



**Testimony of  
Naomi Karp, J.D.,  
Senior Strategic Policy Advisor  
AARP Public Policy Institute**

**On behalf of AARP**

**Submitted to the**

**Senate Judiciary Committee - Subcommittee on Administrative  
Oversight and the Courts**

**Regarding**

**Protecting Seniors and Persons with Disabilities – An Examination of  
Court-Appointed Guardians**

**On September 22, 2011**

**AARP  
601 E Street, NW  
Washington, DC 20049**

For further information, contact:  
Larry White  
(202) 434 3770  
Government Affairs

Chairman Klobuchar, Senator Sessions and distinguished members of the Subcommittee, thank you for giving AARP the opportunity to address the critical topic of protecting older adults with court-appointed guardians. I am Naomi Karp, Senior Strategic Policy Advisor in the AARP Public Policy Institute.

Guardianship is a powerful legal tool that can bring good or ill for an increasing number of vulnerable adults. It provides necessary decision-makers for people with diminished capacity, and protects them from abuse—yet it also removes fundamental rights and may increase opportunities for abuse of the very people we strive to protect.

A state court judge appoints a guardian who steps into the shoes of an incapacitated adult, and who makes judgments about property, medical care, living arrangements, lifestyle and potentially all personal and financial decisions.

And the number of these guardianship appointments will continue to grow dramatically, due to the increasing incidence of Alzheimer's disease and other dementias, the extended lifespan of people with intellectual disabilities, and the rising incidence of elder abuse, for which guardianship can be a remedy. Data are scarce, but the National Center for State Courts recently estimated that 1.5 million adults—and perhaps more—have guardians. In other words, there are as many people with court-appointed guardians as there are residents in US nursing homes at any given time.<sup>1</sup> Our federal and state governments have long-standing and comprehensive structures in place to protect nursing home residents—but who is guarding the guardians?

AARP has long advocated that individuals subject to guardianship receive full due process rights, and that once guardians are appointed, courts fully monitor cases to protect vulnerable adults, identify abuses, and sanction guardians who demonstrate malfeasance.

When a guardian is abusive, he or she is cloaked in the court's authority and can be a wolf in Little Red Riding Hood's cape—often with no one protecting grandmother. The victim may not know what is happening or may not be able to seek help. Abusers often isolate their victims—and people with cognitive impairments are easier to isolate. We know that the majority of guardians are

---

<sup>1</sup> <http://www.cdc.gov/nchs/fastats/nursingh.htm>

family members. A national elder abuse prevalence study found that 5.2% of older adults experience financial mistreatment by a family member.<sup>2</sup> These known cases are the tip of the iceberg—as are cases of abuse by others in positions of trust.

AARP's Public Policy Institute, with the American Bar Association Commission on Law and Aging, spent two years studying court monitoring of guardians. We found many troubling signs, although there are some bright spots. In our 2006 survey of judges, court staff, lawyers, guardians and other stakeholders, we learned that we still have a long way to go.<sup>3</sup> For example, we found that:

- Although almost all states require guardians to file annual reports and accounts, one third of survey respondents said no one at their court verifies or investigates these reports.
- 40 percent of respondents said that no one is assigned to visit the wards—the only real way to see how they are faring.

These failures are not deliberate—the fact is that most courts with guardianship jurisdiction simply lack the staff, the resources, the knowledge and the time to effectively monitor.

In 2007, we looked for promising court practices around the country that can be models for the rest of the country.<sup>4</sup> The good news is that some dedicated judges and court administrators are making great strides by harnessing technology, using volunteers, collaborating with the aging network and using some basic funding towards sustained oversight on behalf of this vulnerable population. Some of the key practices include:

- Requiring that guardians file written prospective financial and personal care plans to serve as a baseline for later review;
- Visits to the incapacitated person at home by staff investigators or trained volunteers who serve as the “eyes and ears of the court;”

---

<sup>2</sup> R. Acierno, M. A. Hernandez, A. B. Amstadter, H. S. Resnick, K. Steve, W. Muzzy, and D. G. Kilpatrick, Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health* (Feb. 2010): 292–7.

<sup>3</sup> N. Karp and E. Wood, *Guardianship Monitoring: A National Survey of Court Practices*. AARP Public Policy Institute, 2006. [http://assets.aarp.org/rgcenter/consume/2006\\_14\\_guardianship.pdf](http://assets.aarp.org/rgcenter/consume/2006_14_guardianship.pdf)

<sup>4</sup> N. Karp and E. Wood, *Guarding the Guardians: Promising Practices for Court Monitoring*. AARP Public Policy Institute, 2007. [http://assets.aarp.org/rgcenter/il/2007\\_21\\_guardians.pdf](http://assets.aarp.org/rgcenter/il/2007_21_guardians.pdf)

- Random audits of accountings, with tiered levels of scrutiny; and
- Linkage with community groups and the aging network for training, information and referral to services.

One of the most promising practices we found, in Senator Klobuchar's state, is a system of electronic filing of accountings by guardians of property. Initiated in Ramsey County, MN, the software allows guardians to submit the annual accounting in a uniform online format. The system "does the math," thereby avoiding common accounting errors. Records can be attached as verification. But most importantly, the system permits built-in "red flags" signaling problematic cases. If the closing balance one year doesn't match the tally of assets when the next year begins, or extraordinary expenditures are included, the red flag pops up, allowing court staff to investigate irregularities that might signal a "guardianship gone bad." Systems like this are inexpensive, they're not rocket science, they can save human labor and pay off in protections for adults vulnerable to exploitation. We should encourage and facilitate replication of similar types of e-filing systems.

In its July 2011 report on guardianship oversight, the GAO highlighted the nine areas of promising monitoring practices identified in the AARP report, and urged the federal government to evaluate these practices. AARP agrees that much remains to be done in this arena.

An additional area of protective activity needing enhancement is criminal background checks and other screening of proposed guardians before appointment. As noted by GAO, only 13 states require independent criminal background checks in advance, and even fewer prohibit appointment of guardians with criminal histories. AARP supports investigation of the background and qualifications of prospective guardians. As noted in AARP's report on criminal background checks for home care workers,<sup>5</sup> these can be vital ways to prevent access to vulnerable adults by those who pose threats to safety and property—but the design of an accurate, efficient and effective system that selects an appropriate set of disqualifying crimes is not a simple matter. Further research and piloting of background screening programs for guardians are needed. A workable example that we have supported is the

---

<sup>5</sup> S. Galantowicz, S. Crisp, N. Karp and J. Accius, *Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers*. AARP Public Policy Institute, September 2009. <http://assets.aarp.org/rgcenter/ppi/lrc/2009-12.pdf>

background check pilot for long-term care employees that was recently enacted as part of the new health care law.

AARP appreciates this opportunity to share information on guardianship oversight and commends the Sub-committee for its efforts. We are pleased to submit for inclusion in the record both of the AARP guardianship monitoring studies.

In closing, I'd like to quote Judge Steve King, a Texas judge with a comprehensive monitoring program: "People will not always do what you expect, but will do what you INSPECT." AARP looks forward to working with members of Congress from both sides of the aisle to help give hard-working courts around the country the opportunity to **inspect** where needed to **protect** vulnerable older people.