

Chart of Recommendations

CARIE Guardianship Study

7/31/2012

100 South Broad Street/Suite 1500, Philadelphia, PA 19110

1 | Chart of Recommendations with key sources and responsibility

Recommendation #	Recommendation	Sources	Responsibility
SYSTEMS CHANGE RECOMMENDATIONS			
<p>1.1</p>	<p>A centralized Office of Guardianship Support should be established in Pennsylvania. This should be a conflict-free entity that supports guardians and protects the rights of all citizens under guardianship. This entity should be responsible to:</p> <ul style="list-style-type: none"> • Train guardians • Oversee a guardian registry • Monitor guardian compliance with reporting requirements • Develop and implement a statewide guardianship certification system and requirements • Conduct education and develop training materials • Provide education and support about resources and alternatives to guardianship • Support judges in their work and their understanding about alternatives through publications of desk reference materials on available alternatives. 	<p>JSGC 2007, CCI/COSC 2010, Focus Groups, A40, A48, A55, A59, A60, L37, L41</p>	<p>PA Legislature</p>
<p>1.2</p>	<p>AAAs should receive guidance that articulates expectations and be provided with written policy on all aspects of guardianship. The guidance should include:</p> <ul style="list-style-type: none"> • Expectations about the role of the AAA in the guardianship process, • Recommendations around the investigation and research AAAs will be expected to do prior to and during the process of seeking guardianship, • Requirements around how to prevent conflicts of interest - specifically addressing shared or combined job responsibilities i.e. serving as Ombudsman and Guardian or Protective Services Worker and Ombudsman, • Requirement to include in AAA policies clear processes and procedures for how decisions are made to file for guardianship and by whom (lines of authority), and 	<p>Focus Groups, Key Informant Interviews, A21-22, A28, A34-37, A43-44, A47-50, L42</p>	<p>PDA</p>

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Recommendation #	Recommendation	Sources	Responsibility
	<ul style="list-style-type: none"> Requirement to specify how guardians will fulfill their obligations and be monitored by the AAA in service to ward(s). 		
1.3	The Long-Term Care Ombudsman staff and volunteers should be thoroughly trained in guardianship matters and provided guidance in their role as resident advocate for persons who have a guardian. Ombudsman should be empowered to report to courts instances of guardian misuse of power or neglect and should be advised to alert the court when a nursing facility closes or is unstable to help guardians and the court with relocation of residents.	Focus Groups, Key Informant Interviews, A31	PDA
1.4	Develop and provide a required training on the Guardianship process for Nursing Home, Personal Care Home, Assisted Living, and LIFE administrators as part of initial licensure and/or as a continuing education topic.	Focus Groups, Key Informant Interviews	PDA in partnership with Dept. of Education and representative Associations

PRE-HEARING RECOMMENDATIONS

<u>Training and Public Education</u>			
2.1	A curriculum should be developed and required for all Protective Services workers and supervisors. The training should include: formalized, standardized training in how to do capacity assessments, how to understand changes in capacity, and how to evaluate causes of incapacity. Existing guardianship training should be broadened so that more than just a basic overview is offered; the range of offerings should include more advanced practice guardianship discussions and guidance.	Focus Groups, Key Informant Interviews, A6, A10, L22-23, L31	PDA
2.2	The Commonwealth should partner with statewide healthcare associations to develop and implement a strategy to educate healthcare providers about the importance of and how to conduct early and routine cognitive function screenings for older patients.	Focus Groups	PDA, DOH, OLTL/DPW, PA Dept. of Education, PA Medical Society, Nursing Home/PCH/Assisted Living/ Home Care Associations
2.3	The new Office of Guardianship Support should partner with appropriate state agencies to launch a statewide, public education campaign to educate older adults, family members, lawyers, judges, providers and the general public about what guardianship is and about what alternatives	WINGSPREAD 1988 – Recommendation II-D, WINGSPAN 2001 – 10, 11, and 57, JSGC 2007, A58	Office of Guardian Support in partnership with other state agencies/stakeholders

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Recommendation #	Recommendation	Sources	Responsibility
	exist to pursuing guardianship. Education should stress the importance of incapacity planning.		
<u>Diversion to Mediation</u>			
2.4	Petitioners and Respondents should be offered an opportunity for mediation in all cases but particularly when the guardianship petition arises within a context of family conflict and non-guardianship resolution would be adequate.	WINGSPREAD 1988, L24a-b	Courts
<u>Preliminary (Non-Expert) Capacity Assessments</u>			
2.5	A standardized, evidence-based, required capacity assessment tool should be developed and implemented for use by PS staff. The PS staff should then be trained in accordance with Recommendation #1. The assessment tool should include a person-centered functional capacity assessment that incorporates the context of the personal and cultural background of the individual being assessed.	Focus Groups, Key Informant Interviews, A6	PDA
2.6	Attorneys should be educated about and encouraged to use the ABA – APA Tool for Attorneys in Determining Capacity.	Key Informants, Focus Groups, L12	
<u>Expert Evaluations</u>			
2.7	Additional funds to enable to AAAs to pay for timely expert evaluations should be sought through the appropriate channels.	WINGSPAN 2001, Key Informants, A8, A18	PDA in coordination with DPW-OMHSAS
2.8	Circumstances in which Medicaid and/or Medicare will pay for evaluations for older adults should be understood and implemented. Training should then be developed and training conducted for AAA staff on how to obtain Medicaid and Medicare covered evaluations for older adults who have Medicaid and/or Medicare.	WINGSPAN 2001, A17	PDA in consultation with DPW, CMS
2.9	The APA-ABA Tool for Expert Evaluations should be endorsed and encouraged to be used consistently in evaluating AIPs. This may be best implemented through partnering with appropriate professional membership organizations.	WINGSPAN 2001, L12	PDA, Courts, PA Psychiatric/Medical Societies
2.10	Expert evaluations should be required to be submitted to the court prior to the hearing.	Key Informants, L13, L21	Courts

2.11	Expert evaluations should be accepted only from a licensed professional who knows the AIP and, if not, by someone who has taken sufficient time to meet the individual, get familiar with their family and circumstances, and reach a conclusion in the context of the individual’s medical history, records of which the professional has reviewed.	Key Informants, Focus Groups	Courts
<u>Petition</u>			
2.12	All petitions should specify whether there is an actual or anticipated conflict such that adequate time, resources, and advanced preparation can be allocated for the hearing. Additionally, petitions should include a statement of what steps were taken to identify interested persons.	Key Informants, Lawyer Survey, A14, L24	Courts
<u>Guardian Selection</u>			
2.13	AAA petitions for guardianship should only recommend a proposed guardian that the AAA has fully screened and has determined to be qualified to serve as guardian. Further, the Petition should recommend a guardian that is in line with the AIP’s understood preferences about who would serve as guardian or serve as decision-maker through prior executed estate planning or decision making documents.	WINGSPREAD 1988, III-E, A27-28, A31	PDA
<u>Guardian Screening – Pre-Hearing</u>			
2.14	Professional guardians should be required to have guardian certification and a State Board of Guardianship should be created to oversee the certification and ongoing compliance of guardians. Additionally, all professional and lay guardians should be subject to background check requirements that include such things as a credit check, judgment check, criminal background check, and child abuse clearance check. These items should be required to be attached to the petition for guardianship.	1987 House Select Committee Report, JSGC 2007, Key Informants, A26-28, A31, L22-23, L26	PA Legislature
<u>Less Restrictive Alternatives</u>			
2.15	Attorneys and judges should have access to complete information, including continuing legal education and continuing judicial education sessions, about less restrictive alternatives.	WINGSPREAD 1988 – Recommendation I-A, JSGC 2007, A58, L40	Courts in partnership with PBA

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2.16	Further study should be conducted to evaluate whether sufficient funds are provided to local AAAs to provide the services that serve as alternatives to guardianship. To do this may require an evaluation of whether AAAs have sufficient funds and infrastructure to provide supports for families in crisis who need a temporary solution but end up in guardianship because of the absence of supports during the crisis.	Key Informants, Focus Groups, A41-42, A51-52, A54, L16, L19	PDA
2.17	The Pennsylvania Legislature should enact a requirement for registration of Powers of Attorney. A standard form for Powers of Attorney should be developed and implemented that incorporates necessary provisions for succession and success in the event of conflict.	Key Informants, Focus Groups, A54, L18-19	PA Legislature
2.18	A process or forum (mediation) within which to resolve problems with a POA so as to help avoid those guardianships that are filed as a consequence of problems with an agent under POA or with a POA instrument should be explored and implemented.	Key Informants, Focus Groups, L18, L19	PDA in partnership with PBA and other stakeholders
2.19	Options should be explored that address how to ensure that Nursing Facilities are completely evaluating all avenues to facilitate getting paid before they involve the AAA to pursue guardianship as a means of accessing the funds to pay for care.	Focus Groups, A45-46	PDA, OLTL/DPW
2.20	OPTIONS counseling should incorporate questions and information about incapacity planning. Likewise, these questions and information should be incorporated into the Aging Waiver and other LTSS programs' service coordination and an annual responsibility to visit the topic of incapacity planning to prevent the need for guardianship.	Key Informants, Focus Groups	PDA, OLTL/DPW

<u>Court-Appointed Visitor</u>			
2.21	A requirement that there be appointed a court visitor in every case should be enacted and funded. The court-appointed visitor’s role is to explain to the AIP the guardianship that is proposed, interview the AIP and proposed guardian, visit the AIP’s dwelling, obtain information from physicians and anyone else known to have treated, advised, or assessed the AIP’s relevant physical or mental condition, and make any other investigation necessary or directed. The visitor should file a report with the court that includes such things as a summary of the daily functions the AIP can manage without assistance, could manage with supportive services (including technology), and cannot manage; recommendations regarding the appropriateness of the guardianship, a statement about the qualifications of the proposed guardian as well as whether the AIP approves or disapproves of the proposed guardian, and a recommendation as to whether professional evaluation or further evaluation is necessary.	UGPPA 1997, A21	PA Legislature
<u>Appointment of Counsel</u>			
2.22	A requirement that attorneys be appointed for AIPs in all cases, similar to how there is a right to counsel under the Mental Health Procedures Act should be enacted and funded. The AIP should not have to ask for an attorney nor should the Petitioner be relied upon to inform the court whether the AIP should have an attorney appointed.	WINGSPREAD 1988, WINGSPAN 2001, UGPPA 1997, A21-22, L20	PA Legislature
<u>Whether AIP should be in court</u>			
2.23	A requirement for the AIPs to participate in the guardianship hearing should be enacted and enforced. The statute should state that this requirement should be honored by either the AIPs’ physical presence in court, the Court’s conducting the hearing at the AIP’s location, or (with the agreement of the AIP and/or the AIP’s attorney) the AIPs participation through technology such as video-conference. Participation should only be excused by harm that cannot be mitigated by conducting the hearing at the AIP’s location or through electronic participation of the AIP. Parties should be required to address these issues through motions prior to the hearing.	Key Informants, Focus Groups, A22, L20	PA Legislature

Notice

2.24	An independent officer of the court dressed in plain clothes and trained to communicate and interact with elderly and disabled persons should serve the respondent personally and present the information to the respondent in the mode of communication that the respondent is most likely to understand.	WINGSPREAD 1988	Courts
2.25	The Pennsylvania Guardianship Statute should be amended to require that the Petitioner notify all family members of the guardianship petition being filed, and not just those that reside in the Commonwealth.	JSGC 2007, Key Informants, Focus Groups, A14	PA Legislature

HEARING**Facilitating AIP Presence in Court**

3.1	For cases in which the AIP is a AAA client (through PS, Waiver, or other program), AAAs should be required to provide supports (transportation or supportive services) to facilitate participation of AIP in person at the hearing if it is held at the courthouse or in the AIP's location and to provide the technology for electronic participation, if the AIP will not be physically attending the hearing.	CARIE/statewide Practice in work with Senior Victims, A22	PDA
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Evidence of No Less Restrictive Alternatives

3.2	During the hearing, a finding should be made on less restrictive alternatives; a conclusion should be reached that either less restrictive alternatives have been attempted and unsuccessful and/or there is clear and convincing evidence that no less restrictive alternatives to guardianship that can be pursued. This should not be an issue that is plead but not proven.	NPCS 1999, WINGSPREAD 1988, A54, A56, L16, L18	Courts
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Expert Witness Testimony of Incapacity

3.3	Live testimony of the Expert Witness should be required at all hearings in which the AIP's capacity is contested.	Key Informants, A13, A55, L13	Courts
3.4	Video technology should be utilized to facilitate live participation of Expert Witnesses in a manner that may minimize the cost of participation.	Key Informants	Courts

<u>Public v. Private Hearings</u>			
3.5	Consistent policies should be adopted to ensure that guardianship hearings are private and respectful of the AIP and that they not take place in a courtroom with strangers present.	Key Informants	AOPC, Courts
<u>On or off the record</u>			
3.6	The Courts should ensure that the entire guardianship hearing is on the record.	Key Informants, L20	Courts
<u>Confidentiality of Records</u>			
3.7	Confidentiality of records related to guardianship should be studied	Key Informants, focus groups	PA legislature, Courts
<u>Guardian Selection</u>			
3.8	A guardian in line with the ward's preferences should be appointed whenever possible.	WINGSPREAD 1988 Recommendation III-E	Courts
<u>Guardians' Qualifications</u>			
3.9	The proposed guardian should be required to be present at the guardianship hearing and should be subject to questioning by both parties and the Court as to the qualifications presented in the Petition and as to the proposed guardian's understanding of all the duties and responsibilities to the ward and to the Court.	Key Informants, A28, A30, L22, L27	Courts
<u>Training and Information for Guardians</u>			
3.10	The new Office of Guardianship Support should facilitate a collaboration of the Courts, the PDA, the PA Bar Association, and the other interested stakeholders in developing a model orientation and training programs for guardians, following appointment, which must be completed within a fixed number of days (e.g. 30 days) from appointment. The Model guardian training and orientation can include handbooks, online interactive materials, and videos.	JSGC 2007, NPCS 3.3.13, CCJ/COSC 2010, A31, L23	Office Guardian Support in collaboration with PDA, PBA and other stakeholders

Training for Attorneys and Judges

3.11	The Courts should instruct respondents’ attorneys as to their roles and responsibilities. The Office of Guardianship Support should collaborate with the PDA, the PA Bar Association, and the Courts to develop substantive training for attorneys and judges around guardianship issues and the ABA-APA Handbooks available to aid in determining capacity.	WINGSPREAD 1988, CCJ/COSC 2010	Office Guardian Support in collaboration with PDA, PBA and other stakeholders
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Order

3.12	Template orders should be utilized that address a menu of functional areas, with each area requiring specific proof to establish lack of capacity, all of which would have to be sufficiently proven in the hearing in order for a plenary guardianship to be granted.	2004 WINGSPAN Implementation Conference, Action Step 39-1, A6-8, L-12	Courts
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Bonds

3.13	A requirement should be established that all guardians of the estate, including professional and lay guardians, should be subject to bonding requirements. Written requirements for setting the size of each bond should be developed and enacted. In accordance with the UGPPA model law requirement, the bond should “be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. In place of sureties on a bond, the court may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.”	WINGSPAN 2001 #60, NPC 3.4.14, UPGGA 1997 (Section 415), L30, L41	PA Legislature, Courts
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POST-APPOINTMENT

Capacity Re-evaluations and Review Hearings

4.1	A requirement that capacity be reevaluated annually and at any time the needs change prior to the annual renewal date should be established. Such re-evaluation should be filed with the court and guardians should request a review hearing if the reevaluation indicates an improvement in capacity.	Focus Groups, L14-15	PA Legislature
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<p>4.2</p>	<p>Further study should explore whether there should be fixed review hearings or whether they should be triggered only upon a capacity re-evaluation finding a need for Court review. Specifically, the study could evaluate whether courts would be more inclined to grant limited guardianships if they know the matter will be returning annually for review and possible adjustment to the guardianship order.</p>	<p>NPCS 3.3.16 (recommending period review by the court), 1987 House Select Committee (recommending time limited guardianships)</p>	<p>AOPC, Courts in collaboration with key stakeholders</p>
<p>Standards for Guardians’ Performance</p>			
<p>4.3</p>	<p>The new Office of Guardian Support should facilitate collaboration between the Courts, the PDA, the PA Bar Association, the PA Legislature, and other interested stakeholders in developing and implementing written standards or rules of practice and procedure for guardians. These should:</p> <ul style="list-style-type: none"> • include ethical obligations and should be applicable to all professional and lay guardians; and • specify that a guardian should “exercise authority only as necessitated by the ward’s limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward’s own behalf, and develop or regain the capacity to manage the ward’s personal affairs.” <p>Additionally:</p> <ul style="list-style-type: none"> • a guardian should become and/or remain personally acquainted with the ward; • maintain sufficient contact with the ward to know of the ward’s capacities, limitations, needs, opportunities, desires, personal values, and physical and mental health; and • the guardian should be required to consider the expressed desires and personal values of the ward to the extent known to the guardian and to, at all time, act in the ward’s best interest and exercise reasonable care, diligence, and prudence. 	<p>WINGSPREAD 1988 – Recommendation I-B, IV-C, and V-D, WINGSPAN 2001 – Recommendation #45, National WINGSPAN Implementation Session 2004, Third National Guardianship Summit 2011, Conference of State Court Administrators 2010, UGPPA 314, A28, A31, A48, A57, L26, L31-33, L40</p>	<p>Office of Guardian Support in collaboration with the courts, PDA, PBA, PA Legislature and other stakeholders</p>
<p>4.4</p>	<p>A prohibition on conflicts of interest such that guardians and guardianship agencies not directly provide services such as housing, medical care, and social services to their own wards, absent court approval and monitoring should be enacted and enforced.</p>	<p>WINGSPREAD 1988 – Recommendation VI-A, WINGSPAN 2001</p>	<p>PA Legislature</p>

Guardian Duties and Responsibilities

4.5	<p>Guardians should be required to submit, along with the inventory, a written plan that identifies the ward’s needs and how they will be met. The plan should be created through a person-centered process and should identify short-term and long-term needs and goals. For guardians of the person, this will include personal needs. For guardians of the estate, this will include the guardians plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan(s) should be based on the actual needs and take into consideration the best interest of the person. The guardian of the estate’s plan for the ward should include steps to develop or restore the person's ability to manage his/her property. These plans should be updated annually.</p>	<p>Third National Guardianship Summit 2011, UGPPA 1997 (Section 418), National WINGSPAN Implementation Session 2004, A47-48, L31, L40-41</p>	Courts
4.6	<p>Requirements should be enacted that annual reports include the guardian’s opinion as to the adequacy of the ward’s care, a summary of the guardian’s visits with the ward and the guardian’s activities on the ward’s behalf and the extent to which the ward has participated in decision making, if the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward’s best interest; and plans for future care.</p>	<p>UGPPA 1997 (Section 317), A47-48, A50-51, L32-33, L40-41</p>	PA Legislature, Courts
4.7	<p>The court order appointing the guardian should detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the respondent. The court order should inform the guardian what the guardian's responsibilities are, what requirements are to be applied in making decisions and caring for the ward, and what forms the guardian must file with the court and when.</p>	<p>NPCS 3.3.12, Key Informants , A26-28, A32, A51, L22-23, L27, L31-33, L40-41</p>	Courts

4.8	The court order should require guardians to cooperate with other surrogate decision-makers (such as any other guardian, conservator, agent under a power of attorney, health care proxy, trustee, VA fiduciary and representative payee for the ward.	Third National Guardianship Summit 2011, A32, A54, A57, L31	Courts
4.9	The Courts should require guardians of the estate to keep records of the administration of the estate and to make them available for examination on reasonable request of an interested person and should report on the assets under control and a list of receipts, disbursements, and distributions during the reporting period (PA Statute only requires this for income).	UGPPA 1997, A35, A40, A47-48, L22-23, L27, L35-36, L41	Courts
<u>Guardian Support</u>			
4.10	The new Office of Guardianship Support should develop programs for ongoing training and assistance of guardians in meeting their duties to their wards and to the Court.	WINGSPREAD 1988 – Recommendation V-A, WINGSPAN 2001, A27-28, A31, A51, L22-23, L40-41	Office of Guardian Support in collaboration with stakeholders
<u>Guardians’ Fees</u>			
4.11	The Guardianship Statute should be revised to indicate that guardians’ fees may not be paid from income or principal unless approved by the Court and to establish parameters for what is reasonable compensation based on elements such as those recommended by the Third National Guardianship Summit (2011).	JSGC 2007, Third National Guardianship Summit 2011	PA Legislature
<u>Involvement of the LTC Ombudsman</u>			
4.12	The Long-Term Care Ombudsman program should include training and materials on the proper role of the ombudsman in advocating for residents with guardians in conformance with Federal law.	Key Informants, Focus Groups, A31	PDA
4.13	The AAA should ensure that the Ombudsman is conflict-free and is able to advocate on behalf of long term care consumers regardless of whether they have a guardian.	Focus Groups, A31	PDA

Monitoring			
4.14	All due dates for the guardian to file required reports should be monitored and enforced. As in several Pennsylvania counties, courts should have electronic tickler systems that dispatch notices as soon as a guardian is late. The notices should inform the guardian that failure to file the required reports may lead to actions by the court such as, but not limited to: an order to show cause, a review hearing, sanctions (including financial penalties), a finding of contempt, or termination of appointment as guardian.	WINGSPREAD 1988 – Recommendation V-B, NPCS 1999 3.3.17, CCJ/COSC 2010, A35-37, A55, L34-36	Courts
4.15	The frequency and quality of report reviews should be increased and supplemental means such as volunteers, review boards and investigators to verify the contents of the report and the circumstances of the ward should be employed. The Office of Guardianship Support should be charged with helping to identify and train volunteers to assist with report reviews.	WINGSPREAD 1988 – Recommendation V-B, A37, A47, L34-36	Courts
4.16	A standardized guardian, ward, and report monitoring system should be enacted and funded. This should be built upon the best practices in staff-run monitoring in Orphans’ courts and the successful elements of the volunteer monitoring programs run by the Orphans’ Courts in Chester, Dauphin, York, and Westmoreland counties such as annual or more frequent visits to wards and guardians, pro-bono accountant reviews of financial reports, and volunteer/monitor reporting forms that get filed with the court.	Key Informants, A35-37, A47, A50-51, L37, L41	PA Legislature in consultation with AOPC, Courts, PBA, PDA
4.17	Data collection requirements (similar to Act 24 requirements) should be required and funded that will enable the AOPC to provide a clearinghouse for the number and nature of active guardianships.	JSGC 2007, CCJ/COSC 2010	PA Legislature
Penalties for Guardians			
4.18	The Guardianship Statute should be amended to adopt language that makes failure of a guardian to file a timely report or fulfill other requirements a breach of duty and that imposes and authorizes penalties for a breach of duty.	JSGC 2007, A37, L22	PA Legislature