

REPORT TO THE LEGISLATURE

Guardianship laws: impacts and recommendations

ESSB 5092 Sec. 203 (1)(f)(IV)
Chapter 334, 2021 Laws PV

ESSB 5268 Sec. 10 (1)(d)
Chapter 219, 2022 Laws PV

ESSB 5693 Sec. 203 (1)(f)(IV)
Chapter 297, 2022 Laws PV

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Executive Summary

The Developmental Disabilities Administration's task as outlined in ESSB 5268, 5693 and 5092 is to collaborate with advocates and stakeholders to make recommendations that:

- Remove barriers to guardianship payments that limit where a person lives.
- Ensure equitable access to decision-making support that helps people with intellectual and developmental disabilities live as independently as possible.

Not every person with IDD needs a guardian; however, some do have them. Many guardians are professionals who receive a fee for their services. Professional guardianship fees are paid in different ways depending on the residential setting.

In some community residential settings, the full cost of guardianship is paid as part of the person's living expenses. **This can limit community living options for those with guardians and supported decision options for those who need, but do not have a guardian.** We heard of other challenges the community faces with guardianship and protective proceedings.

The recommendations in this report can help to ensure that those who have a paid guardian are able to live in the least restrictive setting that meets their needs. This means looking at the way people with IDD can pay guardianship fees while living as independently as possible. The report also includes recommendations to increase the number of professional guardians serving people with intellectual and developmental disabilities.



"I am aware that some professional guardians are only paid if their ward lives in an RHC or AFH - and that several are unwilling to move their clients into the community because their pay would be affected."



Background

In 2019, the DDA submitted the Legislative Report, Rethinking Intellectual and Developmental Disability Policy to Empower Clients, Develop Providers and Improve Services, a process guided by collaboration with the William D. Ruckelshaus Center. One result of this report was a dedicated effort to improve cross-systems coordination across several domains, including Washington state laws governing guardianship for people with intellectual and developmental disabilities.

When a person is legally incapacitated for reasons such as age, illness or ability, it may become necessary for a court to appoint somebody to assist the person with their personal and financial affairs.

A guardianship may be granted when a court finds that an allegedly incapacitated person is fully or partially unable to provide for his or her necessities of life.

In 2021, Washington adopted the Uniform Guardianship Act for minors and beginning in 2022, the UGA was adopted for adults. The UGA supersedes all previous guardianship laws in Washington state. The UGA provides a new alternative to guardianship, supported decision making. Supported decision making is one or more persons helping another person to make and communicate choices that match their personal and financial wishes and goals. It is established outside of court proceedings and allows the individual to receive decision making support without the loss of the individual's rights.

It is worth noting that at the time of this writing, it may be premature to determine the overall effect of the UGA. It is apparent that guardians, people who currently have a guardian or people who need decision-making support would benefit from outreach and training.

"Guardians should meet with those responsible for a quality adult life at least four times per year."





Methodology

DDA consulted with the Attorney General's Office in the drafting of this report and included this consultation in the recommendations section.

Both quantitative and qualitative data were collected.

Qualitative data was gathered to determine:

- Stakeholder recommended changes to existing guardianship laws.
- Top reported stakeholder challenges.
- Recommended stakeholder changes regarding guardianship payments.

Quantitative data was gathered to determine:

- Number of respondents.
- Region of respondents.
- Type of respondents.
- Number of people DDA enrolled with guardians.
- Type of guardian for people DDA enrolled.
- Number of people with guardians residing in a Residential Habilitation Center.
- Percentage of clients with guardians by care provider setting.
- Percentage of clients/residents identified in survey as needing decision-making assistance.
- Reported number of individuals who could be referred to a public guardian.

"I have a hard time finding guardians for people. Professional guardians are telling me that if the person moves to a Supported Living or State Operated Living Alternatives setting, they will not get paid for their guardianship. This is an issue that is not working."





DDA collected the data in this report through:

- Hosting two community Show and Share events.
- An online survey.
- Analyzing data found in our CARE system and a previous WSIPP report.

Show and Share events

DDA worked with the Washington State Developmental Disabilities Council, DSHS Leadership, People First of Washington, The Arc of Washington State, and Service Alternatives, to host two **Show and Share events**. Over 350 attendees participated virtually in the Jan. 27 and Feb. 10 events.

Through facilitated discovery conversations, people shared what was working and what they felt was not working regarding existing guardianship laws. Feedback, comments, concerns and recommendations were recorded for quality control and used to determine our recommendations.

Groups invited to Show and Share events:

1. People who experience intellectual and developmental disabilities
2. Family members of people who experience I/DD
3. Office of the Developmental Disabilities Ombuds
7. Workers who support people who experience I/DD
4. Advocacy organizations
5. Office of Public Guardianship
6. Office of the Courts



"Washington should create a state funding mechanism to pay for certified professional guardians for all people in Washington who need a guardian but cannot afford one."



Guardianship survey

The online guardianship survey was distributed to the following stakeholders:

- Arc of Washington State
- Washington State Developmental Disabilities Council
- DD Ombuds
- Parent to Parent of Washington State
- People First of Washington
- Self-Advocates in Leadership
- Open Doors for Multicultural Families
- Washington State Fathers Network
- Pierce County Coalition for Developmental Disabilities
- Community Residential Services Association
- Community Advocacy Coalition
- Disability Rights Washington
- Adult Family Home Council
- Friends of Rainier
- Friends of Fircrest
- Lakeland Village Associates
- Friends of Yakima Valley School
- Wraparound with Intensive Services Washington
- King County Coalition for Developmental Disabilities
- People who asked to participate from the Show and Share events
- People Empowered & Communities Enhanced
- Washington Association of Professional Guardians

Marketing strategies were used to encourage participation. A fact sheet regarding the project was distributed. The GovDelivery email system was used to provide project information and updates, timeline reminders as well as the survey itself. Links in the main eight languages were added for translation requests.

"I would like better communication with guardianship rules. I do not get notices until it is too late, and I am not informed about the requirements for my guardianship."



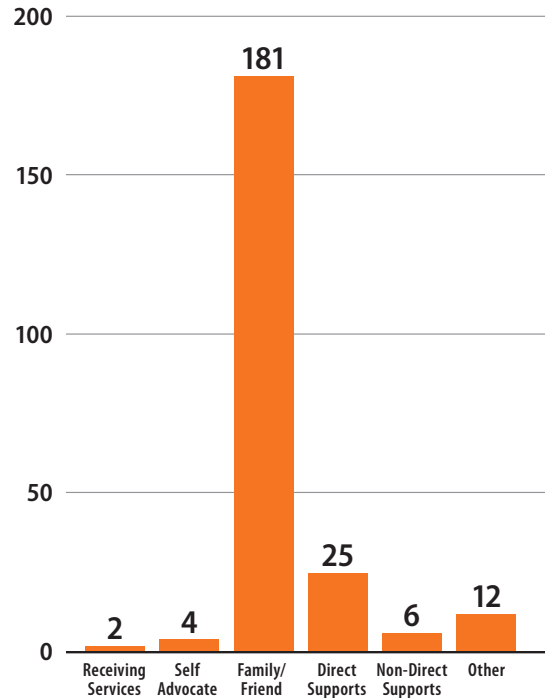


Quantitative data

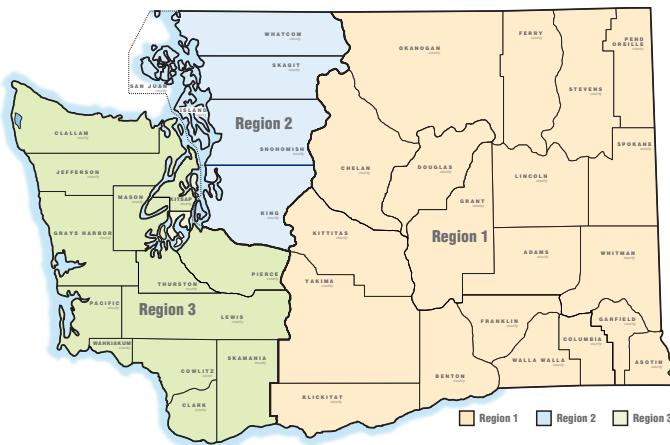
Out of the 230 responses to the DDA guardianship survey, 181 self-identified as a family member or friend of the person enrolled with DDA. Twenty-five respondents provide direct supports to an enrolled person and six provide non-direct support.

Survey Respondent Types

(DDA Stakeholder Outreach 2022)

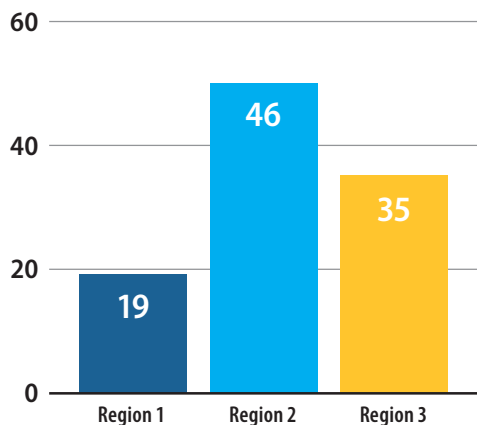


DSHS Regional Map



Survey Respondents by DSHS Service Region

(DDA Stakeholder Outreach 2022)



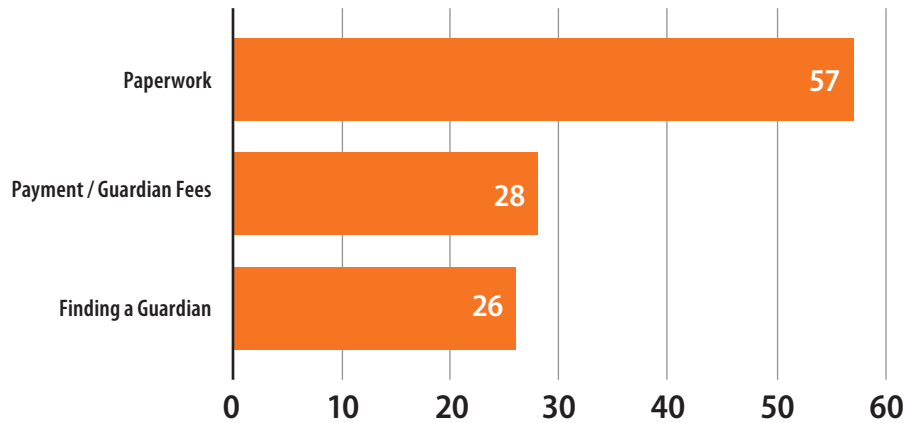
Region 2 (King, Snohomish, Skagit and Whatcom counties) provided the highest number of responses to the DDA guardianship survey.



Show and Share participants and survey respondents shared challenges they face around guardianships. The amount, frequency and difficulty of required paperwork was identified as the biggest challenge for guardians of people enrolled with DDA.

Top Stakeholder Challenges

(DDA Stakeholder Outreach 2022)



"It would be helpful if there were financial resources for qualified families who wish to be guardian but cannot afford the attorney fees."



Quantitative data

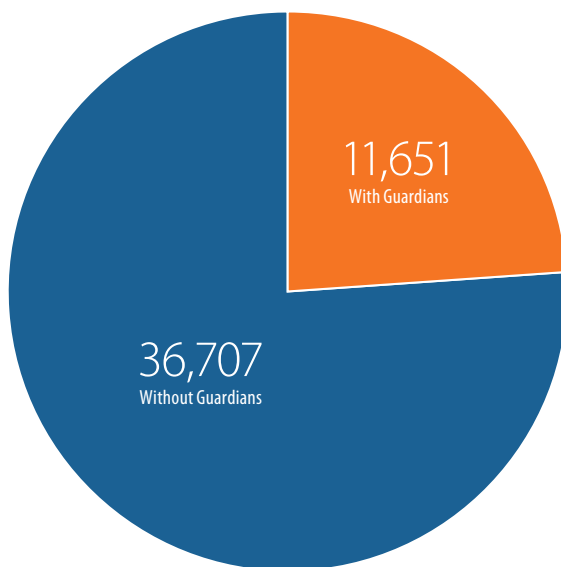
Analyzing data found in CARE system and WSIPP report

Comprehensive data on guardianship rates and other measures can be found in DDA's CARE system. Although published in 2011, the Washington State Institutes Public Policy survey of care providers contains relevant data on the need for public guardianship in Washington state. From these sources, we found:

There are currently 48,358 DDA enrolled clients. A quarter of those enrolled have a guardian. Most guardians are parents or family members. Professional guardians account for approximately 16 percent of guardians serving DDA clients.

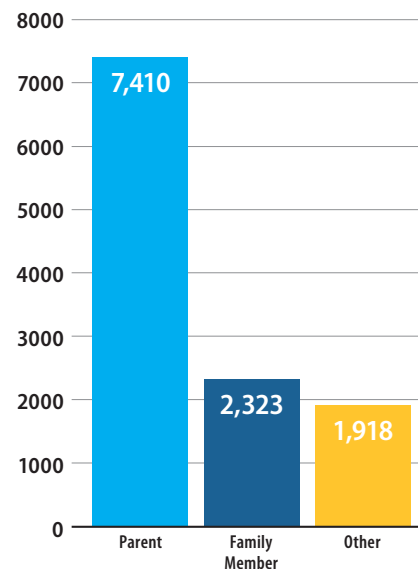
Number of DDA Enrolled Individuals with Guardians

(Total of 48,358 enrolled)
CARE 2022, Caseload Activity Details



Number of Guardian Types for DDA Enrolled

(CARE 2022)



"Certified professional guardians' services and fees should be closely monitored. Without an effective and consistent monitoring program across all counties, there is an increased risk of exploitation and potential for disregard of the incapacitated person's choices and wishes."

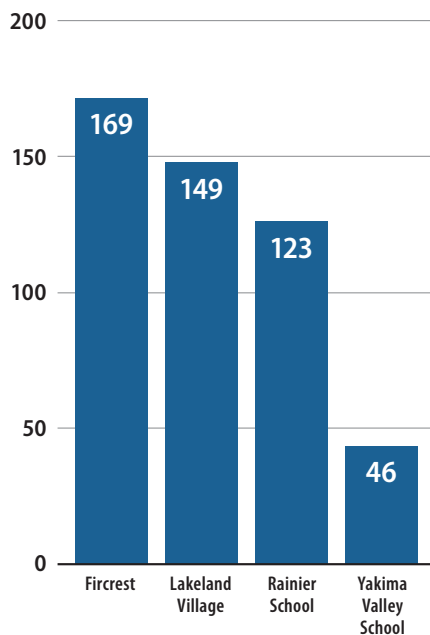


Quantitative data

In 2011, 93 percent of people living in an RHC had a guardian. RHCs had the highest number of people with guardians per setting. There has been little change in the number of people with guardians who reside in an RHC. Currently, out of the 535 people living in a Residential Habilitation Center, 487 (91 percent) have a guardian.

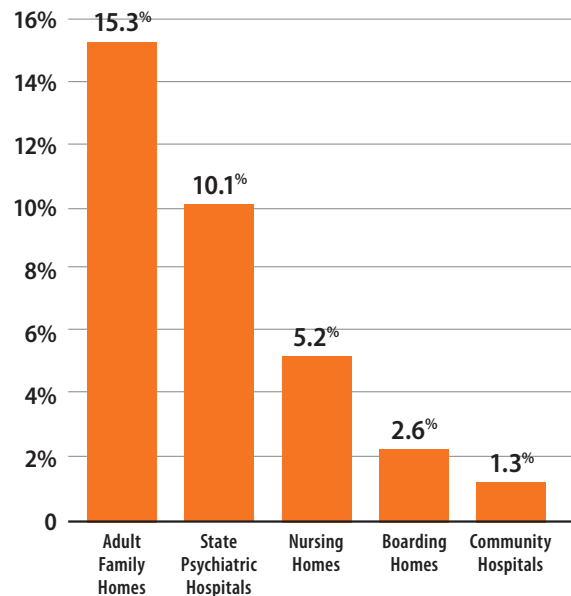
Total Number of People in Residential Habilitation Centers with Guardians

(CARE 2022)



Rate of Guardianship by Care Provider Setting

(WSIPP 2011 report)

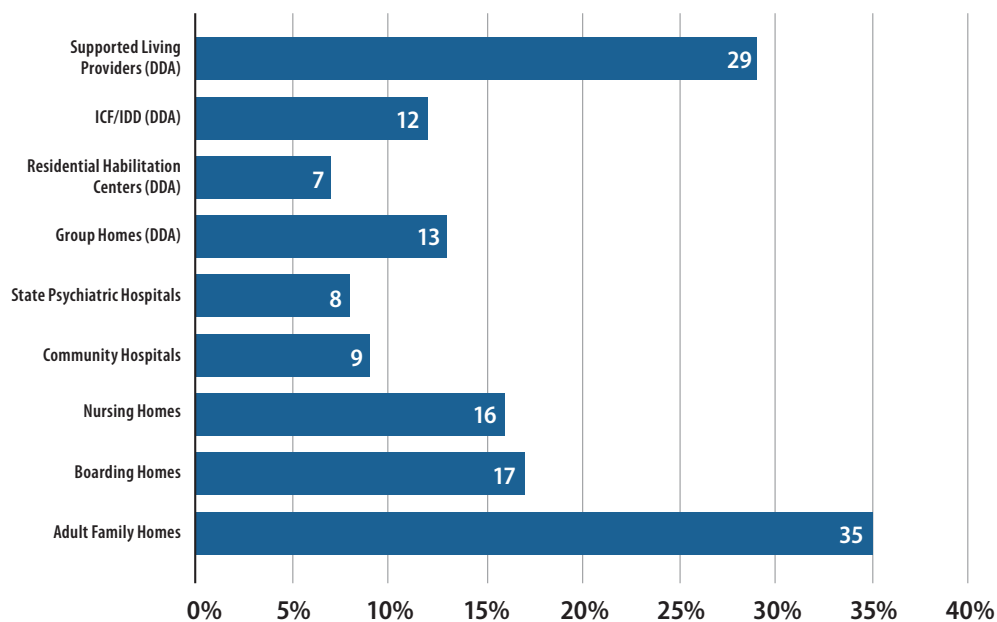




The 2011 Washington State Institute for Public Policy's survey of care providers showed the reported need for decision making support was low for residents of DDA facilities, presumably because most of these individuals already had a guardian. People living in Adult Family Homes represented the highest need for decision-making assistance.

Percentage of DDA Clients with Unmet Needs for Decision-Making Assistance

(WSIPP 2011 report)



"If a person is supported in a Residential Habilitation Center, guardianship fees are paid prior to paying for client participation to the facility. Whereas in Supported Living or other non-facility-based community settings, guardianship fees are paid as part of the person's own living expenses. Inability to pay guardianship fees can guide a guardian's decision on where the person lives."

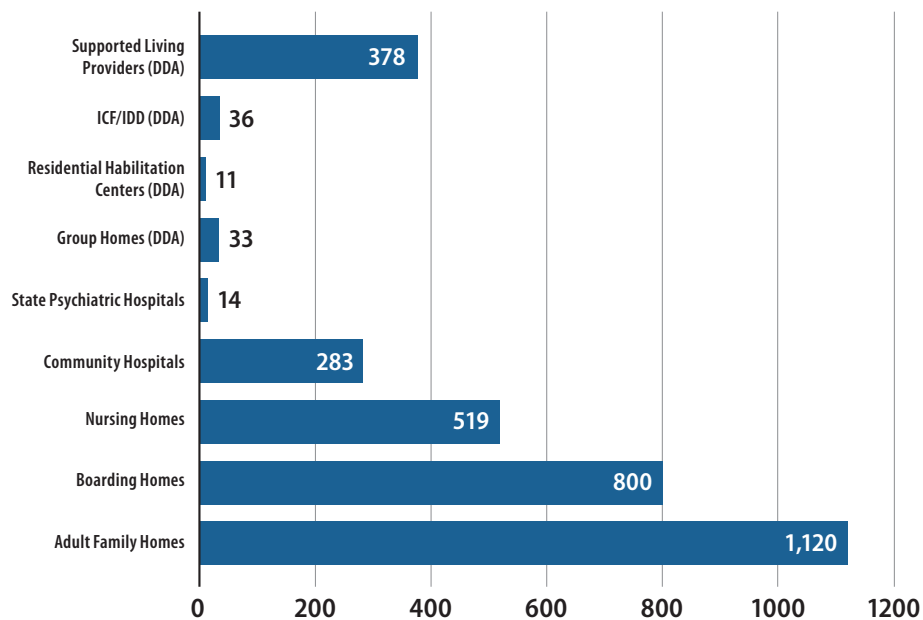




The WSIPP survey specifically asked care providers to identify the unmet need for public guardians by counting people who might need decision-making support and who were also without family, friends or financial resource.

Reported Number of Individuals Who Could Be Referred to a Public Guardian

(WSIPP 2011 report)





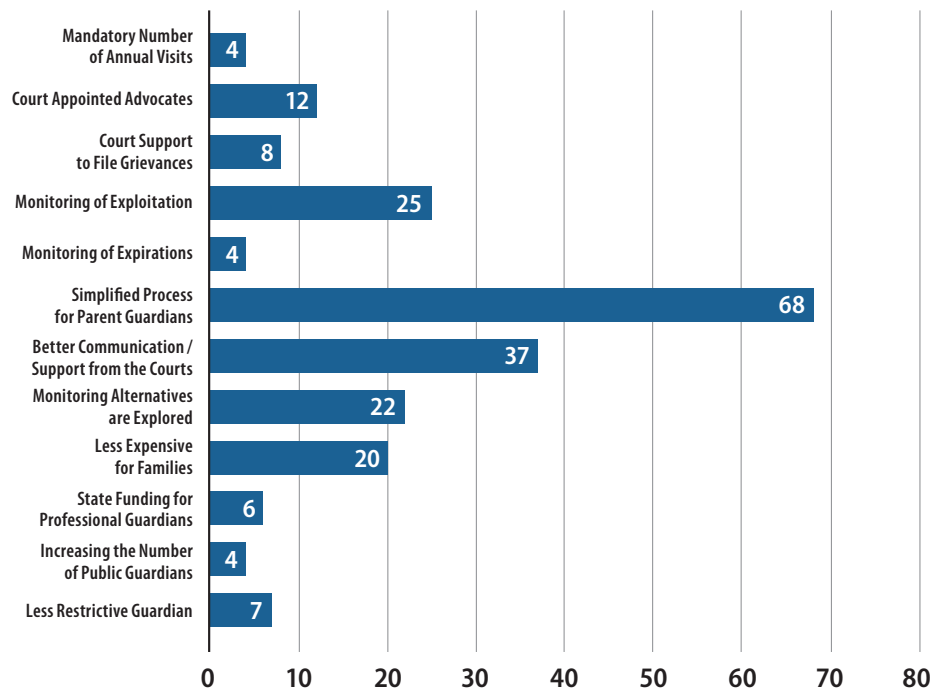
IDD Community Recommendations

A variety of recommendations for improving guardianship laws, protective arrangements and payment processes were shared at stakeholder feedback sessions and in the survey.

The main recommendation of the DDA guardianship survey and stakeholder responses was to simplify the guardianship process for parents.

Recommended Changes

(DDA Stakeholder Outreach 2022)

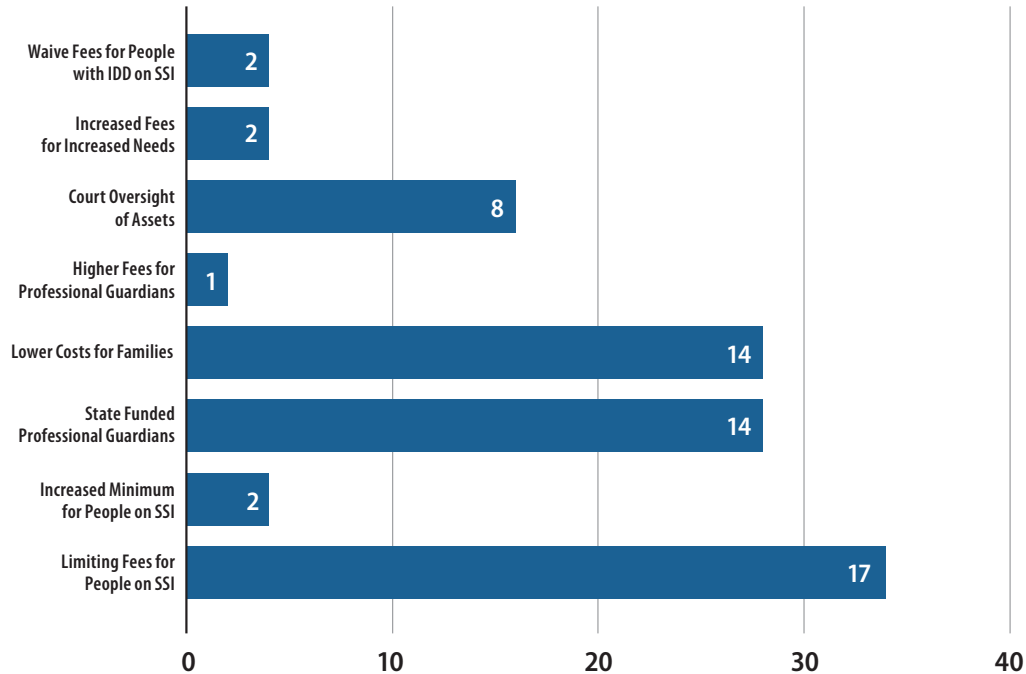




Regarding payments specifically, the main recommendation was to limit guardianship fees for people receiving Supplemental Security Income.

Payments - Recommended Changes

(DDA Stakeholder Outreach 2022)



"Some families don't qualify for low income/free lawyer services to apply for guardianship, which is difficult since applying for guardianship is so expensive. Having financial assistance or a payment plan available would be helpful for families who hesitate to petition for guardianship due to the cost."



Main Community Recommendations Summarized:

- Limit guardianship expense for people receiving Supplemental Security Income. The most requested recommendation from the community was to give those on an SSI income help to pay for a guardian. SSI has an income cap of \$841 per month and the typical guardianship fee is \$235 per month or 28 percent of the total income. This leaves little for personal expenses, such as rent and food.
- Provide more state-funded professional guardians. It can be challenging to find a guardian to work with people who experience intellectual and developmental disabilities, both due to a lack of guardians and the unwillingness of professional guardians to work with people who receive limited supplemental security income or who cannot afford to pay for guardianship.
- Establish a more robust program for the monitoring of guardians to reduce the risk of exploitation. It is reported that counties may or may not have an existing monitoring program. Community members recommend a consistent statewide approach for the monitoring of guardians.
- Continue educational outreach on the Uniform Guardianship Act. With the changes to Guardianship law enacted in 2021 in Washington, there is a need to continue to provide information on the changes. This is especially true for the less restrictive alternatives to guardianship and the requirement to explain why they are not adequate when petitioning the court for guardianship.
- Create a separate and simplified process for parent guardians.
- Lower costs for lay guardians representing family members.
- Provide increased and timely communication from the courts for lay guardians.
- Define the number of times guardians must annually meet with the person they support.
- Fund paralegal support for lay guardians so that family members can better navigate the court requirements for guardianship. A paraprofessional support network could assist lay guardians by answering basic questions and helping them execute their duties and filing requirements.

"They (the client) make approximately \$800 in SSI, and they pay \$235 for guardianship fees. Professional guardians should be available to anyone who needs a guardian and lives on their social security alone."





DDA Recommendations

The following DDA recommendations are priorities:

- **Increase the number of state-funded public guardians for people with developmental disabilities through the Office of Public Guardianship.** This would serve to address the problem of people with professional guardians not being able to transition into the community. Currently, people residing in an RHC have guardianship fees automatically deducted from their Supplemental Security Income. If a person transitions to the community, guardianship payments are not assured as living expenses are to be met first. In 2019, the Attorney General's Office filed more than 192 petitions for guardianship prompted by DSHS' Adult Protective Services' investigations. Increasing the number of state-funded public guardians would also serve to address the problem not being able to afford a guardian when a guardian is needed. The Office of Public Guardianship reports they currently have 19 public guardians with funding to support 135 individuals. According to the Washington State Institute for Public Policy's 2011 report, "Assessing the Potential Need for Public Guardianship Services in Washington State," an estimated 4,500 people may be eligible for a public guardian.
- **Legislate a compliance mechanism.** The Office of Public Guardianship has been directed to develop a regional guardianship monitoring process. However, without authority in statute, OPG lacks a compliance mechanism. When adding statutory authority, it will be beneficial to specifically mention the Administrative Office of the Courts to solidify the authority of OPG's statewide guardian monitoring program and allow access to court records to audit the accounting and guardianship reports. Without a consistent statewide process, counties continue to monitor compliance. Many counties have no monitoring programs causing incapacitated people to be at a higher risk of exploitation. Without OPG authority in statute, there will continue to be variation between counties' acceptable guardianship practices which reduces public confidence in courts and guardianships as a viable option.



"Most people who have a guardianship have no way to express their dissatisfaction of that guardianship. This is a huge problem. The guardian has a high risk of agendas that preclude this person being independently heard. But there is an absence of monitoring."



Qualitative data

- **A centralized and robust data collection program is needed for effective monitoring of guardianships.** There is little data currently collected beyond filings and depositions. National and state experts have said that there is not enough data to determine the amount of abuse of incapacitated persons by guardians, or if guardians are protecting incapacitated persons. As currently collected, county-level data in Washington state cannot be collected in a way that allows effective guardianship monitoring. It does not provide useful guidance for policy makers and practitioners to strengthen the guardianship system and prevent abuse. A centralized data collection system would provide efficiencies, and statutory authority to access court records is required for effective monitoring. Effective monitoring and reporting¹ would:
 1. facilitate effective case processing;
 2. gauge the extent of abuse by guardians and the extent to which guardians protect incapacitated persons from abuse;
 3. gauge the effect of court orders;
 4. provide useful feedback and support in a demanding role; and
 5. have a preventive effect.
- **Grant additional DDA guardianship resources, including a dedicated coordinator for each region and a program manager in the central office.** DDA currently assigns this work as extra duty to staff who have other assigned positions. Having a dedicated program manager and regional coordinators will allow the DDA to better focus on the needs of clients with guardianships, further follow up on expired guardianships and collaborate with guardians to address concerns. This team of four full time employees will provide education and outreach to support establishing least restrictive alternatives to guardianships including supported decision making.
- **Give authority in statute to mandate the number of annual visits required by guardians.** Currently, the board of regulations requires quarterly visits, however, this is not reflected in statute, and is reportedly not well known and compliance is low.
- **Conduct new studies of the newly implemented Uniform Guardianship Act through the WSIPP.** The 2011 Washington State Institute for Public Policy reports: *Assessing the Potential Need for Public Guardianship Services in Washington State and Public Guardianship in Washington State Costs and Benefits* are outdated and need updating.
- **Consider introducing a temporary substitute guardianship system similar to those used in other states, such as [Minnesota](#).** Currently, Washington state courts have “benches” of court-appointed attorneys and guardians to advocate during court proceedings. Neither currently function as a short-term decision-making authority when guardianship complaints are pending. Funding temporary substitute guardians through the courts may help bridge this gap.

¹ WA State Judicial Branch 2019-2012 Biennial Budget Decision Packet