

EXECUTIVE SUMMARY

(NOTE: We have added this Executive Summary since submitting our paper to Congress.)

Guardianship, a form of civil commitment, can be dangerous to the health and wealth of all Americans! It has grown in epidemic proportion, and threatens the vulnerable elderly, disabled – and even the veterans of the current war on terror.

Historically, protective proceedings were described as “lunatic” proceedings. Today, “guardianizing” an innocent vulnerable person for nefarious purposes is becoming increasingly easier due to the generally vague and incomplete language of the law. “Incapacitated” now replaces “incompetent” in a number of state statutes, thereby exposing even persons with minor or temporary physical disabilities to a complete and potentially permanent loss of life, liberty and property, most often to the day they die.

Many proceedings involve rights violations and lack of due process at the inception. Once “guardianized,” a “ward of the state” does not even have the right to complain! These “wards” are treated as chattel.

When the family fights to protect their loved ones, they are maligned and treated as interlopers. They feel betrayed by government, after being forced into useless litigation which can run through generations (like Dickens' “Bleak House”). Many families are bankrupted and left drained emotionally and physically, possibly never to recover.

Although the states have “protective” statutes in place, which require “least restrictive alternative” and “family first,” those basic elements are not adhered to in most cases; the courts will often appoint professional fiduciaries instead. These third-party strangers then engage in exorbitant overbilling and easily bleed the estates for their own self-enrichment. Their fee applications are rubberstamped by uncaring, overworked or corrupt judges. Advance directives, wills and trusts can be ignored or overturned without concern for rules of procedure or evidence.

In the present economy, criminal activity by fiduciaries is increasing. A few states have begun to enhance criminal penalties for guardians and other fiduciaries. Guardianship abuse is clearly elder abuse and exploitation and must be recognized as such.

While the original purpose of guardianship was to “protect” and “conserve,” those elements appear to have been forgotten. Despite the growing trend and availability of community services, court-appointed fiduciaries will quickly remove wards from their homes for purposes of sale (sometimes to insiders at low prices), and dispose of their wards’ personal property (often destroying irreplaceable photographs and family heirlooms in the process). Wards are forced into nursing facilities for the

rest of their lives, against their will, despite family objections. When families complain, corrupt guardians often restrict or stop visitation altogether, effectively isolating their wards, causing them to feel abandoned or unloved by their family. Brainwashing techniques can be employed at this juncture. Judges most often allow the cruel isolation, relying on conclusory statements by fiduciaries against family, who are often prevented from defending themselves against these unproven allegations accepted by a judge as evidence, contrary to law.

Government, professional organizations and media have been reporting on guardianship problems for more than 20 years now, during which time guardianship has grown into a new major industry. In fact, guardianship is replacing family law as the new 'bread and butter' of the organized Bar. Although the major problems - lack of monitoring and oversight - have long been pointed out, they continue unabated. The time spent studying and discussing the problem has not brought any significant protection to the increasing number of innocent victims of fiduciary exploitation. The future for Boomers is bleak unless talk is replaced by action.

A growing problem is the "emergency" or temporary guardianship, which easily morphs into a permanent guardianship. There is often no notice prior to "hearings," which can take but five minutes, while control of a person's life and property is quickly given to strangers by the courts.

There is no accountability - neither the appellate process nor the grievance process provide relief to victims or their families desperately trying to free them. Guardianship has become a lifetime sentence to innocent people who have committed no crime, yet are afforded less rights and liberties than convicted felons.

In an appalling and paradoxical twist, when a ward's assets are fully drained by the fiduciary, the newly indigent ward becomes the financial responsibility of the American taxpayer, who now is forced to pick up the tab for the ward's remaining lifetime care through Medicaid. One of the indisputable ironies we are presenting here for resolution is the fact that the American taxpayer was also supposed to be protected by guardianship law, but has now become a victim as well.

Because complaints to various agencies and officials - both state and federal - fall on deaf ears, Congressional intervention is critically needed to force reform.

Our Table of Contents highlights the specific problems of unlawful and abusive guardianship and conservatorship.