June 25, 2013

The Honorable Amy Klobuchar
302 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable John Cornyn
517 Hart Senate Office Building
United States Senate
Washington, DC 20510

Re: Court-Appointed Guardian Accountability and Senior Protection Act

Dear Senators Klobuchar and Cornyn:

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 your bipartisan introduction of S. 975, the Court-Appointed Guardian Accountability and Senior Protection Act. Except for the source of funding, the ABA strongly supports your effort to provide demonstration grants to state courts to assess and improve adult guardianship and conservatorship proceedings, as well as your effort to encourage the use of technology to improve reporting.

The ABA has long taken a leadership role both in guardianship reform and the prevention and identification of elder abuse. On adult guardianship, our policy urges annual reporting by guardians and conservators using standardized forms (August 1987); supports the development of creative and innovative ways to direct funds to guardianship (August 2002); and encourages court-community collaborations to assess and improve state guardianship systems (August 2012). S. 975 captures these principles by providing funding for state court assessments and improvements, in collaboration with the state unit on aging and the adult protective service agency.

Your bill explicitly mentions two improvements that may result from the state assessments: electronic filing of guardian and conservator reports and background checks of potential guardians and conservators. The ABA has policy specifically supporting electronic filing. This is a “win-win” in that it will simplify the filing process for conservators and guardians and also bolster court oversight and the detection of fraud and exploitation. Although we do not have
policy that addresses background checks specifically, this appears to be a sensible part of the “overarching efforts to improve the guardianship system” contemplated by our August 2002 policy.

While the Association supports these needed guardianship reforms, we are concerned about the source of funding. S. 975 would be funded under the Elder Justice Act of 2009, from a section of the Social Security Act (42 U.S.C. 1397m-1) that provides for “Adult Protective Services Functions and Grant Programs.” Thus, the bill’s guardianship reforms might compete with adult protective services programs for much needed funding to prevent, detect and address elder abuse – both in connection with guardianship and in a range of other contexts as well. The Association supports funding for both adult guardianship and adult protective services. Clearly the competing considerations are difficult, and we would be glad to work with you on this issue.

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