



Guardianship and Conservatorship

Empowering and Protecting Idaho Citizens

Report to the Governor
C.L. "Butch" Otter
and the
2nd Regular Session of the
63rd Idaho Legislature



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By 2030, Idaho will see an estimated 23% increase in the population of individuals over the age of 60¹. This means in just 15 short years 458,000 additional people in Idaho will need services and supports unique to an aging population. In addition, the prevalence of individuals with developmental disabilities was 17% higher in 2006-2008² than it was a decade earlier.

Guardianships and conservatorships are often a necessary tool to support a population that may struggle with making decisions or suffer from illnesses like dementia or cognitive impairments that affect capacity. Guardianships are relationships created by Idaho law in which a court gives a person or entity (the guardian) the duty to make personal decisions for another (the ward). Conservatorships are relationships in which the court gives a person or entity (the conservator) the duty to make financial decisions for the ward.

ACHIEVEMENTS, PROMISING PRACTICES AND A ROADMAP FOR THE FUTURE

Alternatives to Full Guardianship and Conservatorship

The Idaho Legislature has recognized through Title 66 (the Developmental Disability Code) and Title 15 (the Uniform Probate Code) that every individual has unique needs and differing abilities, and public welfare is promoted by establishing a guardianship or conservatorship that permits persons to participate as fully as possible in decisions affecting them. To further this objective, the Guardianship and Conservatorship Committee (GC Committee) is researching and identifying promising practices to facilitate limited guardianships and conservatorships, less intrusive alternatives and crafting procedures that take into account each individual's unique circumstances.

The GC Committee is exploring several practices for future implementation including:

- Person-centered planning which encompasses the idea that the individual is at the heart of all decisions about services, support, and care.
- Limited guardianships and conservatorships where the person appointed to make decisions for another has only limited powers and the person under guardianship or conservatorship retains all those rights to make decisions for which he has the capacity.
- Supported decision making occurs when people choose trusted friends, family members and professionals to help them understand the situations and choices they face, so they may make their own decisions.

Guardianship Monitoring Pilot Project

In July 2014 the GC Committee launched two pilot projects in the Third and Fifth Judicial District to explore and develop best practices for comprehensive court monitoring functions for guardianship cases. Two Guardianship and Conservatorship Monitoring (GCM) Coordinators were hired to focus on court monitoring of persons under guardianship, to develop and implement a set of effective, streamlined policies and procedures, and to ensure persons are protected against exploitation, abuse and neglect.

¹ Policy Academy State Profile, Administration on Aging, found at: http://www.aoa.acl.gov/AoA_Programs/HPW/Behavioral/docs2/Idaho.pdf. Last visited August 18, 2015.

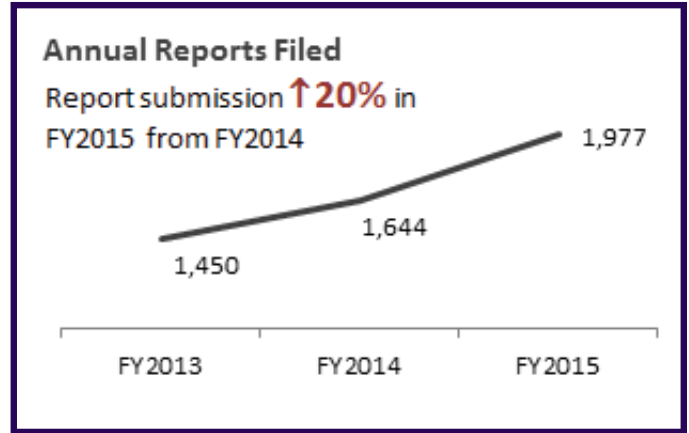
² Centers for Disease Control and Prevention. Can be found at: http://www.cdc.gov/Features/dsDev_Disabilities/. Last visited August 18, 2015.

In the first year the GCM coordinators concentrated on:

- locating missing guardians and conservators who fail to report annually as required;
- validating data to ensure accuracy of case volume and workload needs;
- becoming the district expert on guardianship and conservatorship practice;
- identifying those cases that require additional monitoring activities; and
- reviewing annual reports of the guardian.

As a result of the GCM Coordinators' work, in just one year the two pilot project locations have seen a 20% increase in the number of guardianship reports filed. This is one of the most effective and efficient ways to determine how the person under guardianship is functioning and if the guardian is fulfilling his or her responsibilities to protect the interests of the incapacitated individual.

The GCM Coordinators have also evaluated and reviewed over 160 guardianship cases to identify risk factors for abuse or neglect and provide intensive follow-up for those cases deemed most at risk. One of those cases involved a 21 year old Twin Falls woman with developmental disabilities under full guardianship. After evaluation, there were several indications the guardianship was used as a means to control the woman rather than provide her an opportunity to learn and develop. After investigation and a hearing on the specifics of the case, the woman's maternal aunt and uncle stepped in to be successor co-guardians and today she is doing very well. The GCM coordinator contacts her once a month to make sure she is doing okay with the new changes and finding independence in a safe and secure setting.



Eldercaring Coordination

The Association for Conflict Resolution provided an opportunity for courts across the nation to participate in a pilot project on Eldercaring Coordination. Eldercaring Coordination focuses on reducing the level of conflict in families regarding the care and safety of an elder, so that the elder and family members can more productively address the issues at hand and work with others in their support system to provide legal advice, guidance and care. The Fifth Judicial District is participating in the pilot project and three Eldercaring coordinators have completed the intensive training to provide alternative dispute resolution for contested guardianship and conservatorship cases. At the completion of the one year project, it will be evaluated on how to bring this process to other jurisdictions in the state, starting with a course on elder mediation and the special needs of the aging population.

Financial Review

The GC Committee implemented a statewide conservator monitoring program five years ago, that provides an independent review process to ensure effective asset management for the person under conservatorship. In FY2015, Idaho clerks of the court submitted 2,608 annual financial reports for review. These reports reflect over \$343³ million of assets under the care of another person. Of those financial reports reviewed by Certified Public Accountants working for the Administrative Office of the Courts, 292 required further follow up with the conservator to ensure the conservator was not mismanaging the finances of the protected person.

All these promising practices and achievements fundamentally recognize there is no one-size-fits-all solution for individuals struggling with decision making. It is the responsibility of the judiciary, community, stakeholders and others to craft a solution that ensures individuals retain all the fundamental rights possible while maintaining the safety and security of the person in need of assistance.

³ *Previous version of this report incorrectly stated the total amount of assets under review as \$367 million. This CORRECTED report posted 04-06-16.*

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