

Acknowledgements

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Executive Summary

The number of Texas citizens aged 65 or older is projected to grow significantly by 2030, and the Texas Judiciary is expecting a related increase in adult guardianships. Adult guardianships, which are provided for in Texas law, are designed to protect an incapacitated person from abuse, neglect, and exploitation. As of August 31, 2016, there are 54,693 active guardianships reported in the state. In addition to the 54,693 individuals protected in those cases, an estimated \$5 billion in assets are managed by their guardians. As the number of adult guardianships increase, so too will the need for courts to increase capacity to actively monitor the cases to ensure the protection of the incapacitated person and his or her estate. In his State of the Judiciary speech to the 84th Texas Legislature, Chief Justice Nathan Hecht called for the Legislature to fund a pilot program to improve guardianship monitoring. The 84th Legislature provided an appropriation to the Texas Office of Court Administration to fund the Guardianship Compliance Project through August 2017.

The Guardianship Compliance Project (GCP) is a pilot project designed to assist courts with their monitoring of guardianship cases. The GCP employs four guardianship compliance specialists who conduct guardianship file reviews and audits to identify reporting deficiencies. GCP staff also assist courts in implementing best practices for monitoring and managing guardianship cases. In addition to the services provided by GCP staff, the project includes the development of an online reporting and monitoring system for guardians to file required reports electronically. The system will enable guardianship data to be tracked from year to year, provide alerts to identify potential reporting issues, prioritize cases to be reviewed by audit staff, and generate reports for judges to assist in monitoring guardianship cases.

As of December 2016, GCP staff have worked with 18 courts in 11 counties. The following performance measures summarize the work of the GCP:

- 10,325 guardianship cases were reviewed;
- 7,866 guardianship cases recommended for closure;
- 2,438 active guardianship cases were identified;
- 680 guardianship cases were found to be out of compliance with statutorily required reporting;
- 35 percent of cases were found to be missing reports of the person;
- 46 percent of cases were found to be missing initial inventories;
- 48 percent of cases were found to be missing annual accountings; and
- 1 case was reported to the court for well-being or financial exploitation concerns.

An initial file review of guardianship cases has been completed in eight counties and is still in progress in the remaining three counties. In the eight counties in which the initial review has been completed, 43 percent of cases are out of compliance with at least one element of statutorily required reporting. While the project has implemented improvements in the monitoring of guardianship cases in participating counties, the high percentage of guardians out of compliance with required reporting highlights the urgent need for continued and expanded work in this area.

Guardianship Basics¹

An **incapacitated person** (referred to as the “ward”) is an adult who, because of their physical or mental condition, is substantially unable to feed, clothe or shelter himself/herself, to care for his/her physical health, or to manage his/her financial affairs. **Guardianship** is a legal process designed to protect an incapacitated person from abuse, neglect (including self-neglect), and exploitation. Guardianship provides for the person’s care and/or management of his or her money while preserving, to the largest extent possible, that person’s independence and right to make decisions affecting his or her life.

A **guardian** is a person who is appointed by the court to protect the individual and/or property of the individual who does not have the capacity to protect his or her own interests. There are two types of guardianships: **guardianship of the person** and **guardianship of the estate**. In a guardianship of the person, a guardian is appointed to take care of the physical well-being of the ward. In a guardianship of the estate, a guardian is appointed to care for a ward’s property, including finances.

Under current law, private professional guardians, guardians who work for programs, and Health and Human Services Commission (HHSC) (formerly the Department of Aging and Disability Services guardians) are required to be certified by the Judicial Branch Certification Commission (JBCC). The approximately 460 **certified guardians** are appointed in less than 5,000 of the approximately 54,000 reported active guardianships in the state. The remaining guardianships are handled by individuals who are not required to be certified, such as family members, friends and attorneys.

Professional guardians must be certified by the JBCC, which is administratively attached to the Texas Office of Court Administration (OCA). In addition to meeting eligibility requirements, which include successfully passing a Commission approved exam and a criminal history background check, certified guardians must complete continuing education and comply with minimum standards adopted by the Supreme Court of Texas. Currently, attorney and family guardians have no certification or registration requirements.

Guardian Reporting Requirements

Reports from the guardian about the well-being of the incapacitated person, as well as the initial inventory and annual accountings, are the minimum reporting requirements and primary source of information for the courts about the personal condition of the incapacitated person and his or her estate. When the reports are not filed, not filed timely, or are incomplete or inaccurate, the courts are unable to provide the monitoring necessary to protect vulnerable citizens and their assets. The following sections of the Texas Estates Code are the key statutes governing the reports required to be submitted by guardians.

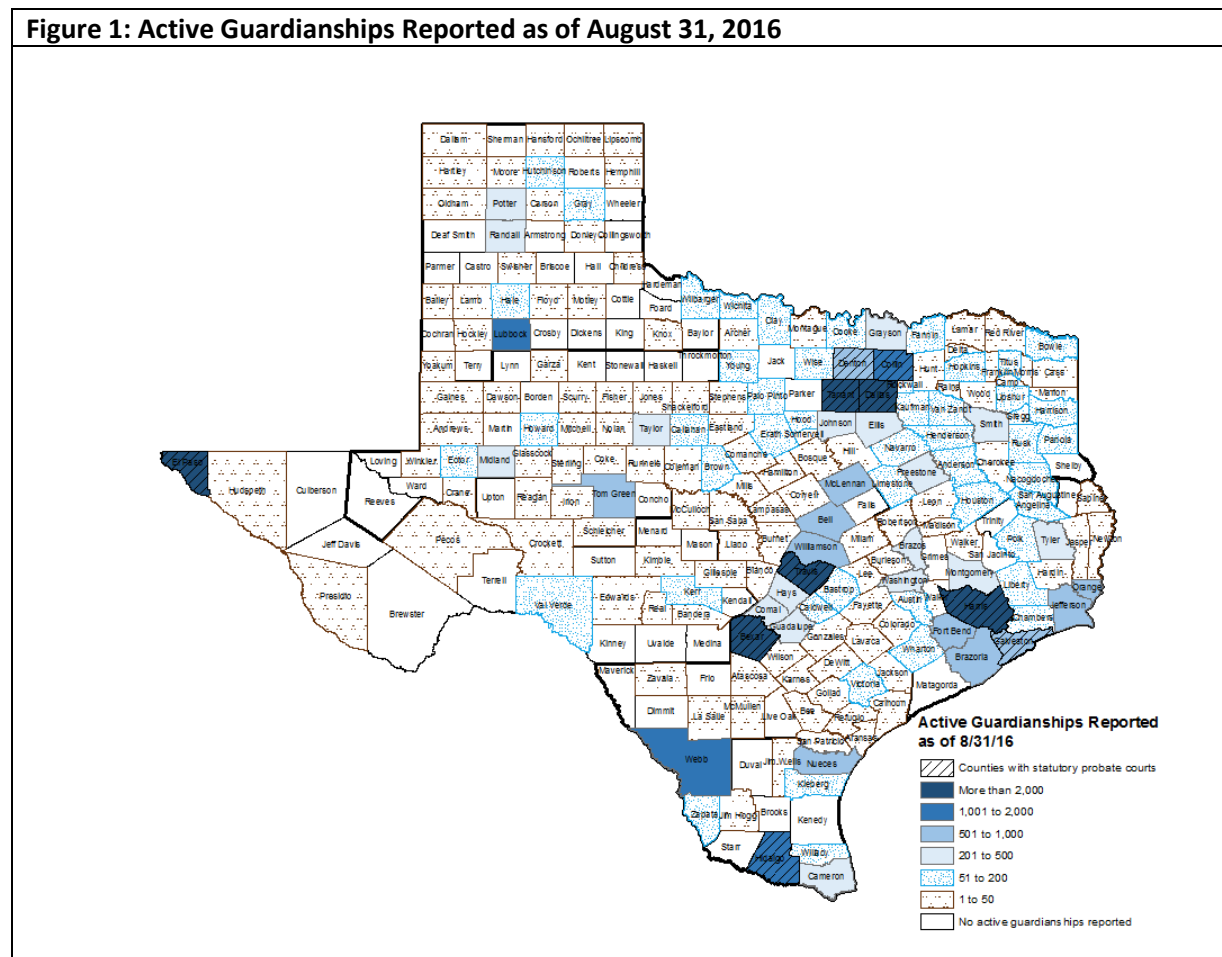
- *§1163.101 Annual Report Required.* Once each year for the duration of the guardianship, a guardian of the person shall file with the court a report that contains the information required by this section.
- *§1154.051 Inventory & Appraisalment.* Not later than the 30th day after the guardian of the estate qualifies, the guardian shall file with the court clerk a single written instrument that contains a verified, full and detailed inventory of all the ward’s property that has come into the guardian’s possession or of which the guardian has knowledge.

¹ Guardianship basic definitions adapted from [Texas Guardianship Association](#).

- *§1163.001 Initial Annual Account of Estate.* Not later than the 60th day after the first anniversary of the date the guardian of the estate of a ward qualifies, unless the court extends that period, the guardian shall file with the court an account consisting of a written exhibit made under oath.
- *§1163.002 Annual Account Required Until Estate Closed.* A guardian of the estate shall file an annual account conforming to the essential requirements of Section 1163.001 regarding changes in the estate assets occurring since the date the most recent previous account was filed.

Texas Courts Handling Guardianship Cases

In Texas, a county court, county court at law, or statutory probate court has original jurisdiction over a guardianship case. **Figure 1** provides the number of active guardianships by county as of August 31, 2016. Eighteen statutory probate courts have been created in ten of the more populated counties. In the remaining 244 counties, the 20,345 guardianship cases may be handled in constitutional county courts by judges who are not required to have a law license or in statutory county courts by law-trained judges handling a wide range of case types. In addition, Texas Government Code requires only statutory probate courts to have specialized staff such as auditors and investigators. Statewide, the number of courts with court auditors and investigators is unknown and the total amount of assets under protection of the courts is unknown.



Guardianship Compliance Project

Background

Courts face five major challenges in guardianship cases: 1) determining capacity of the potential ward; 2) costs associated with administering guardianships; 3) training and education standards for judges; 4) court monitoring of guardianships; and 5) the collection of data.²

OCA developed the GCP to provide direct services to the courts facing these challenges with the goal of helping courts protect vulnerable citizens and their assets. The services include: reviewing guardianship cases to identify reporting deficiencies by the guardian; auditing annual accountings; reporting findings to the court; preparing notices for missing reports; and developing best practices for courts in managing guardianship cases. An additional component of the project is the development of an online reporting and monitoring system for guardians to submit the filings of statutorily required reports. The system will enable enhanced monitoring of the guardianship cases by providing timely and accurate information about the ward and his or her estate to the court.

As part of the 84th legislative budget process, OCA requested funding to support the Guardianship Compliance Project. OCA received an appropriation of \$515,881 to fund the project through August 2017. A rider was adopted requiring OCA to report on the performance of the GCP. The report is required to include at least the following:

- the number of courts involved in the guardianship compliance project;
- the number of guardianship cases reviewed by guardianship compliance specialists;
- the number of reviewed guardianship cases found to be out of compliance with statutorily-required reporting requirements;
- the number of cases reported to the court for ward well-being concerns or for financial exploitation concerns; and
- the status of technology developed to monitor guardianship filings.

These required performance measures, as well as additional performance measures, are provided in the [Performance Measures](#) section of this report.

Project Services

The direct services provided to the courts was delivered by three guardianship compliance specialists beginning in November 2015, with a fourth person hired in November 2016. The project began with a review of the active guardianship cases for each participating county. Although the number of active guardianship cases is a data element reported to OCA as part of the monthly Texas Judicial Council Trial Court Activity Reports, some counties were unable to accurately identify active guardianship cases. In these counties, the guardianship compliance specialists reviewed all guardianship files. An additional part of the review process was identifying cases for possible closure. The circumstances indicating the need for review by the court for possible closure ranged from an elderly incapacitated person who was likely deceased to an individual who was a minor at the time the guardianship was established but would now

² Uekert and Van Duizend, [Adult Guardianships: A Best Guess National Estimate and the Momentum for Reform](#), NCSC, 2011.

be an adult. Of the 10,325 cases reviewed in 11 counties, 2,438 cases were determined to be active. **Appendix A** provides GCP statistics by participating county. **Appendix B** provides a list of the data elements collected during file review.

The active cases were then reviewed to identify compliance with statutorily required reporting. Of the active guardianship cases in counties in which the initial review was completed, 43 percent were missing statutorily required reports. In addition to missing reports, documentation needed to support reports that had been submitted was identified as a deficiency. Examples of reported transactions that needed documentation include unauthorized ATM withdrawals totaling \$20,000, \$40,000 gifts to grandchildren, and a decrease in estate value of more than \$400,000. After the reporting deficiencies were identified, GCP staff worked with the courts and County Clerk offices to draft individual letters to notify the guardian of the deficiencies. GCP staff activity ranged from counties in which GCP staff provided a list of the missing reports for court staff to contact the guardians to counties in which GCP staff developed customized letters that included court letterhead, a list all missing reports and the specific supporting documentation that was needed. In some counties, GCP staff also created the mailing list and merged the list with the form letter to produce the letters for the guardians. GCP staff produced more than 1,000 letters to guardians.

As the result of these reporting deficiencies, few cases contained sufficient information or documentation for a full audit to be conducted. To date, 40 financial audits of guardianship files have been conducted and provided to the courts. Of the 40 cases audited, 14 cases included financial data that did not balance or could not be reconciled.

An additional service provided by GCP staff to each participating county was a review of background check practices. As of September 1, 2015, Section 1104.402 of the Texas Estate Code requires that a criminal history record be obtained by the County Clerk. Of the 11 participating counties, all of the background checks were being conducted in four counties, some background checks but not all were being conducted in two counties, and no background checks were being conducted in four counties. In the remaining county, the Clerk's office requests that the attorney filing the guardianship application provide the criminal history report.

Finally, GCP staff worked with the participating courts and clerks to develop best practices for managing guardianship cases. **Appendix C** contains a list of best practices recommendations that have been provided to the clerks and courts. These recommendations are based on the GCP staff's review of guardianship cases.











[Online Reporting and Monitoring System](#)

OCA is developing an online reporting and monitoring system for guardians to file required inventories, annual accounts and annual reports of the person electronically. The system will enable guardianship data to be tracked from year to year, provide automated review to identify potential reporting compliance issues, prioritize cases to be reviewed by audit staff, and generate reports for judges to assist in monitoring guardianship cases. Work is underway on the system's user interface for the guardian and is approximately 80 percent complete. Pilot testing of the system is expected in early Spring 2017.

Performance Measures

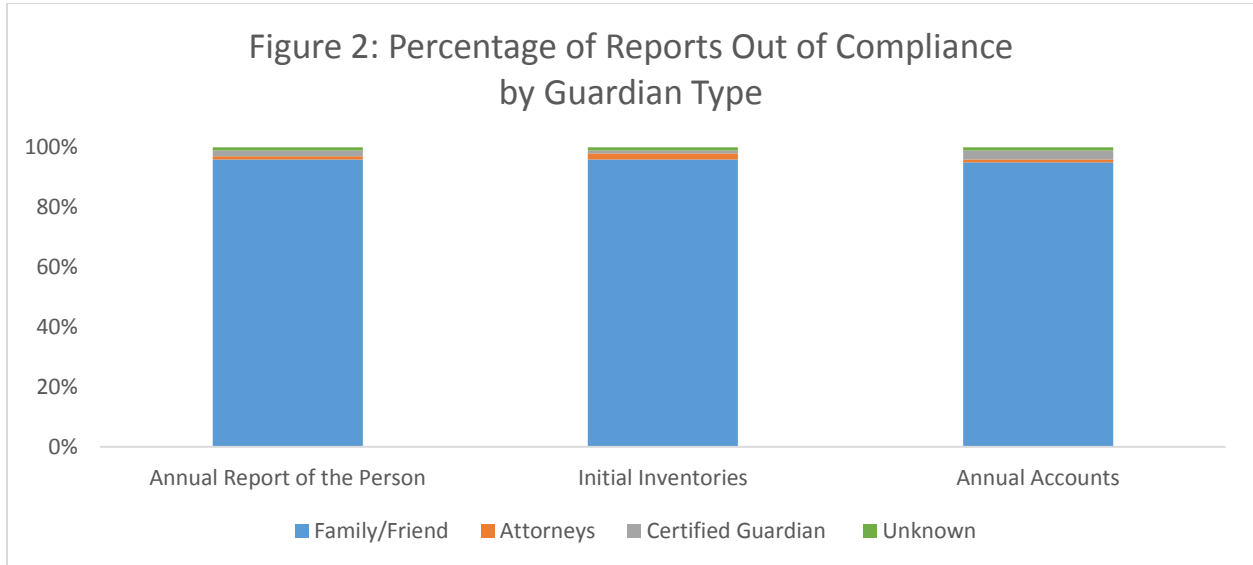
Table 1 provides performance measures for the Guardianship Compliance Project.

Table 1: Guardianship Compliance Project Performance Metrics as of December 16, 2016

| | | |
|---|------------------------------------|--|
|  | 18 | Courts involved in the guardianship compliance project |
|  | 10,325 | Guardianship cases reviewed by the guardianship compliance project |
|  | 7,866 | Guardianship cases recommended for closure |
|  | 2,438 | Active guardianship cases |
|  | 680* | Guardianship cases found to be out of compliance with statutorily required reporting |
|  | 35%* | Percentage of cases with missing reports of the person |
|  | 46%* | Percentage of cases with missing initial inventories |
|  | 48%* | Percentage of cases with missing annual accountings |
|  | 1* | Cases reported to the court for well-being or financial exploitation concerns |
|  | Pilot testing in early Spring 2017 | Status of technology developed to monitor guardianship filings |

*Note: These statistics are reported for the 8 counties in which the initial review process has been completed. The number of active guardianships in those 8 counties totaled 1,591. With 680 cases out of compliance with required reporting, the percentage of cases out of compliance is 43%. Insufficient data are currently available in those cases to identify ward well-being or financial exploitation concerns. Full audits are more likely to identify well-being or financial exploitation concerns.

Figure 2 shows the percentage of cases out of compliance with required reporting by type of guardian. For all three statutorily required report types, family/friend guardians were the most often out of compliance. Family/friend guardians are not required to be certified. Cases involving HHSC guardians are not included in the figure, because they were in compliance.



In complement the GCP performance metrics, the following anecdote provides insight into the personal impact that the monitoring of guardianship cases can provide.

Guardianship Monitoring Success Story

In the course of conducting a financial audit on the guardianship of an estate of a minor with a disability who turned 18, GCP staff requested supporting documentation for an annual accounting. The documentation requested included receipts for unusual expenses as well as bank transactions. The guardian responded quickly to the request and explained that her son, the incapacitated person, has been enrolled in a program at a local college. He manages his own money, lives in an apartment independently, navigates the bus schedule and routes, and purchases groceries. Additionally, the guardian reported that while her son does not drive and does not make decisions on his own regarding medical issues, he does well overall. The guardian relayed that her son was no longer the same person as when the guardianship was established and expressed the need to change the guardianship. GCP staff suggested that the guardian contact her attorney. A motion to modify the guardianship was subsequently filed requesting additional financial independence for the ward and, more specifically, the right to vote due to the ward's expressed interest in the electoral process, as well as the right to marry. This matter is currently pending before the court.

Conclusion

The Guardianship Compliance Project has provided direct services to courts to assist in providing statutorily required monitoring of guardianship cases in the 18 courts and 11 counties participating in the project. While the project has enabled those counties to improve the monitoring of guardianship cases, the high percentage of reporting deficiencies by the guardian highlight the needs for continued and expanded work in this area.

The Texas Judicial Council has approved a [resolution](#) requesting that the Legislature expand the Guardianship Compliance Project statewide so that the project can be expanded to provide services to all counties without statutory probate courts. The Council believes that the expansion of this project, in conjunction with other legislative changes, can result in meaningful change in protecting and improving the quality of life for the elderly and incapacitated.



Appendix A: Guardianship Compliance Project Statistics by County

| Participating County | Anderson | Bexar* | Comal | Guadalupe | Hays | Lubbock* | Montgomery | Orange | Tom Green* | Tyler | Webb |
|---|-------------|--------|--------------|-------------|--------------|----------|--------------|-------------|------------|-----------|-------------|
| Active Guardianship Cases Reported | 83 | 8,399 | 403 | 205 | 228 | 1,602 | 508 | 844 | 557 | 405 | 1,139 |
| Total Case Files Reviewed | 97 | 2,865 | 403 | 205 | 656 | 1,153 | 508 | 2,702 | 238 | 359 | 1,139 |
| Closures: Recommended for Inactive Status | 17 | 2,747 | 231 | 46 | 435 | 549 | 35 | 2,523 | 113 | 319 | 851 |
| Total Active Cases | 66 | 118 | 171 | 159 | 221 | 604 | 474 | 176 | 125 | 36 | 288 |
| Number of Cases by Type of Guardianship | | | | | | | | | | | |
| <i>Guardianship of the Person</i> | 14 | | 88 | 84 | 66 | | 379 | 34 | | 6 | 49 |
| <i>Guardianship of the Estate</i> | 0 | | 8 | 10 | 13 | | 19 | 11 | | 3 | 8 |
| <i>Guardianship of Person & Estate</i> | 52 | | 75 | 65 | 142 | | 76 | 131 | | 27 | 231 |
| Reporting Deficiencies | | | | | | | | | | | |
| <i>Missing Annual Report of the Person</i> | 38% | | 21% | 23% | 39% | | 2% | 63% | | 58% | 79% |
| <i>Missing Annual Accounting</i> | 46% | | 24% | 27% | 47% | | 6% | 60% | | 57% | 77% |
| <i>Missing Initial Inventory</i> | 58% | | 14% | 24% | 39% | | 0% | 50% | | 47% | 80% |
| Bonds | | | | | | | | | | | |
| <i>Cases with Bond Waived</i> | 9% | | 17% | 34% | 39% | | 4% | 5% | | 53% | 41% |
| Reported Estate Value From Initial Inventories | | | | | | | | | | | |
| Total | \$6,058,976 | | \$15,479,192 | \$9,439,432 | \$10,088,171 | | \$25,011,408 | \$7,714,716 | | \$683,609 | \$6,484,402 |
| Average Per Case | \$302,949 | | \$206,389 | \$162,749 | \$134,509 | | \$211,961 | \$101,509 | | \$45,574 | \$166,267 |

*Initial review of active guardianship cases was not complete in Bexar, Lubbock and Tom Green Counties as of December 16, 2016 and complete data was not available.

Appendix B: Data Elements Collected During File Review

1. Case Number
2. County
3. Court
4. Name of Ward
5. Ward's Date of Birth
6. Ward's Sex
7. Ward County of Residence
8. Ward's Residence: Lives with Guardian, Nursing Home, etc.
9. Type of Guardianship: Person, Estate, Both
10. Duration of Guardianship: Temporary/Permanent
11. Date Guardianship Case Filed
12. Date Guardianship Established
13. Applicant Attorney Name or Pro Se
14. Attorney Bar Number
15. Reason for Guardianship: Aging Issues, Intellectual Disability, Health Event, Minor with Disability Turning 18, Other
16. Medical Evidence Letter
17. Date of Letter/Date of Exam
18. Name of Professional Certifying to the Ward's Status
19. Name of Guardian
20. Guardian's County of Residence
21. Relationship to Ward: Attorney, Private Professional Guardian, Program Guardian, DADS, Friend or Family
22. PPG Cert. Number
23. PPG Cert. Expiration Date
24. Background Check run and reviewed by judge (if required)
25. Bond (Current, Waived, Pending, Unknown)
26. Bond Amount
27. Bond - Other
28. Fees Paid to Guardian
29. Qualification Date
30. Qualification Date Per Bond, Oath or Both
31. Date Most Recent Report of Well Being of Ward Due
32. Annual Report Received: Y, N, N/A or Not Yet Due
33. Date of Most Recent Report of Well Being of Ward Received
34. Date Most Recent Report of Well Being Approved
35. Total Number of Well Being of the Person Reports Missing
36. Guardian in Compliance with Reports of the Person
37. Well-Being Concerns
38. Date Initial Inventory Due
39. Date Initial Inventory Received
40. Initial Inventory Received Timely
41. Total Assets Reported in Initial Inventory
42. Date Initial Inventory Approved
43. Annual Accounting Number
44. Annual Accounting Received
45. Date Annual Accounting Due
46. Date Annual Accounting Received
47. Total Assets Reported in Most Recent Annual Accounting
48. Non-Guardianship Trust Value
49. Date Annual Accounting Approved
50. Findings: None, Minor/Correctable/Unable to Audit
51. Notes
52. Total Number of Annual Accountings Missing
53. Guardian in Compliance on Annual Accountings
54. Estate Concerns
55. Follow-up Notices Required
56. Missing Report or Missing Documentation Only
57. Initial Auditor Initials
58. Follow-up Auditor Initials
59. Reviewing Auditor Initials

Appendix C: Best Practice Recommendations

- Implement background checks per Texas Estates Code (EST) §1104.402.
- Assign at least one probate clerk and a back-up clerk who specializes in guardianship matters.
- Review and implement staff training, oversight, and monitoring of data entered in the case management system to ensure information captured is available and helpful to run reports and queries to manage the guardianship cases. Recommended reports include minor reaching age of majority, orders appointing guardian, expired temporary guardianships, guardian failed to qualify, inactive cases, and due dates of required inventories and reports.
- Ensure accurate OCA reporting by updating cases as inactive when closure orders are filed.
- Formalize a process for bringing complaints or concerns to the attention of the court.
- Implement a policy and procedure manual OR update the policy and procedure manual.
- Conduct monthly reviews and/or maintain tickler system for guardians delinquent in their reporting/accounting in order to ensure protection of a Ward's estate and well-being.
- Ensure delinquency notices are sent when annual reports become delinquent.
- Implement the practice of sending annual reminder notices for both annual reports and annual accountings at date of anniversary OR implement a process to ensure a notice is sent within 60 days for delinquent reports. This may include the use of monthly query reports or a tickler system to identify cases with delinquent annual reports. Once delinquent cases are identified, monitor the cases and continue follow-up action until issues are addressed.
- Develop forms, templates, and other informational resources for use by guardians.
- Monitor guardianships for minors for age of majority or implement orders containing an actual end date in the original order appointing the guardian as well as monitoring for final accountings/closure.
- Monitor of temporary guardianships for expiration and filing of final accounting.
- Implement an internal contact form information sheet for guardian(s) to provide relevant contact information for the guardian and a minimum of two additional family members or other contact persons that could provide contact information for the guardian or person under guardianship. The contact form should be updated periodically and include at a minimum home and employment addresses, phone numbers, and email addresses for all persons.
- Document the date the report/accounting is due in the order.
- Develop protocols to settle estates, where appropriate, and close cases that are no longer active.
- Implement the practice of reviewing guardianships annually for continuation, modification or termination at approval of annual report.
- Optimize the use of the case management system to timely identify cases in which the guardian has not filed an oath or bond to ensure appropriate action is taken.
- Implement and formalize the process to notify the guardian of additional documentation required to support income, expenses, and asset amounts reported in the annual accounting so that a review of the accounting can be performed prior to approval of the annual accounting.
- Implement a show cause docket for guardians not in compliance.
- Formalize a process to periodically review guardianship cases to identify deceased persons under guardianship and/or deceased guardians to ensure appropriate action is taken timely.
- Formalize the audit process of annual accountings to maintain a record of issues found.
- Set bonds for all applicable guardianships as indicated in EST §1105.101.
- Ensure bond amounts comply with EST §1105.154.