

Collaboration Regarding Residents' Rights and Guardianship

Some individuals living in long-term care facilities may have had some or all of their rights terminated by the court and been appointed a guardian or conservator. To the extent of the court order, the guardian or conservator is legally responsible for making personal and/or financial decisions for the person (ward) who has been adjudicated incapacitated. State laws vary, but generally an individual is deemed incapacitated if the court determines the individual “lacks capacity to make personal and/or property decisions on his or her own behalf and may be at risk of harm without the protection of a guardian.”¹

Ombudsman programs may encounter challenges when advocating for residents with guardians or conservators. For example, the resident’s guardian or conservator may have overstepped the legal authorities granted to them by court order, or the guardian’s interest may conflict with the resident’s wishes, or it may appear that the guardian is not acting in the resident’s best interest. In addition to individual issues such as the examples above there are also systemic issues in the guardianship process advocates could address (e.g., frequent use of full guardianship opposed to limited guardianship).

This brief discusses one way that Ombudsman programs and Protection and Advocacy (P&A) programs can collaborate to address systemic guardianship issues in their state.

One of the key recommendations from the 2011 Third National Guardianship Summit, sponsored by the National Guardianship Network, was the creation of “coordinated state court-community partnerships” called “Working Interdisciplinary Networks of Guardianship Stakeholders or WINGS.”² The goal of establishing a WINGS entity in states is to bring guardianship stakeholders together to identify weaknesses in the state’s current guardianship network and address them, highlight least restrictive decision-making options, and provide training and community education regarding guardianship and alternatives to guardianship.

How can Ombudsman programs and Protection and Advocacy (P&A) agencies work together to support WINGS?

- Help to organize WINGS in your state.
- Educate guardians and the court system about less restrictive options for supporting a person.
- Improve state laws pertaining to guardianship/conservators.
- Develop an agreement regarding information sharing, referrals, and support for individual cases regarding guardianship (e.g., resident needs legal representative to restore their rights).

State P&A and Ombudsman programs are encouraged to join or help their state establish a Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS). The National Guardianship Network offers implementation [guidelines](#) for states choosing to organize a WINGS. Stakeholder groups essential to WINGS are the judicial system, legal services,

¹ *Good Guardianship: State Court Partnerships with the Aging Network- Promising Practice Ideas on Court Links for Agencies on Aging, Adult Protective Services, and Long-Term Care Ombudsmen.* American Bar Association.

http://www.americanbar.org/content/dam/aba/administrative/law_aging/GoodGuardianshipBrochureAgenciesOmbudsmen.authcheckdam.pdf

² WINGS Tips: State Replication Guide for Working Interdisciplinary Networks of Guardianship Stakeholders. 2014. National Guardianship Network.

http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_wings_implementation_guide.authcheckdam.pdf

aging, disability, guardianship, mental health, Ombudsman programs, and P&A. Currently there are fifteen (15) states with WINGS.³

State Ombudsmen were asked about their involvement in WINGS and the following examples of activities were provided:

- Participation in community education events.
- Provided assistance with training regarding guardianship, supportive decision-making, and alternatives to guardianship.
- Distribution of educational materials to the public and representatives of the Ombudsman program regarding guardianship and least restrictive alternatives.
- Education with the courts about less restrictive options and alternative options to guardianship.
- Systemic advocacy to improve or create a state guardianship program.

Working together to support or develop a Working Interdisciplinary Networks of Guardianship Stakeholders is another opportunity for Ombudsman programs and P&A agencies to advocate for quality care and life of vulnerable adults.

Resources

Note: This resource is part of series of materials regarding Ombudsman program and P&A collaboration, visit the NORC [website](#) for additional information on this topic.

American Bar Association- Commission on Law and Aging, Guardianship

http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html

NORC Guardianship Issue Page

<http://ltombudsman.org/issues/guardianship>

WINGS Tips: State Replication Guide for Working Interdisciplinary Networks of Guardianship Stakeholders. 2014.

National Guardianship Network.

http://www.americanbar.org/content/dam/aba/administrative/law_aging/2014_wings_implementation_guide.authcheckdam.pdf

National Resource Center for Supported-Decision Making

<http://supporteddecisionmaking.com/>

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³ Guardianship & Supported Decision-Making. Erica Wood. *Bifocal- A Journal of the ABA Commission on Law and Aging*. Volume 37, Issue 2. December 2015. http://www.americanbar.org/publications/bifocal/vol_37/issue_2_december2015/2015-guardianship-supported-decision-making.html