

## Working Interdisciplinary Network of Guardianship Stakeholders

### June 28, 2017 Summary Minutes

**Attendees:** Andrew Riggle, Daniel Musto, David Connors, Dustin Hummers, James Toledo, Joanne Bueno Sayre, Karolina Abuzyarova, Kaye Lynn Wootton, Kent Alderman, Mary Jane Ciccarello, Michelle Wilkes, Nancy Sylvester, Robert Denton, Todd Weiler, Wendy Fayles, Xia Erickson (in place of Shannon Alvey), Amy Notwell, Eric Stoker, Nan Mendenhall

**Excused:** Nels Holmgren

**No show:** Judge James Brady

**Introduction:** Committee Chair, Judge Connors asked committee members to introduce themselves. Committee approved April minutes. Judge asked guest speakers to move forward with the presentation.

**Advocates as Leaders, Self Advocacy Speaker's Network:** Amy Notwell, Program Manager of the Advocates as Leaders, Self Advocacy Speaker's Network and Eric Stoker, Self Advocate and employee of the Developmental Disabilities Council handed out the copies of the "My Voice Counts: Supported Decision Making An Alternative to Guardianship" a self advocate's guide to supported decision making.

Amy Notwell said that over 600 professionals received training in 2016 and around 800 in 2017. In the relation to WINGS the idea is to steer away from guardianship as a last resort by explaining the difference between guardianship and supported decision-making. Supported decision making promotes the ability to be self-determined, have control over your own decisions and empower to be more self-sufficient and independent. Self-advocates are giving permission to others to be part of their life. It encourages identifying the right people to be part of the support team, creating the agreement that distributes the roles and describes the area of support. Judge Connors noted that he hasn't seen agreements of supported decision-making in Court yet.

Amy mentioned that support coordinators play an important role is building community support around the individual. Coordinators used to be employed by DSPD, but are now independent contractors. They help lower the expectations what could be done and help individuals understand that they are responsible in maintaining their life and making it what they want it to be. Services of support coordinators are covered through DSPD and other agencies that have generally a waiting list of 2500 people for their services.

Amy reminded about Celebration of Self-Determination Conference on July 10<sup>th</sup> at the Red Lion Hotel, where self advocates would be making an extensive presentation and a nation expert on supported decision-making, Jonathan Martinis will be speaking as well.

**Legislative update:** Mary Jane Ciccarello provided legislative update on the latest changes to Utah code relevant to guardianship matters: general power and duties of guardian and information about penalties, emergency guardians, essential treatment and intervention act. Legislation became effective on 5/9/2017. See detailed analysis under Tab 2 in meeting agenda for 6/28/2017.

*General Power and duties of guardian-Penalties* (Utah Code, Section 75-5-312(3)(f)(ix). The new statute says "the provisions and penalties governing annual reports do not apply if the guardian or a co-guardian is the parent of the ward". Prior to this change anyone not a parent serving as guardian had to file the annual reports and accountings. The Rule of Judicial

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Administration, Rule 6-501, has not been changed and still exempts only parents of adult children under guardianship from the reporting requirements.

*Emergency guardians (75-5-310)*. The new language is "Upon request by an interested person after the appointment of an emergency guardian, the court shall hold a hearing within 14 days pursuant to Section 75-5-303". While an emergency appointment is not to exceed 30 days pending notice and hearing, the court shall hold a hearing within 14 days of the emergency appointment only upon request by an interested person. Thus, the hearing within 14 days is no longer required. An ex parte appointment can last for at least 30 days and possibly more pending notice and hearing.

*Essential Treatment and Intervention Act (62A-15-12)* and *Statement of legislative intent (62A-15-1201)*. To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

*Criteria for essential treatment and intervention (62A-15-1204)* and *Seventy-two-hour emergency treatment (62A-15-1207)*. One issue is that the petitioner must provide financial guarantee of ability to cover treatment costs not covered by the individual's insurance. This is also a new cause of action that allows family members (as defined in the statute) to petition the district court to order an adult to essential treatment for substance abuse disorder. The courts will process these cases in a manner similar to involuntary commitment proceedings. This proceeding and involuntary commitment proceedings are different from adult guardianship proceedings but there is often confusion about these different case types.

Karolina asked Mary Jane to bring up the roundtable that she suggested organizing on the subject of interrelation of guardians' authority, the role of the court, involuntary commitment and essential treatment. There seems to be quite a bit of misunderstanding within legal community, guardians, judges and medical professionals on the subject. Particular example was when the court gave the guardians an authority to involuntarily commit person subject to guardianship. WINGS Committee seemed to be responsive to the idea and was interested in participating. Utah State University grant funds left from FY 2017 were extended until the end of 2017 to fund the roundtable in Salt Lake City. The goal is to come up with policy and practice recommendations and hopefully publish them.

#### **Abuse subcommittee:**

Present: Xia (OPG), Michelle Wilkes, James Toldeo, Nancy Sylvester, Andrew Riggle, Kaye Lynn Wootton, Nan Mendenhall (by phone)

To do list from last meeting:

- We need some base scenarios, best practices within them.
- In what cases does APS step in? We need APS triaging. What would they like this to look like?
- What does OPG do--what is their protocol? What would they like this to look like? Nan and Shannon should talk about this at the next meeting.
- Education on self-neglect cases: we need to connect with Area Agencies on Aging (Meals on Wheels Program)?
- What are the resources in each district?
- Input from judges: here are the situations that we've been dealing with.
- Guardianship issues--which tribes use the state system? If a tribe is using the state court

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system, what are the resources on tribal lands? What about an alleged perpetrator on tribal land? Or a Caucasian person abusing on a reservation? Who has jurisdiction?

- Need contact numbers for tribes. James Toledo can provide this information.

Michelle came up with a scenario regarding a victim/protected person named Beth Childs. APS would get involved but changes wouldn't happen overnight. They'd have to weigh all of the evidence and then present it to a judge and try to prove exploitation. Medicaid Fraud wouldn't have jurisdiction if the abuse happens in a private home.

OPG would look to other family members involved to determine if there was another appropriate person to serve. Referral can come from anyone. If judge determines that new guardian should be appointed, OPG can have already vetted that.

James Toledo has an updated contact list of tribes. APS does not have a contract with tribes. Has pending MOU with Piute tribe to provide services.

If the court has a concern, order parties to contact APS. APS can petition the court for a protective services order. Minimum of 24 hours to get ducks in a row. Put ownership back on those representing the parties. Court's role is limited other than following up that the referral to APS was done.

If there is no one to step in as guardian, a referral would go to OPG. If a referral to APS is not appropriate, there is an open question of who reports to OPG and asks for a recommendation. Court Visitor program could open a well-being case and visitor makes call to OPG if there is no one to step in. If there are siblings, visitor can make recommendation as to who would be appropriate.

Nan noted a disconnect between hearing and notification to APS caseworkers of the hearing. Michelle said she will notify the caseworker or Nan of the hearing.

What we are missing now is input from judges.

Resources in each district may be a non-starter as far as the courts are concerned.

We should have a flow chart and a written document. Once we have more scenarios from judges, we can do a training and take judges through the flow chart.

#### **Limited guardianship subcommittee:**

Present: Kent Alderman, Dustin Hammers, Daniel Musto, Joanne Bueno Sayre, Karolina Abuzyarova, Robert Denton, Todd Weiler, Wendy Fayles.

Excused: Mary Jane Ciccarello

Subcommittee discussed the handbook on judicial determination of capacity in older adults. At the last meeting in April Kent Alderman brought up an issue of payment for the evaluations. Dustin Hammers provided the codes that physicians can use to bill for the evaluations.

Dustin and Kent noted that not only judicial education is important, but more so procedural changes in probate court. Karolina responded that, first, there is lack of permanent funding, and second, WINGS work has a grassroots and outreach nature versus support from the executive leadership. The intent is to educate the judiciary, build capacity and hopefully the procedures will change in an organic way as opposed to a top to bottom approach.

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Kent Alderman brought up an idea of having an assigned judge on probate matters and have higher representation of judges on the WINGS Committee. Names of the judges that came up in the discussion were: judge Skanchy, Kouris, Parker, Laura Scott, George Harmond.

As for the format of the document to be produced by the subcommittee, Daniel Musto recommended to laminate a benchcard that is easy to use. Committee discussed a possibility of having a brief judicial guide that is somewhere in between benchbook and benchcard.

One of the policy recommendations could be: rotation on the probate calendar that lasts at least a year or a designated probate judge.

Subcommittee discussed a need of training for both judges and clerks.

Senator Todd Weiler suggested extracting the first 14 pages of the document that contain the main text and distributing among members, as opposed to a 100-page full document that includes the evaluation forms and charts.

Karolina said she will email the abbreviated document to the subcommittee and asked everyone to email the comments they might have as for the implementation in Utah, e.g. what would be different based on the local landscape.

**Meetings** in 2017: Aug. 23, Oct. 25, Dec.27