



**SECOND POSITION STATEMENT
REGARDING
“RIGHT TO ASSOCIATION” LEGISLATION
January 18, 2018**

On March 31, 2016, the National Guardianship Association’s Board of Directors released its Position Statement Regarding “Right to Association” Legislation that has been introduced in or adopted by various state legislatures. Legislation advanced by individuals and organizations based on personal experiences with family caretakers and, in some instances, guardians and conservators, has now been passed in various forms in approximately thirty jurisdictions. These “Right to Association” statutes, as referred to by their proponents, may impact broadly upon the post-adjudication rights of protected persons and various classes of family members and acquaintances, as well as potentially on the duties of guardians and conservators with regard to the persons they are appointed to protect.

The emphasis of a number of these statutes is 1) to regulate visits between persons who are under guardianship and family members and other classes of acquaintances, and 2) to require notification of certain life events involving the person under guardianship to relatives. The literature supporting these bills indicate the proposed legislation is a response to abuses by family members (who may or may not be court-appointed guardians) who are alleged to have routinely or unreasonably restricted and/or interfered with the familial relations of vulnerable and/or protected persons, and the failure of the courts to intervene to prevent these perceived abuses if a court-appointed guardian or conservator is involved.

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.

The NGA has urged statutory adoption of its Standards of Practice for Guardians because the Standards, among many other provisions, balance respect for 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 substantial harm might result from honoring such preferences and conduct. The NGA Standards maybe found at www.guardianship.org. NGA encourages all state legislatures and courts to adopt all twenty-four standards of practice for personal and financial decision-making 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 and its state affiliate organizations to develop state-specific standards of practice for guardians based on NGA’s Standards of Practice, modifying them as necessary to address idiosyncrasies in state law and practice.

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 legislation that is overly broad and not narrowly tailored to address circumstances requiring the remedy of statutory intervention.

NGA has expressed concern that limiting a guardian's authority to intervene to restrict access to a vulnerable adult only by means of obtaining a court order could cause time delays and result in substantial harm as well as significant expense to a protected person. NGA also remains concerned about the potential impact of proposed legislation on familial interaction with the protected person, particularly with regard to 1) onerous notification requirements, and 2) penalties assessed related to failure to comply with the notification requirements.

In jurisdictions where the legislature and/or community determines to be necessary to adopt legislation to regulate interaction between a protected person and family members, NGA recommends consideration of language found in recent statutory enactments:

Illinois Public Act 099-082, which amended §11a-17 of the Illinois Probate Act of 1975 by adding the following subsections:

(g)(1) Unless there is a court order to the contrary, the guardian, consistent with the standards set forth in...this Section, shall use reasonable efforts to notify the ward's known adult children, who have requested notification and provided contact information, of the ward's admission to a hospital or hospice program, the ward's death, and the arrangements for the disposition of the ward's remains.

(2) If a guardian unreasonably prevents an adult child of the ward from visiting the ward, the court, upon a verified petition by an adult child, may order the guardian to permit visitation between the ward and the adult child if the court finds that the visitation is in the ward's best interests. In making its determination, the court shall consider the standards set forth in...this Section. This subsection (g) does not apply to duly appointed public guardians or the Office of State Guardian.

New York amended Subdivision (c) of section 81.16 of the Mental Hygiene Law by adding three new paragraphs 4, 5 and 6 to read as follows:

4. The order of appointment shall identify the persons entitled to receive notice of the incapacitated person's death, the intended disposition of the remains of the decedent, funeral arrangements and final resting place when that information is known or can be reasonably ascertained by the guardian.

5. The order of appointment may identify the person or persons entitled to notice of the incapacitated person's transfer to a medical facility.

6. The order of appointment may identify the persons entitled to visit the incapacitated person, if they so choose. However, the identification of such persons in the order shall in no way limit the persons entitled to visit the incapacitated person.

The Texas Legislature modified the statutory scheme that had adopted "Right to Association" with minor modification; however, in the last legislative session the Legislature amended the Texas Estates Code §1051.103 and §1054.104 to impose on family members the burden of requesting notice of certain events by guardians:

Section 1051.103, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) A citation served...to a relative of the proposed ward....must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward....

Section 1051.104, Estates Code, is amended by adding Subsection (d) to read as follows:

(d) Notice required...to a relative of the proposed ward....must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward....

If you need information or have questions please contact:

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