

League of Women Voters of Nebraska
Resource list compiled by Patte Newman, President LWVLL
January 1, 2011

Summary of Resources and Legislation Available on Vulnerable Adults:

The League of Women Voters of Nebraska voted in spring of 2010 to look at some of the very vast issues involving vulnerable adults. Patte Newman and Mary Boschult of LWVLL and Liz Rea of LWVGO volunteered to attempt to start this research.

As suspected the topic encompasses a broad spectrum of issues ranging from populations of the developmentally disabled or mentally incompetent, to assisted living facilities and low income elderly.

In order to present the LWVNE with information in time for identifying priorities for the 2011 legislative session, we have limited our scope to several items.

Chief Justice Mike Heavican appointed a 14 member task force to study the issue of court appointed guardianships in April after it became clear from several well publicized cases in Omaha that proper oversight was lacking. It is estimated that more than 12,400 incapacitated Nebraskans have guardians to oversee their health or conservator agreements to keep track of their financial situations. The committee made several short term recommendations including legislation to set up a statewide database of guardians and conservators, requiring the posting of bonds, background checks and various documentation requirements. These proposals will be forthcoming by Senators Wightman, Coash and Ashford. More than 55 recommendations were made with questions as to how a reform of the system would happen.

Additionally, Senator Gwen Howard proposed several bills involving assisted living facilities.

We recommend that League members continue to compile resources on the variety of issues that could be considered application to this broad population of vulnerable adults so that legislative liaisons are ready to quickly respond to priorities in their legislative dockets. It is estimated that nationally, the elderly population will double from 2000 to 2030 to more than 71 million.

Information on proposed legislation, studies and resources available on vulnerable adults:

1. The **Elder Rights Training Video** can be viewed at:
<http://www.dhhs.ne.gov/ags/training.htm>

2. The **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT** has been talked about. (Appendix A contains UGPPA and explanation of why it needs to be adopted.)
The APS act needs some attention, too.

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3. Final Report of the Joint Committee on guardianships and conservatorships October 1, 2010

Go to the Supreme Court website: supremecourt.ne.gov
On right side of the page on Quick Links. Click on Reports and Publications
Scroll down to Reports and Special Projects
The Guardian Conservator Committee report is the second on the list.

For more information on how we intend to implement these recommendations, call
Debora Brownyard (471 2766) on my staff. She and staff from Senators Wightman,
Coash and Ashford's offices provided the staff support to this group.

Janice Walker, State Court Administrator, Lincoln NE 68509, 402-471-3730

4. Legislation Previously proposed (from Mark Intermill, AARP)

a. LB 902 would establish a consumer disclosure process for assisted living facilities.

The Department of Health and Human Services would create a standardized format for
collecting information about assisted living facilities that would be useful to consumers as
they decide if they want to move into assisted living or which facility is most likely to meet
their needs.

Information about the services provided by the assisted living facility, the charges for
those services, the facility's participation in Medicaid, the circumstances that would lead
to discharge from a facility and the process for developing and updating a resident
services agreement.

Why: Consumer expectations about assisted living don't always match up with assisted
living facility's capacity to meet those needs.

A 2008 survey of 967 AARP members in Nebraska that was conducted in July and
August of 2008 sought information from respondents about where they would like to live
under four care scenarios.

In one scenario, the following question was posed. "If you had a medical condition that
required regular monitoring or treatment by a nurse, where would you most want to live?
The most frequent response was "in my home with paid services to help me". Forty-one
percent of respondents selected that option. The second most frequent response, with
35% of respondents was assisted living.

Nebraska statutes effectively prevent nurses employed by an assisted living facility from
engaging in the full scope of nursing practice. There are consumer expectations for
assisted living facilities that the facilities may not be able to meet.

It is important that a consumer understand what they can expect from an assisted living
facility and what will be expected of them by the facility.

Eight states have developed a consumer disclosure process; Maryland, Minnesota, New
Hampshire, Ohio, Oregon, Texas, Vermont and Washington.

Texas has had a successful consumer disclosure process in effect for about ten years.
The program was profiled in a Government Accounting Office report entitled "Assisted
Living: Examples of State Efforts to Improve Consumer Protections".

<http://www.gao.gov/new.items/d04684.pdf>

The section of the report describing the Texas disclosure statement concludes that “the Texas disclosure form addresses several challenges that consumers of assisted living can face. The categories of information provided on the form help to describe for consumers, who often know little about the industry and may need to make a decision quickly, what facilities can and cannot do for their residents. They also highlight important issues, such as the facility’s discharge criteria, that prospective residents and their families should pay attention to in making their selection. In addition, having comparable information in a concise format for multiple facilities should make it easier to identify key differences among the facilities under consideration.”

In the concluding observations of the GAO report, it was noted that two of the state programs profiled had been discontinued due to funding reductions. But the report states that the Texas disclosure program along with programs in Florida and Georgia “have benefited from the important advantage that none of these programs required substantial resources to initiate and maintain.”

b. LB 903 would require the Department of Health and Human Services to develop criteria to evaluate the adequacy of disclosed practices of Alzheimer’s special care units to determine if those practices are adequate to warrant designation as an Alzheimer’s special care unit.

Why: The purpose of LB 903 is to try to answer a simple question - “what makes a special care unit special?”

There are 284 assisted living facilities in Nebraska. Forty-five of those facilities are listed as “Alzheimer’s Units” in the State of Nebraska’s Roster of Assisted-Living Facilities. Those 45 facilities are concentrated in 13 counties. Thirty-two of the 45 Alzheimer’s Units are located in Douglas, Sarpy or Lancaster Counties. Only two facilities are located in a county in which there are fewer than four assisted living facilities.

AARP’s concern is that by making a designation that a facility is an Alzheimer’s special care unit, for example by listing that information in the roster of assisted living facilities, the state is giving its imprimatur that the facility has programs and physical facilities in place that allow it to provide effective services to persons who have a dementia. The only indication that I can find in state documents that a given facility is an Alzheimer’s special care unit is the roster that is accessible on the Department of Health and Human Services website. A consumer who may have come across that document would be led to believe that the facility has met standards that indicate that it is capable of delivering adequate care for a person who has Alzheimer’s disease dementia.

c. LB 904 would amend the statutes that govern the operation of assisted living facilities in Nebraska.

The intent of the changes is to allow assisted living facilities to provide a service program and physical environment that minimizes the need for residents to move within or from the facility to accommodate their changing needs and preferences.

Specifically, LB 904 would establish a separate category of assisted living certification, called enhanced assisted living.

An assisted living facility operator could opt to seek an enhanced assisted living certificate to be able to serve those residents whose conditions may change and require additional support and services.

The Department of Health and Human Services would be responsible for developing requirements and standards for enhanced assisted living certificates

LB 904 would also require the Department of Health and Human Services to promulgate regulations which would

- 1) require at least one direct care staff to be on the premises and awake at all times;
- 2) provide for an annual survey of assisted living facilities
- 3) establish training requirements for cardiopulmonary resuscitation and first aid; and
- 4) require the development of a disaster-response plan for all assisted living facilities and training of staff in the implementation of the plan.

Why: Surveys conducted by AARP of its members in Nebraska have shown that if they have to move into a residential long-term care setting, Nebraskans prefer assisted living services.

An AARP survey of 967 Nebraskans over the age of 50 that was conducted in July and August of 2008 posed the following question. If you were living in an assisted living facility in Nebraska and the amount of assistance you needed increased, how important would it be for you to stay in the same facility and get all the care you needed instead of moving to a nursing home?

Extremely important	40%
Very important	47%
Somewhat important	9%
Not very important	1%
Not at all important	<.5%
No answer	2%

Assisted living affords a level of privacy and a degree of independent living that is not available in a nursing facility. Nebraska assisted living facility residents often find that they are asked to leave an assisted living facility before they think that they should have to – that the facility believes that their care needs are too great for the facility to provide.

The primary goal of LB 904 is to provide an opportunity for assisted living facilities to seek certification from the Department of Health and Human Services that will allow them to provide the services that they need to provide to retain and serve a resident whose need for care has increased. This would enhance the likelihood that the resident would be able to continue to live in an assisted living facility – which is where they want to continue to live.

The challenge that we face in resolving this issue is to strike a balance between safety and autonomy of assisted living facility residents. We want to make sure that assisted living residents are safe and are having their health and daily care needs met. But we also must recognize that these residents are independent individuals who have had a lifetime of connected independence. We need to make sure that they have an optimal degree of opportunity to pursue the type of life they want to pursue.

Other states have developed rules that have allowed assisted living facilities to continue to serve persons whose care needs are increasing.

We have drawn on the work of those states in developing this bill.

Nebraska does provide Medicaid reimbursement for assisted living facility services. 201 of the 284 licensed assisted living facilities in the state participate in the Medicaid program.

In order to qualify for Medicaid reimbursement, an assisted living resident must need nursing home level of care need. In other words, that person must have care needs that are appropriate for admission and Medicaid payment to a nursing facility. So we know that more than 70% of assisted living facilities have signed on to provide care for people who need nursing facility care. They have indicated that they are capable of meeting the needs of those individuals. This is a substantial change in state policy related to residential long-term care. But there is a compelling reason to take the issue on.

There will be a much larger number of older Nebraskans in 20 and 30 years than there are now. The state's population of persons over the age of 80 will double between now and 2040.

If we don't take begin to control of long-term care policy it, long-term care costs will take control of us, and future Legislatures will have a much more difficult fiscal challenge than we are facing today.

**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT
(2007)**

**David English
Reporter for Act
Current to 10/5/2007**

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 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 US 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 US 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

Similar problems of jurisdiction existed for many years in the US 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 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. 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 a 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 US state.

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Why Should States Adopt... UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT (2007)

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. UAGAPPJA 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.

Solving the Problem of Multiple Jurisdiction. The UAGAPPJA 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 circumstances, another state may proceed if it is the more appropriate forum.

Solving the Problem of Transfer. 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.

Solving the Problem of Out of State Recognition and Enforcement. 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. Once the order has been registered, the guardian appointed in another state may exercise the powers authorized in the order as long as they do not violate the laws of the registration state.

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.

Facilitates communication and cooperation between Courts of different jurisdictions. The act permits communication between courts and parties of other states and jurisdiction to respond to requests for assistance from courts in other states.

This Act will provide uniformity and reduce conflicts among the states. Because of the current absence of ways to resolve these typical interstate jurisdictional quandries, widespread passage of the act should result in significant judicial economy, reduction in litigation, and conservation of the ward's estate. 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.

<http://www.guardianship.org/UAGPPJA.htm>