

# The Guardian Bulletin



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A new year is usually greeted with a fresh look at where we stand and where we might be going. As a guardian, or all of us really, we need to come to grips with new laws that have been passed which add to, correct, recommend, and mandate how we pursue advocating for our clients. Monahan Law Group, LLC, located in Chicago, compiled a list which can be reviewed by going to that website. In this edition of the bulletin, a few select new laws will be recognized with brief comments for you to consider.

McHenry Public Guardian Scott Summers will finish his two part article in this issue of the Guardian Bulletin. If you missed his initial article, please refer to the October, 2017 Guardian Bulletin to review why *driving privileges are terminated if one is adjudicated a disabled person*.

There are some major changes in the Community Care Program (CCP) under the Illinois Department on Aging. Managed Care Organizations will become a major player in the CCP. Marsha Nelson, Community Unit Service Coordinator for Shawnee Alliance, explains how the issue of managed care for Medicaid recipients has evolved in Illinois and how it impacts services in several ways.

## Overview of a few new laws for 2018

By Monahan Group LLC with comments in italics by Perry H. Patterson, IGA

- PA 100-0543 (HB 302) Requires insurance companies to periodically check any unclaimed life insurance policies against a state death registry to ensure families are receiving their due life insurance payouts. *The guardian may find out when conducting an inventory that the ward was a beneficiary of a life*

policy but no record can be found. A full time position to fulfill complaint unit duties is included in this public act to adhere to the proposed legislation. The addition of this law would substantially increase the number of policies eligible for review by carriers and thereby eligible for consumer inquiries including guardians.

- PA 100-0483 (HB 2665) creates a guardianship training program for private individual guardians. The program must be free and is limited to counties with fewer than 3 million residents. Allows governor to designate the Office of State Guardian as interim public guardian to fill vacancies in county with population of 500,000 or less. Affective September 8, 2018. The Guardian Bulletin will follow the progress of the act as it moves to implementation. Please refer to our comments posted in the October 2017 Guardian Bulletin.
- For estate planning, the federal annual exclusion gift amount increases to \$15,000 per person in 2018.
- PA 100-0306 (HB 2762) Prohibits hospitals from maintaining a list of individuals that cannot be admitted for treatment but instead gives the hospital the ability to recommend an alternate provider, or arrange access to care services that best meets the needs of an individual patient. If a ward is being turned down for hospital treatment, the guardian will need to work closely with the hospital to find services that "meets the needs."
- PA 100-0305 (HB 1332) provides that any insurer providing coverage for hospital or medical expenses under an individual policy of accident and health insurance shall also provide coverage for treatment of serious mental illness and substance use disorders. Expands the definition of "serious mental illness" to include certain eating disorders. Coverage for treating serious mentally ill will need advocating by guardian. Definition of "serious mental illness and substance abuse" could be a challenge. The guardian will need to pursue the definition of serious mental illness to assure compliance with this new law. The level of mental health services offered will be of interest.
- PA 100-0050 (HB 2383) expands the list of entities where authorized direct care staff can administer medications to people with developmental disabilities. Will require guardian to know qualifications of direct care staff to assure proper administration of medications...especially for behavioral

issues in residential settings. Pursuant to this law the Department of Human Services is to develop a training program for staff to implement this law. This is an area that will warrant careful monitoring.

- \*PA 100-0313 (SB 1748) Requires copies of investigative reports containing unsubstantiated allegation findings to be provided to agency directors. Extends the provisional CILA license cap from 6 months to 24 months. Prohibits any entity that has had its CILA license revoked from reapplying for a license or under a different name. Provides that in the event of a CILA license revocation, DHS has immediate and full access to the recipients served by that agency, as well as their medications, records and personal possessions in order to ensure a timely, safe and smooth transition from the program. Requires CILA's to securely collect and store up-to-date basic identifying information of its residents as well as emergency contact information. This Public Act indicates some issues that guardians and family need to know regarding CILA placements. Recommend going to the state website [www.ilga.gov/legislation](http://www.ilga.gov/legislation). Enter SB1748 and review the act.
- \*PA 100-0293 (HB 223) Amends the Nursing Home Care Act to make it clear that an identification wristlet may be placed on any resident per a physician's order. Additionally, a facility may require a resident with Alzheimer's dementia and a history of wandering to wear an ID wristlet, unless the resident's guardian of agent under POA directs the wristlet be removed. Guardian needs to be aware of pros and cons of determining consent for use of wristlet.



### **Managed Care Organization (MCO)/Medicaid Expansion**

By Marsha Nelson, Community Unit Service Director, Shawnee Alliance

Managed Care by definition is a type of health insurance. Contracts with health care providers and medical facilities to provide care for members at reduced costs are made for all who are on Medicaid. In Illinois, the decision was made to also put the Long Term Services and Support (LTSS) under Managed Care... a choice very few other states considered.

Effective April 1, 2018, the persons not currently enrolled in a MCO plan, who are full Medicaid, will need to choose or be placed in one of the 5 MCO's covering all the state. This includes all persons of any age currently on Medicaid without being in a spend-down case and without Medicare. Persons who are Medicare and full Medicaid also receiving Long Term Services and Supports will have to pick an MCO to cover the cost of their LTSS which can also include medical coverage.

The over 60 population will no longer have their care plan completed or receive the case management services from their Case Coordination Unit (CCU) but will rely on the MCO to provide that service. The MCO staff will be coordinating the care plan, recommending medical care, and the need for long term services. The experience gathered over the last three years reveals that the case managers for the MCO's are not as accessible to assist with the tasks participants have been getting and have felt frustrated at the lack of reaching someone for assistance.

### Community Re-Investment Program (CRP)

Gov. Bruce Rauner has again vetoed HB 1424 (Public Aid-Tech) plans to prevent changes to make in-home services aimed at keeping elderly Illinois residents out of nursing homes. The governor issued a veto message on Friday, saying the bill would reduce the ability "to assess and serve Illinois' elderly and persons with disabilities." However, advocates of the proposal say changing in-home services could result in more expensive nursing home care. The plan would have established eligibility standards which Governor Rauner wants changed into law. Example of change: "proposes to put persons not on Medicaid into a different program for in home services with approximately 50% of available services packages." Roughly 36,000 Illinoisans age 60 and older are enrolled in the Community Care Program without Medicaid.

The CRP program introduced two years ago by the Illinois Department on Aging (IDOA) was to be a cost saving measure to save the state two million dollars. The savings would be accomplished by reducing the money available for care planning to those persons who were not full Medicaid. CRP was put on hold and HB1424 was introduced to protect the current CCP program. Due to the controversy of the decreased funding, a taskforce was formed by the Governor's office to come up with alternate cost saving avenues to reduce spending with the growing aging population. The taskforce made up of various disciplines has given their recommendations to the IDOA to turnover to the Governor's office. The taskforce

found reducing access to adequate service would not in the long run save money but would result in pre-mature nursing home placement at a higher cost. The goal was the commitment of getting all persons on Medicaid who are eligible. The second recommendation would save \$1.2 million along with assuring Medicaid applications are completed and processed would bring federal dollars into the state at the 50% Medicaid waiver match.

**The Community Based Options (CBO)** pilot was not to be a cost savings program but rather an option for persons who do not need the full CCP dollars. A onetime year \$800 can be used to assist the client, an option not available to persons on Medicaid and by definition the poorer of the populations. A person can switch to CCP anytime from CBO and it is all voluntary during the pilot period currently set to end June 2019.

Two Planning and Service Areas will be piloting the CBO program once the states IT system is ready. The funding goes directly to the Area Agency on Aging (AAA) who will become the administrative arm of the program. The AAA must come up with contracts with providers to do the services needed, allocate and monitor the funding, and make sure all bills are paid within a 30 day time frame. The service package dollars for the seniors care plan is at a much reduced rate than CCP. This program, if implemented, creates a large reduction in what dollars can be used for developing a care plan for a Medicaid vs. non-Medicaid senior. If a non-Medicaid senior cannot get services to sustain them in the community, the place for care becomes a nursing home at a much higher cost to the state tax payer.

## **Guardians, Wards and Automobiles: What Needs to be Done?**

By Scott Summers, Public Guardian, McHenry County, IGA Vice-President

In the last newsletter, we established that pursuant to Illinois Secretary of State Regulations, a ward's driver's license is to be canceled upon adjudication. See <http://www.ilga.gov/commission/jcar/admincode/092/092010300000160R.html> This month, let's examine three issues: storing a ward's car, selling a ward's car, and reinstating a ward's ability to drive.

**INITIAL STEPS** First, a short overview: an automobile should be listed in the statutorily-required guardianship inventory as an item of personal property. If

subsequently sold, the amount received should be deposited into an estate bank account and reported as income in an accounting. Immediately upon adjudication, disable the ward's vehicle (e.g., remove the battery). In order to be extra safe, relocating the vehicle to an undisclosed location is best.

STORING A CAR If storage of a vehicle is contemplated, one can save considerable money by canceling the personal liability and medical provisions of the automobile policy. Be certain to retain the comprehensive coverage that protects against stationary risks such as theft, fire, wind, hail, and flooding. Do not plan on anything other than short-term storage: either sell the vehicle, or get the ward's driving privileges restored. Know that insurance companies may be reticent to provide comp coverage for more than a few months.

SELLING A CAR A car should be thoroughly cleaned inside and out before offering it for sale. Exercise due diligence. Try to determine the vehicle's repair history. Prudence dictates that if the vehicle is a newer model of value, authorization of court to sell it should be sought in advance. Consult online car pricing websites such as Kelly's Blue Book ([www.kbb.com](http://www.kbb.com)) or Edmunds ([www.Edmunds.com](http://www.Edmunds.com)). The sale must be for market value. Have a petition drafted indicating a range of the values derived from the pricing services. If an offer or bid is received that comports with indicated worth, the petition should ask for judicial permission to sell.

If the automobile is an older model, then authorization to sell may not really be necessary. Note that 735 ILCS 5/12-1001(c) establishes as exempt personal property "the debtor's interest, not to exceed \$2,400 in value, in any one motor vehicle."

Sale directly to a dealer or offering the vehicle on consignment through a dealer is highly practical. By using either approach, the guardian need not go to the considerable effort and expense of advertising the automobile and then showing it to multiple parties. In the event you do choose to sell a vehicle to a private party, have it inspected by a mechanic. Does the existing insurance cover driving by an interested buyer in a "for sale" situation?

Be certain to have the title in hand prior to offering the vehicle for sale. In the event that title cannot be located, the Secretary of State can, for a fee, provide a duplicate or replacement title.

In the event that a car loan remains outstanding, another issue presents: the lender may be holding the title as collateral. In order to obtain title, the loan probably will have to be paid off first. Ask for a payoff letter. Use monies on hand in the guardianship estate to retire the loan in full. Present the lender with a certified copy of your Letters of Office, and ask to have the new title captioned as "Estate of John Q. Smith, a disabled person."

Never sell on contract. If a buyer defaults after a payment or two, the guardian will be faced with attempting to repossess the vehicle or, worse, end up writing off the car as a loss if the buyer cannot be readily found.

Once a sale is accomplished - preferably by way of certified funds - the guardian and the buyer need to go together to a Secretary of State facility in order to pay applicable taxes and transfer title. Identify yourself as guardian, and present (a) the current title to the ward's vehicle and (b) a recently certified copy of your letters of office. A certified copy of the court order also may be helpful.

As a condition of sale, have the dealer or private buyer sign a separate bill of sale identifying the car by year, model, color, and vehicle identification number (VIN). Specifically state that the vehicle is being sold in "as-is" condition and entirely without warranties of any kind, either expressed or implied.

Upon sale, cancel license plates and other registrations such as municipal stickers. Contact the insurance agency and ask that the automobile coverage be "short-rated", as described above - that is, obtain a refund for the time of coverage previously paid for but not used.

## **REINSTATING A WARD'S ABILITY TO DRIVE**

If, pursuant to 755 ILCS 5/11a-20a, an order of guardianship is modified to permit a ward to drive, then the guardian has several important things to consider.

1. It is utterly essential that you and your ward have a deeply trusting relationship. Without it - nothing about her/his driving is going to work.

2. With a certified copy of a court order of modification in hand, along with your letters of office, contact the Secretary of State and request that a new driver's license is issued to the ward in accordance with regulations. (See: <http://www.ilga.gov/commission/jcar/admincode/092/092010300000160R.html>). Although the author believes that it is not required by statute, also obtain and submit a completed medical report on the form prescribed by the Secretary. (See: [http://www.cyberdriveillinois.com/publications/pdf\\_publications/dsd\\_dc163.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_dc163.pdf))
3. Bring license plates and other registrations up to date, as required. Get the vehicle reinsured. Tender the Secretary of State's reinstatement and your Letters of Office to an insurance agent. Bring the ward (and her/his new license) along. *Do not add the ward and his/her vehicle to your personal insurance. Try to title the insurance in the name of the estate. Obtain liability, medical and comprehensive coverages and deductibles in amounts consistent with the car's value and the ward's resources. Consider adding uninsured and underinsured coverages. Add yourself as (a) an additional insured and (b) an authorized operator. Have your own set of keys. Be prepared to be exceedingly patient: procurement of auto insurance under these circumstances almost certainly will be entirely unknown to agents and companies alike. You may also wish to have your own professional liability/errors and omissions insurance endorsed for this circumstance.*
4. Have the car thoroughly inspected by a competent mechanic. Make all necessary repairs, and charge those repairs to the ward's estate.
5. Give the ward a prepaid gasoline card that is drawn on estate funds. Provide the ward with proofs of insurance: cards for both the wallet and the glove box. (You should carry a card, too.)
6. Inform local law enforcement agencies about what's going on. Provide them with your contact information.

To conclude: when it comes to wards and driving, consider all of the above advice. However, there is absolutely no substitute for your own good instincts and your own good judgment and your own good common sense. When in doubt - don't!