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**MEMORANDUM**

November 8, 2017

**TO:** Representative Jeni James Arndt  
**FROM:** Anne Wallace, Research Analyst, 303-866-4364  
**SUBJECT:** Colorado Guardianship Laws

**Summary**

This memorandum summarizes the law regarding guardianship of incapacitated persons in Colorado, including the appointment, duties and powers, and termination of guardianship. The memorandum also includes information on audits conducted on the oversight of guardianship.

**The Uniform Guardianship and Protective Proceedings Act**

Laws regarding the appointment, duties and powers, and termination of guardianship for incapacitated adults are found in Colorado's Probate Code. This section of law was revised in 2000 through legislation known as the Uniform Guardianship and Protective Proceedings Act (UGPPA), which was based on a model law written and recommended by the National Conference of Commissioners on Uniform State Laws (commission). According to the comments included in the UGPPA, the language in the law is meant to emphasize limiting guardianship powers whenever possible and to ensure guardianship decisions are made based upon the best interests of and with the cooperation of the incapacitated person whenever feasible.

In addition to Colorado, Alabama, the District of Columbia, Hawaii, Massachusetts, and Minnesota have adopted the uniform law. The state that is discussed in the *New Yorker* article, Nevada, has not adopted the law.<sup>1</sup>

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<sup>1</sup>Uniform Law Commission. *Guardianship and Protective Proceedings Act (1997/1998)*. Accessed at: [http://www.uniformlaws.org/Act.aspx?title=Guardianship%20and%20Protective%20Proceedings%20Act%20\(1997\)](http://www.uniformlaws.org/Act.aspx?title=Guardianship%20and%20Protective%20Proceedings%20Act%20(1997))

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## Overview of the Process for Appointing Guardianship for an Incapacitated Adult in Colorado

**Petition for guardianship.** Colorado law allows any interested person over the age of 21, an adult protective services agency, or a county department of social services to file a petition in district court to appoint a guardian for an adult whom the petitioner believes to be incapacitated. This adult is referred to as the respondent in court proceedings. An incapacitated adult is defined as a person who is unable to effectively receive and/or evaluate information or make or communicate decisions to such an extent that he or she lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.<sup>2</sup>

The petitioner must include the following information when filing to appoint guardianship:

- a description of the alleged incapacity;
- the reason why limited guardianship is not appropriate (if requesting unlimited guardianship);
- the powers and duties the guardian would require;
- the reason the petitioner has priority for appointment as guardian (if the petitioner is requesting to be appointed guardian);
- contact information for the respondent, the respondent's immediate family members, and caregivers;
- information on the respondent's assets; and
- information on the fee that the proposed guardian plans to charge the respondent, if applicable.<sup>3</sup>

After receipt of a petition and appropriate paperwork, the court will set a date and time for a hearing and will assign a court visitor to the case to investigate the necessity of guardianship.<sup>4</sup> The UGPPA mandated that a court visitor be appointed and expanded the duties and reporting requirements of the court visitor. The court visitor must interview both the respondent and the proposed guardian and file a written report with recommendations regarding the scope of guardianship and information on the respondent's preferences for guardianship. The court visitor must also inform the respondent of his or her right to request or retain a lawyer. The respondent also has the right to request a professional evaluation of his or her alleged impairment ahead of the hearing.<sup>5</sup>

**Guardianship hearing.** Both the proposed guardian and the respondent are required to attend the guardianship hearing, unless they are excused for good cause. At the hearing, the respondent is permitted to present evidence and may question or examine any witnesses. Any person may request permission from the court to participate in the hearing.<sup>6</sup>

**Guardianship appointment criteria.** The UGPPA updated the list of persons that the court should prioritize when appointing a guardian. The persons are listed in the following order:

- a person currently acting as guardian for the respondent;
- a person nominated as guardian by the respondent;

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<sup>2</sup>Section 15-14-102 (5), C.R.S.

<sup>3</sup>Section 15-14-304, C.R.S.

<sup>4</sup>Colorado Judicial Branch. *Guardianship for Adults*. Accessed at: [https://www.courts.state.co.us/Self\\_Help/adultguardianship/](https://www.courts.state.co.us/Self_Help/adultguardianship/).

<sup>5</sup>Section 15-14-305, C.R.S.

<sup>6</sup>Section 15-14-308, C.R.S.

- a person or agent appointed by the respondent under a durable power of attorney;
- the spouse or partner in a civil union with the respondent;
- an adult child of the respondent;
- a parent of the respondent or persons named in the will of a deceased parent; or
- an adult whom the respondent has resided with for more than six months prior to the petition.

The court may decline to appoint a person who has priority, but must show good cause when doing so. According to the statute comment published by the commission, professional guardians are not given priority in statute because priority should be placed with persons that have a personal relationship with the respondent. Professionals may still be appointed guardianship in cases where no one with priority is available or willing to act as guardian, or the court decides against appointing a person with priority when acting in the respondent's best interest.<sup>7</sup>

A guardian is appointed when the court finds that the respondent is incapacitated and his or her needs cannot be met by any less restrictive means, including with technological assistance. The court must grant the guardian only the powers necessitated by the ward's limitations and needs. The guardian must deliver a copy of the appointment, and a notice of the right to request termination or modification of the order to the ward and those persons listed on the initial petition.<sup>8</sup>

***Guardian duties and powers.*** The specific duties of guardians are outlined in statute. Guardians must act in the ward's best interest at all times and encourage the ward to participate in decisions wherever possible. Specifically, guardians are required to maintain or form a personal relationship with the ward, take reasonable care of the ward's property, expend and conserve money responsibly for the ward, and immediately notify the court of any changes in the ward's conditions.<sup>9</sup>

Unless the guardian's powers are limited by the court, he or she has the power to essentially take custody of the ward and make decisions regarding the ward's living situation and health care. The guardian is also permitted to apply for or receive money on the ward's behalf (i.e., insurance benefits, Social Security, etc.).<sup>10</sup>

The UGPPA requires guardians to submit a written report to the court within 60 days of appointment that describes the ward's condition, presents a personal care plan for the ward, and outlines the assets of the ward that are subject to the guardian's control. In addition, the guardian must file an annual report with the court detailing the condition and living arrangements of the ward, services provided for the ward, and a description of the guardian's relationship with the ward.<sup>11</sup>

***Emergency guardianship.*** When filing a petition requesting guardianship, the petitioner may request that an emergency guardian be appointed. The court must find that complying with normal procedures (i.e., notifying all interested parties) would likely result in substantial harm to

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<sup>7</sup>Section 15-14-310, C.R.S.

<sup>8</sup>Section 15-14-311, C.R.S.

<sup>9</sup>Section 15-14-314, C.R.S.

<sup>10</sup>Section 15-14-315, C.R.S.

<sup>11</sup>Section 15-14-317, C.R.S.

the respondent's health, safety, or welfare. The court must also find that no other person has the authority and willingness to act (i.e., a durable power of attorney). If an emergency guardian is granted, the respondent must be notified as soon as possible within 48 hours, and an attorney is immediately appointed for the respondent. A hearing must be set within 14 days regarding the appropriateness of the guardianship. An emergency guardian may be appointed for a term no longer than 60 days.<sup>12</sup>

**Termination of guardianship responsibilities.** Guardianship is terminated when a ward passes away or upon order of the court. An order of the court for termination may be granted when the court finds that the ward no longer meets the standard for establishing the guardianship. The court may also decide to modify the duties of the guardian if they are found to be excessive or insufficient. A petition to modify or terminate guardianship may be filed by a ward, guardian, or another interested person. Specific court procedures for termination proceedings are described in statute.<sup>13</sup>

**Open records laws.** According to Chief Justice Directives, the court records and files for probate cases are open, unless statute or specific court order declares the records to be private or confidential. State law prohibits public access to criminal background checks, credit reports, and drivers' license information. In addition, medical, sociological, psychological, and psychiatric records submitted in court may only be accessed by the person of interest in the case.<sup>14</sup>

## **Audits on the Judicial Branch Oversight of Guardianship**

Following the passage of the UGPPA, two performance audits have been conducted on the Colorado Judicial Branch's oversight of guardianship of incapacitated adults. The first audit, conducted in 2006 by a contractor of the State Auditor's Office, found that appointed guardians were failing to file an initial personal care plan for the ward and/or annual reports with the courts, and the courts often did not identify or obtain the missing reports from the guardians. The audit also found concerns with fees charged by guardians, including different fees for the same services, professionals charging fees for nonprofessional services, and excessive fees. The audit report provided a number of recommendations to the Judicial Branch to clarify guardianship procedures, requirements, and fees.<sup>15</sup>

A second performance audit was conducted by the State Auditor's Office in 2011 on oversight of guardianships, which also found that guardians were not always submitting statutorily required reports, and that courts were not properly reviewing or monitoring the cases to ensure reports were submitted with the required information. The audit also found that courts did not always obtain the proper background information before guardianship appointment, the respondent was not always appointed a court visitor or lawyer when required, and the court's case tracking technology was inadequate. The audit included several recommendations to clarify proper procedures to Judicial Branch employees, including formulating Chief Justice Directives, updating the *Trial Resource Court Manual*, and providing court employee training.<sup>16</sup>

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<sup>12</sup>Section 15-14-312, C.R.S.

<sup>13</sup>Section 15-14-318, C.R.S.

<sup>14</sup>Office of the State Court Administrator. *Reference Guide to State Statutes Governing Access to Court Records*. August 2008.

<sup>15</sup>Clifton Gunderson LLP. *Oversight of Probate Cases: Colorado Judicial Branch Performance Audit*. September 2006.

<sup>16</sup>Office of the State Auditor. *Judicial Branch Oversight of Guardianships and Conservatorships: Performance Audit*. September 2011.