Transferring Guardianship Between States

By Scott Suzuki, Esq.

With the increasing mobility of American families, the need to transfer guardianships between states is on the upswing. A new job (or military assignment), supports that better meet the ward's needs, or even a more favorable climate are among the many motivations.

Moving is one of the most stressful things that anyone can do, let alone helping someone who has special needs move. Different states have different rules that may further complicate a move involving a person who is under guardianship. Commonly, guardians may need to take special steps to help their ward maintain or re-apply for government benefits, such as Medicaid or SSI (Supplemental Security Income). Guardians seeking to move their wards from the state that originally granted them guardianship should also consider whether the new state would recognize their authority.

Transferring a guardianship from one state to another can be complicated, so it is important to seek counsel in *both* the original state and the new state. If both states have adopted UAGPPJA (Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act), the process should be simplified and just require procedural paperwork. Currently passed by 37 states, Puerto Rico and the District of Columbia, the uniform code is intended to streamline the transfer process by stipulating that the substantive findings of the originating state be recognized and adopted by the new jurisdiction.

Potential Complications

When both states have *not* signed up for reciprocity, guardians may need to start the guardianship process over by petitioning the new jurisdiction's legal system for a brand new appointment to be recognized in the new state. A guardian may also need to petition the originating state court for permission to even take a ward out of the original state. Should this be the case, there would be two proceedings in two different states with different jurisdictional bases to proceed or decline to proceed. Since definitions of capacity, limits to guardian powers, and many other factors differ across the nation, there's always the risk that the new court's findings will conflict with earlier determinations. In addition to the law-school-exam-style complexity of the procedural concerns, a guardian would also have to contend with the expense of attorneys, medical experts, investigators and, possibly, bond premiums. In such a situation, guardians must continue filing reports and accountings with

the original state and, in the interim, service providers and financial institutions in the new state may fail to recognize their authority.

I know of a situation involving two states that had not yet passed UAGPPJA, where the originating state's refusal to relinquish jurisdiction resulted in two years of judicial back and forth, including establishment of a separate conservatorship to manage the ward's special needs trust. While the matter was ultimately settled, the cost and upheaval were considerable.

In order to be compliant with UAGPPJA:

- the ward must be permanently relocating to the new state;
- the move cannot be detrimental to the ward's interests;
- there can be no opposition to the relocation; and
- plans to care for the ward in the new jurisdiction must be "reasonable and sufficient."

These stipulations have the additional advantage of preventing quarreling family members from moving a vulnerable relative across state lines in an effort to terminate debate or for their own advantage. Consider, for example, a scenario involving an adult child's disagreement with a stepparent on nursing home care for a parent with dementia.

I'm also reminded of a situation in which, due to neglect, a public guardian had been appointed for an individual with special needs. The negligent family members petitioned to establish guardianship in another state in which abuse allegations had not been investigated and the matter could proceed uncontested. The order appointing guardianship in the new state allowed the new state guardians to move the ward from the original state, even over the objection of the former counsel in the original state. The frail ward died within hours of arriving in the new jurisdiction, allowing for the negligent family members to receive the protected person's assets almost immediately. Had either state enacted the UAGPPJA at that time, the "no detriment/no opposition" standard likely would have applied to block the transfer and better protect the ward.

UAGPPJA in Practice

When UAGPPJA is in place, guardianship transfer becomes a largely clerical operation: permission from the originating state court to transfer; a request to the new home state to begin proceedings, then various back and forth notifications until the final transfer has been accepted and the file can be closed in the former home state.

But even when UAGPPJA has been adopted by both states, there can be additional details to work out. Different terminology may be used in each jurisdiction, requiring attorney time to work through the semantics. And in my home state of Hawaii, where UAGPPJA is taking effect this year, the legislation includes a caveat indicating that the court may request an evidentiary hearing when transfers are requested. So, while unlikely, extensive proceedings are still a possibility.

The Special Needs Alliance, with highly experienced member attorneys in most states, is an excellent resource if you're considering a relocation. They can advise you concerning not only the requirements for transferring guardianship, but of differences in public programs and the availability of local services. Begin early to plan for such a move.
