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Program and Ward Characteristics and Cost Savings of Public Guardianship: An Evaluation of the Florida Public Guardianship Program

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PROGRAM AND WARD CHARACTERISTICS AND COST SAVINGS OF PUBLIC GUARDIANSHIP: AN EVALUATION OF THE FLORIDA PUBLIC GUARDIANSHIP PROGRAM

Winsor C. Schmidt, Pamela B. Teaster,** Marta Mendiondo,***
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I.	INTRODUCTION	330
II.	METHODOLOGY	335
	A. <i>Data Collection Measures</i>	336
	1. Analysis of the Programs	336
	2. Characteristics of the IPs	336
	3. Cost Savings.....	336
	B. <i>Data Collection Procedures</i>	336
III.	RESULTS: PROGRAM ADMINISTRATION	337
	A. <i>Description of the Programs</i>	337
	B. <i>Classification of Program Model</i>	337
	C. <i>Background to Other Florida Public Guardian Program Characteristics</i>	338
	1. Staff to Client Ratio	338
	2. Staff with Higher Education	339
	3. Professional Staff Including a Compensated Attorney.....	340
	4. Full-Time Staff Members Versus Part-Time Staff Members.....	340
	D. <i>Programs and Program Administration</i>	341

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E.	<i>Program Staffing</i>	341
1.	Paid Staff.....	341
2.	Staff to IP Ratio	341
F.	<i>Costs of Operating Programs</i>	341
1.	Tangible Cost Savings	342
2.	Intangible Cost Savings: Quality of Life Actions.....	343
IV.	RESULTS: CHARACTERISTICS OF INCAPACITATED PERSONS.....	343
A.	<i>Demographic Characteristics</i>	343
1.	Type of Guardianship Provided for IPs	343
2.	Type of Residence of IPs	344
3.	Gender.....	344
4.	Race.....	344
5.	Age.....	345
6.	Marital Status.....	345
7.	IP's Annual Family Income Before Taxes.....	345
8.	Education	345
B.	<i>Health and Functional Abilities</i>	345
V.	DISCUSSION	346
A.	<i>Public Guardianship Model Classification</i>	347
B.	<i>Staff to IP Ratio</i>	347
C.	<i>Public Guardian Program Costs</i>	348
D.	<i>Public Guardian Program Savings</i>	348
E.	<i>Public Guardian Quality of Life Activities</i>	349
F.	<i>Characteristics of Incapacitated Persons</i>	349
1.	Type of Guardianship	349
2.	Residence	350
3.	Gender, Race, Age, Marital Status, Income.....	350
VI.	CONCLUSION.....	351

I. INTRODUCTION

In its analysis of financial exploitation, neglect, and abuse of seniors by legal guardians, the U. S. Government Accountability Office provides this case example involving public guardians:

Public guardians appointed to care for an 88-year-old California woman with dementia allegedly sold the woman's properties below market value to buyers that included both a relative of the guardian and a city employee. One of the public guardians also moved the ward into various nursing homes without notifying family members, who had to

call the police to help them find their relative. The woman developed bed sores during this time that became so serious her leg had to be amputated at the hip.¹

Media scrutiny of guardians and the guardianship system persist, including recent accounts in Florida.²

1. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-1046, GUARDIANSHIPS: CASES OF FINANCIAL EXPLOITATION, NEGLECT, AND ABUSE OF SENIORS 6 (2010); *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-33, ELDER ABUSE: THE EXTENT OF ABUSE BY GUARDIANS IS UNKNOWN, BUT SOME MEASURES EXIST TO HELP PROTECT OLDER ADULTS 10 (2016) (professional guardian in Washington paid by the Office of Public Guardianship violated Certified Professional Guardian Standards of Practice by (1) failing proper financial affairs management including untimely tax returns filing and medication bills payment; (2) insufficient basic clothing for the person under guardianship; (3) irregular visits and arrangements for qualified visits; and (4) improper taking of guardian fees without consulting the person under guardianship while being paid by the Office of Public Guardianship; potential loss of up to \$25,000 and 25% of the estate).

2. *See, e.g.*, Barbara Peters Smith, *Courtroom Trauma: Amicable Divorce Turned into Guardianship Nightmare*, SARASOTA HERALD-TRIB. (Aug. 20, 2016, 12:01 AM), <http://www.heraldtribune.com/news/20160820/courtroom-trauma-amicable-divorce-turned-into-guardianship-nightmare>. And even after recent efforts to add state oversight, family members and friends of wards still complain of a routine process where professional guardians sell off elders' property, and move them from familiar surroundings to institutions where they decline and die. Guardianship activists have a chilling description for this sequence: "liquidate, isolate, medicate." *Id.*; Barbara Peters Smith, *Elder Guardianship: Between a Rock and a Hard Place*, SARASOTA HERALD-TRIB. (Dec. 7, 2014), <http://extra.heraldtribune.com/2014/12/07/elder-guardianship-rock-hard-place/> (revealing issues with guardian nonprofit Lutheran Services of Florida which charges for a phone call to a doctor's voice mail (\$8.50), guardian two-hour home visit during doctor visit (\$170), in addition to attorney fees (\$10,000)); Barbara Peters Smith, *Guardian Puts Ex-husband in "Rat's Nest," She Says*, SARASOTA HERALD-TRIB. (Dec. 7, 2014), <http://extra.heraldtribune.com/2014/12/07/guardian-put-ex-husband-rats-nest-says/> ("Florida's underfunded elder guardianship system subsists mostly on the assets of its thousands of wards . . ."); Barbara Peters Smith, *Little Common Ground in Debate on Guardianship*, SARASOTA HERALD-TRIB. (Oct. 19, 2015, 3:59 PM), <http://www.heraldtribune.com/news/20151019/little-common-ground-in-debate-on-guardianship>; Barbara Peters Smith, *Elder Guardianship: A Well-Oiled Machine*, SARASOTA HAROLD-TRIB. (Dec. 6, 2014), <http://guardianship.heraldtribune.com/default.aspx>. In response to a pressing need, Florida has cobbled together an efficient way to identify and care for helpless elders, using the probate court system to place them under guardianship. But critics say this system—easily set in motion, but notoriously difficult to stop—often ignores basic individual rights. Most of it plays out in secret, with hearings and files typically closed from the public. *Id.*; Editorial, *Finish Reform of Guardianship Law*, GAINESVILLE SUN (Oct. 26, 2015, 12:01 AM), <http://www.gainesville.com/news/20151026/editorial-finish-reform-of-guardianship-law>; John Pacenti, *All Power Over Adult Guardianship Severed for Judge Colin*, PALM BEACH POST (Feb. 23, 2016, 5:27 PM), http://www.mypalmbeachpost.com/news/all-power-over-adult-guardianship-severed-for-judge-colin/NpANB6_bXxjqb8hZP4KPR4H/; *see also, e.g.*, Arian Campo-Flores & Ashby Jones, *Abuse Plagues System of Legal for Adults*, WALL ST. J. (Oct. 30, 2015, 1:18 PM), <https://www.wsj.com/articles/abuse-plagues-system-of-legal-guardians-for-adults-1446225524>; Beth LeBlanc, *Judge Requests Investigation of Lansing Lawyer, Removes Her from Cases*, LANSING STATE J. (Oct. 3, 2017) (conflicts of interest in lawyer's role as guardian), <http://www.lansingstatejournal.com/story/news/local/2017/10/03/judge-requests-invesigation-lansing-lawyer-conflicts-interest-judge-requests-investigation-lansing/712704001/>; Beth LeBlanc, *Judge Denies Second Request for Disqualification from Landing*

Problems in public guardianship range from the quantity and quality of unmet need for public guardian services³ to problematic outcomes for

Lawyer, LANSING STATE J. (Oct. 5, 2017) (conflicts of interest in lawyer's role as a guardian), <http://www.lansingstatejournal.com/story/news/local/2017/10/05/judge-denies-second-request-disqualification-lansing-lawyer/733408001/>; Carol D. Leonnig et al., *Under Court, Vulnerable Became Victims; Attorneys Who Ignored Clients or Misspent Funds Rarely Sanctioned*, WASH. POST, June 15, 2003, at A01; Colton Lochhead, *Clark County's Private Guardians May Protect—Or Just Steal and Abuse*, LAS VEGAS REV.-J. (Apr. 11, 2015, 7:23 PM), <http://www.reviewjournal.com/news/las-vegas/clark-county-s-private-guardians-may-protect-or-just-steal-and-abuse>; Colton Lochhead, *Courts, Lawmakers Working on Protection for Weakest Citizens*, LAS VEGAS REV.-J. (Apr. 12, 2015, 7:44 PM), <http://www.reviewjournal.com/news/nevada/courts-lawmakers-working-protection-weakest-citizens>; Colton Lochhead, *Few Clark County Guardianship Cases are in Compliance with Nevada Laws*, LAS VEGAS REV.-J. (Apr. 1, 2016, 8:28 PM), <http://www.reviewjournal.com/news/las-vegas/few-clark-county-guardianship-cases-are-compliance-nevada-laws>; Colton Lochhead, *Grand Jury Indicts Nevada Guardian on more than 200 Charges*, LAS VEGAS REV.-J. (Mar. 8, 2017), <https://www.reviewjournal.com/crime/grand-jury-indicts-nevada-guardian-on-more-than-200-charges/>; Jack Leonard et al., *Guardians for Profit; Judges' Inaction, Inattention Leave Many Seniors at Risk; Probate Courts are Supposed to Watch Conservators' Conduct and Discipline those who Abuse their Authority. They've Failed Dismally in this Vital Role*, L.A. TIMES, Nov. 14, 2005, at A1; James Eli Shiffer, *Unfit to be Lawyer, Yet a Guardian for 200*, STAR TRIB. (Mar. 30, 2011, 11:26 AM), <http://www.startribune.com/unfit-to-be-lawyer-yet-a-guardian-for-200/117860934>; Josh Jarman et al., *Elderly, Mentally Ill and Children Trapped in Broken Court System*, COLUMBUS DISPATCH (May 18, 2014, 12:01 AM), <http://www.dispatch.com/content/stories/local/2014/05/18/elderly-mentally-ill-and-children-trapped-in-broken-court-system.html>; Office of Pub. Info. of the Supreme Court of Ohio, *On Guard: Ohio Moves to Protect Vulnerable Adults*, CNO REV., Apr. 2015, at 6; Rachel Aviv, *How the Elderly Lose Their Rights*, NEW YORKER (Oct. 9, 2017), <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>; Robin Fields et al., *When a Family Matter Turns into a Business*, L.A. TIMES (Nov. 13, 2005), <http://www.latimes.com/local/la-me-serve13nov13-story.html>; Sarah Cohen et al., *Rights and Funds Can Evaporate Quickly, Attorneys' Powers Thwarted D.C. Residents Trying to Remain Independent*, WASH. POST, June 16, 2003, at A01; Susan Garland, *Calls for Court Reform as Legal Guardians Abuse Older Adults*, N.Y. TIMES (July 28, 2018), <https://www.nytimes.com/2017/07/28/business/calls-for-court-reform-as-legal-guardians-abuse-older-adults.html?mcubz=3>; William Glaberson, *Grand Jury Urges Overhaul of Legal Guardianship System*, N.Y. TIMES (Mar. 3, 2004), <http://www.nytimes.com/2004/03/03/nyregion/grand-jury-urges-overhaul-of-legal-guardianship-system.html>. See generally, e.g., Winsor C. Schmidt et al., *Study Finds Certified Guardians with Legal Work Experience are at Greater Risk for Elder Abuse Than Certified Guardians with Other Work Experience*, 7 NAELA J. 171, 173–74 (2011) (summary of leading newspaper reports regarding the guardianship system for 1987 through 2010).

3. See, e.g., David Hightower, Alex Heckert & Winsor Schmidt, *Elderly Nursing Home Residents' Need for Public Guardianship Services in Tennessee*, 2 J. ELDER ABUSE & NEGLECT 105, 120 (1990); Winsor C. Schmidt, *Guardianship for Vulnerable Adults in North Dakota: Recommendations Regarding Unmet Needs, Statutory Efficacy, and Cost Effectiveness*, 89 N.D. L. REV. 77, 82–91 (2013); Winsor C. Schmidt & Roger Peters, *Legal Incompetents' Need for Guardians in Florida*, 15 BULL. AM. ACAD. PSYCHIATRY & L. 69, 81 (1987); MASON BURLEY, WASH. STATE INST. FOR PUB. POLICY, DOC. NO. 11-12-3901, *ASSESSING THE POTENTIAL NEED FOR PUBLIC GUARDIANSHIP SERVICES IN WASHINGTON STATE* 14 (2011); KAREN A. ROBERTO, JOY O. DUKE, NANCY BROSSOIE & PAMELA TEASTER, *THE NEED FOR PUBLIC GUARDIANS IN THE COMMONWEALTH OF VIRGINIA* 16 (2007); Pamela B. Teaster & Karen A. Roberto, *Living the Life of Another: The Need for Public Guardians of Last Resort*, 21 J. APPLIED GERONTOLOGY 176, 182

guardianship and public guardianship, and other protective services interventions.⁴ Among the consequences for persons lacking decision-making capacity and a legal guardian, the median intensive care unit (ICU) length of stay for critically ill hospital patients lacking decision-making capacity and a surrogate decision-maker is twice as long as other ICU patients.⁵

Public guardianship is the appointment and responsibility of a public official or publicly funded entity to serve as a legal guardian for a person with legal incapacity in the absence of willing and responsible family members or friends to serve as guardian, or in the absence of resources to employ a private guardian.⁶ The first national study of public guardianship assessed the extent to which public guardianship assists or hinders people with legal incapacity in securing access to their rights, benefits, and entitlements.⁷ The study found a need for public guardianship and instances of genuine concern and successful advocacy for persons under public guardianship, but also discovered: understaffing, underfunding, and the approach of a saturation point in public guardian offices; many people under public guardianship receiving little personal attention; and instances of abuse. Failure regarding conflicts of interest, staffing and funding, or the guardianship statute “will tip the benefit

(2002); REPORT OF THE GUARDIANSHIP TASK FORCE TO THE WSBA ELDER LAW SECTION EXECUTIVE COMMITTEE: RECOMMENDATIONS FOR IMPROVING AOC'S LAY GUARDIAN TRAINING PROGRAM 2 (2013), <http://www.wsba.org/Legal-Community/Sections/Elder-Law-Section/Guardianship-Committee>.

4. See, e.g., GEORGE ALEXANDER & TRAVIS LEWIN, *THE AGED AND THE NEED FOR SURROGATE MANAGEMENT* (1972); WINSOR SCHMIDT, *GUARDIANSHIP: COURT OF LAST RESORT FOR THE ELDERLY AND DISABLED* (1995); WINSOR SCHMIDT, KENT MILLER, WILLIAM BELL & B. ELAINE NEW, *PUBLIC GUARDIANSHIP AND THE ELDERLY* (1981); PAMELA TEASTER, WINSOR SCHMIDT, ERICA WOOD, SUSAN LAWRENCE & MARTA MENDIONDO, *PUBLIC GUARDIANSHIP: IN THE BEST INTERESTS OF INCAPACITATED PEOPLE?* (2010); Margaret Blenkner, Martin Bloom & Margaret Nielsen, *A Research and Demonstration Project of Protective Services*, 52 SOC. CASEWORK 483 (1971); Mark Lachs, Christianna Williams, Shelley O'Brien & Karl Pillemer, *Adult Protective Service Use and Nursing Home Placement*, 42 GERONTOLOGIST 734 (2002).

5. See Douglas White, J. Randall Curtis, Bernard Lo & John Luce, *Decisions to Limit Life-Sustaining Treatment for Critically Ill Patients Who Lack Both Decision-Making Capacity and Surrogate Decision-Makers*, 34 CRITICAL CARE MED. 2053, 2057 (2006); see also, e.g., Anirban Basu, Romina Kee, David Buchanan & Laura S. Sadowski, *Comparative Cost Analysis of Housing and Case Management Program for Chronically Ill Homeless Adults Compared to Usual Care*, 47 HEALTH SERVICES RES. 523 (2012) (housing and case management program for chronically ill homeless adults generated annual cost savings of \$6,307 per person); Laura S. Sadowski, Romina Kee, Tyler VanderWeele & David Buchanan, *Effect of a Housing and Case Management Program on Emergency Department Visits and Hospitalizations Among Chronically Ill Homeless Adults: A Randomized Trial*, 301 J. AM. MED. ASS'N 1771 (2009) (housing and case management reduces hospital days and emergency department visits for chronically ill homeless adults).

6. SCHMIDT, MILLER, BELL & NEW, *supra* note 4.

7. *Id.*

burden ratio against the individual ward, and the ward would be better off with no guardian at all.”⁸

The replication of the first national public guardianship study discovered that nearly all public guardianship programs are inadequately staffed and funded, personnel are undertrained and undercompensated, data collection systems are limited and often poorly managed, and due process protections from inappropriate coercion are still lacking: “Poorly executed public guardianship does greater harm than no public guardianship at all.”⁹

The Second National Guardianship Conference recommended: “Research [should] be undertaken to measure successful practices and to examine how the guardianship process is enhancing the well-being of persons with diminished capacity. . . . The research should examine how the system is working.”¹⁰

The objectives of this Article are to present the results of an evaluation of a state’s public guardianship program. The results include: (a) important guardian program characteristics like classification of the public guardian program model, numbers served, staffing ratios, program costs, program cost savings, and program quality of life actions; and, (b) characteristics of the people under public guardianship. The article then provides discussion, implications, and conclusions for public guardianship, for persons subject to public guardianship, and for the unmet need for public guardianship services and problematic public guardianship outcomes.

8. *Id.* at 183.

9. TEASTER ET AL., *supra* note 4, at 144.

10. *Wingspan-The Second Nat’l Guardianship Conference, Recommendations*, 31 STETSON L. REV. 595, 597 (2002); *see also, e.g.*, Karl Pillemar, Marie-Therese Connolly, Risa Breckman, Nathan Spreng & Mark Lachs, *Elder Mistreatment: Priorities for Consideration by the White House Conference on Aging*, 55 GERONTOLOGIST 320, 322 (2015) (“An extremely serious problem is that after decades of interest, there is a near absence of empirically tested elder mistreatment interventions.”); *Adult Guardianship Initiative: An Initiative of the NCSC’s Center for Elders and the Courts and the CCJ/COSCA Joint Committee on Elders and the Courts*, NAT’L CTR. FOR STATE COURTS (2016), <http://www.eldersandcourts.org/~media/Microsites/Files/cccl/Guardianship%20Strategic%20Action%20Plan%202016.ashx>. Adult Guardianship Initiative project concepts include:

Building a Research Portfolio and Developing Court Performance Management Systems . . . There is very little research on particular guardianship practices and their effectiveness in promoting the well-being of vulnerable adults placed under a guardianship or conservatorship. . . . A research portfolio that includes program evaluations and comparative studies on guardianship practices is proposed to develop best practices. . . . Ultimately, the courts should move toward performance management processes that are constantly informed by data.

Id. at 5.

The Public Guardianship Act in Florida established the Statewide Public Guardianship Office in the Department of Elder Affairs.¹¹ In 2008, the Office contracted for public guardian services with fifteen local public guardian programs that cover 30% (20 of 67 counties) of the state. Florida, with 18% of residents over age 65, represents America's demographic future of 20% over age 65 by 2050.

II. METHODOLOGY

Evaluation of the Florida public guardian program is modeled on the research design originally used for the first two of Florida's pilot public guardian programs,¹² the evaluation of the first two of Virginia's pilot programs,¹³ and another evaluation of the Virginia public guardianship programs.¹⁴ Individual public guardian programs and the Florida Department of Elder Affairs provided information and feedback during the 2008–2009 evaluation period.

The study built upon earlier strategies used for data collection for the Virginia public guardianship evaluation,¹⁵ and for a national study of public guardianship.¹⁶ In addition to surveys of public guardians, applicable state programmatic data were used.

11. FLA. STAT. §§ 744.701–715 (2015). In March 2016, the Office of Public and Professional Guardians replaced the Statewide Public Guardianship Office, expanding the office to have regulatory oversight of registered professional guardians. FLA. STAT. § 744.2001 (2016).

12. Winsor Schmidt, Kent Miller, Roger Peters & David Loewenstein, *A Descriptive Analysis of Professional and Volunteer Programs for the Delivery of Public Guardianship Services*, 8 PROB. L.J. 125, 150–55 (1988) (Guardianship Program of Dade County, Inc., Miami “determined to deliver higher quality services overall” than Lutheran Ministries of Florida–Suncoast Area, St. Petersburg); *cf.*, e.g., Barbara Peters Smith, *Elder Guardianship: Between a Rock and a Hard Place*, *supra* note 2 (issues with guardian nonprofit Lutheran Services of Florida including, e.g., charges for phone call to doctor's voice mail (\$8.50), guardian two-hour home visit during doctor visit (\$170), attorney fees (\$10,000)); Barbara Peters Smith, *Governor's Veto Strands Indigent Wards of State*, SARASOTA HERALD-TRIB., July 15, 2015, <http://www.heraldtribune.com/news/20150715/governors-veto-strands-indigent-wards-of-state> (Governor Rick Scott vetoes \$750,000 appropriation for Lutheran Services Florida, Inc.).

13. Pamela Teaster, Winsor Schmidt, Hillel Abramson & Richard Almeida, *Staff Service and Volunteer Staff Service Models for Public Guardianship and “Alternatives” Services: Who is Served and With What Outcomes?*, 5 J. ETHICS, L. & AGING 131, 144 (1999).

14. PAMELA TEASTER & KAREN ROBERTO, VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAMS: EVALUATION OF PROGRAM STATUS AND OUTCOMES (2003).

15. *Id.*

16. See TEASTER ET AL., *supra* note 4; PAMELA TEASTER, ERICA WOOD, NAOMI KARP, SUSAN LAWRENCE, WINSOR SCHMIDT & MARTA MENDIONDO, WARDS OF THE STATE: A NATIONAL STUDY OF PUBLIC GUARDIANSHIP (2005); PAMELA TEASTER, ERICA WOOD, WINSOR SCHMIDT & SUSAN LAWRENCE, PUBLIC GUARDIANSHIP AFTER 25 YEARS: IN THE BEST INTERESTS OF INCAPACITATED PEOPLE? (2007).

A. Data Collection Measures

1. Analysis of the Programs

Programs were analyzed by gathering information on incapacitated persons (IPs)¹⁷ served, service outcomes, administrative procedures used, activities of the program, and associated programmatic costs.

2. Characteristics of the IPs

Demographic and health characteristics of the IPs served, including their past, present, and future needs, and outcomes of service provision are determined from self-reported data provided by the programs and from the database of the Department of Elder Affairs.

3. Cost Savings

Costs to the state, cost savings for the state, and quality of life improvements for the IPs served by the programs are calculated from information collected through an email survey. The survey recorded information on up to six specific actions resulting in program savings and up to nine specific actions improving quality of life for each active, individual IP as of September 1, 2008.

B. Data Collection Procedures

The evaluation of the Florida public guardian programs took place in 2008–2009. Data were collected on-line during the fall of 2008 and the winter and spring of 2009. All Florida public guardian programs

17. According to Fla. Stat. § 744.102(12) (2016), “‘Incapacitated person’ means ‘a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.’” Fla. Stat. § 744.102(22) (2016) specifies: “‘Ward’ means a person for whom a guardian has been appointed.” Such terms are used herein as formal legal terms of art in Florida. However, the Third National Guardianship Summit recommends, “Where possible, the term *person under guardianship* should replace terms such as *incapacitated person*, *ward*, or *disabled person*.” Recommendation #1.7, *Third National Guardianship Summit Standards and Recommendations*, 2012 UTAH L. REV. 1191, 1199 (2012); see also Jan La Forge, *Preferred Language Practice in Professional Rehabilitation Journals*, 57 J. REHABILITATION 49 (1991); Texas Council for Developmental Disabilities, *People First Language—Describing People with Disabilities*; Cf. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV-TR, 4th ed. 2000)* (text revised) (“[a] common misconception is that a classification of mental disorders classifies people, when actually what is being classified are disorders that people have;” thus, DSM-IV “avoids the use of such expressions as ‘a schizophrenic’ or ‘an alcoholic’ and uses the more accurate, but admittedly more cumbersome, ‘an individual with Schizophrenia’ or ‘an individual with Alcohol Dependence.’”).

participated in the data collection. A survey was developed to analyze service provision; to investigate characteristics, needs, and outcomes of service provision; and to gather cost information and calculate cost savings.

All data manipulation and data analyses were performed with SAS[®] statistical software. Descriptive statistics were used to create a profile of the programs and the IPs and to assess program implementation. Differences in the characteristics between the IP population and general population of Florida were assessed using chi-square analysis. Analyses were performed on the population of active IPs as of September 1, 2008. IPs were considered active if documented by both the Florida Department of Elder Affairs and by the individual public guardian programs in Florida.

Findings are organized into two broad sections: program administration and characteristics of the IPs.

III. RESULTS: PROGRAM ADMINISTRATION

A. *Description of the Programs*

There are fifteen Florida public guardian programs that serve IPs needing guardians in eighteen primarily urban counties and two primarily rural counties, thus covering only 30% (20/67) of the state.¹⁸ Of these, two programs serve one county¹⁹ and four programs serve more than one county.²⁰

B. *Classification of Program Model*

The state of Florida, including the fifteen public guardian programs with which it contracts, is classified as a division of a social service agency model of public guardianship (the Statewide Public Guardianship

18. Aging Safely [De Soto (rural) and Manatee Counties]; Aging Solutions, Inc. (Brevard, Hillsborough, Pasco, and Pinellas Counties); Barry University School of Social Work, Office of the Public Guardian (Broward County); Collier County Public Guardian; Charlotte County Public Guardian; Council on Aging of Volusia County, Inc.; Fifth Circuit Public Guardian Corporation (Marion County); Guardianship Program of Dade County (Miami-Dade County); Lee County Public Guardianship Program; Legal Aid Society of Palm Beach County, Inc.; Martin County Public Guardian, Inc.; Office of the Public Guardian, Inc. [Bay, Leon and Madison (rural) Counties]; Osceola Council on Aging (Osceola County); Seniors First, Inc.; (Orange County); The Guardianship Care Group, Inc. (Miami-Dade County).

19. Guardianship Program of Dade County (Miami-Dade County); The Guardianship Care Group, Inc. (Miami-Dade County).

20. Aging Safely (De Soto and Manatee Counties); Collier County and Charlotte County Public Guardian; Office of the Public Guardian, Inc. (Bay, Leon and Madison Counties); Seniors First, Inc. (Orange County and Seminole County).

Office is in the Department of Elder Affairs).²¹ This model of providing public guardian services puts social services agency providers as guardians in the conflict of interest position of consenting to or refusing their own social services.²² The four models of public guardianship originally proposed by Regan and Springer²³ are (1) a court model, (2) an independent state office, (3) a division of a social service agency, and (4) a county agency.²⁴ Florida public guardianship programs were initially housed in the Office of the State Courts Administrator in 1982 and classified as a court model.²⁵

C. Background to Other Florida Public Guardian Program Characteristics

1. Staff to Client Ratio

Florida mandates a professional staff to ward ratio of one professional to forty wards in public guardianship,²⁶ one of the few states to statutorily mandate a staffing ratio and one of only seven states to mandate a staffing ratio in any form.²⁷ Previous national research in 1981 recommended a maximum ratio of 1:30.²⁸ Subsequent research in Virginia, a state with a social service agency administrative model similar to Florida's, established an updated maximum ratio of 1:20.²⁹ A Council on Accreditation Adult Guardianship Service Standard (AG 7) prescribes that adult guardianship caseload sizes "support regular contact with individuals and the achievement of desired outcomes,"³⁰ accompanied by the following research note: "Studies of public guardianship programs have found that lower staff to client ratios are associated with improved outcomes and recommend a 1:20 ratio to eliminate situations in which

21. TEASTER ET AL., *supra* note 4, at 247–48.

22. See, e.g., SCHMIDT ET AL., *supra* note 4, at 38; TEASTER ET AL., *supra* note 4, at 23–24.

23. John J. Regan & Georgia Springer, *Protective Services for the Elderly* (U.S. S. Spec. Comm. on Aging, Working Paper, 1977).

24. SCHMIDT ET AL., *supra* note 4, at 59.

25. Winsor Schmidt, *The Evolution of a Public Guardianship Program*, 12 J. PSYCHIATRY & L. 349 (1984).

26. FLA. STAT. § 744.2103(7) (2016).

27. TEASTER ET AL., *supra* note 4, at 129, 152–53.

28. SCHMIDT ET AL., *supra* note 4, at 193.

29. WINSOR SCHMIDT ET AL., SECOND YEAR EVALUATION OF THE VIRGINIA GUARDIAN OF LAST RESORT AND GUARDIANSHIP ALTERNATIVES DEMONSTRATION PROJECT (1997); TEASTER & ROBERTO, *supra* note 14, at 67 (The Virginia Department for the Aging "contracted with the local [Virginia] programs for a maximum staff to ward ratio of 1:20 and the programs were able to maintain [an average of] this ratio, serving between 10 and 35 wards per evaluation year.")

30. Council on Accreditation, *Adult Guardianship Service Standards - Standard AG7: Frequency of Contact*, <http://coanet.org/standard/ag/7/> (last visited April 13, 2015).

there is little to no service being provided.”³¹ The most recent national study of public guardianship confirms the 1:20 maximum ratio.³²

2. Staff with Higher Education

Previous research recommends that public guardianship staff members have no less than college degrees.³³ Programs with staff members with these qualifications tend to provide better service to IPs than those that do not. A recent study investigating the relationship between state guardian certification requirements for education and guardian sanctioning in the state of Washington found that 83.3% of high school diploma or equivalency (GED) graduates are likely to have more severe sanctions compared with 76.4% with undergraduate or higher education.³⁴ The Council on Accreditation Adult Guardianship Service Standard AG 11.01 specifies that “Guardianship workers are qualified by

31. *Id.* See also WASH. REV. CODE § 2.72.030(6) (2013) (Washington’s office of public guardianship is prohibited from authorizing payment for guardianship services “for any entity that is serving more than twenty incapacitated persons per certified professional guardian.”). Adopted in thirty-one states (including Florida), the Uniform Veterans’ Guardianship Act provides that no person may be a guardian for more than five wards at one time. Nisha Thakker, *The State of Veterans’ Fiduciary Programs: What Is Needed to Protect Our Nation’s Incapacitated Veterans?*, 28 BIFOCAL 19–23 (2006) (“no person other than bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family” (citing to UVGA § 4 (1942))). A class action law suit in 1999 against a County Public Administrator providing public guardianship services in Nevada alleged that the:

Guardian fails to engage sufficient numbers of professional personnel to be able to adequately assess and periodically reassess the needs of each of its individualized wards, to adequately formulate and periodically revise an individualized case plan for each of its wards, to insure the implementation of such case plans and to insure minimal professional interactions with each ward on an ongoing basis. Winsor Schmidt, *Legal Framework for Evaluating Public Guardianship in Virginia*, Presentation at the Annual Scientific Meeting of the Gerontological Society of America (Nov. 22, 2004) (citing *Tenberg v. Washoe Cnty. Pub. Admin.*, No. CV99-01770 (Fam. Ct., 2d Jud. Dist. Ct., Nev., filed March 15, 1999) (settled)). Problems with Clark County, Nevada guardians are reported recently. See Lochhead, *supra* note 2 (April 11-12, 2015).

32. TEASTER ET AL., *supra* note 4, at 116 (recommending 1:20 ratio: “No office of public guardian shall assume responsibility for any [incapacitated persons] beyond a ratio of 20 [incapacitated persons] per one paid professional staff.”). *Cf.*, e.g., Schmidt, *supra* note 3, at 126 [“When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by . . . (d) Not assuming responsibility for any wards beyond a ratio of twenty wards per one paid professional staff.”].

33. TEASTER ET AL. PUBLIC GUARDIANSHIP AFTER 25 YEARS, *supra* note 16, at 110, 117 (“All paid professional staff with decision-making authority at least shall have graduated from an accredited four-year college of university; have a degree in law, social work, or psychology; [and be certified by the state guardian certification entity].”). *Cf.* TEASTER ET AL., *supra* note 4, at 154, 164.

34. Winsor Schmidt, Fevzi Akinci & Sarah Wagner, *The Relationship Between Guardian Certification Requirements and Guardian Sanctioning: A Research Issue in Elder Law and Policy*, 25 BEHAV. SCI. & L. 641 (2007).

. . . an advanced degree in a relevant field; or . . . a bachelor's degree with two years' relevant experience."³⁵

3. Professional Staff Including a Compensated Attorney

Programs with attorneys, especially programs with attorneys as the chief administrator, are more successful and provide better service to IPs than those without attorneys.³⁶ Public guardians are public agents of the court with legal fiduciary duties and responsibilities that are best understood and implemented by attorneys.

4. Full-Time Staff Members Versus Part-Time Staff Members

Programs with full-time staff members are better able to provide continuity of IP service than those with a majority of part-time staff members who are stretched thin with other responsibilities and percentages of time dedicated to other tasks.³⁷

35. Council on Accreditation *Adult Guardianship Service Standards* (Standard AG 11.01), <http://coanet.org/standard/ag/11/> (last visited April 20, 2015). The National Academy of Elder Law Attorneys, the National Guardianship Association, and the National College of Probate Judges state: "The supreme court of each state should promulgate rules[,] and/or the state legislature of each state should enact a statutory framework[,] to require education and certification of guardians as well as continuing education within the appointment process to ensure that all (i.e.- professional and family) guardians meet core competencies." NAT'L ACAD. OF ELDER L. ATT'YS, NAT'L GUARDIANSHIP ASS'N & NAT'L C. OF PROB. JUDGES, NAT'L WINGSPAN IMPLEMENTATION SESSION: ACTION STEPS ON ADULT GUARDIANSHIP PROCESS (2004), at 7. The private Center for Guardianship Certification (CGC) offers certification of individual professional guardians. The U.S. Government Accountability Office reported that CGC did not require Social Security numbers or other identifying information, did not verify educational or professional credentials, and did not conduct background or credit checks for fictitious certification applicants. GOV'T ACCOUNTABILITY OFFICE, GUARDIANSHIPS: CASES OF FINANCIAL EXPLOITATION, NEGLECT, AND ABUSE OF SENIORS, *supra* note 1, at 25. The fictitious applicants passed the National Certified Guardian Examination and "were listed on the organization's website as nationally certified guardians." *Id.* at 26. More colorfully regarding professional guardians, Barbara Buckley, the executive director of the Legal Aid Center of Southern Nevada, states, "We have regulatory bodies for things such as barbers, . . . But not have a similar body when we're talking about the lives of vulnerable seniors?" Lochhead, *supra* note 2, *Courts, Lawmakers*.

36. TEASTER, WOOD, SCHMIDT & LAWRENCE, *supra* note 16, at 110, 117. *Cf.* TEASTER ET AL., *supra* note 4, at 153, 162 ("The public guardian shall be a licensed attorney, shall be hired based on a broad knowledge of law, human development, sociology, and psychology, and shall have business acuity."). Examples of such programs include: the Pima County (Tucson), Arizona Office of the Public Guardian; the Maricopa County (Phoenix), Arizona Office of the Public Guardian; and the Cook County (Chicago), Illinois Office of the Public Guardian. *Id.* at 47–56, 90–110.

37. *See, e.g.*, SCHMIDT ET AL., *supra* note 4, at 193; TEASTER ET AL., *supra* note 4, at 163.

D. Programs and Program Administration

The fifteen Florida public guardian programs served 2,208 IPs on September 1, 2008, ranging from the low of ten IPs (Martin County Public Guardian, Inc.) to the high of 994 IPs (Guardianship Program of Dade County). The Guardianship Program of Dade County was the only program serving more than 500 IPs. Reflecting the continuing demand and unmet need,³⁸ there were 418 IPs on waiting lists ranging from a low of zero (Collier County, Guardianship Program of Dade County, Martin County Public Guardian, Inc., The Guardianship Care Group, Inc.) to a high of 150 (Aging Solutions, Inc.). Some programs had no persons on their waiting list because they remained at service capacity for so long that possible IPs were no longer put on the list by referral sources.

E. Program Staffing

1. Paid Staff

The programs used a mix of full-time and part-time staff. Case managers were the most frequently reported staff members. Three executive directors were reported as uncompensated. Program descriptions indicated that eight of fifteen programs have attorneys either as the program supervisor or as part of the staff.

2. Staff to IP Ratio

The state program served 2,208 IPs with an overall staff of 102 FTEs for an overall staff-to-IP ratio of 1:21. When including all FTE staff members in the ratio, no program exceeded the 1:40 ratio of IP to public guardian staff, but eight of fifteen programs had a staffing ratio greater than 1:20. When considering IPs to FTE “binding decision makers” (e.g., public guardian, case worker, social worker, or attorney), five programs exceeded the 1:40 ratio, and twelve of fifteen programs had a staffing ratio greater than 1:20.

F. Costs of Operating Programs

From July 1, 2007 to June 30, 2008, the public guardian programs reported a Statewide Public Guardianship Office state allotment of \$2,057,413 to operate the fifteen programs. The average yearly state contribution per program was \$137,161. The average monthly cost per program was \$487,283. The average yearly cost of serving an IP in

38. SCHMIDT & PETERS, LEGAL INCOMPETENTS’, *supra* note 3.

Florida was \$2,648, a decline from \$2,857 in 1983.³⁹ The low costs per IP are likely the result of the too-high, 1:40 IP to staff ratio in Florida.

1. Tangible Cost Savings

The Florida public guardian programs reported conducting numerous actions and activities for IPs that result in substantial cost savings (\$3,940,456) for the state of Florida (Table 1). Facilitating the discharge of IPs from medical hospitals to assisted living facilities resulted in the largest cost savings. Other cost saving measures included discharge from a state hospital to an assisted living facility or a nursing home, and discharge from a medical hospital to a nursing home. In addition to these cost saving activities, the state makes arrangements for pre-paid funerals. Cost savings for pre-paid funerals are not included. However, for each 100 pre-paid funerals arranged in a year's time, the state could realize \$600,000 in savings.

Table 1: Cost Savings Activities Conducted by the Guardianship Programs^a

Results from Re-analysis	June – Dec. 2008		Projected Actions for 1 Year ^b	Estimated Cost Savings for 1 Year
	Programs	IPs		
Action/Activity				Cost Savings
Discharge from state hospital to assisted living facility	1	32	64	138,240
Discharge from state hospital to nursing home	6	261	522	328,860
Discharge from medical hospital to nursing home	1	17	34	165,852
Discharge from medical hospital to assisted living facility	8	241	481	2,493,504
Secure comm.-based service (to prevent moving to more restrictive environ)	10	407	814	814,000
TOTALS	11	958	1,916	\$3,940,456

39. SCHMIDT ET AL., *supra* note 12; Teaster et al., *supra* note 13; TEASTER & ROBERTO, *supra* note 14 (for the state of Virginia, the average yearly cost per IP was \$2,662 in 1997 and \$2,955 in 2002); MASON BURLEY, PUBLIC GUARDIANSHIP IN WASHINGTON STATE: COST AND BENEFITS 16 (2011) (The average annual cost per public guardian client in Washington in 2008-2011 was \$3,163); The Guardianship Project, Summary of Medicaid Cost-Savings (Vera Institute of Justice, Inc., 2010) (on file with author) (The annual operating cost per guardianship client in New York City in 2010 was \$8,648.60).

^a Information on the calculation of cost-savings is found in Appendix A.

^b Number of IPs for the six-month period was doubled to project figures for an entire year.

Overall, during the period July 1, 2007 to June 30, 2008, the programs' estimated total cost savings to the state of Florida was \$1,883,043 (Table 2).

Table 2: Overall Cost Savings

Year	Total State Funding	Program Cost Savings	Cost Savings to the State ^a
2008	\$2,057,413	\$3,940,456	\$1,883,043

^a Represents reported cost savings minus total state funding.

2. Intangible Cost Savings: Quality of Life Actions

Important, intangible cost savings were realized in improving the quality of life of IPs by the programs that serve them. Significant quality of life savings for IPs included fifteen programs offering clients emotional support and enhancing client socialization; thirteen programs re-establishing relationships with family and friends; thirteen programs securing needed medical care and/or equipment; twelve programs arranging client funerals and making appropriate placement from home to facility; eleven programs establishing residences for a homeless person; and seven programs re-establishing religious affiliations.

IV. RESULTS: CHARACTERISTICS OF INCAPACITATED PERSONS

A. Demographic Characteristics

1. Type of Guardianship Provided for IPs

The majority of public guardianships ($n = 1,713$)⁴⁰ in Florida consists of plenary guardianships (79.8%), followed by limited guardianships (10.8%), guardian advocates (6.1%),⁴¹ successor guardian (1.7%),

40. The overall "N" of the study sample is $N = 2,208$. Subsequent n values in this article are less than 2,208 because of incomplete data.

41. A guardian advocate in Florida is a person judicially appointed to make decisions regarding mental health treatment for a patient found incompetent to consent to treatment. FLA. STAT. § 394.455 (2016).

awaiting discharge (0.80%), emergency temporary (0.70%), and extended emergency (0.05%).

2. Type of Residence of IPs

IPs ($n = 2,114$) most commonly reside in facilities providing an increased level of supervision and assistance with activities of daily living, such as skilled nursing facilities (59.8%) or assisted living facilities (22.7%), with a very small percentage (6.9%) of the population living in private residences. Only 3.5% of the IPs resides in hospitals, and another 6.9% of the IP population lives in other types of residential situations such as an adult home, group home, correctional facilities, homeless shelters, and hospice.

3. Gender

The distribution of IP gender ($n = 2,180$) is similar to that seen in the 2000 Florida census data, consisting of approximately half female (52% v. 51%) and half male (48% v. 49%). In 1981, while more than half of individuals under public guardianship nationally were female, the proportions varied from state to state.⁴² Gender variability outside Florida has continued with, for example, Delaware reporting 154 women out of 174 IPs (89%) in 2003 and San Bernardino County, California reporting mostly males in mental health conservatorships in 2006.⁴³

4. Race

Approximately half of the IPs ($n = 2,180$) are Caucasian (52% v. 78% in Florida's population), and 19% are Hispanic. A similar percentage of the general population in Florida is Hispanic (17%). A larger percentage of African-Americans is seen in the IP population (28%) compared to the general population of Florida (15%).

42. SCHMIDT ET AL., *supra* note 4, at 168. For example, these states reported the following proportions: Cook County (Chicago), Illinois (80% female); Delaware (80% female); Maricopa County (Phoenix), Arizona (65% women); Pima County (Tucson), Arizona (55% female); San Bernardino County, California (65-70% female); Colorado (50% female); Minnesota (48% women); Kansas City, Missouri (60-65% female); Multnomah County, Oregon (65% female); Medford County, Oregon (45% women); Pennsylvania persons with developmental disabilities (49% females) and mental health facilities (42% females); South Dakota (50% female). *Id.* at 89, 94, 96, 103, 112, 138, 168, 230, 236, 238, 243-45, 247.

43. TEASTER ET AL., *supra* note 4, at 71, 117.

Regarding gender identity issues and guardianship, see Nancy Knauer, *LGBT Issues and Adult Guardianship: A Comparative Perspective*, in *COMPARATIVE PERSPECTIVES ON ADULT GUARDIANSHIP* 299 (Kimberley Dayton ed., 2013).

5. Age

The IPs ($n = 2,156$) are an average age of 66 years. The IPs are significantly older ($p < .001$), with 70% of the IPs 55 years of age and older compared to 27% who are 55 years of age and older in the general population of Florida.

6. Marital Status

Most of the IPs ($n = 1,943$) are single (68%) versus 24% in the general population of Floridians. The majority of the general population is married (57%) versus 4% married in the IP population. This difference is statistically significant ($p < .001$). Of the IP population, 16% are widowed compared to 8% in the general population and 12% of both populations are divorced.

7. IP's Annual Family Income Before Taxes

There are 41% of IPs ($n = 789$) with available data ($n = 1924$) that have annual incomes below \$5,499. Only 12% of the IPs ($n = 51$) have annual incomes of \$11,000 or more. In contrast with the general population of Florida, the annual income distribution of IPs differs significantly, with the majority (65%) of the general population earning between \$15,000 and \$75,000 annually. There are 95% of IPs ($n = 1,828$) that have an annual income below \$15,000, but only 16% of the general population of Florida report an annual income below \$15,000 ($p < .001$).

8. Education

There are 68% of the IPs ($n = 835$) with available data ($n = 1,225$) that have less than a high school education. Only 23% of the IPs ($n = 281$) hold a high school diploma. Overall, 4% of IPs ($n = 49$) have a college degree. The distribution of education in the IP population is quite different from that in the general population, in which approximately 80% earned a high school diploma, and 29% earned a college degree. The IPs are significantly less educated than is the general population of Florida ($p < .001$).

B. Health and Functional Abilities

There were eleven of fifteen programs that provided diagnoses of health conditions for IPs. The proportion of IPs with diagnosed neurological, psychiatric, and developmental conditions is similar across programs. Overall, 43% of IPs are diagnosed with a neurological condition; 41% are diagnosed with a psychiatric condition; and 48% are

diagnosed with a developmental health condition. Neurological conditions are defined as including, but not limited to, Alzheimer's disease, other dementias, and epilepsy. Psychiatric conditions are defined as including, but not limited to, obsessive compulsive disorder, schizophrenia, depression, and anxiety. Developmental conditions are defined as including, but not limited to, mental retardation, cerebral palsy, and autism.

IPs' activities of daily living (ADL) and instrumental activities of daily living (IADL) requirements were reported. The majority of IPs require at least some assistance with ADLs, with the most frequent needs in the areas of bathing and dressing. Most of the IPs need help with IADLs in the areas of money management, meal preparation, taking medication, and laundry.

Overall, 17% ($n = 335$) of all IPs with available data ($n = 1,969$) are not oriented to any of the three spheres of person, place, and time; 35% ($n = 689$) are oriented to only one or two spheres at least some of the time; 20% ($n = 394$) to only one or two spheres all the time; 15% ($n = 295$) to three spheres some of the time; and only 12% ($n = 433$) of the IPs are oriented to all spheres all the time.

V. DISCUSSION

This Article presents the results of an evaluation of a public guardianship program in a state (Florida) that with 18% of its residents over age 65 represents America's demographic future of 20% over age 65 by 2050.

One conceptualization places guardianship and public guardianship on a coercion or intrusion continuum from less to more restrictive adult protective services intended to facilitate independent living and prevent or remedy adult abuse, neglect, and exploitation.⁴⁴ While the overall rates of child victimization have declined from 2009 through 2013,⁴⁵ there is a

44. William Bell, Winsor Schmidt & Kent Miller, *Public Guardianship and the Elderly: Findings from a National Study*, 21 GERONTOLOGIST 194, 194 (1981); Winsor Schmidt, *Adult Protective Services and the Therapeutic State*, 10 LAW & PSYCHOL. REV. 103 (1986); Kathleen Wilber, *Alternatives to Conservatorship: The Role of Daily Money Management Services*, 31 GERONTOLOGIST 150, 153 (1991).

45. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES & CHILDREN'S BUREAU, CHILD MALTREATMENT 2013, at ii (2015), available at <http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/child-maltreatment>. For programs that prevent child abuse and neglect (including cost effective programs), see, for example: Mark Chaffin, Jane Silovsky, Beverly Funderburk, Linda Anne Valle, Elizabeth Brestan, Tatiana Balachova, Shelli Jackson, Jay Lensgraf & Barbara Bonner, *Parent-Child Interaction Therapy with Physically Abusive Parents: Efficacy for Reducing Future Abuse Reports*, 72 J. CONSULTING & CLIN.

steady increase in elder abuse reports⁴⁶ and the potential for a continued upward trend with the aging population.⁴⁷

A. Public Guardianship Model Classification

This study of public guardianship in Florida shows a relatively mature state program that has transitioned from a commendable court model to a conflict-of-interest division-of-a-social-service-agency model. The Statewide Public Guardianship Office was housed in the Department of Elder Affairs.

B. Staff to IP Ratio

The overall state program staff-to-IP ratio was a very good 1:21. However, when considering total IPs to FTE binding-decision-makers, five of fifteen contracted programs exceeded the legislated 1:40 ratio, and twelve of fifteen programs exceeded the 1:20 ratio.

The Council on Accreditation guardianship service standards prescribe caseloads that support regular contact with individual IPs and achievement of desired outcomes. A recent court of appeals decision in Washington state⁴⁸ concludes that a guardian's "duty generally was to provide [arrange for], to the extent reasonably possible, all the care [the ward] needed. We view the specific acts, such as infrequent visits, which the [Department of Social and Health Services] Board characterized as duties, to be evidence of [the guardian's] failure to meet her general

PSYCHOL. 500 (2004); Dante Cicchetti & Sheree Toth, *Child Maltreatment*, 1 ANN. REV. CLIN. PSYCHOL. 409 (2005); Jennifer MacLeod & Geoffrey Nelson, *Programs for the Promotion of Family Wellness and the Prevention of Child Maltreatment: A Meta-analytic Review*, 24 CHILD ABUSE & NEGLECT 1127 (2000); Melissa Merrick & Natasha Latzman, *Child Maltreatment: A Public Health Overview and Prevention Considerations*, 9(1) ONLINE J. ISSUES NURSING 2 (2014); Ronald Prinz, Matthew Sanders, Cheri Shapiro, Daniel Whitaker & John Lutzker, *Population-based Prevention of Child Maltreatment: The US Triple P System Population Trial*, 10 PREVENTION SCI. 1 (2009); Matthew Stagner & Jiffy Lansing, *Progress Toward a Prevention Perspective*, 19(2) THE FUTURE OF CHILDREN 19 (2009). Federal spending on elder abuse activities (\$11.9 million) in 2009 was 588 times less than for child abuse (\$7 billion) and fifty-four times less than for violence against women (\$649 million). See Xin Qi Dong, *2015 Rosalie Wolf Memorial Award Lecture: Past, Present, and Future of Elder Abuse*, 28 J. ELDER ABUSE & NEGLECT 345, 361 (2016); Xin Qi Dong, *Elder Abuse: Systematic Review and Implications for Practice*, 63 J. AM. GERIATRIC SOCIETY 1214, 1215 (2015).

46. See, e.g., NATIONAL CENTER ON ELDER ABUSE, TRENDS IN ELDER ABUSE IN DOMESTIC SETTINGS (1996).

47. See, e.g., Jutta Lindert, Juan de Luna, Francisco Torres-Gonzales, Henrique Barros, Elisabeth Ioannidi-Kopolou, Maria Gabriella Melchiorre, Mindaugas Stankunas, Gloria Macassa & Joaquim Soares, *Abuse and Neglect of Older Persons in Seven Cities in Seven Countries in Europe: A Cross-sectional Community Study*, 58 INT'L J. PUB. HEALTH 121, 122 (2013).

48. *Raven v. Dep't of Soc. & Health Servs.*, 273 P.3d 1017 (Wash. Ct. App. 2012).

duty.”⁴⁹ Resonating with the 2010 GAO case cited at the outset, the guardian in *Raven* was charged with violation of the Abuse of Vulnerable Persons Act for behavior that included a log of guardian visits “evidenced only six in 2004, two in 2005 (both when Ida [the ward] was hospitalized [with severe skin ulcers]), and five in 2006.”⁵⁰

C. Public Guardian Program Costs

This study found that the average yearly cost of serving an IP in Florida was \$2,648, a decline from \$2,857 in 1983.⁵¹ This compares favorably with the average yearly costs per IP of \$2,662 for Virginia in 1997⁵² and \$2,955 in 2002.⁵³ The low costs per IP in Florida are likely the result of the too-high, 1:40 IP to staff ratio, and the number of contracted programs exceeding the 1:40 and 1:20 ratios. The average annual cost per public guardian client in Washington state in 2008-2011 was \$3,163 with a 1:20 staff-to-ward ratio.⁵⁴ The yearly operating cost per guardianship client in New York City in 2010 was \$8,648.⁵⁵ The annual per ward cost in North Dakota was \$2,380 per client annually in the first year of the 2011-2013 biennium, and \$2,449 per client annually in the second year.⁵⁶

D. Public Guardian Program Savings

Facilitated discharges of IPs by the Florida public guardian program from more restrictive to less restrictive alternatives saved Florida almost \$4 million in one year. These cost savings were \$1.8 million more than the public guardianship program cost. These results are consistent with other guardianship cost savings studies from other states.⁵⁷ Half of the legally incapacitated public mental hospital patients without guardians in a different Florida study could have been immediately discharged if a

49. *Id.* at 1028.

50. *Id.* at 1023. On appeal, the Washington Supreme Court reversed the court of appeals and held, *inter alia*, that substantial evidence did not support the conclusion that the guardian’s conduct meets the statutory definition of neglect. However, the court found that the actions of the Department of Social and Health Services against the guardian were “substantially justified” and rejected the guardian’s request for attorney fees. *Raven v. Dept. of Soc. & Health Servs.*, 306 P.3d 920 (Wash. 2013).

51. Schmidt et al., *supra* note 12.

52. SCHMIDT ET AL., *supra* note 29; Teaster et al., *supra* note 13.

53. TEASTER & ROBERTO, *supra* note 14.

54. BURLEY, *supra* note 3.

55. The Guardianship Project, *supra* note 39.

56. Schmidt et al., *supra* note 2, at 94.

57. BURLEY, *supra* note 3; The Guardianship Project, *supra* note 39; TEASTER & ROBERTO, *supra* note 14.

public guardian was available.⁵⁸ The Greater New York Hospital Association lost \$13 million in nine months awaiting appointment of guardians for 400 un-discharged patients.⁵⁹

E. Public Guardian Quality of Life Activities

While cost savings are important and relatively easy to measure, there were also the more intangible cost savings of quality of life actions. Contracted programs most often reported providing emotional support to the client, enhancing client socialization, securing needed medical care and/or equipment, and re-establishing relationships with family and friends. Other common activities include arranging an IP's funeral, placing an IP in an appropriate facility, establishing a residence for a homeless person, and re-establishing religious affiliations. These results are similar to those reported elsewhere. Washington state, for example, concluded that: the decrease in average costs of residential settings exceeded the cost of providing a guardian within thirty months in 2008–2011; clients with a public guardian had a decrease of an average twenty-nine hours in personal care hours needed each month, compared with an increase in care hours for similar comparison group clients; and 21% of clients with a public guardian had a reported improvement in self-sufficiency in the previous three months.⁶⁰

F. Characteristics of Incapacitated Persons

1. Type of Guardianship

Of the Florida public guardianships, 80% are plenary guardianships, 11% are limited guardianships, and 6% are guardian advocates. This 8:1 ratio of plenary to limited guardianships in Florida is higher than the national 4:1 ratio for guardianships of the person, and for judicial estimates that the limited guardianship proportion would not exceed 20%.⁶¹ Tailoring guardianship to the extent of individual functioning is conceptually attractive, but implementation is challenging.⁶² A guardian advocate in Florida is a person judicially appointed to make decisions regarding mental health treatment for a patient found incompetent to

58. Schmidt & Peters, *supra* note 3.

59. Winsor Schmidt, *Public Guardianship Issues for New York: Insights from Research*, 6 ELDER L. ATT'Y 31 (1996).

60. BURLEY, *supra* note 3.

61. TEASTER ET AL., *supra* note 4.

62. Lawrence Frolik, *Promoting Judicial Acceptance and Use of Limited Guardianship*, 31 STETSON L. REV. 735 (2002); Schmidt, *Assessing the Guardianship Reform of Limited Guardianship: Tailoring Guardianship or Expanding Inappropriate Guardianships?*, 2 J. ETHICS, L. & AGING 5 (1996).

consent to treatment.⁶³

2. Residence

The majority of Florida IPs reside in skilled nursing facilities (59.8%) and assisted living facilities (22.7%), with only 7% living in a private residence, a supposed goal of such adult-protective services as guardianship. Nursing home placement is a common outcome of guardianship and related protective services.⁶⁴ The U.S. Supreme Court ruled that “[u]njustified isolation [in institutions] . . . is properly regarded as discrimination based on disability,”⁶⁵ elsewhere characterized as sanism.⁶⁶

In a recent Tennessee case, the public guardian agency with a high staff ratio successfully sought the controversial sale of an African American woman’s house, car, jewelry, sewing machine and other possessions.⁶⁷ The 82-year old woman ended up first in a nursing home and then in a one-bedroom public housing unit.

3. Gender, Race, Age, Marital Status, Income

The gender, race, and income IP characteristics are generally similar to those reported nationally.⁶⁸ However, the age of Florida’s IPs trends higher than the 37% to 57% of IPs over age 65 reported for programs nationally.⁶⁹ IPs aged 18-64 comprise 43% to 62% of program IP populations nationally,⁷⁰ which is generally younger than the IP population a generation ago.⁷¹

Florida public guardian IP characteristics are also similar to previously reported cognitive impairment and psychiatric symptom severity characteristics;⁷² advanced age, social isolation, low income, dementia, and physical impairment characteristics;⁷³ and increasing age, small family network, not living with a spouse, and emotional or physical

63. FLA. STAT. § 394.455(18) (2016).

64. Schmidt et al., *supra* note 4; TEASTER ET AL., *supra* note 4; Blenkner et al., *supra* note 4; Lachs et al., *supra* note 4.

65. Olmstead v. L.C., 527 U.S. 581, 597 (1999).

66. Michael Perlin, *On Sanism*, 46 SMU L. REV. 373 (1992).

67. Walter Roche, *Conservatorship Is Meant to Protect, But in Tennessee, It Sometimes Destroys*, *The Tennessean*, April 15, 2012.

68. Schmidt et al., *supra* note 4; TEASTER ET AL., *supra* note 4.

69. TEASTER ET AL., *supra* note 4.

70. *Id.*

71. SCHMIDT ET AL., *supra* note 4.

72. Wilber, *supra* note 44.

73. Sandra Reynolds & Kathleen Wilber, *Protecting Persons with Severe Cognitive and Mental Disorders: An Analysis of Public Conservatorship in Los Angeles County, California*, 1 AGING AND MENTAL HEALTH 87, 90 (1997).

limitations characteristics⁷⁴ for other public guardian populations.

VI. CONCLUSION

There is a significant and growing unmet need for public guardianship⁷⁵ as one end of the adult protective services continuum intended to facilitate independent living and prevent or remedy increasing adult abuse, neglect, and exploitation.⁷⁶

The purpose of public guardianship is the *parens patriae* responsibility of the state to take care of people who cannot take care of themselves.⁷⁷ Yet plenary guardianship intervention results in an individual's loss of almost all legal rights and the realization of dubious systemic outcomes.⁷⁸ One summary of public guardianship concludes:

Recognize guardianship for what it really is: the most intrusive, non-interest serving, impersonal legal device known and available to us and as such, one which minimizes personal autonomy and respect for the individual, has a high potential for doing harm and raises at best a questionable benefit/burden ratio. As such, it is a device to be studiously avoided.⁷⁹

Public guardian program benefits include numbers served, some staffing ratios, program cost savings, and program quality of life actions. Public guardian program burdens and challenges include the social services agency conflict-of-interest model, extensive waiting lists and unmet need, and extensive institutionalization.

Future research should prioritize "epidemiologically rigorous"⁸⁰ work on the use of public guardianship, guardianship, and adult protective services, the extent of positive benefits and of systemically negative burdens, and the effectiveness of improvements and alternatives.

74. Sandra Reynolds, *Guardianship Primavera: A First Look at Factors Associated with Having a Legal Guardian Using a Nationally Representative Sample of Community-Dwelling Adults*, 6 AGING AND MENTAL HEALTH 109, 110 (2002).

75. TEASTER ET AL., *supra* note 4, at 7; Hightower et al., *supra* note 3; Schmidt & Peters, *supra* note 3, at 81; Teaster & Roberto, *supra* note 3, at 179.

76. Bell et al., *supra* note 44; Lindert et al., *supra* note 47; Schmidt, *supra* note 44; Wilber, *supra* note 44; NCEA, *supra* note 46.

77. Peter Horstman, *Protective Services for the Elderly: The Limits of Parens Patriae*, 40 MO. L. REV. 215, 221 (1975).

78. ALEXANDER & LEWIN, *supra* note 4; SCHMIDT, *supra* note 4; SCHMIDT ET AL., *supra* note 4; TEASTER ET AL., *supra* note 4; Blenkner et al., *supra* note 4; Lachs et al., *supra* note 4.

79. TEASTER ET AL., PUBLIC GUARDIANSHIP AFTER 25 YEARS, *supra* note 16, at 104 (quoting Elias Cohen, *Protective Services and Public Guardianship: A Dissenting View*, Address at 31st Annual Meeting of the Gerontological Society, Dallas (Nov. 20, 1978)).

80. Lachs et al., *supra* note 4, at 734.

Appendix A: Cost Savings Calculation Explanation

Cost savings were calculated on reported national and Florida specific estimates. The average cost of nursing homes and assisted living facilities in Florida was calculated based upon the 2008 MetLife Mature Market Institute® National Survey of Nursing Home and Assisted Living Costs (accessible at <http://www.metlife.com/mmi/>). The United States Department of Health and Human Service's mean cost for all hospital stays in the nation for 2006 was used to estimate the daily cost and median stay of an acute hospital (accessible at <http://hcupnet.ahrq.gov/>). Finally, the state hospital cost was estimated from the average daily cost of the Northeast Florida State Hospital provided by the Florida Department of Children and Families (accessible at http://www.myflorida.com/cf_web/). The Northeast Florida State Hospital serves approximately half of Florida's counties.

Action	Calculation	Cost
From SH to ALF	(SH) \$233/day - (ALF) \$89/day = \$144 x 30 days	\$4,320
From SH to NH	(SH) \$233/day - (NH) \$191/day = \$42 x 30 days	\$1,260
From AH to ALF	(AH) \$1817/day - (ALF) \$89/day = \$1728 x 3 days	\$5,184
From AH to NH	(AH) \$1817/day - (SH) \$191/day = \$1626 x 3 days	\$4,878
Secure community-based services	\$100	\$100

Assumptions:

Nursing home (NH) day = \$191

Assisted living facility (ALF) day= \$89

Acute hospital day (AH)= \$1,817

State hospital (SH) day = \$233 (this includes Psychiatric Hospitals)

Pre-paid funeral = \$6,000

\$100 one-time per client for securing community-based service to prevent moving to more restrictive environment

Patient would have stayed in state hospital for 30 days if not otherwise moved

Patient would have stayed in acute hospital for 3 days if not otherwise moved