Amending UGPPA to Implement 3rd National Guardianship Summit

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3rd National Guardianship Summit

- Convened in October 2011 at University of Utah
- Attended by 100 or so representatives from a dozen or so groups
- Results are 27 general recommendations and 43 recommended guardianship standards, all focusing on post-appointment issues
- Recommendations/standards and backup law review articles have been published in Utah Law Review

Wingspread (1988)

- This was first conference, which was held at Wisconsin Wingspread resort in response to Associated Press series critical of guardianship practice. Themes:
  - Appointment procedures should be tightened
  - There should be emphasis on limited guardianship
  - Counsel for respondent should be appointed in all cases
  - Guardians should receive training
  - Ward’s choices and substituted judgment should be emphasized
Wingspan (2001)

• This was second conference, which was held at Stetson University College of Law.
• Produced series of recommendations largely reinforcing and refining recommendations made at Wingspan.

The UGPPA

• Stands for Uniform Guardianship and Protective Proceedings Act.
• Under Act, a “guardian” is appointed to make personal decisions. A “conservator” is appointed in a “protective proceeding” to make decisions regarding property.
• UGPPA originally approved in 1969, but extensive amendment occurred in 1982 and 1997.
• Act, even if not enacted by a state in total, has influenced all reform efforts.

Implementing 3rd Summit

• Implementation Committee appointed to implement recommendations of 3rd National Summit. Committee tasked with recommending revisions to UGPPA.
• Third Summit also encouraged creation of WINGS [Working Interdisciplinary Network Guardianship Stakeholders] in individual states.
Revising the UGPPA

- Implementation Committee divided recommendations/standards into following categories: S-statutory; P-practice standard; E-educational; O-other
- David English and Linda Whitton of Implementation Committee then revised, reclassifying some S as P or E but also some P or E as S

Classification Results

- Of 70 recommendations/standards, 33 are classified as partially or fully statutory
- The 33 items fall into the following statutory categories:
  - Order of appointment
  - Duties and powers
  - Reporting
  - Compensation
  - Termination

Main Themes

- Terminology [R1.7]
- Transparency of duties [R1.1]
- Reporting to court [S1.1, 2.2]
- Fees [S 3.1, R3.2]
- Substituted judgment [R1.5]
- Financial decisions [S 4.1-4.6, 4.8-4.9, 4.12]
- Health-care decisions [S 5.1-5.3]
- Residential decision-making [S 6.1, 6.3-6.4]
Terminology [R1.7]

• “Where possible, the term person under guardianship should replace terms such as incapacitated person, ward, or disabled person.”

Transparency of duties [R1.1]

• State statutes should set forth the mandatory duties of guardians. Court or administrative rules should set forth guardian standards.

Reporting to Court

• The guardian shall develop and implement a plan setting forth short-term and long-term goals for meeting the needs of the person--plan shall emphasize “person-centered philosophy.” S1.1
• The guardian and conservator shall keep the court informed about the well-being of the person and the status of the estate through personal care and financial plans, inventory and appraisals, and annual reports and accountings. S2.2
Fees

- Advance disclosure of fees, including basis, changes, and detailed explanation. S3.1
- Factors in setting fees. R3.2

Substituted Judgment [R1.5]

- States should adopt by statute a decision-making standard that provides guidance for using substituted judgment and best interest principles in guardian decisions.
- These standards should emphasize self-determination and the preference for substituted judgment.

Financial Decisions

- Role of substituted judgment in financial decisions. S4.1-4.5
- Avoidance of conflicts of interest and self-dealing. S4.6
- Role of conservation and prudent management in addition to substitute judgment. S4.8
- Bond requirement. S4.9
- Power to delegate. S4.12
Health Care Decision-Making [1]

- The guardian, in making health care decisions or seeking court approval for a decision, shall maximize the participation of the person. S5.1
- The guardian shall
  - Acquire a clear understanding of the medical facts
  - Acquire a clear understanding of the health care options and risks and benefits of each
  - Encourage and support the individual in understanding the facts and directing a decision. S5.2

Health Care Decision-Making [2]

- To the extent the person cannot currently direct the decision, the guardian shall act in accordance with the person's prior directions, expressed desires, and opinions about health care; or, if unknown and unascertainable,
  - Act in accordance with the person's prior general statements, actions, values and preferences; or, if unknown and unascertainable,
  - Act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the person's welfare, to determine the person's best interests. S5.3

Residential Decision-Making [1]

- Protocol for ascertaining person's goals on residential placement. S6.1
- The guardian shall have a strong priority for home or other community-based settings, when not inconsistent with the person's goals and preferences. S6.3
Residential Decision-Making [2]

• The guardian shall make and implement a person-centered plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting. S6.4