Guardianship Monitoring: A National Survey of Court Practices

This In Brief summarizes the findings of the AARP Public Policy Institute report, Guardianship Monitoring: A National Survey of Court Practices, by Naomi Karp of the Public Policy Institute and Erica Wood of the American Bar Association (ABA) Commission on Law and Aging. Guardianship is a powerful legal tool that can bring good or ill for an increasing number of vulnerable adults with cognitive impairments, affording needed protections, yet drastically reducing fundamental rights. A judge appoints a guardian upon finding that an adult lacks capacity to make decisions for him or herself.

Court monitoring of guardians is essential to ensure the welfare of incapacitated persons, identify abuses, and sanction guardians who demonstrate malfeasance. The need for effective court monitoring is heightened by ongoing demographic trends that will sharply boost the number of guardianships in coming years. These trends include: growing numbers of older people, individuals with Alzheimer’s disease and other dementias and people with intellectual disabilities; the rising incidence of elder abuse; and the increasing number of guardianship agencies that must make critical decisions about multiple wards, sometimes with high caseloads.

The purpose of this research report is to better understand how courts are monitoring the performance of guardians. It is the first detailed look at adult guardianship monitoring practices in over fifteen years. This paper reports the findings of a 2005 national survey of experts with frontline experience – 387 judges, court managers, guardians, elder law attorneys and legal representatives of people with disabilities. AARP and the ABA are continuing this research with site visits and intensive interviews in jurisdictions with exemplary monitoring practices. AARP will publish a follow-up report articulating recommended steps for replication around the country.

KEY FINDINGS

Reporting by Guardians

- 74% of respondents stated that their court requires annual reports on the ward’s personal status.
- 83% reported that their court requires annual accountings of the ward’s finances.
- Over 34% reported that their court requires guardians to file forward-looking plans, although only 10 state statutes require them.
- Almost 64% said the court has an effective notification system in place to alert guardians of report due dates.

* PPI Report #2006-14
©2006, AARP. Reprint with permission only.
AARP, 601 E St., NW, Washington, DC 20049
http://www.aarp.org/ppi 202-434-3910 ppi@aarp.org
INB Number 126
Verification, Investigation and Sanctions

- Over one-third of respondents said no one is designated to verify the information in reports and accountings; only 16% reported that someone verifies every report.
- Over 40% report that no one is assigned to visit individuals under guardianship, and only one-fourth said that someone visits regularly.
- The most common sanction for guardian malfeasance, used by over 67% of respondents, is removing the guardian and appointment of a successor guardian.

Court-Community Interaction

- Only 11% of respondents reported that the court collaborates with community groups on training.
- Over one-fifth said that no guardian training resources are available.

Use of Technology

- 22% of respondents said their court does not use computer technology in monitoring.
- Only 4% said their court emails guardians about reporting status.
- Only 27.6% said the court has a computerized data system to track the number of adult guardianship filings and dispositions.

Funding

- 43% of respondents said funding for monitoring is unavailable or insufficient.
- 30% report that their court has no specific funding for monitoring.

CONCLUSIONS

Salient themes in the survey findings include the following:

- Guardianship monitoring practices show wide variation, as they did in a similar 1991 study.
- Reporting practices have advanced over the past 15 years in key aspects, including more frequent requirement of personal status reports, greater compliance with statutory reporting requirements, and greater use of guardianship plans.
- Verification of guardian reports and accounts, as well as visits to vulnerable individuals under guardianship, is frequently lacking.
- Use of technology in monitoring is minimal despite vast opportunities for web-based and email monitoring techniques as well as computerized data collection.
- Guardian training has increased but remains a compelling need.
- Courts and community groups rarely collaborate on guardianship monitoring.
- Funding for guardianship monitoring remains minimal.