

The Guardian Bulletin



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Box 7009, Hines, IL 60141 Tel#312-458-9867

www.illinoisguardianship.org

The IGA had their Chicago and Springfield conferences this spring. The conferences included presentations on Department of Human Service's asset investigation & penalties, mental health issues, guardianship ethics and standards using the National Guardianship Standards as the best practices, adult protective services and the long-term care ombudsman program, individual care conferences, and a public guardian roundtable reviewing current issues. Attendance was good at both conferences but we would like to reach more public and family guardians. An October conference in Springfield is being considered.

Included in this bulletin are:

- The results of a guardian survey that was handed out at the spring conferences.
- An article reflecting interest at the federal level to have conversations about adult guardianship and what changes and improvements can be made to improve services.
- A statement document is included that focuses on visitation issues of wards by family/interested others. This is an important issue for guardians and their wards.

Thank you Midland States Bank

We thank Midland States Bank for sponsoring our Springfield conference. The attendees were exposed to the importance of financial advisers for asset management of guardianship estate cases.

Survey Results at Chicago and Springfield Conferences 2016*

	<u>Office of State Guardian</u>	<u>Public Guardian</u>	<u>Professional</u>	<u>Private Attorney</u>
# Completed	22*	5*	4*	1*
>Average case load	114	4.5	3.5	2
>Range of cases	21-200	2-11	1-5	2
>Avg. # Visits/year Each case	5	12	15	4
>Annual Program plans attended	1,150	19	65	10
>Total moved to less Restrictive	130	8	0	0
>Rights Restored	56	2	1	1
>Financial Exploitation	112	10	0	2

*Thirty-two (32) individuals completed survey.

The survey sample is small but it does indicate that OSG's staff high caseload makes it difficult to meet NGA Standards of visiting wards 12 times a year. On a positive note, a number of wards have been moved to a less restrictive setting and a significant number of ward's rights have been restored which indicates conforming to National Standards.

The five public guardians who completed the survey are seeing a significant number of financial exploitation cases. Taking into consideration the number of public guardians in Illinois, financial exploitation appears to be a major issue. A push for criminal action as opposed to civil should be considered at this rate.

A Federal Conversation about Guardianship

By Perry H. Patterson, Illinois Guardianship Association

Kathy Greenlee, Administrator and Assistant Secretary for Aging, U.S. Administration for Community Living (ACL) brought together a number of professionals to discuss exploring efforts and options to improve adult guardianship and address abuses. The format involved not only speakers face to face but also phone listeners who were able to ask questions at the end of the presentations. A summary follows:

- Erica Wood represented the American Bar Association and Commission on Law and Aging. She claims that many states have model statutes with individual state priorities. However, practice is uneven and evaluation of state practices lack data. She advises that uniform revisions, guardianship standards, court standards, and states creating all inclusive supportive decision making are all efforts to improve guardianship services.
- Brenda Uekert with the National Center for State Courts agreed with Erica Wood that guardianship practice is uneven...the law and practice is quite different. Abuse and exploitation will continue unless there is improvement in monitoring in place. She mentions that Minnesota has a well organized system that should be looked at replicating. Minnesota has a system that can predict fraud in financial matters. North Dakota has an education program for family guardians that should be looked at by other states. Regardless of best efforts by many state courts scandals still occur.
- Terry Hammond representing the National Guardianship Network states that national certification of guardians occurs but family guardians are not included for the most part. He sees that no national system of guardianship exists but only "3000 counties doing differently a lot of the time." He advises that the National Guardianship Association (NGA) over the years has drawn up standards that 15 states either adopted or accept as how guardians should fulfill their role as guardian.
- Morgan Whitlatch represented the National Resource Center on Supported Decision Making. She sees a need to identify gaps in services and to pursue supportive decision making. Grants for "Best Practices in Guardianship" should be available. She mentions that Autistic, ACLU, Representative Payee,

and Wing groups all need to develop policy and procedures for the kind of supportive decision making that can reduce/prevent abuse.

- Sharon R. Bock Clerk and Comptroller for Palm Beach County Florida states that individual needs of the older person is essential for her state which has the greatest number of open guardianship cases (50,000) that begs for uniform reports and standards which could be used in the criminal courts and not just civil court action. Another goal is to collect statistics that would aid in taking court action on abusers with all stakeholders accepting this approach. She mentions that advocates and family guardians need to have a hotline available to them to protect the individual needs of the aged.

The questions and answers that followed agreed that pulling together information from such a group is a good start for a conversation about guardianship. Many of the federal agencies are willing to continue working with ACL to coordinate action to improve guardianship services.

"Right to Association Bills" and "Visitation Restriction."

Excerpts from ISBA Visitation Newsletter Article May, 2016, Vol. 62, No.11.

Dan Deneen, McLean County Public Guardian, wrote that "prior to Casey Kasem's death in June, 2014 his current wife and children were feuding. The children were effectively kept away from Casey Kasem for several months. There were allegations of elder abuse, but authorities did not act upon them. Illinois House Bill 4560 was introduced in response to the deprivation of visitation by Kasem's current wife. This well-intentioned but unnecessary and inappropriate bill is a bad remedy for private misconduct. This bill would have prevented guardians from cutting off visitation without court approval. This bill, which is one of several benignly labeled "Right to Association Bills" surfacing around the country, disregards the whole concept of guardianship. Judicious resources should be used to remedy violations of the fiduciary duties, not to supervise guardians and micromanage their decisions."

In May 2016, the National Guardianship Association (NGA) rendered an opinion "that consideration should be afforded to the court appointed guardian to exercise discretion as to when and to who notice be provided." NGA further recommends, "that adoption of nationally recognized standards of practice, modified as needed to comply with state practices, along with education for guardians on ethical

decision-making with a focus on the rights of protected persons under guardianship, will provide the most appropriate and constructive environment for guardians in every state."

Deneen continued in his article that "one of the most common visitation restriction problems is when family and friends will not accept that a ward should not be going home and disturbing the adjustment process at a nursing home or assisted living. The "false hope" given by these persons need to be restricted during the adjustment period. Judges shouldn't be required to enter a visitation restriction during this time unless a guardian determines that a return home is not in the best interest of the person."

In summary, Deneen stated that "a guardian should have discretion as to proper associations. All guardians should understand that communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail is presumed beneficial, and inappropriate withholding of communications, visitation and interactions would be a material factor in any determination as to whether a new guardian should be appointed."

Web Site changes...

During June we will be converting to another web site structure. The changes anticipated will make it easier to access the various pages including the links to other programs and services. Some of the information currently included has become a bit outdated at the very least. We want our web site to have technical information that assists a broad range of members and interested others. We want to be even a better resource for our members but we are aware of the many family and public guardians we do not reach.

We ask that you help us communicate to all guardians, including family, who would benefit from what we provide in *The Guardian Bulletin* and other information that appears on our web site.

Medicaid Application Issues

Ms. Kathy Butcher, Of the Office of Inspector General, addressed the IGA Members and other attendees of the spring program in Springfield on Medicaid Application Issues. The question and answer session at the end was especially

useful. As result, the Illinois Guardianship Association has started a dialogue with the Office of Inspector General on streamlining the application procedure for Public Guardians and the Office of State Guardian. Not for profit guardianship agencies might be brought into the discussion also.

One area of discussion was increased prosecution of financial exploitation uncovered by Public Guardians and the Office of State Guardian. The OIG appeared interested in finding a way to streamline reports from PG's and the OSG on financial exploitation to maximize prosecution, while allowing clients of the PG's and OSG access to funds for their needs.

HB4648 Synopsis

Creates the Revised Uniform Fiduciary Access to Digital Assets Act (2015). Defines terms. Provides procedures and requirements for the access and control by guardians, executors, agents, and other fiduciaries of the digital assets of persons who are deceased, under a legal disability, or subject to the terms of a trust. Adds provisions concerning: applicability; user direction for disclosure of digital assets; terms-of-service agreements; fiduciary duty and authority; custodian compliance and immunity; the Act's relation to federal laws governing electronic signatures; and severability. Makes corresponding changes in the Criminal Code of 2012.

This bill has passed both the House and Senate. After being transmitted to the Governor, he has 60 days to sign. It seems likely to be signed.

Membership

The Illinois Guardianship Association could use a whole lot more members. We need your help.

Could you please invite persons involved in the guardianship process to become members?

A Membership Application can be found on our website at www.illinoisguardianship.org . Click on Membership Form and after completing submit it to the address provided along with a check for payment.