



Testimony

Before the Special Committee on Aging,  
U.S. Senate

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## ELDER ABUSE

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

Statement of Kathryn A. Larin, Acting Director, Forensic  
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Chairman Collins, Ranking Member McCaskill, and Members of the Committee:

Thank you for the opportunity to discuss our report on elder abuse and guardianship, which is being released today.<sup>1</sup> 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.<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. 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.

My remarks today highlight the key aspects of our report on elder abuse and guardianship. Specifically, this testimony describes what is known about the extent of elder abuse by guardians, and what measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians.

To conduct this work, 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 officials from federal agencies such as the Department of Health and Human Services (HHS), six selected state courts, and nongovernmental organizations with expertise in guardianship-related issues. In addition, we 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. Our report includes a detailed

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<sup>1</sup>GAO, *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults*, [GAO-17-33](#) (Washington, D.C.: Nov. 16, 2016).

<sup>2</sup>Courts can generally appoint different types of guardians, including 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.

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explanation of the methods used to conduct our work. The work on which this testimony is based was performed in accordance with generally accepted government auditing standards.

Regarding the first question we addressed in our report, 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, including incomplete information about the ages of individuals with 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, presenting an additional challenge to identifying the extent of elder abuse by guardians.

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. Table 1 provides a summary of eight 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.

**Table 1: 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 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 persons 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-17-273T

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 1, 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.

While the extent of elder abuse by guardians nationally is unknown, 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, HHS plans to launch the National Adult Maltreatment Reporting

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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. We 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.

Turning to the second question we addressed in our report, as I previously noted the federal government does not regulate or directly support guardianship. Nevertheless, 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. For example, HHS has assumed a national role for funding grants to support coordination and information sharing that could help educate guardians and other parties. The federal government also shares information that state and local entities can use related to guardianship. For example, the Bureau of Consumer Financial Protection has developed materials that can be used by various parties to help better protect older adults with guardians from abuse.

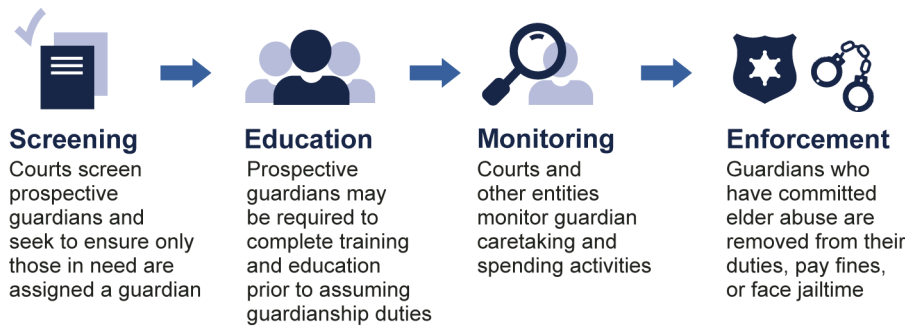
Since state and local courts have primary responsibility over the guardianship process, they have a role in protecting older adults with guardians from abuse. In 2014, the National Association for Court Management published an adult guardianship guide with detailed information about how to plan, develop, and sustain a court guardianship program.<sup>3</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 uniform 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

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<sup>3</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).

guardians vary but generally include screening, education, monitoring, and enforcement, as shown in figure 1.

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



Source: GAO analysis of selected state courts' guardianship oversight roles. | GAO-17-273T

Promising practices related to screening include periodically reexamining guardianship, and performing criminal history and credit checks. Promising practices related to education include having standards of practice and certification, and providing support for guardians. Promising practices related to monitoring include conducting in-person visits and well-being checks, and examinations of guardian expenditures. Promising practices related to enforcement include setting up complaint systems, having dedicated investigative resources, and utilizing appropriate disciplinary measures.

Chairman Collins, Ranking Member McCaskill, and Members of the Committee, this concludes my prepared remarks. I look forward to answering any questions that you may have at this time.

## GAO Contact and Staff Acknowledgments

For further information on this statement, 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. Individuals who made key contributions to this statement are Gabrielle Fagan, Assistant Director; John Ahern; and Nada Raouf.

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