

RESOLUTION

Subject: Support for Autonomy for People with Disabilities Under Conservatorship

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Referred to: Reference Committee

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Whereas, 1.3 million American adults with disabilities are estimated to be under active conservatorships wherein a court appointed adult assumes guardianship of the person with a disability¹; and

Whereas, under guardianship a person with a disability may lose control of all finances and the right to vote and, where there is not a power of attorney, may also lose the right to make their own medical decisions²; and

Whereas, the most recent government reports on guardianship abuse revealed that, despite inadequate oversight from courts, hundreds of allegations of neglect and physical and financial abuse were reported between 1990 and 2010³;and

Whereas, the AMA Code of Ethics 2.1.2 Supports ethical and shared decision making with patients who lack capacity and AMA Opinion 11.1.1 reiterates this commitment to ethical and informed decision especially for the most vulnerable patients and populations^{4,5}; and

Whereas, Restoration of Rights is the process of removing a conservatorship or reinstating some personal control over assets and decision making in an effort to restore equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities⁶; and

Whereas, though every state has a process for the Restoration of Rights for persons with disabilities, this process is considered underutilized by Florida and North Carolina studies analyzing the use of the Restoration of Rights process; their data suggested that persons under guardianship were not aware of their right to restoration and that this was the primary barrier to access⁷; and

Whereas, additional barriers identified for persons with disabilities seeking Restoration of Rights included poor access to courts and access to counsel due to the fact that they do not have personal control of their assets¹; and

Whereas, where studied, Restoration of Rights petitions were usually submitted by the person under guardianship and were uncontested in the court, suggesting that access and awareness is the primary hurdle¹; and

Whereas, 20 states have introduced laws allowing for informal petitions for Restoration of Rights and Utah, Texas, Michigan and Minnesota have bills of rights for persons under

guardianship informing them of the option of restoration with the most recent of these bills being passed last year, suggesting a state level movement to support the rights of adults under guardianship^{7,8}; and

Whereas, Kentucky State Representative Patti Minter introduced the CARE Act in 2021, clarifying the rights of adults for whom a guardian appointment has been submitted and notifying them of their right to counsel and to respond to petitions for guardianship and also that emergency guardianship be limited in scope to ensure autonomy and safety of adults with disabilities⁸; now, therefore be it

RESOLVED, that KMA support (1) autonomy through least restrictive conservatorship options for adults with disabilities and (2) increasing access to guardianship hearings for persons under conservatorship including notifying persons under conservatorship of their option to pursue Restoration of Rights.

References:

- 1 Romano, N. et. al. Beyond Guardianship. Toward Alternatives That Promote Greater Self-Determination. National Council on Disability; 2018.
- 2 *Guardianship: Key concepts and resources (2023) The United States Department of Justice*. Available at: <https://www.justice.gov/elderjustice/guardianship-key-concepts-and-resources> (Accessed: March 8, 2023).
- 3 Government Accountability Office. The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults. GAO-17-33. Government Accountability Office Reports and Testimonies; November 30, 2016. <https://www.gao.gov/assets/690/681877.pdf>
- 4 AMA. Code of Ethics 2.1.2. Updated 2017. (Accessed: March 8, 2023).
- 5 AMA. Opinion 11.1.1. *Defining Basic Health Care*.
- 6 Center for Disability Rights. Americans with Disabilities Act Restoration Act.
- 7 Wood, E. et. al. Restoration of Rights in Adult Guardianship: Research and Recommendations. 2017
- 8 Kentucky General Assembly. AN ACT relating to guardians and conservators. House Bill 675; March 30, 2022.