

# **STATE ADULT GUARDIANSHIP LEGISLATION: DIRECTIONS OF REFORM – 2011**

## **Commission on Law and Aging American Bar Association**

### **Introduction**

In 2011, at least 27 states passed a total of 39 adult guardianship bills – as compared with 21 states and 29 bills passed in 2010. Nebraska, Arizona and Colorado passed substantial bills with a focus on guardian responsibilities, oversight and compensation. Texas enacted a host of provisions addressing multiple aspects of its guardianship system. Ten states enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), bringing the total number of states with enactments to 30.

Overall, the clearest theme to emerge from the 2011 enactments was guardian accountability. The message was that guardians need to be qualified up front in background checks, they need to understand their duties and submit timely reports to court, their fees need to be reasonable and well documented, and provisions for their removal must be clear.

The 2011 legislative spotlight on guardian accountability is set against a backdrop of events that highlighted instances of guardian malfeasance and emphasized the need for guardian standards of practice. In December 2010, a Government Accountability Office report profiled egregious cases of guardian misconduct over the past twenty years (*Guardianships: Cases of Financial Exploitation, Neglect and Abuse of Seniors*, GAO 10-1046); and in August 2011 a GAO report noted continuing need for enhanced monitoring, guardian screening and coordination with federal representation payment programs (*Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, GAO 11-678).

In October 2011, the ten major national organizations comprising the National Guardianship Network, as well as a number of co-sponsoring organizations, convened the *Third National Guardianship Summit: Standards of Excellence*, resulting in 43 standards for guardian performance and decision-making; 21 recommendations for action by courts, legislators and others; and six implementation steps. In November, 2011, Sen. Amy Klobuchar of Minnesota introduced S.1744, the Guardian Accountability and Senior Protection Act, to provide pilot funding for states to assess and improve guardianship systems; conduct background checks of prospective guardians and conservators; and promote electronic filing of conservator accountings.

An earlier version of the 2011 legislative summary was included in the **National Guardianship Association's 2011 Legal & Legislative Review** (Fields, S., McLeod, R., Wank, J. & Wood, E.), October 2011. Five bills have been added. The organizational structure of the 2011 summary is based generally on that of the *NGA Review*, differing somewhat from the approach in previous years.

Catherine Seal, Mary Buford Wilson, Steve Fields, and Diana Clarke contributed to portions of this summary. If you know of additional state adult guardianship legislation enacted in 2011 but not described below, please contact Erica Wood, ABA Commission on Law and Aging, [erica.wood@americanbar.org](mailto:erica.wood@americanbar.org), 202-662-8693.

## **I. Pre-Adjudication Issues**

Over the past two decades, legislative changes have sought to bolster safeguards in proceedings for the appointment of a guardian or conservator. In 2011, Illinois and Indiana addressed procedures in temporary guardianship; and Texas made changes in requirements for notice, presence and representation by counsel. In addition, Missouri strengthened petition information; and Nebraska provided for referral of contested cases to mediation.

**1. Illinois and Indiana – Temporary Guardianship.** Many states have sought to tighten requirements concerning temporary guardianship. (For a chart on state statutory procedural safeguards in temporary guardianship, see [http://www.americanbar.org/content/dam/aba/migrated/aging/legislativeupdates/pdfs/angela\\_emerg\\_gd\\_chart\\_final\\_2\\_09.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/legislativeupdates/pdfs/angela_emerg_gd_chart_final_2_09.authcheckdam.pdf).)

- **Illinois – SB 2015.** New provisions in Illinois concern when the court may grant an extension of the time period for a 60-day temporary guardianship. If there has not been an adjudication of “disability” (incapacity), the court may grant an extension pending the disposition of a petition for guardianship as long as it is in the best interest of the alleged incapacitated person and so as to protect the person from abuse or other harm. The extension can be for no more than 120 days from when the temporary guardian was appointed. The bill sets out circumstances in which an extension may be granted if there has been an adjudication.
- **Indiana – HB 1055.** This Indiana measure, which adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act as indicated below, also makes amendments in the appointment of a temporary guardian. It specifies that the petitioner for temporary guardianship must provide advance notice and a copy of the petition to each person required to receive notice before the court considers and acts

on the petition – but if this was not possible, such notice must be given when the court enters an order scheduling a hearing or when the court enters an order appointing a temporary guardian, whichever is earlier. Moreover, the bill states that this is in addition to court rules requiring the petitioner to make a specific showing of efforts to provide advance notice or the reasons why advance notice cannot be given. Additionally, the bill changes the time period for a temporary guardianship from “not to exceed 60 days” to “not to exceed 90 days.”

## **2. Texas – Procedural Protections**

- Timely written notice of a guardianship petition and hearing is fundamental to allowing an alleged incapacitated person and/or other interested parties to respond. In SB 220, Texas requires that the posted notice and personal notice served on the alleged incapacitated individual include a clear and conspicuous statement about an interested person’s right to request notification by of all pleadings filed in the case. The bill also clarifies that notice is to go to all relatives within the third degree of consanguinity (replacing “next of kin”).
- Despite the passage in many states of provisions requiring the alleged incapacitated person to be present at the hearing unless it would be harmful ([http://www.americanbar.org/content/dam/aba/uncategorized/2011/chart\\_conduct\\_08\\_10.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/2011/chart_conduct_08_10.authcheckdam.pdf) ), presence is frequently waived. Following the passage of the Americans with Disabilities Act in 1990, some states provided that if the person could not come to the court, the court should come to the person – that is, the hearing may or must be held in a location convenient and accessible to the individual. Texas SB 1196 allows the court to hold guardianship hearings at any suitable location in the county, provided it is not likely to have a harmful effect on the individual, and provided that the person or attorney may request that the hearing be held at the courthouse.
- SB 220 also addresses the alleged incapacitated person’s representation by counsel, providing that a person who has capacity to contract may retain an attorney for representation in the proceeding, and also may hire an attorney after appointment, during the guardianship, instead of being represented by an attorney ad litem selected by the court. The attorney must be certified as a court-appointed attorney in guardianship proceedings by the State Bar of Texas. If the person retains such an attorney, the court may remove the required attorney ad litem.

- Texas SB 1196 states that the attorney ad litem appointment continues after the court appoints a temporary guardian unless the court terminates the appointment.
- SB 1196 also clarifies that a guardianship proceeding can be filed in probate court of a person over which the family court has continuing jurisdiction of a suit affecting the parent-child relationship when the individual was a child.

**3. Petition Information.** Full information in a petition will enable the court and the parties to best respond, and will assist the court in oversight if a guardian is appointed.

- Missouri SB 213 and HB 111 (which also enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, as noted in Sec. II below) modify required information to include: the three most recent addresses at which the incapacitated person lived in the three years before the filing of the petition; the location and value of any real property owned by the person outside the state; the name and address of the person's closest known relatives, the name of any adults living with the person, in some situations the name and address of the person's siblings and siblings' children; and the name and address of any agent under a power of attorney and any trustee of a trust for which the person is a beneficiary, and the purpose of the power of attorney or trust.
- Montana HB 518 requires a petition for conservatorship to affirm that no mental health care advance directive exists or, if a directive exists, the directive must be attached to the petition.

**4. Nebraska – Mediation Referral.** The 2001 “Wingspan” Second National Guardianship Conference recommendations urged that “the use of mediation for conflict resolution [in guardianship proceedings] and as a pre-filing strategy alternative be increased.” The Center for Social Gerontology and others have pioneered in the use of mediation to address family and other disputes at the time of a petition concerning less restrictive alternatives, who will serve as guardian, and the elements of a guardianship plan (see <http://www.tcsg.org/med.htm> ). The Association for Conflict Resolution's Section on Elder Decision-making and Conflict Resolution has proposed “Mediation Training Objectives for Adult Guardianship Cases (see <http://acrellder.org/wp-content/uploads/2010/08/Core-training-objectives-For-comment-until-March-2011.pdf> ).

In LB 157, Nebraska allows the court to refer a contested guardianship or conservatorship proceeding to mediation or another form of alternative dispute resolution. The case must return to court no longer than 90 days after the date of the order making the referral. Any agreement that results from the mediation must be voluntarily entered into by the parties. (Also see Arizona SB 1499 below under Post-Appointment issues, which specifies that the court may require arbitration or another form of alternative dispute resolution after initial appointment of a fiduciary.)

## **II. Multi-Jurisdictional Issues**

**1. Drive Toward Uniform Guardianship Jurisdiction – Nine More States Enact UAGPPJA.** In our increasingly mobile society, adult guardianships often involve more than one state, raising complex jurisdictional issues. For example, many older people own property in different states. Family members may be scattered across the country. Frail, at-risk individuals may need to be moved for medical or financial reasons. Thus, judges, guardians, and lawyers frequently are faced with problems about which state should have initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship in one state will be recognized in another.

Such jurisdictional quandaries can take up vast amounts of time for courts and lawyers, cause cumbersome delays and financial burdens for family members, and exacerbate family conflict -- aggravating sibling rivalry as each side must hire lawyers to battle over which state will hear a case and where a final order will be lodged. Moreover, lack of clear jurisdictional guideposts can facilitate “granny snatching” and other abusive actions. See Fact Sheet from the Alzheimer’s Association at: [http://www.alz.org/national/documents/Adult\\_Guardianship\\_Factsheet.pdf](http://www.alz.org/national/documents/Adult_Guardianship_Factsheet.pdf).

To address these challenging problems, the Uniform Law Commission in 2007 approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas where more than one state is involved, and to enhance communication between courts in different states. Key features include:

- Determination of initial jurisdiction. The Act provides procedures to resolve controversies concerning initial guardianship jurisdiction by designating one state – and one state only – as the proper forum. It sets out a schema for determining a person’s “home state” and if none then a “significant jurisdiction state” in which a proceeding should be heard.
- Transfer. The Act sets out a two-state procedure specifies a procedure for transferring a guardianship or conservatorship to another state, helping to

reduce expenses and save time while protecting persons and their property from potential abuse.

- Recognition and enforcement of a guardianship or protective proceeding order. The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register these orders in other states.
- Communication and cooperation. The Act permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.
- Emergency situations and other special cases. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for that property.

As it is jurisdictional in nature, the UAGPPJA cannot work as intended -- providing uniformity and reducing conflict -- unless all or most states adopt it. See “Why States Should Adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,” [http://www.nccusl.org/Update/uniformact\\_why/uniformacts-why-agppja.asp](http://www.nccusl.org/Update/uniformact_why/uniformacts-why-agppja.asp). In 2008, five states (Alaska, Colorado, Delaware, Utah and the District of Columbia) quickly adopted the Act. In 2009, eight additional states enacted the UAGPPJA (Illinois, Minnesota, Montana, Nevada, North Dakota, Oregon, Washington and West Virginia). In 2010, an additional seven states adopted the Act (Alabama, Arizona, Iowa, Maryland, Oklahoma, South Carolina, Tennessee). In 2011, another ten states enacted the UAGPPJA, as listed below. (For an updated map showing UAGPPJA enactments, see: [http://www.nccusl.org/Act.aspx?title=Adult\\_Guardianship\\_and\\_Protective\\_Proceedings\\_Jurisdiction\\_Act](http://www.nccusl.org/Act.aspx?title=Adult_Guardianship_and_Protective_Proceedings_Jurisdiction_Act). For additional resources on the UAGPPJA see ABA Commission on Law and Aging, <http://new.abanet.org/aging/Pages/guardianshipjurisdiction.aspx> ).

- Arkansas – SB 4
- Idaho – SB 1056
- Indiana – HB 1055
- Kentucky – HB 164
- Missouri – SB 213
- Nebraska – LB 157
- New Mexico – SB 146
- South Dakota – HB 1062
- Vermont – HB 264
- Virginia – SB 750

**2. Texas Jurisdictional Bills.** Although Texas has not passed the UAGPPJA, it enacted a number of jurisdictional measures.

- Unjustifiable Conduct. In addition to the nine states passing the UAGPPJA, Texas enacted one of the significant UAGPPJA provisions. The Uniform Act's Section 207 enables a court to refuse to exercise jurisdiction if such jurisdiction was made possible through "unjustifiable conduct" – and the Commentary notes that "unauthorized removal of an adult to another state" is a common example of such conduct. Additionally, the section authorizes the court to assess fees and expenses against the party that engaged in unjustifiable conduct. In other words, the section allows judges to refuse to take jurisdiction when "granny snatching" is involved, and to sanction such action. This is one of the important ways in which the Act targets multi-state elder and adult abuse (see "Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, [http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011\\_aging\\_ea\\_nine\\_ways.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_ea_nine_ways.authcheckdam.pdf) . Texas SB 1 adopts this Uniform Act section.
- Intrastate Transfers. Another Texas bill, SB 1, replaces the word "removal" with the word "transfer" in code sections relating to transfers of guardianships within the state from one county to another. It also requires a new bond payable to the court to which the case is transferred. Within 90 days of receiving such a transferred case, the court must hold a hearing to consider modifying the rights, duties and powers of the guardian.
- Interstate Transfers. SB 1 also addresses guardianships transferred into a Texas court from another state. It requires a certified copy for the Texas court of all papers filed in the foreign court, and provides that the Texas court must hold a hearing to consider modifying the administrative procedures of the proposed transferred guardianship to conform to local or Texas law.

### **III. Choice of Guardian**

**1. Guardian Background Checks – Nebraska, Nevada, Arkansas.** In 2010, the U.S. Government Accountability Office, in its report on *Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors*, found that "State courts failed to adequately screen potential guardians. In 6 of our 20 case studies, state courts failed to adequately review the criminal and financial backgrounds of prospective guardians,

leading to the appointment of individuals or organizations whose past should have raised questions about their suitability to care for vulnerable seniors” (p. 8). An increasing number of states have begun to enact criminal and financial background checks for prospective guardians. In 2011, four states passed such measures.

- Arkansas – HB 1279 provides that the Department of Human Services may request a fingerprint-based background check of the prospective guardian performed by the FBI; may request a criminal records check with the State Police; and may check the Adult and Long-Term Care Facility Resident Maltreatment Central Registry for previous findings of adult mistreatment (or its equivalent in the prospective guardian’s state of residence). Additionally, the Department may perform an evaluation of the home or proposed dwelling.
- Kentucky – Kentucky’s new elder abuse legislation in HB 52 provides that any person convicted of a felony shall be disqualified from appointment and service as a guardian, limited guardian, conservator, and limited conservator. Any interested person or entity has standing to contest the appointment or continued service for such a person.
- Nebraska – LB 157. Under Nebraska’s new guardianship law, everyone seeking to be appointed as a guardian or conservator must provide a criminal background check, adult abuse registry check, a child abuse registry check, sexual abuse registry check and a credit check to the Court ten days prior to the appointment hearing. The court may waive this requirement. Emergency temporary guardians may still be appointed without the security check in place.
- Nevada – SB 229 concerns criminal history records information about a prospective guardian. A private professional guardian must undergo a background investigation at his or her own expense and to present the results of the investigation to the court upon request. The investigation requires the submission of a complete set of fingerprints to the Central Repository for Nevada Records of Criminal History and to the FBI for their reports.

**2. Standby Guardians – Arizona & Indiana.** The Uniform Guardianship and Protective Proceedings Act and a growing number of states provide for the designation of a “standby guardian” selected by a parent of an adult child with intellectual disabilities, a spouse or other caretaker/guardian, to become effective on the death or incapacity of the appointing person.



- Arizona – SB 1081 allows for such a standby guardian for an adult. It permits the spouse or parent of an adult with diminished capacity to nominate a guardian to serve after the spouse/parent’s death or incapacity. With notice to the alleged incapacitated person, and if there is no objection, the appointment is automatic upon the death or incapacity, or upon a determination by a physician that the appointing parent or spouse is no longer able to care for the individual. The standby guardian must file a notice of acceptance of appointment and give notice of the acceptance – including the right to file written objections -- to listed parties, and the court must confirm the appointment. Appointment of a standby guardian is not a determination of incapacity. A petitioner may initiate the procedure for a minor who is 17 ½ years of age, to become effective on the minor’s 18<sup>th</sup> birthday.
- Indiana -- HB 1055 also sets out a procedure for appointment of a standby guardian – in this case by a currently serving guardian. The guardian of a protected person may designate a standby guardian, effective upon the current guardian’s death or incapacity, by making a written declaration naming the person designated to serve. Such a standby guardianship terminates 90 days after it becomes effective unless the standby guardian files a petition for guardianship during that period.

**3. Arizona – Petition of Incapacitated Person for Substitution.** On the theory that an incapacitated person should have a role in selection of guardian (and need for guardianship), SB 1499 provides that the individual may petition for termination or substitution of the guardian or conservator at any time. “The court does not need to find that the guardian [or conservator] acted inappropriately to find that the substitution is in the ward’s best interest. . . The court may appoint an individual nominated by the ward if the ward is at least fourteen years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.” (See also “Rights of Wards” below.) A person who knowingly interferes with the transmission of this request for substitution may be found in contempt of court. An interested person, “*other than the guardian or ward*” may not file a petition to substitute a guardian [or conservator] earlier than one year after the order adjudicating incapacity unless the court finds the guardian may endanger the individual.

**4. Other Arizona Provisions on Choice/Qualifications of Guardian.** Arizona SB 1499 makes additional revisions concerning the court’s selection of a guardian:

- To avoid conflict or the appearance of conflict, a court-appointed investigator and persons or entities closely related to the investigator may not serve as fiduciary, attorney or professional in the same case.

- In listing the hierarchy of persons the court may consider for appointment as guardian, SB 1499 adds an individual nominated in the alleged incapacitated person's health care power of attorney, as well as durable power of attorney. The last two choices, coming at the end of the list, are first a licensed fiduciary other than a public fiduciary, and finally a licensed public fiduciary as last resort.
- The bill specifies "good cause" for the court to pass over a person who has priority and appoint a person with lower or no priority. Such "good cause" includes instances in which a durable or health care power of attorney is invalid; honoring the durable or health care power of attorney would not be in the person's best interest; or the estimated cost of the fiduciary would adversely affect the ability of the estate to provide for the person's expenses. The bill also requires the court to make a specific finding as to why someone with priority was passed over, upon request by such a person within ten days of the order.
- The court must make specific findings on the record concerning the person's ability to manage property and that the property will be wasted or dissipated without a conservator.
- Upon appointment as a guardian or conservator, a licensed fiduciary must provide notice to the protected person or anyone entitled to notice that the fiduciary is licensed and regulated by the Supreme Court.

**5. Additional Guardian Qualification Enactments.** Three states passed additional measures specifying requirements for guardians:

- Arkansas – HB 1628. The court may not appoint person or institution as permanent guardian of person or estate of an adult in custody of the Department of Human Services unless the Department has evaluated the prospective guardian according to state law and Department policy.
- Nevada -- SB 229. New Nevada provisions require every guardian to file a verified acknowledgement of the duties and responsibilities of a guardian before the letters of guardianship are issued. A public guardian or private professional guardian may file a general acknowledgement covering all of their cases. The acknowledgement includes a summary of the duties, functions and responsibilities of a guardian; a summary of the statutes, regulations, rules and standards governing the duties of a guardian; a list

of actions concerning the incapacitated person that require the prior approval of the court; and a statement of the need for accurate record keeping and the filing of annual reports.

- Washington – SHB 1053. This measure seeks to implement recommendations from the Washington State Bar Association Elder Law Section’s report of a Guardianship Task Force. It provides that guardians who are not state-certified professional guardians and not financial institutions must complete any standardized training video or web cast for lay guardians made available by the courts unless the court grants a waiver because the guardian already has the knowledge and experience to serve. The petition must include evidence of completion of the required training, or the court can require it to be completed later. The court may waive the requirement if there is evidence the guardian already has the knowledge and experience to serve.
- West Virginia – HB 2885. West Virginia law provides that a guardian appointed by the court may not be affiliated with any public entity providing services to the individual needing protection. HB 2885 makes an exception for persons employed in a Medicaid waiver program providing behavioral health services to the individual and who are *related* to the person by blood, marriage or adoption.

#### **IV. Guardians’ Actions**

**1. Guardian Authority to Make Health Care Decisions.** Perhaps one of the most controversial or “hottest” topics in the guardianship arena is the authority of guardians to make health care decisions for incapacitated persons. Which decisions can guardians make independently and which require approval by the court? What about end of life decisions? What standards are guardians to use? An especially difficult subset of health care decisions concerns mental health treatment, including authority to admit an individual to a mental health facility. In 2011, three pieces of legislation in two states addressed the mental health authority of guardians:

- Arizona – HB 2211. This amendment clarifies and modifies a guardian’s authority concerning inpatient mental health treatment. Existing Arizona law has allowed the court to grant authority to a guardian to consent to inpatient mental health care and treatment in a licensed mental health facility. The court may grant such authority on clear and convincing evidence supported by the opinion of a mental health expert, and with notice to the attorney of the incapacitated person. The new measure addresses implementation of a guardian’s authority under this provision. It

specifies that a guardian who is granted mental health treatment authority and believes the person is in need of evaluation or treatment may apply for admission of the person to a mental health facility: (1) by presenting the mental health facility with a certified copy of the letters of guardianship; and (2) if prior to admission a physician conducts an investigation and an interview, and makes a determination that the person needs such evaluation or treatment, and documents it in the medical chart. If after admission the incapacitated person refuses treatment or requests discharge and the treating physician believes that further treatment is necessary, the facility may rely on the consent of the guardian.

- Arizona – HB 2402 streamlines appointment of a guardian and/or conservator for a person who is the subject of a civil commitment proceeding. If the court finds that an individual meets the criteria for court-ordered mental health treatment and also that there is “reasonable cause to believe” that the person needs a guardian or conservator, the court may order an investigation, appoint an attorney to represent the person, schedule a hearing, and may appoint an emergency temporary guardian or conservator or both, not to exceed 30 days.
- Texas – SB 1196. This amendment allows a guardian of a person younger than 18 (formerly 16) years of age to voluntarily admit the person to a public or private inpatient psychiatric facility for care and treatment. Note that a guardian may not consent to such a voluntary admission for an adult incapacitated person.

**2. Authority of Texas Department of Aging and Disability Services.** In Texas the Department of Aging and Disability Services serves as guardian of adults, either directly or through contracts with local guardianship programs, to individuals referred by adult protective services. Texas SB 220 clarifies several key aspects of Department authority to act:

- Use of Volunteers. The revision allows the Department to use non-certified volunteers to assist with guardianship services. The bill amends the Human Resources Code to encourage the use of volunteers in guardianship cases and to identify tasks for volunteers such as life enrichment activities, companionship, and transportation services. Volunteers may not provide services that would require them to be certified under the state guardianship certification system.
- Release of Confidential Information. The bill addresses release of confidential information by the Department. It allows the Department, on

request, to release such information on persons assessed for guardianship or on former wards to the individual, the individual's guardian, or the executor or administrator of the person's estate. The Department must edit the information to protect adult protective service informants. The Department's release does not waive the confidentiality of the information.

- Relationship of Department to APS. Additionally, the bill specifies that the Department and APS (adult protective services) must identify and implement modifications to investigations of abuse, neglect and exploitation to prevent any unnecessary duplication of efforts.

**3. Texas – Creation of Pooled Trust Account.** SB 1196 specifies that a guardian, an applicant for guardianship, an attorney ad litem, guardian ad litem or individual under guardianship may apply to the court to create a pooled trust subaccount for an alleged incapacitated person or an individual under guardianship. Another amendment is to require that a guardianship of the estate may be closed when all assets of the estate have been transferred to a pooled trust subaccount by court order.

**4. Nebraska – Guardian Residential Decisions.** A guardian's determination of where a person with diminished capacity will live goes to the core of quality of life (see Karp & Wood, upcoming, \_\_ *Utah L. Rev.* \_\_ (Spring 2012)). State guardianship laws grant guardians various degrees of decision-making authority over residential decisions. The Uniform Guardianship and Protective Proceedings Act provides that the guardian may "establish the ward's place of custodial dwelling, but may only establish or move the ward's place of dwelling outside this State upon express authorization of the court" (Sec. 315(a)(2)). Eight states have adopted very similar provisions. In LB 157, Nebraska now joins these states, specifying that "a guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission."

## **V. Fees for Guardians and Attorneys**

The *NGA Standards* concerning guardian fees focus on reasonableness, the aim of conserving the estate, and the requirement that fees be directly related to the fiduciary duties at hand (Standard #22). Despite this practice standard, guardian fee disputes are frequent and press reports have highlighted the charging of excessive fees that drain the estate. In 2011, two states (Arizona and Colorado) made reform of guardian compensation a high priority and enacted substantial measures, while two others (Nevada and Texas) touched on a specific fee-related issue.

**1. Arizona – SB 1499.** In April 2010 the Arizona Chief Justice created a Committee on Improving Judicial Oversight and Processing of Probate Matters, which

issued an interim report in October, spurring enactment of key provisions in SB 1499. The Committee issued a final report to the Arizona Judicial Council in June 2011, <http://www.azcourts.gov/Portals/84/pdf/FinalReport.pdf> .

One of the Committee's three working groups targeted fiduciary fees (as well as guardian ad litem fees and attorney fees). The group's fee recommendations became the basis for several important statutory changes in SB 1499:

- Basis for Compensation. The Committee's report found that fees are "usually reviewed and approved by the court after expenditures have occurred; and that there was no mechanism to pre-approve a maximum fee, hourly rate, or set a range of permissible fees." Thus in some cases there could be significant or excessive fees taken from an estate before any review by a judicial officer. Moreover, there were no statewide guidelines for review and approval of fee petitions. The report recommended statewide fee guidelines for attorneys and fiduciaries paid from the estate.

Accordingly, SB 1499 requires that guardians, conservators, attorneys or guardians ad litem who seeks payment of fees from the estate must give written notice of the basis for compensation when they first appear in a case, and when they change their rates. The legislation defines "basis for compensation" as "hourly rate, a fixed fee or a contingency fee agreement and reimbursable costs."

Compensation sought must be reasonable and necessary considering a range of factors listed in the statute including: whether the services provided any benefit or attempted to advance the best interest of the individual; the usual and customary fees charged in the relevant professional community; the size and composition of the estate; the extent that services were provided in a reasonable, efficient and cost-effective manner; whether there was appropriate and prudent delegation to others, and any other factors bearing on reasonableness. This follows the Committee report's rejection of a rigid fee guidelines in favor of reasonable fees based on key factors tailored to the circumstances of each case – that is, the Committee favored "general compensation factors but not . . . predetermined rate schedules or fees as a percentage of an estate."

- Deadline for Claiming Fees. The Committee report found that there was no time limitation for fee requests to the estate by attorneys and guardians ad litem, and in practice they were sometimes submitted "years after services were performed." As a result, SB 1499 requires attorneys and guardians ad litem who intend to be paid by the estate to submit a claim to

the fiduciary within four months of rendering the services, incurring the cost or being appointed, whichever is later, unless another deadline is set by the court.

- Maximizing Prudent Management of Costs. The Committee report recommended that “a holistic approach to prudent management of costs” would best prevent or reduce costly and antagonistic fee disputes that erode the estate. Consequently, SB 1499 adopted a series of measures to engender trust and moot the causes of fee disputes, including:
  - Requiring persons paid from the estate to prudently manage costs, preserve the assets for the benefit of the individual, and avoid costs that exceed the probable benefits to the person;
  - Authoring the court to summarily deny repetitive motions;
  - Authorizing the substitution of a guardian or conservator even if there is no wrongdoing, if it is in the best interest of the individual;
  - Prohibiting investigators or those closely related from serving as fiduciary, attorney or professional in the same case; and
  - Permitting parties entitled to notice of a conservator’s annual account to request in writing that not more than once every 30 days the conservator allow the party to view the estate’s financial records, provide the party with copies of relevant documents, or provide a report of receipts and disbursements.
- Remedy for Unreasonable or Abusive Conduct. SB 1499 states that if the court finds that professional fees or expenses have been incurred as a result of unreasonable conduct, the court may order the person who engaged in such conduct to pay the individual for some or all of the fees.

While SB 1499 as introduced included a provision requiring the petitioner for a guardianship or conservatorship to submit with the petition a good faith estimate of monthly costs – to forestall “sticker shock” by disclosing anticipated expenses, as the Committee report suggested – this provision was removed prior to final passage of the bill, as the Supreme Court expressed a preference for placing it in court rules.

**2. Colorado – SB 11-083.** In 2008, the Trust and Estate Section of the Colorado Bar Association formed a Subcommittee to critically review all compensation and cost statutes in the state’s probate code. The Subcommittee included 31 members including

judges, representatives from the state's largest corporate fiduciaries, lawyers who specialize in elder law and protective proceedings, estate planners, estate and trust administrators, and probate trial lawyers. The initiative for the Subcommittee review resulted from concerns expressed by a recent audit of Colorado protective proceedings, as well as from judges and from probate lawyers dealing with compensation issues in their day-to-day practice. The Subcommittee identified a number of needs requiring attention, including but not limited to:

- Consolidate compensation statutes into one area of the code;
- Clarify who is statutorily entitled to recover reasonable fees from an estate in probate matters;
- Create a better balance between the court's authority to determine reasonable fees and the entitlement of parties to receive such fees;
- Identify specific factors to be considered when determining a reasonable fee in probate matters;
- Streamline procedure for resolving fee dispute; provide disincentive for fee disputes; and Clarify that, regardless of the method used to charge a fee, "reasonableness" is the standard of review.

The recommendations of the Subcommittee became HB 1105 in 2010. After addressing several issues including termination of protective proceedings, a modified bill was re-introduced and passed in 2011 as SB 11-083. The new legislation concerns compensation for fiduciaries including guardians and conservators. It states the court's inherent authority, discretion and responsibility to determine the *reasonableness* of fiduciary compensation, with the following major provisions:

- A fiduciary who defends or prosecutes a proceeding on good faith, whether successful or not, is entitled to compensation from the estate.
- The bill lists factors to be considered in determining the reasonableness of compensation:
  - No presumption that any method of charging a fee is per se unreasonable.
  - Time and labor required
  - Novelty and difficulty of tasks
  - Skill required
  - Compensation customarily charged in community for similar services
  - Nature and size of estate
  - Liquidity of estate
  - Results and benefits obtained



- Whether litigation was involved
  - Life expectancy and needs of the individual
  - Time limitation imposed by circumstances
  - Adequacy of detailed billing statement
  - Expertise, reputation and ability, and any prior experience of the fiduciary; and
  - Cost effectiveness of the course of action taken by the fiduciary.
- Additionally, the new measure addresses the resolution of fee disputes. The bill sets out a court procedure for fee dispute resolution, and further provides that:
  - If any proceeding was brought in bad faith, the court may assess fees.
  - A fiduciary who was unsuccessful in defending the reasonableness of compensation is not entitled to recover fees or costs of defense.
  - A fiduciary who was unsuccessful in defending a breach of fiduciary duty is not entitled to recover fees.
- Finally, the bill addresses the death of an individual under guardianship or conservatorship, providing that all fees, costs and expenses of administration including any unpaid fiduciary fees and costs, as well as those of counsel, may be submitted to the court for approval in conjunction with the termination of the guardianship or conservatorship.

### **3. Additional Fee Legislation**

- Nevada – SB 128 prohibits the removal of a guardian by the court if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian. Thus, if the money runs out and there are no fees for payment, a guardian may not on that basis alone request to be removed from the case.
- Texas – SB 220 concerns use of Medicaid funds for guardian fees. It provides that a court that appoints a guardian for a Medicaid recipient may order \$175 per month as the guardian's compensation to be deducted as an additional personal needs allowance in computing the recipient's applied income.

## **VI. Rights of Wards**

Legislation this year focused on rights of wards in two specific areas – driving and termination of the guardianship.

**1. Arizona – Driving Privileges.** Arizona HB 2402 creates procedures concerning the driving privileges for an individual under guardianship. A finding of incapacity in and of itself does not suspend driving privileges. For a suspension, the court must find that the incapacity affects the person’s ability to safely operate a motor vehicle. In lieu of suspension, the court may order the person not to drive until presentation of sufficient medical or other evidence establishes ability to drive safely. A person whose driving license has been suspended or revoked may file a request to terminate the suspension or revocation. Finally, an order terminating a guardianship vacates any previous order suspending or revoking the license.

**2. Arizona and Colorado – Termination of the Guardianship.** It has been said that guardianship, like marriage, is “until death do us part.” Substitution of the guardian (short of wrongdoing) or restoration of rights is generally an uphill battle for the individual under guardianship.

- Arizona – SB 1499. Substitution of the guardian or conservator upon nomination of a substitute by the ward in Arizona’s SB 1499 was addressed earlier under “Choice of Guardian.” The bill goes beyond the individual’s petition for substitution to include termination of the guardianship as well. It provides that “the ward may petition the court for an order that the ward is no longer incapacitated . . . . A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this request may be found in contempt of court.” A person other than the guardian or individual under guardianship may not file such a petition earlier than one year after the order, unless on the basis of affidavits providing reason to believe the person is no longer incapacitated.
- Colorado – SB 11-083. When proposed revisions to the Colorado Probate Code were introduced last year, the Colorado Cross-Disability Coalition objected to provisions concerning termination of the guardianship. In 2011, this section of the bill was redrafted. The new provisions address procedures when a ward or protected person initiates a proceeding to terminate the guardianship or conservatorship. Under the new law, the fiduciary is not to take an active role opposing the termination at the hearing – “the guardian [conservator] may not take any action to oppose or interfere in the termination proceeding.” However, the guardian or conservator may file a written report to the court on matters relevant to the termination proceeding, and may file a motion for instructions regarding

whether an attorney, guardian ad litem or visitor should be appointed, whether further investigation or evaluation should be conducted, and “whether the guardian is to be involved in the termination proceedings and, if so, to what extent.”

## **VII. Capacity Issues**

A sound and thorough evaluation of medical, cognitive and functional elements can make a real difference in the judge’s decision to appoint a guardian, as well as the scope of the guardianship order. Provisions in three bills in 2011 addressed capacity assessment for an individual alleged to have diminished decision-making ability.

**1. Arizona – Capacity Assessment.** Arizona law requires that an alleged incapacitated person be examined by a physician, psychologist or registered nurse appointed by the court. SB 1499 states that if the person already has an established relationship with a physician, psychologist or registered nurse who the court determines qualified to evaluate the person’s capacity, the court may appoint such a professional to conduct the examination.

**2. Texas – Medical Evidence.** Texas SB 1196 concerns medical evidence needed for a determination of capacity. It clarifies that if the alleged condition affecting capacity is mental retardation, the petitioner may present a letter from a physician dated within 120 days before the application or may present a determination of mental retardation from a physician or psychologist certified by the Department of Aging and Disability Services showing an examination of the individual within 24 months before the date of the hearing.

**3. Utah – Terminology.** HB 230 replaces outdated terms relating to persons with a disability, not only in guardianship provisions but throughout the code. For instance, it replaces the term “mental retardation” with “intellectual disability” and “disabled person” with “person with a disability.”

## **VIII. Medicaid/Public Benefits**

**1. Texas – Transfer to Qualify.** Texas SB 1196 amends the Probate Code to allow a guardian of the estate or any interested person to apply for a court order for the transfer of a portion of the individual’s estate as necessary to qualify the person for government benefits, but only to the extent allowed by applicable state or federal laws or rules regarding those benefits, and on a showing that the individual will probably remain incapacitated for life.

**2. Georgia –Workman’s Compensation.** SB 134 Adds the word “conservator” whenever “guardian” is mentioned in code provisions concerning workman’s compensation.

## **IX. Guardian and Fiduciary Misconduct**

The 2010 Government Accountability Office report “could not determine whether allegations of abuse by guardians are widespread,” but the report identified hundreds of such allegations by guardians in 45 states and DC between 1990 and 2010. The GAO examined 20 cases in which criminal or civil penalties resulted, and found significant exploitation of assets. An additional GAO report in July 2011 (*Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, GAO-11-678, <http://www.gao.gov/products/GAO-11-678> ) found that guardianship monitoring by state courts needs improving. These GAO reports – not to mention several cases profiled in this *NGA Legal Review*!! --underscore the compelling need to bolster court oversight requirements and practices. In 2011, three states addressed procedures by courts to target guardian and fiduciary misconduct.

**1. Texas – Removal of Abusive Guardian.** Texas SB 220 and SB 481 amend Code provisions concerning removal of guardians.

- Texas SB 220 changes the former reason for removal of an abusive guardian with or without notice from “neglected or cruelly treated a ward” to “has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation” as defined in the state’s elder abuse laws. This squarely aligns harmful behavior by guardians with the state’s definition of abuse.

SB 220 also requires the court to appoint an attorney ad litem and a guardian ad litem (which may be the same person unless it presents a conflict) if the court removes a guardian without notice. The appointment of a successor guardian upon removal either with or without notice does not preclude an interested person from filing an application to be appointed as guardian.

- Texas SB 481 provides that if the court removes a guardian without prior notice because of such behavior, it must nonetheless issue a notice about the removal, with a copy of the removal order, and such notice must be personally served on the removed guardian by the seventh day after the removal order. The notice must include a bold-type statement informing the guardian of the right to contest the order and apply for reinstatement

within 30 days – and the court must hold a hearing on the application for reinstatement within 60 days.

**2. Arizona – Reimbursement for Unreasonable Conduct.** As indicated earlier (under Fees section), Arizona SB 1499 states that if the court finds that professional fees or expenses have been incurred as a result of unreasonable conduct, the court may order the person who engaged in such conduct to pay the individual for some or all of the fees.

**3. Wyoming – Abuse of Fiduciary Duty.** Wyoming has taken a different statutory approach toward addressing fiduciary misconduct -- using its adult protective services laws. SF 89 amends the state’s adult protective services provisions by expanding the definition of exploitation to include “any use of a . . . conservatorship or guardianship to: . . . abuse the fiduciary duty . . .”

## **X. Post-Adjudication Issues**

**1. Nebraska --Post-Appointment Financial Safeguards.** Following a highly publicized case involving financial exploitation by a guardian/conservator, the Nebraska Supreme Court Chief Justice appointed a task force to examine needed reforms. Task Force recommendations resulted in LB 157, which in addition to passage of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (see above), made notable changes to tighten financial accountability:

- **Bonds.** Previously, bonds were at the discretion of the judge. The new law requires bonds for estates over \$10,000 at a value of the personal property of the estate plus one year’s income. No bond is required if the person executed a power of attorney that nominates a guardian or conservator and specifically does not require a bond. No bond is required of financial institutions.
- **Inventories.** The new law moves the date for conservators to file inventories from 90 days to 30 days after appointment. Copies of the inventory must be mailed to the protected person and to all interested parties; and the conservator must file an updated inventory with the annual accounting.

Interestingly, if no conservator has been appointed, a guardian must, within 30 days of appointment, file an inventory, and mail a copy to the individual under guardianship and to interested parties. The guardian must keep suitable records and show them on request to any interested person. To the extent a guardian has possession and control of the estate, the guardian must file an updated inventory every year with an affidavit of

mailing. The guardian also must send a form to allow interested persons to request continued notification of proceedings.

## **2. Other Post-Adjudication Enactments**

- Alabama – Removal to Circuit Court. SB 48 permits (in certain counties) a guardian, conservator, guardian ad litem or next friend of an individual under guardianship or anyone entitled to support from the estate may initiate a removal of the case from the probate court to the circuit court at any time before a proceeding for final settlement is begun in probate court. The bill provides for the remand of the guardianship or conservatorship to probate court under certain circumstances.
- Arizona – Post-Appointment Procedures. SB 1499 requires the conservator to attach to the inventory of assets a copy of the protected person’s consumer credit report dated within 90 days. It also allows persons entitled to notice of the conservator’s account to request, not more than once every 30 days, a report of receipts and disbursements, or that they be allowed to view or have copies of the protected person’s financial records and conservator and attorney billing statements.

Additionally, SB 1499 specifies that the court may require arbitration or another form of alternative dispute resolution after the initial appointment of a fiduciary. It also allows the court to summarily deny repetitive motions or petitions filed within a twelve month period.

- Texas – Inventory. Texas SB 1196 amends the Probate Code to no longer require in the “Inventory, Appraisal and List of Claims” the names and relationship of people who co-own property or claims with the person under guardianship.

## **XI. Public Guardianship Enactments**

The 2008 national public guardianship study found that 44 states have statutory provisions on public guardianship or guardianship of last resort. Of these, 27 states have “explicit schemes” that refer specifically to public guardianship and frequently establish a public guardianship program or office; while 18 states have “implicit schemes” (some states have more than one system) that address the role of guardian of last resort – for instance designating a governmental agency to serve if no one else is available. Additional states have public guardianship functions in practice. (See Teaster et al, *Public Guardianship: In the Best Interest of Incapacitated People?* Praeger, 2010). This year, several states made changes in their public guardianship provisions.

**1. Delaware – Changes in Office of Public Guardian.** Delaware was among the first states to have an Office of Public Guardian, established in 1974. The statewide office has been located within the court system. In 2011, Delaware’s SB 24 makes several important changes in the state’s long-existing program:

- The Act requires the Public Guardian to be an attorney, and to serve for a term of six years. The requirement for an attorney is in accordance with the 2008 study’s Model Public Guardianship Act. It allows the Public Guardian to file the required pleadings and to represent the Office in matters before the Court of Chancery.
- The Act changes the appointing authority for the Public Guardian from the Chancellor to the Governor. This is to remove the conflict of the Public Guardian appearing in the Court of Chancery while at the same time being supervised by the Chancellor.
- The Act expands the mission of the Office to include greater advocacy. The Office is to “advocate and provide guardianship services. . . work with advocacy groups and state agencies to promote systemic reform and recommend changes in the law, procedure and policy . . . .”
- Finally, the Act establishes a 12-member Delaware Guardianship Commission which functions in part as an advisory committee to the Office. Having such a statewide public guardianship advisory committee is in alignment with the 2008 Model Public Guardianship Act.

**2. California – Property Held in Trust.** AB 1288 authorizes a county public guardian or public conservator that intends to apply for appointment as the guardian or conservator of a person domiciled in the county to restrain the transfer, encumbrance or disposal of real or personal property held in trust for the individual if: the property is subject to loss, injury, waste or misappropriation; the individual is a settler of the trust; the individual has a beneficial interest in the trust; and the individual holds a power to revoke the trust.

**3. Missouri – County Jurisdiction for Public Administrators.** In Missouri, county public administrators serve as public guardians. SB 57 concerns a request by a public administrator to transfer a case to the jurisdiction of another county by filing a petition for transfer. If the receiving county meets the statutory venue requirements, and the public administrator of the receiving county consents to the transfer, the court must transfer the case. The final settlement of a public administrator’s conservatorship is to be

filed within 30 days of the transfer in the court with jurisdiction over the original conservatorship, and forwarded to the receiving county upon audit and approval.

**4. Maine – Stakeholder Group.** As indicated below, Maine LD 1252 requires the convening of a stakeholder group to consider a plan for transitioning the public guardianship program for adults with cognitive disabilities to an independent entity.

**5. Oregon** – As indicated below, Oregon HB 2237 recreates a Public Guardian and Conservator Task Force.

## **XII. Statutory Task Forces and Studies**

States continue to take a hard look at their adult guardianship systems, scrutinizing procedures, protections against abuse and exploitation, needs and costs, public guardianship and more. The Third National Guardianship Summit recommended that states establish Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to “advance adult guardianship reform . . . .” Enactments by the five states below could lead toward establishment of such WINGS groups.

**1. Arizona** – HB 2424 began as a comprehensive revision of guardianship and conservatorship law, but as enacted it creates an ongoing Probate Advisory Panel to address needed statutory improvement. The Panel is to include two [family] guardians of an adult child or sibling, two [family] conservators of a parent, one public fiduciary, one private fiduciary, one attorney, one judge and a clerk of court. The panel is to hold a public hearing at least once each year on how to improve the guardianship or conservatorship process through statutory changes, and submit an annual report and recommendations to the Governor, the House, the Senate and the Supreme Court.

**2. Delaware** – As referenced above, Delaware’s SB 24, in addition to making changes in the state’s public guardianship program, created a Delaware Guardianship Commission as an advisory body to the Office of the Public Guardian – but more broadly to “advocate for the welfare of incapacitated individuals,” conduct an annual statewide needs assessment, advocate for legislation, develop public and professional education programs, and more. The legislation sets out a broad range of stakeholder members.

**3. Maine** – LD 1252 requires the Maine Developmental Disabilities Council to convene a stakeholder group to establish a working plan to transition public guardianship responsibilities for adults with cognitive disabilities from the Department of Health and Human Services to an entity independent of that agency. The group is to make recommendations to the Joint Standing Committee on Health and Human Services by January 15, 2012.



**4. North Dakota** – HB 1199 authorizes and appropriates funds for a guardianship services study. The study is to include an analysis of the need for guardianship services, the establishment of guardianships; costs associated with providing guardianship services; and the interaction between the courts, counties, state agencies and guardianship organizations. The final report and recommendations are due to the legislature by June 1, 2012.

**5. Oregon** – HB 2237 recreates the Public Guardian and Conservator Task Force established by the legislature in 2009 so that it can complete its work. The 11-member task force is to study and make recommendations on the need for public guardian and conservator services, and examine options and models to meet the need.

#### **State Adult Guardianship Legislation at a Glance: 2011**

<b>State</b>	<b>Legislation</b>	<b>Provisions</b>
AL	SB 48	Concerns removal of a case from probate court to circuit court.
AZ	SB 1081	Provides for standby guardian for adult.
AZ	SB 1499	Enacts substantial provisions on guardian accountability and compensation; concerns role of guardian on restoration petition; amends provisions on experts for capacity assessment.
AZ	HB 2211	Concerns guardian consent to inpatient mental health care and treatment.
AZ	HB 2402	Amends procedure for appointment of guardian or conservator for subject of civil commitment proceeding; concerns driving privileges.
AZ	HB 2424	Creates Probate Advisory Panel.
AR	SB 4	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
AR	HB 1279	Provides for background checks of prospective guardians.
AR	HB 1628	Concerns evaluation of prospective guardians.
CA	AB 1288	Amends authority of public guardians concerning property held in trust.
CO	SB 11-083	Enacts substantial provisions on guardian compensation; concerns role of guardian in individual's petition for restoration.
DE	SB 24	Amends public guardianship provisions; establishes Guardianship Commission.
GA	SB 134	Adds "conservator" in provisions concerning workman's compensation.
ID	SB 1056	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

IL	SB 2015	Concerns temporary guardianship.
IN	HB 1055	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; amends temporary guardianship provisions; and provides for standby guardian appointments.
KY	HB 52	Prohibits felons from serving as guardian or conservator.
KY	HB 164	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
ME	LD 1252	Requires development of stakeholder group concerning placement of public guardianship responsibilities.
MO	SB 57	Concerns transfer of public administrator case to another county.
MO	SB 213 & HB 111	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; amends provisions on content of petition.
MT	HB 518	Concerns content of petition.
NE	LB 157	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; adds substantial provisions on guardian accountability.
NV	SB 229	Provides for criminal history records information about prospective guardians; provides for guardian acknowledgement of responsibilities.
NV	SB 128	Concerns removal of guardian upon exhaustion of estate.
NM	SB 146	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
ND	HB 1199	Authorizes guardianship services study.
OR	HB 2237	Recreates Public Guardian and Conservator Task Force.
SD	HB 1062	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
TX	SB 1	Concerns guardianship jurisdiction.
TX	SB 220	Amends provisions on notice and representation by counsel; amends authority of Department of Aging and Disability Services as guardian of adults; concerns use of Medicaid funds for guardian fees; makes provisions for removal of abusive guardian.
TX	SB 481	Provides for notice to guardian upon removal.
TX	SB 1196	Concerns presence of alleged incapacitated person at hearing, role of attorney ad litem; probate court jurisdiction; and creation of pooled trust account; transfer of assets; inventory; and medical evidence for capacity assessment.
UT	HB 230	Makes changes in disability terminology.

VT	HB 264	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
VA	SB 750	Adopts Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
WA	SHB 1053	Concerns training of professional guardians.
WV	HB 2885	Concerns guardian qualifications.
WY	SF 89	Concerns abuse of guardian's fiduciary duty.

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Keywords:  
Comments:  
Creation Date: 12/29/2011 11:35:00 AM  
Change Number: 2  
Last Saved On: 12/29/2011 11:35:00 AM  
Last Saved By: genuser  
Total Editing Time: 2 Minutes  
Last Printed On: 12/29/2011 11:35:00 AM  
As of Last Complete Printing  
Number of Pages: 27  
Number of Words: 9,701 (approx.)  
Number of Characters: 55,300 (approx.)