Study L-750 August 2, 2012

Memorandum 2012-34

Uniform Adult Guardianship Protective Proceedings Jurisdiction Act: A Brief Introduction to UAGPPJA and California Conservatorship Law

In early 2011, the Commission began to study the Uniform Adult Guardianship Protective Proceedings Jurisdiction Act ("UAGPPJA" or "the Act"). The Commission considered the topic at several meetings, but then lost its quorum and later had to turn its attention to the redevelopment study, which had an usually short statutory deadline. Now that the redevelopment study is out of the picture, the Commission can recommence work on UAGPPJA.

Because almost all of the current Commissioners are new and did not participate in the 2011 discussions, this memorandum provides introductory information about UAGPPJA and California conservatorship law, similar to the information previously provided in the staff memorandum that introduced this study (Memorandum 2011-8). The staff also plans to prepare two other memoranda for the upcoming meeting: A memorandum summarizing the Commission's prior work on UAGPPJA and suggesting a plan of action (Memorandum 2012-35) and a memorandum presenting some new communications relating to this study (Memorandum 2012-36). We hope these materials will quickly bring the new Commissioners up to speed, and allow the study to move forward at a good pace.

This memorandum begins by briefly describing UAGPPJA. A copy of the Act is attached for the Commission's consideration. Also attached are the following documents obtained from the website of the Uniform Law Commission ("ULC"), which drafted UAGPPJA:

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

In addition to receiving support of the national organizations listed above, UAGPPJA has been approved by the American Bar Association, and has been endorsed by the Council of State Governments as "Suggested State Legislation."

After describing UAGPPJA, we recite some of the Act's intended benefits, and explore which states have adopted the Act and which have not yet done so. Next, the memorandum provides a brief introduction to California law on guardianship and conservatorship. The memorandum concludes by noting some key issues relating to adoption of UAGPPJA in California.

The memorandum is purely informational, and does not require any Commission decisions. It is intended as a foundation for future discussions of specific aspects of UAGPPJA and whether and, if so, how the Act should be adapted for enactment in California.

A BRIEF DESCRIPTION OF UAGPPJA

UAGPPJA is not the only uniform act relating to guardianships and protective proceedings. Another uniform act, the Uniform Guardianship and Protective Proceedings Act ("UGPPA"), comprehensively addresses all aspects of guardianships and protective proceedings for both minors and adults. Although UGPPA was approved in 1997, it has only been adopted in a few states, and California is not one of them.

In contrast to UGPPA, UAGPPJA is narrow in scope, focusing on jurisdiction and related issues pertaining to adult guardianship and protective proceedings. Parts of it were modeled on the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), which has been widely adopted throughout the United States. One reason UAGPPJA is limited to adults is because "most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA." *Prefatory Note to UAGPPJA*, p. 2.

UAGPPJA is divided into five different articles, as follows:

Article 1. General Provisions
Article 2. Jurisdiction
Article 3. Transfer of Guardianship or Conservatorship

Article 4. Registration and Recognition of Orders from Other States
Article 5. Miscellaneous Provisions

Each article is described briefly below.

Article 1. General Provisions

Article 1 of UAGPPJA "contains definitions and provisions designed to facilitate cooperation between courts in different states." *Prefatory Note to UAGPPJA*, p. 2.

Of particular importance, this article defines "conservator" as "a person appointed by the court to administer the *property* of an adult …." UAGPPJA § 102(2) (emphasis added). A "protective order" is "an order appointing a conservator or other order related to management of an adult's property." UAGPPJA § 102(10). Similarly, a "protective proceeding" is "a judicial proceeding in which a protective order is sought or has been issued." UAGPPJA § 102(11).

In contrast, the article defines "guardian" as "a person appointed by the court to make decisions regarding the *person* of an adult …." UAGPPJA § 102(3) (emphasis added). A "guardianship order" is "an order appointing a guardian." UAGPPJA § 102(4). Likewise, a "guardianship proceeding" is "a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued." UAGPPJA § 102(5).

Article 1 also contains the following provisions designed to facilitate cooperation between courts in different states:

- A provision authorizing a court in this state to *communicate* with a court of another state regarding a guardianship or protective proceeding. UAGPPJA § 104.
- A provision authorizing a court in this state to *request that a court of another state take certain action* in a guardianship or protective proceeding (e.g., holding an evidentiary hearing), and to *comply with such a reques*t from a court of another state. UAGPPJA § 105.
- A provision regarding *depositions and discovery* in guardianships and protective proceedings, which is designed to be "consistent with and complementary to the Uniform Interstate Depositions and Discovery Act." UAGPPJA § 106 & Comment. California adopted the Uniform Interstate Depositions and Discovery Act a few years ago, with certain modifications, on recommendation of this Commission.

In addition, Article 1 contains a provision that would permit, but would not require, a court in this state to treat a foreign country as if it were another state for purposes of applying UAGPPJA. UAGPPJA § 103. That provision does not apply to Article 4 of UAGPPJA. *See id.*

Article 2. Jurisdiction

According to the ULC, Article 2 of UAGPPJA is "the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator or issue another type of protective order." *Prefatory Note to UAGPPJA*, p. 2. By establishing a mechanism for determining which court has jurisdiction, this article would address an important problem:

> Because the United States has 50 plus guardianship systems, *problems of determining jurisdiction are frequent*. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state.

Id. at 1 (emphasis added). The principal objective of the article is to "assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states." *Id.*

To help resolve jurisdictional issues, Article 2 introduces the terms "home state" and "significant-connection state." In general, a person's "home state" is the state in which the person "was *physically present*, including any period of temporary absence, *for at least six consecutive months immediately before* the filing of a petition for a protective order or the appointment of a guardian …." UAGPPJA § 201(a)(2).

A person's "significant-connection state" is a state, other than the home state, with which the person "has a significant connection other than mere physical presence and in which substantial evidence concerning the [person] is available. UAGPPJA § 201(a)(3). Factors to consider in determining whether a person has a significant connection with a particular state are:

- The location of the person's family and other persons required to be notified of the guardianship or protective proceeding.
- The length of time the person at any time was physically present in the state and the duration of any absence.
- The location of the person's property.

- The extent to which the person has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

UAGPPJA § 201(b). A respondent in a guardianship or protective proceeding may have several "significant connection" states, but will have only one "home state." *Prefatory Note to UAGPPJA*, p. 3.

The key provision for resolving jurisdictional issues is Section 203 of UAGPPJA. It establishes a three-level priority system:

(1) A court in a person's "home state" has primary jurisdiction to appoint a guardian or issue a protective order for the person.
(2) If a person does not have a "home state," and in certain other circumstances, a court in a "significant-connection" state has such jurisdiction.
(3) In highly restricted circumstances, a court in another state may appoint a guardian or issue a protective order for a person.

See UAGPPJA § 203 & Comment.

Section 204 of UAGPPJA provides rules for determining jurisdiction in special cases, such as appointment of a guardian in an emergency situation. The remainder of Article 2 "elaborates on" the core concepts described above. *Prefatory Note to UAGPPJA*, p. 4.

Article 3. Transfer of Guardianship or Conservatorship

Article 3 of UAGPPJA concerns transfer of an existing guardianship or conservatorship from one state to another state. "Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding." Article 3 General Comment.

Before UAGPPJA, few states had streamlined procedures for transferring a guardianship or conservatorship proceeding to another state, or for accepting such a transfer. *Prefatory Note to UAGPPJA*, p. 1. "In most states, all of the procedures for an original appointment [would have to] be repeated, a time consuming and expensive prospect." *Id*. Article 3 of UAGPPJA provides "an expedited process for making such transfers, thereby avoiding the need to relitigate incapacity and whether the guardian or conservator appointed in the first state was an appropriate selection." *Id*.

To transfer a guardianship or conservatorship proceeding under UAGPPJA, two court orders are necessary: one from the court transferring the case, and

another from the court accepting the case. A hearing is held only if one of the courts deems it necessary, or it if is requested by a person entitled to notice of the transfer proceeding. See UAGPPJA §§ 301(c), 302(c). The transfer process is thus intended to be relatively simple, minimizing the burden on litigants and judicial resources.

The transfer process begins when the guardian or conservator files a transfer petition in the state currently supervising the guardianship or conservatorship. Article 3 General Comment. "The transferring court must find that the incapacitated or protected person is physically present in or is reasonably expected to move permanently to the other state, that adequate arrangements have been made for the person or the person's property in the other state, and that the court is satisfied the case will be accepted by the court in the other state." *Prefatory Note to UAGPPJA*, p. 4; see UAGPPJA § 301.

After the transferring court makes such findings, a petition must be filed in the other state, and the court in that state "must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person's interests or the guardian or conservator is ineligible for appointment in the accepting state." Article 3 General Comment; UAGPPJA § 302(d). The ULC "specifically did not try to design the procedures in Article 3 for the difficult problems that can arise in connection with a transfer when the guardian or conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as conservator or a government agency is acting as guardian." Article 3 General Comment. Rather, the transfer procedures "are designed for the typical case where the guardian or conservator is legally eligible to act in the second state." *Id.*

The transferring court cannot dismiss its proceeding until it receives a copy of the other court's provisional order accepting the transfer. UAGPPJA § 301(f). Once the transferring court issues an order dismissing its proceeding, that order must be filed in the accepting court, and the accepting court must issue "a final order appointing the petitioning guardian or conservator as guardian or conservator in the accepting state." Article 3 General Comment.

To expedite the transfer process, the court in the accepting state *must give deference* to the transferring court's finding of incapacity and selection of the guardian or conservator." *Prefatory Note to UAGPPJA*, pp. 4-5 (emphasis added); UAGPPJA § 302(g). The ULC explains the reasons for this procedure as follows:

> The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such a proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. … *But the most serious problem is the need to prove the case in the second state from scratch, including proving the respondent's incapacity and the choice of guardian or conservator.* Article 3 eliminates this problem. Section 302(g) requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.

Article 3 General Comment (emphasis added).

"Because guardianship and conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the guardianship or conservatorship needs to be modified to conform to the law of the accepting state." *Id.*; see UAGPPJA § 302(f). The 90 day requirement is not inflexible; states are encouraged to adjust the time limit so as to coordinate it with the time limits for other required filings, such as a guardianship or conservatorship plan. Article 3 General Comment.

"This initial period in the accepting state is also an appropriate time to change the guardian or conservator if there is a more appropriate person to act as guardian or conservator in the accepting state." *Id.* In that situation, "a change of guardian or conservator can be initiated once the transfer has been secured." *Id.*

Article 4. Registration and Recognition of Orders from Other States

Article 4 of UAGPPJA is designed to ensure that a guardianship or protective order is enforceable not only in the state that entered the order, but in other UAGPPJA states as well.

Prior to UAGPPJA, "few states ha[d] enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state." Article 4 General Comment. Further, the ULC says there is no federal mandate that a guardianship or

conservatorship determination be honored in a state other than the one in which it was entered:

> The Full Faith and Credit Clause of the United States Constitution requires that court orders in one state be honored in another state. *But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings is one.*

Prefatory Note to UAGPPJA, p. 2 (emphasis added). According to the ULC, sometimes a family must initiate a second guardianship or conservatorship proceeding, at considerable expense, "because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state." *Id.*

To address this situation, Article 4 of UAGPPJA establishes a registration procedure for a guardianship or protective order. "Section 401 provides for registration of guardianship orders, and Section 402 for registration of protective orders." Article 4 General Comment. Upon completion of the registration process, "Section 403 authorizes the guardian or conservator to thereafter *exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state*." *Id.* (emphasis added).

Article 5. Miscellaneous Provisions

Article 5 of UAGPPJA contains miscellaneous provisions: a provision specifying the effective date of the act (UAGPPJA § 505), a provision on retroactive application of the act (UAGPPJA § 504), a provision on how the act interrelates with the Electronic Signatures in Global and National Commerce Act (UAGPPJA § 502), and a provision stating that the act should be construed "to promote uniformity of the law with respect to its subject matter among states that enact it" (UAGPPJA § 501). Article 5 also includes a provision that would repeal any inconsistent laws a state has previously enacted relating to guardianship and conservatorship (UAGPPJA § 503).

BENEFITS OF UAGPPJA

According to the Alzheimer's Association, in 1987 approximately 400,000 adults in the United States had a court-appointed guardian. Current data is unavailable, but "demographic trends suggest that today this number probably is much higher." Memorandum 2011-8, Exhibit p. 6.

"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." *Id.* The Alzheimer's Association has provided four hypotheticals to illustrate the benefits of UAGPPJA in such situations. We quote them essentially verbatim below, because they concretely and succinctly demonstrate the types of problems that may arise and how UAGPPJA could help address those problems:

> **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 [State X]. Neither Texas nor [State X] have enacted UAGPPJA. Upon arriving in [State X], Jane attempts to transfer her Texas guardianship decision to [State X], but she is told by the court she must refile for guardianship under [State X] law because [State X] does not recognize adult guardianship rights made in other states. This duplication of effort burdens families both financially and emotionally.
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> **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 [State Y]. Florida, New York and [State Y] 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 files for guardianship in [State Y], but the [State Y] court tells Steve that it does not have jurisdiction because Alice has never lived in [State Y], 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.
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> **Scenario #3 Interstate Health Markets (local medical centers accessed by persons from multiple states):** Jack, a northern [State X] man with dementia, is brought to a hospital in [a nearby city in State Y] because he is having chest pains. As it turns out, he is having a heart attack. While recuperating in the 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 [State X]. However, she is told that because Jack does not intend to return to [State X], she must file for guardianship in [State Y]. The [State Y] court then refuses guardianship because Jack does not have residency in [State Y]. Even though the [State X] court is located within miles of the [State Y] state line, no official channel exists for the two state courts to communicate about adult guardianship because neither state has enacted UAGPPJA.
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> The final example demonstrates how the process for resolving a jurisdictional adult guardianship issue is simplified if the states involved have adopted UAGPPJA:
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> > **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.

Memorandum 2011-8, Exhibit pp. 7-8 (with modifications to reflect that some of the states used as examples of non-UAGPPJA states have now adopted UAGPPJA).

ADOPTION OF UAGPPJA IN THE UNITED STATES

"To effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA." *Id.* at 6. For this reason, "UAGPPJA only will work if a large number of states adopt it." *Id.*

To date, UAGPPJA has been adopted by the District of Columbia and 33 states: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma,

Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia.

It is noteworthy that all of the states adjacent to California have adopted UAGPPJA. Jurisdictional issues between California and those states may be common in border areas.

The staff has not yet fully examined how closely the above states adhered to the ULC language in adopting UAGPPJA. We are aware of some minor deviations (e.g., Nevada revised the jurisdictional standards slightly, and Delaware omitted the provisions on recognition of an out-of-state guardianship, because equivalent provisions already existed in Delaware). So far, however, our impression is that in general the adopting states have stuck closely to the ULC language. We will provide further information on this matter in a future memorandum.

Legislation to enact UAGPPJA is currently pending in Puerto Rico (SB 2334 (Ferrer)) and in five more states: Massachusetts (HB 2181 (Gobi)), Mississippi (HB 191 (Moak)), New Jersey (AB 2628 (Rudder)), New York (SB 7464)), and Ohio (HB 27 (Stautberg)). Other states that have not yet enacted UAGPPJA include Florida, Georgia, Kansas, Louisiana, Michigan, New Hampshire, North Carolina, Rhode Island, Texas, Wisconsin, and Wyoming.

A BRIEF INTRODUCTION TO CALIFORNIA LAW ON GUARDIANSHIP AND CONSERVATORSHIP

In considering whether to adopt UAGPPJA in California, it is necessary to have an understanding of existing California law on guardianship and conservatorship. The discussion below briefly introduces that topic; we will provide further information as this study progresses. We begin by describing the terminology used in California for these types of cases. After describing the terminology, we discuss some of the substantive rules.

TERMINOLOGY

California uses very different terminology than UAGPPJA for the types of proceedings covered by UAGPPJA.

Under UAGPPJA, a "guardian" is "a person appointed by the court to make decisions regarding the *person* of an *adult* …." UAGPPJA § 102(3) (emphasis added). In California, a "guardian" may only be appointed for a minor. See Prob.

Code §§ 1500-1501. The term "conservator of the person" is comparable to what UAGPPJA denominates a "guardian." In what is known as a "Probate Code conservatorship" (sometimes referred to as a "general conservatorship"), a California court may, with certain exceptions, appoint a "conservator of the person" for "a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter …." Prob. Code § 1801(a).

Under UAGPPJA, the term "conservator" refers to "a person appointed by the court to administer the *property* of an adult …." UAGPPJA § 102(2) (emphasis added). In California, the comparable term is a "conservator of the estate." In a Probate Code conservatorship, a California court may, with certain exceptions, appoint a "conservator of the estate" for "a person who is substantially unable to manage his or her own financial resources or to resist fraud or undue influence …." Prob. Code § 1801(b).

California also expressly recognizes that a single person may serve as both "conservator of the person" and "conservator of the estate." Prob. Code § 1801(c). Such a person may be referred to as a "conservator of the person and estate." *Id*. In contrast, UAGPPJA does not include a special term for a person who acts in both roles (i.e., a person who is both a "guardian" and a "conservator" as defined in UAGPPJA).

A further complication is the terminology used to refer to the types of proceedings in which such appointments are made. Under UAGPPJA, a "guardianship proceeding" is "a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued." UAGPPJA § 102(5). A "protective order" is "an order appointing a conservator or other order related to management of an adult's property." UAGPPJA § 102(10). A "protective proceeding" is "a judicial proceeding in which a protective order is sought or has been issued." UAGPPJA § 102(11). The term "conservatorship" is not defined, although it is used in a few places in UAGPPJA, apparently to refer to a proceeding in which a UAGPPJA "conservator" is appointed. See UAGPPJA § 102 Comment (explaining that "protective proceeding" is broader than "conservatorship" because "protective proceeding" encompasses proceeding in which party seeks property management order without appointment of conservator).

Here in California, the term "guardianship proceeding" is reserved for proceedings relating to minors, which are not addressed by UAGPPJA. Under California law, the term "conservatorship proceeding" encompasses both a

proceeding to appoint a "conservator of the person" and a proceeding to appoint a "conservator of the estate," as well as a proceeding to appoint a "conservator of the person and estate." Moreover, the term "protective proceeding" is used far more inclusively than under UAGPPJA. Instead of being limited to proceedings that involve management of property, the term encompasses all "conservatorship proceedings" and "guardianship proceedings," as well as some types of similar proceedings. See Prob. Code §§ 1301, 4126, 4672; Cal. R. Ct. 7.51(d), 10.478(a), 10.776(a).

SUBSTANTIVE RULES

In 1978, this Commission proposed a new guardianship-conservatorship law, which was enacted in 1979, refined to some extent in 1980, and became operative on January 1, 1981. See 1979 Cal. Stat. ch. 726; 1980 Cal. Stat. chs. 89, 246; *Guardianship-Conservatorship Law,* 14 Cal. L. Revision Comm'n Reports 501 (1978); *Guardianship-Conservatorship* (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980). That body of law was recodified a decade later, with some changes, when the Legislature enacted a new Probate Code on this Commission's recommendation. See 1990 Cal. Stat. ch. 79; *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1989).

The guardianship-conservatorship law in the Probate Code has been repeatedly revised over the years, on recommendation of this Commission and otherwise. In 2006, it was extensively overhauled, with the enactment of four major bills that comprised the "Omnibus Conservatorship and Guardianship Reform Act of 2006." See 2006 Cal. Stat. chs 490, 491, 492, 493. The Commission was not involved in that effort.

Some of the basic rules governing Probate Code conservatorships are described below. We then briefly discuss the 2006 reforms. Next, we mention a few provisions that relate to interstate issues, or otherwise seem particularly pertinent to consideration of UAGPPJA. Finally, we describe several other types of conservatorships and similar arrangements that exist under California law.

Basic Rules Governing Probate Code Conservatorships

Probate Code Section 1800 expresses the Legislature's intent relating to establishment of Probate Code conservatorships:

> 1800. It is the intent of the Legislature in enacting this chapter to do the following:

(a) Protect the rights of persons who are placed under conservatorship.

(b) Provide that an assessment of the needs of the person is performed in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible.

(c) Provide that the health and psychosocial needs of the proposed conservatee are met.

(d) Provide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible.

(e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests of the conservatee.

(f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met.

(g) Provide for the proper management and protection of the conservatee's real and personal property.

Consistent with the foregoing goals, "[n]o conservatorship of the person or of the estate shall be granted by the court unless the court makes an *express finding* that the granting of the conservatorship is the *least restrictive alternative* needed for the protection of the conservatee." Prob. Code § 1800.3(b) (emphasis added). Further, the standard of proof for appointment of a conservator "shall be clear and convincing evidence." Prob. Code § 1801(e). Before a court decides whether to appoint a conservator, a court investigator must make a detailed investigation and report. Prob. Code § 1826. Once the court establishes a Probate Code conservatorship, the court must periodically review the conservatorship to ensure that it remains in the best interests of the conservatee. See Prob. Code § 1850; Second Supplement to Memorandum 2011-31, pp. 3-6. For further information on applicable procedural protections, see Memorandum 2011-31, pp. 55-58; Memorandum 2011-24, p. 12.

In a conservatorship of the person, a Probate Code conservator "manages the personal care of a person who cannot properly provide for his or her personal needs for physical health, medical care, food, clothing, or shelter." CEB, California Conservatorship Practice § 1.2, at 3 (2005). In a conservatorship of the estate, a Probate Code conservator "manages the financial affairs of a person who is substantially unable to manage his or her own financial resources or to resist fraud or undue influence." *Id.* "The conservator's primary responsibility is to conserve, manage, and use the conservatee's property in California for the

benefit of both the conservatee and those whom he or she is obligated to support." *Id.*

Establishment of a Probate Code conservatorship "shifts the responsibility for making financial and personal care decisions from the conservatee to the conservator, and imposes significant limitations on the conservatee's ability to act on his or her own behalf." *Id.* at § 1.3, p. 4.

"Under a conservatorship of the person, the conservator has the 'care, custody and control' of the conservatee, which includes the power to determine where the conservatee will live." *Id.*; see Prob. Code §§ 2351, 2352. The conservator must select the "least restrictive appropriate residence," however, and must meet special requirements to place conservatee with dementia in a "secured perimeter residential care facility for the elderly" or a "locked and secured nursing facility which specializes in the care and treatment of people with dementia." See Prob. Code §§ 2352, 2356.5. The conservatee also retains certain other rights, such as:

- The right to marry, unless the court specifically finds that the conservatee lacks capacity to marry. Prob. Code §§ 1900, 1901.
- The right to make medical decisions, unless the court finds that the conservatee lacks capacity to give informed consent. See Prob. Code §§ 2354, 2355.
- The right to vote, unless the court specifically determines that the conservatee is not capable of completing an affidavit of voter registration. See Prob. Code § 1910.

When there is a conservatorship of the estate, the conservatee generally is "presumed to lack capacity to contract, to sell, transfer, or convey property, to make gifts, to incur debts (except in limited circumstances), to delegate powers, to waive any rights, or to serve as a fiduciary." Cal. Conservatorship Practice, *supra,* § 1.3, at 4; see Prob. Code §§ 1870, 1872. Again, however, there are some exceptions. See, e.g., Prob. Code §§ 1871(c) (right to make a will), 1871(d) (right to enter into transactions to provide "necessaries of life" to self and immediate family), 2421 (right to control allowance), 2601 (right to control wages or salary).

"The relationship of conservator, whether of the person or estate, and conservatee is a fiduciary relationship that is governed by the law of trusts." Cal. Conservatorship Practice, *supra,* § 14.1, at 604; Prob. Code § 2101. "Consequently, every conservator … assumes the basic obligation of a fiduciary to act prudently and in good faith." Cal. Conservatorship Practice, *supra,* § 12.2, at 516.

In determining whether to appoint a Probate Code conservator, a court must assess the capacity of the prospective conservatee. The Due Process in Competence Determinations Act ("DPCDA") provides guidelines for that assessment. See Prob. Code §§ 810-813, 1801, 1881, 3201, 3204, 3208. Under that act, all persons are rebuttably presumed to "have the capacity to make decisions and to be responsible for their acts or decisions." Prob. Code § 810(a). A determination that a person lacks capacity must "be based on *evidence of a deficit* in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder." Prob. Code § 810(c) (emphasis added); see also Prob. Code § 811. For further information on determination of capacity in California, see Memorandum 2011-31, pp. 17-22. For discussion of the rules governing selection of a conservator, see *id.* at 38-42; see also Memorandum 2011-24, pp. 6-7, 8-9.

2006 Reforms

In 2006, the Legislature found that California's Probate Code conservatorship system was fundamentally flawed and in need of reform:

> The Legislature finds and declares the following:
>
> (a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the year 2000, to 6.3 million in the year 2020. The fastest growing segment of California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and almost 50 percent of the population over 85 years of age will suffer from Alzheimer's disease.
>
> (b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.
>
> (c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee $2.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.
>
> (d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.
>
> (e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the

physical or financial abuse, of the clients professional fiduciaries are supposed to serve.

(f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.

(g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform.

2006 Cal. Stat. ch. 493, § 2.

To address the perceived problems, the Legislature enacted four different bills, which collectively are referred to as the "Omnibus Conservatorship and Guardianship Reform Act of 2006." Each bill has a different focus, as follows:

(1) **SB 1116 (Scott), 2006 Cal. Stat. ch. 490.** This bill established a presumption that "the personal residence of the conservatee at the time of commencement of the [conservatorship] proceeding is the least restrictive appropriate residence for the conservatee." Prob. Code § 2352.5. The bill also revised provisions relating to sale of a conservatee's personal residence.

(2) **SB 1550 (Figueroa), 2006 Cal. Stat. ch. 491, which is known as the "Professional Fiduciaries Act."** This bill created the Professional Fiduciaries Bureau in the Department of Consumer Affairs, and required the bureau to license and regulate professional fiduciaries. The bill also created the Professional Fiduciaries Advisory Committee, and specified its duties.

(3) **SB 1716 (Bowen), 2006 Cal. Stat. ch. 492.** This bill strengthened the system for court review of existing conservatorships.

(4) **AB 1363 (Jones), 2006 Cal. Stat. ch. 493.** Among other things, this bill required the Judicial Council to establish qualifications and educational requirements for court personnel involved in conservatorship matters, and to develop educational programs for nonlicensed conservators and guardians. The bill also required the Judicial Council to study and report on conservatorship practice in three counties, imposed other duties on the Judicial Council relating to conservatorship proceedings, and made various other changes to conservatorship law.

The staff is not sure to what extent these new laws have been implemented. A 2007 article in a State Bar publication warned that there might be problems due to lack of funding:

> Tragically, however, the Act provides no funding for those who must administer the new laws. Conservatorships were already expensive for all involved: petitioners, proposed conservators, conservatees, and the court system. By increasing the number and

> complexity of the procedures meant to protect vulnerable seniors, the Act will also increase the expense of conservatorships. And, unless the courts and the offices of the court investigators receive more funding, these procedures will fail to provide the intended protections.

E. Corey, Jr., M. Lodise & P. Stern, *Crisis in Conservatorships*, 12 Cal. Trusts & Estates Q. 43, 43 (Winter 2007). Those comments were prescient. Under a bill enacted last year, superior courts are not required to perform certain duties imposed by the 2006 reforms "until the Legislature makes an appropriation identified for this purpose." See SB 78 (Committee on Budget & Fiscal Review), 2011 Cal. Stat. ch. 10, §§ 13, 15. To the best of the staff's knowledge, the Legislature has not yet made such an appropriation.

Provisions Particularly Pertinent to Consideration of UAGPPJA

UAGPPJA addresses three main points:

(1) Determining which state has jurisdiction of a UAGPPJA "guardianship" (comparable to a California Probate Code "conservatorship of the person") or a UAGPPJA conservatorship (comparable to a California Probate Code "conservatorship of the estate"). See UAGPPJA Article 2.

(2) Providing an effective and streamlined mechanism to transfer such a proceeding from one state to another. See UAGPPJA Article 3.

(3) Ensuring that a person appointed as a UAGPPJA "guardian" (California's "conservator of the person") or a UAGPPJA "conservator" (California's "conservator of the estate") is able to effectively perform that role not only with regard to matters arising in the appointing state, but also when it is necessary to perform tasks or take action in another state. See UAGPPJA Article 4.

The staff has been keeping an eye out for California provisions that are relevant to these points. Our research thus far has uncovered the provisions described briefly below.

Determining Which State Has Jurisdiction (UAGPPJA Article 2)

California has a number of statutory provisions that specify the proper venue (i.e., the proper county) for filing a Probate Code conservatorship. See Prob. Code §§ 2201-2203. Among these is a provision that specifies the proper venue for a proceeding in which the proposed conservatee lives outside California. See Prob. Code § 2202.

However, the staff is not aware of any statutory provisions comparable to the ones in Article 2 of UAGPPJA, which specifically give guidance on which state has jurisdiction when a proposed conservatee has contacts with more than one state. Such statutory guidance might be a useful addition to California law.

Transfer of Proceeding from One State to Another (UAGPPJA Article 3)

Several California provisions give guidance on relocation of a conservatee, or such a person's assets, to another state. In particular, Probate Code Section 2352(c) states that "[i]f permission of the court is first obtained, a … conservator may establish the residence of a … conservatee at a place not within this state." A court order under that provision "shall require the … conservator either to return the … conservatee to this state, or to cause a … conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the … conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order." Prob. Code § 2352(d).

There are also provisions that authorize transfer of a nonresident's personal property from California to a conservator or comparable fiduciary located in and appointed by another jurisdiction. See Prob. Code §§ 2800-2808 (transfer of nonresident's personal property by order of California court in which conservatorship of the estate is pending); see also Prob. Code §§ 3800-3803 (transfer of nonresident's property when no proceeding for conservatorship of nonresident is pending or contemplated in this state).

The staff was unable to find any provisions that facilitate relocation when a person is subject to an out-of-state conservatorship or comparable proceeding, but then becomes a resident of California. Apparently, it would be necessary to begin a new conservatorship proceeding from scratch under California law, even if a similar proceeding has already been conducted elsewhere. See Code Civ. Proc. § 1913(b) ("The authority of a … conservator … does not extend beyond the jurisdiction of the government under which that person was invested with authority, except to the extent expressly authorized by statute."); see also Memorandum 2011-18, pp. 17-19 & cases cited therein.

Probate Code Section 2107, relating to nonresidents who spend time in California, seems consistent with that conclusion. It provides:

> (a) Unless limited by court order, a … conservator of the person of a nonresident has the same powers and duties as a … conservator of the person of a resident while the nonresident is in this state.

> (b) A … conservator of the estate of a nonresident has, with respect to the property of the nonresident within this state, the same powers and duties as a … conservator of the estate of a resident. The responsibility of such a … conservator with regard to inventory, accounting, and disposal of the estate is confined to the property that comes into the hands of the … conservator in this state.

The Law Revision Commission's Comment explains that "[t]his section prescribes powers and duties of a … conservator *appointed in California* for a nonresident." (Emphasis added.) Thus, the section appears to require commencement of a California proceeding when an incapacitated nonresident merely spends significant time in California, without any intention to establish residence in the state. See also Prob. Code § 2202 (venue for conservatorship proceeding relating to nonresident).

In reviewing UAGPPJA for possible adoption in California, the Commission will need to **take these existing provisions into account, and consider whether they require any revisions.**

Recognition and Enforcement of Out-of-State Appointment (UAGPPJA Article 4)

Aside from the above-described provisions relating to transfer of a nonresident's property, the staff did not find any California statutes that facilitate recognition and enforcement of an out-of-state order appointing someone to provide personal care (California's "conservator of the person") or assist with financial matters (California's "conservator of the estate"). For example, we could not find any provision that would require a California-based company to accept a contract document signed by an out-of-state conservator on a conservatee's behalf.

OTHER TYPES OF CALIFORNIA CONSERVATORSHIPS AND SIMILAR ARRANGEMENTS

In addition to a "Probate Code conservatorship," California has several other types of conservatorships and similar arrangements. In considering the possibility of adopting UAGPPJA in California, the Commission needs to be aware of these statutory schemes and should clarify whether and how they would interrelate with UAGPPJA, particularly the transfer process under Article 3.

In each of the following types of civil proceedings, a California court evaluates an adult's ability to function independently, and, if the adult does not

appear sufficiently capable, the court designates an individual or entity to provide care, treatment, or other assistance:

(1) Proceedings specifically relating to developmentally disabled adults:
   (a) A limited conservatorship for a developmentally disabled adult. See Prob. Code § 1801(d).
   (b) A conservatorship in which the Director of Developmental Services is appointed conservator for a developmentally disabled adult. See Health & Safety Code §§ 416-416.23.
   (c) A judicial commitment of a "mentally retarded" person who is dangerous to others or to self. Welf. & Inst. Code §§ 6500-6513.

(2) Proceedings under the Lanterman-Petris-Short Act ("LPS Proceedings"):
   (a) An involuntary detention under the LPS Act.
   (b) An LPS conservatorship for a person who is "gravely disabled as a result of mental disorder or impairment by chronic alcoholism." Welf. & Inst. Code § 5350.

(3) Civil commitment of a person accused or convicted of a crime or allegedly addicted to narcotics:
   (a) Civil commitment of a person found incompetent to stand trial. Penal Code §§ 1367-1376.
   (b) Civil commitment of a person found not guilty by reason of insanity. Penal Code §§ 1026-1027.
   (c) Civil commitment of a mentally disordered offender. Penal Code §§ 2960-2981.
   (d) Civil commitment of a sexually violent predator. Welf. & Inst. Code §§ 6600-6609.3.
   (e) Civil commitment of a person who has been convicted of a misdemeanor or infraction, or whose probation for such an offense has been revoked, and who the judge thinks may be addicted to narcotics or in imminent danger of becoming so addicted. Welf. & Inst. Code §§ 3050-3055.
   (f) Civil commitment of a person who may be addicted to narcotics or in imminent danger of becoming so addicted. Welf. & Inst. Code §§ 3100-3111.

Each type of proceeding is described briefly below.

Proceedings Specifically Relating to Developmentally Disabled Adults

A "developmental disability" is "a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely,

and constitutes a substantial handicap for such individual." Prob. Code § 1420. The term includes "mental retardation," cerebral palsy, epilepsy, and autism. *Id.* It also includes "handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but does not include other handicapping conditions that are solely physical in nature." *Id.*

In the Lanterman Developmental Disabilities Services Act, 1977 Cal. Stat. 1252, § 550 (Welf. & Inst. Code §§ 4500-4868), the State of California "accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." Welf.& Inst. § 4501. The Act guarantees certain rights to persons with developmental disabilities. See Welf. & Inst. Code § 4503. It also seeks to establish an array of services and supports that is "sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." *Id.*

Central to this system are entities known as "regional centers," which are "private, nonprofit corporations, located throughout California, that provide diagnosis, counseling, individual program planning, residential placement, case management, and referral for services and their purchase for individuals with developmental disabilities and their families." Cal. Conservatorship Practice, *supra,* § 22.7, at 1064; see Welf. & Inst. Code §§ 4620-4669.75.

In appropriate circumstances, a Probate Code conservatorship can be established for a person with a developmental disability. Prob. Code § 1828.5(c). There are, however, some other possibilities, as described below.

Limited Conservatorship for a Developmentally Disabled Adult

"Since 1980, California has had a system of limited conservatorships for adults with developmental disabilities, which grew out of the disability rights and de-institutionalization movements of the 1970s." Cal. Conservatorship Practice, *supra*, § 22.1, at 1061. A limited conservatorship

> is designed to serve two purposes. First, it provides a protective proceeding for those individuals whose developmental disability impairs their ability to care for themselves or their property in some way but is not sufficiently severe to meet the rigid standards of Prob. C § 1801(a)-(b) for creation of a general conservatorship. Second, in order to encourage maximum self-reliance and independence, it divests the limited conservatee of rights, and grants the limited conservator powers, only with respect to those

> activities in which the limited conservatee is unable to engage capably. Prob C § 1801(d). See also Welf & I C §§ 4500-4867 (Lanterman Developmental Disabilities Act).

Id. at § 22.2, p. 1061. Unless a different rule is specified, the general rules governing a Probate Code conservatorship apply to a limited conservatorship. *Id.* at § 22.1, p. 1061; see Prob. Code §§ 29, 30.

There are a number of major distinctions between a limited conservatorship and a Probate Code conservatorship. Of particular note,

- A limited conservatorship is specifically for a developmentally disabled adult. See Prob. Code § 1801(d).
- A court may appoint a limited conservator if it finds that the proposed conservatee "lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources …." Prob. Code § 1828.5(c).
- To establish a limited conservatorship, the proposed conservatee must be assessed by a regional center. Prob. Code § 1827.5(a). This report does not replace the requirement of a court investigator's report. Cal. Conservatorship Practice, *supra*, § 22.26, at 1078.
- The petition for appointment of a limited conservator must request specific powers. Prob. Code §§ 1821(j), 1830(b), 1872(b), 2351.5(b).
- A limited conservator has a duty to "secure for the limited conservatee those habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence." Prob. Code § 2351.5(a)(2).

Conservatorship in which the Director of Developmental Services is Appointed Conservator for a Developmentally Disabled Adult

The Director of Developmental Services may be appointed as conservator of the person and estate, or person or estate, of any developmentally disabled adult who is (1) eligible for the services of a regional center or (2) a patient in a state hospital who was admitted or committed to that hospital from a county served by a regional center. Health & Safety Code §§ 416, 416.9. A petition for such an appointment may be brought by the developmentally disabled adult, or by that person's conservator, parent, relative, or friend. Health & Safety Code § 416.4.

Such an appointment may also be made pursuant to Welfare and Institutions Code Section 4825, which may be necessary when a developmentally disabled

adult appears to require state hospitalization but has no parent or conservator to apply for admission to a state hospital. Once the Director of Developmental Services is appointed as conservator pursuant to that section, the director is authorized to seek such admission and can delegate such authority to a regional center to exercise. See Welf. & Inst. Code § 416.19; *North Bay Regional Center v. Sherry S.*, 207 Cal. App. 3d 449, 256 Cal. Rptr. 129 (1989); see also *In re Violet C.*, 213 Cal. App. 3d 86, 261 Cal. Rptr. 470 (1989).

In considering a petition to appoint the Director of Developmental Services as conservator, the usual preferences for choosing a conservator (Prob. Code § 1812) do not apply. Welf. & Inst. Code § 416.9. A regional center must provide the court with "a complete evaluation of the developmentally disabled person for whose protection the appointment is sought …." Welf. & Inst. Code § 416.8. In general, however, the rules and procedures applicable to this type of conservatorship proceeding are the same as for a Probate Code conservatorship. See Welf. & Inst. Code §§ 416.1, 416.16.

"No appointment of both the Director of Developmental Services and a private guardian or conservator shall be made for the same person and estate, or person or estate." Welf. & Inst. Code § 416.10. If the Director of Developmental Services is appointed as conservator, the director "shall maintain close contact with the developmentally disabled person no matter where such person is living in this state; shall act as a wise parent would act in caring for his developmentally disabled child; and shall permit and encourage maximum self-reliance on the part of the developmentally disabled person under his protection." Welf. & Inst. Code § 416.17. The director shall perform these duties through the regional centers or designees of the regional centers, and shall receive a reasonable fee for such services. Welf. & Inst. Code § 416.20.

Judicial Commitment of a "Mentally Retarded" Person Who is Dangerous to Others or Self

"Mental retardation" is classified as a type of developmental disability. See Prob. Code § 1420. A pending bill (AB 2300 (Mansoor)) would replace the term "mental retardation" with the term "intellectual disability," which is intended to be less stigmatizing. For present purposes, we will use the term "mental retardation," because that is the term used in existing law.

If a court finds that a person "is mentally retarded, *and* that he or she is a danger to himself, herself, or to others, the court may make an order that the

person be committed to the State Department of Developmental Services for suitable treatment and habilitation services." Welf. & Inst. Code § 6509 (emphasis added). "[N]o mentally retarded person may be committed to the State Department of Developmental Services pursuant to [Welfare and Institutions Code Sections 6500-6513], unless he or she is a danger to himself, herself, or others." Welf. & Inst. Code § 6500. "For this purpose, 'dangerousness to self or others' includes a finding of incompetence to stand trial on specified criminal charges involving physical violence or danger to others." 3 B. Witkin, California Procedure *Actions* § 92, at 165 (5th ed. 2008 & Supp. 2012); see Welf. & Inst. Code § 6500. Importantly, however, "section 6500 proceedings are not criminal in nature, and … commitment under this scheme, though involuntary, is not punishment." *People v. Barrett,* __ Cal. 4th __, 2012 LEXIS 7246, at *28 (No. S180612, filed July 30, 2012).

A petition for commitment under this set of statutes "shall be presented by the district attorney for the county [where venue is proper] unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel." *Id.* The court shall conduct a hearing on the petition within 60 days after it is filed, and "shall inquire into the condition or status of the alleged mentally retarded person." Welf. & Inst. § 6507. The evidence must include a report prepared by a regional center based on an examination of the respondent. Welf. & Inst. § 6504.5. The court may also have the respondent examined by a clinical psychologist and/or a physician "who has made a special study of mental retardation and is qualified as a medical examiner." Welf. & Inst. § 6507. The respondent is entitled to request a jury trial. *See, e.g., People v. Barrett*, __ Cal. 4th __, 2012 LEXIS 7246 (No. S180612, filed July 30, 2012); *People v. Bailie,* 144 Cal. App. 4th 841, 844, 50 Cal. Rptr. 3d 761 (2006); *People v. Alvas,* 221 Cal. App. 3d 1459, 1464, 271 Cal. Rptr. 131 (1990).

Upon commitment, the respondent must be placed in "the least restrictive residential placement necessary to achieve the purposes of treatment." Welf. &. Inst. Code § 6509. "Any order of commitment made pursuant to this [set of statutes] shall expire automatically one year after the order of commitment is made." Welf. & Inst. Code § 6500. If a subsequent petition for commitment is filed, the procedures shall be the same as for the initial petition for commitment. *Id.*

Proceedings under the Lanterman-Petris-Short Act ("LPS Proceedings")

The Lanterman-Petris-Short Act or "LPS Act" (Welf. & Inst. Code §§ 5000-5550) was landmark legislation enacted in 1967. It is intended to promote the following purposes:

(a) To end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to eliminate legal disabilities;
(b) To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism;
(c) To guarantee and protect public safety.
(d) To safeguard individual rights through judicial review.
(e) To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons;
(f) To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures;
(g) To protect mentally disordered persons and developmentally disabled persons from criminal acts.

Welf. & Inst. Code § 5001. Further, the Act reflects a policy determination that "mentally and physically handicapped persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability." Welf. & Inst. Code § 5115(a). "The LPS Act has been called a 'Magna Carta for the Mentally Ill' that 'established the most progressive commitment procedures in the country.'" *In re Qawi,* 32 Cal. 4th 1, 17, 81 P.3d 224, 7 Cal. Rptr. 3d 780 (2011), *quoting* Assem. Subcom. on Mental Health Services, Dilemma of Mental Commitments in California (1978) foreword by Asm. Louis Papan.

Among other things, the LPS Act (1) specifies certain conditions under which a person can be involuntarily detained for mental health treatment, and (2) authorizes the creation of an "LPS conservatorship" in specified circumstances. Each of those points is discussed in greater detail below.

Involuntary Detention under the LPS Act

"When any person, *as a result of mental disorder,* is a danger to others, or to himself or herself, or gravely disabled, a peace officer [or certain other professionals] may, upon probable cause take or cause to be taken, the person into custody and place him or her in a facility designated by the county and

approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation." Welf. & Inst. Code § 5150 (emphasis added). Likewise, "[w]hen any person is a danger to others, or to himself, or gravely disabled *as a result of inebriation,* a peace office [or certain others] may, upon reasonable cause, take, or cause to be taken, the person into civil protective custody and place him in a facility designated by the county and *approved by the State Department of Alcohol and Drug Abuse* as a facility for 72-hour treatment and evaluation of inebriates." Welf. &. Inst. Code § 5170 (emphasis added).

Each person admitted to such a facility "shall receive an evaluation as soon as possible after he or she is admitted and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held." Welf. & Inst. Code § 5152; see also Welf. & Inst. Code § 5172. "Any person who has been detained for evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for intensive treatment, or a conservator or temporary conservator shall be appointed pursuant to [the LPS Act] as required." Welf. & Inst. Code § 5152; see also Welf. & Inst. Code § 5172.

A concerned person can initiate a similar 72-hour detention and evaluation procedure by requesting that the local district attorney (or, in some cases, the county counsel) file a petition alleging that a particular individual, as a result of mental disorder, is a danger to others, or to self, or is gravely disabled. Welf. & Inst. Code §§ 5114, 5201. If probable cause exists, the local district attorney shall file such a petition as requested. Welf. & Inst. Code § 5202. "Whenever it appears, by [such a] petition, to the satisfaction of a judge of a superior court that a person is, as a result of mental disorder, a danger to others, or to himself, or gravely disabled, and the person has refused or failed to accept evaluation voluntarily, the judge shall issue an order notifying the person to submit to an evaluation at such time and place as designated by the judge." Welf. & Inst. Code § 5206. A judge can also order a 72-hour evaluation of any criminal defendant "who appears, as a result of chronic alcoholism or the use of narcotics or restricted dangerous drugs, to be a danger to others, to himself, or to be gravely disabled." Welf. & Inst. Code § 5225 *et seq*.

After a 72-hour evaluation, a person may be certified for up to 14 days of further intensive treatment relating to the person's mental disorder or impairment by chronic alcoholism, if the superior court finds that the following conditions are satisfied:

> (a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found that the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to self or others, or gravely disabled.
>
> (b) The facility providing intensive treatment is designated by the county to provide such treatment, and agrees to admit the person.
>
> (c) The person has been advised of the need for treatment, but has not been willing or able to accept such treatment on a voluntary basis.

Welf. & Inst. Code § 5250. Various procedural safeguards apply. See Welf. & Inst. Code §§ 5250 *et seq.*

Under specified circumstances, a court may require a person to undergo additional periods of involuntary treatment. See Welf. & Inst. Code §§ 5260-5268 (up to 14 additional days of intensive treatment for suicidal person), 5270.10-5270.65 (up to 30 additional days of intensive treatment for gravely disabled person), 5300-5309 (postcertification procedures for imminently dangerous persons, which may include up to 180 days of additional treatment); see also Welf. & Inst. Code §§ 5275-5278 (judicial review of order subjecting person to additional involuntary treatment). Throughout the process of involuntary treatment, the LPS Act expressly gives each patient certain legal and civil rights. See Welf. & Inst. Code §§ 5325-5337. Among other things, the Act declares that "[n]o person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily or involuntarily received …." Welf. & Inst. Code § 5331.

LPS Conservatorship for a Person Who is "Gravely Disabled" as a Result of Mental Disorder or Impairment by Chronic Alcoholism

The LPS process "culminates in a one-year conservatorship for persons who are 'gravely disabled' as a result of their mental disorders." *People v. Barrett*, __ Cal. 4th __, 2012 LEXIS 7246, at *52 (No. S180612, filed July 30, 2012). Under Welfare and Institutions Code Section 5350, "[a] conservator of the person, of the estate, or of the person and the estate may be appointed for any person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism."

A person is considered "gravely disabled" if either of the following circumstances exist:

- The person, as a result of a mental disorder or impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter. Welf. & Inst. Code § 5008(h)(1)(A) & (2). In this context, a person is not considered "gravely disabled" if the person "can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter." Welf. & Inst. Code § 5350(e). "However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help." *Id.* This rule is intended to "avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter." *Id.*
- The person has been found mentally incompetent to stand trial under Penal Code Section 1370, and:
    (1) The person is charged with a felony involving death, great bodily harm, or a serious threat to the well-being of another person;
    (2) The charge has not been dismissed; and
    (3) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.

  Welf. & Inst. Code § 5008(h)(1)(B).

Under either of these prongs, it is necessary to determine whether the person has a "mental disorder." That term is not defined in the LPS Act, but the California Supreme Court recently explained that unlike mental retardation or other developmental disabilities, "[m]ental illness and related disorders are said to be conditions that may arise suddenly and, for the first time, in adulthood." *People v. Barrett*, __ Cal. 4th __, 2012 LEXIS 7246, at *53 (No. S180612, filed July 30, 2012). In addition, the need for treatment of a mental disorder may be intermittent or short-lived, whereas a developmental disability is expected to continue indefinitely. *Id.*

Upon a showing of necessity, a temporary LPS conservator may be appointed pending the hearing on the existence of a grave disability. Welf. & Inst. Code § 5352.1. A temporary LPS conservatorship may last no more than 30 days, unless the proposed conservatee demands a court or jury trial on the issue of grave

disability, in which case the temporary conservatorship may last no more than six months. *Id.*

Except as otherwise provided by law, the procedure for establishing, administering, and terminating an LPS conservatorship is the same as for a Probate Code conservatorship. Welf. & Inst. Code § 5350. An LPS conservator is authorized to place the conservatee in a mental health treatment facility against the conservatee's will. See Welf. & Inst. Code § 5358. This is "the primary special power of an LPS conservatorship that a probate conservator of the person lacks." Cal. Conservatorship Practice, *supra,* § 23.49, at 1141; see Prob. Code § 2356. Some of the other important distinctions are:

- A different conservatorship investigation process is used. See Welf. & Inst. Code §§ 5350(f), 5351.
- The usual preferences for choosing a conservator (Prob. Code § 1812) are inapplicable if the officer providing an LPS conservatorship investigation so recommends. See Welf. & Inst. Code § 5350(b)(1).
- In choosing an LPS conservator, the court must consider "the purposes of protection of the public and the treatment of the conservatee." Welf. & Inst. Code § 5350(b)(2).
- A proposed LPS conservatee is entitled to demand a jury trial on the issue of whether he or she is gravely disabled. Welf. & Inst. Code § 5350(d). This right also applies in any subsequent proceedings to reestablish an LPS conservatorship. *Id.* A proposed Probate Code conservatee is also entitled to demand a jury trial. Prob. Code § 1827. However, the standard of proof is not as strict as for an LPS conservatorship. *Compare Conservatorship of John L.*, 48 Cal. 4th 131, 143, 225 P.3d 554, 105 Cal. Rptr. 3d 424 (2010) (LPS conservatorship requires unanimous jury verdict using reasonable doubt standard) *with* Prob. Code § 1801(e) (clear and convincing evidence standard applies to Probate Code conservatorship).
- An LPS conservatorship can be initiated only on the recommendation of the professional person in charge of an agency providing comprehensive evaluation of the proposed conservatee, or a facility providing intensive treatment of the proposed conservatee. Welf. & Inst. Code § 5352. If the county officer providing conservatorship investigation concurs with the recommendation, the officer is to file a petition for an LPS conservatorship. *Id.* No one else is authorized to file such a petition.

If a Probate Code conservatorship of the estate already exists for a person, an LPS conservatorship of the estate cannot be established. Prob. Code § 5350(c).

There is no need for a second such proceeding, because the LPS Act does not confer special powers with regard to property management. But the situation is different with regard to a conservatorship of the person. When a gravely disabled person already has a conservator of the person appointed under the Probate Code, LPS proceedings "shall not terminate the prior proceedings but shall be concurrent with and superior thereto." *Id.* That rule makes sense, because an LPS conservator of the person has greater power than a Probate Code conservator of the person.

Unlike a Probate Code conservatorship, which continues indefinitely, an LPS conservatorship automatically terminates one year after appointment of the conservator. Welf. & Inst. Code § 5361. For an LPS conservatorship to continue, the conservator must petition for reappointment for another year. Welf. & Inst. Code § 5361.

Civil Commitment of a Person Accused or Convicted of a Crime or Allegedly Addicted to Narcotics

California also has a number of other civil commitment schemes for adults, which involve commission or alleged commission of a criminal offense, or alleged addiction to narcotics. These include:

(a) Civil commitment of a person found incompetent to stand trial. Penal Code §§ 1367-1376.

(b) Civil commitment of a person found not guilty by reason of insanity. Penal Code §§ 1026-1027.

(c) Civil commitment of a mentally disordered offender. Penal Code §§ 2960-2981; *see, e.g., People v. Allen,* 42 Cal. 4th 91, 164 P.3d 557, 64 Cal. Rptr. 3d 124 (2007); *In re Qawi,* 32 Cal. 4th 1, 81 P.3d 224, 7 Cal. Rptr. 3d 780 (2004).

(d) Civil commitment of a sexually violent predator. Welf. & Inst. Code §§ 6600-6609.3; see, e.g., *People v. McKee,* 47 Cal. 4th 1172, 223 P.3d 566, 104 Cal. Rptr. 3d 4276 (2010); *Munoz v. Kolender,* 208 F. Supp. 2d 1125, 1137-38 (So. Dist. Cal. 2002).

(e) Civil commitment of a person who has been convicted of a misdemeanor or infraction, or whose probation for such an offense has been revoked, and who the judge thinks may be addicted to narcotics or in imminent danger of becoming so addicted. Welf. & Inst. Code §§ 3050-3055.

(f) Civil commitment of a person who may be addicted to narcotics or in imminent danger of becoming so addicted. Welf. & Inst. Code §§ 3100-3111.

We will not describe these statutory schemes in greater detail here. It seems unlikely that anyone would suggest that a conservatorship proceeding could be transferred to California under UAGPPJA and automatically be made subject to any of these statutory schemes (as opposed to commencing a new proceeding and proving the required elements from scratch pursuant to California law). We can provide further information on these types of civil commitments later if needed.

KEY ISSUES RELATING TO ADOPTION OF UAGPPJA IN CALIFORNIA

Based on our current knowledge, the staff sees three sets of key issues relating to adoption of UAGPPJA in California: (1) terminology issues, (2) issues pertaining to UAGPPJA's requirements that, in specified circumstances, California accept appointments and incapacity determinations made by other states, and (3) questions about how to determine where an out-of-state proceeding transferred under UAGPPJA would fit within California's multi-track conservatorship scheme.

Terminology

The difference in terminology between UAGPPJA and corresponding California law is an obvious source of concern. To some extent, the ULC acknowledged and addressed this point in drafting UAGPPJA:

> **The Problem of Differing Terminology**
>
> States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person;" a "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology used in the UGPPA and in a majority of the states. *An enacting state that uses a different term than "guardian" or "conservator" for the person appointed by the court or that defines either of these terms differently than does the UGPPA may, but is not encouraged to, substitute its own term or definition.* Use of common terms and definitions by states enacting the Act will facilitate resolution of cases involving multiple jurisdictions.

Prefatory Note to UAGPPJA, p. 5 (emphasis added).

Unfortunately, the problem here is not just that California uses one term and UAGPPJA uses another term for the same thing. Rather, in several instances California and UAGPPJA use exactly the same term, but with different meanings. In adapting UAGPPJA for possible enactment in California, the Commission will need to take special care to try to minimize the risk of confusion arising from this terminological disparity.

Acceptance of Determinations Made By and Procedures Used By Other States

In specified circumstances, UAGPPJA requires an adopting state to accept an incapacity determination and resultant appointment made by another state, and to respect the associated procedures used by other states. See UAGPPJA §§ 302(g), 401-403. Because the rules for determining incapacity, making an appointment, and handling such a proceeding vary from state to state, there might be some resistance to these requirements.

For example, California has strict standards for determining incapacity. See Memorandum 2011-31, pp. 17-22. The standards used in other states may be less strict. See, e.g., *id.* at 22-31 (describing capacity determinations in Arizona, Oregon, and Nevada).

Under UAGPPJA's transfer process, a case from another state could be transferred to California, and California would be expected to defer to the other state's determination of incapacity, at least temporarily so as to expedite the transfer process. As a result, a California court might sometimes be required to treat an individual as incapacitated even though the individual would not be considered incapacitated under California law. That would to some extent conflict with California's policy of providing strong protection for personal liberties, imposing conservatorships only where the facts clearly demand that result.

Similarly, under UAGPPJA's registration procedure, a conservatorship order from another state could be registered in California. Upon registration, the out-of-state conservator would have the same powers in California as in the other state, except powers that cannot legally be exercised in California. In other words, people and institutions in California would be required to recognize the out-of-state conservator's authority to act on behalf of the conservatee, and California courts would be available to enforce such authority, so long as the conservator's actions are legal here. That would mean that on some occasions, Californians and California courts might be required to accept an out-of-state

conservator's authority to take action on behalf of the conservatee, even though the conservatee would not be considered incapacitated if evaluated under California's strict standards for determining capacity. Again, this situation would to some extent conflict with California's policy of providing strong protection for personal liberties, imposing conservatorships only where the facts clearly demand that result.

In this study, the Commission will need to evaluate whether the potential downsides of having to accept another state's determination of capacity outweigh the potential benefits of UAGPPJA's transfer procedure and registration procedure. The Commission should also look for ways to adjust UAGPPJA to protect the policy interests underlying California's capacity standards, and should assess the pros and cons of making such adjustments.

This type of analysis will be required not only with regard to California's capacity standards, but also with regard to its rules governing selection of a conservator, and with regard to the procedural protections that it provides in conservatorship proceedings. As with determination of capacity, California's rules governing selection of a conservator differ from the corresponding rules in other states. See, e.g., *id.* at 37-54. For example, California treats a domestic partner as comparable to a spouse in selecting a conservator, while other states may not do so. *See id.* Similarly, California affords certain procedural protections in conservatorship proceedings that may not always be provided in other states. See, e.g., *id.* at 55-69. UAGPPJA's transfer and registration procedures may thus require Californians and California courts to accept the authority of a conservator who would not have been chosen under California's selection rules, or a conservator who was appointed pursuant to a conservatorship procedure that lacks some of procedural safeguards afforded in California. See *id.* at 52-54, 67-69.

In assessing UAGPPJA, the Commission should therefore (1) identify the policy interests implicated by California's procedural rules for conservatorship proceedings and its rules governing selection of a conservator, (2) examine the degree to which UAGPPJA would impinge on those policy interests, (3) explore ways to eliminate or mitigate any such impingements, (4) assess the potential benefits of UAGPPJA, and then (5) balance the competing interests and formulate an appropriate recommendation.

Coordinating UAGPPJA with California's Multi-Track Conservatorship Scheme

Finally, suppose an out-of-state conservatorship were transferred to California under UAGPPJA. Would it be treated as a Probate Code conservatorship? Could the proceeding instead be treated as a limited conservatorship for a developmentally disabled adult? If so, under what circumstances and conditions? Alternatively, could the proceeding be treated as an LPS conservatorship, or as some other type of California conservatorship or civil commitment? How would a court determine which statutory scheme to follow? If California adopts UAGPPJA, what rules would apply regarding involuntary commitment of a conservatee in a proceeding that is transferred to California? Must the grounds for any involuntary commitment be relitigated from scratch pursuant to California law? If so, would that also be true with regard to placement of a conservatee with dementia in a "secured perimeter residential care facility for the elderly" or a "locked and secured nursing facility which specializes in the care and treatment of people with dementia"? This is another important constellation of questions that the Commission will need to consider in reviewing UAGPPJA for possible adoption in California.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SIXTEENTH YEAR
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WITH PREFATORY NOTE AND COMMENTS

December 3, 2007

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The **National Conference of Commissioners on Uniform State Laws** (NCCUSL), also known as Uniform Law Commission (ULC), now in its 116th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

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DRAFTING COMMITTEE ON UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

DAVID G. NIXON, 2340 Green Acres Rd., Suite 12, Fayetteville, AR 72703, *Chair*
GAIL H. HAGERTY, Burleigh County Court House, P.O. Box 1013, 514 E. Thayer Ave., Bismarck, ND 58502-1013
LYLE W. HILLYARD, 595 S. Riverwood Parkway, Suite 100, Logan, UT 84321
PAUL M. KURTZ, University of Georgia School of Law, Athens, GA 30602-6012
SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629
LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338
SUZANNE BROWN WALSH, P.O. Box 271820, West Hartford, CT 06127
STEPHANIE J. WILLBANKS, Vermont Law School, P.O. Box 96, Chelsea St., South Royalton, VT 05068
DAVID M. ENGLISH, University of Missouri-Columbia, School of Law, Missouri & Conley Aves., Columbia, MO 65211, *National Conference Reporter*

EX OFFICIO

HOWARD J. SWIBEL, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606, *President*
TOM BOLT, 5600 Royal Dane Mall, St. Thomas, VI 00802-6410, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

LARRY CRADDOCK, 2601 N. Lamar Blvd., Austin, TX 78705-4260, *ABA Advisor*
KAREN E. BOXX, 316 William H. Gates Hall, P.O. Box 353020, Seattle, WA 98195-3020, *ABA Section Advisor*
ERICA F. WOOD, 740 15th St. NW, Washington, DC 20005, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 211 E. Ontario St., Suite 1300, Chicago, IL 60611, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

PREFATORY NOTE

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues in adult proceedings. Drafting of the UAGPPJA began in 2005. The Act had its first reading at the Uniform Law Commission 2006 Annual Meeting, and was approved at the 2007 Annual Meeting.

States may enact the UAGPPJA either separately or as part of the broader UGPPA or the even broader Uniform Probate Code (UPC), of which the UGPPA forms a part. Conforming amendments to the UGPPA and UPC are expected to be approved in 2009 that will facilitate enactment of the UAGPPJA by states that have enacted the UGPPA or UPC.

The Problem of Multiple Jurisdiction

Because the United States has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state.

In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present. In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more frequent. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a second home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes. Article 2 of the UAGPPJA is intended to provide such a mechanism.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that an already existing guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect. Article 3 of the UAGPPJA is designed to provide an expedited process for making such transfers, thereby avoiding the need to relitigate incapacity and whether the guardian or conservator appointed in the first state was an appropriate selection.

The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the United States Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state. Article 4 of the UAGPPJA creates a registration procedure. Following registration of the guardianship or protective order in the second state, the guardian may exercise in the second state all powers authorized in the original state's order of appointment except for powers that cannot be legally exercised in the second state.

The Proposed Uniform Law and the Child Custody Analogy

Similar problems of jurisdiction existed for many years in the United States in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more that one state had jurisdiction to issue custody orders. But the Uniform Law Conference has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters; the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator or issue another type of protective order and contains definitions applicable only to that article. Its principal objective is to assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article 3 specifies a procedure for transferring a guardianship or conservatorship proceedings from one state to another state. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains an effective date provision, a place to list provisions of existing law to be repealed or amended, and boilerplate provisions common to all uniform acts.

Key Definitions (Section 201)

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" (Section 201(a)(2)) is the state in which the individual was physically present, including

any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or appointment of a guardian. If the respondent was not physically present in a single state for the six months immediately preceding the filing of the petition, the home state is the place where the respondent was last physically present for at least six months as long a such presence ended within the six months prior to the filing of the petition. Section 201(a)(2). Stated another way, the ability of the home state to appoint a guardian or enter a protective order for an individual continues for up to six months following the individual's physical relocation to another state.

A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available. Section 201(a)(3). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
- the length of time the respondent was at any time physically present in the state and the duration of any absences;
- the location of the respondent's property; and
- the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services. Section 201(b).

A respondent in a guardianship or protective proceeding may have multiple significant-connection states but will have only one home state.

Jurisdiction (Article 2)

Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

- *Home State*: The home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order.

- *Significant-connection State*: A significant-connection state has jurisdiction to appoint a guardian or conservator or issue another type of protective order if on the date the petition was filed:
    - the respondent does not have a home state or the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum; or
    - the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order (i) a

petition for an appointment or order is not filed in the respondent's home state; (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206.

- *Another State*: A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction because the court in the other state is a more appropriate forum, or the respondent does not have a home state or significant-connection state.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the respondent is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where a respondent's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another type of protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state as provided in Article 3.

The remainder of Article 2 elaborates on these core concepts. Section 205 provides that once a guardian or conservator is appointed or other protective order is issued, the court's jurisdiction continues until the proceeding is terminated or transferred or the appointment or order expires by its own terms. Section 206 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 prescribes additional notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states, requests for assistance made by a court to a court of another state, and the taking of testimony in another state. Sections 104-106.

Transfer to Another State (Article 3)

Article 3 specifies a procedure for transferring an already existing guardianship or conservatorship to another state. To make the transfer, court orders are necessary from both the court transferring the case and from the court accepting the case. The transferring court must find that the incapacitated or protected person is physically present in or is reasonably expected to move permanently to the other state, that adequate arrangements have been made for the person or the person's property in the other state, and that the court is satisfied the case will be accepted by the court in the other state. To assure continuity, the court in the transferring state cannot dismiss the local proceeding until the order from the state accepting the case is filed with the transferring court. To expedite the transfer process, the court in the accepting state must give

deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

Out of State Enforcement (Article 4)

To facilitate enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise in the registration state all powers authorized in the order except as prohibited by the laws of the registration state.

International Application (Section 103)

Section 103 addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures under Article 4, but a court in the United State may otherwise apply the Act as if the foreign country were an American state.

The Problem of Differing Terminology

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person;" a "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology used in the UGPPA and in a majority of the states. An enacting state that uses a different term than "guardian" or "conservator" for the person appointed by the court or that defines either of these terms differently than does the UGPPA may, but is not encouraged to, substitute its own term or definition. Use of common terms and definitions by states enacting the Act will facilitate resolution of cases involving multiple jurisdictions.

The Drafting Committee was assisted by numerous officially designated advisors and observers, representing an array of organizations. In addition to the American Bar Association advisors listed above, important contributions were made by Sally Hurme of AARP, Terry W. Hammond of the National Guardianship Association, Kathleen T. Whitehead and Shirley B. Whitenack of the National Academy of Elder Law Attorneys, Catherine Anne Seal of the Colorado Bar Association, Kay Farley of the National Center for State Courts, and Robert G. Spector, the Reporter for the Joint Editorial Board for Uniform Family Laws and the Reporter for the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

[ARTICLE] 1

GENERAL PROVISIONS

General Comment

Article 1 contains definitions and general provisions used throughout the Act. Definitions applicable only to Article 2 are found in Section 201. Section 101 is the title, Section 102 contains the definitions, and Sections 103-106 the general provisions. Section 103 provides that a court of an enacting state may treat a foreign country as a state for the purpose of applying all portions of the Act other than Article 4, Section 104 addresses communication between courts, Section 105 requests by a court to a court in another state for assistance, and Section 106 the taking of testimony in other states. These Article 1 provisions relating to court communication and assistance are essential tools to assure the effectiveness of the provisions of Article 2 determining jurisdiction and in facilitating transfer of a proceeding to another state as authorized in Article 3.

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Comment

The title to the Act succinctly describes the Act's scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a guardian or conservator or other protective order is being sought or has been issued.

The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address conservatorship and other issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.

SECTION 102. DEFINITIONS. In this [act]:

(1) "Adult" means an individual who has attained [18] years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under [insert reference to enacting state's conservatorship or

protective proceedings statute].

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under [insert reference to enacting state's guardianship statute].

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

***Legislative Note**: A state that uses a different term than guardian or conservator for the person appointed by the court or that defines either of these terms differently may, but is not encouraged to, substitute its own term or definition. Use of common terms and definitions by states enacting this Act will facilitate resolution of cases involving multiple jurisdictions.*

Comment

The definition of "adult" (paragraph (1)) would exclude an emancipated minor. The Act is not designed to supplant the local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition.

Three of the other definitions are standard uniform law terms. These are the definitions of "person" (paragraph (8)), "record" (paragraph (12)), and "state" (paragraph (14)). Two are common procedural terms. The individual for whom a guardianship or protective order is sought is a "respondent" (paragraph (13)). A person who may participate in a guardianship or protective proceeding is referred to as a "party" (paragraph (7)).

The remaining definitions refer to standard guardianship terminology used in a majority of states. A "guardian" (paragraph (3)) is appointed in a "guardianship order" (paragraph (4)) which is issued as part of a "guardianship proceeding" (paragraph (5)) and which authorizes the guardian to make decisions regarding the person of an "incapacitated person" (paragraph (6)). A "conservator" (paragraph (2)) is appointed pursuant to a "protective order" (paragraph (10)) which is issued as part of a "protective proceeding" (paragraph (11)) and which authorizes the conservator to manage the property of a "protected person" (paragraph (9)).

In most states, a protective order may be issued by the court without the appointment of a conservator. For example, under the Uniform Guardianship and Protective Proceedings Act, the court may authorize a so-called single transaction for the security, service, or care meeting the foreseeable needs of the protected person, including the payment, delivery, deposit, or retention of property; sale, mortgage, lease, or other transfer of property; purchase of an annuity; making a contract for life care, deposit contract, or contract for training and education; and the creation of or addition to a suitable trust. UGPPA (1997) §412(1). It is for this reason that the Act contains frequent references to the broader category of protective orders. Where the Act is intended to apply only to conservatorships, such as in Article 3 dealing with transfers of proceedings to other states, the Act refers to conservatorship and not to the broader category of protective proceeding.

The Act does not limit the types of conservatorships or guardianships to which the Act applies. The Act applies whether the conservatorship or guardianship is denominated as plenary, limited, temporary or emergency. The Act, however, would not ordinarily apply to a guardian

ad litem, who is ordinarily appointed by the court to represent a person or conduct an investigation in a specified legal proceeding.

Section 102 is not the sole definitional section in the Act. Section 201 contains definitions of important terms used only in Article 2. These are the definitions of "emergency" (Section 201(1)), "home state" (Section 201(2)), and "significant-connection state" (Section 201(3)).

SECTION 103. INTERNATIONAL APPLICATION OF [ACT]. A court of this state may treat a foreign country as if it were a state for the purpose of applying this [article] and [Articles] 2, 3, and 5.

Comment

This section addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures of Article 4, but a court in this country may otherwise apply this Act to a foreign proceeding as if the foreign country were an American state. Consequently, a court may conclude that the court in the foreign country has jurisdiction because it constitutes the respondent's "home state" or "significant-connection state" and may therefore decline to exercise jurisdiction on the ground that the court of the foreign country has a higher priority under Section 203. Or the court may treat the foreign country as if it were a state of the United States for purposes of applying the transfer provisions of Article 3.

This section addresses similar issues to but differs in result from Section 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States court must honor a custody order issued by the court of a foreign country if the order was issued under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA. Only if the child custody law violates fundamental principles of human rights is enforcement excused. Because guardianship regimes vary so greatly around the world, particularly in civil law countries, it was concluded that under this Act a more flexible approach was needed. Under this Act, a court may but is not required to recognize the foreign order.

The fact that a guardianship or protective order of a foreign country cannot be enforced pursuant to the registration procedures of Article 4 does not preclude enforcement by the court under some other provision or rule of law.

SECTION 104. COMMUNICATION BETWEEN COURTS.

[(a)] A court of this state may communicate with a court in another state concerning a proceeding arising under this [act]. The court may allow the parties to participate in the

communication. [Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.]

***Legislative Note**: An enacting state is encouraged to enact the bracketed language so that a record will be created of the communication with the other court, even thought the record is limited to the fact that the communication occurred. In some states, however, a legislative enactment directing when a court must make a record in a judicial proceeding may violate the separation of powers doctrine. Such states are encouraged to achieve the objectives of the bracketed language by promulgating a comparable requirement by judicial rule.*

Comment

This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also include communication between courts of different states to facilitate the transfer of a guardianship or conservatorship to a different state under Article 3. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.

The court may authorize the parties to participate in the communication. But the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.

This section includes brackets around the language relating to whether a record must be made of any communication with the court of the other state. As indicated by the Legislative Note to this section, the language is bracketed because of a concern in some states that a legislative enactment directing when a court must make a record in a judicial proceeding may violate the doctrine on separation of powers. The language is not bracketed because the drafters concluded that the making of a record is not important. Rather, if concerns about separation of powers leads to the deletion of the bracketed language, the enacting state is encouraged to achieve the objectives of the bracketed language by promulgating a comparable provision by judicial rule.

This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who

listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conversation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.

Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of adult guardianship and protective proceedings suggested a need for greater flexibility.

SECTION 105. COOPERATION BETWEEN COURTS.

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent;

(4) order any appropriate investigation of a person involved in a proceeding;

(5) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);

(6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504 [, as amended].

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Legislative Note*: A state that permits dynamic references to federal law should delete the brackets in subsection (a)(7). A state that requires that a reference to federal law be to that law on a specific date should delete the brackets and bracketed material, insert a specific date, and periodically update the reference.*

Comment

Subsection (a) of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in adult guardianship and protective proceedings and with the addition of subsection (a)(7), which addresses the release of health information protected under HIPAA. Subsection (b), which clarifies that a court has jurisdiction to respond to requests for assistance from courts in other states even though it might otherwise not have jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.

Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states. Typically, such assistance will be requested to resolve a jurisdictional issue arising under Article 2 or an issue concerning a transfer proceeding under Article 3.

This section does not address assessment of costs and expenses, leaving that issue to local law. Should a court have acquired jurisdiction because of a party's unjustifiable conduct, Section 207(b) authorizes the court to assess against the party all costs and expenses, including attorney's fees.

SECTION 106. TAKING TESTIMONY IN ANOTHER STATE.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the

manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

[(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.]

***Legislative Note**: In cases involving more than one jurisdiction, documentary evidence often must be presented that has been transmitted by facsimile or in electronic form. A state in which the best evidence rule might preclude the introduction of such evidence should enact subsection (c). A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c).*

Comment

This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).

This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.

Subsection (a) empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.

Subsections (b) and (c) clarify that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence. A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c), which has been placed in brackets for this reason.

This section is consistent with and complementary to the Uniform Interstate Depositions

and Discovery Act (2007), which specifies the procedure for taking depositions in other states.

[ARTICLE] 2

JURISDICTION

General Comment

The jurisdictional rules in Article 2 will determine which state's courts may appoint a guardian or conservator or issue another type of protective order. Section 201 contains definitions of "emergency," "home state," and "significant-connection state," terms used only in Article 2 that are key to understanding the jurisdictional rules under the Act. Section 202 provides that Article 2 is the exclusive jurisdictional basis for a court of the enacting state to appoint a guardian or issue a protective order for an adult. Consequently, Article 2 is applicable even if all of the respondent's significant contacts are in-state. Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions. But there are circumstances under Section 203 where a significant-connection state may have jurisdiction even if the respondent also has a home state, or a state that is neither a home or significant-connection state may be able to assume jurisdiction even though the particular respondent has both a home state and one or more significant-connection states. One of these situations is if a state declines to exercise jurisdiction under Section 206 because a court of that state concludes that a court of another state is a more appropriate forum. Another is Section 207, which authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 205 provides that once an appointment is made or order issued, the court's jurisdiction continues until the proceeding is terminated or the appointment or order expires by its own terms.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another type of protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state as provided in Article 3.

The remainder of Article 2 address procedural issues. Section 208 prescribes additional notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state.

SECTION 201. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

(a) In this [article]:

(1) "Emergency" means a circumstance that likely will result in substantial harm

to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under Sections 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Comment

The terms "emergency," "home state," and "significant-connection state" are defined in

this section and not in Section 102 because they are used only in Article 2.

The definition of "emergency" (subsection (a)(1)) is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

Pursuant to Section 204 of this Act, a court has jurisdiction to appoint a guardian in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the respondent's home state. Pursuant to Section 204(b), the emergency proceeding must be dismissed at the request of the court in the respondent's home state.

Appointing a guardian in an emergency should be an unusual event. Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Pursuant to Section 203, a court in the respondent's home state has primary jurisdiction to appoint a guardian or issue a protective order. A court in a significant-connection state has jurisdiction if the respondent does not have a home state and in other circumstances specified in Section 203. The definitions of "home state" and "significant-connection state" are therefore important to an understanding of the Act.

The definition of "home state" (subsection (a)(2)) is derived from but differs in a couple of respects from the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has "lived" for the prior six months. Basing the test on where someone has "lived" may imply that the term "home state" is similar to the concept of domicile. Domicile, in an adult guardianship context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the respondent was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.

The definition of "significant-connection state" (subsection (a)(3)) is similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, subsection (b) of this Section adds a list of factors relevant to adult guardianship and protective

proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section 301(e)(1), the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state.

SECTION 202. EXCLUSIVE BASIS. This [article] provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Comment

Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a child custody order, this section provides that this article is the exclusive jurisdictional basis for determining jurisdiction to appoint a guardian or issue a protective order for an adult. An enacting jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction in guardianship and protective proceedings cases. A Legislative Note to Section 503 provides guidance on which provisions need to be repealed or amended. The drafters of this Act concluded that limiting the Act to "interstate" cases was unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act onto a state's existing jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular case is truly local, the local court would likely have jurisdiction under both this Act as well as under prior law.

SECTION 203. JURISDICTION. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's

home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and;

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206;

(3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under Section 204 are met.

Comment

Similar to the Uniform Child Jurisdiction and Enforcement Act (1997), this Act creates a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a protective order; the home state (defined in Section 201(a)(2)), followed by a significant-connection state (defined in Section 201(a)(3)), followed by other jurisdictions. The principal objective of this section is to eliminate the possibility of dual appointments or orders except for the special circumstances specified in Section 204.

While this section is the principal provision for determining whether a particular court has jurisdiction to appoint a guardian or issue a protective order, it is not the only provision. As indicated in the cross-reference in Section 203(4), a court that does not otherwise have jurisdiction under Section 203 may have jurisdiction under the special circumstances specified in Section 204.

Pursuant to Section 203(1), the home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order. This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section 206 on the basis that another state is a more appropriate forum, or, as provided in Section 205, a court of another state has appointed a guardian or issued a protective order consistent with this Act. The standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section 206. Should the home state not have enacted the Act, Section 203(1) does not require that the declination meet the standards of Section 206.

Once a petition is filed in a court of the respondent's home state, that state does not cease to be the respondent's home state upon the passage of time even though it may be many months before an appointment is made or order issued and during that period the respondent is physically located. Only upon dismissal of the petition can the court cease to be the home state due to the passage of time. Under the definition of "home state," the six-month physical presence requirement is fulfilled or not on the date the petition is filed. *See* Section 201(a)(2).

A significant-connection state has jurisdiction under two possible bases; Section 203(2)(A) and Section 203(2)(B). Under Section 203(2)(A), a significant-connection state has jurisdiction if the individual does not have a home state or if the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum.

Section 203(2)(B) is designed to facilitate consideration of cases where jurisdiction is not in dispute. Section 203(2)(B) allows a court in a significant-connection state to exercise jurisdiction even though the respondent has a home state and the home state has not declined jurisdiction. The significant-connection state may assume jurisdiction under these circumstances, however, only in situations where the parties are not in disagreement concerning which court should hear the case. Jurisdiction may not be exercised by a significant-connection state under Section 203(2)(B) if (1) a petition has already been filed and is still pending in the home state or other significant-connection state; or (2) prior to making the appointment or issuing the order, a petition is filed in the respondent's home state or an objection to the court's jurisdiction is filed by a person required to be notified of the proceeding. Additionally, the court in the significant-connection state must conclude that it is an appropriate forum applying the factors listed in Section 206.

There is nothing comparable to Section 203(2)(B) in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.

Pursuant to Section 203(3), a court in a state that is neither the home state or a significant-connection state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the respondent does not have a home state or significant-connection state. The state must have some connection with the proceeding, however. As Section 203(a)(3) clarifies, jurisdiction in the state must be consistent with the state and United States constitutions.

SECTION 204. SPECIAL JURISDICTION.

(a) A court of this state lacking jurisdiction under Section 203 has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding [90] days for a respondent who is physically present in this state;

(2) issue a protective order with respect to real or tangible personal property located in this state;

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Comment

This section lists the special circumstances where a court without jurisdiction under the general rule of Section 203 has jurisdiction for limited purposes. The three purposes are (1) the appointment of a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically located in the state (subsection (a)(1)); (2) the issuance of a protective order for a respondent who owns an interest in real or tangible personal property located in the state (subsection (a)(2)); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a guardianship or conservatorship proceeding from another state (subsection (a)(3)). If the court has jurisdiction under Section 203, reference to Section 204 is unnecessary. The general jurisdiction granted under Section 203 includes within it all of the special circumstances specified in this section.

When an emergency arises, action must often be taken on the spot in the place where the respondent happens to be physically located at the time. This place may not necessarily be located in the respondent's home state or even a significant-connection state. Subsection (a)(1) assures that the court where the respondent happens to be physically located at the time has jurisdiction to appoint a guardian in an emergency but only for a limited period of 90 days. The time limit is placed in brackets to signal that enacting states may substitute the time period under their existing emergency guardianship procedures. As provided in subsection (b), the emergency jurisdiction is also subject to the authority of the court in the respondent's home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment

through repeated temporary appointments.

"Emergency" is specifically defined in Section 201(a)(1). Because of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, the drafters of this Act concluded that adding a uniform definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Subsection (a)(2) grants a court jurisdiction to issue a protective order with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the protected person owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.

Subsection (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which addresses transfer of a guardianship or conservatorship to another state. A "Catch-22" arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state. Subsection (a)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding form another state, is intended to unlock the stalemate.

Not included in this section but a provision also conferring special jurisdiction on the court is Section 105(b), which grants the court jurisdiction to respond to a request for assistance from a court of another state.

SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this [act] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Comment

While this Act relies heavily on the Uniform Child Jurisdiction and Enforcement Act (1997) for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence by the child and others, loss of a significant connection, or unavailability of

substantial evidence. Section 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody determination made in another state. Nothing comparable to either UCCJEA section is found in this Act. Under this Act, a guardianship or protective order may be modified only upon request to the court that made the appointment or issued the order, which retains exclusive and continuing jurisdiction over the proceeding. Unlike child custody matters, guardianships and protective proceedings are ordinarily subject to continuing court supervision. Allowing the court's jurisdiction to terminate other than by its own order would open the possibility of competing guardianship or conservatorship appointments in different states for the same person at the same time, the problem under current law that enactment of this Act is designed to avoid. Should the incapacitated or protected person and others with an interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the proceeding to the other state as provided in Article 3.

The exclusive and continuing jurisdiction conferred by this section only applies to guardianship orders made and protective orders issued under Section 203. Orders made under the special jurisdiction conferred by Section 204 are not exclusive. And as provided in Section 204(b), the jurisdiction of a court in a state other than the home state to appoint a guardian in an emergency is subject to the right of a court in the home state to request that the proceeding be dismissed and any appointment terminated.

Article 3 authorizes a guardian or conservator to petition to transfer the proceeding to another state. Upon the conclusion of the transfer, the court in the accepting state will appoint the guardian or conservator as guardian or conservator in the accepting state and the court in the transferring estate will terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and the court in the accepting state acquires exclusive and continuing jurisdiction as provided in Section 205.

SECTION 206. APPROPRIATE FORUM.

(a) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all

relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Comment

This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a guardianship or protective order determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section 203. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and

Enforcement Act (1997) except that the factors in Section 206(c) of this Act have been adapted to address issues most commonly encountered in adult guardianship and protective proceedings as opposed to child custody determinations.

Under Section 203(2)(B), the factors specified in subsection (c) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the respondent's home state or in another significant-connection state. Under Section 207(a)(3)(B), the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether it is a more appropriate forum than the court of any other state under the factors set forth in Section 206(c); and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable

conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this [act].

Comment

This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define "unjustifiable conduct," concluding that this issue is best left to the courts. However, a common example could include the unauthorized removal of an adult to another state, with that state acquiring emergency jurisdiction under Section 204 immediately upon the move and home state jurisdiction under Section 203 six months following the move if a petition for a guardianship or protective order is not filed during the interim in the soon-to-be former home state. Although child custody cases frequently raise different issues than do adult guardianship matters, the element of unauthorized removal is encountered in both types of proceedings. For the caselaw on unjustifiable conduct under the predecessor Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman, *Parties' Misconduct as Grounds for Declining Jurisdiction Under §8 of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 A.L.R. 5th 650 (1993).

Subsection (a) gives the court authority to fashion an appropriate remedy when it has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering several specified factors. Under subsection (a), the unjustifiable conduct need not have been committed by a party.

Subsection (b) authorizes a court to assess costs and expenses, including attorney's fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction. Subsection (b) applies only if the unjustifiable conduct was committed by a party and allows for costs and expenses to be assessed only against that party. Similar to Section 208 of the UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

SECTION 208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the

notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Comment

While this Act tries not to interfere with a state's underlying substantive law on guardianship and protective proceedings, the issue of notice is fundamental. Under this section, when a proceeding is brought other than in the respondent's home state, the petitioner must give notice in the method provided under local law not only to those entitled to notice under local law but also to the persons required to be notified were the proceeding brought in the respondent's home state. Frequently, the respective lists of persons to be notified will be the same. But where the lists are different, notice under this section will assure that someone with a right to assert that the home state has a primary right to jurisdiction will have the opportunity to make that assertion.

SECTION 209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 203 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Comment

Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this section addresses the issue of which court has the right to proceed when proceedings for the same respondent are brought in more than one state. The provisions of this section, however, have been tailored to the needs of adult guardianship and protective proceedings and the particular jurisdictional provisions of this Act. Emergency guardianship appointments and protective proceedings with respect to property in other states (Sections 204(a)(1) and (a)(2)) are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the respondent's home state but emergency action will be necessary in the place where the respondent is temporarily located, or a petition for the appointment of a conservator will be brought in the respondent's home state but real estate located in some other state needs to be brought under management.

Under the Act only one court in which a petition is pending will have jurisdiction under Section 203. If a petition is brought in the respondent's home state, that court has jurisdiction over that of any significant-connection or other state. If the petition is first brought in a significant-connection state, that jurisdiction will be lost if a petition is later brought in the home state prior to an appointment or issuance of an order in the significant-connection state. Jurisdiction will also be lost in the significant-connection state if the respondent has a home state and an objection is filed in the significant-connection state that jurisdiction is properly in the home state. If petitions are brought in two significant-connection states, the first state has a right to proceed over that of the second state, and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that of the home state and all significant-connection states.

Under this section, if the court has jurisdiction under Section 203, it has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction under Section 203, it must defer to the court with jurisdiction unless that court determines that the court in this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as to which state is the home state or significant-connection state. Consequently, while under Section 203 there will almost always be a court having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence gathering provisions of Sections 104-106 will sometimes be necessary to determine which court that might be.

[ARTICLE] 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

General Comment

While this article consists of two separate sections, they are part of one integrated procedure. Article 3 authorizes a guardian or conservator to petition the court to transfer the guardianship or conservatorship proceeding to a court of another state. Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. Article 3 authorizes a transfer of a guardianship, a conservatorship, or both. There is no requirement that both categories of proceeding be administered in the same state.

Section 301 addresses procedures in the transferring state. Section 302 addresses procedures in the accepting state.

A transfer begins with the filing of a petition by the guardian or conservator as provided in Section 301(a). Notice of this petition must be given to the persons who would be entitled to notice were the petition a petition for an original appointment. Section 301(b). A hearing on the petition is required only if requested or on the court's own motion. Section 301(c). Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section 301(d) (guardianship) or 301(e) (conservatorship) have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section 301(f), it receives a copy of the provisional order from the accepting court accepting the transferred proceeding.

Following issuance of the provisional order by the transferring court, a petition must be filed in the accepting court as provided in Section 302(a). Notice of that petition must be given to those who would be entitled to notice of an original petition for appointment in both the transferring state and in the accepting state. Section 302(b). A hearing must be held only if requested or on the court's own motion. Section 302(c). The court must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person's interests or the guardian or conservator is ineligible for appointment in the accepting state. Section 302(d). The term "interests" as opposed to "best interests" was chosen because of the strong autonomy values in modern guardianship law. Should the court decline the transfer petition, it may consider a separately brought petition for the appointment of a guardian or issuance of a protective order only if the court has a basis for jurisdiction under Sections 203 or 204 other than by reason of the provisional order of transfer. Section 302(h).

The final steps are largely ministerial. Pursuant to Section 301(f), the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the proceeding, subject to local requirements such as filing of a

final report or account and the release of any bond. Pursuant to Section 302(e), the final order terminating the proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning guardian or conservator as guardian or conservator in the accepting state.

Because guardianship and conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the guardianship or conservatorship needs to be modified to conform to the law of the accepting state. Section 302(f). The number "90"is placed in brackets to encourage states to coordinate this time limit with the time limits for other required filings such as guardianship or conservatorship plans. This initial period in the accepting state is also an appropriate time to change the guardian or conservator if there is a more appropriate person to act as guardian or conservator in the accepting state. The drafters specifically did not try to design the procedures in Article 3 for the difficult problems that can arise in connection with a transfer when the guardian or conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as conservator or a government agency is acting as guardian. Rather, the procedures in Article 3 are designed for the typical case where the guardian or conservator is legally eligible to act in the second state. Should that particular guardian or conservator not be the best person to act in the accepting state, a change of guardian or conservator can be initiated once the transfer has been secured.

The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. Oftentimes the court will conclude that it is without jurisdiction to make an appointment until the respondent is physically present in the state, a problem which Section 204(a)(3) addresses by granting a court special jurisdiction to consider a petition to accept a proceeding from another state. But the most serious problem is the need to prove the case in the second state from scratch, including proving the respondent's incapacity and the choice of guardian or conservator. Article 3 eliminates this problem. Section 302(g) requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.

SECTION 301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.

(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(b);

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302; and

(2) the documents required to terminate a guardianship or conservatorship in this state.

SECTION 302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the

court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this state.

(f) Not later than [90] days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under [insert statutory references to this state's ordinary procedures law for the appointment of guardian or conservator] if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

[ARTICLE] 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

General Comment

Article 4 is designed to facilitate the enforcement of guardianship and protective orders in other states. This article does not make distinctions among the types of orders that can be enforced. This article is applicable whether the guardianship or conservatorship is full or limited. While some states have expedited procedures for sales of real estate by conservators appointed in other states, few states have enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if guardianship and protective orders were entitled to recognition in other states.

Article 4 provides for such recognition. The key concept is registration. Section 401 provides for registration of guardianship orders, and Section 402 for registration of protective orders. Following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, Section 403 authorizes the guardian or conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate [county] of this state, certified copies of the order and letters of office.

SECTION 402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment

in a court of this state, in any [county] in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

SECTION 403. EFFECT OF REGISTRATION.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this [act] and other law of this state to enforce a registered order.

[ARTICLE] 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 503. REPEALS. The following acts and parts of acts are hereby repealed:

(1) .....

(2) .....

(3) .....

Legislative Note: *Upon enactment, the state should repeal existing provisions on subject matter jurisdiction for adult guardianship and protective proceedings. If existing provisions address proceedings for both minors and adults, the provisions should be amended to limit their application to minors. In addition, the state should repeal or limit to minors any existing provisions authorizing transfer of a guardianship or conservatorship proceeding to another state and any provisions authorizing a guardian or conservator to act in another state.*

SECTION 504. TRANSITIONAL PROVISION.

(a) This [act] applies to guardianship and protective proceedings begun on or after [the effective date].

(b) [Articles] 1, 3, and 4 and Sections 501 and 502 apply to proceedings begun before

[the effective date], regardless of whether a guardianship or protective order has been issued.

Comment

This Act applies retroactively to guardianships and conservatorships in existence on the effective date. The guardian or conservator appointed prior to the effective date of the Act may petition to transfer the proceeding to another state under Article 3 and register and enforce the order in other states pursuant to Article 4. The jurisdictional provisions of Article 2 also apply to proceedings begun on or after the effective date. What the Act does not do is change the jurisdictional rules midstream for petitions filed prior to the effective date for which an appointment has not been made or order issued as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the Act affect the validity of already existing appointments even though the court might not have had jurisdiction had this Act been in effect at the time the appointment was made.

SECTION 505. EFFECTIVE DATE. This [act] takes effect.....

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues. The new UAGPPJA addresses many problems relating to multiple jurisdiction, transfer, and out of state recognition. It has been endorsed by the National Guardianship Foundation and the National College of Probate Judges. Endorsement by the American Bar Association is expected at the ABA's 2008 Mid-Year Meeting.

Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAGPPJA will, when enacted, help effectively to address these problems.

The Problem of Multiple Jurisdiction

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently problems arise because the individual has contacts with more than one American state. In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.

In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the U.S. Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings law is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state.

The Proposed Uniform Law and the Child Custody Analogy

EX 1

Similar problems of jurisdiction existed for many years in the U.S. in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more that one state had jurisdiction to enter custody orders. But the Uniform Law Commission has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters: the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to locate jurisdiction in one and only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article 3 specifies a procedure for transferring guardianship or conservatorship proceedings from one state to another. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains boilerplate provisions common to all uniform acts.

Key Definitions and Terminology (Section 102)

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding (Section 102(6)). A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available (Section 102(15)). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

> the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
> the length of time the respondent was at any time physically present in the state and the duration of any absences;
> the location of the respondent's property; and
> the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person." A "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology as used in the UGPPA. States employing different terms or the same terms but with different meanings may amend the Act to conform to local usage.

Jurisdiction (Article 2)

Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

> *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following a move to another

state.

Significant-connection State: A significant-connection state has jurisdiction if: individual has not had a home state within the past six month or the home states is declined jurisdiction. To facilitate appointments in the average case where jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court in another state.

Another State: A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or significant-connection state.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state.

The remainder of Article 2 elaborates on these core concepts. Section 205 provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred. Section 206 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 prescribes special notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states and taking testimony in another state (Sections 104-106).

Transfer to Another State (Article 3)

Article 3 specifies a procedure for transferring a guardianship or conservatorship to another state. To make the transfer, court orders are necessary both from the court transferring the case and from the court accepting the case. Generally, to transfer the case, the transferring court must find that the individual will move permanently to another state, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the court is satisfied the case will be accepted by the court in the new state. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

Out of State Enforcement (Article 4)

To facilitate enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the registration state. The Act also addresses enforcement of international orders. To the extent the foreign order violates fundamental principles of human rights, Section 104 permits a court of an American state that has enacted the Act to recognize an order entered in another country to the same extent as if it were an order entered in another U.S. state.

Conclusion

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many

guardianship issues such as original jurisdiction, registration, transfer, and out-of-state enforcement. It provides procedures that will help to considerably reduce the cost of guardianship and protective proceeding cases from state to state. It should be enacted as soon as possible in every jurisdiction.

111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

tel: (312) 450-6600 | fax: (312) 450-6601

EX 4

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

Why States Should Adopt the...

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) received its final approval at the National Conference of Commissioners for Uniform State Laws' (NCCUSL) 2007 annual meeting. The UAGPPJA deals primarily with jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings. There are a number of reasons why every state should adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

•Provides procedures to resolve interstate jurisdiction controversies. The UAGPPJA creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict by designating that the individual's "home state" has primary jurisdiction, followed by a state in which the individual has a "significant-connection." Under certain prescribed circumstances, another state may be chosen if it is the more appropriate forum.

• Facilitates transfers of guardianship cases among jurisdictions. The UAGPPJA specifies a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting persons and their property from potential abuse.

• Provides for recognition and enforcement of a guardianship or protective proceeding order. The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register these orders in other states.

• Facilitates communication and cooperation between Courts of different jurisdictions. Permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.

• Addresses emergency situations and other special cases. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for the property located there.

• Authorized guardians to exercise the powers authorized in the order and addresses international orders. UNIFORMITY This Act will provide uniformity and reduce conflicts among the states.

The UAGPPJA will also help save time for those who are serving as guardians and conservators, allowing them to make important decisions for their loved ones as quickly as possible. Every state should act quickly to adopt the Uniform Adult Guardianship and Protective Proceeding Act.

111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

tel: (312) 450-6600 | fax: (312) 450-6601

EX 5

alzheimer's association

the compassion to care, the leadership to conquer

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 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.

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.

Conference of Chief Justices
Conference of State Court Administrators

Association Services
300 Newport Avenue
Williamsburg, Virginia 23185
(757) 259-1841
FAX: (757) 259-1520

CCJ PRESIDENT
Honorable Margaret H. Marshall
Chief Justice
Supreme Judicial Court of Massachusetts
John Adams Courthouse
One Pemberton Square, Suite 2200
Boston, Massachusetts 02108-1735
(617) 557-1131
(617) 557-1091 (fax)

COSCA PRESIDENT
Stephanie J. Cole
Administrative Director of the Courts
Alaska Court System
303 K Street
Anchorage, Alaska 99501
(907) 264-0547
(907) 264-0881 (fax)

September 29, 2008

The Honorable Martha Lee Walters
President, The National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue, Suite 1010
Chicago, Illinois 60602

Dear Ms. Walters:

At the 60th Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators, the Conferences adopted the attached resolution on July 30, 2008. The resolution, **In Support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act** was recommended for adoption by the

We share a copy of this resolution with you for your information and the information of your membership. This resolution reflects the policy position of the Conferences.

If you need additional information or assistance, please feel free to contact us or Kay Farley or Jose Dimas at the National Center for State Courts. Ms. Farley can be reached at (703) 841-5601 or kfarley@ncsc.org. Mr. Dimas can be reached at (703) 841-5610 or jdimas@ncsc.org.

Sincerely,

Margaret Marshall

Chief Justice Margaret H. Marshall
President
Conference of Chief Justices

Stephanie J. Cole

Ms. Stephanie J. Cole
President
Conference of State Court Administrators

Conference of Chief Justices
Conference of State Court Administrators

Resolution 5

In Support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators recognize both the challenges for guardianship and protective proceedings when the parties have connections to multiple states and the benefits of clear and uniform jurisdiction rules in these multi-state cases; and

WHEREAS, the establishment of procedures to resolve interstate jurisdictional problems and facilitate transfers of guardianship cases among jurisdictions were key recommendations of the 2001 Wingspan National Guardianship Conference; and

WHEREAS, the Uniform Laws Commission, previously known as the National Conference of Commissioners of Uniform State Laws, convened a committee of experts and drafted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) to address existing problems; and

WHEREAS, the UAGPPJA (1) provides for a process of communication and cooperation between courts in different jurisdictions; (2) specifies which court has jurisdiction to appoint a guardian or conservator; (3) limits jurisdiction to the courts of one and only one state except in cases of emergency or in situations where the individual owns property in multiple states; (4) establishes a procedure for transferring a guardianship or conservatorship case from one state to another; (5) facilitates enforcement of guardianship and protective orders in other states by authorizing registration of orders; and (6) provides for registered orders to be entitled to full faith and credit; and

WHEREAS, adoption and implementation of the UAGPPJA will effectively address current jurisdictional problems and result in uniformity in both state law and practice;

NOW, THEREFORE, BE IT RESOLVED that the Conferences commend the work of the Uniform Laws Commission in developing this model legislation and recommend that states consider adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Adopted as proposed by the CCJ/COSCA Courts, Children and Families Committee July 30, 2008.

NAELA
National Academy of Elder Law Attorneys, Inc.
Leading the Way in Special Needs and Elder Law

1604 NORTH COUNTRY CLUB ROAD ● TUCSON, ARIZONA 85716-3102 ● 520/881-4005 ● 800/395-7204 ● 520/325-7925 FAX ● www.naela.org

February 13, 2008

David Nixon, Esq.
National Conference of Commissioners on Uniform State Laws
211 E. Ontario St., Suite 1300
Chicago, IL 60611

Dear Commissioner Nixon:

I am delighted to inform you that at the November, 2007 board meeting, the National Academy of Elder Law Attorneys (NAELA) Board of Directors voted unanimously to endorse the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). NAELA is a non-profit association that assists lawyers, bar organizations and others who work with older clients and their families. Established in 1987, the Academy provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

As you know, NAELA was actively engaged in the drafting process of the UAGPPJA by sending representatives to the meetings and providing numerous comments on the drafts. NAELA strongly supports the UAGPPJA because it is designed to help solve the increasing problems of multiple jurisdiction across state line, problems relating to transfer, and out of state recognition issues that negatively impact our clients.

Contested cases in which courts in more than one state have jurisdiction are becoming more frequent. There is a need for an effective mechanism for resolving multi-jurisdictional disputes. Article 2 of the UAGPPJA is intended to provide such a mechanism. Oftentimes, problems arise even absent a dispute. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect. Article 3 of the UAGPPJA is designed to provide an expedited process for making such transfers, thereby avoiding the need to re-litigate incapacity and whether the guardian

Additional Offices:
1156 15th Street NW, Suite 600, Washington DC 20005
355 Lexington Avenue, 15th Floor, New York, NY 10017
1100 Johnson Ferry Road, Suite 300, Atlanta, GA 30342

NAELA
National Academy of Elder Law Attorneys, Inc.
1604 NORTH COUNTRY CLUB ROAD ● TUCSON, ARIZONA 85716-3102 ● 520/881-4005 ● 520/325-7925 FAX ● www.naela.org

or conservator appointed in the first state was an appropriate selection. Article 4 of the UAGPPJA also helps to resolve important problems relating to out-of-state recognition and enforcement. These provisions will greatly improve the nation's guardianships system and save many of our clients and their families time and money when resolving these issues.

The mission of the National Academy of Elder Law Attorneys is to establish NAELA members as the premier providers of legal advocacy, guidance and services to enhance the lives of people with special needs and people as they age. Helping to enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act across the United States will help our organization fulfill our important mission.

Sincerely,

G. Mark Shalloway

G. Mark Shalloway, CELA
President, National Academy of Elder Law Attorneys

NATIONAL COLLEGE OF PROBATE JUDGES

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

WHEREAS guardianship and protective proceedings for adults has left Courts facing many dilemmas and challenges concerning jurisdiction over these proceedings,

WHEREAS the National College of Probate Judges has performed groundbreaking work on this issue in the National Probate Court Standards for some time in order to provide statutory direction for this complex problem,

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward this work by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings order of a foreign country, provides for a process of communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings, provides that a court on its own motion may order the testimony of a person to be taken across state lines and may prescribe the manner in which and terms upon which the testimony is taken,

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act, if enacted, will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it,

WHEREAS the National College of Probate Judges is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the American Association of Retired Persons, National Guardianship Association, and the National Association of Elder Law Attorneys,

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions.

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults,

THEREFORE BE IT RESOLVED that the National College of Probate Judges supports the efforts of the National Conference of Commissioners on Uniform State Laws in its effort to create the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

National Guardianship Foundation

P.O. Box 5704 - Harrisburg, PA 17110 - (717) 238-4689 phone - (717) 238-9985 fax
www.guardianship.org

May 7, 2007

National Conference of Commissioners on
Uniform State Laws (NCCUSL)
c/o David G. Nixon, Chairman
211 E. Ontario Street
Suite 1300
Chicago, IL 60611

Dear Mr. Nixon:

The National Guardianship Foundation (NGF) Board of Trustees met in late April and voted unanimously to endorse the attached resolution related to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Should you have any questions, please don't hesitate to contact me directly. Thank you for your hard work on this important issue.

Sincerely,

Denise R. Calabrese

Denise R. Calabrese
Executive Director

cc: NGF President Gary Beagle
NGA Executive Director Terry Hammond
David English

NATIONAL GUARDIANSHIP FOUNDATION

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

WHEREAS population mobility has left courts facing many dilemmas and challenges concerning which of several states have jurisdiction over guardianship and protective proceedings;

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward the groundbreaking work of the National College of Probate Judges in its National Probate Court Standards on interstate jurisdiction transfers by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions;

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings orders, and facilitates the communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings;

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it;

WHEREAS the National Guardianship Foundation is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the AARP, American Bar Association, the National Guardianship Association, the National College of Probate Judges, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, and other interested groups; and

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can help effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults;

THEREFORE BE IT RESOLVED that the National Guardianship Foundation supports the efforts of the National Conference of Commissioners on Uniform State Laws to promulgate the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.