



**2022 ANNUAL REPORT**  
PROTECTING NEBRASKA'S  
MOST VULNERABLE



STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

Office of Public  
Guardian

# A LETTER FROM OUR DIRECTOR

As this report is ready to be published, I am working with Associate Public Guardians who have eight wards who are homeless; either on the street, “couch surfing,” recently released from jail, banned and barred from shelters, or ready to discharge from a hospital with no appropriate place to be served. It is -36° Fahrenheit with the wind chill. Guardians have had their wards denied admission to hotels (no ID), assisted living facilities, nursing homes, group homes (behavioral, mental health or addiction, no payor source), and even homeless shelters (banned and barred due to substance use, mental health issues, or on the sex offender registry).

Associate Public Guardians are very deeply distressed in not being able to provide their wards with basic human needs. **Individuals, determined by a court to be too ill to make decisions for themselves, are faced with homelessness and denied basic human necessities to protect their life, much less have access to “Nebraska’s Good Life.”**

This is the eighth Annual Report by the Office of Public Guardian. Every year, the Office of Public Guardian has provided information on our activities and data. Additionally, every year the OPG has reported on the barriers and difficulties of serving Nebraska’s most vulnerable adults. I invite you to review the Systems Issues sections of those reports found on the Supreme Court website. Unfortunately, the same issues continue year after year. Across the system are gaping holes in the social safety net: banning and barring services in shelters; “treat and release” by observation status in hospitals; discharging from hospitals to jail, or some hospitals, to homelessness; dropping charges once jailed, releasing actively psychotic individuals to the streets to avoid county medical costs; refusing guardian involvement in board of mental health actions; law enforcement driving people with mental illness to the next county line to get them out of their jurisdiction; Medicaid managed care failing to provide access, availability, and/or capacity to serve individuals with chronic, severe mental health issues who qualify for and should receive services.

In this Annual Report, as OPG data and stories are shared, written comments are included to, again, provide insight to the issues and consequences of the failures in the systems. Sharing these stories is meant to identify the struggles, but the Public Guardian strongly believes these failures are not insurmountable. The last section of the Annual Report describes the Crisis faced by individuals over the last year; reviews the Commitment OPG has made to improve the lives of its clients; and the Collaboration between OPG and other agencies, facilities, and systems to endeavor to solve the problems. The Office of Public Guardian believes solutions exist within Nebraska to improve the lives of the vulnerable adults.

**With political will, focused commitment, and collaboration between partners, sharing responsibility and resources, all systems working together could fix these issues, strengthen the safety net, and provide access for all Nebraskans to experience a good life.**



**MICHELLE CHAFFEE, JD**  
PUBLIC GUARDIAN

# OUR TEAM



Michelle Chaffee, JD  
Public Guardian



Marla Fischer, JD  
Deputy Public Guardian



Michelle Moore  
Financial Operations  
Manager



Erin Wiesen  
Education &  
Outreach Coordinator



Lisa Meyer, JD  
Legal Counsel



Jeff Heineman, JD  
Legal Counsel



Erin Woitaszewski  
Business Manager



Jill VanDusen  
Administrative  
Assistant



Jacey Gale  
Administrative  
Assistant - Intake



Michelle Ging  
Administrative  
Assistant - Case Aide



Sarah Herrera  
Administrative  
Assistant - Case Aide



Stacy  
Associate Public  
Guardian



Jana  
Associate Public  
Guardian



Glenda  
Associate Public  
Guardian



Nancy  
Associate Public  
Guardian



Kelly  
Associate Public  
Guardian



Lisa  
Associate Public  
Guardian



Missy  
Associate Public  
Guardian



Joe  
Associate Public  
Guardian



Jena  
Associate Public  
Guardian



Ali  
Associate Public  
Guardian



Allen  
Associate Public  
Guardian



Emily  
Associate Public  
Guardian



Tracey  
Associate Public  
Guardian



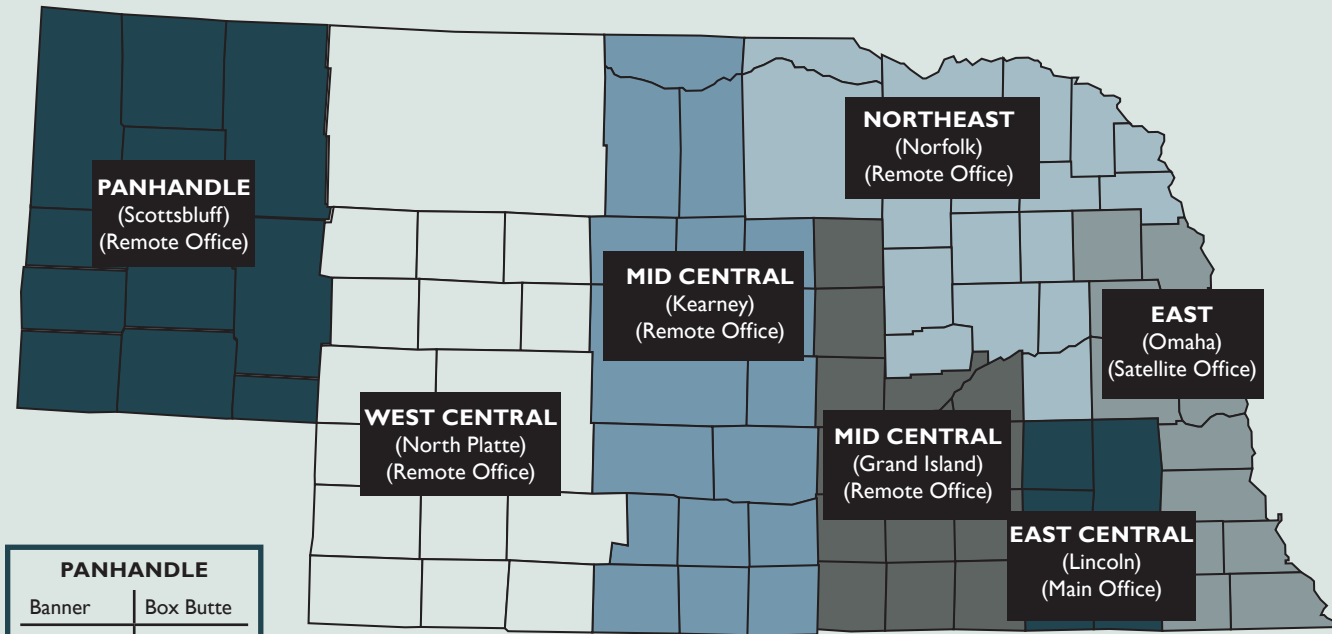
Susan  
Associate Public  
Guardian



Martha  
Associate Public  
Guardian

The Office of Public Guardian is committed to providing high quality guardianship and conservatorship services to all individuals. Despite the vacancies of five Associate Public Guardians throughout most of 2022, OPG staff provided countless hours of advocacy, seeking out necessary services and advocating for facilities, providers, and agencies to provide appropriate care to all individuals served.

# WHERE WE ARE



PANHANDLE	
Banner	Box Butte
Cheyenne	Dawes
Deuel	Garden
Kimball	Morrill
Scotts Bluff	Sheridan
Sioux	

(1 Associate Public Guardian)

WEST CENTRAL	
Arthur	Chase
Cherry	Dundy
Frontier	Grant
Hayes	Hitchcock
Hooker	Keith
Lincoln	Logan
McPherson	Perkins
Red Willow	Thomas

(1 Associate Public Guardian)

MID CENTRAL	
Blaine	Brown
Buffalo	Custer
Dawson	Franklin
Furnas	Garfield
Gosper	Harlan
Kearney	Keya Paha
Loup	Phelps
Rock	Sherman
Valley	

(1 Associate Public Guardian)

MID CENTRAL	
Adams	Clay
Fillmore	Greeley
Hall	Hamilton
Howard	Merrick
Nance	Nuckolls
Polk	Thayer
Webster	Wheeler
York	

(1 Associate Public Guardian)

NORTHEAST	
Antelope	Boone
Boyd	Butler
Cedar	Colfax
Dixon	Holt
Knox	Madison
Pierce	Platte
Stanton	Thurston
Wayne	

(2 Associate Public Guardians)

EAST	
Burt	Cass
Cuming	Dakota
Dodge	Douglas
Johnson	Nemaha
Otoe	Pawnee
Richardson	Sarpy
Saunders	Washington

(6 Associate Public Guardians)

EAST CENTRAL	
Gage	Jefferson
Lancaster	Saline
Seward	

(5 Associate Public Guardians)

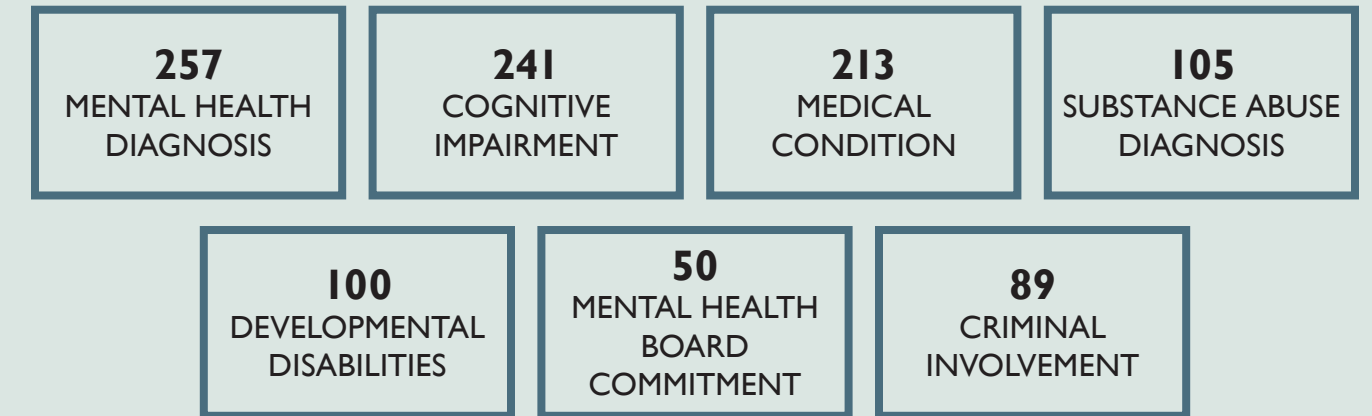
# WHAT WE DO

The Office of Public Guardian is designed to serve as the guardian or conservator for an individual when no other alternative is available. This is achieved through monthly in-person visits, communication with direct service providers, financial case management, and response to emergency needs. The OPG models best practices in guardianship and conservatorship by acting in accordance with the Standards of Practice of the National Guardianship Association. **Each Associate Public Guardian is limited to serving 20 individuals.<sup>1</sup> OPG timekeeping data reveals the average ward requires 2.5 hours per week of service by their Associate Public Guardian, and 1.5 hours per week of financial and administrative support.**

In addition to providing the means of last resort as guardians or conservators for those situations where no family member or suitable individual is available, the Office of Public Guardian provides education, training, and support for volunteer and family guardians and conservators, recruits individuals to serve as guardians and conservators, and safeguards the rights of all Nebraskans under guardianship by supporting least restrictive alternatives and full guardianships only as a last resort.

<sup>1</sup> Neb. Rev. Stat. § 30-4115.

# WHO WE SERVE



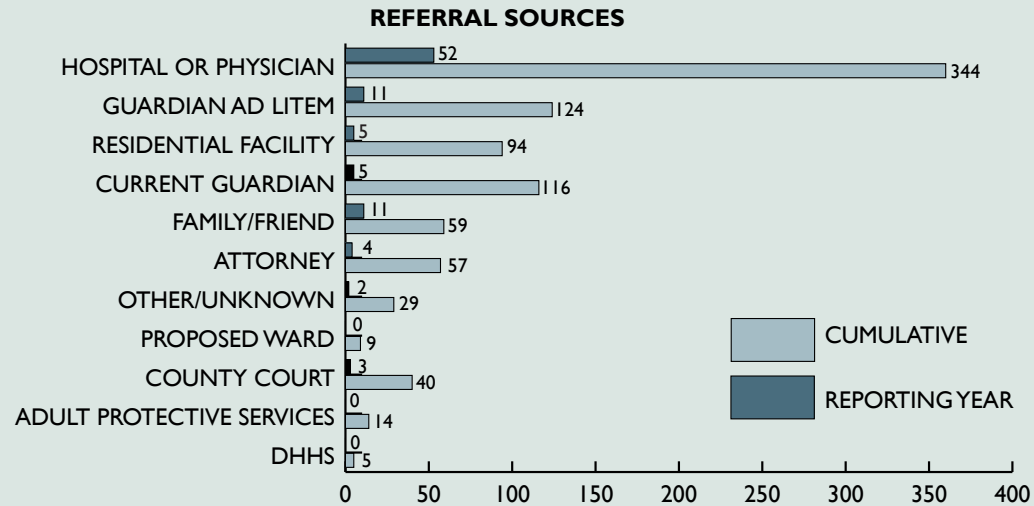
**During this reporting period, the Office of Public Guardian served 305 individuals experiencing 1,055 complex medical issues and/or social conditions.** Many individuals served by the Office of Public Guardian experience the “revolving door” of hospitalization, discharge, and homelessness. Often, individuals are hospitalized because there is no other place for wards to obtain services. Then, facilities refuse their return, or admission, at discharge. **The lack of appropriate community mental health and residential services is the number one cause of hospital discharge delays.<sup>1</sup>** There are not enough transitional care options to provide individuals with appropriate services, when needed.

<sup>1</sup> Alison Hirschel and Lori Smetanka, Use and Misuse of Guardianship by Hospitals and Nursing Homes, 72 Syracuse L. Rev. 255 (2022).

# NOMINATIONS

**94**  
nominations this reporting year

**907**  
nominations since 2015



During this reporting year, the OPG was nominated 94 times. Nominations come from a variety of sources (see graph). **Guardianship nominations from hospitals and physicians continue to account for over half of this year's nominations.**

The Office of Public Guardian has a statutory duty to safeguard the rights of individuals by exploring all options available in the least restrictive manner possible.<sup>1</sup> Research shows that statutory and procedural barriers to less restrictive alternatives account for high rates of hospital and nursing home nominations, with institutional pressures taking precedence over identifying and tailoring care to the individual's required needs.<sup>2</sup>

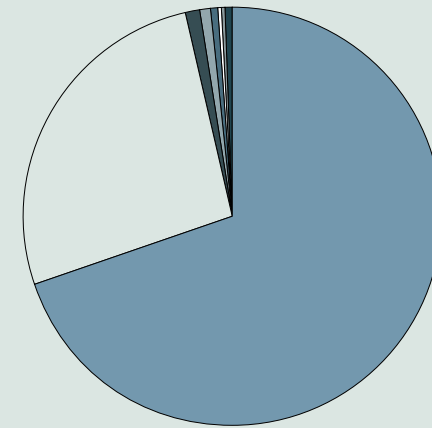
While guardianship sometimes is the necessary and least restrictive step, with the OPG being the last resort, **the magnitude of a guardianship's impact on a person's life and autonomy cannot be overstated. Guardianship inflicts total and complete control over the individual's medical care, property, and finances. Great care and due diligence should be taken to explore alternatives to guardianship**, including surrogate decision-making and temporary protective orders in lieu of guardianship, narrowed in scope to meet the needs of the individual.<sup>3</sup>

<sup>1</sup> Neb. Rev. Stat. § 30-4105. Neb. Rev. Stat. § 30-4105.

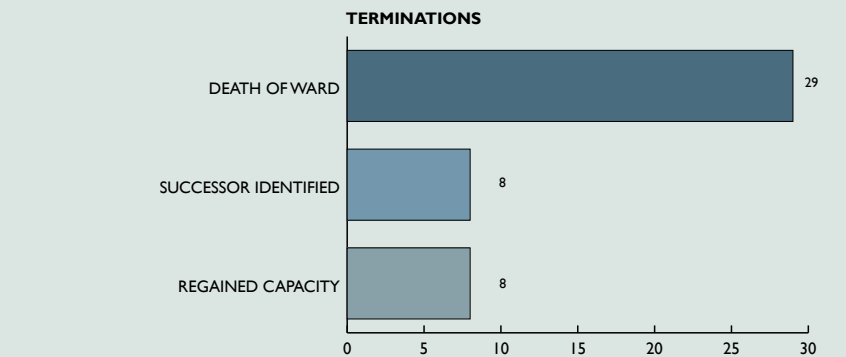
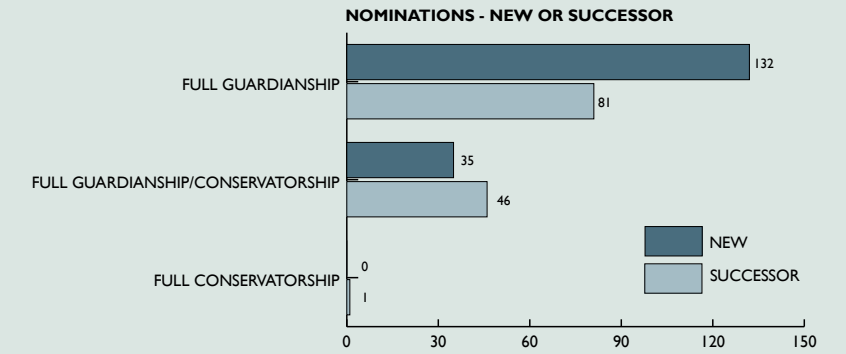
<sup>2</sup> Alison Hirschel and Lori Smetanka, Use and Misuse of Guardianship by Hospitals and Nursing Homes, 72 Syracuse L. Rev. 255 (2022).

<sup>3</sup> Nina Kohn and David English, Protective Orders and Limited Guardianships: Legal Tools for Sidelining Plenary Guardianship, 72 Syracuse L. Rev. 225 (2022).

# CASE DISTRIBUTION



- Full Guardianship (213)
- Full Guardianship/Conservatorship (81)
- Limited Guardianship (4)
- Temporary Guardianship/Conservatorship (2)
- Limited Guardianship/Conservatorship (2)
- Full Conservatorship (1)
- Limited Guardianship / Full Conservatorship (1)
- Temporary Guardianship (1)



The Office of Public Guardian served **305** individuals during this reporting period, with the large majority of cases being full guardianships or full guardianship/conservatorships. Nebraska law mandates limited guardianship be considered prior to full guardianship, and the Standards of Practice require guardians to seek termination or restoration when less restrictive alternatives exist.<sup>1</sup> **Limited guardianships and/or conservatorships have been ordered in only seven OPG cases, or 2% of the OPG's total caseload.**

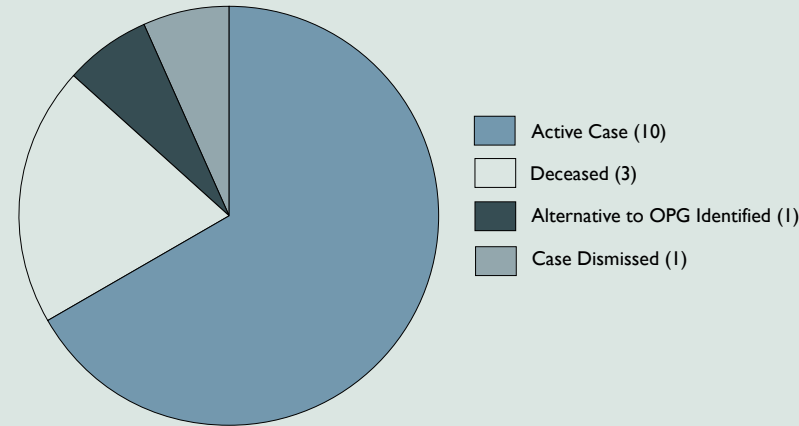
The OPG is statutorily required to safeguard the rights of individuals by exploring all options for less restrictive alternatives and to model the highest standards of practice.<sup>2</sup> Accordingly, Associate Public Guardians seek to review cases and pursue less restrictive alternatives. One example is Josh,\* a man in his 50s served by OPG. Josh has been under full guardianship since 2016. Although Josh needs financial oversight assistance, he does not appear to need a full guardianship. The OPG believes Josh's needs could be met through a less restrictive alternative to guardianship, such as a representative payee.

<sup>1</sup> National Guardianship Association, Standards of Practice, <https://www.guardianship.org/wp-content/uploads/NGA-Standards-Final-8-22.pdf> (last visited December 8, 2022).

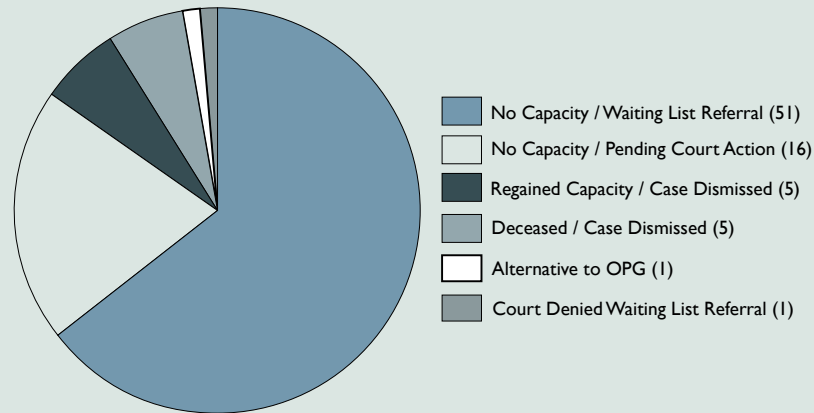
<sup>2</sup> Neb. Rev. Stat. § 30-4105(7).

## CASE DISPOSITION

During this reporting period, the Office of Public Guardian was nominated 94 times, accepting 15 cases. At the conclusion of this reporting year, the 15 accepted cases stand as follows:



Of the 94 total nominations, the OPG did not accept 79 cases for the following reasons:



The Office of Public Guardian is committed to providing high quality guardianship and conservatorship services to all individuals.<sup>1</sup> The OPG is not immune to the hiring challenges of the current job market. **In 2022, APG vacancies had a direct impact on the OPG's ability to take new cases, despite the addition of new APG positions authorized by the Legislature in July 2022.** Vacancies require veteran Associate Public Guardians (APGs) to cover cases in addition to their normal duties, to ensure all OPG wards receive quality attention and care. New APGs require robust orientation and training before assuming their official duties. At the time of this report, the OPG had four vacancies posted.

<sup>1</sup> Neb. Rev. Stat. § 30-4115(b).

## SUCCESSOR GUARDIAN EFFORTS

The Office of Public Guardian makes reasonable efforts to locate a successor guardian for all individuals served.<sup>1</sup> Guardianship requires a high level of responsibility for complex decision-making and financial management. **Thanks to the diligent efforts of APGs, the Office of Public Guardian was able to transfer eight cases to successor guardians this reporting year.**

<sup>1</sup> Neb. Rev. Stat. § 30-4114(1).

**223**  
CASES WHERE  
ALL LEADS FOR  
POTENTIAL  
SUCCESSOR  
GUARDIANS HAVE  
BEEN EXHAUSTED

**44**  
CASES WHERE  
THE POTENTIAL  
SUCCESSOR  
GUARDIAN IS  
UNWILLING

**8**  
CASES  
TRANSFERRED  
TO A SUCCESSOR  
GUARDIAN

**1,400+**  
INDIVIDUALS  
EDUCATED ON  
THE NEED FOR  
SUCCESSOR  
GUARDIANS

## RESTORATION OF RIGHTS

Often, adult guardianships are permanent, lifelong appointments.<sup>1</sup> There is a clearly outlined procedure for the appointment of a guardian, but the process of limiting a guardian's authority or restoring the individual's rights is not well defined. Guardians should always evaluate the alternatives available and make decisions based on the individual's needs, including the exploration of less restrictive alternatives.

The Office of Public Guardian provides regular public outreach and training to agencies, providers, families, advocates, and other stakeholders. This includes expanding the importance of limited guardianships and restoration of rights, as the National Guardianship Association's Standards of Practice are clear: The guardian shall petition the court to restore the person's rights or limit the guardian's authority if [an] assessment so indicates.<sup>2</sup>

**The Office of Public Guardian was discharged from eight cases where a more limited option was appropriate during this reporting year. Six of those cases were terminations of the guardianship, leading to a full restoration of the individual's rights.**

<sup>1</sup> American Bar Association, Commission on Law and Aging, Restoration of Rights in Adult Guardianship: Research & Recommendations, [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/restoration%20report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration%20report.authcheckdam.pdf) (last visited December 8, 2022).

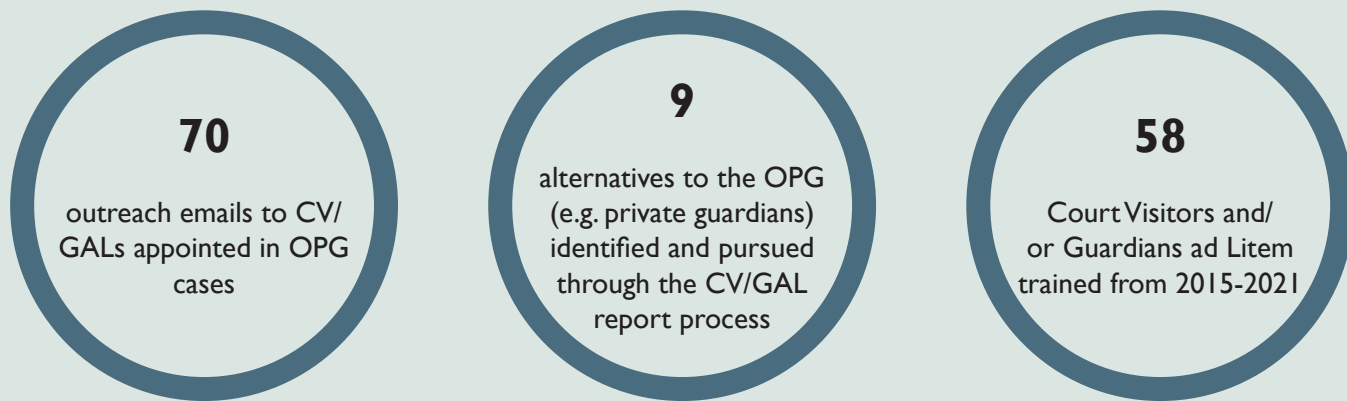
<sup>2</sup> National Guardianship Association, Standards of Practice, <https://www.guardianship.org/wp-content/uploads/NGA-Standards-Final-8-22.pdf> (last visited December 8, 2022).

# COURT VISITOR / GUARDIAN AD LITEM

Court rules require the appointment of a Court Visitor or Guardian ad Litem (CV/ GAL) to each OPG nominated case.<sup>1</sup> The purpose of a CV/GAL appointment is to investigate the claims of the petitioner and to present a report to the court, demonstrating whether the person requires guardianship, that less restrictive alternatives are not appropriate, and that no one else is available to serve. **During this reporting period, nine alternative guardians to the OPG were identified.**

The OPG provides CV/GAL education for new OPG nominations and waiting list referrals. These efforts include providing the CV/GAL with blank copies of all required OPG forms, as well as copies of the OPG process training materials. Individuals wait longer for OPG's services when CV/GAL reports are missing crucial information necessary for OPG appointments. Detailed and thorough CV/GAL reports assist with determining who has the greatest need when an opening occurs. **Additionally, little consideration or efforts are generally made to explore alternatives during the time on the waiting list. Temporary guardians are sometimes appointed, but limited emergency temporary conservatorships could obtain financial information necessary to obtain Medicaid or other benefits. This would facilitate discharge from hospitals to nursing homes or other less restrictive placements.**

<sup>1</sup> Neb. Ct. R. § 6-1433.02(F).



The OPG would like to formally recognize and thank an outgoing Court Visitor, **Sherry Woodard-Rush** of Omaha, for her **seven years** of service in Douglas and surrounding counties. Sherry was one of the first Court Visitors recruited and trained by the Office of Public Guardian, and has volunteered her services in nearly 50 cases.

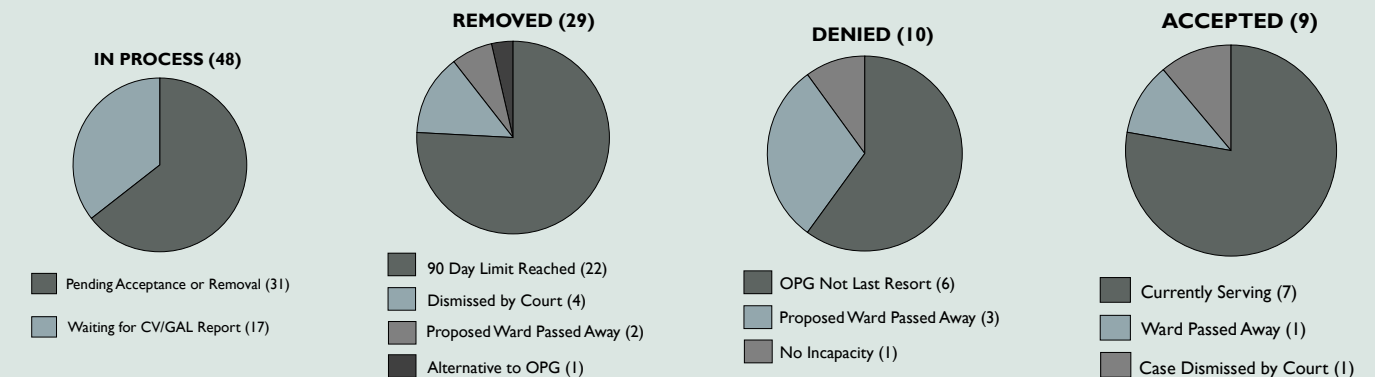
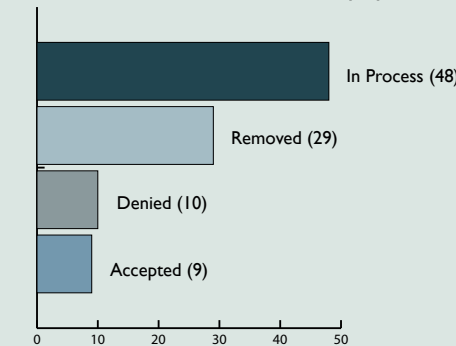
# WAITING LIST

The Office of Public Guardian may accept appointments not to exceed an average ratio of 20 cases per multidisciplinary team member.<sup>1</sup> When the average ratio is reached, the OPG shall not accept further appointments.<sup>2</sup> During this year's reporting period, the OPG continued to operate at capacity in most service areas, receiving **96** referrals to the Waiting List (new or re-referrals).

When the OPG receives a Waiting List referral, it is approved or denied based on the CV/GAL report and other factors. If approved, the case remains on the list for up to 90 days. If an opening becomes available during that timeframe, cases are selected based on a level of need determination. If the case is not chosen within the 90 days, the OPG removes the case from the list. **For cases that are re-referred to the waiting list, obtaining updated, accurate CV/GAL reports remains a serious issue. The lack of updated information directly impacts the OPG's ability to provide guardianship services to individuals with the greatest need when an opening occurs.**

<sup>1</sup> Neb. Rev. Stat. § 30-4115(2).  
<sup>2</sup> Neb. Rev. Stat. § 30-4115(3).

WAITING LIST REFERRALS (96)



# SYSTEMS ISSUES

## REAL LIFE, REAL PEOPLE, REAL IMPACTS

### ROGER

The Office of Public Guardian was appointed to serve as guardian for Roger\* in 2016. Roger is a veteran and has a service-connected mental health diagnosis, which entitles him to receive Veterans Administration (VA) healthcare benefits. Roger has had long periods of stability, but when his mental health declines he experiences periods of mania and physical aggression, leading to hospitalization and/or incarceration.

Years before the OPG became guardian, **Roger was banned from all services offered by the VA after one incident of physical aggression.** Hospitals are hesitant to admit Roger for treatment due to his aggression, so he is usually treated and released without adequate discharge planning. Roger began to “cycle” in July 2022. He lost placement at the mental health facility where he resided. Roger was taken to a crisis center through Emergency Protective Custody (EPC). Roger’s guardian found another mental health facility willing to serve him, but he continued to “cycle” and was placed on a mental health board inpatient commitment. He was hospitalized for a month, waiting for an inpatient treatment bed as required by the commitment. During this time, Roger’s mental health stabilized, and the commitment was dropped. Roger transitioned to a mental health facility, but he was hospitalized again due to mental health crisis and later jailed for assaulting a healthcare worker. Roger remains incarcerated.

The OPG has continuously attempted to compel the VA to provide the services and/or funding Roger is entitled to as a veteran with service-connected disabilities.<sup>1</sup> The OPG has exhausted all administrative avenues within the VA to resolve the issues and has gone so far as to contact the Senators for Nebraska to request intervention on behalf of a constituent. At present, Roger’s VA issues are unresolved, and he continues to suffer from a revolving door approach of services that result in limited treatment of long-term needs.

**The pervasive stigma that follows Roger through life prevents him from getting the care and support he needs. The current mental health system’s approach of treating immediate symptoms in an emergency room does little to serve the actual needs of individuals and by extension, reduce hospital readmissions.**

<sup>1</sup> Neb. Rev. Stat. § 30-2628(5)(i).

### EVELYN

Evelyn\* is a woman in her early 60s who previously resided at a skilled nursing facility in the Office of Public Guardian’s Mid-Central service area. Evelyn has a variety of medical issues, and though she has a mental health diagnosis, that was not the primary reason she required a nursing home level of care. Evelyn had resided at the same nursing home for 4 years without incident and had no previous history of aggression or violence.

In August 2022, Evelyn became extremely upset after a staff member allegedly used a racial slur in describing her hair, and she allegedly attempted to attack staff. She was taken to the nearest hospital, provided with medication, and cleared to return to her residence. However, the nursing home barred her from returning. Involuntary discharge, sometimes referred to as “patient dumping,” must meet specific criteria under federal and state law. Medicare regulations state an individual must be permitted to stay in their nursing home unless it is necessary for their welfare because their needs can no longer be met, or that the safety of individuals in the facility would otherwise be endangered.<sup>1</sup>

Despite advocacy efforts by Evelyn’s guardian, she was not permitted to return to the nursing home, due to her alleged attack on staff. This, even though the facility had been paid at a higher level to address her known mental health issues. Even if she had been permitted to return, Evelyn’s guardian developed concerns that there would be issues with staff retaliation. Evelyn was now labeled as a “behavior risk” and several facilities declined to consider her admission. Nearly a month after the initial incident, placement was eventually located in a facility with a locked behavioral unit several hours away, after considerable effort by Evelyn’s guardian and the hospital to follow up with referrals.

<sup>1</sup> 42 C.F.R. § 483.15.

***One doesn’t have to operate with great malice to do great harm. The absence of empathy and understanding are sufficient. - Charles M. Blow***

# SYSTEMS ISSUES

## EDWARD

The Office of Public Guardian became Edward's guardian in the fall of 2021. Edward had been hospitalized since May 2021 after he was found to have fallen down a staircase. He was initially hospitalized in Iowa, then transferred to a hospital in Nebraska due to his complex care needs. Edward was diagnosed with a Traumatic Brain Injury (TBI) as a result of the fall, with a history of heart issues, the use of a pacemaker, and diabetes. Edward experiences behaviors commonly associated with his TBI, including frequent verbal outbursts and physical agitation. Aggression is common in an acute TBI period and a challenge in obtaining appropriate rehabilitation services due to both patient and staff safety concerns.<sup>1</sup>

Despite being hospitalized for over four months prior to the OPG's appointment as guardian, **Medicaid benefits had not been initiated on Edward's behalf.** Upon appointment, Edward's guardian immediately applied for his Social Security benefits to be reinstated, applied for Nebraska Medicaid, and engaged the services of an immigration attorney to renew his legal status. A fee waiver request was denied by United States Citizenship and Immigration Services (USCIS). Due to Edward's medical needs, he could not travel to the immigration office to complete the biometrics screening, or to a passport office for new photos. **His Medicaid application was denied.**

Edward's guardian applied for Medicaid again after new immigration information was obtained, but the application was again denied. **Without a payor source, months went by, as the hospital could not make any referrals to long-term care facilities. While waiting for immigration processes and in order to reapply for Medicaid, the OPG made multiple document requests to ensure appropriate services after Edward's eventual discharge.** Typically, social workers will release medical records to the guardian while the person is hospitalized when placement decisions need to be made, or when the records are needed to qualify for benefits. Edward's guardian filled out all of the forms and sent them into medical records but received no response.

Hospital systems, due to lack of access for financial assistance while Medicaid is pending (or has been denied), have sometimes chosen to pay for a patient's care at another facility to facilitate discharge. This approach is less expensive than keeping the person hospitalized and the appropriate level of care benefits the patient. Once approved, Medicaid can pay retroactively back to the date of the person's application. Medical staff must be knowledgeable about modifying care for individuals with TBI throughout the entire continuum of care.<sup>2</sup> Due to the continued immigration backlog, a third Medicaid application is now pending.

**Unfortunately, during this difficult and complex discharge process, Edward now has pending assault charges on an incident that allegedly occurred over a year ago. This has further complicated the matter and involves yet another system (the criminal justice system) ill-suited to address any of Edward's care needs.**

As of this writing, Edward remains hospitalized pending the resolution of his immigration status, benefits application issues, and referral to an appropriate long-term care facility.

<sup>1</sup> Vani Rao et al., "Aggression after Traumatic Brain Injury: Prevalence and Correlates," *The Journal of Neuropsychiatry and Clinical Neurosciences* 21, no. 4 (2009): pp. 420-429, <https://doi.org/10.1176/jnp.2009.21.4.420>.

<sup>2</sup> "Health Disparities and TBI," Centers for Disease Control and Prevention (Centers for Disease Control and Prevention, May 12, 2021), <https://www.cdc.gov/traumaticbraininjury/health-disparities-tbi.html>.

## KEVIN

*The Office of Public Guardian does not typically share identifying or private health information of its wards. However, Kevin's story was made public due to the media coverage of his lawsuits.<sup>1</sup>*

In the summer of 2018, Kevin was confused and incoherent in public. He was not violent, nor threatening. The police were called to assist but could not obtain rational replies from Kevin. **Rather than taking Kevin to a hospital to be examined, the police ticketed him for disturbing the peace and he was booked into an Iowa jail. He requested to be taken to a mental health facility but was denied.** Jails and prisons are required to provide care to sick or injured inmates under the Eighth and Fourteenth Amendments to the U.S. Constitution.<sup>2</sup> After 10 minutes of failure to communicate effectively with the jail's psychiatrist, he was prescribed psychotropic medications, without any prior records being consulted. After eleven days of jail staff and medical providers neglecting to respond to his needs, Kevin was found in shock in his cell, and an ambulance was called. He had become progressively more ill, incoherent, and unresponsive with lack of circulation to both legs and one arm due to blood clots. Kevin had gangrene in his foot. Emergency surgery ensued: his arm was saved but both legs were amputated. The charge of disturbing the peace was dropped.

Prior to the OPG's appointment, Kevin's temporary guardian was contacted by the Iowa Ombudsman's office regarding the jail's negligence but chose not to pursue a tort action on Kevin's behalf. In 2020, the Office of Public Guardian accepted Kevin off the OPG Waiting List and became his guardian. The OPG was contacted by the Iowa Ombudsman's office, and after reviewing the incarceration and medical history, decided to obtain legal counsel to review Kevin's case. With the statute of limitations approaching, lawsuits were initiated for Kevin against the jail and jail physicians who were responsible for Kevin's care. Subsequently, the jail's psychiatrist was found not negligent at trial. The County and the jail's physicians settled the lawsuits out of court. **The settlements required the implementation of staff education, and a change in the county jail's policies for incarcerated individuals who exhibit mental health symptoms and severe healthcare needs. It allowed Kevin to be removed from Nebraska Medicaid and pay for his health care needs.**

<sup>1</sup> Paul Hammel, Justice sought for Nebraska ward whose legs were amputated after being jailed, *Nebraska Examiner*, <https://nebraskaexaminer.com/2022/09/14/lawyers-seek-justice-for-nebraska-state-ward-whose-legs-were-amputated-after-being-jailed/> (last accessed December 12, 2022)

<sup>2</sup> Stuart Klein, Prisoners' Rights to Physical and Mental Health Care: A Modern Expansion of the Eighth Amendment's Cruel and Unusual Punishment Clause, 7 *Fordham Urb. L.J.* 1 (1979).

***No one would ever say that someone with a broken arm or a broken leg is less than a whole person, but people say that or imply that all the time about people with mental illness. – Elyn R. Saks***



## LEGAL COUNSEL

Legal Counsel with the Office of Public Guardian (OPG) provide representation concerning ward issues within the guardianship and conservatorship case, in accordance with the Public Guardianship Act. The Public Guardian retains outside counsel as necessary to represent OPG wards in a variety of matters relating to divorces, child support enforcement, criminal charges, real estate transactions, personal injury, etc.

Legal Counsel have regular communication with stakeholders of OPG cases, including attorneys, Guardians ad Litem, Court Visitors, court staff, and interested parties. OPG Legal Counsel attend most court hearings involving OPG wards. **Legal Counsel attended 445 hearings throughout the reporting year, an 11% increase from the last reporting year and a 23.5% increase over the last two reporting years.** In-person hearings have resumed post-COVID, but hearings by phone or video conference are still utilized for various reasons.

Legal Counsel continue to monitor policy and regulation issues affecting OPG wards, conducting legal research as necessary for specific circumstances. Legal Counsel review and approve most documents signed by Associate Public Guardians on behalf of their wards, to ensure that contracts, agreements, notices, and consents are properly executed.



Legal Counsel's review of contract matters protects the individuals served by the OPG. In Gary's\* case, a nursing home's contract did not conform to federal or state law. The OPG attempted to modify the contract to comply with the law, but the facility would not agree to the modified terms. The OPG opted not to place Gary in this facility, and instead he moved in temporarily with a family member until a permanent placement could be secured. With Gary's dementia in active decline, the temporary family placement was difficult. The OPG found Gary another nursing home and he was able to move in after OPG successfully navigated the new facility's admission process.

## FINANCIAL OPERATIONS

The Office of Public Guardian utilizes a web-based case management system, EMS, in conjunction with an organizational collective bank account held with Union Bank & Trust. EMS continues to assist the OPG in managing ward finances including receipts, disbursements, and records maintenance for each person served.

During this reporting period, Social Security continues to be the highest source of receipts for OPG wards. The OPG manages ward benefits coming from Social Security, Supplemental Security Income, Veterans benefits, state benefits such as AABD, and wages. During the pandemic, the OPG managed Economic Impact Payment funds on behalf of OPG wards, including spend downs to maintain resource limits for SSI and/or Medicaid eligibility.

The OPG also continues to receive guardianship fees from its sliding fee scale. The Public Guardianship Act requires the use of a sliding fee scale, which allows the OPG to collect fees from wards and protected persons who meet criteria. Wards or protected persons with over \$5,000 in liquid assets are assessed a monthly fee at the time of their annual court report. **The Office of Public Guardian collected fees from 144 individuals this reporting period, totaling \$55,310.00.**

**19,573**  
TRANSACTIONS

**5,736**  
RECEIPTS  
TOTALING  
**\$4.36 MILLION**

**13,837**  
DISBURSEMENTS  
TOTALING  
**\$4.53 MILLION**

**During this reporting period, the OPG added a Business Manager position to the financial operations team.** Managing the financial and property affairs of OPG wards requires robust internal systems and procedures.

As the OPG continues to add more Associate Public Guardians to meet the needs of individuals served, the multidisciplinary team must also expand. The OPG continues to adapt and develop new strategies for its growth, to best support the individuals served by the office now and in the future.



**277**  
CASES WHERE  
OPG SERVES  
AS THE SSA  
REPRESENTATIVE  
PAYEE

**89**  
CASES WHERE  
OPG WARDS  
HAVE ENABLE  
SAVINGS PLANS

# PRIVATE GUARDIAN EDUCATION

The Office of Public Guardian (OPG) provides training and support to new guardians and/or conservators in Nebraska. The online course is provided in English and Spanish, whereas the in-person course is provided in English with options for interpretation.

**During this annual reporting year, the OPG provided education to 1,361 people serving as guardians and/or conservators for children and incapacitated adults, with over 96% of participants taking the class online.**



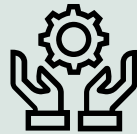
**36%**

of new guardians and/or conservators were serving a **minor child**



**64%**

of new guardians and/or conservators were serving an **incapacitated adult**



**91%**

of new guardians and/or conservators were serving as **volunteers**



**69%**

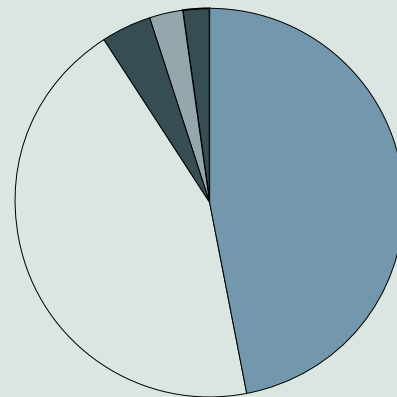
of new private guardians and/or conservators were **women**



**98%**

of new private guardians and/or conservators felt prepared to serve after training

**PRIVATE GUARDIAN CASE DISTRIBUTION**



- Full Guardianship (47%)
- Full Guardianship/Conservatorship (44%)
- Temporary Guardianship (4%)
- Limited Guardianship (3%)
- Temporary Guardianship/Conservatorship (2%)

The OPG often appears to be a microcosm of greater systems issues, and the number of limited guardianships is no different. **According to OPG's guardian education survey results, only 3% of new adult guardianships in the state were limited.** This is the case, even though statutes require a limited guardianship be ordered unless the court determines, by clear and convincing evidence, that a full guardianship is necessary.

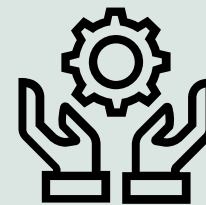
# PRIVATE GUARDIAN SUPPORT

The Office of Public Guardian provides support and ongoing education to private guardians and/or conservators outside of the initial formal training process. The number of hours spent educating private guardians decreased again this year due to the ongoing preference of users to take an online class, though OPG staff continued to provide 1:1 support and information to private guardians via phone and email.

Outreach efforts also continued this year with regular social media posts, webinars, and agency support. Training sessions were provided at the agency and community group levels in McCook, Lincoln, and Omaha. **The OPG's Deputy Director also provided a training session on guardianship and/or conservatorship with options less restrictive alternatives during this year's 2022 Elder Justice Conference, a statewide virtual training event.**



WEBINARS



FACEBOOK

## LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP

- Representative Payee (Social Security Administration)
- Fiduciary (Veterans Administration)
- Health Care Surrogacy
- Durable Powers of Attorney (healthcare)
- Durable Powers of Attorney (financial)
- Living Will
- Trusts (including Special Needs Trusts)
- Supported Decision-Making

## GUARDIAN'S AUTHORITY OVER AN INDIVIDUAL

- Selecting the individual's place of residence
- Arranging for and consenting to medical treatment and care
- Protecting the individual's personal effects (e.g. property)
- Providing consents, approvals, and releases
- Arranging for education, support, and habilitative services
- Managing public/private benefits such as Social Security, Medicare, Medicaid, pensions, etc.
- Compel individuals/entities to support the ward as required
- Enter into contractual agreements
- Receiving and applying the ward's funds to their care and needs
- Any other area which the court may direct<sup>1</sup>

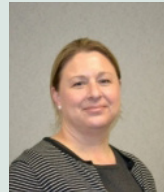
<sup>1</sup> Neb. Rev. Stat. § 30-2628.

## ADVISORY COUNCIL

Members of the OPG's Advisory Council assist the Public Guardian in carrying out the Public Guardianship Act, meeting at least four times per year. The Advisory Council consists of professionals from a variety of disciplines, including law, social work, mental health, aging, developmental disabilities, and other related fields. Hospital representation was added during this reporting year. Members of the Advisory Council are appointed by the State Court Administrator and serve three-year terms. New members during this reporting year include Laura Betzold, Julianne M. Spatz, and Gina Mack.



**Corey Steel**  
State Court  
Administrator



**Dianne DeLair, JD**  
Attorney  
(Council Chair)



**Hon. Todd Hutton**  
County Judge



**Lisa Line, JD**  
Attorney



**Julie Masters, PhD**  
Professor of  
Gerontology



**Darla Schiefelbein**  
Clerk Magistrate



**Beth Baxter**  
Behavioral Health  
Administrator



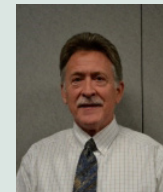
**Laura Betzold**  
Hospital  
Administrator



**Julianne M. Spatz**  
Attorney



**Gina Mack**  
Adult Protective  
Services



**Russ Leavitt**  
Member  
At-Large

The Office of Public Guardian would like to recognize and thank this year's outgoing member, **Russ Leavitt**, for his many years of service to the Office of Public Guardian's Advisory Council.

## CRISIS

While society has moved on from the COVID-19 pandemic, vulnerable, at-risk people continue to be left behind. Staffing shortages in the OPG, nursing homes, and other services are just the tip of the iceberg. The mental health crisis in Nebraska has reached a tipping point. The need for mental health care includes providers, psychiatrists, specialized housing, transitional care, evaluations, options for medication monitoring, and involuntary crisis response. OPG staff are immersed daily in assisting individuals in crisis, while remaining responsible for every aspect of their life, care, and decisions.

## COMMITMENT

Despite the grave realities of serving individuals experiencing crisis, the dedication and commitment of OPG staff continues to inspire. With the vacancies of five Associate Public Guardians throughout most of 2022, the OPG's team of Associate Public Guardians (APGs) worked tirelessly to adapt to additional, demanding workloads to safeguard and care for wards. APGs spent thousands of hours seeking out services, responding to the critical, desperate needs of OPG wards. OPG data shows that APGs spent 2.5 hours a week per ward, an average of 50 hours per week with a caseload of twenty individuals. During vacancies, wards are covered by the remaining APGs, causing additional work for APGs and the multidisciplinary team. Staff vacancies also result in multiple guardians being assigned at various times, with some wards having had five different guardians this reporting year, as the OPG utilized APGs for coverage across all of Nebraska.

## COLLABORATION

The Office of Public Guardian has a statutory duty to provide public education to increase awareness of the duties of guardians and conservators, and to safeguard the rights of individuals by exploring all options available to support those individuals in the least restrictive manner possible.<sup>1</sup> As such, the OPG has collaborated with various entities improve Nebraska's systems of care. Namely, the OPG provided specific, detailed examples of ward experiences with Medicaid's managed care program during DHHS's Medicaid Managed Care Listening Tours; provided data and information to hospitals, nursing homes, DHHS, and other stakeholders to address the shortage of hospital beds, nursing home beds, mental health services, and other service gaps; and teamed up with Adult Protective Services to develop a media campaign for 2023, to recruit volunteer guardians and to expand community outreach regarding the continued need for guardians.

<sup>1</sup> Neb. Rev. Stat. § 30-4105.



**Office of Public Guardian**

1540 S. 70th St. Ste. 202

Lincoln, NE 68506

Phone: 402.471.2862 | Fax: 402.471.2870

Email: [nsc.publicguardian@nebraska.gov](mailto:nsc.publicguardian@nebraska.gov)



STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

Office of Public  
Guardian