

SB 202 Study: *Consideration of Recommendations for CFHHS Legislation*

At the May 2020 CFHHS meeting, Senator McNally and Senator Sands agreed to examine the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act of 2017 (Uniform Law) and, for discussion at the June CFHHS meeting, recommend portions of the Uniform Law that CFHHS may want to pursue as committee legislation. This paper describes those recommendations.

1. Require consideration of less restrictive alternatives in petitions for and orders appointing a guardian for an adult. This would require anyone petitioning for guardianship of an adult to include in the petition information about any less restrictive alternatives that have been considered or implemented and why less restrictive alternatives are insufficient to meet the adult's needs. In addition, a court order appointing a guardian for an adult must include a specific finding that the identified needs of the adult could not be met by a less restrictive alternative. A less restrictive alternative "means an approach to meeting an individual's needs which restricts fewer rights of the individual than would the appointment of a guardian." Examples of less restrictive alternatives include supported decisionmaking, technological assistance, or appointment of a representative payee or a health care or financial power of attorney.

Comments to the Uniform Law note that this requirement "emphasizes that guardianship is a last resort and that less restrictive alternatives are to be preferred. . . . These requirements serve to provide the court with important information relevant to whether guardianship is appropriate. These also prompt would-be petitioners to explore less restrictive alternatives."

2. Require a guardian of an adult to submit an individualized plan for the adult. This would require a guardian of an adult to file with the court a plan within 60 days of appointment and anytime there is a significant change in the adult's circumstances or anytime the guardian seeks to deviate significantly from the previously filed plan. The plan covers a variety of topics, including: (1) the adult's living arrangement; (2) social and educational activities the guardian will facilitate for the adult; (3) persons with whom the adult has personal relationships and how the guardian will facilitate visitation; (4) goals for the adult and how the guardian anticipates achieving those goals; (5) the anticipated nature and frequency of the guardian's visits and communications with the adult; (6) whether the adult has an existing plan and whether the guardian's plan is consistent with the adult's plan; and (7) how much the guardian intends to charge for the guardian's services. The guardian is required to provide copies of the plan to the adult and other persons entitled to notice. The adult and other persons entitled to notice may object to the plan. The court may approve the plan or direct the guardian to revise the plan. Any plan approved by the court must be provided by the guardian to the adult and other persons entitled to notice.

Comments to the Uniform Law note that a guardian's plan "serves as a tool for the guardian to identify the adult's needs and desires and as a guide for the guardian to meet those needs and respect those desires consistent with the guardian's duties and powers. The planning process creates an opportunity for guardians to consider and develop an approach to their role that is transparent and consistent with the requirements of this act." The existence of a guardian's plan provides for more meaningful monitoring of guardians and plays a role in avoiding subsequent problems by allowing persons entitled to receive notice of the plan an opportunity to identify potential problems before they occur. "From the guardian's perspective, this can be advantageous as well, creating a mechanism to alert the guardian to objections in advance of action, at a time when the guardian can still change course."