

TESTIMONY ON
Strengthening Guardianship Laws & Preventing Elder Abuse
Senate Bill 506

Joint Public Hearing
Senate Judiciary Committee
Senate Aging & Youth Committee

Presented by
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Thank you to the chairs, members and staff present today. I appreciate the invitation to speak on the topic of guardianship. My name is Connie Brode and I am Executive Director for the Huntingdon-Bedford-Fulton Area Agency on Aging. I have been in the Aging network for 33 years starting as an Aging Care Manager and Protective Service Worker to now serving as the Director.

The Huntingdon-Bedford-Fulton Area Agency on Aging has been providing guardianship services since 1985. During this time there were no other local organizations available to serve as guardian for an incapacitated older adult, so the Court system looked to the Agency to fulfill this role. To date the Agency continues to operate a guardianship program, and there are still few providers available to meet this need. Currently the Agency is serving 65 individuals as either limited guardian or plenary guardian of person and or estate.

The majority of the guardianship cases are a result of the protective service investigation completed as part of the Older Adult Protective Services Act (OASPA). Reports of need are received alleging neglect, abuse, exploitation or abandonment. A comprehensive investigation is completed which requires an investigator to meet with an older adult to determine if they are in need of protective service. Additional information is obtained regarding their medical condition, home environment and financial situation. When as a result of the investigation it is determined that the individual is incapacitated by OAPSA definition, the investigator looks for ways to resolve the situation in the least restrictive manner. A independent, comprehensive psychiatric or psychological evaluation may be requested to determine the individuals decision making capabilities.

Least restrictive measures may range from informal assistance, Representative Payee through Social Security, Power of Attorney, Trust, Financial Advisor, etc. The Area Agency on Aging will try to collaborate with family, friends, other agencies to alleviate the risk to the older adult. However, sadly, many times the investigation reveals abuse or exploitation by family members. If all other options are not feasible to safely remedy the situation, the Area Agency on Aging may file a Guardianship petition.

Although all Area Agencies on Agings provide protective services, not all Area Agencies on Aging provide Guardianship Services. Some Area Agencies on Agings subcontract out the guardianship work, while others manage the program internally and some are unable to do this work at all.

Let me explain a little more about the Huntingdon-Bedford-Fulton Area Agency on Aging guardianship process. Once it is determined a guardianship petition needs to be pursued, a petition is prepared by the Agency solicitor and presented to the Judge in the prospective county. Once the petition is reviewed by the Judge, the Court appoints counsel for the alleged incapacitated person and a 72 hour/ Emergency Hearing is scheduled. The petition and order are served to the alleged incapacitated person and intestate heirs if known.

On the day of the 72 hour/Emergency Hearing the incapacitated older adult is present for the Hearing when preliminary testimony is heard, unless excused by a doctor due to a serious medical or psychiatric issue. If determined appropriate the Judge will order a evidentiary hearing to be held within 20 to 30 days. During this time the Area Agency on Aging continues to explore viable resolutions and identify prospective guardians in the event the Court determines a plenary or limited guardian is needed. The alleged incapacitated older adult continues to be consulted about the process as it progresses.

When working with family members about taking on the guardianship role, many are reluctant to take on the responsibility due to concerns for liability or how it may affect their relationship with their loved one. The Agency offers to educate the family on what is expected when the court determines a guardian is needed and they are selected. Court reporting requirements including the initial inventory of the persons estate and subsequent annual reports can be somewhat intimidating, therefore, the Agency offers to assist with report submissions through the Guardianship Tracking System. However, despite these efforts, often times there is no one willing or able to fulfil the role and it can be very difficult to find an appropriate guardian.

If the agency is appointed as the limited or plenary guardian of person and /or estate, we work hard to build a relationship with the older adult, seeking their guidance in care planning, housing/placement arrangements, medical care, financial management and end of life planning preferences.

The work associated with providing guardianship services can be quite extensive especially for individuals living in the community. Staff works with service providers to ensure their personal needs are met as well as assisting with obtaining groceries, medications, clothing, arranging medical appointments, trash removal, snow removal and lawn care, transportation, applications for needed assistance, and ongoing monitoring of their safety and well-being.

Guardian of the Estate responsibilities range from securing the personal property such as home and car, gathering financial documents, securing checking, savings accounts and other financial accounts. applying for Representative Payee through Social Security or Veterans Administration, determining debts, notifying creditors, possibly winterizing the home and boarding the pets. If funds are not available to maintain the home and the older adult is unable to return home, arrangements are typically made to sell the property to utilize the funds for care needs. If the funds have been exhausted, an application is made for medical assistance.

As noted previous, the older adult is residing in the community, care providers are located to assist in providing care. This however can be a challenge in our current environment. Direct care workers are difficult to find and lack of service providers may impact the ability for the individual to return or remain at home.

Throughout this process Agency staff are always aware if the older adult's condition, and when changes identified, reassess the goals for their care as there are times when is it appropriate to have the individual re-evaluated to determine if guardianship services are still needed.

The Huntingdon-Bedford-Fulton Area Agency on Aging's cost for providing guardianship services for fiscal year 21/22 was \$227,687. Although guardianship fees are permitted under the guardianship law and through the Department of Human Services Medical Assistance Program it is not always appropriate or ethical to accept it. This Agency received only \$17,300 in guardianship fees during this same time period. Area Agencies on Aging are currently utilizing their Block Grant funding to meet this need which pulls resources of both staff time and dollars from other programs that the Agency is mandated to provide.

The Agency recognizes the need for guardianship services, as well as the likelihood of increased needs in the future due to the increase in the aging population, longer life expectancy, increase in individuals living with dementia, change in family dynamics and lack of service providers.

The Area Agency on Aging network recognizes the need for alternatives to guardianship whenever possible and are willing to look at innovative solutions. Since guardianship is administered differently throughout the state, the creation of a state wide guardianship entity would help meet the needs in areas where resources are not available as well as standardize the guardianship process.

As mentioned previously, it is difficult to find individuals who are willing to serve as guardian. In looking at a guardianship certification process, how would it impact the ability to find prospective guardians? The certification process would provide very useful information on expectations of serving as guardian and how to make appropriate decisions on behalf of the incapacitated older adult. This information would also be beneficial for anyone appointed to serve as guardian whether certified or not. Is there thought to providing an information resource bank as part of the Guardianship Tracking System that any court appointed guardian may access? Information could include: What do I consider when making a serious health care decisions for my ward? Who do I consult for an opinion? When is it appropriate to approach the court for permission for health care decisions? When should I approach the court for permission to sell assets?

Questions have been raised about Area Agencies on Aging taking advantage of or overstepping, when petitioning for guardianship as a resolution for a protective service case. When all alternative solutions to guardianship have been pursued to resolve an unsafe situation and medical experts have determined an individual is unable to make informed decisions ,it becomes necessary to request the judiciary system review the evidence and decide if in fact an individual's rights should be removed, and if so to what extent. It is the Courts determination as to who would be the best person to serve, taking into account the incapacitated older adults' preference.

Each case is unique and personal. The Area Agency on Aging understands the gravity in petitioning to have someone rights taken away, and the responsibility given to whomever is appointed to serve as guardian. Guardianship is always an option of last resort when trying to resolve an unsafe situation.

Thank you again for allowing me the opportunity to speak with you today.