



Transferring Guardianship Across State Lines

The Voice is the e-mail newsletter of The Special Needs Alliance. This installment was written by Special Needs Alliance member and current president [Scott Suzuki, Esq.](#) of Honolulu, Hawaii. Mr. Suzuki's law practice emphasizes planning for individuals with special needs and their families. He serves on the board of The Arc of Hawaii and is a founding member of Aloha Independent Living Hawaii; former vice president of Family Voices, which facilitates community-based, family-centered care for children with special needs; and a longtime volunteer with the University of Hawaii Elder Law Program.

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The U.S. Census Bureau estimates that more than seven million United States residents moved from one state to another over the past year. (See U.S. Census Data Set 2014, American Community Survey, One-year Estimates, State-to-State Migration Flows.) Moving can be a very stressful event and guardians of individuals who are incapacitated or who need assistance making personal decisions should be aware of legal complications that may arise when moving a ward between states. (This article will use the terms "guardian" and "ward," although some jurisdictions may use the term "conservator" and "protected person." For more information about Guardianships, see [The Voice, Volume 7, Issue 5, June 2013.](#))

Many guardians may assume that once they have been appointed by their state's court as guardian for a ward, the original court order will be effective in each and every state to which the ward may move. Unfortunately, this assumption is not correct. The laws between the states can vary considerably and until recently it was a challenge for a guardian to move a ward between jurisdictions and retain guardianship authority because [the transferring state and the new home state may have had independent requirements for a guardianship—](#) both substantively and procedurally. Often, the state where the ward moved would not accept the authority of a guardian who was appointed by a different state, and the state that made the original appointment was reticent to terminate the appointment and allow the transfer for fear that the ward was not being protected. Dealing with two sets of laws and regulations, in this or any other context, can be overwhelming to say the least and can and did lead to complicated delays and lengthy legal proceedings.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was designed to simplify the process of moving a guardianship between states. To date, 45 states, Puerto Rico and Washington, D.C., have enacted the statute ([click here for an up-to-](#)

[date tally](#)). The UAGPPJA strives to simplify the process of moving guardianships between state lines by outlining a process that will generally enable each state to recognize the legal findings and authority of a guardian implemented in another state. Although this is the general intent, the actual implementation of this rule can still vary among the states.

The UAGPPJA permits a guardian to record an existing court order in the judicial system of the new home state and have the new state then enforce the prior state's court order. States have developed their own procedures to carry this out. Most states require a guardian to petition the court that granted the original guardianship for permission to transfer the guardianship to a court in the new state of residence. The court in the new state of residence will want to be assured that the initial appointment was consistent with its laws and to ensure that certain safeguards for the ward are met. The court in the transferring state will want to make sure that adequate provisions for the ward's health and safety are being met in the new state of residence.

The primary safeguard addressed by the UAGPPJA is to ensure that moving a ward across state lines is done for appropriate reasons. In relevant part, the UAGPPJA requires that:

- the relocation is in the ward's best interests;
- plans to care for the ward in the new home are "reasonable and sufficient";
- no parties oppose the move; and
- the relocation is permanent.

Under UAGPPJA, a guardian will need to initiate a legal process to request permission from both the originating state and new home state to effectuate the transfer. The back-and-forth process can be largely clerical in uncontested matters because the UAGPPJA has streamlined the process. There are still delays, however. The use of different legal terms by the various states involved can slow operations, so utilizing experienced attorneys to oversee the process is recommended. In some cases, especially those that are being contested, the courts may want to hold evidentiary hearings.

It is important to note that even if the initial petition to transfer jurisdiction is denied, the guardian may still be able to seek appointment in the new home state if the court has jurisdiction to otherwise appoint a guardian other than by granting an order of transfer. This involves basically the same procedure as starting a new guardianship process in the new state, but it will not necessarily include the requirements that may have been imposed by order of the court of the prior state.

Once guardianship has been transferred to the new home state under the UAGPPJA, there may be additional steps to take with the original state, including seeking a final order

confirming the transfer of the guardianship to the new jurisdiction. Even if it is not required, it may be beneficial to seek the termination of the initial guardianship proceeding in the original state. If the original proceeding remains in effect, the guardian would need to continue to comply with the original order which may include reporting requirements. Failure to comply with an effective court order is problematic and could be investigated by the state's protective services division.

In instances where both states have not approved reciprocity or adopted the UAGPPJA, complications can multiply. Guardians may need to petition the court in the originating state to allow the transfer to take place and may have to start proceedings from scratch in the new one. Fees could mount for attorneys, medical experts and more, and the new court may ultimately disagree with previous findings. In the meantime, guardians must continue submitting reports and accountings to the first state.

The Special Needs Alliance (SNA), with highly experienced [member attorneys](#) in most states, is an excellent resource if you are considering a relocation for a ward. SNA attorneys can advise you not only about the requirements for transferring guardianship, but of differences in public programs and the availability of local services. If you are thinking of moving across state lines, it is best to begin planning as early as possible.

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