October 19, 2011

The Honorable Amy Klobuchar
United States Senate
Washington, DC 20510

Re: The Guardian Accountability and Senior Protection Act

Dear Senator Klobuchar:

On behalf of the American Bar Association and its nearly 400,000 members nationwide, I commend you for your attention to the critical area of adult guardianship reform with the impending introduction of your bill, the Guardian Accountability and Senior Protection Act. The ABA strongly supports your effort to provide funding for state courts to assess and improve adult guardianship and conservatorship proceedings, as well as your effort to encourage the use of technology to improve conservatorship reporting.

The Association has long taken a leadership role in guardianship reform, tracking state legislation, partnering in studies of guardianship monitoring and public guardianship, and developing materials for courts on volunteer guardianship review programs. In August 2002, the ABA adopted a policy recommending the implementation of six principles from the 2001 Wingspan Conference addressing adult guardianship issues. One principle was to “[s]upport effective monitoring, personal and financial reporting, and accountability for all guardianships by [m]andating . . . annual financial accountings, and ensuring the auditing of such reports,” as well as “[m]aintaining adequate data systems to assure that required plans and reports are timely filed.” A second principle was to “[s]upport overarching efforts to improve the guardianship system by . . . [d]eveloping innovative and creative ways by which funding sources (federal, state, local, private) are categorically directed to guardianship.” Later, in February 2009, the Association adopted policy “encourag[ing] the federal government to provide funding and support for training, research, exchange of information on practices, consistent collection of data, and development of state, local and territorial standards regarding adult guardianship.”

The proposed Guardian Accountability and Senior Protection Act captures these principles. Title I would provide funding under the Older Americans Act for state courts to assess and improve the handling of proceedings relating to adult guardianship. This is patterned on the concept of “court improvement projects” underway in the child welfare arena for many years. Funding is needed to help state court systems partner with state agencies on aging, disability agencies, and
others to assess the most critical gaps in practice – and formulate and begin to implement a plan of improvement.

Title III would create a state grant program “to assist in improving conservator monitoring efforts through electronic filing,” a concept based on a currently operating system in Minnesota. Such a system is a “win-win,” making filing easier for conservators and making monitoring easier for courts. Electronic filing establishes a uniform, statewide process for the filings in which math is computed automatically, inconsistencies can be identified and investigated, data will be uniformly collected, and patterns and trends will be revealed.

While we have not considered the concept of background checks for prospective conservators, a concept within Title II, it appears to be a sensible part of the “overarching efforts to improve the guardianship system” contemplated by the ABA’s August 2002 policy.

We appreciate your leadership in proposing to bring visibility and resources to improve the quality of life for incapacitated adults and look forward to working with you on this important legislation.

Sincerely,

Thomas M. Susman