



Disability and Guardianship Project Disability and Abuse Project

9420 Reseda Blvd. #240, Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

February 21, 2017

Senator Amy Klobuchar
United States Senate
302 Hart SOB
Washington, DC 20510

(www.disabilityandabuse.org/klobuchar-letter.pdf)

Re: [S. 182](#) – Amendments to Court-Appointed Guardian Accountability and Senior Protection Act to include all vulnerable adults and to monitor performance of court-appointed attorneys

Dear Senator Klobuchar:

Thank you for introducing S. 182 – a bill to include court-appointed guardianship improvement and oversight activities under the Elder Justice Act of 2009. Specifically, the bill would amend Section 2042(c) of the Social Security Act.

[Section 2042](#) deals with “Adult Protective Services Functions and Grant Programs.” Subdivision (c) authorizes the Department of Health and Human Services to make grants available to states that create demonstration programs pertaining to elder abuse prevention, detection, and response. This bill would amend subdivision (c) to specifically authorize grants for demonstration programs that “assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, including the appointment and the monitoring of the performance of court-appointed guardians and conservators.”

We applaud the intent of this bill but think it can be strengthened with two changes.

First, the bill could clarify that the guardianship improvement demonstration programs receiving grants should focus on all wards and conservatees and not just seniors. The scope of the services of APS agencies is not limited to people over the age of 60. As you can see from a [2013 National Survey](#) conducted by NAPSA (National Adult Protective Services Association), while the terminology may vary from state to state, all vulnerable adults including those between the ages of 18 and 59 come under the protective umbrella of APS agencies.

State laws recognize that vulnerability to abuse and exploitation is a function of disability rather than age. Similarly, adult guardianship and conservatorship proceedings in all states provide protection to all vulnerable adults with cognitive and communication disabilities over the age of 18. No distinction is made in these proceedings between people over 60 and those under 60. An amendment to S. 182 could clarify that the bill is intended to promote improvements in guardianship and conservatorship proceedings for elders and dependent adults regardless of age.

Second, the provision calling for an assessment of such proceedings could be amended to read “including the appointment and the monitoring of the performance of court-appointed guardians and conservators and court-appointed attorneys.” This would insure that such proceedings are assessed from start to finish, not just after a guardian or conservator has been appointed. The initial proceedings from the filing of the petition to appointment of a guardian are a critical stage.

National organizations advocating for reform of guardianship and conservatorship systems have documented abuses by these systems at all stages of the proceedings, including the initial stages which involve assessment and adjudication. As currently written, S. 182 only focuses on the post adjudication stage – after a guardian or conservator has been appointed. This misses some of the most critical proceedings and stages when both systemic and individual abuses occur. We therefore believe that this omission is an oversight – one that easily can be corrected with an amendment.

[Court-appointed attorneys](#) play a vital role from the time a petition is filed until a decision is made on whether to appoint a guardian and establish the terms of the guardianship. It is in this pre-adjudication stage that a respondent needs effective advocacy and defense in order to ensure that fundamental rights are not unnecessarily restricted. The research of our organization has found that during this phase, guardianship respondents are being systematically and routinely denied effective legal advocacy and defense. This not only violates federal due process, but it also deprives seniors and other vulnerable adults access to justice as guaranteed by the Americans with Disabilities Act.

Many state supreme courts have created advisory committees called WINGS (Working Interdisciplinary Network of Guardianship Stakeholders). These committees focus on guardianship reform. They do not limit their activities to seniors in guardianship proceedings but include all adults with cognitive and other disabilities. Similarly, state supreme courts in Pennsylvania, Nevada, and elsewhere have established task forces to review ways to improve guardianship and conservatorship proceedings. These task forces have also taken an inclusive approach by seeking to improve these systems for all of the adults who they serve and not just seniors.

Since state APS agencies already focus on elder and dependent adult abuse, and since WINGS agencies and state task forces also focus on adults with cognitive disabilities regardless of age in their review of guardianship systems, S. 182 could adopt this inclusive approach as well.

Furthermore, the issue of court-appointed attorneys in guardianship and conservatorship proceedings has been the focus of attention in several states. The WINGS agency in [Washington State](#) is currently studying this issue. Task Forces in [Pennsylvania](#) and [Nevada](#) included court-appointed attorneys in recent policy reports. The [Judicial Council of California](#) is currently considering new court rules to improve the performance of such attorneys in conservatorship proceedings.

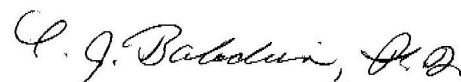
We therefore respectfully encourage you to consider amending S. 182 to specifically include all adults with cognitive disabilities who find themselves embroiled in guardianship and conservatorship proceedings, and to add “court-appointed attorneys” to the scope of demonstration projects.

If we can be of any assistance on this matter, please have your staff contact us.

Respectfully submitted:



Thomas F. Coleman
Legal Director
tomcoleman@spectruminstitute.org



Nora J. Baladerian, Ph.D.
Executive Director
nora@disability-abuse.com

cc: Co-sponsors Sen. John Cornyn and Sen. Catherine Cortez Masto