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Statement in Support of Raised Bill No. 1053, An Act Concerning the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act.

By: Christine I. Andrew, Esq.
Richard S. Fisher, Esq.
[On behalf of Members of the Board of Directors and the Public Policy Committee of the Alzheimer's Association, Connecticut Chapter]

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 may be 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.

As we noted when we testified in support of similar bills that were introduced in 2009 and 2010, although Connecticut has had a few reported cases involving multi-state jurisdictional questions, problems can and do arise. For example, there was the case of Maydelle Trambarulo, which we discussed in our prior testimony. Mrs. Trambarulo had resided in New Jersey for close to 50 years and then moved to Delaware where she had lived for one year. She came to Connecticut in 2004 for treatment of Parkinson's Disease. While she was in Connecticut, her husband's niece filed for conservatorship. The Connecticut Probate Judge declined to allow her to return to New Jersey and appointed a permanent conservator in Connecticut. 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 [Docket Number: CV064020211S].

Under the proposed law, New Jersey would have been a "Significant-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 joined with other national organizations including the American Bar Association's Commission on Law and Aging, the Conference of Chief Justices and the Conference of State Court Administrators in supporting the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act by all states. We attach a copy of the Adult Guardianship Jurisdiction Factsheet issued by the National Office of the Alzheimer's Association in October 2010.

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. As pointed out in the attached Factsheet, the proposed uniform legislation does NOT make any substantive changes to adult conservator/guardian law, such as whether a conservatorship is appropriate or who should be appointed. What the Act does do is put into place procedures that will allow cases involving jurisdictional issues to be settled more quickly and more consistently and hopefully at reduced economic and emotional cost to affected individuals and their families.

Bill No. 1053 is the result of discussion among parties who had varying views of certain provisions in legislation introduced originally in 2009. Negotiations resulted in the present consensus bill. The Connecticut Chapter of the Alzheimer's Association testified in favor of passage of the 2009 and 2010 bills and strongly supports Raised Bill No. 426 and urges its passage.

Adult Guardianship Jurisdiction

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.

- Adult guardianship is the process through which a court appoints and oversees an individual to serve as the legal decision maker – a guardian – for another adult, who due to incapacity or other disability, is unable to make decisions for him/herself.
- Once appointed, the guardian may make decisions for the incapacitated person that relate to that person's health, well-being, and economic interest.
- The only available data is from 1987, which estimated that 400,000 adults in the United States have a court-appointed guardian. Demographic trends suggest that today – more than 20 years later – this number is probably much higher.

Organizations Supporting UAGPPJA

Alzheimer's Association
 American Bar Association Commission on Law and Aging
 Conference of Chief Justices
 Conference of State Court Administrators
 National Academy of Elder Law Attorneys
 National Conference of Commissioners
 on Uniform State Laws
 National Guardianship Association

The process of appointing a guardian is handled in state court.

- As a result, the United States has 55 different adult guardianship systems.
- When multiple states, each with its own adult guardianship system, have an interest in a single guardianship case, it may be unclear which state court has jurisdiction to hear and decide the legal issues.
- Adult guardianship jurisdiction issues commonly arise in situations involving snowbirds, transferred/long-distance caregiving arrangements, interstate health markets, wandering, and even the rare incident of elderly kidnapping.

In response, the Uniform Law Commission developed the *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)*.

- The legislation establishes a uniform set of rules for determining jurisdiction, thus simplifying the process for determining jurisdiction between multiple states. It also establishes a framework that allows state court judges in different states to communicate with each other.
- UAGPPJA does not make any substantive changes to adult guardianship law, such as whether guardianship is appropriate or who should be awarded guardianship.

UAGPPJA would simplify the process for resolving a jurisdictional adult guardianship issue – allowing cases to be settled more quickly, and providing more predictable outcomes.

- To effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA. And, ultimately, it will only 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.
- As of October 2010, 19 states and the District of Columbia have passed UAGPPJA.

Ultimately, it is important to increase awareness of the need for advanced planning and end-of-life issues. UAGPPJA will move that process forward.

- The disorganized array of state adult guardianship laws and the lack of communication between states is a barrier to addressing end-of-life issues.
- 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.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act States
(October 2010)



■ Enacted UAGPPJA

■ Planned Legislation

CASE STUDIES IN ADULT GUARDIANSHIP JURISDICTION

To explain why the jurisdictional issues related to adult guardianship are critical for individuals with Alzheimer's and other dementias, consider the following 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

(Interstate Health Markets are 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 only Illinois has enacted UAGPPJA.

Scenario #4 – Better Caregiving with UAGPPJA

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.

Last Updated January 15, 2010
(States where the bill has been enacted are highlighted in yellow.)

State	Legislative Status	Sponsor	Notes
AK	Enacted 2008		
AL	2010 HB114,	Irons	House judiciary
AR			Introduced and died 2009
AZ			Likely consideration
CA	Study for 2010		
CO	Enacted 2008		
CT	Likely to be reintroduced		Introduced and died 2009;
DE	Enacted 2008		
DC	Enacted 2008		
FL	Likely in 2010		
GA	Likely in 2010		
HI	Likely in 2010		
KY	HB 468 (BR 1470)	<u>M. Marzian</u>	Introduced in House Feb 13, 2009, Hearing on 1/20 scheduled
ID	Withdrawn		Bar study
IL	Enacted 2009		
IN	Likely in 2010		
IA	Likely in 2010		Carryover from 2009, has passed one house already. HF734, Senate Judiciary
LA			The interstate guardianship transfer legislation has a sponsor for the 2010 non-fiscal session.
MD	Bill being drafted		
MI			
MN	Enacted 2009		
MS	Likely in 2010		
MT	Enacted 2009		
MO			Reintroduction from last year sought
NE			Withdrawn due to other uniform acts requiring effort and ongoing UCCJEA case
NV	Enacted 2009		
NH			Working on 2010 introduction
NJ	Likely in 2010		
NM			Died in 2009
ND	Enacted 2009		
OH	Likely in 2010		
OR	Enacted 2009		
PA	Likely in 2010		
Puerto Rico	Likely in 2010		
TX			
TN	Likely in 2010		
SC			
SD			Bar association study
USVI	Likely 2010		
UT	Enacted 2008		
VA 2010	SB 80	Howell	
VT	SB 169	Campbell	Senate Judiciary
WA	Enacted 2009		
WV	Enacted 2009		