



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

SEP 02 2021

The Honorable Robert P. Casey, Jr.  
United States Senate  
Washington, DC 20510

Dear Senator Casey:

Thank you for your letter about guardianship issues. Specifically, you raised issues concerning available guardianship data, how to prevent guardian abuse, and how to better support individuals under guardianship. In collaboration with the Department of Justice (DOJ), this response is also being sent on behalf Attorney General Garland. As you noted, the authority for guardianship rests with state courts. Nevertheless, the DOJ and the Department of Health and Human Services (HHS) are cognizant of the issues posed by guardianship and have been engaged in joint and individual efforts to address guardianship issues.

At this time, the federal government has no authority to collect data from the most direct and efficient source of guardianship data – the state and local courts that adjudicate guardianship proceedings. Accordingly, the only data the federal government receives is through a voluntary data set and agreement with states specific to Adult Protective Services (APS) interventions. As you noted, the HHS Administration for Community Living (ACL) administers the National Adult Maltreatment Reporting System (NAMRS),<sup>1</sup> which collects quantitative and qualitative data from APS agencies in the U.S. and its territories annually specific to the practices and policies of their agencies investigations into the reports of maltreatment of older adults and adults with disabilities. It is important to note that NAMRS collects data on investigations of abuse, neglect, and exploitation reported to and screened by APS. The focus is on the alleged victim of maltreatment and circumstances important for the APS investigator to know to better serve the alleged victim and assist with reducing their risk of harm. The presence of a substitute decision-maker is an important facet of a client's characteristics. Therefore, ACL asks APS agencies to report data elements in NAMRS to the degree they are able to collect them related to victims of abuse who had a guardian or conservator at the beginning of an APS investigation and those who had a guardian or conservator appointed at the close of an investigation, as well as information on alleged perpetrators who are guardians.

ACL is also engaged in efforts to prevent guardianship and support individuals under guardianship. For example, ACL has awarded Elder Justice Innovation Grants (EJIG)<sup>2</sup> since 2016 that are targeted at improving guardianship practices and outcomes. This year, ACL will

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<sup>1</sup> National Adult Maltreatment Reporting System (NAMRS) webpage: <https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs>

<sup>2</sup> Elder Justice Innovation Grants webpage: <https://acl.gov/programs/elder-justice/elder-justice-innovation-grants-0>

be awarding approximately 16 EJIG grants to highest state courts,<sup>3</sup> as authorized by the Elder Justice Act,<sup>4</sup> to assess the fairness, effectiveness, timeliness, safety, and integrity of adult guardianship and conservatorship proceedings, and develop innovations to improve the experiences of individuals at risk of guardianship/conservatorship. Grantees will undertake activities such as: developing systems to audit conservator and guardian accounting and case management systems to track cases; developing judicial training programs and curricula; identifying and understanding how to avoid and/or mitigate abuse by conservators and guardians; exploring how judicial systems may coordinate with the Social Security Administration and the Department of Veterans Affairs to identify and remove abusive fiduciaries; and creating independent ombudsman programs for protected persons to voice concerns and seek redress from abuse.

ACL has also worked on alternatives to guardianship for people with disabilities. Most recently, ACL funded in September 2020 the Center for Youth Voice, Youth Choice to break the school-to-guardianship pipeline many youth with intellectual and developmental disabilities (ID/DD) experience. The new center will conduct research, create a sustainable model for capacity building and resource dissemination, and form a Youth Ambassador program that will train youth in leadership development and mentoring to other youth on SDM. In addition to directly engaging youth with ID/DD in the work of the project, it will be guided by an advisory committee, 75 percent of whom will be youth with ID/DD. This builds off ACL's prior investments in a National Resource Center for Supported Decision Making and state-based grants for SDM activities for people with ID/DD.

ACL also funds legal assistance programs for older Americans with economic and social need in every state, for whom redress of abuse, neglect and financial exploitation are priorities for representation of older individuals.<sup>5</sup> ACL's National Center on Law and Elder Rights (NCLER), which offers robust training, technical assistance and case consultation services to aging network professionals, including legal assistance providers.<sup>6</sup> NCLER has developed the Elder Justice Toolkit,<sup>7</sup> a collection of actionable resources for civil legal aid attorneys and advocates to respond to elder abuse, with a focus on trauma-informed and culturally competent strategies. The Toolkit contains a module on guardianship and elder abuse.<sup>8</sup> NCLER also has training materials specific to guardianship and alternatives to guardianship.<sup>9</sup> For people with disabilities, ACL-funded Protection and Advocacy systems in each state are also charged with seeking redress from guardianship and empowering eligible clients to find self-determined, person-centered supports for decision-making.

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<sup>3</sup> FY 2021 Elder Justice Innovation Grant Announcement: <https://acl.gov/grants/elder-justice-innovation-grants-fy2021>

<sup>4</sup> 2042(c)(2)(E) of the Social Security Act [42 U.S.C. 1397m-1].

<sup>5</sup> ACL Legal Assistance webpage: <https://acl.gov/programs/protecting-rights-and-preventing-abuse/legal-help>

<sup>6</sup> National Center on Law and Elder Rights (NCLER) website: <https://ncler.acl.gov/>

<sup>7</sup> Elder Justice Toolkit: <https://ncler.acl.gov/ElderJustice-Toolkit/About-Elder-Justice-Toolkit.aspx>

<sup>8</sup> Module on Guardianship and Elder Abuse: <https://ncler.acl.gov/ElderJustice-Toolkit/Guardianship-Elder-Abuse.aspx>

<sup>9</sup> Training Materials for Guardianship: <https://ncler.acl.gov/Legal-Training/Guardianship.aspx>

Similarly, the DOJ's Elder Justice Initiative worked with the National Center for State Courts and the American Bar Association Commission on Law and Aging to launch in 2016 "Finding the Right Fit: Decision-making Supports and Guardianship," a free online training to help individuals who may need assistance making decisions to understand the options and resources available to them. The training also provides information on the role of guardians and the risks of abuse, neglect and exploitation that accompany guardianships and other forms of supported decision-making.<sup>10</sup> The Initiative also recently added information on its Elder Justice Website ([www.elderjustice.gov](http://www.elderjustice.gov)) regarding guardianships.<sup>11</sup> The information includes an overview of key concepts, less restrictive alternatives to guardianship, including supported decision-making, as well as some of the abuses and problems that have occurred in the guardianship context. Finally, where appropriate, the Department has pursued guardians or other fiduciaries who have allegedly defrauded older adults.<sup>12</sup>

Likewise, DOJ has made substantial progress implementing the Elder Abuse Prevention and Prosecution Act. At the outset, the Department has aggressively investigated and pursued elder fraud schemes in all their many forms. This past June, for example, the Department announced criminal charges in two separate matters involving defendants accused of furnishing perpetrators of elder fraud schemes with consumer data on millions of Americans.<sup>13</sup> As part of the deferred prosecution agreements entered by both defendants, they acknowledged that they had sold consumer lists to a number of mass-mailing fraud schemes that sent false "sweepstakes" and "astrology" solicitations to consumers. Moreover, as reflected in the consumer lists sold by the defendants to the operators of the fraud schemes, the schemes disproportionately affected the elderly and other vulnerable individuals. At the same time that the Department pursued elder fraud schemes, it also pursued nursing homes that defrauded the Medicare and Medicaid programs. In May 2021, the Department announced an \$11.2 million settlement with SavaSeniorCare LLC and related entities to resolve False Claims Act allegations that the company had caused its skilled nursing facilities to bill the Medicare program for medically unnecessary rehabilitation therapy, as well as grossly substandard nursing services.<sup>14</sup>

In addition to its law enforcement efforts, the Department has made significant strides in the development of tools, training, and resources for a wide array of elder justice professionals, such as state and local prosecutors and law enforcement. For example, the Department supported the development of the Elder Abuse Guide for Law Enforcement (EAGLE), a free web module designed to provide law enforcement with resources to respond to elder abuse.<sup>15</sup> Based on EAGLE, the National White Collar Crime Center collaborated with the National Center on Elder

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<sup>10</sup> Finding the Right Fit: Decision-making Supports and Guardianship Training: [https://eji.courtllms.org/catalog/info/id:140.cms\\_featured\\_course:1](https://eji.courtllms.org/catalog/info/id:140.cms_featured_course:1)

<sup>11</sup> <https://www.justice.gov/elderjustice/guardianship>

<sup>12</sup> See, e.g., <https://www.justice.gov/usao-edpa/pr/court-appointed-pennsylvania-guardian-and-virginia-co-conspirators-indicted-stealing>; <https://www.justice.gov/usao-mdfl/pr/former-state-attorney-indicted-extortion-part-conspiracy-defense-attorney-well-briber-2>; <https://www.justice.gov/usao-ndia/pr/dubuque-couple-sentenced-federal-prison-after-stealing-hundreds-thousands-dollars-man-s>.

<sup>13</sup> See <https://www.justice.gov/opa/pr/justice-department-recognizes-world-elder-abuse-awareness-day-files-cases-against-marketing>

<sup>14</sup> See <https://www.justice.gov/opa/pr/savaseniorcare-llc-agrees-pay-112-million-resolve-false-claims-act-allegations>

<sup>15</sup> Elder Abuse Guide for Law Enforcement: <https://eagle.usc.edu>.

Abuse to develop the EAGLE Online Elder Abuse Training,<sup>16</sup> the first elder abuse training for law enforcement that has been certified by the International Association of Directors of Law Enforcement Standards and Training, which qualifies for one hour of Police Officers Standards and Training credit in 36 states. The development and availability of EAGLE and its accompanying training is a significant step towards ensuring that local law enforcement have the tools and training they need to respond effectively to elder abuse.

In addition to bolstering the capacity of state and local elder justice professionals to address elder abuse, the Department has also developed many resources and programs to support older victims. In addition to the National Elder Fraud Hotline,<sup>17</sup> which assists older victims and their families to report fraud and/or to find local assistance, the Department has supported the Elder Justice AmeriCorps Legal Fellowship Program to help address the myriad of legal needs of older abuse victims,<sup>18</sup> as well as awarded grants to state and local elder abuse programs that provide direct community and systems based services to older victims.<sup>19</sup>

Lastly, it is worth noting that the Fourth National Guardianship Summit<sup>20</sup> convened the week of May 10, 2021. This Summit brought together key stakeholders including judges, lawyers, scholars, family guardians and others with an interest in guardianship. Participants discussed the current state of adult guardianship and developed recommendations for reform and improvement, emphasizing maximizing autonomy and ensuring accountability. Key staff from HHS and DOJ who have experience and expertise in guardianship and less-restrictive alternatives that support adult self-determination participated in the Summit.

While we believe these and other incremental efforts have had a positive impact on the experience of adults under guardianship, we agree that there is much more that must be done. Collectively at the federal, state and local level additional efforts to support coordination and information sharing can lead to a more comprehensive, holistic and person-directed approach, gain a better understanding of the scope of guardianships through meaningful data collection, and expand the availability of less restrictive alternatives.

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<sup>16</sup> EAGLE Online Elder Abuse Training: [www.nw3c.org/online-training/online-course-detail/488](http://www.nw3c.org/online-training/online-course-detail/488)

<sup>17</sup> National Elder Fraud Hotline: <https://ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope>

<sup>18</sup> Elder Justice AmeriCorps Legal Fellow Program: <https://www.equaljusticeworks.org/fellows/?s-program=elder-justice-program>

<sup>19</sup> <https://www.justice.gov/file/1375296/download>.

<sup>20</sup> Fourth National Guardianship Summit webpage: <http://law.syr.edu/academics/conferences-symposia/the-fourth-national-guardianship-summit-autonomy-and-accountability>

I trust this provides you with some better context on the underlying issues and our federal response. These issues are complex and involve a multifaceted interplay of mostly state authorities with some limited federal engagement. If you have additional questions or a briefing would be helpful, please have your staff contact Jonathan Osborne with the HHS Office of the Assistant Secretary for Legislation, at [Jonathan.osborne@hhs.gov](mailto:Jonathan.osborne@hhs.gov). I will also provide this response to Senator Warren.

Sincerely,

A handwritten signature in blue ink, appearing to read "Xavier Becerra", with a stylized flourish at the end.

Xavier Becerra