

OVERVIEW

The Office of Public Guardianship (“OPG”) is an independent, publicly funded, state agency within the Judicial Department, created pursuant section 13-94-104, C.R.S. (2017). OPG is headed by a director (the “Director”) and the Director serves at the pleasure of the statutorily created commission (the “Commission”). Section 13-94-104, C.R.S. (2021).

The Commission has found that, to accurately assess the performance of the Director and OPG, the Commission must be provided with information necessary to oversee the Director and the operations of OPG. The Commission directs the Director to provide to the Commission, at minimum, the information detailed in this document, which includes any exhibits, attachments, or addenda to this document (the “OPG Oversight Policy”). This information shall enable the Commission to provide oversight, advice, approval, and/ or information related to OPG.

The Commission, the Director, and OPG shall adhere to all applicable laws whether or not they are explicitly included in the OPG Oversight Policy.

RELEVANT OVERSIGHT LAW

“The commission shall appoint a director to establish, develop, and administer the office of public guardianship, which offices is hereby created within the judicial department. The director serves at the pleasure of the commission.” Section 13-94-104(3), C.R.S. (2021).

“In addition to carrying out any duties assigned by the commission, the director shall ensure that the office provides, at minimum, the following services to designated judicial districts ...” Section 13-94-105(2), C.R.S. (2021).

“Notwithstanding any law to the contrary, commencing January 1, 2019, each statutorily created board or commission in state government, not including a special purpose authority as defined in section 24-77-102 (15),¹ shall implement written policies or bylaws and obtain annual training on:

- (a) Understanding and operating within the limits of statutory directives, legislative intent, and any specific directions or laws related to the board or commission’s establishment and its powers and duties;
- (b) Defining the board or commission’s mission or role in the oversight of projects or entities approved to receive public funding, if applicable;
- (c) Understanding the goals of the programs the board or commission oversees, and aligning the board or commission’s processes with those goals;
- (d) Identifying and managing conflicts of interest;
- (e) Understanding the requirements of the “Colorado Open Records Act”, part 2 of article 72 of this title 24, and the open meetings law, part 4 of article 6 of this title 24;
- (f) Setting parameters regarding board or commission staff’s duties relative to the board or commission’s mission or role;

¹“Special purpose authority” means any entity that is created pursuant to state law to serve a valid public purpose, which is either a political subdivision of the state or an instrumentality of the state, which is not an agency of the state, and which is not subject to administrative direction by any department, commission, bureau, or agency of the state. Section 24-77-102 (15)(a), C.R.S., (2021).

- (g) Identifying and securing sufficient data in order for the board or commission to make informed decisions;
 - (h) Ensuring the appropriate involvement of members in the review of key communications and in any policy-making activities;
 - (i) Ensuring members act in accordance with their roles as public representatives;
 - (j) Coordinating with other boards or commissions, industry, educational institutions, and state agencies where responsibilities and interests overlap; and
 - (k) Annually reviewing management practices to ensure best practices are utilized.
- Section 44-3.7-102(1), C.R.S. (2021).

COMPLAINT PROCESSES

Complaints are a normal and real part of all organizations. Having clear complaint processes is especially important for OPG due to: (1) the vulnerability of persons under guardianship; (2) the legal authority that guardians are granted to make decisions on behalf of the vulnerable people under guardianship; and (3) OPG’s status as a publicly funded, state agency that is subject to public inquiry and laws supporting public inquiry.

As related to Commission oversight, the following are minimum guidelines for the different types of complaints that OPG may receive:

Complaints about the OPG Office

Complaints about the OPG office shall be sent to and received by the Director. If the complaint involves the Director or a Commission oversight function, the Director shall immediately forward such complaint to the Commission.

Complaints about the Director

Complaints about the Director are handled pursuant to the Commission’s Policy on Complaints Regarding the Executive Director.

- **Complaints about the OPG Employees**

Complaints about the OPG guardians or other OPG staff, not including the OPG deputy director, (the “Staff”) shall be sent to and received by the Director and/or the OPG deputy director (the “Deputy Director”). To remain in compliance with state and federal employment laws that address mandatory confidentiality and privacy standards, complaints need to be received, reviewed, and addressed by OPG management. If and when the Director hires human resources personnel, human resources personnel may also receive and address complaints about the Staff.

If the complaint is about the Deputy Director, the complaint shall be handled by the Director because it would be a conflict of interest for the Deputy Director to handle such a complaint. If the Deputy Director receives such a complaint, the Deputy Director shall immediately send the complaint to the Director in its original form, in its entirety, and without sending it to anyone else. If and when the Director hires human resources personnel, human resources personnel may also receive and address complaints about the Deputy Director.

If the Director, the Deputy Director, or a member of the Staff is subject to disciplinary action by any court, enforcement body, or the like, the Director shall immediately report such matters to the Commission. If the Director, Deputy Director, or a member of the Staff is found in violation of any law or statute, receiving any disciplinary action from a party other than OPG, or has to go in front of any court to address a legal issue, the Director shall immediately report such matters to the Commission. If the Deputy Director or a member of the Staff is chronically incurring complaints or violating OPG policies, the Director shall as soon as practicable report such matters to the Commission. **Please note, these lists are not exhaustive.**

FISCAL OVERSIGHT

As a body appointed to oversee a publicly funded office, the Commission has found that it has fiduciary responsibilities. To provide effective fiduciary oversight, the Director shall provide the Commission with the information necessary to assess the financial health of OPG and the fiscal stewardship of the Director. Accordingly, the Director shall seek review, advice and approval for actions when necessary and/or appropriate including but not limited to the following:

- Providing the Commission with a monthly budget summary and/or cash flow statement;
- Seeking Commission review of capital expenditures over \$5,000.00; individual expenditures for goods over \$5,000.00; and expenditures for services or service contracts over \$25,000.00 (citation);
- Seeking review and advice of the Commission in the development of the annual budget;
- Alerting and seeking advice of the Commission on changes to the projected budget or changes to expenditures and revenues that impact the delivery of OPG services.
- Seeking review and response, if indicated, to external audits as required by policy (citation); and,
- Providing evidence that expenditures in excess of \$75,000 are subject to the appropriate RFP process as defined in Judicial policy (citation).

The Commission Chair, or Vice Chair on behalf of the Chair:

- Reviews and approves out-of-state travel of the Director;
- Reviews, approves and authorizes payment of monthly credit card and bank statements of the Chair of the Commission (citation);
- Reviews and approves requests for paid time off exceeding three days and any request for unpaid time off exceeding one day; and,
- Refers questions of fiscal oversight to the full Commission as appropriate.

PROGRAMMATIC OVERSIGHT

The Commission has statutory responsibility for hiring the Director and determining if the Director will be retained. To fulfill this function the Commission must have access to information necessary to evaluate the performance of the Director and assess whether the Director is fulfilling his or her duties and responsibilities pursuant to Title 13, Article 94 of the Colorado Revised Statutes. The Director shall provide the Commission with any updates and information that the Director believes is relevant to this assessment, including but not limited to the following:

- Providing monthly updates on the number of individuals the Office is serving and referrals in process;
- Seeking reviews and advice on any substantive additions or revisions to or other changes in the Policy and Procedures of the Office;
- Seeking review and advice on critical incidents as defined by the Commission and any other incidents referred to the Commission by the Director. For purposes of this policy, critical incidents reportable to the Commission include:
 - Expected or unexpected death of a ward;
 - Illness or injury requiring emergency care or overnight hospitalization;
 - Elopement in which the ward is not immediately found, their safety is at serious risk or there is a risk to public safety;
 - Missing person;
 - Suspected mistreatment (abuse, caretaker or other neglect, exploitation);
 - Medication errors that result in medical treatment or hospitalization of a ward;
 - Suspected criminal activity involving a ward wither as a victim or perpetrator;
 - Unresolved situation of unsafe housing or displacement
- Seeking review and advice on any substantive change to services impacting current or future clients of the Office.
- Seeking review and advice on information provided in relation to personnel management and stakeholder relations including chronic complaints against guardians or the Office received by the Director and any circumstance in which any member of the Staff is subject to legal action related to their duties.
- Seeking review and advice on any actions to enter into contract or other agreements with governmental or nongovernmental organizations;
- Seeking review and advice, time permitting, on any presentations, requests, or actions before a legislative body; and,

The Chair, or Vice Chair on behalf of the Chair:

- Routinely communicates with the Director to review and advise on current challenges and opportunities related to Office operations.
- Refers any complaints against the Director and other complaints directed specifically to the Commission regarding the operation of the Office or scope of services to the Commission for investigation and response (citation);
- Coordinates the annual performance evaluation of the Director.

***FINAL REPORT²**

On or before January 1, 2023, the Director shall submit to the judiciary committees of the senate and the house of representatives, or to any successor committees a report concerning the activities of the Office (the “Final Report”). Section 13-94-105, C.R.S., (2021).

² *The Final Report is due on January 1, 2023. This is a one-time, statutory duty of the Director, and, at this time, there is no indication that the Final Report duty will extend beyond January 1, 2023. If the Final Report duty is completely fulfilled on January 1, 2023, and no similar duty is statutorily prescribed, this section of the OPG Oversight Policy will no longer be applicable.

