

Agenda

Working Interdisciplinary Network of Guardianship Stakeholders

November 19, 2014
12:00 to 2:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Conference Room B, Suite W19

Welcome, introductions and approval of minutes		Kate Toomey
Update on medical evidence of incapacity subcommittee <ul style="list-style-type: none"> • Paper edited and submitted for feedback to medical professionals • Distribution 		Norman Foster Kent Alderman Rob Denton
Agency cooperation subcommittee: <ul style="list-style-type: none"> • Training outline from the WINGS and SSA 	Tab 1	Karolina Abuzyarova Mickie Douglas
Call for new education subcommittee members: <ul style="list-style-type: none"> • Online component • Live training sessions 		Kate Toomey Kent Alderman
Tasks accomplished since first WINGS meeting 2013-04-17	Tab 2	Kate Toomey Karolina Abuzyarova
Proposed meeting schedule: <ul style="list-style-type: none"> • January 14, 2015 • March 11, 2015 • May 13, 2015 • August 12, 2015 • October 14 • December 9, 2015 		Karolina Abuzyarova

Tab 1

WINGS Training Guide

I. Fraud and Misuse Reporting

A. Fraud vs. Misuse

1. What do “fraud” and “misuse” mean?
2. Definitions of “fraud” and “misuse” in:
 - State statutes
 - State court rules
 - Federal statutes
 - CFR
 - SSA POMS
 - Others?

http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/explanation_for_APS_IA_LTCOP_citations_chart.authcheckdam.pdf

B. Penalties for fraud/misuse

1. Are there any penalties on the federal or state level?
2. What are the distinctions between criminal and civil penalties?
3. State criminal statutes
4. Utah Code Sections 76-5-111:
http://le.utah.gov/code/TITLE76/htm/76_05_011100.htm
5. State civil statutes
6. Utah Code Sections 62A-3-301 to 321:
http://le.utah.gov/code/TITLE62A/htm/62A03_030100.htm
7. Court imposed sanctions
 - a) Termination of appointment
 - b) Fines
8. SSA imposed sanctions
9. Office of Inspector General Sanctions

C. How to report fraud/misuse

1. State reporting laws
http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html
2. What must be reported?
3. Penalties for failing to report?
http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_failure.authcheckdam.pdf
4. SSA reporting requirements
5. Who has the obligation to report?
6. How are problems shared/reported between SSA and courts?
7. Courts
 - a) Court visitors
 - b) Other interested parties to a guardianship
 - c) What is the responsibility of the court itself if a report of abuse is made directly to the court?

D. Getting APS/police involved

1. What is court's obligation to report fraud/misuse to APS or police?
2. What is obligation of APS to report substantiated fraud/misuse to courts?
3. What is obligation of SSA to report fraud/misuse to courts? To APS?
4. What is obligation to report simultaneously to APS and law enforcement?
http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/Requirements_of_Simultaneous_Reports_to_APS_and_Law_Enforcement_Comparison_Chart.authcheckdam.pdf

II. Terminology of State Recognized Representatives



Utah State Court
Visitor Resou...

http://www.utcourts.gov/visitor/resources/docs/07_Dictionary.pdf

III. Oversight of Representative and Organizational Payees

A. SSA Oversight of Individual Representatives Payees

1. SSA law requires payees to use benefits for the current needs of beneficiaries and save any remaining funds
2. Required to complete a yearly report
3. All payees receive a report except State mental institutions participating in Onsite Review program
4. Use of Report
 - a) Monitor how payee spent or saved benefits
 - b) Identify situations where payee needs to be changed, where beneficiary may no longer need a payee and if payee continues to be suitable
5. Questions
 - a) Felony conviction reporting
 - b) Verification of living situation
 - c) Verification of payee decision-making categories of spending (food and housing and other things such as clothing, education, etc.). Verified amount and type of any savings.
6. Guide for Organizational Payees
<http://www.socialsecurity.gov/payee/NewGuide/toc.htm>
 - a) Policy categories covered in Guide:
 - Terms
 - Need for Payee
 - Role of Payee
 - Duties of Payee
 - Becoming a Payee
 - Required Reporting Events
 - Use of Benefits
 - Bank Accounts
 - Payee Monitoring and Accounting
 - Fee for Service Payees
 - Frequently Asked Questions

7. Site Visits for Organizational Payees
 - a) Done every three years
 - b) Review records including receipts, cancelled checks
 - c) Interview beneficiaries
- B. State Oversight of Guardians
 1. What kind of monitoring from the State standpoint
 - a) Volunteer Court Visitor Programs - guardianship monitoring program of the State Courts
 2. Utah Court Visitor Volunteer assignments

IV. Representative Payee Accounting

A. Annual Report Obligations

1. Payees may place funds for several beneficiaries in a single checking or savings account. A representative payee must complete the report even if he/she is the beneficiary's legal guardian.
2. Representative payees are responsible for keeping records and reporting yearly to the Social Security Administration (SSA) by completing a Representative Payee Report.
3. The report is used to monitor how the representative payees spend and or save the benefits on behalf of the beneficiary. The policy for reporting the use of benefits is the same for Title II and Title XVI.
4. The Representative Payee Accounting Report Form indicates whether the representative payee retained custody of the beneficiary during the relevant time, whether the representative payee was responsible for determining how the funds were used, what portion of the funds were used for the beneficiary's current needs, and what portion of the funds were conserved for the beneficiary's future needs. Program Operations Manual System (POMS) GN 00605.065.
5. Either a representative payee can report online or mail back paper payee forms on how they spent funds on behalf of the beneficiary.
6. The website for completing a payee accounting form online is <http://www.socialsecurity.gov/payee/form/index.htm>

B. Different Types of Accounting Forms

There are primarily three different types of paper accounting forms that are mailed to payees for completion.

1. The SSA-623 (Representative Payee Report) is for individual representative payees
2. The SSA-6230 (Representative Payee Report) is for payees who are parents, stepparents or grandparents with custody of

minor children who receive Title II, Title XVI or concurrent benefits.

3. The SSA-6234 (Representative Payee Report) is for organizational payees and includes a “fee for service” question. The form is also used to obtain a yearly breakdown of how Social Security and/or SSI benefits were used.

To find out more about the online forms, individuals can go to <http://www.socialsecurity.gov/payee/faqacct.htm>

C. Accounting Guidelines

1. Payees may place funds for several beneficiaries in a single checking or savings account. This is called a “collective account”, but rules apply to these accounts
 - a. The account title must show that the funds belong to the beneficiary and not the representative payee;
 - b. The account name must be separate from the organization's operating account;
 - c. Any interest earned belongs to the beneficiaries;
 - d. There must be clear records showing the amount of each beneficiary's monies.
2. SSA is required to obtain an annual accounting report from all payees, except for state mental institutions participating in the Onsite Review Program.

D. Failure of Representative Payee to Satisfy Reporting Obligations

1. If the payee does not respond to, or will not cooperate with efforts to obtain and approve an accounting report, a change of payee or direct payment may be in the beneficiary's best interest.
 - a. The field office (FO) must evaluate the current payee for continued suitability, consider if a beneficiary is capable of managing his or her own benefits, and document any suspected misuse or fraud.
 - b. A change of payee may be in the best interests of the beneficiary. (POMS GN 00605.235).
2. SSA should make every reasonable effort to contact the payee before considering appointing a successor payee. Benefits should not be suspended as a tool for achieving contact with the payee.
3. Generally, a parent with custody is the preferred payee. Even if a parent refuses a face-to-face interview, change of payee is not a desirable option.

E. When to Consider the Need for a Successor Payee Development is required if the current payee:

1. Dies;
2. Becomes incapable of handling funds;
3. No longer wishes to serve as payee;
4. Fails to use or account for benefits properly;
5. Ceases to be responsible for the care or welfare of the beneficiary
6. Fails to cooperate, (i.e., does not report events affecting payments or furnish requested evidence);
7. Files a clearly disadvantageous request to terminate the recipient's title XVI benefits;
8. Becomes geographically separated from the beneficiary by a considerable distance;
9. Is identified as being incarcerated or is identified as having an unsatisfied felony warrant
10. No longer has custody of the beneficiary;
11. Is a beneficiary who has a payee; or
12. Is otherwise no longer suitable to act as a payee.
13. If an individual is changing payees because the current payee is unsuitable or because the current payee has died, SSA will determine whether that payee serves other beneficiaries. In most cases, a change of payee would be appropriate for these beneficiaries, too. In addition, capability development will be needed if the beneficiary requests direct payment.

F. Recommendation to Improving Accounting Forms.

The accounting forms do not require very specific information. SSA will ask for additional records should they suspect misuse on the part of a representative payee. It may be prudent for the drafters of these forms to add additional requests for information including, but not limited to, bank statements, receipts, cancelled checks, upon submission of the representative payee report. Although representative payees are advised to keep these records, they do not currently have to send in the records with the report form unless SSA asks for additional proof

V. Fee for Services

A. Fee-for-Service Payees vs. Guardian/Conservators

1. A Fee-for-Service Payee (FFS) is an organization authorized by SSA to receive payment for their payee services. To qualify as a FFS payee, the organization must:

- a) be a state/local government agency or community based, non-profit social service organization,
- b) serve five individuals,
- c) request approval in writing, and
- d) receive a notice of approval from SSA before collecting a fee.

2. A Guardian is a third party appointed by a State court to manage the affairs of an individual who is not able to do so.

B. When payment for payee services can or cannot be collected?

1. A FFS payee cannot collect from a beneficiary if no payment is due for that month, the organization misused funds in the month, the organization is receiving compensation (including court/guardianship fees) for performing payee duties, payee services were not performed in the month, or the payee serves less than five beneficiaries

2. Part of a beneficiary's funds may be used for customary guardianship costs (or proceedings) and court-appointed fees, provided: the guardianship appears to be in the beneficiary's best interests, the beneficiary's personal needs are met, and the beneficiary's funds would not be depleted by the guardianship costs. Fees cannot be collected when the guardianship costs and fees are included as part of the State's support obligation to the beneficiary, the cost or fees relate to an unsuccessful petition for guardianship, or the beneficiary's funds will be depleted by the guardianship costs to the point where there are unmet personal needs.

C. How much can be collected? What happens if too much is collected?

1. In 2014, FFS organizations can collect the lesser of 10% of the monthly benefit amount or \$40. In some cases, organizational payees can receive up to \$77 per month if the beneficiary's listed diagnosis code involves a substance abuse disorder.

2. The many variables affecting the amount of guardianship fees (e.g., the amount and type of assets owned by the beneficiary and the applicable State and local laws) make it difficult to provide guidelines on what constitutes "excessive" guardianship fees. We decide each case on its merits. If the guardianship and attorney fees represent services, in connection with the beneficiary's total estate (i.e. all real and personal property owned by the beneficiary) and have been approved by the court, Social Security would take no further action if the benefits were only a small part of the estate. In those cases in which the Social Security benefits represent at

least 50 percent of the estate, and the costs associated with the guardianship proceedings and/or attorney fees appear excessive in light of the beneficiary's income and resources, Social Security will request a legal opinion from Regional Office.

D. Common Questions

1. Will SSA automatically select a guardian as the representative payee?
 - a. Social Security will choose the applicant who is best suited and willing to serve as representative payee. We evaluate each payee applicant to ensure the beneficiary's best interest is served.
2. Can a legal guardian also be an organizational payee that has FFS status?
 - a. The legal guardian of a beneficiary may also be an organizational payee that has fee-for-service status. However, a FFS payee cannot collect fees if they are receiving compensation, including court/guardianship fees, for performing any representative payee services for the individual from another source.

VI. Best Practices and Lessons Learned

A. General court practices to enhance coordination

1. Require guardianship petition to include rep payee status of individual and name/contact of any payee.
2. Instruct guardians ad litem, court staff visitors or investigators, & volunteer guardianship monitors/visitors to inquire about rep payee status.
3. Consider representative payment as option that might avoid need for guardianship of property if there is no other income or assets.
4. Encourage attorneys to serve pro bono as rep payees.
5. Provide access to SSA for data on guardians and individuals under guardianship.
6. Consider regular joint trainings and joint pro bono recruitments with SSA.
7. Have key judge/s meet regularly with designated SSA representatives to address coordination issues.
8. Have judges write in guardian orders that a guardian is specifically appointed to manage federal benefits if that is the case. This may be helpful when identifying who can also serve as a representative payee.

B. Practices for cases in which the same person/entity serves as guardian and rep payee

1. Identify all cases with dual roles.
2. Require guardian to attach SSA rep payee report to the guardian's annual report/accounting.
3. Identify cases in which a guardian proposes to take his/her guardianship fee from the beneficiary's Social Security account, so the judge can consider this in determining the overall reasonableness of the fee, and whether the fee may be excessive.
4. Establish and implement a procedure by which courts notify SSA of any change in guardian status, failure to file reports, sanctions or removal. Provide a form for courts to use for this notification.
5. Encourage courts to report any suspected abuse/exploitation by rep payees to adult protective services and to the SSA OIG.

Note: This outline does not include one critical element – a procedure for courts to request information from SSA about rep payees in problematic cases, due to Privacy Act limitations. Is this assumption correct? Ideally, where the same person/organization is serving in both roles, and the court finds red flags indicating possible malfeasance, courts could get information from SSA on the record of the payee. Or, in cases in which there may be a different payee, courts could get information on whether there is a payee, as well as contact information.

Tab 2

Working Interdisciplinary Networks of Guardianship Stakeholders
April 17, 2013 summary minutes

Topics to be addressed by WINGS:

1. The importance of early recognition and prevention of Alzheimer's disease.
2. Identify medical evidence of cognitive decline in dementias, mental illness, etc. as part of the appointment of a guardian and evidence of regained capacity for termination of the appointment. Identify qualified medical professionals for better judicial decisions.
3. Improve monitoring of and help for guardians, possibly an ombudsman within the courts or Department of Human Services, or a network of agencies. The objective would be to connect vulnerable adults, guardians and caregivers to the resources available in the community, conduct investigations and provide ongoing monitoring.
4. Examine the role of the courts in monitoring guardians after appointment.
5. Develop a system of sharing medical records between hospitals, courts, and law enforcement. Create a uniform record for advance healthcare directives and similar documents that will be accessible through the system.
6. Expand "Safe Return" programs beyond Alzheimer's disease to include mental illness, developmental disabilities, etc. The program might provide a safety net by having a 24-hour toll-free number and registration in a national database.
7. Establish a pool of advocates for vulnerable adults, such as an Office of the Guardian Ad Litem for Incapacitated Adults.
8. Work with the Utah State Bar to provide representation and legal services for vulnerable adults.
9. Educate lawyers on guardianship proceedings with an emphasis on serving as the attorney for the respondent in such proceedings, developing person-centered plans and orders, and alternatives to guardianship.
10. Develop a mechanism that would assist law enforcement agencies in working with victims of abuse, neglect and exploitation who need guardianship services and in directing vulnerable adults with mental illnesses and substance abuse to the needed services.
11. Educate the public and stakeholder groups on alternatives to guardianship, person-centered planning, guardianship proceedings, and the guardian's responsibilities.
12. Attempt to involve relevant government agencies, especially those providing benefits to vulnerable and incapacitated adults, like the VA and the SSA.
13. Involve other stakeholder groups such as family caregivers and guardians and representatives from minority and ethnic communities, especially from the Hispanic community and the LGBT community.
14. Establish a framework to continue the effort to explore issues.