

Highlights of [GAO-11-678](#), a report to the Chairman, Special Committee on Aging, U.S. Senate

Why GAO Did This Study

If Social Security (SSA), Veterans Affairs (VA), and state courts find that adults are incapacitated, they appoint federal fiduciaries and court-appointed guardians to make decisions on their behalf. Incapacity is often associated with old age, so if these arrangements are not overseen, older adults could be vulnerable to financial exploitation.

This report assesses (1) SSA, VA, and state court procedures for screening potential fiduciaries and guardians; (2) SSA, VA, and state court fiduciary and guardian monitoring; (3) information sharing between SSA and VA and between each agency and state courts; and (4) federal support for court oversight of guardians. GAO interviewed federal and court officials and experts, and reviewed federal laws, regulations, and policies, and others' compilations of state guardianship laws.

What GAO Recommends

The Department of Health and Human Services (HHS) should consider funding evaluations of practices for monitoring guardians, and HHS agreed that the Administration on Aging (AoA) has the authority to take such action.

GAO also believes SSA should determine how it can, under current law, disclose certain information about beneficiaries and fiduciaries to state courts, upon request.

SSA disagreed and asserted that Privacy Act limitations prevent sharing this information with state courts. Given SSA's position, it should take whatever measures necessary to allow it to do so, including proposing legislative changes.

View [GAO-11-678](#) or key components. For more information, contact Kay Brown at (202) 512-7215 or brownke@gao.gov.

INCAPACITATED ADULTS

Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement

What GAO Found

SSA, VA, and state courts have screening procedures for ensuring that fiduciaries and guardians are suitable. SSA and VA strive to prevent individuals who have misused beneficiaries' payments from serving again, and each is currently developing an automated system that will enhance its ability to compile and maintain information about misuse of benefits by fiduciaries. Similarly, according to the AARP Public Policy Institute, laws in most states require courts to follow certain procedures for screening guardians. However, only 13 states conduct criminal background checks on all potential guardians.

There are also statutes and regulations requiring SSA and VA to monitor fiduciary performance. Fiduciaries in each agency must periodically report on their responsibilities. Similarly, most states require courts to obtain annual reports from guardians. There is evidence that guardianship monitoring by state courts, however, needs improving, and promising practices have been proposed to strengthen it. Given limited resources for monitoring, courts may be reluctant to invest in these practices without evidence of their feasibility and effectiveness from projects designed to evaluate these practices.

Gaps in information sharing may adversely affect incapacitated adults. When VA and SSA have incapacitated beneficiaries in common, sharing certain information about them could enhance each agency's ability to protect the interests of these beneficiaries. While SSA and VA do not systematically share such information, VA can obtain such information from SSA on a case-by-base basis. SSA officials indicated, however, that obtaining similar information from VA may not be cost-effective given the relatively small proportion of SSA beneficiaries who also collect VA benefits. It is also in the best interest of incapacitated beneficiaries for federal agencies to disclose certain information about these beneficiaries and their fiduciaries to state courts. National organizations representing elder law attorneys and advocating for elder rights have noted that courts have difficulty obtaining such information when it is needed, particularly from SSA.

The federal government has a history of funding technical assistance and training related to guardianship for state courts, primarily through the AoA within HHS. In 2008, AoA established the National Legal Resource Center (NLRC) to support improvements in legal assistance for older adults and to support elder rights protections. Among its other projects, NLRC has supported an evaluation of Utah's public guardian program. Because of the federal government's activities in this area, it is well positioned and has an opportunity to lead in ensuring the rights of incapacitated adults with court-appointed guardians by supporting evaluations of promising court monitoring practices.