

New Uniform Act Boosts Guardianship Reform



State legislatures grappling with the complexities of guardianship need a model, a beacon to guide them in shaping the best solutions.

Over the years, the Uniform Law Commission (ULC) has offered such a model – first as Article V of the Uniform Probate Code in 1969, then as a free-standing Uniform Guardianship and Protective Proceedings Act (UGPPA) in 1982, and finally in a significantly revised version of the Act in 1997. Seven states have passed the Act in its entirety, and many more have enacted specific provisions.

Fast forward to 2011. In that year, the National Guardianship Network (NGN), comprised of national organizations dedicated to effective guardianship law and practice, held the Third National Guardianship Summit. The Summit resulted in recommendations¹ that formed the basis of a request to ULC to revise the 1997 Act.

The ULC appointed a Drafting Committee in 2014, including ULC Commissioners, American Bar Association advisors and others – and welcomed the full participation of a broad range of “observers” including those representing NGN organizations. The Committee Chair was David English, University of Missouri-Columbia School of Law; and the Reporter was Nina Kohn, Syracuse University College of Law. Over the course of more than two years, Committee members engaged in spirited discussion – and sometimes lively debate – bringing to the table useful state law provisions and case examples.

The ULC approved the new [“Uniform Guardianship, Conservatorship and Other Protective Arrangements Act”](#)² in July 2017, and it is ready for adoption by states. It represents a huge leap forward for guardianship reform, and merits a close look by state legislators and advocates. The Prefatory Note describes three overarching aims of the Act:

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1. **To reflect a person-centered philosophy.** For example, instead of the old terms “ward” and “incapacitated person,” the Act uses the terms “adult subject to guardianship” and “individual subject to conservatorship.” The Act requires that such individuals be given meaningful, plain-language notice of their rights, and be involved in decisions affecting them. It requires guardians to create and courts to monitor person-centered plans.
2. **To promote key objectives of the 2011 Summit and address other key challenges.** For example, it offers necessary guidance to guardians and conservators in carrying out their duties.
3. **To make it easier for all involved in the process to achieve those objectives.** For example, it creates new petition requirements, a model petition form to give judges additional information, and a model order – making it easier for petitioners to seek and courts to fashion a limited order.

¹Symposium: Third National Guardianship Summit: standards of Excellence, Utah Law Review, Vol. 2012, No. 3 [2012].

²www.uniformlaws.org/shared/docs/Guardianship%20and%20Protective%20Proceedings/2017AM_UGCOPPA_AsApproved.pdf

The Prefatory Note also highlights several more specific noteworthy changes. For instance, as reflected in the new title, the Act creates an option for courts to enter specific orders (“other protective arrangements”) meeting identified needs instead of using guardianship or conservatorship orders. The Act clearly states that neither guardianship nor conservatorship are to be used if needs can be met by less restrictive options including a protective arrangement, as well as use of supportive services, technological assistance or supported decision-making.

The Act clarifies how guardians and conservators are to make complex choices about medical treatment and residential settings. It limits a guardian’s authority to restrict the individual’s right to communicate, visit or interact with others. It strengthens court monitoring through notice of key changes or events to identified third parties; making bond a default option for conservators; and clarifying factors in determining a reasonable fee.

A thorough reading of the new Act will uncover carefully crafted provisions on many thorny guardianship issues that call for balancing competing concerns. Get out your reading glasses and get ready for action!

Keck School of
Medicine of USC



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