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National Guardianship Association

Position Statement Regarding “Right to Association” Legislation

A number of members of the National Guardianship Association (NGA) and affiliated state guardianship associations have requested that NGA comment on several variations of legislative bills that have been proposed to state legislatures across the country entitled “The Right to Association.” This proposed legislation, which is being promoted by groups such as the National Association to Stop Guardian Abuse, is being proposed for enactment in all states much like a uniform law, and impacts jointly upon the post-adjudication rights of protected persons as well as the duties of guardians and conservators with regard to the persons they are appointed to protect. The primary focus of the proposed statutes is 1) facilitating visits between persons under guardianship with family members, and 2) notification of certain life events involving the person under guardianship to relatives defined by statute. The literature supporting these bills indicate the proposed legislation is a response to perceived abuses by Court-appointed guardians who are alleged to have routinely or unreasonably restricted and/or interfered with the familial relations of these protected persons, and the failure of the Courts to intervene to prevent these perceived abuses by Court-appointed guardians and conservators.

The National Guardianship Association (NGA) is an organization whose mission is to advance the nationally recognized standard of excellence in guardianship. To that end, NGA is obligated to address the impact of the proposed legislation on the protected person, on guardianship systems in general, and on the guardians who are court-appointed and entrusted to provide the protections of warranted court action.

NGA’s Standards of Practice for Guardians, which may be found at www.guardianship.org, have been adopted by or have formed the nucleus of personal and financial decision-making standards for Court-appointed guardians in at least 14 states. NGA’s members, as well as all guardians certified by the Center for Guardianship Certification (www.guardianshipcert.org), are required to follow NGA’s Standards of Practice, to include a focus on the personal preferences of the protected person, promote social interactions and meaningful relationships consistent with the person’s preferences, encourage and support that person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person. The guardian may not intervene with established relationships unless the intervention is necessary to protect the person from substantial harm. We believe that limiting a guardian’s authority to intervene in such circumstances only by obtaining a court order to restrict access could cause time delays and incur significant expense and result in substantial harm to a protected person in the meantime. In addition, there are reasonable and occasional circumstances that may warrant a guardian exercising either

restricted or supervised access that may not rise to a level that elicits the courts to take action.

The National Guardianship Association encourages all state legislatures and courts to consider adoption of the 24 standards for personal and financial decision-making, even with modification as necessary to address idiosyncrasies in state law and practice, and believes that **all Court-appointed guardians** should be held to these standards. NGA encourages legislative, judicial, and executive bodies to work jointly with NGA to develop state-specific standards of practice for guardians based on NGA's Standards of Practice.

Further, NGA supports additional legislation as necessary that protects and preserves the civil rights of protected persons under guardianship. NGA also desires to avoid adverse consequences resulting from proposed legislation such as this on the honorable and noble work by judges, attorneys, allied professionals, and professional and family guardians who dedicate their time and effort to protecting vulnerable persons.

NGA is concerned about the potential impact of this proposed legislation on familial interaction with the protected person, particularly with regard to 1) the notification requirements, and 2) penalties assessed related to the notification requirements or the failure to comply with those requirements.

With regards to notification, NGA is concerned that the class of people entitled to notice may be too broad and the circumstances under which notice is required may be too expansive. For example, providing notice of significant changes regarding status or circumstances of the protected person to parties who have previously requested notice may be reasonable. Requiring notice to be provided to a broad list of persons who have never requested such notice and who have been disinterested in the protected person is likely unnecessarily burdensome and expensive. Additionally, it is NGA's opinion that consideration should be afforded to the Court-appointed guardian to exercise discretion as to when and to whom notice is provided.

With regard to sanctions and penalties against court-appointed guardians, the majority of guardians, who are usually family members of the protected person, are unrepresented and unaware of changes to guardianship law. Consideration and passage of legislation to address identified needs in a jurisdiction can easily be justified; however, there is likely no empirical evidence to demonstrate that the perceived injustices that the bill attempts to address are widespread. Statutes encouraging sanctions and penalties against well-meaning guardians exercising their judgment in good faith may have a chilling effect on a person's willingness to serve as guardian, and the penalty provisions may require the court to penalize lay guardians who are unaware of the statute and who may not have the resources to be represented by an attorney.

Enactment of statutes with punitive provisions to address potential but uncommon misuse of authority by guardians may have a detrimental impact on the adjudication and administration of guardianships by the Courts. NGA recommends that the adoption of nationally recognized standards of practice, modified as needed to comply with state practices, along with education for guardians on ethical decision-making with a focus on the rights of protected persons under guardianship, will provide the most appropriate

and constructive environment for guardians in every state. Adoption of such standards for guardians will also result in desired uniformity of practices in the various states so that all protected persons may be afforded the same dignity, respect, and due process regardless of where they may be domiciled.

If you need information or have questions please contact one of the individuals below.

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