

# A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

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## ABSTRACT

This article contains a 50-state review of recent laws, legislation, and literature concerning public and private guardianship programs across the United States. The authors found that financial planners should consider four key questions regarding the law in the client's home state when analyzing whether a guardianship will best serve a client's needs: (1) How does state law determine whether a guardianship is necessary?; (2) What are the legal decision-making standards for guardians in the state—importantly, to what degree, if any, must a guardian defer to the wishes of an individual subject to guardianship?; (3) How does state law determine whether a guardian is qualified to provide care?; (4) Has state law adopted the protections of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)? Special needs planners must be keenly aware of these issues to help clients make well-informed decisions in guardianship matters.

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*Editor's note: This article is the third of a three-part series from the Journal on guardianship policy issues in special needs planning. In the September 2020 issue, see "Implementing Guardianship Policies in Special Needs Planning: Five Possible Pitfalls" where Kelly et al. examine the challenges that can arise when serving clients who are subject to guardianships. See also "Implementing Guardianship Policies in Special Needs Planning: Five Potential Positives" by Kelly et al. in the November 2020 issue, which examines the benefits of leveraging guardianships when serving clients with special needs.*

## Overview

It is generally understood that effective special needs planning (SNP) requires multidisciplinary collaboration to express, define, and refine a client's individual needs. However, experts are only beginning to truly understand how to best create and leverage interprofessional teams for SNP.<sup>1</sup> The extent and depth of knowledge that is necessary to meaningfully support clients who have disabilities and special needs requires not only the specialized expertise of a financial planner, but also the ability to coordinate plans, assess concerns, and implement solutions alongside a host of other professionals. These can include probate attorneys, tax planners, and health care delivery specialists, such as social workers, physical therapists, occupational therapists, and in-home care givers. Analyzing a client's particular guardianship needs can create an addition-

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

al layer of complexity in the SNP process. Financial planners can provide tremendous value to clients by assisting them in navigating this morass.

Financial planners must take care to understand the key differences in guardianship law across the 50 states, as a guardianship is predominately governed by the probate laws of the individual states. This is especially important because clients with special needs and their families will come and go across state lines throughout their working lives and into retirement.<sup>2</sup> The U.S. government estimates that guardianship cases will continue to rise over the next several years.<sup>3</sup> At the same time, many sections of the American workforce continue to become increasingly mobile. If these trends continue, financial planners are more likely to encounter issues regarding appointments, interstate transfers, and removals of guardians. Despite the complexity and serious implications of guardianship considerations in SNP, there are few meaningful analyses of guardianship issues for financial planners.<sup>4</sup> A 50-state review is needed to understand the current state of majority and minority trends in the law. This article addresses that need.

According to the best estimates by the federal government and private scholars, there are 1.3 million active adult guardianship or conservatorship cases, and courts oversee at least \$50 billion of assets under adult conservatorships nationally.<sup>5</sup> These figures are expected to rise exponentially over the next several years. Guardianship issues in SNP are rife with misapprehensions, prejudices, and varying degrees of inefficiency.<sup>6</sup> In large part, this is due to the fact that guardianship laws are challenging and expensive to implement. Few areas of the law are more disjointed and incomplete than guardianship for SNP.<sup>7</sup> Interestingly, the challenges facing the guardianship and SNP systems are anything but new. For example, back in the 16th century BC, these issues were included in the Babylonian Code of Hammurabi, the earliest known written laws from ancient Mesopotamia.<sup>8</sup> Looking back through the annals of history, a mix of competing government priori-

ties and varied prejudices have manifested such that guardianship law has evolved in fits and starts. From its inception, through its slow development through Roman antiquity and English common law, to the present day's American legal system, guardianship law has lacked—and to a great extent, continues to lack—systematic processes to establish and follow-up on guardianships to ensure the well-being of the individual subject to guardianship.<sup>9</sup>

Though legal terminology can vary from state to state, there are two main types of guardianships in the United States: guardianship of the person and guardianship of the estate.<sup>10</sup> The former sphere of authority affects personal interests, while the latter is focused on property interests.<sup>11</sup> In some states, guardianship of the estate is considered within the scope of conservatorships where a conservator is authorized to make decisions regarding the real or personal property of an adult who is determined by the court to be incapable of making those decisions. In other states, however, a conservator's decisions are limited to specific situations.

A guardianship appointment can be essential to protect individuals who, due to disability, will not be able to make decisions for themselves as adults. Likewise, it can be a lifeline for an older person who develops a disability later in life. Under all state laws, if the circumstances that originally mandated a guardianship have materially changed, courts are obligated to perform a review to confirm whether the guardianship is still required or if another type of protective measure is more appropriate. Nevertheless, from a de facto perspective, once a guardianship is established, it is usually a permanent legal construct. According to the U.S. National Council on Disability, guardianships are often procedurally difficult to overturn.<sup>12</sup> Recognizing the serious prejudice and bias concerns that often underlie guardianship issues, financial planners must take extreme care when determining whether to recommend guardianship as part of a comprehensive SNP process.

A 50-state review of guardianship laws demon-

states that legal standards of proof for guardianship determinations vary across state lines. Moreover, state laws grant numerous degrees of deference to the wishes of an individual subject to guardianship. The requirements for a guardian's eligibility, screening, training, and follow-up reporting vary from moderate to nonexistent across state lines. Because each guardianship is under the jurisdiction of a particular state court, some laws present procedural challenges when guardianships need to transfer between states. As planners navigate through the labyrinth that is guardianship law, they should consider which states provide the best options for setting up and administering guardianships. These matters engender four key questions:

1. How does the law in the client's home state determine whether a guardianship is necessary?
2. What is the legal decision-making standard for guardians in the client's home state?
3. How does the law in the client's home state determine whether a guardian is qualified to provide care?
4. Is the client residing in a state that has adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)?

The following sections develop each of these key issues in turn.

### **Issue 1: How Does the Law in the Client's Home State Determine Whether a Guardianship Is Necessary?**

All guardianship determinations are enforced according to a standard of proof, often referred to as the legal burden of proof. These standards refer to the duty or burden carried by the party responsible for proving the case.<sup>13</sup> The burden of proof level sets forth the amount of evidence that must be presented for the court to make a determination about a fact.<sup>14</sup> The burden requirements for proving that a guardianship is absolutely necessary can vary greatly across state lines.<sup>15</sup> One of three standards of proof can apply in guardianship cases for determining legal competency:

*Beyond a Reasonable Doubt*—is the highest and

most demanding of legal standards. This is the typical burden of proof for proving a person's guilt in criminal cases. If there is any reasonable doubt in the mind of the judge or jury, the fact in question cannot be deemed as true. In guardianship cases, only one state, New Hampshire, applies this high level of proof.

*By Clear and Convincing Evidence*—is a standard that ranks below beyond a reasonable doubt in scale, but higher than the preponderance of the evidence standard. It is often used in cases that involve fraud and punitive damages. This standard is the most commonly used in guardianship cases. *By a Preponderance of the Evidence*—is the standard of proof in most civil law cases. A preponderance means that each fact is proven to be more likely than not as true in the mind of the judge or jury. This lower standard applies in some states' guardianship cases.<sup>16</sup>

A majority of states use the clear and convincing evidence standards to set up, change, or end a guardianship. Some states use the lower preponderance of the evidence standard to consider rescinding a guardianship. Considering the variances in burdens of proof for competency in guardianship determinations, judges who preside in jurisdictions that use the higher standards—beyond a reasonable doubt and clear and convincing evidence—may be more skeptical of guardianship determinations that seek transfers into their state from states that use the lower preponderance of the evidence standard. Financial planners should research the likelihood of such a possibility when advising clients who require interstate guardianship transfers.

Financial planners must always consider the possibility that a guardianship is not necessary or appropriate to safeguard a particular client's needs. There is a growing concern among state and federal policymakers that current laws for appointing guardianships are not properly constructed because they do not require detailed, individualized examinations of an individual's skills and abilities. Not all individu-

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

als with intellectual and developmental disabilities (IDD)—even those with several challenges—require the assistance of a guardian.

In theory, state courts are supposed to impose guardianships as a last resort to protect individuals when no other options are available to ensure their welfare. Nevertheless, a 2018 study from the National Council of Disability (NCD) confirms that there are some disturbing loopholes in guardianship systems nationwide.<sup>17</sup> The NCD has issued a formal statement that “[p]eople with disabilities are often denied due process in guardianship proceedings.”<sup>18</sup> The NCD’s findings include the following:

Guardianship is viewed as a benevolent measure that is sought in the best interest of people with disabilities and/or older adults who are seen as needing protection. Guardianship cases are often dispensed with as quickly as possible with little concern for due process or protecting the civil rights of individuals facing guardianship. Individuals have been denied due process within guardianship proceedings because courts did not meaningfully consider whether any less-restrictive alternatives were feasible.<sup>19</sup>

The NCD also states that many laws are flawed and even discriminatory in determining whether a person’s legal capacity is lacking—specifically, there are many societal misperceptions about the ability of people with disabilities to make autonomous decisions.<sup>20</sup> To ensure that due process requirements are met, the NCD stresses that it is especially important for individuals who are under consideration for a guardianship to “have qualified, independent legal representation that will advocate for the individual’s desired outcome, especially if that person expresses a desire to avoid guardianship or objects to the proposed guardian.”<sup>21</sup> Financial planners should recognize that many courts lack sufficient resources to fund this type of representation.<sup>22</sup> Therefore, planners must consider the need to set aside funds for two line items as part of SNP for clients who may need a guardianship: (1) independent attorney’s fees for guardianship evalua-

tions; and (2) individualized health examinations to confirm whether a guardianship is, in fact, absolutely necessary. This is of particular concern for clients who have serious cognitive disabilities that are likely to worsen over time, like dementia.<sup>23</sup>

Financial planners should be aware that definitions of legal capacity for the initiation of guardianship proceedings also vary greatly between states. The definition of legal incapacity is so varied across state lines that it is entirely possible that an individual may be deemed legally incapable in one state, but found to have only limited cognition or functionality in another.<sup>24</sup> See Table 1, which lists incapacity considerations for functionality, cognition, necessity, and risk of harm in 50 states and the District of Columbia. The nature of terms like functionality, cognition, guardianship necessity, risk of harm, and conditions of the body/mind differ between state laws.<sup>25</sup>

Importantly, planners must take care to distinguish between *legal* and *mental* capacity. Legal capacity refers to the right to make decisions and enter into binding contracts. According to Werner and Chabany, legal capacity includes a person’s legal standing (e.g., the ability to bring a lawsuit in court).<sup>26</sup> This also encompasses the principle of legal agency, which is a person’s ability to act within the framework of the legal system.<sup>27</sup> Werner and Chabany explain that because mental capacity refers to an analysis of a person’s cognitive abilities and decision-making skills, “tying the two terms together leads to the erroneous assumption that individuals who lack mental capacity also lack legal capacity.”<sup>28</sup> In summary, a client’s ability to express their will and intentions is an issue separate and apart from legal capacity.

When deliberating SNP courses of action, financial planners must keep two goals in mind simultaneously: to meet the client’s financial needs and to ensure short-term and long-term goals reflect the client’s preferences and intentions as much as possible.<sup>29</sup> In examining the mental decision-making abilities of individuals with IDD, Sullivan et al. explain that mental capacity matters are “relational” in nature.<sup>30</sup>

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 1**

Incapacity Considerations for Functionality, Cognition, Necessity, and Risk of Harm in 50 States and the District of Columbia<sup>a</sup>

Alabama	<ul style="list-style-type: none"> <li>• Lacking sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• Appointment necessary to provide continuing care and supervisions</li> <li>• Mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, alcoholism, drug addiction, or other cause</li> </ul>
Alaska	<ul style="list-style-type: none"> <li>• Lacks ability to provide essential requirements for physical health or safety</li> <li>• Impaired ability to receive and evaluate information or communicate decisions</li> <li>• Need for court-ordered assistance</li> </ul>
Arizona	<ul style="list-style-type: none"> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions about person</li> <li>• Appointment necessary to provide for needs</li> <li>• Mental illness, mental deficiency, mental disorder, physical disability or illness, alcoholism, drug addiction</li> </ul>
Arkansas	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for health or safety</li> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• Ordered only to extent necessitated by limitations</li> <li>• Mental illness, mental deficiency, physical illness, chronic use of drugs or alcohol</li> </ul>
California	<ul style="list-style-type: none"> <li>• Unable to provide properly for personal needs for physical health, food, clothing, shelter</li> <li>• Substantially unable to manage their own financial resources or resist fraud or undue influence</li> </ul>
Colorado	<ul style="list-style-type: none"> <li>• Lacks ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance</li> <li>• Unable to effectively receive or evaluate information or both or make or communicate decisions</li> <li>• Needs cannot be met by less restrictive means</li> </ul>
Connecticut	<ul style="list-style-type: none"> <li>• Even with appropriate assistance, unable to meet essential requirements for personal needs</li> <li>• Even with appropriate assistance, unable to perform functions inherent in managing affairs</li> <li>• Unable to receive and evaluate information or make or communicate decisions</li> <li>• Property will be wasted unless properly managed</li> <li>• Receive evidence of ability to meet needs without appointment of conservator</li> <li>• Mental, emotional, or physical condition</li> </ul>
Delaware	<ul style="list-style-type: none"> <li>• Unable properly to manage or care for their own person or property</li> <li>• In danger of dissipating property or becoming victim of designing persons, or substantially endangering health, or becoming subject to abuse</li> <li>• Mental and physical incapacity</li> </ul>
District of Columbia	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for physical health, safety, habilitation, therapeutic needs</li> <li>• Impaired ability to receive and evaluate information effectively or communicate decisions</li> <li>• Court-ordered assistance or appointment of guardian needed</li> <li>• Guardianship necessary to provide court supervision</li> </ul>
Florida	<ul style="list-style-type: none"> <li>• Lacks capacity to meet at least some of essential health and safety requirements</li> <li>• Serious and imminent physical injury or illness more likely than not to occur</li> </ul>
Georgia	<ul style="list-style-type: none"> <li>• Lacks sufficient capacity to make or communicate significant responsible decisions concerning health or safety</li> <li>• Lacks sufficient capacity to make or communicate significant responsible decisions concerning the management of property</li> </ul>
Hawaii	<ul style="list-style-type: none"> <li>• Lacks ability to meet essential requirements for health and safety</li> <li>• Unable to receive and evaluate information or make or communicate decisions</li> </ul>

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 1 (cont.)**

Incapacity Considerations for Functionality, Cognition, Necessity, and Risk of Harm in 50 States and the District of Columbia<sup>a</sup>

Idaho	<ul style="list-style-type: none"> <li>• Inability to provide for personal needs for food, clothing, shelter, health care or safety; measured by functional limitations</li> <li>• Acts or occurrences within 12 months of filing</li> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• Must suffer substantial harm</li> <li>• Must have isolated instances of negligence not evidence of inability</li> <li>• Mental illness, mental deficiency, physical disability or illness, alcoholism and/or drug addiction</li> </ul>
Illinois	<ul style="list-style-type: none"> <li>• Not fully able to manage person or estate</li> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• So spends or wastes estate as to expose self or family to want or suffering</li> <li>• Mental deterioration, physical incapacity, mental illness, developmental disability, gambling, idleness, debauchery, excessive use of intoxicants or drugs</li> </ul>
Indiana	<ul style="list-style-type: none"> <li>• Unable to provide self-care</li> <li>• Appointment of guardian necessary as means of providing care and supervision</li> <li>• Mental illness or insanity, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, confinement, detention, duress, fraud, undue influence, other incapacity, developmental disability</li> </ul>
Iowa	<ul style="list-style-type: none"> <li>• Unable to care for personal safety or provide for necessities such as food, shelter, clothing, or medical decision-making capacity so impaired that unable to make, communicate, or carry out important decisions concerning financial affairs</li> <li>• Without appointment, physical injury or illness might occur</li> </ul>
Kansas	<ul style="list-style-type: none"> <li>• Lacks capacity to manage estate or meet essential needs for physical health, safety, or welfare</li> <li>• Ability to receive and evaluate information effectively or to communicate decisions is impaired, even with use of assistive technologies</li> <li>• Without appointment, serious illness or injury likely to occur</li> </ul>
Kentucky	<ul style="list-style-type: none"> <li>• Measured by functional incapacities with acts or occurrences within 6 months prior</li> <li>• Lacks capacity to provide for physical health, safety, health care, food, shelter, clothing, hygiene</li> <li>• Unable to make informed decisions</li> </ul>
Louisiana	<ul style="list-style-type: none"> <li>• Unable to care for person and property</li> <li>• Unable consistently to make reasoned decisions or communicate decisions</li> <li>• Interests cannot be protected by less restrictive means</li> <li>• Infirmity</li> </ul>
Maine	<ul style="list-style-type: none"> <li>• Necessary or desirable to provide continuing care and supervision</li> <li>• Mental illness, mental deficiency, physical disability or illness, alcoholism and drug addiction</li> </ul>
Maryland	<ul style="list-style-type: none"> <li>• Unable to provide for health care, food, clothing, shelter</li> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• Physical or mental disability, disease, habitual drunkenness, drug addiction</li> </ul>
Massachusetts	<ul style="list-style-type: none"> <li>• Lacks ability to meet essential requirements for physical health, safety, or self-care</li> <li>• Unable to receive and evaluate information and make or communicate informed decisions</li> <li>• Clinically diagnosed condition</li> </ul>
Michigan	<ul style="list-style-type: none"> <li>• Lacks sufficient understanding or capacity to make or communicate informed decisions</li> <li>• Appointment necessary to provide continuing care and supervision</li> <li>• Mental illness, mental deficiency, physical disability or illness, alcoholism and drug addiction</li> </ul>
Minnesota	<ul style="list-style-type: none"> <li>• Deficits in behavior which evidence inability to meet personal needs for medical care, nutrition, clothing, shelter, safety, without technological assistance</li> <li>• Lacks sufficient understanding or capacity to make or communicate responsible personal decisions</li> </ul>

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 1 (cont.)**

Incapacity Considerations for Functionality, Cognition, Necessity, and Risk of Harm in 50 States and the District of Columbia<sup>a</sup>

Mississippi	<ul style="list-style-type: none"> <li>• Incapable of taking care of person and property</li> <li>• Incapable of managing estate by reason of advanced age, physical incapacity, or mental weakness</li> </ul>
Missouri	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements food, clothing, shelter, safety, care</li> <li>• Unable to receive or evaluate information or communicate decisions</li> <li>• Serious physical injury, illness, or disease likely to occur</li> <li>• Impaired to such an extent</li> </ul>
Montana	<ul style="list-style-type: none"> <li>• Unable to meet essential requirements for physical health or safety</li> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• Incapable of realizing and making rational decision about treatment need</li> <li>• Judicial intervention necessary</li> <li>• Mental illness, mental deficiency, physical illness or disability, chronic drug or alcohol use, or any other cause</li> </ul>
Nebraska	<ul style="list-style-type: none"> <li>• Lacks sufficient understanding or capacity to make or communicate responsible decisions</li> <li>• Appointment necessary or desirable to provide for continuing care or supervision</li> <li>• Mental illness, mental deficiency, physical illness or disability, chronic drug/alcohol use, or any other cause</li> </ul>
Nevada	<ul style="list-style-type: none"> <li>• Unable to receive and evaluate information or make or communicate decisions</li> <li>• Able to make independently some but not all decisions necessary for care and management</li> <li>• Lacks the ability to meet essential requirements for physical health, safety, or self-care without appropriate assistance</li> <li>• Mental illness, mental deficiency, disease, weakness of mind, or any other cause</li> </ul>
New Hampshire	<ul style="list-style-type: none"> <li>• Impaired ability to participate in and perform activities of daily living (ADLs) to secure and maintain proper food, clothing, shelter, health care, or safety</li> <li>• A legal (not a medical) disability measured by functional limitations</li> <li>• Has suffered, is suffering, or is likely to suffer substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, health care, or safety, or an inability to manage his or her property or financial affairs</li> <li>• Inability to provide for personal needs or to manage property shall be evidenced by acts or occurrences, or statements which strongly indicate imminent acts or occurrences</li> <li>• All evidence of inability must have occurred within 6 months prior to the filing of the petition and at least one incidence of such behavior must have occurred within 20 days of the filing of the petition for guardianship</li> </ul>
New Jersey	<ul style="list-style-type: none"> <li>• Lacks sufficient capacity to govern self or manage affairs</li> <li>• Mental illness, intellectual disability, physical illness or disability, chronic use of drugs, alcoholism, other cause</li> </ul>
New Mexico	<ul style="list-style-type: none"> <li>• Impairment that is measured by a person's inability to manage his personal care or the person's inability to manage his estate or financial affairs or both</li> <li>• Inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene, or safety so that physical injury, illness, or disease has occurred or is likely to occur in the near future</li> <li>• Gross mismanagement, as evidenced by recent behavior, of one's income and resources or medical inability to manage one's income and resources that has led or is likely in the near future to lead to financial vulnerability</li> </ul>
New York	<ul style="list-style-type: none"> <li>• Unable to provide for personal needs or property management</li> <li>• Cannot adequately understand and appreciate nature, consequences of inability</li> <li>• Court must determine person is likely to suffer harm; appointment is necessary</li> </ul>

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 1 (cont.)**

Incapacity Considerations for Functionality, Cognition, Necessity, and Risk of Harm in 50 States and the District of Columbia<sup>a</sup>

North Carolina	<ul style="list-style-type: none"> <li>• Lacks sufficient capacity to manage own affairs</li> <li>• Lacks sufficient capacity to make or communicate important decisions</li> <li>• Mentally ill, cognitively impaired, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury</li> </ul>
North Dakota	<ul style="list-style-type: none"> <li>• Lacks capacity to make, communicate responsible decisions on residence, education, medical treatment, legal affairs, vocation, and finance</li> <li>• Incapacity endangers health or safety</li> <li>• Mental illness, mental deficiency, physical illness, disability, chemical dependence</li> </ul>
Ohio	<ul style="list-style-type: none"> <li>• Incapable of taking proper care of self or property or family</li> <li>• Mental or physical illness or disability, cognitive impairment, chronic substance abuse</li> </ul>
Oklahoma	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for physical health, safety, manage resources</li> <li>• Ability to receive and evaluate information effectively, make and communicate responsible decisions</li> <li>• Serious physical injury is more likely than not to occur</li> <li>• Mental illness, cognitively impaired, developmentally disabled, physical illness, disability, or drug or alcohol dependency</li> </ul>
Oregon	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for physical health or safety, includes health care, food, shelter, clothing, personal hygiene, other</li> <li>• Ability to receive and evaluate information effectively or communicate decisions</li> <li>• Serious physical injury or illness is likely to occur</li> <li>• Appoint guardian only as necessary to promote and protect well-being</li> <li>• Mental illness, mental deficiency, physical illness or disability, chronic drug use, or intoxication</li> </ul>
Pennsylvania	<ul style="list-style-type: none"> <li>• Unable to meet essential requirements for physical health, safety</li> <li>• Impaired ability to receive and evaluate information effectively and communicate decisions to significant extent</li> <li>• Specific finding regarding need in light of availability of family, friends, other supports, and existence of advance directives</li> </ul>
Rhode Island	<ul style="list-style-type: none"> <li>• Assistance needed with decision making in the areas of financial, health care, residential, and/or relationship matters</li> <li>• Lacks decision-making ability</li> <li>• Needs cannot be met by least restrictive alternative</li> </ul>
South Carolina	<ul style="list-style-type: none"> <li>• Unable to effectively receive, evaluate, respond to information, even with appropriate, reasonably available support and assistance</li> <li>• Cannot meet essential requirements for physical health, safety, or self-care, necessitating the need for a guardian</li> <li>• Mental illness, mental deficiency, physical illness or disability, advanced age, drug or alcohol abuse</li> </ul>
South Dakota	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for health, safety, habilitation, therapeutics, manage property, or provide support</li> <li>• Ability to respond to people, events, environments is impaired</li> <li>• Needs assistance or protection of guardian</li> </ul>
Tennessee	<ul style="list-style-type: none"> <li>• Court must find respondent is fully or partially disabled and in need of assistance from the court</li> <li>• Mental illness, physical illness, injury, developmental disability, mental or physical incapacity</li> </ul>
Texas	<ul style="list-style-type: none"> <li>• Substantially unable to provide food, clothing, shelter for self or family, care for physical health, manage financial affairs</li> <li>• Only as necessary to protect rights or property</li> <li>• Physical or mental condition</li> </ul>

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 1 (cont.)**

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Utah	<ul style="list-style-type: none"> <li>• Unable to manage property and affairs effectively</li> <li>• Finding that appointment is necessary or desirable as means of providing continuing care and supervision</li> <li>• Mental illness, mental deficiency, physical illness/disability, drug/alcohol abuse</li> </ul>
Vermont	<ul style="list-style-type: none"> <li>• Unable to manage personal care means inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene, or safety</li> <li>• Gross mismanagement, as evidenced by recent behavior, of one's income and resources which has led or is likely in the near future to lead to financial vulnerability</li> <li>• Significantly impaired cognitive functioning which grossly impairs judgment, behavior, or the capacity to recognize reality</li> <li>• Unable to manage without supervision of guardian</li> <li>• Physical injury, illness, or disease has occurred or is likely to occur in the near future</li> <li>• Significantly subaverage intellectual functioning; physical or mental condition</li> </ul>
Virginia	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for health, care, safety, therapeutic needs, manage property or financial affairs, provide for support of self or dependents</li> <li>• Incapable of receiving and evaluating information effectively or responding to people, events, or environments</li> <li>• Needs the assistance or protection of a guardian</li> <li>• Poor judgment alone not sufficient evidence</li> </ul>
Washington	<ul style="list-style-type: none"> <li>• Demonstrated inability to adequately provide for nutrition, health, housing, safety, finances, property</li> <li>• Sufficient risk of personal, financial harm</li> <li>• A legal and not medical decision</li> <li>• Age, eccentricity, poverty, medical diagnosis alone not sufficient to justify finding of incapacity</li> </ul>
West Virginia	<ul style="list-style-type: none"> <li>• Lacks capacity to meet essential requirements for health care, safety, habilitation, therapeutic needs, manage property or financial affairs, provide support for self or dependents</li> <li>• Unable to receive and evaluate information effectively or respond to people, events, and environments</li> <li>• Needs assistance or protection of guardian or conservator</li> <li>• Mental impairment</li> <li>• Poor judgment alone will not be considered sufficient evidence</li> </ul>
Wisconsin	<ul style="list-style-type: none"> <li>• Unable to effectively receive and evaluate information to such an extent that the individual is unable to meet the essential requirements for his/her physical health and safety</li> <li>• Unable to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his/her physical health and safety</li> <li>• Need for decisional assistance is unable to be met less restrictively through training, support services, assistive devices, or other means</li> <li>• Developmental disability, serious or persistent mental illness, degenerative brain disorder, other like incapacities</li> </ul>
Wyoming	<ul style="list-style-type: none"> <li>• Unable unassisted to properly manage and take care of self or property</li> <li>• Necessity for appointment proved by preponderance</li> <li>• Infirmities of advanced age, physical disability, disease, alcohol or drug use, mental illness, deficiency, cognitive impairment</li> </ul>

<sup>a</sup> See endnote 24; Also, "GN 00502.300: Digest of State Guardianship Laws," *U.S. Social Security Administration Program Operations Manual System* (February 22, 2018). (This manual is often abbreviated as POMS). See also "Resources & Research: Guardianship and Supported Decision-Making," American Bar Association Commission on Law and Aging (October 19, 2020); accessed at: [https://www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice](https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice).

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

They state:

Decision-making capacity varies with the complexity of a decision...[People with] IDD can participate to some extent in decision making if provided with accommodations and supports by health professionals and family and other committed caregivers (e.g., for communication or deliberation).<sup>31</sup>

For these reasons, planners should recognize that adults with IDD may have challenges in communication (including language comprehension, expression, and/or social interaction).<sup>32</sup> Sullivan et al. recommend that professionals consider the following to ensure effective communications with clients with IDD: (1) engage the individual directly; (2) attend to both verbal and nonverbal cues; (3) communicate slowly and clearly; (4) involve caregivers familiar with the client to help them to communicate; and (5) if a professional is uncertain about how to facilitate communications with a client with IDD, obtain the services of a psychologist, licensed social worker, or other professional who is familiar with assessing people with IDD.<sup>33</sup> In cases where a legal substitute decision maker does not know a client well, Sullivan

et al. recommend consulting with trusted family and other caregivers to inform deliberations.<sup>34</sup>

Intellectual functioning deficits and cognitive impairments can cause a broad array of challenges with reasoning, problem solving, and judgment.<sup>35</sup> These challenges range on a spectrum between mild to moderate to severe in nature. The ability to make important decisions and engage in certain activities of daily living depends on the unique circumstances facing a particular individual with disabilities.<sup>36</sup> To inform a person's need for a guardian or some other alternative, health care experts should perform a detailed independent examination to analyze three main areas of adaptive functioning: conceptual, social, and practical.<sup>37</sup> Table 2 explores the three possible areas of adaptive functioning challenges for individuals with cognitive impairments or developmental disabilities, such as intellectual disabilities. As a best practice, interdisciplinary teams of health care professionals should analyze each of these areas of functioning to confirm whether any serious impairments exist *to the extent* that the individual cannot identify and consent to high-risk situations; only

**TABLE 2**

Possible Areas of Adaptive Functioning Challenges for Individuals with Intellectual Functioning Deficits and/or Cognitive Impairments<sup>a</sup>

Conceptual	Social	Practical
<ul style="list-style-type: none"> <li>• Reasoning/problem solving</li> <li>• Processing speed</li> <li>• Working memory</li> <li>• Language (expressive and receptive)</li> <li>• Literacy and learning</li> <li>• Generalizing</li> <li>• Overall knowledge</li> </ul>	<ul style="list-style-type: none"> <li>• Communication skills</li> <li>• Social judgment</li> <li>• Cues and nuances</li> <li>• Following rules</li> <li>• Making/keeping friendships</li> </ul>	<ul style="list-style-type: none"> <li>• Personal care (ADLs)/ instrumental activities of daily living (IADLs)</li> <li>• Responsibilities</li> <li>• Organizing tasks</li> <li>• Reliance on others</li> </ul>

<sup>a</sup>American Psychiatric Association (2013), endnote 35; "Medicare Current Beneficiary Survey (MCBS): Appendix B Definitions," U.S. Centers for Medicare & Medicaid Services; accessed November 15, 2019, at: [https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/MCBS/downloads/2008\\_Appendix\\_B.pdf](https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/MCBS/downloads/2008_Appendix_B.pdf). (Noting that ADLs are activities related to personal care, including bathing or showering, dressing, getting in and out of bed or a chair, walking, using the toilet, and eating. If a person has difficulty performing an activity by himself/herself and without special equipment, or does not perform the activity, the person is deemed to have a limitation in that activity. IADLs are activities related to independent living (including preparing meals, managing money, shopping for groceries or personal items, performing light or heavy housework, and using a telephone). If a person has any difficulty performing an activity by himself/herself, or does not perform the activity at all the person is deemed to have a limitation in that activity.)

then does the person require a guardian to protect their health and well-being.

When considering guardianship needs, financial planners can take advantage of an excellent checklist tool provided by the American Bar Association (ABA) called the PRACTICAL Tool.<sup>38</sup> The acronym stands for the following principles:

**PRESUME** guardianship is not needed. **REASON.** Clearly identify the reasons for concern. **ASK** if a triggering concern may be caused by temporary or reversible conditions. **COMMUNITY.** Determine if concerns can be addressed by connecting the individual to family or community resources and making accommodations. **TEAM.** Ask the person whether he or she already has developed a team to help make decisions. **IDENTIFY** abilities. Identify areas of strengths and limitations in decision-making if the person does not have an existing team and has difficulty with specific types of decisions. **CHALLENGES.** Screen for and address any potential challenges presented by the identified supports and supporters. **APPOINT** legal supporter or surrogate consistent with person's values and preferences. **LIMIT** any necessary guardianship petition and order [as appropriate].<sup>39</sup>

The ABA's PRACTICAL Tool and Resource Guide can help financial planners to identify decision-making options for clients with disabilities that are less restrictive than guardianship (e.g., limited guardianship, power of attorney, trustee, etc.).<sup>40</sup> The tool is available online at [www.ambar.org/practicaltool](http://www.ambar.org/practicaltool).

## Issue 2: What Is the Legal Decision-Making Standard for Guardians in the Client's Home State?

State laws govern the decision-making abilities of a guardian and dictate whether a client under the authority of a guardian will have strong legal rights to execute certain opinions or preferences.<sup>41</sup> In some states, a guardian is legally required to consider the protected person's particular wishes in drawing con-

clusions; in other states, guardians are merely ethically encouraged to do so. In analyzing the scope of a guardian's abilities, a 2019 NCD report emphasizes that "people with disabilities both desire and deserve choices when seeking assistance with daily living that maintains their self-determination and maximum dignity and independence."<sup>42</sup> Historically, guardians have made decisions on behalf of the protected individual without many legal requirements to consider the opinions of the individual subject to guardianship. For this reason, the traditional guardianship process is sometimes referred to as a "surrogate decision-making" or "substitute decision-making" process.<sup>43</sup> As Kohn, Blumenthal, and Campbell point out, some modern guardianship laws are shifting to embrace "supported decision-making," a more person-centered and autonomy-focused process for protecting vulnerable adults.<sup>44</sup> The supported decision-making standard emphasizes empowering persons with disabilities "by providing them with help in making their own decisions, rather than simply providing someone to make decisions for them."<sup>45</sup>

Across all 50 states, there are five distinct categories of decision-making standards for guardians: six states (12 percent) use the least restrictive model, seven states (14 percent) use the maximum self-reliance model, 13 states (26 percent) use the best interest model, 15 states (30 percent) use the substitute judgment model, and nine states (18 percent) either use a relatively ambiguous hybrid of the above-named theories, or have no detailed standard in place.<sup>46</sup> Figure 1 illustrates how state guardianship decision-making standards are categorized among states. The ABA summarizes each of the standards as follows:

*Substitute Judgment Standard:* Guardian substitutes the protected person's values and desires for their own to make decisions about the protected person, and—to the best of the guardian's ability—discern the protected person's personal values and wishes.

*Best Interest Standard:* Guardian makes decisions

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

by reference to the guardian's belief about what is in the general best interest of the protected person.

*Maximum Self-Reliance Standard:* Guardian fosters the protected person's independence as much as possible.

*Least Restrictive Standard:* Guardian exercises the least amount of intervention possible, making decisions for the protected person that least restrict the protected person's decision-making agency.

*Other Standard:* Statutory language does not adhere to any category or is silent as to guardianship decision-making standards.<sup>47</sup>

Two of the above standards emphasize a guardian's best intentions and guesswork: the substitute judgment and the best interest standards. Though well intended, the logic supporting these models is somewhat patronizing in nature. The maximum self-reliance and least restrictive standards are more modern because they emphasize a person-centered focus.<sup>48</sup> Currently, policymaking trends are considering guardianship law reforms with a focus on standards that more closely align with the maximum self-reliance and the least restrictive models.<sup>49</sup> All in all, the crux of new reforms for guardianship decision-making laws contains three key principles:

1. Ensuring that a guardianship is invoked only as

a last resort and after considering the availability of support to assist people in decision-making

2. Ensuring a guardianship is as confined in scope and duration as is reasonably possible, subject to accessible mechanisms for review

3. Guardianship decision making should also respect the will, preferences, and rights of the individual.<sup>50</sup>

In SNP, financial planners can help to champion a client's self-reliance and personal autonomy by seeking detailed evaluations of an individual's capabilities and challenges from an interprofessional team of health care providers. This group of experts can include, but is not limited to, the following: the client's treating physician, psychologist, psychiatrist, licensed social worker, home care nurse, speech pathologist, physical therapist, and occupational therapy provider.

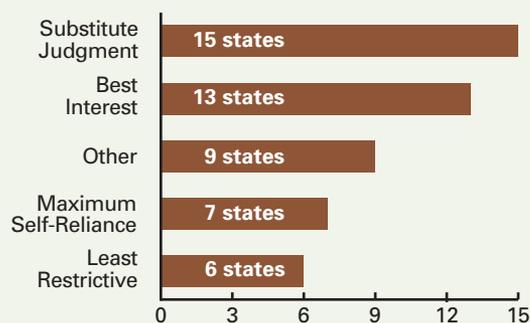
In reviewing state laws concerning guardian decision making, Haddon and Winston note that "state statutes rarely, if ever, describe one clear standard for decision-making...[s]ome statutes are in the probate code, some in a dedicated elder abuse statute, and some completely silent."<sup>51</sup> They contrast two state laws from Illinois and Arizona as follows (both of which still use the term ward to refer to an individual subject to guardianship):

[Statute in the State of Illinois] is relatively unambiguous that guardians should 'determine how the ward would have made a decision based on the ward's previously expressed preferences' when possible.' However, 'if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the ward's best interests.' In Arizona, by contrast, the statute requires simply that '[i]n making decisions concerning his ward, a guardian shall take into consideration the ward's values and wishes,' but guardians are not given direction for decision-making when the protected person's values and wishes are unknown, such as when a protected person is in a coma, or in an advanced state of dementia.<sup>52</sup>

Given the wide variances in a guardian's abilities,

**FIGURE 1**

State Guardianship Decision Making Standards:  
Number of States Enacting Each Model<sup>a</sup>



<sup>a</sup>See endnotes 43–45.

financial planners and other legal stakeholders must reinforce the principle that guardianship is truly an option of last resort. If a planner has any concern regarding a proposed or existing guardianship appointment, they should recommend an independent needs evaluation from health care providers. This course of action will help ensure that alternatives to guardianship are meaningfully examined and determine the correct approach based on the individual circumstances of the beneficiary. As state laws move away from an emphasis on “surrogate decision-making” and “substitute decision-making” processes, financial planners can enhance the value of their services by advising clients to seek “supported decision-making” assessments. With these practices, financial planners can assist clients with disabilities to foster as much personal independence as reasonably possible.

### **Issue 3: How Does the Law in the Client’s Home State Determine Whether a Guardian Is Qualified to Provide Care?**

How guardians are screened and monitored differs greatly among states. While most state laws prevent individuals with felonies from becoming guardians, only a minority of states require that guardians undergo independent criminal background checks before being appointed.<sup>53</sup> Nonprofit scholarly bodies, like the National College of Probate Judges through the National Center for State Courts, advise courts to request national background checks on all prospective guardians.<sup>54</sup> If a thorough background check is not completed before an appointment is made, a court may lack critical information about the prospective guardian, including whether the individual has been: convicted of a relevant crime; determined to have committed abuse, abandonment, neglect, or financial or sexual exploitation of a child, spouse, or other adult; suspended or disbarred from law, accounting, or other professional licensing for misconduct involving financial issues.

The National Conference of Commissioners on

Uniform State Laws has created the Uniform Guardianship and Protective Proceedings Act (UGPPA) to suggest evidence-based procedures and best practices for guardian appointments.<sup>55</sup> The UGPPA has been enacted in part within seven states and the District of Columbia.<sup>56</sup> Under the UGPPA, functional incapacity occurs when an individual “lacks ability to meet essential requirement for physical health, safety, or self-care even with appropriate technological assistance.”<sup>57</sup> Cognitive incapacity occurs when the individual is “unable to receive and evaluate information or make or communicate decisions.”<sup>58</sup> A guardianship appointment is required when it is “necessary to provide continuing care and supervisions.”<sup>59</sup> Specific conditions for a declaration of incapacity include: “mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, alcoholism, drug addiction, or other cause.”<sup>60</sup>

### **Issue 4: Is the Client Residing in a State that Has Adopted UAGPPJA?**

In 2007, legal and policy scholars at Uniform Law Commission finalized the UAGPPJA and encouraged state legislatures to adopt the proposed act into law.<sup>61</sup> Financial planners should take care to memorize the basic tenants of UAGPPJA and note which states have not yet adopted it: Florida, Texas, Kansas, and Michigan.<sup>62</sup> It can be especially challenging for attorneys and special needs planners to transfer a guardianship into and between these four states—their respective processes require the courts to reanalyze the evidence that was previously submitted in the other jurisdiction in detail and reassess the overarching need for a guardianship. Though these exceptions to the UAGPPJA majority rule may seem procedurally inefficient or inconvenient for a client who requires a guardian’s services, any state government safeguards to avoid inappropriate guardianship determinations should be applauded. Figure 2 details the percentage of state legislatures that adopted UAGPPJA from 2008 to the present. Also Table 3

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

provides a reference chart of the UAGPPJA laws for each state. Financial planners should be aware that while the majority of states have adopted the act in its entirety, most state guardianship laws vary because of amendments to the UAGPPJA law and other state-specific legal nuances.

There are two primary interstate jurisdictional issues that often arise in guardianship cases, and UAGPPJA addresses both matters. First, if a jurisdictional conflict arises between two or more states, the act provides a prioritization system to resolve disputes.<sup>63</sup> Second, if an individual subject to guardianship moves to a new state of residence, the act creates a simplified registration process. In a guardianship proceeding under UAGPPJA, one court may request that another court do any of the following seven acts:

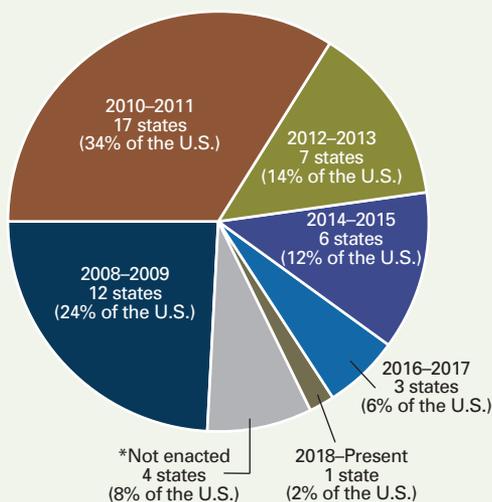
- (1) Hold an evidentiary hearing;
- (2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (3) Order that an evaluation or assessment be made of the respondent;
- (4) Order any appropri-

ate investigation of a person involved in a proceeding; (5) Forward to the court of this state a certified copy of the transcript or other record of a hearing...or any other proceeding, any evidence otherwise produced...and any evaluation or assessment. (6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; [and/or] (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information [subject to state and federal privacy laws for records].<sup>64</sup>

In sum, UAGPPJA statutes allow a state to quickly and efficiently begin exercising its authority to provide for the individual subject to guardianship.<sup>65</sup>

UAGPPJA grants primary jurisdiction to an individual's primary state of residence. It defines the term "home state" as the state where the individual subject to guardianship "was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian."<sup>66</sup> If the above is not applicable, the act states that the home state is where the individual subject to guardianship "was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition."<sup>67</sup> In analyzing this distinction, Orzeske explains that a state where the individual has a "significant connection *other than mere physical presence* can exercise jurisdiction only if there is no order pending in the home state." [emphasis added]<sup>68</sup> In cases that involve the dispute of a home state, all interested parties "must have received notice and an opportunity to object."<sup>69</sup> Depending on the particular circumstances of the individual subject to guardianship, sometimes a state that would otherwise be deemed as the "home state" or "state of residency" will decline jurisdiction because another state is a more appropriate forum.<sup>70</sup>

**FIGURE 2**  
Percentage of State Legislatures that  
Adopted UAGPPJA: 2008–Present<sup>a\*</sup>



<sup>a</sup>See endnote 24.

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 3**  
State Bill Reference Chart: UAGPPJA Jurisdictions

State	Key Adult Guardianship Statutes	UAGPPJA Adoption Year	UAGPPJA Bill Citation
Alabama	Ala. Code. T. 26, Ch. 2A, Art. 1–2	2010	HB 144
Alaska	Alaska Stat. Ann. T. 13, Ch. 26, Art. 1–6	2008	SB 101
Arizona	Ariz. Rev. Stat. T. 14, Ch. 5, Art. 1–8	2010	HB 2426
Arkansas	Ark. Code. Ann. T. 28, Subpart 5, Ch. 74 Art. 1–5	2011	SB 4
California	Cal. Prob. Code §§ 1400–1490; 1500–1611; 1800–1970; 2100–2893; 2900–2955	2014	SB 940
Colorado	Colo. Rev. Stat. Ann. T. 15, Art. 14, Pt. 1–5	2008	SB 100
Connecticut	Conn. Gen. Stat. Ann. §§ 45a-591 to 602; 45a-628 to 705a	2012	HB 5150
Delaware	Del. Code Ann. T. 12, Ch. 39, Subpart I–VII	2008	SB 281
District of Columbia	D.C. Code Div. III, T. 21, Ch. 20, Subpart I–VI	2009	B 17-585
Florida	Fla. Stat. Ann. T. XLIII, Ch. 744, Pt. I–VIII	Not Enacted	Not Enacted
Georgia	Ga. Code Ann. T. 29, Ch. 1–11	2016	HB 954
Hawaii	Haw. Rev. Stat. T. 30A, Ch. 560, Art. V, Pt. 1–6	2012	SB 2318
Idaho	Idaho Code Ann. ST. T. 15, Ch. 5, Pt. 1–6	2011	SB 1056
Illinois	Ill. Comp. Stat. Ann. Ch. 755, Act. 5, Art. XIA	2009	HB 759
Indiana	Ind. Code Ann. T. 29, Art. 3, Ch. 1–13	2011	HB 1055
Iowa	Iowa Code Ann. T. XV, Subpart 4, Ch. 633, Div. XIII, Pt. 1–7	2010	HF 734
Kansas	Kan. Stat. Ann. Ch. 59, Art. 30	Not Enacted	Not Enacted
Kentucky	Ky. Rev. Stat. Ann. T. XXXIII, Ch. 387	2011	HB 164
Louisiana	La. Rev. Stat. Ann. T. 13, Ch. 24, Pt. I–V	2016	SB 94
Maine	Me. Rev. Stat. T. 18-a, Art. V, Pt. 5-a, Subpart 1–5	2012	LD 1377
Maryland	Md. Code Ann. T. 13, Subpart 2 & 7, Pt. II	2010	SB 231
Massachusetts	Mass. Gen. Laws Ann. T. 2, Ch. 190B, Art. V–5a	2014	SB 2249
Michigan	Mich. Comp. Laws Ann. Ch. 700, Art. V, Pt. 1–5	Not Enacted	Not Enacted
Minnesota	Minn. Stat. Ann. Ch. 252A	2009	SF 412
Mississippi	Miss. Code. Ann. T. 93, Ch. 14, Art. 1–5	2014	SB 2240

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

**TABLE 3 (cont.)**

State Bill Reference Chart: UAGPPJA Jurisdictions

State	Key Adult Guardianship Statutes	UAGPPJA Adoption Year	UAGPPJA Bill Citation
Missouri	Mo. Ann. Stat. T. XXXI, Ch. 475	2011	SB 213
Montana	Mont. Code Ann. T. 72, Ch. 5, Pt. 1–6	2009	HB 477
Nebraska	Neb. Rev. Stat. Ch. 30, Art. 26, Pt. 1–5	2011	LB 85
Nevada	Nev. Rev. Stat. Ann. T. 13, Ch. 159	2009	SB 313
New Hampshire	N.H. Rev. Stat. Ann. T. XLIV, Ch. 462–465	2015	SB 209
New Jersey	N.J. Stat. Ann. T. 3b, Ch. 12, Art. 4–7	2012	AB 2628
New Mexico	N.M. Stat. Ann. Ch. 45, Art. 5, Pt. 1–4	2011	SB 146
New York	N.Y. Mental Hyg. Law §§ 81.01–81.44; N.Y. Soc. Serv. Law §§ 473–d to –e	2014	AB 857
North Carolina	N.C. Gen. Stat. Ann. Ch. 35A, Subch. I–IV	2016	HB 817
North Dakota	N.D. Cent. Code Ann. T. 30.1, Art. V, Ch. 30.1–28	2009	SB 2074
Ohio	Ohio Rev. Code Ann. Sup. Rule 51, Form 15	2013	HB 27
Oklahoma	Okla. Stat. Ann. T. 30, Art. 3	2010	SB 2204
Oregon	Or. Rev. Stat. Ann. T. 13, Ch. 125, Art. 1–5	2009	SB238
Pennsylvania	Pa. Cons. Stat. Ann. T. 20, Ch. 55, Subch. C–F	2012	HB 1720
Rhode Island	R.I. Gen. Laws Ann. T. 33, Ch. 15.2	2015	SB 525
South Carolina	S.C. Code Ann. T. 62, Art. 5, Pt. 1–7	2010	SB 1070
South Dakota	S.D. Codified Laws T. 29a, Ch. 29A-5, Pt. 1–5	2011	HB 1062
Tennessee	Tenn. Code Ann. T. 34, Ch. 1–8	2010	SB 444
Texas	Tex. Est. Code T. 3, Subt. D–I	Not Enacted	Not Enacted
Utah	Utah Code Ann. T. 75, Ch. 5, Pt. 1–6	2008	SB 122
Vermont	Vt. Stat. Ann. T. 14, Pt. 4, Ch. 111	2011	HB 264
Virginia	Va. Code Ann. T. 37.2, Subt. IV, Ch. 10–10.1	2011	SB 750
Washington	Wash. Rev. Code Ann. T. 11, Ch. 11.88–11.92	2009	HB 1261
West Virginia	W. Va. Code Ann. Ch. 44A, Art. 1–5	2009	SB 515
Wisconsin	Wis. Stat. Ann. Ch. 54, Subch. I–VII	2018	AB 629
Wyoming	Wyo. Stat. Ann. T. 3, Ch. 2, Art. 1–3	2013	SB 39

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

If a client has a guardianship in a state that has adopted UAGPPJA and moves to another state that also adheres to UAGPPJA, it is likely that the existing guardianship will easily transfer to the client's new state of residence. Orzeske raises the example of a scenario when an established guardian's job requires moving to another state.<sup>71</sup> He states, "If there is no objection, the courts of both states can agree to transfer jurisdiction to the guardian's new home state, thus avoiding the time and expense associated with a new legal proceeding."<sup>72</sup>

To illustrate the fundamentals of a guardianship transfer between two UAGPPJA states, assume that a client who is subject to guardianship is a resident of Ohio (State A) who plans to move to New York (State B) below. There are four key steps to transfer guardianship under UAGPPJA:

Step 1. Petition to obtain a Provisional Order for Guardianship Transfer from State A, e.g., petition an Ohio court to obtain a provisional order to move the guardianship from Ohio to New York.

Step 2. Petition for State B to Accept State A's provisional order, e.g., petition a New York court to review the Ohio court's provisional order and issue an order of acceptance.

Step 3. Petition State A to discharge the guardianship to State B, e.g., petition the Ohio court to review the order of acceptance from the New York court and issue an order to discharge the Ohio-based guardianship.

Step 4. Petition State B to issue the new guardianship, e.g., petition the New York court to review the order to discharge the Ohio-based guardianship and issue a New York-based guardianship.<sup>73</sup>

In essence, transferring a guardianship within UAGPPJA jurisdictions is a matter of filing paperwork with the state the client is transferring to and the state the client is transferring from.

### Conclusion

Financial planners who work with clients and families on SNP matters must be keenly aware of

the current state of U.S. guardianship law. Because guardianship policies vary greatly across state lines, it can be challenging for professionals to keep abreast of current trends and changes to state and federal laws.

When considered as a whole, the American guardianship system is rife with fairness concerns and inefficiencies. As Nguyen and Rubel state, technically "[o]ur guardianship system works, but it (we) can do better."<sup>74</sup> They add, "While no system is perfect, thousands of individuals get the help they need every year under our laws...[however], *any* abuse in the system is too much abuse in the system." [emphasis added]<sup>75</sup> Financial planners who labor in the SNP system must never forget that caring for the individual subject to guardianship is paramount above all other concerns. In the past, as now, guardianship and SNP matters continue to present unique challenges. ■

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## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

on understanding the needs, experiences, and service delivery systems for caregivers of individuals diagnosed with intellectual and developmental disabilities. Dr. Marsack-Topolewski is a coinvestigator on the Michigan Older Caregivers of Emerging Adults with Autism and Other Neurodevelopmental Disabilities (MI-OCEAN) Family Support Project. As an appointee to the National Task Group (NTG) for Intellectual Disabilities and Dementia Care Practices, she currently serves on the NTG Steering Committee. She can be reached at [ctopole1@emich.edu](mailto:ctopole1@emich.edu).

- (1) Financial planners should recognize that there are different schools of thought regarding the terms “special needs” and “disability.” Many view the term special needs as empowering and inclusive, especially in cases where individuals with government-recognized disabilities consider their condition as unique, but not personally disabling or incapacitating. A minority of others, however, views the term special needs as an imprecise moniker for a serious disability that impacts an individual’s ability to conduct activities of daily living.
- (2) Beneficiaries can be both minors and adults. The title of guardian is not used consistently across all state codes. In certain jurisdictions, the title of “custodian” or “conservator” is used to describe either a full guardian or various types of guardianships with limited authority.
- (3) “Turning Rights into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities,” U.S. National Council on Disability (June 10, 2019): 13; accessed at: [https://ncd.gov/sites/default/files/NCD\\_Turning-Rights-into-Reality\\_508\\_0.pdf](https://ncd.gov/sites/default/files/NCD_Turning-Rights-into-Reality_508_0.pdf).
- (4) The modern standard of care for servicing clients in SNP requires financial planners to maintain a working knowledge about how different states manage guardianship issues. While 50-state reviews of literature for other SNP tools are limited, information is available. See, e.g., Annemarie Kelly and Lewis Hershey, “A 50-State Review of ABLE Act 529A Accounts,” *Journal of Financial Service Professionals* 72, no. 2 (2018): 69–84. By contrast, collective analyses of how guardianships vary by state are extremely limited and almost never tailored to the needs of financial planners.
- (5) “Beyond Guardianship: Toward Alternatives that Promote Greater Self-Determination,” U.S. National Council on Disability (March 22, 2018): 55-66; accessed at: [https://ncd.gov/sites/default/files/NCD\\_Guardianship\\_Report\\_Accessible.pdf](https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf). (Noting that “[t]his estimate is based on the handful of states that do track and report reasonably reliable data on guardianships; however, Dr. Uekert notes that there is wide variation among the states and it is difficult to extrapolate what we know from a few states to the country as a whole. Additionally, most states do not adequately sort data in a way that allows researchers to draw accurate conclusions from the available data.”)
- (6) “GAO-10-1046: Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors,” U.S. Government Account-

ability Office (September 2010): 5; accessed at: <https://www.gao.gov/new.items/d101046.pdf>. (Discussing failures of state court oversight in guardianship cases.)

(7) Richard H. Helmholz, “Roman Law of Guardianship in England, 1300-1600,” *Tulane Law Review* 52, no. 2 (1978): 223; accessed at: [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2497&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2497&context=journal_articles), citing Archibald Symptom, *A Treatise on the Law and Practice Relating to Infants*, 183 (*Making of Modern Law: Legal Treatises 1800-1920*, 4th ed. (Farmington Hills, MI: Gale, 1926)). (Interestingly, when studying the history of guardianship, the great English legal historian Frederic William Maitland used the phrase “disjointed and incomplete” to describe guardianship laws. In particular, he noted that English law concerning the guardianship of minors in the 15th century recognized at least 10 different classifications of legal guardian, depending on the person subject to the guardianship’s social and economic rank.)

(8) Martha Roth, “Mesopotamian Legal Traditions and the Laws of Hammurabi,” *Chicago-Kent Law Review* 71, no. 3 (1995): 13-39; accessed at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol71/iss1/3>. (Discussing the Code of Hammurabi generally.)

(9) In the past, the terms “ward,” “incompetent person,” and “incapacitated person” were often used to describe individuals who have a court-appointed guardian. The authors submit that the label of ward indicates a pejorative state of total dependence. Instead, the authors recommend that professionals who work with SNP matters strictly use person-first language in all communications with the client, their family, and third parties. The authors suggest using the terms “individual subject to guardianship,” “beneficiary,” “adult who is the subject of a proceeding,” “protected individual,” and/or “principal” to describe a person who receives guardianship services. All in all, these descriptions respectfully emphasize the importance of each individual’s right to self-determination and general autonomy. In addition, the authors encourage financial planners to generally avoid using the term “incompetency” because it is overly broad and stigmatizing. For a broad overview of guardianship fundamentals, see “What Is Guardianship?,” National Guardianship Association (2019); accessed at: <https://www.guardianship.org/what-is-guardianship>, and Sally Balch Hurme, ed., *The Fundamentals of Guardianship: What Every Guardian Should Know* (Chicago: American Bar Association Book Publishing, 2016).

(10) See, generally, Brenda Uekert and Richard Van Duizend, “Adult Guardianships: A ‘Best Guess’ National Estimate and the Momentum for Reform,” *Future Trends in State Courts*, National Center for State Courts (2011); accessed at: <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1846>. (Noting that these definitions are consistent with the definitions used by the Court Statistics Project (CSP) in the *State Court Guide to Statistical Reporting*.)

(11) *Matter of Guardianship of Hedin*, 528 N.W.2d 567 (Iowa 1995); *Ciaverelli v. Crime Victim’s Compensation Bd.*, 153 Pa. Commw.

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

639, 621 A.2d 1232 (1993).

(12) U.S. National Council on Disability (2019), endnote 3.

(13) George Blum et al., “Constitutional Law: Due Process of Law: Hearing: Evidence and Presumptions: Presumptions and Burden of Proof,” 16B *American Jurisprudence* § 1016 (2nd Ed. 2019). (Noting that a “standard of proof, as required by the Due Process Clause of the 14th Amendment and the need for fact finding, instructs the fact finder concerning the degree of confidence society thinks he or she should have in the correctness of factual conclusions for a particular type of adjudication and a standard of proof allocates the risk of error between the litigants and indicates the relative importance attached to the ultimate decision”) [citing references omitted]. See also Kevin Clermont and Emily Sherwin, “A Comparative View of Standards of Proof,” *American Journal of Comparative Law* 50, no. 2 (2002): 243.

(14) *Ibid.*

(15) *Ibid.*

(16) *Ibid.* See also Francis Amendola et al., “Evidence: Weight and Sufficiency: Degree of Proof: In General,” 32A *Corpus Juris Secundum* § 1615 (2019).

(17) U.S. National Council on Disability (2018), endnote 5: 21.

(18) *Ibid.*, p. 28.

(19) *Ibid.*

(20) *Ibid.*

(21) *Ibid.*

(22) *Ibid.*

(23) See, generally, Soumya Hegde and Ratnavalli Ellajosyula, “Capacity Issues and Decision-Making in Dementia,” *Annals of Indian Academy of Neurology* 19, no. 1 (2016). (Noting that “[e]ven a patient with moderate or severe dementia...may still be able to indicate a choice and show some understanding.” The authors evaluate four key components of decision making in a capacity evaluation for individuals with dementia: understanding, communicating a choice, appreciation, and reasoning.)

(24) Ala. Code. T. 26, Ch. 2A, Art. 1-2; Alaska Stat. Ann. T. 13, Ch. 26, Art. 1–6; Ariz. Rev. Stat. T. 14, Ch. 5, Art. 1–8; Ark. Code Ann. T. 28, Subpart 5, Ch. 74 Art. 1–5; Cal. Prob. Code §§ 1400-1490; 1500-1611; 1800–1970; 2100–2893; 2900–2955; Colo. Rev. Stat. Ann. T. 15, Art. 14, Pt. 1–5; Conn. Gen. Stat. Ann. §§ 45a-591–602; 45a-628–705a; Del. Code Ann. T. 12, Ch. 39, Subpart I–VII; D.C. Code Div. III, T. 21, Ch. 20, Subpart I–VI; Fla. Stat. Ann. T. XLIII, Ch. 744, Pt. I–VIII; Ga. Code Ann. T. 29, Ch. 1–11; Haw. Rev. Stat. T. 30A, Ch. 560, Art. V, Pt. 1–6; Idaho Code Ann. ST. T. 15, Ch. 5, Pt. 1–6; Ill. Comp. Stat. Ann. Ch. 755, Act. 5, Art. XIA; Ind. Code Ann. T. 29, Art. 3, Ch. 1–13; Iowa Code Ann. T. XV, Subpart 4, Ch. 633, Div. XIII, Pt. 1–7; Kan. Stat. Ann. Ch. 59, Art. 30; Ky. Rev. Stat. Ann. T. XXXIII, Ch. 387; La. Rev. Stat. Ann. T. 13, Ch. 24, Pt. I–V; Me. Rev. Stat. T. 18-a, Art. V, Pt. 5-a, Subpart 1–5; Md. Code Ann. T. 13, Subpart 2 & 7, Pt. II; Mass. Gen. Laws Ann. T. 2, Ch. 190B, Art. V-5a; Mich. Comp. Laws Ann.

Ch. 700, Art. V, Pt. 1-5; Minn. Stat. Ann. Ch. 252A; Miss. Code Ann. T. 93, Ch. 14, Art. 1-5 Mo. Ann. Stat. T. XXXI, Ch. 475; Mont. Code Ann. T. 72, Ch. 5, Pt. 1–6; Neb. Rev. Stat. Ch. 30, Art. 26, Pt. 1–5; Nev. Rev. Stat. Ann. T. 13, Ch. 159; N.H. Rev. Stat. Ann. T. XLIV, Ch. 462–465; N.J. Stat. Ann. T. 3b, Ch. 12, Art. 4–7; N.M. Stat. Ann. Ch. 45, Art. 5, Pt. 1–4; N.Y. Mental Hyg. Law §§ 81.01 to 81.44; N.Y. Soc. Serv. Law §§ 473d–e; N.C. Gen. Stat. Ann. Ch. 35A, Subch. I–IV; N.D. Cent. Code Ann. T. 30.1, Art. V, Ch. 30.1–28; Ohio Rev. Code Ann. Sup. Rule 51, Form 15; Okla. Stat. Ann. T. 30, Art. 3; Or. Rev. Stat. Ann. T. 13, Ch. 125, Art. 1–5; Pa. Cons. Stat. Ann. T. 20, Ch. 55, Subch. C–F; R.I. Gen. Laws Ann. T. 33, Ch. 15.2; S.C. Code Ann. T. 62, Art. 5, Pt. 1–7; S.D. Codified Laws T. 29a, Ch. 29A-5, Pt. 1–5; Tenn. Code Ann. T. 34, Ch. 1-8; Tex. Est. Code T. 3, Subt. D-I; Utah Code Ann. T. 75, Ch. 5, Pt. 1-6; Vt. Stat. Ann. T. 14, Pt. 4, Ch. 111; Va. Code Ann. T. 37.2, Subt. IV, Ch. 10–10.1; Wash. Rev. Code Ann. T. 11, Ch. 11.88-11.92; W. Va. Code Ann. Ch. 44A, Art. 1–5; Wis. Stat. Ann. Ch. 54, Subch. I–VII; Wyo. Stat. Ann. T. 3, Ch. 2, Art. 1–3.

(25) Ala. Code § 26-2A-20(8); Alaska Stat. § 13.26.005(4); Ariz. Rev. Stat. § 14-51-1(1); Ark. Code Ann. § 28-65-101(1); Cal. Prob. Code § 1801(a); Colo. Rev. Stat. Ann. § 25-14-102(5); Conn. Gen. Stat. Ann. § 45a-644; Del. Code Ann. tit. 12, § 3901(a); Fla. Stat. Ann. § 744.102(12); Ga. Code Ann. § 29-4-4(a); Ga. Code Ann. 20-5-1; Haw. Rev. Stat. §§ 560:5-101-102; Idaho Code § 15-5-101(a); 75/5 Ill. Comp. Stat. § 5/11a-2-3; Ind. Code § 29-3-1-7.5; Iowa Code § 633.552; Kan. Stat. Ann. § 59-3051(a); Ky. Rev. Stat. Ann. § 387.510(8); La. Code Civ. Proc. Ann. Art. 389; Me. Rev. Stat. Ann. tit. 18, § A 5-304(a); Md. Code Ann., Est. & Trusts § 13-705(b); Mass. Gen. Laws ch. 190B § 5-101(9); Mich. Comp. Laws Ann. § 700.1105(a); Minn. Stat. § 524.5-102(6); Miss. Code Ann. § 93-13-111; Mo. Ann. Stat. § 475.075(11); Mont. Code Ann. § 72-5-316(1); Mont. Code Ann. § 72-5-101(1); Neb. Rev. Stat. § 30-2601(1); Nev. Rev. Stat. §§ 159.019–159.022; N.H. Rev. Stat. Ann. § 464–A-2; N.J. Stat. Ann. § 3B:1-2; N.M. Stat. Ann. § 45-5-101(c); N.Y. Mental Hyg. Law § 81.02(b); N.C. Gen. Stat. Ann. § 35A-1101; N.D. Cent. Code § 30.1-28-01; Ohio Rev. Code § 2111.01(D); Okla. Stat. Ann. tit. 30, § 1-111(12)(b); Or. Rev. Stat. § 125.005; Pa. Cons. Stat. Ann. § 20-5501; R.I. Gen. Laws § 33-15-47; R.I. Gen. Laws § 33-15-4(a)(1); S.C. Code Ann. § 62-5-101(13); S.D. Codified Laws § 29A-5-302; Tenn. Code Ann. § 34-1-101(13); Tex. Estate Code Ann. § 1002.017; Utah Code Ann. § 75-5-401(2)(a); Vt. Stat. Ann. tit. 14 § 14-3061; Va. Code Ann. §§ 64.2-2000; Wash. Rev. Code Ann. § 11.88.010(1); W. Va. Code § 44A-1-4(3); Wis. Stat. Ann. § 54.01(15); Wyo. Stat. Ann. § 3-1-101(a)(ix); D.C. Code Ann. § 21-2011. See also “Capacity Definition & Initiation of Guardianship Proceedings: Statutory Revisions,” American Bar Association Commission on Law and Aging (December 31, 2018); accessed at: [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/chartcapacityandinitiation.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/chartcapacityandinitiation.pdf). (Containing additional

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

information about the notable elements of guardianship petition requirements in each state.)

(26) Shirli Werner and Rachel Chabany, “Guardianship Law versus Supported Decision-Making Policies: Perceptions of Persons with Intellectual or Psychiatric Disabilities and Parents,” *American Journal of Orthopsychiatry* 86, no. 5, (2016): 486-499.

(27) *Ibid.*

(28) *Ibid.*

(29) *Ibid.*

(30) William Sullivan et al., “Clinical Practice Guidelines: Primary Care of Adults with Intellectual and Developmental Disabilities,” *Canadian Family Physician* 64, no. 4 (2018); accessed at: <https://www.cfp.ca/content/cfp/64/4/254.full.pdf>, 254–279. (Discussing mental capacity and decision-making concerns for individuals with IDD. Though most examples are specific to health care settings, this guidance on fostering clear communications with reasonable accommodations/supports is applicable to other areas of personal decision making. These best practices for discerning an individual’s health care preferences and opinions regarding health interventions can be used to confirm a client’s personal goals and financial preferences in SNP).

(31) *Ibid.*, p. 258–259.

(32) Sullivan et al. (2018), endnote 30: 258–259. See also Katherine McKenzie et al., “Systematic Review of the Prevalence and Incidence of Intellectual Disabilities: Current Trends and Issues,” *Current Developmental Disorders Reports* 3 (2016): 104–115; “Definition of Intellectual Disability,” American Association of Intellectual and Developmental Disabilities; accessed February 10, 2020, at: <https://www.aaid.org/intellectual-disability/definition>.

(33) Sullivan et al. (2018), endnote 30: 259. See also Nancy Brady et al., “Communication Services and Supports for Individuals with Severe Disabilities: Guidance for Assessment and Intervention,” *American Journal on Intellectual and Developmental Disabilities* 121, no. 2 (2016): 121–138.

(34) Sullivan et al. (2018), endnote 30: 259. (Stressing the need to be “be attentive to inappropriate taking over of decision making.”)

(35) American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, (Washington, DC: American Psychiatric Publishing, 2013): 33–34. (Noting that the term developmental disabilities is broad. There are individuals with a developmental disability (e.g., autism spectrum disorder) that do not have cognitive impairments or intellectual disabilities/deficits that would require a guardian.)

(36) *Ibid.*

(37) *Ibid.*

(38) American Bar Association, “Law and Aging: Resources & Research: Guardianship and Supported Decision-Making: PRACTICAL Tool”; accessed May 8, 2016, at: [https://www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice/practical\\_](https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_)

tool. ABA Groups Commission on Law and Aging Resources & Research Guardianship and Supported Decision-Making. (Noting that this is a joint product of four American Bar Association entities: Commission on Law and Aging; Commission on Disability Rights; Section on Civil Rights and Social Justice; and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making.)

(39) American Bar Association, “PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making” (2016); accessed at: [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/PRACTICALGuide.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.pdf).

(40) *Ibid.*

(41) U.S. National Council on Disability (2018), endnote 5: 15–17. (Emphasizing that there is a general lack of court oversight of guardians, and inaccessibility and underutilization of rights restoration processes after a guardian is appointed. The NCD also notes that it is challenging to study these concerns because of the serious lack of reliable state and national data on guardianship.)

(42) U.S. National Council on Disability (2019), endnote 3.

(43) *Ibid.*

(44) Nina Kohn, Jeremy Blumenthal, and Amy Campbell, “Supported Decision-Making: A Viable Alternative to Guardianship,” *Penn State Law Review* 117, no. 4 (2013): 1111, 1113.

(45) *Ibid.*

(46) *Ibid.* (citing Ala. Code 26-1A-114; Alaska Stat. Ann.13.26.001; Ariz. Rev. Stat. 14-5312; Ark. Code Ann. § 28-65-105; Cal. Prob. Code 2355; Colo. Rev. Stat. Ann. 15-14-314; Conn. Gen. Stat. Ann. 45a-656; Del. Code Ann. Title 12 3982 and 12 Del. C. § 3922; D.C. Code 21-2047; Fla. Stat. Ann. 744.361; Ga. Code Ann. 29-4-22; Haw. Rev. Stat. 560:5-314 Uniform Probate Code; Idaho Code Ann. 15-5-311; 755 ILCS 5/11a-17; Ind. Code Ann. 29-3-9-4.5; Iowa Code Ann. 633.637; Kan. Stat. Ann. 59-3075; Ky. Rev. Stat. Ann. 387.640; LSA-C.C. Art. 392; ME ST T. 18–C § 5–313; Md. Code Ann., Est. & Trusts 13-206; M.G.L.A. 190B § 5-309; Mich. Comp. Laws Ann. 700.5314; Minn. Stat. Ann. 252A.111; Miss. Code Ann. § 93-13-127; Mo. Ann. Stat. § 475.130; MCA 72-5-306; Neb. Rev. St. § 30-2620; N.R.S. 159.0795; N.H. Rev. Stat. § 464-A:2; N.J.S.A. 3B:12-25; N. M. S. A. 1978, § 45-5-312; McKinney’s Mental Hygiene Law § 81.03; N.C.G.S.A. § 35A-1241; NDCC, 30.1-28-12; OH R LAKE PROB Rule 66.09; 30 Okl. St. Ann. § 1-121; O.R.S. § 125.300; 20 Pa. Cons. Stat. Ann. § 5521; RI Gen. Laws 1956, § 33-15-29; SC Code 1976 § 62-5-304; SDCL § 29A-5-402; T. C. A. § 34-7-102; V.T.C.A., Estates Code § 1001.001; U.C.A. 1953 § 75-5-312; 14 V.S.A. § 3069; VA Code Ann. § 64.2-2021; West’s RCWA 2.72.005; and W. Va. Code, § 44A-3-1; W.S.A. 54.18; W.S.1977 § 3-2-105).

(47) *Ibid.*

(48) “Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) & State Advocacy,” American

## A 50-State Review of Guardianship Laws: Specific Concerns for Special Needs Planning

Annemarie M. Kelly et al.

Bar Association Section on Civil Rights and Social Justice (February 28, 2018); accessed at: <https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/ABA-UGCOPAA-presentation-2-28-18.pdf>. (Noting that the UGCOPAA provides clear, person-centered decision-making standards for guardians.)

(49) “Guardianship Accountability Act of 2019,” S.591, 116th Cong. (February 27, 2019) (sponsored by Senator Susan Collins, Republican from the state of Maine); “Guardianship Accountability Act of 2019,” H.R.4174, 116th Cong. (August 6, 2019) (sponsored by Representative Darren Soto, Democrat from the state of Florida).

(50) Bruce Alston, “Towards Supported Decision-Making: Article 12 of the Convention on the Rights of Persons with Disabilities and Guardianship Law Reform,” *Law in Context* 35, no. 2 (2017): 21–43; Robert Dinerstein, Esme Grewal, and Jonathan Martinis, “Emerging International Trends and Practices in Guardianship Law for People with Disabilities,” *ILSA Journal of International & Comparative Law* 22, no. 2, (2016): 435–460; Hung Nguyen and Stacy Rubel, “The Shifting Landscape of Guardianship Law: Three Consecutive Years of Changes,” *Florida Bar Journal* 90, no. 8 (2016): 52–55; Matthew Brunson, “Family Law—Providing for Those Who Cannot Provide for Themselves: a Proposal for the Arkansas General Assembly to Follow in the Footsteps of an Already Expansive Guardianship Law and Grant Guardians the Right to File for Divorce on Behalf of a Ward,” *University of Arkansas at Little Rock Law Review* 38, no. 2 (2016); Hyoung Seok Kim, “Two Years of the Reformed Adult Guardianship Law in South Korea: A Retrospect,” *Journal of Korean Law* 16, no. 2 (June 2017): 311–322.

(51) Angela Haddon and Sarah Winston, “How Do Guardians Make Up Their Minds: Chart of State Decision-Making Standards,” *Bifocal, A Journal of the ABA Commission on Law and Aging* 40, no. 1 (September–October 2018); accessed at: [https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol-40/issue-1-september-october-2018/guardians-make-up-minds](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-40/issue-1-september-october-2018/guardians-make-up-minds).

(52) *Ibid.* (Citing 755 ILCS 5/11a-17 and Ariz. Rev. Stat. 14-5312.)

(53) “Guardianship Qualifications,” National Center for State Courts, Center for Elders and the Courts; accessed November 1, 2019, at: <http://www.eldersandcourts.org/guardianship/qualifications-of-guardianships>.

(54) “Background Checks,” National Probate Court Standards § 3.12 (2013); accessed at: <https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/240>.

(55) “Uniform Law Commission: Home: Guardianship and Protective Proceedings Act,” The National Conference of Commissioners on Uniform State Laws; accessed November 15, 2019, at: <https://www.uniformlaws.org/committees/community-home?CommunityKey=d716e47d-f50b-4b68-9e25-dd0af47a13b7>. Note: The UGPPA law is different from the UAGPPJA also mentioned herein).

(56) Mass. Gen. Laws Ann. T. 2, Ch. 190B, Art. V-5a (adopted UGPPA in 2009); Haw. Rev. Stat. T. 30A, Ch. 560, Art. V, Pt. 1–6 (adopted UGPPA in 2004); Minn. Stat. Ann. Ch. 252A (adopted UGPPA in 2003); Colo. Rev. Stat. Ann. T. 15, Art. 14, Pt. 1–5 (adopted UGPPA in 2000); Ala. Code. T. 26, Ch. 2A, Art. 1–2 (adopted UGPPA in 1987); and D.C. Code Div. III, T. 21, Ch. 20, Subpart I–VI (adopted UGPPA in 1987).

(57) Uniform Guardianship and Protective Proceedings Act § 102(5) (2017).

(58) *Ibid.*

(59) *Ibid.*

(60) *Ibid.*

(61) “Uniform Law Commission, “Adult Guardianship and Protective Proceedings Jurisdiction Act,” The National Conference of Commissioners on Uniform State Laws; accessed November 15, 2019, at: <https://www.uniformlaws.org/committees/community-home?communitykey=0f25ccb8-43ce-4df5-a856-e6585698197a&tab=groupdetails>. (Noting that UAGPPJA is endorsed by leading organizations such as the AARP (formerly the American Association of Retired Persons), Alzheimer’s Association, National Association of Elder Law Attorneys, National College of Probate Judges, National Guardianship Association, Endorsed as Suggested State Legislation by the Council of State Governments (CSG), and American Bar Association.)

(62) See endnote 24.

(63) Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act § 105 (2007). (Discussing cooperation between courts.)

(64) *Ibid.*

(65) *Ibid.*

(66) Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act § 201(a)(2) (2007). (Discussing definitions for “significant connection factors” with a state.)

(67) *Ibid.*

(68) Benjamin Orzeske, “Interstate Guardianship Issues,” *Bifocal, A Journal of the ABA Commission on Law and Aging* 34, no. 5 (May–June 2013); accessed at: [https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol\\_34/issue\\_5\\_june2013/interstate\\_guardianship\\_issues](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_34/issue_5_june2013/interstate_guardianship_issues).

(69) *Ibid.*

(70) *Ibid.*

(71) *Ibid.*

(72) *Ibid.*

(73) *Ibid.*

(74) Hung Nguyen and Stacy Rubel, “The Shifting Landscape of Guardianship Law: Three Consecutive Years of Changes.” *Florida Bar Journal* 90, no. 8 (2016): 52–55.

(75) *Ibid.*

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