



# Oregon

Kate Brown, Governor

## Office of the Long-Term Care Ombudsman

3855 Wolverine NE, Suite 6

Salem, OR 97305-1251

503.378.6533

Toll Free 1.800.522.2602

TTY 711

FAX 503.373.0852

[www.oregon.gov/LTCO](http://www.oregon.gov/LTCO)

DATE: March 26, 2017

TO: The Honorable Elizabeth Steiner Hayward, Co-Chair  
The Honorable Dan Rayfield, Co-Chair  
Subcommittee on Human Services  
Joint Committee on Ways and Means

FROM: S. Travis Wall, Oregon Public Guardian and Conservator  
Oregon Public Guardian and Conservator Program, and  
Fred Steele, Oregon Long-Term Care Ombudsman & Agency Director  
Office of the Long-Term Care Ombudsman

RE: Oregon Public Guardian and Conservator Program

During our presentation before the committee on March 20, 2017, the committee asked a number of questions and requested information on the following topics:

### **1. How do you identify the people whom you will serve?**

As you may recall, the Oregon Public Guardian and Conservator Program (OPG) serves as a court-appointed, surrogate decision maker for adults incapable of making decisions about their persons and affairs; and who do not have a family member or friend willing and able to serve as their guardian or conservator, nor the resources for a private, professional guardian or conservator. Those in need of OPG services include persons incapacitated as a result of an age-related neurocognitive conditions, such as dementia; serious and persistent mental illnesses; intellectual and developmental disabilities; and traumatic brain injuries.

OPG is a new and developing program with a small staff and limited resources. The need for our services is exponentially greater than our capacity.<sup>1</sup> As a result, our focus is on individuals most incapacitated and at risk of harm, and our services are only available in certain areas of Oregon.<sup>2</sup> We have adopted the following priorities, requirements and guidelines for referrals and cases.

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<sup>1</sup> Since 1971, Oregon Counties have been authorized to provide public guardian and conservator services. Only two counties, Multnomah and Jackson, have public guardianship programs. The Task Force on Public Guardian and Conservator (TFGPC), whose recommendations prompted the legislation establishing OPG, estimated that between 1,575 and 3,150 Oregon adults need but lack public guardianship services. (TFGPC Report to the Legislature, 2012). Through our existing staff and pending contracts, we have the capacity to serve up to 150 protected persons. For more on OPG's development see *Attachment 1 - OPG Accomplishments, Activities and Challenges*.

<sup>2</sup> As part of our initial plans for implementing OPG services, we have established a presence in Clackamas, Deschutes, Lane, Marion and Umatilla Counties; and are taking referrals from the interagency, multidisciplinary High Risk Teams that our local partners and we have developed in those communities to screen and refer cases to us. We have

### Priority of Cases

In determining whether to accept referrals, we categorize prospective cases based on the circumstances involved. As a general rule, we do not accept cases that fall below the top categories.

#### *First Priority*

- Severe and current abuse or neglect.
- Profound self-neglect with life threatening issues.

#### *Second Priority*

- Recent abuse with high risk of repeated abuse.
- Guardianship necessary to secure a crucial placement/service.
- Replace a current abusive fiduciary.
- Current financial exploitation negatively affecting care and placement.

#### *Third Priority*

- Serious medical issues, deterioration likely but not currently life threatening.
- Management of a terminal illness.
- Unsuitable current fiduciary with significant risk factors.
- Conservatorship only for pension/ trust income.
- Conservatorship only to recover assets, protect from exploitation, and other high risk factors.

### Other Requirements and Guidelines

Prospective referrals are screened by OPG staff and local High Risk Teams. We only take cases when the following criteria and requirements are met. Our evaluations include a comprehensive, written assessment of an individual's need for guardianship or conservatorship; meeting directly with the individual, preferably in their living environment; and evaluation of their decision making capacity.

The proposed protected person must:

- Be 18 years of age or older.
- Be incapacitated or financially incapable, as defined by Oregon law.<sup>3</sup>
- Be at imminent risk of abuse, neglect, self-neglect and/or exploitation.
- Fall within OPG's top priorities (see above).

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guardianship clients (protected persons) in all of these counties except Marion. In addition, we have sought and obtained guardianships of persons living in Multnomah, Hood River, Malheur, Morrow, Wallowa, Wasco and Yamhill Counties. We sought and obtained these guardianships after the professional fiduciary responsible for these individuals was convicted of exploiting and abusing persons for whom she was responsible, and there was no else available to serve the individuals in question.

<sup>3</sup> "Incapacitated" is defined as "a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety." (ORS 125.005(3)) "Financially incapable" is defined as "a condition in which a person is unable to [effectively] manage [his or her] financial resources ... for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power ..." (ORS 125.005(5))

In addition, there must be:

- Documentation of the person’s incapacity, such as a recent evaluation by a physician or licensed psychologist or otherwise qualified expert.
- No less restrictive alternative to guardianship or conservatorship.
- No other responsible person able and willing to serve as guardian or conservator for the person.
- A viable plan for improving the safety, health and welfare of the person through the use of guardianship or conservatorship.

Generally, we do not seek guardianship when the only goal is placement, involuntary treatment or to address law enforcement concerns.

**2. How many have you been referred? Include counts disposition/action.**

Since OPG began to provide services in the fall of 2015, we have:

- Received over 185 inquiries for information and assistance, including over 160 direct inquires and over 25 referrals from High Risk Teams.

In response, we:

- Performed over 35 comprehensive guardianship/conservatorship evaluations.
- Filed over 22 petitions with courts for temporary and continuing guardianships and conservatorships, and have been appointed as a guardian for 16 persons.

In addition, our High Risk Teams and we facilitated over 35 diversions of at-risk individuals to less restrictive alternatives to guardianship and conservatorship.

**3. Include referral source type.**

The agencies, programs and individuals that most frequently contact and make referrals to us are:

- County and state protective services programs, including APS managers and workers.
- Local mental health and developmental disability programs, including social workers counselors, case managers and discharge planners.
- Long-term care facilities, Oregon State Hospital and medical hospitals, including discharge planners and social workers.
- Private professional fiduciaries and attorneys.

**4. A case is referred and then what happens? What are the “paths” that these various referrals take?**

In general, prospective cases are routed to High Risk Teams for screening, staffing and referral. In the event there is no less restrictive alternative to assist a person in need and the person appears to meet our eligibility requirements and case priorities, the case is referred to us for intake, evaluation and, depending on the outcome of the evaluation, pursuit of guardianship or conservatorship. These processes and related activities are outlined in the flow charts that can be found in *Attachment II – OPG Charts*. See the *HRT Evaluation, Problem Solving and Referral Process* chart and the *OPG Intake Screening Process* chart.

The HRTs and our staff meet monthly. In cases that arise between HRT meetings and require immediate attention, we can be contacted directly by concerned parties. In this event, we assess the need for OPG services and respond as outlined in the *OPG Intake Screening Process* chart.

In the event we conclude a person needs guardianship or conservatorship and OPG should serve as the person's guardian or conservator, our Attorney General legal counsel and we prepare and file the necessary petition and documentation, and proceed with the legal process. These steps are illustrated in *Initial Court Process* chart, also in *Attachment II*. (Please note this is a complex process involving many steps and the chart reflects this complexity.)

In cases where we are not in a position to provide services but there is a need for assistance or intervention, we staff and problem solve cases with inquirers, and endeavor to identify and make referrals to other sources of assistance.<sup>4</sup> In extraordinary situations, we will consider making exceptions to our case priorities, eligibility requirements and geographic limitations.

## **5. What are less restrictive alternatives to guardianship?**

Alternatives include:

- Case management and service coordination can make guardianship of a person with diminished capacity unnecessary or postpone its necessity by providing needed organization and structure to the person's life; facilitating provision of basic necessities and supports; and facilitating access to and delivery of critical health, mental health, habilitative and other services. Often it is the absence of services, gaps and limits in service systems, and other problems with services that are the tipping point for guardianship. Case management may also be the vehicle for utilizing other alternatives.
- Advance directives are legally-authorized processes by which an adult designates another person to make certain decisions on the adult's behalf in the event the adult becomes incapacitated or otherwise unable to make decisions. They may also be used to provide written advance direction about how an adult wants certain decisions made on his/her behalf in the event of incapacity. Oregon advance directives include Powers of Attorney, Advance Directives for Health and Declarations for Mental Health Treatment.
- Money management involves provision of assistance in organizing financial papers, paying bills and banking.
- Representative payeeships are administrative arrangement through which the Social Security Administration (SSA) authorizes a third party to manage an adult's retirement or disability benefits in the event SSA has determined the adult requires assistance to manage his/her benefits. The Veterans Administration has a similar arrangement for recipients of VA

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<sup>4</sup> We may be contacted by directly phone, email and in-person at our office in Salem and in the field. We have a statewide, toll-free telephone line and a website with information about our services, eligibility and referral and links to us and other resources.

benefits. Payeeships are often used in lieu of conservatorship for individuals with limited estates, and with or without guardianship, depending on an individual's needs.

- Trusts may be established by an individual or a organization to hold money or property for the benefit of another adult or set of adults. There are many kinds of trusts. Some may be and are often used by a family member to assist another family member with decisional limitations.
- Supported decision making is an approach to assisting individuals with limited decision making abilities that involves the use of family members, friends and other “natural supports” in supporting and assisting an adult with diminished capacity in making and communicating his/her choices and preferences to care and treatment providers and others.
- Short-term involuntary mental health holds and civil commitment are processes to facilitate psychiatric hospitalization of individuals with mental illness who pose a danger to themselves or others and will not or cannot consent to hospitalization. While drastic and intrusive, in most instances commitment is less restrictive than guardianship because it is for a limited period of time and involves less control over an adult's life, and affords more due process.

## **6. What is the cost savings to the State of individuals diverted from guardianship?**

Initial data on diversions facilitated by High Risk Teams and OPG suggest there may be significant savings. However, a larger number of diversions and cases will be needed in order to carry out the analysis necessary to meaningfully and accurately answer this question.

Recent analysis of the costs and benefits of public guardianship in the state of Washington suggests services are cost beneficial. In summarizing the report it prepared for the Washington legislature on this issue, the Washington State Institute for Public relayed the following:

This evaluation examines program outcomes and cost effectiveness for clients served by public guardians between 2008 and mid-2011. Our analysis over this period found the following:

- Average residential costs per client decreased by \$8,131 over the 30-month study period. The average cost for providing a public guardian was \$7,907 per client during that time.
- Personal care decreased by an average of 29 hours per month for public guardianship clients, compared with an increase in care hours for similar clients.
- One in five public guardianship clients showed improvements in self-sufficiency during the study.

...While we found positive results for public guardianship clients in this evaluation, without a randomly assigned control group (that did not receive services), it is difficult to determine

the extent to which public guardians may have contributed to these outcomes.<sup>5</sup>

## **7. Explanation of interaction with APS and OPG role versus APS role/responsibility.**

APS and OPG interact in a variety of ways but have very different roles and responsibilities. The shared goal and mission between the two is to ensure the safety of vulnerable, at-risk individuals.

APS is a time limited service provided to individuals reported to be victims of abuse, neglect and self-neglect in community and facility settings. APS workers do not form long-term professional relationships with individuals nor are protective services ongoing. The APS worker's initial charge is to investigate the allegation of abuse to determine its validity. They are also charged with ensuring the safety of the individual before, during and after the investigatory process. In doing so, the worker is bound by statute, rule and practice standards to take protective action only with the consent of the victim and in the least restrictive manner possible. It is only when 1) the individual has been determined to lack the capacity to make informed decisions about their health and safety and 2) when all other less restrictive means to ensuring health safety have been exhausted, that APS will refer an individual for guardianship or conservatorship services.

APS serves as both a source of referrals for OPG, as well as a resource for diverting individuals from guardianship by ensuring they are protected through less restrictive means. OPG has sought out and enlisted local APS leadership in developing and operating the county interagency and multidisciplinary High Risk Teams that work with OPG to screen and refer cases to OPG when no less restrictive alternatives have been identified.

## **8. How many cases do you have? Include number of cases being handled directly by OPG office and number through contract and cost per case.**

Presently, OPG is the guardian for 16 persons and we are evaluating 11 other individuals for guardianship. These cases and evaluations are being handled directly by the program. Current protected persons reside in 10 counties, including Clackamas, Hood River, Lane, Malheur, Morrow, Multnomah, Umatilla, Wallowa, Wasco and Yamhill.

It should also be noted that we have processed over 25 referrals from High Risk Teams, made 35-plus diversions of persons to less restrictive alternatives, performed over 35 comprehensive guardianship/conservatorship evaluations, and filed over 22 petitions. In many instances, diversions and evaluations that do not result in guardianship involve considerable time and effort. (A good example of this is the case of Susan Jones (a pseudonym). For the details, see *Attachment III - OPG Case Examples*.)

In relation to contracting for public guardianship and conservatorship services:

- We are in contract negotiations with the Senior Citizens Council of Clackamas County, a nonprofit organization that has served as a professional fiduciary for many years. We anticipate completing the contract later this spring and initiating services thereafter.

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<sup>5</sup> Mason Burley. (2011). Public guardianship in Washington State: Costs and Benefits (Document No. 11-12-3902). Olympia: Washington State Institute for Public Policy.

- We developed a special procurement for contracting with the Center for Nonprofit Legal Services, the designated public guardianship program in Jackson County, to increase its staff and provision of services. We have been awaiting Department of Administrative Services' approval of this procurement for some time.
- Shortly, we will issue a second solicitation for services in Deschutes, Crook and Jefferson Counties. We received no responses to the prior RFP that we issued for services. Development of public guardianship services in central Oregon remains a high priority and a significant challenge due to the exceptionally limited availability of guardianship services east of the Cascades limited, including a viable pool of potential contractors.
- Our plans for an intergovernmental agreement with the Multnomah County Public Guardianship and Conservatorship Program to augment their staff and increase their services were tabled last fall, after we were advised of possible reductions to our budget in 2017-19.

A number of factors and extenuating circumstances have had an effect on our planned rollout of OPG services and caseload growth. These include:

- The time and effort necessary to become and serve as guardians for 11 protected persons previously the responsibility of Lisa Bayer-Day, the professional fiduciary convicted of abusing and exploiting many of her clients. Most of the Bayer-Day persons that we assist live in eastern Oregon counties, far removed from our offices. This requires considerable travel and overnight stays by staff on regular basis.

In addition, we expended considerable energy and time in identifying and locating many of Bayer-Day's protected persons; and subsequently in prompting and assisting state and local agencies and courts to facilitate new guardianship arrangements for many other of Bayer-Day's 55 protected persons.

- The challenges of being a new and very small program tasked with making arrangements necessary for legal representation of the program in guardianship proceedings, client banking and staff criminal background checks; developing and defending staff positions and classifications; recruiting, hiring, training, bonding and certifying staff; while also seeking to engage and educate state and local stakeholders about a new state function and service, and plan development of the program. In some instances, we continue seek resolution to issues, including obtaining the statutory authority necessary to carry out certain statutory responsibilities.
- Labored and difficult state procurement processes that have resulted in significant delays in obtaining a much needed automated case management and accounting system, as well the procurements for contract guardianship services.

**9. In what way is OPG serving their clients? How does OPG serving them make them safer and assure that they are getting what they need?**

We provide surrogate decision making, life management and advocacy services to the protected persons for whom we are appointed as guardians or conservators. We do so in accordance with

Oregon law (including ORS Chapter 125) and as authorized by the court in each case, and outlined in the court's orders granting the guardianship or conservatorship.

Our guardianship and conservatorship services are tailored to the circumstances and needs of each protected person. Primary guardianship duties and functions are summarized below. For examples of actual cases, see *Attachment III – OPG Case Examples*.

- Develop and implement guardianship plans for protected persons, informed by the person and their supporters, to the extent they are available; and, the person's current and past preferences, wishes and aspirations, to the extent these can be determined or ascertained by past decisions, lifestyle and past and current actions. Identify and take into account any advance directives or powers of attorney executed by persons prior to imposition guardianship or conservatorship.
- Ensure the welfare and safety of protected persons, through stabilization of living circumstances, including place of residence and level of care; and obtaining and authorizing needed care, treatment and services, including those urgent and life critical.
- Make informed decisions for and about protected persons, including care, comfort and maintenance, including training and education; health, mental health, habilitative rehabilitative care, treatment and services; advance and needed funeral and burial arrangements; and, property, income, public benefits and personal effects.

In making decisions, we utilize the principle of substituted judgment first (deciding what the person would decide if capable of making an informed decision), giving consideration to current and past wishes; unless a decision will likely result in substantial harm to the person. In this event, we utilize the principle of best interest and seek to do what is best for the person in the least restrictive and intrusive manner possible.

- Work with and through other professionals, providers and advocates to obtain/manage treatment, care and other needed services. Participate in treatment, care and service meetings with and on behalf of protected persons. Consult directly with others to make/convey informed decisions on behalf of protected persons.
- Monitor protected persons as needed order to assure their health, safety and well-being, and that care, treatment and services are appropriately delivered and as prescribed. Visit places of residence at least monthly and directly communicate with persons at least twice monthly, and more frequently as needed.
- Secure needed financial assistance and public and private benefits. If and when necessary, facilitate appointment OPG or others as a representative payee in order to manage benefits.
- Identify, secure, inventory and provide for the care of protected persons' property including any real estate, clothing, furniture and other personal property.
- Monitor and reassess the need for guardianships and make timely, related recommendations to the Public Guardian, OPG's legal counsel and the court



- Respond and seek to resolve grievances expressed by protected persons about their care, treatment or services, including guardianship. Assist persons in accessing independent advocacy services to address grievances, and communicate with the court about unresolved grievances and guardianship disputes, including contesting guardianship.

**10. Request for written case scenarios. If possible, include an example of what a not-so-complex case might look like.**

See *Attachment 3* for examples of our cases. The case of Eleanor White (a pseudonym) is less complex than most.

**11. Additional Lisa Bayer Day information.**

See *Attachment IV – Summary of Circumstances Involving Lisa Bayer-Day* for additional information concerning Bayer-Day, the professional fiduciary convicted of abusing and exploiting a number of her protected person and other adults for whom she was responsible.

## **Attachments**

Attachment I- OPG Accomplishments, Activities and Challenges

Attachment II- OPG Charts

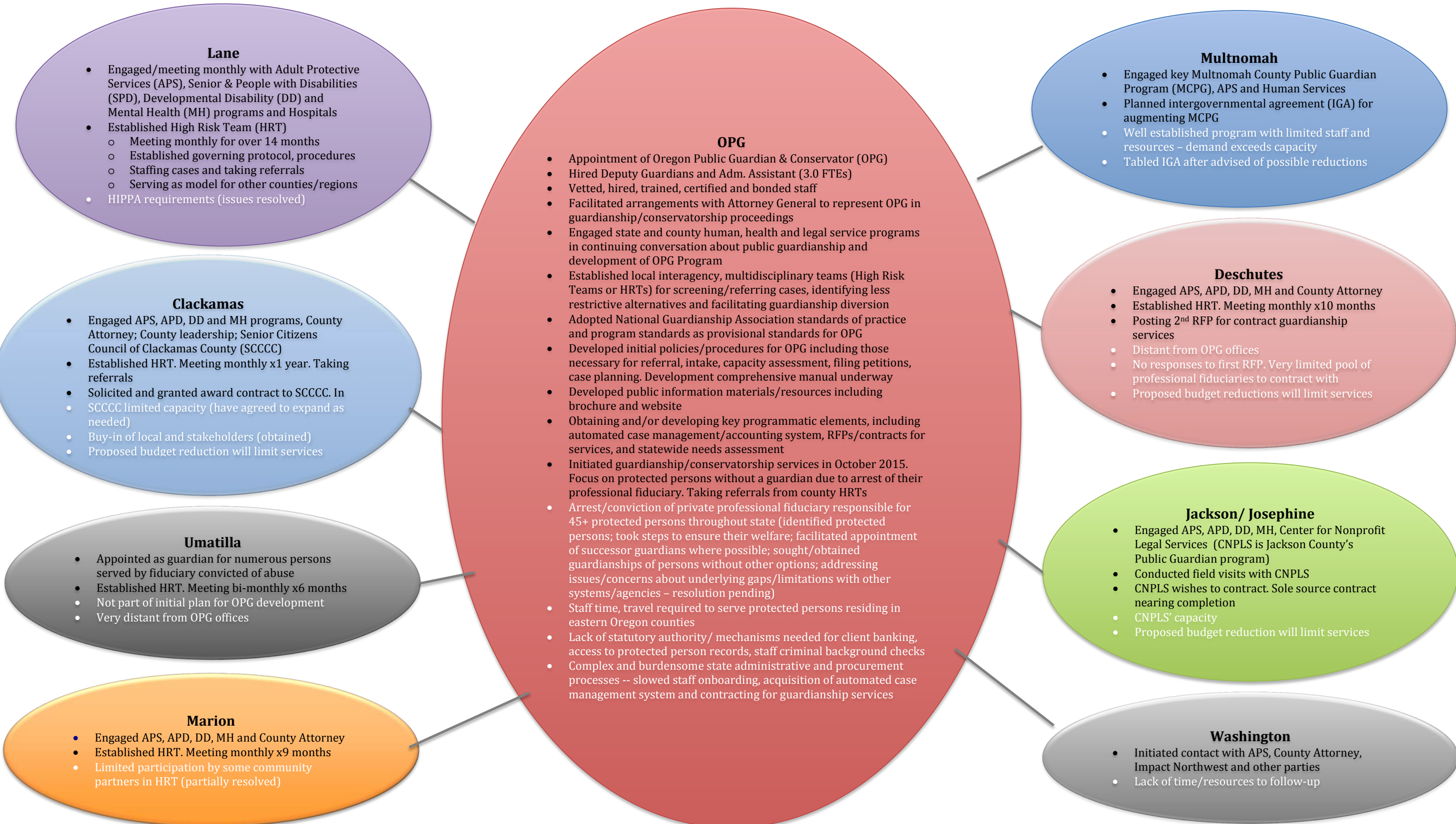
- High Risk Team Evaluation, Problem Solving and Referral Process
- OPG Intake Screening Process
- Initial Court Process
- Ongoing OPG Process

Attachment III- OPG Case Examples

Attachment IV- Summary of Circumstances Involving Lisa Bayer-Day and the Protected Persons for Whom she was Responsible

# Attachment I

## OPG Accomplishments, Activities and Challenges



**Attachment II**  
OPG Process Charts

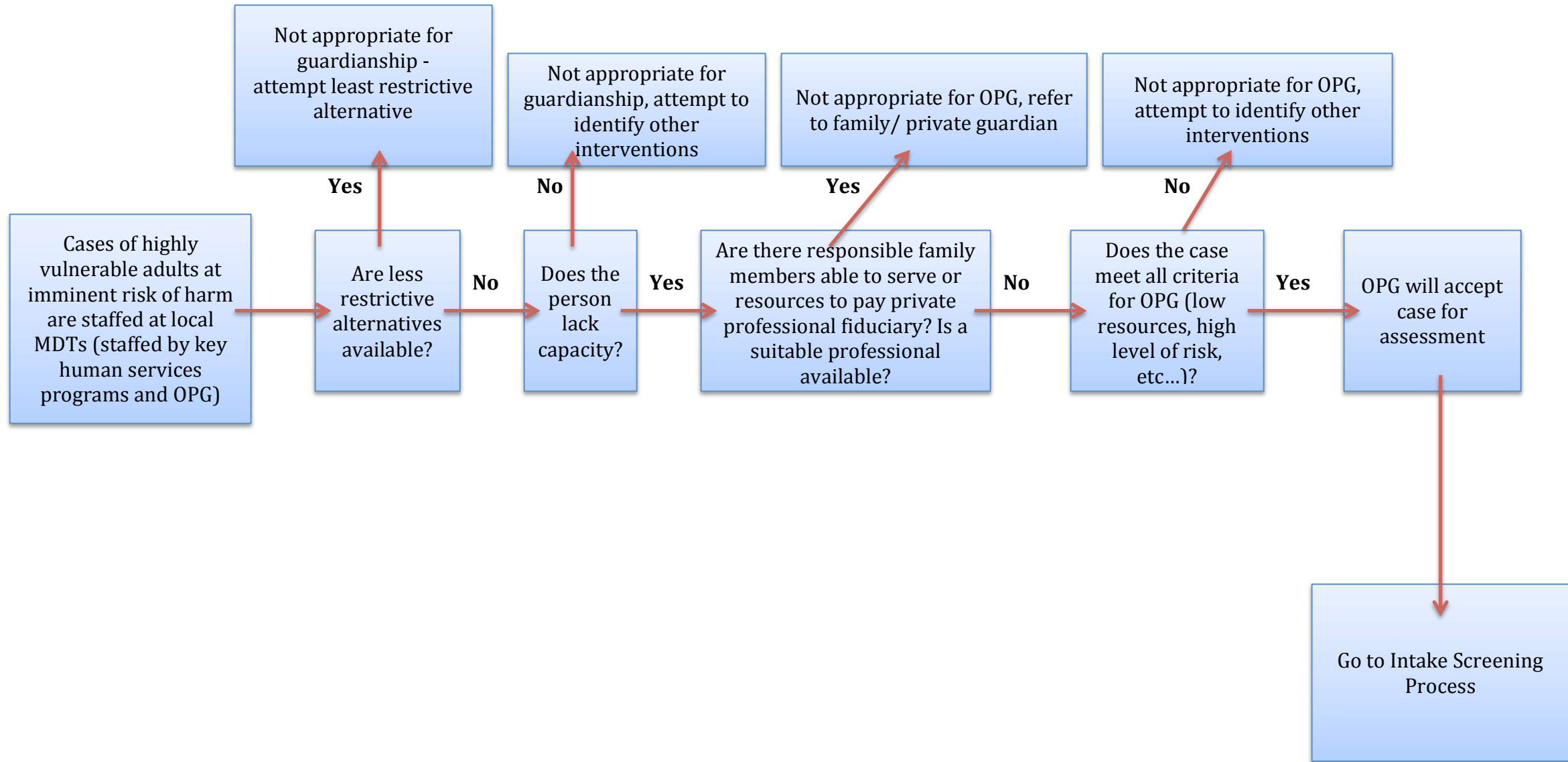
High Risk Team Evaluation, Problem Solving and Referral Process

OPG Intake Screening Process

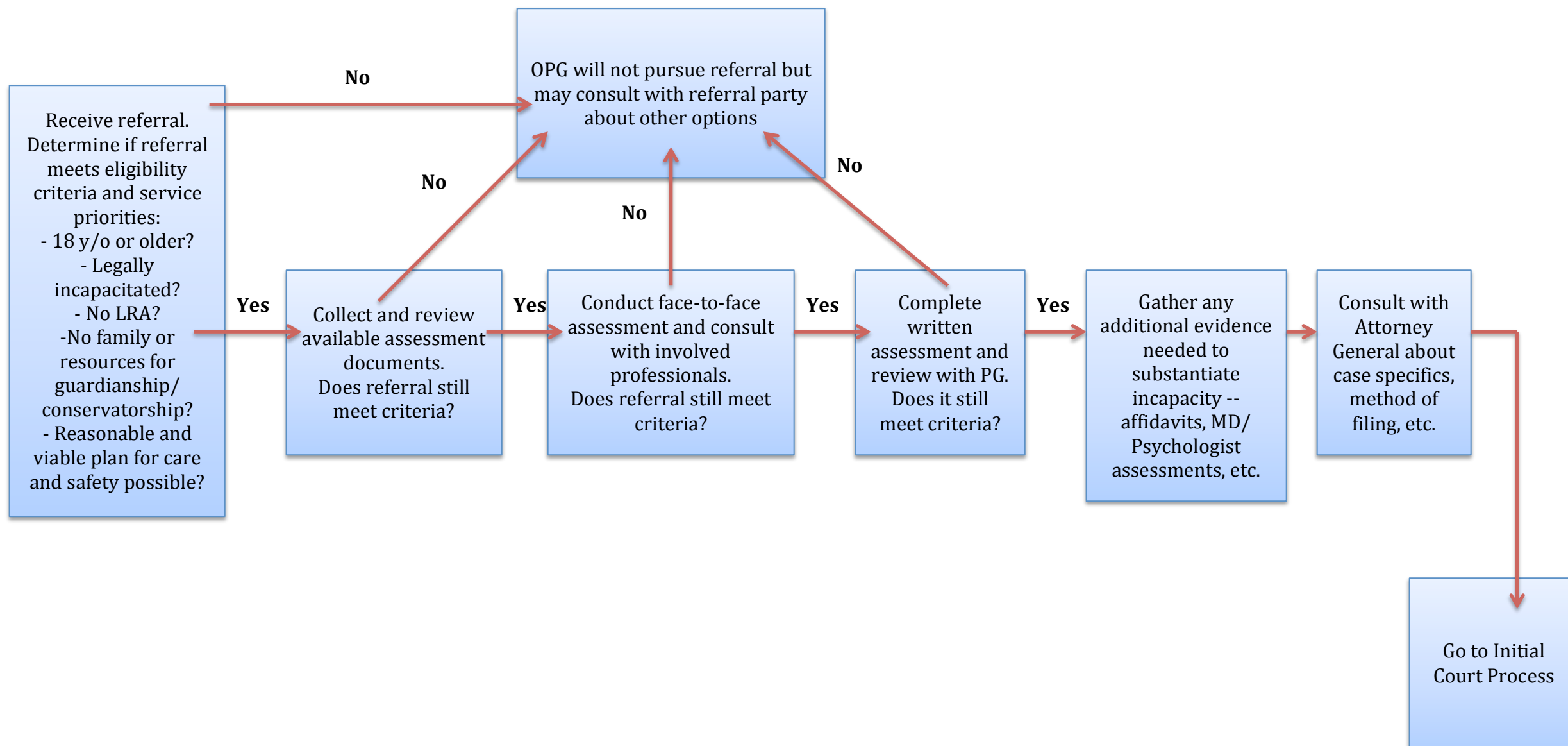
Initial Court Process

Ongoing OPG Process

# High Risk Team Evaluation, Problem Solving and Referral Process

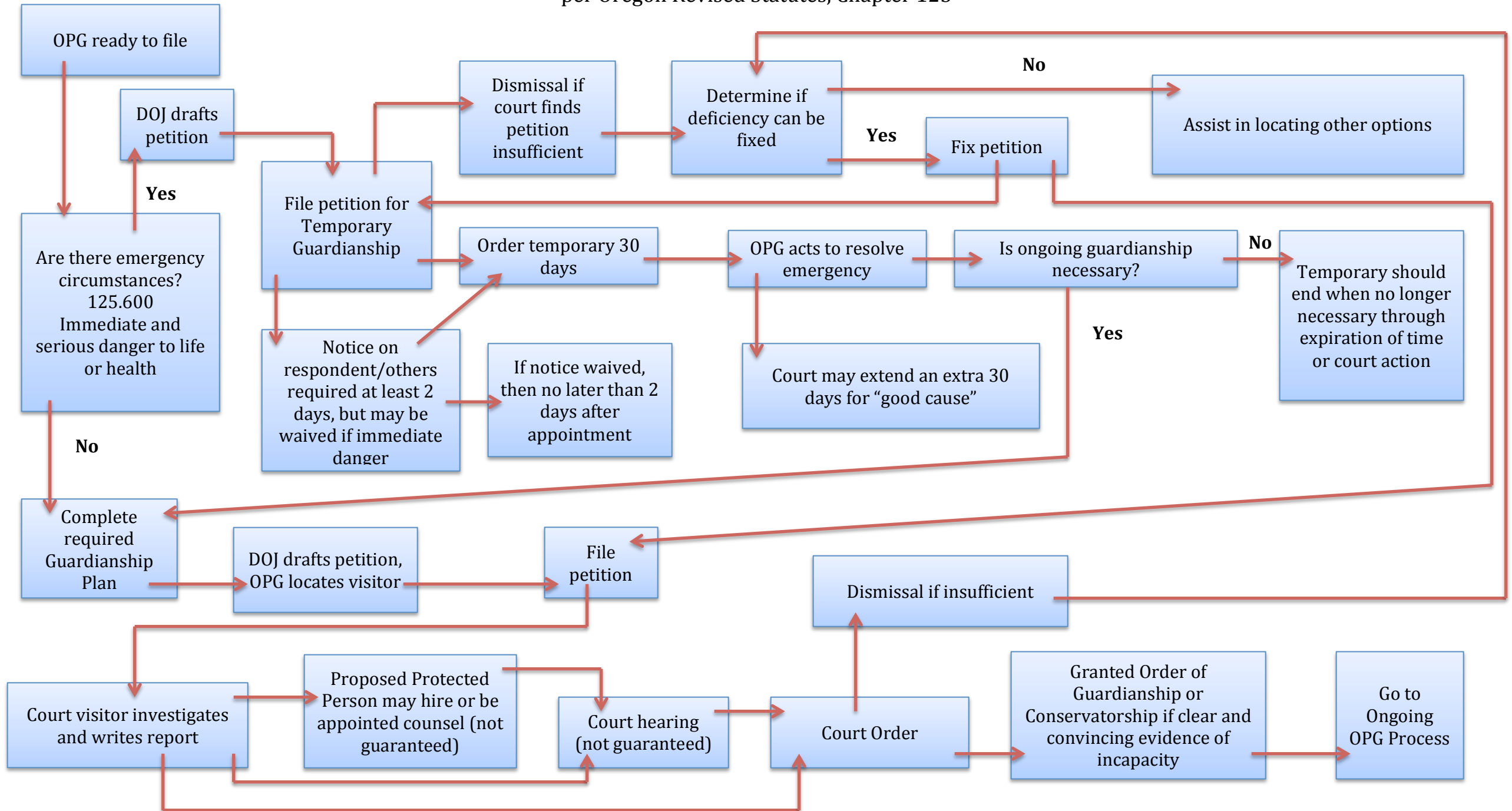


## OPG Intake Screening Process

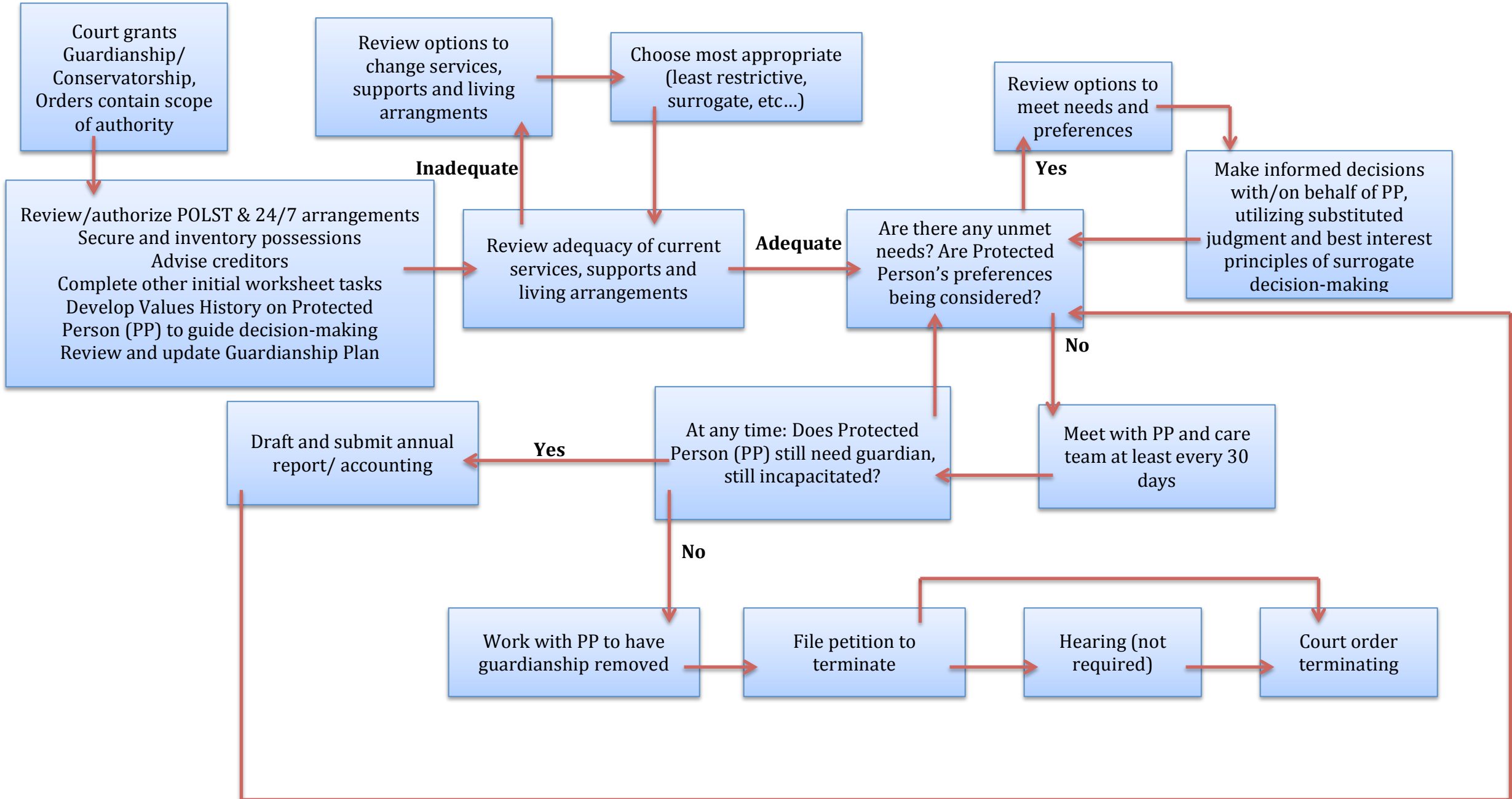


# Initial Court Process

per Oregon Revised Statutes, Chapter 125



# Ongoing OPG Process





## **Attachment III** **OPG Case Examples**

**Eleanor White**<sup>1</sup> is a woman with lifelong mental illness who was referred us by one of the High Risk Teams, after she developed a tumor on her neck that she was refusing to have evaluated and treated. The doctor that had initially evaluated Eleanor believed it very likely the tumor was metastatic cancer and needed prompt attention. However, a formal diagnosis could not be completed without a biopsy.

As part of her mental illness, Eleanor experiences delusions. She believed that the doctor who had evaluated her was lying, the lump on her neck was the result of her own excessive thinking about her past, and that if she were to stop thinking about her past it would go away. She told us that she did not want to die, and that she would not because god loves her and would not let her die. Eleanor's beliefs about the tumor and her prognosis were unchangeable, regardless of the logic or reasoning used.

After meeting with Eleanor several times to evaluate her situation and capacity to make decisions, consulting with doctors and the team at the mental health residential facility where she lives, and reviewing other information, we concluded that she was incapable of making decisions about her medical needs and care and needed a guardian.

We petitioned the court for a limited guardianship of Eleanor, seeking authority only to make evaluation and treatment decisions on her behalf related to the tumor and decisions necessary to keep her safe during that process. Eleanor objected to the guardianship at the initial court hearing. However, working patiently with Eleanor, we gained her trust. As a result, she withdrew her objections to the guardianship, consented to the biopsy procedure, allowed for it to be performed, and attended follow-up consultations with two specialists. (We accompanied Eleanor to these appointments and meetings, and supported and interacted on her behalf.)

In the end it was determined that the tumor was non-malignant and non-life threatening, and options for additional treatment of the tumor posed more risk than not. Throughout this time, we have maintained contact with Eleanor, regularly visiting her at her facility residence (in another county) and by telephone. Presently, we are reviewing Eleanor's case to determine if there is any more need for her guardianship. If we conclude there is not, we will seek dissolution of it.

There were many factors that made working with Eleanor difficult and time consuming. Eleanor was born in Thailand and immigrated to this country when she was a young adult. While she maintains she is fully assimilated, we had questions about how cultural issues might be influencing her thinking and how to most effectively interact with her. Equally significantly, we could not locate family or friends to advise us about Eleanor and what she

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<sup>1</sup> All names used in this paper are pseudonyms and other identifying information has been omitted in order to not reveal the identities of the principals.

might prefer to have done if not subject to delusions. It was also was not evident what path would need to be taken if the tumor were determined malignant and metastatic. There were concerns that surgery itself would be risky, recovery could be difficult if was not compliant with follow-up care, and that the results could greatly diminish the quality of Eleanor's life. Additionally, due to the nature of her psychiatric condition and her level of instability, her condition cycled quickly between periods of relative stability to periods of psychosis requiring acute psychiatric hospitalizations. Through all of it we were able to work with Eleanor and achieved a positive outcome by facilitating the medical evaluation of what could have been a life-threatening condition.

**Joan Smith** is an elderly woman with a serious and persistent mental illness who went without critically needed surgery for two years because the care facility in which she lived was unable to obtain the consent of her guardian, a professional fiduciary. Without the fiduciary's authorization, the hospital that was to perform the surgery was unwilling to do so.

The facility contacted us after Joan's condition deteriorated and they could no longer reach the fiduciary. Joan had lost a number of teeth. All of her remaining teeth had decayed and needed to be removed. Joan was in severe pain, had difficulty eating, could only consume soft foods, was experiencing recurring urinary tract and yeast infections, spent much of her time self-isolating in her room, and her mental health condition was poor.

Upon investigating Joan's situation, we learned that Joan's guardian had been arrested and was in jail awaiting trial on over 80 felony and misdemeanor charges of abuse and exploitation of the protected persons and others for whom she was responsible. We petitioned the court to dismiss the fiduciary and appoint us as Joan's successor guardian. The court agreed. Upon appointment, we arranged for the needed surgery.

Post-surgery, we arranged for Joan to be fitted with dentures. In turn, we have gotten to know Joan so that we can make informed and responsible decisions on her behalf, participate with care providers in her treatment and care planning, regularly visit her at the facility in which she lives, monitor her care and treatment, and are available 24/7 to address urgent and emergency business. Also post-surgery, Joan's recurring infections cleared so we were able to work with her doctors with finding medications to better meet her mental health needs. Today, Joan's physical and mental health are much improved and she frequently participates in groups, although she remains incapable of making most decisions about her care and treatment. We remain Joan's guardian.

**Rodney Adams** is a veteran with a serious and persistent mental illness who we found living in a home owned by his guardian, the same professional fiduciary that had been Joan Smith's guardian (and was now in jail awaiting trial).

The fiduciary had provided Rodney with very little care and assistance, despite charging his estate \$3,600 a month for her services; and now the fiduciary and her husband were seeking to evict Rodney from the home she owned and moved him to in order to sell it and obtain funds she presumably needed for her legal defense.

As a result of her lack of care, Rodney had lost considerable weight, not bathed and changed his clothing in months, his hair was matted in knots, and his fingernails and toenails were so overgrown that one of his feet was at risk of harm. In addition, the fiduciary had failed to pay taxes or secure Rodney's ownership interest in a property he inherited, putting the home in jeopardy of foreclosure;

After we successfully petitioned the court to terminate the fiduciary's guardianship and appoint us as Rodney's guardian and the Oregon Department of Veterans Affairs as his conservator, we arranged for Rodney to be hospitalized and treated for the "failure to thrive" condition that he was diagnosed to be in. After his recovery we arranged for him to be discharged from the hospital to an adult foster care home in the area where he wanted to live, and set up his primary medical care through the local VA clinic.

We remain Rodney's guardian and are a regular and continuing presence in his life. While he is an individual who wishes to live a more solitary life, he is in good health and spirits. Although he has received medications for his mental illness in the past, he does not wish to take them presently. Although we continue to monitor his condition, as long as he remains safe and stable without the medications, we will not force the issue (this approach is consistent with national practice standards). When the adult foster home in which he lives was unexpectedly sold, we evaluated the new owners qualifications, and consulted with Rodney about his wishes and decided to keep him in the home after the ownership change, as the new owners were qualified and appropriate and Rodney desired to stay.

As his conservator, ODVA is putting Rodney's financial affairs in order. When feasible and if consistent with Rodney's wishes, we may seek to transfer his case to a responsible professional fiduciary.

**Susan Jones** is a middle-aged woman with intellectual and developmental disabilities, including a seizure disorder. A local hospital presented her case to one of our High Risk Teams. The hospital was concerned that Susan's elderly parents who are also her court-appointed guardians were failing to properly care for Susan. As a result, they believed her health was repeatedly and seriously compromised.

Over the preceding nine months, Susan had undergone four lengthy hospitalizations. Prior to the first hospitalization and in subsequent periods between hospitalizations, Susan experienced precipitous and significant losses in weight, including declining from 115 pounds, her normal weight, to 75 pounds. During each hospital stay, Susan regained weight and her health improved, only for her weight to decline and her condition to deteriorate upon discharge and with her care again under the direct control of her parents/guardians.

As we were to learn, the inadequate nutrition and weight loss that Susan was repeatedly experiencing were the result of her mother's insistence Susan be maintained on a highly unusual and restrictive diet, in spite of recommendations to the contrary by Susan's doctors and care providers. The diet, developed by her mother a number of years ago, was intended to treat Susan's seizure disorder. But it was evident that the diet no longer prevented or reduced Susan's seizures, if it ever had. Moreover, it appeared that the diet

now presented serious, potentially life threatening consequences for Susan. In addition, Susan's mother was unwilling to follow physician recommendations for treating Susan's seizures with medications.

Concerns about Susan had been reported to local developmental disability officials. But officials had not fully investigated Susan's situation, nor had they intervened on her behalf. The hospital in which Susan was staying was unwilling to discharge her because they feared Susan would be harmed if her mother reinstated the diet and made all decisions about Susan's health care.

Over the ensuing six months, we:

- Evaluated Susan's situation and confirmed the hospital concerns about Susan's welfare and her parents apparent abuse and neglect of her.
- Repeatedly urged and worked with local and state officials to fully investigate Susan's situation, including the allegations of mistreatment by her mother, and take the steps necessary to ensure Susan's safety, health and welfare.
- While awaiting completion of the investigation, Susan was again discharged and subjected to abuse and neglect by her mother. Thirteen days later Susan was admitted to a hospital ICU. We decided we could no longer wait for completion of the investigation. We filed a motion with a court to appoint a court visitor to evaluate Susan's safety and the appropriateness of her mother as her guardian.
- After a delay of many months, local officials completed their investigation and substantiated that Susan's mother had neglected her.
- The court visitor subsequently determined that it was in Susan's best interest that her mother and stepfather be removed as her guardians. In response, we petitioned to be appointed Susan's successor guardian. In addition, we filed and obtained a protective order prohibiting Susan's mother from interfering with Susan's care; removing Susan from the hospital without prior court and physician approval; and engaging in abusive or neglectful conduct towards Susan.
- During the pendency of the legal process, Susan's mother and stepfather offered to resign as guardians and pay for the services of a respected local professional fiduciary in lieu of OPG becoming Susan's guardian.
- We evaluated this proposal. Upon receiving formal assurances that Susan would receive appropriate care and services, we agreed to the appointment of the professional fiduciary.

If we had not intervened on Susan's behalf, she would have continued to be neglected and abused. It is very possible this would have resulted in her death. Today she is free from abuse and neglect and doing well in her recovery.

We sought to do what was best for Susan in the least intrusive manner possible. In agreeing to the appointment of the private professional fiduciary, while ensuring that measures were implemented to protect Susan from abuse and neglect, we facilitated an outcome that provides for Susan's health and safety, while making it possible for her and her parents to

interact with one another. While we do not condone the conduct of Susan's parents, they have been the most important people in her life. If we had insisted in becoming her guardian, it is likely her parents and we would have been embroiled in a continuing legal battle that would not have benefited Susan, and would have been very costly for the state of Oregon and OPG.

Our intervention in Susan's case will likely result in significant savings to the state of Oregon, bringing to end repeated, lengthy and costly hospital stays. Susan is a Medicaid recipient. In 2016 alone, Susan spent over 200 days in hospitals at a cost that may reach half a million dollars. At the time the successor guardianship was granted on March 2<sup>nd</sup> she had been in the hospital for more than 60 days already in 2017.

**Attachment IV**  
**Summary of Circumstances Involving Lisa Bayer-Day and  
the Protected Persons for Whom she was Responsible**

*This paper summarizes what OPG learned as it looked into the circumstances of many of the protected persons for whom Lisa Bayer-Day, a professional fiduciary (guardian and conservator), had been appointed to serve.<sup>1</sup> It does not address concerns that we have about possible gaps and limitations in Oregon's guardianship law and system, and health and human services systems that may have contributed to the events that transpired.*

In October 2015, OPG became aware of a situation involving Lisa Bayer-Day, a professional guardian and conservator (fiduciary). OPG was contacted by a long-term care facility that was caring for one of Bayer-Day's protected persons. The person had been in need of surgery for some time. More recently, the situation had become urgent and possibly life threatening. The facility sought but had been unable to obtain Bayer-Day's authorization for the surgery. The facility subsequently learned that the fiduciary was in jail, having been arrested and detained on over 80 felony counts of abuse and exploitation of her guardianship, conservatorship and representative payee clients.

As OPG investigated the situation involving the protected person in need of surgery it became concerned about the welfare of other Bayer-Day clients. It was not evident who Bayer-Day's clients were, where they were living, if they were safe and whether their needs were being addressed. Initially, no state or local human services agency could provide this information, although in many cases public agencies had referred and facilitated Bayer-Day's appointment as a guardian and in a number of instances had paid or were paying for her fiduciary services on a continuing basis.

As OPG looked further into matters, it became evident there is no centralized registry or source of information in Oregon about adults who are subject to guardianship and conservatorship. OPG turned to court visitors, other professional fiduciaries and court records to identify and locate Bayer-Day's protected persons. In the end, it was necessary to painstakingly comb through the records of many different courts across the state.

OPG subsequently learned that some courts were preparing to vacate guardianships because no successor guardians and conservators had been found for many of the protected persons. This prompted another concern. Who did these courts expect would ensure the health and safety and look after the affairs of these protected persons? And what would happen to these protected persons if they fared poorly?

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<sup>1</sup> OPG has done its best to validate and verify the information presented in this paper. The cited and described events, actions, circumstances and developments are based on information that OPG was provided and obtained after Bayer-Day's arrest, as OPG sought to identify the "protected persons" for whom Bayer-Day was responsible, ensure they were safe and being cared for, and address their guardianship needs. Sources include the communication the office had with DHS and OHA staff and managers and that of local public human services programs, other service and care providers, professional fiduciaries, court visitors and judges; court records for all of Bayer-Day's known petitions and guardianship and conservatorship cases; and, the first-hand experience and observations of OPG staff and management.

OPG alerted state and local mental health and human services agencies and officials about what it had learned. OPG sought the assistance of officials in addressing the immediate welfare and needs of Bayer-Day's protected persons. In the fifteen months since becoming aware of the situation, OPG has continued to advocate for the needs of the protected persons who effectively lacked a guardian, with Bayer-Day in jail and later in prison, and for whom no successor guardian had been appointed. OPG prompted and worked with officials and courts to identify and facilitate appointment of fiduciaries. Ultimately this resulted in private professional fiduciaries and others being appointed as successor guardians for 16 protected persons. In the case of 11 protected persons for whom no other guardianship arrangements could be identified, OPG sought and obtained guardianships, and is continuing to serve these persons. Also, through this process we identified 2 individuals previously under guardianship by Bayer-Day who no longer needed guardianships and possibly never did.

The process of locating, reviewing, assessing for guardianship, and either facilitating alternative successor guardians, or directly petitioning for OPG guardianship and serving after appointment when necessary in all 29 current cases where Lisa was still the legal guardian at the time of her arrest, was time intensive; especially for OPG, which was in the very early stages of program development when we were faced with this situation. In addition to ensuring the safety of the protected persons involved, we also invested considerable time and resources in working with other state entities, to identify gaps and limitations by those entities and others that helped facilitate the growth of Bayer-Day's business, despite information known early on that she was problematic.

### **Bayer-Day's Guardianships and Events Leading to Her Arrest and Conviction**

Bayer-Day began her guardianship and conservatorship business in 2006, after having worked as a case manager for another professional fiduciary. Perhaps due to her residency in Beaverton, Bayer-Day initially sought appointment for cases in the Portland metropolitan area. However, due to misconduct that Bayer-Day is reported to have committed in her prior capacity as a case manager, serious questions were raised about her suitability to serve as a fiduciary. For instance, as a case manager, Bayer-Day is reported to have used the funds of an elderly client to purchase fast food and lingerie items for herself, and then to have attempted to document the purchases as expenses made on behalf of the client. In one of the earliest cases in which Bayer-Day petitioned to be a fiduciary, a court visitor's report documents Bayer-Day inappropriately asking the proposed protected person to sign a blank check, which Bayer-Day then filled out naming herself as payee. After this was brought to the court's attention, Bayer-Day withdrew that particular petition.

Many of the court visitors that serve in the Portland metro area regularly communicate with each other and share information, including concerns about specific fiduciaries. Through this informal information sharing, Bayer-Day's ethically questionable behavior became known among court visitors in the metro area, and was reflected in visitor reports, which in turn informed the probate court judges in the metro area when they made decisions about whether to appoint her. Although Bayer-Day was initially appointed as a professional fiduciary in several cases in the metro area, concerns about her conduct appear to have resulted in denials for appointment in subsequent cases.

In 2006 and 2007, Bayer-Day petitioned for guardianship in five separate cases in Multnomah and Washington Counties. In all of these cases, the court visitor and/or the presiding judge found Bayer-Day unfit to serve as a guardian. In only one of these cases was Bayer-Day appointed as an ongoing guardian or conservator; and in that case, she was appointed with numerous restrictions, including the requirement that she be fully bonded and that she be mentored by an established professional fiduciary.

Bayer-Day filed no petitions in the Multnomah and Washington counties during 2008. The last known case where she petitioned in these two counties occurred in 2009. In that case, the court visitor recommended against appointment of Bayer-Day, and the judge denied the petition and specifically wrote in the judgment that Bayer-Day was not suitable to be appointed guardian at that time. Thereafter, Bayer-Day did not file petitions in Multnomah and Washington counties. Instead she began petitioning in other areas of the state, primarily in northeastern Oregon. The courts and court visitors in these other counties may have been entirely unaware of Bayer-Day's prior improper conduct when they made determinations of her fitness and suitability to serve as a fiduciary lacking this information. Bayer-Day's business grew significantly during that time period.

Over the course of Bayer-Day's practice as a professional fiduciary, numerous concerning incidents were identified and reported to governmental entities in various forms. In addition, there is evidence that other improper, possibly unlawful, actions by Bayer-Day may have been identified had the courts or human service officials (who paid her for fiduciary services) exercised meaningful oversight over her guardianships and conservatorships. Examples include: failure to pay bills on behalf of clients, failure to communicate with clients and service and care providers, overbilling for services (theft) and billing for services not provided (theft), the use of threats and intimidation to control clients, the use of businesses owned by herself and her family members without required disclosure or prior court authorization, failures to secure appropriate medical or personal care, accessing funds not covered by her legal authority (theft) and in some cases completely losing track of the location of her protected persons.

With the exception of a handful of incidents where action was taken against her in individual cases, no action to stop Bayer-Day's practice as a whole occurred until 2015. By that time, she had filed over 67 petitions for guardianship or conservatorship in at least two states, including 17 Oregon counties, and had been appointed as a professional fiduciary for at least 55 individuals. In addition, according to her records, as of February 2015 she had been appointed and was serving as a representative payee for 78 recipients of VA benefits and 76 people receiving Social Security disability benefits.

The Department of Justice, Medicaid Fraud Control Unit (DoJ) began discretely investigating her practices in 2013. Thereafter, some human services staff responsible for investigating concerns and allegations of misconduct by Bayer-Day, recall being told by superiors to exercise caution and not to further pursue matters so as not to jeopardize the DoJ investigation. In the period between the onset of the investigation and Bayer-Day's arrest in September 2015, an indeterminate number of protected persons were subjected to abuse and exploitation by Bayer-Day.



In October 2014, a court in Grant County, determined that Bayer-Day had wrongfully taken money belonging to a protected persons. Including billing for services not provided and paying money to a business owned by her spouse for work never completed. That court stripped Bayer-Day of her guardianship authority and ordered her to repay the wrongfully taken funds.

In March 2015, a complaint was filed with the national Center for Guardianship Certification (CGC) about Bayer-Day. CGC's subsequent investigation resulted in the suspension of Bayer-Day's certification in May 2015, and full revocation of her certification in June 2015.

In May 2016, as part of a plea deal, Bayer-Day pled guilty to 12 felony counts, including Criminal Mistreatment, Theft I, Aggravated Theft I, Money Laundering and Tax Evasion. On May 25, she was sentenced to 48 months in prison and ordered to repay \$117,000 to her victims.