

United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

(202) 224-5364

May 31, 2023

The Honorable Gene L. Dodaro
Comptroller General
United States Government Accountability Office
441 G St. NW
Washington, D.C. 20548

Dear Comptroller General Dodaro,

We write regarding state guardianship laws, which can give a single person or entity the power to make personal, financial, health, education, residency, and other decisions for another.¹ Recent Senate Special Committee on Aging testimony and media reports suggest that guardian abuse and fraud can have devastating effects. Such abuse can deprive older adults, people with disabilities, and others of their rights, their financial security, and even contact with their families. Historically, there has been inadequate data on the use of guardianship and occurrences of abuse in the United States, suggesting that a review of new data is in order. We ask the Government Accountability Office (GAO) to provide us with a better understanding of the use of guardianship across states and how people are impacted by existing guardianship laws, occurrences of abuse, and proposals for reform.

Most commonly, state courts may appoint a guardian for someone who is determined to be “incapacitated,” or unable to make decisions because of conditions such as dementia, intellectual disability, mental illness, or substance use disorder.² A 2017 estimate states there are roughly 1.3 million active guardianship arrangements throughout our Nation.³ An industry of private, professional guardians has developed in part because of an increasing use of guardianships for people who do not have family or friends who can act as guardians.⁴ Because of a guardian’s power over the life of another person, a guardianship may entail significant risk, especially when guardians handle multiple protective arrangements and they are subject to limited oversight.⁵

¹ “Guardianship & Conservatorship Basics,” Center for Elders and the Courts, last accessed May 16, 2023 [hereinafter “Guardianship Basics Webpage”], https://www.eldersandcourts.org/guardianship_conservatorship/general-information/basics.

² “Guardianship Overview,” Department of Justice, last accessed May 16, 2023, <https://www.justice.gov/elderjustice/guardianship-overview>.

³ The 1.3 million figure includes conservatorships, a term some states use for cases when an individual is appointed to oversee another person’s finances, but not other aspects of that person’s life. See *Social Security’s Representative Payee Program, Before the Subcommittees on Oversight and Social Security of the House Committee on Ways and Means*, 115th Congress, at 44, 2017, statement of Brenda Uekert, <https://www.govinfo.gov/content/pkg/CHRG-115shrg33365/pdf/CHRG-115shrg33365.pdf>.

⁴ *Supra*, note 1, Guardianship Basics Webpage.

⁵ *Abuse of Power: Exploitation of Older Americans by Guardians and Others They Trust, Before the Senate Special Committee on Aging*, 115th Congress, at 48, 2018, statement of Denise Flannigan [hereinafter “April 2018 Aging Guardianship Hearing”], <https://www.govinfo.gov/content/pkg/CHRG-115shrg35280/pdf/CHRG-115shrg35280.pdf>.

Although many guardians live up to their obligations, testimony and media stories illustrate the dark side of guardianships. Some adults are wrongly placed into guardianships, which can be unnecessarily restrictive and violate their rights.⁶ The status of people under guardianships may be “poorly monitored in sufficient, meaningful, and diligent ways,” resulting in “exploitation, abuse, and neglect.”⁷ In Nevada, adults were placed under guardianships for questionable reasons, then lost their homes, assets, and contact with their families.⁸ In New Mexico, the owners of a guardianship agency embezzled approximately \$10 million from their clients and spent it on luxury items and vacations.⁹ In Pennsylvania, a guardian mismanaged a client’s personal assets and did not properly file for veteran’s benefits, costing the client \$25,000 over a 22-month period.¹⁰ There is a clear need to understand how older adults and people with disabilities are impacted by guardianships and how proposed reforms could affect their lives.

There is a lack of data on guardianships in the United States.¹¹ In 2016, GAO found that the extent of elder abuse by guardians was unknown.¹² However, GAO noted that the National Adult Maltreatment Reporting System (NAMRS), a data-collection system that was then under development, might eventually provide useful information on guardianship abuse.¹³ NAMRS is now active and has released reports for fiscal years 2016 through 2020.¹⁴ Examining guardianships in light of the data available through NAMRS will help policymakers and taxpayers evaluate existing laws and proposed reforms and identify continuing gaps in the available data.¹⁵

There are efforts to reform guardianship systems, including by the Uniform Law Commission (ULC), which has developed model legislation that states may choose to adopt.¹⁶ The Uniform

⁶ *Id.*, at 30, statement of Nina Kohn.

⁷ *Id.*, at 34, statement of Pamela Teaster.

⁸ Rachel Aviv, “How the Elderly Lose Their Rights,” *The New Yorker*, October 2, 2017,

<https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>.

⁹ Heidi Blake and Katie J.M. Baker, “Beyond Britney: Abuse, Exploitation, and Death Inside America’s Guardianship Industry,” *BuzzFeed News*, September 17, 2021, <https://www.buzzfeednews.com/article/heidiblake/conservatorship-investigation-free-britney-spears>.

¹⁰ *Supra*, note 5, April 2018 Aging Guardianship Hearing, at 47, statement of Denise Flannigan.

¹¹ *Ensuring Trust: Strengthening State Efforts to Overhaul the Guardianship Process and Protect Older Americans, Before the Senate Special Committee on Aging*, 115th Congress, at 46, 2018, statement of Karen C. Buck, <https://www.govinfo.gov/content/pkg/CHRG-115shrg37591/pdf/CHRG-115shrg37591.pdf>.

¹² Government Accountability Office, *The Extent of Abuse by Guardians is Unknown, but Some Measures Exist to Help Protect Older Adults*, November 2016, at 6-8 [hereinafter “GAO Guardian Abuse Report”], <https://www.gao.gov/assets/gao-17-33.pdf>.

¹³ *Id.*, at 12. Run by the Administration on Community Living, NAMRS collects data from state adult protective services programs. See “National Adult Maltreatment Reporting System (NAMRS),” Administration for Community Living, last modified on February 13, 2023, <https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs>.

¹⁴ “National Adult Maltreatment Reporting System (NAMRS),” Administration for Community Living, last modified on February 13, 2023, <https://acl.gov/programs/elder-justice/national-adult-maltreatment-reporting-system-namrs>. Note that, although participation in NAMRS is voluntary for the states, every state has participated since fiscal year 2018.

¹⁵ While NAMRS might improve the Nation’s understanding of guardianship abuse, it may not answer every question. For example, a 2020 GAO report examined financial abuse among all older adults (not just those under a guardianship) and found that while NAMRS was an important source of information, there were gaps in its data. See Government Accountability Office, *HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation*, December 2020, at 11, <https://www.gao.gov/assets/gao-21-90.pdf>. Ultimately, it is important for policymakers and the public to understand both what is known about the impact of guardianships and what remains unknown.

¹⁶ *Supra*, note 12, GAO Guardian Abuse Report, at 18.

Guardianship, Conservatorship, and Other Protective Arrangements Act was developed with input from guardianship judges and organizations that advocate for reform.¹⁷ Changes include limits on a guardian’s ability to restrict communications and clarification that there is a right to counsel to seek restoration of rights.¹⁸ It is important to have up-to-date information on the adoption of the ULC reforms and data on how those reforms work for people subject to guardianships.

Given the serious impact that guardianship arrangements can have on older adults and people with disabilities, and the importance of transparency in promoting awareness of and accountability for such a legally constraining institution, we seek an update on the data that is available on guardianships in the United States. We also seek to understand the impact of proposed reforms and efforts to safeguard the due process rights of people who are subject to guardianships. Accordingly, we request that GAO examine and report on the following issues:

1. How many guardianships are currently active in the United States?
 - a. How accurate are the estimates of the number of guardianships in the country?
 - b. What requirements would be needed to ensure that an accurate accounting of guardianships across the country is available to policy makers on an on-going basis?
 - c. Which steps at the state level have been effective in promoting transparency and accessible data around guardianships and less restrictive alternatives?
2. To what extent is NAMRS able to identify cases of elder abuse where a guardian was involved?
 - a. What are the trends in NAMRS data on abuse by guardians over time?
 - b. What, if any, gaps exist in the NAMRS data collection related to elder abuse by guardians, and are there barriers to collecting this information?
3. How do selected states treat petitions to end guardianships, and what, if any, challenges do states face in administering their guardianship programs?
 - a. What barriers do individuals in selected states face when they attempt to challenge or terminate a guardianship?
4. When adopted by a state, what impact do the changes in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act have on individuals subject to or under consideration for a guardianship arrangement?

¹⁷ “Guardianship, Conservatorship, and Other Protective Arrangements Act,” Uniform Law Commission, last accessed May 17, 2023, <https://www.uniformlaws.org/committees/community-home?attachments=&communitykey=2eba8654-8871-4905-ad38-aabbd573911c&libraryentry=6e6eb32e-741c-409d-90af->.

¹⁸ Erica Wood, “New Uniform Act Boosts Guardianship Reform,” *Bifocal* volume 39, issue 1, October 2017, https://www.americanbar.org/groups/law_aging/publications/bifocal/vol--39/issue-1--october-2017/-/new-uniform-act-boosts-guardianship-reform/; *Supra*, note 5, April 2018 Aging Guardianship Hearing, at 31-32, statement of Nina Kohn.

5. What federal policies assist states in the oversight of guardianships, and how can federal policy help states seeking to adopt less restrictive alternatives such as those outlined in the ULC model guardianship law?

We appreciate your attention to this request. Should you have questions or need additional information, please contact the Senate Special Committee on Aging at 202-224-5364.

Sincerely,



Robert P. Casey, Jr.
United States Senator
Chairman, Special Committee
on Aging



Mike Braun
United States Senator
Ranking Member, Special Committee
on Aging