

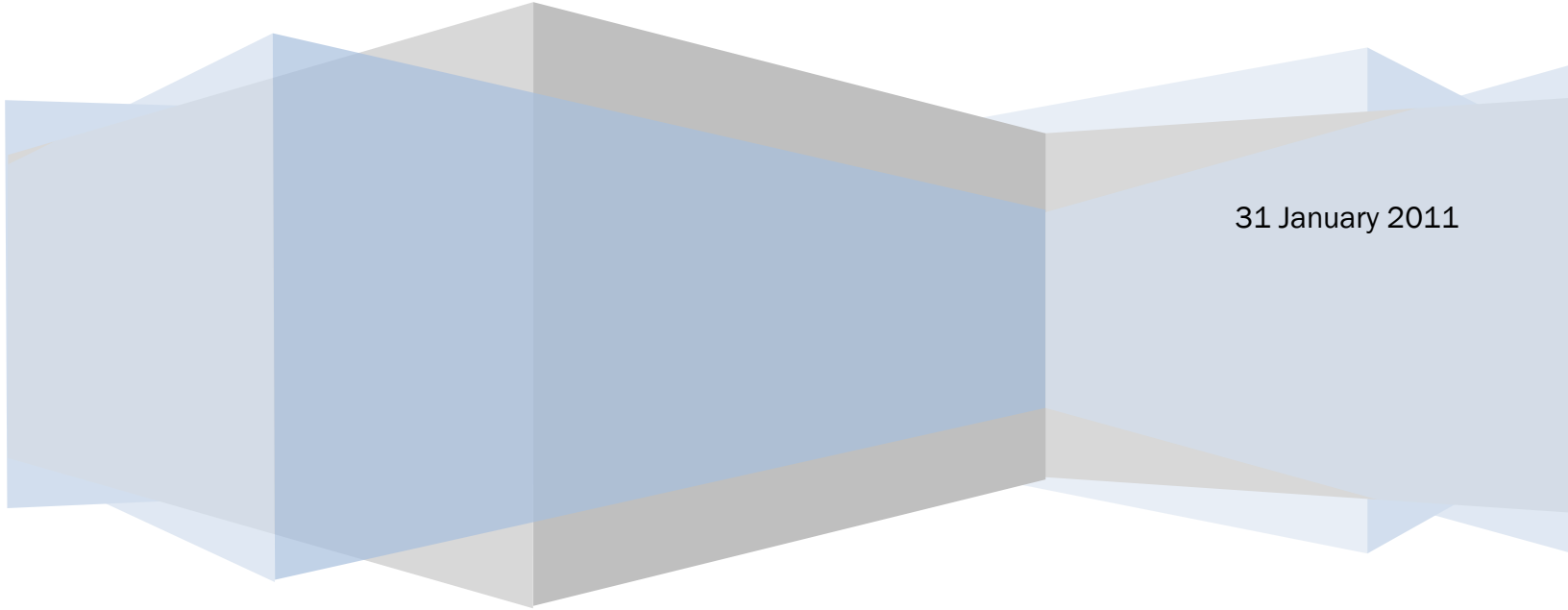
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A REVIEW OF THE TRAINING PROGRAM FOR TITLE 11 GUARDIANSHIP GUARDIANS AD LITEM

Prepared by the
Advisory Committee
to the
Washington Department of Social and Health Services

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A REVIEW OF THE TRAINING PROGRAM FOR TITLE 11 RCW GUARDIANSHIP GUARDIANS AD LITEM

Executive Summary

Between 400 and 500 Guardians ad Litem (GALs) assist the Superior Courts of the State of Washington in evaluating whether and to what extent guardians should be appointed for Washington residents alleged to be incapacitated, as that term is defined by our statutes.¹ Because the appointment of a guardian can significantly limit an individual's ability to exercise his or her rights and autonomy, the Court is under an obligation to give careful consideration to the disposition of a petition for appointment of a guardian.² The role of the GAL is crucial in providing the Court with evidence upon which to base its determination.

Incapacitated or alleged incapacitated persons may be persons with developmental disabilities, dementia or mental illness, minors or seniors with significant disabilities. They may be injured victims of a crime or accident. In evaluating their circumstances, GALs must be able to call on a broad range of knowledge and skills, varying from case to case.

The central importance of the GAL's role in the lives of the State of Washington's most vulnerable residents suggests the need for great care in the training of those who will be filling the role. To that end, the Legislature has called for periodic review of the training provided to GALs pursuant to RCW 11.88.090(4)(b). This report has been prepared by an Advisory Committee composed of a cross-section of interested

¹ RCW 11.88.010 grants to the Superior Courts the authority to appoint guardians for persons demonstrated to be incapacitated as to their persons or estates, as follows: "(a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

"(b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs."

² RCW 11.88.005 states: "It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs."

populations, including representatives from affected consumer, advocacy, and professional groups, assembled by the Department of Social and Health Services in accordance with the statute.

The Committee's review included input from a range of interested parties. Analysis of this input reveals that, while the current GAL Training Program is, in some ways, adequate, there is dissatisfaction on many fronts with the form and content of training, particularly for GALs seeking recertification, and with the ability of GALs to address many of the issues encountered by GALs in the cases to which they are assigned.

Generally, the Committee concluded that the shortcomings reported in the Sections below can and should be addressed by a combination of changes to the existing Training Program and modifications of the manner in which the program operates, both as to the training itself and administratively within the Courts. Implementation of some recommendations will require only modification of the existing program. Others will require changes in underlying rules and guidelines. A few may require statutory or regulatory changes.

Section III identifies three major issues which summarize the input the Committee received. Section IV sets forth the Committee's specific recommendations. Generally, the Committee's recommendations were arrived at by consensus. Not all Committee members agreed on all points, however. Points of significant disagreement and alternative ideas are identified in Section IV.

I. Background

In 1990, the Washington Legislature enacted RCW 11.88, which provides for the appointment, qualification and removal of guardians, and updated RCW 11.92, which sets forth the powers and duties of guardians and limited guardians. These statutes establish the procedure for creating and monitoring guardianships, and give the Superior Courts authority over all guardianships.

RCW 11.88.090(3) provides for appointment of a GAL “to represent the best interests of the alleged incapacitated person . . .” whenever a petition for guardianship is filed.³ In ongoing guardianships, the Superior Court from time to time appoints GALs to investigate or perform specific tasks. Such cases may arise where an emergent situation is called to the court’s attention, or in case of a dispute affecting an incapacitated person, where the Court would benefit from an independent recommendation. RCW 11.88.090 sets forth the duties of the GAL on appointment in the case of a new petition, and the qualifications an individual must have in order to be listed on the Court’s registry of certified GALs. Training is specifically provided for: GALs must “[h]ave the requisite knowledge, training, or expertise to perform the duties required by this section.” RCW 11.88.090(3)(b).

The Department of Social and Health Services (“DSHS”) is responsible for establishing and keeping current a program for training GALs.⁴ Training has been available for GALs pursuant to a training program known as the *Title 11 RCW Model Guardian ad Litem Training Program* (the “Training Program”) that was developed in 1997 by the Guardian Ad Litem Training Project Advisory Group and the Aging and Adult Services Administration of DSHS.⁵

In 2009, DSHS contracted with the King County Bar Association (“KCBA”) for the creation of an Advisory Committee to review the Training Program, and to make recommendations with respect to updating it.⁶ KCBA provided for formation of the present Advisory Committee (the “Committee”) to carry out this task. As provided for in the statutes and in the contract, members of the Committee are drawn from consumer, advocacy and professional groups, and are knowledgeable in the range of

³ The statute provides for an exception: “No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition.” RCW 11.88.090 (3)

⁴ RCW 11.88.090 (4) (b) (ii) (e) requires that DSHS shall “develop a model guardian ad litem training program and shall update the program biennially.” The full text of RCW 11.88.090 is attached to this report as [Appendix A](#) for convenience.

⁵ The full text of the Training Program appears at [Appendix B](#).

⁶ That portion of the contract between DSHS and KCBA titled “Statement of Work” is included with this report as [Appendix C](#).

fields generally affected by guardianships. In constituting the Committee, KCBA solicited individuals from across the state.⁷

The Committee initiated its process by gathering data with a view to reviewing and evaluating the Training Program as it has been operating by:

- Compiling information from county registrars as to the geographic distribution and profile of GALs, and how training is carried out in the various counties around the state.
- Reviewing input from as many sources as possible regarding the effectiveness of current training. Formal input included seminar evaluations by GALs following training sessions in King, Whatcom and Spokane counties, and questionnaires completed by GALs; online surveys of professional guardians and social workers in skilled nursing facilities; questionnaires completed by lay guardians; and informal input from others involved in the legal process. Input was solicited and received from judicial officers and from attorneys practicing in the area of guardianship. Committee members interviewed individuals in the mental health and developmental disability fields, including a representative of a specifically cross-cultural group, as well as other individuals from consumer, professional and advocacy groups.
- Exchanging ideas and input from each member of the Committee, from his and her own perspective as a practitioner and/or a representative of an organization or a profession that works in the guardianship field or a related field.⁸

In analyzing the input received, the Committee recognizes some inherent contradictions, some of which are grounded in the economics of the way the program operates, and some of which go beyond pure cost/benefit factors to the substance of what a GAL does.

- Because of the range and diversity of individuals to be served, there is a large body of knowledge, data, procedure and skills, much of it in one or more specialized fields, to be assimilated and applied by a GAL, but appointments often are infrequent enough that GALs do not have the opportunity to build an experience base in substantive areas and legal procedures.
- The fact that costs are generally charged either to the county or to the alleged incapacitated person makes it imperative that the GAL's work be accomplished efficiently, to keep costs to a minimum. Serving as a GAL is not likely to be a lucrative part of a professional practice, yet, by their nature,

⁷ "The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties." RCW 11.88.090 (4)(b)(ii) (e). A list of the members of the Committee with their biographical information appears at [Appendix D](#).

⁸ The surveys returned by the various groups canvassed are attached as [Appendix E](#).

many cases are complex and difficult, posing a serious challenge to the need for cost and time savings.

These points are reflected in the fact that much of the input the Committee received concerned GAL performance and the operation of the GAL program rather than specifics of training. Many suggestions and recommendations called for measures already available under the current Training Program. In some instances, the question is not whether the Training Program provides for training in a particular area, but rather how effectively that training is provided and the lessons applied. Because input on many of these points was so consistent, the report identifies them specifically, for the use of those who plan for training and administration of the program.

The Committee's discussions frequently reverted to talk of cost, budgets, and the feasibility "in the current climate" of recommendations under consideration. However, the Committee does not view its mission to include an evaluation of the economic feasibility of its recommendations, but rather to make recommendations for improving the effectiveness of training.

Having analyzed the data and identified issues raised, the Committee submits its recommendations with this report.

II. The Current Situation

1. Profile of Guardians ad Litem in Washington State

RCW 11.88.090 (4) (a) provides the framework for the appointment and qualification of GALs:

The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

The Committee surveyed all 39 counties in the state to determine the current status of GAL registries. The Registrars of 25 of the counties responded, reporting as outlined below.⁹ From the responses received, as it appears there is no tracking in any reporting county of numbers and types of cases assigned to GALs, the statistical information reported to the Committee in these areas is estimated.

There are 438 GALs on the registries of 24 of the counties reporting. One county, Adams, uses 3 GALs registered in other counties. Not all counties provided specific data as to how many of their GALs are attorneys. Generally, based on the responses, the Committee estimates that approximately 365, or 80% of GALs are attorneys. County by county, the proportion of attorneys to non-attorneys ranges from 100% attorneys (Spokane, Asotin, Clallam, Columbia-Garfield) to a preponderance of non-attorneys (Cowlitz, Island, Skagit, Whatcom). Non-attorney GALs have qualifications in social work, mental health, medical professions and other areas.

Most counties reported that GALs are appointed on a rotational basis except in special circumstances, as the statute requires. In at least one small county, the parties must agree on the appointment of a GAL. In at least one county, some GALs refuse to take county paid cases, whereas in another GALs are required to take two county paid cases per year as a condition of remaining on the registry. In most counties, a GAL can expect to receive only one to two appointments per year (one county, which does not make appointments on a rotational basis, reported that GALs

⁹ A list of the counties reporting appears at [Appendix E](#). The questionnaires are available [here](#).

receive “one or less” *[sic]* appointments per year). On the other hand, especially in some smaller counties, the number of appointments may be as many as ten.

Recourse to special qualifications or competencies of GALs that could be useful in particular cases appears to be inconsistent, and based on the personal knowledge of parties or court personnel rather than by reference to a systematic data base.

2. Discipline and Removal

Most, but not all, counties reporting have in place a system for discipline and removal of GALs. Although registry managers did not report specific discipline problems or the removal of GALs, a consistent complaint from many of the sources reviewed was that GALs were not performing as well as the complainant thought they should. Further, the Committee was informed that family members and other interested parties were not aware of the avenues for complaint, or that complaints had been discouraged. While RCW 11.88.090(3) sets forth the process for seeking the removal of a Guardian Ad Litem and GAL rules provide for filing complaints and grievances about Guardians Ad Litem, the Committee received feedback that interested parties are not well-informed about these procedures and that some courts do not act on a timely or thorough basis on complaints filed about Guardians Ad Litem.

3. Compensation of GALs

RCW 11.88.090 provides in part that a GAL’s fee shall be specified by the court and “shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs.” The court may also, in its discretion, order payment by others: (i) the petitioner, or (ii) “any other person who has appeared in the action.”¹⁰

¹⁰ “The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule.” RCW 11.88.097.

“The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.” RCW 11.88.090(10).

In the absence of a computerized tracking system, some county registrars state that they are unable to report to the Committee as to the number of cases where GALs are privately paid as opposed to the number of cases paid by the county, without a manual count. A number of registrars stated the allocation was “50/50.” One county reported that 67% of its total appointments were county paid. No attempt was made to discover the source of payment for privately paid cases.

Current guidelines provide, and it stands to reason, that training must prepare GALs to be efficient in the performance of their duties, and to inform those with whom they interact as to the limits of their authority in every case. The Committee heard that, in some cases, GALs appeared to lack sufficient time to perform a thorough investigation. One interviewee identified the cases where this occurred as “county paid cases.”

County rates of pay are very low compared to the prevailing hourly rates charged by the attorneys and other professionals who are GALs. For example, in King County, the hourly rate is \$45. Current practice is for the court to set a maximum of \$300 per case in most cases in the initial order, excluding costs, unless the court approves additional fees prior to the hearing on the petition.¹¹ In Pierce County, the rate is \$75, with a maximum of \$750 per case, including all costs. Snohomish, Chelan and Kitsap Counties all allow hourly rates of \$50. Snohomish County allows a maximum of \$600 per case; Kitsap sets the maximum at \$500.

GALs applying for recertification consistently complain that the cost of a full day of refresher training is not justified by the compensation they receive for the work they are appointed to do, given that there are generally so few appointments, with up to half of them county paid.

4. Current Model Guardian ad Litem Training Program

The guidelines under which the program presently operates were established in 1997 as the Title 11 RCW Model Guardian ad Litem Training Program (the “Training Program”). The Training Program’s components are [\(i\) Training Program Standards;](#) [\(ii\) Training Program Summary of Statutory Requirements of Guardians ad Litem;](#) [\(iii\) Training Program Goals and Objectives;](#) and [\(iv\) the written Guardian ad Litem Handbook \(the “Handbook”\).](#)

Although the statute calls for an advisory committee to be convened every two years to review the Training Program, no such review has been done until now. The Handbook has been reviewed and revised over the years in the context of annual

¹¹ King County has a full time GAL on staff to handle county paid cases. Nonetheless, the caseload is such that GALs are regularly appointed from the registry for these cases as well. Recognizing the court’s statutory mandate to set a maximum rate of compensation in the initial order (RCW 11.88.097), GALs interviewed point out that the cost of presenting a motion for an increase of fees in advance of the hearing, which cannot be charged, is a disincentive from requesting the increase, effectively limiting their income.

training made available by the King County Bar Association. The most recent version of the Handbook is the *Title 11.88 RCW Guardianship Guardian ad Litem Handbook, May 2010 Edition*, available through the King County Bar Association, and attached here as [Appendix G](#)

A summary of the program follows.

1. Purpose:

The purpose of the Training Program is to “assist the courts, the training providers, and the training participants to conform with the Title 11 RCW requirement that all candidates applying for registration as qualified guardians ad litem shall have satisfactorily completed training to attain essential minimum qualifications to act as guardians ad litem.”

2. Curriculum:

The Training Program provides for two “units”, each to consist of at least 6 to 7 and one-half hours of instruction.¹² Unit One is intended as initial instruction for individuals who have no previous experience as GALs. The curriculum for Unit One is to include, at a minimum:

- *The roles, duties, and limits of authority of the guardian ad litem as defined by Washington State Law (RCW 11.88);*
- *The consideration of alternatives to guardianship;*
- *The determination of functional capacity in accordance with the guardianship statutes;*
- *Due process and the rights of the alleged incapacitated person;*
- *Information about impairments, local services and resources;*
- *and*
- *Terminology*

Unit Two, the “advanced unit”, is intended as both a continuation of the initial instruction for first-time guardians ad litem, and as an annual update for GALs who wish to be recertified to continue to serve. The curriculum for Unit Two is to include:

- *Expanded information about impairments, available local resources, and community resources;*
- *A review of changes in the law;*
- *Interactive problem-solving exercises where the attendees learn by doing; and*

¹² Complete goals and objectives to be reflected in the Handbook appear at pages 25-34 of the Training Program.

- *Other relevant topics, such as:*
 1. *Discussion of diversity issues: relevant locally selected issues which facilitate and foster awareness of and sensitivity to local area socio-economic, ethnic, cultural and religious differences and the role of cultural norms in decision making.*
 2. *Local court procedures [Examples: Use of court approved forms, complex trial issues, payment issues, court calendars, GAL qualifications, appointments and notice, court registry policies and procedures]*
 3. *Advanced communication skill building [Example: Conducting effective interviews with persons who are non-verbal and persons who have developmental disabilities, deafness or other hearing impairment.].*

Participation in interactive problem-solving group exercises is required of all attendees.

The Training Program provides that training may be offered by videotape, provided that the videotape is presented in a group setting and that there are qualified moderators present to facilitate interactive exercises. If used, any videotape is to be updated as needed to ensure the training remains current.

Sign-in/sign-out procedures are provided for, to verify attendees' participation in training.

3. *Faculty:*

The Training Program provides that faculty shall have a minimum of five years' experience and that their experience shall be relevant to guardianship and adult education, that they be effective public speakers, and that they be familiar with the duties of GALs, have experience as GALs, or be persons with disabilities or who have experience working with people with disabilities.

5. **Description of current practices**

A two-day program is presented each year in Seattle by the King County Bar Association. King County's program is the only one that offers both Unit One and Unit Two training. The 2010 program was attended by GALs and aspiring GALs from 20 counties. Attendees at the Unit Two training are both first-time applicants and experienced GALs intending to apply for re-certification.

The King County Bar Association updates the Handbook every other year and distributes the Handbook. Unit Two attendees receive an electronic version of the

updated Handbook. In addition, materials provided by Unit Two speakers are provided to attendees in the counties where the programs are presented.

The Unit Two requirement may be satisfied by annual recertification, or “refresher” courses in Spokane, Whatcom, Benton and Kitsap Counties. The fact that training is not more broadly available is a source of irritation and even hardship, for some GALs, and may be discouraging experienced GALs from continuing to serve. The Committee received numerous requests for less frequent recertification training (every other year), reduced hours of refresher training (one-half day instead of a full day), and especially for the availability of video training, particularly for the Unit Two component, coupled with a flexible time period for viewing the video.¹³

At least one small county reported that its GALs do not receive annual re-certification training, or that the reporting party in the county was not aware of whether they received such training, in spite of the requirement of the Training Program that GALs receive annual training and that they be re-admitted each year.

No county reported a substantive evaluation process other than completion of the training requirements prior to certification of a GAL.

¹³ As noted, although the Training Program allows for video presentations, the requirement is that they be presented in a group setting, with instructors present. The Committee was not advised that any such programs presently exist.

III. Summary of Findings and Issues from Data Analysis

1. *Issue: Is the current format of two days (units) for initial training, one day (unit) of refresher training sufficient and effective?*

Input from existing GALs and representatives of consumer groups strongly indicates that there is a need for more variety in the practical aspects of attending both the initial training and the annual refresher training. Some experienced GALs find training repetitive and not useful. They express frustration with the amount of time taken from their daily work vis-à-vis the benefit of the training when they get few appointments, some of which are low-pay.

Other input indicates that there is a need for more in-depth training in specific areas. Among these are legal procedures (for non-lawyers), working across cultures, investigative techniques, the duties of guardians, the organization and operations of DSHS, mental health and the civil commitment process, the nature of Alzheimer's, the abuse and exploitation of vulnerable adults, and the ability to identify and isolate areas of capacity and incapacity in individuals with developmental disabilities. Feedback was received that GALs need additional training in how to determine incapacity, including the ability to identify residual capacities that could lend themselves to less restrictive alternatives and a broader range of less restrictive alternatives.

Input from judicial officers indicates report writing skills could be improved. Some GALs interviewed informally expressed their view that they would benefit from more formal training in investigative techniques. Input from advocates who work with persons with disabilities and with individuals in multicultural communities, reflecting interviews with clients, indicates that GALs the clients have encountered sometimes (i) do not know how to work through interpreters, (ii) do not want to work on cases involving cultural issues in addition to the presenting disability issues because the public pay scale does not sufficiently compensate them, and (iii) are not aware of questions affecting communication or attitudes that interfere with the GAL's ability to get the information needed.

Experienced GALs expressed a strong desire to be able to meet recertification requirements by attending less frequent trainings, attending other continuing education seminars in relevant areas, or participating in trainings via webinars or by viewing videotaped trainings.

The Committee concluded that a restructuring of training for GALs seeking recertification was advisable.

2. *Issue: Is the current training adequately accessible to Guardians Ad Litem across the state?*

Input received from GALs and County Registry Managers reflects the need for greater accessibility to training for interested applicants in rural or smaller counties. The Committee received feedback that applicants interested in the training find it prohibitively expensive to travel to King County to attend a two day training, due to travel costs and time apart from business or family obligations. The Committee received many requests for a video option for training, especially from GALs in smaller counties or in counties where no refresher course is offered. There is also a need for training to reflect the unique needs and practices of individual counties.

The current Training Program provides for video training in an interactive group setting only. The Committee's recommendation responds to the concerns expressed by eliminating the requirement of a group setting, although not all members favored this measure.

3. *Issue: Should non-attorneys be excluded from qualifying as Title 11 Guardians Ad Litem?*

The Committee received input from experienced attorney GALs that non-attorney GALs are not adequately trained or skilled in legal procedures. Non-attorney GALs also expressed the need for more training in legal procedures and issues. These needs impact the content and format of the training provided, as some attorney GALs express frustration that presentations regarding legal issues aimed at non-attorneys during refresher courses are too basic. Moreover, in some complex cases or cases that proceed to trial, non-attorney GALs might require representation by an attorney, resulting in increased costs to the proceeding. On the other hand, eliminating non-attorneys from qualification as GALs would exclude the expertise other professionals bring to the court in evaluating incapacity or addressing cultural issues. Moreover, such exclusion would adversely impact some smaller counties that lack a pool of attorney GALs.

In the light of these considerations, the Committee discussed at length a proposal that non-attorneys be barred from being certified as GALs. Ultimately almost all members agreed that the advantages of the diverse backgrounds of non-attorney GALs in areas that are relevant to the practice outweigh the disadvantages of not having legal training, which can be met by (a) additional training, and (b) appointment of attorney GALs in cases where it appears likely from the outset that specific legal expertise will be needed.

Therefore, the consensus of the Committee is that non-attorneys should not be excluded from qualifying as Title 11 Guardians Ad Litem, but that additional training in legal procedures specifically related to guardianships be required of non-attorneys, and that non-attorneys be encouraged to decline appointments in cases where it is evident from the petition that legal procedures such as restraining orders, or trial, will be involved.

In King County, current procedures for presenting a petition or motion requesting appointment of a GAL make it impractical to consult with a prospective GAL in a timely manner as to the suitability of appointing that GAL, prior to appointment. As a result, unless court personnel are personally familiar with the next GAL on the rotation, non-attorney GALs may be just as likely as attorney GALs to be appointed in cases requiring legal expertise.

IV. Recommendations

After the information gathering in which the Committee members engaged, the Committee met seven times across approximately six and one-half months, in person, telephonically, and via teleconferencing to discuss and come to agreement on the following recommendations:

1. *The existing Two Unit format should be retained and identified as Initial Training of first-time Guardians Ad Litem*
 - a. To meet the concerns expressed to the Committee, the Initial Training should include more in-depth teaching about the investigation process, multicultural values and norms, including working with interpreters, and the types of incapacitating conditions that are encountered.
 - b. The second day of the two-day format for Initial Training should include breakout sessions focusing on specialized areas, such as legal procedure (for non-attorneys or attorneys who are new to guardianships), an expanded definition of less restrictive alternatives, in particular with respect to persons with disabilities, trust and financial issues, investigative techniques, the mental health treatment and commitment processes, issues related to the prevention, identification and response to abuse and exploitation of vulnerable adults . It should also include an interactive program on application of the material presented during breakout sessions as well as legislative and case law updates.
 - c. The effectiveness of the Initial Training should be evaluated using a self-evaluation tool that GALs seeking certification should complete within a specified time period following the training. GALs should be required to report the results of the evaluation as part of the application to be certified. *
 - d. Additional training solely in legal procedures specifically related to guardianships (6 hours) should be required of new, non-attorney GALs, beyond the two-day Initial Training. *
 - e. Basic uniform training materials for the Initial Training should be available statewide. The Guardianship Manual and any updated materials should be available on-line and in hard copy. Training also should include information regarding local rules, practices and resources.
 - f. All levels of training and mentoring of GALs should emphasize (i) the need for a common sense approach to a GALs work and (ii) best practices, including knowing

* Recommendations marked with an asterisk (*) would involve modification of the Training Program; recommendations not so identified call for implementation and reinforcement of existing provisions of the Training Program, with some minor drafting changes.

when to decline an appointment. Court procedures need to be designed to facilitate the opportunity for a GAL to decline an appointment in a case that calls for specialization such as legal or other expertise that he or she does not have.

g. Training should emphasize making information regarding resources that may be useful to GALs more readily available. Resource referral information should be available on a single website, with links to resources, where possible. Referrals should include resources such as DSHS' AAA agencies and the Certified Professional Guardians' website.

h. Since attorneys for alleged incapacitated persons are appointed from the GAL list in many counties, GAL training should include a breakout session available to attorneys during Unit Two of the Initial Training, focusing on guardianship advocacy, and the difference between representing an AIP's best interests as GAL and representing the AIP's wishes as an advocate. *

i. GALs who do not qualify as "Experienced GALs" (see below) should attend Unit Two of the Initial Training in order to be re-certified, as is the current practice.

2. In order to be recertified, Experienced GALs should be required to attend either (i) an advanced training course (a "Recertification Course"), which should be held annually, or (ii) Unit Two of the Initial Training, or (iii) 7 hours of relevant continuing education courses to provide training in specialized areas.

a. GALs with at least 5 years' experience and at least 10 completed appointments (cumulative, not annual) ("Experienced GALs") should qualify for these options. If feasible or desirable, each county could design and present its own Recertification Course. In all cases, recertification training should include legislative and case law updates relevant to guardianship proceedings.

b. "Continuing education" could include CLEs for attorneys as well as continuing professional education in other areas where GAL knowledge is needed, such as mental health, particular disabilities and conditions (Alzheimer's, developmental disabilities), additional information on alternatives to guardianship, prevention, identification and response to abuse and exploitation of vulnerable adults, and trainings for Certified Professional Guardians. A mechanism for selecting the courses and monitoring attendance needs to be provided. The Standing Committee recommended in Section 3(b) below could fill this function.

c. Unit Two of Initial Training should be available to Experienced GALs in an interactive statewide format via webinar or video streaming for accessibility and uniformity. Updates of local rules and practice specific to each county should be

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provided to attendees from those counties through written materials to supplement this format, if they are not addressed in the sessions being transmitted. *

3. Administration of the GAL program should be revised, to increase the effectiveness of the services provided to the Courts by Guardians ad litem.

- a. A state-wide Guardian Ad Litem Registry Manager position should be established to certify new GALs and to monitor the recertification of existing GALs. *
- b. A Standing Committee, including members representing a diversity of disciplines and perspectives, should be established for the purpose of making periodic reviews and recommendations regarding the initial training and recertification process, and to identify and develop additional training modules. This committee should include, and/or consult with, individuals with diverse perspectives and from diverse disciplines in doing their work.
- c. A statewide data base of GALs should be created to track appointments and cases, characterizing cases (public vs. private pay, vulnerable adult, trial or not, dismissal or appointment of guardian or limited guardian) and training. The data base should be designed to identify any special skills (language, financial, medical, legal etc.) a GAL possesses. *
- d. Greater consideration should be given to the appointment of the appropriate GAL in a particular case. Petitioners should advise the Court of any unique issues in a case and the Court should give consideration to the skills required of the GAL, based on the allegations in the petition, including the appointment of attorney GALs in cases where litigation or other procedures appear likely. Judicial officers should have the data base recommended above available to assist in making appointments of appropriately qualified GALs.
- e. A mentoring program should be established or reinforced for new GALs to access information and suggestions from experienced GALs. This could include development of a statewide listserv for exchange of information and expertise.
- f. Information should be provided to parties and interested others in guardianship proceedings regarding how to file complaints or grievances about GALs. County Registry Managers are strongly encouraged to publish local GAL grievance procedures broadly, using brochures, web pages and other accessible media to ensure that grievance procedures are simply, concisely, and understandably articulated
- g. The training should include a panel of people living with disabilities who could discuss issues related to guardianship from the perspective of individuals with disabilities. The panel would help raise awareness of bias and stereotypes regarding

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disability and incapacity. The existing Certified Professional Guardian training curriculum already includes such a panel that could serve as a model for this training panel.

* Recommendations marked with an asterisk (*) would involve modification of the Training Program; recommendations not so identified call for implementation and reinforcement of existing provisions of the Training Program, with some minor drafting changes.

V. Conclusion

Making the system better serve our state's residents is a task of the highest priority. In an ever-evolving and challenging justice system within an equally evolving society, Washington's statutory scheme not only allows, but actually requires periodic review of the rules, guidelines, and system for training GALs.

With the Advisory Committee's recommendations, informed by the review the Committee has undertaken, Washington will be able to address the training of current and prospective GALs more efficiently and effectively to ensure that GALs are more prepared for the important role they serve in identifying the strengths and needs, protecting the rights, and advancing the best interests of some of our most vulnerable residents.

Appendices:

- A. RCW 11.88.090
- B. The Training Program
- C. Statement of Work
- D. List of all Committee members, biographical information
- E. List of Counties Reporting
- F. Results of surveys and other input
 - F-1 County Registrars
 - F-1 Certified Professional Guardians
 - F-2 Lay Guardians
 - F-3 Guardians ad Litem
 - F-4 Judicial Officers
 - F-5 Attorneys representing parties in guardianship proceedings
 - F-6 Other input
- G. Title 11.88 RCW Guardianship Guardian ad Litem Handbook, May 2010 Edition

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| <u>State</u> | <u>Right to Counsel</u> | <u>Counsel Role</u> | <u>Guardian Ad Litem</u> | <u>Visitor</u> | <u>Medical Documentation/ Evaluation</u> |
|------------------------------------|--|---|--|--|--|
| UGPPA | 305(b), 406(b) Alt 1: If requested by respondent, recommended by visitor, or court determines need for representation Alt. 2: Shall appoint | | 115 If representation is otherwise inadequate | 305(a), 406(a) Shall appoint a visitor , training and experience in alleged incapacity 305(c), 406(e) Visit, interview in person; explain petition, proceeding, rights, powers of guardian, determine views, inform of right to counsel, cost paid from estate; visit dwelling; obtain info from physician; investigate; file a report to court | 306 May order professional evaluation and shall if respondent demands; must be examine by physician, psychologist or other qualified person, file written report |
| Alabama: Code | 26-2A-135(b) shall appoint attorney | 26-2A-135(b), 26-2A-102(b) may be GAL | 26-2A-52 26-2A-102(b) court representative | 26-2A-102(b) court representative interviews ward and petitioner, visits present and proposed abode | 26-2A-102(b) must be examined by a physician or other qualified person and submit a written report |
| Alaska: Statute | 13.26.106(b) entitled, shall appoint Office of Public Advocacy if no funds | 13.26.111 represent zealously, determine interest, personally interview, explain rights | 13.26.112 upon request, may appoint GAL | 13.26.106(c) visitor arranges evaluations, interviews respondent & proposed guardian 13.26.108 visitor's report includes affidavit on process | 13.26.106(c) expert has expertise in alleged incapacity |
| Arizona: Rev. Stat. Ann. | 14-5303(C) Shall appoint. May discharge after guardian appointed if no longer necessary based on specific findings | <i>Not stated</i> | 14-5303(C) investigator | 14-5303 investigator interviews respondent, proposed guardian, visits present, proposed residence, caregiver | 14-5303(C) functional assessment by physician, psychologist or RN; if established relationship, court may appoint that professional |

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|--|---|---|---|--|---|
| Arkansas: Code Ann. | 28-65-213(a)(1) entitled | <i>Not stated</i> | 28-65-207(c)(3) GAL not necessary in each case | <i>Not stated</i> | 28-65-211(b)(1) sworn statement by 1 or more qualified medical witnesses with expertise in alleged incapacity 28-65-212 professional evaluation |
| California: Prob. Code | 1823(b)(6) entitled; right to | <i>Not stated</i> | 1833 1826 court investigator | 1826 interview respondent, inform of rights; determine attendance at hearing, if contests or objects, wants counsel; review allegations in petition | 1801(e) medical evidence & specific impairments |
| Colorado: Rev. Stat. Ann. | 15-14-305(2) appoint if request 15-14-305(3)(c) Right to lawyer; right to request court-appointed lawyer | <i>Not stated</i> | 15-14-115 | 15-14-305 (1) & (3) meet respondent, explain rights, interview proposed guardian, visit new/old abode, interview dr. or care provider | 15-14-306 Court may order evaluation by physician, psychologist, other qualified individual and shall if respondent demands; report contains specific cognitive & functional limitations, evaluation of mental & physical condition, prognosis, recommend treatment plan |
| Connecticut: Gen. Stat. Ann. | 45a-649a(a) Right to be represented 45a-649a(b) if indigent shall appoint | 45a-649a(c) Represent, consult on bringing appeal, not obligated to represent on appeal 45a-649a(f) not accept appointment as guardian ad litem or conservator | <i>Not stated</i> | <i>Not stated</i> | 45a-650(c) statement by 1 or more physicians who have examined respondent; may also consider summary of functioning, availability of support services, evaluations from other professionals |

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|---|---|--|--|---|--|
| Delaware: Code Ann. tit. 12 | 12 3901(c) entitled to representation | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> |
| District of Columbia: Code Ann. | 21-2041(h) shall appoint | 21-2033(b) Zealously represent interests of individual | 21-2033(a) May appoint to assist respondent in determining interest. Not fact finder, investigator or ombudsman | 21-2033(c) before hearing | 21-2041(d) |
| Florida: Stat. Ann. | 744.331(2)(a), 744.3215(1) shall appoint | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> | 744.331(3)(a) 3-member examining committee; attending dr. may not be member, each shall examine |
| Georgia: Code Ann. | 29-4-11(c) right to court appointment unless retained | <i>Not stated</i> | 29-4-11 upon motion by any interested party or court's own motion | <i>Not stated</i> | 29-4-11(d) physician, psychologist or licensed clinical social worker |
| Hawaii: Rev. Stat. | 560:5-305(b) if request, recommended by kokua kanawai, or court determines is needed | <i>Not stated</i> | 560:5-115 at any stage if interests inadequately represented | 560:5-102, -305(c), -406(c) may appoint kokua kanawai officer to explain, determine views, costs, interview petitioner and proposed guardian, visit dwelling, get information from physician | 560:5-306, -406 may request by physician, psychologist & other qualified, shall if demanded by respondent |

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|--|--|---|---|---|--|
| Idaho: Code | 15-5-303(b) shall appoint attorney | 15-5-303(b) attorney with GAL duties | 15-5-315 GAL conducts independent investigation, reports results, makes recommendation, acts as advocate, general representation of ward, negotiates, monitors 15-5-308(3) GAL and visitor must be separate and independent | 15-5-303(b) visitor shall interview petitioner, respondent, proposed guardian, visit both abodes | 15-5-303(b) physician & visitor, mental health professional |
| Illinois: 75/5 Ill. Comp Stat. | 5/11a-10(b) appointed if requested or respondent adverse to GAL 5/11a-11(a) entitled to representation | <i>Not stated</i> | 5/11a-10(a) shall appoint, report on best interests, observe, inform of rights | | 5/11a-11(c) 1 or more independent experts |
| Indiana: Code Ann. | 29-3-5-1(c) may appoint | <i>Not stated</i> | 29-3-2-3(a) shall appoint if not represented | <i>Not stated</i> | <i>Not stated</i> |
| Iowa: Code Ann. | 633.561(1)(a); 633.575(1)(a) court shall appoint attorney | <i>Not stated</i> | Iowa R. Civ. Pro. 14 | <i>Not stated</i> | <i>Not stated</i> |
| Kansas: Rev. Stat. Ann. | 59-3063(3) shall appoint | <i>Not stated</i> | <i>Not stated</i> | 59-3065 may order investigation and report on family relationships, past conduct, nature & extent of property or income, if likely to injure self or others, other matters | 59-3064 shall order exam and evaluation at hospital, psychiatric hospital, community mental health, community DD, private physician, psychiatrist, psychologist, other qualified professional |

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|--|---|---|---|--|--|
| Kentucky: Rev. Stat. Ann. | 387.560(1) shall appoint | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> | 387.540(1) interdisciplinary evaluation by physician, psychologist & social worker |
| Louisiana Civ. Code Ann.; Code of Civ. Pro.; Rev. Stat. Ann. | CCP Art. 4544 shall appoint | CCP 4544(B) Personally visit respondent; discuss allegations, relevant facts, law, rights & options | <i>Not stated</i> | <i>Not stated</i> | CCP 4545 may appoint examiner with training & experience in type of infirmary alleged |
| Maine: Me. Rev. Stat. Ann. tit. 18 | 18-A 5-303(b) shall appoint 1 or more: attorney, GAL or visitor; must appoint attorney if respondent wishes to object | <i>Not stated</i> | 18-A 5-303(b) appointment when necessary | 18-A 5-303(b) shall interview respondent, proposed guardian; explain petition/proceeding, indicate need for counsel | 18-A 5-303(b) physician or licensed psychologist |
| Maryland: Code Ann., Est. & Trusts; MD Rules | 13-705(d) shall appoint | MD Rules Attorney is advocate | <i>Not stated</i> | MD Rules Independent investigator, not an attorney, may be appointed if necessary | R73(b)(1) 2 physicians, or physician and psychologist |

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|---|--|---|---|-----------------------|--|
| Massachusetts: Gen. Laws ch. 190B | 5-106(a) court shall appoint at any time if requested or determines is inadequately represented | <i>Not stated</i> | 5-106(b) may appoint to investigate condition and report to court | <i>Not stated</i> | 5-303(b)(11) medical certificate signed no more than 30 days prior or why impossible to obtain 5-404(11)(A) For conservatorship, clinical exam must be no more than 180 prior 5-303(c) Physician or psychologist, certified psychiatric nurse or nurse practitioner; if mental retardation by clinical team Contains specific cognitive and functional limitations, evaluation of condition, identification of potential, prognosis, and improvement. 5-303(e) Court can require respondent to submit and require others to submit evidence |
| Michigan: Comp. Laws Ann. | 700.5304(5) entitled to counsel 700.5305(3) &(4) shall appoint if requested, petition contested or proposed guardian, seeks limits on order; or if guardian ad litem recommends | 700.5304 Shall present evidence and cross-examine | 700.5305(1) Shall be appointed and explain procedure and rights | <i>Not stated</i> | 700.5304(1) physician or mental health professional |

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|----------------------------------|---|--|---|--|--|
| Minnesota: Stat. Ann. | 524.5-304(b) & 406(b) shall appoint immediately if not provided unless respondent waives right via visitor | 524.5-304(b) & 406(b) consult; have time to prepare; representation continues until appeal expires | 524.5-115 may appoint at any stage if other representation inadequate | 524.5-304(a) & 406(a) may appoint; 404(c) & 406(c) personally serve notice; offer to read petition; interview in person; explain substance, rights; obtain view on guardian, duties, scope; explain right to attorney & that costs come from estate | 524.5-304(f) co. social service agency may create screening committee to determine if less restrictive alternative |
| Mississippi: Code Ann. | <i>Not stated</i> | <i>Not stated</i> | 93-13-255 may appoint, shall be present, present interest of respondent | 93-13-255 before hearing | 93-13-255 2 physicians, personal exam |
| Missouri: Ann. Stat. | 475.075(3) court shall appoint | 475.075(3) | <i>Not stated</i> | <i>Not stated</i> | 475.075(4) court may direct that respondent be examined |
| Montana: Code Ann. | 72-5-315(2) may have counsel of own choice or appointed counsel; or court may order Public Defender to assign counsel | 72-5-315(2) has duties of GAL | 72-5-314(2) representation by GAL not necessary | 72-5-315(3) special court appointee shall interview respondent, petitioner, proposed guardian, visit present and proposed abode | 72-5-315(3) shall be examined by court appointed physician |
| Nebraska: Rev. Stat. | 30-2619(b) court may appoint if person indicates a desire for an attorney | <i>Not stated</i> | 30-2619(b) court may appoint, advocates for best interest | 30-2619.01 visitor evaluates incapacity, shall interview proposed guardian, service agencies, respondent, visit present and proposed abode | 30-2619(c) may be examined by court appointed physician |

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|--|---|----------------------------|--|--|---|
| Nevada: Rev. Stat. | 159.0485 court shall appoint legal aid or private attorney if unable to retain & requests | <i>Not stated</i> | 159.0455 may appoint, order sets duties | 159.046 may appoint investigator to locate needed services & resources available, competing interests, allegations or claims | 159.044(2)(j) certificate by physician, or letter by any govt. agency that does investigations and any other person ct. finds qualified; court form with need for guardian, danger to self or others, if attendance at hearing be detrimental, if able to comprehend or contribute to proceedings, if capable to live independently, limitations and how limitations affect abilities |
| New Hampshire: Rev. Stat. Ann. | 464-A:6 absolute, unconditional right | <i>Not stated</i> | 464-A:41 may appoint if rights are not fully represented; shall appoint if requested | <i>Not stated</i> | <i>Not stated</i> |
| New Jersey: Stat. Ann. | 3B:12-24.1(c)(5) attorney appointed by court for temporary guardianship | <i>Not stated</i> | <i>Not stated</i> | <i>Not stated</i> | 3B:12-24.1(d) Physicians & psychologists |
| New Mexico: Stat. Ann. | 45-5-303(C) 45-5-309(c) court shall appoint if not represented | <i>Not stated</i> | 45-5-303.1 shall interview respondents; review medical and visitor reports | 45-5-303(E) shall appoint a visitor to interview respondent, proposed guardian, present and proposed abode, evaluate needs | 45-5-303(D) shall be examined by qualified health care professional appointed by the court |

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|--------------------------------------|--|---|--|--|--|
| New York: Mental Hyg. Law | 81.10 shall have right to chose counsel if choice is freely and independently made; court appoints counsel if requested, contested, need major medical decision, temporary power requested, conflict of interest, if helpful | <i>Not stated</i> | <i>Not stated</i> | 81.09 shall appoint court evaluator, interview respondent & petitioner, explain rights, proceeding, evaluate need for counsel, if understands English | 81.09 court evaluator, including mental hygiene legal service in the judicial department where the person resides, a not-for- profit corporation, an attorney-at-law, physician, psychologist, accountant, social worker, or nurse |
| North Carolina: Gen. Stat. | 35A-1107 entitled to counsel of own choice; an attorney shall be appointed unless respondent retains own counsel | 35A-1107 has duties of GAL | 35A-1107 shall personally visit, make every reasonable effort to determine respondent's wishes; present respondent's express wishes; may make recommendations as to best interest if differ from express wishes; shall consider limited guardianship; shall recommend rights, powers, privileges to be retained | <i>Not stated</i> | 35A-1111 multi-disciplinary evaluation |
| North Dakota: Cent. Code | 30.1-28-03 shall appoint attorney to act as GAL | 30.1-28-03 Act as guardian ad litem, interview, explain rights and proceeding. | <i>Not stated</i> | 30.1-28-03(3) shall appoint, Interview proposed guardian and ward, ascertain views, visit present abode, prepare alternative resource plan | 30.1-28-03(3) ct appointed physicians or psychologist |

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|--|--|----------------------------|---|---|---|
| Ohio: Rev. Code Ann. | 2111.02(C)(7)(a) right to be represented by counsel of choice 2111.02(C)(7)(d) right to have counsel appointed at court expense if indigent | <i>Not stated</i> | <i>Not stated</i> | 2111.041 shall require a probate court investigator; investigate circumstances of alleged incapacity, communicate with alleged incapacitated | 2111.031 physicians or other qualified persons |
| Oklahoma: Stat. Ann. tit. 30 | 30-3-107 court may appoint attorney; may be public defender; if respondent present & after explanation requests attorney or if court determines in best interest, court shall appoint attorney | <i>Not stated</i> | 30- 1-117(B) any person or court on own may file for appointment of GAL 30 3-106.1 ct. may appoint volunteer advocate or GAL who advocates objectively for best interest | <i>Not stated</i> | 30 3-108 Court on its own motion or at request of any party where capacity of person is material issue. Physician, psychologist, or social worker. |
| Oregon: Rev. Stat. | 125.070(2)(e)(A) right to be represented by attorney | <i>Not stated</i> | <i>Not stated</i> | 125.150 court shall appoint officer of court or special appointee; shall exercise powers of guardian; shall interview proposed guardian, respondent where located; may interview caregiver, physician; must be present at hearing | <i>Not stated</i> |
| Pennsylvania: Cons. Stat. Ann. | 20-5511(a) shall be appointed in appropriate cases | <i>Not stated</i> | 20-5511(a)(2) shall not be necessary | 20-5511(d) shall on good cause shown have independent evaluation | 20-5518 individuals qualified by training & experience in evaluating incapacity |

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|--|---|---|---|---|---|
| Rhode Island: Gen. Laws | 33-15-7(d), (e) Court shall appoint if wishes to contest, limit powers, object to person nominated as guardian, if requests, if GAL determines in best interest | <i>Not stated</i> | 33-15-7(c) shall be appointed, personally visit, explain purpose and effect, explain procedure and rights, name of petitioner, review decision making assessment tool, petition and notice; interview proposed guardian; make determinations on wishes as to presence, object, limits, and counsel. | <i>Not stated</i> | 33-15-4 physician must complete decision making assessment tool found in 33-15-47 |
| South Carolina: Code Ann. | 62-5-303(6) court shall appoint unless has own counsel | 62-5-303(b) has duties of guardian ad litem | <i>Not stated</i> | 62-5-303(b) court shall send visitor to observe conditions 62-5-308 | 62-5-303(b) shall be examined by 2 examiners; one of which shall be a physician |
| South Dakota: Codified Laws Ann. | 29A-5-309 court shall appoint if requested, contested, needed | <i>Not stated</i> | <i>Not stated</i> | 29A-5-309 If no counsel, shall appoint court representative to investigate and make recommendation on or order person to attend. 29A-5-310 shall interview petitioner, proposed guardian, respondent; explain notice and make report to court on need for protection | 29A-5-306 evaluation of mental and physical condition |

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|--------------------------------|---|---|---|-----------------------|--|
| Tennessee: Code Ann. | 34-3-106 Right to have attorney ad litem appointed | 34-1-101 Attorney ad litem acts as counsel | 34-1-107 court shall appoint unless represented by adversary counsel, waive if best interest, verify notice, consult in person, explain rights, determine if proposed guardian is appropriate, investigate capability, if property guardianship investigate nature of property, financial capacity of proposed fiduciary, credit report, fiduciary, and management plan 34-1-101 Investigate and report | <i>Not stated</i> | 34-3-105 Physician, psychologist or senior psychological examiner who examined 90 days before filing; if not examined, can't get out, or refuses, ct. shall order to submit; examiners report is prima facie evidence of disability and need for appointment |

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|-----------------------------------|---|---|--|--|--|
| Texas: Estate Code Ann. | 1054.001 shall appoint attorney ad litem to represent the interests of the respondent, may appoint in other context 1054.006 Respondent may retain an attorney if have capacity to contract and court may remove attorney ad litem | 1054.004 interview proposed ward, discuss laws and legal options, review application, certificates, and medical records | 1054.051 may be appointed by judge to represent interests of incapacitated person and protect the best interest of the person; is officer of the court; same person may be attorney ad litem and guardian ad litem | 1054.102 Each statutory court shall operate court visitor program; use volunteers to greatest extent possible 1054.151 Court may appoint court investigator to investigate circumstances to determine if least restrictive alternative is appropriate, investigate complaints and report to court | 1101.053 medical, psychological, intellectual test records; are not binding buy may be sufficient 1101.103; 1101.104 Physician (physician or psychologist if intellectual disability) who has examined within 120 days prior. Certificate includes nature, degree and severity of condition; functional deficits; ability to handle business, manage financial affairs, operate car; make decision on placement, voting, marriage; consent to medical treatment; if medications affect demeanor; how benefit from supports and services |
| Utah: Code Ann. | 75-5-7(3) Not required to appoint if uncontested and incapacity not at issues | 75-5-303(4) has powers of GAL | <i>Not stated</i> | 75-5-303(4) may appoint, may be GAL; visit current and proposed residence; interview petitioner and incapacitated person; not required if 4 th stage Alzheimer's or IQ under 20-25 | 75-5-303(3) may be examined by physician |

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|---------------------------------------|---|--|---|-----------------------|---|
| Vermont: Stat. Ann. tit. 14 | 14-3065(a) shall appoint; may appoint in any subsequent proceeding | 14-3065(b) consult and explain meaning of proceeding; act as advocate; may not substitute own judgment for that of respondent; distinct from role of GAL; endeavor that wishes of respondent are heard; show that no least restrictive alternative; make sure proper due process is followed, no rights waived without consent | 14-3066 on motion by counsel or court may on its own motion | <i>Not stated</i> | 14-3067(b) Shall order assessment by person with specific training and demonstrated competence 14-3067(c) Specific content of assessment |
| Virginia: Code Ann. | 64.2-2006 right to representation, may appoint on request of GAL, respondent or if court determines is needed | 64.2-2006 Protect respondent's interest | 64.2-2003(B) shall appoint, personally visit, advise of rights, investigate petition | <i>Not stated</i> | 64.2-2005 physician or psychologist; professionals skilled in assessment & treatment of alleged conditions |
| Washington: Rev. Code Ann. | 11.88.045(1)(a) right to be represented by willing counsel of choice, shall appoint when cannot afford | 11.88.045(1)(b) advocate; shall act of distinct from GAL | 11.88.090(2) expected to promote best interests | <i>Not stated</i> | 11.88.045(4) physician or psychologist |
| West Virginia: Code | 44A-2-7(a) shall appoint | 44A-2-7(b) extensive list of duties | <i>Not stated</i> | <i>Not stated</i> | 44A-2-3 Physician or psychologist |

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| <u>State</u> | <u>Right to Counsel</u> | <u>Counsel Role</u> | <u>Guardian Ad Litem</u> | <u>Visitor</u> | <u>Medical Documentation/ Evaluation</u> |
|---------------------------------|---|--|---|-----------------------|---|
| Wisconsin: Stat. Ann. | 54.42(1)(c) Shall appoint if proposed ward requests, ward opposes petition or court determines required | 54.42(1)(b) advocate for expressed wishes of proposed ward | 54.40(i) court shall appoint GAL | <i>Not stated</i> | 54.36 licensed physician or psychologist |
| Wyoming: Stat. | 3-1-205(a)(iv) if ordered by court | <i>Not stated</i> | 3-1-205(a)(iv) right to GAL | <i>Not stated</i> | <i>Not stated</i> |

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| Online Decisional Capacity Training Curriculum for Physicians | |
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| Module | Module Summary and Key Points |
| Module 1: The Importance of Evaluating Your Patient's Capacities | <ul style="list-style-type: none"> • With the aging of the population and increase in dementia, you will face more patients who may need an assessment of decisional capacity. • This curriculum presents a process for thinking through a clinical determination of capacity in particular situations. • Only a court of law can make a legal finding of incapacity, but a health care professional can make a clinical finding, on which a legal finding could be based. |
| Module 2: Key Capacity Assessment Principles and Practices | <p>10 Principles of Capacity</p> <ol style="list-style-type: none"> 1. Start with a presumption of capacity. 2. Assess the ability to make the decision, not the outcome. 3. Recognize and address ageism. 4. Capacity is task-specific and situation-specific. 5. Diminished capacity may be reversible and temporary. 6. Don't confuse communication challenges with diminished capacity. 7. Culture counts. 8. Consider key underlying factors. 9. Find ways to support capacity. 10. Seek collateral information; dig deeper. |
| Module 3: The Process and Context of Your Evaluation | <p>This module provides a framework for the capacity assessment process, which can be summed up in the mnemonic phrase "A Mighty Fine Evaluation (AMFE)."</p> <ul style="list-style-type: none"> • When you are faced with a situation in which capacity assessment is needed, think through: <ul style="list-style-type: none"> ○ <i>Antecedent</i> (preliminary questions); ○ <i>Medical</i> condition, including effect of medication use; ○ The person's <i>functional</i> abilities; and ○ The <i>environmental</i> or contextual factors including barriers, risks and supports. • Be alert to your own beliefs and attitudes toward age as you interact with older clients and assess capacity. • Be alert to undue influence by individuals close to a patient, who may deceptively bend the patient's will to take unfair advantage. • There are various screening and assessment instruments available, some of which are best used by an assessment specialist. • Your interview and observation are critical to the assessment. |
| Module 4: Specific Capacities and Situations | <ul style="list-style-type: none"> • For capacity for medical treatment consent, patients must be able to understand the treatment options and the risks and benefits of each. |

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| | <ul style="list-style-type: none"> • In assessing capacity to live independently, evaluation of functional abilities including activities of daily living and instrumental activities of daily living is especially important. • In assessing financial capacity, examine a person's practical financial skills, knowledge about his/her finances, and judgment in making financial decisions. • Family conflict may affect a patient's ability to understand and appreciate the decision at hand. It is important to speak with family members, but be aware they may have differing perceptions and agendas. |
| Module 5: When to Conduct an Evaluation Yourself and When to Refer | <ul style="list-style-type: none"> • Sometimes your knowledge and relationship with the patient will allow you to make a sound capacity assessment, but in other situations you will need to refer to a specialist such as a psychologist, psychiatrist, or other mental health professional. • You may need to re-evaluate the patient if conditions or situations have changed. Don't draw long-term conclusions from short-term problems such as delirium in the hospital. • Examples of situations in which you may need to refer the assessment to a specialist include those where family issues are complicated, the patient is refusing life-saving treatment, the patient makes a decision inconsistent with previously expressed wishes, the patient has a serious mental disorder, or an attorney is asking for a formal assessment in the context of conflict. • If you suspect abuse, neglect or exploitation, make a report to your local adult protective services. |
| Module 6: Working with Courts in Guardianship Proceedings | <ul style="list-style-type: none"> • Each state guardianship law has a specific definition of "incapacity." Find out the specific elements of "incapacity" in your state's law. • Your assessment for a judge in a guardianship proceeding should be thorough and specific, and should include the medical, cognitive, functional, and environmental factors including risks, values and supports. • Your assessment can directly affect the fundamental rights of a patient. • While most guardianship cases are not contested, be prepared to testify in court. |