

2014 State Guardianship Legislation Addressing Elder Abuse

Adult guardianship¹ can be both a solution to – and a source for – elder abuse. A court-appointed guardian can be a savior, protecting from abuse; or can enable elder abuse, particularly if a court fails to demand accountability.²

Each year state legislatures enact laws changing procedures and requirements in guardianship. In 2014, 16 states enacted changes in their guardianship code in 19 different bills. Here are the changes that most affect elder abuse, neglect and exploitation.³*

Cross-Border Guardianships

Guardianship often involves more than one state. Jurisdictional issues can take up time for courts, cause delays in care and financial burdens for families, and aggravate family conflicts. Lack of clear jurisdictional guidelines can allow for cross-border “granny snatchings” and other abusive actions.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) clarifies jurisdiction and offers a procedural roadmap for dilemmas where more than one state is involved. The Act also targets abuse by guardians in several ways.⁴ It gives courts in cross-border cases more information about alleged abuse in other states and requires courts to consider that information in making decisions and monitoring guardians. It reduces the possibilities of “granny snatching” by changing the rules for a court to have jurisdiction.

The Act has been adopted by 40 states, the District of Columbia and Puerto Rico. This includes three states – Mississippi, Massachusetts and California – that passed the Act in 2014.



* AZ, CA, FL, ID, IL, IN, MA, MD, MS, NE, OR, TN, UT, VT, VA, WV

¹ Guardianship terminology varies by state. In this brief, the generic terms “guardian” and “guardianship” refer to guardians of the person as well as guardians of the property.

² Wood, E., “The Paradox of Adult Guardianship: A Solution to – and a Source for – Elder Abuse, *Generations*, American Society on Aging, Vol. 36, No. 3, Fall 2012, pp. 79-82

³ American Bar Association Commission on Law and Aging, *State Adult Guardianship Legislation: Directions of Reform – 2014*, http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html

⁴ Stiegel, L. & Wood, E., “Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and protective Proceedings Jurisdiction Act,” American Bar Association Commission on Law and Aging, http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/guardianship_jurisdiction.html

Public Guardianship

State or local public guardianship programs are last resort programs. They serve vulnerable, incapacitated individuals with no willing and able family members or friends to help in making decisions about property, medical care and living arrangements.⁵ Public guardianship programs often support adults at risk of abuse, neglect or exploitation.

In 2014, two states enacted and funded statewide public guardianship programs. The new Oregon program is established in the state Long-Term Care Ombudsman office; and the new Nebraska program is located in the state Supreme Court.



Background Checks for Guardians

Some states have enacted criminal and other background checks for prospective guardians.⁶ A 2014 Florida measure requires guardians to submit to credit history investigation and background screening. New Arizona provisions mandate notification of a guardian appointment to the national instant criminal background check system.

Fiduciary Misconduct

Guardians are fiduciaries, with a high standard of care and accountability. Guardians who financially exploit individuals entrusted to their care breach their fiduciary duty. Legislation in West Virginia clarifies that appointment as a fiduciary “shall not, standing alone, constitute a defense to a charge of financial exploitation.”

Court Oversight of Guardians

During the past 15 years, many states have strengthened the court’s tools for oversight of guardians.⁷ In 2014, Idaho amended requirements for guardian reporting.

Oregon authorized the court to appoint a trained volunteer “protected person special advocate” after a guardian is appointed – to be the “eyes and ears” of the court and report back to the judge. The volunteer is to investigate and evaluate the person’s circumstances and the way in which the guardian is fulfilling duties, and to help the guardian by providing information about community resources.⁸

⁵ Teaster, P. et al, *Public Guardianship: In the Best Interest of Incapacitated People?* Preager [2010].

⁶ See 2013 chart on Guardian Felony Disqualification and Background Requirements, Hurme, S. & ABA Commission on Law and Aging, http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html

⁷ Karp, N. & Wood, E., *Guarding the Guardians; Promising Practices for Court Monitoring*, AARP Public Policy Institute [2007], assets. assets.aarp.org/rgcenter/il/2007_21_guardians.pdf

⁸ American Bar Association Commission on Law and Aging, *Handbook on Volunteer Guardianship Monitoring and Assistance: Serving the Court and Community*, http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/court_volunteer_guardianshipmonitoring.html

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