMMATIC AND STRUCTURAL ISSUES	89
1.	Background on Contracts for Guardianship Services	89
2.	Discussion: Contracts for Guardianship Services	90
2.a.	<i>Differences Between the Office and the Contractors</i>	<i>92</i>
1)	Differences in Definition of Role as Guardian	93
2)	Differences Regarding Philosophy of Guardianship	94
3)	Differences Regarding Maintenance of Files	95
4)	Relationship between the Office, Contractors and Department	96
2.b.	<i>Consideration of Future Options Regarding Contracts for Guardianship Services</i>	<i>97</i>
3.	Recommendations: Contracts for Guardianship Services	99
E.	CONCLUSIONS AND OVERALL OBSERVATIONS	100
APPENDIX A:	INTERVIEWEES FOR UTAH OFFICE OF PUBLIC GUARDIAN PROGRAM EVALUATION REPORT	103

EXECUTIVE SUMMARY

UTAH OFFICE OF PUBLIC GUARDIAN: PROGRAM EVALUATION

The Office of Public Guardian Act, enacted by the Utah legislature in July 1999, created the Utah Office of Public Guardian. The Act established the Office of Public Guardian within the Department of Human Services, mandated that a Board of Public Guardian Services be appointed by the Executive Director of the Department of Human Services, and set forth the duties and responsibilities of the Office of Public Guardian. Among those duties and responsibilities was the requirement that the Office of Public Guardian obtain a program evaluation by a specified date:

By July 1, 2001, the office shall obtain an independent evaluation of its program and services. The office shall provide a copy of the evaluation to the board, the executive director, and the Health and Human Services Interim Committee no later than September 15, 2001.

(Office of Public Guardian Act, Chapter 14, Section 62A-14-112 (2))

This legislatively mandated program evaluation of the Utah Office of Public Guardian (the Office) was conducted by The Center for Social Gerontology, a non-profit organization in Ann Arbor, Michigan with established expertise in the guardianship field, including development of nationally recognized standards for the provision of guardianship services published by the Select Committee on Aging of the US House of Representatives and numerous studies of the guardianship system and guardianship service providers.

Program evaluation activities, which began in April 2001, included:

- two on-site visits to the Office;
- numerous interviews with individuals in Utah that work in the Office or have been involved with the Office in a variety of different roles;
- interviews with other states' public guardianship programs and national experts on guardianship;
- review of the literature on public guardianship;
- case-file review of guardianship cases of the Office and its contractors; and
- review of numerous internal Office documents including the excellent Implementation Plan of January 2000 which serves as the "blueprint" for development and operation of the Office.

The Program Evaluation Report draws on all these sources to discuss our evaluation findings and make future recommendations.

The Program Evaluation Report contains two sections: program components and Office structure, the first assessing what the Office does, and the second focusing on the context in which these program components are implemented. Separate categories within each section are followed by specific recommendations.

It is important to note that the evaluation was undertaken with recognition that the Office has been in existence for only a brief period, and its operations and procedures are still in the process of being developed and refined. Given this, it was agreed by the evaluator, the Office and the Department, that the aim of the evaluation is to assess the progress the Office has made thus far, but more important, to explore various options and make recommendations for future directions.

Thus the large number of recommendations that appear in each of the sections of the report, and that are summarized in this Executive Summary, are not intended to reflect serious concerns of the evaluators with the way the existing program is developing. Rather they were formulated based on our knowledge and experience with guardianship services and are included to provide future guidance as the Office continues to grow and develop.

This Executive Summary first provides an overall summary of the Program Evaluation Findings; it then highlights the specific issues and questions explored and summarizes the recommendations formulated for each of those issues/questions. It concludes with some overall observations on the Office and the substantial contributions it has already made in developing a system of surrogate decision-making services that is critical to incapacitated elder Utahns and adults with disabilities -- a system that is geared to protecting the personal dignity and independence of those persons to the maximum possible extent and that serves as a model for other states developing public guardianship programs.

I. Summary of Program Evaluation Findings

Our overall impression of the Office was very positive. The evaluators found a program that had many elements that could serve as models for states across the country that are attempting to set up public guardianship programs. Most impressively, we saw a program which had a vision of guardianship that respected individual autonomy and self-determination and did not seek to impose guardianship where it was not appropriate. We saw staff who were intelligent, skilled, dedicated, possessed personal integrity, and who manifested in their comments an attitude of caring for the people they were responsible for serving and a commitment to a view of guardianship as a last resort. Many of the Office's accomplishments are groundbreaking, representing progress in areas such as public education, that simply were not addressed before. Public education about guardianship and guardianship alternatives serves the especially critical function of deterring unnecessary guardianships.

The accomplishments of the Office are all the more impressive given several factors that were at play that include: 1) the very short period of time the Office has been in existence resulting in many systems and procedures that are still in the process of development; 2) the limited resources available for the Office's operation; and 3) the fact that the Office was not being created "from whole cloth" but rather needed to incorporate a number of pre-existing pieces -- including inherited cases and pre-existing contracts with other agencies -- that had to be reformulated in order to comport with the new vision, philosophy and standards of operation of this Office.

A recurring theme in our evaluation was the Office's lack of sufficient resources and the impact of that deficit on the Office's operations. Many of the areas of improvement we identified are substantially linked to this problem, and we see the provision of additional resources in certain areas, as discussed in greater detail in the full report, as indispensable for the Office's fully effective functioning.

II. Content of the Evaluation Report

The full evaluation report contains the following sections:

Introductory and Background Sections

These sections introduce the report and describe the evaluation (a profile of the evaluators and the design and implementation of the evaluation) and the Office (its history, staff, and the way it is organized).

The Program Evaluation.

The program evaluation is divided into two sections: “*Program Components*” and “*Structure of the Office of Public Guardian*”.

The first section on Program Components identifies three separate roles that the Office plays as arbiter, guardian, and educator (the Office assesses referrals for guardianship and facilitates alternatives, acts as guardian for its own public guardianship cases, and provides public education). The evaluation separately discusses these specific roles, the strengths and challenges of each, and recommendations to fortify the existing strengths in program components and become more effective in certain areas.

The second section on Structure of the Office discusses the current structure of the Office and what structural models might be considered in the future. Within this section we address whether the Office should be public or private, its location within a public agency if it remains public, the geographic location of the Office, the use of a volunteer model, and the model through which guardianship should be imposed. A separate section that includes both program and structure issues looks at the use of contractors to provide guardianship services.

III. Highlights of Recommendations

Our recommendations are highlighted here. For simplification, some are condensed and are not repeated in full. As indicated above, the number of recommendations is large, not because the evaluators saw serious problems with the Office, but rather because the goal of the evaluation was to be forward looking and provide guidance for future directions to strengthen and enhance the Office and its services.

1. **Program Components: Recommendations**

The Office as Arbiter of Guardianship and Facilitator of Alternatives. We recommend that - -

- *The Office create a mission statement that incorporates its vision of guardianship*
- *The Office formalize its assessment protocol to be relied upon as the Office assessment tool.*
- *The Office track in greater detail both advice it gives to family guardians and referrals it handles that do not end up in guardianship.*
- *Once the Office is more established with core programmatic elements, it provide alternatives to guardianship directly.*
- *The Office expand its eligibility guidelines to more fully meet the legitimate need.*
- *The Department explore whether a future assessment of the need for public guardianship in Utah should be done, but the Office, given its very limited resources, should not be the agency conducting such a needs assessment.*

The Office as Guardian. We recommend that --

- *A minimum of an additional two staff positions be added to the current number of staff. Three more staff positions are needed if the Office is to meet adequately the needs of residents state-wide.*
- *The Office establish and clarify when and how it should obtain outside professional advice and that additional resources be provided for such advice where needed.*
- *The further development of initial guardianship training.*
- *The Office institute further programmatic policies that address “initial steps” to be taken when a new guardianship is assumed.*
- *With respect to maintenance of files, that the Office institute some kind of “tickler system that prompts timely submission of annual reports.*

The Office as Educator. We recommend that -

- The Office specifically address further educating family members who may wish to become guardians and those in the community for whom education on less restrictive alternatives might deter future guardianships.
- *With additional staff – an element which this evaluation finds indispensable for the Office’s future functioning – a staff person or persons be identified who can serve as a resource to answer questions that arise about guardianship and alternatives.*
- *The Office continue to establish dialogue with Other Divisions in the Department of Human Services, informal connections in particular, and with the Division of Aging and Adult Services in particular, as well as with others outside the Department*

2. Structure of the Office of Public Guardian: Recommendations

With respect to various structural elements, we recommend that --

- The Office not be privatized until it is fully established and has at least the minimal resources necessary to meet effectively its objectives.
- *If the Office remains within the Department, it should not report directly to a Division. However, avenues should be explored that would result in the Office becoming more visible and prominent within the Department and able to advocate for more resources independently.*
- *Any consideration of future privatization include the development of safeguards to assure adequate monitoring and oversight and assure equal treatment of indigent and fee-paying clients. Oversight of a privatized Office should be contained within the statutory language creating it.*
- *The Office explore ways in which it could adopt a model in which it would not itself act as petitioner because of the inherent conflicts of a guardianship service provider also acting as petitioner.*
- *The Department assure that there is sufficient funding for guardianship defense. Where the adequacy of guardianship defense in outlying areas is questionable, there should also be training in guardianship defense.*
- *An additional staff position be created to fund a guardian based in the Southern part of Utah. That staff member would be trained in the Office and have established regular contact with the Office to assure that one unified philosophy of guardianship guides the provision of services state-wide.*
- *A volunteer model not be implemented at the current time from a practical perspective alone. Philosophically, over the long term, even apart from the current realities that make it not a viable option, we believe that the model can be difficult one because of the care and effort that is involved and that any future consideration of this model should take into account these difficulties.*
- *The Office meet with the volunteers currently working with the Office’s clients to assure that they are knowledgeable and effective.*

3. Contracts for Guardianship Services: Recommendations

With respect to contracting for guardianship services, we recommend that --

The Office work toward the desired outcome, in our view, of a state-wide system that provides one unified program of guardianship services. Accordingly, if services are to be contracted out, they must be contracted out in such a way that the population served by the Contractors receives services that are comparable to the populations served directly by the Office staff. To achieve this objective, the Office could intensify its connection with the contractors, change contractors, or provide services itself. We have discussed some of the considerations that underlie these different options, the choice of which is better made by the Office or the Department itself.

IV. Conclusions and Overall Observations

As stated above, this program evaluation was specifically designed to be forward looking and therefore includes the large number of recommendations indicated above. As also noted previously, the number and specificity of recommendations does not reflect serious overall concerns about the quality of the Office or the many excellent services it provides.

Having taken this forward looking view thus far in the Evaluation Report, we provided a concluding section which takes a retrospective view, and looks at the program components and the structural elements as a whole to evaluate what the Office has accomplished that did not exist before. These achievements are many, and they are significant. Some highlights are collected together here to present an overall picture of how guardianship under the Office has changed the landscape that existed before in the State of Utah.

- The primary accomplishment of the Office, one that underlies other achievements as well, has been to “reshape the vision of guardianship” in the words of its Director and confirmed in many interviews. Before the Office was established, awareness of guardianship, in its progressive reform-minded meaning, taking into account concepts of “least restrictive,” “last resort” and “substituted judgment” was not part of the system. Compared to the previous program (in the words of that prior program’s own director):

The difference between this Office and the previous program is night and day. The program now is 100 times better in terms of thoroughness and protocol.

Other interviewees similarly praised what the program had accomplished in the short time of its existence, stating that:

The standards make the Office head and shoulders above other guardianship programs. They are better in terms of knowing what they are doing.

The previous program was more geared to just “getting the guardianship.”

The Office looks at guardianship more holistically...

Before the Office was established, the people who had a stake in guardianship – nursing homes, hospitals, judges -- were not as aware of the theory surrounding guardianship law. The presence of the Office has elevated awareness and knowledge.

- The Office has built a program, from the ground up, that didn't exist before. Before, guardianship was *“handled by doing the minimum the law required. . . there was no assessment protocol, no education component.”* From its first task of developing an Implementation Plan – a blueprint of what guardianship should be, that had never before existed in the state – the Office has brought to guardianship program development a serious in-depth look of what a good guardianship program should be, involving a degree of contemplation that had not been brought to bear on the subject before. Translating the concept more fully in ongoing guardianship work is the focus of our recommendations. The important point to make here is that this blueprint did not exist in any form to provide leadership in the way a public guardianship program or any other guardianship program could effectively and ethically operate. Further, although the Plan was mandated by the legislature, it could have been done in a much more cursory fashion.
- Before the Office came into existence, assessment, as evidenced in our case-file review, was not a pivotal focus of guardianships handled by the state. The approach now taken views very seriously the concept that there must be incapacity before there can be guardianship and represents a marked departure from previous norms and a significant improvement in how guardianship is approached:

Compared to the previous program, there is much better screening...

There didn't used to be any assessment procedure the way there is now...

Well, the main difference with our assessments is that they're legal (referencing that while a determination of legal incapacity is mandated by law, it is not the standard that is regularly adhered to in many other locations, or prior to the Office)

- In acting as guardian, the Office has taken a system that was in much more disarray and made it cohesive and coherent: case-files that were not maintained in a way that made them comprehensible and informative were updated and expanded and omissions such as absent reports were rectified. In writing annual reports that thoroughly address the situation of the person under guardianship, the Office has accomplished something that was never done before, and exemplified setting a standard that essentially said: these reports should not be routine (and fairly uninformative) paperwork, but should be done with the same attentiveness that accompanies many other court filings in other areas of the law.
- Before the Office, there was no forum for public education. Detailed informational literature about guardianship that would aid family members and friends who needed to act as guardian, or a place family members could call and get advice did not exist. Substantial outreach and presentations about guardianship to other professionals had not been undertaken before. *"There was no education component in the previous program."* All the achievements within public education were groundbreaking in this respect.

Taken together, these very significant accomplishments indicate that, whatever future improvement can be made, what the Office has already accomplished represents great progress, a sea change really, from what existed in the guardianship field before.

UTAH OFFICE OF THE PUBLIC GUARDIAN: PROGRAM EVALUATION

I. INTRODUCTION

The Office of Public Guardian Act, enacted by the Utah legislature in July 1999, created the Utah Office of Public Guardian. The Act established the Office of Public Guardian within the Department of Human Services, mandated that a Board of Public Guardian Services be appointed by the Executive Director of the Department of Human Services, and set forth the duties and responsibilities of the Office of Public Guardian. Among those duties and responsibilities was the requirement that the Office of Public Guardian obtain a program evaluation by a specified date:

By July 1, 2001, the office shall obtain an independent evaluation of its program and services. The office shall provide a copy of the evaluation to the board, the executive director, and the Health and Human Services Interim Committee no later than September 15, 2001.

(Office of Public Guardian Act, Chapter 14, Section 62A-14-112 (2))

On April 2, 2001, The Office of Public Guardian (hereinafter referred to as the Office) contracted with our organization, The Center for Social Gerontology (TCSG), a non-profit organization with extensive experience both in the study of guardianship and guardianship service providers and, more broadly, in working with diverse groups on issues relating to program and performance improvement, to provide the mandated program evaluation.

This report is the TCSG program evaluation of the Utah Office of Public Guardian.

II. BACKGROUND

A. DESCRIPTION OF EVALUATION

1. Objectives

The aim of this evaluation is to assess the progress the Office has made thus far, and make recommendations for its future development. Given that the Office is relatively new and its operations and procedures are still in the process of being developed and refined, there were early conversations with the Office on how to strike a balance between evaluating what currently exists and exploring potential changes and directions for the future. It was agreed that the greater emphasis should be on looking toward the future.

Accordingly, while assessment of the Office's current program necessarily underlies future recommendations, exploration of different options for future directions and our recommendations form a key component of the evaluation. Thus the large number of recommendations that appear in each of the sections of this report are not intended to reflect serious concerns of the evaluators with the way the existing program is developing. Rather they were formulated based on our knowledge and experience with guardianship services and are included to provide future guidance as the Office continues to grow and develop.

To achieve the objectives of assessing the current functioning of the Office and exploring areas of future growth and development, TCSG formulated evaluation questions with input from the Office, identified people to be interviewed and cases to be reviewed, planned and carried out two on-site visits, collected information from a diverse variety of sources, and analyzed that information, drawing from our own experience in the guardianship field. These activities are described in greater detail in the following section of our approach to the evaluation.

2. Design

Commencing in December of 2000 and continuing through our first on-site visit at the end of May 2001, the Office and TCSG had many conversations about the shape of the

evaluation, its purpose, and what it should contain. As a result of these collaborative conversations, TCSG prepared the following:

- formulation of evaluation question guidelines for interviews;
- formulation of guidelines for case-file review, and determination of number of case files to be reviewed, both of the Office and the agencies with which it contracts;
- planning of two on-site visits to the Office (May 29-June 1 and June 25-29, 2001);
- identification of people to be interviewed in Utah (with advice and information from the Office);
- arrangement of telephone interviews with public guardianship programs in other states; and
- review of documents sent to us by the Office before the on-site visits.

In order to assure the integrity and credibility of the evaluation, we took the following steps in its implementation:

- we interviewed staff members of the Office privately rather than as a group;
- case-files of the three agencies to be reviewed were selected randomly;
- where possible, we initiated contact with the interviewees ourselves, and set up the interviews at the interviewee's office. (Interviews within the Office and in the Department were set up by the Office Director); and
- for staff at facilities who interact with the Office, we determined which facilities we would call and with whom we would speak, drawing from names from case-file reviews as well as a longer list supplied to us by the Office.

At the same time, mindful of the value of a shared effort between TCSG and the program to be evaluated, the Office was significantly involved in the evaluation in the following ways:

- there were intensive conversations with the Office to develop the evaluation;
- evaluation materials, such as the interview and case-file review guidelines, were shared with the Office, in advance, in order to incorporate their input to the scope of the materials; and
- we spoke with the Office during the evaluation to elicit their views on various aspects of the evaluation as well as to share some of our preliminary findings with the Director.

3. Implementation

During May and June of 2001, we carried out two on-site visits to Utah. The purpose of the first visit was to conduct interviews with the staff and other stakeholders and attend the scheduled meeting of the Board of Public Guardian Services, at which time we conducted a group interview of the Board. The purpose of the second on-site visit was to conduct further interviews and also to review case-files of the Office as well as of the two contractors who provide services for persons with developmental disabilities, Guardianship Associates of Utah and Guardianship and Advocacy Providers. We reviewed 30 files in all.

Upon the completion of the on-site interviews, we conducted further telephone interviews from Michigan – both with individuals whom we had not interviewed in Utah (often because they were not located close to the Office, for example, staff of facilities where clients resided) and with public guardians and guardianship experts in other states.

On-site visits, interviews, case-file reviews, reviews of Office materials and literature on public guardianship thus formed the backbone of our evaluation, and gave us a wealth of information that forms the basis of this report.

B. DESCRIPTION OF OFFICE

1. History

Prior to the establishment of the Office, the Division of Aging and Adult Services, Department of Human Services provided guardianship services through a guardianship program within the Division (hereinafter referred to as Guardianship program). In addition, the Division of Services for People with Disabilities, Department of Human Services provided guardianship services through contracts with two private nonprofit guardianship agencies, Guardianship Associates of Utah and Guardianship and Advocacy Providers. When the Office was established, it inherited all of the cases being handled by the Guardianship program, and the responsibility for administering the contracts with both contract agencies was transferred from the Division of Services for People with Disabilities to the Office.

While the Office is located within the Department of Human Services, it does not report directly to a Division within the Department. Instead, the Office reports to the Office of Legal Counsel of the Department (as of the time of the evaluation site visits).

The first major task of the Office was to develop an Implementation Plan (hereinafter referred to as the Plan), as required by statute, that would serve as a blueprint for the development of this new public agency. Developing the Plan was a major undertaking, and consideration of the accomplishments of the Office in the two years that it has been in existence should, accordingly, take into account that a substantial percentage of the Office's time in its early months was spent developing the Plan. A draft plan was submitted to the legislature in September 1999 and disseminated to more than 200 concerned organizations, groups and individuals for review and input. The final version of the Implementation Plan, which incorporated input from the Legislature, Board and stakeholders was completed and published in January 2000.

As a whole, the Plan document reflects the careful and considered approach to guardianship that characterizes the Office. Prior to its drafting, the Director of the Office thoroughly researched existing standards of practice for guardianship services, gathered information on public guardianship programs in other states and the history of guardianship law and practice in Utah, and sought the input and advice from experts around the country. The resulting first five sections of the Plan provide an excellent framework for developing in Utah a program that is exemplary in terms of limiting the use of guardianship to cases where it is truly necessary and appropriate, providing the highest quality services where the Office is appointed as guardian, and educating the public about guardianship and about the use of less restrictive alternatives.

Of particular relevance for the purpose of our evaluation is the final section of the Plan, section VI, which most specifically discusses the Office itself – its anticipated structure, function, goals and objectives. Familiarity with this section of the Plan underlies the evaluation we undertook and guided our development of it in many ways. At the same time, we felt that a helpful evaluation must look beyond the parameters of the Plan and not rely on it as the yardstick or scorecard of what has been accomplished or not accomplished.¹

The Plan is, however, an important frame of reference we relied upon in developing the evaluation and specific relevant aspects of it are noted in our discussion of the Office. While the Office was legislatively established in July 1999, it really became operational in January 1, 2000, upon the completion of the Plan. (Conversation with Director of Office) .

¹ Much of the Plan addresses the exploration of various topics for future discussion – the structure of the Office, for example, the use of volunteers. Reliance on the Plan as a “scorecard” would thus simply ask whether these topics were discussed and explored; our deeper objective was to ask and answer the substantive questions themselves.

2. Office Structure and Staff

As we evaluate different program components, it will be clear that there are areas in which the Office does not have the capacity at the present time to function as fully and effectively as it might. This background description of the Office evidences some root causes for that limited capacity. The current size of the Office, its number of staff, the longevity of the current staff, the geographical regions it serves, and the tasks that have necessarily taken priority thus far in the Office's relatively short tenure because they were legislatively mandated and because the Office inherited a pre-existing case-load and two contractors with full case-loads when it began operations, are all extremely significant in laying the framework to understand what the Office has and has not been able to achieve.

While the Implementation Plan envisioned four guardian positions serving under the Director of the Office, to date, there have not been more than three staff guardians in the Office and, for a brief period of time, there was only one guardian. Currently, in addition to the Director and an Administrative Secretary, there is one Senior Guardian whose responsibility is primarily to assess referrals, and two Deputy Guardians.

The background experience of office staff at the time of our on-site visits includes social work and case work experience, experience in work with older persons and persons with disabilities and with disability law, experience in state agencies that serve the Office's clients, and work in nursing homes and other long-term care facilities as well as community alternatives programs. At the time of our visits, the Office did not have staff with significant real estate, accounting or other financial background although the Office serves as conservator for some of their clients. Nor was there a lawyer directly on staff or someone with a medical or nursing background. The Director reported that given the minimal funding, it is hard to attract certain individuals with advanced degrees or use them for consultations. At the time of the on-site visits, the Director was attempting to hire a staff guardian who would have primary responsibility for conservatorship work and who would have some expertise in areas where there were gaps.

At the end of July 2001, a new guardian was hired who is a registered nurse with 8 years experience in a variety of settings (including nursing homes, psychiatric facilities, veterans' facilities and acute care settings) and who has experience as a bookkeeper and is a law school graduate.

An accomplishment of the Office, notwithstanding these difficulties, has been to advocate for some additional funding in order to seek out individuals with advanced degrees, despite the problems with limited resources, as evidenced in the two most recent additions to the staff of a social worker (MSW) and a nurse with a law degree. As our recommendations later indicate, sufficient resources not only for additional staff but sufficient to attract staff that truly has the expertise that guardianship requires, is crucial for the continuing success of the Office.

It should also be noted at the outset that because the Office has been so very recently established, a significant amount of time was necessarily spent in start-up administrative work to make a brand new program operational -- including redefining and re-structuring various pieces from a pre-existing program. This necessarily included many time-consuming tasks such as writing job specifications and establishing basic office procedures, handling a pre-existing case load, developing an initial budget, and so forth. Moreover the legislative time-line that governed the new agency itself dictated additional responsibilities for how a substantial amount of the early time would be spent. The Director's own time was devoted in large part to the legislatively mandated Implementation Plan when he first came to the Office as well as to the essential early tasks of educating the aging, disability and judicial communities about the Office, making the transition and transfer of the prior Guardianship program, cases and contract to the Office, and developing the newly-created Board of Public Guardian Services, which by statute, is responsible for establishing policy for the Office. Most recently, if to a lesser degree, the Director's time was required to prepare for this legislatively mandated evaluation. The accomplishments that have been made so far, as discussed in detail, are all the more

noteworthy in light of all the tasks that needed to be undertaken in the past two years to start up a new agency and, further, to comply with legislatively mandated responsibilities in a timely fashion.

Apart from the Director, who was hired shortly after the Office of Public Guardian Act was passed in July of 1999, none of the three staff people had been in the Office for a full year at the time of the first on-site visit of the evaluators at the end of May 2001. The two Office employees who were guardians with the guardianship program that preceded the establishment of the Office resigned in the summer of 2000; another staff member hired by the Office resigned that summer as well. For one season during the evaluation period – the summer of 2000 – the Office was operating with only its director and one guardian.

Currently, the Office has a caseload of 37 guardianships² and has handled 55 guardianship cases since it was established. Between January 2000 and July 2001, the Office has conducted 59 assessments, 31 of which have resulted in guardianships. The Office has terminated 5 guardianships where it determined guardianship was no longer appropriate. That roughly half of the Office assessments did not result in guardianships together with the Office's own initiation of guardianship termination evidences a commitment to guardianship as a last resort that is rare in guardianship programs and particularly commendable.

The Office, based in Utah's capital city, is responsible for meeting the guardianship needs throughout the state. As there is just one office, this means that a staff person must spend a whole day of driving in order to have direct contact with a ward or proposed ward in the southern part of the state:

There was one week where I started up in Logan, which is north of Salt Lake City. And on Wednesday, I had to be in St. George which is several hours south

² The word "guardianship" technically refers to guardianship over personal affairs alone. The Office may also serve as conservator, in which case it has authority over financial affairs. For simplification in this report, we use the terms "guardian" and "guardianship" to cover instances where the Office is guardian alone and also when it acts as guardian and conservator (of the estate).

of us. So in one week, I was in the very northernmost point of the state, and its most southern point. Obviously, it involved a lot of driving.

(Guardian, Office of Public Guardian)

In sum, then, this is an Office which is operating on a skeletal basis and, as such, is not able at this time to achieve all of its objectives. Many of our evaluation findings and recommendations should be viewed within the framework of how the Office is currently structured, the fact that it inherited pre-existing cases, procedures, and contracts that have had to be re-defined and re-developed, the numerous new tasks that had to be undertaken such as developing the Board, and the relatively short time it has had to work on these things. There are a number of areas in which we have made recommendations aimed toward improving the program's capacity where the Director is already moving in the direction of those recommendations but has not yet been able to complete their implementation. Implementation of many of these recommendations as well as achieving a number of objectives in the Plan, however, will also depend on the allocation of more resources.

III. PROGRAM EVALUATION

A. SUMMARY OF FINDINGS

Our program evaluation contains two main sections. The first section of the evaluation focuses on the program components of the Office to assess what the Office does; the second section of the evaluation focuses on the structure of the Office to evaluate the context in which these program components are implemented.

Separate categories within these two sections are each followed by specific recommendations. As noted above, we would like to emphasize that the number of recommendations is not intended to suggest that there are excessive problems in the Office and should not be so interpreted. To the contrary, as discussed immediately below, our overall impression has been that the Office has been successful in accomplishing a great deal in a very short amount of time. Instead, the relatively high number of specific recommendations we have made derives from the extensiveness and comprehensiveness of the evaluation and our attempt to think through future directions for each of the many areas we explored. The recommendations also grow out of the very early agreed upon emphasis of the evaluation on future development rather than a description of what currently exists. Accordingly, our intent with the recommendations is to be as forward-looking as possible with the hope that these recommendations will be useful and suggest avenues for future development.

It should be said at the outset that, as evaluators, we approached the study of a guardianship agency with a clear awareness of the many deep-seeded fundamental problems of guardianship service providers that have been evidenced in our own studies and in the literature as a whole. Most fundamentally, these problems relate to the overuse and misuse of guardianship where it is not appropriate. Given this awareness, we were especially attuned to evidence of such problems in this new agency. Our evaluation, however, did not find that these problems occurred in this agency. Instead, the evaluation found that the Office exemplified a

progressive and commendable vision of guardianship which was committed to the notion of guardianship as last resort.

Our overall impression of the Office was very positive. The evaluators found a program that had many elements that could serve as models for states across the country that are attempting to set up public guardianship programs. Most impressively, we saw a program which had a vision of guardianship that respected individual autonomy and self-determination and did not seek to impose guardianship when it was not appropriate. We met staff who were intelligent, possessed personal integrity, manifested in their comments an attitude of caring for the people they were responsible for serving and were committed to this view of guardianship as a last resort. The accomplishments of this Office are all the more impressive given several factors that were at play here that include the following: 1) the very short period of time that the Office has been in existence resulting in many systems and procedures that are still in the process of development; 2) the limited resources available for the Office's operation; and 3) the fact that the Office was not being created "from whole cloth" but rather needed to incorporate a number of pre-existing pieces – including inherited cases and pre-existing contracts with other agencies – that had to be reformulated in order to comport with the new vision, philosophy, and standards of operation of this Office.

The above expression of an overall positive impression is not to say that the evaluators did not find areas for improvement. It does suggest however, that many of these areas are substantially linked to the short development time of the Office and limited resources. Further, as noted above, the number of recommendations are not a sign of serious flaws, but rather were developed in an effort to provide guidance that will keep the program moving in the direction of serving as a model for the nation.

With respect to the program components analysis that follows this discussion, this major strength of the Office is detailed in the section describing the Office's role as arbiter of guardianship. Our evaluation further found that the Office has been very effective in the

program component which relates to public education. The public education that has already taken place is groundbreaking and represents activities that simply were not in existence before the establishment of the Office. Public education is an especially critical component of a guardianship Office which can, in itself, serve to deter guardianships: family members, for instance, with greater knowledge of guardianship can act themselves as guardians rather than looking to outside. For both these two program components – the Office as arbiter and the Office as educator – our recommendations suggest ways in which the Office can fortify its existing commitment to these roles and also be even more effective in the future.

Notwithstanding how much the Office has been able to accomplish in a very short time, a recurring theme in the evaluation was the extent to which lack of resources inhibited full achievement of objectives. This obstacle was most clearly seen in our evaluation in the third program component: the Office's role as guardian. Here, not unexpectedly, we found programmatic constraints which limited how many guardianships could be assumed, staff training and program management of those cases, and the capacity of the Office to provide services state-wide. Our very specific recommendations in this area delineate what specific improvements could be made to be more effective, improvements which, to a large extent, turn on the necessity of having adequate resources.

Our evaluation findings with respect to structural issues addressed whether the Office should be public or private, its location if it remains part of the Department of Human Services, the use of a volunteer model, the physical location of the Office, the model through which guardianship should be imposed, and the use of contractors to provide guardianship services.

A brief summary of our findings in these structural areas is as follows:

We found little evidence of actual conflicts of interest by virtue of the fact that the Office is within a state agency that itself provides services, but a widespread recognition of the potential for conflict. Similarly, we found that the model by which guardianship is established has not, in practice, resulted here in abuses but that, in the long-term, this model lacks certain

safeguards and there is potential for abuse. We found that, currently, there are programmatic differences between the Office and the contractors who provide guardianship services, and recommended various possibilities for the future that would build toward the goal of one unified program. While we would not recommend privatization at this point of time, nor would we recommend the immediate development of a volunteer model because the Office seems itself insufficiently established to move now in that direction, we do discuss various considerations to be explored with respect to both privatization and the use of volunteers. We recommend the establishment of a satellite field Office to better meet the needs of residents throughout the state and recommend the exploration of ways in which the Office could be more visible and have a strong ability to advocate for its needs while it is situated within the Department of Human Services.

B. PROGRAM COMPONENTS

In order to evaluate a program, it is important to initially isolate and identify the components of that program. Here, then, the first inquiry is: what does a Public Guardianship Office do?

Perhaps the most obvious answer to that question is that a public guardianship office acts as a guardian for those entrusted to its care. This is clearly a chief program component. Yet another very significant element of a public guardianship program comes chronologically before the point in time that a public guardian assumes guardianship responsibilities over a client. That element is the program's appraisal of whether or not to accept a case and become guardian or facilitate other alternatives.

While these two elements relate to the program's capacity to address individual needs when guardianship is being considered, the third and final program component involves a leadership role that goes beyond how the program meets the needs of individual clients or proposed clients. This leadership role may be described as the "public education" component of a Public Guardianship Office: the program's capacity to educate professionals whose work involves guardianship, family members or friends who may become guardians, and diverse groups in the community as a whole for whom education about less restrictive alternatives may be a deterrent to future guardianships.

Our evaluation focuses on assessing these three distinct program components:

- 1) Is the Office set up in such a way that it meets no less and no more than the legitimate need for guardianship?
- 2) When acting as guardian, does the Office have the capacity to meet the needs of those entrusted to its care?
- 3) Does the Office have the capabilities to carry out effectively a leadership role in providing public education?

The above three inquiries provide a broad frame of reference in which to view the evaluation of these different program components. Many more specific questions are raised

and analyzed in the separate evaluation of each one. That evaluation looks to these three program components to assess what has been accomplished so far and to suggest future directions for improvement or growth.

As noted above, this evaluation was undertaken with a goal of looking much more toward the future than assessing the past performance of the Office during its brief history. That is, it is primarily intended to provide guidance on ways the Office might be strengthened and enhanced as it moves forward. Thus as the three program components are evaluated separately below, the discussion for each concludes with a fairly large number of recommendations. The number and specificity of recommendations does not reflect serious overall concerns about the quality of the Office or the many excellent services it provides. Rather they are intended to fulfill the goal of providing future guidance. These program components will be revisited in our Conclusion to this Report when we take a look at the program as a whole and what it has accomplished.

1. Discussion: The Office as Arbiter of Guardianship and Facilitator of Alternatives

Guardianship should never be imposed on people who are capable of making their own decisions. Fundamental to any good public guardianship program is its adherence to this principle. Criticism of public guardianship often focuses on the danger that this principle will be subverted: that is, that the very existence of a public guardianship office will prompt inappropriate petitions and that the reach of a public guardianship program will extend beyond the legitimate needs of individuals to be served by it. *"I'm reminded of that movie",* said one director of a public guardianship program in another state, acknowledging this potential, *"If you build it... they will come."*³

This is a very serious danger. Regardless of how guardianship can be a positive force in people's lives in instances when it is appropriately imposed, taking away individuals' decision-making powers when they are themselves capable of making their own decisions is repugnant to basic civil liberties. No matter how "good" a guardian may be, no guardianship services are justified if the person over whom they are exercised should not be a ward just as, analogously, there is no positive value to a surgeon's medical skill and expertise if it is employed to amputate a healthy limb. When public guardianship programs grow excessively large, either because there are inappropriate guardianships or because the program is severely under-staffed for the caseload it carries, public guardianship programs have been viewed as doing more harm than good.⁴

Our very first frame of reference in evaluating a public guardianship program thus assesses how well the model operates to assure that the wrongful imposition of guardianship does not occur.

³ Interview with Director of Kansas Guardianship Program.

⁴ Schmidt, Winsor, *Public Guardianship Issues for New York: Insights from Research*, 6/3 Elder Law Attorney (N.Y. State Bar Association) 31, 36 (1996)

At the same time, the Office was created because there was a deeply felt need for public guardianship. In this respect, the program's capacity to function effectively turns on the extent to which it can meet that legitimate need. Where the legitimate need for guardianship is unmet, the Office has not achieved the central objective it was established to accomplish.

An effective program must, accordingly, navigate between under-utilization and over-utilization and steer the proper course to assure it meets adequately but exclusively the legitimate need for guardianship within the populations it serves.

Our evaluation focused on these two different facets of the program's effectiveness in screening guardianships and also probed the program's capacity to facilitate alternatives:

- Does the program model safeguard against wrongful guardianship and an excessive number of guardianships?
- Is the program model capable of meeting the legitimate need for guardianship?
- Does the program have the capacity to offer or facilitate alternatives when guardianship is not appropriate?

1.a. *Safeguarding Against Wrongful Guardianships and Excessive Numbers of Guardianships*

As indicated above, two dangers of public guardianship programs are that they serve as guardians over people who should not have a guardian or they serve as guardian for too many individuals to adequately meet their needs.⁵ For reasons discussed below, these are not current problems of the Office. While there is no indication that they would become problems,

⁵ The Illinois Office of State Guardian, for instance, an independent state public guardianship agency, has a client/caseworker ratio of approximately 138:1, the kind of excessively high ratio under which guardians are "stretched beyond the limits of their capacity to serve as effective guardians." Fred, Morris, *Illinois Guardianship Reform Project, Final Report*, Equip for Equality, February 2001. Large public guardianship programs in Texas are reportedly too big, stretched beyond their limits, with excessively high caseloads. (Interview with Kathleen Anderson, Director, Texas Guardianship Alliance). These are only two examples that came up during the course of preparation of the evaluation report. Overly burdened public guardianship programs are reportedly a problem nation-wide. "This refrain about lack of resources or limitations in public guardianship systems is repeated throughout the literature." (Fred, Morris, *Illinois Guardianship Reform Project Final Report*, p. 44, FN 4)

our recommendations center on ways to fortify a philosophy that deters inappropriate guardianship.

Our evaluation that this Office is not over-utilized is based on the following four programmatic elements of the Office: (1) the Office's vision; (2) the Office size; (3) its assessment procedures; and (4) its terminations of guardianship.

1) The Office's vision of guardianship

When asked about the strength of the Office, the theme reiterated by many interviewees was its principled vision of guardianship:

we have reshaped the vision of guardianship into something other than the medical model which can pathologize behaviors that it sees as offensive. We have made people aware of how guardianship should be....

the staff is exceptionally committed to the whole guardianship notion of not usurping people's autonomy....

the strength of the Office is the director and his philosophy...

they do a very good job of not using guardianship unnecessarily...

previously, there was more of a focus on getting the guardianship; the Office looks at the situation more holistically.

the strength is their belief in least restrictive alternatives...⁶

Fundamental to this vision is the idea that guardianship should never be imposed when the person has capacity or, even if there is incapacity, if there are other alternatives. The perception of most people interviewed⁷ that the Office adheres to this

⁶ These quotations are not usually attributed to the particular interviewee who made them. It seemed less important to note which stakeholder expressed which comment, as to capture the different views expressed. The separation between the quotation indicates that the subsequent quote is from a different interviewee. Statements made by other states' Offices of Public Guardian are attributed, however, because it is useful to know the experience of the particular state.

⁷ The one less fully endorsing view came from someone who provided guardianship defense. It was her view that in a couple of cases she was involved in "something less than guardianship" would have been preferable, specifically in these instances, case management. The problem, as she defined it, was not an overly zealous Office that imposed inappropriate guardianships – to the contrary she praised the Office's assessment procedure -- but the fact that the Office did not provide alternatives. This comment is especially related to our later

principle evidences a guiding philosophy that helps to assure that guardianships will be appropriate.

2) The size of the Office, its caseload, and eligibility guidelines

The Office currently has a total of 37 cases. Any suggestion of current “over-utilization” is obviated by that figure. The size of the caseload is linked to stringent eligibility guidelines. That the Office is not adequately funded and only has three guardians, one of whom does mostly assessment, also explains a small caseload. However, it is important not to overstate this factor, given the many instances where other state public guardianship programs were heavily burdened with excessive caseloads despite a lack of resources. (See footnote 5.) Instead, this Office seems to have made a deliberate decision not to expand cases beyond its ability to adequately oversee them.

3) The Office’s assessment procedures.

The Office’s assessment of cases was also perceived as one of its major strengths by those we interviewed. The assessment procedure was seen as extremely thoughtful, comprehensive and vigilant in assessing whether the person was incapacitated and whether there was a need for guardianship. A representative comment -- one from someone whose job is to represent the alleged incapacitated person in providing guardianship defense -- was that *“they do a very good job of conducting assessments, of carrying out the screening function.”*

The development of an assessment tool exemplifying “best practices” was seen as a major accomplishment of the Office that distinguished it from the previous Guardianship program:

discussion of alternatives and raises the question of whether an Office, however committed its vision of guardianship, can fully assure that guardianship is a last resort if it does not also offer alternatives.

The previous guardianship program was getting cases more on an emergency basis and doing less assessment of what was going on; the Office does a much better job of assessing the situation and figuring out what's going on....

the previous program was doing only what the law required – there was no assessment procedure like there is now, and no assessment protocol...

there is much better screening now, and more competent people doing screening.

Currently, the assessments are all being done by the Senior Deputy Guardian, and the positive comments about them are often linked to this staff person's ability. Asked what the Office's safeguards were that prevented the possibility of over-reaching, one other staff member replied, "*our biggest safeguard is the senior guardian.*" This is an important point to make here, and it underlies one of our recommendations, because our case-file review included assessments also done by the Office, but by someone else before this guardian joined the Office. Our evaluation found those Office assessments to be wholly different, neither as comprehensive or as careful, as those conducted now.

Current assessments were described by the guardian who does them as follows:

The assessments are clearer and cleaner now – and there is the appropriate assessment focus. There's a standard of functional assessment now away from what was patronizing in the past – when people were essentially put into a guardianship because they were making different choices.

The assessment process involved, beyond the initial telephone intake, one or more face-to-face evaluations, collection of collateral information from significant others, service providers and allied agencies, and the preparation of materials. A template for assessments, described as not yet formal but used for training purposes, given to us by the guardian who currently does assessments, evidences a thoughtful, careful, comprehensive process, and details the kinds of evaluative measures that should be used while meeting with the alleged incapacitated person. (It should be noted here that the fact that it is the Office itself exclusively doing the assessments raises other issues

beyond how well they are being conducted. These issues are more structural ones and will be discussed in that section of the structure of the Office).

4) The Office's termination of guardianships

Although guardianships should never outlast the period of incapacity, many guardianship models are not developed with an eye toward terminating a guardianship whenever it can. In TCSG's study of guardianship service providers, many of the agencies who had served as guardians for hundreds of wards had almost never terminated a guardianship. Our evaluation found that this was not the case with this Office. The guardianships in several of the cases inherited from the predecessor program were terminated when the Office questioned the continuing need for the guardianship. Of the 55 guardianships handled by the Office since its inception, five have been terminated because the Office determined that guardianship and/or conservatorship was no longer necessary. This is a markedly higher percentage of terminations of guardianship in the short tenure of the Office compared to that of other guardianship agencies we have interviewed, and is all the more pronounced considering the stringent initial eligibility requirements now employed by the Office.

The vision of guardianship discussed above also translates here into a positive desire to seek termination: *"We terminated this one guardianship. It felt really good dissolving the guardianship when the man was getting better."* reported one staff guardian – a strikingly different view from a common negative perception of guardianship agencies who either cling to guardianships because they are an ongoing source of funds or are not involved enough with the ward to know when termination is an option.

Taken together, these four evaluation findings –

- a principled vision of guardianship,
- a controlled caseload of 37 guardianships,
- a keen assessment procedure that narrowly focuses on legal incapacity, and

- an outlook geared toward potential restoration of rights

-- all guard against inappropriate guardianships.

This finding is of critical importance. It suggests that in the short time of its existence, the Office has established itself has something quite other than the large over-burdened public guardianship agencies in some other states in which guardianship becomes over-utilized. Some of the reason that the Office is not on this course may have to do with just how small it is, but the evaluation findings above indicate that it reflects a far more deliberate choice.

1.b. Provision of Alternatives to Guardianship

If the Office is vigilant in taking only the cases that are the most in need of guardianship, and operating in a triage mode as discussed in greater detail in the next section, what happens to the people for whom guardianship is not an option? These are the people for whom the “least restrictive alternatives” ideally come into play. Yet alternatives, which are invariably mentioned in the same breath as any discussion of guardianship, are not often actually employed. In many ways, alternatives to guardianship could be described in much the same way that Mark Twain described the weather: “*everybody talks about it, but nobody does anything about it*” – with the important distinction that, unlike the weather, you can do something about guardianship alternatives.

The Office, as stated in its Plan, does not directly provide alternatives to guardianship because it does not currently have the resources to do so. The Office has, however, sought out limited rather than plenary guardianship, when it felt that a limited guardianship was sufficient,⁸ Our evaluation probed the following areas:

⁸ *In the Plan, the Office does place “limited guardianships” under alternatives to guardianship, and notes that it has actively sought out limited guardianships and, in that sense, does provide alternatives. When we, as evaluators, use the term “alternatives,” we are speaking exclusively of non-guardianship interventions (e.g. representative payeeship, money management alternatives, trusts, and durable powers of attorney), but acknowledge that the Office has sought the less restrictive alternative within the guardianship context by seeking limited guardianships where appropriate.*

- even if the Office does not provide alternatives directly, does it facilitate them?
- what is the general perception outside the Office of the importance of providing alternatives?
- what is the general perception about how effectively alternatives are provided, even if they are not provided by the Office ?

Conversations with the Office indicated that alternative options are explored for referrals that do not result in guardianship. The staff member who does most of the assessments expressed satisfaction with referrals for which further investigation and networking resulted in a solution that was not guardianship. Almost half of the referrals to the Office do not end up in guardianships (59 assessments were done by the Office since its inception; 28 did not culminate in a guardianship). Currently, however, the outcome in the cases that were diverted from guardianship is not tracked internally in order to assess whether and to what extent alternatives were utilized.

Our evaluation also found that the Office was not perceived as a resource that could be turned to for others to explore alternatives:

I wish the Office were more available for problem-solving: what to do in cases if guardianship isn't the answer. I'd like to be able to call there and get someone who could be a resource.

I would like to see some way of someone being able to act as a clearinghouse to explore all the options that are available. The office really needs resources to direct people.

There are lots of options, but people don't know about them. They need help knowing about Durable Powers of Attorney, in-home services, and other options. It would be good if the Office had a person who could focus on that.

For agencies who deal with the capacity issues, this should be the place to go and get guidance.

The evaluation found that alternatives were widely seen as significant and important but not used. *"In the ideal world, there would be much more exploration of alternatives. Right now, you just can't get people to talk about them."* Similarly, one interviewee felt that in a couple of

cases for which she provided guardianship defense, there could have been “*something else – something short of guardianship,*” but the interviewee was at a loss as to who to turn in order to explore some of those options.

Deficiencies in providing meaningful exploration of alternatives was a theme that occurred in our conversations with public guardians outside Utah as well: “*there’s really been an abysmal job done by free standing entities in developing viable alternatives to guardianship.* (Conversation with Director, Kansas Guardianship Program).

The Plan enumerates and defines the different alternatives to guardianship. However, the reality may be that if someone is indigent and guardianship through the Office is not appropriate, there may be great obstacles in actualizing those alternatives even if there is awareness of them: who will pay for money-management services for someone indigent if the Office does not provide it? For this reason, in our recommendations section, we recommend that – as a more long-term objective – the Office of Public Guardian should itself provide alternatives as a direct service as well as, in the shorter-term, maintaining and even increasing efforts to facilitate them.

1.c. Meeting the Legitimate Need for Public Guardianship in Utah

1) Existence of Need for Public Guardianship in Utah.

Our evaluation first explored whether there was a consensus among those interviewed that there was a legitimate need for public guardianship. We found virtually complete consensus among everybody we interviewed that there was a need for a public guardianship program. Many interviewees prefaced their comments about this need with the statement that this was a problem that had gone on for years and years and was only now being addressed, however incompletely, with the establishment of the Office. The unanimous opinion of all those we interviewed was that there were numerous individuals who did not have decision-making capacity and did not have family or friends to protect their interests. There was also a shared perspective that this was a

reality that was more difficult to communicate because of deeply held beliefs in this particular state that family and, in many instances, a close-knit religious community, were available to meet the needs of individuals alone.

Yet the direct experiences of those who worked with populations that included people who no longer had decision-making capacity, as reported to us, was a testimony that, notwithstanding a supportive community, there were people who simply had no one to watch over them. From a variety of vantage points, from the judge in a probate court who hears guardianship cases to a social worker in a nursing home, the interviewees spoke of seeing before them people who had a need for guardianship that was not being met. In such instances, the establishment of a guardianship was largely seen not as an intrusion, but as a way of assuring that surrogate decision-making was handled appropriately.

This consensus was not only seen among people who might have a “stake” in promoting guardianships, but also among advocates whose interests were to protect individual rights and who had no additional interest in making sure that guardianships were established:

The need is clear: there are people who need guardians—single people without family or friends....

There is clearly need, because we have a growing number of adults who need to have a guardian of last resort...

The Office can't even really serve the need that's out there...

(Comments of a legal aid lawyer with expertise in guardianship, a legal services developer, and an attorney who does guardianship defense, representing the alleged incapacitated person).

Now that the Office has been established, an inverse way of assessing whether there was a need for it, was to explore people's views of what would happen were the Office not to exist. Again, there was consensus that this would be a big step backward, the comment quoted providing one example of what we heard from others as well:

If the Office were gone, it would be worse than before. What we would lose for the future would be frightening: it would be a patchwork approach.

(Director of Adult Protective Services, Director of guardianship program in place before Office established).

2) Extent of Need for Public Guardianship in Utah

While there was complete consensus that there is real and legitimate need for public guardianship in Utah, quantifying that need for guardianship proved a more difficult issue. Estimates from a needs assessment undertaken in 1997 was relied upon in the establishment of the Office and in its Implementation Plan. A rough approximation of the need was also, as reported to us, established by finding out the percentage of elderly in other states and the percentage of guardianships in those states and extrapolating that data to calculate the need in Utah.⁹ While all the interviewees strongly believed there was a need for public guardianship, a number of them expressed concerns about how that need had been quantified. The fact that the existing needs assessment was dated (four years old currently), was performed by an intern, and was not designed to accurately account for all those individuals who could be in need of guardianship were comments we heard during the interviews. Sources of information outside of the needs assessment similarly seemed overly vague. These concerns were voiced particularly by the Board of the Office:

On the anecdotal level, it's clear there's need, but the needs assessment was very vague....

The basis for the number that was thrown out seemed unclear: people just assumed it was true.

I don't think people even assumed it was true.

(Board members, group interview of Board of Office)

⁹ The problem with this approach, while it may serve as some very rough guide, is that it assumes that the existing guardianships are needed guardianships. In fact, as our own and other research in guardianship indicates, guardianships may often be wrongfully imposed, so that the calculation of number of guardianships cannot be equated to the extent of guardianship need.

We found that this concern did not arise from doubts that there was a need, but rather from a desire to advocate for a stronger presence for the Office and a feeling that such advocacy was hindered by the absence of clear data. If anything, most people, including the Board members, felt that the need had been under-reported:

the problem with the existing needs assessment is that it only dealt with the captive audience – there are lots of other people who fell outside of needs assessment. There's a huge group of people in assisted living, for instance, who might need services, but don't come up against system. If we could get intervention to them earlier, it would be both much less costly in the long run, and maybe we could use less restrictive interventions.

(Board Member, Group interview of Board)

We found that interviewees were divided about how much the need should be further quantified. There were those who felt it was important to get better data in order to more effectively build a case for more funding. Others felt that the need was so clear, that devoting existing limited funding to perfecting a needs assessment was not a good use of resources; and still other comments expressed that, to a certain extent, the need cannot be predicted in advance or quantified. The comments quoted below reflect these different views:

We probably need more data. We had an intern pull figures together, but that needs to be updated. It needs to be interpreted with an eye to future legislation...

I would oppose any future needs assessment. Things can be studied to death. The need is very clear: all you need to demonstrate it are some compelling cases...

To a certain extent, you can't really accurately predict or quantify the need, and from what I know, other Offices haven't been able to do so either. There are populations where the need can't be measured: the need of someone, for instance, who has been living independently and then suddenly has a stroke or is otherwise incapacitated and needs services or the need that arises in a hospital when someone is in a life and death situation and there is no one to make informed decisions about future care.

Possible ways to approach this issue, mindful of both the utility of more data and the possibly excessive effort involved in attaining it, are discussed in the recommendations portion of this section.

3) Program Capacity to Meet Need.

Whatever vagueness there may be in an exact figure for guardianship need, the Office does not now have the capacity to meet that need, however low or high that threshold may ultimately be. The Office is clear that it is not meeting the extent of the need for guardianship, and reports it is unable to do so because of how severely limited the available resources are:

We are operating on a triage model. We do not have the resources to serve all those who need guardianship ...

*There are lots more people who need guardianship than we are able to serve
(Staff members of Office).*

That the Office is not now meeting the need for guardianship is reflected in the number of cases in which the Office serves as guardian and or conservator: thirty-seven. (Fifty-five guardianship and conservator petitions have been filed since the inception of the Office.) It is also reflected in the stringent eligibility guidelines the Office has imposed as a response to not having enough resources.¹⁰

Different views were expressed about the caseload of the Office and the eligibility guidelines. For some, the stringency indicated a laudatory caution in the beginning of a new program with limited resources to not take on more than it was able to handle. There was also the Director's belief that it was important to make sure that all cases inherited from the predecessor program were complete, thorough, informative, and comprehensible – a task which consumed a great deal of staff time. It was also noted,

¹⁰ In practice, as reported to us, the Office only takes cases from nursing homes and acute medical care settings when there is an emergency “life and death” situation requiring active decision-making for an incapacitated person; it takes referrals from Adult Protective Services when an incapacitated person is experiencing abuse, neglect, self-neglect or financial exploitation. Eligibility guidelines are also set forth in the Plan (p. 53). Eligibility guidelines, as explained to us, are not intended to suggest that only these people require guardianships. Rather, they reflect a triage model in response to lack of resources to serve the most needy.

particularly by the Director and staff of the Office, that significant staff turnover had limited the Office's capacity to expand its caseload.

For others, the stringency appeared counter-productive in the face of demonstrating the clear need for more funding :

I question keeping the door closed on caseload. I think it would be better to open doors, start taking some non-APS clients. That would make the position for funding clearer. . .

The Director has done an incredible job, building a program from the ground up. He is also very meticulous, but sometimes that is an obstacle to moving forward, in terms of the length of time spent on updating old cases, old files, rather than progressing forward...

They need to increase their caseload; there needs to be a paradigmatic shift.

The eligibility guidelines were also the subject of some concern, particularly as applied to nursing homes, in which only someone in an immediately life-threatening situation would be considered for guardianship:

It results in a kind of Hobson's choice really. Here's this one person who has a horrible need – they may be dying and some one needs to make decisions for them. But then here is this other person who is incapacitated and doesn't have anyone watching what's happening day-to-day even if they're not in an immediate life-threatening situation, and it's hard to say that's not an area to look at.

It's hard the way the guidelines are: it's hard to say – oh, you're dying, OK we'll take you.

We also found that there was confusion about what the eligibility guidelines were. Interviewees who dealt directly with service providers felt that people at the facilities were not aware for some time of just which cases would be candidates for guardianship from the Office and which not. At the same time, it should be noted that whatever confusion exists, the Office did make clear and comprehensive efforts to communicate the eligibility guidelines. The eligibility guidelines were outlined in the Plan, which was widely disseminated, and communicated even more specifically in a subsequent mailing to hundred of groups and individuals detailing the Office's services and eligibility and, in

addition, reviewed in the many presentations made by the Office to human service professionals.

1. Recommendations: The Office as Arbiter of Guardianship & Facilitator of Alternatives

Recommendation:

We recommend that the Office create a mission statement that incorporates its vision of guardianship.

Discussion:

The Office's progressive vision of guardianship is one of its greatest strengths. We believe it would further entrench and enhance that philosophy if it were translated into a brief mission statement. Such a statement would help promote future continuity of the Office's philosophy over time and over possible personnel changes. In an interview with one public guardian in another state, a strong mission statement – and Board support of it – was enumerated as one of three key ingredients to a good public guardianship office. (Interview with Director, New Hampshire Office of Public Guardian). While the Plan contains vast information on different policies and procedures and avenues to be explored, and contemplates a future mission statement as well, it does not currently contain one.

Recommendation

We recommend that the Office formalize its assessment protocol to be relied upon as the Office assessment tool.

Discussion:

As with its overall philosophy about guardianship, the Office's specific use of assessment procedures is a clear strength. Our recommendation to formalize this assessment protocol is based on the intent to assure that the current assessment procedures will be institutionalized to the extent that they will survive any future changes in personnel. This recommendation was reinforced by case-file review where there was a clear difference in quality

between the assessments conducted by the current guardian and those of another previous guardian in the Office. To promote better assessments across the board and lessen the possibility that a different new person might perform assessments in a less thorough, careful way, a standardized assessment protocol is critical. The Office may have already moved in this direction, as indicated in follow-up responses to our evaluation draft that indicated there is a formal assessment procedure. (At the time of our on-site visit, the senior guardian who performs assessments gave us, when asked about the existence of a protocol, a template which was referred to as not formalized, but used in training.)

Recommendation:

We recommend that the Office track in greater detail advice both advice it gives to family guardians and referrals it handles that do not end up in guardianship.

Discussion:

Our evaluation found that while the Office does not itself provide alternatives, it reportedly devotes significant time to exploring and facilitating other less restrictive interventions for referrals that do not result in guardianship and also to advising family members. Absent the Office's own provision of alternatives, it is important to communicate more fully these activities which foster such alternatives. While information supplied to us by the Office indicates that almost half of the cases referred to it do not ultimately culminate in a guardianship, we do not know – and it would be useful to know – what happens in all those cases for which guardianship was deemed inappropriate.

Recommendation:

We recommend that, once the Office is more established with core programmatic elements, it provide alternatives to guardianship directly.

Discussion:

While this is a more long-term objective, we believe it is a highly important one. If guardianship is truly a last resort, there must be meaningful provision of alternatives. For the

mostly indigent population the Office is set up to serve, those alternatives will be meaningful in many instances only if the Office provides them.

Recommendation:

We recommend that the Office expand its eligibility guidelines to more fully meet the legitimate need.

Discussion:

Effective surrogate decision-making would be improved, we believe, if the eligibility guidelines did not translate on the street as: “if you’re dying, they’ll take you.” If best practices in surrogate decision-making translate into the application of a “substituted judgment” standard (one that attempts to ascertain the person’s own wishes) rather than a “best interests” standard (one that determines what would be “the best” for the person, relied upon if the person’s own wishes cannot be ascertained), knowing a person before that person is in a life-and-death situation is an advantage. Incapacitated people who are not facing an immediate emergency may nonetheless have a need for a guardian to monitor day-to-day decisions that are made for them or to advocate on their behalf.

Also, to the extent that the eligibility guidelines may inherently not apply equally to all populations, for example, referrals from Adult Protective Services may be of individuals who are not in an immediate life-and-death situation, it may be important to expand the guidelines so that the needs of the four populations (apart from the developmentally disabled who are served by the two contracting agencies) that are defined in the Plan ¹¹ are met more equally.

¹¹ The plan identifies five different groups of Utahns needing guardianship services. They are: incapacitated elders in nursing homes; incapacitated adults with developmental disabilities living in institutions or residential facilities; incapacitated adults with psychiatric disabilities living in institutions or residential facilities; incapacitated adults who are in acute medical settings or nursing facilities and are in an acute medical crisis or end-of-life situation which requires the use of a surrogate decision maker; and incapacitated elders and adults with disabilities living independently in the community. The Plan, p. 54.

Recommendation

The Department should explore whether a future assessment of the need for public guardianship in Utah should be done, but the Office, given its very limited resources, should not be the agency conducting such a needs assessment.

Discussion:

Acknowledging the benefit that might be gained from a current, clear, and comprehensive needs assessment, there would nevertheless be something incongruous about requesting an agency that currently serves a total of 37 clients to justify its future existence by trying to pin down whether somewhat under a thousand or somewhat over a thousand Utahns need guardianship services. Were a dozen new staff positions to be sought, rather than the two or three recommended here, the Office still would not have the capacity to maintain a reasonable caseworker/ward ratio and meet even the lowest possible estimate of the need.

Since, at the same time, there was a view that funders would want “data” to support the need for whatever service they are funding, the Office could explore other ways of communicating the nature and extent of the need. It could keep track of all the cases brought to its attention where it was unable to serve as guardian despite the legitimate need of the person for guardianship; it could ask probate judges and others how many people they have seen in their own direct experience for whom guardianship was needed but nobody was available to serve; and it could elicit from other agencies and other sources, information about individuals who may need guardianship but who do not come within the ambit of the populations whose needs are more easily assessed.

2. Discussion: The Office as Guardian

A major strength of the Office identified in the above section is a principled vision of guardianship that is stringent enough to deter unnecessary guardianship. When it does assume a guardianship, however, it is important that the Office is similarly strong in its capacity to carry out guardianship duties. Here, we found that the Office's vision of how a guardian should serve its clients is, like its view of guardianship as a whole, committed to the concept of complying with guardianship standards of practice. Correspondingly, we found that providers who dealt directly with the Office on matters of care of the ward expressed high levels of satisfaction with the Office. However, we also found that there were programmatic deficiencies and constraints which hindered the full actualization of that vision in properly acting as an advocate and surrogate decision-maker for wards of the Office. As indicated above, the obstacle does not seem to be inherent in staff who are not "good" guardians. Instead, driven in large part by resources, there is neither enough staff nor the right complement of staff to effectively manage a guardianship/ conservatorship caseload. Further, at this point in the development of the Office procedures, the programmatic elements to assure the best possible ongoing care of wards are less fully developed than the elements to assure the proper selection of individuals to become wards.

The evaluation below discusses both of these attributes of the Office – its vision on how wards should be served and the current capacity to achieve that vision – and suggests recommendations for future growth.

2.a. Guardians' Perspectives and Satisfaction of Providers

The Director and staff of the Office are thoroughly committed to the idea that guardians should be conscientious in providing personal care for their wards. While it may seem self-evident that a guardian would be attentive to the ward, it is unfortunately not necessarily the norm. In the evaluators' own experience studying public and private guardianship service providers across the country, and that reported by others, there are many guardians who fill out

accountings, and sign informed-consent forms faxed to them with minimal to no contact with the person entrusted to their care. This is clearly not the case with the Office. As reported to us by the staff, and reflected in case-file review, regular contact is maintained with those under guardianship by monthly visits and more contact if needed. (As discussed later in a consideration of geographic considerations, outlying areas do not receive the same amount of contact, but regular contact is still maintained.)

Furthermore, reflected in conversations with the staff is an attitude that is one of respect and care for the people they serve. As basic a notion as respect for an individual may be, it too is often overlooked in the guardianship field, and is central and important enough to fulfillment of guardianship best practices that it is codified in the fundamental principles of the model standards developed by The Center for Social Gerontology (TCSG) and adapted for national use.¹² In this sense, the Office model lives up to that principle. It is also, as indicated by the attention to guiding principles in the Plan developed by the Director, an Office that takes seriously the concepts of standards and ethics in acting as guardian. *“There is a high level of professionalism in the quality of services they provide... Standards make the Office head and shoulders above the other guardianship providers.”*

We spoke to four staff at facilities where there were residents who were wards of the Office, choosing staff who had the most interaction with the Office: social workers primarily, and, in one case, a director of the facility. Each of the facility representatives we interviewed

¹² *Surrogate Decisionmaking for Adults: Model Standards to Ensure Quality Guardianship and Representative Payee Services*, A Report of the Select Committee on Aging of The U.S. House of Representatives, (hereinafter U.S. Model Standards) Comm. Pub. No. 100-705 (December 1988). These model standards, developed by TCSG and published by the House Select Committee on Aging have been considered “the definitive work in the area of professional health care surrogate ethics and standards”. (Levine, Richard Steven, *Care Management Bioethics and Standards for Professional Health Care Surrogates*, National Guardianship Association (1997). Principle 8 of the Model Standards states that: “a guardian or representative payee shall treat the ward or beneficiary with dignity and respect.”

spoke highly of the Office and expressed satisfaction with how the Office acted as guardian.

The specific comments made included:

she's wonderful to work with—she really cares about William, and is interested in him and attentive to his needs...

the Office is very responsive: whenever I call and leave a voice mail, they call me back right away....

they've been very good at addressing any matter that comes up; they have very good follow-through to concerns we raise ...

the two that come down here always spend time with Catherine; they are pleasant and nice.

One of two comments made that suggested areas for improvement was from a facility several hundred miles from the Office:

it takes an Act of Congress to get them to take a case, and it moves so slowly to get it to happen, but once they do take the case, they're very good.

(This comment is more linked to the structure of the Office with respect to geographic constraints, as will be discussed in a later section, as well as eligibility guidelines earlier discussed)

The representative of another facility wished that the guardians could directly provide some more personal needs for the wards: *"I wish they could bring her some things directly instead of just telling me that there are funds if I need to get anything. We're so short-staffed here, it's hard to just get underwear for the residents, let alone nicer individual things they might want."*¹³

¹³ This comment too needs some qualification. As other public guardians expressed, there is often the wish on the part of facilities that their guardianship program do as much as family guardians do: take a ward shopping, take the ward out for a meal. Yet it is not always feasible for a professional guardian to assume this role of companion to the degree a family guardian can. At the same time, in this particular case referenced here, the resident at the facility had come into a significant amount of money through an inheritance, so an issue legitimately raised here is whether there was enough prospective planning for the ward's care in this case, as discussed in the next section.

Acknowledging that provider satisfaction with the Office is, of course, not a full measure of the Office's capacity to act as guardian (It does not for instance, address advocacy on behalf of the ward that may run counter to the facilities' views), this aspect of the evaluation does indicate the program's overall capacity to be responsive to the needs of wards as communicated by the facility, with the qualifications set forth above.

2.b. The Office as Guardian: Internal Office Programmatic Components

Many different programmatic ingredients may make up good guardianship practices. Some of these are elusive to depict, having to do with the personalities and interactions of the staff involved, though the above section gauges this subjective element to some degree by assessing our conversations with staff and satisfaction with staff performance at the facilities. However, as our primary emphasis in this evaluation is to assess programmatic capacity more than the quality of individual performances, we have, accordingly, focused here on discrete programmatic elements that underlie the program's capacity to function meaningfully as guardian.

The three programmatic components we explored and evaluated were:

- Staffing of Office and Reliance on Consultants
- Training of Staff
- Office-wide Systems to Provide Ongoing Care, Including Effective Maintenance of Files

This evaluation follows the lead of the Plan which addresses program policies and procedures that may need to be developed. Training and staffing were envisioned as areas that needed further development as were the institution of office-wide procedures.¹⁴

¹⁴ We have not simply gone through the list set forth in the Plan, item by item, to see which procedures and policies are currently in place, to assess whether the Office accomplished what it said it wanted to accomplish, for several reasons. First, as discussed earlier, it became clear early in the evaluation that using the Plan as a "scorecard" was not a useful approach to evaluation. Furthermore, the Plan was formulated to be as inclusive as possible, including quite specific procedures (such as developing an organizational chart), while our intent in

1) Staffing of Office and Consultants

Staffing. The introductory background section on the Office described the five people who currently are part of the Office: a Director, an Administrative Secretary, a Senior Deputy Guardian, and two Deputy Guardians. These comprise fewer staff than that envisioned in the Plan, which set forth one additional staff position at a minimum.

Before turning to specific expertise that is or is not present on the staff, some issues that relate more broadly to the total number of staff are as follows.

- Our evaluation found that three guardians were not sufficient to meet the needs of the state as a whole. Three guardians in one city cannot cover the needs of clients or proposed clients in outlying areas. Currently, guardians spend a great deal of time simply driving to outlying areas in order to have any contact with wards there – an inefficient use of limited resources.
- As indicated above, three guardians are not sufficient to meet the legitimate need for guardianship as evidenced in the imposition of stringent eligibility guidelines which admittedly result in not serving adequately those who need guardianship.
- As discussed in a later section, three guardians are not sufficient to provide 24 hour-a-day / 7 day-a-week (24/7) coverage for the Office, the establishment of which was viewed as critical by almost all interviewees.
- Finally, three guardians are not sufficient to serve the broader objective of the Office of promoting alternatives and serving as a resource for those who have specific questions about options that would actualize less restrictive interventions.

the evaluation was to extract several central programmatic components that we saw as priorities. Finally, our evaluation of important programmatic components grew not only from the Plan but also from areas that seemed to point to significant needs in case-file reviews and in interviews.

Given this baseline awareness that the current number is clearly inadequate, the remainder of the discussion on staffing evaluates the programmatic needs for specific staff positions.

At the time of the site visits, there was no staff person with established expertise and background in financial matters. This has been perceived by the Director and others across the board as the major staff deficiency of the Office and efforts were being made to address this.¹⁵ The Office acts as conservator and is thus directly responsible for handling the financial decision-making for many of its wards. To handle inventories, annual accountings, benefit issues, investment decisions, sale of real property, to name only some of the financial matters that arise, a person with financial expertise is critical. Everyone within the Office felt the first priority in increased staffing was to add a conservator to the staff. *“The Office really needs a financial person. I’m not an accountant.”* *“We need a conservator in the worst way;”* *“Our need for more staff is for someone to do conservatorship.”* (Comments of the guardian who was currently handling financial matters, senior deputy guardian, and Director, respectively). Virtually everyone we asked outside the Office about priorities in allocation of possible future resources responded similarly that a financial person was needed for the staff.

A guardian wears so many different hats in being responsible for all facets of decision-making for another human being, that there are obviously many different areas of staff expertise that would be very valuable. Highlighted, in particular, in interviewee responses about staff needs was the need for more medical and legal expertise. (the

¹⁵ As noted above, at the time of the on-site visits, the Director was attempting to hire a staff guardian who would have primary responsibility for conservatorship work and who would have some expertise in areas where there were gaps. At the end of July 2001, a new guardian was hired who is a registered nurse with 8 years experience in a variety of settings (including nursing homes, psychiatric facilities, veterans’ facilities and acute care settings) and who has experience as a bookkeeper and is a law school graduate.

second of which is discussed at greater length in the section addressing outside services).

To have someone with this kind of background on staff requires the ability to pay for expertise. A consequence of under-funding was seen to be an obstacle in attracting people with advanced degrees and high levels of experience. Some other public guardianship programs indicated, though, that it is precisely those people who are needed to achieve program capacity to meet its objectives:

You have to have good staff in a public guardianship program. It all centers on people so you have to be adequately funded to get good staff. You can't expect, if you're not offering a good salary, that you will attract a high caliber of professionalism.

We look for people with advanced degrees, master's degrees.

Our office has a good reputation: we attract high caliber people and look for advanced degrees. We've managed to attract these people and haven't had trouble with turnover.

A noteworthy accomplishment of the Office is that, despite a lack of resources, it strongly advocated for resources to hire people with adequate expertise to effectively act as guardians. The staff additions in the last year of individuals with specific expertise and advanced education (social work, nursing and law) reflect that commitment to hiring the best possible staff and suggest that future funding take into account the importance of resources sufficient to attract highly qualified staff.

In analyzing all the information collected, from interviews and case-file reviews, our evaluation finds that there is an underlying unmet need on the staff that was broader than the specific additional expertise a particular staff person could bring to the Office. That unmet need is for a program manager. As the Senior Deputy guardian is currently responsible for all the assessments and referrals, responsibility for ongoing supervision and management of cases that do become guardianships is not at this point

established enough within the Office -- this is an area of improvement that is very much correlated with the programmatic procedures we later recommend to be in place.

The other major evaluation finding with respect to staff was the impact of major staff turnover in the Office. When the Office was created, a Director was hired who had not been part of the previous Guardianship program. The Office has experienced a complete staff turnover from the staff who were in the Office when it was established, and has had two guardians it hired early on resign before completing a year of employment, with one result being that the Office lost three staff members in three months. Longevity of staff is of particular importance in a guardianship program because there is a very high learning curve. *"It's not a job you can just show up for. It takes at least a year to know what you are doing . Staff turnover would definitely be a problem in an office that requires that kind of longevity."* (Director, New Hampshire Office of Public Guardian)

The impact of such staff turnover is substantial. It was reflected in our case-file review where we saw gaps in the files corresponding to the times when guardians had departed. (It is a measure of the ability of the existing staff that despite this major upheaval, nobody reported a neglect of the wards during this time, as described in staff satisfaction with the guardians.) It reportedly permeated how the Office functioned during its relatively short tenure, with the turnover limiting the accomplishments that may have been otherwise achieved.

Consultants. While the Plan contemplates the use of outside expertise when it is necessary, this is not an area that has been further explored at any length at this time, although the Office has used pro bono outside services in some instances (for tax preparation and to obtain a second medical opinion). In an Office with a small staff and with gaps in in-house expertise, as is the case here, it is especially significant to be able

to rely on outside expertise of various kinds. The Model Standards specifically address the need to obtain the “assistance and services of necessary professionals.”¹⁶

While there are many areas of expertise that may be needed (the model standards list six), we hone in here on one in particular, because it seemed of particular significance: the ability to obtain legal advice. It might seem, at first glance, that there would be an abundance of resources here, since the Office is surrounded by lawyers in certain ways: it has been placed under the Office of Legal Counsel in the Department; it is represented by the Attorney General; and it works closely with the Legal Services Developer, who in this case is an attorney with a great deal of expertise in the area of guardianship. (As noted, since our on-site visit, the Office has hired on staff a guardian who has a law degree.)

In fact, though, there is no clear direction for a resource for legal advice about guardianship, and this is an obvious need for the Office. The Office of Legal Counsel is not perceived as serving the role of providing legal advice about specific guardianship matters. The Attorney General is viewed more as the Office’s court representative for hearings than as counsel in matters that come up in a more routine course of events. And, discussed at greatest length during our evaluation, the role of the Legal Services Developer may not be to give legal advice, although the Legal Services Developer is relied upon to do just that:

it would be better if there was clarification of just what the relationship between our Office (Legal Services Development, Division of Aging and Adult Services) and the Office of Public Guardian is. It’s clear we can give technical assistance but not clear that we should give legal advice, and it’s very difficult to avoid having the former slide into the latter. But when it essentially means that legal advice given may be used to set policy, that’s not comfortable without further direction.”

¹⁶ *Model Standards, supra at Note 12, Standard 12 (e)*

Public Guardianship Offices elsewhere in the nation emphasize the importance of being able to readily obtain legal advice. It was a key ingredient to a good program noted by one public guardian, who listed “*ready access to legal counsel,*” as one of four key ingredients of a good Office. (Director, Kansas Guardianship Program). The New Hampshire Public Guardian Office has five lawyers on staff. Notwithstanding this, the New Hampshire Office reports that it regularly uses the services of an outside lawyer who is counsel to the Office:

I see having a source for legal advice as absolutely imperative. Even though I am an attorney, and other senior staff are attorneys, I still call our outside counsel at least once a week.

(Director, New Hampshire Office of Public Guardian)

Absent an on—staff lawyer, it is all the more important that the Office have resources and clear direction for obtaining legal advice.¹⁷

2) Training of Staff

Our discussion of training of staff should be understood in the context in which the initial training of current staff occurred. Because of the newness of the Office and the staff upheaval that occurred in the early months after its creation, new staff joined at a point of time when the Office was stretched very thin. One staff person joined to become the only guardian in the Office for a short period, with the only other two people in the Office being the Director and the administrative secretary. The climate at the Office during the time was one described as “crisis-management” and the minimal initial training can be traced in part to that. (We are addressing initial training here since the

¹⁷ One specific instance that illuminated the need for this was an ongoing problem of how to handle winding up the ward’s financial affairs after the ward dies since, by statute, guardianship authority ends upon the death of the ward. This was a problem that very much bothered the guardians we spoke to – *how can we tell nursing homes, yes, thank you for taking care of him, but no we can’t pay the final bill now that he has died and oh, here, will you take another client of ours?* Most of all, it seemed to reflect the absence of a clear direction for legal advice that might provide resolution. And, in fact, indicating a problem of “too many cooks” (but no

Office, as described in greater detail below, did evidence a commitment to training in later providing in-service training and other opportunities for professional development). Nevertheless, for future development, it is critical to build up effective initial training components. For it is perhaps most important when an Office is stretched thin, were some future crisis to arise, that the people who are on staff know what they are doing.

In conversations with other state guardianship programs, our evaluation found that training was invariably identified as key to success of the Office. When, in the course of our interviews, we asked the interviewees from other states to list three or four ingredients of a good public guardianship program, training was always included in those characteristics. Representative comments included:

Good training is absolutely essential. There must be a constant interactive relationship between the staff and the director.

(Interview with Director of Texas Guardianship Alliance)

Good training was further described as being very individualized, extensive, and involving a great deal of one-on-one interaction:

You have to have thorough meaningful training and review of performance in the beginning. I meet with them on a weekly basis for six months and review their decisions. After six months there is an evaluation and then after a year there is another evaluation...

The training manual translates standards to day to day situations. The goal is to take a situation and apply substitute judgment doctrine to that decision.

The training is one on one and customized to the person. For example, our newest public guardian has a manager background and what she is least qualified in has to do with legal responsibilities – so there will be an emphasis on that in addition to baseline training.

(Interview with Director and Deputy Director of
New Hampshire Office of Public Guardian)

chef), there appeared to be conflicting legal opinions among the lawyers mentioned above who interact with the department, none of whom is decisively the Office's legal counsel.

In the Office, training was described as “whirlwind” and “minimal.” Asked what it consisted of, staff described most of the training as involving reading. When asked what they read, they said that most of the reading was of the Implementation Plan:

The training was pretty haphazard. By the time I got here, things were really backed up; there was very little training – most of it was reading the Plan.

The training focused on documents that needed to be filled out.

*The training is marginal in terms of established procedures.*¹⁸

These comments need to be clarified and put in a certain context because, in themselves, they would suggest that there is no commitment to training, and in a number of ways, the Office has clearly manifested such a commitment. First of all, our questions asked about initial training – how were you trained when you first came to the Office and what did that training consist of? -- and not about further training that would be part of ongoing staff development. As noted earlier, the time when the new staff was hired followed a time of upheaval.

Notwithstanding the importance of initial early training as our recommendations propose, it is important to note the Office’s commitment to educating staff as it is reflected in various activities that took place since July 2000 (after new staff were in place). These activities included numerous in-service trainings for staff with presentations on separate occasions from senior Office staff as well as by the Utah

¹⁸ In its response to our evaluation draft, the Office, felt that these quotations underestimated the training that had occurred. In addition to the activities detailed below, they noted, for instance, that there had been supplementary reading material, including materials from the National Guardianship Association, that included self-testing components, and time had been spent with the guardians. The Director nevertheless agreed that training could be more systemic and comprehensive and involve more personal interaction in training. We have attempted here to give expression to both viewpoints – acknowledging that staff felt there could be more training, and the various ways that the Office did make a commitment to training. The key point, for purpose of the evaluation, is not so much a meeting of the minds on exactly the extent of the training that did occur, as a more forward-thinking exploration of how, regardless of varying perceptions of what exactly went on, it might become more established, comprehensive, and timely and interactive in the future.

Legal Services Developer, Utah Bar Association, Attorney General's Office, Long Term Care Ombudsman, a physician specializing in dementia, among others.

An additional way in which the Office's commitment was shown (and not one that could be elicited from the current staff guardians) was its decision, despite limited funding, to commit funding for Office guardians to become certified guardians by the National Guardianship Association (NGA). The Director of the Office noted that, before staff turnover, all the Office guardians were NGA certified guardians because of the commitment of the Office to certification. However, apart from the current Senior Guardian and the Office Director, the guardians who were NGA certified are no longer with the Office. Moreover, there are now some reservations on the part of the Office about just how adequate the NGA training for certification is and alternative training is being explored. These reservations, taken together with the views of other state public guardians about the importance of training within the particular Office, suggest that NGA certification should always complement rather than supplant the establishment of systemic procedures for in-house training.

Along with these accomplishments, however, the staff wished for more initial training and more guidelines about day-to-day activities. Even one comment that an Office guardian made about an in-service training indirectly bolsters the importance of in-house training initially :

I found the in-service helpful. The private guardians there knew so much, from the questions they asked. I wished I could have been trained by them.

At the same time, the staff was clear that there had been mentorship within the Office that was useful to them. They were accompanied on their first visit to clients with another guardian, for example. Informal mentorship clearly occurred too as they felt they could ask questions and learn a great deal from the senior guardian when problems arose. Although complete responsibility for assessment and referrals went to the senior

deputy guardian, that guardian also spent time in mentoring the two deputy guardians. Although the Director was more involved in executive and administrative responsibilities, with the senior guardian responsible for day-to-day management, the Director also was involved in staff education and mentorship. While we find, as described in our recommendations, a need for more emphasis on established procedures for program management, the mentorship that occurred informally was viewed by staff as a very valuable and educational part of the Office.

3) Office Procedures and Protocols

This final category is a compilation of a wide variety of programmatic features, all of which go to the existence or recommended implementation of system-wide procedures to fortify the Office's capacity to meet the needs of those it serves.

Maintenance of Files

Maintaining informative and accurate information on clients, and submitting timely and accurate court filings, is an essential program component of a guardianship program. It played an especially large role here because the files inherited by the program were found to be not complete in terms of required court filings or in terms of information contained in them. A substantial effort over the last year has gone to updating the files so that they are informative and comprehensive and usable -- if an assigned guardian were not available and an emergency arose, another guardian should be able to get accurate information from the file, and complying with legally mandated court filings is clearly requisite to the proper functioning of the Office.

Of this time spent on files, a substantial percentage was devoted to preparing more informative annual reports, which then provided the basis for the client overview/profile in each file. The resulting difference in annual reports was striking in our case-file analysis. Before the Office annual reports, it was difficult to figure out what was really going on in the case by studying the file which was a compilation of

fragmented documents in many instances. The new and revised Office files and the annual reports tied all that information together and made it cohesive.

Furthermore, the effort to update annual reports was not a “paper” exercise , or one driven solely by the court requirements. Rather, the process of going through each file and distilling a narrative of what occurred provided, from the Director’s view, an important means of understanding cases which had been inherited by the Office, and resulted in the Office becoming aware of issues that should be pursued in those cases. It was seen as a first step toward allowing the Office to be more proactive in its case handling and moving beyond case files that were merely descriptive.

At the same time, some questions were raised about whether the revised annual reports needed to be quite as perfected as they were, especially given the lack of resources in the Office.¹⁹ Whether or not this past allocation of time was fully justified in all instances, it is clear that there is a great improvement in the status of the files and further, in our recommendations, we suggest that similar attention be now given to continuing to move forward with prospective planning, as next discussed.

Prospective Planning

A repeated theme during interviews was that as a consequence of the Office’s not having enough resources there was a tendency for the Office to operate in a “crisis management mode” – addressing the needs that were most emergent at the time. As a result of this, there was a sense that there was an absence of programmatic components in place to guide day-to-day management of cases and oversight of them.

¹⁹ While annual reports, as found in our research of guardianship service providers elsewhere and recognized in the literature, are usually overly standardized, consisting of a page or two of information at most, much of it boilerplate, the Office’s annual reports were seven or eight pages long, containing very descriptive individualized narratives. Furthermore, our previous guardianship research indicates that when annual reports are filed, they are very rarely read. The Director explained that in his view, following a progressive vision of guardianship, it was important to set the standard in this area and model what truly best practices would be.

Staff meetings were at times cancelled because of immediate problems that came up. When meetings were held, they did not include as part of a set agenda going over new cases, but rather focused more on responding to immediate issues present at the time. In addition, guardians did not always have an overall understanding of the cases that were being handled by the Office as a whole, apart from the cases they themselves handled, since there was no established routine for reviewing or presenting cases that were currently in the Office.

While we did notice in case file review evidence of more proactive involvement of current Office Guardians with their wards than of prior program staff, we also noted the impact of limited prospective planning. In several cases, notwithstanding visits with the ward during which the guardian inquired about the ward's welfare, there was no clear forum in which overall, forward-looking planning had been addressed and, as a result, certain ongoing issues that may well have been raised in such a forum were overlooked.²⁰

²⁰ Some of these specific issues that evidenced the need for system-wide prospective planning were:

1) prospective planning of the best contact with the ward: One ward spoke primarily German, her first language, forgetting English more and more. While one previous guardian had apparently delighted the ward when she was able to speak German with her, there appeared to be no prospective planning about how future visitors might bridge the language barrier—monthly narratives simply noted the language barrier instead.

2) prospective planning for residential decision-making: A man and his wife who were both wards of the Office were moved right after guardian appointment to a more restrictive, and reportedly more institutional and less pleasant and home-like facility because the wife needed such a setting and the husband wanted to stay with her. When the wife died one month after the transfer, no formal planning procedure was in place to assess whether the husband should stay at a facility that might be unsuitable for him. (In this specific instance, the Office did investigate and found that a later transfer for the husband would not have been possible, since funding was available only for nursing home care and not assisted living. While this suggests there had been thinking along those lines, even if not reflected in the file, our point here goes to the establishment of a systematic forum that would raise the different dimensions of decision-making, and consider their present and potential future impact. This is particularly important with residential decisions where -- once a move is made - it is often very difficult to reverse. In this case such future planning had particular significance because both the husband and wife were under guardianship and the wife had much greater need for care.)

3) prospective medical care decision-making: In a case that very much reflected the positive impact the Office can have, a ward flourished when she was moved from a facility in which she had been greatly neglected to a much better setting. However, the medical treatment that remained on file was a “no code” that was based on the solicited opinion of the very caregiver who had been neglectful. No planning session addressed the need

More broadly, in case-files, while much effort had gone into preparing comprehensive annual reports and descriptive information providing detailed background on the clients' situation and needs, which reflect retrospective care over the past year, similar effort had not gone into planning for the future and devising prospective guardianship plans. The annual plans and descriptive information was unusually informative, detailed and individualized, while the guardianship plans relied more on boiler-plate standardized language or used the facilities' own plans. This may again reflect a "second-generation" problem, with the most immediate task perceived by the Office being one of assuring that all the existing files for ongoing cases were carefully reviewed in order to get up to speed on inherited cases and were made comprehensive and informative. Nevertheless, the imbalance suggests the need to think through future priorities and assure that systems are in place to assure that the actual care and decisions being made for all wards -- inherited and those who are new since the creation of the Office -- are prospectively planned in a way that is comparably thorough.

24 Hour-a-Day / 7 Day-a-Week Coverage

Another important program attribute is its policy regarding after-hours coverage. Due in large part to limited resources, the Office determined it could not provide 24-hour-a-day, seven-day-a-week (24/7) coverage. (This determination turned in part on the number of staff and the fact that 24/7 coverage would essentially translate into uncompensated time – which could be a difficult problem of its own in terms of labor issues, particularly if a problem arose during which the staff was operating outside the

to revisit the medical treatment plan and assure that it reflected the ward's own wishes , to the extent they could be ascertained, and was based on a reputable source;

ambit of paid employment.) Absent 24/7 coverage, calls are screened each night and responded to on the next business day, and the Office's answering machine so advises callers.

Within the staff, there were mixed views about 24/7 coverage, ranging from a view that it was not necessary as this system worked where everything was attended to within 24 hours, to a view that it was unfortunate but dictated by resources, to a clear discomfort with the absence of 24/7 coverage expressed by the two guardians most responsible for ongoing care of clients: *"I would feel better if there were 24/7, I'd rather have a rotating beeper...."if we're guardian for someone, it seems kind of funny that we are seeing people 8-5; there should be night-time facilities as well – things don't only go on during working hours. "* (That the guardians of the predecessor program reportedly chose to carry pagers and be available to work after hours, indicates how strongly some who are directly responsible for clients feel the need for full coverage is).

Outside the staff of the Office itself, there was an even clearer consensus that 24/7 coverage was needed. During our group interview with the Board, Board members indicated they felt that 24/7 coverage should be Office policy. Among other interviewees, one referenced the labor issue, one did not see it as a problem, (both of whom were within the Department) but all the other interviewees saw this as a serious problem that should be addressed, and indicated the problems that might arise in its absence. Representative comments included:

24/7 is something very important to have: people don't only wander the streets during business hours. Also it would be a terrible thing if somebody ended up in jail -- which can happen in such instances – only because the guardian can't be reached , when that would be a wholly inappropriate, tragic setting....

4) prospective financial decision-making: one ward came into a sizeable amount of money during the course of the Office's guardianship; insufficient planning appeared to have been undertaken to address ways in which that money might be used to enhance her quality of life.

If this is going to be a good office, they have to have 24/7 coverage...

For facilities that operate 24 hours, you need 24 hour coverage...

The Guardian needs to be available – there are emergencies in the hospital in the middle of the night.

From the point of view of providers at the facilities where clients live, all of whom were asked whether problems had arisen from lack of 24/7 coverage, the four providers we spoke with said there had not been any problems so far, though they would prefer 24/7 coverage. One provider said it would definitely be a problem if for some reason, when an emergency arose, a medical treatment plan was not yet in the record.

2. Recommendations: The Office as Guardian

Recommendation:

We recommend that a minimum of an additional two staff positions be added to the current number of staff (three if the Office is to meet adequately the needs of residents state-wide)

Discussion:

As reiterated by almost all interviewees, the Office critically needs a staff person with a financial background to handle financial matters.²¹ There is also the need for at least one more staff position in order to begin to take more cases, have enough staff to provide 24/7 coverage, and further act as a resource in public education. With this additional staff position, we recommend that a senior guardian assume responsibilities as program manager. Any meaningful attempt to meet the guardianship need throughout the state requires one further staff position for a guardian to be based in another location.

²¹ As noted above, in July 2001, the Office hired a new Guardian who is a registered nurse, a law school graduate and who has experience as a bookkeeper.

Recommendation:

With respect to expertise that is not available “in house,” the Office should establish and clarify when and how it should obtain professional advice and, especially how it should obtain legal advice. Added to the need for resources for additional staff, is a need for resources for obtaining outside professional advice.

Discussion:

As guardianship decision-making requires expertise in numerous areas, not all of which can be covered in-house, there should be established avenues for consultation with experts outside of the Office. Our evaluation found a particular need for there to be a clear system for obtaining legal advice. Currently, despite the number of attorneys surrounding the Office in various capacities (*and subsequent to our on-site visits, a guardian with a law degree on staff*), there is not a clear means of obtaining direction on legal issues.

Recommendation:

We recommend that a formalized system for meaningful training be further developed which is in-depth, interactive, communicates decision-making standards, continues for an established interval of time, and is individualized beyond the baseline training materials.

Discussion:

A commitment to training was evidenced by the Office in the many in-service trainings provided for staff and other guardians, informal mentorship in the Office and commitment of resources to obtain NGA certification for previous Office guardians, the Office Director, and the current senior guardian. Notwithstanding these accomplishments, we found that there was not sufficient initial training as reflected in some of the staff’s descriptions of it, and a lack of formalized systemic established procedures, especially those that involve personal interaction and guidance in case-handling for new staff (much of the systemic training procedures that did exist involved reading materials). The absence of established training procedures in the specific instances here are understandable in light of the numerous other essential tasks of establishing

the Office and providing a full array of services to a pre-existing caseload, particularly given the major staff turnover that had just occurred.

Nevertheless, an important future direction, in keeping with the Office's existing belief in the importance of educating the staff as reflected in the other activities it has engaged in, would be the exploration of the best ways to train new guardians and institutionalizing procedures to assure such initial training. While the Office is in the best position to determine the parameters of initial training, some of the training that was done as part of Board education, as later discussed, (i.e. the use of hypotheticals based on actual cases) may be amenable to adoption here.

Our recommendation that the training emphasize standards of surrogate decision-making (i.e. substituted judgment vs. best interests) grows out of our finding that there was some uncertainty about the precise meaning of these two surrogate decision-making standards and a lack of certainty as to which should be followed. These are complex areas, and we know from our work with guardianship service providers elsewhere that people often have difficulty in truly comprehending what the difference between "substitute judgment" decision-making and "best interests decision-making" is.

Recommendation:

In order to assure prospective planning for client care, we recommend that the Office institute programmatic policies that address "initial steps" to be taken when a new guardianship is assumed. Of particular importance, here, would be to institute, among those initial steps, a procedure under which new guardianship cases would automatically be placed on the agenda at regular staff meetings, at which time the case would be looked at as a whole by the Office staff, considering such areas as residential, medical, financial and special needs decision-making, to evaluate the ward's ongoing needs. Subsequent evaluation of each case for future prospective planning, would be scheduled at regularly occurring intervals to be determined by the Office.

Discussion:

This recommendation arose out of information collected during interviews and during case-file analysis that indicated there is not currently system-wide attention to prospective planning. Our model standards,²² emphasizing the importance of prospective planning devote a detailed standard to the “initial steps” that should be taken when a new guardianship is assumed, including the development of an “individual client plan” outlining, among other things, the goals for the client, and target date set for completion of each goal.

Interviews indicated that there have not been enough clear guidelines established about ongoing management of cases. Case-file evaluation indicated that while there has been careful attentiveness to thorough annual reports which report retrospective events since the Office was created, a similar attentiveness to prospective planning for the ward has not yet been achieved. Annual reports were individualized and detailed, while guardianship plans relied more on standardized boilerplate or used the facilities’ own plans. More significantly, as discussed above, case-file review indicated some specific instances where the absence of a programmatic component to plan for ongoing care, may have contributed to some needs not being addressed.

Given the very strong philosophical commitment the Office has to quality care, establishing a forum/procedure through which to look at new cases in terms of present and future needs and goals might have caused the following questions -- based on specific examples from case files -- to be raised more readily: How should we bridge the language barrier with Mrs. B, since she only speaks German?; Now that Mrs. C has come into a sizeable inheritance, what could we do to enhance her quality of life?; Given that the medical treatment plan of “comfort measures only” that we have on file for Mrs. R was based on information from a

²² *Surrogate Decisionmaking for Adults: Model Standards to Ensure Quality Guardianship and Representative Payeeship Services*, Standard 6, p 49-52. (*Supra* Note 12.)

previous caregiver who neglected her, should we seek new information to assure the plan reflects Mrs. R's own wishes?

Meetings at which cases are regularly scheduled for review would also foster better awareness throughout the Office of the status of cases. The reported problem of learning "after the fact" of deficiencies in performance revealed after the particular guardians had left the Office, would be mitigated with systematic appraisal of ongoing cases on a more routine basis. Routine presentation of new cases would also achieve the objective of enabling the Office as a whole to be familiar with the current caseload of the Office, and it would constitute a kind of ongoing training for less experienced guardians.

Recommendation:

We recommend the development of Office procedures related to the sale of a client's home.

Discussion:

This recommendation does not arise from an immediate need but is important to put in place for future growth. Right now, the Office only has a handful of clients living independently. However, future expansion of the caseload would suggest that there would be more people who have a home when they become clients. One of the most disturbing findings of our previous studies of guardianship service providers was the speed and lack of deliberation that sometimes accompanied the decision to sell the home and move wards into long term care institutions. And, in examining the case files of several individuals whose cases commenced before the establishment of the Office, the files indicated that homes were sold within a couple of months of appointment. The Plan for the Office contemplates the objective of having people living independently as long as possible. In achievement of that objective, we recommend that specific procedures be developed to assure both that a fiduciary standard is met in sale of a home and also, that no home is sold when there is a possibility that a ward could return to it.

Recommendation:

We recommend that the Office provide 24/7 coverage.

Discussion:

24/7 coverage was largely viewed as a requisite programmatic component of an effective public guardianship program. The guardians within the staff who work the most directly with ongoing care of wards wanted 24/7 coverage. Almost all of the interviewees – and all of the Board – felt there should be 24/7 coverage. With additional staff positions – which we view as critical to achieve the Office’s mandate – such coverage should be possible.²³ Need for 24/7 coverage would be all the more pronounced in the future when, as would likely occur as the Office meets the needs of more populations and expands its caseload, more people would be living independently. (A commitment to “least restrictive” and to promote independent living whenever possible, should translate to more people living independently.) It may be felt that 24/7 is less of a problem within facilities (though most of our interviewees did not feel this); having 24/7 would be a necessity when more clients are living independently.

Recommendation:

With respect to maintenance of files, we recommend that the Office institute some kind of “tickler” system that prompts timely submission of annual reports, and that hard copies of reports are maintained for each file.

Discussion:

Given a period of untimely reports, when the Office was first established and very understaffed, we think it is important that there be a system-wide procedure for tracking due dates and assuring timely submission. Rather than assuming that guardians will accurately track the due date for each of their reports, an office-wide system tracking due dates for filings

may better meet that objective. With respect to the second facet of this recommendation, other public guardianship offices we spoke to felt that it was critical to maintain hard copies. First, this seemed important because of the enormous responsibility of being a guardian and to safeguard the risk of equipment failure. Second, it seemed important to foster teamwork within the Office and foster prospective planning: one guardian's electronic file, even if there is access to it, may be subject to less oversight than if another guardian can pick up a hard copy of it .

²³ Our Model Standards suggest that a 24/7 coverage requirement may be fulfilled by use of an answering service or an answering machine, provided the service gives a caller emergency access to at least one staff member. (Model Standard 12(F). (*Supra* Note 12.)

3. Discussion: The Office as Educator

The third major program component of the Office of Public Guardian is its Education function. Here, the evaluation widens beyond the assessment of the program's capacity to meet directly the needs of those individuals for whom guardianship services are being considered. At issue here is not the program's capacity to meet those individuals' needs but its capacity, through public education, to provide leadership and guidance in the guardianship field. The "public" toward whom this public education is directed encompasses different constituent groups, including:

- senior citizens and people with disabilities who need information on less restrictive alternatives to guardianships.
- family members who may wish to themselves serve as guardian
- professionals, including advocates in disability services and senior services, staff at long-term care facilities, hospital staff, state agency personnel from other Divisions within the Department of Human Services, and members of the Utah bar and judiciary, and others -- all of whose work may involve guardianship in a variety of different contexts.

Unlike the evaluation of guardianship services to individuals, which could be ascertained in part from analysis of case-files, the assessment of this public education component is necessarily based upon information collected during on-site and telephone interviews; it is not a subject that can be explored in case-files. Within the Office itself, staff highlighted the program component of Public Education both as a particularly significant objective and also one which the Office had made significant progress on to date: Outside the Office, the public education activities were highly praised.

We have reshaped the vision of guardianship; we have made people aware of how guardianship should be...

We have given confidence to people who refer to us, who know how seriously we take the notion of guardianship...

We help other agencies (through public education) as much as they help us.

In discussing specifically how the reshaping of the vision of guardianship had occurred, the Office Director spoke of establishing a presence in the community, opening a dialogue with

others, developing a Board with understanding of the issues, and raising the level of awareness of bar and bench. The Office supplied us with a document it had prepared containing a summary of its activities in public education, which itemized, among other activities, the many presentations and trainings conducted by the Office to diverse audiences, including: nursing homes, ethics committees, the Bar Association, graduate students in nursing, social work and gerontology, judicial conferences, residential centers for the developmentally disabled, legislative committees, gerontology associations, and sister agencies within the Department of Human Services. These activities represented an impressive involvement in public education over a relatively short amount of time.

A further important activity within Public Education was the development and dissemination of literature about guardianship – the latter being especially relevant to the program objective of facilitating guardianship by family members or friends. In addition to the Plan and a brochure about the Office, the Office has published educational brochures about Utah guardianship and resources available in Utah, thousands of which have been distributed.

Another category in which the Office has been especially heavily involved in carrying out its role as educator is in Board education. Board education – developing knowledge and expertise in guardianship matters across the Board – was an especially time-consuming, but critical, activity during this early period of the Office's existence. Because the Board, by statute, is a decision-making Board that establishes policy for the Office, assuring that the Board was knowledgeable in reaching those policy decisions was crucially important. The Director accomplished a great deal with respect to Board education, including such activities as, inviting in state and national experts to give presentations, working with the Board on guardianship hypotheticals to enhance an understanding of how guardianship theory translates to practice, and, in a presentation by the senior deputy guardian, walking the Board through a guardianship case from referral to the initiation of guardianship. While much of the Board education had to

occur in the early stages of it and the Office being established, it is an ongoing process to keep existing Board members current and to educate new Board members as they join.

Taken together, the engagement of the Office in public education, as reflected in all these activities – presentations to a multitude of different audiences, development and dissemination of educational literature, and Board education , has been extremely positive and extensive, especially in light of how short a time the Office has been operating.

The positive impact of this education was seen in our evaluation by the way people spoke of how the Office had heightened an awareness of, and sensitivity to, guardianship issues. Responding to a question about the overall impact of the Office, a representative comment of one interviewee was that: *“stakeholders, nursing homes, hospitals, and judges, were not as aware of theory surrounding guardianship law; the impact has been of elevating awareness, and knowledge.”* A judge we interviewed expressed high praise for the education he and other judges have received from the Office, stating that it had been extremely valuable in helping raise his own consciousness of the complex and sensitive issues involved in guardianship cases.

In addition to more formal avenues of public education, public education goes on informally in a number of ways. The Office reports that it receives three to five calls a week from family members with questions about guardianship. (These calls are not tracked, but this is the Director’s best estimate of their frequency). These calls are responded to by senior staff – the Director or the senior deputy guardian. While they do not relate to the Office’s own caseload, the Office sees responding to such calls as a way of setting good standards of guardianship practice as a whole and as a way of expressing a commitment to maintaining guardianships by family members wherever possible.

Furthermore, in her work handling referrals to the Office, very many of which do not result in guardianships, the senior deputy guardian reports being very involved in collaborative work with other agencies. The importance of this kind of one-on-one education around specific

cases -- where the senior Guardian explores with other professionals involved in the case the appropriateness of guardianship and alternative options that might better meet the underlying needs of the individual and of families -- cannot be overstated.

The information collected about the public education activities of the Office reflect that the Office has engaged in an extensive amount of public education that has reached a multitude of different audiences. The interviewees spoke highly of the caliber of these presentations. However, interviewees also expressed regret that the formal public education presentations did not co-exist with less formal advice and help on specific cases that arose.

Several interviewees commented that the Office could not serve as a resource for those who had specific questions about guardianship or what to do if guardianship were not appropriate.

I wish they could serve more as a resource, in cases where guardianship is not the answer.

I wish they would provide more resources to answer some questions, give some technical advice; I'd like to be able to call there and get someone who could be an information resource.

Another interviewee felt there was a gap between the conscientiousness with which the formal presentations took place without the capacity to provide individualized help when a specific question arose:

They do a very good job at presentations, but they really aren't there to address our concerns about a specific case or what we should do.

This may well be a "second-generation" concern: the primary concern of the Office was, as it should have been, to introduce itself in a more formal way and establish a dialogue with others who work with the same population it serves to raise generally the level of understanding and appreciation of guardianship issues. The Office also notes that it is very small and that, correspondingly, it can naturally only have interactions with a certain number of individuals and agencies, despite all its efforts with respect to Public Education.

The evaluation also found that there was an expressed desire for more contact between different agencies and within the Department of Human Services. While interviewees did not indicate it should be the responsibility of the Office to make it happen, there was a feeling that communication between and among the various agencies that serve similar populations is inadequate, and that better communication would allow them to serve as resources for each other:

There is a lack of communication between different organizations, even within the same agency. There are programs we have initiated that might be of interest to the Office, but there's no lines of communication. Here we are – next door neighbors, program specialists, but not sharing knowledge, expertise, different resources...

There would be a real value in having a dialogue every year with each of the Divisions (Aging and Adult Services, Mental Health, Division of Services to People with Disabilities) to review and assess what we are doing. This isn't based on problems – I just think it would be good.

The Office really isn't a presence in our life, and I find that alarming. We serve 30,000 elderly and run many programs and there are many occasions where the Office could be a resource. But, apart from some formal presentations, it isn't.

3. Recommendations: The Office as Educator

The section above on the Office as Educator reflects that many accomplishments have been made by the Office in the area of public education since it was created two short years ago. Most fundamentally and significantly, the Office has had a strong positive influence in shaping how people view guardianship, deepening their understanding of guardianship issues, and eliciting serious thought about matters that were previously handled less carefully. The recommendations below highlight some areas that the evaluation suggests would be valuable as the next steps in public education.

Recommendation:

We recommend that the Office specifically address further educating family members who may wish to become guardians and those in the community for whom education on less restrictive alternatives might deter future guardianships..

Discussion:

To date, many of the efforts in public education have been to engage in public education for a professional audience. This is understandable as the initial task of the Office. The “second generation” issue in public education may be to place additional focus on educating a lay community and thereby deter professional guardianship. We are referring here to direct personal interactions and programs. There has already been a successful effort to develop written materials on guardianship and send them to interested parties.

This is an issue that this Office is especially capable of addressing because it is consonant with the Office’s philosophy of guardianship as last resort. Also, it is a direction that we think may be particularly welcome in this particular state – where public education to prevent guardianships and encourage families to act as guardian by the very agency that also provides guardianship will militate against a perception of a guardianship agency as a monolithic intrusive governmental force.

Recommendation:

With additional staff – an element which this evaluation finds indispensable for the Office’s future functioning – we recommend that a staff person or persons be identified who can serve as a resource to answer questions that arise about capacity or about what to do in cases where the Office cannot take the guardianship case.

Discussion:

This recommendation arises out of evaluation findings that interviewees, while appreciating the formal presentations and outreach sessions, wanted the Office to be more available as a resource on specific matters. They wanted to be able to call the Office and speak to someone about what to do. As earlier noted, this reflects some divergence in perceptions as the Office has felt that it has been involved in collaborative activities , but, because of its size, is limited in the numbers of interactions it has been able to be involved in. Acknowledging these different perceptions, a specified resource person may help alleviate what concerns do exist.

As with the recommendation above, engaging more in this activity also may promote a greater receptivity to an Office that is committed to providing broader help than guardianship alone.

Recommendation:

We recommend that the Office continue to establish dialogue with other Divisions in the Dept. of Human Services, informal connections in particular, and with the Division of Aging and Adult Services in particular, as well as with others outside the Department.

Discussion:

Public Education is fostered when there is rich interaction between different organizations. As one interviewee stated, through such lines of communication, each organization could learn from the current activities and insights of the other. In particular, what seemed to be sought here was not more formal presentations, but more informal connections between different groups who serve the same populations to some extent. Given that the Division of Aging and Adult Services serves a similar population – the elderly — it would be especially important to have a greater connection with that agency. It was also suggested that there be annual meetings of the Directors of each Division and the Office so they could learn from one another.

4. Overall Comments on Evaluation of Program Components

Our recommendations for each of the program components evaluated separately above were designed to look forward to the future. That is, they are intended to provide guidance on ways the Office might be strengthened and enhanced as it moves forward. And, as noted previously, the number and specificity of recommendations does not reflect serious overall concerns about the quality of the Office or the many excellent services it provides. Overall – as arbiter, guardian, and educator – the Office has accomplished a tremendous amount during its short existence and truly serves as a model for others in many ways.

D. STRUCTURE OF THE OFFICE OF PUBLIC GUARDIAN

The capacity of the Office to act effectively as a guardian, to promote least restrictive alternatives and to educate the public all go to assessing *what* the Office of Guardian does. A separate area of our program evaluation looked to the context in which these program components were carried out: the structure of the Office. This facet of the evaluation explored the merits of the current structure of the Office and whether any changes should be made to it.

Most broadly, the question raised regarding the structure of the Office is whether the Office should remain part of a state agency or become an independent private agency. That inquiry is central to our evaluation. Drawing on our own experience with guardianship agencies, and collecting the insights from all our Utah interviewees as well as other state public guardianship programs, we analyzed this issue of what future structure of the Office would most enable it to implement its guardianship role in the best possible way.

Within that overarching question of whether the Office should be public or private are a multitude of different specific questions of how the Office should be structured. Our evaluation probes the following questions that relate to structure in a variety of different contexts:

1. Should the Office be Public or Private?
2. If the Office were to remain within a state agency, where should it be located?
3. What special concerns should be addressed with privatization if it does occur?
4. How should the legal process of establishing a guardianship be structured in terms of who petitions for the guardianship, who represents the petitioner and who represents the alleged incapacitated person?
5. How should the Office be structured to meet the needs of residents throughout the state?
6. Whether the Office is public or private, should it incorporate a volunteer model?

A final question is how the two contracts that pre-existed and were inherited by the Office to serve persons with developmental disabilities, should be handled in the future? Because this involves both program and structure issues, it is addressed in a separate section.

1. Discussion: Should the Office Be Public or Private?

From the inception of the Office, its privatization has been viewed as an option that should be seriously considered, and indeed possibly preferred, for the future. Surveying four different models of public guardianship – a government employee not providing social services, a governmental agency that promotes social services, an independent state agency and an independent quasi-governmental/private agency – the Plan concludes that the latter two are the preferred models in the long run, primarily because their independence prevents conflicts of interest.

Currently, the Office functions within the second model noted above; it is within the Department of Human Services, which is a governmental agency that provides social services. As the Plan notes, the potential for a conflict of interest does exist when a guardianship program is within a state agency that provides services. Guardianship literature reinforces this view and explains its basis:

*Conflicts of interest may arise if any agency that funds the public guardian also provides services to wards.... a publicly funded guardianship agency should design its programs to meet the needs of its wards, and should retain sufficient independence to raise legitimate challenges to “the hand that feeds it” without fearing loss of funds.*²⁴

*A guardianship program shall be a free standing entity and should not be subject to undue influence. When the program is a part of a larger organization or governmental entity there must be an arms length relationship with the larger organization or governmental entity, and independent decision making ability.*²⁵

With respect to conflicts of interest, our evaluation findings were two fold: first, almost all the interviewees did not feel there were actual conflicts of interest; second, almost all the interviewees acknowledged the potential for conflict of interest. Representative comments reflecting both of these points were as follows:

²⁴ *Guardianship: An agenda for Reform.* Recommendations of the National Symposium at Wingspread of the American Bar Association, 1989, Recommendations VI-A and VI-C

²⁵ Ethics and Standards for Guardians: The National Guardianship Association: October, 1991

I haven't seen the conflict, but obviously the potential is there. You need to have multiple players and lots of scrutiny ...

It isn't an existing problem because this Department of Human Services has a strong tradition of not interfering with the autonomy of divisions, but you still worry about conflict – that you wouldn't be aware of a conflict that you need to be aware of...

Even if there isn't an actual conflict right now, because of the particular people who are here, there is always the potential for conflict when the guardian is part of an agency that provides services and the guardian is the advocate for the people receiving those services. I'm often worried about the potential for conflict. If, for instance, a guardian thinks a placement is incorrect, would that guardian feel able to fight a Division that is a sister agency?

The explanation for the perceived absence of actual conflicts was that the current administration of the department was principled about affording the Office autonomy. Along with this explanation, though, was the awareness that the presence or absence of conflicts was thus subject to changes in political climate: were the administration to change and a different viewpoint imposed, hypothetical conflicts could well become realities.

There's always a possibly slippery slope when a guardianship agency is within a state agency of service providers that the guardian could become a conduit simply for admission to facilities.

Our evaluation of case-files largely supported the general impression we found from interviewees that the conflicts at this point were potential more than actual.

Given the stringency of guardianship eligibility guidelines, it was certainly clear that the Office did not feel pressure from the Department to assume guardianships over people because they were receiving services from other Divisions within the same Department. At the same time, as cautioned in the above quotation that “you might not see a conflict that was there,” if an Office were not fully advocating for its clients because of fear of “stepping on the toes” of others in the Department, that reticence may well not be visible.

We did not find however, that the issue of whether the Office should be private or public turned only on the question of independence from conflict of interest. Were that to be the sole issue involved, its resolution would dictate a recommendation that the Office be privatized right

away. There are other variables involved, however, which relate to possible benefits of remaining within the Department and possible risks of privatization and, most importantly, whether privatizing the Office, even if that is the ultimately preferred avenue, is a viable option at the current time.

The expressed advantages to remaining within the Department were the following:

There's a supportive knowledgeable staff to draw on...

The advantage to being within the Department is there is an instant access to networks which we wouldn't have as a private entity...

The advantage is that if you have trouble getting something to happen, there is proximity and access to people who can get it done.

Staff within the Office also spoke of the benefits associated with a state position which would deter them from working in a private setting, where such benefits would not be available. Furthermore, privatization, while providing independence, was perceived as containing certain problems of its own:

I'm against privatization. Two things happen: either services go down or prices go up...

In certain instances, I've seen more problems with a quasi-independent agency because there is less oversight.

Interestingly, one of the public guardians with whom we spoke from another state who had experience both with being part of a state agency and then, later, becoming a "quasi-public instrumentality" felt that advocacy in some ways was enhanced in the former setting:

There was much more opportunity to address issues directly. If we knew of a problem or a trend, we could bring it to the attention of the agency responsible for it. And it was an enormous benefit to be able to walk down the hall and talk to the attorney when a legal matter arose.

(Interview with Director, Kansas Office of Public Guardian)

A more immediate issue with privatization, even were it to be the preferred option, is whether it is feasible for the Office to become more independent at this point of time. Here, our evaluation suggests that it would not be prudent for the Office to be separated from the Department until core functions of the Office were in place. As discussed earlier in this report,

right now the Office does not have that capacity. For example, it does not have enough staff or staff with expertise in particular needed areas; operating under a triage model, it does not have the capacity currently to begin to meet the need for guardianship; and, having one office in Salt Lake City, it does not provide adequately for the needs of Utahns in outlying areas.

In conversations with two Offices of the Public Guardian elsewhere in the nation which had moved from public to private models (New Hampshire and Kansas), the directors of both programs felt that it was essential that the core program be already operating fully and meeting its objectives before it was privatized. In both instances, the programs they directed were fully in place before they became private. This view was reiterated by others in the Department: *“privatization is supported and probably is a way to go eventually, but the Office needs to establish itself first.”*

As this has not yet occurred in this Office, we feel that privatization should occur at such later time when the Program has been more fully established – with some additional staff, some program to meet the needs of residents outside of the Salt Lake area, an expansion of eligibility guidelines to greater meet the need for guardianship along with the implementation of system-wide procedures to assure effective oversight of those cases, and a greater capacity to serve as a resource and provide assistance and facilitate alternatives for those who should not be subjected to guardianship.

1. Recommendations: Should the Office be Public or Private?

Recommendation:

We recommend that the Office not be privatized until it is fully established and has at least the minimal resources necessary to meet effectively its objectives.

2. Discussion: If the Office Remains Within the Department, Where Should It Be Located?

Several interviewees were less concerned that the Office was within the Department of Human Services than they were pleased that it did not directly report to a Division within that Department. Were the Office to report directly to a Division, there was the belief that this – more than the fact of being in the Department in itself – would detract from the Office’s neutrality and possibly curb its effectiveness.

Reporting directly to a Division was tainted with the possibility of conflict of interest in a way that the Office’s current location within the Department was not. (It is noteworthy, along those lines, that the only two suggestions of a possible conflict of interest reported during the evaluation occurred with the agencies that contract with the Office of Public Guardian but were formerly with the Division of Services for Persons with Disability and some connections with that Division still remain. This may illustrate just the way that possibility of conflicts are heightened when there is direct reporting to a Division)

The Director of the Office felt that the Office had profited from the experience of having the Office of Legal Counsel as a supportive resource, and that the relationship with that particular Office of Legal Counsel had been unusually positive and beneficial. At the same time, certain interviewees felt that the fact that the Office reported to the Office of Legal Counsel undercut its visibility and its ability to have a voice of its own to advocate for its needs, comparable to the ability of other division directors to do so:

The way the Office is structured, they’ve kind of buried it administratively. I don’t think it should have been buried under the Office of Legal Counsel. That way it’s not as visible.

The Director goes to the Legal Counsel who goes to the Executive Director. And the problem is that the Office is just one item on the Executive Director’s budget. The Office does not speak to the legislature....

The problem is that the Office could get lost in being part of the Department’s budget. The Office should make a separate presentation to the legislature...

2. Recommendations: If the Office Remains Within the Department, Where Should It Be Located?

Recommendation:

If the Office remains within the Department, it should not report directly to a Division. However, avenues should be explored that would result in the Office becoming more visible and prominent within the Department and able to advocate for more resources independently.

3. Discussion: Were the Office to Become Private , What Safeguards Should Be Put in Place?

Our own national study of guardianship service providers raises concerns about private agencies. We had seen evidence of “profits over people” in the way such agencies operated. During our Utah evaluation, interviewees countered this concern by noting that the population served here – largely people without any significant assets – would not foster a drive for profits. Nevertheless, a chief attribute of other state Offices of Public Guardian that are independent is that some of their clients are fee-paying (for example, 40% in the New Hampshire Office of Public Guardian). Therefore, to assure that a private office with fee-paying clients maintain integrity, it is imperative that standards be developed. There also needs to be some monitoring put in place for a more independent agency since there can be less oversight of them:

One problem with privatization is oversight. You need to establish how to preserve visibility and accountability if it is a private agency.

In addition, the Office of New Hampshire reported that the fact that there were both fee-paying and indigent clients did not result in the preferential treatment because of the strong ethical backbone to the Office:

That just doesn't come up as a problem, and I think it's because of the strong mission statement we follow. We have such a deeply held belief of what we are about that acts as a safeguard. Just today, I turned down two cases with significant estates because we don't have the capacity to take them on right now.

3. Recommendations: Were the Office to Become Private , What Safeguards Should Be Put in Place?

Recommendation:

While we do not recommend that the Office become private during the immediate future for the reasons set forth above, we recommend that any consideration of privatization develop safeguards to assure adequate monitoring and oversight and assure equal treatment of indigent and fee-paying clients. Oversight of a privatized Office should be contained within the statutory language creating it.

4. Discussion: Establishing the Guardianship

Currently, the Office is structured so that the Office assesses the referrals for guardianship and petitions for guardianship with representation by the State's Attorney General's Office in those petitions. The evaluators' concern with this structure grows out of our studies and our development of standards for guardianship service providers, and focuses primarily on the Office itself serving as petitioner. The underlying reason for the concern is the possible conflict of interest – that is, an agency whose purpose is to provide guardianship services and that is compensated (fee-for-service, state funds, etc.) for providing those services, also acting as petitioner for guardianship and being in a position to influence a guardianship hearing or its outcome. Our model guardianship standards specifically prohibit guardianship agencies from acting as petitioners:

*a program shall not act as the petitioner in a guardianship proceeding,... programs should not be in the position to initiate or influence the appointment of guardians.*²⁶

The reason for a standard discouraging guardianship agencies from acting as petitioners is the concern that if a guardianship agency is both petitioning for imposition of guardianship over an individual thereby terminating the individual's decision-making rights, and is then being appointed and compensated to serve as guardian for persons placed under guardianship, there is a lurking danger of a kind of "ambulance chasing." Our model standard does not apply to family members petitioning for guardianship over a relative, but only to agencies where there is a program interest which might be perceived as self-serving or adverse to the position or best interest of clients.

The other state office of public guardian with which we spoke at greatest length about this issue (New Hampshire) felt strongly that they should not act as petitioner because they saw it as a conflict of interest. We are aware, however -- and the Office further pointed this out in its

response to the draft evaluation report we shared with them -- that there are public guardianship programs that do so petition, for example the very established Office of Public Guardianship in California. Moreover, as the Office points out, options other than having the Office itself petition are not always practical to carry out. If, for example, some entity other than the Office petitions and the Office is appointed in a case where it believes the guardianship is either unwarranted or that the Office does not have capacity to provide needed services, its options are limited. It can move to have the guardianship dissolved if it believes it was wrongfully imposed or it could apply its own assessment and eligibility criteria and not accept the case. Neither option is seen as a truly feasible alternative.

The Office's view and intent is that, in acting as petitioner, it can more fully assure that alleged incapacitated persons are protected because it is so vigilant in its assessment and screening of potential cases and because its strict eligibility guidelines effectively limit the numbers and types of petitions it brings. The Office would rather decide and exercise control at the entry-point when the question of guardianship is first raised. Indirectly confirming the Office's own views, the director of another public guardian office confirmed that sometimes it receives appointments that are not appropriate when the petition and referral come from other agencies:

and you can guess that they (the other agency) isn't too happy when we tell them that, so we're usually tactful about it. We don't immediately dissolve the guardianship. But we do terminate it in a short time of a few months or so.

Accordingly, we are sensitive to the Office's desire to avoid just such an outcome by itself acting as screener and petitioner. And, most of the interviewees with whom we spoke, perhaps because of their view of the Office's careful scrutiny of cases, did not express particular concerns or reservations about the Office acting as petitioner. As best we could ascertain, this careful scrutiny and a commitment to guardianship as a last resort has meant that, whatever the

²⁶ Model Standards, Standard 4(A)(3). (Supra Note 12.)

inherent potential conflicts of interest of this model, they have not translated to actual problematic practices. To the contrary, the Office, as we have discussed at length above, is particularly diligent in screening out proposed guardianships which it feels would be wrong to impose.

Over the long run, however, the present model lacks safeguards so that, especially with changes of personnel, its continued use would pose concerns of the nature described above. As one Board member during our group interview stated: *“The Office is both appointing itself to act, and policing it’s own limits. That’s really a conflict ...”* Thus, while acknowledging the very rational underpinnings of the Office’s desire to act as petitioner, we do not recommend the long-term continuance of a practice that both the National Guardianship Association standards (5.E) and Model Standards (4.A.3) see as having the potential or appearance of conflict of interest.²⁷

To the extent that this practice remains in effect for the short-term, we see it as critically important to have a vigorous competent guardianship defense. The model of the Office as petitioner, because it puts great control in the hands of the Office to influence the imposition of guardianship, must have, at a minimum, this safeguard of competent defense counsel representing the due process rights of the alleged incapacitated person. It is our understanding that, currently, there is not a budgetary commitment to guardianship defense. In Salt Lake City, such a defense is provided but there is not a clear source of established funding for its continuance. In outlying areas of Utah, the adequacy of guardianship defense, as discussed later, is questionable.

The issue with the State’s Office of Attorney General representing the Office when it brings petitions links back to the root concern about a guardianship service provider also acting as petitioner. It is because the Office, a governmental entity, is petitioning that the Attorney

²⁷ Model Standards, Standard 4.A.3 and National Guardianship Association Standards, Standard 5.E. (Supra Note 12.)

General provides representation. This representation by the Office by the Attorney General against the alleged incapacitated person raises concerns about an imbalance of power, with the weight of state authority being brought to bear against the alleged incapacitated person in a proceeding to determine if that person's rights should be removed and given over to the Office.

While there is little empirical data on how public guardianship programs in other states are structured with respect to their role in petitioning and involvement of states' attorneys general, Erica Wood, a nationally recognized expert and author of the annual reports summarizing states' guardianship reform legislation²⁸ indicated she had seen nothing comparable elsewhere. She had strong reservations about such representation as well as about the Office acting as petitioner, for the reasons indicated above, stating that :

The Attorney General shouldn't represent the petitioner for the basic reason that the petitioner should never be the guardianship program, because it is a conflict. When the Attorney General represents the guardianship program in its petition, there is simply too much state power being brought to bear against an older person in what can be a coercive proceeding. There is something backwards about it: if anything, I would like the Attorney General to be representing members of the public against the guardianship agency²⁹

(This is in fact the precedent the evaluators are more accustomed to seeing since the Michigan Attorney General has been involved over the past couple of years in prosecuting guardianship programs derelict in their duties, including a private agency in Detroit and a county Public Guardian in southwestern Michigan.)

As noted above, repeatedly in interviews, guardianship defense was seen as the safeguard that made the model of Office as petitioner and representation by the Attorney General acceptable. The evaluation found that the caliber of guardianship defense was considered to be very high in Salt Lake City, with a dedicated commitment from the Legal Aid

²⁸ Erica Wood, *State Guardianship Legislation: Directions of Reform* (1988-2000) (annual report prepared by the ABA).

²⁹ Telephone interview with Erica Wood, Associate Staff Director of the American Bar Association Commission on Legal Problems of the Elderly, Washington DC.

Society of Salt Lake providing it, although with no assurances of continued funding. Concerns were raised, however, as to the adequacy of guardianship defense in outlying areas.

Even the presence of guardianship defense does not fully erase either the concerns over the potential conflict of self-petitioning or the significant power of the State being marshaled toward the alleged incapacitated person when the Attorney General represents the Office in its petitions. The overriding concern -- when the structure of how guardianships are established is put together with the structure of how guardianship referrals are screened -- is that the current Office model depends to a large extent on the skill and integrity of the particular individuals in the Office to do the right thing. It is the Office itself which assesses the need for guardianship and decides whether to seek guardianship; it is the Office itself, with the State Attorney General as counsel, which petitions for guardianship. However commendable the Office's current assessments and screening may be (and they appear to be excellent), a good structural model is not one that essentially relies on the skills and direction of particular individuals. As was observed in one of our interviews with a nationally recognized expert in guardianship: "*In the right hands, that kind of model can work; in the wrong hands, it could become draconian.*"³⁰

4. Recommendations: Establishing the Guardianship

Recommendation:

We recommend that the Office explore ways in which it could adopt a model in which it would not itself act as petitioner because of the inherent potential for conflicts of interest. The corollary to this recommendation is that the Attorney General would not be representing the Office as petitioner – since the Office would not be the petitioner.

³⁰ Telephone interview with Erica Wood. Supra.

Recommendation:

Since it is critical that the due process rights of the alleged incapacitated person are respected, it is critical that the Department assure that there is sufficient funding for guardianship defense. Where the adequacy of guardianship defense in outlying areas is questionable, there should also be training in guardianship defense. This recommendation becomes all the more crucial for as long as the present model (assessments and petitioning by the Office with Attorney General representation) is in effect because guardianship defense is the only outside safeguard in that model.

5. Discussion: Geographic Location of Office

The consequence of having one Office located in Salt Lake City and an objective of meeting state-wide needs, is that an inordinate amount of staff-time, in short supply to begin with, is spent driving to various parts of the State. The outlying Southern and Eastern areas (chiefly the St. George and Moab areas) in which the Office has clients, require a full day of driving simply to go there and back, regardless of guardianship activities undertaken while in those areas. As a result, there cannot be a fully equivalent level of service for wards in those areas. They are visited because the Office is committed to visiting, but not as often as wards in the immediate vicinity. The services provided them more often rely upon volunteers – inherited usually from the previous Guardianship Program – than do the services for other wards. All in all, it is simply not feasible for the guardians in one office in Salt Lake City to meet needs state wide, and provide a comparable level of service to all its clients when the outlying areas are so distant.

Despite these constraints, the Office has done a remarkable job of encompassing clients from areas outside of Central Utah. Although the majority of the Office guardianships are in central Utah (29), the Office has 5 clients in Northern Utah and 16 clients in Southeastern Utah.

Notwithstanding this accomplishment, the limited ability of the Office to meet state-wide needs was mentioned by a number of interviewees as an area that needed to be addressed. The director of the Office perceived this as a problem, as did others, *“I have a real concern over meeting needs in outlying areas..... There are facilities all over state. One Office cannot adequately meet their needs.”* The solution proposed by several was that the Office needed to have another satellite office or staff person physically located in another area. In the alternative, for the short-term, if funds for this were not available, it was suggested that the Office contract with an agency care-manager in one of those areas. The location suggested for the satellite office was consistently the Southern part of the State, most commonly St. George.

5. Recommendations: Geographic Location of Office

Recommendation:

We recommend that an additional staff position be created to provide a guardian based in the Southern part of Utah. That staff member would be trained in the Office and have established regular contact with the Office to assure that one unified philosophy of guardianship guides the provision of services state-wide.

6. Discussion: Establishment of Volunteer Model

The Plan contemplated the exploration of incorporating a volunteer model to enhance service capacity of the Office. When the Board and Director discussed this possibility early on, they recognized that developing a high quality volunteer model is an extremely challenging and time-consuming task, and the Board felt that it was too demanding a task to be embarked upon during the early period of establishing the Office, given an already daunting list of objectives to meet with limited resources.

Our evaluation interviews found that, for the most part, the advisability of incorporating a volunteer model into the Office was viewed with some skepticism at best. The prevailing sentiment was that there were too many problems with a volunteer model. There is too rapid a turnover in volunteers to justify the investment of time required to recruit and adequately train them, and that the investment of time of paid staff in developing volunteers would be excessive. Volunteers were also seen as a dangerous proposition for the Office because of the immense responsibility that a guardian has. Volunteering as a guardian calls for a great deal more responsibility than do many other volunteering opportunities, for example, a guardian makes life-and death decisions. An interviewee who had experience running other volunteer programs said: *"This is the kind of Office where a volunteer can do a great amount of harm."*

A volunteer model was also perceived as one that "sounded good" but seldom was as good in practice. As one attorney said: *"People are always saying, Oh, let's use attorneys as volunteers! But the truth is, first, they're not available to do it and, second, they won't know what they're doing. I've been doing this guardianship work for a year, and I'm just beginning to get the hang of it."* Similarly, a volunteer model was viewed as one that sounded good because it was felt to be cheaper, but that in fact, it really wasn't: *"volunteers are proposed, without any*

sense of just how much money it takes to run a good volunteer program.³¹ The director of an agency which had a volunteer program within it -- an ombudsman program -- cautioned that it took a great deal of time and resources to develop and maintain a good volunteer program:

We have a good program now, but it took ten years to get it that way. I funded failure for ten years, knowing that I would ultimately get the right thing in place and it would be a good program.

Other states' Offices of Public Guardian that have had experience with volunteer models have had differing experiences, but all share the perspective that the time, effort, and resources involved in volunteer models should not be underestimated. The New Hampshire Office of Public Guardian discontinued a pilot guardianship program which used volunteers because

we didn't think it worked out. Volunteers come and go. There are so many things they don't know that a great deal of time goes into supervision. Probate judges aren't happy with the situation with volunteers because of their lack of knowledge. Between the effort of recruiting and educating them, it's not worth it.

The Kansas Guardianship Program is a well-established program relying on a volunteer model. While it is clear that many more wards are served than could be served with the existing paid staff of the Kansas Office (seven paid field staff / 1550 wards), substantial resources are required to recruit, train, supervise, and maintain the volunteers. The director there also cautioned that volunteers require very careful screening and individualized training, and that immunity issues would need to be addressed.

In Texas, the director of the Guardianship Alliance who works with twenty-two different programs had a very broad perspective on guardianship programs that relied on different models. She too felt that volunteer models could be burdensome for the court: "*volunteers would leave and then the pro bono attorney would have to be going back in to court to get a*

³¹ In our own experience studying a volunteer guardianship program, we found some other disadvantages not specifically noted by the above interviewees. There tended to be a view that since the volunteers were acting for free, they should somehow be sheltered from as much scrutiny and not subject to as rigorous an appraisal than if they were paid. "They're saints," was a phrase we repeatedly heard, "they do this for no money." As a result, a volunteer model may, in addition to the problems noted above, be subject to less oversight.

successor guardian.“ And she felt that volunteer programs required great effort, and sometimes attracted people who really shouldn’t be serving as guardians. Interestingly, volunteers were viewed as much more appropriate for smaller rural communities “*where everybody knows everybody*” than for urban populations, where there was more anonymity and much more turnover.

None of the interviewees who questioned a model that relied totally or primarily on volunteers to provide guardianship services felt that there was no role for volunteers in the area of guardianship. The New Hampshire Office, for instance, spoke very highly of volunteer guardianship monitoring programs that AARP can assist in establishing. However, the view of both the New Hampshire and Texas Alliance directors was that volunteers are more suited to complement the work of staff guardians rather than being named guardians themselves.

It should be noted that the Office does use some volunteers that were “inherited” from the previous program. These volunteers were not named guardians but were visitors to the Office’s guardianship wards – especially in outlying areas of the State where contact with the wards was less frequent. The volunteers were sent a letter when the Office was established, but were not re-assessed.

6. Recommendations: Establishment of Volunteer Model

Recommendation:

Given the time, effort, and resources necessarily involved in recruiting, training, overseeing and maintaining volunteers, it does not seem to us that a volunteer model should be implemented at the current time from a practical perspective alone. Above, we identified the areas of training of staff and office-wide direction for ongoing cases as areas where the Office should focus its resources. Philosophically, over the long term, we believe that the volunteer model can be difficult for all the reasons expressed above. Were the Office to explore this model further in the

future, such exploration should take into account all the points raised about the effort and care that is involved.

Recommendation:

The Office should meet with the volunteers currently working with the Office's clients to assure that they are knowledgeable and effective.

7. Overall Comments on Evaluation of Structure of the Office

Our recommendations for each of the six structural elements we examined separately above were designed to look forward to the future. That is, they are intended to provide guidance on ways the Office might be strengthened and enhanced as it moves forward. As with the Program Components examined in the previous section, the number and specificity of recommendations does not reflect serious overall concerns about the quality of the Office or the many excellent services it provides. Overall the Office has accomplished a tremendous amount during its short existence and truly serves as a model for others in many ways. And as noted in the concluding section of this report, the very significant accomplishments of the Office thus far indicate that, whatever future improvement can be made, what the Office has already accomplished represents great progress, a sea change really, from what existed in the guardianship field before

E. CONTRACTS FOR GUARDIANSHIP SERVICES: PROGRAMMATIC & STRUCTURAL ISSUES

The final section of this evaluation report also involves structural issues, but is addressed separately here because it involves programmatic elements as well. This section discusses the two current contracts -- inherited by the Office -- through which services are provided to persons with developmental disabilities under the auspices of the Utah Office of Public Guardian. Since this evaluation is of the Office of Public Guardian, and the Office holds contracts with the two separate agencies, an integral part of the overall evaluation is to assess the program with respect to these contracts.

1. Background

As noted in the introductory section of this report, the Office has contracts with two service providers, Guardianship Associates of Utah (Guardianship Associates) and Guardianship and Advocacy Providers (Guardianship Providers) (hereinafter collectively referred to as “the Contractors”) to provide services to individuals with developmental disabilities. These contractor services existed prior to the creation of the Office and were previously administered by the Division of Services for People with Disabilities. They were effectively transferred to the Office when the Office was established. Guardianship Associates currently has 150 clients for whom it provides guardianship services; Guardianship Providers currently has 30 clients.

Our primary objective in the evaluation was to assess the effectiveness of the current model in which services for one population are contracted out, whether it should be continued, or whether a different model should be explored instead. To meet this objective, we interviewed the directors of both contract agencies, reviewed case-files of both (ten files of Guardianship Associates and three of Guardianship Providers, a percentage reflecting the different size of the two agencies) and interviewed the Director of the Division of Services for People with Disabilities, the interviewee who had the most experience with the Contractors. In addition we elicited information and opinions about the Contractors from other interviewees. (Our sources

were more limited here than for the Office itself; a number of the interviewees were more directly involved with the Office and did not have enough experience with the Contractors to form views about them.)

As stated above, this assessment of the Contractors involved both a structural inquiry about how the Office should operate, but also, at least to some extent, a programmatic evaluation. Whether the Office should continue to contract out for services for individuals with developmental disabilities depends in large part on whether the contracted services are functioning properly and effectively under the standards and procedures now established for the Office. With respect to this last component, our inquiry was necessarily somewhat limited. Our major purpose was to evaluate the Office. A full program evaluation of both contractors would essentially translate into three program evaluations which was beyond the scope of what resources allowed here. Accordingly, our evaluation of the Contractors does not represent separate, full program evaluations of each, but is geared toward drawing on the information we did obtain to guide the exploration of how future decision-making about the contracts might proceed.

2. Discussion

A state-wide program of public guardianship should assure that people in different populations that are served by it are treated with the same level of professionalism and the same approach to guardianship. We begin with this premise, i.e., that a state-wide Office of Public Guardian would want to have one unified program of guardianship services with essentially the same vision, same guidelines, same protocols, and same procedures operating for both the Office and any agencies or individuals with which it contracts to provide guardianship services.

Evidence that the Office has moved to provide a unified vision for the contracts which it inherited is found in the current contract language between the Office and the Contractors. The contracts clearly move in the direction of greater oversight to assure that the guardianship

services provided by the contractors to clients with developmental disabilities conform to the same principles as those that govern provision of services by the Office's own staff. The Office revised the old contracts that existed between the Division of Services for People with Disabilities and the Contractors. Our comparison of these changes found that the new contracts made substantive changes that reflected the Office's vision of guardianship and the intent to assure that it was followed by the contractors.

Overall, the new contract language is much more specific and provides clearer guidelines than was true of the old contracts. Some specific examples of substantive changes include: 1) a clearer mandate to assure that families serve as guardian whenever possible and an affirmative obligation on the part of the contract agencies to terminate guardianships whenever appropriate; 2) specified guardianship duties to assure that the contractors have the capacity and follow procedures to adequately care for their clients including contact with every client once every two months at a minimum, and development of guardianship plans for every client; and 3) mandatory guardianship training in the form of a requirement that the Contractors attend an orientation provided by the Office and a requirement that they become certified through the National Guardianship Association.

The Office further revised the contracts to provide much more oversight of the contractors by the Office than was true previously. These revisions details the annual review which is now conducted by the Office and requires the Contractors to report "any unusual incidents involving wards" promptly to the Office.

All these revisions indicate a movement toward a system of uniform standards in the provision of guardianship services across different client populations. Interviewees also reported that the Contractors' performance had improved since the Office was established. (Group interview with Board and interview with Director of the Division of Services for People with Disabilities)

However, as would be expected with pre-existing contract agencies, our evaluation also suggests that at this point in time, and as discussed in greater detail below, considerable differences remain between the two pre-existing contractors and the newly created Office. For the future, the essential question to be resolved is how best to proceed so that, regardless of how many contracts there may be under the umbrella of the Office, they share a common vision and a common understanding of how that vision should be implemented.

Discussed here are, first, the differences we found between and among the contractors and the Office, and second, the considerations that would underlie each of the options, drawing on the views we heard about them. While we discuss these different options, the ultimate decision of whether the Office should directly provide guardianship services for those persons with developmental disabilities now served by the contractors or continue to contract those services out, is not one on which we have a specific recommendation. It seems to the evaluators that the Office and the Department are in a better position to make that decision themselves, and neither option, as discussed below, is specifically discouraged.

2.a. Differences Between the Office and the Contractors

Our interviews with the Contractors and review of case-files suggested basic differences between the three entities – the Office and the two Contractors. The chief differences we found were:

- fundamental differences in the basic definition of the role of a guardian and, consequently, differences in how they acted as guardians;
- differences in philosophy about guardianship in terms of perceptions of limitations of guardianship and pursuit of “least restrictive” interventions;
- differences in views about maintaining file integrity; and
- relationship between the Department of Human Services and the Office and Contractors.

Further there is a difference in the level of service provided by the Office as compared to the Contractors. The Office provides both guardianship and conservatorship services and

provides a full range of guardianship services within the scope of the guardianship order. The Contractors do not provide conservatorship services, and their guardianship services are limited for the most part, to medical and habilitative decision-making.

1) Differences in Definition of Role of Guardian

The most fundamental difference we saw had to do with how the three entities viewed the basic role of guardian. The role of guardian can be interpreted many different ways. At one end of the continuum, there is the view that the guardian is exclusively a surrogate decision-maker who makes necessary decisions that an incapacitated person cannot make for himself or herself. At the other end of the continuum is a view that, in addition to whatever legal responsibilities the guardian assumes, a guardian is a companion and friend. Somewhere in the middle of this continuum (and in the opinion of the evaluators, the best model) is the view that a guardian is -- more than simply a reactive decision-maker, if less than a friend -- someone who is an advocate for the incapacitated person and who, in that advocacy role, is proactive rather than reactive in identifying and meeting needs as well as pursuing opportunities for enhancing the capacities of those entrusted to the guardian's care.

The Office, in our view, has a commitment to the view of guardian as advocate. With respect to this basic definitional view of guardianship, the two Contractors which pre-existed the Office appear to be at different ends of the continuum – with one describing its role as guardian as decision-maker (taking people to appointments, attending planning and case review meetings at which decisions needed to be made, providing informed consent, etc.) and with the other contractor at the other end of the continuum seeing a guardian not only as decision-maker, but also as a companion and friend and expressing a philosophy of the guardian's role as “maximizing the joy that could be found in life for each client.”

Where, in particular, the role of guardian is seen as reactive more than proactive, as exclusively a surrogate decision-maker rather than an advocate, the clients whose care is informed by that view are not receiving the same services and are not being afforded the same opportunities as are those whose guardians view their role as advocates. This consequence was reflected in some of the reviews of contractor case-files in which we saw more minimal contact with wards, contact that was more reactive than proactive, decisions that relied more on advice and recommendations of care providers than on an understanding of the clients' perspectives as to their own needs and desires, and, overall, did not reflect an approach of involvement with the client.

Whatever the advantages of different approaches, the key point here is that they are different. And, because this is a difference that goes to the heart of a program – how it defines what it does for its clients – it would seem important that that definition be consistent for a State Office of Public Guardian. Right now, there is not that consistency of vision.

2) Differences Regarding Philosophy of guardianship

At the beginning of this report, we highlighted as one of the noteworthy accomplishments of the Office a vision of guardianship that emphasizes guardianship as last resort, that prefers the use of less restrictive alternatives, and that recognizes the desirability of limiting guardianship or terminating it where capacity can be restored. While this philosophy clearly guides the approach of Office staff, it was not equally present in discussions with the Contractors who began operations under different circumstances and with a somewhat different vision. With the contractors, we heard that this was a population for whom there were typically not viable alternatives to guardianship. And as reported in one interview, the interviewee had no recollection of cases for which termination was sought by either of the contractors.

Further, the newly created Office has established a careful and thorough process through which it is able to directly scrutinize cases as to the need for guardianship prior to acceptance, and is significantly involved in the assessment process. The Contractors are not similarly involved in the assessment. As a result, the guiding philosophy of limiting guardianship and exploring less restrictive alternatives that is the first frame of inquiry for the Office is not an established part of the Contractors' programs. A related practice that is further evidence the Office's philosophy of "guardianship as last resort" is that of ensuring that each time a petition for guardianship is brought by the Office there is adequate defense for the alleged incapacitated person. With respect to the contractors, the evaluators were not in a position to gather sufficient information about their role in the petition process or about their responsibility for securing a defense attorney for their cases, to draw conclusions. However, because of the vital importance of a strong defense, particularly where the contractors are serving as petitioners, we recommend that future models should consider this issue and that uniform practices be established.

3) Differences Regarding Maintenance of Files

Maintaining informative and current files is essential to an Office that provides guardianship services. Here, there were clear differences between the Office and the Contractors. As highlighted in our discussion of the Office, the Office committed a great deal of time to "cleaning up files" it inherited – rectifying omissions, updating and adding information – as well as to building files for new clients with the objective that the files be informative and useful. A system for Office files was established that would provide a full picture and understanding of the client, the case history, and current needs and plans. Concurrently, the Office prepared detailed and extensive annual reports for the courts that both "set the bar" in the guardianship field by exemplifying court filings that were much more than routine uninformative boilerplate, and also provided a narrative

that made the reports themselves coherent and complete thus allowing the court to assess the services being provided.

As with other operating procedures, the Contractors had systems for maintaining files that pre-dated the Office, and the Contractor files reviewed by the evaluators were not approached with the same rigor as the Office. At one extreme was the view that paperwork was peripheral to the role of acting as guardian which translated into files that were disorganized, incomplete and not really informative in themselves without added commentary. In the other case -- much less extreme, but still distinct from the Office -- files were less informative (it was difficult to ascertain why the guardianship had begun absent a petition or explanation) and court filings were more boiler-plate (identical annual reports were found for some years). Again, the point here is that there is not yet one unified system at work, with these differences existing.

4) Relationship between the Office, the Contractors, and the Department

This distinction, unlike the three discussed above, goes more to structural issues. It is noted here because it is relevant to consideration of future models. As discussed earlier, the issue of a conflict of interest with the Office's location within the Department of Human Services, was generally viewed as one which posed a potential, as opposed to actual, conflict of interest. As also briefly referenced there, the only comments pertaining to possible current conflicts came with respect to the Contractors and their being in a contractual/funding relationship with the same agency that is the primary provider of housing and services to their wards.

While we were not in a position to get sufficient information about the facts to draw conclusions, it is noteworthy that the very question of a possible existing conflict only arose with the Contractors. It may be -- and consideration of future models should take this into account -- that the relationship the contractors have with the Department is somehow different from the one the Office has with the Department at large. If this were

found to be the case, and it operated in such a way that a Departmental Division was more intrusive in the guardianship activities and decisions of the contractors, then this fact too would affect the provision of services and result in different treatment across different populations.

2.b. Consideration of Future Options Regarding Contracts for Guardianship Services

That the Office has moved in a relatively short time in the direction of having one state-wide system is clearly evidenced in the contractual changes it made with the Contractors, and reports of an overall improvement of performance in guardianship services, from the Contractors as well as from the Office. Still, at the present time, given that the Contractors had established operating procedures and caseloads that pre-date the Office, the Contractors and the Office seem in some ways like three different programs rather than one common one.

The overarching question to be resolved is how to move to uniformity not only in vision but in day-to-day operating procedures and protocols for the various client populations. Further progress toward building one unified state-wide system could occur in different ways. One option would be to further intensify connections with the Contractors and oversight of them to build an overall program with common goals and philosophies and means of implementing them. Another option would be for the Office to provide services directly for persons with developmental disabilities and discontinue contracting these services out to outside agencies. Between these two options are the variations of contracting services out to only one agency or engaging in a process to find new contractors.

We do not specifically recommend any one of these options because it seems to us that the choice turns on programmatic and resource considerations that the Office and Department are better suited to resolve. Our queries about these different options did reveal, however, a consensus about certain issues that would underlie the decision of how to proceed in the future, as follows:

- There was no feeling that the Office could not or should not directly provide services for persons with developmental disabilities beyond what they are already doing. Neither was there the view that these services should necessarily be contracted out. For example, while it was recognized that there are differing areas of expertise and different types of service providers to be worked with for the two populations, it was felt that, given adequate resources, the Office could develop the needed expertise on staff and establish the contacts needed to serve both older incapacitated clients and persons with developmental disabilities. The Office is already serving a small number of persons with developmental disabilities and does have staff with capability in this area.
- If the Office staff were to provide an increased level of services to the developmentally disabled, it should make sure there is continued development of in-house expertise on disability law and the special needs of the populations now served by the contractors.
- Although it was reported that historically, there were two Contractors in order to provide a choice of service providers, particularly for parents of individuals with developmental disabilities with differing views about institutionalization, there was a general view that it was not a priority to assure that there continued to be that choice in the form of two contractors. The priority, instead, was viewed as assuring a high caliber service program.

In addition to these general considerations, the Office itself raised concerns about the feasibility of providing these services itself, given the additional resources that would be required to effectively and properly provide services. Along similar lines, our earlier discussion of programmatic areas which currently need to be further developed suggests that it would be difficult, in the short term, for the Office to take on this added responsibility. At the same time, the fact that the only mention of possible existing conflicts of interest came with respect to the Contractors raises the possibility that the Office has an independence that is not currently fully

existent with the Contractors, and would serve as an advantage for the Office itself providing services.

4. Recommendations: Contracts for Guardianship Services -- Programmatic and Structural Issues

Recommendation:

Our key recommendation here goes to outcome more than the specific means to achieve that outcome. The desired outcome, in our view, would be for a state-wide system to provide one unified program of guardianship services. Accordingly, if services are to be contracted out, they must be contracted out in such a way that the population served by the Contractors receives services that are comparable to the populations served by the Office itself. At present, the objective is not met to the extent that there are differences between the Office and the Contractors.

To achieve this objective, the Office could intensify its connection with the contractors, change contractors, or provide services itself. We have discussed some of the considerations that underlie these different options, the choice of which is better made by the Office or the Department itself.

E. CONCLUSIONS AND OVERALL OBSERVATIONS

As we have stated several times previously, this program evaluation was specifically designed to be forward looking. It therefore includes a large number of recommendations regarding both the program components and the structural elements of the Office. The intent in providing so many recommendations is to provide guidance on ways the Office might be strengthened and enhanced as it continues to move forward. And, as also noted previously, the number and specificity of recommendations does not reflect serious overall concerns about the quality of the Office or the many excellent services it provides.

Having taken this forward looking view thus far in the Evaluation Report, this concluding section takes a retrospective view, and looks at the program components and the structural elements as a whole to evaluate what the Office has accomplished that did not exist before. These achievements are many, and they are significant. Some highlights are collected together here to present an overall picture of how guardianship under the Office has changed the landscape that existed before in the State of Utah.

- The primary accomplishment of the Office, one that underlies other achievements as well, has been to “reshape the vision of guardianship” in the words of its Director and confirmed in many interviews. Before the Office was established, awareness of guardianship, in its progressive reform-minded meaning, taking into account concepts of “least restrictive,” “last resort” and “substituted judgment” was not part of the system. Compared to the previous program (in the words of that prior program’s own director):

*The difference between this Office and the previous program is night and day.
The program now is 100 times better in terms of thoroughness and protocol.*

Other interviewees similarly praised what the program had accomplished in the short time of its existence, stating that:

The standards make the Office head and shoulders above other guardianship programs. They are better in terms of knowing what they are doing.

The previous program was more geared to just ‘getting the guardianship.’

The Office looks at guardianship more holistically....

Before the Office was established, the people had a stake in guardianship – nursing homes, hospitals, judges, were not as aware of the theory surrounding guardianship law. The presence of the Office has elevated awareness and knowledge.

- The Office has built a program, from the ground up, that didn't exist before. Before, guardianship was “*handled by doing the minimum the law required. . . there was no assessment protocol, no education component.*” From its first task of developing an Implementation Plan – a blueprint of what guardianship should be, that had never before existed in the state – the Office has brought to guardianship program development a serious in-depth look of what a good guardianship program should be, involving a degree of contemplation that had not been brought to bear on the subject before. Translating the concept more fully in ongoing guardianship work is the focus of our recommendations. The important point to make here is that this blueprint did not exist in any form to provide leadership in the way a public guardianship program or any other guardianship program could effectively and ethically operate. Further, though the Plan was mandated by the legislature, it could have been done in a much more cursory fashion.
- Before the Office came into existence, assessment, as evidenced in our case-file review, was not a pivotal focus of guardianships handled by the state. The approach now taken views very seriously the concept that there must be incapacity before there can be guardianship and represents a marked departure from previous norms and a significant improvement in how guardianship is approached:

Compared to the previous program, there is much better screening....

There didn't used to be any assessment procedure the way there is now...

Well, the main difference with our assessments is that they're legal
(referencing that while a determination of legal incapacity is mandated by law, it is not the standard that is regularly adhered to in many other locations, or prior to the Office)

- In acting as guardian, the Office has taken a system that was in much more disarray and made it cohesive and coherent: case-files that were not maintained in a way that made them comprehensible and informative were updated and expanded and omissions such as absent reports were rectified. In writing annual reports that thoroughly address the situation of the person under guardianship, the Office has accomplished something that was never done before, and exemplified setting a standard that essentially said: these reports should not be routine (and fairly uninformative) paperwork, but should be done with the same attentiveness that accompanies many other court filings in other areas of the law.
- Before the Office, there was no forum for public education. Detailed informational literature about guardianship that would aid family members and friends who needed to act as guardian, or a place family members could call and get advice did not exist. Substantial outreach and presentations about guardianship to other professionals had not been undertaken before. *“There was no education component in the previous program.”* All the achievements within public education were ground-breaking in this respect.

Taken together, these very significant accomplishments indicate that, whatever future improvement can be made, what the Office has already accomplished represents great progress, a sea change really, from what existed in the guardianship field before.

APPENDIX A

INTERVIEWEES FOR UTAH OFFICE OF PUBLIC GUARDIAN PROGRAM EVALUATION REPORT

Kathleen Anderson, Director, Texas Guardianship Alliance

Robin Arnold-Williams, Executive Director, Utah Department of Human Services, Salt Lake City, Utah

The Honorable William B. Bohling, District Court Judge, Utah Third District, Salt Lake City, Utah

Board Members, Utah Office of Public Guardian (Group Interview with 9 Board Members)

Karen Bradford, Director, Guardianship Associates of Utah, Salt Lake City, Utah

Sean Chandler, Deputy Director, New Hampshire Office of Public Guardian

Mary Jane Ciccarello, Senior Legal Services Developer, Division of Aging and Adult Services, Utah Department of Human Services, Salt Lake City, Utah

Danette Faretta, Manager of Legal Services, Utah State Hospital, Provo, Utah

Joan Gallagos, Director of Utah Health Care Association, Salt Lake City, Utah

Sue Geary, Director, Division of Services for People with Disabilities, Utah Department of Human Services, Salt Lake City, Utah

Dan Hawkins, Deputy Public Guardian, Office of Public Guardian, Utah Department of Human Services, Salt Lake City, Utah

Gloria Jensen-Sutton, Senior Deputy Public Guardian, Office of Public Guardian, Utah Department of Human Services, Salt Lake City, Utah

Steve Kesler, Director, Guardianship and Advocacy Providers, Inc., Cedar Hills, Utah

Carrie Kinnet, Administrative Secretary, Office of Public Guardian, Utah Department of Human Services, Salt Lake City, Utah

Jean Krahn, Director of Kansas Guardianship Program

Kate Lahey, Director of Office of Legal Counsel, Utah Department of Human Services, Salt Lake City, Utah

Anna Lird, Long-Term Care Ombudsman, Salt Lake City, Utah

Arlene Love, Social Worker, Aspen Care, Utah

Linda Mallon, Director of New Hampshire Office of Public Guardian

Steve Mikita, Assistant Attorney General, Utah Office of Attorney General, Salt Lake City, Utah

Cindy Newby, Director of Nursing, Willow Wood Care Center, Salt Lake City, Utah

Sabrina Nichols, Social Worker, St. George Care and Rehabilitation, St. George, Utah

Shauna O'Neil, Director, Salt Lake County Aging Services, Salt Lake City, Utah

Jennifer Sabol, Deputy Public Guardian, Office of Public Guardian, Utah Department of Human Services, Salt Lake City, Utah

Joanna B. Sagers, Legal Aid Society of Salt Lake, Salt Lake City, Utah

Ron Stromberg, Director of Adult Protective Services, Division of Aging and Adult Services, Utah Department of Human Services, Salt Lake City, Utah

Marilee Tuifua, Eastridge Care Center, Salt Lake City, Utah

S. Travis Wall, Director, Office of Public Guardian, Utah Department of Human Services, Salt Lake City, Utah

Paul Wharton, Utah Legal Services, Salt Lake City, Utah

Erica Wood, Associate Staff Director, American Bar Association Commission on Legal Problems of the Elderly, Washington, DC