Will Your Health Care Advance Directive Be There When It’s Needed?

Learn about the Commission’s new health care advance directive manager app!

Available on the App Store

Available on Google Play
99 Will Your Health Care Advance Directive Be There When It’s Needed? 
by Jim Silkenat

101 Palm Beach Guardianship Monitoring Program Offers Innovative Model 
by Sharon R. Bock and Anthony Palmieri

103 Annual NLRC User Needs Survey

104 Spring 2014 Commission Interns

105 Commission on Law and Aging Senior Attorney Appointed to Board of National Academy of Elder Law Attorneys

106 A Guardian’s Health Care Decision-Making Authority: Statutory Restrictions 
by Karna Sandler

112 Attorneys Representing Veterans: Opportunities and Challenges 
by David Godfrey

115 Randy & Sandy’s Advance Care Plan Web video shorts on talking and planning how you want to die

116 CFPB Resource Highlight

117 Commission Publication Checklist for an Elder-Friendly Law Office

118 Upcoming CLE Social Security Retirement Strategies: Helping Your Clients Maximize Benefits

119 National Aging and Law Conference 2014 AARP Foundation Jerry D. Florence Scholarships

119 World Congress on Adult Guardianship

120 National Aging and Law Conference Update
For years, the American Bar Association has preached the need for every adult to have a health care advance directive. That’s the legal document, such as a living will or health care power of attorney, that enables you to make your health care preferences clear and legally binding.

Most often, we focus on the two-thirds of adults who have yet to do an advance directive, and we tend to forget one of the big challenges still faced by those who have actually completed a directive. That’s the challenge of making sure your directive is in the hands of the right people and at the right place when it’s needed. It’s not an easy task, considering that in today’s world, we often have several physicians involved in our care – practically one for every organ of our body – and we may pass through multiple care and treatment settings during the course of an illness. So, even if you give a copy of your directive to your regular physician, there’s no guarantee it will be easily accessible in the ICU, or nursing home, or in the home health agency’s medical record.

A new smartphone app from the American Bar Association’s Commission on Law and Aging helps overcome this problem in a very simple way. The My Health Care Wishes app gives individuals and their family members the ability to store their own and each other’s health care advance directives on their Apple or Android smartphones, and to send the documents directly to health care providers by email or Bluetooth. It also stores and can send other key information, such as contact information for your health care agent, key family members, and physician, as well as important medical and insurance information.

You might think of the app as a kind of personal advance directive registry. Registries have been around for a while, operated either by state agencies or private organizations. But registries normally store documents on a central server and make them available to medical providers on request through cloud-based systems. None of the existing registries have ever attracted a truly critical mass of participants. The ABA’s Commission on Law and Aging concluded that many people are simply reluctant to give up control of such personal information.

My Health Care Wishes is a smartphone app that gives you and your family members the ability to store your own and each other’s health care advance directives, key health information, and health care contacts on your Apple or Android smartphones, and to send advance directive documents and other key information directly to health care providers by email or Bluetooth.
documents to a third party and to an electronic environment they don’t personally control. This in turn triggered the idea for the app which allows users to create and manage their own “registry” right on their smart phones.

**How Can It Help?**

So how would this app make a difference? Let’s suppose a friend named Sandra has an aging father who lives on the East Coast and enters a hospital with a very serious condition. He is unable to make decisions for himself. Sandra lives in the Midwest. The hospital notifies her of the admission and asks if her father had appointed a decision-maker or has an advance directive. Sandra’s father did indeed create an advance directive naming Sandra as his health care agent. Fortunately, Sandra has her father’s advance directive on her smartphone, and she immediately emails it to the hospital.

The app has also stored other vital information about her father’s medical condition, physician and specialists, and his health insurance, which she also emails immediately, without having to search her home files for documents or other health information. If Sandra’s father had been mentally capable when he entered the hospital, he too could have provided his advance directive to the hospital through his own smartphone by email or Bluetooth connection.

We all hope we will never need to use an advance directive, but when it’s needed, making it accessible is so very important. The full version of the app, which costs $3.99, is described as a “personal and family advance directive manager.” A lite version of the app is free and stores only one person’s advance directive information.

Go to [http://ambar.org/MyHealthcareWishes](http://ambar.org/MyHealthcareWishes) or to [www.MyHealthCareWishes.org](http://www.MyHealthCareWishes.org) for more information and to download the app.

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**Pro and Lite versions**

**The free Lite version** is designed to store one person’s advance directive information and one document.

**The Pro version at $3.99** offers these added features:

- Unlimited storage of documents and people profiles
- Email stored documents to a health care provider—be prepared in case of emergency to advocate for your loved ones, no matter where you are
- Store additional details about you and your loved ones: specialists, emergency contacts, insurance, and medical conditions
- The Personal and Family Manager allows you to show the relationships between profiles you’ve stored
- Click-to-call and click-to-email feature gives you an instant connection to those whose profiles you’ve stored
- Syncing to your DropBox account to allow for easy importing and exporting of PDF documents
- ABA multi-state power of attorney toolkit PDF for use in most states
- More resource tips and links to help you plan smart and effectively!

To download, go to [www.MyHealthCareWishes.org](http://www.MyHealthCareWishes.org)

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*James R. Silkenat, a partner in the New York office of the national law firm of Sullivan & Worcester and a member of its Corporate Department, is President of the American Bar Association.*
As our nation’s population continues to age, the importance of independent monitoring of guardianship grows as well. Monitoring is critical to protecting society’s most vulnerable individuals—older individuals with dementia, younger individuals with disabilities, and minors. The Clerk & Comptroller, Palm Beach County’s Division of Inspector General team performs highly specialized, in-depth audits and investigations of guardianships. Florida is fortunate to have many excellent guardians—professionals, corporations and family members—who do great work on behalf of vulnerable individuals. The Inspector General team helps to protect Floridians from those who don’t have the individual’s best interests at heart and, if unchecked, could do irreparable financial harm. The Guardianship Fraud Program seeks to protect vulnerable individuals with combined assets of approximately $500 million. This article will highlight the Clerk & Comptroller, Palm Beach County’s monitoring program.

**Identifying the Need for Reform**

It is no secret—with over 3.4 million persons over 65 years of age, Florida has a large senior population. From the Panhandle to the Keys, there are an estimated 500,000 older persons with Alzheimer’s type dementia. With more than 100,000 persons over 80 years of age, Palm Beach County is considered “ground zero” for the aging of the nation. As a result, the county faces many age-related issues. In the mid-2000’s, the Clerk & Comptroller’s office started actively tracking guardianships and discovered a growing trend of open guardianship cases. In addition to a case load of more than 2,700 open cases, there were approximately 400 new guardianship cases filed each year—a rate that far outpaced the number of closed guardianship cases.

This rise in guardianship cases coincided with increased economic pressures—the stock market declining and a housing bubble driving up home prices—and created an atmosphere ripe for financial exploitation, and specifically, guardianship fraud.

Guardianship fraud in Palm Beach County came to the forefront in 2010, after local attorney Ted Babbitt filed court documents alleging that lawyers representing an 8-year-old Palm Beach County

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boy drained an estate that was once valued at $50 million. The young boy was left parentless when his father, a real estate tycoon, killed his mother and later died in prison while serving a life sentence. After losing his family and receiving a large inheritance, the boy—who was adjudicated a minor ward and appointed a guardian—was allegedly victimized by his lawyers. It was after this case that the Clerk & Comptroller's office committed to doing more for exploited wards. The office had the authority under Florida Statute and the expertise as the County's auditor.

Independently elected Clerks of the Circuit Court in Florida have a statutory duty to audit guardianship reports, such as the verified inventory and annual accountings. Clerks also have the duty to advise the Court about the guardianship report audit results. When initially enacted in 1989, the statute did not define what was meant by “audit.” However, in 2006, “audit” was codified and defined as: “a systematic review of financial and all other documents to ensure compliance with s. 744.368 [Florida statute], rules of court, and local procedures using generally accepted accounting principles.”

As a result of the statutory definition, the majority of the 67 Florida Clerk's offices established audit procedures for guardianship cases to determine: (1) if guardianship reports were filed on a timely basis; (2) if guardianship reports were materially complete; and, (3) if all of the financial information in the guardianship reports were calculated accurately.


A Local Effort to Protect Vulnerable Individuals
The Clerk & Comptroller, Palm Beach County has performed basic audits on guardianship reports for the last 25 years. During this time, it became clear that these audits were insufficient in uncovering unscrupulous behavior, fraud, and the financial exploitation of wards. As a result, the Clerk & Comptroller's office established a Guardianship Fraud Unit within an accredited Division of Inspector General. With our judicial partners through administrative order, this program is tasked with performing enhanced audits and advising the court of its findings.

The Inspector General audits differ greatly from basic statutory minimum audits, which are somewhat superficial. Enhanced audits are comprehensive in scope, as third-party verification of income, disbursements, capital transactions and other assets are required and evaluated. These audits have resulted in heightened scrutiny and expanded oversight far beyond previous basic audits. As professional auditors, the Clerk's office follows the assets back to the source, whether it's a financial institution, the Internal Revenue Service, Social Security Administration, or even a public record. No petition or statement is accepted at face value without independent verification.

Next, the Inspector General team compares their findings to the guardianship reports, with an emphasis on discrepancies that may negatively impact the ward. These findings are reported to the Court, and if appropriate and warranted, to law enforcement, the State's Attorney and/or the Florida Bar.

Impact and Next Steps
When initiated in 2011, the goal of Palm Beach County's Guardianship Fraud Program was simple:

protect the most vulnerable individuals from becoming victims of fraud and financial abuse. There have been significant strides in the first two years, including identifying more than $2.7 million in questionable expenses and misreported assets and two arrests resulting from the IG’s detailed investigations. These successes have kept Palm Beach County on the forefront of this issue locally, statewide, and nationally.

With established and proven programs in Palm Beach and Pinellas counties, the Clerk & Comptroller, Palm Beach County would like to see expansion throughout Florida. That’s why the Palm Beach County’s Clerk & Comptroller’s office, has asked state leaders to pass legislation that will allow all of Florida’s Clerks to perform enhanced audits that significantly improve the court’s oversight of guardianship cases. The legislation will codify the best practices that have been developed and implemented in Palm Beach and Pinellas counties.

Sharon R. Bock, Esq. was elected Clerk & Comptroller of Palm Beach County in 2004, and re-elected in 2008 and 2012. Clerk Bock is a real estate lawyer and a member of the Florida Bar. She is also a member of the Florida Government Finance Officers Association and the Association of Inspectors General. The Clerk holds several elected and appointed positions on statewide boards and committees on using technology to modernize and improve access to the courts.

Anthony Palmieri, JD, CIA, CCSA is a Deputy Clerk & Senior Internal Auditor for the Clerk & Comptroller of Palm Beach County’s Division of Inspector General.

To learn more about guardianship monitoring in Palm Beach County, visit the Clerk’s Guardianship Fraud Program at http://www.mypalmbeachclerk.com/fraudhotline.aspx or call (561) 355-FRAUD (3728).

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**Elder Justice Issue Alert**

Don’t Let Congress Go Another Year Without Funding the Elder Justice Act

The first major legislation ever enacted by Congress addressing elder abuse, the Elder Justice Act, is about to finish its fourth year of existence since its passage in 2010 without ever having a penny appropriated under it. So far, Congress has handed seniors a false hope. The President’s proposed budget for fiscal Year 2015 includes $25 million in funding for the Act, but it will be an uphill battle to convince Congress to adopt that figure, even though that amount is but a shadow of the original $757 million authorized by the Act over four years.

The viability of the Elder Justice Act depends on the strength of the public’s demand to include the Administration’s proposed $25 million in this year’s appropriations bills. The American Bar Association wrote letters to both the House (http://bit.ly/1pPEb5x) and Senate (http://bit.ly/1lA0Sq7) Appropriations Committee subcommittees on April 25, supporting the Administration’s modest FY 2015 budget request to fund programs authorized by the Elder Justice Act.

Specifically, the Administration’s proposal would provide $13.8 million to strengthen Adult Protective Service (APS) programs in the states by creating an APS National Data System and providing grants to states to interface with the System. It also would establish national demonstration grants to test a variety of methods to detect and prevent elder abuse. The remaining $11.2 million would be used for research to create credible benchmarks for elder abuse, neglect, and exploitation prevention, as well as program development and evaluation.

Everyone’s voice needs to be heard.

Go to the Elder Justice Coalition’s web page to get more information and to use the easy tool for contacting your Senators and Congressman: http://elderjusticecoalition.com/current-issues.

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9 To learn more about the legislation, see Florida Senate Bill 634 (2014) and Florida House of Representative Bill 635 (2014).
Katie Gorski
I would highly recommend an internship with the Commission to anyone with interest in elder law. When I started my internship, I already had an understanding of the subject from my work at elder law firms in the northern Virginia area. Working with the Commission, I was able to see firsthand what it means to work on the policy side of the law.

I had the opportunity to attend Commission meetings, where I was able to listen and take notes on a variety of topics relevant to elder law, and gain a firsthand experience of the policy-making process. I was also able to attend the Congressional reauthorization hearing for the Older Americans Act, which provided a window into the world of making legislation.

I also had the opportunity to work more closely with two of the Commission staff on more specific elder law topics. Under the supervision of Senior Attorney Lori Stiegel, I researched the changes to the state Adult Protective Services statutes. I also worked with Assistant Director Erica Wood on a larger project, researching guardianship and conservatorship bond statutes, creating a chart, and working on a paper summarizing those findings. The office atmosphere provides the perfect combination of independence and supervision, and everyone is always willing to answer questions. I really enjoyed this experience, and am truly thankful I was given this opportunity.

Karna Sandler
My semester at the Commission was a valuable learning experience in which I delved into the many legal issues facing older populations. It was a great way to get real world experience with guidance from attorneys with a wealth of knowledge and experience in the area.

I had the opportunity to research guardianship health care decision-making and drafted an article to be published in Bifocal, the Commission’s ejournal. I was also able to attend Congressional hearings and two of the Commission’s meetings. These provided great networking opportunities and a chance to learn about the many career opportunities in elder law.

This internship provides an opportunity to learn what it is like to work in policy and to practice and improve research and writing skills. I would highly recommend this internship to anyone who is interested in the area of elder law.
Commission on Law and Aging Senior Attorney Appointed to Board of National Academy of Elder Law Attorneys

The National Academy of Elder Law Attorneys (NAELA) Nominating Committee has selected Officers for 2014-15 and Directors for 2014-16. Mr. Godfrey is one of two new Board members; he will assume office on June 1 for a two-year term.

NAELA was founded in 1987 as a professional association of attorneys who are dedicated to improving the quality of legal services provided to seniors and people with special needs.

The NAELA membership is comprised of attorneys in the private and public sectors who deal with legal issues affecting seniors and people with disabilities. Members also include judges, law professors, and students. NAELA members assist their clients with public benefits, probate and estate planning, guardianship/conservatorship, and health and long-term care planning, among other important issues.

The focus of the Academy is to provide members continuing legal education programs on a broad range of Elder Law topics. Face-to-face meetings and workshops facilitate networking and professional growth opportunities for like-minded attorneys practicing throughout the country. Virtual and archived seminars offer convenient educational opportunities for members, while simultaneously providing specialized education needed to strengthen practice skills.

David Godfrey is a Senior Attorney at the American Bar Association Commission on Law and Aging.

Complete this brief survey to tell the National Legal Resource Center (NLRC) how it can support your work!

The NLRC provides a variety of resources, training, technical assistance, and consultations with experts.

To do its job effectively, it needs to hear about the needs of professionals in law and aging.

Please take this short survey to provide feedback for the coming year.


The National Legal Resource Center is a collaborative effort developed by the Administration on Aging.

Its partners are:

- The ABA Commission on Law and Aging
- The Center for Elder Rights Advocacy
- The Center for Social Gerontology
- The National Consumer Law Center
- The National Senior Citizens Law Center

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A Guardian’s Health Care Decision-Making Authority: Statutory Restrictions

by Karna Sandler

Introduction
Guardianship is an important tool for protecting incapacitated adults who are unable to care for themselves. One role of the guardian is to make or assist the individual with health care decisions, ranging from routine appointments to serious surgical procedures and end-of-life decisions. To ensure guardian accountability in these highly personal decisions, some states have statutory restrictions that require court approval for certain critical health care decisions that “implicate the ward’s most fundamental privacy and liberty interests.” These restricted decisions may include placing an individual in a mental health or residential facility, consenting to invasive or experimental procedures, or withholding life-sustaining treatment.

Although this article only addresses state guardianship statutes, other types of statutes also may include restrictions on health care decision-making by guardians. Default surrogate consent statutes (sometimes called “family consent” statutes) address decision-making authority in the event an individual lacks capacity to make health care decisions and there is no advance directive. Generally, these statutes list a hierarchy of individuals who may be authorized to serve as a surrogate decision-maker, which may include a guardian. In addition, involuntary commitment statutes and power of attorney statutes may address certain areas of guardianship decision-making. However, these statutes are beyond the scope of this article.

This article updates a portion of a 2003 article titled Health Care Decision-Making: A Guardian’s Authority by Sarah B. Richardson. State statutory restrictions on guardianship health care decision-making have changed little since 2003. Nevertheless, the changes show a small trend towards states increasing the number of restricted decisions; in particular restrictions on placement in mental health facilities, consent to invasive procedures, and consent to withholding or withdrawing life-sustaining treatment. This article provides a comparison of state statutory restrictions on guardianship health-care decision making and analyzes how those restrictions have changed in the last ten years.

Statutory Restrictions
State guardianship statutes generally grant guardians broad authority to make health care decisions for incapacitated persons and contain language similar to the Uniform Guardianship and Protective Proceedings Act (“UGPPA”), which states that a guardian may “consent to medical or other care, treatment, or service for the ward.” However, the statutes limiting that authority vary broadly and only eight states have no statutory restrictions on guardianship healthcare decision-making.

5 The eight states without statutory restrictions on guardian healthcare decision-making authority are Alabama, Georgia, Idaho, Nebraska, Ohio, Rhode Island, South Carolina, and Utah. Since 2003, only New Jersey added restrictions to its guardianship statutes where it previously had none. N.J. Stat. Ann. § 38:12-57.
Admission to a Mental Health Facility

Placement in a mental health facility greatly restricts an individual's freedom by segregating the individual from mainstream society. Therefore, all states require a civil commitment process for involuntary placement in a mental health facility. However, it can be unclear whether a guardian has the authority to “voluntarily” place an individual in a mental health facility, without going through the civil commitment process.7

Thirty state guardianship statutes follow the UGPPA, which states “a guardian may not initiate the commitment of a ward to a [mental health-care] institution except in accordance with the State’s procedure for involuntary civil commitment.” However, four of those states make an exception allowing guardians to place incapacitated persons in mental health facilities without court approval for a limited time period, ranging from two to forty-five days. By requiring court approval, states add a layer of protection to ensure that the decision is made appropriately.

Consent to Invasive Procedures

Although guardians generally have the authority to consent or withhold consent to medical procedures on behalf of the incapacitated individual, some states find that certain invasive procedures require extra oversight by the court. These procedures are controversial because of the personal nature of the decision, which involves an individual’s moral, ethical and religious beliefs. Delegating the authority to guardians creates a risk that a guardian could impose the guardian’s own beliefs into the decision-making process. Moreover, these procedures are of additional concern because of the potential negative impact on an individual’s well-being.

Admission to a Residential Care Facility

Residential care facilities are institutions that provide long-term care in a residential setting, such as nursing homes and assisted living facilities. Like mental health facilities, residential care facilities are restrictive settings that can be very isolating for the individual. Consequently, some states also restrict a guardian’s authority to place individuals in residential care facilities.

Eleven states require court approval for a guardian to place an incapacitated person in a residential care or nursing facility. However, Nevada makes an exception for when a guardian obtains the recommendation of a physician or other certified person. Furthermore, although Maryland’s and Iowa’s statutes do not specifically address residential care or nursing facilities, Maryland requires court approval for a change in classification of abode; and Iowa requires court approval for placement in a more restrictive setting. These restrictions all serve to protect the individual from the potentially isolating effects of a residential care facility unless necessary for the individual’s well-being.

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mental health. Therefore, some states require court approval for controversial invasive procedures.

Nineteen states have provisions restricting the guardian’s ability to consent on behalf of the incapacitated person to one or more invasive procedures, including abortion, sterilization, psychosurgery, or removal of bodily organs. Seventeen states restrict consent to sterilization, thirteen states restrict consent to psychosurgery, and seven states restrict consent to abortion, and seven states restrict consent to the removal of bodily organs. Two states have also added amputation to the list of restricted procedures. Iowa takes a broader approach and prohibits a guardian from consenting to any major elective surgery or non-emergency major medical procedure, without court approval. Most states always require court approval for these invasive procedures; however, seven states make an exception for emergency situations in which the procedure is necessary to preserve life or prevent serious harm.

Consent to Experimental Treatment

The decision to consent to experimental treatment is complex because of the uncertainty involved. Thus, the decision requires a number of important considerations, such as the likelihood of success, possibility of side-effects, availability of other treatment options, and the benefits to science. Therefore, some states find that the decision to consent to experimental treatment requires additional protections.

Twelve states require court approval before a guardian may consent on behalf of the incapacitated person to experimental treatment. However, some of those states allow guardians authority to consent to experimental treatment in limited circumstances. California only limits the use of experimental drugs, not experimental procedures. Furthermore, Arkansas makes an exception for experimental treatments that are intended to preserve life or prevent serious harm, and Wisconsin makes an exception for experimental treatment that involves a minimal

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21 Iowa Code Ann. § 633.635(2).


risk of harm.25 By requiring court approval, these statutes help to ensure that the complexities of the decision are taken into consideration.

Consent to Withhold or Withdraw Life-Sustaining Treatment

Decisions to withhold or withdraw life-sustaining treatment are controversial and involve a number of considerations, such as the possibility of improved health, relief from suffering, and the individual's values, moral, and religious beliefs. Consequently, some courts are hesitant to provide guardians with the authority to make such decisions and instead require court approval or proscribe specific standards to use in making the determination.

Fourteen state guardianship statutes address a guardian’s authority to make decisions about whether to withhold or withdraw life-sustaining treatment.26 Eleven of those states prohibit the guardian from consenting to withhold or withdraw life-sustaining treatments.27 Nevertheless, five of these states have limited exceptions that allow the guardian to make the decision without court approval when the incapacitated person has provided an advance directive, durable power of attorney, or instructions from the incapacitated person when the incapacitated person had capacity.28 When court approval is required, the statutes generally provide the court with specific standards to use in making the determination to withhold or withdraw life sustaining treatment.

Three state guardianship statutes have provisions granting guardians the authority to make decisions to withhold or withdraw life-sustaining treatment.29 However, Illinois and Oregon limit that authority to specific situations, such as a terminal condition or permanent unconsciousness.30 The majority of states do not address end-of-life decisions in the state’s guardianship statute, but additional guidance may be available in the state’s default surrogate consent statute.

Consent to Mental Health Treatment

Some states find that certain mental health treatments require additional oversight by the court because of the high risk involved and the controversial nature of the treatments. Accordingly, eight states require court approval before a guardian may consent on behalf of the incapacitated person to convulsive treatment.31 In addition, Wisconsin restricts a guardian's authority to consent to the involuntary administration of psychotropic medication.32

Involuntary Medical Decisions

New Jersey and Vermont take a different approach to restricting a guardian's authority to make healthcare decisions. Instead of prohibiting the guardian from authorizing specific types of medical decisions, New Jersey requires court approval if the incapacitated person objects to any decision made by the guardian,33 and Vermont requires court approval for consent to any involuntary treatment or medication.34 This approach focuses on the incapacitated individual's opinion rather than the type of medical decision.


Conclusion

States generally provide guardians with broad statutory authority to make healthcare decisions for individuals under their care. However, some states limit that authority for medical decisions that are particularly controversial or implicate greater infringements on personal freedoms. For such decisions, state guardianship statutes may require court approval, but these restrictions vary broadly across states.

A large majority of states have at least one restriction on a guardian's authority to make health care decisions, and some states restrict as many as eight types of health care decisions. Moreover, there appears to be a small upward trend in states adding new restrictions to guardianship statutes. Although more restrictions add burdens to the guardianship process, states balance this burden against the importance of preserving the individual's autonomy. Therefore, guardians must be aware of the limits of their authority and when court approval is required for certain critical health care decisions.

Karna Sandler is a second-year law student at American University Washington College of Law in Washington, D.C. Ms. Sandler received her B.A. from Tulane University in New Orleans, LA, with a major in sociology and a minor in Spanish. She is an intern with the Commission on Law and Aging in Washington, DC.

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Statutory Restrictions on Guardianship Health Care Decision-Making

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**Further Resource**
Attorneys Representing Veterans: Opportunities and Challenges

by David Godfrey

Six years ago, options for attorneys to assist veterans seeking benefits were greatly expanded, and that created both opportunities and challenges for lawyers. Prior to that time, lawyers had been involved in helping veterans seek benefits, largely on a pro bono basis. The changes to the Code of Federal Regulations in 2008 established a system for authorizing advocates to represent veterans in appeals, and it changed the point in the appeals process at which an attorney can start charging a fee.\(^1\) There is still a prohibition on charging for helping with the initial claims form and eligibility verification.\(^2\)

The 2008 amendments modified the procedural point at which a veteran could pay a lawyer for representation. Previously, lawyers could be paid starting at the appeal to the Court of Appeals for Veterans Claims, and everything before that had to be essentially pro bono. Now attorneys may be paid for conducting a first-level appeal to the Board of Veterans’ Appeals. One of the goals of this change was to expand the options for a veteran unsatisfied with the original determination by the Department of Veterans Affairs (VA). As a result, more attorneys can afford to undertake appeals for veterans unsatisfied with the original VA determination.

The 2008 amendments also created a new system of accreditation for attorneys and other advocates wishing to represent veterans, with or without charging fees. The goal of this change was to ensure that advocates representing veterans meet minimum standards and are accountable to the VA.

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For lawyers, the news is good—the VA determined that being a lawyer in good standing satisfies the initial certification requirement. Those seeking to represent veterans must file to be accredited by the VA. This is very much like being admitted to a federal court. Accreditation is not complicated, and yet every year I hear from attorneys who thought that being admitted to the state and federal courts would be sufficient, only to be refused recognition by the VA as qualified to represent a veteran. To become accredited, attorneys must file an application with the VA Office of General Counsel demonstrating that they are in good standing with the highest court of one or more jurisdictions; detailing their disciplinary history, if any; and answering some general character and fitness questions.3

Once the application is received and reviewed by the VA, the attorney receives a letter of accreditation. The attorney then has up to one year to complete a mandatory continuing legal education (CLE) course covering the basics of VA benefits, practice, and procedure. The fact that the initial letter of accreditation has to be issued before the basic CLE program is taken trips up a lot of attorneys. Once a year, VA-accredited attorneys must send a letter to the VA recertifying bar membership, reporting any changes, and reporting completion of VA-related CLE. Once the initial CLE requirement is met, three additional hours of VA-focused CLE are required every other year.

Lawyers are the relative newcomers to VA claims, and this brings with it challenges. For decades, the primary source of help with veteran benefits had been veterans service organizations (VSOs). These voluntary membership organizations have full-time claims representatives who assist veterans with their claims. Going back to the Civil War, in the days before the bar was organized, attorneys were viewed with a degree of skepticism by other advocates for veterans. Attorneys are still establishing credibility in helping veterans. We will build our credibility by doing what lawyers do best—putting the best interest of the client first, being zealous advocates for our clients, and learning the details of this complex area of practice. I encourage lawyers to develop a connection with a VSO.4 VSOs have a great depth of knowledge of the VA benefits systems, are trusted, and are well connected with veterans.

The VA provides a spectrum of programs and benefits that can be a real challenge to understand.5 There are multiple program options for income, health care, education, and other benefits, many of which have multiple ways to qualify. In many ways, the VA is the most flexible federal benefits system. The rules are a mixture of hard-and-fast eligibility rules and flexible guidelines that give the VA amazing discretion in assisting veterans in need. Attorneys will be challenged by learning the spectrum of benefits and programs and


4 Information about VSOs can be found at www.va.gov/ogc/apps/accreditation/index.asp.

5 See www.va.gov/landing2_vetsrv.htm for a partial list of VA benefits and programs.
by adjusting to the mixture of firm rules and flexible guidelines.

One of the greatest flexibilities of veterans benefits also creates a challenge for lawyers. Some VA programs are “needs based” (the applicant must demonstrate an economic need), and the VA has no asset restructuring or transfer rules. An example of a needs-based VA program is the Aid and Attendance benefit that provides financial assistance to a veteran or a veteran’s spouse for home-based or nursing home care. Unlike with Medicaid, recent gifts will not disqualify an otherwise qualified veteran from this program. At first blush this looks like an opportunity—but it is an opportunity laced with challenges. The primary challenge lies in the interaction between VA benefits and Medicaid. While VA benefits can be generous, long-term care can easily exceed available VA benefits, leading to the need to apply for Medicaid while receiving VA benefits.

Great care must be taken in restructuring assets for the VA so as to avoid unintentionally disqualifying a veteran from Medicaid benefits based on gifts and uncompensated transfers. A secondary challenge of aggressive asset restructuring or divestment is the potential for political consequences. Congress has already held hearings on these practices, and at least one bill has been filed in Congress to impose transfer and gifting penalties similar to those of the Medicaid rules but different enough to cause additional complications.

The VA is a system in the midst of change and modernization. Until recently, the VA was an entirely paper-based system, and the transition to an electronic system has been challenging both to those inside and outside of this sprawling agency. The VA has distinct program silos, and there are challenges in communicating across them. Attorneys are surprised that a notice of representation to one VA program is not a part of the file in the next VA program, or that a change of address with one part of the VA will not become part of the record in another part of the VA.

Veterans benefits laws and regulations are complex, but probably no more so than the Internal Revenue Code or the immigration system. To master the VA system in order to help veterans obtain and retain VA benefits requires mastery of a new and complicated area of practice—but it is also a wonderful opportunity to help veterans who have served our country.

David Godfrey is a senior attorney to the ABA Commission on Law and Aging. He offers special thanks to Kenneth Goldsmith, legislative counsel and state legislative counsel for the ABA Governmental Affairs Office, for his help in editing this article.

This piece was originally published in Experience, Volume 23, Number 3, 2014. © 2014 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
Randy & Sandy's Advance Care Plan

Web video shorts on talking and planning how you want to die

Randy and Sandy are a light-hearted approach to much-needed conversations. They show that the most important talk we are not having is the one about how we want to die.

The 12 episodes engage in what’s real when it comes to dying care — advance directives are about being treated the way you want, conversations should happen long before that time comes and more than once, and that not talking about dying won’t stop the inevitable.

Several of the shorts introduce My Health Care Wishes an mHealth (mobile health) app for smartphones, distributed by the American Bar Association. The app stores and sends your advance directives and those of your loved ones “just in case,” addressing the rare availability of these documents when most needed.

View the videos and learn more at: https://vimeo.com/channels/696874

These shorts reflect a shared purpose and are in conjunction with:

- The National Healthcare Decisions Day
  www.nhdd.org

- Engage with Grace
  www.engagewithgrace.org

- The Conversation Project
  www.theconversationproject.org

- The American Bar Association Commission on Law and Aging
  www.ambar.org/healthdecisions

The mission of the ABA Commission on Law and Aging is to serve as a collaborative, interdisciplinary leader of the Association’s work to strengthen and secure the legal rights, dignity, autonomy, quality of life and quality of care of aging persons.

Make a Gift of Support

Help us continue to improve the lives of older Americans.

—Write a Check—
Make payable to Fund for Justice and Education (designate ABA Commission on Law and Aging on memo line) and mail to: ABA Commission on Law & Aging, 1050 Connecticut Ave., NW, Washington, DC 20036

—Donate Online—
Please visit: https://donate.americanbar.org/cola

—Call Us—
Discuss a specific gift of support at:
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Your contribution is tax-deductible.
Resources from the Consumer Financial Protection Bureau

**ASK CFPB:** [http://www.consumerfinance.gov/askcfpb/](http://www.consumerfinance.gov/askcfpb/)

Get answers to common financial questions; if you can’t find your question listed, submit a new one to us.

**Tell your story:** [https://help.consumerfinance.gov/app/tellyourstory](https://help.consumerfinance.gov/app/tellyourstory)

Tell us your story, good or bad, about your experience with consumer financial products and services. Your story will help inform how we work to protect consumers and create a fairer marketplace.

**Submit a complaint:**

Submit a complaint for the following categories:

- Bank account or service
- Credit card
- Credit reporting
- Debt Collection
- Money transfer
- Mortgage
- Student loan
- Vehicle or consumer loan
- Payday loan

Once you submit a complaint

1. **Complaint submitted**
   You submit a complaint about an issue you have with a company about a consumer financial product or service. You will receive email updates and can log in to track the status of your complaint.

2. **Review and route**
   We’ll forward your complaint to the company and work to get a response from them. If we find that another government agency would be better able to assist, we will forward your complaint to them and let you know.

3. **Company response**
   The company will review your complaint, communicate with you as needed, and report back about the steps taken or that will be taken on the issue you identify in your complaint.

4. **Consumer review**
   We will let you know when the company responds. You can review that response and give us feedback.

5. **Review and investigate**
   Complaint data is shared with state and federal law enforcement agencies. Complaints tell us about business practices that may pose risks to consumers. If we need more information, we’ll reach out and let you know.

6. **Analyze and report**
   Complaints help with our work to supervise companies, enforce federal consumer financial laws, and write better rules and regulations. We also report to Congress about the complaints we receive and post some consumer complaint data.

**How to submit a complaint**

- Submit a complaint online [consumerfinance.gov/complaint](http://consumerfinance.gov/complaint)
- Submit a complaint by phone 855-411-CFPB (2372); TTY/TDD 855-729-CFPB (2372)
  Hours of operation 8 a.m. to 8 p.m. Eastern Time, Monday through Friday
- Submit a complaint by fax 855-237-2392
- Submit a complaint by mail Consumer Financial Protection Bureau P.O. Box 4503, Iowa City, IA 52244

**Tip!** Don’t forget to tell us about your military status. If you’re submitting your complaint online, you can indicate your status on the “My Information” page of the complaint intake form; veterans should mark the box ‘servicemember’ then ‘veteran’ or ‘retired’ from the drop down menu.
As the American population ages, accommodating the needs of older Americans becomes more and more important to a myriad of businesses.

An elder-friendly law office is one that provides spatial and social accommodations for disabilities prevalent among older persons such as hearing loss, visual impairment, and mobility limitations.

By complying with the American with Disabilities Act (ADA) Accessibility Guidelines and making the other practical design decisions highlighted in this 22-page publication, you can improve an older client's experience in your office.

Product Code: 4280031PDF
Publication Date: December 2013
Price: $19.95
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Join Elderbar, the discussion list that brings together public and private sector legal advocates and the aging network.

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

Elderbar is a project of the ABA Commission as part of its role in the National Legal Resource Center, funded by the Administration on Aging.

It is a closed list; messages can only be posted and read by members.

To get connected to Elderbar send your name, e-mail address, and professional affiliation to david.godfrey@americanbar.org.
CLE Webinar

Social Security Retirement Strategies
Helping Your Clients Maximize Benefits

Wednesday, June 18, 2014
1:00 – 2:30 Eastern time

Clients frequently ask when is best to start drawing Social Security retirement benefits. Whether they take early retirement benefits at age 62 or delayed benefits at age 70, timing can make thousands of dollars difference for your clients. There are many factors to consider in answering this question.

This webinar will explore the complex issues in making decisions on Social Security retirement benefits and offer guidance in helping clients decide when is the best time for them. Learn the basic rules of thumb and how to create strategies to find more retirement benefits by creating a claiming strategy.

Panelists will:

• Explore the factors to consider in making a decision on Social Security retirement benefits
• Examine models for predicting best outcomes for retirement elections
• Discuss factors other than age and money, such as health status, and personal needs
• Consider whether Social Security will run out of money and the top impending proposals

Faculty:

• William Meyer, Founder, Managing Principal, Social Security Solutions, Leawood, KS
• John Whitelaw, Supervising Attorney, Community Legal Services Aging and Disabilities Unit, Philadelphia, PA
• David Godfrey (Moderator), Senior Attorney, American Bar Association Commission on Law & Aging, Washington, DC

Register Now!

• Phone: 800-285-2221 and select option “2”
• Online: http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=128040322
• Event code: CET4SRT

Special $95 rate for: government, legal services, and non-profit lawyers

National Legal Resource Center

The National Legal Resource Center provides in-depth substantive legal information and expertise, case consultation, technical support on legal service development and legal hotlines, and training on issues in law and aging to attorneys, advocates, and professionals in the fields of law and aging.

Find out about the programs and services of the NLRC at www.NLRC.AoA.gov
The AARP Foundation is pleased to announce the continuation of the AARP Foundation Jerry D. Florence Scholarships. The purpose of the scholarships is to offset part of the cost of attendance at the 2014 National Aging and Law Conference by advocates working on behalf of low income and diverse older adults.

The AARP Foundation has pledged $10,000 in needs-based scholarships for the 2014 National Aging and Law Conference being held October 16–17 in Washington, DC.

AARP Foundation established this scholarship in memory of Jerry D. Florence, who served as the Director of the AARP Foundation for two years before dying suddenly in 2005 at the age of 57. Mr. Florence was a leader who was quickly able to envision how new ideas could transform the lives of AARP’s members. He delighted in finding ways to help others, and his energy, positive attitude, and easy smile touched many hearts.

Consideration will be given to all applicants for the AARP Foundation Jerry D. Florence Scholarships; however, priority will be given to applicants who:

- Have not attended the National Aging and Law Institute or the National Aging and Law Conference recently.
- Demonstrate a financial need in order to attend.
- Provide legal services or advocacy for low to moderate income older Americans and older Americans of diverse backgrounds.

Scholarship applications are due by June 15, 2014. Learn more and apply at: www.ambar.org/nalc2014

This three-day event features 42 general and breakout sessions, including a keynote presentation from Kathy Greenlee, Administrator for Community Living and Assistant Secretary for Aging. Complete details, including the full program, registration information, and hotel details, can be found at www.worldcongressguardianship.org.
Save the Date!

New National Aging and Law Conference

October 16 & 17, 2014
Washington, DC

Conference schedule now available online!

This October 16-17, the ABA's Commission on Law and Aging will sponsor the National Aging and Law Conference in Washington, DC.

This year's conference theme is: 50th Anniversary of the War on Poverty: Progress & Challenges for the Future.

For information, contact the Commission's David Godfrey at: David.Godfrey@Americanbar.org.

Stay Updated!

Conference website: www.ambar.org/nalc2014

Facebook page: http://t.co/fWDko0uL1R

Twitter @NtlAgingLawConf

Featured Plenary Speakers

• M. T Connelly, a MacArthur Foundation Fellow and expert on elder abuse

• Nora Dowd Eisenhower, Assistant Director for the Office of Older Americans at the Consumer Financial Protection Bureau

Panel Highlights

• Older Adult Hunger: America's Silent Epidemic

• Lightening Round! Healthcare and Economic Rights

• Gaps, Bumps, and Glitches: Smoothing out ACA Transitions to Medicare and Medicaid

• PLUS, workshops on Medicare, Medicaid, elder abuse, legal service development and delivery, guardianship, income security, diversity, public benefits, and legal ethics...

Interested in Scholarship Opportunities?

• See page 121 for information on the AARP Foundation’s Jerry D. Florence Scholarships