



Summary Report Third Colloquium: Proposal for a Public Guardianship Program

From: Heather L. Connors, Ph.D., Director of Research, Guardian Community Trust, Inc.

To: Registrants and Subscribers to the Colloquium Series

Date: December 22, 2016

I. Introduction

The Third Colloquium: A Proposed Statute for Public Guardianship, part of the Institute's Colloquium Series, was held on November 16, 2016, at the Social Law Library in Boston. The program was an in-depth discussion of components of the Public Guardianship bill which will be filed in January 2017.

The Colloquium was attended by over 40 people (including presenters), representing 32 public and private agencies.

Persons affiliated with the following organizations¹ attended the Colloquium:

Public Agencies:

Massachusetts Department of Developmental Services
Massachusetts Department of Mental Health
Massachusetts Probate Court Office of Administration
Massachusetts Protective Services (Executive Office of Elder Affairs)
Office of Representative Paul Brodeur
Office of Senator Cindy Creem
Office of Senator Joan Lovely
Probate Court Office of Administration
Veterans Administration–Boston Healthcare System

Non-Profit Agencies:

AARP Massachusetts
Beth Israel Deaconess Medical Center
Boston Center for Independent Living
FriendshipWorks
Greater Boston Legal Services

¹ Unless otherwise footnoted, no organization listed herein has endorsed officially the Colloquium, its sponsors, its views, the contents of this Report, or any other product of the Colloquium, nor was anyone affiliated with any listed organization present as an official representative thereof. The list is provided for the benefit of interested parties and stakeholders, as an indication of the breadth of interest in guardianship reform in Massachusetts.

(Non-Profit Agencies, continued)

Guardian Community Trust
Institute for Community Inclusion/UMB
Jewish Family & Children's Service
Legal Planning for Special Needs
Massachusetts General Hospital
Massachusetts Medical Society
Mt. Pleasant Home
Northeast Justice Center
North Shore Elder Services

Private Law Firms and Other Organizations:

Casper & Edwards
Charles Group Consulting
CW Consulting
EXC Legal Services
Law Office of James Downes
Margolis & Bloom
Shuster Institute for Investigative Journalism
Smith, Duggan, Buell & Rufo
Suffolk University Law School

The Honorable Scott Harshbarger welcomed attendees and reminded us of the Institute's progress over the past year, from the first Colloquium in which public guardianship as a concept was explored, to research of existing programs, to today's event in which a statute is being proposed. Attorney General Harshbarger concluded by imploring participants that they must "demonstrate that government can work."

II. Research Update

A. Jennifer Moye, Ph.D.

Jennifer Moye, Ph.D., Associate Director for Education and Evaluation for the Boston VA Healthcare System and Associate Professor of Psychiatry at Harvard Medical School, reported on the research she and her team continue to conduct for the Institute. Dr. Moye indicated that a report has been completed for Phase I of her study, *Examining a Need for a Public Guardian in Massachusetts* (available through the Institute), and that an article based on the research has been submitted to Healthcare Ethics Forum, an academic journal. Dr. Moye also described the design of Phase II, which will involve surveying hospital counsel, discharge planners and current guardians to better understand how they approach decision-making and guardianship for patients who are alone and lack decisional capacity. Finally, Dr. Moye discussed other projects with which she is involved that may further the public guardianship mission.

B. Heather Connors, Ph.D.

Heather Connors, Ph.D., Director of Research at Guardian Community Trust, reported on the Institute's other research initiatives including a collaboration with the Donahue Institute at UMass Amherst, to better understand costs to the Commonwealth associated with not having public guardianship. Because there is little research on this topic, this study has the potential to be a guide not only for Massachusetts, but also for other states hoping for further investment in public guardianship.

III. Statute for a Public Guardian

Members of the Statutory Drafting Committee addressed components of the proposed Public Guardianship Statute.

A. Overview – Peter Macy, Ed.M., J.D.

The committee proposes a model in which a very small state agency (the Office of Adult Guardianship and Decisional Support Services) will oversee a privately funded non-profit agency, which will serve as Public Guardian. The state-level Office will promulgate standards, provide education and perform audits of the non-profit Public Guardian. The mission of the Public Guardian will be to help those unbefriended persons in need of guardianship who do not fall under the purview of existing state agencies (Elder Affairs, Department of Developmental Services, Department of Mental Health), and who do not have the resources to pay privately for such services.

B. Location in the Executive Branch – Wynn Gerhard, J.D.

Ms. Gerhard provided background for the form of the proposed statute, noting that only after substantial debate did the Drafting Committee settle on placing the Office of Adult Guardianship and Decisional Support Services within the Executive Office of Health and Human Services. While there are numerous Public Guardianship models nationally, including models in which the program is housed in the judiciary or at the county level, locating the Massachusetts program at the Executive level will house it with other agencies providing guardianship, allowing for easy exchange of information and collaboration as needed.

C. Partnership: Public Mandate, Private Financing – Peter Macy, Ed.M., J.D.

Recognizing that funding a new agency is challenging in this political climate, the committee proposes a hybrid model in which the state provides funding for the oversight function of the Office, and the non-profit is self-funded. Mr. Macy explained that his agency, Guardian Community Trust, Inc., has pledged major funding for the first three years of the program. He will continue to pursue additional sources of funding to make up any shortfalls, but this model will ensure that Massachusetts does not fall victim to the same fate faced by some other states: the unfunded mandate. Private funding for the bulk of the program's budget will shield the program from state budget cuts and mission drift. After the program is in place as a pilot project, other funding models, which may include a social impact bond issue phase, will be pursued.

D. Working with Volunteers – Heather L. Connors, Ph.D.

Guardianship programs use volunteers in many ways, ranging from office volunteers in some Tennessee programs, to actually naming them as guardians in Kansas. Between these two extremes, lies Indiana’s VASIA program which takes appointments as an agency but, delegates many of its duties as guardian to trained and supervised volunteers.

The Institute’s proposed statute offers a similar model, in which a paid staff person will oversee trained volunteers who will provide routine case management. Because the Public Guardian is named guardian, there will be certain decisions that may only be made by designated persons, and it will be the ultimate responsibility of the Public Guardian to ensure that all reports, paperwork and communication is completed appropriately.

In addition to cost savings associated with using volunteers, volunteers may have more time to spend with the client, acting as the guardian’s “eyes and ears” to recognize changes in the client’s environment or physical or mental health before such changes become emergencies. It is hoped that volunteers also may have the time available to forge close relationships with clients, so as to better communicate the client’s wishes in a given situation.

E. Creating an Advisory Council – John Ford, J.D.

The Office of Adult Guardianship and Decisional Support Services will be overseen by an Advisory Council, appointed by the Governor. The Council is intended to provide constant feedback to the Office about how its work is being received in the community, and/or to facilitate communications with other branches of government.

F. Complementary Policies – Eileen Sullivan-Boss, J.D.

In addition to the Public Guardianship Statue, the committee is lending its support to other policies that may reduce the need for guardianship. One such policy is a bill by the Massachusetts Medical Society (MMS) to authorize default surrogates who can provide consent for medical treatment when there is no Health Care Proxy and no guardianship in place. The Institute has worked closely with the MMS to come to a consensus on the bill’s language, as this statute alone could drastically reduce the number of guardianship cases that must be filed by hospitals. The Institute is also interested in the role that Supported Decision Making may play in avoiding the need for guardianship in other contexts.

IV. Legislative Process and Strategy

Charles Glick and Kate Saville-Worrall, principal and associate, respectively, of Charles Group Consulting, provided an overview of the legislative process. They discussed the importance of professional advocacy, of the kind they see happening through the Institute, to raise concerns about public guardianship, where the individuals of diminished capacity

themselves are not able to do so. Mr. Glick reminded participants that the stories they share can relay the importance of this issue and help legislators understand the need.

Massachusetts Representative Paul Brodeur and Massachusetts Senator Joan Lovely both took time to share their own stories and the need for public guardianship. Senator Lovely, who had been a guardian at one time, recalled feeling lost, and shared that she would have benefitted from an agency that could have provided guidance and support. Both indicated that they will support the bill.

V. Next Steps

The Massachusetts Guardianship Policy Institute will continue to solicit feedback on its proposed Public Guardianship bill, with the intention of filing it by January 20, 2017, for the 2017-18 Legislative session. After it has been submitted, the Institute will work with lead sponsors to garner support from Senate and House leadership. You can help by talking to your legislators about the need for public guardianship in Massachusetts.

Please let us know your thoughts, comments, concerns and ideas, whether in response to this Summary Report, or in any other context. The website at www.guardianship.institute now is available as a communication nexus for stakeholders and others who wish to support the Institute in its advocacy for guardianship reform and the creation of a Public Guardian in Massachusetts.