

## GUARDIANSHIP MONITORING: A DEMOGRAPHIC IMPERATIVE

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*Demographic trends are converging to create an unprecedented increase in guardianships, and state courts are faced with the responsibility of ensuring their wards receive appropriate care without exploitation and neglect. A decades-long process of improving court monitoring of guardianships continues as the federal government focuses on the issue.*

The number of people age 65 and older numbered 35.9 million in 2003. As the baby boomers come of age, this older population will more than double, reaching more than 71 million by 2030.<sup>1</sup> The number of people aged 85 and older is expected to triple by 2040 to 15 million.<sup>2</sup>

Alzheimer's disease and related dementias are becoming more prevalent. In 2007 there are now more than 5 million people in the United States living with Alzheimer's disease, 4.9 million of whom are over the age of 65. This is a 10 percent increase from the previous nationwide estimate of 4.5 million.<sup>3</sup> In addition, guardianships include an increasing number of younger adults with developmental disabilities and mental illness. Intellectual disabilities affect about one in ten families in the U.S.<sup>4</sup>

At the same time, incidents of elder abuse are rising. Between 1986 and 1996, reports of abuse and neglect of seniors age 60 and older to state adult protective services agencies increased 150 percent, from 117,000 to 293,000.<sup>5</sup> However, these cases are often grossly underreported. A 1998 national study conducted by the National Center on Elder Abuse estimated that approximately half a million seniors were victims of abuse or neglect in domestic settings in 1996, yet only 16 percent of these cases were reported to state APS agencies.<sup>6</sup>

As some of these elderly adults become physically or mentally incapable of making or communicating important decisions, those who do not have family members who can informally assume responsibility for their decision making may require appointment of a guardian to protect them from abuse and neglect.

In response to these demographic changes and the increased need for surrogate decision making, professional or agency guardianship entities, both for-profit and not-for-profit, as well as governmental public guardianship programs, have become a major factor in the provision of guardianship services for those who have no available family or friends qualified to serve as guardians. These agency guardians must frequently work with high caseloads and insufficient funding, making decisions about the care of their wards with little knowledge of their wards' lives or values.<sup>7</sup>

As the number of guardianships reaches an all-time high and continues to escalate, methods for ensuring that such arrangements are safe and effective have become increasingly crucial.

### "Best Practices" in Guardianship Monitoring

Through the years of conferences, meetings, and symposia, a consensus list of "best practices" to ensure effective guardianship monitoring has emerged. Although this list is not "all-inclusive," using the rubric of the National Commission on Probate Court Standards, many of these best practices include:

#### A. Training and Outreach

- Develop and implement regular training of court staff, attorneys, guardians, and court visitors to understand and acknowledge their responsibilities
- Require certification of all professional fiduciaries
- Provide training and comprehensive materials for guardians, including forms, information on medical decision making, government programs, community resources, etc.
- Develop "stakeholders committees" between courts, attorney groups, mental-health professionals, social-services staff, adult-protective services, agencies on aging, long-term care ombudsman, etc., who can regularly exchange information on issues and challenges in the area of guardianship and guardianship monitoring
- Develop a vehicle for interaction between court staff in jurisdictions within the state to exchange operating procedures and collaborate on solutions

## Milestones in Guardianship Monitoring



- Develop strong working relationships between the court and state agencies to protect the elderly and law-enforcement entities for referral in cases of suspected abuse
- Advocate for sufficient court resources
- Work with constituent groups to improve this field of law by establishing, amending, or repealing state legislation
- Develop fee-based funding to finance monitoring efforts
- Educate budgetary decision makers about the importance and needs of guardianship services, including monitoring

### B. Reports by Guardians

- Mandate uniform forms to ensure consistent reporting and review practices and make forms generally available (trainings, Web site, clerk’s office)
- Require regular (preferably annual) reports on the condition and well-being of the ward and verified accountings as to all assets, receipts, and expenditures
- Require care plans for the ward and management plans for ward’s estate
- Require a final report, both for the ward and the estate, before discharge of the guardian

### C. Review of Reports

- Adopt a “redemptive” rather than “punitive” approach to erring guardians.
- Develop uniform reporting and accounting documents, as well as audit procedures, and train court staff, guardians, and attorneys on implementation and use.
- Establish monthly allowances to minimize need for applications and orders for expenditures
- Observe appropriate bonding practices or require restricted access to fiduciary accounts and review bond adequacy annually
- Require court approval of reports and accounts
- Develop and implement computer technology to store, retrieve, and sort case information, including the capacity to identify and manage cases with overdue reports/accounts and to trigger notification to guardians and other interested parties
- Develop and implement a monitoring program using trained volunteers (retirees, law students, social-work students, nursing students) as visitors, acting under supervision of court staff
- Develop protocols for the use of e-filing in guardianships to allow guardians to electronically file reports and accounts



#### D. Reevaluation of the Necessity for Guardianship

- Review annually any need to alter or modify the guardianship

#### F. Enforcement of Court Orders

- Develop a comprehensive policy for enforcement of reporting, including the use of database technology and progressive notices, sanctions, and procedures for removal and replacement of guardians

#### ENDNOTES

<sup>1</sup> GAO-06-1086T, *Guardianships: Little Progress in Ensuring Protection for Incapacitated Elderly People*, a report to the Chairman, Special Committee on Aging, U.S. Senate, September 2006, [www.gao.gov/new.items/d061086t.pdf](http://www.gao.gov/new.items/d061086t.pdf).

<sup>2</sup> GAO-04-655, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, a report to the Chairman, Special Committee on Aging, U.S. Senate, July 2004 [www.gao.gov/new.items/do4655.pdf](http://www.gao.gov/new.items/do4655.pdf).

<sup>3</sup> Alzheimer's Association, *Alzheimer's News* (March 20, 2007), [http://www.alz.org/news\\_and\\_events\\_rates\\_rise.asp](http://www.alz.org/news_and_events_rates_rise.asp).

<sup>4</sup> President's Committee for People with Intellectual Disabilities, Administration for Children and Families, U.S. Department of Health and Human Services, "Fact Sheet." Retrieved Dec. 6, 2005 from [www.acf.hhs.gov/programs/pcpid/pcpid\\_fact.html](http://www.acf.hhs.gov/programs/pcpid/pcpid_fact.html).

<sup>5</sup> Carrie Abner, "A Silent Crisis," *State News* (April 2005), Council of State Governments, <http://www.csg.org/pubs/Documents/sn0505SilentCrisis.pdf>.

<sup>6</sup> *National Incidence Study*, October 8, 1998, National Center on Elder Abuse, [www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse/ABuseReport\\_Full.pdf](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/ABuseReport_Full.pdf).

<sup>7</sup> Naomi Karp and Erica Wood, *Guardianship Monitoring: A National Survey of Court Practices*, AARP Public Policy Institute, [www.aarp.org/pp\\_#2006-14](http://www.aarp.org/pp_#2006-14) June 2006.