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Plan to expand embattled Office of Public Guardianship on hold

By **Marianne Goodland** April 24, 2023 | updated 3 years ago





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Angel, left, and friend Sleepy discuss the difficulties of living in a camp after picking up trash between their site and a neighboring site on Monday, Feb. 28, 2022, near I-225 and East Mississippi Avenue in Aurora, Colo. Angel has stacked up debris around her tent to help insulate it from the wind. Out of the first 86 clients of the Office of Public Guardianship, 47 – or more than half – were homeless when they were referred to the office. (Timothy Hurst/The Denver Gazette)

Timothy Hurst

Plans by the Colorado Office of Public Guardianship — which serves as the guardian of last resort for homeless people and individuals with mental illnesses who don't have anyone else to care for them — to expand statewide are on hold.

The embattled agency faced criticism following the deaths of 20 people — out of its 102 clients — under its care since the pilot program began three years ago. The agency also faced complaints from its biggest referring partner about the way it operated.

But the reason why policymakers rejected its expansion plans is money.

The expansion would have cost the state \$1.2 million in general fund dollars and added 10 new full-time equivalent employees, just for the last six months of 2023. By 2025, the state tab would grow to just under \$3 million and with the addition of almost 28 new employees. The proposed expansion would have required all judicial districts to set up an OPG office in county courthouses — which the judicial department would pay for — by 2030.



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The Senate Appropriations Committee voted last Friday to hit the pause button, saying the funding just isn't there and hoping that a year from now the money would materialize.

But that's not guaranteed, either.

Budget writers and state revenue forecasts warn of a fiscal cliff headed to the state that could result in tighter budgets in the years to come.

The Office of Public Guardianship started off as a pilot program in the Denver judicial district under legislation adopted in 2017. But the pilot legislation put no funding into the office, instead relying on gifts, grants and donations, a sign that lawmakers liked the idea but were not immediately willing to fund it.



Two years later, the pilot finally got funding, half from the state and half from the courts through a list of 11 fees, including jury fees. The program was extended in 2021 to include two more judicial districts, with a sunset date for 2023.

That legislation came with a requirement to evaluate the program. That evaluation was conducted by the Office of Public Guardianship, and not by an independent third-party.

The office started taking referrals in April 2020. Between November 2020 and through January 2022, 14 wards died under the office's care. Another six died in 2022.

The office deals with a population that faces grave socio-economic, and acute care and behavioral health challenges.



Legislation in 2021 showed OPG was still supposed to be funded primarily by court fees through June 30, 2024, with a minimal amount of about \$44,000 from the Department of Human Services.

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Polis promised oversight

Gov. Jared Polis said a year ago he would seek more oversight over the office.

It's not clear how or if the oversight promised by the governor has occurred.

In a statement last November after learning more clients had died, the governor's office said, "These are tragic losses and difficult situations. Public guardianship is an intervention of last resort, generally involving an individual with complex medical needs that lacks decision-making capacity and has no family or friend to act as a power of attorney or guardian."

The statement noted the governor's budget request for 2023-24 had asked for an additional \$1.6 million in funding and that the General Assembly would review those recommendations in the months ahead.

The request also referred to the evaluation the office did of itself.

That review said that, as of September 30, 2022, OPG received 288 referrals, 82 of them from outside of Denver County and therefore not eligible for guardianship services under the office's limited capacity set by law.

Out of those 206 Denver-based referrals, the office took on 102 guardianships, including the 20 clients who died under its care.

The office has refused requests from Colorado Politics to talk about the cause of death for those individuals, whose age ranged from 47 to 93, or whether there were guardians with more deaths than others.

However, its own review indicated the cause of death for those clients were "consistent" with national statistics from the Centers for Disease Control and Prevention for people aged 65 and older, such as "heart disease, cancer, COVID-19, stroke and dementia."

The self-authored review's conclusion recommended that OPG be established as a permanent, independent agency, with a three-year rollout plan to cover the entire state. It also recommended that OPG establish accountability and oversight "via strong internal and external evaluative systems."

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SB 64, the legislation authorizing the expansion, was amended by the Senate to *add a performance audit of the agency, sometime between 2027 and 2030, to be conducted by the state auditor. The bill passed on a 32-3 vote on Monday.

The report's conclusion noted that participants in a qualitative survey conducted by the office "made it clear that OPG is serving a need to the community that was not there prior to the inception of the office."

"While the OPG is not perfect and still has room for improvement, the impact the OPG has made in three years has gone beyond justifying the cost of the program," the report said.

The report said that all types of participants in the evaluation — client, guardian, family or friend, or affiliate provider — noted the need for the program and the "desire to build on the framework that has been developed over the past three years."

The report added: "Even with large caseloads, OPG has made an impact in Colorado. For some clients, their services have meant life or death, and for others it has meant client's quality of life was vastly improved as a result of having an OPG guardian advocate on their behalf."

'Insufficient understanding' of care

While lauding OPG's partnership with Denver Health, its biggest referring partner, the report did not mention that Denver Health had been among its fiercest critics in 2021 and 2022.

A hospital representative offered a long list of complaints about OPG's practices and the behavior of its guardians at a public hearing at the state Capitol in January 2022. One guardian was accused of unprofessional behavior with a client that resulted in hospital security removing the guardian from the premises, Denver Health said.

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In another complaint in that same hearing, Denver Health noted an OPG client died at the hospital. Denver Health claimed that, despite the client being an OPG ward, the office failed to take custody of the client's body at the hospital, and the hospital had to make funeral arrangements, despite it being a violation of hospital policy.

The report noted that guardianship terminates with the client's death and the guardian will communicate with family to work with the facility or funeral homes. If there is no family, the guardian "may assist the facility social worker or interested friend in contacting the Public Administrator or other agency that may be appropriate to the individual client's situation."

At the time, OPG said despite the "unavoidable deaths," the office "(serves) a larger role in preventing deaths," through the services guardians provide.

"No Coloradoan should face death alone, unfriended and without representation or advocacy," the office said in the report.

Jackie Zheleznyak, Denver Health's director of government affairs, said at the 2022 public hearing that "Colorado is in desperate need of guardianship services and an office with adequate support and necessary training of those who work there to succeed for our vulnerable populations."

"Unfortunately," Zheleznyak said, "we don't see this as a state at OPG, which has an insufficient understanding of the different levels of care that exists within the healthcare continuum."

That included the understanding that hospitals should not be considered temporary housing for OPG clients, Zheleznyak said.

In response, OPG Director Sophia Alvarez said she wished the hospital had come to her first before going public with its complaints. She also disputed the claims made by Denver Health.

Relationship repaired

OPG has worked to repair that relationship, Zheleznyak told Colorado Politics after the SB 64 hearing with the Senate Judiciary Committee in February.

They have since worked with the governor’s office and OPG, and now believes OPG is the “best path forward at this point,” she said.

While the issues Denver Health raised last year were significant, the relationship has gotten stronger between Denver Health and OPG, and OPG has worked on the problems, such as better training and better communication between the office and the hospital, Zheleznyak said.

“It isn’t a perfect system and there’s still disagreements, but we are both committed to a collaborative relationship. This is a population that needs help and we should do that together,” she said.

The biggest gap remains to be funding, she said, adding the state budget would probably not provide the kind of funding the office needs.

“I truly believe it’s not the desire of OPG to do a mediocre job,” Zheleznyak said. “It’s their desire to be the best advocate they can be, but they’re not given the resources to succeed in that way.”

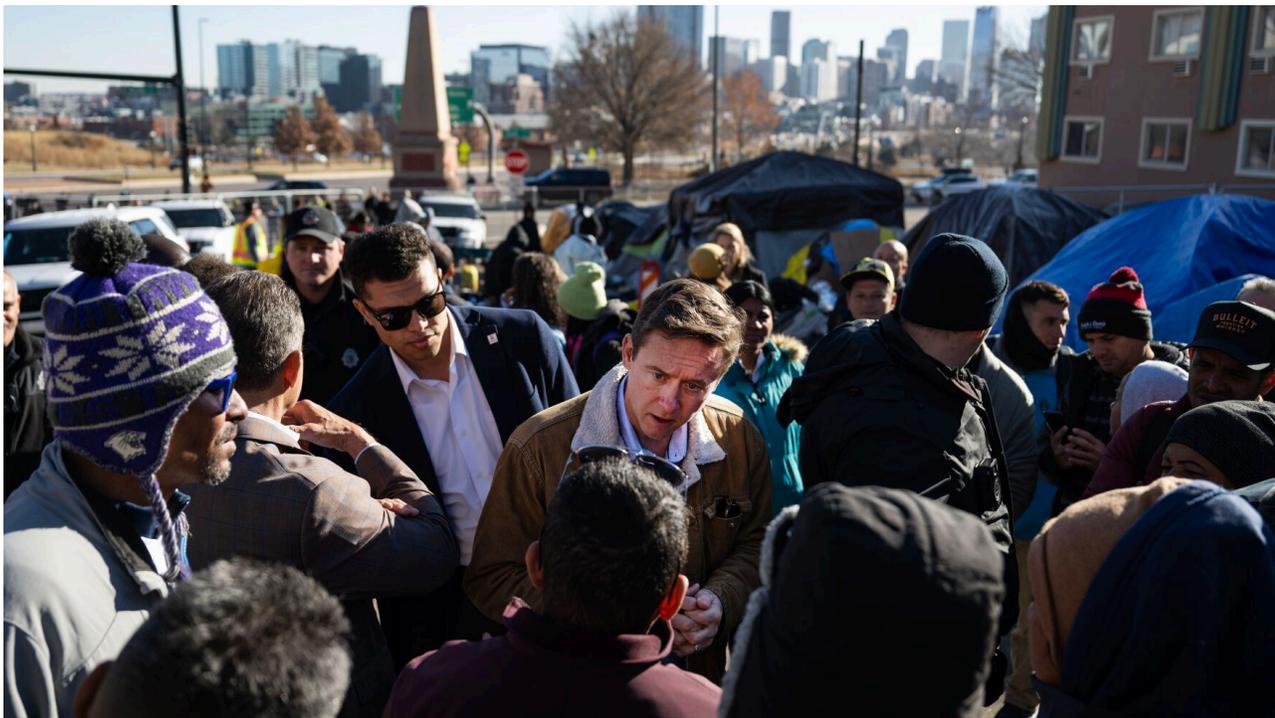
Editor’s note: This story has been updated to include amendment to SB 64 on OPG audits.



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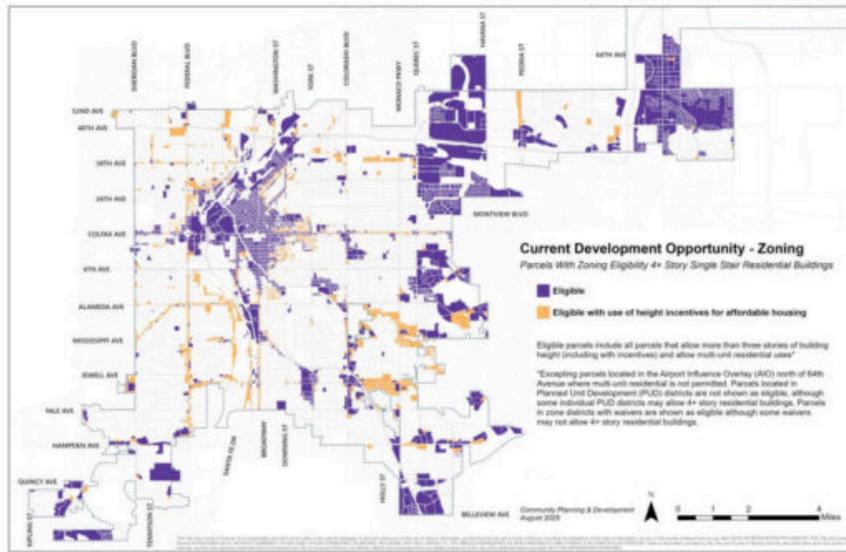
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