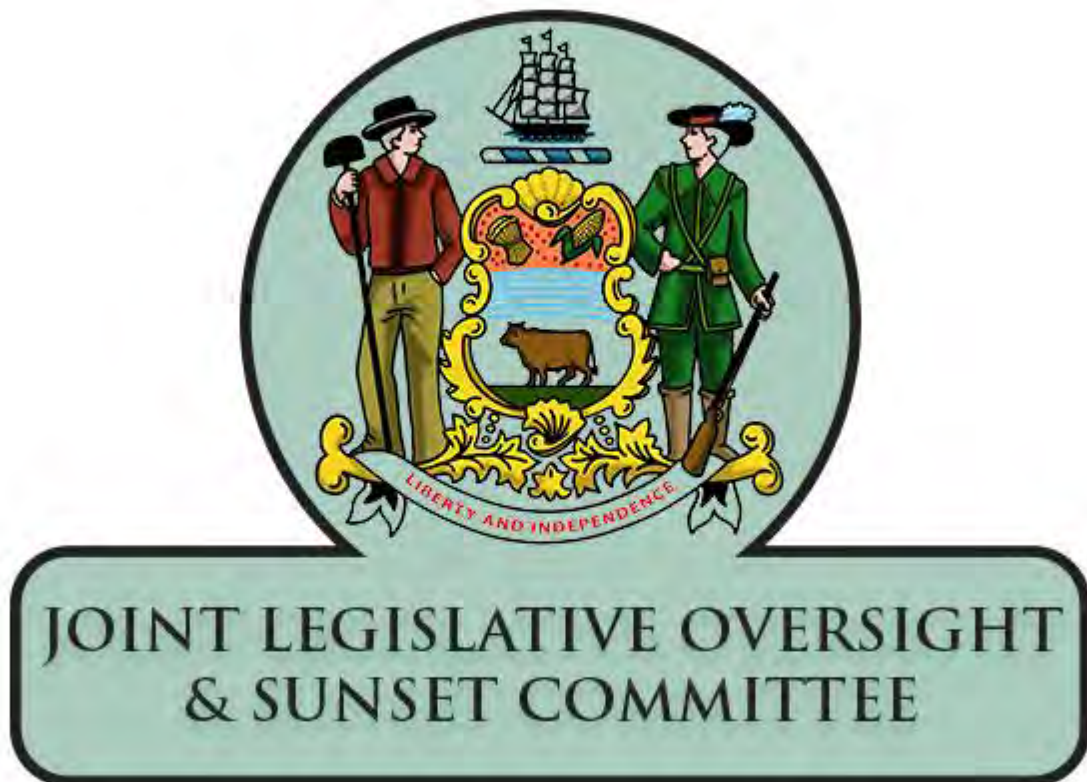


Delaware Guardianship Commission

Self-Report

151st General Assembly



*Respectfully submitted to the
Joint Legislative Oversight and Sunset Committee
June 15, 2022*

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The Joint Legislative Oversight and Sunset Committee (“JLOSC” or “Committee”) is a bipartisan body comprised of 5 members of the Senate appointed by the President Pro Tempore and 5 members of the House of Representatives appointed by the Speaker of the House.

JLOSC completes periodic reviews of state supported entities such as agencies, commissions, and boards following statutory criteria under [29 Del. Code, Chapter 102](#). The review’s purpose is to determine the public need for the entity and whether the entity is effectively performing to meet the need. The goal of the review is to provide strength and support to entities that are providing a state recognized need.

JLOSC performs its duties with support provided by the Division of Research’s dedicated and nonpartisan staff. JLOSC staff completes a performance evaluation of the entity under review and submits a Staff Report to JLOSC which includes analysis, key findings, and recommendations. Recommendations are not finalized until reviewed, discussed, and adopted by JLOSC with an affirmative vote of 7 members. In February 2023, JLOSC staff will schedule a presentation meeting for each entity under review to present to the Committee. For additional review information, please visit the Committee’s website at <https://legis.delaware.gov/Committee/Sunset>.

ABOUT THIS SELF-REPORT

The JLOSC statute requires the entity under review to supply information and materials to facilitate a legislative oversight and sunset review. Additionally, the entity under review has the burden of showing, through the statutory review criteria, that there is a genuine public need and that the entity is meeting that need.

JLOSC staff supplies each entity under review with a Self-Report template and instructions. All questions appearing in this Self-Report are from the JLOSC staff created *JLOSC Performance Review Questionnaire* (“questionnaire”) and are the same for each entity under review. All questions appearing in the questionnaire use statutory review criteria. Throughout the questionnaire, the use of the broad term “entity” refers to the entity under review, which may be a board, committee, commission, or council. The entity under review supplies review information by completing this Self-Report and is responsible for its contents and for forwarding all updates or corrections to JLOSC staff in a timely manner during the entire review period.

JLOSC staff will not edit or modify the information received in this Self-Report and only checks for completeness and adherence to instructions. JLOSC members will receive completed Self-Reports and updates directly from their staff. The Committee’s website will include electronic copies of all Self-Reports and any updates received from entities under review.

JLOSC PERFORMANCE REVIEW QUESTIONNAIRE

SECTION 1: ENTITY HISTORY, PURPOSE, AND FUNCTIONS

Section 1-A. Please provide a summary of the entity's history. Highlight any key events.

Formed in 2011 as part of a legislative package enacting reforms of the Office of the Public Guardian, the Delaware Guardianship Commission was established as an advisory group to the Office of the Public Guardian to assist in creating appropriate policies and priorities for State Guardianship, and an advocacy group to assess those needs and protect the rights of these individuals. This Commission brings the stakeholders in the protection of the elderly and persons with disabilities together to work toward the betterment of that protective mission. The Commission exists in response to concerns in the state and the Nation about the quality of process and procedure in the Court of Chancery regarding adult guardianships.

There is a genuine public need to have an organized meeting, open to the public, of vital stakeholders to the guardianship process where the meetings are held on a regular basis, and a record is kept of the proceedings. There is no doubt that if the Commission did not exist, these conversations would still occur, but there would be less public access to them.

The Commission is wholly supported by the Office of the Public Guardian, and does not carry a fiscal note. Members of the Commission shall serve without compensation, but may be reimbursed, upon request, for reasonable and necessary expenses incident to their duties as members of the Commission to the extent funds are available through the Office of the Public Guardian. As a result of the pandemic, the Commission has moved to ZOOM meetings, and this forum is ideal for meetings, and has boosted attendance.

Section 1-B. What are the main functions of this entity? Does this entity issue any advisory or policy opinions? If so, where can they be found?

The primary function of this Commission is to examine and evaluate the policies, procedures, and effectiveness of the guardianship system, and make recommendations for changes, to conduct needs assessments, to advocate for legislation and make legislative recommendations, and to develop education programs. It may also act in an advisory capacity to the Office of the Public Guardian.

The Commission serves the need of bringing stakeholders, who serve or are served by the process of guardianship, together on a quarterly basis to address concerns related to the administration of the adult guardianship process. These stakeholders include agencies whose clients are frequently most in need of assistance, a representative of persons with disabilities, a representative of the senior community, and the Court.

The one thing that cannot be done without the Commission is provide public access to the process and the state providers for guardianship. The Commission gives stakeholders and the

public a forum to address the guardianship process, needs for reform and each other in organized meeting format. The public has no other way to access this process except by calling or writing individual agencies or the Court.

The Commission does not issue advisory or policy opinions.

Section 1-C. What condition(s), situation(s), and/or problem(s) existed prior to the creation of this entity that directly led to its creation? Please provide specific examples.

In 2008, Vice Chancellor Glasscock, then a Master in Chancery, stated “[I]n adjudicating any proposed ward as a disabled person, this Court is imposing the greatest diminution of an individual’s autonomy and personal rights that any court may impose, short of criminal conviction.” In 2009, the National Guardianship Association (NGA) conducted a “Judicial Quality Review” of the Delaware Court of Chancery and its procedures regarding adult guardianships. The purpose of the study was to assess the service delivery of the court system according to standards promulgated by the National Center for State Courts in the National Probate Court Standards. The National Guardianship Association made a series of recommendations at the conclusion of the study. These recommendations were specific to forms of accounting, developing standard forms for inventories, requiring bond, establishing procedures for annual review of guardianship cases, checklists for marshalling assets to be reported, contacting individuals under guardianship on an annual basis, giving proper notice to parties, tasking attorney ad litem, and requiring evidence that less restrictive measure were exhausted prior to petitioning for guardianship, among other items. The Court of Chancery was engaged in resolving these issues and making plans to develop a group to address the topic of adult guardianships in September of 2011, when the legislation founding the Commission took effect.

The Delaware Guardianship Commission was formed as a direct result of the concerns raised by the NGA in Delaware, by concerns across the country regarding the imposition and use of guardianship to make decisions for individual who were deemed not able to do so for themselves, and whether Courts were utilizing the best processes and procedures to protect the rights of the individual prior to appointing a guardian, and the desire of the Court of Chancery to have the best means to address these concerns.

The one thing that cannot be done without the Commission is public access to the process and the state providers for guardianship. The Commission gives stakeholders and the public a forum to address the guardianship process, needs for reform and each other in organized meeting format. The public has no other way to access this process except by calling or writing individual agencies or the Court.

Looking across the Nation, other jurisdictions have “WINGS” groups that were formed to address concerns around the guardianship process similar to the goals the Delaware Guardianship Commission was formed to accomplish. The American Bar Association describes State WINGS groups as *“ongoing court-stakeholder partnerships that drive changes affecting guardianship policy and practice through planning and action. WINGS can galvanize change through “collective impact”– by coordinating actions of organizations with the same goals. Reinforcing each other’s efforts is a win-win.”*¹). When the Commission was formed, this was the goal. WINGS groups continue to be formed across the Nation. Delaware has the Delaware Guardianship Commission.

¹ https://www.americanbar.org/groups/law_aging/resources/wings-court-stakeholder-partnerships0/

Section 1-D. To what extent has the existence and functioning of this entity alleviated each of these condition(s), situation(s), and/or problem(s)? Please provide specific examples.

The success of the DGC lies in the ability to utilize partnerships between agencies and State entities, break down silo walls, and push forward ideas for improvement and concepts for change through specific tasks or recommendations. It is accurate that these accomplishments could be done and have been done outside of the Commission meetings. However, the Commission provides structure, documentation, and public access to the proceedings. The Commission gives stakeholders and the public a forum to address the guardianship process, needs for reform and each other in organized meeting format. The public has no other way to access this process except by calling or writing individual agencies or the Court.

Section 1-E. Would the condition(s), situation(s), and/or problem(s) described in question “1-C” above recur or worsen, in the absence of the entity?

In the absence of the Commission, stakeholders would not have the ability to bring problems, concerns, or items of interest to the table for discussion and recommendations, and stakeholders would be much less aware of the process, procedures and challenges facing the guardianship process. For example, if an entity or member of the public wished to propose to the Court of Chancery a rule change which required the Petitioner to state that all less restrictive means (than guardianship) of decision-making assistance had been attempted prior to filing for guardianship, there would be no means of doing so, no forum in which to speak, and it would create a higher level of difficulty for reform or improvement of the process, or even to know what improvement was necessary. There would also be less transparency to the guardianship process.

Section 1-F. Are there any recent condition(s), situation(s), and/or problem(s) that further justify the need for the entity’s existence?

There are several reasons to continue the existence of the Delaware Guardianship Commission.

The concerns around the implementation of adult guardianships and financial exploitation or abuse of individuals under guardianship have only grown in recent years. The attention brought to the process of guardianship by the case of Britney Spears, by the case of Jenny Hatch (who launched a nationwide movement to Supported Decision Making), and the recent movie entitled “I Care A Lot” which was based on the utilization of the guardianship process for business profit at the cost of the individuals placed under guardianship, and the loss of their identities and homes, has continued to increase concerns regarding the guardianship process. Specifically, the position of guardian is frequently exploited to the detriment of the individual under a guardianship, by either family guardians or professional guardians.² Nationally, there are concerns about guardians exploiting the elderly and those with disabilities, and this Commission brings to the table those with the expertise to evaluate this problem in detail.

² See “How the Elderly Lose Their Rights”, The New Yorker, October 9, 2017, <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.

Second, SB85 requires the Commission to establish a fee collection schedule for the Office of the Public Guardian. This has initially been done, but work is ongoing. The Commission is now a vital part of oversight to fee collection in the Office of the Public Guardian.

The need for public education for the guardianship process and decision-making assistance for loved ones who have cognitive disabilities and are unable to make decisions for themselves is a continuing problem. In 2019, just prior to the pandemic, which forced a change of focus, the Commission was working on an educational program for the public. This work continues. There is no other entity having this conversation beyond the Court of Chancery. The Commission has the ability to bring a substantial education program forward.

There are continuing points of reform needed, such as addressing the limitations on the guardian's ability to consent for substantial mental health treatment found in 12 Del.C. §3922. The Delaware Guardianship Commission provides a working group already formed and meeting on a regular basis, to meet this need and help the public through this advocacy.

Section 1-G. Are there any functions of this entity that are outdated and no longer needed? If so, please explain and provide examples.

Guardianship is an ongoing process in the State, and both in the State and Nationally, there is a need to bring stakeholders together to make certain that process is well done in our state. The Commission is a current necessary and viable entity to maintaining progress in this area and providing access to that conversation to stakeholders and the public.

SECTION 2: MISSION, GOALS, OBJECTIVES, & AUTHORITY

Section 2-A. What is the mission of this entity? Does the enabling legislation accurately reflect the mission?

The Delaware Guardianship Commission exists to identify and address, through advocacy and reform, the issues and challenges presented to the State, to care providers, to families, and to the person themselves when a person is unable to manage or make decisions about their own care or finances and needs a decision maker to help and protect them.

Section 2-B. Please identify and explain the entity's goals and objectives, in order of priority.

According to statute, the Delaware Guardianship Commission acts:

- 1) In an advisory capacity to the Office of the Public Guardian, providing assistance to the Public Guardian in establishing administrative policies and procedures in the Office of the Public Guardian, and assistance in developing case acceptance priorities for the Office of the Public Guardian;
- (2) Examine and evaluate the policies, procedures and effectiveness of the guardianship system, and make recommendations for changes therein, including establishing statewide standards and regulation of public and private guardianships;

(3) Conduct an annual statewide needs assessment relating to the number of individuals currently and predicted to be in need of a decision maker due to incapacity, the resources available or needed to meet that need, and to the processes utilized to meet the need;

(4) Advocate for legislation and make legislative recommendations to the Governor and the General Assembly;

(5) Develop public and professional education programs on issues relating to guardianship, alternatives to guardianship, and concerns relating to the abuse, neglect, and exploitation of individuals who are incapacitated; and

Section 2-C. Please describe the internal performance evaluation system that the entity uses to measure the attainment of its goals and objectives.

Currently there is no internal performance evaluation system towards the attainment of goals.

Section 2-D. Does the entity collect any data sets? If so, please identify and explain.

The entity frequently evaluates data from the OPG and the Court to further discussion.

Section 2-E. Does the entity conduct any research? If so, please explain and provide the location of research reports (if produced).

No independent research is done, beyond obtaining information from membership.

Section 2-F. Has the State Auditor or any other external organization recently audited and/or evaluated the entity or any of its programs? Please identify some of the major conclusions and/or recommendations. Provide links to all reports.

N/A

Section 2-G. In general, how do other states carry out similar functions?

Looking across the Nation, other jurisdictions have “WINGS” groups that were formed to accomplish the tasks the Delaware Guardianship Commission was formed to accomplish. The American Bar Association describes State WINGS groups as “ongoing court-stakeholder partnerships that drive changes affecting guardianship policy and practice through planning and action. WINGS can galvanize change through “collective impact”— by coordinating actions of organizations with the same goals. Reinforcing each other’s efforts is a win-win.”.

These WINGS groups are not numerous, but are increasing. To the knowledge of the Chair, there are no other Commissions directly for Guardianship. Pennsylvania has a Task Force focusing on the elderly. (<https://www.pacourts.us/judicial-administration/court-programs/office-of-elder-justice-in-the-courts>).

Section 2-H. Are the entity's functions similar or overlapping of other state or federal entities? If so, discuss how the entity coordinates its services with other state or federal bodies sharing similar objectives. Please explain why the functions are best placed within this entity or why they should be placed elsewhere.

The Commission work does not overlap and is not similar to any other state or federal entity.

SECTION 3: ACCOMPLISHMENTS

Section 3-A. List and briefly explain the entity's most significant accomplishments.

In 2014, the Commission put together recommendations for the Chancellor which included a proposed plan to address the need for attorneys to represent persons with alleged disabilities who opposed the guardianship or the proposed guardian and needed representation in guardianship proceedings by initiating a program for Volunteer Attorneys. The Commission also developed standards for professional guardians for this presentation, and made recommendations for statutory changes. The recommendations for statutory changes included addressing the evidentiary standard necessary to impose a guardianship (by adopting a "clear and convincing" evidentiary standard spelled out in the statute), requiring guardians to follow the substituted judgement doctrine where the individual's wishes are known when making decisions, developing more substantial guidance on "emergency" or "interim" guardianships granted to enable immediate urgent health or end-of-life decisions, developing statutory authority for limited guardianships or requirements that less-intrusive alternatives be exhausted, and developing language which would allow Guardians to address mental health treatment needs, in place of the current language preventing voluntary commitment.

The Commission has participated in the conversation around ad litem, and the need for attorneys to represent individuals in the guardianship process, and the need to augment the physician's affidavit. In 2016, the DGC set out to develop a Physician's Affidavit for recommendation to the Court. The Physician's Affidavit had been the subject of an NGA recommendation. The DGC developed and made a recommendation to the Court, who ultimately adopted portions of the recommended affidavit. Specifically, the work of the Commission helped to augment the Physician's Affidavit in the area of emergency guardianships. Also in 2016, the group discussed and made recommendations regarding the Supportive Decision Making Legislation, which was passed later that year.

In 2017, the Commission discussed several goals, including 1) A statutory amendment to allow for limited guardianships, 2) A statutory amendment to allow the OPG to act as Representative Payee for clients of DHSS without appointment as Guardian of Property, and 3) A "Medicaid cut-out" to encourage fee-for-service guardianship, which would allow for guardianship fees as a "fundable service". As of 2021, the first two of these items had been achieved through legislation passed in 2019 with the assistance of the Office of the Public Guardian, and as of March 2022, resulting from the work of the Non-Acute Patient Medical Guardianship Task Force, the Division of Medicaid and Medical Assistance has enacted a Special Plan Amendment providing that Guardianship fees are an allowable expense where an individual is a resident of a nursing facility, and is receiving Medicaid. The Commission is currently evaluating a recommendation to expand the Medicaid Allowable Expense for Guardians to all individuals receiving LTC Medicaid.

In 2020 and 2021, the Commission evaluated concerns over guardian abuse of the process and profiteering, and held meetings to set the fee schedule for the Office of the Public Guardian, per the requirements of 12 Del.C. §3986. This project involves evaluating the needs of individuals relative to their living accommodations and their income, and is ongoing.

SECTION 4: CHALLENGES

Section 4-A. List and briefly explain 3 to 4 challenges the entity is currently facing.

1) DGC needs to find ways to reach out to the public, both to bring their concerns and ideas to the table, but also to provide information to them. The Commission has no funds to support outreach at the present time, but with the enactment of 12 Del.C. §3986, and the subsequent recommendation of the Delaware Guardianship Commission to the Office of the Public Guardian to utilize part of fees collected for public outreach and education, this challenge may be alleviated.

2) The lack of direct staffing for the Commission impacts the completion of tasks. There is no staff for this Commission. The Commission Chair, i.e. the Public Guardian, has to assimilate the duties and task the other support staff in the OPG to assist in completing what needs to get done. Multiple staff members for OPG provide the clerical and other support for the Commission, including taking minutes. Incorporating additional duties into the Office of the Public Guardian, which is already stretched to the edge of their resources, is a challenge, and has impacted results.

3) Membership:

a) There is a need to fully resolve how members are appointed. Initially they were appointed by the Governor, but last year, the Governors office deferred to the Designee to appoint a representative. The second way works much better to insure that Commission seats have members. Turnover can be an issue with the State actors serving on the Commission. For example, the Department of Justice moves their attorneys around, necessitating a new designee frequently.

b) Membership may need to be evaluated.

It has been suggested that there be a specific seat for Community Legal Aid Society Inc., who have been serving as the representative from the disability community. This is a good idea, as CLASI has always participated, and it would be beneficial to have an additional representative for persons with disabilities, perhaps a member of the public.

A similar suggestion applies to representatives for the elderly community, perhaps a stakeholder or a representative from AARP.

SECTION 5: OPPORTUNITIES FOR IMPROVEMENT

Section 5-A. List and briefly explain several opportunities for improvements. Please prioritize.

1) Outreach to the public. The Commission needs to explore available free avenues for outreach, such as Facebook or Instagram, and support for posting. Facebook has been explored as an option,

similar to the Office of the Child Advocate, but the request was not supported by the administration in place at the time of the request. DGC needs to find a way to bring the voice of the public to the table.

2) Membership. Defining how members are appointed and adding seats for entities with a vested interest would be an improvement.

3) Another important opportunity for improvement is a better for delegation of duties, including the election of a Vice-Chair and Secretary, and to have those officers take a role in providing administrative support, so that it does not fall solely on the Public Guardian or the Office of the Public Guardian. The Office of the Public Guardian needs assistance in supporting this Commission.

It's worth noting that since the Commission was added as a duty of the Public Guardian and the Office of the Public Guardian, other duties have also been added, such as the Guardianship Monitoring Program, and fee collection, as well as OPG having increasingly complex financial cases.

Section 5-B. In the past 5 years, has the entity recommended any changes to the Legislature, Governor's Office, or other State agency to improve the entity's operations? If so, please explain and provide the outcome or current status?

No.

SECTION 6: COMPOSITION & STAFFING

Membership:

Section 6-A. How is entity membership defined? Please explain and provide the section(s). Examples include statute, regulations, or by-laws.

Title 12, Chapter 3991 if the Delaware Code states:

The Commission shall consist of 12 members and shall be staffed by the Office of the Public Guardian. The Guardianship Commission shall be comprised of the following:

- (1) One member from the Court of Chancery, designated by the Chancellor;
- (2) A representative from the Department of Justice, designated by the Attorney General;
- (3) The Director of the Guardianship Monitoring Program, or the Director's designee;
- (4) One member of the House of Representatives, designated by the Speaker of the House;
- (5) One member of the Senate, designated by the President Pro Tempore of the Senate;
- (6) The Director of the Division of Services for Aging and Adults with Physical Disabilities, or the Director's designee,
- (7) The Director of the Division of Substance Abuse and Mental Health, or the Director's designee;

(8) The Director of the Division of Developmental Disabilities Services, or the Director's designee;

(9) The Secretary of the Department of Health and Social Services, or the Secretary's designee.

(10) A representative from the Disability Community, designated by the Secretary of Health and Social Services;

(11) A representative from the Senior Citizen Community, designated by the Secretary of Health and Social Services;

(12) A representative from the hospital community, designated by the Delaware Healthcare Association.

Section 6-B. Are there special qualifications for membership?

Please see above.

Section 6-C. Who has member appointment authority? Where is this defined?

Title 12, Chapter 3991.

Originally, members were appointed by the Governor. Recently, the Governor's office advised that members may be designated by the statutory authority without involvement of the Governor's office. This is very helpful, as members are from State agencies and may need to be replaced due to employment changes.

Section 6-D. What is the designated term of office for entity members? Where is this defined?

The designated term per the by-laws is three years with eligibility for two additional terms.

Section 6-E. How many members currently serve on this entity? Are there any vacancies? If so, indicate the length of time each vacancy has existed and the reasons why. Has the entity or support staff advised the Governor's Office or appointing authority of the vacancies?

Currently there are 11 members, with one vacancy, that of the Department of Justice. The Department of Justice has been notified of the need to fill the vacancy. This seat became vacant in 2022. This seat from the Department of Justice is normally tasked to the Attorney General who files Guardianships on behalf of the State Agencies, and the Department has hired a new individual for the position, who has not begun duties as of yet.

Section 6-F. Can this entity create subcommittees or task forces? If "yes" please address the following questions:

Yes.

1. Describe the process and site the entity document (statute, regulations, or by-laws) that permits this.

The by-laws permit the creation of both Committees and “Ad-Hoc Committees”. Committees are created by the Commission in its entirety, whereas Ad-Hoc Committees may be designated by the Chair.

2. Provide a brief history on how many have been created in the past 5 years and indicate where meeting documents can be found.

In the past five years, one of each has been created. A Committee was established to address the Fee Collection Schedule in July of 2021, and tasked to meet once a month to complete the goal. The Committee drafted a recommendation, approved it, and has forwarded the recommendation to the Court. An Ad-Hoc Committee was formed as part of that process to devise a particular definition of Financial Sufficiency. This Ad-Hoc Committee met, developed a recommendation for the DGC Committee, and will continue to meet to further the definition. The members were a small group of specialists.

3. If final reports were issued, please provide their location.

The most recent ad-hoc committee provided the Commission with a memorandum of recommendation.

4. If there are current subcommittees or task forces currently meeting and conducting business; include information on membership, duties, and where meeting documents can be found.

The Ad-Hoc Committee is still functioning, the members are: Eric Merlino, the representative from the Senior Citizen Committee, Laura Waterland, Esq. Community Legal Aid Society, Inc. as representative from the Disability Community, and Cory Nourie, representative of the Division of Developmental Disabilities Services. Duties are to further define the term “Financial Sufficiency” for the purposes of fee collection. Copies of documents are kept with the Chair.

Section 6-G. Include a current membership roster with this Self-Report. This is a separate request from the list of supporting documents included in the Self-Report instructions. This current membership roster must indicate the following for each member:

- First and last name, and their city and state of residence.
- Position held (i.e., Chair, President, Co-Chair, Secretary, etc.).
- Professional or public member.
- Their profession or occupation.
- Original appointment date, expiration date, and number of terms served.

To satisfy this current membership roster request, please complete one of the following:

- Complete the included table below.
- Delete the included table below, build a new table, and place in this section.
- Delete the included table below and attach a document to the Self-Report and label in the appendices section.

See Appendix

Meeting Frequency:

Section 6-H. How frequent are meetings held? Is meeting frequency defined anywhere such as the statute or by-laws? If so, provide document name and section information.

Per the By-Laws, there are four meetings annually. Meetings are held quarterly, on the fourth Monday of the Month.

Section 6-I. Can the entity hold special or emergency meetings? If so, describe the protocol involved in requesting and holding a special or emergency meeting.

Yes. Special Meetings may be called between regular meetings by the Chair or at the written request of three Commission members. Five days notice is required for Special Meetings.

Meeting Order and Quorum:

Section 6-J. For meeting order, does the entity follow Mason's Manual of Legislative Procedure or Roberts' Rules of Order? Is this defined in statute, regulation, or by-laws?

The Commission follows Robert's Rules of Order

Section 6-K. How is meeting quorum defined and where is the definition located?

The definition of a quorum for a meeting is found in the by-laws, and consists of forty percent (Currently 5) of the membership.

Member Removal:

Section 6-L. Is there a mechanism for member removal? If so, how are members removed and who has the authority to remove a member? Using the process described, has there ever been an instance of member removal, and if so, briefly describe the nature of events that led to the member removal.

There is not a process for removal of a member yet.

Member Compensation:

Section 6-M. Are members compensated? If so, how are they compensated?

Members are not compensated, per statute.

Member Training and Handling Conflicts of Interest:

Section 6-N. Are members offered any special training opportunities? Is training required or voluntary?

Members are not offered special training opportunities.

Section 6-O. Has a Deputy Attorney General (“DAG”) reviewed the provisions of the Public Integrity Act with entity members to ensure that they are in compliance with the provisions in the law? If so, what is the frequency of this review?

No. This requirement has never been raised.

Section 6-P. Please explain how entity members avoid conflicts of interest.

Conflicts of interest are reviewed at appointment, and the members may recuse themselves, as has happened previously with the representatives from the Court.

Section 6-Q. Has the Public Integrity Commission (“PIC”) provided training or clarification to members or issued any advisory opinions on entity activities? If so, please explain the details. Provide a link to the information or attach relevant information to this report.

No.

Support Staff:

Section 6-R. Is there dedicated support staff *directly* assisting the entity? If so, what state agency, department, or office supplies the support staff?

- If this question is applicable answer all questions in this section.
- If not applicable, state that no support staff exists for question Section 6-R and explain how duties are divided among members, skip to questions Section 6-Y and Section 6-Z below.

The Office of the Public Guardian provides support to the Commission but does not have staff directly dedicated to the task.

Section 6-S. How many employees are employed by the state agency or department supplying support staff? (skip if not applicable)

Support is provided by the Administrative Officer and Deputy Public Guardian.

Section 6-T. Does the state agency or department supplying support staff offer internships? If so, do interns provide support services to the entity? (skip if not applicable)

No.

Section 6-U. What is the size of the support staff *directly* assisting the entity? How many are merit, appointed, exempt, temporary, casual seasonal, or contract employees? For contract employees indicate who holds the employment contract. Highlight support staff responsibilities, indicate who performs each and the percent of staff time spent on each responsibility. (skip if not applicable)

There are no direct support staff..

Section 6-V. Who supervises the support staff *directly* assisting the entity? (skip if not applicable)

The Chair/Public Guardian supervises the indirect support activities.

Section 6-W. How is the support staff *directly* assisting the entity recruited and hired? Is there an orientation session for new hires? (skip if not applicable)

Not applicable.

Section 6-X. What training opportunities are available to support staff *directly* assisting the entity? (skip if not applicable)

Not applicable.

Section 6-Y. Is the effectiveness of the entity hindered by a lack of staff assistance or dedicated support staff? Please explain. What steps, if any, have been taken to address any staffing issues? (all entities under review answer this question)

The effectiveness of the entity is directly hindered by the absence of direct support staff. The Office of the Public Guardian is challenged by resource limitations to do tasks directly related to guardianship business, and the addition of duties related to organizing, documenting, and posting meeting information suffer by lack of urgency and priority.

Section 6-Z. Please identify, list, and briefly describe any executive orders, interagency agreements, management directives, administrative circulars, or like documents that directly impact the functioning of the entity. (all entities under review answer this question)

Not applicable.

SECTION 7: FREEDOM OF INFORMATION ACT (“FOIA”) & OPEN MEETING LAW COMPLIANCE

Section 7-A. How does the entity respond to FOIA requests?

To date, no FOIA requests have been made.

Section 7-B. When and where are the meeting notices and agendas posted?

The meeting notices and agendas are posted on the website for the Office of the Public Guardian, at <https://courts.delaware.gov/publicguardian/dgc.aspx>.

Section 7-C. Are meeting minutes regularly transcribed? When and where can the public obtain copies of meeting minutes?

The meeting minutes are taken by hand by members and support staff of the Office of the Public Guardian and drafted by the Public Guardian. They are available upon request by calling the Office of the Public Guardian and making a request.

Section 7-D. Are meetings recorded? If so, indicate whether it's an audio or video recording and is the recording posted online for the public? If the recordings are not posted online, are instructions provided to the public on how to request recordings?

The meetings are not recorded, but it was recently suggested.

Section 7-E. Within the past 3 calendar years, has the entity conducted executive sessions or other closed meetings? If yes, please indicate the date of each and the nature of the meeting. Are minutes of executive sessions or other closed meetings available to the public?

In the last three years, the DGC has not conducted any executive sessions or closed meeting. The DGC did hold special meetings in addition to the quarterly meetings from July 2021 to June 2022 to complete the duties assigned by 12 Del.C. §3986. Minutes were taken and are available to the public.

Section 7-F. Has the entity ever received any complaints that it was violating FOIA? If so, please list and include the result of the hearing or the review.

The entity has never received complaints that it was violating FOIA.

SECTION 8: ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

Section 8-A. Does the entity promulgate rules or regulations in accordance with the Administrative Procedures Act?

No.

Section 8-B. Has a DAG assigned to this entity reviewed the current rules and regulations for compliance with the governing statute?

No.

Section 8-C. Is the entity considering any changes to its current rules and regulations?

No.

If "yes" please address the following questions: Not Applicable

- 1. What is the status and nature of the planned changes?**
- 2. Have the proposed changes been reviewed and approved by the entity's Deputy Attorney General?**

3. Have the proposed changes and the public hearing date been published in the Register of Regulations?

SECTION 9: COMPLAINT AND DISCIPLINARY PROCESS

Section 9-A. Please describe in detail the complaint process utilized to resolve disputes between the entity and the public, including how complaints are filed, who investigates complaints, and how long investigations proceed.

The Delaware Guardianship Commission has not developed a complaint process.

Section 9-B. What are some of the most common complaints received by the entity? Please identify where the complaints originate (i.e., public, media, Attorney General's Office, consumer groups, etc.).

The Delaware Guardianship Commission has not received any complaints.

Section 9-C. Have any complaints been filed with the Attorney General's Office? If so, have they been resolved?

No.

Section 9-D. Are there any Delaware Attorney General's Opinions that affect the functioning of the entity? If so, please provide the date and number.

No.

Section 9-E. Are there any recent judicial decisions (state or federal) that directly affect the functioning of the entity?

No.

Section 9-F. What specific disciplinary actions were taken by the entity as a result of complaint investigations? (i.e., license revocation, license suspension, formal reprimand, penalty, etc.).

Not Applicable.

Section 9-G. Please describe in detail the process utilized for determining appropriate disciplinary actions taken against individuals licensed, employed, or monitored by the entity. Include the appeals process, if applicable.

Not Applicable.

Section 9-H. If applicable, provide the following complaint data for calendar years 2019, 2020, 2021, 2022 (to date):

Not Applicable.

	Calendar Year 2018	Calendar Year 2019	Calendar Year 2020	Current Calendar Year 2021
Total Number of Complaints Received by the Entity				
Total Number of Complaints Investigated				
Total Number of Complaints Found Valid				
Total Number of Complaints Forwarded to the Attorney General				
Total Number of Complaints Resulting in Disciplinary Action				

SECTION 10: PRIOR JLOSC REVIEW

Section 10-A. Has JLOSC previously reviewed this entity? If so, provide the year(s) of review and list all JLOSC final recommendations, indicate whether the entity is complying or non-compliant with each recommendation, and explain all areas of non-compliance.

No previous review.

SECTION 11: PUBLIC INFORMATION

Section 11-A. How does the entity communicate information with the public? Does the entity use a website and/or social media platform(s)? If so, please list each method of communication and supply the applicable web address, handle, or username.

The Commission does not actively communicate with the public. The Office of the Public Guardian did at one time investigate the possibility of a Facebook page to enable communication, but after discussion with the Administrative Office of the Courts, a Facebook Page was not created.

Section 11-B. What information or educational resources are made available to the public relating to the entity's activities? Examples include newsletters, guidelines, rules and regulations, policy briefs, or other similar documents. Please indicate the method and frequency of distribution for each and identify the target group(s).

None.

Section 11-C. Does the entity actively engage with the public and solicit feedback? If so, please explain. If the entity has conducted surveys, please list all surveys conducted within the past 5 years and indicate where the public can find survey results.

No.

Section 11-D. Does the entity have by-laws? If so, are they available for the public (include location) and what was the last date of revision?

Yes. The By-Laws are not publicly posted.

Section 11-E. Please complete the following 3 charts (add or delete cells as needed) with the most current information regarding interest groups, national organizations, and industry or trade publications as described in each chart heading.

Interest Groups (Groups affected by entity actions or represent others served by or affected by entity actions)		
Group or Association Name/Contact Person	Internet Address	Phone Number
Name of group		
	NOT APPLICABLE	

National Organizations or other State Agencies (Serve as an information clearinghouse or regularly interact with the entity)		
Group or Association Name/Contact Person	Internet Address	Phone Number
Name of group		
	Not Applicable	

Industry or Trade Publications		
Group or Association Name/Contact Person	Internet Address	Phone Number
Name of group		
	NOT APPLICABLE	

SECTION 12: ENACTED LEGISLATION IMPACTING THE ENTITY

Section 12-A. Did legislation establish the entity? If so, what year and by what legislative bill was the entity established?

146th General Assembly, 2011. Formerly Senate Bill No. 24 as amended by Senate Amendment No. 2:

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE PUBLIC GUARDIAN AND TO ESTABLISH THE DELAWARE GUARDIANSHIP COMMISSION.

Section 12-B. Please list all legislation and other acts that have made substantive amendments to the entity’s enabling legislation. Please indicate the bill number and date of enactment for each.

None.

Section 12-C. Please identify, list, and briefly describe any federal laws or regulations that guide or otherwise directly affect the functions, responsibilities, and operations of the entity.

None.

SECTION 13: PENDING & PROPOSED LEGISLATION

Section 13-A. Please list any currently proposed legislation (state and federal) that, if passed, will directly impact the functions or operations of the entity. Please indicate any bills that the entity is supporting or opposed.

HA 1 to HB 369, which appoints the Chair of the Elder Law Section of the Delaware Bar Association as an additional member of the DGC passed the House on May 10, 2022, and is currently in committee in the Senate. Has not been enacted. The Commission was not consulted regarding its position on this Bill. The Public Guardian was made aware and is not opposed.

SECTION 14: FISCAL INFORMATION

Section 14-A. Complete the following chart to provide the entity’s actual revenue for FY20 and FY21 and budgeted revenue for FY22. Also indicate the source of funds (i.e., general fund, federal funds, special funds, etc.).

The Delaware Guardianship Commission does not have revenue or collect fees. This section is not applicable.

Revenue:

Fiscal Year	Source of Funds	Amount
FY22 (budgeted)		
	General Funds	\$0.00
	Federal Funds	\$0.00
	Special Funds	\$0.00
	TOTAL:	\$0.00
FY21 (actual)		
	General Funds	\$0.00
	Federal Funds	\$0.00
	Special Funds	\$0.00
	TOTAL:	\$0.00
FY20 (actual)		
	General Funds	\$0.00
	Federal Funds	\$0.00
	Special Funds	\$0.00

TOTAL:	\$0.00
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Section 14-B. If the entity receives federal funds, including grants, please indicate the following:

Not Applicable.

- **Total amount of federal funds.**
- **Type of federal fund.**
- **State/Federal Match Ratio.**
- **State Share of Dollars.**
- **Federal Share of Dollars.**

Section 14-C. Does the entity collect any fees or fines? Provide information on any fines or fees collected by the entity:

Not Applicable.

Description of Fine or Fee	Current Fine or Fee \$\$	Number of Persons or Entities Paying Fine or Fee	Fine or Fee Revenue \$\$	Where is the Fine or Fee Revenue Deposited? (i.e., general fund, special fund)

Section 14-D. Has the entity conducted a financial analysis to determine if the current fees are sufficient to cover the cost of the administrative activity related to each? Do the current fees or fines need to be updated or revised? Please explain, indicating whether the fees or charges can be changed directly by the entity or if legislative approval is required.

Not Applicable.

Section 14-E. Complete the following chart to provide the entity's actual expenditures for FY20 and FY21 and budgeted expenditures for FY22. Also indicate the source of expenditures (i.e., general fund, federal fund, special fund, etc.).

Not Applicable.

Expenditures:

Fiscal Year	Source of Funds	Amount
FY22 (budgeted)		
	General Funds	\$0.00
	Federal Funds	\$0.00
	Special Funds	\$0.00
	TOTAL:	\$0.00
FY21 (actual)		

- Indicate how many are currently licensed, and whether an individual or institution receives the license.
- Standard date of and requirements for renewal.
- Criteria for determining qualifications for licensure.
- Period for which a license is valid.

Section 15-B. Please provide the following data for each license, certificate, or approval notice issued by the entity during calendar years 2019, 2020, 2021, and 2022 (to date). Include additional charts, if necessary:

Name of license issued by the entity: _____

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2019	0	0	0	0	0
Calendar Year 2020	0	0	0	0	0
Calendar Year 2021	0	0	0	0	0
Current Calendar Year 2022 (to date)					

Name of license issued by the entity: _____

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2019	0	0	0	0	0
Calendar Year 2020	0	0	0	0	0
Calendar Year 2021	0	0	0	0	0
Current Calendar Year 2022 (to date)					

Section 15-C. Do licenses issued by the entity have reciprocity or endorsement agreements with Delaware? If so, provide a list of all states and jurisdictions that have licensing reciprocity or endorsement agreements with Delaware. Indicate if the entity requires a signed agreement or endorsement from another state or jurisdiction before a Delaware license is issued?

Application Fees:

Section 15-D. Are any application fees collected by the entity? If so, complete the chart below.

Fee Type	Application Fee

Section 15-E. If application fees are collected, when are fees due? Where are fees deposited? What happens if the fee is not paid? Are there any reduced fee options?

Section 15-F. If application fees are collected, has the entity conducted a financial analysis to determine if the current application fees are sufficient to cover the cost of processing applications? Do the current application fees need to be updated or revised? Please explain, indicating whether the application fees can be changed directly by the entity or if legislative approval is required.

Application Process:

Section 15-G: Describe the application review process. Include where applications are obtained. Who reviews applications? How are applicants informed of decisions?

Examinations:

Section 15-H. If there is an examination requirement to obtain a license, address the following questions:

1. Is the examination written, oral, or both?
2. Is a standardized national examination used?
3. Who develops and scores the exam?
4. Are all aspects of the examination validated?

5. Who administers the exam, where is it administered, and how often is the exam given?
6. During each of the previous three calendar years, how many persons sat for an exam, and of those, how many successfully passed?

SECTION 16: RECONSIDERATION, APPEAL, SANCTIONS, REVOCATION

Reconsideration:

Section 16-A: Is there a process for application or entity decision reconsideration (a process prior to a formal appeal, sometimes referred to as an administrative reconsideration)? This could also apply to reconsidering budget decisions made by the entity. If so, please explain.

The Delaware Guardianship Commission does not issue decisions and does not have a reconsideration or appeal process.

Appeal:

Section 16-B: Can an applicant, group, or individual appeal an entity decision? If so, explain the process for appeal.

Not Applicable

Sanctions:

Section 16-C: Can the entity issue sanctions? If so, explain the sanction process.

Not Applicable

Revocation:

Section 16-D: Does the entity have a revocation process? If so, explain the process.

Not Applicable

SECTION 17: SELF-REPORT AUTHOR(S)

Section 17-A: Include all Self-Report author(s) and contact information below.

- **All Self-Report author(s) listed below certify the information supplied in this Self-Report is correct to the best of their ability.**
 - **Reminder to entity under review: Any updates or corrections to Self-Report contents and entity information must be submitted to JLOSC staff in a timely manner during the entire period of review.**

Self-Report Author:

/s/Alexandra McFassel, Esq. NCG

Chair of the Delaware Guardianship Commission

Public Guardian

Section 17-B: This Self-Report was submitted to JLOSC staff on June 15, 2022

APPENDICES

APPENDIX A

SECTION 6-G

CURRENT MEMBERSHIP:

(a)(1)

Representing the Court of Chancery:

The Honorable Selena Molina

Claymont, DE

Master in Chancery / Professional

2021- 2024

(a)(2)

Representative of the Department of Justice: Vacant

(a)(3)

Representing the Guardianship Monitoring Program

Sherri J. Hageman, M.S., NCG

Middletown, DE

Guardianship Advocacy Director/Professional

2011- Term is expired but there is only one FTE in the Guardianship Monitoring Program.

(a)(4)

Representative of the House of Representatives

The Honorable Sherry Dorsey-Walker

Representative/Professional

February 2020 – February 2023

(a)(5)

Representative from the Senate

The Honorable Elizabeth Lockman

Wilmington, DE

Senator/Professional

1/2019 – 1/2022 (May serve two additional terms)

(a)(6)

Representative for the Division of Services for Aging and Adults with Physical Disabilities:

Julie Devlin, Esq.

Wilmington, DE

Executive Assistant to the Director

Professional

2022-2025

(a)(7)

Representative for the Division of Substance Abuse and Mental Health:

Lauren Grace

Wilmington, DE

Clinical Services Administrator, PROMISE Program

Professional

2022-2025

(a)(8)

Representative for the Division of Developmental Disabilities Services:

Cory Nourie, MSS, MLSP

Wilmington, DE

Director of Community Services

Professional

2021-2024 (Confirm)

(a)(9)

Representative for the Department of Health and Social Services:

Teresa Ritter

Smyrna, DE

Director of Constituent Relations

Office of the Secretary

Professional

2022-2025

(a)(10)

Representative for the Disabilities Community:

Laura Waterland, Esq.

Community Legal Aid Society, Inc.

Professional

2022-2025

(a)(11)

Representing the Senior Citizen Community:

Eric Merlino, M.Ed

President, Supportive Care Solutions

Professional

2022-2025

(a)(12)

Representing the Delaware Healthcare Association:

Brett T. Norton, Esq.

Assistant General Counsel and Risk Liason

Bayhealth Medical Center, Inc.

Professional

2022-2025

Appendix B
By-Laws of the Delaware Guardianship Commission

DELAWARE GUARDIANSHIP COMMISSION BYLAWS

Article I – MISSION

Section 1.1 Mission Statement - The Delaware Guardianship Commission exists to identify and address through advocacy and reform the issues and challenges presented to the State, to care providers, to families, and to the person themselves when a person is unable to manage or make decisions about their own care or finances and needs a decision maker to help and protect them.

Section 1.2 Guiding Principles - In pursuing this mission, the Delaware Guardianship Commission is guided by the following principles:

- a) That people unable to make their own decisions who are appointed to the care of guardians and fiduciaries deserve quality services and that every person should be provided respect, due process, rights, and dignity in guardianship and substituted decision-making.
- b) An understanding that while all individuals are entitled to autonomy and personal rights that there are those who need assistance in developing their abilities and capabilities.
- c) A mindfulness that assistance to persons unable to make their own decisions through appointment guardians or fiduciaries should acknowledge that guardianship of an individual is the greatest diminution of autonomy and personal rights that the State may impose under civil law, and that exploration of and advocacy for less-restrictive alternatives to guardianship is a priority of their care.
- d) That a collaboration of elected officials, the medical community, the legal community, the providers of care and advocacy for the citizens of this State who are elderly or have a disability, provides a critical resource to creating a system of service for the citizens of Delaware which meets their needs for both independence and decision making.

Article II - DUTIES OF THE COMMISSION

Section 2.1 Duties of the Commission - Duties of the Commission are established by statute at 12 Del.C. §3992, and include:

- A. Act in an advisory capacity to the Office of the Public Guardian, and assist in developing priorities for the Office as to those individuals most in need of public guardianship services.

- B. Examine and evaluate systems of public and private guardianship and decision-making services and guardians and decision-makers in the State, and make recommendations for change, including establishment of statewide standards, regulation, and certification of guardianship, guardians and other legal established methods of decision-making.
- C. Advocate for and assist in developing law and resources to meet the needs of the citizens of Delaware for individuals who may act as their decision-makers for health, welfare, and financial decisions. Develop and implement a strategic plan for meeting the guardianship and decision-making needs of the population of Delaware.
- D. Initiate and advocate for legislation and legislative changes to accomplish reform.
- E. Develop public and professional education programs on issues relating to guardianship, alternatives to guardianship, and concerns relating to the abuse, neglect, and exploitation of incapacitated individuals.

Article III - MEMBERSHIP

Section 3.1 Commission Voting Members and Officers

The Commission Membership is defined at 12 Del.C. §3991(a) and consists of twelve specific members who are voting members. The Commission may elect a Vice-Chair and a Secretary from among its members.

Commission Membership may be extended to additional individuals pursuant to 12 Del.C. §3991(b) by invitation of the Public Guardian with concurrence of the Commission Voting Membership. These members shall be non-voting members of the Commission.

The Public Guardian shall serve as the Executive Director and the Chair of the Commission. The Public Guardian may vote when required to break a tie among the voting commission members.

Section 3.2 Terms and Vacancies

A. Except as provided in Section 3.5 of this section, each member shall serve a term of 3 years, and will be eligible for 2 additional terms. Any person appointed to fill a vacancy among the members of the Commission shall be filled for the remainder of the unexpired term of the former member and such member will be eligible for 2 additional terms. Each term of office shall expire on the date specified in the appointment; however, the Commission member may continue to serve as an active voting member until notified by the Governor.

B. A person, who has never served on the Commission, may be appointed to the Commission for 3 consecutive terms; but no such person shall thereafter be eligible for 3 consecutive appointments. No person, who has twice been appointed to the Commission or who has served on the Commission for 9 years within any 12 year period, shall again be appointed to the Commission until an interim period of at least 1 term has expired since such person last served.

C. Members of the Commission who participate by virtue of invitation of the Public Guardian through 12 Del.C. §3991(b) shall serve a term of 6 months, which may be renewed by the Public Guardian with the concurrence of the Commission Voting Membership.

Section 3.3 Resignation and Removal

A. It is recommended that a Commission member, if resigning at any time, give written notice to the Office of the Governor and copy the Executive Director of the Commission.

B. A member of the Commission shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. The Executive Committee may recommend removals to the Governor.

Article IV – OFFICERS

Section 4.1 Commission Officers - Commission officers shall consist of a Chair, a Vice-Chair, and a Secretary. The Executive Director shall serve as the Chair. The Vice-Chair and the Secretary shall be chosen from the voting members designated by statute in 12 Del.C. 3991(a).

Section 4.2 Chair - The Chair shall have general charge of the business of the Commission. The Chair may delegate his/her powers to the Vice-Chair or to other Commission Members. The Chair shall preside over the Executive Committee and be a member of all other committees. In the absence of the Chair, the Chair shall designate the Vice Chair to preside over a meeting.

Section 4.3 Vice-Chair

A. In the absence of the Chair, the Vice Chair shall perform the duties of the Chair, and when so acting, shall have all the powers of and be subject to all the restrictions upon the chairperson.

B. In the absence of the Vice-Chair he or she will designate a member to preside over a scheduled meeting when needed.

C. Upon the resignation of the Vice Chair the Commission will elect another.

Section 4.4 Secretary - The Secretary shall ensure that the minutes are recorded of proceedings of all Commission and Executive Committee meetings. Minutes shall be

provided promptly to the Executive Director following Commission Meetings. The Secretary shall perform such other duties as the Commission may from time to time prescribe.

Section 4.5 Executive Director

- A. Pursuant to 12 Del.C. 3991(b)§ the Public Guardian is the Executive Director of the Commission. The Executive Director shall be responsible for the active direction and management of the business and affairs of the Commission and shall perform such duties as may be assigned to him/her from time to time by the Commission.
- B. The duties of the Executive Director include: Compiling the annual report of the work and recommendations of the Delaware Guardianship Commission, including the work of the Office of the Public Guardian; providing staff support to the Commission and to the committees of the Commission; The Executive Director shall have the authority to represent the Commission and manage day-to day business of the Commission. The Executive Director may delegate these duties to other staff members.

Section 4.6 Officer Terms - The officers shall be elected to serve for one year from the date of their election, but shall serve no more than two consecutive terms unless no successor has been found. The officer in this case may serve until a successor has been elected.

Section 4.8 Nominations of Officers - Nominations may be made from the floor subject to approval by the nominated person.

Article V – COMMISSION BUSINESS

Section 5.1 Meetings - Business of the Commission shall be conducted by Commission members at regularly scheduled meetings (which includes special meetings). The Commission shall meet at least four times a year. A quorum is required to conduct business of the Commission.

Section 5.2 Quorum - A quorum shall exist when forty percent of the voting members of the Commission are present. Phone, electronic and paper proxies count towards the determination of a quorum.

Section 5.3 Special Meetings - Special meetings may be called between regularly scheduled meetings by the Chair or at the written request of three Commission members. Five days notice is required for special meetings.

Section 5.4 Conference Call - A Commission Member attending via telephone connection shall be counted in attendance and shall be able to conduct business as if he or she were in the room.

Article VI – COMMITTEES

Section 6.1 Committees

- a) The Commission shall establish committees as necessary to carry out business and the responsibilities specified in Article II. Chairs of all committees must be Commission Members but non-commission members may be members of committees when their presence adds diversity, breadth, and expertise to the committee. Committee chairs shall be selected and approved by the Executive Committee.
- b) A vice-chair, selected by the committee chair, and approved by the Executive Committee shall serve, and vote, at Executive Committee meetings in the absence of the committee chair.

Section 6.2 Executive Committee - The Executive Committee shall consist of the Officers of the Commission and two voting Commission Members selected by nomination and election of the Commission. The Executive Committee shall have general supervision of the affairs of the Commission between meetings. Should emergencies arise and immediate action be required, the Executive Committee may act on behalf of the Commission. The Executive Committee shall be subject to the orders of the Commission and none of its acts shall conflict with action taken by the Commission.

Section 6.3 Special (Ad Hoc) Committees - The Chair may designate such committees as from time to time who are deemed appropriate to conduct specific assignments. Each special (ad hoc) committee shall be considered temporary and disbanded on acceptance of its report or when discharged by the Chair.

Article VII AMENDMENTS

Section 7.1 By-Law Amendments - These by-laws may be amended by a two-thirds vote of the voting membership of the Commission.

Article VIII RULES OF ORDER

Section 8.1 Rules of Order - The rules contained in the current edition of Roberts Rules of Order Newly Revised shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these by-laws and any special rules of order that the Commission may adopt.

By-Laws written January 20, 2012

Approved: _____

Appendix C
Agenda/Minutes 2022/2021/2020

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2021 p.59

2020 p.80

2022

DELAWARE GUARDIANSHIP COMMISSION

January 4, 2022

Meeting cancelled to await appointment of new membership

DELAWARE GUARDIANSHIP COMMISSION

February 28 – 10 a.m. until 12 noon

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

Join Zoom Meeting

<https://us06web.zoom.us/j/85819460320>

Meeting ID: 858 1946 0320

Passcode: 9136895571

One tap mobile

+19292056099,,85819460320#,,,,*9136895571# US (New York)

+13017158592,,85819460320#,,,,*9136895571# US (Washington DC)

Meeting ID: 858 1946 0320

Passcode: 9136895571

Alexandra McFassel, 674-7463 or Stefanie Champiny at 674-7465 if you need the zoom link or other assistance or have questions.

AGENDA:

- I. Review Membership
- II. Wrap Discussion on Fee Allocation (How funds will be spent) with discuss of sample case, and EMS categories per action items.)
- III. Discuss Recommendation Options for Fee Schedule Recommendation. Current Proposal discussed is one in form of Rule 132-A
- IV. Vote to Recommend Plan

Delaware Guardianship Commission (Special Meeting)

Location: Live via videoconferencing

Date: February 28, 2022

Time: 10:00 a.m. – 11:24 a.m.

Agenda: **SB85** Fees - OPG

Attendance

*Alexandra McFassel, Esq.

Stefanie Champiny

*Sherri Hageman (GMP)

*Lauren Grace (DSAMH)

*Teresa Ritter (DHSS)

Suzanne Seubert, Esq.

Kyle Baranski (AOC)

*Randy Vesprey, Esq. (DOJ)

*Cory Nourie (DDDS)

*Eric Merlino (Senior Citizen Representative)

*Brett Norton, Esq. (DE Healthcare Assoc.)

*Julie Devlin, Esq. (DSAAPD)

*Laura Waterland, Esq. (Disability Community)

*Voting Commission Member (A)

Business

Meeting started with a discussion of the Minutes for the January 4, 2022 meeting. Ms. Seubert requested eliminating a line in which it was recorded that she said there were inefficiencies in the OPG, and a line which stated "rebuttal" (for vagueness).

There were no objections to the amendments. C. Nourie made a motion to adopt the minutes, seconded by A. McFassel. Minutes of January 4, 2022 meeting passed.

It was noted by Ms. McFassel the wrong agenda was sent to members, and that the correct agenda focused on finalizing a spending plan and finalizing a fee schedule, if possible.

Spending Plan Discussion:

Discuss re: Contractual Services

There was a question as to whether there was an ability for individuals under guardianship to reimburse the funds used from the fee collection fund where possible. This was answered in the affirmative.

Laura Waterland asked if fees would be collected from individuals on SSI (Supplemental Security Income through SSA). Ms. McFassel responded it was unlikely but it was a decision for the Court to make, pursuant to the statute which reads that fees will be paid by individuals whose resources are "deemed sufficient", and the court would make a case-by-case determination. Ms. McFassel also pointed out the example of Rule 132-A which specifies Court approval.

Ms. McFassel mentioned the fees do not come out of the Personal Needs Allowance, and also mentioned that the amount allowed under Rule 132-A is almost precisely the amount allowed by the Social Security Administration for Organizational Representative Payees (\$43.00 a month) and that was the baseline imagined when the statute language was introduced to the General Assembly.

Discuss re: Supplementation of services through subcontracted FFS agency services –

Ms. McFassel asked if DGC members had an opportunity to review the document sent by Eric Merlino, outlining FFS fees. Eric Merlino noted that the document was meant to give an idea of general fee costs, or the fee range. Ms. McFassel asked if Supportive Care Solutions still did POA services, and the answer was affirmative.

Discussion re: Education and Support for Indigent Wards –

Discussed whether when money was expended to support indigents wards that the fund could be reimbursed if resources were found. In the case of expenditures for indigent wards it is also the policy of OPG to reimburse where resources are found.

Ms. Waterland asked if the funds could be used to assist individuals who could not access other services.

Discussion of prioritizing the categories. Ms. Waterland advocated for more funds toward Education and services for indigent individuals. Mr. Brett Norton advocated more funds towards subcontracted FFS services to meet the need of more guardianship services and facilitate acute-care transitions to other placements. He noted the difficulty in obtaining FFS services downstate.

Ms. McFassel made a Motion that the spending plan for fees collected be as follows: Education 30%, Contractual Services 20%, Indigent Services 30%, and Subsidized FFS Services 20%.

Discussion:

Ms. Waterland believed 30% for Education was too high.

Mr. Norton stated DHA would like to see more funds supporting the FFS agencies.

"Spending Plan will be reviewed on an annual basis" added to the language.

Proposal: (by Motion), Second by Sherri Hageman

The spending plan for fees collected be as follows: Education 30%, Contractual Services 20%, Indigent Services 30%, and Subsidized FFS Services 20%. The spending plan will be reviewed on an annual basis.

6 Affirmative, 2 Abstain

Motion Carries.

The Commission moved to the issue of the fee schedule. Ms. McFassel proposes a fee schedule similar to Rule 132-A, as discussed at the last meeting and referencing the discussion with Master Selena Molina, which occurred at the January 4, 2022 meeting, wherein Master Molina commented on the suggestion "Rule 132-A" specific to fee collection by the OPG and allowing monthly collection up to the allowable amount. Master Molina indicated there would have to be specific language and

that the recommendation of the DGC would be developed into a Rule proposed to the GTE subcommittee.

That conversation, and the proposal of Ms. McFassel is that the OPG would collect fees monthly, based on the guidelines of the Social Security Administration for Organizational Representative Payees, up to the amounts indicated in the current Rule 132-A, which is \$500.00 annually and \$250.00 for a six-month period.

Collection on a monthly basis, instead of once per 12 month or 6 month period is the only change to the current Rule 132-A proposed.

Ms. Seubert commented that Rule 132-A was perhaps too meager to assist family and friends who commonly act as guardians. Ms. Seubert additionally indicated that as OPG does not have overhead, the amount proposed to be collected should be cut in half.

Eric Merlino noted the provision in the Rule which allowed for an individual to petition the Court for additional funds if supported.

Discussion followed in which Ms. Seubert indicated her opposition to Rule 132-A, and Mr. Merlino indicated education for pro-se applicants on filing would be helpful.

Ms. Seubert asked Ms. Waterland if DVLS assisted in guardianship. Ms. McFassel indicated there was the potential for a helpful partnership between OPG and DVLS for educational purposes.

The Public Guardian (as Chair) asked for other thoughts on altering the Current Rule 132-A to allow for the monthly collection of fees, with all other language staying the same.

There was no other discussion, and the Public guardian made a Motion that the Commission establish the fee schedule (for recommendation to the Court of Chancery) to be:

(Proposal by Motion, Second by Brett Norton, Esq. and Julie Devlin, Esq.)

"The adoption of the structure and content of the current Rule 132-A with the amendment that the Office of the Public Guardian be allowed to collect fees on a monthly basis"

The Motion was seconded and passed with no abstentions or opposition, (9 votes in favor).

Laura Waterland immediately made the recommendation to consult the "POMS", or PROGRAM OPERATIONS MANUAL SYSTEM, of the Social Security Administration for instructions on wording the Court Order, as a representative Payee is allowed to collect a fee for acting as Representative Payee, but "Guardianship fees" are not allowed.

The meeting was then adjourned.

End.

DELAWARE GUARDIANSHIP COMMISSION

April 25, 2022 – 10-12 p.m.

This meeting is held live via videoconferencing.

ZOOM Information will be sent out to members 48 hours in advance of the meeting.

Members of the public who wish to attend should call the Office of the Public Guardian at 302-674-7462, for ZOOM information and to confirm the time. Thank you.

REGULAR FUTURE MEETING DATES:

July 25, 2022 from 2-4 p.m. via Zoom

October 24, 2022 from 2-4 via Zoom

AGENDA:

I. Old Business:

SB85 Standards for Fee Collection.

Motion forwarded to the Court.

II. New Business:

Request that the Commission define “sufficient” income for the recommendation under Rule 132-A

Delaware Guardianship Commission (Special Meeting)

Location: Live via videoconferencing

Date: 4-25-2022

MINUTES OF MEETING

Attendance

*Alexandra McFassel, Esq.	*Cory Nourie (DDDS)
*Eric Merlino (Senior Citizen Rep)	*Sherri Hageman (GMP)
*Brett Norton, Esq. (DE Healthcare Assoc.)	
*Lauren Grace (DSAMH)	*Julie Devlin, Esq. (DSAAPD)
*Teresa Ritter (DHSS)	*Laura Waterland, Esq. (Disability Community)
* The Honorable Selena Molina (Court of Chancery)	
Dakia-Hunter McKnight	Evelyn Nestlerode
Suzanne Seubert, Esq.	Stefanie Champiny
Kyle Baraski	Andrew Freud

Business

News:

- Update that there is legislation to add a seat on the Commission from the Elder Law Section. It was noted during this meeting there was a scheduled Sunset Review.
- JLOSC (Joint Legislative Oversight and Sunset Committee) voted to conduct a review of the Delaware Guardianship Commission. Discussion regarding purpose of, and positive tenor.
- There was a suggestion for better minutes and that someone aside from the OPG should take the minutes.
- An individual present requested a month's notice of agenda.
- There was a request that OPG provide statistics on OPG in the minutes, specifically two times a year report on number of cases,

and 2-4 times a year number of new cases. Discussion on purpose of request, answered that it was helpful. Noted there needs to be an annual report accomplished.

- A desire was expressed to have more accurate minutes, and to potentially record the meetings, and a discussion was had regarding that.

Vote on Minutes from 2-28-22

- Comments were made regarding the minutes from the prior meeting but it was noted those minutes had been amended at the time, voted on, and passed. Debate ensued on how detailed minutes should be, whether a transcription of what occurred or a general summary.
- Minutes were accepted.

Old Business:

- **(Edited for clarity) Per transcription of Administrative Officer Present at the meeting:**
 - a. Rule 132a – only amendment OPG allowed to collect on a monthly basis.
 - b. [41:08] Court Feedback.
 - c. 41:40 No Feedback gotten from commission in the interim.
 - d. 42:10 Laura – more precise with federal Poverty level guidelines.
 - e. 43:00 Eric Merlino – tricky thing to define. Ongoing debt obligations of the individual.
 - f. 43:40 Alex – proposal we did. Divide people up where they resided. 2 is tricky. People in the community. 1 is a good definition. 1 is people in ITC settings. 2=poverty settings
 - g. 44:35 Molina – low level. Most going to everyday needs. Starting point is low.

- h. 45:08 Alex – does Comm legal aid have a standard
- i. 45:30 Laura – most programs don't have income guidelines.
- j. 45:45 Molina – screen share *
- k. 47:10 Laura – these are low and impoverished people.
- l. 47:40 Eric – wouldn't take someone like that as a client. Would hurt them more than help them.
- m. 48:15 Laura – can't use more liberal standard in nursing home than community. Need to be careful with the standards of both groups. Patient pay community waiver.
- n. 49:26 Laura/Eric/Alex – Medicaid. Community get to keep income. Laura "don't get to keep all of it". More stringent standard could create problem. Nursing home resident have additional benefit. No guarantee for someone in the community. In NH all needs met by virtue of income and Medicaid.
- o. 50:52 Laura/Alex. Fed Poverty level. Clarify in terms of LTC Medicaid? Laura: take fees more people in community than those in NH. Could be discriminating in favor of NH patients.
- p. 52:05 Eric/Laura . Built in portion in NH as opposed in community. L: easy to treat the same. Income guidelines. Resource and income test.
- q. 53:20 Stef Eric Laura Alex. Income limit. L: 250% for LTC Medicaid. L: statute clearer which FTL talking about. Al: Collecting fees from indigent is not intended goal. LTC fee not coming from personal needs
- r. 55:00 Alex Eric. don't have large # in community. don't have to collect fees from those in community at all. Fees coming out of cost of care. Not personal needs. If in community. How give guidance to court for what's sufficient? How impact fees collection?
- s. 56:00 Laura Alex Eric. E: meant to give guidance in instances charge fees, taken case isn't impoverished. Modest amount of savings. Income of

3-4K. looking to establish bottom end of that type of case in addition to floor of those on Medicaid in NH?

t. 57:15 Alex Eric. A: baseline where fees can be collected. Able to collect fees. Under 132a. set of fees collected. If you want more. Follow guidelines of 132a. E: how wide ranging this is? Wht will apply in every situation?

u. 58:50 Cory . C: most ours have ltd resources. Some have pat pay. Could link if pat pay obligation, means they have sufficient funding to charge the fee? A: different mechanism if on LTC Medicaid. Comes out of amt paid to facility. C: some in GH have pat pay obligation. My people are paying a PP obligation to offset COC.

v. 1:00:00 Eric Cory . E: Medicaid. Carved out X amt from fees to NH. No net effect on resident. Amt no matter what. Medicaid and NH as far as fees. No net effect

w. 1:01:30 Alex Cory Laura . A: LTC setting. Don't discriminate LTC setting . if this is the case. If personal needs amt that wont change, we'll collect fee from COC portion. When use Fed pov guidelines, if qualified on LTC Medicaid. Made difference bbased on twhere they were and circumstances were. C: LTC defined as facility? Laura: yes

x. 1:03:20 Alex Laura . A: need to have set definition for what we mean when say LTC facility. L: It's a defined term. A: goal. Definition of LTC needs to be improved

y. 1:04:25 Alex Laura. L: PP amt what pay not what get to keep. L: Pers needs amt varies, not a set #. Be careful what words we're using A:

z. 1:06:00 Alex . A: be clear this isn't written in stone. A starting effort. Need help from you all. Help coming up with how to amend and table and come back or whatever. Need proposals going around. Can send to me and I send to the group. Complexity of care is tough to wade into. Sufficiency depends on what your circumstances are. DDS clients are diverse with needs and resources. Fees sometimes are fine and other time are a hardship. How do we capture that? Are we close?

- aa. 1:08:40 Cory Alex. C: how do other states define these/ A: Alaska had lots of fee collection. Amt of income that triggers that. C: if have patient with large PP amts. Smaller population that 1200. Vast majority do not have it because have small resources.
- bb. 1:10:10 Alex . A: MT are smaller #. PP weird distinction to make. Fee not coming from their pocket
- cc. 1:10:50 Eric . E: could look at it as we will not charge fees that pull more than x percentage of person's available spending. Take into consideration whats paid and what's left. 0 against Medicaid. Someone in another setting where it varies with patient pay, must have x before we charge those fees. More complicated in community. Different definitions of things in community. How much available income/ unspent income do you look at to determine how much is eligible for fees?
- dd. 1:12:50 Alex Eric . remaining amt varies based on income and where they're at. Does it get to big enough figure to take fees out of. Whats the min and max? its complicated
- ee. 1:13:40 Bret Alex. B: is 250 too simple. A: it is. SS allows fees collection as a rep payee even if on SSI . Eric agrees. Would allow fee collection even if on SSI. They do allow it to happen. Have to develop something to allow for collection of fees, recognizing there will be people below the 250 poverty level.
- ff. 1:15:40 Eric Alex . E: have to encompass everything. Whats the impact on the person's available resource. How to figure out the min percent. A: great suggestion. Don't want to harm the individual. Quality of life. Fees not collected in LTC facility. Have to come up with a standard.
- gg. 1:17:10 Cory Alex. C: don't want to give opinion. Need to think about it. A: diverse. People who work, some over-resourced. Maybe need 3 divisions. 1st is those in LTC facilities. C: Neighborhood GH, providers who offer ALA alternative living arrangement. Not easy that this covers everyone.
- hh. 1:19:00 Laura Cory Alex. C: 1102 subchapter x L:

- ii. 1:20:00 screen share 2 ** Alex Cory Laura Suzanne. 1.2 3 for pmt sources and not 4-9. Delcode.delaware.gov/title16/c011/sc01/index.html . S: a good start
- jj. 1:22:20 Alex Laura . A: 1-3 don't want to hurt those in the community who need it for living. People pay quite a bit out of pocket. L: need to be really explicit if coming out of __. Assisted living half of one and the other. Not from a fee POV.
- kk. 1:24:30 Alex Laura. A: sufficiency defined in terms of 1-3 . does anyone have a problem with that statement as long as LTC facility defined better. L: want to see it
- ll. 1:26:00 Alex Laura: Fed poverty guidelines need to look at. L: if \$ doesn't increase obligation. Don't have to pay fee. Structure so that the impact is the same, don't have to talk about fed poverty guidelines cuz its based on the funds. That's treating people the same. Initial thought.
- mm. 1:28:10 Alex Laura Eric. A: concern for equal treatment . L: unexpected resource that becomes avail. Addl resource. A: special petition under 132. E: talking about income and income guidelines. Doesn't effect income, but assets. New asset sitting there. A: getting rid of asset is what takes the time. L: independent _ to get costs and fees. A: 132 if feel have addl reason to collect fees. E: should there be an income and resource component. How Medicaid does it
- nn. 1:31:00 Alex A: income resources. 2 sections. Se how Medicaid is set up. Make things comparable makes easier for people to understand. Fed Poverty guidelines. Jackie Chiconea
- oo. 1:32:15 Bret Alex. B: all based on . Bayhealth based on FPL too. Best way to go to understand where everyone's coming from. A: statute issues. People in community are the problem. People in comm = people in their own home. Need every penny to live. Just exclude them. What do we think of that. Resource test. Distinction between people in the community
- pp. 1:34:30 Eric Alex Laura . E: if only make min amt of income in terms of impact. If below that cant touch. Would apply to both in and out of facilities. Not impacting __ coming from disposable income. Percentage

if that's the way you're going. How do you measure. L: be careful with terminology. Talking about income or resources. A: income and resources in the community? L: not talking about a lot of money avail to you

qq. 1:36:20 Laura Eric Alex. A: windfall. SNT. What do about those with SNT? Even in the community. Need examples. L:ook at Medicaid. Don't know of any other OPG that sets their fee schedule this way. Need to look at them again

rr. 1:38:11 Molina Alex M: Alaska has sliding scale A: not a large # of examples.

ss. 1::39:00 screen share 3 *** Molina Alex . Alaska fee schedules. Provides some info for what they do. Assets not income.

tt. 1:42:20 Molina Alex . A: Rule 132a best way since closest to SS. M: found this in email from 10/21/21. A:

uu. 1:44:00 screen share 4 **** . Alex. A: better definition of LTC. Impact of perosns available _ and resources. If it doesn't impact to them, then any level of income is sufficient. Ideas?

vv. 1:45:30 Brett Alex Laura . B: have to think about it. A: goal is to minimize at all times. Often comes from the facility. B: concerned about the impact on the people in the community. L: need to think about all of this. Regret this. Could be a critical fee for many people. A: If have more than 250% of FPGL. L: more concerned about people in community that NH. More of an issue for me. Structure it so people in the community so that amt of fee to Gdn is explicitly stated as a deduction from income. Ways to do it so person doesn't pay addl amt. could get pushback from NHs

ww. 1:48:50 Alex Laura. A: faciulites part of taskforce. No pushback there. Medicaid no pushback. L: great. To make it work for those in community. May need regulatory changes for how _ calculated. Will have ripple effect other places. A: im hearing that people in the community are a much different picture. If basic sufficiency we can agree on, do we do now or all at once. C: if do that. 1 and 3. Using as initial cohort. Seems there res and assets in a specific place. Then work into rest. If choose that

population in a LTC Nursing facility. E: starting at zero impact. C: Careful about harming people.

xx. 1:51:30 Alex . A: statute already spoken. Granted power t collect fees. They understood for most part, minimal level of stuff avail to individual. Don't want to take from individual. Special meeting next month.

yy. 1:53:15 Alex Julie . next meeting start at least impact. #1 only place have defined sufficiency. Send to court the language. People in different placements. How much many they have available and where they are. J: need to think about offline. A: need to put some things in writing

zz. 1:54:40 Alex. A: Look at the FOIA stuff

7. 1:55:25 Alex Cory. A: what do we want to be done next time or want meeting to be like?

a. Try to reword #1

b. Table #2 [people in community/sufficiency] for later. Definition of sufficiency

c. Sufficiency definition for people 1-3 in 1102

d. C: 1&3 as opposed to 1-3.

e. 1:57:53 Alex . A: don't want a recording that could be made public. 3 people here are taking notes. Send out early and people can add while their memory is fresh.

f. 1:59:40 Alex Suzanne. A: everybody good? S: possible to have meeting 5/23? Have discussion with folks who need to talk to. Problem is, chair on vacation last week. Not always possible to get turn around time in 2-3 days. A: Elder law section. Important, but not only ones tasked with their tasks.

g. 1:01:35 Alex A: send out doodle poll. Get minutes out. And go from there

h. 1:01:50 Alex motion to adjourn. Approved.

End.

DRAFT

DELAWARE GUARDIANSHIP COMMISSION

June 2, 2022 – 10-12 a.m.

This meeting is held live via videoconferencing.

ZOOM Information will be sent out to members 48 hours in advance of the meeting.

Members of the public who wish to attend should call the Office of the Public Guardian at 302-674-7462, for ZOOM information and to confirm the time. Thank you.

REGULAR FUTURE MEETING DATES:

July 25, 2022 from 2-4 p.m. via Zoom

October 24, 2022 from 2-4 via Zoom

AGENDA:

I. Old Business:

Request that the Commission define “sufficient income” for the purposes of Fee Collection

II. New Business:

TBD

2021

DELAWARE GUARDIANSHIP COMMISSION

January 25, 2021 at 2:00 p.m.

Meeting cancelled

DELAWARE GUARDIANSHIP COMMISSION

April 26, 2021 at 2:00 p.m.

No meeting minutes were taken. The entirety of the meeting was used to discuss the film "I Care a Lot".

DELAWARE GUARDIANSHIP COMMISSION

July 26, 2021 at 2:00 p.m.

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

Join Zoom Meeting

<https://zoom.us/j/99903296410>

Meeting ID: 999 0329 6410

Passcode: 9309751730

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Meeting ID: 999 0329 6410

Passcode: 9309751730

Find your local number: <https://zoom.us/u/adxQWu6Cbz>

Join by Skype for Business

<https://zoom.us/skype/99903296410>

Please call Alexandra McFassel at 674-7463, or email at Alexandra.McFassel@delaware.gov if you need assistance or have questions.

2021 MEETING DATES REMAINING:

July 26, 2021, October 25, 2021

- I. Opening Remarks/Minutes/News
- II. Old Business - Education Plan
- III. SB 85 - Fee Collection approved for the Office of the Public Guardian

Agenda for the Commission:

A. Continue addressing the membership issues (we have a quorum, so this is a work in progress)

B. Determine need for and schedule for more frequent meetings, and whether those meetings (to develop a fee schedule) should involve a committee or the entire commission.

C. Creation of a fee collection schedule.

IV. Open to Public

DELAWARE GUARDIANSHIP COMMISSION
MEETING MINUTES
FOR MEETING OF July 26, 2021

In Attendance:

Alexandra McFassel, Esq., Public Guardian
Stefanie Champiny, Deputy Public Guardian
Sherri Hageman, Guardianship Advocacy Director
Jim Reynolds
Tasha Stevens, Esq.
Suzanne Seubert, Esq.
Hon. Pat Griffin
Eric Merlino, Supportive Cares Solutions
Representative Sherry Dorsey-Walker
Kyle Baranski
Evelyn Nestlerode
Gerry Street, Esq.

I. Opening Remarks/Minutes/News

Attachments sent for the meeting were the agenda, a sample fee schedule for Alaska and Illinois, and a memorandum on fee collection.

A quorum was not reached. Discussion of old business regarding an education plan was deferred by the agreement of those present. The Commission moved to discussion of the new business, that being the passage of SB85 and the development of a fee schedule pursuant to the language of that bill.

II. Old Business:

- Discussion deferred by agreement of members present.

III. New Business

SB-85 discussion was initiated by opening the floor for questions. Suzanne Seubert opened with a question regarding how many guardianships the Office of the Public Guardian is responsible for, and Alexandra responded on behalf of the OPG that there were approximately 225 guardianships of person/person and property, and specifically approximately 100 guardianships of property. There are less than 20 cases where OPG is representative payee in addition to guardians of person. A follow up question was asked regarding other State Agencies that were fiduciaries, and the financial range for the cases in which OPG was appointed.

Alexandra McFassel (AM) confirmed the information sought was the lowest to highest range (of financial value) and that OPG would collect that information for the Commission. Jim Reynolds stated that no referrals had been made by OPG to his FFS agency, and stated there were options available rather than OPG for cases involving resources and assets.

Discussion continued on how and under what circumstance cases were referred to Fee-for-Service guardians, and what impact SB85 might have on referrals. There was discussion that OPG would transfer existing/future cases where there were resources discovered after appointment. The Commission discussed the concept of insuring OPG was utilized as the guardian of last resort and steps that could be taken in that regard.

Further discussion on fee schedules are planned, after membership gaps are addressed. It is anticipated the monthly meetings will occur to address this issue.

END Draft Minutes.

Delaware Guardianship Commission

Location: Live via videoconferencing

Date: October 25, 2021

Time: 2:00pm – 4:00pm

Attendance

Alexandra M., Sherri H., Kristiana R., Cory N., Tasha S., Evelyn N., Gerry S., Deborah A., Master Griffin, Daykia H., Randy V., Shannon M., Kyle B., Laura W., Patty J., Eric M.

Opening Remarks

(Alex) – Next Guardianship Meeting to be held 01/24/2022

Minutes: Passed

Old Business

A. Membership Issues

(Alex) - Doing pretty well, she contacted Governor's office about membership (i.e., Nominations). Shannon Menei took over for Linda Brittingham – CHS.

(Alex)- Process is not as formal as before

(Randy V) – Represents the Attorney General's office – handles guardianship for state agencies.

(Alex) – DSAPD & DSAMH needed. Will contact the Governor's office again regarding nominations.

B. Meeting Schedule Discussion

-Meeting more frequently?

-Developing a monthly fee schedule?

-Membership?

No Objections

(Gerry) - Question about group, a smaller working group is usually more effective.

(Alex) – Explained fee-for-service. Rep agrees with Gerry, smaller groups are helpful. Cheryl post-acute Rep. for nursing homes. Shannon agrees.

(Master Griffin) – Smaller group to develop then bring it to the comm?

(Alex) – Time for monthly meetings?

(Master Griffin) – Leave it open to the public?

(Alex) – Yes. Invite comm (entire) sure. Referred to statute comm (sub).

(Cory) – Monthly would be hard to coordinate.

(Alex) – Task force comm. Info – send out a range of dates for members to select availability.

-Asked for a vote from members – Favor?

(Gerry) - Asked for clarification – thumbs down

(Alex) - Explained budget info and fee schedule

-Evelyn & Kyle – AOC - Nursing home Reps

(Gerry) – Increase in fees could affect Medicaid.

(Alex) – Nursing home involvement may not need to be involved in every meeting.

Learned how to run a meeting from the Task Force. Helpful.

-Fee for service representatives – Attorneys?

(Master Griffin) – Having attorneys who deal with guardianship is useful.

(Alex) – Will send out a monthly invite to all attendees – including a Medicaid Rep.

(Alex) – Contacted Medicaid/Nursing homes/ group confirmed. Monthly is good.

(Alex) – Wants to discuss the possibility of starting small. Develop a fee schedule and then ask the Court of Chancery to review. We can start small and modify it as needed throughout the months.

Thoughts?

(Master Griffin) – Saw what Alex sent from other states. Maybe those states could present something to the Commission. Don't just want to adopt a fee schedule.

(Alex) – Spoke to a Rep. in Alaska. Population is very similar to the population in Delaware. *Action Item for Alex*

(Cory) – Can we work backwards? Have the OPG paint a picture of what we need and move on from there.

(Master Griffin) – No. It's a lovely thought.

(Alex) – Agrees. Likely no more staff (costly). Cannot count on fees collected. One FTE is not enough sadly.

(**Alex**) – Not envisioning a complex fee schedule. Short staffed in the management of property guardianships. Hire out for house cleanings etc. OPG needs additional resources for contracting our certain services such as moving houses.

(**Master Griffin**) – Purpose is not to increase OPG caseload.

(**Alex**) – Important points. We, OPG, have a very large caseload now which is stretched. New do not need any more cases.

(**Eric**) – Discussed path for added staff

-SJH bathroom break

(**Alex**) – Reached out to Steve Groth – fees. Haven't heard anything further. State plan amendment. Allow funds to pay for fee for service agencies. Fees are complex. Anything we don't want to see? Admin effort? *from her perspective* wants to see something.

(**Eric M.**) – It's not a good method to use assess level %. Could be more work.

(**Alex**) – Agrees with Eric. Assess go away quickly. A sliding fee schedule makes little sense. We spend down. We spend down very quickly to qualify them for Medicaid. Most cases have no money; some have special needs trusts.

(**Gerry**) – No one wants more complex issues. What are we going to do with the \$ cart before the horse, etc. Why not staffing?

(**Alex**) – Simply; to start. To have more staff is very expensive. Wants to use \$ for people who have nothing, for the clients.

[Eric M. wants to serve on the sub-committee]

(**Alex**) – Wants to sub-contract out to fee-for-service agencies. What's allowable from social security? (Needs to be structured) Wants to use extra money for the people who have zero funds. First of the list of people to help.

(**Shannon**) – Agrees with Alex. Many clients have nothing.

(**Cory**) – Question: The goal is not to charge clients for how difficult their cases are. Right?

(**Eric**) – Alex explained the money allocation.

(**Master Griffin**) – Separate structure for people with more money. Simple structure. She believes (Rule-132).

(**Alex**) – Agrees with Rule 132. Start small, then the schedule could be modified or amended.

- (**Deborah**) – Regarding wards without enough funds, the OPG would assist the poorer wards with raised funds. Like a benevolence funds.
- (**Alex**) – Not going to be a huge fund. (Limits are likely). Is not apposed to a benevolence fund but that can get complicated. It is a huge problem.
- (**Deborah**) – Are we guest members?
- (**Alex**) – Yes, except Jim Reynolds was appointed by he Secretary to represent senior citizens.
- (**Gerry**) – Illegible
- (**Alex**) It is not fair.
- (**Gerry**) – But you are the government?
- (**Eric**) – There has to be other government agencies where a sliding fee schedule exists?
- (**Alex**) - Understands but we need to use the money most effectively.
- (**Randy**) – Advocacy program funded by the Court, or no?
- (**Sherri**) Explained.
- (**Alex**) – Wants to use the money to help people who want to be a guardian. We all want less restrictive alternatives.
- (**Laura**) – Provides assistance to those with questions about guardianship services. Education is necessary. Give guardians a better sense of what is needed. Has educational materials that can help.
- (**Alex**) – Education programs currently not funded.
- (**Cory**) – here could be other programs to provide educational programs.
- (**Alex**) – It's "Mission Critical" an educational program.
- (**Master Griffin**) – There are a lot of people in need of a guardianship. Although no funds are available.
- (**Alex**) – Explained process of cleaning out apartments etc.
- (**Eric**) – Collecting fees from one person but using the funds for another – conflict? Any issues?
- (**Master Griffin**) – Sub-contracting out of fiduciary duties needs to be looked in to. Pool of funds?
- (**Evelyn**) – Yes. AOC would pay the bills. Money goes into a pot. Its not a direct transfer of funds.
- (**Master Griffin**) – general structure/ fee structure would make everyone comfortable.

(Alex) OPG could have a fee-for-service agency as the sub-contractor etc.

(Randy) – Does he court access fees?

(Master Griffin) – RTSC fee only. Not necessarily.

(Alex) Good question Randy. Maybe an allowable fee for Rep Payee fee-organizational-\$43 per person. Explained to Randy how it will be spent.

(Gerry) – Agrees with the \$43 fee.

(Alex) – Fee explanation – not a new concept

(Eric) – good payout.

(Alex) – Send out a doodle poll – availability (Nov)

- Speaker – Another state

- Get the minutes out quickly

- Any other questions?

(Master Griffin)

- Fee structure

- How funds will be used

- All structures that would be possible. Gathering of info.

(Alex) – Good idea. Shoot her emails if you have any ideas.

New Business

A. Guardianship Bill of Rights

(Master Griffin) – Generally established for persons subject to guardianship. The Comm. would be a good group to look at it. (Long term project).

*Adjourned 3:52pm

DELAWARE GUARDIANSHIP COMMISSION

October 25, 2021 at 2:00 p.m.

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

Join Zoom Meeting

<https://us06web.zoom.us/j/89365415810>

Meeting ID: 893 6541 5810

Passcode: 3610642532

One tap mobile

*+13126266799,,89365415810#,,, *3610642532# US (Chicago)*

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Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 893 6541 5810

Passcode: 3610642532

Find your local number: <https://us06web.zoom.us/j/kAHbUtRDR>

Join by Skype for Business

<https://us06web.zoom.us/skype/89365415810>

Please call Niyya Rice at 674-7462, or email at Niyya.Rice@delaware.gov if you need the zoom link or other assistance or have questions.

2021 MEETING DATES REMAINING:

October 25, 2021

- I. Opening Remarks/Minutes/News
- II. Old Business -
 - A. Continue addressing the membership issues.

B. Determine need for and schedule for more frequent meetings, and whether those meetings (to develop a fee schedule) should involve a committee or the entire commission.

C. Creation of a fee collection schedule.

III. None at this time

IV. Open to Public

DELAWARE GUARDIANSHIP COMMISSION

December 2, 2021-2 p.m. to 3:30 p.m.

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

Join Zoom Meeting

<https://us06web.zoom.us/j/87412623612>

Meeting ID: 874 1262 3612

Passcode: 8732781154

One tap mobile

*+13017158592,,87412623612#,,,,*8732781154# US (Washington DC)*

*+13126266799,,87412623612#,,,,*8732781154# US (Chicago)*

Dial by your location

+1 301 715 8592 US (Washington DC)

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Meeting ID: 874 1262 3612

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Find your local number: <https://us06web.zoom.us/j/kdvwWT6SIIm>

Please call Niyya Rice at 674-7462, or email at Niyya.Rice@delaware.gov if you need the zoom link or other assistance or have questions.

DELAWARE GUARDIANSHIP COMMISSION

December 2, 2021-2 p.m. to 3:30 p.m.

SPECIAL SUBCOMMITTEE MEETING

For the purpose of developing a fee schedule pursuant to SB85

I. Opening Remarks

II. SPEAKER: Beth Goldstein, the Deputy Director and Supervising Attorney for the Alaska Office of Public Advocacy. The fee schedule information for this office has previously been sent by email attachment to our meeting notices. Ms. Goldstein will be able to speak as to the application of the Alaska Fee Collection schedule, and the system they use to do so, which also happens to be the financial case management system employed by OPG here in Delaware.

III. Strategic Plan:

A. Future Meetings: Agree to range of times/Poll to follow

B. Confirm Objectives/Desired Outcomes

(Example: An issue raised is to what purpose funds raised will be used. Is the desired outcome a written recommendation to the Office of the Public Guardian and the Court of Chancery regarding this matter?)

1. Gathering Information: What information is desired in order to proceed?

2. How funds will be used?

3. Draft Language of Fee Schedule:

a. Discussion of following Rule 132-A.

b. Discussion of other structures.

Delaware Guardianship Commission

Location: Live via videoconferencing
Date: December 02, 2021
Time: 2:00pm – 3:30pm
Speaker: Beth Goldstein, Esq.– Alaska OPG

Attendance

Alexandra M., Sherri H., Kristiana R., Cory N., Tasha S., Evelyn N., Gerry S., Deborah A., Master Griffin, Daykia H., Randy V., Shannon M., Kyle B., Laura W., Patty J., Eric M.

Business

Speaker: Beth Goldstein, Esq.

(Beth) – Alaska uses EMS like Delaware, (24) FT gdn, 1,700+ clients, consv. Power, conservative ship & guardianships.

- Appt. of last resort.
- 20% of all Alaska statewide cases
- Cannot say “no” to court appointments
- Has employees that apply for all the state services (i.e., public health benefits) and eligibility techs.
- 4 teams – PG1, PG2, PG3 (Supervisors)
 - PG1 – No caseload, no signatory authority, no exams
 - PG2 – Gets caseloads, must pass exams

Monthly flat fee; fee schedule, will waive the collection of fees if it negatively affects the? PWAD. Fees can be waived at the end as well.

(Beth)- Fee waivers completed/approved by administration. Native income can be used for OPG fees. 900 to 1,100 Annually per average case. Assessments done periodically.

(Alex) Question: – Community clients v. Nursing Facility

65% in community, 5% choose to be homeless, some in Ind Housing, some still live w/ a family member, 30% in facilities.

Alaska uses EMS; full financial section utilized guardians rqt checks but financial until prints checks, reduces fraud – no one with complete access. Books are balanced at EOD each day.

Check mode. No ACH capability yet. Sometimes use gift cards, etc. No online ability to manage checks yet.

Do not collect fees from S.S.A. – Not an Organizational Payee- Joint Rep. Payee Acct SSA cannot reclaim funds from their accounts. All cases set to deferred billing at first.

(Beth) – hey have a large clientele, safeguards are in place. There is no client contact on a regular basis due to large caseload.

- Clients have some independence when they receive weekly checks. They can tell weekly why clients are not cashing checks etc.
- Contact guardians about the clients and they get feedback as to what's going on with the client.
- Every morning an insufficient funds report is created (early alert system).
- Reports are issued regularly.

(Evelyn) Question: - Clients balances checked in June or the OPG's balances?

Answer: OPA acts as their own bank. EMS is bank statement & it "speaks" to the state system. 2 million in fees every year. A significant portion of budget; keep 1.6/1.7 million and the rest goes to Alaska gen fund.

(Beth) – Very few fees for service companies in Alaska. More are needed. The OPA/G figures out cases to go to FFS.

(Master Molina) – Talk about case opening fees

A - \$200 Conserv.

- \$300 Guardianship

- \$500 Combination of both

Fees to sell property are not usually waived.

(Master Molina) Question: – Does the court get involved in fee waivers?

Answer: Not really. [Separated from Court] Full fee waivers happen only at the end of a case. OPA/G files motions to sell property for extra authority. Court makes suggestions only.

(Suzanne) Question: – Population?

Answer: "I don't know".

Question: How much money does OPA/G control?

Answer: Mid 35 million.

(Evelyn) – Question: - When did it begin (fees)?

Answer: Increased in 2016 (no exact answer provided).

(Alex) Question: – How again do FFA agencies get cases?

Answer: Court appoints court visitor who assesses the petition, gathers docs & says if guardianship or conservative ship is appropriate. They find people to get involved in the

case etc. But the OPA/G has "due diligence" in a case, and they routinely review cases so they will refer cases as needed.

- The OPG gets the complex cases
- They also have an investigator now – from elder (Illegible). Access to a database to find new people.
- Clear is a Westlaw product. It is new w/Clear-Westlaw (Awesome!)

(Alex) – Question: - Alaska has people that help minors transition to adult, right?

Answer: Yes, very new. The agency will assist. Especially for individuals who may not need guardianship or conservative ship forever. (Different guardianship needs).

(Suzanne) Question: - Court proceedings? Resp. Atty appointed?

Answer: Court Visitor – (2) different types; yes. Court visitors – paid contractors; will be moved fully to the court system soon. They work for the courts.

(Master Molina) – Question: - The Court pays?

Answer: Yes, but the OPA sends the court funds to cover.

[No more questions]

(Alex) Moving on: – We need to think about all of this. Open the floor. Objectives for next meeting?

-Would like a fee schedule by March 2022.

(Master Molina) – Discussion of Rule 132-A:

It went into affect yesterday. Fiduciary fees = \$500 annually.

Guardians can request more through the court. Currently, OPG is excluded. OPG could be included.

(Alex) – Flat rate fees but Rule allows more fees to be rewarded when necessary. It is a good starting point.

(Evelyn) – Spoken to the Chief Justice, he does not like fees assessed on indigent people. If it comes out to \$43 a month from SSI, he appreciated the idea. It is a simple fee schedule & fair. Seems like a good path to take.

(Alex) – In some cases, fees would need to be collected monthly, etc.

(Suzanne) – Invited to attend meetings, tries to bring the respondents perspective to the guardianship commission. Also, taxpayers' perspective (mentions Christiana Care cases). What will the funds be used for? "We will get to that I'm sure". Delaware spends a lot; least desirable state for retirees (due to taxes). If it goes into the general fund that's one thing but its another if it stays in the Office of the OPG.

- Questioned OPG's prop. (\$) cases.
- Flat fees are simple but not indicative to the services provided to clients.

(Alex) – Answered Suzanne, we only have 5 cases with substantial resources.

(Eric) – Answered as well, his agency does not have a problem with "problematic" cases. Some other agencies do or did though.

(Alex) – OPG can very easily review those cases.

(Shannon M.) – From the hospital side, they do refer to the OPG first, but they could also reach out to FFS agencies!

(Alex) – Answered.

(Stef) – Agreed. If I find property, I ask referent to contact an FFS agency.

(Eric) – Understands process of referral from hospitals are slow. Sometimes hospitals know of property, values, etc. He gets it.

(Alex) – We do not know assets of an individual while they are in the hospital. Transfers could happen afterwards but will be discussed later. Next meeting?

(Suzanne) – Where will the fees go? If not the general fund?

(Evelyn) – Special fund for the use of the OPG. Budget process like other agencies. Consider creating a spending plan for the funds.

(Alex) – We will review the Code. Will talk o Evelyn before January 4th 2022.

(Alex) – A spending plan is a good idea.

(Shannon) – Protected funds to help support FFS agencies? Interested to work with FFS.

(Alex) – It is a separate issue, (Groff). I will follow up on that issue.

- Meet with Evelyn. Look at fee schedules of other states.
- Email Steve Groff

(Eric) – Fees have to have a meaning.

(**Alex**) – Examples at next meeting.

(**Eric**) – FFS schedules are on file with the Court of Chancery.

(**Alex**) – No hourly fees; different. No compensation for effort.

(**Master Molina**) – Additional fees other than the \$500 flat rate (i.e., Sale of Property)?

(**Eric**) – Fee base philosophies?

(**Alex**) – Collect as little as possible; not making a profit – not OPG is goal. Likes flat fees.
Wants to sustain services.

*Adjourned 3:30pm

2020

DELAWARE GUARDIANSHIP COMMISSION

January 27, 2020 at 2:00 p.m.

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

Kent County Courthouse, Courtroom 2, across the bridge in the old courthouse section.

New Castle County Courthouse, the conference room on the 11th floor in the Court of Chancery's new mediation center, which is just past the Register in Chancery entrance. Attendees should follow the signs for Court of Chancery Mediation Center.

Sussex Court of Chancery, Courthouse on the Circle

Please be aware that electronics cannot be brought into the courthouse in some cases.

Please call Cecelia Bauer at 674-7462, or email at Cecelia.Bauer@State.de.us if you need assistance or have questions.

Attachments available: Agenda

FUTURE MEETINGS:

NOTE-2020 Dates: January 27, 2020, April 27, 2020, July 27, 2020, October 26, 2020

- I. Opening Remarks/Minutes/News
- II. Old Business
 - Membership
 - Education
- III. New Business
- IV. Open to Public

DRAFT MINUTES OF THE DELAWARE GUARDIANSHIP COMMISSION

1/27/2020

Present at the meeting were: Senator Lockman, Master Pat Griffin, Master Selena Molina, Jim Reynolds, Patty Justice, Suzanne Suebert, Linda Brittingham, Cory Nourie, Deborah Akinola, Stefanie Champiny, Gerry Street, Alexandra (Lexie) McFassel.

I. Opening Remarks

No minutes from the meeting just past. No quorum. Moved on to current business, which did not require a quorum.

II. Old Business

a. Membership:

There are several positions that need to be filled, per the chair, and input from members was solicited regarding continuing members and new. It was requested by the chair that members notify it of concerns or suggestions, and that the chair would follow up with Lydia Massey regarding appointments. Lydia Massey is the liaison in the Governors Office.

b. Education

- Chair started the conversation by suggesting focus on audience, topics and subject of educational presentation as well as format.
- Master Griffin noted limited utility of video presentations in moments of crisis for a family. "When you are in a crisis you aren't going to watch a video". This does not mean short videos have no use. Cory Nourie noted the development of videos at A.I. duPont, which had been useful, and useful at times when you just needed to get a grasp on the info. (Middle of the night when you can't sleep.)
- Master Griffin suggested the use of relatable vignettes in materials.
- Master Griffin suggested contacting Jacqui Chacona at DVLS, as she is working with private attorneys and developing training.
- Topics were suggested and there was a concern that the training might creep away from the immediate focus on decision making (such is the need for information on how to access services, and how to help loved ones). One point made was that there needs to be info regarding the OPG (and also FFS agencies?).
- Contact DHSS for a broader group of knowledge and resources.
- Gerry Street pointed out that no matter how well a video is done, it does not take the place of face-to-face training, and used the examples of the required DMV and Family Court trainings as a means of obtaining an investment in the process, by having people pay for the training.
- The group concurred that face-to-face training was preferred and highly effective. Need to find the "pay-off" for guardianship training to entice paid for education.

- Linda Brittingham pointed out the concern of people feeling like they are “on the hook” or wanting to know what they would be on the hook for. Contrast this (perhaps?) with the parents of young adults who want to be involved.
- There are law firms providing education on elder law issues.
- NOTE of importance: Must include information on transition to adulthood. Filing guardianships at “17 1/2”.
- Patty Justice mentioned the ADRC line and its function to provide direction and support to people needing information and assistance from State Agencies. There may be some educational opportunities to provide further information on guardianships to those providing services (AUDIENCE, Care Providers)
- Have a road show. Need to identify presentation forums: Senior Centers, etc.
- NEED: get information out on Physician Affidavits, work on language of them (Court is working on further improvement)
- REACHING the medical community: Medical Association, and/or the Academy of Medicine. Talk to a doctor, both one familiar with the process and one who isn’t. What do doctors need, how do we reach the patients. (PCP’s).
- TRY TO SURVEY WHAT IS ALREADY BEING DONE OR HAS BEEN DONE.

ACTION ITEM – ALL MEMBERS:

Due Date, February 10th.

Send to the Public Guardian your top 10-15 points you feel should be included in an educational presentation.

Brief break, to describe the proposed legislation allowing the OPG to collect fees.

Jim Reynolds raised a question about whether the allowance of collecting fees by the OPG would alter the practice of referring the cases with assets and resources to the private FFS guardians. General consensus was that the answer lay with the DGC and it’s role of determining standards for the collection of fees.

III. New Business

Suzanne Seubert. Proposal for hospital funding for a position in the OPG. Linda Brittingham suggested that the idea would have the most impact if it was statewide. Indicated we should locate the Grant Writer for the Judicial Branch and see if she is able to find grants to support the idea.

DELAWARE GUARDIANSHIP COMMISSION

April 27, 2020

Meeting cancelled due to Pandemic

DELAWARE GUARDIANSHIP COMMISSION

July 27, 2020 at 2:00 p.m.

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

WEBEX:

Meeting link:

<https://alexandramcfassel.my.webex.com/alexandramcfassel.my/j.php?MTID=m11c38204e2f8e4f6b7513800384b88b2>

Meeting number:

126 067 2699

Password: 2ibEsdVjh36 (24237385 from phones and video systems)

Join by phone

+1-415-655-0001 US Toll

Access code: 126 067 2699

Please call Alexandra McFassel at 674-7463, or email at Alexandra.McFassel@delaware.gov if you need assistance or have questions.

Attachments available: Agenda

FUTURE MEETINGS:

NOTE-2020 Dates: July 27, 2020, October 26, 2020

- I. Opening Remarks/Minutes/News
- II. Old Business - COVID Procedures (Phase 2)
- III. New Business – COVID Phase 3
- IV. Open to Public

DRAFT MINUTES OF THE DELAWARE GUARDIANSHIP COMMISSION

July 27, 2020

Present were:

Hon. Pat Griffin	Eric Merlino
Patty Justice	Pat Maichle
Jim Reynolds	Karin Volker
Alexandra McFassel	Sherri Hageman
Tasha Stevens	Suzanne Seubert
Linda Brittingham	Cory Nourie

Discussion:

No Minutes to review.

Substantive Topic:

Review of guardianship through the COVID-19 Pandemic, and difficulties faced based on the practical experience of those present in the meeting.

Utilized the handout: "Frequently Asked Questions by Guardian about the COVID-19 Pandemic as of June 16, 2020" promulgated by the American Bar Association, the National Center for State Courts, and the National Guardianship Association.

Questions were asked about whether there were any reporting concerns or trust issues with the Nursing Facilities in Delaware in light of the statistical information showing a higher than (National) average of deaths in LTC SNF facilities. An overall positive response was given by membership, both in terms of how the crisis was being handled, and trust in the reporting. DHCI was reported to be excelling in its COVID response, with a concern that private facilities were less proactive. (There were no complaints from Fee-for-Service representatives regarding the response of any facility.) It was felt overall facilities had done their best.

There was discussion regarding the availability of medical records, and whether they could be obtained online. It was noted by some that medical records were obtained by fax.

It was mentioned that the Ombudsman's Office had been working very long hours and there seemed to be an awareness that the Ombudsman's office could be contacted with concerns.

Concurrent with the concerns raised in the ABA paper, the group discussed communication issues and being able to see clients. Visitation was being conducted outside and via technology. Overall, it appears tablet technology was being fully utilized to enable guardianship and court processes to continue. There was also mention that Zoom had been utilized to connect families. Tablets appear to have also been used for music therapy. There are not likely enough tablets in the nursing homes, as it was mentioned there were not a lot. PG asked if any collection programs were known of for tablets. None were. It was pointed out that new ones were preferable due to safety issues.

PPE supplies do not appear to be an issue.

Overall, there was a positive discussion as to the care and welfare of persons with disabilities and the ability of Guardians to communicate with the individuals, the families and the care providers. The ABA/NCSC/NGA paper was reviewed and no significant concerns were raised for Delaware. Protocols and CDC guidelines have been followed and PPE equipment is available. There have been some reporting issues, but no problems specifically reported by those present.

The next meeting was noted for October 26, 2020. A preference for ZOOM was noted.

End/ASM

DELAWARE GUARDIANSHIP COMMISSION

October 26, 2020 at 2:00 p.m.

PLEASE NOTE: Current locations for meeting: (Live via videoconferencing)

Zoom:

Meeting link:

ZOOM:

Join Zoom Meeting

<https://zoom.us/j/98798079342>

Meeting ID: 987 9807 9342

Passcode: 4284640005

Find your local number: <https://zoom.us/u/abb6JWjvB>

Please call Alexandra McFassel at 674-7463, or email at Alexandra.McFassel@delaware.gov if you need assistance or have questions.

2021 MEETING DATES:

January 25, 2021, April 26, 2021, July 26, 2021, October 25, 2021

- I. Opening Remarks/Minutes/News
- II. Old Business - Education Presentation Input and planning
- III. New Business – Future Meetings by Zoom
- IV. Open to Public

DELAWARE GUARDIANSHIP COMMISSION
MEETING MINUTES
FOR MEETING OF OCTOBER 26, 2020

In Attendance:

Alexandra McFassel, Esq., Public Guardian
Stefanie Champiny, Deputy Public Guardian
Sherri Hageman, Guardianship Advocacy Director
Tasha Stevens, Esq.
Cory Nouri, DDDS
Suzanne Seubert, Esq.
Hon. Selena Molina
Eric Merlino, Supportive Cares Solutions
Linda Brittingham
Pat Maichle
Representative Walker

I. Opening Remarks/Minutes/News

The attachments sent with the meeting announcement were the proposed minutes for July, the passed minutes for January, 2020, for reference, and a power point presentation presented for review of the group.

A quorum was reached and the minutes for the July 27, 2020 meeting were voted upon and passed. A correction was brought up for the materials attached for the meeting, that Ms. Seubert's name was misspelled on the minutes for January.

II. Old Business:

Review of educational materials discussed as being appropriate for development in January. The draft presentation, "Helping Others Make Decisions", was attached to the meeting notice.

- The group concurred (in response to the question presented) that the presentation should be split into three parts determined by audience:
 - 1) "Young Adult Transition" or "Reaching the Age of Majority"

- 2) “Elderly and Persons with Disabilities” or “Aging and Persons with Disabilities”
- 3) “Professionals”.
- Important points raised for inclusion:
 - “Capacity is ultimately a legal decision”. Suggestion made to use the term competency here in place of capacity. It was noted, however, that this process is initiated by a doctor, and once initiated, is not commonly second-guessed by another doctor (LB).
 - That individuals retain the right to make a will.
 - Suggested flow: “When the opinion of a Doctor brings to light a capacity issue” it initiates consideration of (in this order) supported decision making, surrogate decision making or use of a Health Care Agent/POA.
- Reference point for making a video: OMB Government Services, or “OK Video”, who assisted the DDC with a video on Supported Decision Making.
- IMPORTANT NOTE: Accessibility issues with the presentation on a website should be explored, to make certain the website and the presentation are accessible. A “read-speaker” was suggested.
- Practical suggestions: spell-check and pare down the language use. “There are too many words”. Discussion recommended a detailed spoken narration, and that a script is needed, while keeping the visual presentation streamlined.
- Along the lines of paring down the presentation, a suggestion was made that the presentation be limited to the “big picture” and language included to the effect that if more detailed presentations is needed, the audience should be referred to either research the matter further, or consult an attorney. The cost of attorneys was noted by the PG to be a barrier to having DM documents prepared (DM= Decision Making).
- Referrals for legal advice may be made to DVLS, CLASI, or a private attorney.
- It was noted that the presentation should recommend executing the ACHD/POA when the Supported DM document is done.
- Should the term “trusts” remain included on page 8? Trusts may require the legal advice spoken of above.
- Add information on ABLE Accounts.
- Slide 17 should use human language.

- **SIGNIFICANT DISCUSSION: (Legal Point).** Regarding the capacity required to execute a Power of Attorney (POA). It was indicated by one of the attorney participants that the level of capacity necessary to execute a POA is the same as that necessary to contract, (referencing the standard recommended by the DSBA, and Mark Vavala; and a CLE presentation by Jerry Hyman), specifically that to execute a POA, the principal must have the capacity required to make a contract. This is distinguished from “testamentary capacity” as presented in the power point. It was noted that further research would be conducted to make certain the correct info was presented.
- On slide 20, it was recommended that “unrelated” be added before “witnesses”, and that it be noted that the ombudsman is required to act as a witness when documents are executed in long-term care facilities.
- Notes on slide 22 refer to the statement/certification of agent. I need clarification on this?
- It was noted that the guardianship portion should indicate that guardianship does not interfere with the right to vote (unless the order specifically addresses the issue).
- Slide 27 should not link to forms.

III. New Business

A. The Question was presented as to whether the Commission could continue to meet via Zoom. Representative Walker indicated that the Public Meeting Law is satisfied if notice of the meeting is published 10 days in advance and the agenda is published. [I recall some discussion as to whether there had to be at least one physical location. Does anyone recall that discussion?]

B. Action Items mentioned:

- 1) Check with Senator Poore as to the status of the Task Force.
- 2) DHSS is working on a “Plan for Aging”, for further information the DGC should contact Gabriella Nejner (sp?) at the Secretary’s office.

END Draft Minutes.

DELAWARE GUARDIANSHIP COMMISSION
MEETING MINUTES

FOR MEETING OF OCTOBER 26, 2020

In Attendance:

Hon. Alexandra McFassel, Esq., Public Guardian¹
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Sherri Hageman, Guardianship Advocacy Director
Tasha Stevens, Esq.
Cory Nouri, DDDS
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¹ The Public Guardian is nominated by the Governor and confirmed by the Senate, making the use of the prefix "the Honorable" appropriate.

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END Draft Minutes.

Appendix D

Appendix D

Commission Members for Past 5 Years

Representing	Member	Term Served
Court of Chancery	The Honorable Selena Molina	2022-2025
Court of Chancery	Vice Chancellor Sam Glasscock	2012-2021
Dept of Justice	Karen Volker	2018-2021
Dept of Justice	Lisa Barchi	2012-2018
Dept of Justice	Randolph Vesprey	2021-2022
Dept of Justice	Vacant	0
Division of Developmental Services	Cory Nourie	2020-2023
Division of Developmental Services	Vacant	2017-2020
DSAAMH	Lauren Grace	2022-2025
DSAAMH	Vacant	0
DSAAPD	Julie Devlin, Esq.	2022-2025
DSAAPD	Patricia Justice, Esq.	2018-2021
Guardianship Monitoring Program	Sherri Hageman	2012-present
Rep for Disabilities	Brian Eng	2018-2019
Rep for Disabilities	Laura Waterland	2022-2025 [attended prior]
Rep for Disabilities	Vacant [No Official Appointment]	2020-2021
Representative	The Honorable Melanie Smith	2016-2019
Representative	The Honorable Sherry Dorsey Walker	2020-2023
Representative for Dept of Health and Social Services	Teresa Ritter	2022-2025
Representative for Dept of Health and Social Services	Vacant	2019-2022
Senate	The Honorable Bryan Townsend	2016-2019
Senate	The Honorable Elizabeth Lockman	2019-2022