



November 2016

# ELDER ABUSE

The Extent of Abuse  
by Guardians Is  
Unknown, but Some  
Measures Exist to  
Help Protect Older  
Adults

# GAO Highlights

Highlights of [GAO-17-33](#), a report to congressional requesters

## Why GAO Did This Study

The number of older adults, those over age 65, is expected to nearly double in the United States by 2050. When an older adult becomes incapable of making informed decisions, a guardianship may be necessary. Generally, guardianships are legal relationships created when a state court grants one person or entity the authority and responsibility to make decisions in the best interest of an incapacitated individual—which can include an older adult—concerning his or her person or property. While many guardians act in the best interest of persons under guardianship, some have been reported to engage in the abuse of older adults.

GAO was asked to review whether abusive practices by guardians are widespread. This report describes (1) what is known about the extent of elder abuse by guardians; and (2) what measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians.

GAO reviewed relevant research, reports, studies, and other publications issued by organizations with expertise on elder abuse and guardianship issues. GAO also conducted interviews with various guardianship stakeholders including federal agencies such as HHS, six selected state courts, and nongovernmental organizations with expertise in guardianship-related issues. In addition, GAO identified eight closed cases of abuse by guardians in which there was a criminal conviction or finding of civil or administrative liability to use as nongeneralizable illustrative examples. GAO makes no recommendations in this report.

View [GAO-17-33](#). For more information, contact Kathryn A. Larin at (202) 512-6722 or [larink@gao.gov](mailto:larink@gao.gov).

November 2016

## ELDER ABUSE

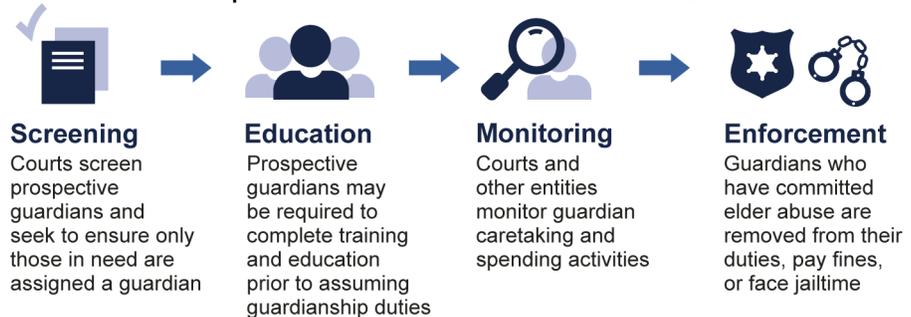
### The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults

## What GAO Found

The extent of elder abuse by guardians nationally is unknown due to limited data on key factors related to elder abuse by a guardian, such as the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian. Court officials from six selected states GAO spoke to noted various data limitations that prevent them from being able to provide reliable figures about elder abuse by guardians, including incomplete information about the ages of individuals with guardians. Officials from selected courts and representatives from organizations GAO spoke to described their observations about elder abuse by a guardian, including that one of the most common types appeared to be financial exploitation. Some efforts are under way to try to collect better data on elder abuse and guardianship at the federal, state, and local levels to support decision making and help prevent and address elder abuse by guardians. For example, the Department of Health and Human Services (HHS) plans to launch the National Adult Maltreatment Reporting System—a national reporting system based on data from state Adult Protective Services (APS) agency information systems by early 2017. According to HHS and its contractor, this system has the capability to collect information that could specifically help identify cases of elder abuse where a guardian was involved. GAO also identified state and local initiatives to capture key data points and complaint data as well as identify “red flags” such as unusually high guardian fees or excessive vehicle or dining expenses.

The federal government does not regulate or directly support guardianship, but federal agencies may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination, as well as by sharing information that state and local entities can use related to guardianship. State and local courts have primary responsibility over the guardianship process and, as such, have a role in protecting older adults with guardians from abuse, neglect, and exploitation. Measures taken by selected states to help protect older adults with guardians vary but generally include screening, education, monitoring, and enforcement.

#### Measures Used to Help Protect Older Adults with Guardians from Abuse



Source: GAO analysis of selected state courts' guardianship oversight roles. | [GAO-17-33](#)

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## Abbreviations

ACUS	Administrative Conference of the United States
APS	Adult Protective Services
CFPB	Bureau of Consumer Financial Protection
HHS	Department of Health and Human Services
NAMRS	National Adult Maltreatment Reporting System
NCSC	National Center for State Courts
SSA	Social Security Administration
WINGS	Working Interdisciplinary Networks of Guardianship Stakeholders

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November 16, 2016

The Honorable Susan M. Collins  
Chairman  
The Honorable Claire McCaskill  
Ranking Member  
Special Committee on Aging  
United States Senate

The Honorable Orrin G. Hatch  
Chairman  
Committee on Finance  
United States Senate

In 2014, the U.S. Census Bureau estimated that there were over 46 million older adults—individuals aged 65 and over—in the United States. The Census Bureau predicts this number will nearly double to 88 million by 2050. When an older adult becomes incapable of making informed decisions, a guardianship may be necessary. Generally, guardianships are legal relationships created when a state court grants one person or entity the authority and responsibility to make decisions in the best interest of an incapacitated individual—which can include an older adult—concerning his or her person or property.<sup>1</sup> State and local courts are generally responsible for overseeing guardianship appointments. The federal government does not regulate or directly support guardianship, but federal agencies may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination. In addition, some agencies have established programs that appoint representative payees to manage

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<sup>1</sup>The focus of this report is older adults with guardians. While some states differentiate between various types of guardianships and conservatorships, for the purposes of this report we define guardianship broadly as a relationship created by state law in which a court gives one person or entity the duty and power to make personal or property decisions, or both, for another person—often called a ward or person under guardianship. While terminology and responsibilities vary from state to state, in this report we use the term “guardian” broadly to refer to various types of state guardians and conservators.

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federal benefits for individuals who are unable to do so for themselves.<sup>2</sup> While many guardians act in the best interest of persons under guardianship, some have been reported to engage in the abuse of older adults.<sup>3</sup>

Because of your concern about the financial exploitation and other abuses of older adults, you asked us to review whether abusive practices by guardians are widespread. This report describes (1) what is known about the extent of elder abuse by guardians; and (2) what measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians from abuse. In addition, appendix I contains information related to coordination between federal representative payee programs and state guardianship programs.

To determine what is known about the extent of elder abuse by guardians, we reviewed relevant research, reports, studies, and other publications issued by organizations with expertise on elder abuse and guardianship issues. We also conducted interviews with various guardianship stakeholders including the following:

- Federal agencies including the Department of Health and Human Services (HHS), Bureau of Consumer Financial Protection (CFPB), and Department of Justice to discuss efforts to support to state guardianship programs. We also interviewed officials from the Social Security Administration (SSA), the Department of Veterans Affairs, and Office of Personnel Management to discuss their representative payee programs.
- State court officials that oversee or are otherwise knowledgeable on guardianship-related issues from California, Florida, Minnesota, Ohio, Texas, and Washington. These states were selected because they had the largest populations of older adults as well as at least two of the following criteria: guardian certification requirements, a Working

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<sup>2</sup>The Social Security Administration (SSA), the Department of Veterans Affairs, and the Office of Personnel Management have programs that appoint representative payees to manage federal benefits received by individuals who are unable to do so for themselves. We use the term “representative payee” to refer to Department of Veterans Affairs fiduciaries and SSA or Office of Personnel Management representative payees. A representative payee may also be a guardian, and some beneficiaries with a representative payee also have a guardian.

<sup>3</sup>For the purposes of this report, we define elder abuse as any knowing, intentional, or negligent act by anyone that causes harm or a serious risk of harm to an older adult, including physical, sexual, or emotional abuse, neglect, and financial exploitation.

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Interdisciplinary Networks of Guardianship Stakeholders (WINGS) program, an independent guardianship support program, or citation during our preliminary interviews as having promising practices or known problems.<sup>4</sup> In addition, we spoke with an official from the Conservator Account Auditing Program, a statewide program housed in the Minnesota court system that audits the periodic accounting information certain guardians are required to provide to the court. We also interviewed prosecutors, judges, and county clerk officers from some of the six states referred to us during our interviews with other court officials and nongovernmental organizations. The observations gleaned from interviews with officials from these states are not generalizable to other states.

- Nongovernmental organizations with expertise in guardianship-related issues. Specifically, we interviewed officials from the American Bankers Association, American Bar Association, Center for Elders and the Courts, National Adult Protective Services Association, National Center for State Courts (NCSC), National Committee for the Prevention of Elder Abuse, National Association to Stop Guardian Abuse, National Guardianship Association, Center for Guardianship Certification, Uniform Law Commission, and Virginia Tech Center for Gerontology. We selected nongovernmental organizations to interview by reviewing published materials related to elder abuse by guardians, conducting a web search using terms related to elder abuse by guardians, and referrals from our preliminary interviews.

We also identified eight closed cases of elder abuse by guardians in which there was a criminal conviction or finding of civil or administrative liability in the last 5 years, to illustrate the types of abuse that guardians have been found to inflict on older adults under guardianship. Seven of these cases were identified using public-record searches, while an eighth was referred to us during one of our interviews.<sup>5</sup> To corroborate key information about each case, we examined court records, police reports, or other relevant documents. The illustrative examples we identified are nongeneralizable and cannot be used to make inferences about the overall population of guardians.

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<sup>4</sup>WINGS programs are court–community partnerships designed to affect the ways courts and guardians practice and to improve the lives of people who need help in decision making.

<sup>5</sup>Public-record searches included web searches for terms related to elder abuse by a guardian such as “elder abuse,” “guardianship abuse,” “convicted,” and “sentenced.” We also reviewed public websites that list disciplinary actions taken against certified guardians.

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To identify measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians from abuse, we reviewed relevant research, publications, and other materials on elder abuse and guardianship. We also conducted interviews with the various guardianship stakeholders described above.

We conducted this performance audit from November 2015 to November 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Guardianship

In general, state courts appoint a guardian for individuals when a judge or other court official determines that an individual lacks the capacity to make important decisions regarding his or her own life or property. Depending on the older adult's needs and relevant state laws, a court may appoint a "guardian of the person" who is responsible for making all decisions for the older adult, or a "guardian of the estate"—or conservator—who only makes decisions regarding the older adult's property.

When state courts appoint guardians, older adults often forfeit some or all of their decision-making powers. Depending on the terms of the court's guardianship appointment, older adults may no longer have the right to sign contracts, vote, marry or divorce, buy or sell real estate, decide where to live, or make decisions about their own health care.

Courts can generally appoint different types of guardians including the following:

- **Family guardians.** According to the Center for Elders and the Courts, courts favor the appointment of a family member or friend, often called

a family guardian.<sup>6</sup> However, it may not always be possible to find family or friends to take on this responsibility.

- **Professional guardians.** A professional guardian may be hired for a fee to be paid by the older adult, and may serve more than one older adult at a time. Some states require that a professional guardian be certified. This requirement is described in additional detail later in this report.
- **Public guardians.** If an older adult is unable to find a capable family or friend and is unable to afford the fees and associated expenses of hiring a professional guardian, a public guardian—whose cost is funded by the state or local government—may be appointed.

## Elder Abuse

Elder abuse is a complex phenomenon.<sup>7</sup> Table 1 describes the types of elder abuse, according to the National Center on Elder Abuse.<sup>8</sup> Each of these can affect older adults with guardians, as well as those without. The categories include physical, sexual, and emotional abuse, as well as financial exploitation, neglect, and abandonment, but it is not uncommon for an older adult who has been abused to experience more than one type of abuse simultaneously.

**Table 1: Types of Elder Abuse**

Type <sup>a</sup>	Description
Physical abuse	The use of physical force that may result in bodily injury, physical pain, or impairment.
Sexual abuse	Nonconsensual sexual contact of any kind with an older adult.
Psychological abuse	Also referred to as verbal or emotional abuse, psychological abuse is the infliction of anguish, pain, or distress through verbal or nonverbal acts.
Financial exploitation	The illegal or improper use of an older adult's funds, property, or assets.
Neglect	The refusal or failure to fulfill any part of a person's obligations or duties to an older adult.

<sup>6</sup>The Center for Elders and the Courts, a project of the NCSC, attempts to increase judicial awareness of issues related to aging, and provides training tools and resources to improve court responses to elder abuse and guardianships.

<sup>7</sup>For recent GAO reports related to elder abuse, see GAO, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, [GAO-13-110](#) (Washington, D.C.: Nov. 15, 2012); and *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, [GAO-11-208](#) (Washington, D.C.: Mar. 2, 2011).

<sup>8</sup>The National Center on Elder Abuse is a national resource center dedicated to the prevention of elder abuse. Funded by the Administration on Aging in HHS, it is made up of a consortium of grantees.

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Abandonment

The desertion of an older adult by an individual who has assumed responsibility for providing care for an older adult, or by a person with physical custody of an older adult.

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Source: National Center on Elder Abuse. | GAO-17-33

<sup>a</sup>Federal and state law may define these terms differently.

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## The Extent of Elder Abuse by Guardians Is Unknown, and Available Information Varies by State and Locality, but Some Efforts Are Under Way to Gather More Data

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### Courts Lack Comprehensive Data on Older Adults in Guardianships and Elder Abuse by Guardians, but Some Courts Have Limited Information

The extent of elder abuse by guardians nationally is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian. While courts are responsible for guardianship appointment and monitoring activities, among other things, court officials from the six selected states that we spoke to were not able to provide exact numbers of guardians for older adults or of older adults with guardians in their states. Also, on the basis of our interviews with court officials, none of the six selected states appear to consistently track the number of cases related to elder abuse by guardians.

Court officials from the six states we spoke with described the varied, albeit limited, information they have related to elder abuse by guardians and noted the various data limitations that prevented them from providing reliable figures on the extent of elder abuse by a guardian.

- **California.** A court official in California stated that while the Judicial Council of California collects information about requests for restraining orders to prevent elder abuse, it does not separately identify those cases alleging elder abuse by a guardian. The council also collects the number of new guardianships filed each year statewide. The official stated the number of new adult guardianships is partially

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estimated because about half of the courts in the state report a combined number of guardianships for minors and adults.

- **Florida.** A court official in Florida acknowledged that the court does not collect guardianship and elder abuse information such as the number of guardians for older adults, the types of guardians currently serving in guardianship roles for older adults, and the number of elder abuse hearings conducted. This official cited lack of funding as a barrier for collecting this type of information. Detailed information on financial exploitation specifically may be available at the county level. For example, officials from one county in Florida told us that it collects data on the number of guardianships and the assets guardians control, and also identified the amount of fraud over a 4-year period.
- **Minnesota.** A court official in Minnesota told us that the state differentiates between guardianship of the person and conservatorship of the estate. The state collects figures on the (1) number of guardianship cases, (2) number of conservatorship-only cases, and (3) number of combined guardianship and conservatorship cases; and can break these figures out by minors and adults. The state also has a statewide program housed in the court system—the Conservator Account Auditing Program—that audits the financial reports that guardians of the estate (or conservators) are required to submit electronically through a system called MyMNConservator. This system can calculate the total assets under court jurisdiction in Minnesota, which are presented in an annual report. According to the annual report, the program audits accounts with assets over a certain threshold at regular intervals and upon referral by the court. However, one of these officials told us that this system does not track the age of the individuals with guardians of the estate, so the number of older adults in this arrangement is not identifiable.
- **Ohio.** An official from the Supreme Court of Ohio told us probate courts in the state report to the Supreme Court quarterly aggregate caseload data including the number of pending guardian applications for adults, the number of new applications for the appointment of guardians, and the number of guardianships closed, but the data are not classified by the age of the person under guardianship. Additionally, although local courts may do so, the Supreme Court of Ohio does not capture the number of complaints related to guardianships. Court officials directed us to state Adult Protective Services (APS) elder abuse complaint data.
- **Texas.** Court officials in Texas told us that every county is required to submit monthly information to the Office of Court Administration pertaining to active guardianships. However, officials told us that

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some counties do not report any active guardianships (considered to be underreporting), and some counties overreport on active guardianships that should have actually been closed, such as when the person under guardianship is deceased.

- **Washington.** A court official in Washington stated that while she could provide the number of adult guardianships statewide, she could not provide this information specifically for older adults. Further, the state's Certified Professional Guardian Board publishes the number of grievances against professional guardians each year its annual Grievance Report, but does not identify which were for older adults.<sup>9</sup> This official stated that while the court has case information on abuse by professional guardians, it does not track information on abuse by family guardians.

Representatives from nongovernmental organizations we spoke with also told us that the way cases are classified in the court system makes collecting data on elder abuse by guardians difficult. For example, representatives from the Center for Elders and the Courts told us that few cases appear to be clearly labeled with phrases such as "elder abuse" in the court system, making it difficult to identify the universe of these cases. These representatives explained that cases of elder abuse may appear as other charges, such as assault, battery, or theft. Identifying all cases involving elder abuse, and more specifically that by a guardian, would require a difficult manual review of a large volume of court cases. Further, stakeholders we spoke to noted that instances of elder abuse by guardians can be difficult to prosecute, reducing the number of known cases in the legal system and presenting an additional challenge to identifying the extent of elder abuse by guardians.

Collecting reliable information about court practices related to guardianship can also be challenging. At the request of SSA, the Administrative Conference of the United States (ACUS) administered and analyzed the results of a survey of judges, court staff, and guardians to

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<sup>9</sup>Washington's Certified Professional Guardianship Board defines a grievance as a written document filed by any person with the board or directly by the board itself, for the purpose of commencing a review of the professional guardian's conduct under the rules and disciplinary regulations applicable to professional guardians.

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review guardianship practices in state courts in 2014.<sup>10</sup> The survey collected information regarding appointment, monitoring, and discipline of guardians; caseloads and electronic case-management capabilities; and court interaction with federal agencies and other organizations.<sup>11</sup> However, in administering this survey, ACUS was unable to identify a sample of courts that were representative of the guardianship practices in all states as no comprehensive list identifying courts or judges that have oversight of adult guardianship cases exists, which makes it impossible to generalize the findings to a known universe.

In the absence of reliable data, information on individual cases can provide some insight into the types of abuse guardians have been found to inflict on older adults under guardianship. In a 2010 report, we identified hundreds of allegations of abuse, neglect, and exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010. At that time, we reviewed 20 of these cases and found that guardians had stolen or otherwise improperly obtained \$5.4 million from 158 incapacitated victims, many of whom were older adults.<sup>12</sup> Table 2 provides a summary of eight new cases in which guardians were found to have financially exploited or neglected older adults under guardianship in the last 5 years. Seven of these cases were identified using public-record searches, while the eighth was referred to us during one of our interviews. We examined court records, police reports, or other relevant documents to corroborate key information about each case. The illustrative examples of selected closed cases of elder abuse by a guardian we identified are nongeneralizable and cannot be used to make inferences about the overall population of guardians.

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<sup>10</sup>ACUS is an independent federal agency that attempts to improve the administrative process through research and provides advice and recommendations for improved federal agency procedures. This study was done in response to recommendations by GAO and Congress to improve SSA's collaboration with state courts to help protect incapacitated persons and better prevent the misuse of federal funds.

<sup>11</sup>Administrative Conference of the United States, *SSA Representative Payee: Survey of State Guardianship Laws and Court Practices* (Dec. 24, 2014).

<sup>12</sup>See GAO, *Guardianships: Cases of Financial Exploitation, Abuse, and Neglect of Seniors*, [GAO-10-1046](#) (Washington, D.C.: Sept. 30, 2010).

**Table 2: Selected Closed Cases of Elder Abuse by a Guardian**

Case number	Type of elder abuse	Case details
1	Financial exploitation	<ul style="list-style-type: none"> <li>According to a complaint filed by an official in the Office of the State Attorney in Florida, over the course of 21 months a family guardian spent money of the person under guardianship—an elderly disabled adult—on items unrelated to the care and welfare of that individual including personal bills, services, restaurant purchases, and cash withdrawals.</li> <li>In 2013, the guardian pleaded guilty to the exploitation of an elderly or disabled adult, and was sentenced to 120 days in jail and ordered to pay over \$33,000 in restitution.</li> </ul>
2	Financial exploitation	<ul style="list-style-type: none"> <li>According to Supreme Court of Ohio documents, a professional guardian misappropriated funds from persons under guardianship—at least one of whom was elderly—to support his drug addiction. The court found that the guardian’s misconduct caused harm by misappropriating more than \$200,000 over a 6-year period.</li> <li>In 2014, the guardian was convicted of three felony counts of theft from the elderly, and was sentenced to a 4-1/2-year prison term, and ordered to pay restitution. In 2016, he was indefinitely suspended from the practice of law in Ohio.</li> </ul>
3	Financial exploitation	<ul style="list-style-type: none"> <li>According to a criminal complaint in Virginia, a family guardian spent money of the person under guardianship—her 83-year-old aunt—on personal expenses including an \$11,645 pickup truck for a friend and \$360 at a sunglasses retailer in Tennessee, and told law enforcement officials that she believes she is entitled to be taken care of using her aunt’s funds.</li> <li>In 2012, the guardian pleaded guilty to intent to defraud, and agreed that total losses were no less than \$29,000. The guardian was sentenced to 12 months in prison and ordered to pay restitution of over \$32,000.</li> </ul>
4	Financial exploitation	<ul style="list-style-type: none"> <li>According to a criminal complaint in Virginia, the legal assistant of a professional guardian in Virginia used her unauthorized access to the bank accounts of an elderly person under guardianship to obtain more than \$100,000 to support a drug habit by issuing and cashing fraudulent checks.</li> <li>The guardian initially discovered the thefts but, because of a personal relationship with his assistant, he failed to remove the access to the accounts, thereby allowing the thefts to continue, and attempted to conceal the scope and extent of the thefts from law enforcement officials and others.</li> <li>In 2014, the guardian pleaded guilty to misprision of a felony, agreed to repay the stolen funds, and in 2015 consented to the revocation of his law license.</li> </ul>
5	Financial exploitation and neglect	<ul style="list-style-type: none"> <li>According to documents from the Certified Professional Guardian Board in the state of Washington, a professional guardian violated the Certified Professional Guardian Standards of Practice by (1) failing to properly manage the financial affairs of an elderly person under guardianship including the untimely filing of tax returns and payment of medication bills, (2) not providing basic clothing, (3) not visiting regularly or making arrangements for qualified visits, and (4) improperly taking guardian fees without consultation of the person under guardianship when the guardian was already being paid by the Office of Public Guardianship.</li> <li>The mismanagement of the funds of the person under guardianship represented a potential loss of up to \$25,000 and accounted for up to 25 percent of the person’s assets.</li> <li>In 2015, the state Certified Professional Guardian Board revoked the guardian’s certification, and the guardian was required to pay administrative costs of approximately \$20,000.</li> </ul>

Case number	Type of elder abuse	Case details
6	Financial exploitation and neglect	<ul style="list-style-type: none"> <li>According to documents from the Texas Judicial Branch Certification Commission, a professional guardian was responsible for more than 50 persons under guardianship statewide, including at least 6 older adults in two facilities 400 miles from the guardian's home and place of business.</li> <li>For the persons under guardianship in these two facilities, the guardian went months without contacting these individuals, did not provide them with shoes and clothing, was late in paying facilities, withheld moneys from their monthly stipends, and was nonresponsive to communications from their facilities.</li> <li>This conduct resulted in 16 violations of provisions of Texas's Minimum Standards for Guardianship Services. On the basis of these and other unrelated violations, the guardian was required to pay an administrative penalty of over \$25,000 and is not permitted to renew her guardian certification.</li> </ul>
7	Financial exploitation	<ul style="list-style-type: none"> <li>According to court documents, a professional guardian in Nevada withdrew money from the bank accounts of persons under guardianship including over \$78,000 in cash from an elderly person, falsified payments to her own company, and inappropriately used the funds of person under guardianship for other personal purchases such as jewelry items and payment to a cell-phone company.</li> <li>In 2013, the guardian pleaded guilty to the exploitation of an elderly or vulnerable person, which is a felony in Nevada, and was sentenced to 8 years in prison and ordered to pay over \$160,000 in restitution.</li> </ul>
8	Financial exploitation	<ul style="list-style-type: none"> <li>According to court documents, a professional guardian in Oregon mistreated or stole money from 26 persons under guardianship including at least five older adults.</li> <li>The guardian, among other things, (1) intercepted checks made out to persons under guardianship, third-party care providers, and ambulance companies to deposit them in her own personal bank account and (2) when persons under guardianship died, the guardian diverted funds to her own personal bank account.</li> <li>In total, the guardian was convicted of five counts of Criminal Mistreatment in the First Degree, four counts of Aggravated Theft in the First Degree, one count of Theft in the First Degree, one count of money laundering, and one count of tax evasion. The guardian was sentenced to 48 months in prison and was ordered to pay more than \$117,000 in restitution to the victims. The guardian's certification was also revoked.</li> </ul>

Source: GAO analysis of court, police, state certifying board, and other state agency data. | GAO-17-33

Stakeholders we spoke to described their observations about elder abuse by a guardian. According to stakeholders, financial exploitation is among the more common types of elder abuse. Similarly, all eight of the closed cases of elder abuse by a guardian we found, presented above in table 2, were examples of financial exploitation. A prosecutor in one of the states we spoke to shared her observation that the majority of financial exploitation by professional guardians is done through overcharging for services that were either not necessary or were never performed. One representative commented that greed was a driving factor for guardians to financially exploit persons under guardianship. Some stakeholders we spoke to also expressed concerns that guardians may become overwhelmed by their guardianship responsibilities, or may not have the

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proper training and education to understand and perform their guardianship duties.

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### Federal, State, and Local Entities Have Some Efforts Under Way to Collect More Information on Elder Abuse by Guardians

Federal, state, and local entities have some efforts under way to try to collect better data on elder abuse and guardianship to support decision making and help prevent and address elder abuse by guardians. While state courts are responsible for overseeing the guardianship process—appointment and screening, education, monitoring, and enforcement—HHS has also taken steps to collect better data on guardianship and elder abuse. In 2011, we found that existing studies likely underestimated the full extent of elder abuse and could not be used to track trends.<sup>13</sup> At that time, we recommended that HHS coordinate with the Attorney General to conduct a pilot study to collect, compile, and disseminate data on the feasibility and cost of collecting uniform, reliable APS administrative data on elder abuse cases from each state, and compile and disseminate those data nationwide. HHS agreed with our recommendation.

In 2013, HHS's Administration on Aging began developing the National Adult Maltreatment Reporting System (NAMRS)—a national reporting system based on standardized data submitted by state APS agency information systems.<sup>14</sup> The goal of the system is to provide consistent, accurate national data on the exploitation and abuse of older adults and adults with disabilities as reported to state APS agencies. According to HHS officials and the contractor developing NAMRS, this system will have the capability to collect information that could help identify cases of elder abuse where a guardian was involved.<sup>15</sup> For example, NAMRS can collect information about substitute decision makers, including guardians, associated with the complaint such as whether there was a substitute decision maker at the start and end of the investigation, whether the perpetrator was the older adult's substitute decision maker, and what recommendations or actions the state APS agency initiated against the perpetrator. An official from the Administration on Aging stated that the

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<sup>13</sup>See GAO, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, [GAO-11-208](#) (Washington, D.C.: Mar. 2, 2011).

<sup>14</sup>HHS's Administration on Aging aims to promote the well-being of older adults by providing services and programs designed to help them live independently in their homes and communities.

<sup>15</sup>State APS agencies receive some complaints about incidents of elder abuse, so their systems represent a potential source of information for compiling national data on elder abuse.

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pilot phase of the system is complete and the agency hopes to roll it out for data submissions from all states by early 2017.<sup>16</sup>

Representatives from the National Adult Protective Services Association stated that NAMRS would provide important information that could inform the guardianship process once fully implemented.<sup>17</sup> For example, a court official from Florida suggested that having more information on elder abuse by a guardian may help guardianship programs decide whether to place more focus on screening, education, and monitoring of guardians, and enforcement of policies and laws governing guardians, as described later in this report.

In addition to this federal effort, some state and local efforts are also under way to collect better data on elder abuse and guardianship. However, some of the stakeholders we spoke to acknowledged that these efforts face funding challenges and require ongoing support.

- **Compiling data points.** Officials in one county in Florida described an ongoing project they have to extract key data points from guardianship cases, such as the reason for alleged incapacity, asset values, and time spent with a guardian, to share with other state guardianship programs. These officials expect that the data points will be used to assess the guardianship system in this county, and suggested that courts could use critical data points on guardianship such as the average time in guardianship, average burn rate of assets, or typical fees charged in order to make appropriate data-driven decisions on how to better address cases of potential elder abuse by a guardian. A court official in Florida told us that in the fall of 2016, the Chief Justice of Florida will appoint a workgroup under the state's Judicial Management Council to examine judicial procedures and best practices related to guardianship to help ensure that courts are protecting these individuals. Similarly, in Texas, the Office of

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<sup>16</sup>While the system was designed to be flexible enough to be able to eventually gather data from different sources besides state APS agencies, there are currently no plans to enter information from other sources into NAMRS.

<sup>17</sup>The National Adult Protective Services Association is a nonprofit organization whose goal is to provide APS programs a forum for sharing information, solving problems, and improving the quality of services for victims of elder and vulnerable adult mistreatment. Its mission is to strengthen the capacity of APS at the national, state, and local levels, to effectively and efficiently recognize, report, and respond to the needs of elders and adults with disabilities who are the victims of abuse, neglect, or exploitation, and to prevent such abuse whenever possible.

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Court Administration started the Guardianship Compliance Pilot Project, which provides additional resources to courts handling guardianships by supplementing local staff to review compliance with statutory requirements and by developing an electronic database to monitor guardianship filings of initial inventory and annual accountings. Information collected includes the number of courts involved in the project, the number of guardianships reviewed, the number of guardianships out of compliance with required reporting, the number of guardians reported to the court for person under guardianship well-being or financial exploitation concerns, and the status of technology developed to monitor guardianship filings.

- **Collecting complaint data.** In Washington, the state’s Certified Professional Guardianship Board collects complaint and grievance information about professional guardians. In its annual report, the state publishes the number of cases opened, closed, investigated, and in need of investigation. The state also discloses the number of sanctions, which can include decertification, suspension, reprimand, prohibition from taking new cases, and admonishment, imposed on professional guardians. Ohio’s Disciplinary Counsel also reported the number of grievances filed regarding guardianships in 2015 and through September 2016. A court official from the Judicial Council of California told us his state tracks the number of requests for restraining orders under California’s Elder Abuse and Dependent Adult Civil Protection Act, which can include those against guardians.
- **Identifying red flags.** Representatives from the National Center for State Courts (NCSC) are using data collected from Minnesota’s Conservator Account Auditing Program to identify “red flags,”—or risk indicators—such as unusually high guardian fees or excessive vehicle or dining expenses that would help courts detect cases that need additional review or monitoring.<sup>18</sup> Representatives from the NCSC told us they are hopeful that these efforts will help courts move forward in preventing and responding to abuses.

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<sup>18</sup>The NCSC is an independent, nonprofit court-improvement organization that serves as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts.

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Federal Agencies Provide Funding to Support Coordination and Sharing Information, While State and Local Entities Oversee the Guardianship Process to Help Protect Older Adults with Guardians from Abuse

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Federal Agencies' Measures to Help Protect Older Adults with Guardians Include Providing Funding to Support Coordination and Sharing Information

Providing Funding to Support Coordination

While the federal government does not regulate or directly support guardianship, federal agencies, such as HHS, may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination. The federal government also shares information that state and local entities can use related to guardianship.

HHS has assumed a national role for funding grants to support coordination and information sharing that could help educate guardians and other parties.

- HHS has funded grants through the National Legal Resource Center to share best practices related to guardianship with states, attorneys, and other interested parties. The grant activities cover a wide range of guardianship issues related to court oversight and monitoring and illustrate the ongoing commitment to developing nationwide "Best Practice" resources on this issue. For example, grant activities have included providing technical assistance and policy guidance to states on guardianship issues, oversight and monitoring improvements, developing standards of practices for guardians, training attorneys practicing in the area of guardianship law, and developing solutions for interstate jurisdictional issues involving guardianship cases.

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- HHS launched the Elder Justice Innovation Grants program in fiscal year 2016. The purpose of the program is to support foundational work to create credible benchmarks for elder abuse, neglect, and exploitation prevention and control, and for program development and evaluation. HHS expects projects funded by these grants will contribute to the improvement of the field of elder abuse prevention and intervention by developing and advancing approaches to address new and emerging issues related to elder justice, or by establishing and contributing to the evidence-base of knowledge. In 2016, HHS identified abuse in guardianship as one of the targeted priority areas for this program, and according to agency officials awarded three grants in this target area—each grant is funded at approximately \$1,000,000 over 2 years, September 2016 through September 2018. At the completion of these grants, HHS expects grantees will have developed materials and information for further replication and testing.
  - HHS also funds the National Center on Elder Abuse, which collects information regarding research, training, best practices, news, and resources on elder abuse, and provides this information to policymakers, professionals in the elder justice field, and the public.

In addition, the State Justice Institute has provided grants to various entities to improve coordination and develop and share best practices.<sup>19</sup>

- With help from funding provided by the State Justice Institute and others, states have developed Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) programs to facilitate enhanced coordination. WINGS programs bring together judges and court staff, the aging and disability networks, the public and private bar, mental-health agencies, advocacy groups, medical and mental-health professionals, service providers, family members and individuals affected by guardianship, and others to drive changes affecting the ways courts and guardians practice and to improve the lives of older adults (and others) with guardians. National Guardianship Association representatives told us that WINGS groups look at the broader picture of what is happening to address guardianship-related issues across the country and are not just focused on abuse and neglect.<sup>20</sup> WINGS

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<sup>19</sup>Congress established the State Justice Institute as a private, nonprofit corporation that awards grants to improve the quality of justice in state courts, and create solutions to common issues faced by all courts. 42 U.S.C. §§ 10701 – 10713.

<sup>20</sup>The National Guardianship Association is a nonprofit corporation whose mission is to advance the nationally recognized standard of excellence in guardianship.

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programs can make recommendations to state supreme courts and state legislatures based on their observations. American Bar Association representatives told us one of the keys to the success of a WINGS program is ongoing communication.<sup>21</sup> The programs are not designed to be onetime conversations or a task force, but instead represent an ongoing communication mechanism to ensure optimal coordination. During our interviews, feedback for WINGS programs was consistently positive, and the WINGS group we spoke with emphatically encouraged other states to develop their own WINGS-like programs and expressed interest in continued funding support for its program.<sup>22</sup> In addition, one of the goals of grants awarded through the Elder Justice Innovation Grants program is to establish, expand, and enhance state WINGS programs to improve the ability of state and local guardianship systems to develop protections less restrictive than guardianship and advance guardianship reforms. As of September 2016, at least 14 states and the District of Columbia have adopted either WINGS programs or something that resembles these programs.

## Sharing Information

CFPB has developed materials that can be used by guardians, banks, and others to help better protect older adults with guardians from abuse.

- CFPB has published numerous educational materials to help protect older adults from financial abuse and exploitation. These include guides for fiduciaries that lay out the rules and responsibilities for appropriately handling the finances of another person.<sup>23</sup> CFPB has also developed guidance for financial institutions. For example, in 2013, CFPB and seven other federal agencies issued guidance on privacy laws and reporting information on financial exploitation.<sup>24</sup> This guidance is intended to make it clear that reporting suspected financial abuse of older adults to appropriate local, state, or federal agencies does not, in general, violate the privacy provisions of the

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<sup>21</sup>The American Bar Association is a voluntary professional organization for attorneys that, among other things, has developed extensive research on guardianship and related matters.

<sup>22</sup>The American Bar Association and National Guardianship Network developed a 10-step guide for replicating WINGS programs.

<sup>23</sup>According to CFPB officials, these guides can be adapted to incorporate state-specific rules and terminology.

<sup>24</sup>Board of Governors of the Federal Reserve System, *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults* (Washington, D.C.: 2013).

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Gramm-Leach-Bliley Act or its implementing regulations.<sup>25</sup> CFPB officials stated that they hoped the 2013 Interagency Guidance will help financial institutions better understand their ability to report suspected financial exploitation to relevant federal, state, and local agencies. Additionally, in 2016, CFPB released an advisory and related recommendations for financial institutions on preventing and responding to elder financial exploitation.

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### State and Local Measures Can Include Screening, Education, Monitoring, and Enforcement

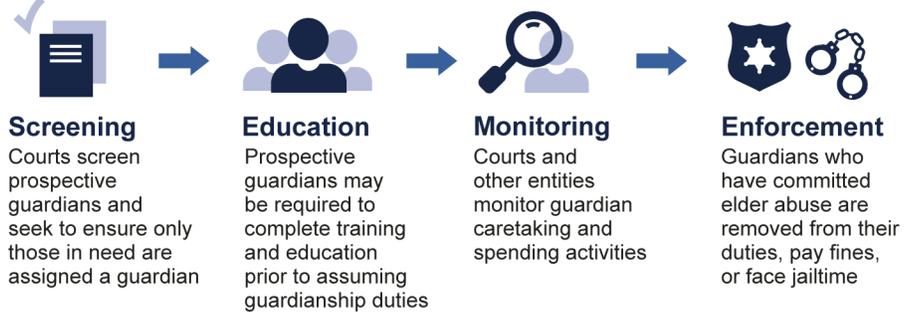
State and local courts have primary responsibility over the guardianship process and, hence, have a role in protecting older adults with guardians from abuse. In 2014, the National Association for Court Management published an adult guardianship guide with detailed information about how to plan, develop, and sustain a court guardianship program.<sup>26</sup> This report laid out detailed suggestions for practices to effectively establish guardianships, monitor guardians, and train relevant stakeholders. Guardianship laws can also vary by state, but organizations such as the Uniform Law Commission—an organization that drafts legislation for states intended to bring clarity and stability to state statutory law—have developed model legislation to promote the uniformity of procedures for appointing guardians and conservators and strengthening due process protections for individuals in guardianship proceedings and jurisdictional conflicts. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed that measures states can take to help protect older adults with guardians vary but generally include screening, education, monitoring, and enforcement as shown in figure 1.

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<sup>25</sup>Gramm-Leach-Bliley Act, Pub. L. No. 106-102, Title V, §§ 501 – 510, 113 Stat. 1338, 1436 – 1445 (Nov. 12, 1999) and 12 C.F.R. §§ 1016.1 – 1016.17.

<sup>26</sup>National Association for Court Management, *Adult Guardianship Guide: A guide to plan, develop, and sustain a comprehensive court guardianship and conservatorship program*, 2013-2014 Guide (Williamsburg, Virginia: 2014).

**Figure 1: Measures Used to Help Protect Older Adults with Guardians from Abuse**



Source: GAO analysis of selected state courts' guardianship oversight roles. | GAO-17-33

## Screening

According to multiple stakeholders we spoke with, an important step of the guardianship process is for a court to ensure that only those in need are appointed a guardian. Once the need for a guardian has been identified, state courts generally are responsible for screening proposed guardians to help ensure suitable individuals are appointed. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to screening.

- **Least-restrictive option.** Due to the loss of rights experienced when an older adult is placed into a guardianship, courts determine whether a guardian is appropriate. One representative from a state WINGS program that we spoke with expressed concern that guardianship may not be appropriate for some persons under guardianship, especially when the appointment is made for the convenience of others. To address this concern, this representative told us that courts in her state have modified court guardianship forms to encourage the use of less-restrictive alternatives to guardianship, such as a caregiver.<sup>27</sup>
- **Periodically reexamine guardianship.** Some courts periodically reexamine the appropriateness of the guardianship to ensure that it is working for the person under guardianship and remains appropriate, since it can be difficult for an older adult with a guardian to demonstrate that his or her capacity has been restored.
- **Criminal history and credit checks.** These types of checks provide an easy and relatively inexpensive way to ensure that potential guardians do not have a criminal history or financial concerns.

<sup>27</sup>A caregiver is an individual who provides compensated or uncompensated care to an older adult who needs supportive services in any setting.

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However, one of the stakeholders we spoke with described some limitations regarding background checks. For example, criminal-background check systems may not present a complete picture for various reasons, including that many elder abuse cases are not prosecuted. Even when prospective guardians have been prosecuted, a number of factors determine whether the criminal history appears in the background check. For example, a background check may not always identify a criminal history in another state.

## Education

Stakeholders we spoke with agreed that education plays an important role in helping ensure that guardians understand their roles and responsibilities and appropriately perform their duties. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to education.

- **Educational requirements.** Education allows guardians to better understand their roles and responsibilities. For example, a court rule requires professional guardians in Washington to complete a training program developed by the state's Certified Professional Guardian Board, while a statute generally requires family guardians to complete video or web-based training. According to state officials, the professional guardian training consists of a 90-hour course offered by the University of Washington, while family guardians usually complete a 2-hour training module. Florida statutes also generally require family guardians to undergo course work on guardian responsibilities, while applying more rigorous requirements for professional guardians. These types of training requirements may help to address unintentional and nonmalicious mistreatment such as comingling assets of the guardian and the person under guardianship. Officials at the National Guardianship Association told us that education about how to be an effective guardian is very important because guardians may make bad decisions due to lack of training or education about their role, and not intentional abuse. However, educational requirements for guardians are not in place in many states.
- **Standards of practice and certification.** The National Guardianship Association has developed standards of practice that define a guardian's duty to comply with laws and regulations; the guardian's relationship with the courts, protected persons, and others; and other duties to the person under guardianship. Also, the Center for Guardianship Certification has developed a certification program that tests a prospective certified guardian's ability to apply these standards

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of practice.<sup>28</sup> Under this certification program, certified guardians must meet continuing educational requirements to maintain their status as professional guardians. According to the Center for Guardianship Certification, 12 states require professional guardians to be certified, including 8 states that require certification via the use of Center for Guardianship Certification examinations, as of September 2016.

- **Educational materials.** Courts in all six of the selected states we spoke to post written guidance for guardians online. These guides explain the responsibilities and duties associated with becoming a guardian while providing other potentially useful information. For example, a guide from California discusses the importance of separating funds of guardian and of persons under guardianship by warning guardians that mixing their money with that of the persons under guardianship could get the guardian in serious trouble. Minnesota has also made online videos that explain the guardianship process as well as guardian roles and responsibilities. In conjunction with the NCSC, North Dakota developed a web-based information seminar that guardians can use to better understand their responsibilities. The training is scenario-based and helps the trainee understand his or her options, and was designed to be easily modified for replication in other states. One challenge that one official noted is that it can be difficult to reach family guardians to provide them with educational materials. Also, even when family guardians can be reached, one stakeholder suggested that a 30-minute training video is unlikely to radically enhance guardian performance when a guardian is faced with some of the more complicated scenarios.
- **Support for guardians.** One of the stakeholders we spoke with suggested that guardians and persons under guardianship would benefit from other initiatives, such as states providing guardians with a mechanism to ask questions and allowing guardians to receive positive feedback when something went well instead of just warnings when something went wrong. Another stakeholder told us it would be beneficial for guardians to interact with one another to find ways to achieve better outcomes.

## Monitoring

According to some of the stakeholders we spoke with, most states require guardians to be monitored, but the level of oversight and specific

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<sup>28</sup>The Center for Guardianship Certification was created in 1994 as an allied organization of the National Guardianship Association to enhance the quality of guardianship services through national certification. Voluntary certification through CGC is open to all guardians, not just professional guardians.

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requirements vary by state. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to monitoring.<sup>29</sup>

- **In person visits and well-being checks.** To monitor the person under guardianship's personal well-being, one stakeholder told us courts in every state should periodically send a court investigator to conduct an unannounced site visit to check on that individual.
- **Examinations of guardian expenditures.** A state court official we spoke with cautioned that, without effective monitoring, guardians basically have free access to the person under guardianship's money and other officials we interviewed outlined some specific related measures. For example, an official from one organization suggested that steps should be taken to help ensure that fees are appropriate for the services rendered (e.g., attorneys should not charge attorney rates for grocery shopping), while another representative of a different organization suggested that fees should be capped to help protect persons under guardianship. Other related suggestions from various stakeholders included independent reviews of mandatory annual financial reports, an initial inventory of the person under guardianship's assets, and utilizing effective accounting controls to help protect that individual's assets. Technology can be used to support the oversight process. For example, as previously described, Minnesota monitors the state's conservators using an online program that allows auditors to flag suspicious spending patterns and other warning signs for potential abuse.

Despite the known importance of monitoring efforts, stakeholders described how challenges in monitoring guardians often arise from resource limitations. According to one of the stakeholders we interviewed, courts often do not have the resources to employ court visitors, investigators, auditors, or robust case-management systems for tracking key filings and case events. Another stakeholder told us that guardians are supposed to submit annual reports about persons under guardianship, and in many states and counties these reports are filed, but no one checks to see if the reports have been filed on time or to verify if what is reported is accurate.

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<sup>29</sup>In 2007 the AARP Public Policy Institute and American Bar Association issued a study on promising practices for court monitoring. See AARP Public Policy Institute, *Guarding the Guardians: Promising practices for court monitoring* (Washington, D.C.: 2007), for additional details about these practices.

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In addition, other monitoring efforts can be limited. For example, a court official in Washington told us some reviews are paper audits where no one conducts a site visit to the person under guardianship to verify his or her well-being. Representatives from the National Guardianship Association told us that while guardianships have some oversight, there is significant variation in the level of oversight performed by different states. The investment in monitoring the activity of guardians is up to local counties and constrained by resources. One of the recurring themes these representatives find when they examine guardianship issues is that states would like to apply more robust oversight, but the states say that there are not enough resources available to investigate and oversee these cases.

To help overcome resource limitations, the American Bar Association and AARP have developed programs courts can use to recruit and train volunteers to help monitor guardian activities. While there are some costs associated with these programs, according to stakeholders, they can reduce the burden on courts for monitoring guardian activities.

## Enforcement

Enforcement activities punish the guardian for his or her abusive actions against a person under guardianship, deter future abuse by sending the message that the abuse of older adults by guardians will not be tolerated, and at times may allow for restitution to the victim. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed the following promising practices and challenges related to enforcement.

- **Complaint systems.** In addition to providing educational benefits to guardians, certification systems can provide states with a mechanism for receiving complaints and addressing noncriminal guardian performance issues (e.g., not submitting required accountings), while offering other potential certification-related benefits such as screening opportunities and continuing education requirements. In states that certify guardians, complaints may also be directed to the guardianship certification board. State-operated hotlines can also help identify cases of abuse. For example, the Palm Beach County Clerk's Inspector General set up a hotline that allows the public to report concerns about guardians via telephone, e-mail, or the Internet, or in-person. From fiscal year 2011 through February 2016, the Palm Beach County Clerk's Inspector General reported 516 contacts, 250 of which were actionable. However, multiple stakeholders also identified some challenges related to complaints. For example, some of the representatives we spoke with stated that it may be difficult or

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impossible for people with diminished capacity to file a complaint about a guardian, so complaints typically originate from family members. Also, one of the stakeholders we interviewed told us it is not always clear where complaints about guardians should be sent, but that anyone with an elder-abuse related concern could contact law enforcement agencies or the state APS agency. In addition, this stakeholder told us that courts may have complaint processes, but it can be difficult to navigate these processes without effective counsel.

- **Dedicated investigative resources.** Palm Beach County, Florida, dedicated resources to independently audit guardian spending reports and also dedicated resources to the investigation and monitoring of guardianship-related activities, which has had a positive effect, according to officials there. A prosecutor that we spoke with in San Diego discussed similar efforts in his jurisdiction, but noted that law-enforcement entities in most cities do not have departments dedicated to investigating elder abuse.
- **Appropriate disciplinary measures.** Guardianship enforcement activities can range from removing guardians for poor performance to prosecution for overt criminal actions. States that apply such measures appropriately can punish bad actors, obtain restitution for victims, and deter future abuse.<sup>30</sup> However, there can be investigative and prosecutorial challenges associated with cases of elder abuse by a guardian. Stakeholders we spoke to highlighted obstacles that can obstruct efforts to punish abusive guardians. For example, a prosecutor in Washington noted that when abuse by guardians takes the form of overcharging an older adult for the guardian's services, because the courts have approved the payments in question it is virtually impossible for the prosecutor's office to file charges. This prosecutor explained that a guardian charged with financial exploitation in such a case would be able to argue that the fees he or she obtained were appropriate because they were sanctioned by the courts; this would almost certainly prevent such a guardian from being found guilty at trial. Also, a prosecutor in California opined that law-enforcement officials generally feel that when someone is in a position of trust, law enforcement officials cannot and should not get involved. Specifically, they feel it is a civil matter that should be handled in the civil jurisdiction. Other representatives we spoke with raised concerns about the cost of investigating cases of potential abuse. For example,

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<sup>30</sup>In some states, guardians are generally required to post a bond in an amount set by the court to allow victims to recover losses resulting from a guardian's failure to properly perform his or her duties.

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representatives from the National Guardianship Association noted the forensic analysis to identify evidence in these cases can cost \$20,000 or more for just one case. Other challenges relate to the penalties associated with these crimes. For example, an official in Washington has noted the sentences tend to be insignificant and jail time can often be avoided. This official also noted that prosecutors will rarely proceed with cases that do not exceed certain dollar thresholds.

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## Agency Comments

We are not making recommendations in this report. We provided a draft of this report to HHS, CFPB, the Department of Justice, SSA, the Department of Veterans Affairs, and the Office of Personnel Management for review and comment. CFPB and SSA provided technical comments, which we incorporated as appropriate. HHS, the Department of Justice, the Department of Veterans Affairs, and the Office of Personnel Management had no comments on this report.

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As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to relevant congressional committees; the Commissioner of the Social Security Administration; the Secretary of Veterans Affairs; the Secretary of Health and Human Services; and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-6722 or [larink@gao.gov](mailto:larink@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Kathryn A. Larin  
Acting Director  
Forensic Audits and Investigative Service

# Appendix I: Coordination between Federal Representative Payee Programs and State Guardianship Programs

The Social Security Administration (SSA), the Department of Veterans Affairs, and the Office of Personnel Management have programs that appoint representative payees to manage federal benefits received by individuals who are unable to do so for themselves.<sup>1</sup> Federal agencies are responsible for oversight of representative payees assigned under these programs, while state and local courts are responsible for oversight of guardianship appointments. A representative payee may also be a guardian, and some beneficiaries with a representative payee may also have a guardian. According to a white paper prepared for the Elder Justice Coordinating Council, the representative payee and the guardian might or might not be the same person or organization.<sup>2</sup> Table 3 shows the number of beneficiaries who are older adults and have representative payees, as well as the number of representative payees and court-appointed guardians or conservators that the respective federal agency is aware of.

**Table 3: Counts of Older Adults Receiving Federal Benefits, and Related Number of Representative Payees and Guardians**

Agency	Number of program beneficiaries over age 65	Number of beneficiaries over age 65 with representative payees	Number of representative payees <sup>a</sup>	Beneficiaries with a court-appointed guardian or conservator <sup>b</sup>
Social Security Administration (SSA) <sup>c</sup>	44,888,000	652,688	550,493	91,744
Department of Veterans Affairs <sup>d</sup>	2,413,353	121,946	108,987	2,793
Office of Personnel Management <sup>e</sup>	2,051,946	6,619	6,339	4,641

Source: SSA, Department of Veterans Affairs, and Office of Personnel Management. | GAO-17-33

<sup>a</sup>A single representative payee may assist multiple federal beneficiaries.

<sup>b</sup>Federal agencies are responsible for oversight of representative payees assigned under these programs, while state and local courts are responsible for oversight of guardianship appointments.

<sup>c</sup>SSA directed GAO to its July 2016 Monthly Statistical Snapshot to determine the number of program beneficiaries over age 65 and to its 2015 Annual Statistical Supplement to provide the number of beneficiaries over age 65 with representative payees. SSA directly provided the remaining figures as of July 2016.

<sup>1</sup>We use the term “representative payee” to refer to both Department of Veterans Affairs fiduciaries and SSA or Office of Personnel Management representative payees.

<sup>2</sup>Erica Wood, *Statement on Federal Approaches Toward Elder Financial Exploitation by Fiduciaries—Representative Payees & Guardians*, paper prepared for the Elder Justice Coordinating Council (Oct. 31, 2012).

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**Appendix I: Coordination between Federal Representative Payee Programs and State Guardianship Programs**

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<sup>d</sup>The Department of Veterans Affairs uses the term fiduciary to describe the person who supports individuals who are unable to manage their financial affairs. The number of beneficiaries over the age of 65 with a court-appointed guardian or conservator only includes those court appointments recognized by the Department of Veterans Affairs. The Department of Veterans Affairs provided the number of program beneficiaries over 65 as of September 2015, and provided the number of beneficiaries with representative payees, number of representative payees, and number of beneficiaries with a court-appointed guardian or conservator as of August 2016.

<sup>e</sup>The Office of Personnel Management provided figures for all columns as of August 2016.

We have previously found that, among other things, poor communication between the courts and federal agencies has enabled guardians to chronically abuse persons under guardianship and others.<sup>3</sup> In 2011, we found that information sharing among federal fiduciary programs and state courts could improve the protection of older adults with guardians.<sup>4</sup> More specifically, we found that information about SSA's incapable beneficiaries and their representative payees could help state courts (1) avoid appointing individuals who, while serving as SSA representative payees, have misused beneficiaries' SSA payments in the past, and (2) provide courts with potential candidates for guardians when there are no others available.<sup>5</sup> At that time, we recommended that SSA should determine how it can, under current law, disclose certain information about beneficiaries and fiduciaries to state courts upon request, potentially proposing legislative changes to allow such disclosure. Upon review of our recommendation, SSA determined it could not disclose information about SSA beneficiaries and representative payees to state courts for the purposes of determining guardianship without written consent because legal limitations prevent the sharing of this information.

While we continue to believe that it is in the best interest of incapable SSA beneficiaries for the agency to disclose certain information about beneficiaries and fiduciaries to state courts, SSA officials with whom we

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<sup>3</sup>See GAO, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation*, [GAO-13-110](#) (Washington, D.C.: Nov. 15, 2012).

<sup>4</sup>See GAO, *Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, [GAO-11-678](#) (Washington, D.C.: July 22, 2011).

<sup>5</sup>Pursuant to 42 U.S.C. § 405(j)(2)(B)(ii), SSA maintains a centralized file of individuals whose certification as a representative payee has been revoked, who have been convicted of certain types of fraud under the Social Security Act, or who have otherwise misused certain SSA benefits. Generally, these individuals may not serve as representative payees for SSA benefits. SSA officials told us that the agency has determined that a routine use for sharing this information with state courts is not legally permissible under the Privacy Act (5 U.S.C. § 552a) because such a use is not compatible with the purposes for which SSA collected the information.

spoke in 2016 maintain that the agency cannot disclose information regarding SSA beneficiaries and representative payees to courts for the purposes of determining guardianship issues without written consent, unless a Privacy Act exception applies. SSA officials also told us they were not aware of any routine exchanges of information between state courts and their agency; however SSA does share limited information about representative payees with other federal agencies when legally authorized to do so.

Officials from state courts we spoke to also reiterated the need for increased coordination and communication with federal representative payee programs. For example, a court official in Washington explained that it is important for courts to know when there is an issue with a representative payee who is trying to become a guardian, and it is also important for SSA to know when there is a problem guardian.<sup>6</sup> Also, court officials in Ohio described another challenge related to their monitoring efforts that occurs when they are unaware of significant increases in the assets of the person under guardianship, caused by the receipt of sizable back payments paid by SSA.

As described in this report, the Administrative Conference of the United States administered and analyzed the results of a survey of judges, court staff, and guardians to review, among other things, court interaction with federal agencies.<sup>7</sup> In August 2016, SSA officials told us the agency was using the study to make improvements that will leverage the work of state courts in SSA's process for determining whether a representative payee is necessary. For example, SSA is exploring whether the agency could automatically appoint guardians—or individuals who are currently serving in a similar capacity—as representative payees. Additionally, SSA officials told us they are using the results to identify better ways to communicate with state and local courts and the guardians appointed by these entities. These efforts include providing clarification to agency

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<sup>6</sup>SSA officials reviewed this comment made by the Washington court official and noted that SSA's standards for representative payees differ from state guardianship standards; thus, while some problems may be helpful for SSA to know about, others may not. SSA officials also noted that under the Privacy Act, SSA must maintain in its records only such information about an individual as is relevant and necessary to accomplish the purpose of administering its programs. 5 U.S.C. § 552a(e)(1).

<sup>7</sup>Administrative Conference of the United States, *SSA Representative Payee: Survey of State Guardianship Laws and Court Practices* (Dec. 24, 2014).

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**Appendix I: Coordination between Federal  
Representative Payee Programs and State  
Guardianship Programs**

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technicians on permitted disclosures to state and local courts and legal guardians.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Kathryn A. Larin, (202) 512-6722 or [larink@gao.gov](mailto:larink@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Gabrielle Fagan (Assistant Director), John Ahern, Nada Raoof, and April Van Cleef made key contributions to this report. Also contributing to the report were Lorraine Ettaro, Colin Fallon, Maria McMullen, and James Murphy.

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