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July 20, 2018

The Honorable Susan M. Collins
Chairman
Special Committee on Aging
United States Senate
G-31 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Robert P. Casey, Jr.
Ranking Member
Special Committee on Aging
United States Senate
628 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Collins and Ranking Member Casey:

AARP appreciates the opportunity to respond to the Senate Special Committee on Aging's bipartisan request for input regarding guardianship. We will speak to this issue broadly and address the questions you posed.

Guardianship is a state process in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for an adult upon a finding that the adult lacks capacity to make decisions for him or herself. State terms vary, but frequently a "guardian" has authority over health and personal decisions, and a "conservator" has authority over financial and property decisions. Often the term "guardianship" is used to encompass both.

AARP is committed to advocating for comprehensive guardianship and power of attorney reforms to help protect vulnerable adults and provide their family caregivers with the tools they need to make important decisions for their loved ones as quickly as possible regardless of where they live. There are over 40 million family caregivers, some of whom are appointed legal guardians. Guardians may be family caregivers, such as family, friends, or neighbors, or they may be public or professional guardians.

After a guardian has been appointed, courts are responsible for monitoring the guardian's performance and ensuring that those under guardianship are protected and cared for appropriately. The lack of monitoring in guardianship can often lead to abusive situations and/or the court losing track of an individual, their money, or the guardian. Most states have and continue to make improvements to their guardianship laws to provide parameters to prevent abuse and have developed standards for guardians and state guardianship programs.

Elder abuse, like many other forms of domestic abuse, is often hidden and affects hundreds of thousands of older adults annually. AARP supported the enactment of the Elder Justice Act, which addresses elder abuse broadly. AARP has a long history of fighting for protections against financial exploitation of seniors and supports strong legal protections against this type of abuse. Financial exploitation of seniors can cause injuries far beyond the pocketbook. This abuse frequently affects seniors' physical and emotional health. The state and family members in many instances find themselves trying to pick up the pieces after-the-fact, which can be costly. Yet efforts to prevent this abuse through the passage of stricter laws is often cost-neutral to the states. Thus, the enactment of stronger safeguards against the abuse of elders is a win-win-win situation for states, older adults, and their families. AARP has also supported efforts to improve the quality of care in nursing homes as well as prevent and address abuse of nursing home residents.

Below are the questions you asked regarding guardianship and AARP's responses.

1. A lack of reliable data on guardianship cases has posed problems for some policymakers attempting to understand and address issues related to these types of arrangements. What recommendations do you have for collecting information about these cases in order to better inform federal, state, and local officials?

The federal government, through the Administration for Community Living (ACL), has provided a grant to establish, expand, and enhance state Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). WINGS are court-community partnerships that focus on collaborative problem-solving reform in guardianship policy and practice, including identifying what does and does not work. There are [25 states that have a WINGS or similarly structured group](#) focused on guardianship reform, including less restrictive alternatives, right to counsel, and restoration of rights.

The ACL funding currently supports WINGS in seven states. The federal government could continue funding WINGS and use additional new WINGS grants or funding to focus on data collection. Multiple states or counties within states could be part of such a data collection pilot. Promising approaches or results could be expanded. It is also important to sustain WINGS after federal funding ends.

ACL is also piloting the National Adult Maltreatment Reporting System (NAMRS), the first comprehensive, national reporting system for adult protective services (APS) programs. It collects quantitative and qualitative data on APS practices and policies, and the outcomes of investigations into the maltreatment of older adults and adults with disabilities. You may want to look at NAMRS to determine its relevancy for guardianship.

2. Stories of guardian misconduct resulting in physical, emotional, and/or financial harm to the protected individual have raised questions related to the need for enhanced guardian oversight. What recommendations do you have for action that can be taken to ensure that individuals subject to guardianship are protected from exploitation and abuse by their guardians?

One important step is more education for guardians to assist them with carrying out their responsibilities, particularly family members, who may not be familiar with the role and the responsibilities guardianship entails. One example of a good educational tool are state specific guides, such as those developed by the Consumer Financial Protection Bureau (CFPB) to help guardians and conservators who are managing a protected individual's money and ["Managing Someone Else's Money in Texas: Help for Court-Appointed Guardians of the Estate"](#), designed by AARP Texas and Texas Appleseed and modeled off of the CFPB guides. Such guides include information on the duties of a fiduciary, information on financial exploitation and consumer scams, where to go for help, and other important information. The Texas collaboration also produced an additional guide, ["Help for Supporters Under a Supported Decision-Making Agreement."](#) You may want to consider federal resources for state courts to produce such guides to educate guardians about their role and for training for guardians, conservators, judges, and others. Education and training could help raise awareness and spot concerns or issues sooner, along the lines of "See something, say something."

Additional education about the importance of advance care planning, including the availability of voluntary advance care planning under Medicare, may also be beneficial. If more individuals make their health care goals, values, and preferences known prior to advanced illness, more guardians will have documentation of and direction on protected individuals' health care wishes. We also note AARP's support for the Patient Choice and Quality Care Act (S. 1334/H.R. 2797) that includes provisions regarding education in this area.

In addition to education and training for all guardians, it is imperative that there is a process to monitor and remove any guardian who is not adhering to the court order as well as a process to appoint a successor guardian, where necessary.

Federal-state coordination of federal representative payment programs and guardianship should be strengthened and streamlined through such means as increased communication between and among courts and federal agencies (such as the Social Security Administration and the Department of Veterans Affairs [VA]) to ensure appointment of appropriate guardians and representative payees, to monitor the activities of those fiduciaries, and to maximize services to individuals with diminished capacity. Some Social Security representative payees and VA fiduciaries may also be guardians. It would be helpful to look at barriers and gaps and how to address them.

3. Although guardians play an essential role in protecting many individuals who do not possess the capacity to make certain decisions, guardianship may be

inappropriate for individuals who have regained capacity or whose needs are limited to only certain functions. What recommendations do you have for ensuring that guardianship is imposed only when necessary and that it is removed if it becomes no longer necessary?

In July 2017, the Uniform Law Commission approved the [Uniform Guardianship, Conservatorship and Other Protective Arrangements Act](#) (UGCOPAA). This new act is a comprehensive guardianship statute that promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order. Among other things, the UGCOPAA outlines that courts are not authorized to appoint a guardian or conservator if the individual's needs could be met with a less-restrictive alternative. The act also outlines a process for the appointment and role of a court visitor and attorney for the protected individual, as well as a process for removal of a guardian, and modification or termination of a guardianship where necessary. These provisions enable the protected individual to have their voice heard in the processes. This year, Maine became the first state to enact UGCOPAA in its entirety and New Mexico adopted parts of the act. States could adopt all or part of UGCOPAA and more states are likely to act.

Additionally, the UGCOPAA includes supported decision-making (SDM) as a less restrictive alternative. A supported decision-making agreement enables a person who can make his or her own life decisions but needs assistance doing so to name an individual, like a family caregiver, to help make these decisions. In 2015, Texas became the first state to enact SDM, followed by Delaware and most recently, Wisconsin and the District of Columbia. The Alaska legislature passed a SDM bill that is currently awaiting the Governor's signature.

Importantly, both UGCOPAA and SDM are two examples of state efforts to provide less restrictive alternatives to guardianship. It is important to allow time for implementation of these changes to see how they are working through oversight and follow-up in state courts.

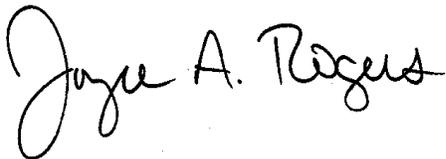
4. Procedures and practices related to guardianship can differ greatly from jurisdiction to jurisdiction, but many of the factors that influence the success of these relationships are the same. What best practices or other policies would you recommend to policymakers considering guardianship reforms?
 - a. The 115th Congress passed the Elder Abuse Prevention and Prosecution Act (P.L. 115-70), which includes guardianship provisions in Section 5. Monitoring implementation of this law will be important, including looking back a year after enactment. Among the provisions, the law included Government Accountability Office (GAO) reports on elder justice and elder abuse. It may be helpful to see whether GAO is tracking abuse by guardians or just elder abuse generally, and whether they are identifying who is perpetrating the abuse (i.e. family or friends, other guardians or agents, powers of attorney, other fiduciaries, etc.).

In their November 2016 report, [*The Extent of Abuse by Guardians is Unknown, but Some Measures Exist to Help Protect Older Adults*](#), the GAO noted that although state courts have primary responsibility for guardianship “federal agencies may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination, as well as by sharing information that state and local entities can use related to guardianship.”

- b. We note WINGS as an example of state groups focused on guardianship reform. Some of the state WINGS received federal funding. It may be helpful to look at what we learned from these grants and other state efforts to build on them, while also not reinventing the wheel, as 25 states already have WINGS or similarly structured groups. WINGS and similar groups in states have created partnerships and helped to make improvements, such as adopting court administrative rule changes and creating educational and training materials for professional and family guardians. Encouraging and supporting data collection and encouraging states to add WINGS may be helpful. You may also want to consider the potential value of a federal WINGS.
- c. We also suggest that states consider adopting UGCOPAA, pursue less restrictive alternatives to guardianship, such as SDM, and other important reforms.
- d. Additionally, when considering reforms policymakers should also look into support and other services available to victims of abuse and exploitation. Policymakers should also consider the cost of various reforms and who will bear the cost, including whether costs will be passed on to the protected individual.

AARP will continue to fight to protect individuals who rely on their guardians for vital decision-making and support, as well as to make sure guardians have the necessary training and tools to take on their important responsibilities. Thank you for the opportunity to provide feedback on guardianship and the importance of protecting older adults. If you have further questions, please feel free to contact me, or have your staff contact Rhonda Richards on our Government Affairs staff at (202) 434-3770 or rrichards@aarp.org.

Sincerely,



Joyce A. Rogers
Senior Vice President
Government Affairs