



SeniorLAW Center

Protecting the Rights of Older Pennsylvanians

Testimony before the
U.S. Senate Special Committee on Aging

Senator Susan M. Collins, Chair
Senator Robert P. Casey, Jr., Ranking Member

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As a proud public interest attorney and nonprofit leader who has advocated for older Americans for the past 21 years, I am pleased to present testimony on the challenges with the guardianship system we see and some ideas on solutions and best practices for improvement. I am a proud Pennsylvanian (with deep connections as well to the state of Maine), and share the gratitude of our staff, board, thousands of clients and supporters for the leadership Senator Collins, Senator Casey and this Committee are providing to focus attention on the most critical needs of older people in our country. We are proud to have Senator Casey represent us in Washington and on this important Committee.

SeniorLAW Center fights for justice for older Pennsylvanians and advocates for elder justice around the country with national colleagues. We are a nonprofit legal services organization of attorneys and advocates, celebrating our 40th year of providing *free* legal representation, education and advocacy on critical issues of law affecting older people, focusing on those in the greatest social and economic need. From devastating elder abuse and financial exploitation, to the complex issues of homelessness prevention, homeownership, and challenges of older tenants, to serving senior veterans, immigrants and grandparents raising grandchildren, and much more, SeniorLAW Center protects the rights of older individuals and their families, and advocates for systems which treat them with fairness, respect and compassion. Our mission is to seek justice for older people by using the power of the law, educating the community and advocating on local, state and national levels. We envision a world that values older people, hears their voices and guarantees their rights

Few legal proceedings have more impact on an individual's fundamental rights and liberties than guardianship. Putting life decisions of one into the hands of another is daunting. Few of us would choose to be in such a situation and at SeniorLAW Center, we do much to *prevent* the need for guardianship. Guardianship has overwhelming impact on an individual's health, safety, economic security, shelter, family, happiness, quality of life, and, even, longevity. And, as we have seen, is ripe for abuse, neglect and exploitation in the wrong hands. It has created situations of enormous family anguish and pain; it is at the same time an important tool to provide for the care of our most vulnerable citizens. It is often misunderstood. Today, it has become controversial. It is thus a tool that demands our attention as family members, advocates and decisionmakers. We thank you for the opportunity to provide our thoughts and insights.

We have organized our testimony in alignment with key areas of significance as relates to guardianship in our country:

1. DATA COLLECTION

We know that there is a paucity of guardianship data (and an even less amount of reliable data) in Pennsylvania and many other parts of the country. This is an excellent place to begin as data is essential to addressing the size and scope of the problem, what works and what doesn't, and even tracking the caseload, the guardians and individuals/wards/alleged incapacitated persons involved, and their health and safety.

Yet, in this area, Pennsylvania is making great strides. I am proud to be an original appointed member of the Pennsylvania Supreme Court's Elder Law Task Force and its current

Advisory Council on Elder Justice in the Courts, two bodies of diverse leaders which have spent enormous time and effort in examining guardianship and its challenges and best practices, elder abuse and neglect, and access to justice. The Task Force released a 284-page report with 130 recommendations at the conclusion of its work in November 2014. The Advisory Council on Elder Justice in the Courts takes that work forward to seek to implement and promote those recommendations. I must emphasize that in presenting this testimony, I do so on behalf of SeniorLAW Center and myself, not on behalf of the Court's Advisory Council.

We Pennsylvanians should be proud of the groundbreaking work of the Court's Task Force and Council, and of the Administrative Office of the Pennsylvania Courts (AOPC), which together have recently created and released a new Guardianship Tracking System which will do much to address the data gap in guardianship in our Commonwealth, or at least begin to do so. With 67 counties, Pennsylvania's court system, AAA, protective services and aging network systems are fragmented and guardianship processes, data collection, tracking and reporting are disparate. Support for development and implementation of data tracking is important as well as articulation of the need for such systems, including sharing information about guardians and counsel to identify "red flags" when abuse or exploitation may be involved, as well as individuals who do not need or no longer need guardians, families that are unable to access their loved ones, guardians that are handling an unreasonable number of guardianships, guardians with a history of exploiting or neglecting or abusing older or vulnerable people and/or *relevant* criminal records or convictions which may have an impact on their ability to serve as a guardian, etc. Providing accurate information to courts making these decisions, which have such an extraordinary impact on individual lives and freedom, is essential.

2. AVOIDING GUARDIANSHIP ABUSE AND EXPLOITATION

Data collection and enhanced tracking systems will also help enable courts to oversee guardianships and help respond to abuse and exploitation. We also recommend:

- enforcement of full and timely reporting by guardians on their actions and the safety and security of those in their care, and ensuring that reporting forms are comprehensive and updated, with focus on the individual's rights and well-being
- thorough and timely review of those reports by judicial or other professionals
- training of judges, court staff, families, the public, the aging network and others about the guardianship process, responsibilities of guardians, signs of abuse and exploitation, and rights of individuals subject to guardianship
- a Bill of Rights for both Incapacitated and Alleged Incapacitated Persons (drafted in PA)
- guardianship monitoring systems, whether well-trained and supervised volunteer pro bono systems (good examples in PA – Dauphin County and others) or professional paid staff
- guardianship advocates and/or visitors (well-trained and supervised, including the CASA Model of advocates proposed by our partners and officemates CARIE, the Center for Advocacy for the Rights and Interest of the Elderly)
- requiring training and certification of professional guardians and reasonable investigation into the backgrounds of all guardians before appointing them

- raising visibility about guardianship abuse and exploitation and ways to identify and avoid through partnerships of courts, legal services, advocates, families and other stakeholders
- ensuring right to counsel of both Incapacitated and Alleged Incapacitated Persons
- supporting advocates and legal services to represent and advocate for individuals who are being abused and exploited or allege such abuse or exploitation

In addition to working to *prevent* the need for guardianship through our Life Planning services, SeniorLAW Center's team of attorneys and advocates provide community education and professional training, legal information, counsel and advice through our statewide legal HelpLine, and direct legal services for senior victims of abuse and exploitation of all kinds. Senior legal services, senior legal hotlines and helplines, pro bono and law school programs, and court-based access to justice projects can all play important roles in crafting solutions to the challenges of ensuring trust and fairness in the guardianship system and proceedings.

3. GUARDIANSHIP AND LEAST RESTRICTIVE ALTERNATIVES

Monitoring and tracking guardianships, the actions of guardians and the safety, security, health and estates of those under guardianships will do much to determine whether guardianship is needed and whether it is an appropriate and necessary relationship. Funding advocates and legal services (see above) to represent and advocate for individuals who no longer need guardianship, or believe so, is fundamental. Currently there is little support for such services and those individuals likely have no or little access to their funds to pay for legal or advocacy services to help them and may also have restrictions on their ability to access help.

We further recommend required training about guardianship alternatives, including newer concepts such as supported decisionmaking, for courts, the Bar, the aging network, families and communities, and guardians, community and judicial education on the requirement to use the least restrictive alternative. Per the Recommendation of the American Bar Association, states should be encouraged to explore the specific addition of language to their guardianship statute requiring consideration of alternatives to guardianship, such as supported decisionmaking. Attorneys, advocates and aging and disability network service providers, among others, should be trained in the full panoply of alternatives to guardianship to understand them and how to pursue.

Ensuring individuals subject to guardianship -- and their families and advocates -- know their rights, and are given a Bill of Rights and how to enforce them is essential to identifying those who no longer need guardianship or the form of guardianship imposed. We must continue to recognize that there are few if any other court actions that so harshly remove an individual's rights and freedoms.

4. RIGHT TO COUNSEL

In addition to those identified above, we are especially concerned about the right to counsel and representation of alleged incapacitated persons in guardianship proceedings, and ensuring fair, unbiased and zealous advocacy for individuals. Asking for and honoring their request for counsel of their choice, if feasible, is recommended.

Setting a goal that individuals participate in and are present at all hearings affecting their lives, if they are at all able to participate, is also very important, starting with a presumption that they are, vs. the opposite, and requiring evidence that the individual absolutely cannot attend, if they are excluded.

We are grateful for the opportunity to participate in this important discussion and look forward to being involved further as it evolves. SeniorLAW Center is committed to pursuing justice for older people of all walks of life through our work and through vibrant and diverse partnerships. Our elders represent our past as well as our future, where we have come from and where we are going. Surely we want justice to be there when older Americans – including our loved ones and yes, even us -- arrive.

Respectfully submitted,



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