STATE ADULT GUARDIANSHIP LEGISLATION SUMMARY:
DIRECTIONS OF REFORM – 2019

Commission on Law and Aging
American Bar Association

This 2019 legislative summary reviews approximately 58 enactments from 33 states, as compared with 39 enactments from 22 states in 2018. An earlier version of this 2018 legislative summary [January – August] was published as part of the National Guardianship Association’s 2019 NGA Legal and Legislative Review, presented at the 2019 NGA National Conference.

States were active on a variety of fronts, enacting a variety of significant changes to guardianship laws. Washington became the second state, after Maine in 2018, to adopt the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA). Without adopting UGCOPAA in its entirety, Nevada and New Mexico enacted certain provisions of the model law. Iowa and Mississippi also included sections from UGCOPAA in sweeping statutory reforms.

To rebuild its probate code, the Virgin Islands adopted five uniform laws – Nonprobate Transfer on Death, Real Property Transfer on Death, Disclaimer of Property Interest, Custodial Trust, and Partition of Heirs.

Texas and New Mexico established new programs to address guardianship abuse. Texas founded a guardianship abuse, fraud, and exploitation detection program to review guardianships and identify issues, work with courts to develop best practices, and report concerns of potential abuse, fraud, or exploitation. New Mexico created a grievance procedure, which includes mandatory court review, for complaints against guardians and conservators.

Indiana, North Dakota, Nevada, and Rhode Island recognized supported decision-making agreements, bringing the total to nine states that have made these agreements legally enforceable since 2015. The acts are not uniform; provisions such as governing who may serve as a supporter, the scope of the supporter’s duties, and indemnification of third parties vary among the state statutes.

Since 2011, states have enacted a total of approximately 328 adult guardianship bills – ranging from a complete revamp of code provisions to minor changes in procedure. Most of these statutory changes have advanced guardianship reform by safeguarding rights, addressing abuse, and promoting less restrictive options. The real challenge lies in turning good law into good practice.
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If you know of additional state adult guardianship legislation enacted in 2019, please contact dari.pogach@americanbar.org. The views expressed in this legislation summary have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

I. Pre-Adjudication Issues

For the last 30 years, legislative changes have sought to bolster safeguards in proceedings for the appointment of a guardian or conservator. Additionally, states continue to make various procedural “tweaks” to clarify requirements, promote effective administration, and address inconsistencies.


1. Counsel for Respondent. Perhaps the most basic procedural right of respondents in guardianship proceedings is the right to counsel. Both the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) and the National Probate Court Standards provide for appointment of counsel. State guardianship laws address the right to and appointment of counsel with substantial variation; some states require counsel to serve as a vigorous advocate and others specify that counsel should act as guardian ad litem. For a state by state overview, see “Representation and Investigation in Guardianship Proceedings,” ABA Commission on Law and Aging and Sally Hurme (2018), at https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartrepresentationandinvestigation.pdf.

Georgia H.B. 70 prohibits a lawyer who already represents a person alleged to need a guardian or a person with a guardian from serving as guardian ad litem for the same person. Nor can a guardian ad litem for an individual also serve as the person’s attorney.

Iowa H.F. 610 requires counsel to “advocate for the wishes of the respondent to the extent these wishes are reasonably ascertainable.” If the respondent’s wishes are not ascertainable, the attorney shall advocate for the least restrictive alternative consistent with the respondent’s best interests.
2. Procedural Changes. Over the past 30 years, most states have made changes in pre-appointment requirements for petition, notice, presence, and hearing procedures.

Indiana SB 380 requires a petitioner to include a description of the petitioner’s efforts to use less restrictive alternatives prior to seeking guardianship. The new statutory language includes supported decision-making in the definition of less restrictive alternatives.

Iowa H.F. 610 removes a provision explicitly allowing either party to request a jury trial as provided by the rules of civil procedure.

Iowa H.F. 610 increases the requirements for a petition for guardian or conservator, including: a statement why a less restrictive alternative is not available and the names and addresses of interested parties including family members, legal representatives, and health care proxies. If the petitioner requests a conservator, the petition must include the estimated value of real estate owned by the person, the estimated gross annual income of the person, and a brief description of why the respondent cannot communicate or carry out important decisions about financial affairs.

Iowa H.F. 610 requires the court, upon receiving the petition, to set a hearing for a minimum of twenty days after notice is served. The respondent is entitled to attend the hearing and all other proceedings, and the court shall make reasonable accommodations for the respondent’s attendance. In addition, the court shall require the proposed guardian/conservator and the court visitor to attend the hearing. The court may waive the attendance of any of the three aforementioned parties – respondent, proposed guardian/conservator, and court visitor. Any person may submit a written application to the court requesting permission to participate. The court may grant the request if it is in the best interests of the respondent.

Iowa H.F. 610 requires that the written notice for the respondent in a petition to appoint a guardian includes: the guardian’s powers, including which powers the guardian may exercise without court approval and which require court approval; the respondent’s right to representation by an attorney; the “potential deprivation of the respondent’s civil rights.”

Maine H.B. 1118 cleans up last year’s adoption of UGCOPAA. The new law conforms UGCOPAA to various local court procedures. Also, in consideration of guardians who may have been appointed years earlier and are unaware of new requirements, it exempts existing guardianships/conservatorships from the new reporting and notice requirements, and the new limits on guardian powers. The court may impose new requirements on a case by case basis.
Nevada S.B. 20 allows the petitioner for appointment of guardian to petition the court for an expedited hearing to discharge the proposed protected person to a more appropriate healthcare facility that provides a less restrictive level of care.

Nevada S.B. 20 allows a proposed protected person to waive appearance through his or her attorney or appear through other means.

New Mexico S.B. 395 allows the person alleged to be incapacitated to present evidence and subpoena witnesses and documents, examine witnesses, and otherwise participate in the hearing.

Tennessee H.B. 676 authorizes the court, when appointing a guardian or conservator, to direct the funds of a person with a disability into a trust and to appoint a fiduciary (which may or may not be the guardian or conservator) to manage the trust.

3. Temporary/Emergency Guardianship Orders. In emergency situations, statutory provisions and the court must strike a difficult balance between procedural safeguards and prevention of irreparable harm. An emergency guardianship, sometimes established without full procedural protections, may open the door for a plenary and permanent appointment. In the landmark 1991 case Grant v. Johnson, a federal district court declared the Oregon temporary guardianship statute unconstitutional because it did not provide minimum due process protections. Following the Grant decision, some states revised their temporary guardianship provisions. For a state by state overview, see https://www.americanbar.org/content/dam/aba/administrative/law_aging/Emergency_Guardianship_Chart.authcheckdam.pdf. (ABA Commission on Law and Aging 2014).

Georgia HB 70 extends the prerequisite findings for appointment of a guardian to appointment of an emergency guardian.

Iowa H.F. 610 authorizes the court to appoint an emergency guardian or conservator for a maximum of thirty days.

Nevada S.B. 20 authorizes a court to appoint a successor guardian to serve immediately or when a designated event occurs, or for a temporary substitute guardian for no more than six months. The authority of the temporary guardian must be limited to any actions required to ensure the health, safety, or care of the person. The bill also authorizes a court to appoint a successor guardian.

4. Youth Transition. In many cases parents of minors with disabilities file for guardianship upon (or in some states before) the child turns 18. Parents or legal guardians of a child with a disability may have been told by education or social service professionals that they must seek guardianship to remain involved with their child’s life when the child turns 18. In some cases, parents/legal guardians may fear their child will not be able to receive medical treatment or public benefits without the consent of an adult guardian. It is
seldom the case that a young person must have a legal guardian upon turning eighteen or suffer calamitous consequences. There are many legal options for ensuring parents/legal guardians can continue to provide support and care without rushing into what may be an unnecessary guardianship.

**Iowa H.F. 610** permits any adult to initiate a proceeding to appoint a guardian or conservator for a minor six months prior to the minor’s eighteenth birthday. The guardianship/conservatorship takes effect on the minor’s eighteenth birthday.

### 5. Basis for Appointment

**California S.B. 40** authorizes the court to appoint a temporary conservatorship for up to twenty-eight days for a person has been detained eight or more times in a twelve-month period. This provision expands upon last year’s law, authorizing a pilot program in three counties to provide for the appointment of a one-year mental health conservatorship of person and property for someone who cannot care for their own health and well-being due to a serious mental illness and substance abuse disorder as evidenced by eight or more detentions for evaluation and treatment in the preceding 12 months. See the 2018 Adult Guardianship Legislative Review for more information.

**Iowa H.F. 610** creates an additional requirement for the basis of appointment. While the statute already requires a finding that the respondent’s decision-making capacity is so impaired that the respondent is unable to care for the respondent’s safety, or carry out important financial decisions, now the court must also find, by clear and convincing evidence, that the appointment of a guardian/conservator is in the best interests of the respondent.

**Iowa H.F. 610** requires the court to consider whether other less restrictive alternatives, including third party assistance, is available and would meet the respondent’s needs. Previously the court only had to consider whether third party assistance was available. Neither party has the burden to produce such evidence.

**Mississippi H.B. 2828** establishes new criteria for basis of appointment of a guardian or conservator, including:

- The court must determine that less restrictive alternatives, including the use of appropriate supportive services and technological assistance, would not meet the needs of the person.
- A required examination of the person alleged to need a guardian by two licensed physicians or; one licensed physician and either one licensed psychologist, nurse practitioner, or physician’s assistant. A certificate of the results of the exam must be submitted in writing to the court and become part of the case record. The examination may occur in person or via telemedicine. The professional conducting the evaluation may be called on to testify at the hearing.
- Proper notice for the respondent.
Mississippi S.B. 2828 provides the court may appoint a conservator if the adult is missing, detained, incarcerated, or unable to return to the United States.

6. Mediation

Iowa H.F. 610 authorizes the court to order parties to participate in mediation in any guardianship/conservatorship action.

7. Pre-appointment visitors, evaluation

Iowa H.F. 610 authorizes the court to appoint a court visitor. The court visitor’s fees will be paid by the respondent’s estate, or if the respondent is indigent, the cost “shall be assessed against the county in which the proceedings are pending.” Any qualified person may be court visitor. The attorney for the respondent may not also serve as court visitor. The visitor’s duties are enumerated in the statute.

Iowa H.F. 610 requires the court to order a professional evaluation of the respondent at a hearing for appointment or termination of a guardianship/conservatorship, unless the court already has “sufficient information to determine whether the criteria for a guardianship or conservatorship are met.” If the respondent or petitioner file an evaluation, the court may accept it or determine an additional evaluation is necessary. The respondent shall pay for the evaluation unless the respondent is indigent, in which case the county shall pay for the evaluation.

New Mexico S.B. 395 requires the guardian to file a written report with the court prior to the hearing on the petition for appointment.

8. Venue

Missouri S.B. 230 expands the definition of domicile for the purposes of determining which county has jurisdiction over a guardianship proceeding. Of note, placement by a court, fiduciary, or agency shall not constitute a choice of domicile. The court may consider the desire or intent of the alleged incapacitated person. When the person has no domicile in the state, the court shall look for a significant connection to a county. If the venue for purposes of guardianship and conservatorship are in different counties, venue shall be in the county of guardianship.

II. Multi-Jurisdictional Issues

In our increasingly mobile society, adult guardianships often involve more than one state, raising complex jurisdictional issues. For example, many older people own property in different states. Family members may be scattered across the country. Frail, at-risk individuals may be moved for medical or financial reasons. Thus, judges, guardians,
and lawyers must frequently address which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another.

1. Uniform Act. To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved, and to enhance communication between courts in different states. Key features include:

- **Determination of initial jurisdiction.** The Act provides procedures to resolve controversies concerning initial guardianship jurisdiction by designating one state – and one state only – as the proper forum.

- **Transfer.** The Act specifies a two-state procedure for transferring a guardianship or conservatorship to another state, helping to reduce expenses and save time while protecting persons and their property from potential abuse.

- **Recognition and enforcement of a guardianship or protective proceeding order.** UAGPPJA facilitates enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register orders in the second state.

- **Communication and cooperation.** The Act permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.

- **Emergency situations and other special cases.** A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for that property.

2. Passage of Uniform Act by States. As it is jurisdictional in nature, the UAGPPJA cannot work as intended – providing uniformity and reducing conflict – unless all or most states adopt it. For more information, see “Why States Should Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,” https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=f93ce131-365d-423e-70a3-7416d9dd5b5a&forceDialog=0.

All but four United States jurisdictions have adopted UAGPPJA. Four states have not adopted the uniform law: Florida, Kansas, Michigan, and Texas.

Georgia H.B. 70 clarifies several points to conform with UAGPPJA, which the state legislature adopted in 2016.
III. Choice of Guardian

In the past, bills on choice of guardian have targeted guardian certification and licensure; standards and training; requirements for court selection of guardians; and guardian background checks.

1. Who May Serve?

Arkansas HB 1762 authorizes the court to waive the prohibition against convicted and unpardoned felons serving as guardian of the person (not estate), if the court reviews the sentencing order and finds that, notwithstanding the conviction, the potential guardian is qualified. The court shall set a hearing if the convicted and unpardoned felon fails to file a report or accounting, to show cause why the guardianship should not be terminated.

Minnesota H.F. 90 prohibits nursing facility staff from serving as guardian or conservator of residents.

New Mexico S.B. 395 defines “professional guardian/conservator” as an individual who serves more than two individuals who are not related to the guardian/conservator. The professional guardian must be certified and in good standing with an organization that provides certification.

2. Guardian Background Checks

Iowa H.F. 610 requires the court to request criminal records checks and checks of child abuse, dependent adult abuse, and sexual offender registries for all proposed guardians and conservators, other than financial institutions with Iowa trust powers. The judicial branch shall have electronic access to a single repository in which state agencies can file these record checks. The petitioner is responsible for paying the fee for the background check.

Missouri H.B. 694 authorizes courts and department of social services to require fingerprinting of guardians and conservators for the purpose of positive identification and criminal history information.

Mississippi S.B. 2828 requires anyone being considered for guardian or conservator, to disclose to the court whether the person is or has been a debtor in a bankruptcy proceeding, or has been convicted of a felony, a crime involving dishonesty, neglect, violence, or the use of physical force, or other relevant crimes.

3. Public Guardianship. A 2008 national public guardianship study found that 44 states have statutory provisions on public guardianship or guardianship of last resort. According to the study, 27 states have “explicit schemes” that refer specifically to public
guardianship and frequently establish a public guardianship program or office; while 18 states have “implicit schemes” (some states have more than one system) that address the role of guardian of last resort – for instance designating a governmental agency to serve if no one else is available. Additional states have public guardianship functions in practice. (See Teaster et al, Public Guardianship: In the Best Interest of Incapacitated People? Praeger, 2010); see also an earlier version of the study (2007) at https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html.

**Colorado H.B. 1045** extends the state’s public guardianship pilot program from a possible end date of 2021 to 2023 and appropriates additional funds for the program.

**Delaware SCR 130** establishes a non-acute medical guardianship task force to study and make findings and recommendations regarding the needs and options of non-acute hospital patients in need of medical guardianship services.

**Mississippi S.B. 2828** provides when there is no available qualified guardian or conservator, the court has the discretion to appoint the chancery court clerk (or public administrator instead of a conservator). The clerk shall serve as ordered by the court unless a conflict of interest arises or there is another reason for recusal.

**Nevada S.B. 121** expands the investigatory authority of the public guardian.

**Ohio H.B. 595** authorizes probate courts to create and fund their own guardianship service boards, which serve as public guardians. Courts may fill this fund by charging other agencies fees for services. The statute allows courts and county boards of developmental disabilities, boards of addiction and mental health services, and other entities to work together to create their own guardianship service board or join with other counties to create a multi-county board. In addition, this fund may be used for services for the treatment of any person with a guardian, including individuals receiving drug and alcohol treatment, mental health services, and individuals with developmental disabilities.

**Oklahoma S.B. 931** enacts the Veterans Volunteer Guardianship Act, updating a law that was last amended in the 1930s. Among many new requirements, the act directs bond to be provided or reimbursed by the Oklahoma Department of Veterans Affairs.

**Oregon S.B. 31** authorizes the public guardian to expand a pilot program of “high risk teams” that will identify options for addressing safety risks for highly vulnerable adults who are experiencing or at risk of harm, with a focus on least restrictive alternatives. These individuals have not been appointed a guardian.

**Oregon S.B. 5520** appropriates increased funding for the expansion of the public guardian’s office.
Tennessee H.B. 686 authorizes the public guardian to serve as a conservator for people with disabilities who are under the age of 60, when there are no less intrusive alternatives available, and there are no family members, banks, or corporations willing to serve.

Washington H.B. 1329 charges the public guardian to promote alternate services that provide support for decision making for individuals who need them and for whom adequate services would otherwise not be available. The legislature recognizes provision of these services may be less expensive than guardianship. The statute also limits standard caseloads for certified professional guardians to 20 incapacitated individuals, with a maximum of 36 in some situations.

IV. Guardian Actions

1. Guardian’s Powers/Authority

Alabama H.B. 381 broadens the authority of medical and mental health treatment providers to provide treatment without consent, eliminating the requirement that medical treatment professionals inform or seek the consent of relatives or legal guardians prior to performing authorized treatment.

California S.B. 303 addresses the guardian or conservator’s authority to establish the residence of the person without the permission of the court. The guardian/conservator is required to select the least restrictive appropriate residence that is available. The law presumes that the person’s residence is the least restrictive appropriate residence. S.B. 303 changes the guardian’s burden of proof to overcome this presumption from a preponderance of the evidence to clear and convincing.

California S.B. 303 authorizes a conservator to sell a person’s residence with certain requirements, such as providing notice to court of the proposed sale. The conservator must also provide to the court specific information about the sale, including whether the person supports the sale or whether the person can live in a personal residence. The court may only authorize the sale if it finds by clear and convincing evidence that the conservator demonstrated a compelling need to sell the residence for the benefit of the conservatee. Finally, S.B. 303 removes the court’s authority to waive certain requirements for a sale.

Iowa H.F. 610 amends the guardian’s responsibilities. Previously, a guardian was responsible for providing for the care, comfort, and maintenance of the person, including training to maximize the person’s potential. Now, the guardian is responsible for making decisions regarding the care, maintenance health, education, welfare, and safety of the person and establishing a place of residence for the person. In addition to existing requirements to take reasonable care of the person’s possessions, the guardian is now responsible for reasonable care of all manner of service animals. Instead of being responsible for ensuring the person receives professional and medical care, the guardian

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is responsible for *consenting to and arranging for* medical, dental, and other health care treatment. Additional responsibilities include consenting to and arranging for other professional services, appropriate training, educational, and vocational services, maintaining contact with the person, and making reasonable efforts to identify and facilitate supportive relationships and interactions.

**Iowa H.F. 610** explicitly allows the guardian to request permission from the court to consent to withholding/withdrawing life sustaining procedures, and the performance of an abortion or sterilization on the protected person.

**Iowa H.F. 610** enumerates the duties and responsibilities of a conservator, including affirming the conservator’s role as a fiduciary with duties of prudence and loyalty to the protected person.

**Michigan H.B. 5818** requires a guardian seeking authority to consent to inpatient hospitalization or involuntary mental health treatment obtain a court order.

**Michigan H.B. 5818** adds a “nonopioid directive form” to a list of directives (do not resuscitate order and physician orders for scope of treatment form) that do not affect the guardian’s power to consent to a physician’s order to withhold resuscitative measures in a hospital. Moreover, the guardian has the authority to execute a nonopioid directive on behalf of the person.

**Mississippi S.B. 2828** exempts third parties from accepting the authority of the guardian if the third party has actual knowledge/reasonable belief that the letters of guardianship or conservatorship are invalid, or the guardian/conservator is exceeding or improperly exercising authority, or the third party has actual knowledge of abuse and neglect. The third party that refuses to accept the authority of the guardian/conservator may report the refusal to the court. The court shall consider whether removal of the guardian/conservator would be appropriate.

**Mississippi S.B. 2828** lists the duties of a guardian and conservator: the guardian is a fiduciary, the guardian must promote self-determination of the person and to the extent reasonably feasible, encourage the person to make decisions, act on the person’s own behalf, and develop or regain capacity. Furthermore, the guardian shall exercise reasonable care, diligence, and prudence when acting on behalf of the person. In making decisions for the person, the guardian must make a decision the guardian reasonably believes the person would make unless doing so would unreasonably harm or endanger the person. If the guardian cannot determine what decision the person would have made if able, or the guardian believes the person’s choice would harm or endanger the person, the guardian shall act in the best interests of the person. The conservator shall invest and manage the estate as a prudent investor would.
Mississippi H.B. 2828 enumerates the guardian’s powers, including to the extent possible, the power to delegate decision-making to the person and receive personally identifiable health-care information.

Mississippi H.B. 2828 prohibits a guardian from initiating commitment of the person to a mental health facility except in accordance with involuntary civil commitment procedures.

Nevada A.B. 91 strengthens due process protections when a guardian seeks the court’s consent to sterilization. Now, the court must appoint an attorney and guardian ad litem for the protected person and hold a full evidentiary hearing. The court must find by clear and convincing evidence that the sterilization is in the best interests of the person and there are no less intrusive means of contraception.

New Jersey A.B. 1504 permits terminally ill patients to self-administer medication to end life. Guardians and conservators are not authorized to take any action on behalf of a terminally ill patient to self-administer such medication, except for communicating the patient’s health care decisions to a health care provider upon request of the patient. Furthermore, the patient’s request to self-administer said medication shall not provide the sole basis for appointment of a guardian or conservator.

Oklahoma H.B. 2605 directs the court, when appointing a guardian, to make a specific determination regarding the capacity of the person, including the capacity to make a decision about receiving hospice services. The guardian cannot consent to hospice without a court order.

Oregon S.B. 2601 adds the following to the guardian’s duties: promote self-determination, encourage the person to participate in decisions, act on the person’s own behalf, and develop or regain capacity. To do this, the guardian shall: become personally acquainted with the person and maintain contact, identify the values and preferences of the person and involve the person in decision-making, and identify and facilitate supportive relationships and services. The statute also addresses the standard for substituted decision-making, charging the guardian with making decisions the guardian believes the person would make, unless doing so would unreasonably harm or endanger the person. If the guardian cannot make a decision the guardian believes the protected person would have made, the guardian should make a decision in the person’s best interests.

Tennessee H.B. 909 authorizes a conservator to seek relief on behalf of an adult subject to a violation of the state’s elder and vulnerable person protection law.

Texas H.B. 2734 authorizes a guardian, on behalf of a resident of a state supported living center, to elect to make an anatomical gift on behalf of the resident.
Texas H.B. 4531 addresses issues of consent when a sexual assault survivor who has a guardian seeks a forensic exam and treatment. The guardian’s consent is not needed if the health care facility determines the survivor understands and agrees to the nature of the forensic exam and treatment. Otherwise, the guardian may consent, unless the guardian is an alleged perpetrator. If the survivor refuses the examination, the facility may not provide an exam, regardless of whether the guardian requests one.

2. Authority of Agents vs. Guardians. Financial and health care powers of attorney are important planning tools that can mitigate the need for guardianship. If a guardian is nonetheless appointed, a key question is the extent to which, and under what circumstances, an agent’s authority trumps that of a guardian. For agents under financial powers of attorney, there may be considerations of abuse and exploitation. UGCOPAA provides that, unless authorized by specific order, a guardian does not have the power to amend or revoke a power of attorney. In fact, a power of attorney for healthcare or finances trumps the authority of the guardian. Thus, the decision-maker appointed in a power of attorney maintains authority over health care or financial decisions, and the guardian/conservator should cooperate as much as possible (Sec. 315(a)). Recent legislation diverges widely on following the Uniform Law and deferring to an agent in a power of attorney, or following the older Uniform Power of Attorney Act (2006), which terminates a power of attorney upon appointment of a guardian or conservator.


Iowa H.F. 610 requires a conservator to act in accordance with the applicable provisions of power of attorney law if the protected person has executed a power of attorney.

Mississippi S.B. 2828 directs the guardian to defer to a decision by an agent under an advanced health care directive executed by the adult and cooperate to the extent feasible with the person making the decision. Unless authorized by court order, the guardian does not have the power to revoke or amend an advanced health care directive or financial power of attorney. Similarly, a conservator must defer to a financial power of attorney, unless otherwise authorized by court order.

Nevada A.B. 299 allows for the authority of a power of attorney to pause when a guardianship is appointed, and to spring back into effect if the guardianship is terminated.

3. Sale of Real Property. Many states have specific requirements concerning the authority of the guardian/conservator in the sale of real property.
Mississippi S.B. 2828 requires the court’s authorization before a conservator may acquire or dispose of real property.

4. Guardian/conservator liability for the actions of the individual.

New Mexico S.B. 395 prohibits any person from seeking a waiver of liability from a conservator.

5. Guardian Access to Digital Assets. The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) (approved by the Uniform Law Commission in 2015) allows individuals to plan for the disposition of their digital assets in the same way they can make an estate plan for traditional assets. Digital assets include email, digital photographs, documents stored in electronic form, websites, and social media accounts. For conservators, access to certain private communications is restricted unless approved by the court or the protected person. This year New Hampshire S.B. 147 and Rhode Island H.B. 5778 adopted the act, bringing the total to 44. (Summary by Ben Orzeske.)

6. Post-Death Authority

Arkansas H.B. 1424 addresses the duties of the public guardian after the death of the person subject to guardianship. Within 40 days of the person’s death, the public guardian shall file a report (and/or accounting if guardian of the estate) with the court and petition to terminate the guardianship. The court shall conduct a hearing on the petition to terminate the guardianship and consider the petition, delivery of funds of the person’s estate, and payment of funds for disposition of the body. The public guardian is authorized to use the funds to pay for the disposal as directed by the person. If the person did not make an arrangement, the public guardian can use the funds to dispose of the body or consent to donating the body to medical science. Neither the public guardian’s office nor the Department of Human Services is responsible for any costs, including disposition of the body of the person.

Kentucky H.B. 479 establishes a Guardian Trust Fund, for the receipt of funds of deceased individuals subject to guardianship remaining after living, funeral, and estate recovery. The Trust may receive donations or grant funds for the support of indigent people subject to guardianship. The Trust may be used for temporary housing, medical or transportation supplies, emergency personal needs, burial expenses, and other expenses that are not covered by other funds. The public guardian shall also establish an online registry to provide notice of remaining funds to creditors and relatives, and the process for claiming those funds. The public guardian shall deposit any remaining funds under $10,000, which remain unclaimed after one year of public notice, in the Trust.

Nevada S.B. 20 establishes an order or priority of family members who may claim property of decedents. If the family members have a dispute, the guardian has the authority to sell the property.
**North Dakota S.B. 2070** adds guardian or conservator of a decedent to a list of eligible persons to be appointed as personal representative of a decedent’s estate.

**V. Fees for Guardians and Attorneys**

Payment of guardian fees and attorney fees, as well as court fees and costs, is a significant factor in bringing a guardianship proceeding. Guardian fees can be substantial and are often the subject of legal disputes.

**California S.B. 303** prohibits compensation to a guardian, conservator, or attorney with any government benefit program moneys unless court deems such payment necessary to sustain the support and maintenance of the person.

**Georgia H.B. 70** broadens the authority of the court to order payment of court costs and fees. In any proceeding for appointment of a guardian or conservator, the court shall consider several factors in determining allocation of fees and costs, including: the person’s estate, the petitioner’s conduct if the court did not appoint a guardian, “if the judge who actually presided over the hearing includes a finding in the order that the party against whom such costs … are cast appears to lack sufficient assets …, fees shall be paid by the county of the court exercising jurisdiction,” the conduct of any party who has been the perpetrator of abuse, neglect, or exploitation, and any property, funds, or proceeds recovered on behalf of or in favor of the person.

The bill also authorizes the court to direct the payment of fees for all proceedings outside of appointment of a guardian or conservator.

**Illinois H.B. 3437** designates fees from sales of special license plates to assist private citizens who are willing to become guardians for individuals with developmental disabilities but who are unable to pay the associated legal fees.

**Iowa H.F. 610** adds court visitor fees to the costs of a guardianship proceeding, including attorney and expert witness fees, that shall be assessed against the respondent or the respondent’s estate. If the proceeding is dismissed, the fees and costs may be assessed against the petitioner for good cause shown.

**Mississippi S.B. 2828** creates guidelines for attorney and guardian fees. The court has discretion to determine the amount of and award reasonable compensation to an attorney, guardian, conservator or other individual whose services benefited the person. Costs of proceedings to appoint a guardian shall be paid out of the person’s estate if a guardian is appointed. If the adult has no estate, or a guardian is not appointed, the petitioner must pay. If a person with a guardian seeks to terminate the guardianship, the court may order compensation to the guardian or conservator for the time spent opposing the termination.
VI. Rights of Individuals

Advocacy, scholarship, and legislative enactments over the past 25 years have heightened awareness that guardianship removes or infringes on fundamental rights, that some basic rights should be retained statutorily, and that limited guardianship can allow the person to retain rights in certain areas of decision-making.

1. Right to Visitation/Association. Visits by, and communication with, family members and friends are basic to the quality of life of an individual subject to guardianship. Guardians stand in a position to either restrict or enhance such communication. Restrictions may result in harmful isolation, yet at the same time may be an effort to protect against harm and abuse. The complex cases in which visitation issues arise are often marked by family dysfunction, and may involve undue influence, neglect, and financial exploitation. A fundamental question is: to what extent should decisions involving basic rights to visitation/association be left to guardians or the courts?

The NGA Standards of Practice direct guardians to support visitation whenever possible: stating “the guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person,” and “the guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person (Std #4).” See https://www.guardianship.org/standards/.

The Uniform Guardianship, Conservatorship and Other Protective Arrangements Act (UGCOPAA) provides a model for statutory provisions that support and foster communication and visitation (§§ 311, 315, 502, 503). The Act:

• Requires that the individual receive notice of the right to communicate, visit or interact with others;

• Prohibits the guardian from restricting communication/visitation with three exceptions – (1) the restriction is authorized by court; (2) there is a protective order or protective arrangement that limits contact; OR (3) the guardian “has good cause to believe the restriction is necessary because interactions with a specified person pose a risk of significant physical, psychological, or financial harm” AND the restriction is for not more than 60 days, OR the person with whom contact is restricted does not have a family or social relationship with the individual.

• Allows the court to order a “protective arrangement” instead of a guardianship. Under this Article, the court may direct a visitation or supervised visitation; or restrict access “by a person whose access places [the individual] at serious risk of physical or psychological harm” — or by a person who uses fraud, coercion, duress or deception and control.

For a more in-depth analysis of the right to visitation, see the ABA Commission on Law and Aging’s 2018 Legislative Fact Sheet: Guardianship and the Right to Visitation,
The following bills restrict and/or authorize guardians to take various actions concerning an individual’s right to visitation/association and communication with family and friends.

Mississippi H.B. 2828 makes several references to the right to visitation and the guardian’s duty to facilitate visitation. The statute prohibits the guardian from restricting the person’s visitation, communication, and interaction with others without a court order, or for good cause with specific time limits on the restriction.

Oregon H.B. 2601 enacts new visitation requirements, prohibiting a guardian from limiting a protected person’s associations without a court order or to the extent possible to avoid unreasonable harm. An interested party may move the court to modify the guardian’s powers with respect to limiting visitation. If the court finds the guardian unreasonably limited association, the court may permit the association, modify the guardian’s powers to limit visitation, remove the guardian, or award reasonable attorney’s fees and court costs.

2. Bill of Rights. At least seven states have statutory provisions listing rights of individuals with guardians. Florida sets out a basic set of rights (Fla. Stat. § 744.3215), Minnesota’s statute enumerates 14 specific rights (Minn. Stat. § 524.5-120), providing that “the individual/protected person retains all rights not restricted by court order and these rights must be enforced by the court,” Michigan’s guardianship statute includes an extensive list (Mich. Comp. Laws Ann. § 700.5306a), Texas sets out 24 rights (Tex. Estates Code § 1151.351). Nevada has a “Protected Persons’ Bill of Rights” (Nev. Rev. Stat. § 159.327-8). South Carolina requires the court’s guardianship order to specify, from a detailed list, which rights the court has removed and vested in the guardian (S.C. Code §62-5-101 et seq.). Last year Missouri enacted a comprehensive list of rights (Mo. Rev. Code §475.075).

Mississippi S.B. 2828 affirms several rights for a person appointed a guardian, including the right to:

• Seek termination or modification of the guardianship, removal of the guardian, and choose an attorney to represent the person in these matters;
• “Be involved in decisions, including decisions about the adult’s care, dwelling, activities, social interactions, to the extent reasonably feasible and supported in understanding the risks and benefits of health-care options;”
• Be notified (and be able to object to) at least fourteen days before a change in primary dwelling or permanent move to a nursing home, mental health facility, or other facility that places restrictions on visitation;
• Communicate, visit, or interact with others.
3. Other Provisions Concerning Rights

District of Columbia Act 22-573 prohibits sexual orientation change efforts ("conversion therapy") (previously prohibited only for minors) for people who have guardians or conservators and therefore lack the legal capacity to consent.

4. Changes in Terminology. Many states are updating statutory language to replace terms that may be offensive with language that is more sensitive to self-advocates and maintaining the dignity of individuals whose capacity is in question. Some changes simply clarify meaning.

Iowa H.F 610 replaces “potential ward” with “respondent to a petition for guardianship or conservatorship” and “ward” with “adult subject to guardianship or conservatorship” and/or “protected person.”

New Mexico S.B. 395 removes the following “A guardian of a protected person has the same powers, rights and duties respecting the protected person that a parent has respecting an unemancipated minor child…”

VII. Capacity Issues

Fundamental to guardianship law is the “trigger point” that states use to determine when an individual’s rights can be removed and, in some cases, transferred to a court-appointed surrogate – a guardian or conservator. State statutes have a definition of “incapacity,” or some similar term, to direct judges in their determination. These definitions generally combine or select from four elements: medical condition, cognitive ability, functional ability, and potential harm without a surrogate appointment.

The Uniform Guardianship and Protective Proceedings Act of 1997 used a functional and cognitive test. UGCOPAA (2017) uses similar language but: (1) adds supports and supported decision-making; and (2) does not use the term “capacity” or “incapacity” – instead the language sets out the “basis for appointment” of a guardian, which is a finding by clear and convincing evidence that the respondent:

Lacks the ability to meet essential requirements for physical health, safety, or self-care because: (A) the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and (B) the respondent’s identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives. (Sec. 301).

For a state by state review of the role of capacity in appointing a guardian, see “Capacity Definition and Initiation of Guardianship Proceedings,” ABA Commission on Law and Aging and Sally Hurme (2018), available at
1. Determination of Capacity. States use a variety of definitional elements and a variety of experts to assist the judge in making the difficult determination of whether an individual needs a guardian or conservator.

Iowa H.F. 610 directs the court to make a separate determination as to whether a protected person with an intellectual disability is competent to vote. The court shall find the protected person incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

Maine S.P. 420 expands the list of professionals who may perform the required evaluation of cognitive and functional abilities in an adult guardianship case from a licensed physician or psychologist to a "medical practitioner," which could be a licensed physician, a registered physician assistant, a certified psychiatric clinical nurse specialist, a certified nurse practitioner or a licensed clinical psychologist.

2. Supported Decision-Making. Supported decision-making is gaining recognition as a decision-making paradigm and a less restriction option to guardianship in which a person with a disability or age-related cognitive decline makes decisions with the input and participation of trusted supporters. This set of principles and/or strategies does not have a uniform model or application. It is meant to be an individualized process for every decision-maker. For more on supported decision-making, see the National Resource Center on Supported Decision-Making, http://www.supporteddecisionmaking.org.

Several states have statutorily recognized supported decision-making, including Texas, which was the first state to recognize supported decision-making agreements as legally enforceable documents in 2015. At least 8 other states have followed Texas’s example in codifying the role of agreements: Delaware (2016), District of Columbia (2018), Wisconsin (2018), Alaska (2018), and this year, Indiana S.B. 380, Nevada A.B. 480, North Dakota H.B. 1378, and Rhode Island S.B. 31 recognized supported decision-making agreements.

Other states, including Missouri, Tennessee, and Utah, have recognized supported decision-making in additional ways, including as a less restrictive option than guardianship and affirming the rights of people with guardians to continue to make their own decisions whenever possible.

Maine H.B. 1118 expands UGCOPAA’s criteria for determining whether supported decision-making or other less restrictive alternatives would be appropriate instead of guardianship:
In making a determination ... including whether supported decision-making or
other less restrictive alternatives are appropriate, the court may consider ...:
proposed vetting of the person chosen to provide support in decision making;
reports to the court by an interested party regarding the effectiveness of an
existing supported decision-making arrangement; or any other information to
determine whether supportive services, technological assistance, supported
decision making, protective arrangements or less restrictive arrangements will
provide adequate protection for the respondent.

Washington H.B. 1329 expands the duties of the public guardian to include
providing alternative services to guardianship that provide support for decision making.
The statute states, “the legislature further recognizes that services that support decision
making for people with limited capacity can preserve individual liberty and provide
effective support responsive to individuals’ needs and wishes.”

3. Restoration to Capacity. While it is most common for a guardianship to end with the
death of the individual, all state statutes provide for termination of a guardianship upon
a finding that: (1) the person has sufficient capacity to manage personal and/or financial
affairs; (2) the person has gained sufficient supports; or (3) new evidence is identified to
show the individual does not meet the definition of “an incapacitated person” or a similar
definition.

Restoration proceedings are under increasing focus -- especially for younger
individuals with intellectual disabilities, mental illness or brain injuries who may be able
to make decisions on their own with adequate family and community support. In 2017,
the ABA Commission on Law and Aging, with the Virginia Tech Center for Gerontology,
completed a pioneering research project on restoration including a review of court files
in four states and a roundtable discussion resulting in recommendations. See Restoration
of Rights in Adult Guardianship: Research & Recommendations,
https://www.americanbar.org/content/dam/aba/administrative/law_aging/restoration
%20report.authcheckdam.pdf. For an overview of restoration, including a discussion of
recent success stories, see the Commission on Law and Aging’s 2018 webinar training,
Guardianship Termination and Restoration of Rights, hosted by the National Center on

Iowa H.F. 610 directs the court to consider whether less restrictive alternatives would
meet the needs of the protected person, however, neither party has the burden to
produce such evidence.

Mississippi H.B. 2828 provides for the removal or termination of a guardian. The court
shall modify the guardian’s powers if they are excessive or inadequate. The person
seeking termination has the right to choose counsel, and the court shall award reasonable
attorney’s fees.
New Mexico S.B. 395 amends an existing requirement for the court to hold a status hearing every ten years. Now, the court may hold a hearing or appoint a court investigator to assess the person’s capacity and report to the court.

VIII. Guardian and Fiduciary Misconduct

The 2010 Government Accountability Office report entitled *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* (http://www.gao.gov/Products/GAO-10-1046) “could not determine whether allegations of abuse by guardians are widespread,” but the report identified hundreds of such allegations by guardians in 45 states and DC between 1990 and 2010. In 2016, a GAO report entitled *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults* (https://www.gao.gov/assets/690/681877.pdf) found that the extent of abuse nationally by guardians is unknown due to limited data, but profiled exploitation cases from six states. In October 2017, the *New Yorker* magazine featured a chilling article, “How the Elderly Lose their Rights” describing fraudulent actions by guardians in Clark County, Nevada.


Montana S.B. 311 addresses financial institutions and financial exploitation. The new law’s definition of financial exploitation includes misuse of a guardianship.

Virginia S.B. 1080 holds any guardian or conservator who commits waste of the estate of the person shall be liable to the person for damages.

IX. Post-Adjudication/Monitoring Issues

During the past 15 years, many states have sought to strengthen the court’s tools for oversight of guardians. See *Guarding the Guardians: Promising Practices for Court Monitoring*, http://assets.aarp.org/rgcenter/il/2007_21.guardians.pdf. Several 2019 bills addressed court oversight tools, including monitoring programs.

1. Notice of Appointment

Mississippi H.B. 2828 requires a guardian to provide notice to the person and all other persons given notice of the petition within fourteen days of appointment.

Oregon S.B. 376 requires the guardian to provide notice to all statutorily required parties within 30 days of appointment.
2. **Bond Requirements.** Approximately 20 state statutes require a guardian of property/conservator to post a bond, and the remainder allow courts some or complete discretion. See Conservatorship and Guardianship Bonds: State Statutory Requirements (ABA Commission on Law and Aging 2014), at https://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_guardian_bond_chart.authcheckdam.pdf. UGCPAA makes bond a default option for courts in the appointment of conservators, providing that “The court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement. . .” (Sec. 416).

**Georgia H.B. 70** clarifies several points about bond requirements for guardians: bond requirements apply to guardians who were originally appointed in a court of a different state and then the guardianship was transferred to the jurisdiction of a Georgia court. Any Georgia court may communicate with the appointing court in another state regarding any action relating to a bond of a guardian. Furthermore, the guardian may request payment of a bond from the estate: “When the guardian is required to give bond, the conservator shall, at the request of the guardian, pay any bond premium from the estate.”

**Iowa H.F. 610** requires conservators to post a bond, unless the court finds there is an alternative to a bond that will provide sufficient protection for the assets of the person.

**Mississippi S.B. 2828** requires conservators to furnish a bond or provide an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement under certain conditions. Post appointment, the person subject to conservatorship or another interested party may petition for an order requiring the conservator to furnish a bond.

3. **Guardian Report.** Regularly required guardianship reports can hold the guardian accountable, and ensure court review of guardianships. Furthermore, guardian reports assess the continuing need for the guardianship. UGCPAA requires the guardian’s annual report to include “a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.” (Sec. 317(a)). A number of states require such a statement. See “Monitoring Following Guardianship Proceedings,”https://www.americanbar.org/content/dam/aba/administrative/law_aging/monitoring.pdf (ABA Commission on Law and Aging and Hurme 2018).

**Indiana S.B. 380** requires the guardian to include in the biennial report whether the guardianship is still necessary and whether any less restrictive alternatives have been considered or implemented.

**Iowa H.F. 610** states the court may not waive reporting requirements for a care plan that the guardian must submit within 60 days of appointment, and an annual report that must be submitted within 60 days of the close of the reporting period. The annual report must
include several points, including the guardian’s recommendation as to the need for continuation of the guardianship.

Iowa H.F. 610 requires a conservator’s report include an initial plan for protecting, managing, and investing the conservatorship estate, based on the needs of the protected person, taking into account the protected person’s best interests and preferences, values, and prior directions. The initial plan must also include several points, including: a budget, a statement of how the conservator will involve the person in decisions about financial management, if ordered by the court, any steps the conservator plans to take to develop or restore the protected person’s ability to manage the estate. In addition to the initial report, the conservator shall file an inventory of the protected person’s assets within 90 days of appointment. The conservator shall file a mandatory report on a regular basis:

Michigan H.B. 5818 adds the following requirements to the guardian’s annual report: include any information about the person’s mental health treatment and whether the guardian has executed a nonopioid directive form.

Mississippi S.B. 2828 gives the court the discretion to require the guardian to file a plan for the care of the person no later than 90 days after appointment. If there is a significant change in circumstances, or the guardian seeks to deviate from the plan, the guardian must submit a revised plan and a report of the person’s well-being. The well-being report has several requirements, including a description of the person’s mental, physical, and social condition; living arrangements; a summary of services and the guardian’s opinion as to the adequacy of the person’s care; a summary of the guardian’s visits; the extent to which the person has participated in decision-making; if the person lives in a facility, the guardian’s opinion of the facility; any business relation the guardian has had with a person who has benefited from services to the person or from the property of the person; whether a guardian is still needed.

The court may order a guardian ad litem to review the report, interview the guardian or person, or investigate any other matter regarding the guardianship.

The court must establish procedures, as described in the bill, for monitoring a report, and review each report at least annually. If the court determines the guardian may not have complied with the guardian’s duties or the guardianship should be modified or terminated, the court shall notify the person and all parties entitled to notice, may appoint a guardian ad litem to investigate, and may hold a hearing to consider removal.

Mississippi S.B. 2828 authorizes the court to require the conservator to file a plan for no later than 90 days after the order of appointment or order to file a plan. If the plan is required, and there is a significant change in circumstances, or the conservator seeks to deviate from the plan, the conservator must submit a revised plan. Every plan includes a budget, how the conservator will involve the individual in making decisions, any steps the conservator plans to take to develop or restore the person’s ability to manage the estate,
and an estimate of the duration of the conservatorship. The conservator must give reasonable notice of filing of the plan to the person and anyone entitled to notice. Additionally, the conservator must file a detailed inventory of the estate.

Nevada S.B. 20 authorizes the court to waive the requirement that a guardian’s report must be served on a protected person, if service would cause harm to the protected person.

Oregon S.B. 376 addresses the court’s response to the guardian’s annual report. If the guardian indicates that the guardianship should end or does not provide adequate information, the court shall order the guardian to supplement the report or file a motion to terminate the proceeding. Failure to comply is grounds for removal; the court shall order the guardian to appear and show cause why the guardian should not be removed.

Virginia S.B. 1144 authorizes a court to issues a summons or rule to show cause why a guardian has failed to file an annual report.

4. Court Auditing of Accounts. After the guardian/conservator files reports/accounts, ideally the court’s role is to review them for compliance and to identify any issues. UGCOPAA requires the court to “establish a system for monitoring reports submitted. . . and review the reports at least annually . . . (Sec. 317, 423). The National Probate Court Standards state that courts should “[review] promptly the contents of all plans, reports, inventories, and accountings.” (Standard #3.3.17). In practice, many courts lack the staff and expertise to effectively review and audit reports and accounts.

Mississippi S.B. 2828 allows the person subject to conservatorship or another interested party to petition for a court order requiring an accounting of the estate.

Texas S.B. 31 establishes a guardianship abuse, fraud, and exploitation detection program. The program’s guardianship compliance specialists review guardianships and identify reporting issues, audit annual guardian accounts, work with courts to develop best practices, and report concerns of potential abuse, fraud, or exploitation. The program will maintain an electronic database to monitor filings of inventories, annual reports, and other reports.

5. Other Post-Adjudication/Monitoring Issues

Illinois S.B. 1387 adds guardian to a list of qualified individuals to serve as a designated representative of an ABLE account, which already included plenary guardians of the estate or limited guardians of financial or contractual matters. The bill clarifies the law’s intent to permit any guardian, without court order, to open, maintain, and transfer funds to an ABLE account on behalf of the account holder.
New Mexico S.B. 395 creates a procedure for filing a grievance against a conservator or guardian. The protected person or another party may file a grievance with the court if they believe a guardian, conservator, or representative payee have violated their fiduciary duty or orders of appointment. The court must review the grievance and hold a hearing.

Missouri S.B. 230 holds assets held in an ABLE account shall not be considered property of a conservatorship estate, unless the ABLE account is in the charge and custody of the public administrator.

Texas S.B. 1184 authorizes a guardian to manage an ABLE account on behalf of a designated beneficiary who is not able to exercise signature authority of the account.

West Virginia H.B. 2848 clarifies that a guardian may manage an ABLE account regardless of the amount of a designated beneficiary’s assets.

6. WINGS. “Working Interdisciplinary Networks of Guardianship Stakeholders” (WINGS) is gaining recognition as an effective framework for guardianship reform. In WINGS, stakeholders work together in an ongoing court-community problem-solving group. WINGS bring together judicial, legal, aging, disability, and mental health networks to identify strengths and weaknesses in a state’s guardianship law and practice, and pursue common objectives for change through an ongoing consensus-building partnership. Approximately 27 states have either a WINGS or a similar stakeholder guardianship reform group. See http://ambar.org/wings. Some state legislatures have passed resolutions in support of WINGS or other guardianship reform groups. There is no relevant legislation this year, but the Montana Supreme Court created a WINGS by court order.

7. Reports of abuse, neglect, and exploitation.

Arizona S.B. 1538 added guardian and conservator to a list of mandated reporters of abuse, neglect, and exploitation of vulnerable adults, and requires guardians and conservators to report abuse, neglect, and exploitation to adult protective services.

Colorado HB 19-1063 addresses disclosure of reports of mistreatment of at-risk adults. A court order is not required to disclose a report to a guardian. If the guardian is the substantiated perpetrator of the mistreatment, the disclosure must not be made without authorization by the court for good cause.

Nevada S.B. 540 requires the disclosure of confidential reports of abuse or neglect of an older or vulnerable person to an attorney who represents the older or vulnerable person in a guardianship proceeding and to the State Guardianship Compliance Office. If the attorney receives such a report, the attorney must disclose the information to the guardianship court.
North Dakota H.B. 1107 waives the guardian’s required consent to disclose records when the guardian is an alleged perpetrator in a state agency’s investigation of abuse and/or neglect. Otherwise, the state agency must provide the report of abuse or neglect to the guardian.

8. Task Forces to Consider Future Legislative Amendments

Arkansas ISP 2019-008 established a task force to study the state’s guardianship laws and recommend changes.

<p>| Table: State Adult Guardianship Legislation at a Glance: 2019 |
|-----------------|-----------------|-----------------|-----------------|
| <strong>State</strong>       | <strong>Legislation</strong> | <strong>Code Section Amended</strong> | <strong>Provisions</strong> |
| AL              | HB 381          | Ala. Code 1975 § 22-8-1 | Eliminates requirement for medical professional to seek consent from guardian before treating without consent. |
| AR              | HB 1424         | Ark. Code § 28-65-706(a) | Clarifies duties of public guardian, including authorizing public guardian to purchase burial services. |
| AR              | HB 1762         | Ark. Code § 28-65-203 | Creates an exception for the prohibition against a felon to serve as guardian. |
| AR              | ISP 2019-008    | N/A | Creates a task force to study guardianship laws and recommend changes |
| CA              | SB 303          | Cal. Probate §§ 2352.5; 2540; 2541.5; 2591; 2591.5; 2640; 2641 | Addresses conservator’s powers to establish person’s residence and sell person’s property. Prohibits use of government moneys for guardian and attorneys’ fees, with some exceptions. |
| CA              | SB 40           | Cal. Welf. &amp; Inst. Code §§ 5451, 5453, 5456, 5462, 5463, 5555, 5465.5 | Allows temporary guardianship for up to 28 days under certain circumstances. |</p>
<table>
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<tr>
<th>State</th>
<th>Bill/Act</th>
<th>Statute/Code</th>
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<td>DC</td>
<td>Act 22-573</td>
<td>D.C. Code § 7-1231.14a</td>
<td>Prohibits sexual orientation change efforts for individuals with guardians.</td>
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<tr>
<td>DE</td>
<td>SCR 130</td>
<td>N/A</td>
<td>Establishes the non-acute patient medical guardianship task force.</td>
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<tr>
<td>IA</td>
<td>HF 610</td>
<td>Iowa Code. § 633 subchapters XIII, XIV</td>
<td>Major revisions to guardianship and conservatorship laws.</td>
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<td>IN</td>
<td>SB 380</td>
<td>Ind. Code §§ 29-3-1-7.8; 29-3-5-1; 29-3-9-6; 29-3-14</td>
<td>Requires consideration of less restrictive alternatives pre- and post-appointment; codifies supported decision-making agreements.</td>
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<tr>
<td>KY</td>
<td>HB 479</td>
<td>KY Rev. Stat. § 210.290</td>
<td>Establishes a Guardian Trust Fund and directs the public guardian to donate remaining funds of decedents who were subject to guardianship under certain circumstances.</td>
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<tr>
<td>ME</td>
<td>SP 420</td>
<td>Me. Stat. tit. 18-C § 5-306</td>
<td>Expands the list of professionals who may perform the required evaluation of cognitive and functional abilities in an adult guardianship case.</td>
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<tr>
<td>MI</td>
<td>HB 5818</td>
<td>Mich. Comp. Law § 700.5314</td>
<td>Addresses guardian’s authority with regards to non-opioid directive and consent to mental health treatment.</td>
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<td>MN</td>
<td>HF 90</td>
<td>Minn. Stat. § 1441.101</td>
<td>Prohibits nursing facility staff from accepting appointments as guardian or conservator of residents.</td>
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<tr>
<td>State</td>
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<tr>
<td>MO</td>
<td>SB 230</td>
<td>Mo. Rev. Stat. § 475.035</td>
<td>Prohibits conservators from having authority over ABLE accounts, unless the account is in the care and custody of the public administrator; addressing issues of venue.</td>
</tr>
<tr>
<td>MO</td>
<td>HB 694</td>
<td>Mo. Rev. Stat. § 43.548</td>
<td>Expands judiciary and agency authority to perform background check on guardians.</td>
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<tr>
<td>NV</td>
<td>SB 540</td>
<td>Nev. Rev. Stat. § 200.5095</td>
<td>Reports of abuse and neglect must be provided to attorneys appointed to represent individuals in guardianship proceedings.</td>
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<td>NV</td>
<td>SB 20</td>
<td>Nev. Rev. Stat. § 159, 159A</td>
<td>Enacts certain provisions of UGCOPAA; Allows petitioner for guardianship to petition for transfer of proposed protected person to less restrictive setting; authorizes court to appoint a successor guardian; limits powers of emergency guardian; establishes priority of family members for claims to property.</td>
</tr>
<tr>
<td>NV</td>
<td>AB 299</td>
<td>Nev. Rev. Stat. § 162A</td>
<td>Allows power of attorney to pause and spring back upon appointment and termination of guardianship.</td>
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<tr>
<td>State</td>
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<tr>
<td>NJ</td>
<td>A.B. 1504</td>
<td>N.J. Rev. Stat. § 26:16-1</td>
<td>States guardians and conservators are not authorized to consent to medical in dying for a terminally ill patient.</td>
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<td>ND</td>
<td>HB 1378</td>
<td>N.D.C.C. § 30.1-6</td>
<td>Recognizes supported decision-making agreements.</td>
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<tr>
<td>ND</td>
<td>SB 2070</td>
<td>N.D.C.C. § 30.1-13-03</td>
<td>Adds a guardian/conservator to list of individuals who may be appointed as a personal representative of a decedent.</td>
</tr>
<tr>
<td>ND</td>
<td>HB 1107</td>
<td>N.D.C.C. § 50-25.2-05</td>
<td>Addresses when and when not to disclose reports of abuse or neglect to a guardian when the guardian is the alleged perpetrator.</td>
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<td>OH</td>
<td>S.B. 595</td>
<td>Ohio Rev. Code § 2111.51</td>
<td>Creating multicity guardianship service board to serve as public guardian.</td>
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<td>OR</td>
<td>S.B. 376</td>
<td>Or. Rev. Stat. § 125.325</td>
<td>Requiring guardian to provide notice of appointment and court to respond to inadequate notice; addresses court’s response to the guardian report.</td>
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<td>OR</td>
<td>S.B. 31</td>
<td>Or. Rev. Stat. § 125.678</td>
<td>Authorizes public guardian to expand high risk team pilot program.</td>
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<td>OR</td>
<td>S.B. 2601</td>
<td>Or. Rev. Stat. §125.080, 125.315</td>
<td>Amends visitation law; adding promotion of self-determination to guardian’s duties.</td>
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<tr>
<td>OR</td>
<td>S.B. 5520</td>
<td>N/A</td>
<td>Provides additional funding for expansion of public guardian office.</td>
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<tr>
<td>TN</td>
<td>H.B. 686</td>
<td>Ten. Code Ann. § 34-7-104</td>
<td>Expands the jurisdiction of the public guardian to “disabled persons” under the age of 60.</td>
</tr>
<tr>
<td>TN</td>
<td>H.B. 909</td>
<td>Ten. Code Ann. § 71-6-124</td>
<td>Authorizes a conservator to seek relief for an elderly or vulnerable person who has been subject to a violation of the newly amended “Elderly and Vulnerable Adult Protection Act.”</td>
</tr>
<tr>
<td>TN</td>
<td>HB 676</td>
<td>Ten. Code Ann. § 34-1-104</td>
<td>Authorizes the court to direct the funds of a person appointed a guardian or conservator into a trust.</td>
</tr>
<tr>
<td>TX</td>
<td>S.B. 31</td>
<td>Tex. Govt. Code § 72.121</td>
<td>Establishes a guardianship abuse, fraud, and exploitation deterrence program.</td>
</tr>
<tr>
<td>TX</td>
<td>S.B. 1184</td>
<td>Tex. Educ. Code § 54.910</td>
<td>Authorizes a guardian to manage an ABLE account on behalf of a designated beneficiary who is not able to exercise signature authority of the account.</td>
</tr>
<tr>
<td>TX</td>
<td>H.B. 2734</td>
<td>Tex. Health &amp; Safety § 555.027</td>
<td>Authorizes a guardian to elect on behalf of a resident of a state supported living center to make an anatomical gift on behalf of the resident.</td>
</tr>
<tr>
<td>TX</td>
<td>H.B. 4531</td>
<td>Tex. Health &amp; Safety § 323.0044</td>
<td>Addresses issues of consent when a sexual assault survivor who has a guardian seeks a forensic exam and treatment.</td>
</tr>
<tr>
<td>VA</td>
<td>S.B. 1144</td>
<td>Va. Code Ann. § 64.2-2020(C)</td>
<td>Authorizes a court to issues a summons or rule to show cause why a guardian has failed to file an annual report.</td>
</tr>
<tr>
<td>VA</td>
<td>S.B. 1080</td>
<td>Va. Code Ann. § 8.01-178.1</td>
<td>Holds any conservator or guardian who commits waste of the estate</td>
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<tr>
<td>WA</td>
<td>H.B. 1329</td>
<td>Wash. Rev. Code § 2.72.005</td>
<td>Expands duties of public guardian to provide services to support decision making; limits caseload of public guardian.</td>
</tr>
<tr>
<td>WV</td>
<td>H.B. 2848</td>
<td>W. Va. Code § 11-21-12i</td>
<td>Clarifies that a guardian may manage an ABLE account regardless of the amount of a designated beneficiary’s assets.</td>
</tr>
</tbody>
</table>