

# Implementing Guardianship Policies in Special Needs Planning: Five Potential Positives

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## ABSTRACT

This article reviews recent literature, policies, and litigation concerning guardianship matters to analyze public and private guardianship programs across all 50 states. Special needs planners should consider how clients might benefit from a legal guardianship system and how guardianship policies are incrementally changing for the better. The authors conclude that planners must be aware of at least five potential positives to best serve their clients: (1) An appropriate guardianship contributes to a client's overall well-being; (2) Government entities have formally recognized a pressing need to improve government oversight of guardianship arrangements; (3) Certain agencies and courts are working to implement less restrictive alternatives to guardianship whenever possible; (4) Government IT systems are in development to collect large, reliable datasets on guardianship matters; and (5) For the first time in American history, guardianship reform efforts are emerging as a key policy concern.

Vol. 74, No. 6 | pp. 49-63

This issue of the Journal went to press in October 2020.  
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*Editor's note: This article is the second of a three-part series from the Journal on guardianship policy issues in special needs planning. In the September 2020 issue, see "Implementing Guardianship Policies in Special Needs Planning: Five Possible Pitfalls" where Kelly et al. examine the challenges that can arise when serving clients who are subject to guardianships. "A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning" by Kelly et al. will be published in the January 2021 issue, and contains best practice guidance for navigating state-specific issues.*

*Audiatur et altera pars.*

Let us listen to the other side.

—Aeschylus, Greek tragedian and poet (525–456 BC)

## Overview

**G**uardianship is a relationship created by federal and state law in which a court gives one person or entity, the guardian, legal authority over another, the beneficiary.<sup>1</sup> When a judge deems that an individual no longer has legal capacity to make decisions on their own behalf for health or general well-being, the court will appoint a guardian as a surrogate decision maker.<sup>2</sup> When a client's family is considering a guardianship alongside less restrictive alternatives, financial planners should be familiar with the potential positive aspects of a guardianship along with its possible pitfalls. While both guardianship benefits and challenges are important, this paper focuses on five key positive aspects of guardianship when it is properly incorporated into the overall financial planning process for clients

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with special needs. During the complex process of special needs planning for an individual with disabilities, one of the fundamental questions a planner must consider is, “To what extent is my client capable of making independent decisions to manage their own personal affairs?”<sup>3</sup> Generally, this is the crux of legal capacity—a person’s legal power to enter into binding contracts, and to sue and be sued. The doctrine of legal capacity has recently evolved in large part because of changes in informed consent requirements for medical procedures and clinical research.

When clients with disabilities require a full guardianship, a parent or other loved one sometimes wishes to serve as the legally appointed guardian.<sup>4</sup> In these cases, Ruebeck et al. suggest that parents should “plan ahead and consult with attorneys, financial planners, and service providers prior to their child reaching the age of majority.”<sup>5</sup> It is a recommended best practice to try to establish guardianship needs before the client with disabilities reaches age 18.<sup>6</sup> As a general rule for most minors, parents—or another court-appointed person—serve as a child’s legal guardians until the child reaches age 18, the legal age of adulthood. In the absence of any legal capacity concerns, a person typically becomes legally independent and responsible for managing their own personal affairs at age 18. Financial and legal planners should take care to ensure there is no time gap between legal childhood and legal adulthood in which the client’s guardianship status could be improperly considered as legally independent. Where a full guardianship grants a guardian broad decision-making control, a limited guardianship designates a guardian to make decisions in specifically designated matters (such as medical care).<sup>7</sup>

Teaster et al. summarizes guardianship as a legal relationship created by state law in which a court gives one person, the guardian, the “duty and power to make personal and/or property decisions for another.”<sup>8</sup> While specific terminology varies from state to state, guardianships tend to be distinguished between “guardianships of the person” and “guardianships of the estate” (sometimes referred to as “con-

servatorships”).<sup>9</sup> Uekert and Duizend provide the following summary of these issues:

**Guardianships:** A guardian is lawfully authorized to make decisions in place of an adult who is determined by the court to be incapable of caring for himself or herself.

**Conservatorship:** A conservator is authorized to make decisions regarding the real or personal property of an adult who is determined by the court to be incapable of making those decisions.<sup>10</sup>

In addition to the distinctions above, financial planners should be cognizant of the four main categories of guardianship arrangements: plenary, of the person, of the estate/property, and limited guardianship. See Table 1.<sup>11</sup>

In many instances, an appointed guardian is a family member or close friend of the individual subject to guardianship. In about 25 percent of cases, a guardian is a “professional guardian,” an organization or paid third party with no knowledge of the individual prior to appointment.<sup>12</sup> An often-cited figure in Congressional and U.S. agency reports estimates that there are currently over 1.3 million adults subject to guardianships in America.<sup>13</sup> Within those guardianships, the best calculations that are available approximate that there are roughly \$50 billion in assets under the care of guardians across the country.<sup>14</sup> Many researchers are concerned that this number may be grossly understated.<sup>15</sup>

As Cohen et al. explain, the total number of people subject to guardianships is “expected to rise dramatically as the population ages.”<sup>16</sup> This is particularly concerning for the increasing populations of individuals who are living longer lifespans than ever before while being “incapacitated from dementia.”<sup>17</sup> Cohen et al. state that, over the next few years, many individuals who are older “will develop impaired capacity to make medical decisions and will need assistance from a surrogate decision maker.”<sup>18</sup> Amidst these changing population demographics, financial planners who work with special needs clients can identify at least five “potential positives” for using guardianship as a tool to help ensure and protect a client’s quality of life.

**Potential Positive 1:  
Government, for-profit, and nonprofit organizations have recognized that a guardianship, when properly implemented, constitutes a tremendously positive contribution to a client’s safety, dignity, and overall well-being.**

Historically, American guardianship practices arose under the state power of *parens patriae*, a power inherited from English common law where the Crown assumed the care of certain individuals.<sup>19</sup> As early as 1890, the U.S. Supreme Court labeled guardianship programs as “indispensable” to assist “those who cannot act for themselves.”<sup>20</sup> In 1978, a pivotal human rights milestone was published in the *U.S. Federal Register*—the *Belmont Report*. This document identifies the basic ethical principles and guidelines concerning research performed with human subjects.<sup>21</sup> Because of its focus on protecting individual civil rights, the *Belmont Report* had a ripple effect in reforming guardianship law. In large part because of the *Belmont Report* and its related statutes, American civil law has evolved for the better in several respects.

Today, the law recognizes that an individual’s legal capacity exists along a spectrum according to risk.<sup>22</sup> Depending on a person’s particular mental and emo-

tional circumstances, legal capacity can range broadly between two main poles: (a) individuals who are legally incapable of making major decisions to safeguard their safety and welfare, and (b) individuals who are capable of making decisions to safeguard their safety and welfare, but only in low-risk scenarios.<sup>23</sup> There can be a true value-added contribution to a person’s best interests when a full guardianship is used correctly. When guardians perform their legal duties conscientiously, individual beneficiaries reap the benefits. Oftentimes, a guardianship can provide an individual with far stronger legal protections than a power of attorney, dual trustee, or personal representative because the latter designations can be procedurally easier to challenge and alter in court. See Table 2.<sup>24</sup> Only a sitting judge can appoint a guardian; however, appointments of a power of attorney, dual trustee, and personal representative can be completed by a written contract alone. In designating a guardian, the judge files a court order that describes the duration and scope of the guardian’s powers and duties.<sup>25</sup> Though circumstances can vary from case to case, a formal judicial appointment is less likely to be scrutinized and overturned than agreements made outside the confines of a courtroom.

There are many cases, both documented and unreported, of personal successes that individuals achieved with the assistance of a dedicated guardian.<sup>26</sup> These

**TABLE 1**  
Four Categories of Guardianship Appointments

<b>Plenary Guardianship</b>	Vests the guardian with the authority to make decisions on behalf of the principal concerning both personhood and property
<b>Guardianship of the Person</b>	Vests the guardian with the authority to make decisions on behalf of the principal concerning personal welfare matters only
<b>Guardianship of the Estate/Property</b>	Vests the guardian with the authority to make decisions on behalf of the principal concerning financial and property rights only
<b>Limited Guardianship</b>	Vests the guardian with the authority to make decisions on behalf of the principal concerning only particular matters according to the principal’s individual needs. This arrangement has particularized decision-making dynamics only.

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stories show how guardians can help people shift away from situations of extreme loneliness, isolation from their community, and exploitation. Guardians can help beneficiaries to feel more secure, engaged, and fulfilled in life activities. In addition, guardians often assist beneficiaries in developing personal interests and enjoying hobbies. There are numerous documented cases where vulnerable adults with severe disabilities were not participating in any activities outside of their homes before they received the assistance of a guardian.<sup>27</sup> With a guardian's support, these same individuals were able to make new friends, complete vocational trainings, and engage in social programs in their communities.<sup>28</sup> There are thousands of cases nationwide where guardians assisted vulnerable adults who were victimized by severe fraud and abuse.

A guardian can serve to root out scams, stop abusive patterns, and prevent further harm to a beneficiary. Consider, for example, the 2006 case of *In re Estate of Hoellen*.<sup>29</sup> In this instance, the guardian's

interventions shielded an Illinois resident, Theodore Hoellen, from abuse and coercion:

Theodore Hoellen was 89 years old, lived alone, and faced challenges from severe dementia and physical disabilities. The law considered him a 'vulnerable adult' who was unable to protect himself from exploitation. Court records show that Donald Owsley, a Chicago police officer, first met Mr. Hoellen when responding to a 9-1-1 call from Mr. Hoellen's neighbor. Mr. Hoellen had mistakenly entered the neighbor's home believing it was his residence. After this incident, Mr. Owsley began regularly visiting Mr. Hoellen under the guise of friendship. Over a period of years, Mr. Owsley exploited Mr. Hoellen. Using a power of attorney document, Mr. Owsley assumed control over all of Mr. Hoellen's assets. These included pension benefits, savings accounts, and house in a land trust. After the Office of the Public Guardian was notified of Mr.

**TABLE 2**

Legal Instruments to Consider When Protecting Property and Personal Affairs<sup>a</sup>

<b>Power of Attorney</b>	Private contract between a principal and a designated third party to mutually agree in advance on procedures concerning what, when, and how the matters of the principal will be handled by the third party
<b>Adult Guardianship System</b>	Provides the principal with an appropriate substituted decision maker nominated by the court or tribunal based on the mental capacity of the principal
<b>Elder Abuse Prevention Statutes and Consumer Protection Statutes</b>	Also termed "legal negligence," this is a legal cause of action for statutory violations. This is negligence established as a matter of law, so that breach of duty is not a jury question.
<b>Personal Representative</b>	Also termed "independent personal representative" or "legal representative," this is a person who manages the legal affairs of another under a written contract
<b>Trustee</b>	Person who has legal title to property and holds it in trust for the benefit of another. Trustees owe a fiduciary duty to the beneficiary.

<sup>a</sup> Bryan Garner, ed., *Black's Law Dictionary*, 8th ed. (Eagan, Minn.: Thomson West, 2005); 586, 894, 1079, and 1267. See also Yukio Sakurai, "Risk of the Elderly with Dementia and Its Safeguards: Reactive or Proactive," presentation at McGill University Graduate Law Conference (May 8-9, 2019) in Montreal, Canada; accessed at: 333022629\_Risk\_of\_the\_Elderly\_with\_Dementia\_and\_its\_Safeguards\_Reactive\_or\_Proactive.

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Owsley's actions, a guardian sued for damages on Mr. Hoellen's behalf. After a lengthy trial, the court voided all of Mr. Hoellen's transactions with Mr. Owsley and awarded Mr. Hoellen \$50,000.00 in punitive damages.<sup>30</sup>

In the *Hoellen* case, the court concluded that Mr. Owsley had "used his position as a police officer to gain Mr. Hoellen's trust, exert undue influence over him, and then flagrantly and intentionally breach the fiduciary duty he owed him by virtue of a power of attorney."<sup>31</sup> This is exactly the type of exploitation that guardianship was designed to protect against; for Theodore Hoellen, the guardianship system functioned as intended. All in all, financial planners need to consider both the degree of guardianship (limited versus full) and advise clients on the need to choose a suitable guardian—one who will leverage the powerful protections afforded under guardianship.

Financial planners must also recognize that most states, though not all, will accept a guardianship that was created under another state's laws (provided the requirements in the previous state are substantially similar to those of the current jurisdiction).<sup>32</sup> When a client subject to a guardianship is contemplating a change in their state of residency, the financial planner should coordinate with legal counsel to confirm in writing that the state court in the client's new home county will enforce the existing guardianship. One means of ensuring that a guardianship appointment will be recognized in another state jurisdiction is using a legal pleading called a "declaratory judgment."<sup>33</sup> A prudent financial advisor will confirm the "portability" of such transfer in advance of the client's moving date. This will avoid any unexpected changes in the client's status as a beneficiary subject to a guardianship. All in all, though interstate guardianship transfer laws are improving to accommodate swifter changes in residency, financial planners should work in tandem with attorneys to ensure that the proper legal documentation is in place whenever a client subject to a guardianship moves to a new state of residency.

### Potential Positive 2:

**Members of Congress, key federal government agencies, and several state governments have recognized the pressing need for policies to improve government oversight of guardians and guardianship arrangements.**

Current guardianship laws are far from perfect; however, they are evolving to improve effectiveness in guardian screening, guardian monitoring, and specialized training for guardians. In both chambers of the U.S. Congress, Democrats and Republicans have issued formal Congressional findings that call for sweeping reforms to guardianship law.<sup>34</sup> Additionally, the U.S. Department of Health and Human Services (DHHS), along with a number of state governments, have formally acknowledged the need for anti-abuse enforcement against predatory guardians.<sup>35</sup> If guardianship discussions at the federal level are considered as a timeline, a pivotal period of groundbreaking achievements occurred from 2006 to 2019. This era set the stage for today's debates on guardianship reform by publishing three seminal documents: (1) the first United Nations (UN) Convention on the Rights of Persons with Disabilities (the "UN Convention"); (2) the first U.S. DHHS National Council on Disability (NCD) report on national guardianship laws; and (3) new federal bills with formal Congressional findings that emphasize a critical and urgent need for increased government accountability and other progressive reforms in guardianship matters.<sup>36</sup>

To a great extent, today's growing calls for reforms to U.S. guardianship laws and policies began in 2006 when the U.S. and other nations signed the UN Convention. The UN has celebrated this document as the "first comprehensive human rights treaty of the 21st century."<sup>37</sup> The U.S. was one of 82 total signatories. As an "instrument with an explicit, social development dimension," the UN Convention works to change attitudes and approaches to persons with disabilities by reaffirming that "all persons with all types of disabilities must enjoy all human rights and fundamental freedoms."<sup>38</sup> In celebrating the UN Convention's enactment, the UN released the following statement:

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[There must be a] movement from viewing persons with disabilities as “objects” of charity, medical treatment and social protection towards viewing persons with disabilities as “subjects” with rights, *who are capable of claiming those rights and making decisions for their lives* based on their free and informed consent as well as being active members of society.<sup>39</sup> [emphasis added]

This constitutes a monumental recognition. It admits that serious civil rights violations against individuals with disabilities have occurred in the past, and continue to take place. For the first time in modern history, an international coalition of government officials—including the United States—strongly emphasized the need for self-determination and person-centered analyses in all matters concerning disability rights. In time, these concepts have merged under one commonly used term that is particularly emphasized in the health care services industry—“person-first analysis.” Champions of person-first analyses have stressed the need for more detailed science when analyzing a person’s abilities, life challenges, and whether a full guardianship is truly needed on a case-by-case basis.

In 2018, a dozen years after the UN Convention was issued, the U.S. NCD issued a detailed report on guardianship policies nationwide.<sup>40</sup> This was the first analysis of its kind in the NCD’s 30 years as an independent federal agency.<sup>41</sup> The NCD’s report, titled “Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination,” specifically acknowledges that “transformations” in guardianship law are needed in light of the “profound impact” of guardianship.<sup>42</sup> It states in pertinent part:

Although it has been an important part of Western law since the ancient Greeks, guardianship has not garnered the attention of policymakers and disability rights advocates the way other issues have. In fact...the Council has not, until now, explored how guardianship impacts people with disabilities or made recommendations regarding *how to transform* the way in which we assist people with disabilities who may need

help managing money or property or making decisions that impact their health and welfare... guardianship has a *profound impact* on the people subject to it, as well as on their families and communities.<sup>43</sup> [emphasis added]

These declarations are another milestone in the history of human rights. In this report, a leading U.S. government agency acknowledges longstanding concerns about the U.S. guardianship system as a whole. Moreover, the report echoes calls from civil rights advocates for guardianship policy reforms to ensure that a guardianship is assigned only when there is simply no other reasonable alternative to provide for a person’s safety and security.<sup>44</sup>

NCD recognizes that once a guardian is appointed, the individual subject to guardianship loses certain legal rights for their protection. See Figure 1.<sup>45</sup> These rights include deeply personal actions that cannot be exercised by any other person besides the individual with disabilities, such as the fundamental rights to marry, vote in government elections, seek employment, and retain employment.<sup>46</sup> A guardian can exercise a number of other rights on the behalf of the individual subject to guardianship, such as the rights to decide with whom to associate/befriend; contract, sue, and defend lawsuits; apply for government benefits; manage money or property; decide where to live; consent to medical treatment; and drive a vehicle. Under the law, certain kinds of rights can only be exercised by a guardian with a court order. These include the right to consent to experiments, file for divorce, terminate parental rights, consent to sterilization, or consent to abortion.<sup>47</sup> When considered as an asset, these protections make guardianship a boon for beneficiaries. Financial planners should consider each of these factors when examining how to best provide for and protect clients with special needs.

In 2019, a year after the NCD’s guardianship report was published, members of both the House and Senate published three official Congressional findings that highlight the need to improve the government’s oversight of guardians and guardianship arrangements.<sup>48</sup> The findings read:

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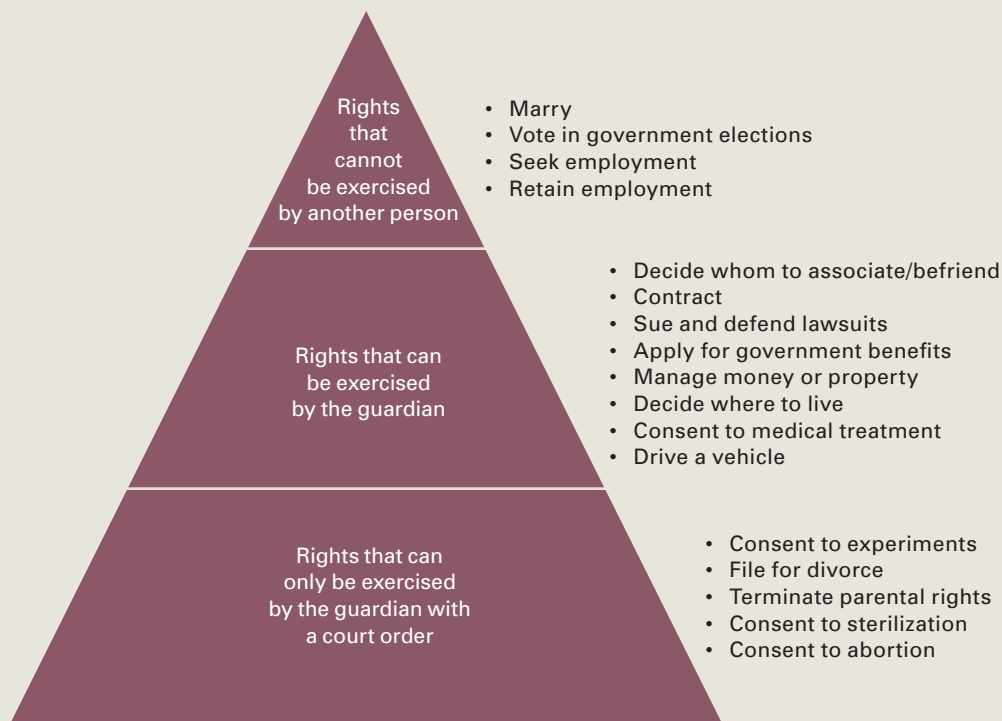
- 1) Most guardians are selfless, dedicated individuals who play an important role in safeguarding individuals in need of support. However, *unscrupulous guardians acting with little oversight* have used guardianship proceedings to obtain control of individuals in need of support.
- 2) Once a guardianship is imposed, there are *often few safeguards in place* to protect against individuals who choose to abuse the system and few States are able to report accurate or detailed guardianship data.
- 3) *A national resource center on guardianship is needed* to collect and publish information for the benefit of courts, policy makers, individuals subject to guardianship, guardians, community organizations, and other stakeholders.<sup>49</sup> [emphasis added]

From a legal perspective, these Congressional findings are similar to the recitals section within a contract—under legal doctrine, they are not viewed as mere assertions or personal beliefs.<sup>50</sup> These findings are specific statements from members of Congress that confirm matters of fact.<sup>51</sup>

The above calls for reforms in guardianship practices are largely due to a growing body of research that shows certain groups of people have been unfairly discriminated against in guardianship proceedings.<sup>52</sup> Today, there is a general consensus between government and public research entities that, historically, two main populations have been singled out for guardianship abuses: people with disabilities and older adults. Government analysts project that the

**FIGURE 1**

Rights That Can Be Removed Under Guardianship Law<sup>a</sup>



<sup>a</sup> "Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination," (2018), endnote 40: p. 28.

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population aged 85 and older will more than double from 6.5 million in 2017 to 14.4 million in 2040—an increase of 123 percent.<sup>53</sup> In addition, at least one in four adults in the United States—about 61.4 million people—live with a disability that impacts their major life activities.<sup>54</sup> See Table 3.

When guiding clients with disabilities and their families, special needs planners must be aware that guardianship doctrine is evolving alongside major shifts in age demographics and perspectives on civil rights for individuals with disabilities. Taken as a whole, these developments are positive signals that some meaningful changes in guardianship laws will occur during the next decade.

### **Potential Positive 3: Members of Congress, key federal government agencies, and several state governments are encouraging courts to implement less restrictive alternatives to guardianship whenever possible and to perform more detailed analyses of individualized needs and abilities.**

For the first time in modern history, members of U.S. government organizations are truly emphasizing the need to employ guardianships only when abso-

lutely necessary to avoid violating the Constitutional rights of individuals with disabilities.<sup>55</sup> This constitutes another positive milestone for disability advocates because it focuses on preserving self-autonomy and an individual's abilities (as opposed to focusing solely on the conditions of their disability). In theory, the U.S. guardianship system was designed to be a special needs planning tool of “last resort” when there is no other option to ensure that the beneficiary will receive essential care and protection.<sup>56</sup> Despite this, for a myriad of reasons, this principle has not been consistently enforced in the past. Modern courts are asking more detailed questions when considering whether a particular situation requires a full guardianship. For example, in the 1994 case of *Matter of M.R.*, the Supreme Court of New Jersey made the following statement, which has since been emphasized in hundreds of other court opinions across America:

[W]e suggest that trial courts consider appointing limited, rather than general, guardians in appropriate cases. A guardianship can be a *drastic* restraint on a person's liberty...In some situations, the need for a guardianship may be served adequately by a limited guardianship.<sup>57</sup> [emphasis added]

Eight years later in the case of *In re Orshansky*, the

**TABLE 3**

By the Numbers: National Population Estimates Germane to Guardianship Reform

#### **One in four adults have a serious disability**

- At least one in four adults in the U.S.—about 61.4 million people—lives with a disability that impacts major life activities.<sup>a</sup>
- Historically, the population group of people with disabilities has been unfairly targeted with discriminatory guardianship practices.
- Such civil rights violations have occurred both in the U.S. and in other countries worldwide.

#### **In the U.S., the population aged 85+ will increase 123 percent over the next two decades**

- The aged 85+ population is projected to more than double from 6.5 million in 2017 to 14.4 million in 2040—an increase of 123 percent.<sup>b</sup>
- Historically, the population group of people aged 85+ has been unfairly targeted with discriminatory guardianship practices.
- As with other groups of people, these civil rights violations have occurred both in the U.S. and in other countries worldwide.

<sup>a</sup> Okoro (2018), endnote 54.

<sup>b</sup> “2018 Profile of Older Americans,” (2018), endnote 53.



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District of Columbia Court of Appeals made another seminal statement that championed disability rights.<sup>58</sup> The court's opinion reads, "The appointment of a guardian...is an extraordinary intervention in a person's life and affairs...[therefore, courts must] ensure careful consideration and respect for the rights of the subject of the proceeding."<sup>59</sup> All in all, today's courts are more likely to appreciate that there are numerous documented cases where full guardianships were incorrectly assigned.

When a guardian is not needed, a court can appoint a conservator with limited decision-making authority to manage all of the beneficiary's finances or, depending on the individual's need, only specific financial issues.<sup>60</sup> In 2019, members of Congress formally recognized long-standing concerns regarding the need to champion alternatives to guardianship as appropriate. There are two new Congressional findings in this regard:

- 1) *A full guardianship order may remove more rights than necessary* and may not be the best means of providing support and protection to an individual. If individuals subject to guardianship regain capacity, all or some rights should be quickly and efficiently restored.
- 2) *States should encourage courts to use alternatives to guardianship* through State statutes, including the adoption of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, to ensure better protections and control for individuals being considered for guardianship and those pursuing a restoration of their rights.<sup>61</sup> [emphasis added]

Since 1969, the National Conference of Commissioners on Uniform State Laws, more commonly referred to as the Uniform Law Commission (ULC) has developed best practices for probate codes and guardianship requirements. See Table 4.<sup>62</sup> The ULC's recommended statutes can be enacted in all or in part by state legislatures. If state policymakers vote to codify the most recent ULC recommendations in the proposed Uniform Guardianship, Conservatorship,

and Other Protective Arrangements Act (UGCOPAA), guardians will be required to make decisions that they "reasonably believe the adult [beneficiary] would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult."<sup>63</sup> Guardians in UGCOPAA jurisdictions must "consider the adult's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable" to determine the decision the beneficiary would make.<sup>64</sup> Lastly, guardians under UGCOPAA are required to make decisions that are in the best interest of the beneficiary. Under this legal standard, if the guardian cannot determine what decision the person would make or the decision would unreasonably harm the welfare or interests of the beneficiary.<sup>65</sup> As of 2019, two states, Washington and Maine, have enacted UGCOPAA and legislation is under review in Utah and Montana.<sup>66</sup> If Congress can allocate additional funds for state guardianship reform efforts, it is likely that many other state jurisdictions will be encouraged to modernize their guardianship statutes and adopt UGCOPAA into law.

### **Potential Positive 4: Federal agencies and a number of state governments are pioneering new IT systems to collect large, reliable datasets on guardianship matters.**

Several fundamental questions must be answered before anyone can understand the current state of U.S. guardianship policies in depth:

Is the guardianship system functioning as intended? What are the actual effects of a limited or full guardianship? How many people between ages 50 to 65 are under a guardian's care nationwide? What about the population bracket of those aged 85 and older? How many adult guardianship and adult conservatorship cases are filed, closed, and pending nationally?

Policy researchers have not yet ascertained detailed

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answers for each of these questions. Fortunately, more informed and evidence-based guardianship policies are increasingly possible with technology innovations in data collection and analysis.

On a national level, empirical data is needed to forecast and process guardian caseloads and the needs of individuals subject to guardianship. U.S. policymakers need more information to make evidence-based decisions on guardianship appointment and screening, education, monitoring, and enforcement matters. Encouragingly, several members of Congress, federal government agencies, and a number of state governments agree.<sup>67</sup> These entities have admitted there is a dearth in guardianship-specific research and called for new IT systems to collect much-needed data concerning guardianship. At the financial planning level, publicly available data from these developing data-

bases will allow planners to better predict trends in guardianship issues, but also to identify the form of guardianship that will work best for their clients with increased precision and accuracy.

In 1992, the National Center of State Courts raised the need for a national database on guardianship to the U.S. Senate Special Committee on Aging.<sup>68</sup> In 2004, attorney Frank Johns appeared before the same committee and called for it to create guardianship-specific databases for each state and the federal government.<sup>69</sup> He said,

[Previous testimony from the National Center of State Courts raised] made the obvious point that neither the federal government, nor each state knows how many individuals are subject to guardianship proceedings annually, what guardianship caseloads correlate with population, whether or not they correlate with an elderly

**TABLE 4**

Timeline of 1969–2017: Forty-Eight Years of Uniform Probate Codes Seeking Changes to State Guardianship Law

Year Enacted	Uniform Code Proposed for State Legislatures	Key Details
1969	Uniform Probate Code	Article V focuses on the protection of persons under disability and their property
1979	Uniform Durable Power of Attorney Act	Provides a uniform framework for durable power of attorney provisions
1982	Uniform Guardianship & Protective Proceedings Act (UGPPA)	Encourages the use of limited guardianships as a special needs planning tool
1997	Revised UGPPA	Provides additional protections for individual legal rights, least restrictive alternatives to guardianship, court visitors, and considering the beneficiary's views in decision making
2006	Uniform Power of Attorney Act	Provides greater protection against financial abuse; encourages wider acceptance for using power of attorney as a special needs planning tool
2017	Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA)	Provides clear, person-centered decision-making standards for guardians

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population and how they compare when adjusted for the population in different states, different jurisdictions and according to different administrative structures.<sup>70</sup>

Johns further testified to Congress that the funding for state guardianship data collections “may only be realized through a federal effort because so many states continue to struggle near bankruptcy while still in the dark when it comes to statistics regarding guardianship.”<sup>71</sup>

In 2010, the GAO issued a report on guardianships that identified several differences in the way courts track guardianships.<sup>72</sup> It noted that in most jurisdictions, records of guardianship appointments are not available online.<sup>73</sup> The GAO found that while some federal agencies identify guardians who also serve as representative payees for federal beneficiaries, they do not keep a list of all court-appointed guardians.<sup>74</sup> Some states maintain lists of certified guardian members and certain other guardians are exempt from certification requirements.<sup>75</sup> The GAO’s 2010 report also includes this alarming statement:

Although we continue to receive new allegations from family members and advocacy groups [about financial exploitation, neglect, and abuse of individuals who are older], we could not locate a *single* Web site, federal agency, state or local entity, or any other organization that compiles comprehensive information on this issue.<sup>76</sup>

In searching for information about complaints or disciplinary action taken against guardians, the GAO found that it is not often publicly available.<sup>77</sup> The GAO states that “state and local enforcement may consist of measures not specific to guardians, such as discipline by a bar association for lawyers or by a regulatory board for Certified Public Accountants.”<sup>78</sup> In sum, the exact number of allegations about abuse, neglect, or exploitation by guardians remains unknown.

In a 2011 study on abuse issues faced by older adults, the GAO found that government data on guardianship matters in abuse cases has “likely *underestimated* the full extent of elder abuse and could not be used to track trends.”<sup>79</sup> In light of this finding,

the DHHS coordinated with the Office of the U.S. Attorney General to conduct a pilot study to collect, compile, and disseminate data on the feasibility and cost of collecting uniform, reliable administrative data on elder abuse and guardianship cases from each state, and compile and disseminate those data nationwide.<sup>80</sup> Moreover, the first nationwide reporting datasets on adult abuse and related guardianship concerns have recently become publicly available from the new National Adult Maltreatment Reporting System (NAMRS).<sup>81</sup> As guardianship abuse, neglect, and exploitation issues become better documented and understood, financial planners can incorporate knowledge of such concerns into the design of the special needs plan to help protect clients from potential harms.

### **Potential Positive 5: For the first time in American history, guardianship reform efforts are emerging as a key policy concern and budget spending priority.**

While responsibility for the day-to-day oversight of guardianship matters has been viewed traditionally as a state-based concern, it is a commonly accepted view that the federal government is in the best position to coordinate and consolidate guardianship data from across the country.<sup>82</sup> At present, there is an ongoing bipartisan movement in Congress to create new statutory protections for individuals subject to guardianship.<sup>83</sup> Though most bills have remained stuck in the first round of committee review, it is encouraging that guardian-specific bills are under review in both chambers of the federal legislature.<sup>84</sup> For instance, both the Senate and the House have proposed substantially similar bills with the same title, the “Guardianship Accountability Act of 2019” (referred to herein collectively as “the Bills”).<sup>85</sup> As of October 2019, the Bills remained under review in their respective Committee on the Judiciary.<sup>86</sup> Congress’ high-level description for each proposed law is identical, stating:

This bill requires the Elder Justice Coordinating

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Council [within the U.S. DHHS Administration for Community Living] to create a National Online Resource Center on Guardianship for the publication of resources and data relating to court-determined adult guardianships. Further, the bill requires the Department of Health and Human Services to award at least 5% of certain grant funds for state programs related to overseeing the administration of court-appointed guardian arrangements.<sup>87</sup>

If enacted into law, the proposed act will “help States improve guardianship oversight and data collection” with three main actions: (1) designating a national online resource center on guardianship; (2) authorizing grants for the purpose of developing state guardianship databases; and (3) establishing procedures for sharing background check information related to appointed guardians with other jurisdictions.<sup>88</sup>

The fact that both the Senate and House have coordinated to have the proposed Guardianship Accountability Act under review in both Congressional Committees on the Judiciary confirms the following: (1) Congress is taking meaningful action to analyze how to collect and analyze guardianship data, and (2) Congress has recognized the need for a dedicated pool of funds for in-depth research on guardianship matters.

Knowledge of these past and current policy trends provides the financial planner with insight into the future of guardianship policies and how potential reforms might impact special needs planning practices. Armed with such information, the financial planner becomes a valuable strategic asset to the client as an expert source for analyzing guardianship issues and implementing financial planning tools to fund, protect, and ensure the best possible outcomes for the client with special needs.

### Conclusion: Summary Observations

Financial planners who assist clients subject to guardianship should be keenly aware of the potential positives discussed above. Because of advances in health care technology and other factors, many

older adults aged 65 and up are living longer than ever before.<sup>89</sup> During the 20th century, life expectancy in the United States nearly doubled with a 10-fold increase in the number of Americans aged 65 or older.<sup>90</sup> At this same time, many older adults are also living with serious conditions like Alzheimer’s disease, dementia, and other impairments.<sup>91</sup> These types of cognitive impairments, among others, are increasingly prevalent in the aging populations and can be challenging for health care professionals to diagnose and treat.<sup>92</sup> These demographic changes are generating more questions about guardianships than ever before. When navigating special needs planning concerns, financial planners should always take care to remember that a mental impairment or disability—even a serious one—in and of itself, is *never* an automatic trigger for a full guardianship.

In light of growing concerns about the needs of aging populations who will require a broad range of personal and financial assistance, U.S. courts and legislatures have an urgent interest in analyzing guardianship matters, employing full guardianships only when absolutely necessary, and leveraging other less restrictive types of planning tools to serve clients with special needs. In other words, demands for special needs planning involving guardianship are currently high and they will only rise over the next several years. Recent exciting developments in guardianship policy reveal multiple potential benefits for the financial planning industry. These include:

1. When properly implemented, a full guardianship can constitute a tremendously positive contribution to a client’s safety, dignity, and overall well-being. Financial planners can help clients to more fully realize the protections and safeguards that accompany a necessary guardianship.
2. Current and forthcoming changes in guardianship regulations provide a further impetus for clients to employ financial advisors to help them navigate a complex guardianship system as part of special needs planning.
3. Emerging government IT systems for tracking

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guardianship outcomes will provide all stakeholders in guardianship matters—including financial advisors—with more evidence-based information for designing more comprehensive special needs plans.

4. Society's increasing interest in guardianships and supported decision-making alternatives to guardianship will likely engender new demands for private strategic financial planning services.

As necessity continues to drive substantial changes in guardianship laws and encourages less restrictive alternatives to guardianship appointments, financial planners will be at the front lines to assist clients in understanding which specific special needs planning tools best suit individual needs. ■

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(1) In the past, the terms “ward,” “incompetent person,” and “incapacitated person” were often used to describe individuals who have a court-appointed guardian. The label of ward indicates a pejorative state of total dependence. Instead, the authors recommend that professionals who work with special needs planning matters strictly use person-first language in all communications with the client, their family, and third parties. The authors suggest using the terms “individual subject to guardianship,” “beneficiary,” “adult who is the subject of a proceeding,” and/or “principal” to describe a person who receives guardianship services. All in all, these descriptions respectfully emphasize the importance of each individual's right to self-determination and general autonomy. In addition, the authors encourage financial planners to generally avoid using the term “incompetency” because it is overly broad and stigmatizing. For a broad overview of guardianship fundamentals, see “What Is Guardianship,” National Guardianship Association (2019); accessed at: <https://www.guardianship.org/what-is-guardianship>, and Sally Balch Hurme, ed., *The Fundamentals of Guardianship: What Every Guardian Should Know* (Chicago: American Bar Association Book Publishing, 2016).

(2) See, e.g., *Francine M. Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642 (2nd Cir. 1999) (stating that guardians are fiduciaries of the person subject to guardianship). Note: In certain jurisdictions, the title of “custodian” or “conservator” is used to describe either a full guardian or various types of guardianships with limited authority.

(3) L. Mark Russell and Arnold Grant, *Planning for the Future: Give Your Child with a Disability the Gift of a Safe and Happy Life*, 7th ed. (Palatine, Ill.: Planning for the Future Inc., 2010): 127.

(4) Chloe Ruebeck, Taryn Nicksic-Springer, and Daniel E. Olympia, “Funding Services for Adults with Developmental Disabilities and Autism Spectrum Disorder,” in E. Braaten (ed.), *The SAGE Encyclopedia of Intellectual and Developmental Disorders* (Thousand Oaks, Calif.: SAGE Publications, Inc., 2018): 690-692. (Noting that the Social Security Administration (SSA) provides two kinds of benefits to individuals with disabilities over the age of 18: supplemental security income (SSI) and disabled adult child benefit/social security disability insurance (SSDI). SSI is available to people with disabilities that prevent them from having gainful employment. The individual cannot have greater than \$2,000 dollars in assets; however, their parent's resources are not counted. SSDI is for adults whose disability developed prior to age 22 and whose guardian, typically a parent, is either deceased or receiving Social Security retirement/disability benefits. SSDI is available regardless of the adult's income or resources).

(5) *Ibid.*

(6) *Ibid.*

(7) *Ibid.*

(8) Pamela Teaster et al., “Wards of the State: A National Study of Public Guardianship,” *Stetson Law Review* 37 (2007): 193-241; accessed at: [http://supporteddecisionmaking.com/sites/default/files/wards\\_of\\_the\\_state.pdf](http://supporteddecisionmaking.com/sites/default/files/wards_of_the_state.pdf).

(9) Brenda Uekert and Richard Van Duizend, “Adult Guardianships: A ‘Best Guess’ National Estimate and the Momentum for Reform,” *Future Trends in State Courts*, National Center for State

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Courts (2011); accessed at: <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1846>. (Noting that these definitions are consistent with the definitions used by the Court Statistics Project (CSP) in the *State Court Guide to Statistical Reporting*.)

(10) *Ibid.*

(11) *In Re: M.R.*, 638 A.2d 1274 (1994) (discussing burden of proof matters in disability law).

(12) K. Bulcroft, M.R. Kielkopf, and K. Tripp, "Elderly Wards and Their Legal Guardians: Analysis of County Probate Records in Ohio and Washington," *Gerontologist* 31, no. 2 (1991):156-164; Also, Teaster et al. (2007), endnote 8.

(13) "Guardianship Accountability Act of 2019," S.591, 116th Cong. (February 27, 2019) (sponsored by Senator Susan Collins, Republican from the state of Maine); "Guardianship Accountability Act of 2019," H.R.4174, 116th Cong. (August 6, 2019) (sponsored by Representative Darren Soto, Democrat from the state of Florida). See also Uekert and Van Duizend (2011), endnote 9.

(14) *Ibid.*

(15) *Ibid.*

(16) Andrew B. Cohen, et al., "Guardianship and End-of-Life Decision Making," *Journal of the American Medical Association Internal Medicine* 175, no. 10 (2015): 1687-1691; accessed at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4683611>.

(17) *Ibid.* [citing references omitted].

(18) *Ibid.* [citing references omitted].

(19) Mark Andrews, "The Elderly in Guardianship: A Crisis of Constitutional Proportions," 5 *Elder Law Journal* 75 (1997): 79-80.

(20) *Ibid.* (Noting that the opinion from *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 57 (1890) states that the American "revolution devolved on the State all the transcendent power of parliament, and the prerogative of the crown, and gave their acts the same force and effect.")

(21) *The Belmont Report*, U.S. Department of Health and Human Services Office for Human Research Protections (March 15, 2016); accessed at: <https://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/index.html>. (*The Belmont Report* contains ethical principles and guidelines for the protection of human subjects of research and took its name from the Belmont Conference Center where the document was drafted in part.)

(22) Bryan Garner, ed., "Capacity," in *Black's Law Dictionary*, 8th ed. (Eagen, Minn.: Thomson West, 2005): 171.

(23) *Ibid.*

(24) A power of attorney is a legal document where clients grant authority to someone else to act on their behalf and in their best interests.

(25) See, generally, Uekert and Van Duizend (2011), endnote 9, p. 107.

(26) See, generally, "Guardians-in-Action Stories," Minnesota Association for Guardianship & Conservatorship (MAGIC); accessed October 15, 2019, at: <https://www.minnesotaguardianship.org/guardians-in-action-stories/>; Also, "Adult Guardianship: About Us: Success Stories," Office of the Cook County Public Guardian; accessed October 15, 2019, at: <https://www.publicguardian.org/guardianship/about/success-stories>.

(27) *Ibid.*

(28) *Ibid.*

(29) *In re Estate of Hoellen*, 854 N.E.2d 774 (Ill. App. Ct. 2006).

(30) *Ibid.*, p. 778.

(31) *Ibid.*

(32) The same is true for powers of attorney, dual trustee, and personal representative designations.

(33) See, generally, Isabel Laluna, Meaghan Fitzpatrick, and Lesley Orloff, "Use of Declaratory Judgments in Family Law Matters," National Immigrant Women's Advocacy Project (NIWAP) and American University Washington College of Law (November 16, 2017); accessed at: <http://niwaplibrary.wcl.american.edu/wp-content/uploads/Appendix-S-Using-Declaratory-Judgment-In-Family-Law-Matters.pdf>. (Noting that this publication was developed under a grant from the State Justice Institute (SJI). As a private, nonprofit corporation created by the federal State Justice Institute Act of 1984, the SJI works to analyze judicial administration in the U.S. state courts.)

(34) Guardianship Accountability Act S.591 and H.R.4174 (2019), endnote 13.

(35) See, e.g., "Who's Overseeing the Overseers? A Report on the State of Adult Guardianship in Indiana," State of Indiana Adult Guardianship State Task Force (February 2012); accessed at: <https://www.in.gov/judiciary/iocs/files/ad-guard-2012-full-report.pdf> (including three report appendices: Appendix A: Michael Jenuwine, "The State of Adult Guardianship in Indiana: An Empirical Perspective" (2011); Appendix B: Kevin Barton, "Guardianship Reform and an Aging Population" (2008); and Appendix C: Jennifer Ihns "Adult Guardianship: A National Overview" Notre Dame Legal Aid Clinic (2011)).

(36) While these publications are by no means the only documents on guardianship that were issued by the U.S. federal government between 2006 and 2019, it can be argued that these three items have had the greatest positive impact on policy discourses for reforms to guardianship law.

(37) "Convention on the Rights of Persons with Disabilities (CRPD)," United Nations Department of Economic and Social Affairs; accessed October 1, 2019, at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>. (The convention entered into force in May 2008. The convention was negotiated during eight sessions of an ad hoc committee of the General Assembly from 2002 to 2006, making it the fastest negotiated human rights treaty in history).

(38) *Ibid.*

(39) *Ibid.*

(40) "Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination," U.S. National Council on Disability (March 22, 2018); accessed at: [https://ncd.gov/sites/default/files/NCD\\_Guardianship\\_Report\\_Accessible.pdf](https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf).

(41) *Ibid.*

(42) *Ibid.*

(43) *Ibid.*, p. 15. (Noting that, apart from specific guardianship policies, the NCD has "consistently supported and encouraged the adoption of [other] policies that promote the self determination of people with disabilities.")

(44) *Ibid.*

(45) *Ibid.*

(46) *Ibid.*, p. 28.

(47) *Ibid.*

(48) Guardianship Accountability Act S.591 and H.R.4174 (2019), endnote 13.

(49) *Ibid.*

(50) Bryan Garner, ed., "Recitals," in *Black's Law Dictionary*, 8th ed. (Eagen, Minn.: Thomson West, 2005): 1053.

(51) *Ibid.*

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- (52) “State Adult Guardianship Legislation Summary: Directions of Reform,” American Bar Association Commission on Law and Aging (2018); accessed at: [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2018-adult-guardianship-legislative-summary.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-adult-guardianship-legislative-summary.pdf).
- (53) “2018 Profile of Older Americans,” U.S. Department of Health and Human Services Administration for Community Living; accessed at: <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2018OlderAmericansProfile.pdf>. (This report contains the latest data available to the U.S. government. The Administration for Community Living, which includes the Administration on Aging, notes that the “[p]rincipal sources of data for the Profile are the U.S. Census Bureau, the National Center for Health Statistics, and the Bureau of Labor Statistics.”)
- (54) Catherine A. Okoro et al., “Prevalence of Disabilities and Health Care Access by Disability Status and Type Among Adults: United States: 2016,” *Morbidity and Mortality Weekly Report* 67, no. 32 (2018): 882–887.
- (55) “Turning Rights into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities,” U.S. National Council on Disability (June 10, 2019): 24–26; accessed at: [https://permanent.fdlp.gov/gpo121724/NCD\\_Turning-Rights-into-Reality\\_508.pdf](https://permanent.fdlp.gov/gpo121724/NCD_Turning-Rights-into-Reality_508.pdf). See also A. Kimberley Dayton, *Comparative Perspectives on Adult Guardianship* (Durham, N.C.: Carolina Academic Press, 2014) (discussing supported decision-making and guardianship accountability concerns).
- (56) *Ibid.*, p. 24.
- (57) *Matter of M.R.*, 638 A.2d 1274 (1994): 1282, citing *Lommason v. Washington Trust Co.*, 53 A.2d 175 (E. & A. 1947).
- (58) *In re Orshansky*, 804 A.2d 1077 (D.C. 2002).
- (59) *Ibid.*, 1080.
- (60) Ruebeck, Nicksic-Springer, and Olympia (2018), endnote 4.
- (61) Guardianship Accountability Act S.591 and H.R.4174 (2019), endnote 13.
- (62) “Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) & State Advocacy,” American Bar Association Section on Civil Rights and Social Justice (February 28, 2018); accessed at: <https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/ABA-UGCOPAA-presentation-2-28-18.pdf>.
- (63) Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act of 2017 (UGCOPAA), National Conference of Commissioners on Uniform State Laws (2017); accessed at: <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=2eba8654-8871-4905-ad38-aabb573911c&tab=librarydocuments>. See also “Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) & State Advocacy” (2018), endnote 62.
- (64) *Ibid.*
- (65) *Ibid.*
- (66) “Guardianship, Conservatorship, and Other Protective Arrangements Act (2017), endnote 63.
- (67) Guardianship Accountability Act S.591 and H.R.4174 (2019), endnote 13.
- (68) Ingo Keilitz, “Comments before a Roundtable Discussion on Guardianship,” Special Committee on Aging, U.S. Senate (102nd Cong. 2nd Sess. 1992) (Serial Number 102-22).
- (69) Frank Johns, “Written Comments to the Special Committee on Aging Forum on Guardianship,” U.S. Senate (108th Cong. 2nd Sess. 2004); accessed at: <https://www.aging.senate.gov/imo/media/doc/72220041.pdf>.
- (70) *Ibid.*
- (71) *Ibid.*
- (72) “GAO-10-1046: Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors,” Report to the Chairman, U.S. Government Accountability Office, Special Committee on Aging, U.S. Senate (September 2010): 5; accessed at: <https://www.gao.gov/new.items/d101046.pdf> (in identifying several differences in the way courts track guardianships).
- (73) *Ibid.*, p. 5.
- (74) *Ibid.*
- (75) *Ibid.*
- (76) *Ibid.*, p. 27.
- (77) *Ibid.*
- (78) *Ibid.*
- (79) “Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse,” Report to the Chairman, U.S. Government Accountability Office, Special Committee on Aging, U.S. Senate (March 2011): 1 and 3; accessed at: <https://www.gao.gov/new.items/d11208.pdf>.
- (80) *Ibid.*
- (81) “National Adult Maltreatment Reporting System (NAMRS),” U.S. Department of Health and Human Services Administration for Community Living (November 20, 2018); accessed at: <https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs>.
- (82) Pursuant to the powers of taxation and federalism within the Supremacy Clause in the U.S. Constitution.
- (83) Guardianship Accountability Act S.591 and H.R.4174 (2019), endnote 13.
- (84) *Ibid.* Due to the large number of pending bills as well as political factors, it is a common occurrence for most types of legislation to remain under Congressional committee review for a long period of time and/or not advance beyond the initial committee review stage.
- (85) *Ibid.*
- (86) *Ibid.*
- (87) *Ibid.* See also “Elder Justice Coordinating Council (EJCC),” U.S. Department of Health and Human Services Administration for Community Living (March 29, 2019); accessed at: <https://acl.gov/programs/elder-justice/elder-justice-coordinating-council-ejcc>.
- (88) Guardianship Accountability Act S.591 and H.R.4174 (2019), endnote 13.
- (89) “The National Institute on Aging: Strategic Directions for Research, 2020–2025,” U.S. Department of Health and Human Services National Institute on Aging; accessed at: <https://www.nia.nih.gov/sites/default/files/2020-05/niastrategic-directions-2020-2025.pdf>
- (90) *Ibid.*
- (91) “Disease of the Week: Alzheimer’s Disease,” U.S. Department of Health & Human Services Centers for Disease Control and Prevention; accessed June 3, 2019, at: <https://www.cdc.gov/dow/alzheimers/index.html>. (Noting that 5.7 million Americans are estimated to be living with Alzheimer’s disease in 2018. From 1999 to 2014, Alzheimer’s death rates increased 55 percent. The CDC also states that more than 16 million Americans, typically family members and other loved ones of the person with the disease, provide unpaid care for people with Alzheimer’s or other dementias.)
- (92) *Ibid.*