

# alzheimer's association™

## **Statement in Support of Raised Bill SB576, An Act Concerning the Connecticut Uniform Protective Proceedings Jurisdiction Act.**

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The Alzheimer's Association is a donor supported, non-profit organization serving the needs of families, health care professionals, and those individuals who are affected with Alzheimer's disease and related dementias. The Association provides information and resources, support groups, education and training, and a 24-hour, 7 Day a week Helpline.

Both of us are elder law attorneys and we deal on a regular basis with individuals with dementia for whom a conservatorship in Connecticut is sought. We have both been involved in cases in which a parent having dementia became the object of a battle either between or among children seeking to have the parent either stay in Connecticut, move to Connecticut, or be allowed to leave Connecticut.

Connecticut has had a few cases involving multi-state jurisdictional questions among which was the case of Maydelle Trambarulo. Mrs. Trambarulo came to Connecticut for treatment of Parkinson's Disease in 2004. She had resided in New Jersey for close to 50 years and then moved to Delaware where she had lived for one year. While she was in Connecticut, her husband's niece filed for conservatorship and a permanent conservator was appointed. The Connecticut Probate Judge declined to allow her to return to New Jersey. In 2007, Judge Robinson of the Connecticut Superior Court decided that the Connecticut Probate Court did not have jurisdiction over Mrs. Trambarulo and allowed her to leave Connecticut with the transfer of guardianship to an appropriate individual or entity in New Jersey. By this time, she was in a hospice program. *Trambarulo v. Whitaker*, 2007 WL3038792.

Under the proposed law, New Jersey would have been a sufficient connection state and the Connecticut court could have declined jurisdiction because New Jersey would have been a more appropriate forum and because of the unjustifiable conduct of the niece. Thus, Mrs. Trambarulo would not have been trapped in Connecticut for approximately 3 years.

Our National Office has taken a supporting position with regard to the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act by all states. We attach a copy of the statement by the National Office of the Alzheimer's

Association. As pointed out in the statement, the cases involving jurisdictional issues most often revolve around individuals with dementia.

The probate courts in Connecticut have been faced with issues of jurisdiction many of which have been resolved by judges using common sense. However, this is not sufficient when there are families battling and willing to take cases through the appeals process. It is critical in such cases to have a procedure to determine which court, in a multi-state situation, has the right to make decisions. We also recognize that there are times when a move to another jurisdiction is not only appropriate but is in the best interests of the conserved person. This Act puts into place procedures that will accomplish these objectives and hopefully most, if not all, of our sister states will also adopt such a law so that the courts can coordinate their decisions based on the law.

The Connecticut Chapter of the Alzheimer's Association strongly supports Raised Bill SB576 and urges its passage.

## Adult Guardianship Jurisdiction Case Statement

### Position

The Alzheimer's Association supports the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) by all states.

### Background

Due to the impact of dementia on a person's ability to make decisions and in the absence of other advanced directives, people with Alzheimer's disease may need the assistance of a guardian. Advocating for the adoption of a more uniform and efficient adult guardianship system will help remove uncertainty for individuals with dementia in crisis and help them reach appropriate resolution faster.

Adult guardianship jurisdiction issues commonly arise in situations involving snowbirds, transferred/long-distance caregiving arrangements, interstate health markets, wandering, and even the occasional incidence of elderly kidnapping. The process of appointing a guardian is handled in state courts. The U.S. has 55 different adult guardianship systems, and the only data available is from 1987, which estimated 400,000 adults in the U.S. have a court-appointed guardian. Even though no current data exists, demographic trends suggest that today this number probably is much higher.

### Proposed Legislation

Often, jurisdiction in adult guardianship cases is complicated because multiple states, each with its own adult guardianship system, may have an interest in the case. Consequently, it may be unclear which state court has jurisdiction to decide the guardianship issue. In response to this common jurisdictional confusion, the Uniform Law Commission developed UAGPPJA. The legislation establishes a uniform set of rules for determining jurisdiction, and thus, simplifies the process for determining jurisdiction between multiple states in adult guardianship cases. It also establishes a framework that allows state court judges in different states to communicate with each other about adult guardianship cases.

To effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA. Thus, UAGPPJA only will work if a large number of states adopt it. In order for a state court system to follow UAGPPJA, the state legislature must first pass UAGPPJA into law. Currently, only Alaska, Colorado, Delaware, the District of Columbia and Utah have enacted UAGPPJA. Our goal in the next year is to significantly increase the number of states that adopt UAGPPJA.

The more states that enact UAGPPJA in identical format, the simpler the adult guardianship process will become. In an ideal future, enactment of UAGPPJA by all states will allow the question of jurisdiction in adult guardianship situations to be settled more easily and provide predictable outcomes in adult guardianship cases.

### Existing Problems of Jurisdiction

To explain why the jurisdictional issues related to adult guardianship are critical for individuals with dementia, here are a few common scenarios:

**Scenario #1 Transferred Caregiving Arrangements:** Jane cares for her mother who has dementia in their home in Texas. A Texas court has appointed Jane as her mother's legal guardian. Unfortunately, Jane's husband loses his job, and Jane and her family move to Missouri. Neither Texas nor Missouri have enacted UAGPPJA. Upon arriving in Missouri, Jane attempts to transfer her Texas guardianship decision to Missouri, but she is told by the court she must refile for guardianship under Missouri law because Missouri does not recognize adult guardianship rights made in other states. This duplication of effort burdens families both financially and emotionally.

**Scenario #2 Snowbirds:** Alice and Bob are an elderly couple who are residents of New York, but they spend their winters at a rental apartment in Florida. Alice has Alzheimer's disease, and Bob is her primary caregiver. In January, Bob unexpectedly passes away. When Steve, the couple's son, arrives in Florida, he realizes that his mother is incapable of making her own decisions and needs to return with him to his home in Nebraska. Florida, New York and Nebraska have not adopted UAGPPJA. Steve decides to institute a guardianship proceeding in Florida. The Florida court claims it does not have jurisdiction because neither Alice nor Steve have their official residence in Florida. Steve next tries to file for guardianship in Nebraska, but the Nebraska court tells Steve that it does not have jurisdiction because Alice has never lived in Nebraska, and a New York court must make the guardianship ruling. If these three states adopted UAGPPJA, the Florida court initially could have communicated with the New York court to determine which court had jurisdiction.

**Scenario #3 Interstate Health Markets (local medical centers accessed by persons from multiple states):** Jack, a northern Indiana man with dementia, is brought to a hospital in Chicago because he is having chest pains. As it turns out, he is having a heart attack. While recuperating in the Chicago hospital, it becomes apparent to a hospital social worker that Jack's dementia has progressed, and he now needs a guardian. Unfortunately, Jack does not have any immediate family, and his extended family lives at a distance. The social worker attempts to initiate a guardianship proceeding in Indiana. However, she is told that because Jack does not intend to return to Indiana, she must file for guardianship in Illinois. The Illinois court then refuses guardianship because Jack does not have residency in Illinois. Even though the Indiana court is located within miles of the Illinois state line, no official channel exists for the two state courts to communicate about adult guardianship because neither state has enacted UAGPPJA.

The final example demonstrates how the process for resolving a jurisdictional adult guardianship issue is simplified if the states involved have adopted UAGPPJA:

**Scenario #4 Long-Distance Caregiving:** Sarah, an elderly woman living in Utah, falls and breaks her hip. She and her family decide it is best that she recover from

her injuries at her daughter's home in Colorado. During Sarah's stay in Colorado, her daughter, Lisa, realizes her mother's cognition is impaired, and she is no longer capable of making independent decisions. Lisa decides to petition for guardianship in Colorado. Thankfully, both Colorado and Utah have adopted UAGPPJA, and the Colorado court can easily communicate with the Utah court. Following the rules established in UAGPPJA, the Colorado court asks the Utah court if any petitions for guardianship for Sarah have been filed in Utah. The Utah court determines that no outstanding petitions exist and informs Colorado that it may take jurisdiction in the case. Thus, although Utah is Sarah's home state, Colorado may make the guardianship determination.

The situations described above demonstrate that adult guardianship issues frequently can intersect with the needs of people with Alzheimer's disease and their families. Not surprisingly, complicated adult guardianship issues often percolate in situations where people failed to engage in comprehensive end of life planning.

As the Alzheimer's Association works towards increasing awareness of the need for advanced planning, advocating for a more workable adult guardianship systems is important. The current systems are barriers to addressing end of life issues, in part, due to the disorganized array of state adult guardianship laws and the lack of communication between states. Simplifying one aspect of the adult guardianship system by enacting UAGPPJA may encourage more states to dedicate increased resources to meaningful end of life systems change.

#### Organization Supporting UAGPPJA

Other organizations supporting UAGPPJA include: the National Conference of Commissioners on Uniform State Laws, the American Bar Association Commission on Law & Aging, Conference of Chief Justices, National College of Probate Judges, National Guardianship Foundation, and the National Academy of Elder Law Attorneys. Additionally, the Council of State Governments Committee on Suggested State Legislation adopted UAGPPJA as one of its model state laws.

#### Pending Legislation

As of March 4, 2009, UAGPPJA has been introduced in Arkansas, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Minnesota, Montana, New Mexico, North Dakota, Oregon, Tennessee, Texas, and Washington.

#### Contact Information

For more information on the Alzheimer's Association's efforts to pass UAGPPJA in your state, please contact: Laura Boone, State Policy Specialist, Alzheimer's Association, 202.638.8668, [laura.boone@alz.org](mailto:laura.boone@alz.org).

*The Alzheimer's Association is the leading voluntary health organization in Alzheimer care, support and research. Our mission is to eliminate Alzheimer's disease through the advancement of research; to provide and enhance care and support for all affected; and to reduce the risk of dementia through the promotion of brain health. Our vision is a world without Alzheimer's. For more information call (800) 272-3900 or visit [www.alz.org](http://www.alz.org).*