

factsheet

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Adult Guardianship Jurisdiction

Due to the impact of dementia on a person's ability to make decisions and in the absence of other advanced directives, people with Alzheimer's disease may need the assistance of a guardian.

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

Organizations Supporting UAGPPJA

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

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

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

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

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

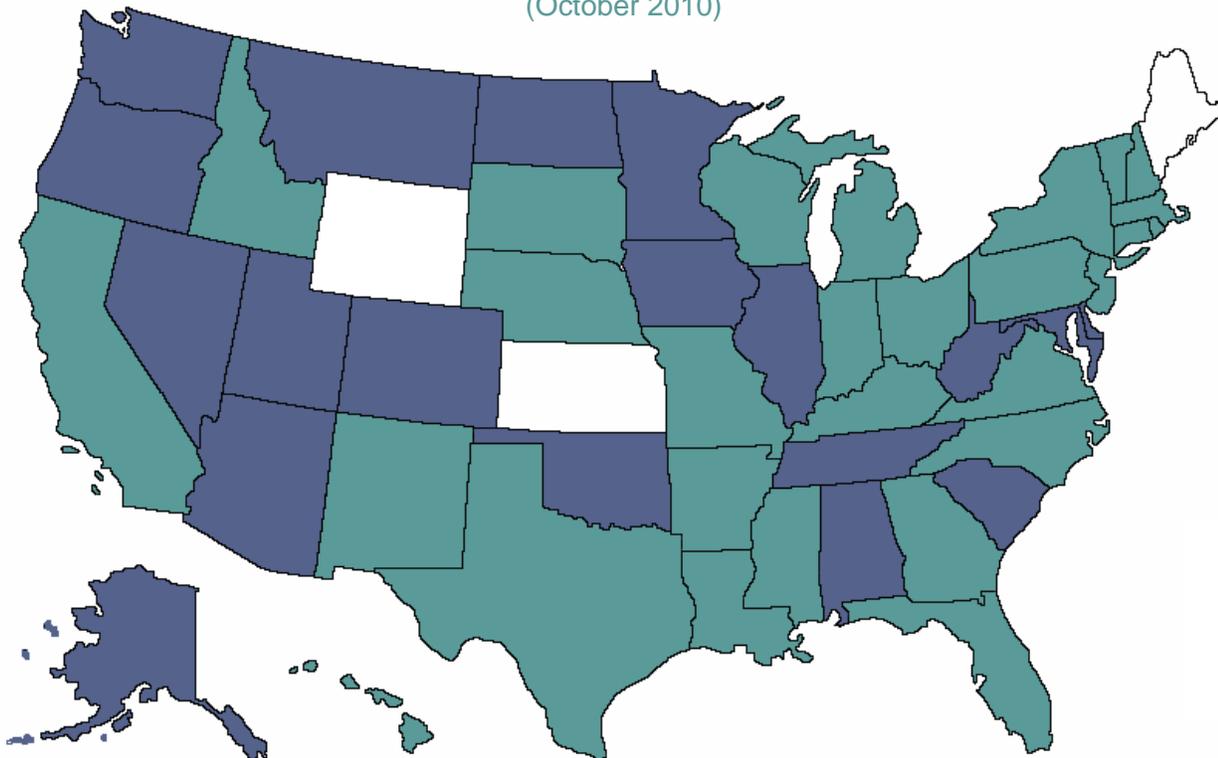
UAGPPJA would simplify the process for resolving a jurisdictional adult guardianship issue – allowing cases to be settled more quickly, and providing more predictable outcomes.

- To effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA. And, ultimately, it will only work if a large number of states adopt it.
- In order for a state court system to follow UAGPPJA, the state legislature must first pass UAGPPJA into law.
- As of October 2010, 19 states and the District of Columbia have passed UAGPPJA.

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

- The disorganized array of state adult guardianship laws and the lack of communication between states is a barrier to addressing end-of-life issues.
- Simplifying one aspect of the adult guardianship system by enacting UAGPPJA may encourage more states to dedicate increased resources to meaningful end-of-life systems change.

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



 Enacted UAGPPJA

 Planned Legislation

CASE STUDIES IN ADULT GUARDIANSHIP JURISDICTION

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

Scenario #1: Transferred Caregiving Arrangements

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

Scenario #2: Snowbirds

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

Scenario #3 – Interstate Health Markets

(Interstate Health Markets are local medical centers accessed by persons from multiple states.)

Jack, a northern Indiana man with dementia, is brought to a hospital in Chicago because he is having chest pains. As it turns out, he is having a heart attack. While recuperating in the Chicago hospital, it becomes apparent to a hospital social worker that Jack's dementia has progressed, and he now needs a guardian. Unfortunately, Jack does not have any immediate family, and his extended family lives at a distance. The social worker attempts to initiate a guardianship proceeding in Indiana. However, she is told that because Jack does not intend to return to Indiana, she must file for guardianship in Illinois. The Illinois court then refuses guardianship because Jack does not have residency in Illinois. Even though the Indiana court is located within miles of the Illinois state line, no official channel exists for the two state courts to communicate about adult guardianship because only Illinois has enacted UAGPPJA.

Scenario #4 – Better Caregiving with UAGPPJA

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