

Briefing I – Supporting Family and Friends

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DEFAULT SURROGATE CONSENT STATUTES

as of June 2014

Explanation: The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning. The default surrogacy statute language varies from state to state and the listed descriptors generally hold the following meanings:

- Adult includes any person who is 18 years of age or older, is the parent of the child, or has married;
- Close friend (Adult friend) is one who has maintained regular contact with the patient as to be familiar with the patient’s activities, health, and religious or moral beliefs.
- **Provisions in red** are those addressing patients with no qualified default surrogate (sometimes called the “unbefriended” patient).

CAUTION: The descriptions and limitations listed in this chart are broad characterizations for comparison purposes and not as precise quotations from legislative language.

State & Citation	General Type of Statute	Priority of Surrogates (in absence of an appointed agent or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
1. ALABAMA Ala. Code 1975 §§22-8A-1 to -14 (2014). Specifically, see §22-8A-11	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> ▪ Spouse (unless legally separated/divorcing) ▪ Adult child ▪ Parent ▪ Adult sibling ▪ Nearest adult relative ▪ Att. physician & ethics committee 	Patient must be in terminal condition or permanently unconscious. Certification requirements.	Yes §22-8A-11(c)	Judicial recourse, §22-8A-11
2. ALASKA Alaska Stat. §§13.52.010 to .395 (West 2014), amended 2008. Specifically, see §13.52.030	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> ▪ Individual orally designated by patient ▪ Spouse ▪ Adult child ▪ Parent ▪ Adult Sibling ▪ Close friend 	Patient has to be an adult N/A to withholding or withdrawing life-sustaining procedures UNLESS patient is in “terminal condition” or “permanent unconsciousness.” Certification requirements. Mental health treatment limitations and anatomical gift limitations, see A.S. §13.52.173 and §13.52.193 Exceptional procedures (abortion, sterilization, psychosurgery, and/or removal of organs) limitations under A.S. §13.52.050.	Yes §13.52.030(g)	Majority rule for adult children, parents, or siblings; and if deadlock, then primary physician decides
3. ARIZONA Ariz. Rev. Stat. Ann. §§36-3201 to -3231 (West 2014), amended 2008. Specifically, see §36-3231	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> ▪ Spouse (unless legally separated) ▪ Adult child (if multiple, health care provider will seek a majority opinion from those available) ▪ Parent ▪ Domestic partner, if unmarried ▪ Sibling ▪ Close friend ▪ Att. physician in consult with ethics committee or, if none, 2nd physician 	N/A to decisions to withdraw nutrition or hydration Mental health treatment limitations	Yes §36-3203(C)	Majority rule for adult children Judicial recourse for all others, §36-3206

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<p>4. ARKANSAS</p> <p>Ark. Code Ann. §§20-6-101 to -118 (2014) Specifically, see §20-6-105</p>	<p>Comprehensive Health Care Decisions Act</p>	<p>A surrogate is designated by the health care provider in the following order of preference conditional on the surrogate being an adult who: (i) has exhibited special care and concern for the principal; (ii) is familiar with the principal's personal values; (iii) is reasonably available; and (iv) is willing to serve.</p> <ul style="list-style-type: none"> ▪ An adult designated orally or in writing ▪ Spouse (unless legally separated) ▪ Adult child ▪ Parent ▪ Adult sibling ▪ Adult relative ▪ Att. Physician in consult with ethics committee or 2nd physician 	<p>Certification requirements for withdrawing or withholding of artificial nutrition or hydration A.C.A. §20-6-106</p>	<p>Yes, §20-6-106</p>	<p>Judicial recourse, §20-6-115</p>
<p>5. CALIFORNIA</p> <p>Cal. Probate Code §§4711 – 4727 (West 2014) Specifically, see §4711</p>	<p>Comprehensive Health Care Decisions Act</p>	<p>An individual designated as surrogate. (orally or written)</p> <p>Note: The surrogate has priority over a concurrently appointed health care agent during the period the surrogate designation is in effect.</p>	<p>Effective “only during the course of treatment or illness or during the stay in the health care institution when the designation is made, or for 60 days, whichever period is shorter.”</p> <p>N/A to civil commitment, electro-convulsive therapy, psychosurgery, sterilization, and abortion.</p>	<p>Yes §4714</p>	<p>N/A since designated surrogate is presumably one person</p>
<p>Cal. Health & Safety Code §24178 (West 2014)</p>	<p>Specialized provision applicable only to medical research</p>	<ul style="list-style-type: none"> ▪ Spouse ▪ Domestic partner ▪ Adult child ▪ Custodial parent ▪ Adult sibling ▪ Adult grandchild ▪ Adult relative with the closest degree of kinship <p>Note: Different rules apply to emergency room experimental consent</p>	<p>Consent restricted to medical experiments that relate to the cognitive impairment, lack of capacity, or serious, or life threatening diseases and conditions of research participants.</p> <p>This provision N/A to persons involuntarily committed or voluntarily committed by a conservator under the Welfare & Institutions Code</p>	<p>Yes §24178(g)</p>	<p>Consensus required</p>
<p>Cal. Health & Safety Code §1418.8 (West 2014)</p>	<p>Specialized provision applicable only to nursing homes</p>	<ul style="list-style-type: none"> ▪ Next of kin:” ▪ The attending physician and surgeon in accordance with an interdisciplinary team review 	<p>Applies when “the attending physician and surgeon of a resident in a skilled nursing facility or intermediate care facility prescribes or orders a medical intervention that requires informed consent”</p>	<p>Not addressed</p>	
<p>6. COLORADO</p> <p>Colo. Rev. Stat. Ann. §§15-18-101 to 15-18.7-110(West 2014) Specifically, see §§15-18.5-101 to -103</p>	<p>Comprehensive Health Care Decisions Act</p>	<p>The following "interested persons" must decide who among them shall be surrogate decision-maker:</p> <ul style="list-style-type: none"> • Spouse • Parent • Adult child • Sibling • Adult Grandchild • Close friend 	<p>Certification requirements for withholding or withdrawing artificial nutrition and hydration, §15-18.5-103</p>	<p>Yes, §15-18.5-103(4)(a) Consensus or judicial action in the form of a guardianship</p>	<p>Consensus required on selection of the surrogate. If lack of consensus, judicial recourse (guardianship) §15-18.5-103</p>

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<p>7. CONNECTICUT</p> <p>Conn. Gen. Stat. Ann. §§19a-570 to -580g (West 2014) Specifically, see §19a-570 and -571</p>	<p>Part of Public health chapter on “Removal of Life Support Systems”</p>	<p>Physician, in consultation with next of kin in the following priority: (A) The spouse of the patient; (B) an adult son or daughter of the patient; (C) either parent of the patient; (D) an adult brother or sister of the patient; and (E) a grandparent of the patient (§19a-570) Oral communications re: withholding life support by patient made part of medical record per §19a-570</p>	<p>Limited to the removal or withholding of life support systems, and patient is in terminal condition or permanently unconscious</p> <p>Pregnancy limitation under §19a-574</p>	<p>Yes §19a-571(a)</p>	<p>judicial recourse, §19a-580c</p>
<p>8. DELAWARE</p> <p>Del. Code Ann. 16 Del. Code §§2501 to 2518 (2014). Specifically, see 16 Del. Code §2507</p>	<p>Comprehensive Health Care Decisions Act</p>	<ul style="list-style-type: none"> • An individual orally designated as surrogate • Spouse, unless petition for divorce • Adult child • Parent • Adult sibling • Adult grandchild • Adult niece or nephew • Adult aunt or uncle • Close friend <p>NOTE: Surrogate is disqualified if protective order against the individual is filed or in existence.</p>	<p>Adult patient must be in terminal condition or permanently unconscious, documented in writing with its nature and cause</p> <p>Pregnancy limitation, 16 Del. Code. §2503(j)</p>	<p>Yes 16 Del.Code. §2507(b)(8))</p>	<p>If in a health care institution, refer to “appropriate committee” for a recommendation. Judicial recourse, §16 Del. Code §2511</p>
<p>9. DISTRICT OF COLUMBIA</p> <p>DC Code §§21-2201 to -2213 (2014). Specifically, see §21-2210</p>	<p>Durable Power of Attorney for Health Care Act</p>	<ul style="list-style-type: none"> • Spouse or domestic partner • Adult child • Parent • Adult Sibling • Religious superior if in religious order or a diocesan priest • Close friend* • Nearest living relative <p>* Close friend may not be an individual or facility provider</p>	<p>Incapacity certified in accordance with DC Code §21-2204</p> <p>N/A to abortion, sterilization, or psycho-surgery, convulsive therapy or behavior modification programs involving aversive stimuli are excluded</p> <p>At least 1 witness must be present whenever surrogate grants, refuses or withdraws consent on behalf of the patient.</p>	<p>Yes 21-2210(b)</p>	<p>Yes DC Code §21-2210 (e)-(f), legal standing to challenge higher priority standard and rebuttable presumption established</p>
<p>10. FLORIDA</p> <p>Fla. Stat Ann. §§765.101 to .113 (West 2014) Specifically, see §765.401 and .113</p>	<p>Comprehensive Health Care Decisions Act</p>	<ul style="list-style-type: none"> • Spouse • Adult child or majority of adult children if more than one • Parent • Adult Sibling or majority of adult siblings if more than one • Close adult relative • Close friend • Licensed clinical social worker selected by bioethics committee, and if decision is to forgo life-prolonging procedures, must be reviewed by bioethics committee. 	<p>N/A to abortion, sterilization, electroshock therapy, psychosurgery, experimental treatment not approved by IRB, or voluntary admission to a mental health facility.</p> <p>Pregnancy limitation, §765.113</p>	<p>Yes §765.401(2) and (3)</p>	<p>Majority rule for adult children or siblings.</p> <p>Judicial recourse not addressed.</p>

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<p>11. GEORGIA</p> <p>Ga. Code Ann. §§31-9-1 to -7 (West 2014), amended 2010. Specifically, see § 31-9-2.</p>	<p>Informed Consent Statute</p>	<ul style="list-style-type: none"> • Spouse; or any parent, adult or minor of minor child • Person standing in loco parentis for minor child or ward • Adult child • Parent • Adult sibling • Grandparent • Adult first degree relation (niece, nephew, aunt, or uncle) • Close friend 	<p>Can consent to any surgical or medical treatment procedures not prohibited by law upon physician advice</p> <p>Not explicitly applicable to <i>refusals</i> of treatment, but nevertheless should be applicable.</p>	<p>Yes §31-9-2(b)</p>	<p>None provided</p>
<p>Ga. Code Ann. §§31-39-1 to -9 (West 2014) Specifically, see §31-39-4</p>	<p>DNR Statute</p>	<ul style="list-style-type: none"> • Spouse • Guardian (comes after spouse) • Adult Child • Parent • Sibling • Physician w/ concurrence of 2nd physician and ethics committee (31-39-4(e)) 	<p>Applies only to consent to DNR orders</p> <p>Limitation when disagreement between parents of minor child – hospital cannot enter DNR order if parents disagree</p>	<p>Yes §31-39-4(c)</p>	<p>None provided</p>
<p>Ga. Code Ann. §§31-36A-1 to -7 (West 2014) Specifically, see §31-36A-6</p>	<p>Specialized provision applicable to Temporary Health Care Placement</p>	<ul style="list-style-type: none"> • Spouse • Adult Child • Parent • Sibling • Grandparent • Adult grandchild • Aunt or Uncle • Nephew or Niece 	<p>Applies only to decisions regarding admission to or discharge from one health care facility or placement, or transfer to another health care facility or placement.</p> <p>Excludes involuntary placement for mental illness (governed by Title 37)</p>	<p>Yes 31-36A-6(b)</p>	<p>None provided</p>
<p>12. HAWAII</p> <p>Hawaii Rev. Stat. §§327E-1 to -16 (West 2014) Specifically, see §§327E-2 and E-5</p>	<p>Comprehensive Health Care Decisions Act</p>	<ul style="list-style-type: none"> • An individual orally designated as surrogate If none, the following "interested persons" must decide who among them shall be surrogate decision-maker: <ul style="list-style-type: none"> • Spouse (unless separated or estranged) • Reciprocal beneficiary • Adult child • Parent • Adult Sibling • Adult Grandchild • Close friend 	<p>None for orally designated surrogate, but an “interested person” may make a decision to withhold or withdraw nutrition and hydration only if two physicians certify that providing it will merely prolong the act of dying and the patient is highly unlikely to have any neurological response in the future.</p>	<p>Yes §327E-5(g)</p>	<p>Consensus required on the selection of the surrogate. If lack of consensus, judicial recourse (guardianship), §327E-5(d)</p>

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<p>13. IDAHO</p> <p>Idaho Code §§ 39-4501 to -4515 (West 2014), amended 2012. Specifically, see § 39-4504</p>	<p>Comprehensive Health Care Decisions Act</p>	<ul style="list-style-type: none"> • Spouse • Adult child • Parent • Person named in a delegation of parental authority executed pursuant to § 15-5-104 • A relative representing self as appropriate, responsible person • Other individual representing self to be responsible for the person's health care • In a medical emergency, attending physician or dentist may authorize and/or provide such care, treatment or procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such physician or dentist, may proceed as if informed, valid consent therefor had been otherwise duly given. 	<p>None listed</p>	<p>Indirect in statement of policy: "Any authentic expression of a person's wishes with respect to health care should be honored." ICS 39-4509(3)</p>	<p>None provided</p>
<p>14. ILLINOIS</p> <p>755 ILCS §§ 40/1 to 40/65, Specifically, see 40/25 (West 2014)</p>	<p>Health Care Surrogate Act</p>	<ul style="list-style-type: none"> • Spouse • Adult child • Parent • Adult Sibling • Adult grandchild • Close friend 	<p>N/A to admission to mental health facility, psychotropic medication or electro-convulsive therapy (see 5/2-102; 5/3-601.2, amended 1997)</p> <p>If decision concerns forgoing life-sustaining treatment, patient must be in terminal condition, permanently unconscious, or incurable or irreversible condition.</p>	<p>Yes §40/20(b)</p>	<p>Majority rule for children, siblings and grandchildren.</p> <p>Judicial recourse (guardianship), § 40/25(d)</p>
<p>15. INDIANA</p> <p>Ind. Code Ann. §§ 16-36-1-1 to -14 (West 2014) Specifically, see § 16-36-1-5</p>	<p>Health Care Agency (durable power) and Surrogate Consent Act</p>	<p>Any of the following:</p> <ul style="list-style-type: none"> • Spouse • Parent • Adult child • Adult Sibling • Religious superior if the individual is a member of a religious order 	<p>None listed</p>	<p>Yes § 16-36-1-5(d)</p>	<p>Judicial recourse not addressed</p>
<p>16. IOWA</p> <p>Iowa Code Ann. §§ 144A.1 to .12 (West 2014) Specifically, see § 144A.7</p>	<p>Living Will Statute</p>	<ul style="list-style-type: none"> • Spouse • Adult child • Parent or parents • Adult sibling 	<p>Limited to the withholding or withdrawal of life-sustaining procedures, and patient is in terminal condition or comatose</p> <p>A witness must "be present at the time of the consultation when that decision is made."</p> <p>Pregnancy limitation, § 144A.7(3)</p>	<p>Yes § 144A.7(1)</p>	<p>Majority rule for adult children</p> <p>Judicial recourse not addressed</p>
<p>17. KANSAS</p> <p>K.S.A. § 65-4974 2014</p>	<p>Specialized provision, applicable only to consent to medical research</p>	<ul style="list-style-type: none"> • Spouse, unless legally separated • Adult child • Parent • A relative <p>Note: Authority of guardian or agent with authority to make health care decisions is specifically acknowledged.</p>	<p>Consent is restricted to research protocols that have been approved by an institutional review board.</p> <p>Cannot consent if contrary to the incapacitated person's permission, expressed orally or in writing</p>	<p>No</p>	<p>None provided</p>

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18. KENTUCKY Ky. Rev. Stat. §§311.621 to .644(Baldwin 2014) Specifically, see §311.631	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> Spouse Adult child Parents Nearest adult relative 	N/A to withholding or withdrawal artificial nutrition and hydration unless specified conditions are met	Yes §311.631(3)	Majority rule for adult children and nearest relative Judicial recourse not addressed
19. LOUISIANA La. Rev. Stat. Ann. §40:1299.58.1 to .10 (West 2013) Specifically, see §40:1299.58.5	Living Will Statute	<ul style="list-style-type: none"> Spouse, if not judicially separated Adult child Parents Sibling Other ascendants or descendants (direct blood line relatives) 	Limited to executing a LW (“Declaration”) for patient in terminal and irreversible condition or comatose	No	Consensus required Judicial recourse not addressed
20. MAINE Me. Rev. Stat. Ann tit. 18-A, §5-801 to -817 (West 2014) Specifically, see §5-805.	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> Spouse, unless legally separated Adult in spouse-like relationship Adult child Parent Adult sibling Adult grandchild Adult niece or nephew Adult aunt or uncle Adult relative familiar with patient's values Close friend 	<p>If decision pertains to withdrawal or withholding of life-sustaining treatment , patient must be in terminal condition or persistent vegetative state under §5-805(a)</p> <p>N/A to denial of surgery, procedures, or other interventions that are deemed medically necessary</p> <p>Admission to mental health institution</p>	Yes §5-805(f)	Majority rule if more than one member of any class assumes authority Provider may refer them “to a neutral 3 rd party for assistance in resolving the dispute”
21. MARYLAND Md. Health-Gen. Code Ann., §§5-601 to -626 (2014) Specifically, see §5-605	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> Spouse or Domestic Partner Adult child Parent Adult sibling Close friend or relative who has maintained regular contact with the patient 	N/A to sterilization or treatment for mental disorder Applicable to life-sustaining procedure only if the patient as been certified to be in a terminal condition, persistent vegetative state, or end-stage condition	Yes §5-605(c)	If in hospital or nursing home, refer to ethics committee If elsewhere, consensus required
22. MASSACHUSETTS	None				
23. MICHIGAN Mich. Comp. Laws Ann. §§333.5651 to .5661 (West 2014) Specifically, see §333.5653(g) and .5655(b)	Health Care disclosure and consent act.	<ul style="list-style-type: none"> “a member of the immediate family, the next of kin, or the guardian” (priority not specified) 	Applies when patient has a “reduced life expectancy due to advanced illness”	No	Judicial recourse not addressed
24. MINNESOTA	None				

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25. MISSISSIPPI Miss. Code Ann. §§41-41-201 to -303 (West 2014) Specifically, see §§41-41-203(s), -211, and -215(9)	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> Individual orally designated by patient Spouse, unless legally separated Adult child Parent Adult sibling Close friend Owner, operator, or employee of residential long-term care institution (but see limitations in next column) 	<p>Admission to mental health institution.</p> <p>If surrogate is owner, operator, or employee of residential long-term care institution, then the authority does not extend to decisions to withhold or discontinue life support, nutrition, hydration, or other treatment, care, or support. §41-41-215(9)</p>	Yes §41-41-211(6)	<p>Majority rule if more than one member of any class assumes authority</p> <p>Judicial recourse not addressed</p>
26. MISSOURI	None				
27. MONTANA Mont. Code Ann. §§50-9-101 to -111 (2013) Specifically, see §50-9-106	Living Will Statute	<ul style="list-style-type: none"> Spouse Adult child Parents Adult sibling Nearest adult relative 	<p>Limited to withholding or withdrawal of life-sustaining treatment, and patient is in terminal condition</p> <p>Pregnancy limitation, §50-9-106(7)</p>	Yes §50-9-106(4)	<p>Majority rule for adult children and siblings</p> <p>Judicial recourse not addressed</p>
28. NEBRASKA	None				
29. NEVADA Nev. Rev. Stat. §§449.535 to -.690(2013) Specifically, see §449.626	Living Will Statute	<ul style="list-style-type: none"> Spouse Adult child Parents Adult sibling Nearest adult relative 	<p>Limited to withholding or withdrawal of life-sustaining treatment, and patient is in terminal condition</p> <p>Pregnancy limitation, §449.626(6)</p>	Yes §§449.626(4)	<p>Majority rule for adult children and sibling</p> <p>Judicial recourse not addressed</p>
30. NEW HAMPSHIRE	None				
31. NEW JERSEY NJ St. § 26:14-1 – 5 (West 2014) Specifically, see §25:14-5	Specialized provision applicable only to medical research	<ul style="list-style-type: none"> Spouse or civil union partner Adult child Custodial parent Adult sibling Nearest adult relative 	Limited to medical research approved and monitored by an institutional review board, plus certain benefit/risk criteria must be met.	Yes NJ St. § 26:14-5(d) plus procedural requirements for informed consent	<p>Consensus required</p> <p>Judicial recourse not addressed</p>
32. NEW MEXICO N.M. Stat. Ann. 1978 §§24-7A-1 to -18 (West 2007) Specifically, see §24-7A-5	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> An individual designated as surrogate Spouse Individual in long-term spouse-like relationship Adult child Parent Adult sibling Grandparent Close friend 	Admission to mental health facility §24-7A-13(E)	Yes §24-7A-5(F)	<p>Majority rule if more than one member of any class assumes authority</p> <p>Judicial recourse. §24-7A-14</p>

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<p>33. NEW YORK</p> <p>N.Y. Family Health Care Decisions Act §§2994-A to -U (McKinney 2014) Specifically, see § 2994- D</p>	<p>Specialized Surrogate Consent Statute (applicable to health care provided in a hospital and nursing homes)</p>	<ul style="list-style-type: none"> • Spouse or Domestic Partner • Adult child • Parent • Adult sibling • Close friend • Attending Physician for routine medical treatment or, for major medical treatment, the attending physician must make a recommendation to the hospital for the treatment and have at least one other physician designated by the hospital to independently concur 	<p>Even if the patient lacks capacity, a patient’s objection to the surrogate’s decision will prevail unless a court of competent jurisdiction determines the patient is incompetent for all purposes, not just for health care decisions.</p> <p>Decisions to withhold or withdraw life-sustaining treatment for a patient shall be authorized only if certain conditions are met and the attending physician or hospital concurs with the decision.</p>	<p>Yes 2994-d(4) and §2994-d(5)</p>	<p>Judicial recourse (guardianship), § 2994-R</p>
<p>N.Y. Pub. Health Law §§2960 to 2979 (McKinney 2014)</p> <p>Specifically, see §§2965 & 2966</p>	<p>Specialized Surrogate Consent Statute (applicable only to DNR orders)</p>	<ul style="list-style-type: none"> • Spouse or domestic partner • Adult child • Parent • Adult sibling • Close friend • Physician, with concurrence by a qualified second physician who personally examines patient that resuscitation is medically futile. 	<p>Limited to consent to a DNR order, and patient is in terminal condition, or permanently unconscious, or where resuscitation is futile or extraordinarily burdensome</p>	<p>Yes §2965(3)(a)</p>	<p>Refer to dispute mediation system</p> <p>Judicial recourse, Specifically, see §2973</p>
<p>34. NORTH CAROLINA</p> <p>N.C. Gen. Stat. §90-320 to -328 (2014) Specifically, see §90-322</p>	<p>Living Will Statute</p>	<ul style="list-style-type: none"> • Spouse • Parents • Adult Child • Siblings • Close friend • Att. physician 	<p>Limited to the withholding or withdrawal of life-prolonging measures where the patient is terminal or permanently unconscious.</p>	<p>No</p>	<p>Majority rule for parents, adult children & siblings</p> <p>Judicial recourse not addressed</p>
<p>35. NORTH DAKOTA</p> <p>N.D. Cent. Code §23-12-01 to -19 (2014) Specifically, see §23-12-13</p>	<p>Informed Consent Statute</p>	<ul style="list-style-type: none"> • Spouse who has maintained significant contacts with incapacitated person • Adult children who have maintained significant contacts with incapacitated person • Parents, including stepparent who has maintained significant contacts with incapacitated person • Adult siblings who have maintained significant contacts with incapacitated person • Grandparents who have maintained significant contacts with incapacitated person • Adult grandchildren who have maintained significant contacts with incapacitated person • Close adult relative or friend who have maintained significant contacts with incapacitated person 	<p>Not explicitly applicable to refusals of treatment, but nevertheless should be applicable. A determination of incapacity, over the patient’s objections, can be determined in a court hearing pursuant to chapter 30.1-28.</p> <p>N/A to sterilization, abortion, psychosurgery, and admission to a state mental facility for > 45 days</p>	<p>Yes §23-12-13(3)</p>	<p>None provided</p>

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<p>36. OHIO</p> <p>Ohio Rev. Code Ann. §2133.01 to .16 (West 2014) Specifically, see §2133.8</p>	<p>Living Will Statute</p>	<ul style="list-style-type: none"> • Spouse • Adult child • Parents • Adult sibling • Nearest adult relative 	<p>Limited to consent for withdrawal or withholding of life-sustaining treatment, and patient has been in terminal condition or permanently unconscious for at least 12 months.</p> <p>Nutrition and hydration may be withheld <i>only</i> upon the issuance of an order of the probate court</p> <p>Pregnancy limitation, §2133.08(G)</p>	<p>Yes §2133.08(D)(3)</p>	<p>Majority rule for adult children and siblings</p> <p>Judicial recourse not addressed</p>
<p>37. OKLAHOMA</p> <p>Okla. Stat. Ann. tit. 63 §3101 to 3102.3A (West 2014) Specifically, see §3102A</p>	<p>Specialized provision applicable only to medical research</p>	<ul style="list-style-type: none"> • Spouse • Adult child • Parent • Adult sibling • Relative by blood or marriage 	<p>Limited to experimental treatment, test or drug approved by a local institutional review board.</p>	<p>Yes §3101.16</p>	<p>Judicial recourse not addressed</p>
<p>38. OREGON</p> <p>Or. Rev. Stat. §127.505 to .660 (2014) Specifically, see §127.635, §127.505(13) and 127.535(4)</p>	<p>Comprehensive Health Care Decisions Act</p>	<ul style="list-style-type: none"> • Spouse • Adult designated by others on this list, without objection by anyone on list • Adult child • Parent • Sibling • Adult relative or adult friend • Att. physician 	<p>Limited to withdrawal or withholding of life-sustaining procedures for a patient in a terminal condition or permanently unconscious, or who meets other conditions related to pain or advanced progressive illness.</p> <p>Principal's parent or former guardian's priority status to withhold or withdraw life-sustaining procedures may be withheld if a court has taken the principal out of their custody permanently or terminated the parental rights.</p>	<p>Yes §127.535(4) & 127.535(6)</p>	<p>Majority rule for adult children and siblings</p> <p>Judicial recourse not addressed</p>
<p>39. PENNSYLVANIA</p> <p>Pa. Stat. Ann. tit. 20, §§5451 to 5461 (West 2007) (<i>eff. January 29, 2007</i>) Specifically, see §5456 and §5461</p>	<p>Comprehensive Health Care Decisions Act</p>	<ul style="list-style-type: none"> • Spouse • Adult designated by others on this list, without objection by anyone on list • Adult child • Parent • Adult sibling • Adult grandchild • Close friend <p>Note: Individual may provide for a different order of priority. by signed writing.</p>	<p>Pregnancy limitation, Pa. Stat. Ann. tit. 20, §5429</p> <p>Surrogate health care decision maker may not execute an advance health care directive or name a health care agent on behalf of an incompetent individual.</p>	<p>Yes Tit. 20, §§5456 & 5461</p>	<p>Majority rule if more than one member of any class assumes authority</p> <p>Judicial recourse not addressed</p>
<p>40. RHODE ISLAND</p>	<p>None</p>				

State & Citation	General Type of Statute	Priority of Surrogates (in absence of an appointed agent or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
41. SOUTH CAROLINA S.C. Code Ann. §44-66-10 to -80 (2014) Specifically, see § 44-66-30	Separate Surrogate Consent Act	<ul style="list-style-type: none"> Person given priority to make health-care decisions for the patient by another statute Spouse, unless separated or divorced Parent or adult child Adult sibling, grandparent, or adult grandchild Other close relative Person given authority to make health-care decisions for the patient by another statutory provision 	N/A if patient's inability to consent is temporary and delay of treatment will not result in significant detriment to the patient's health	Yes §44-66-30(F)	Consensus required Judicial recourse. Specifically, see §44-66-30(D)
42. SOUTH DAKOTA S.D. Codified Laws §34-12C-1 to -8 (2014) Specifically, see §34-12C-3	Separate Surrogate Consent Act	<ul style="list-style-type: none"> Spouse Adult child Parent Adult sibling Grandparent or adult grandchild Aunt or uncle or adult niece or nephew Adult cousin Close friend (An authorized surrogate may delegate authority to another person in same or succeeding class)	None listed	Yes §34-12C-3	Consensus required Judicial recourse not addressed
43. TENNESSEE Tenn. Code Ann §68-11-1801 to -1815 (2014) Specifically, see §68-11-1806	Comprehensive Health Care Decisions Act	Supervising health care provider selects from the following order of preference under criteria provided: <ul style="list-style-type: none"> Individual designated by patient Spouse Adult child Parent Adult sibling Other adult relative Close friend Primary Physician, in consultation with ethics committee or independent 2nd physician Disqualified surrogates: <ul style="list-style-type: none"> Indiv. Provider Facility Provider Person who is the subject of a protective order that directs the person to avoid contact with the patient	Any matter governed by the mental health code. Except for individual designated by the patient, other surrogates cannot make decision to w/h or w/d artificial nutrition & hydration without certification by 2 physicians of medical prerequisites.	Yes §68-11-1806(d)	Provider selects surrogate using criteria provided under §68-11-1806(c)(4)
44. TEXAS Tex. [Health & Safety] Code Ann. §166.031 to .053 (Vernon 2013) Specifically, see §166.039	Comprehensive Health Care Decisions Act	Physician and: <ul style="list-style-type: none"> Spouse Adult children Parents Nearest relative Att. Physician, with concurrence of independent 2nd physician or physician member of ethics committee 	Pregnancy limitation, §166.049	Yes §166.039(c)	Judicial recourse (guardianship), §166.039(g)

State & Citation	General Type of Statute	Priority of Surrogates (in absence of an appointed agent or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
Tex. [Health & Safety] Code Ann. §166.081 to .101 (Vernon 2013) Specifically, see §166.088(b)	Specialized provision (applicable to DNR orders)	(Same as above. Incorporates the terms of §166.039)	Pregnancy limitation, §166.098	Yes §166.088(c)	Judicial recourse (guardianship), §166.039(g)
Tex. [Health & Safety] Code Ann. §313.001 to .008 (Vernon 2013) Specifically, see 313.004	Specialized provision applicable to patients in home & community support services or in a hospital or nursing home	<ul style="list-style-type: none"> • Spouse • Adult child (who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker) • Majority of the patient's reasonably available adult children • Parents the individual clearly identified to act for the patient by the patient before the patient became incapacitated • Nearest living relative • Member of the clergy 	<ul style="list-style-type: none"> • Voluntary inpatient mental health services; • Electro-convulsive treatment; or • Appointment of another surrogate decision-maker. 	Yes §313.004(c)	<p>Consensus, in the case of adult children surrogates</p> <p>Judicial recourse, §313.004(b)</p>
45. UTAH Utah Code Ann. §75-2a-101 to -125 (2013) Specifically, see §75-2a-108	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> • Spouse • Adult Child • Parent • Adult sibling • Adult grandchild • Grandparent • Close friend 	<p>Surrogate may not admit the adult to a licensed health care facility for long-term custodial placement other than for assessment, rehabilitative, or respite care over the objection of the adult</p> <p>Pregnancy limitation, §75-2a-123</p>	Yes §75-2a-110(1)	<p>Majority rule inside the highest available priority level.</p> <p>Judicial recourse, §75-2a-120</p>
46. VERMONT	None				
47. VIRGINIA Va. Code §54.1-2981 to -2993 (West 2013) Specifically, see §54.1-2986	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> • Spouse • Adult child • Parents • Adult sibling • Other relative in the descending order of blood relationship • Close friend (knowledgeable of the patient's religious beliefs) 	N/A to non-therapeutic sterilization, abortion, psychosurgery, or admission to a mental retardation facility or psychiatric hospital	Yes §54.1-2986(A)(7)	Majority rule
48. WASHINGTON Wash. Rev. Code Ann. §7.70.010 to .160 (West 2014) Specifically, see §7.70.065	Informed Consent Statute	<ul style="list-style-type: none"> • Spouse or registered domestic partner • Adult children • Parents • Adult siblings 	Not explicitly applicable to refusals of treatment, but nevertheless should be applicable.	Yes §7.70.065(1)(b) and (c)	Consensus required

State & Citation	General Type of Statute	Priority of Surrogates (in absence of an appointed agent or guardian with health powers)	Limitations on Types of Decisions	Provides Standard for Decision-Making	Disagreement Process Among Equal Priority Surrogates
49. WEST VIRGINIA W. VA. Code Ann. §16-30-1 to -25 (West 2007) Specifically, see §16-30-8	Comprehensive Health Care Decisions Act	Att. Physician or Advanced Nurse Practitioner selects from the following order of preference under criteria provided: <ul style="list-style-type: none"> • Spouse • Adult child • Parents • Adult sibling • Adult grandchild • Close friend • Any other person or entity according to DHHR rules Ineligible surrogates: <ul style="list-style-type: none"> ▪ Indiv. Provider* ▪ Facility Provider* * Exception for relatives who are employees of	None listed	Yes §16-30-8(b)(1)(A), -9 and -5(d)	Not applicable since provider selects surrogate.
50. WISCONSIN Wisc. Stat. Ann. §50.06 (West 2007)	Specialized Surrogate Consent Statute applicable to certain facility admissions	<ul style="list-style-type: none"> • Spouse • Adult child • Parent • Adult sibling • Grandparent • Adult grandchild • Close friend 	Limited to consent to admission to nursing home and certain community-based residential facilities for up to 60 days, with 30 day extension possible, and only if: <ol style="list-style-type: none"> 1. The incapacitated person is not diagnosed as developmentally disabled or having a mental illness at time of admission 2. Petitions for guardianship and protective placement are filed <i>prior</i> to admission 	No	Consensus required
51. WYOMING Wyo. Stat. §35-22-401 to -416(2013) Specifically, see §35-22-406	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> • Individual designated by personally informing the supervising health care provider • Spouse, unless legally separated • Adult child • Parent • Grandparent • Adult sibling • Adult grandchild • Close friend 	None listed	Yes §35-22-406(f)	Majority rule if more than one member of any class assumes authority Judicial recourse, §35-22-415
<i>UNIFORM HEALTH-CARE DECISIONS ACT</i>	Comprehensive Health Care Decisions Act	<ul style="list-style-type: none"> • Individual orally designated by patient • Spouse • Adult child • Parent • Sibling • Close friend 	None listed	Yes §5(f)	Majority rule if more than one member of any class assumes authority

CAUTION: The descriptions and limitations listed in this chart are broad characterizations for comparison purposes and not as precise quotations from legislative language.

Provisions in red are those addressing patients with no qualified default surrogate (the “unbefriended” patient)

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STATE HEALTH CARE POWER OF ATTORNEY STATUTES

Selected Characteristics

January 2013

Explanation: The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning.

Abbreviations: AD = Advance Directive LW = Living Will DPA = Durable Power of Attorney UHCDA = Uniform Health Care Decisions Act.

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>1. ALABAMA ALA. CODE. § 22-8A-1 to -14 (West, 2012) ("Natural Death Act") Combined AD. Single statutory form.</p> <p>See also Durable Power of Attorney Act, § 26-1-2</p>	<p>YES Must be substantially followed</p>	<p>Terminology: Health care proxy, §22-8A-3(7)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Nutrition and hydration – refusal permitted if expressly authorized • Alabama Durable Power of Attorney Act, Section 26-1-2: no psychosurgery, sterilization, abortion when not necessary to preserve the life of the principal, or involuntary mental health hospitalization or treatment 	<ul style="list-style-type: none"> • Indiv. Provider * <p>* Exception for relatives employed by the provider</p>	<ul style="list-style-type: none"> • 2 or more witnesses age 19 or older • Appointed proxy must attach written acceptance to designation 	<ul style="list-style-type: none"> • Minor • Agent • Proxy signor • Relative/Spouse • Heir/Beneficiary • Person responsible for care costs 	<p>None Specified</p>	<p>None Specified</p>
<p>2. ALASKA ALASKA STAT. ANN. § 13.52.010 to .395 (West, 2012) ("Health Care Decisions Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent, §13.52.010(b)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • No abortion, sterilization, psychosurgery, or removal of bodily organs except where the above procedures are necessary to preserve the life of the patient or to prevent serious impairment to the patient's health • Pregnancy limitation 	<ul style="list-style-type: none"> • Facility provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witness or notarized 	<ul style="list-style-type: none"> • Agent • Facility provider <p><u>At least one witness shall not be:</u></p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary 	<p>None Specified</p>	<p>None Specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>3. ARIZONA ARIZ. REV. STAT. ANN. § 36-3201 to .3297 (West, 2012) ("Living Wills & Health Care Directives") Combined AD</p> <p><i>Separate Living Will Statute: § 36-3261</i></p>	<p>YES Optional</p>	<p>Terminology: Agent, §36-3201</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> • Person whose license as fiduciary has been revoked/suspended and not reinstated, unless relative 	<ul style="list-style-type: none"> • 1 witness or notarized 	<ul style="list-style-type: none"> • Agent • Provider <p>If only <u>one</u> witness, that person shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary 	<p>None Specified</p>	<p>None Specified</p>
<p>4. ARKANSAS ARK. CODE ANN. § 20-13-104 (West, 2012) ("Durable Power of Attorney for Health Care Act")</p> <p>Special DPA for Health Care</p> <p><i>Separate Living Will Statute: ARK. CODE ANN. § 20-17-201 to -218 ("Arkansas Rights of the Terminally Ill and Permanently Unconscious Act") also includes proxy appointment)</i></p>	<p>NO</p> <p>But proxy appointment in Rights of the Terminally Ill Act has optional form, § 20-17-202.</p>	<p>Terminology:</p> <ul style="list-style-type: none"> • Agent, §0-13-104(b) • Health care proxy, §20-17-201(3) <p>Limitations:</p> <ul style="list-style-type: none"> • Life-sustaining treatment -- unless the DPA incorporates a proxy authorization from the Arkansas Rights of the Terminally Ill and Permanently Unconscious Act, § 20-17-202 • Pregnancy limitation 	<p>None specified</p>	<ul style="list-style-type: none"> • 2 witnesses 	<p>None specified</p>	<p>None Specified</p>	<p>None Specified</p>
<p>5. CALIFORNIA CAL. PROB. CODE §§ 4600 – 4806 (West, 2012) ("Health Care Decisions Law")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent §4607</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Civil commitment • Electro-convulsive therapy • Psycho-surgery • Sterilization • Abortion 	<ul style="list-style-type: none"> • Supervising Indiv. Provider* • Facility Provider* • Conservator – unless conditions are met. <p>* Exception for relatives who are employees of or for a conservator who has satisfied the Lanterman-Petris Short Act</p>	<ul style="list-style-type: none"> • 2 witnesses or notarized 	<ul style="list-style-type: none"> • Agent • Indiv. Provider • Facility Provider <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary 	<ul style="list-style-type: none"> • Declaration, in substance, from each witness* • Declaration, in substance, from non-relative/spouse/heir witness* <p>*Except notary</p>	<ul style="list-style-type: none"> • If HCPA executed in facility, ombudsman must sign/declare as witness. §4675

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>6. COLORADO COLO. REV. STAT. ANN. § 15-14-503 to -509 (West, 2012) ("Colorado Patient Autonomy Act")</p> <p>Special DPA for Health Care</p> <p><i>Separate Living Will Statute:</i> COLO. REV. STAT. §15-18-101 to -113. ("Colorado Medical Treatment Decision Act")</p>	NO	Terminology: Agent § 15-14-504 (1)(c) Limitations: None specified	None specified	None specified	N/A	None Specified	None Specified
<p>7. CONNECTICUT CONN. GEN. STAT. § 19a-570 to -580g (West, 2012) ("Removal of Life-Systems")</p> <p>Combined AD, but separate LW and Appointment of a HC Representative forms)</p> <p><i>See also</i> CONN. GEN. STAT. § 1-56r ("Designation of person for decision-making")</p>	YES Optional	Terminology: <ul style="list-style-type: none"> • Health care representative (19a-570) • Person designated (§1-56r) Limitations: None specified <ul style="list-style-type: none"> • Sections 19a-571 to 19a-573, inclusive, 19a-575 and 19a-575a are not applicable to pregnant patients 	<ul style="list-style-type: none"> • Facility Provider* • Attending physician • Administrator or employee of gov't agency financially responsible for care* * Exception for relatives	<ul style="list-style-type: none"> • 2 witnesses • Notary (for designation of person for decision-making) 	<ul style="list-style-type: none"> • Agent 		If in mental health or DD facility, at least one witness must be a physician or a licensed clinical psychologist w/ specialized training, and at least one witness must not be affiliated with facility. §19a-576
<p>8. DELAWARE DEL. CODE ANN. tit. 16, § 2501 - 2518 (West, 2012) ("Health Care Decisions" chapter)</p> <p>Combined AD</p>	YES Optional	Terminology: Agent §2501 (b) Limitations: <ul style="list-style-type: none"> • Pregnancy limitation 	<ul style="list-style-type: none"> • Residential LTC Facility Provider* * Exception for relatives	<ul style="list-style-type: none"> • 2 witnesses • Witnesses state in writing that they're not prohibited witnesses 	<ul style="list-style-type: none"> • Facility provider • Relative/Spouse • Heir/Beneficiary • Creditor • Person responsible for care costs 	None specified	If in sanatorium, rest home, nursing home, boarding home or related institution, one witnesses must be designated as a patient advocate or ombudsman by either state agency. §2511

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>9. DISTRICT OF COLUMBIA D.C. CODE § 21-2201 - 2213 (West, 2012) ("Health Care Decisions Act")</p> <p>Special DPA</p> <p><i>Separate Living Will Statute:</i> D.C. CODE § 7-621 –630 (West, 2012) ("Natural Death Act")</p>	<p>YES Optional</p>	<p>Terminology: Attorney in Fact §21-2202 (1)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Abortion* • Sterilization* • Psycho-surgery* • Convulsive therapy or other behavior modification programs* <p>*Unless authorized by court</p> <ul style="list-style-type: none"> • Decision to medicate defendant to render him/her competent to stand trial* <p>*Not in statute</p>	<ul style="list-style-type: none"> • Indiv. Provider • Facility Provider 	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Principal • Individual Provider • Facility Provider <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary 	<ul style="list-style-type: none"> • Include language substantially similar to "not affected by" OR "becomes effective upon" incapacity 	<p>None specified</p>
<p>10. FLORIDA FLA. STAT. ANN. § 765.101 - .404 (West, 2012)</p> <p>Separate acts and forms ("Health Care Surrogate Act and "Life-Prolonging Procedure Act") are under an umbrella "Health Care Advance Directives" chapter.</p>	<p>YES Optional</p>	<p>Terminology: Surrogate § 765.101 (16)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Mental health facility admission* • Electro-convulsive therapy* • Psycho-surgery* • Sterilization* • Abortion* • Experimental treatments not approved by IRB* • Withdrawing or withholding life-prolonging procedures from a pregnant patient prior to viability* • Pregnancy limitation* <p>* Consent/refusal permissible if expressly authorized</p>	<p>None specified</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Agent <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse 	<p>None specified</p>	<p>None specified</p>
<p>11. GEORGIA GA. CODE ANN. § 31-32-1 to -14 (West, 2012) ("Advance Directive for Health Care Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Health Care Agent §31-32-2 (6)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Psycho-surgery • Sterilization • Involuntary hospitalization or treatment • Pregnancy limitation 	<ul style="list-style-type: none"> • Indiv. Provider directly involved 	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Agent • Heir/Beneficiary • Indiv. Provider <p><u>No more than one</u> witness shall be:</p> <ul style="list-style-type: none"> • Facility provider 	<p>None specified</p>	<p>None specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>12. HAWAII HAW. REV. STAT. § 327E-1 to -16 (West, 2012) ("Uniform Health-Care Decisions Act")</p> <p>Combined AD</p> <p>See also HAW. REV. STAT. § 551D-2.5 re: DPA for health care</p>	<p>YES Optional</p>	<p>Terminology: Agent §327E-2</p> <p>Limitations: • Mental Health Facility Admission*</p> <p>*Unless expressly authorized by DPA</p>	<ul style="list-style-type: none"> • Facility Provider or Owner* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Indiv. provider • Facility provider • Agent <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse • Heir/Beneficiary 	<p>None specified</p>	<p>None specified</p>
<p>13. IDAHO IDAHO CODE ANN. § 39-4501 to -4515 (West, 2012) ("Medical Consent and Natural Death Act")</p> <p>Combined AD</p>	<p>NO Optional</p>	<p>Terminology: Surrogate Decision Maker § 39-4502 (16)</p> <p>Limitations: • Pregnancy limitation (included in statutory form)</p>	<ul style="list-style-type: none"> • Indiv. Provider* • Community Care Facility Provider* <p>*Exception for relatives who are employees of.</p>	<ul style="list-style-type: none"> • None specified 	<ul style="list-style-type: none"> • None specified 	<p>None specified</p>	<p>None specified</p>
<p>14. ILLINOIS 755 ILL. COMP. STAT. ANN. 45/4-1 to /4-12 (West, 2012) ("Powers of Attorney for Health Care Law")</p> <p>Special DPA</p> <p>Separate LW Statute: 755 ILL. COMP. STAT. ANN 35/1 to /10 ("Living Will Act")</p>	<p>YES Optional</p>	<p>Terminology: Agent § 45/4-4 (c)</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> • Indiv. Provider 	<ul style="list-style-type: none"> • One Witness 	<ul style="list-style-type: none"> • Facility provider • Indiv. provider • Relative/Spouse • Agent 	<p>None specified</p>	<p>None specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>15. INDIANA IND. CODE ANN. § 30-5-1-1 to 30-5-5-19 (West, 2012) specifically § 30-5-5-16 and -17, (part of general "Powers of Attorney" article of code</p> <p>and</p> <p>IND. CODE ANN. § 16-36-1-1 to -14 (West, 2012), ("Health Care Consent " chapter creating a health care representative)</p> <p><i>Separate LW Statute:</i> IND. CODE ANN. § 16-36-4-1 to -21. ("Living Wills and Life Prolonging Procedures" chapter)</p>	NO	<p>Terminology: Attorney in Fact under §30-5-2-2</p> <p>and</p> <p>Health Care Representative under §16-36-1-2</p> <p>Limitations: None specified.</p>	None specified.	None specified	None specified	Mandatory language for authority re life-sustaining treatment (§30-5-5-17). It is also incorporated into §16-36-1-14	None specified
<p>16. IOWA IOWA CODE ANN. § 144B.1 to .12 (West, 2012) ("Durable Power of Attorney for Health Care" chapter)</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> IOWA CODE ANN. § 144A.1 - .12 ("Life-sustaining Procedures Act")</p>	YES Optional	<p>Terminology: Attorney in Fact § 144B.1 (1)</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> • Indiv. Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • Date of execution • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent • Indiv. Provider • Individual less than 18 years old <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee 	None specified	None specified
<p>17. KANSAS KAN. STAT. ANN. § 58-625 to -632 (West, 2012) ("Uniform Durable Power of Attorney Act").</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> KAN. STAT. ANN. § 65-28,101 to -28,109 ("Natural Death Act")</p>	YES Must be substantially followed	<p>Terminology: Attorney in Fact § 58-651 (a)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Cannot revoke previous living will 	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for relatives & religious community members who actually and regularly engage in religious ministrations or performance of health care services</p>	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent • Relative/Spouse • Heir/Beneficiary • Person responsible for health care costs 	None specified	None specified

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>18. KENTUCKY KY. REV. STAT. ANN. § 311.621 to .641 (West, 2012) ("Kentucky Living Will Directive Act")</p> <p>Combined AD (but called "Living Will Directive")</p>	<p>YES Must be substantially followed</p>	<p>Terminology: Surrogate § 311.621 (15)</p> <p>Limitations: • Pregnancy Limitation</p>	<p>• Facility provider*</p> <p>* Exception for relatives within fourth degree of consanguinity & religious community members</p>	<p>• 2 witnesses <u>or</u> notarized</p>	<p>• Relative/Spouse • Facility Provider unless he/she serves as notary public • Attg. physician • Heir/Beneficiary • Person responsible for health care costs</p>	<p>None specified</p>	<p>None specified</p>
<p>19. LOUISIANA LA. REV. STAT. ANN § 40:1299.58.1 - .10 (West, 2012) ("Declarations Concerning Life-Sustaining Procedures")</p> <p>Proxy contained in Living Will statute</p> <p>See also general DPA provisions (called a "mandate"), LA. CIV. CODE ANN. art. 2985 to 3034 (West, 2011) specifically art. 2997 providing for health decisions power.</p>	<p>YES Optional</p>	<p>Terminology: Representative § 2985</p> <p>Limitations: None specified</p>	<p>None specified</p>	<p>• Written declaration signed by 2 witnesses, or • Oral/non-verbal declaration made in the presence of 2 witnesses</p>	<p>• Relative/Spouse • Heir/Beneficiary</p>	<p>None specified</p>	<p>None specified</p>
<p>20. MAINE ME. REV. STAT. ANN. tit. 18-A, § 5-801 to -817 (West, 2011) ("Uniform Health-Care Decisions Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent § 5-801 (b)</p> <p>Limitations: • Mental health facility admission, consent permissible if expressly authorized</p>	<p>• LTC Facility provider*</p> <p>* Exception for relatives</p>	<p>• In writing • 2 witnesses</p>	<p>None specified</p>	<p>None specified</p>	<p>None specified</p>
<p>21. MARYLAND MD. CODE ANN., HEALTH-GEN. §5-601 to -618 (West, 2012) ("Health Care Decisions Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent § 5-601 (c)</p> <p>Limitations: None specified</p>	<p>• Facility provider and providers' relatives*</p> <p>* Exception for principal's relatives, qualified surrogates, and previously appointed agents</p>	<p>• 2 witnesses • For an oral AD – must be made in presence of and signed by attending physician or nurse practitioner AND one witness</p>	<p>• Agent <u>At least one witness</u> must not be: • Heir, or have any other financial interest in person's death</p>	<p>None specified</p>	<p>None specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>22. MASSACHUSETTS MASS. GEN. LAWS ANN. ch. 201D, §§ 1 - 17 (West, 2012) ("Health Care Proxies" chapter)</p> <p>Special DPA</p>	<p>NO But § 4 describes contents of the proxy</p>	<p>Terminology: Health Care Agent, or Agent § 1</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> • Facility provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Agent 	<p>None specified</p>	<p>None specified</p>
<p>23. MICHIGAN MICH. COMP. LAWS ANN. §700.5506 to .5512 (West, 2012) ("Durable Power of Attorney and Designation of Patient Advocate")</p> <p>General DPA law with sections for designation of a "patient advocate"</p>	<p>Only for agent's acceptance</p>	<p>Terminology: Attorney in Fact § 5501 (1)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Pregnancy limitation • Life-sustaining procedures* • Mental health facility admission or forced medication, consent permissible if expressly authorized <p>* Refusal permissible if expressly authorized</p>	<p>None specified</p>	<ul style="list-style-type: none"> • 2 witnesses • Must be part of medical record before implementation <p>Agent must accept in writing before acting as agent ("patient advocate")</p>	<ul style="list-style-type: none"> • Agent • Relative/Spouse • Heir/Beneficiary • Indiv. Provider • Facility Provider (including where the patient resides) • Employee of life/health insurance provider for patient 	<ul style="list-style-type: none"> • For agent's acceptance • Re: when HCPOA is effective • Re: anatomical gifts, that section effective after patient's death 	<p>None specified</p>
<p>24. MINNESOTA MINN. STAT. ANN. § 145C.01 to .16 (West, 2012) ("Health Care Directives" chapter)</p> <p><i>Separate LW Statute:</i> MINN. STAT. ANN. § 145B.01 to .17 (West, 2012) ("Living Will Act")</p>	<p>YES Optional</p>	<p>Terminology: Health Care Agent §145C.01 (2), Proxy §145B.03 (1)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Pregnancy Limitations* <p>*Unless expressly waived in directive</p>	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* • Individual determining capacity <p>* Exception for relatives (including registered domestic partnerships) or "unless otherwise specified" in directive</p>	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent <p><u>At least one</u> shall not be:</p> <ul style="list-style-type: none"> • Health care provider (but provider may notarize) 	<p>None specified</p>	<p>None specified</p>
<p>25. MISSISSIPPI MISS. CODE ANN. § 41-41-201 to -229 (West, 2012) ("Uniform Health-Care Decisions Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent § 41-41-203 (c)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Mental health facility admission, consent permissible if expressly authorized 	<ul style="list-style-type: none"> • LTC Facility* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent • Indiv. Provider • Facility Provider <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary 	<p>Declarations required by witnesses, or declarations by notary</p>	<p>None specified</p>

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<p>26. MISSOURI MO. ANN. STAT. § 404.800 - .872 (West, 2012) "Durable Power of Attorney for Health Care Act")</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> MO. ANN. STAT. §459.010 - .055 (West, 2012) ("Declarations, Life Support" chapter)</p>	NO	<p>Terminology: Attorney in Fact § 404.815</p> <p>Limitations: • Nutrition & hydration*</p> <p>* Refusal permissible if expressly authorized</p>	<ul style="list-style-type: none"> • Att. Physician* • Facility Provider* <p>* Exception for relatives within the second degree of consanguinity and members of same religious community who actually and regularly engage in religious ministries or performance of health care services</p>	•None Specified	None specified	None specified	None specified
<p>27. MONTANA MONT. CODE ANN. § 50-9-101 to -206 (West, 2011) ("Montana Rights of the Terminally Ill Act")</p> <p>Living Will statute with a proxy appointment</p> <p>Also incorporates by reference § 72-5-501 and – 502 (general DPA statute)</p>	YES Optional	<p>Terminology: Attorney in Fact or Agent § 72-5-501</p> <p>Limitations: • Pregnancy limitation</p>	None specified	<ul style="list-style-type: none"> • 2 witnesses under LW statute • DPA statute: none, although customarily notarized 	None specified	None specified	None specified
<p>28. NEBRASKA NEB. REV. STAT. §30-3401 to -3432 (West, 2012) ("Health Care Power of Attorney" article)</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> NEB. REV. STAT. § 20-401 to –416 (West, 2012) ("Rights of the Terminally Ill Act")</p>	YES Optional	<p>Terminology: Attorney in Fact § 30-3402 (3)</p> <p>Limitations: • Life-sustaining procedures* • Nutrition & hydration* (both the usual and typical provision of and those artificially administered) • Pregnancy limitation</p> <p>* Refusal permissible if expressly authorized</p>	<ul style="list-style-type: none"> • Att. Physician or employee of attending physician • Facility* • Any agent presently serving 10 or more principals* <p>* Exception for relatives</p>	• At least 2 witnesses (must substantially follow the form in § 30-3408) <u>or</u> notarized	<ul style="list-style-type: none"> • Agent • Relative/Spouse • Heir/Beneficiary • Att. Physician • Insurer <p><u>At least one</u> witness shall not be: • Facility provider</p>	Witness declarations	None specified

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<p>29. NEVADA NEV. REV. STAT. ANN. § 162A.700 to .860 (West, 2011) ("Durable Power of Attorney for Health Care Decisions"</p> <p>Special DPA, part of general DPA law</p> <p><i>Separate LW Statute:</i> NEV. REV. STAT. ANN. § 449.535 to .690 (West, 2011) with proxy designation. ("Uniform Act on Rights of the Terminally Ill")</p>	<p>YES Form with disclosure statement must be substantially followed</p>	<p>Terminology: Agent § 162A.790 (1)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Mental health facility admission • Electro-convulsive therapy • Aversive intervention • Psycho-surgery • Sterilization • Abortion • Experimental research/treatment 	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for spouse, legal guardian or next of kin to the principal</p>	<ul style="list-style-type: none"> • 2 witnesses who know the principal personally <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent • Indiv. Provider • Facility Provider <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary 	<p>None specified</p>	<p>None specified</p>
<p>30. NEW HAMPSHIRE N.H. REV. STAT. ANN. § 137-J:1 to -J:16 (West, 2012) ("Written Directives for Medical Decision Making for Adults Without Capacity to Make Health Care Decisions" chapter)</p> <p>Combined AD</p>	<p>YES Form and disclosure statement must be substantially followed.</p>	<p>Terminology: Agent § 137 – J:2 (III)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Voluntary admission to any state institution • Sterilization • Pregnancy limitation • Nutrition & hydration* • Life-sustaining treatment* <p>* Refusal permissible if expressly authorized</p>	<ul style="list-style-type: none"> • Facility Provider* • Indiv. Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses or notarized • Principal must acknowledge receipt of disclosure statement 	<ul style="list-style-type: none"> • Agent • Spouse • Heir/Beneficiary • AH Physician or person acting under direction/control of attending physician <p><u>No more than one</u> witness shall be:</p> <ul style="list-style-type: none"> • Health or residential care provider or such provider's employee 	<p>None specified</p>	<p>None specified</p>
<p>31. NEW JERSEY N.J. STAT. ANN. § 26:2H-53 to –81 (West, 2012) ("New Jersey Advance Directives for Health Care Act")</p> <p>Combined AD</p>	<p>NO</p>	<p>Terminology: Health Care Representative § 26:2H-55</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> • Att. Physician • Facility Provider* <p>* Exception for relatives/domestic partners</p>	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent 	<p>None specified</p>	<p>None specified</p>
<p>32. NEW MEXICO N.M. STAT. ANN. § 24-7A-1 to –18 (West, 2012) ("Uniform Health-Care Decisions Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent § 24 -7A-1 (B)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Mental health facility admission unless expressly authorized 	<ul style="list-style-type: none"> • Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses recommended, but not required 	<p>None specified</p>	<p>None specified</p>	<p>None specified</p>

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<p>33. NEW YORK N.Y. PUB. HEALTH LAW §§ 2980-2994 (West, 2012) ("Health Care Agents and Proxies" article)</p> <p>Special DPA</p>	<p>YES Optional</p>	<p>Terminology: Health Care Agent, or Agent § 2980 (5)</p> <p>Limitations: • Nutrition & hydration*</p> <p>* Principal must make his/her wishes "reasonably known"</p>	<ul style="list-style-type: none"> • Att. Physician* • Facility Provider* • Any agent currently serving 10 or more principals* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Agent 	<p>None specified</p>	<p>If facility operated by Office of Mental Health & Retardation, one witness must NOT be affiliated w/ facility and one witness must be psychologist</p>
<p>34. NORTH CAROLINA N.C. GEN. STAT. ANN. § 32A-15 to -27 (West, 2012) ("Health Care Powers of Attorney")</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> N.C. GEN. STAT. ANN. § 90-320 to -323 (West, 2012) ("Right to Natural Death; Brain Death" article)</p>	<p>YES Optional</p>	<p>Terminology: Health Care Agent, or Health Care Attorney in Fact § 32A-15 (2)</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> • Indiv. Provider • Facility Provider 	<ul style="list-style-type: none"> • 2 witnesses <u>and</u> notarized 	<ul style="list-style-type: none"> • Relative related within the third degree of consanguinity to the principal/Spouse • Heir/Beneficiary • Indiv. Provider • Facility Provider • Creditor 	<p>None specified</p>	<p>None specified</p>
<p>35. NORTH DAKOTA N.D. CENT. CODE ANN. § 23-06.5-01 to -19 (West, 2012) ("Health Care Directives")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent §23-06.5-02 (1)</p> <p>Limitations: • Mental health facility admission > 45 days* • Psycho-surgery* • Abortion* • Sterilization* *Unless approved by court order • Pregnancy Limitation* • Nutrition & Hydration*</p> <p>* Unless provided for in AD</p>	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized • Agent must accept in writing 	<ul style="list-style-type: none"> • Agent * • Relative/Spouse * • Heir/Beneficiary * • Creditor * • Att. Physician* • Person responsible for care costs* <p>At least one witness shall <u>not</u> be: • Indiv. Provider • Facility Provider</p> <p>* Also disqualifies notary</p>	<ul style="list-style-type: none"> • 	<p>None specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>36. OHIO OHIO REV. CODE ANN. § 1337.11 to .17 (West, 2012) ("Durable Power of Attorney for Health Care" chapter)</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> OHIO REV. CODE ANN. § 2133.01 to .26 (West, 2012) ("Modified Uniform Rights of the Terminally Ill Act")</p>	<p>NO But does include mandatory disclosure statement</p>	<p>Terminology: Attorney in Fact §1337.12 (A)(2)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Life-sustaining procedures* • Nutrition & hydration* • Pregnancy limitation • Comfort care • Withdraw health care to which principal previously consented* <p>* Refusal permissible if specified conditions are met</p>	<ul style="list-style-type: none"> • Att. Physician • Employee/agent of Att. Physician* • Nursing home administrator • Employee/agent of Facility Provider* <p>* Exception for relatives & members of religious orders</p>	<ul style="list-style-type: none"> • 2 witnesses or notarized 	<ul style="list-style-type: none"> • Agent • Relative/Spouse/Adoptee • Att. Physician • Nursing home administrator where principal is receiving care 	<p>None specified</p>	<p>None specified</p>
<p>37. OKLAHOMA OKLA. STAT. ANN. tit. 63, § 3101.1 - .16 (West, 2012) (the "Oklahoma Advance Directive Act")</p> <p>Combined AD</p>	<p>YES Must be substantially followed</p>	<p>Terminology: Health Care Proxy § 3101.3 (6)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Nutrition & hydration* • Pregnancy limitation* <p>* Refusal permissible if expressly authorized in principal's own words or by a separate section that deals only with nutrition/hydration and is separately marked by declarant</p>	<p>None specified</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Heir/Beneficiary • Relative 	<p>None specified</p>	<p>None specified</p>
<p>38. OREGON OR. REV. STAT. ANN. § 127.505 - .660 and § 127.995 (West, 2012) ("Oregon Health Care Decisions Act")</p> <p>Combined AD</p>	<p>YES Must be followed But recognizes that any other form "constitutes evidence of the patient's desires and interests"</p>	<p>Terminology: Attorney in Fact § 127.505 (6)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Electro-convulsive therapy • Psycho-surgery • Sterilization • Abortion • Life-sustaining procedures* • Nutrition & hydration* <p>* Refusal permissible if expressly authorized or if specified conditions are met (ex: principal has been medically confirmed to be in a terminal condition or permanently unconscious)</p>	<ul style="list-style-type: none"> • Attending physician* • Facility provider* • Person who has been disqualified from making health care decisions for principal <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Agent • Att. physician <p><u>One witness</u> shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse/Adoptee • Heir/Beneficiary • Facility Provider 	<ul style="list-style-type: none"> • Agent must accept in writing • Witness must sign written declaration (form provided) 	<ul style="list-style-type: none"> • If in LTC facility, one witness must be designated by facility and meet qualifications specified by DHS. §127.515

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<p>39. PENNSYLVANIA 20 PA. CONS. STAT. ANN. §§ 5421 – 5488 (West, 2012) ("Health Care" chapter)</p> <p>Combined AD, but separate subchapters for "Health Care Agents and Representatives" and "Living Wills"</p>	<p>YES Optional</p>	<p>Terminology: Health Care Agent § 5453 (a)(1)</p> <p>Limitations: <ul style="list-style-type: none"> • Pregnancy limitation* • Nutrition & Hydration* </p> <p>*Unless expressly authorized in HCPA</p>	<ul style="list-style-type: none"> • Attending physician* • Indiv. Provider* • Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Indiv. Provider • Facility Provider • Principal's signatory 	<p>None specified</p>	<p>None specified</p>
<p>40. RHODE ISLAND R.I. GEN. LAWS ANN. § 23-4.10-1 to -12 (West, 2012) (Health Care Power of Attorney " chapter)</p> <p>Special DPA</p> <p><i>Separate LW Statute:</i> R.I. GEN LAWS ANN. § 23-4.11-1 to -15 (West, 2012) ("Rights of the Terminally Ill Act")</p>	<p>YES Mandatory</p>	<p>Terminology: <ul style="list-style-type: none"> • Agent, or Attorney in Fact § 23 - 4.10 - 2 • Health Care Decision Maker § 23 - 4.11 - 2 (7) </p> <p>Limitations: <ul style="list-style-type: none"> • Pregnancy limitation </p>	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses or notary 	<ul style="list-style-type: none"> • Agent • Indiv. Provider • Facility Provider • <u>One witness</u> shall not be Relative/Spouse or Heir/Beneficiary 	<p>One witness must sign declaration that s/he is not relative/spouse or heir/beneficiary</p>	<p>None specified</p>
<p>41. SOUTH CAROLINA S.C. CODE ANN. § 62-5-501 to -505 (West, 2012) particularly § 62-5-504.</p> <p>Special DPA (within general DPA statute)</p> <p><i>Separate LW Statute</i> (also provides for appointment of an agent: S. C. CODE ANN. § 44-77-10 to -160 (West, 2012) ("Death with Dignity Act")</p>	<p>YES Must be substantially followed</p> <p>(but conventional DPAs may also contain health powers and have no required form §62-5-505)</p>	<p>Terminology: Agent or Health Care Agent § 62-5-504 (A)(1)</p> <p>Limitations: <ul style="list-style-type: none"> • Nutrition & hydration* • Pregnancy limitation </p> <p>* Refusal permissible if expressly authorized</p>	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* • Spouse of a Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses <u>and</u> notarized 	<ul style="list-style-type: none"> • Agent • Relative/Spouse • Heir/Beneficiary • Attending physician • Creditor • Life insurance beneficiary • Person financially responsible for medical care costs <p><u>No more than one witness</u> shall be; <ul style="list-style-type: none"> • Facility provider </p>	<p>Witness affidavit required</p>	<p>None specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>42. SOUTH DAKOTA S.D. CODIFIED LAWS § 59-7-1 to -9 (West, 2012) ("Agency" title)</p> <p>General DPA that permits health decisions authority</p> <p>See also § 34-12C-1 to -8 (Health care consent procedures in absence of AD)</p> <p>Separate LW Statute: S.D. CODIFIED LAWS § 34-12D-1 to -22 (West, 2012) ("Living Wills" chapter)</p>	NO	<p>Terminology: Attorney in Fact, or Person Available to Consent § 34-12C-1 (7)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Pregnancy limitation • Nutrition & hydration* • Withdrawal of comfort care <p>* Refusal permissible if expressly authorized or other conditions are met</p>	None specified	<ul style="list-style-type: none"> • 2 witnesses • Notarization is also expected as a matter of practice. 	None specified	None specified	None specified
<p>43. TENNESSEE TENN. CODE ANN. § 68-11-1801 to -1815 (West, 2012) ("Tennessee Health Care Decisions Act")</p> <p>Combined AD</p>	NO	<p>Terminology: Agent §68-11-1802 (a)(2)</p> <p>Limitations: None specified</p>	None specified	<ul style="list-style-type: none"> • 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> • Agent <p><u>At least one</u> witness shall not be:</p> <ul style="list-style-type: none"> • Relative/Spouse • Heir/Beneficiary 	Written advance directive shall contain witness attestation clause	None specified
<p>44. TEXAS TEX. HEALTH & SAFETY CODE ANN. § 166.001 to -.166 (West, 2011) ("Advance Directives Act")</p> <p>Combined AD, but separate provisions and forms for "medical power of attorney" and medical directives (living will). Agent may be appointed under both.</p>	YES, Must be substantially followed plus mandatory disclosure statement.	<p>Terminology: Agent § 166.002 (11)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Pregnancy limitation • Mental health facility admission • Electro-convulsive therapy • Psycho-surgery • Abortion • Comfort care 	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses or notary 	<p><u>At least one witness</u> shall not be:</p> <ul style="list-style-type: none"> • Agent • Att. Physician • Relative/Spouse • Facility Provider • Heir/Beneficiary • Creditor 	None specified	None specified

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>45. UTAH UTAH CODE ANN. § 75-2A-101 to -125 (West, 2012) ("Advance Health Care Directive Act")</p> <p>Combined AD</p>	<p>YES Optional</p>	<p>Terminology: Agent § 75-2a-103 (3)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Pregnancy limitation • Long-term custodial placement in licensed facility other than for assessment, rehabilitative, or respite care over principal's objection 	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • One witness 	<ul style="list-style-type: none"> • Agent • Relative/Spouse • Indiv. Provider • Facility Provider • Heir • Beneficiary under any instrument/plan/account/transfer • Person responsible for medical care costs • Principal's signatory 	<p>None specified</p>	<p>None specified</p>
<p>46. VERMONT VT. STAT. ANN. tit. 18, §§ 9700 - 9720 (West, 2012) ("Advance Directives for Health Care and Disposition of Remains" chapter)</p> <p>Combined AD</p>	<p>NO</p>	<p>Terminology: Agent § 9702 (2)</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Sterilization 	<ul style="list-style-type: none"> • Indiv. Provider • Facility Provider* • Funeral/crematory/ cemetery/organ procurement representative (when authorized to dispose of remains or donate organs)* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • Agent • Spouse or reciprocal beneficiary • Relative 	<p>None specified</p>	<p>If executed in facility/hospital, one of the following must sign statement that he explained the AD:</p> <ul style="list-style-type: none"> • Ombudsman • Clergy • Atty • Probate ct. designee
<p>47. VIRGINIA VA. CODE ANN. § 54.1-2981 to -2993 (West, 2012)</p> <p>Combined AD</p> <p><i>Separate LW Statute: No</i></p>	<p>YES Optional</p>	<p>Terminology: Agent § 54.1-2982</p> <p>Limitations:</p> <ul style="list-style-type: none"> • Psycho-surgery • Non-therapeutic sterilization • Abortion • Decisions about "visitation" unless expressly authorized 	<p>None specified</p>	<ul style="list-style-type: none"> • 2 witnesses 	<ul style="list-style-type: none"> • None specified 	<p>None specified</p>	<p>None specified</p>
<p>48. WASHINGTON WASH. REV. CODE ANN. § 11.94.010 to .901 (West, 2012) ("Power of Attorney")</p> <p>General DPA with health powers permitted.</p> <p><i>Separate LW Statute:</i> WASH. REV. CODE ANN. § 70.122.010 to -.925 (West, 2012) ("Natural Death Act")</p>	<p>NO</p>	<p>Terminology: Attorney in Fact or Agent § 11.94.010 (1)</p> <p>Limitations: Cross reference to guardianship law [RCWA 11.92.043(5)]:</p> <ul style="list-style-type: none"> • Electro-convulsive therapy* • Psycho-surgery* • Other psychiatric treatment that restricts physical movement* <p>* Decision permissible if expressly authorized</p>	<ul style="list-style-type: none"> • Indiv. Provider* • Facility Provider* <p>* Exception for relatives, spouses and state registered domestic partner</p>	<p>No witnesses nor notary required</p>	<p>N/A</p>	<p>None specified</p>	<p>None specified</p>

STATE	A. PROVIDES FORM	B. AGENT TERMINOLOGY & LIMITS ON AGENT'S POWERS	C. PROHIBITED AGENTS	D. FORMALITIES OF EXECUTION	E. PROHIBITED WITNESSES Note: "Provider" includes employees of provider	F. OTHER MANDATORY LANGUAGE?	G. SPECIAL INSTITUTIONAL PROTOCOL
<p>49. WEST VIRGINIA W. VA. CODE ANN. § 16-30-1 to -25 (West, 2012) ("Health Care Decisions Act")</p> <p>Combined AD, but maintains separate Living Will and Medical Power of Attorney documents</p>	<p>YES Optional</p>	<p>Terminology: Medical Power of Attorney Representative or Representative § 16-30-3 (q)</p> <ul style="list-style-type: none"> Limit on agent's authority to revoke a pre-need funeral contract 	<ul style="list-style-type: none"> Indiv. Provider* Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> 2 witnesses <u>and</u> notarized 	<ul style="list-style-type: none"> Agent Att. Physician Principal's signatory Relative/Spouse Heir/Beneficiary Person responsible for medical care costs 	<p>None specified</p>	<p>None specified</p>
<p>50. WISCONSIN WIS. STAT. ANN. § 155.01 to .80 (West, 2011) ("Power of Attorney for Health Care" chapter)</p> <p>Special DPA</p> <p>See DPA cross reference § 243.07(6m)</p> <p><i>Separate LW Statute: Wis. STAT. ANN. § 154.01 to -.15 (West, 2011) ("Advance Directives" chapter)</i></p>	<p>YES Optional, but disclosure statement is mandatory</p>	<p>Terminology: Health Care Agent § 155.01 (4)</p> <p>Limitations:</p> <ul style="list-style-type: none"> Admission to facility for mental health or other listed conditions Electro-convulsive therapy Psychosurgery Experimental mental health research Drastic mental health treatment Admission to nursing home or residential facility – very limited unless expressly authorized in the document Nutrition & hydration* Pregnancy limitation <p>* Refusal permissible only if specified conditions are met</p>	<ul style="list-style-type: none"> Indiv. Provider or his/her spouse* Facility Provider or his/her spouse* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> 2 witnesses 	<ul style="list-style-type: none"> Agent Indiv. Provider Facility provider* Relative/Spouse/Adoptee/Domestic partner Heir/Beneficiary Person responsible for health care costs <p>* Exception for chaplains & social workers</p>	<p>None specified</p>	<p>None specified</p>
<p>51. WYOMING WYO. STAT. ANN. § 35-22-401 to -416 (West, 2012) ("Health Care Decisions Act")</p> <p>Combined AD</p>	<p>NO</p>	<p>Terminology: Agent § 35-22-402 (a) (ii)</p> <p>Limitations: None specified</p>	<ul style="list-style-type: none"> Facility Provider* <p>* Exception for relatives</p>	<ul style="list-style-type: none"> 2 witnesses <u>or</u> notarized 	<ul style="list-style-type: none"> Agent Indiv. Provider Facility Provider 	<p>Witness declaration required</p>	<p>None specified</p>
<p>UNIFORM HEALTH-CARE DECISIONS ACT</p> <p>Combined Advance Directive</p> <p>http://uniformlaws.org</p>	<p>YES Optional</p>	<ul style="list-style-type: none"> Mental health facility admission* <p>* Only if expressly authorized</p>	<ul style="list-style-type: none"> LTC Facility Provider 	<ul style="list-style-type: none"> 2 witnesses recommended, but not required 	<ul style="list-style-type: none"> None specified 	<p>None specified</p>	<p>None specified</p>

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The American Bar Association acknowledges and thanks the West Group for providing access to on-line legal research.

524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.

The ward or protected person retains all rights not restricted by court order and these rights must be enforced by the court. These rights include the right to:

- (1) treatment with dignity and respect;
- (2) due consideration of current and previously stated personal desires, medical treatment preferences, religious beliefs, and other preferences and opinions in decisions made by the guardian or conservator;
- (3) receive timely and appropriate health care and medical treatment that does not violate known conscientious, religious, or moral beliefs of the ward or protected person;
- (4) exercise control of all aspects of life not delegated specifically by court order to the guardian or conservator;
- (5) guardianship or conservatorship services individually suited to the ward's or protected person's conditions and needs;
- (6) petition the court to prevent or initiate a change in abode;
- (7) care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources;
- (8) be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the ward's or protected person's clothing, furniture, vehicles, and other personal effects, to object to the disposition of personal property and effects, and to petition the court for a review of the guardian's or conservator's proposed disposition;
- (9) personal privacy;
- (10) communication and visitation with persons of the ward's or protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the ward's or protected person's health, safety, or well-being, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;
- (11) marry and procreate, unless court approval is required, and to consent or object to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);
- (12) petition the court for termination or modification of the guardianship or conservatorship or for other appropriate relief;
- (13) be represented by an attorney in any proceeding or for the purpose of petitioning the court;

(14) vote, unless restricted by the court; and

(15) execute a health care directive, including both health care instructions and the appointment of a health care agent, if the court has not granted a guardian any of the powers or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4).

TYPES OF ABUSE:

PROVISIONS AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE

(Laws current as of 12/31/06)

Prepared by Lori Stiegel and Ellen Klem of the American Bar Association Commission on Law and Aging¹ for the National Center on Elder Abuse²

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 Research conducted on Westlaw compliments of West Group

CAUTION: Read the explanation of this chart before relying upon the chart. You can find the explanation online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

<p>Alabama Ala. Code § 38-9-2</p>	<p>ABUSE: The infliction of physical pain, injury, or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health.</p> <p>EMOTIONAL ABUSE: The willful or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any protected person.</p> <p>EXPLOITATION: The expenditure, diminution, or use of the property, assets, or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative</p> <p>NEGLECT: The failure of a caregiver to provide food, shelter, clothing, medical services, or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself when the failure is the result of the person's mental or physical inability.</p> <p>SEXUAL ABUSE: Any conduct that is a crime as defined in Sections 13A-6- 60 to 13A-6-70, inclusive.</p>
<p>Alaska Alaska Stat. § 47.24.900</p>	<p>ABANDONMENT: The desertion of a vulnerable adult by a caregiver.</p> <p>ABUSE: The willful, intentional, or reckless non-accidental, and non-therapeutic infliction of physical pain, injury, or mental distress; or sexual assault under AS 11.41.410 or 11.41.420.</p> <p>EXPLOITATION: The unjust or improper use of another person or another person's resources for one's own profit or advantage.</p> <p>NEGLECT: The intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult.</p> <p>SELF-NEGLECT: The act or omission by a vulnerable adult that results, or could result in the deprivation of essential services necessary to maintain minimal mental, emotional, or physical health and safety.</p>
<p>Arizona Ariz. Rev. Stat. § 46-451</p>	<p>ABUSE: The intentional infliction of physical harm; injury caused by negligent acts or omissions; unreasonable confinement; and sexual abuse or sexual assault.</p> <p>EXPLOITATION: The illegal or improper use of an incapacitated or vulnerable adult or his resources for another's profit or advantage.</p> <p>NEGLECT: The pattern of conduct without the person's informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.</p>

Arkansas (#1)
Ark. Code Ann.
§ 12-12-1703 (relating to reporting & investigation)

ABUSE:

- (A) "Abuse" means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital, by a caregiver:
- (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or impaired person;
 - (ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or
 - (iii) Any intentional threat that a reasonable person would find credible and non-frivolous to inflict pain on or cause injury to an endangered person or impaired person except in the course of medical treatment or for justifiable cause; or
 - (iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish; and
- (B) "Abuse" means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:
- (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;
 - (ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or
 - (iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

ADULT MALTREATMENT: Abuse, exploitation, neglect, or sexual abuse of an adult.

EXPLOITATION: (A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property; (B) Use of an adult endangered person's or an adult impaired person's, power of attorney, or guardianship for the profit or advantage of one's own self or another; or, (C) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

NEGLECT:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or (B) An act or omissions by a caregiver responsible for the care and supervision of an endangered person or an impaired adult constituting: (i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person; (ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel; (iii) Negligently failing to carry out a prescribed treatment plan; or (iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

SEXUAL ABUSE: Deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless;

Arkansas (#2)
Ark. Code Ann.
§ 9-20-101 (authorizing APS to take victims into protective custody)

ABUSE:

(A) "Abuse" means with regard to any long-term care facility resident or any person who is at the Arkansas State Hospital an act by a caregiver that falls into any of the following categories: (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult, excluding court ordered medical care or medical care requested by an endangered adult, an impaired adult, or a person who is legally authorized to make a medical decision on behalf of an endangered adult or an impaired adult; (ii) Any intentional act that a reasonable person would believe subjects an endangered adult or impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care; (iii) Any

	<p>intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause; or (iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.</p> <p>(B) "Abuse" means with regard to any person who is not a long-term care facility resident or at the Arkansas State Hospital: (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult; (ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or (iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause;</p> <p>ADULT MALTREATMENT: "Adult Maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;</p> <p>EXPLOITATION: "Exploitation" means: (A) The illegal or unauthorized use or management of an endangered or impaired adult's funds, assets, or property or the use of an endangered or impaired adult's person, power of attorney, or guardianship for the profit or advantage of oneself or another; or (B) Misappropriation of property of an adult resident of a long-term care facility, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent;</p> <p>NEGLECT: "Neglect" means: (A) An act or omission by an endangered or impaired adult, for example, self-neglect; or (B) An act or omission by a caregiver responsible for the care and supervision of an endangered or impaired adult constituting negligent failure to: (i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or impaired adult; (ii) Report health problems or changes in health problems or changes in the health condition of an endangered or impaired adult to the appropriate medical personnel; (iii) Carry out a prescribed treatment plan; or (iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;</p> <p>SEXUAL ABUSE: "Sexual Abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless;</p>
<p>California Cal. Welf. & Inst. Code § 15610.05</p>	<p>ABANDONMENT: The desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.</p>
<p>Cal. Welf. & Inst. Code § 15610.07</p>	<p>ABUSE OF AN ELDER OR A DEPENDENT ADULT means either of the following: (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.</p>
<p>Cal. Welf. & Inst. Code § 15610.30</p>	<p>FINANCIAL ABUSE OF AN ELDER OR DEPENDENT ADULT occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both. (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both. A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, or retains possession of property in bad faith.</p>
<p>Cal. Welf. & Inst. Code § 15610.43</p>	<p>ISOLATION means any of the following: (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or</p>

<p>Cal. Welf. & Inst. Code § 15610.57</p>	<p>dependent adult from receiving his or her mail or telephone calls. (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons. (3) False imprisonment, as defined in Section 236 of the Penal Code. (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.</p> <p>NEGLECT: Means either of the following:</p> <p>(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise. (2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.</p> <p>Neglect includes, but is not limited to, all of the following:</p> <p>(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. (3) Failure to protect from health and safety hazards. (4) Failure to prevent malnutrition or dehydration. (5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.</p>
<p>Cal. Welf. & Inst. Code § 15610.63</p>	<p>PHYSICAL ABUSE: Means any of the following:</p> <p>(a) Assault, as defined in Section 240 of the Penal Code. (b) Battery, as defined in Section 242 of the Penal Code. (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code. (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water. (e) Sexual assault, that means any of the following: (1) Sexual battery, as defined in Section 243.4 of the Penal Code. (2) Rape, as defined in Section 261 of the Penal Code. (3) Rape in concert, as described in Section 264.1 of the Penal Code. (4) Spousal rape, as defined in Section 262 of the Penal Code. (5) Incest, as defined in Section 285 of the Penal Code. (6) Sodomy, as defined in Section 286 of the Penal Code. (7) Oral copulation, as defined in Section 288a of the Penal Code. (8) Sexual penetration, as defined in Section 289 of the Penal Code (9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code. (f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions: (1) For punishment. (2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given. (3) For any purpose not authorized by the physician and surgeon.</p>
<p>Colorado Colo. Rev. Stat. § 26-3.1-101</p>	<p>MISTREATMENT: The act or omission which threatens the health, safety, or welfare of an at-risk adult, as such term is defined in subsection (1) of this section, or which exposes the adult to a situation or condition that poses an imminent risk of death, serious bodily injury, or bodily injury to the adult.</p> <p>Mistreatment includes, but is not limited to:</p> <p>(a) Abuse which occurs: 1. Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural</p>

	<p>hematoma, soft tissue swelling, or suffocation; 2. Where unreasonable confinement or restraint is imposed; or 3. Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", title 18, C.R.S.</p> <p>(b) Caretaker neglect which occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is not secured for the at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise; except that the withholding of artificial nourishment in accordance with the "Colorado Medical Treatment Decision Act", article 18 of title 15, C.R.S., shall not be considered as abuse.</p> <p>(c) Exploitation which is the illegal or improper use of an at-risk adult for another person's advantage.</p> <p>SELF-NEGLECT: The act or failure to act whereby an at-risk adult substantially endangers the adult's health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.</p>
<p>Connecticut Conn. Gen. Stat. § 17b-450</p>	<p>ABUSE: Includes, but is not limited to, the willful infliction of physical pain, injury or mental anguish, or the willful deprivation by a caretaker of services which are necessary to maintain physical and mental health.</p> <p>NEGLECT: Refers to an elderly person who is either living alone and not able to provide for oneself the services which are necessary to maintain physical and mental health or is not receiving the said necessary services from the responsible caretaker.</p> <p>EXPLOITATION: The act or process of taking advantage of an elderly person by another person or caretaker whether for monetary, personal or other benefit, gain or profit.</p> <p>ABANDONMENT: Refers to the desertion or willful forsaking of an elderly person by a caretaker or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.</p>
<p>Delaware Del. Code Ann. tit. 31, § 3902</p>	<p>EXPLOITATION: The illegal or improper use or abuse of an infirm person, the infirm person's resources or the infirm person's rights, by another person, whether for profit or other advantage</p> <p>ABUSE: 1. Physical abuse by unnecessarily inflicting pain or injury on an infirm adult; or 2. A pattern of emotional abuse, which includes, but is not limited to, ridiculing or demeaning an infirm adult making derogatory remarks to an infirm adult or cursing or threatening to inflict physical or emotional harm on an infirm adult.</p> <p>MISTREATMENT: The failure to provide appropriate physical or emotional care to an infirm adult, including the inappropriate use of medications, isolation or physical or chemical restraints on or of an infirm adult.</p> <p>NEGLECT: 1. Lack of attention by a caregiver to physical needs of an infirm adult including but not limited to toileting, bathing, meals and safety; 2. Failure by a caregiver to carry out a treatment plan prescribed by a health care professional for an infirm adult; or, 3. Intentional and permanent abandonment or desertion in any place of an infirm adult by a caregiver who does not make reasonable efforts to ensure that essential services, as defined in this section, will be provided for said infirm adult.</p>
<p>District of Columbia D.C. Code Ann. § 7-1901</p>	<p>ABUSE: (A) "Abuse" means:</p> <ul style="list-style-type: none"> (i) The intentional or reckless infliction of serious physical pain or injury; (ii) The use or threatened use of violence to force participation in "sexual conduct," defined in § 22-3101(5); (iii) The repeated, intentional imposition of unreasonable confinement or threats to impose unreasonable confinement, resulting in severe mental distress; (iv) The repeated use of threats or violence, resulting in shock or an intense, expressed fear for one's life or of serious physical injury; or (v) The intentional or deliberately indifferent deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life

	<p>or physical health.</p> <p>(B) An adult shall not be considered abused under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.</p> <p>EXPLOITATION: The unlawful appropriation or use of another's "property," defined in section 22-3201, for one's own benefit or that of a 3rd person.</p> <p>NEGLECT: (A) "Neglect" means:</p> <ul style="list-style-type: none"> (i) The repeated, careless infliction of serious physical pain or injury; (ii) The repeated failure of a caregiver to take reasonable steps, within the purview of his or her responsibilities, to protect against acts of abuse described in paragraph (1)(B) of this section; (iii) The repeated, careless imposition of unreasonable confinement, resulting in severe mental distress; or (iv) The careless deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health. <p>(B) An adult shall not be considered neglected under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.</p> <p>SELF-NEGLECT: (A) "Self-neglect" means the failure of an adult, due to physical or mental impairments or incapacity, to perform essential self-care tasks, including:</p> <ul style="list-style-type: none"> (i) Providing essential food, clothing, shelter, or medical care; (ii) Obtaining goods or services necessary to maintain physical health, mental health, emotional well-being, and general safety; or (iii) Managing his or her financial affairs. <p>(B) An adult shall not be considered to be committing self-neglect under this chapter for the sole reason that he or she seeks treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.</p>
<p>Florida Fla. Stat. Ann. § 415.102</p>	<p>ABUSE: Any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.</p> <p>EXPLOITATION: A person who:</p> <ol style="list-style-type: none"> 1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or 2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult. <p>Exploitation may include, but is not limited to:</p> <ol style="list-style-type: none"> 1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property; 2. Unauthorized taking of personal assets; 3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or 4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance. <p>INTIMIDATION: The communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.</p>

	<p>NEGLECT: The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider essential for the well-being of a vulnerable adult. The term "neglect" also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.</p> <p>PSYCHOLOGICAL INJURY: An injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable adult's ability to function within that person's customary range of performance and that person's behavior.</p> <p>SEXUAL ABUSE: Acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal care giving action or appropriate display of affection</p>
<p>Georgia Ga. Code Ann. § 30-5-3</p>	<p>ABUSE: The willful infliction of physical pain, physical injury, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person.</p> <p>EXPLOITATION: The illegal or improper use of a disabled adult or elder person or that person's resources for another's profit or advantage.</p> <p>NEGLECT: The absence or omission of essential services to the degree that it harms or threatens with harm the physical or emotional health of a disabled adult or elder person.</p>
<p>Guam 10 Guam Code Ann. § 2951</p>	<p>ABANDONMENT: The desertion or willful forsaking of an elderly or disabled adult by his or her caregiver under circumstances in which a reasonable person would continue to provide care or custody.</p> <p>ELDERLY OR DISABLED ADULT ABUSE: Any one or more of the following acts inflicted on an elderly or disabled adult by other than accidental means by another person: physical abuse, neglect, abandonment or self neglect.</p> <p>MATERIAL ABUSE: The illegal or improper use of an elderly or disabled adult's money, property or other resources for monetary or personal benefit, profit or gain. It includes but is not limited to theft, misappropriation, concealment, misuse or fraudulent deprivation of money or property belonging to the elderly or disabled adult.</p> <p>MENTAL OR EMOTIONAL ABUSE: Includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, harassment, isolation which provokes fear, agitation, confusion or severe depression.</p> <p>NEGLECT: The failure of a caregiver to provide for the physical, mental or emotional health and well-being of the elderly or disabled adult and includes but is not limited to: (1) Failure to assist or provide personal hygiene for the elderly or disabled adult. (2) Failure to provide adequate food, water, clothing or shelter. (3) Failure to provide medical care for the physical and mental health of the elderly or disabled adult. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. (4) Failure to protect an elderly or disabled adult from health and safety hazards.</p> <p>PHYSICAL ABUSE: The willful infliction of injury which results in physical harm. It includes but is not limited to cruel punishment resulting in physical harm or pain or mental anguish, such as direct beatings, slapping, kicking, biting, choking, burning, sexual assault or molestation, or unreasonable physical restraint or confinement resulting in physical injury.</p>

Hawaii

Haw. Rev. Stat. § 346-222

ABUSE: The actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment as further defined in this chapter.

Abuse occurs where:

(1) Any dependent adult exhibits evidence of:

- (A) Substantial or multiple skin bruising or any other internal bleeding;
- (B) Any injury to skin causing substantial bleeding;
- (C) Malnutrition;
- (D) A burn or burns;
- (E) Poisoning;
- (F) The fracture of any bone;
- (G) A subdural hematoma;
- (H) Soft tissue swelling;
- (I) Extreme physical pain; or

(J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent adult;

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

(2) Any dependent adult has been the victim of non-consensual sexual contact or conduct, including, but not limited to:

- (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
- (B) Obscene or pornographic photographing, filming, or depiction; or
- (C) Other similar forms of sexual exploitation;

(3) Any dependent adult is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;

(4) Any dependent adult is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;

(5) There has been a failure to exercise that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise, including, but not limited to, failure to:

- (A) Assist in personal hygiene;
- (B) Provide necessary food, shelter, and clothing;
- (C) Provide necessary health care, access to health care, or prescribed medication;
- (D) Protect a dependent adult from health and safety hazards; or
- (E) Protect against acts of abuse by third parties;

(6) Any dependent adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent adult's person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or

(7) There is financial and economic exploitation. For the purpose of this part, "financial and economic exploitation" means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. "Financial and economic exploitation" can include but is not limited to:

- (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (B) The unauthorized taking of personal assets;
- (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or
- (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance.

The exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

<p>Idaho Idaho Code § 39-5302</p>	<p>ABUSE: The intentional or negligent infliction of physical pain, injury, or mental injury.</p> <p>EXPLOITATION: An action which may include, but is not limited to, the misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage.</p> <p>NEGLECT: The failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself.</p>
<p>Illinois 320 Ill. Comp. Stat. 20/2</p>	<p>ABUSE: The causing of any physical, mental or sexual injury to an eligible adult, including exploitation of such adult's financial resources. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse, or neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination. Nothing in this Act shall be construed to mean that an eligible adult is a victim of abuse because of health care services provided or not provided by licensed health care professionals.</p> <p>NEGLECT: Another individual's failure to provide an eligible adult with or willful withholding from an eligible adult the necessities of life including, but not limited to, food, clothing, shelter or medical care. This subsection does not create any new affirmative duty to provide support to eligible adults. Nothing in this Act shall be construed to mean that an eligible adult is a victim of neglect because of health care services provided or not provided by licensed health care professionals.</p>
<p>Indiana Ind. Code Ann. § 12-10-3-2 <i>(Indiana's APS program is unique because it is administered by local prosecutor's offices. This may explain why its definitions seem very different from those of other states.)</i></p>	<p>ENDANGERED ADULT:</p> <p>(a) Except as provided in subsection (b), as used in this chapter, "endangered adult" means an individual who is:</p> <ol style="list-style-type: none"> (1) at least eighteen (18) years of age; (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of: <ol style="list-style-type: none"> (A) neglect; (B) battery; or (C) exploitation of the individual's personal services or property. <p>(b) For purposes of Ind. Code Ann. § 12-10-3-17, Ind. Code Ann. § 35-42-2-1, and Ind. Code Ann. § 35-46-1-13, "endangered adult" means an individual who is:</p> <ol style="list-style-type: none"> (1) at least eighteen (18) years of age; (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of: <ol style="list-style-type: none"> (A) neglect; (B) battery; or (C) exploitation of the individual's personal services or property. <p>(c) An individual is not an endangered adult solely:</p> <ol style="list-style-type: none"> (1) for the reason that the individual is being provided spiritual treatment in accordance with a recognized religious method of healing instead of specified medical treatment if the individual would not be considered to be an endangered adult if the individual were receiving the medical treatment; or (2) on the basis of being physically unable to provide self care when appropriate care is being provided.
<p>Iowa Iowa Code § 235B.2</p>	<p>DEPENDENT ADULT ABUSE means:</p> <ol style="list-style-type: none"> (1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker: <ol style="list-style-type: none"> (a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult. (b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult. (c) Exploitation of a dependent adult means the act or process of taking unfair advantage of a dependent

	<p>adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.</p> <p>(d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.</p> <p>(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.</p> <p>(3) Sexual exploitation of a dependent adult who is a resident of a health care facility, as defined in section 135C.1, by a caretaker providing services to or employed by the health care facility, whether within the health care facility or at a location outside of the health care facility.</p> <p>Sexual exploitation means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.</p> <p>DEPENDENT ADULT ABUSE does not include any of the following:</p> <p>(1) Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.</p> <p>(2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.</p> <p>(3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.</p>
<p>Kansas Kan. Stat. Ann. § 39-1430</p>	<p>ABUSE: Any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:</p> <p>(1) Infliction of physical or mental injury;</p> <p>(2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the adult is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;</p> <p>(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm an adult;</p> <p>(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the adult;</p> <p>(5) a threat or menacing conduct directed toward an adult that results or might reasonably be expected to result in fear or emotional or mental distress to an adult;</p> <p>(6) fiduciary abuse; or</p> <p>(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.</p> <p>NEGLECT: The failure or omission by one's self, caretaker or another person with a duty to supply or provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.</p> <p>EXPLOITATION: The misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.</p>

	<p>FIDUCIARY ABUSE: A situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust or benefit.</p>
<p>Kentucky Ky. Rev. Stat. Ann. § 209.020</p>	<p>ABUSE: The infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury;</p> <p>EXPLOITATION: Obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources;</p> <p>NEGLECT: A situation in which an adult is unable to perform or obtain for himself the goods or services that are necessary to maintain his health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult,</p>
<p>Louisiana La. Rev. Stat. Ann. § 14:403.2</p>	<p>ABANDONMENT: The desertion or willful forsaking of an adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.</p> <p>ABUSE: The infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value, to such an extent that his health, self-determination, or emotional well-being is endangered.</p> <p>EXPLOITATION: The illegal or improper use or management of an aged person's or disabled adult's funds, assets, or property, or the use of an aged person's or disabled adult's power of attorney or guardianship for one's own profit or advantage.</p> <p>EXTORTION: The acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation, or abuse of legal or official authority.</p> <p>ISOLATION: (a) Intentional acts committed for the purpose of preventing, and which do serve to prevent, an adult from having contact with family, friends, or concerned persons. This shall not be construed to affect a legal restraining order. (b) Intentional acts committed to prevent an adult from receiving his mail or telephone calls. (c) Intentional acts of physical or chemical restraint of an adult committed for the purpose of preventing contact with visitors, family, friends, or other concerned persons. (d) Intentional acts which restrict, place, or confine an adult in a restricted area for the purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons. However, medical isolation prescribed by a licensed physician caring for the adult shall not be included in this definition.</p> <p>NEGLECT: The failure, by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be neglected or abused.</p> <p>SELF-NEGLECT: The failure, either by the adult's action or inaction, to provide the proper or necessary support or medical, surgical, or any other care necessary for his own well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be self-neglected.</p>
<p>Maine Me. Rev. Stat. Ann. tit. 22 § 3472</p>	<p>ABUSE: The infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; sexual abuse or exploitation; or the willful deprivation of essential needs. 'Abuse' includes acts and omissions.</p> <p>EXPLOITATION: The illegal or improper use of an incapacitated or dependent adult or his resources for another's profit or advantage.</p> <p>NEGLECT: A threat to an adult's health or welfare by physical or mental injury or impairment,</p>

	<p>deprivation of essential needs or lack of protection from these.</p> <p>SEXUAL ABUSE OR EXPLOITATION: A contact or interaction of a sexual nature involving an incapacitated or dependent adult without that adult's consent.</p>
<p>Maryland Md. Code Ann., Fam. Law § 14-101</p>	<p>ABUSE: The sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person.</p> <p>EXPLOITATION: Any action which involves the misuse of a vulnerable adult's funds, property, or person.</p> <p>NEGLECT: The willful deprivation of a vulnerable adult of adequate food, clothing, essential medical treatment or habilitative therapy, shelter, or supervision. Neglect does not include the providing of nonmedical remedial care and treatment for the healing of injury or disease, with the consent of the vulnerable adult, recognized by State law instead of medical treatment.</p> <p>SELF-NEGLECT: The inability of a vulnerable adult to provide the vulnerable adult with the services: (1) That are necessary for the vulnerable adult's physical and mental health; and (2) The absence of which impairs or threatens the vulnerable adult's well-being.</p>
<p>Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, § 14 (<i>applicable to persons who are 60 or older</i>)</p>	<p>ABUSE: An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.</p> <p>FINANCIAL EXPLOITATION: An act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A.</p>
<p>Massachusetts (APS) Mass. Gen. Laws ch. 19C, § 1 (<i>applicable to persons with disabilities</i>)</p>	<p>ABUSE: An act or omission which results in serious physical or emotional injury to a disabled person; provided, however, that no person shall be considered to be abused for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.</p>
<p>Michigan Mich. Comp. Laws § 400.11</p>	<p>ABUSE: The harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, non-accidental physical or mental injury, sexual abuse, or maltreatment.</p> <p>EXPLOITATION: An action that involves the misuse of an adult's funds, property, or personal dignity by another person.</p> <p>NEGLECT: Harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care. A person shall not be considered to be abused, neglected, or in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, and this act shall not require any medical care or treatment in contravention of the stated or implied objection of that person.</p>
<p>Minnesota Minn. Stat. § 626.5572</p>	<p>ABUSE: (a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:</p>

- (1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;
 - (2) the use of drugs to injure or facilitate crime as defined in section 609.235;
 - (3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and
 - (4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.
- A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.
- (b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:
 - (1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;
 - (2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;
 - (3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and
 - (4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section 245.825.
 - (c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.
 - (d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.
 - (e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or sections 253B.03; or 524.5-101 to 524.5-502, , refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:
 - (1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or
 - (2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.
 - (f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.
 - (g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:
 - (1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or
 - (2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

FINANCIAL EXPLOITATION:

- (a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:
 - (1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or
 - (2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.
- (b) In the absence of legal authority a person:
 - (1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;
 - (2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;
 - (3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

- (4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.
- (c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

MALTREATMENT:

Abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

NEGLECT:

- (a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:
 - (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and
 - (2) which is not the result of an accident or therapeutic conduct.
- (b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.
- (c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:
 - (1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or section 253B.03, or 525.539 to 525.6199, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:
 - (i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or
 - (ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or
 - (2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;
 - (3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with:
 - (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or
 - (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or
 - (4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or
 - (5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:
 - (i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;
 - (ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;
 - (iii) the error is not part of a pattern of errors by the individual;
 - (iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;
 - (v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and
 - (vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.
- (d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.
- (e) If the findings of an investigation by a lead agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will

	<p>not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).</p>
<p>Mississippi Miss. Code. Ann. § 43-47-5</p>	<p>ABUSE: The willful or non-accidental infliction of physical pain, injury or mental anguish on a vulnerable adult, the unreasonable confinement of a vulnerable adult, or the willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of a vulnerable adult. "Abuse" includes sexual abuse. "Abuse" shall not mean conduct which is a part of the treatment and care of, and in furtherance of the health and safety of a patient or resident of a care facility. "Abuse" includes, but is not limited to, a single incident.</p> <p>EXPLOITATION: The illegal or improper use of a vulnerable adult or his resources for another's profit or advantage, with or without the consent of the vulnerable adult, and includes acts committed pursuant to a power of attorney. "Exploitation" includes, but is not limited to, a single incident.</p> <p>NEGLECT: Either the inability of a vulnerable adult who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental and physical health, or failure of a caretaker to supply the vulnerable adult with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable adult's mental and physical health. "Neglect" includes, but is not limited to, a single incident.</p>
<p>Missouri (#1) Mo. Ann. Stat. § 660.250 <i>(applicable only to persons who are unable to protect their own interests or adequately perform or obtain services necessary to meet their essential human needs and are either: (1) 60 or older, or (2) between 18 and 59 and have a disability)</i></p>	<p>ABUSE: The infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation.</p> <p>NEGLECT: The failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result.</p>
<p>Missouri (#2) Mo. Ann. Stat. §§ 660.300 – 660.321 <i>(these provisions are applicable only to individuals who are receiving "in home services" as defined by § 660.250(9) "through any in-home services provider agency" as defined by § 660.250(11). Missouri does not have two statutes. We established this construct to distinguish in the charts between the provisions applicable to individuals who are receiving in home services and those who are not. The statute indicated that the definitions contained in 660.250 apply to what we have labeled as Missouri #2; 660.300 – 660.321.)</i></p>	<p>ABUSE: The infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation.</p> <p>NEGLECT: The failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result.</p>
<p>Montana Mont. Code Ann. §52-3-803</p>	<p>ABUSE: (a) the infliction of physical or mental injury; or (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes</p>

	<p>lawful authority.</p> <p>EXPLOITATION: (a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property; (c) the unreasonable use of an older person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.</p> <p>NEGLECT: The failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.</p> <p>SEXUAL ABUSE: The commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.</p>
<p>Nebraska Neb. Rev. Stat. § 28-351</p> <p>Neb. Rev. Stat. § 28-358</p> <p>Neb. Rev. Stat. § 28-363</p> <p>Neb. Rev. Stat. § 28-370</p> <p>Neb. Rev. Stat. § 28-367</p>	<p>ABUSE: Any knowing, intentional, or negligent act or omission on the part of the caregiver, a vulnerable adult, or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, exploitation, or denial of essential services to a vulnerable adult.</p> <p>EXPLOITATION: The taking of property of a vulnerable adult by means of undue influence</p> <p>PHYSICAL INJURY: The damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.</p> <p>UNREASONABLE CONFINEMENT: The confinement which intentionally causes physical injury to a vulnerable adult.</p> <p>SEXUAL ABUSE: Shall include sexual assault as described in section 28-319 or 28-320 and incest as described in section 28-703.</p>
<p>Nevada Nev. Rev. Stat. § 200.5092</p>	<p>ABUSE: The willful and unjustified: (a) Infliction of pain, injury or mental anguish on an older person or a vulnerable person; or (b) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person..</p> <p>EXPLOITATION: Any act taken by a person who has the trust and confidence of an older person or a vulnerable person. or any use of the power of attorney or guardianship of an older person or a vulnerable person. to: (a) Obtain control, through deception, intimidation or undue influence, over the older person's or vulnerable person's. money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his money, assets or property; or (b) Convert money, assets or property of the older person or vulnerable person with the intention of</p>

	<p>permanently depriving the older person or vulnerable person of the ownership, use, benefit, or possession of his money, assets or property. As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another.</p> <p>ISOLATION: Willfully, maliciously and intentionally preventing an older person or a vulnerable person from having contact with another person by:</p> <p>(a) Intentionally preventing the older person or vulnerable person from receiving his visitors, mail or telephone calls, including, without limitation, communicating to a person who comes to visit the older person or vulnerable person or a person who telephones the older person or vulnerable person that the older person or vulnerable person is not present or does not want to meet with or talk to the visitor or caller knowing that the statement is false, contrary to the express wishes of the older person or vulnerable person and intended to prevent the older person or vulnerable person from having contact with the visitor; or</p> <p>(b) Physically restraining the older person or vulnerable person to prevent the older person or vulnerable person from meeting with a person who comes to visit the older person or vulnerable person.</p> <p>The term does not include an act intended to protect the property or physical or mental welfare of the older person or vulnerable person or an act performed pursuant to the instructions of a physician of the older person or vulnerable person.</p> <p>NEGLECT: The failure of:</p> <p>(a) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or vulnerable person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or</p> <p>(b) An older person or a vulnerable person to provide for his own needs because of inability to do so.</p>
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<p>New Hampshire N.H. Rev. Stat. Ann. § 161-F:43</p>	<p>ABUSE: Any one of the following:</p> <p>(a) "Emotional abuse" means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of an incapacitated adult.</p> <p>(b) "Physical abuse" means the use of physical force which results or could result in physical injury to an incapacitated adult.</p> <p>(c) "Sexual abuse" means contact or interaction of a sexual nature involving an incapacitated adult without his or her informed consent.</p> <p>NEGLECT: An act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of an incapacitated adult.</p> <p>EXPLOITATION: The illegal use of an incapacitated adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an incapacitated adult through the use of undue influence, harassment, duress, deception, or fraud.</p> <p>SELF-NEGLECT: An act or omission by an incapacitated adult which results or could result in the deprivation of essential services or supports necessary to maintain his or her minimum mental, emotional or physical health and safety.</p>
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<p>New Jersey N.J. Stat. Ann. 52:27D-407</p>	<p>ABUSE: The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services which are necessary to maintain a person's physical and mental health.</p> <p>EXPLOITATION: The act or process of illegally or improperly using a person or his resources for another person's profit or advantage.</p> <p>NEGLECT: An act or failure to act by a vulnerable adult or his caretaker which results in the</p>
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	<p>inadequate provision of care or services necessary to maintain the physical and mental health of the vulnerable adult, and which places the vulnerable adult in a situation which can result in serious injury or which is life-threatening.</p>
<p>New Mexico N.M. Stat. Ann. § 27-7-16</p>	<p>ABUSE: (1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish; or (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult.</p> <p>EXPLOITATION: An unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise.</p> <p>NEGLECT: The failure of the caretaker of an adult to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health for that adult or failure by an adult to provide such basic needs for himself;</p>
<p>New York N.Y. Soc. Serv. Law § 473</p>	<p>PHYSICAL ABUSE: The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.</p> <p>SEXUAL ABUSE: Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.</p> <p>EMOTIONAL ABUSE: The willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.</p> <p>ACTIVE NEGLECT: The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.</p> <p>PASSIVE NEGLECT: The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.</p> <p>SELF NEGLECT: An adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.</p> <p>FINANCIAL EXPLOITATION: The improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.</p>
<p>North Carolina N.C. Gen. Stat. § 108A-101</p>	<p>ABUSE: The willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.</p> <p>EXPLOITATION: The illegal or improper use of a disabled adult or his resources for another's profit or advantage.</p> <p>NEGLECT: A disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the State-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care Center he is, in the opinion of the professional staff of that hospital or center, mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and he needs medical treatment.</p>
<p>North Dakota N.D. Cent. Code</p>	<p>ABUSE: Any willful act or omission of a caregiver or any other person which results in physical injury,</p>

<p>§ 50-25.2-01</p>	<p>mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.</p> <p>FINANCIAL EXPLOITATION: The taking or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.</p> <p>NEGLECT: The failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.</p> <p>SEXUAL ABUSE OR EXPLOITATION: Includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.</p>
<p>Ohio Ohio Rev. Code Ann. § 5101.60</p>	<p>ABUSE: The infliction upon an adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish.</p> <p>EXPLOITATION: The unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain.</p> <p>NEGLECT: The failure of an adult to provide for self the goods or services necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.</p>
<p>Oklahoma Okla. Stat. tit. 43A § 10-103</p>	<p>ABUSE: Causing or permitting: a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.</p> <p>EXPLOITATION or EXPLOIT: An unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;</p> <p>NEGLECT: a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest, b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;</p> <p>SEXUAL ABUSE: a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, or b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.</p> <p>SELF-NEGLECT: The action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity.</p> <p>SEXUAL EXPLOITATION: Includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law; and</p> <p>VERBAL ABUSE: The use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.</p>

<p>Oregon (EPS) Or. Rev. Stat. § 124.050 <i>(applicable to persons 65 or older who are not residents of long-term care facilities)</i></p>	<p>ABUSE: One or more of the following: (a) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury. (b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being. (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caregiver or other person. (d) Willful infliction of physical pain or injury. (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467. (f) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with disabilities to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with disabilities to believe that the threat will be carried out.</p>
<p>Oregon (APS) Or. Rev. Stat. § 430.735 <i>(applicable only to persons 18 or older who are mentally ill or developmentally disabled and receive services from a community program or facility)</i></p>	<p>ABUSE: Means one or more of the following: (a) Any death caused by other than accidental or natural means. (b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury. (c) Willful infliction of physical pain or injury. (d) Sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult. (e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.</p>
<p>Pennsylvania Pa. Stat. Ann. tit. 35 § 10225.103</p>	<p>ABANDONMENT: The desertion of an older adult by a caretaker.</p> <p>ABUSE: The occurrence of one or more of the following acts: (1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. (2) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health. (3) Sexual harassment, rape or abuse, as defined in the act of October 7, 1976 (P.L. 1090, No. 218), known as the Protection From Abuse Act.</p> <p>No older adult shall be found to be abused solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.</p> <p>EXPLOITATION: An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.</p> <p>NEGLECT: The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. No older adult who does not consent to the provision of protective services shall be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.</p> <p>SEXUAL ABUSE: Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.</p>
<p>Puerto Rico 8 P.R. Laws Ann. § 342</p>	<p>COERCION: Physical or psychological force or violence exerted on a person to compel said person to say or do something.</p> <p>HARASSMENT: Words, gestures or actions addressed to molest, persecute or disturb an elderly person.</p>

	<p>INTIMIDATION: Any action or word whose purpose is to exert moral pressure on the will of an elderly person, who, for fear of suffering physical or emotional harm on his/her person, or property or another person, is compelled to perform an act against his/her will.</p> <p>PHYSICAL ABUSE: Any injury or condition which provokes or creates a substantial risk which may cause the disfigurement or temporary or permanent disability of any bodily part or function, or other forms of bodily harm or injury.</p> <p>MENTAL OR PHYSICAL ABUSE: Any act or conduct which may bring dishonor, discredit or create contempt for personal values, unreasonable limitation of access and management of goods or chattels, isolation, lack of access to proper sustenance or rest, threats, or destruction of objects dear to the person.</p>
<p>Rhode Island R.I. Gen. Laws § 42-66-4.1</p>	<p>ABANDONMENT: The desertion of an elderly person by a caretaker or other person with a duty of care, or the withdrawal of necessary assistance owed an elderly person by a caretaker or other person with an obligation to provide services.</p> <p>ABUSE: The subjection of an elderly person to the willful infliction of physical pain, or willful deprivation of services by a caretaker or other person with a duty of care for the elderly person. Abuse also includes neglect, abandonment, and exploitation.</p> <p>EXPLOITATION: An act or process of taking pecuniary advantage of an elderly person by use of undue influence, harassment, duress, deception, false representation or false pretenses.</p> <p>NEGLECT: The willful refusal to provide services necessary to maintain physical and mental health on the part of a caretaker or other person with a duty of care.</p>
<p>South Carolina S.C. Code Ann. § 43-35-10</p>	<p>ABUSE: Physical abuse or psychological abuse.</p> <p>EXPLOITATION:</p> <ul style="list-style-type: none"> (a) Causing or requiring a vulnerable adult to engage in activity or labor which is improper, illegal, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient; (b) An improper, illegal, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property. <p>NEGLECT: The failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.</p> <p>PHYSICAL ABUSE: Intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.</p>

	<p>PSYCHOLOGICAL ABUSE: Deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.</p>
<p>South Dakota <i>There is no APS statute but the state's APS program is authorized by S.D.</i> Codified Laws Ann. § 28-1-44</p>	
<p>Tennessee Tenn. Code Ann. § 71-6-102</p>	<p>ABUSE OR NEGLECT: The infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services which are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will in accordance with the provisions of the Tennessee Right to Natural Death Law, compiled in title 32, chapter 11, and if the provisions of such medical care would conflict with the terms of such living will.</p> <p>EXPLOITATION: The improper use by a caretaker of funds which have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.</p> <p>SEXUAL ABUSE: Occurs when an adult, as defined in this chapter, is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an "adult," as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person.</p>
<p>Texas Texas Hum. Res. Code Ann. § 48.002</p>	<p>ABUSE: (A) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or (B) sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.</p> <p>EXPLOITATION: The illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.</p> <p>NEGLECT: The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.</p>
<p>Utah Utah Code Ann. § 62A-3-301</p>	<p>ABANDONMENT: Any knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.</p> <p>ABUSE: (a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm; (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; (c) emotional or psychological abuse;</p>

- (d) sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or
- (e) deprivation of life sustaining treatment, except:
 - (i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or
 - (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

ELDER ABUSE: Abuse, neglect, or exploitation of an elder adult.

EMOTIONAL OR PSYCHOLOGICAL ABUSE: Intentional or knowing verbal or nonverbal conduct directed at a vulnerable adult including ridiculing, intimidating, yelling, swearing, threatening, isolating, coercing, harassing, or other forms of intimidating behavior that results or could result in the vulnerable adult suffering mental anguish or emotional distress, including fear, humiliation, degradation, agitation, confusion, or isolation.

EXPLOITATION: The offense described in Subsection 76-5-111(4).

INTIMIDATION: Communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

ISOLATION:

- (a) ...knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
 - (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
 - (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.
- (b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

NEGLECT:

- (a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care; or
- (ii) failure to provide protection from health and safety hazards or maltreatment;
- (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
- (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
- (d) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;
- (e) self-neglect by the vulnerable adult; or
- (f) abandonment by a caretaker.

SELF-NEGLECT: The failure of a vulnerable adult to provide food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

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ABUSE:

- (A) Any treatment of a vulnerable adult which places life, health or welfare in jeopardy or which is likely to result in impairment of health;
- (B) Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain or unnecessary suffering to a vulnerable adult;
- (C) Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult;
- (D) Any sexual activity with a vulnerable adult by a caregiver who volunteers for or is paid by a caregiving facility or program. This definition shall not apply to a consensual relationship between a vulnerable adult and a spouse, nor to a consensual relationship between a vulnerable adult and a

	<p>caregiver hired, supervised, and directed by the vulnerable adult;</p> <p>(E) Intentionally subjecting a vulnerable adult to behavior which should reasonably be expected to result in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress; or</p> <p>(F) Administration, or threatened administration, of a drug, substance, or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.</p> <p>EXPLOITATION:</p> <p>(A) Willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another;</p> <p>(B) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud;</p> <p>(C) The act of forcing or compelling a vulnerable adult against his or her will to perform services for the profit or advantage of another;</p> <p>(D) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age or disability or due to fear of retribution or hardship, whether or not the actor has actual knowledge of vulnerable status.</p> <p>NEGLECT: The purposeful or reckless failure or omission by a caregiver to:</p> <p>(A)(i) provide care or arrange for goods or services necessary to maintain the health or safety of a vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or a terminal care document, as defined in chapter 111 of Title 18;</p> <p>(ii) make a reasonable effort, in accordance with the authority granted the caregiver, to protect a vulnerable adult from abuse, neglect or exploitation by others;</p> <p>(iii) carry out a plan of care for a vulnerable adult when such failure results in or could reasonably be expected to result in physical or psychological harm or a substantial risk of death to the vulnerable adult, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or his or her representative, or a terminal care document, as defined in chapter 111 of Title 18; or</p> <p>(iv) report significant changes in the health status of a vulnerable adult to a physician, nurse, or immediate supervisor, when the caregiver is employed by an organization that offers, provides or arranges for personal care.</p> <p>(B) Neglect may be repeated conduct or a single incident which has resulted in or could be expected to result in physical or psychological harm, as a result of subdivisions (A)(i), (ii), or (iii) of this subdivision (7).</p>
<p>Virgin Islands 34 V.I. Code Ann. § 452</p>	<p>ABANDONMENT: Desertion by a caretaker or other person who has an obligation to provide services.</p> <p>ABUSE: The infliction of verbal, psychological or physical pain, injury or harm, mental anguish or harm, or unreasonable confinement.</p> <p>EXPLOITATION: An act or course of conduct to influence or interfere by misrepresentation, coercion or threats of force whether for monetary, personal, or other benefit, gain or profit.</p> <p>NEGLECT: Failure or refusal to provide treatment or services necessary to maintain physical or mental health.</p>
<p>Virginia Va. Code Ann. § 63.2-100</p>	<p>ADULT ABUSE: The willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.</p> <p>ADULT EXPLOITATION: The illegal use of an incapacitated adult or his resources for another's profit or advantage.</p> <p>ADULT NEGLECT: An adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.</p>
<p>Washington Wash. Rev. Code § 74.34.020</p>	<p>ABANDONMENT: An action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.</p>

	<p>ABUSE: The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:</p> <p>(a) Sexual abuse means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.</p> <p>(b) Physical abuse means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.</p> <p>(c) Mental abuse means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.</p> <p>(d) Exploitation means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.</p> <p>FINANCIAL EXPLOITATION: The illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.</p> <p>NEGLECT: (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.</p> <p>SELF-NEGLECT: The failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.</p>
<p>West Virginia W. Va. Code § 9-6-1</p>	<p>ABUSE: The infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident.</p> <p>NEGLECT: The failure to provide the necessities of life to an incapacitated adult or facility resident with intent to coerce or physically harm the incapacitated adult or resident; and the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or resident.</p>
<p>Wisconsin (EPS) Wis. Stat. Ann. § 46.90(1) <i>(applicable to persons who are 60 or older)</i></p>	<p>ABUSE: Means any of the following:</p> <ol style="list-style-type: none"> 1. Physical abuse. 2. Emotional abuse. 3. Sexual abuse. 4. Treatment without consent. 5. Unreasonable confinement or restraint. <p>EMOTIONAL ABUSE: Means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.</p> <p>FINANCIAL EXPLOITATION: Means any of the following:</p>

	<p>1. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.</p> <p>2. Theft, as prohibited in s. 943.20.</p> <p>3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.</p> <p>4. Unauthorized use of an individual's personal identifying information or documents, as prohibited in s. 943.201.</p> <p>5. Unauthorized use of an entity's identifying information or documents, as prohibited in s. 943.203.</p> <p>6. Forgery, as prohibited in s. 943.38.</p> <p>7. Financial transaction card crimes, as prohibited in s. 943.41.</p> <p>NEGLECT: Means the failure of a caregiver, as evidenced by an act, omission or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law.</p> <p>PHYSICAL ABUSE: Means the intentional or reckless infliction of bodily harm</p> <p>SELF-NEGLECT: Means a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care.</p> <p>SEXUAL ABUSE: Means a violation of s. 940.225(1), (2), (3), or (3m).</p>
<p>Wisconsin (APS) Wis. Stat. Ann. § 55.01 <i>(applicable to adults with disabilities)</i></p>	<p>ABUSE: Has the meaning given in s. 46.90(1)(a)</p> <p>FINANCIAL EXPLOITATION: as the meaning given in s. 46.90(1)(ed).</p> <p>NEGLECT: Has the meaning given in s. 46.90(1)(f).</p> <p>SELF-NEGLECT: Has the meaning given in s. 46.90(1)(g).</p>
<p>Wyoming Wyo. Stat. Ann. § 35-20-102</p>	<p>ABANDONMENT: Leaving a vulnerable adult without financial support or the means or ability to obtain food, clothing, shelter or health care;</p> <p>ABUSE: The intentional or reckless infliction, by the vulnerable adult's caregiver, family member or other individual of:</p> <p>(A) Injury;</p> <p>(B) Unreasonable confinement which threatens the welfare and well being of a vulnerable adult; or</p> <p>(C) Intimidation or cruel punishment with resulting physical or emotional harm or pain to a vulnerable adult.</p> <p>EXPLOITATION: The reckless or intentional act taken by any person, or any use of the power of attorney, conservatorship or guardianship of a vulnerable adult, to obtain control through deception, harassment, intimidation or undue influence over the vulnerable adult's money, assets or property with the intention of permanently or temporarily depriving the vulnerable adult of the ownership, use, benefit or possession of his money, assets or property;</p> <p>NEGLECT: The deprivation of, or failure to provide, the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a vulnerable adult's life or health, or which may result in a life-threatening situation. The withholding of health care from a vulnerable adult is not neglect if:</p> <p>(A) Treatment is given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination; or</p> <p>(B) The withholding of health care is in accordance with a declaration executed pursuant to W.S. 35-22-401 through 35-22-416.</p>

	SELF NEGLECT: When a vulnerable adult is unable, due to physical or mental disability, or refuses to perform essential self-care tasks, including providing essential food, clothing, shelter or medical care, obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety, or managing financial affairs.
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¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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MODEL OMBUDSMAN ACT FOR STATE GOVERNMENTS

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United States Ombudsman Association
Model Ombudsman Act for State Governments
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Drafted by
Model Ombudsman Act Committee of the
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Approved on February 11, 1997 by the
United States Ombudsman Association's Board of Directors

Editor's Note:

The February 1997 document was reformatted in April 2004.
No substantive changes were made to the language of the original document.

For more information on the United States Ombudsman Association,
please visit www.usombudsman.org

PREFATORY NOTE

In the Fall of 1994, the board of directors of the United States Ombudsman Association authorized the preparation of an updated model ombudsman act appropriate for state government. There had been renewed interest in the ombudsman concept in a number of states and one, Arizona, was on the verge of enacting an ombudsman bill. It was felt that an updated model act would be a useful document for those states interested in establishing an ombudsman office as well as a useful tool to promote the classical ombudsman institution in other states. Ruth Cooperrider, legal counsel in the Iowa ombudsman's office, was asked to chair a committee to draft the model act. She was assisted in this endeavor by Marshall Lux, the Nebraska ombudsman, Mike Hostina, former deputy ombudsman from Alaska, and Yen Lew and Norrie Thompson, the Hawaii ombudsman and first assistant. The accompanying document is the result of our work.

While this model act was designed for use at the state government level, it can also be adapted for local government. Those so interested may contact the USOA for assistance.

In drafting the act, the committee decided to use as our basic reference the American Bar Association model which was completed under the leadership of Bernard Frank in 1974. The ABA model itself was based on earlier models, notably the Gellhorn model and the Harvard model. Thus, we are building on the foundations prepared for us by these worthy predecessors.

The ABA model was (and is) an excellent document, well thought-out, comprehensive in scope and meticulously annotated by Mr. Frank in his law review article presentation. We left it essentially intact, limiting our revisions to the following areas:

1. Updating and clarifying the language and making it gender neutral;
2. Amending those provisions which over the course of more than two decades of practical experience were found to lead to administrative difficulties or were otherwise problematic; and
3. Adding new provisions to accommodate recent changes in technology and public administration.

While the ABA model was our basic reference, we also reviewed the Gellhorn and Harvard models for additional clarification on certain points. The recently enacted Arizona statute was consulted to help us understand current legislative thinking about the ombudsman institution. Being either current or former ombudsman practitioners, we were also able to contribute insights from our experiences with our own respective statutes in Alaska, Hawaii, Iowa and Nebraska. This practical experience gave us an advantage over our predecessors whose frame of reference was more theoretical in nature.

Working drafts of the bill were presented at the October, 1995 USOA annual conference in Plymouth, Minnesota and the First North American Conference of ombudsman organizations held in May, 1996 in St. Louis, Missouri. After each conference, comments on the drafts were solicited from conference delegates and the members of the USOA board. Noted ombudsman scholars were also invited to comment.

We received in return a number of very useful comments and suggestions from all these sources, including scholars such as Gerald C. Caiden, Bernard Frank and Donald C. Rowat. Our thanks to all of them. In particular, we would be remiss if we did not acknowledge Mr. Frank's careful review of our draft and his detailed commentary. Mr. Frank, the chair of the ABA ombudsman committee which had issued the ABA model act in 1974, further stated it was appropriate, timely, and logical for the USOA to review and update the ABA model and issue a new USOA model to supersede the ABA model. We are grateful for his endorsement.

In considering the comments and suggestions we received, we undertook a section-by-section review of the draft model act. While that process took an additional six months, it is our feeling that the model act was significantly strengthened as a result. Obviously not all suggestions were accepted. In many cases, this was because the suggestion was at variance with the approach taken in another part of the act. Or, the suggestion raised an issue that we had already considered and resolved among ourselves. This final draft represents a document that is acceptable to all members of the committee, where individual differences and preferences were subsumed in a spirit of consensus and where suggestions from other individuals were incorporated as deemed appropriate.

While we believe that the model act as here presented is suitable for all states, we recognize that political circumstances in a given state may mean that some variations may be more appropriate. This model act is not cast in stone. Those who may be interested in possible alternatives to any of the provisions of this model act are invited to contact the USOA.

Although this is a model act for state governments, the USOA believes the ombudsman institution is applicable at all levels of government and encourages its wider establishment. The state ombudsman office created by this model act is not intended to preempt the establishment of any new local ombudsman office. Any local ombudsman office - whether at the county, municipal, township or other level - whose enabling document meets the standards of independence, fairness, confidentiality, and integrity of the review process which characterize a classical ombudsman, should have statutory immunity similar to that granted to the state ombudsman under this model act. Such immunity is necessary to enable local ombudsmen to have confidential communications with complainants and witnesses and to make findings without fear of interference or retaliation through legal proceedings. The USOA will assist any state legislature considering the enactment of such local ombudsman immunity.

This model act is intended to provide for the establishment of an ombudsman who is able to operate effectively in the context of contemporary state government in this, the final years of the twentieth century. The USOA recognizes that future revisions may be necessary to keep this document up-to-date in light of ongoing changes in the law, in standards of government and public administration and in technology. The USOA welcomes suggestions for future consideration.

United States Ombudsman Association Model Ombudsman Act for State Governments

An Act to establish the office of Ombudsman in _____.

COMMENT:

Enactment clause would be in an appropriate form for the state.

Section 1. Legislative Purpose

It is the intent of the legislature to establish, in addition to other remedies or rights of appeal of any person under state law, an independent, impartial, state office, readily available to the public, responsible to the legislature, empowered to investigate the acts of state [(Alternate) and local] administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency and justice in the administration of state [(Alternate) and local] laws.

COMMENT:

This section provides a concise description of the characteristics of the office and its goals.

If jurisdiction over political subdivisions of the state is included, the phrase “and local” should be included. It must be determined whether the inclusion of the phrase “and local” will be interpreted as pre-empting state jurisdiction over both state and local agencies and preventing local governmental units from establishing their own Ombudsmen.

Section 2. Short Title

This Act may be cited as “The (name of state) Ombudsman Act.”

COMMENT:

The title “Ombudsman” is distinctive from the more usual official titles such as “director” and “commissioner” and has gained recognition in the United States and other countries. The existing state statutes do not all use the title: Hawaii - “Ombudsman”; Nebraska - “Public Counsel”; Iowa - “Citizens’ Aide”; Alaska - “Ombudsman”; Arizona - “Ombudsman-Citizens’ Aide.” But it should be noted the term “Ombudsman” is used in these states by the public, the media, and even by the incumbents, who found other titles could be confused with other offices and concepts.

The term “Ombudsman” should be used only when the legislation provides for an independent official who receives complaints against government agencies and who, after investigation, may, if the complaints are justified, make recommendations to remedy the complaints.

If a term other than “Ombudsman” is selected, appropriate changes must be made throughout this Act.

Section 3. Definitions

As used in this Act,

(a) "Agency" means any department, organization, board, commission, council, bureau, administrative tribunal, facility, institution or other governmental entity of (name of state), [(Alternate) any person who is providing services to individuals under contract with (name of state) and as a term of that contract is subject to the Ombudsman's jurisdiction], and any official, officer, administrative hearing examiner, employee or member of (name of state), whether elected or appointed, acting or purporting to act by reason of connection with (name of state), except:

(1) any judge;

(2) the legislature, its members, its committees and its employees;

(3) the governor and the governor's personal staff;

[(4) (Alternate A) any political subdivision of the state;]

[(4) (Alternate B) mayors, council members, judges, and any other elected officials of any political subdivision and their personal staff;]

(5) any multi-state governmental entity.

(b) "Administrative act" means any action, decision, adjudication, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of any agency.

(c) "Person" means any individual, aggregate of individuals, corporation, partnership, or unincorporated association.

(d) "Record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed or controlled by or on behalf of any agency.

COMMENT:

(a) Rather than specifying by name those agencies under the Ombudsman's jurisdiction, the Act permits jurisdiction over all state-related governmental operations and personnel (in pursuance of public function) with certain limited exceptions which should be minimized. An alternative clause has been added to provide that the Ombudsman's jurisdiction would include businesses, corporations, persons, etc., under contract to provide services to individuals on behalf of the state. With the increasing popularity of "privatizing" government services, policy-makers may feel the need to bring these "private" bureaucracies under the Ombudsman's jurisdiction, in order to insure that the public receives the same level of protection afforded when the services are provided directly by state agencies. If this alternative is adopted, then it would also be necessary to add to the state's statutes relating to procurement a provision to require all agencies entering into a contract for the "privatization" of governmental services to include in that contract a clause obligating the private service provider to submit to the Ombudsman's jurisdiction. By making cooperation with the Ombudsman a condition of the contract, the private contractors will understand from the outset their responsibilities to the Ombudsman and will accept that arrangement as a part of the agreement with the state.

(a)(1) The exclusion of judges is based upon the existence of the long established system of appellate review of judicial decisions and upon the existence of other mechanisms for the sanctioning and/or the removal of judges who act unethically or who are incapacitated. The exclusion is narrow and contemplates that the Ombudsman

would have jurisdiction to investigate administrative or ministerial acts by employees of the judicial branch, when those acts are peripheral to the adjudication itself. In many instances, administrative errors affecting a particular adjudication would have to be challenged and resolved through the established judicial process, but even in those cases, the Ombudsman could make recommendations for improving administrative procedures that would have a prospective effect. The Ombudsman would not, of course, have the jurisdiction to question, criticize or review the substantive content of any judicial order, decision or opinion. The exclusion of judges would pertain only to judicial officers of the judicial branch of government and would not exclude administrative tribunals or administrative law “judges” from the Ombudsman’s jurisdiction.

(a)(2) The Legislature--an independent policy making body, whose actions are conspicuous and subject to public scrutiny, and whose tenure is subject to periodic popular review--is excluded. Committees and staff members who assist in policy formation are, likewise, excluded. Although there may be legislative employees, agencies, bureaus or divisions that provide direct services to the public, those employees and entities are also excluded from the Ombudsman’s jurisdiction, because of concerns that the Ombudsman’s close relationship with the legislative branch would compromise the independence of the office in dealing with cases involving those employees, agencies, etc. If it is determined that it is desirable to include these legislative service agencies within the Ombudsman’s jurisdiction, then as an alternative the exclusion might read, “(2) the members and committees of the legislature and their immediate staff.”

(a)(3) Elected state officials (e.g., Lt. Governor, Treasurer) who deserve exclusion for the same reasons as (a)(2) above, may be added to (a)(3) but they must be distinguished from other elected state officials who should be included and who are less immediately involved in policy-making and are engaged chiefly in administrative matters indistinguishable from those performed by non-elected officials generally. Thus, appropriate officials to be excluded may vary from state to state. Alternatively, this exclusion might read, “(3) elected constitutional officials and their personal staff;”.

(a)(4) Alternate A: Where local jurisdiction is not included, (a)(4) should read, “[4] any political subdivision of the state;].”

(a)(4) Alternate B: If jurisdiction over a political subdivision is included, Alternate B should be used to give an exclusion parallel to that for state officials: “[4] mayors, council members, judges, and other elected officials of political subdivisions and their personal staff;].” A saving clause for existing municipal Ombudsman offices may be added if necessary and desirable.

(a)(5) The specific exclusion of multi-state entities, such as regional transportation and planning authorities, and implicit exclusion of federal agencies (including the local offices thereof), are based on practical and constitutional limitations on sovereign power of the state over such agencies.

(b) “Administrative Act” is broadly defined and includes decisions by administrative boards or tribunals or administrative law “judges” and rule-making activities.

(c) “Person” is defined broadly.

(d) “Record” is broadly defined to make it clear that the Ombudsman is intended to have access to all recorded information possessed or controlled by agencies, regardless of the form or manner of storage of that information.

Section 4. Creation of Office

The office of Ombudsman is established.

Section 5. Nomination and Appointment

The (insert name of legislative body) shall elect the Ombudsman by a two-thirds vote of the members of each house present and voting.

COMMENT:

The Ombudsman is an appointed officer of the legislative branch of government. This arrangement helps to guarantee the independence of the Ombudsman, who might be reluctant to criticize the actions of agencies that are responsible to the executive, if he or she were an executive appointee. As part of the legislative branch of government, the Ombudsman is not only providing a direct service to citizens, but is also performing a role in legislative oversight of the agencies under the Ombudsman's jurisdiction. Since the Ombudsman may only make recommendations, and may not compel the executive and judicial agencies to take substantive actions, the Ombudsman's role is consistent with the concept of separation of powers.

Section 6. Qualifications

(a) The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of law, administration, and public policy.

(b) No person while serving as Ombudsman:

- (1) shall be actively involved in political party activities or publicly endorse, solicit funds for or make contributions to political parties or candidates for elective office;
- (2) shall be a candidate for or hold any other elective or appointive public office;
- (3) shall engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

COMMENT:

The Ombudsman should be a full-time impartial expert in whom the public can have confidence.

(a) This subsection gives the core characteristics and qualifications for an Ombudsman and hence provides more guidance than a mere listing of restrictions on the official.

(b) Paragraph (b)(1) seeks to preserve the Ombudsman's impartiality and the appearance of impartiality in the political arena. The Ombudsman retains the right to participate in the political process as a voter and to express his or her opinion privately.

Paragraph (b)(2) inhibits an Ombudsman from using the office as a political stepping-stone. To further protect the office from politicization, some states (Arizona, Hawaii, and Nebraska) provide that the Ombudsman shall not have served as a member of the Legislature for one or two years prior to his or her appointment. However, this could prevent the appointment of a highly qualified legislator.

Paragraph (b)(3) seeks to assure that the Ombudsman's work is performed on a full-time basis, and that the Ombudsman remains impartial.

Section 7. Term of Office

The Ombudsman shall serve for a term of _____ years and until his or her successor is appointed and qualified. He or she may be reappointed for additional terms.

COMMENT:

A long term is desirable: to permit the Ombudsman sufficient time to become proficient at his or her duties; to provide a measure of independence from politics; and to provide prestige and security to attract qualified persons to the position. An excessively long term (e.g., 15 years) prevents the desired periodic accountability to the Legislature. The term should not be less than five years. The same points that argue for a long term of office for the Ombudsman also support the concept that the incumbent should be eligible for reappointment at the end of his or her term.

Section 8. Removal and Vacancy

(a) The Legislature by a vote of two-thirds of the members of each house present and voting may remove the Ombudsman from office, but only for mental or physical incapacity to perform the duties of the office, or other grounds sufficient for removal of a judge from state court.

(b) If the position of Ombudsman becomes vacant for any reason, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

COMMENT:

(a) The Ombudsman should be secure in the position, so removal is made difficult and must be for cause. This protects the Ombudsman from groundless attacks or political threats. As an alternative, this subsection might provide that the Ombudsman could be removed from office according to state constitutional provisions for removal of judges or other public officials.

(b) In filling vacancies, full term appointment is preferable to remainder-of-term appointment as it provides the desirable longer term of office.

Section 9. Compensation

The Ombudsman shall receive the same salary and benefits as [(Alternate A) a state judge at the general trial court or higher level.] [(Alternate B) a state department head.] [(Alternate C) a legislative agency head.] The salary of the Ombudsman shall not be diminished during the Ombudsman's term of office, unless by general law applying to all salaried officers of the state.

COMMENT:

The Ombudsman is a high-level official who should receive a salary that reflects the importance, responsibility and prestige of the office. Also, a high salary is warranted if the Ombudsman is prohibited by law from engaging in any other occupation, business, or profession.

Three alternative salary proposals are offered for consideration. The first sets the salary at least equal to that of a general trial court judge. The comparison between the two offices is apt in terms of recognizing the Ombudsman's stature as well as reinforcing the

concept of the Ombudsman's independence and neutrality. The second ties the Ombudsman's salary to that of the state department heads. This also provides appropriate stature to the office and emphasizes the point that the Ombudsman deals with department heads as an equal rather than as a lower level official. The third equates the Ombudsman with other legislative agency heads. This approach may be a more familiar frame of reference to legislators and it would help assure consistency within any existing legislative branch salary system. Practically speaking, any of the three alternatives should result in fairly similar salary amounts.

Section 10. Organization of Office

(a) The Ombudsman shall select, appoint and fix the compensation of a person as Deputy Ombudsman and may select, appoint and fix the compensation of such other officers and employees as the Ombudsman may deem necessary to discharge the Ombudsman's responsibilities under this Act. Compensation shall be fixed within the amount available by appropriation. All officers and employees shall serve at the Ombudsman's pleasure.

(b) The Ombudsman may delegate to staff members any authority, power or duty except this power of delegation and the Ombudsman's duty to make any report under this Act. However, the Ombudsman may authorize the Deputy Ombudsman to act in the Ombudsman's stead in the event of illness, absence, leave or disability, or when, in the Ombudsman's sole discretion, an appearance of impropriety or partiality or a conflict of interest prevents the Ombudsman from discharging his or her duty in a particular matter.

(c) The Ombudsman and his or her staff shall be entitled to participate in any employee benefit or retirement plan available to state employees.

COMMENT:

(a) The sensitive nature of the work and the high degree of delegation to and confidence in staff that will be required dictate that the Ombudsman be free of civil service and political constraints in staff selection and retention. The Ombudsman, however, should refer to civil service salary schedules in setting comparable salaries for staff, and would naturally use state accounting facilities for payment of such [cf., section 11(j)]. The appointment of a Deputy Ombudsman is compulsory while selection of other officials, including an Assistant Ombudsman or Ombudsmen, is optional.

(b) This same desire for flexibility should permit a broad delegation of powers. The Ombudsman, however, remains responsible for the organization of the office and for whatever reports leave the office [section 16] -- unless the Deputy Ombudsman has assumed the Ombudsman's duties under this sub-section or when the office is vacant [section 8(b)]. The Ombudsman has complete discretion with respect to recusal for "cause" in order to avoid procedural smoke screens and because the Ombudsman can be expected to diligently maintain his or her limited authority through appropriate recusal. The Ombudsman has discretion to require, by regulation [section 11(b)] or otherwise, that a delegation be in writing or that staff members take an oath of office.

Section 11. Powers

The Ombudsman's powers and duties include but are not limited to the following:

(a) to investigate, on complaint or on the Ombudsman's own initiative, any administrative act of an agency, without regard to the finality of the administrative act;

- (b) to undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings, or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur;
- (c) to make such inquiries and obtain such assistance and information from any agency or person as the Ombudsman shall require for the discharge of the Ombudsman's duties. Agencies shall not restrict the Ombudsman's access to agency personnel;
- (d) notwithstanding any other provision of state law, to have access to and to examine and copy, without payment of a fee, any agency records, including records which are confidential by state law. The Ombudsman shall not disclose confidential records and shall be subject to the same penalties as the legal custodian of the records for any unlawful or unauthorized disclosure;
- (e) to enter and inspect without prior notice the premises of any agency;
- (f) to subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably relevant to the matters under investigation;
- (g) to maintain confidential any matter related to complaints and investigations, including the identities of the complainants and witnesses, except as the Ombudsman deems necessary to discharge the Ombudsman's duties;
- (h) to bring suit in (name of court) to enforce the provisions of this Act;
- (i) to adopt, promulgate, amend and rescind rules and regulations required for the discharge of the Ombudsman's duties, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Ombudsman may not levy any fees for the submission or investigation of complaints;
- (j) to prepare and administer a budget for the office of the Ombudsman;

COMMENT:

The general powers and duties of the Ombudsman are enumerated for clarity; however, this section is not an exhaustive listing of all the powers and duties delegated to the Ombudsman. Additional provisions related to staffing, delegation of powers and duties, recommendations, and reports are contained in sections 10, 15, and 16.

(a) The Ombudsman's investigatory power is limited to administrative acts of agencies [section 3(b)]. The Ombudsman may receive and consider complaints from any source. The Ombudsman can initiate an investigation when others are unwilling to come forward with a complaint or when the Ombudsman discovers a matter warranting investigation.

(b) Although most of the Ombudsman's time will be occupied with individual complaints, the Ombudsman can conduct studies of a general nature to improve agency efficiency or service to the public, either independently or jointly with other governmental bodies or non-governmental research enterprises.

(c) The Ombudsman has broad access to any type of information from an agency or person, and an agency may not restrict agency personnel from assisting or providing information to the Ombudsman. There is no requirement to conduct formal evidentiary hearings of an adversary nature, although the Ombudsman can take statements from persons under oath. If testimony is taken, it should be perceived purely as an investigatory proceeding, and the procedure need not comport with what is normally required in a formal adjudication hearing.

(d) The Ombudsman can examine and copy or obtain a copy of any agency record, including records which are confidential under state law, without the payment of any fee. However, the Ombudsman and the Ombudsman's staff are obligated to maintain the confidentiality of any confidential records provided by an agency to the same extent as the legal custodian of the records.

(e) The Ombudsman has the power to inspect any agency without notice, as advance notice might negate the value of such a visit. Information gathered on site visits may provide subjects for investigation on the Ombudsman's own motion.

(f) The Ombudsman can compel any person to provide testimonial, documentary, or other evidence through issuance of a subpoena. Implicitly, the Ombudsman and his or her staff are empowered to administer oaths to such witnesses. Protections and privileges for witnesses, regardless of whether or not they have been subpoenaed, are provided in section 18. If a person refuses to comply with the subpoena, the Ombudsman can seek enforcement under section 11(h).

(g) To facilitate the gathering of information, the Ombudsman has discretion to keep confidential any complaint or investigative information. The Ombudsman may disclose such information as the Ombudsman deems necessary or appropriate in carrying out the Ombudsman's duties.

(h) The Ombudsman may bring suit regarding the exercise of his or her powers, including actions: for a declaratory judgment to obtain jurisdiction [under sections 3(a) and 11(a)]; to enter and inspect agencies [section 11(e)]; to show cause for not appearing after being subpoenaed [section 11(f)]; and to enforce confidentiality provisions [sections 13(d) and 13(e)].

(i) The Ombudsman is given broad regulatory discretion to determine the procedures for carrying out the office's functions. The Ombudsman may through rules or regulations specify the means by which complaints may be submitted (which may include fax or electronic mail) and require for good reason that certain types of complaints be in writing. To insure accessibility (and avoid discrimination against the poor), a fee may not be imposed for the Ombudsman's services.

(j) A provision for budgetary powers may be necessary in some states and useful in others, to insure that the Ombudsman's budget is independent of outside (agency) administration.

Section 12. Investigation of Complaints

(a) The Ombudsman shall conduct a suitable investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation by the Ombudsman includes any administrative act which the Ombudsman believes might be:

- (1) Contrary to law or regulation;
 - (2) Based on mistaken facts or irrelevant considerations;
 - (3) Unsupported by an adequate statement of reasons;
 - (4) Performed in an inefficient manner;
 - (5) Unreasonable, unfair, or otherwise objectionable, even though in accordance with law;
- or

(6) Otherwise erroneous.

(b) The Ombudsman in the Ombudsman's discretion may decide not to investigate because:

- (1) The complainant could reasonably be expected to use another remedy or channel;
- (2) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (3) The complaint has been too long delayed to justify present examination;
- (4) The complainant is not personally aggrieved by the subject matter of the complaint;
- (5) Resources are insufficient for adequate investigation; or
- (6) Other complaints are more worthy of attention.

(c) The Ombudsman's declining to investigate a complaint shall not bar the Ombudsman from proceeding on his or her own initiative to investigate an administrative act whether or not included in the complaint.

COMMENT:

(a) The Ombudsman has a duty to investigate the complaints described in subsection (a), although he or she may decline to investigate for the reasons given in subsection (b). The enumerated complaints indicate the kinds of administrative acts that generate complaints to the Ombudsman's office. As shown by paragraph (a)(6), which is a catchall, and subsection (c), the statute is intended as a guide to and not a limitation on the complaints which the Ombudsman can investigate.

(b) The Ombudsman may choose to investigate a complaint even though the statute permits him or her to refuse. For instance, under paragraph (b)(1), if the Ombudsman believes that recourse to an administrative or legal remedy would be futile or overly burdensome to the complainant, the Ombudsman may investigate the complaint. Similarly, the Ombudsman may decide to investigate a complaint of public concern even though the complainant was not personally aggrieved.

(c) Complaints which are inappropriate for investigation may nevertheless reveal administrative acts which the Ombudsman may decide to investigate on his or her own initiative [section 11(a)].

Section 13. Rights of Complainant--Communication With Complainant

(a) After the Ombudsman has decided whether or not to investigate a complaint, the Ombudsman shall suitably inform the complainant.

(b) The Ombudsman shall, if requested by the complainant, suitably report the status of his or her investigation to the complainant.

(c) After investigation of a complaint, the Ombudsman shall suitably inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

(d) A letter to the Ombudsman from a person held in custody--including by detention, incarceration and hospitalization--by an agency shall be forwarded immediately, unopened, to the Ombudsman. A letter from the Ombudsman to such person shall be immediately delivered, unopened, to the person. Telephone and personal contacts between the Ombudsman and a person in custody shall not be prohibited or monitored.

COMMENT:

Subsections (a), (b) and (c) give the Ombudsman a general duty to inform the complainant of the status of his complaint. The experience and judgment of the Ombudsman will determine the suitable response to be made.

Section 14. Rights of Agency

Before formally issuing a conclusion or recommendation that is significantly critical or adverse to an agency, the Ombudsman shall have consulted with that agency and permitted the agency reasonable opportunity to reply. If the Ombudsman makes a conclusion or recommendation available to the agency to facilitate a reply, the conclusion or recommendation is confidential and may not be disclosed to the public by the agency unless the Ombudsman releases it.

COMMENT:

This section protects agencies, their officers and employees by requiring consultation and giving them reasonable time to reply to significant criticism before the Ombudsman issues critical findings. The Ombudsman has the discretion to make all or part of his or her findings available to facilitate a reply. Because the Ombudsman may modify findings, which may include removal of confidential information and incorporation of the agency's response [section 15(b)], after reviewing the agency's reply, disclosure of findings not released by the Ombudsman is a violation of law, which may be dealt with under existing records confidentiality provisions.

Notice of the Ombudsman's decision to investigate is not required because such formalities: are inconsistent with the role of the Ombudsman as an alternative to procedure-bound remedies and the limited resources of the office; are largely ceremonial in that the Ombudsman will inevitably contact the agency during an investigation; and are not required by due process given the absence of Ombudsman power to enforce recommendations and the fact that an opportunity to be heard is required before publication.

If an advance notice provision is nonetheless desired, it should provide for: informal or preliminary inquiries without notice, since experience shows that the vast majority of complaints are handled expeditiously and informally; withholding notice when notice would hinder investigation; and flexibility of form to avoid legalistic procedural wrangling, e.g. "If after making preliminary inquiries the Ombudsman decides to investigate, the Ombudsman shall suitably inform the agency involved unless the Ombudsman reasonably believes that advance notice will unduly hinder the investigation or make it ineffectual. The Ombudsman may inform the agency verbally or in writing."

Section 15. Procedure after Investigation

(a) If, after investigation, the Ombudsman is of the opinion that an agency should:

- (1) consider the matter further,
- (2) modify or cancel an act,
- (3) alter a regulation, practice or ruling,
- (4) explain more fully the act in question,
- (5) rectify an omission, or
- (6) take any other action,

the Ombudsman shall state any conclusions, recommendations and reasons therefore to the agency. If the Ombudsman so requests, the agency shall, within the time specified, inform the Ombudsman about the action taken on recommendations or the reasons for not complying with them.

(b) After a reasonable period of time has elapsed, the Ombudsman may issue his or her conclusions or recommendations to the legislature, the governor, a grand jury, the public, or any other appropriate authority. The Ombudsman shall include any brief statement the agency may provide if an opportunity to reply is required by this Act.

(c) If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by legislative action, the Ombudsman shall notify the (insert name of legislative body) and the agency of desirable statutory change.

(d) If the Ombudsman believes that any agency official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman shall refer the matter to the appropriate authorities without notice to that person.

COMMENT:

(a) Though the Ombudsman will rarely have reason to make a recommendation if there is no error in what the agency has done or neglected to do, the Ombudsman should remain free to suggest improvements in method or policy even when the existing practice may be legally permissible. Thus the Ombudsman may facilitate one agency's learning about and taking advantage of the experience of another. This subsection contemplates no entry of judgment, as it were, but simply the expression of opinion by the Ombudsman. The Ombudsman is not a superior official, in a position of command, and cannot compel a change in an administrative act. The Ombudsman's recommendation may, however, induce an agency to exercise whatever power it may possess to right what the Ombudsman points out as a past mistake.

(b) If the Ombudsman is required to provide an opportunity to reply under section 14 and a reply is forthcoming, the Ombudsman must include it when issuing findings. Rather than permitting the Ombudsman to summarize replies, replies are limited to a "brief" statement which shall be printed unedited; regulations as to what is "brief" might be promulgated under section 11(i).

(c) There may be instances where an agency acted in accordance with existing law, but the law itself produces unjust results. The Ombudsman has the duty to bring these situations to the attention of the legislature and appropriate agency officials; if appropriate, the Ombudsman may comment on or recommend changes in legislation.

(d) The Ombudsman's duty to report wrongdoing pertains to miscreant officials. This subsection makes it clear that the Ombudsman may report allegations of wrongdoing without having to first notify the person involved (who may otherwise flee the state or destroy pertinent evidence if tipped off prematurely). This avoids any ambiguity which may arise if this subsection is read in conjunction with section 14.

If the person has testified before the Ombudsman, such testimony would bear the same privileges as testimony in court [section 18].

Section 16. Reports

The Ombudsman may from time to time and shall annually report on his or her activities to the Governor, to the Legislature, or any of its committees, to the public and, in the Ombudsman's discretion, to agencies.

COMMENT:

The Ombudsman's sole means of correcting flawed practices when agencies refuse to do so is to publish criticism and recommendations.

The annual report, whose release date would be set by the Ombudsman [section 11(i)], is mandatory. Special [section 15(b)] or general interim reports are discretionary with the Ombudsman.

Section 17. Ombudsman's Immunities

(a) The substantive content of any finding, conclusion, recommendation, or report of the Ombudsman or member of the Ombudsman's staff shall not be reviewable in any court.

(b) The Ombudsman and the Ombudsman's staff have the same immunities from civil and criminal liabilities as a judge of this state.

(c) The Ombudsman and the Ombudsman's staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Act.

COMMENT:

(a) & (b) As a public watchdog, the Ombudsman should be able to state his or her position freely and candidly without fear of pressure or reprisal. The judicial immunities afforded the Ombudsman are intended to protect against harassment when the Ombudsman deals with controversial issues or makes an unpopular decision. While the Ombudsman's findings are presented only after due consideration, no claim of infallibility is made and the Ombudsman's findings, conclusions and recommendations are always subject to criticism by government officials as well as members of the public. Since the Ombudsman has no enforcement power and any findings and recommendations are only advisory in nature, the courts should have no authority to order that an expression of opinion be changed.

(c) Certain dealings that the Ombudsman has with complainants and witnesses may be confidential in nature. This subsection is meant to protect these confidential relationships so as to encourage complainants to avail themselves of the Ombudsman's services and witnesses to cooperate with the Ombudsman, where they may be otherwise reluctant to do so.

Section 18. Witnesses' Privileges

Any person who provides information under this Act may be accompanied and advised by counsel of his or her choice and shall be paid the same fees and travel allowances and accorded the same privileges and immunities as witnesses whose attendance has been required in the (name of court). However, a representative of an agency providing information under this Act during business hours shall not be entitled to receive such fees and allowances.

COMMENT:

Although investigations conducted by the Ombudsman are not contested cases or adjudications of rights or interests, and although nearly all testimony will be private and confidential, witnesses who testify (whether or not by subpoena) are given judicial privileges and immunities. Witness fees and travel allowances are also required for persons who provide information to the Ombudsman under the Act. A provision that a representative of an agency during business hours shall not be entitled to such fees and allowances is included to avoid possible double payment of public servants during working hours.

Section 19. Obstruction

Any person who willfully obstructs or hinders the proper and lawful exercise of the Ombudsman's powers, or willfully misleads or attempts to mislead the Ombudsman in the Ombudsman's inquiries, shall be guilty of a (specify the level of offense).

COMMENT:

It must be determined in each state whether necessity exists for indicating the court in which proceedings are to be brought and upon whose initiative. Since fines for offenses vary from state to state and may be subject to periodic changes, it is preferable to specify the offense rather than a set amount of fine for a violation.

Section 20. Reprisals Prohibited

(a) No person who files a complaint or participates in any investigation or proceeding pursuant to this chapter shall be subject to any penalties, sanctions or restrictions in connection with his or her employment or be denied any right, privilege, or benefit because of such action.

(b) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, actual damages, and punitive damages. Punitive damages shall not exceed \$10,000.

COMMENT:

This section provides protection to complainants and witnesses from reprisals at their place of employment or the deprivation of other rights or privileges because of their participation in Ombudsman investigations.

Section 21. Relation to Other Laws

The provisions of this Act are in addition to and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or unappealable.

COMMENT:

This section clearly sets forth that the Ombudsman office is a supplemental remedy and is in addition to other remedies or rights of appeal--a principle also covered in section 1 with respect to legislative purpose. This section also establishes the principle that the Ombudsman powers are not inhibited by statutory enactments providing that any administrative action shall be final or unappealable.

Section 22. Appropriation

There is appropriated out of the general revenues of the state the sum of \$_____, or so much thereof as may be necessary for fiscal year _____, to the office of the Ombudsman to carry out the purposes of this Act.

COMMENT:

Before an Ombudsman statute can be implemented, funding needs to be made available to pay for the expense of the office. This section provides the mechanism to do this. This section should be included where required by the fiscal regulations or practice of the state. If inclusion of such section is not necessary, it can be omitted.

Section 23. Effective Date

This Act shall take effect upon its approval.

COMMENT:

This is standard enactment language. The Act actually becomes effective only after appropriation has been made and an Ombudsman has taken office.

Section 24. Severability

The provisions of this Act are declared severable, and if any provision thereof is held to be invalid for any reason, the validity of the remainder of the Act shall not be affected.

COMMENT:

The inclusion of this section is optional. It is not in any of the existing state Ombudsman statutes. The need for a severability clause is unclear, but it may be helpful to assuage any legal concerns that may be raised when the bill is being voted on in the legislature.



REFERENCES

Our proposed model ombudsman act is based primarily on the American Bar Association Model Ombudsman Statute for State Governments. The annotated ABA model, together with Bernard Frank's extensive commentary, may be found in Bernard Frank, "State Ombudsman Legislation in the United States," *University of Miami Law Review* 29, no. 3 (Spring 1975), 379-445. This is an extremely comprehensive source of information about the history of the ombudsman institution in the United States as well as on the principles behind ombudsman legislation.

In turn, the ABA model was based on the model prepared by the late Professor Walter Gellhorn. See Walter Gellhorn, "Annotated Model Ombudsman Statute." In *Ombudsman for American Government?* Edited by Stanley V. Anderson. Englewood Cliffs, NJ: Prentice-Hall, Inc., 1968.

One of the sources that Professor Gellhorn used for his model was the Harvard model prepared by the Harvard Student Legislative Reference Bureau. See "A State Statute to Create the Office of Ombudsman," *Harvard Journal on Legislation* 2, no. 2 (June 1965), 213-238.

We also consulted the current state ombudsman statutes to compare the differences and similarities among them. Interested readers are directed to those sources for further information about possible statutory variations and alternatives. The Alaska ombudsman is authorized under Title 24, Chapter 55 of the Alaska Statutes. In Arizona, Title 41, Chapter 8, Article 5 of the Arizona Revised Statutes Annotated establishes the office of the ombudsman-citizens aide. Chapter 96, Hawaii Revised Statutes, is the ombudsman statute for Hawaii. In Iowa, the ombudsman is known as the citizens' aide pursuant to Chapter 2C, Iowa Code Annotated. Public Counsel is the title used in Nebraska in accordance with Sections 81-8,240 to 81-8,254, Revised Statutes of Nebraska.

Alternatives to Guardianships

A Proposal for a Comprehensive Statutory Framework to Provide Decision-Making Assistance to Persons with Diminished Decision-Making Capability

Report to the Supreme Court and the Board for Judicial
Administration

November 2009

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Overview of the Office of Public Guardianship (OPG)

The 2007 Legislature passed Senate Bill (SB) 5320 establishing the Office of Public Guardianship (OPG) within the Washington State Administrative Office of the Courts (AOC) to develop and administer a public guardianship program. The Governor signed the bill with a partial veto and it became effective on July 22, 2007. Laws of 2007, ch. 364, codified at Chapter 2.72 RCW.

The OPG contracts with public and private entities and/or individuals to provide public guardianship services to persons age eighteen or older whose income does not exceed 200 percent of the federal poverty level determined annually by the United States Department of Health and Human Services, or who are receiving long-term care services through the Washington State Department of Social and Health Services and there is no one else willing and able to serve.

Initial implementation of public guardianship services was required to occur on a pilot basis in a minimum of two geographical areas including one urban and one rural area. RCW 2.72.030(1)(d). The OPG selected Clallam, Grays Harbor, Okanogan, Pierce and Spokane Counties as sites to pilot public guardianship services. In response to documented significant need for public guardianship services, in January 2009 the OPG started a pilot program in King County.

Incapacitated individuals are served based on the following priorities:

- Indigent/Homeless.
- At significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect.
- Imminent danger of loss or significant reduction in public services that are necessary to live successfully in the most integrated and least restrictive environment that is appropriate for a specific individual.

Anticipating significant budget cuts, in June 2009 the OPG placed a moratorium on accepting new cases pending a decision on the 2009-2011 budget. The moratorium will remain in effect until additional funding is obtained.

Purpose of the Report

The Legislature directed the OPG to “report to the legislature on how services other than guardianship services, and in particular services that might reduce the need for guardianship services, might be provided under contract with the office by December 1, 2009. The services to be considered should include, but not be limited to, services provided under powers of attorney given by the individuals in need of the services.” This report fulfills said directive.

If you have any questions or concerns regarding this report, please contact:

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Ad hoc Advisory Committee

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REPRESENTING

Mr. David Armes	Department of Social and Health Services
Ms. Nancy Dapper	Certified Professional Guardian Board
Mr. Lonnie Davis	Impediments to Access Committee of the Access to Justice Board
Mr. Jerry Fireman	Washington State Association of Area Agency on Aging
Ms. Vicky Foster	Disability Rights Washington
Commissioner Steven Grovdahl	Guardianship and Probate Committee of the Superior Court Judges' Association (SCJA)
Ms. Margaret Kennedy	Office of the Attorney General
Mr. David Lord	Disability Rights Washington
Ms. Mary Jo Magruder	The Arc of King County
Mr. David Maltman	Developmental Disabilities Council
Ms. Sue McDonough	Department of Social and Health Services
Mr. Toby Olson	Governor's Committee on Disability Issues & Employment
Ms. Julie Peterson	Washington Association of Housing & Services for the Aging
Mr. Laird A. Pisto	Washington State Hospital Association
Ms. Louise Ryan	Long Term Care Ombudsman
Ms. Joy Ann von Wahlde	Northwest Justice Project
Mr. Dee Wilson	University of Washington School of Social Work

Executive Summary

Patsy*, a 63-year-old female, needs a medical procedure. Her attending physician, Dr. Bryant, has determined that Patsy lacks decisional capacity to give informed consent. Patsy has no family, has not executed an advance directive, and has no legally authorized surrogate. Who will consent to the medical procedure?

Marie*, a 58-year-old female, is concerned that she might die alone in a nursing home. She very much wants to live out her life in her home. Where can Marie obtain information, support and assistance on substitute decision-making that will allow her to plan for her future?

Jim*, a 45-year-old male with a developmental disability, recently lost his mother, his last relative and longtime financial manager. Although Jim lives alone, works and makes all his personal decisions, he never learned to manage money. Who will manage Jim's money now?

Answering these questions is the focus of the recommendations presented in this report. The recommendations included are based on the central premise that decisional capacity is not global. In the past, theories of competency and capacity were based on the principle of all or nothing. An individual was believed to either be competent or incompetent, to have capacity or to lack capacity. Thus the legal construct of guardianship was developed to accommodate this all or nothing theory. Advances in medicine, knowledge of brain function and functional ability has dispelled the all or nothing theory. Capacity is now believed to be specific to functional areas and not global. It is also believed to fluctuate, here today gone tomorrow; to be situational and contextual, occurring as a result of environmental influences or other triggering events, and can potentially be enhanced with education, training, rehabilitation, treatment (mental health and medical), therapy (occupational and physical), services (home and social), and assistive devices or accommodation. The change in capacity theory provides an opportunity to modify how guardianship and alternative programs and services are structured and delivered.

The recommendations focus on people and their needs, and emphasize that when possible any alternatives used should be reflective of the individual's personal communication mechanisms and assist them to outline their needs and wishes. This ultimately leads to greater inclusion as valued members of both community and society.

* Name has been changed for confidentiality

* Id.

* Id.

The report responds to the legislative directive to report to the Legislature on how services other than guardianship services and, in particular, services that might reduce the need for guardianship services, might be provided under contract with the Office of Public Guardianship (OPG).

Six recommendations are presented:

- 1) Expansion of State Aging and Disability Resource Centers.
- 2) Provide protective payee/money management services to individuals who lack the ability to manage their finances.
- 3) Adopt the Uniform Power of Attorney Act (UPOAA).
- 4) Provide power of attorney services to individuals who lack the ability to manage their finances.
- 5) Create statutory surrogate decision-making committees, which empower committees of trained volunteers to evaluate the need for a surrogate decision-maker and when necessary consent to a course of treatment.
- 6) Develop a statewide guardianship monitoring program that includes visits and field investigations, financial audits, and concise reports to be filed in the official court record.

Abbreviations

AAA	Area Agency on Aging
ADRC	Aging and Disability Resource Centers
AoA	Administration on Aging
AOC	Administrative Office of the Courts
CIDL	Center for Independent Living
CPG	Certified Professional Guardian
DD	Developmental Disability
DMM	Daily Money Management
DPOA	Durable Power of Attorney
OPG	Office of Public Guardianship
POA	Power of Attorney
SDMC	Surrogate Decision-Making Committee
SSI	Supplemental Security Income
TBI	Traumatic Brain Injury
VA	Veteran's Administration

Definitions

Activities of Daily Living	Things adults normally do in daily living including any daily activity performed for self-care (feeding, bathing, dressing and grooming), work, homemaking, and leisure.
Advance Health Care Directives	A health care advance directive combines the health care power of attorney and living will document into one document.
Agent	A person granted authority to act for a principal under a power of attorney, whether nominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, co-agent, successor agent, and a person to which an agent's authority is delegated.
Best Interest	A decision-making standard where the surrogate makes a decision for a person with a mental incapacity based on an objective determination as what will provide the best benefit for the person and promote their welfare.
Capacity	An ability to comprehend both the nature and consequences of one's acts. An ability to adequately provide for nutrition, health, housing, physical safety, and manage property and financial affairs.
Daily Money Management (DMM)	Daily money management services help people with their financial affairs, including check depositing and writing, checkbook balancing, bill paying, insurance claim preparation, tax preparation and counseling, public benefit applications and counseling. DMM is voluntary. A person must be capable of asking for or accepting services.
Durable Power of Attorney (DPOA)	A power-of-attorney with a statement that the agent's authority will remain in effect even if the principal becomes mentally incapacitated. Without a durable provision, a power of attorney (POA) terminates when the principal becomes mentally incapacitated. POAs are often used to cover health care and end-of-life decisions. An agent's authority ends if the principal revokes the DPOA or dies.
Guardian	<p>A guardian is a person appointed by a court to manage the affairs of a person who is incapacitated.</p> <p>A guardian may be appointed to manage the financial affairs of a person at significant risk of harm because of a "demonstrated inability to adequately manage property or financial affairs." A guardian may be appointed to make health care and other non-financial decisions for a person at significant risk of harm because of a "demonstrated inability to adequately provide for nutrition, health, housing or physical safety." (The quoted language is from the Washington State law, Revised Code of Washington 11.88.010.)</p>

Health Care Power of Attorney	A health care power of attorney enables a person to name an agent or proxy to make health care decisions if he or she becomes unable to do so. It may address any type of health care decision, and may include guidance to the agent about the type and extent of health care desired.
Health Care Surrogate or Family Consent Laws	Health care surrogate or family consent laws provide legal authority for certain groups of persons (e.g., spouses, children, parents) to make health care decisions for an adult who cannot make or communicate such decisions due to disability, illness or injury, and who has not authorized someone else to do so.
Health Care	Any care, service, or procedure provided by a health care provider.
Health Care Facility	A hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to clients.
Health Care Provider	A person who is licensed, certified, registered or otherwise authorized by the law of Washington State to provide health care in the ordinary course of business or practice of a profession.
Power of Attorney	A writing where a mentally capable person, (the “principal”) grants authority to another person (the “agent”) to act in place of the principal. An agent’s authority ends if the principal revokes that authority, becomes mentally incapacitated, or if the principal dies.
Principal	An individual who grants authority to an agent in a power of attorney.
Representative Payee	A representative payee is appointed by a government agency to receive, manage, and spend government benefits for a beneficiary. A beneficiary may request a representative payee, but usually the agency requires one when a beneficiary is incapable of managing benefits. The representative payee’s authority is limited to the government funds for which he or she is the payee.

Substitute Judgment Standard	A decision-making standard where the surrogate decision-maker makes a decision for a person with a mental incapacity based on what the person would have wanted if the person were able to make the decision his or herself. The surrogate may consider information such as the person's past statements, beliefs, values, and prior life style.
Supplemental Security Income	Supplemental Security Income (SSI) is a federal income supplement program funded by general tax revenues (not Social Security taxes): <ul style="list-style-type: none"> • It is designed to help aged, blind, and disabled people who have little or no income; and • It provides cash to meet basic needs for food, clothing and shelter.
Surrogate	A person or entity that functions as a substitute for another.
Traumatic Brain Injury	Involves a blow or jolt to the head or a penetrating injury that disrupts brain function. Traumatic brain injury (TBI) may cause death and short- and long-term injuries. It affects thinking, language, learning, emotions, behavior, memory, and general independent body functions. ¹

¹ US Center for Disease Control and Prevention, Traumatic Brain Injury Prevention, <http://www.cdc.gov/ncipc/tbi/TBI.htm>

Introduction

According to the *New England Journal of Medicine*² there are four levels of capacity³: (1) the ability to communicate a choice; (2) the ability to understand information; (3) the ability to appreciate one's personal situation; and (4) the ability to weigh information in a rationally defensible way. If one were to ask oneself what should happen to me if I lost one of the above capacities, it is doubtful loss of autonomy and appointment of a guardian would be chosen. Unfortunately, under the current statutory framework, that may be the most probable result. This report recommends a comprehensive statutory framework emphasizing *assistance* in decision-making where appropriate, rather than assuming the need for substituted decision-making, thus preserving self-determination to the greatest extent possible.

Today in Washington State the number of persons with diminished capacity in one or more of the areas above is growing as illustrated by the following demographic trends:

- Washington's population will age rapidly over the next two decades. The state's elderly population, age 65 and older, is expected to grow from 662,000 (or 11.2 percent of the population) in 2000, to 1.66 million (or 19.7 percent of the population) by 2030.⁴ At the same time, forms of dementia are becoming more prevalent. Today, approximately 110, 000 persons in Washington State have been diagnosed with Alzheimer's disease, the most common type of dementia.⁵ That number is estimated to increase to 130,000 by 2020 and 150,000 by 2025.⁶
- National estimates indicate that about 2 percent of the US population live with long-term or lifelong traumatic brain injury (TBI)-related disability and need help

² Applebaum, PS and Grisso, T., *Assessing Patients' Capacities to Consent to Treatment*, New England Journal of Medicine, Vol. 319:1635, Dec. 1988.

³ The capacity to consent to treatment and or to make a decision should not be confused with legal capacity determinations made in the guardianship context. While the capacity to consent and to make decisions should inform capacity determination in guardianship they are not equivalent. RCW 11.88.010 (1) (a) & (b) state "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" and "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."

⁴ Office of Financial Management, The 2009 Long-Term Economic and Labor Force Forecast for Washington, June 2009, Ch. 2 Pg 14. <http://www.ofm.wa.gov/economy/longterm/2009/lt09ch2.pdf>

⁵ Alzheimer's Association, *2009 Alzheimer's Disease Fact and Figures*, pg 25, to be published in Alzheimer's & Dementia, Volume 5, Issue 3.

⁶ *Id.*

to perform activities of daily living.⁷ If these national estimates hold true in Washington State, there are a total of 123,750 residents living with TBI-related disabilities.⁸ Every year there are approximately 5,500 TBI hospitalizations. This translates to 280 more persons annually living with a lifelong TBI related disability.

- The Washington State Health Department reports that from 2003 to 2005, the prevalence of disabilities in Washington increased for those ages 16 and over.⁹ In 2005, there were 783,000 Washingtonians age 16 and over with a disability.¹⁰
- The Washington State Developmental Disabilities (DD) Council reports that there are 106,000 persons in Washington State with a developmental disability.¹¹ Similar to the general population, the DD population is living longer, experiencing a 247 percent increase in life expectancy from 19 years in the 1930s to 66 years in 1993.¹² The DD Council further reports that 67 percent of all individuals with developmental disabilities live with family, and in at least one-quarter of these households the primary caregiver is 60 years or older.¹³ Over the next twenty years, large numbers of primary caregivers will be unable to care for the family member who has a developmental disability.¹⁴
- The Joint Legislative Audit and Review Committee reported in its 2006 review of the need for a specialized regional jail facility that at least 16 percent of persons in jails are mentally ill.¹⁵ This population is believed to be at increased risk for suicide; present increased problems to custody staff; and are likely to reoffend.¹⁶

⁷ Thurman, D. J., Alverson, C. A., Dunn, K. A., Guerrero, J. & Sniezek, J. E. (1999). *Traumatic Brain Injury in the United States: a public health perspective*. Journal of Head Trauma Rehabilitation, 14(6), 602-615; U.S. Centers for Disease Control and Prevention. *Traumatic Brain Injury Prevention*. Retrieved January 20, 2009 from <http://www.cdc.gov/ncipc/tbi/Overview.htm>

⁸ Washington State Department of Health, *Traumatic Brain Injury: Prevalence, External Causes, and Associated Risk Factors*, February 2009 <http://www.doh.wa.gov/hsqa/ocrh/har/TBIfact.pdf>

⁹ Washington State Department of Health, 2007, *People with Disabilities*, The Health of Washington State, <http://www.doh.wa.gov/hws/doc/GHS/GHS-PWD2007.pdf>

¹⁰ Washington State Department of Health, May 2006, *Disability in Washington State* http://depts.washington.edu/cdpr/docs/Disability_Report.pdf

¹¹ Washington State Developmental Disabilities Council, *2008 Task Force Recommendations, Aging with Developmental Disabilities*, pg 3, http://www.ddc.wa.gov/Publications/090211_AgingTFReport.pdf

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ State of Washington Joint Legislative Audit and Review Committee (JLARC), *Analysis of Establishing a Regional Jail Facility for Offenders with Mental Health or Co-Occurring Mental and Chemical Dependency Disorders*, pg 1, February 2006, <http://www.leg.wa.gov/reports/06-2.pdf>

¹⁶ *Id.*

The rates at which these populations are increasing emphasize the importance of creating a comprehensive statutory framework that can provide the specific decision-making assistance needed while utilizing existing services and resources.

Current: Need for a Comprehensive Framework for Decision-Making Assistance

There is currently no comprehensive statutory framework for making decisions on personal welfare matters on behalf of people with diminished decision-making capabilities. These individuals may need assistance making decisions for a number of reasons, including: they were born with a learning disability, have a mental illness, developed dementia or a similar condition such as Alzheimer's, suffered a stroke or other trauma, or some other degenerative condition.

The lack of a statutory framework results in an "all or nothing" approach to decision-making assistance. Generally, individuals who have diminished decision-making abilities are deemed to lack the ability to make *any* decisions. The assistance most often available is appointment of a full guardian. Often full guardianship unnecessarily restricts and inhibits the autonomy and self-determination of individuals who need special assistance with specific issues.

The risks resulting from the absence of a comprehensive statutory framework are:

- a) Increasing caseloads within the jurisdiction of probate, civil and criminal courts, including disputes over eligibility for, and the scope of governmental services, mental health matters, abuse, and exploitation.
- b) Increasing numbers of vulnerable adults at risk for exploitation.
- c) Increasing financial and other abuse that is difficult to detect because there is no individual or institution willing and able to intercede, resulting in harm to human dignity.
- d) Incarceration becomes a replacement for treatment resulting from the inability of individuals to access needed services without the assistance of an appropriate surrogate.
- e) Inconsistent, and sometimes poor decision making by well-meaning, but unqualified surrogates.
- f) Subjecting individuals to over-treatment or under-treatment, or treatment that does not reflect their values, choices and preferences, or best address their well-being.

- g) Healthcare decisions may be drawn out as no one is willing to assume the risk associated with making a decision. There is anecdotal evidence that without client consent, facilities may be reluctant to request treatment, and clinicians may be reluctant to provide treatment until the need for treatment becomes an emergency.
- h) Placement in settings more restrictive than individual need demands.
- i) Repeated emergency hospitalizations resulting from the inability of individuals to obtain preventive healthcare without the assistance of an appropriate surrogate.

These risks have both a human and a financial cost that may be minimized, and in some cases eliminated, by adoption of the following proposed solutions.

Future: Reducing the Need for Guardianships

Addressing the need for decision-making assistance requires solutions that include an opportunity to plan for a time when capacity may diminish as well as solutions for individuals whose capacity has already diminished.

TASH, an international advocacy association of people with disabilities, families, and other advocates, urges developing alternatives to guardianship through “the development and promotion of the use of accommodations and supports individual’s need to make choices and decisions, to have their preferences honored and recognized, and to have their rights to self-determination protected.” The solutions provided herein seek to honor this principle.

RECOMMENDATION ONE: Expansion of State Aging and Disability Resource Centers.

Include the provision of information, support, counseling, assistance, and education related to substitute decision-making to individuals, nominated guardians, court-appointed guardians (lay and professional), other substitute decision-makers (representative payees, agents under Powers of Attorney for Health Care and Powers of Attorney for Finances, family members) and professionals who work with these constituents in the expansion of State Aging and Disability Resource Centers (ADRC).

Overview of Aging and Disability Resource Centers (ADRC) Expansion

The Aging and Disability Resource Center Program (ADRC) is a collaboration effort of the U.S. Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services (CMS) to implement in all states Aging and Disability Resource Centers:

- (A) To serve as visible and trusted sources of information on the full range of long-term care options that are available in the community, including both institutional and home and community-based care;
- (B) To provide personalized and consumer-friendly assistance to empower people to make informed decisions about their care options;
- (C) To provide coordinated and streamlined access to all publicly supported long-term care options so that consumers can obtain the care they need through a single intake assessment and eligibility determination process;
- (D) To help people to plan ahead for their future long-term care needs; and

(E) To assist, in coordination with the State Health Insurance Assistance Program, Medicare beneficiaries in understanding and accessing the Prescription Drug Coverage and prevention health benefits available under the Medicare Modernization Act.

The U.S. Administration on Aging (AoA) has established the goal of using ADRCs to empower consumers to make informed decisions about their long-term service and support options. ADRCs are created to provide information and access “programs” or “systems” that involve networks of state and community organizations that work together in a coordinated manner to provide consumers with a single point of entry to all long-term services and supports. One model which AoA strongly endorses and supports is a “one stop shops” or “no wrong door” approach where ADRCs serve as single entry points to address many of the frustration consumers and their families experience when trying to find needed information, services, and supports. It is critical in creating an ADRC system that there be close partnering between Area Agency on Aging (AAA), Centers for Independent Living (CIL), Public Guardianship programs and other community organizations such as local chapters of the Arc of Washington, advocates for the rights of citizens with disabilities, supported living, and employment providers and self-advocacy organizations.

Need to Partner to Expand ADRCs

Understanding the options available to the elderly and persons with disabilities affords these individuals and their families the opportunity to make choices and decisions which honor and recognize their right of self-determination. Educating the elderly and people with disabilities, family, and service providers about the benefits, alternatives, supports and accommodations available allows them to continue living in the community and helps to mitigate the need for guardianship. Absent that knowledge, decisions may not occur in a timely fashion and may result in decision-making by persons unfamiliar with the preferences of the individual.

Due to the complicated nature of benefits, services and substitute decision-making, there is a unique need for communication at a level that is understandable to each consumer requesting information. Communication at this level is best performed by individuals with a significant level of subject matter expertise. Because no one entity or organization is thoroughly versed in all relevant topics, partnering is required to provide the best quality service.

Method

To assist ADRCs provide “one-stop shopping” sources of information, one-on-one counseling, and streamlined access to programs services and information, the Washington State Administrative Office of the Courts (AOC) and OPG would provide information, support, counseling, assistance, and education related to substitute decision-making to:

- Individuals;
- Nominated guardians;
- Court-appointed guardians (lay and professional);
- Other substitute decision-makers (representative payees, agents under powers of attorney for health care and finances, family members); and
- Professionals who work with these constituents.

Assistance would be provided via a service model that incorporates advanced care planning into regular family and community conversations. AOC/OPG would seamlessly integrate its core competencies, subject-matter expertise in substitute decision-making, into the services provided by an existing elder network, thirteen (13) Area Agencies on Aging (AAA) and a disability network (six (6) Centers for Independent Living [CIDL]). Integration will include leveraging the communication resources and tools (help lines, websites, listservs, newsletters and other publications, events, presentations and other face-to-face interaction) of the thirteen AAAs and six CIDLs to provide information, support, counseling, assistance, and education to target populations. The OPG will serve as a clearinghouse, a central agency for the collection, classification, and distribution of information on substitute decision-making. Information will be shared through help lines, Web sites, listservs, newsletters, trainings, and publications.

Advantages

The impact of the project will be multifaceted:

(1) Appropriate advanced care planning will enable individuals to access the services and protections needed to effectively and efficiently continue living in their homes and communities even if their decision-making capacity diminishes;

(2) The availability of a support service will improve the quality of decisions made by individuals with disabilities and the surrogates of persons with disabilities;

(3) Will increase awareness and knowledge of substitute decision-making, including decision-making standards such as best interest and substituted judgment and the standards and procedures governing guardianship, representative payeeship, advance directives, family consent, and powers of attorney;

(4) Will increase the number of individuals, families and professionals gaining knowledge about the effect and use of Powers of Attorney, and the requirements for executing valid documents; Court-appointed guardians and agents will learn more about their legal obligations and restrictions;

(5) Will potentially reduce the need for court intervention on behalf of persons believed to have diminished capacity, including petitions for guardianship; and

(6) Will potentially reduce exposure to abuse, neglect, and exploitation.

Disadvantage

ADRCs are new entities, largely unknown to the communities they are to serve. A great deal of community education is needed before ADRCs are considered effective sources of information.

RECOMMENDATION TWO: Provide protective payee/money management services to individuals who lack the ability to manage their finances.

Overview and Need

A representative payee (RP) or sometimes called *protective payee* is an individual or organization that receives Social Security and/or Supplemental Security Income (SSI) payments, veteran's, civil service, or Black Lung benefits for someone who cannot manage or direct the management of his or her finances in a manner that ensures that basic living needs are met.¹⁷ These agencies generally look for family or friends to serve in a protective payee capacity, but when friends and family are not able to serve as payee, qualified organizations are sought to be a protective payee.

Most protective payee organizations are paid by fees assessed to clients' benefits. Social Security has set payment on client benefits at no more than \$37 per client or, up to ten percent of clients' benefit under \$370. The Veteran's Administration (VA) has set at payment at a maximum of \$66 per client benefit.

Method

The public guardianship administrator (OPG) would be authorized to establish and administer a protective payee program as follows:

- The office shall contract with public or private entities or individuals to provide protective payee services to persons age eighteen or older.
- The office shall adopt eligibility criteria to enable it to serve individuals with the greatest need.
- The office shall adopt minimum standards of practice for entities providing protective payee services. An overarching standard will be respect for the client's autonomy. RPs will be expected to communicate with each client; to understand and respect his or her values, preferences and choices; and to explain all decisions made on the client's behalf.
- The office shall monitor and oversee the use of state funding.

¹⁷ Daniel Luchins, David Roberts & Patricia Hanrahan, *Provision of Protective Payee Status*, pg 2, Illinois Department of Human Services' Office of Alcoholism and Substance Abuse.

- The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be made available to the Legislature and Supreme Court in a format that is not identifiable by individual(s) to protect confidentiality.
- The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of protective payee services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator.
- The office shall develop standardized forms and reporting instruments.
- The office shall identify training needs for protective payees it contracts with. The office may offer training to entities providing protective payee services.
- The office shall establish a system for monitoring the performance of protective payees it contracts with. The office may conduct further monitoring, including in-office visits as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a protective payee client that is available to the protective payee.

Advantages

A representative payee (RP) can be helpful for individuals who, because of disability, are unable to meet their basic living needs. In the case of mental illness, RP provision can improve community tenure by ensuring that rent is paid consistently and on time. It can also ensure that clients have enough money to provide food for themselves from one check to the next, and can help clients learn to budget their money so they can save for personal items and larger purchases. But representative payees—especially agency-based programs—are in a position to provide more for their clients than assistance in meeting basic living needs. Some effective programs bundle RP provision with other services, such as skills training in the areas of budgeting, bill paying, shopping, and working with banks. RP programs can also provide advocacy by assisting clients to secure entitlements and by helping to negotiate with debtors, landlords, and other financial institutions. The benefits of RP beyond meeting basic living needs may include:

- Reduced inpatient and emergency hospitalization.
- Increased treatment compliance.
- Improved quality of life.
- Reduced victimization related to money.
- Increased use of community services.

- Decreased substance abuse.
- Reduced physical health symptomatology.

The protective payee arrangement is simple, inexpensive, and a potential least restrictive alternative to guardianship for people with little income. Appointment is limited to the handling of specific government funds and does not affect other areas of decision-making. The RP process does not require a formal, judicial finding of incompetency/incapacity like a guardianship. The beneficiary may also request a change in payee. In addition, services provided under contract with OPG will adhere to established standards and OPG will provide oversight.

Disadvantages

- The protective payee still has great control over the beneficiary's affairs without being subject to judicial oversight. A payee also may be appointed against the beneficiary's will.
- Payment amounts set by government benefit providers may not represent sufficient compensation, thus additional funding may be needed. Potential funding sources are addressed on page 36.

Funding

SSA and VA need the help of qualified organizations to serve as representative payees and are continually recruiting social service agencies, institutions, and state or local government agencies to provide fee-for service representative payees.

RECOMMENDATION THREE: Adopt the Uniform Power of Attorney Act (UPOAA)

Overview of the Uniform Power of Attorney Act (2006)

A study conducted by the Uniform Law Commission (ULC) (formerly the National Conference of Commissioners on Uniform State Laws [NCCUSL]) revealed differing approaches to powers of attorney provisions in state statutes.¹⁸ State provisions addressing multiple agents, the authority of later-appointed guardians, the impact of dissolutions or annulments of the principal's marriage to the agent, activation of contingent powers, the authority to make gifts, and standards for agent conduct and liability were increasingly non-uniform.

The Joint Editorial Board for the Uniform Trust and Estate Acts (JEB) conducted a national survey of probate and elder law sections of all state bar associations, the fellows of the American College of Trust and Estate Counsel, the leadership of the

¹⁸ Unif. Power of Atty Act. Preface (2006) http://www.law.upenn.edu/bll/archives/ulc/dpoaa/2008_final.htm

American Bar Association (ABA) Section of Real Property, Probate and Trust Law and the National Academy of Elder Law Attorneys and to special interest listservs of the ABA Commission on Law and Aging to determine the rules that should guide development of a uniform power of attorney statute.

Seventy percent of survey responders agreed that a power of attorney statute should:

- (1) Provide for confirmation that contingent powers are activated;
- (2) Revoke a spouse-agent's authority upon the dissolution or annulment of the marriage to the principal;
- (3) Include a portability provision;
- (4) Require gift making authority to be expressly stated in the grant of authority;
- (5) Provide a default standard for fiduciary duties;
- (6) Permit the principal to alter the default fiduciary standard;
- (7) Require notice by an agent when the agent is no longer willing or able to act;
- (8) Include safeguards against abuse by the agent;
- (9) Include remedies and sanctions for abuse by the agent;
- (10) Protect the reliance of other persons on a power of attorney; and
- (11) Include remedies and sanctions for refusal of other persons to honor a power of attorney.

The ULC drafted the Act, incorporating the knowledge gained from its study and survey.

Need

While the power of attorney (POA) can be a simple and effective means of handling surrogate decision-making, it is considered by many to be a "license to steal" because it provides an easy means to commit abuse. The 2008 AARP report, *Power of Attorney Abuse: What States Can Do About It*, lists the following characteristics of powers of attorney which make it easy for an agent to commit financial abuse:

- (1) "Broad decision-making authority." The agent must have broad decision-making authority for the POA to be an effective tool.
- (2) "Lack of monitoring." There is no third party monitoring, thus it is difficult to detect abuse of authority.

- (3) “Unclear standard for agent conduct.” POA laws do not provide specific legal standards about the duty of the agent to the principal.

The AARP reports that evidence of POA abuse can be found in anecdotal reports from professionals, requests for help from victims of abuse, family members of victims, and media stories.¹⁹ The report concluded that POA abuse occurs everywhere: it may or may not be considered a crime and may be perpetrated by family and nonfamily members.²⁰ The report further states that due to the lack of national data collection on the incidence and prevalence of POA abuse, it is difficult to definitively pinpoint the extent of the problem.²¹ Adult Protective Services reports and surveys from lawyers and other professionals are used to gather information about the problem.²²

Analysis of 2003 APS data indicates that 20.8 percent of reports made to state APS agencies about persons age 60 and older concerns financial exploitation.²³ National surveys of lawyers and other professionals and anecdotal evidence provide more clarity about the extent of the problem.²⁴

Referencing an article by Linda S. Whitten, UPOAA reporter, the article lists the following three categories of abuse:

- (1) “Transactions exceeding the intended scope of the agent’s authority,” such as gift making without explicit authority;
- (2) “Transactions conducted for self-dealing purposes,” for example when the agent purchases items for his or herself with the principal’s resources;
- (3) “Transactions conducted in contravention of the principal’s expectations,” when the agent makes gifts that significantly diminish the principal’s estate plan.

Provisions of the Uniform Power of Attorney Act (UPOAA) that Protect Against Abuse

According to the AARP’s analysis, the UPOAA has 21 provisions that protect individuals and preserve autonomy. Several of these provisions have already been adopted in whole or in part in Washington State.

- Section 108, which defines the relationship between an agent and a fiduciary subsequently appointed by a court (such as a guardian of the estate). ***RCW 11.94.010 (1) is substantially similar.***

¹⁹ Lori Stiegel and Ellen VanCleave Klem. *Power of Attorney Abuse: What States Can Do About It*, 4 AARP (November 2008).

²⁰ *Id.* at 4.

²¹ *Id.* at 6.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 7.

- Section 109, which authorizes the springing POA and provides guidance on how to determine whether the future event or contingency specified in the POA has occurred.
- Section 111(a), which allows the appointment of co-agents and provides guidance on how and whether co-agents are to act jointly or independently.
- Section 111(b), which addresses the termination of a spouse-agent's authority if the marriage ends, recognizing that a spouse-agent may have conflicting interests in such circumstances.
- Section 111(d), which addresses the responsibility of co-agents or successor agents to protect the principal if another agent breaches or is about to breach his or her fiduciary duty.
- Section 113, which clarifies when an individual who has been named as an agent has accepted the responsibility of acting as agent.
- Sections 114 (a), (b), and (h), which clarify the mandatory and default duties of the agent and indicate under what circumstances an agent must disclose information about his or her actions to a third party (including courts, other fiduciaries, or APS or other protective agencies). **RCW 11.94.050 is substantially similar to Section 114 (h).**
- Section 115, which addresses the circumstances under which a principal's attempt to exonerate an agent from liability will not be binding.
- Sections 116 (a) and (b), which indicate who may petition a court to construe a POA or review an agent's conduct and restrict a court from dismissing such a petition at the principal's request if the principal lacks capacity to revoke the agent's authority or the POA. **RCW 11.94.090 and 100 are substantially similar to Section 116(a).**
- Section 117, which governs liability for agents who violate the POA law. RCW 11.94.120
- Section 118, which provides guidance to an agent who resigns his or her role to protect an incapacitated principal from being left without a decision maker.
- Section 119, which addresses third-party acceptance of and reliance upon a POA.
- Sections 120(b)/(c) and (c)/(d), which list circumstances under which a third party may legitimately refuse to accept a POA and provide sanctions for unlawful refusals. **RCW 11.94.040 is substantially similar to Section 120 (b) and equivalent to Sections 120(c) and (d).**

- Section 123, which states that the remedies under the POA law are not exclusive and do not limit the rights or remedies provided under other state laws.
- Section 201 and 301, which set forth the powers that an agent cannot exercise unless the POA expressly authorizes the agent to do so because of the harm that can occur to the principal's property and estate plan if the powers are misused. ***RCW11.94.050 is substantially similar to Section 201(a).***

The UPOAA also includes a statutory form that spells out in plain language what the POA does, and a form listing the duties of the agent that can be signed by the agent to acknowledge his/her acceptance of responsibilities.

The UPOAA has many features that do not relate to protecting vulnerable adults or preserving their autonomy. Implementation of this alternative would therefore involve other stakeholders (e.g., real estate and elder law attorneys, banks, and other businesses).

Advantages

Reduces the risks associated with establishing a POA such as:

- The agent may not understand his/her duties.
- The agent may steal or self-deal.
- It may be difficult or impossible to hold the agent accountable.
- Banks and others may not honor valid exercise of POA authority.
- Banks and others may not respond effectively to financial exploitation.

Disadvantages

- Increases the complexity in developing a POA, which may reduce its availability to those without access to legal assistance.
- Does not address the authority to make health care decisions. In Washington, the Power of Attorney statute (RCW 11.94) covers both financial and health care issues.

RECOMMENDATION FOUR: Provide power of attorney services to individuals who lack the ability to manage their finances.

Overview and Need

Adoption of the Uniform Power of Attorney Act would institute tougher safeguards to protect individuals from power of attorney abuse and increase the usefulness of DPOAs. POAs and DPOAs only apply in situations where an individual (the “principal”) has the mental capacity to sign one and voluntarily chooses to do so. POAs and DPOAs allow the principal to appoint an agent to work at the pleasure and direction of the principal. If the principal’s direction or wishes cannot be determined, the agent should act in accordance with the “best interests” of the principal. Because powers of attorney are voluntary, a principal who has the mental capacity to do so may revoke the power at will.

The usefulness of POAs and DPOAs is dependent on the availability of a trusted and reliable person who agrees to act for the principal. Principals must choose agents carefully and there should be reasonable oversight. In the absence of trusted individuals, family, and friends reputable entities are needed to provide services. The OPG could fulfill that role.

Method

The public guardianship administrator (OPG) would be authorized to establish and administer a power of attorney program as follows:

- The office shall contract with public or private entities or individuals to provide power of attorney services to persons age eighteen or older.
- The office shall adopt eligibility criteria to enable it to serve individuals with the greatest need.
- The office shall adopt minimum standards of practice for entities providing power of attorney services.
- The office shall monitor and oversee the use of state funding.
- The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be made available to the Legislature and Supreme Court in a format that is not identifiable by individual to protect confidentiality.
- The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of power of attorney services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator.

- The office shall develop standardized forms and reporting instruments.
- The office shall identify training needs for agents it contracts with. The office may offer training to entities providing power of attorney services.
- The office shall establish a system for monitoring the performance of power of attorneys it contracts with. The office may conduct further monitoring, including in-office visits, as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a power of attorney client that is available to the agent.

Advantages

- Services are available to anyone who cannot identify a reliable, trustworthy person to appoint.
- Provides an opportunity for the individual to plan and select an agent based on his or her preferences.
- Entities acting as agent are monitored and regulated.
- Doesn't require court intervention.
- May reduce the need for guardianship.

Disadvantages

- The grantor must have capacity to establish a power of attorney.
- Funding will be needed. Potential funding sources are addressed on page 36.

RECOMMENDATION FIVE: Create statutory surrogate decision-making committees, which empower committees of trained volunteers to evaluate the need for a surrogate decision-maker, and when necessary consent to a course of treatment.

Overview of Surrogate Decision-Making Committees (SDMC)

A Surrogate Decision-Making Committee (SDMC) is comprised of regional panels of volunteers from the community who convene to review specific cases where the client is not able to consent to a routine medical procedure. The SDMC evaluates the need for a surrogate decision-maker and if so then evaluates and recommends a course of treatment for the client. Considering the order of priority of decision-makers defined by

Washington State statute,²⁵ the SDMC would be last on the list, interceding only when no other legally authorized decision maker is available. Ideally the SDMC would help to avoid a medical emergency by managing health care decisions in a proactive manner.

Need for Surrogate Decision-Making Committees (SDMC)

SDMCs are needed to respond to a population that a 2002-2003 study by the American Bar Association Commission on Law and Aging²⁶ described as client individuals who:

- Lack decisional capacity to give informed consent to the recommended treatment;
- Have not executed an advance directive; and
- Have no legally authorized surrogate, and no family or friends willing and able to assist in the decision-making process.

Today, in the absence of an emergency, obtaining treatment for members of this population requires appointment of a guardian. Guardianship can be costly, time-consuming and procedurally difficult. With respect to low income individuals, public guardianship services are only available in six counties. Guardianship may also unnecessarily restrict the individual's ability to make decisions in other areas of his or her life, as guardianship appointments are usually plenary and wrongly assume that an inability to consent to a recommended treatment equates to an inability to make other decisions.

The size of the population described above in Washington State is not known, but experts estimate that 3-to-4 percent of the total nursing home populations are members of this group.²⁷ In 2008 the Office of Financial Management reports a nursing home population of 11,044 which translates to 332-to-441 persons in nursing homes who are members of the population described in the ABA study.²⁸ The Department of Housing reports that 2,729 of Washington State's 11,929 homeless populations are dealing with mental health issues.²⁹ These persons are also likely members of the population described above.

Washington State Developmental Disabilities Council reports that over the next twenty years approximately one-quarter or approximately 18,000 family members caring for

²⁵ RCW 7.70.065 Informed consent – Persons authorized to provide for patients who are not competent – Priority.

²⁶ Naomi Karp and Erica Wood, *Incapacitated and Alone*, July 2003

²⁷ *Id.*

²⁸ Washington State Office of Financial Management, *State-Supported Nursing Home Caseload*, <http://www.ofm.wa.gov/trends/tables/fig406.asp>

²⁹ www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&

persons with developmental disabilities will reach age 80 and be unable to appropriately care for the person with a developmental disability.³⁰ If appropriate decisions around surrogate decision-making have not been addressed, these individuals will become members of the population described in the ABA study.

Surrogate Decision-Making Committee (SDMC) Jurisdiction

SDMCs would have a narrow focus. Jurisdiction would include major medical, surgical, or diagnostic treatment where a general anesthetic is used, including necessary dental care or treatment which involves significant risk. Jurisdiction would exclude the administration of medications including antipsychotic medications, mental health and psychiatric treatment, electroconvulsive therapy, withdrawal of life sustaining treatment, sterilization, and termination of pregnancy.

Eligible Agency Participants

- Hospitals
- Psychiatric Centers
- Developmental Centers
- Long-term Care Facilities
- Home and Community Based Waiver Clients

Surrogate Decision-Making Committee (SDMC) Make Up

Each panel will be comprised of four disinterested third party volunteers. Panels will include one health care professional, one attorney admitted to practice law in Washington State, one lay person, and one advocate with a recognized expertise in the care and treatment of persons with disabilities. The advocate will assist the person believed to lack capacity to consent, to express his or her wishes, and improve their ability to understand the proposed treatment and make healthcare decisions. Professionals (health care, legal, and residential) involved with each case, and any individual with a conflict of interest will be excluded from panel participation.

Surrogate Decision-Making Committee (SDMC) Proceeding

An informal, user-friendly process requiring client attendance should be developed. The steps of a process currently used in New York are as follows:³¹

1. Declarant files declaration on behalf of a client believed to need major medical treatment and believed to lack capacity to consent to, or refuse treatment.
The declaration:

³⁰ http://www.ddc.wa.gov/Publications/090211_AgingTFReport.pdf

³¹ Commission on Quality of Care and Advocacy for Persons with Disabilities
<http://www.cqc.state.ny.us/sdmcforms/sdmc.htm>

- i. Shall be signed by the declarant.
 - ii. States the client does not have a parent, spouse, adult child, committee of the person, conservator or legal guardian, or if he or she does have one, that person is willing to allow the panel to step in as surrogates.
 - iii. State reasons showing lack of capacity including factual and professional bases.
 - iv. Provide a description of the major medical treatment proposed and the declarant's opinion as to the client's best interests.
2. When the committee receives the declaration, it will send a copy to any family members, and the chairperson of the committee will assign the declaration to a panel.
3. Prior to the panel hearing, panel members shall review the declaration and decide if they need additional information.
 - i. They may request information from a physician, health care facility or health care professional.
 - ii. They may request an independent assessment of the client.
 - iii. They may consult with other persons who might have further information about the client's values, preferences and choices.
4. When the hearing is conducted, the client is present, as well as any person the client requests to be present.
5. If practical, panel members interview and observe the client before making their decision.
6. The panel determines based on clear and convincing evidence if the client is in need of surrogate decision-making. Three of the four member panel must agree that the client needs surrogate decision-making; otherwise, the client will be found not to have this need.
7. If the panel determines the client needs surrogate decision-making, if possible it must determine the values, preferences and choices of the individual and how those relate to the major medical treatment being considered. If the panel is unable to determine the values, preferences, and choices of the individual, it should determine what is in the best interest of the client based on a fair preponderance of the evidence.
8. If the panel decides to consent to the treatment, the consent is considered a legally valid consent as if the client, he or she, had capacity and consented.
9. At any time, a parent, child, spouse, committee of person, conservator, or legal guardian may object to the panel and proceedings will be ended.

10. A copy of the determination with a description of the right to appeal is given to the client.

The average time from SDMC's receipt of a case to a hearing and decision is fourteen (14) days, and expedited hearings are also available.

Advantages

- Allows for informal and thus more responsive decision-making for individuals who need some form of treatment.
- Provides a neutral party to review and make decisions. Can provide another layer to facilitate decision-making. Panel may want more information from experts or recommend "sub-process" such as guardian ad litem. Panels help guide everyone through the process in a more thoughtful and rational way.
- Cost effective when compared to guardianship proceedings.

Disadvantages

- Does not address the need for routine decision-making on behalf of persons with diminished capacity.
- Does not address the need for a thorough assessment to determine capacity, nor provide a referral procedure for consideration of guardianship.
- Recruitment and training of volunteers is essential. Potential funding resources are addressed on page 36.

RECOMMENDATION SIX: Develop a statewide guardianship monitoring program that includes visits/field investigations, financial audits and concise reports to be filed in the official court record.

Overview of Guardianship Monitoring Programs

Guardianship monitoring has been included as a means to reduce the need for guardianship because an individual's circumstances and condition may change over time. Monitoring is a form of assessment, and assessment of the need for guardianship is an ongoing process meant to ensure that a person is placed under guardianship only when necessary, and only to the extent required by his or her decisional incapacities.

The purpose of a guardianship monitoring program is to collect and evaluate information about the well-being and property of persons who have been adjudicated incapacitated by the courts. The information collected is to be used to protect and preserve the interests of the incapacitated person. A guardianship monitoring program provides the opportunity to look beyond required paper reports to onsite visits.

Onsite visits afford an opportunity for impartial third parties to observe incapacitated persons in their homes and provide information that could answer the following questions:

- Are there signs of abuse or neglect?
- Is the incapacitated person receiving adequate food and shelter?
- Does the medical, psychiatric, and physical treatment received by the incapacitated person appear to be appropriate?
- Is the care being provided to the incapacitated person consistent with the plan?
- Is the incapacitated person receiving any rehabilitation services and/or therapies?
- Are the preferences of the incapacitated person being considered?
- Does the placement of the incapacitated person appear to be appropriate?

Need for Guardianship Monitoring

Guardianship matters, unlike other cases, may remain open for years or even decades, particularly in cases involving individuals with developmental disabilities or mental disorders. Once incapacity has been determined, there are usually no “adversaries” to alert the court to potential problems. The absence of adversaries encumbers the court to be proactive to discover and respond to disputes and issues. The need to be proactive is even more important when the incapacitated person has no family or friends involved in his or her life.

The role of a guardian is highly complex, involving legal, medical, social, financial and psychological dimensions, while many guardians are lay persons, inexperienced with the guardian process and unfamiliar with professional ethics and standards. The eyes and ears of a guardianship monitor can assist the court in detecting and correcting minor issues before they become big problems. These minor corrections can help to preserve and protect the autonomy of incapacitated persons as well as conserve judicial resources.

Method

To efficiently and effectively report on the well-being of the incapacitated person and to protect his or her assets, the court should use court or volunteer investigators to monitor all cases or a random selection of cases, post-appointment, and develop a financial auditing program with various levels of review, depending on the needs and circumstances of the incapacitated person.

A good guardianship monitoring program requires cooperative effort between the County Clerk, court administration, and a dedicated monitoring team comprised of a minimum of four positions: program coordinator, records researcher, court visitor, and court auditor. The duties of each are briefly described below:

- The program coordinator is the designated manager. The coordinator recruits and selects qualified individuals for other positions, is responsible for training, scheduling, case tracking, and reporting.
- Records researchers review guardianship records and verify the information contained in the records. Verifying involves investigating via phone calls and written communication to obtain correct information -- last known address of incapacitated person, updated annual reports, etc.
- Court visitors visit guardians and incapacitated persons and report on the care of the incapacitated person.
- Court auditors review annual returns and related financial records, note problems and concerns, and follow-up as needed.

Advantages

- Aids in assuring proper care and protection for incapacitated adults.
- Acts as a deterrent to abuse, neglect, and exploitation.
- Improves the court's image and inspires public confidence.
- Provides a means to tracking guardianship and gauging the effect of court orders.
- Assists guardians in meeting their duties to incapacitated persons.
- Ensures the accuracy and completeness of guardianship reports.

Disadvantages

- Need for volunteers, training, and funding. Potential funding sources are addressed on page 36.
- Potential liability issues associated with volunteers.

Potential Sources of Funding

Due to the current economic crisis locally and nationally, securing funding during a time of severe budget cutting will be difficult. Thus, creative funding sources must be aggressively considered and pursued. Unfortunately, time constraints hindered a review of funding sources by OPG's ad hoc Advisory Committee. The following potential sources are presented by OPG as a basis for further discussion.

Harness Escheat Funds

Escheat is the reversion of property to the state when a person dies without a Will or any known heirs. Washington State Department of Revenue reports the collection of \$1,700,000 between 2004 and 2008 in escheat funds. The Department includes escheats collected when a decedent died without a Will and there were no known heirs or a decedent died listing specific heirs in their Will and those heirs were not located. Developing a plan to harness escheat funds should be explored.

Establish a Charitable Foundation and a Pooled Trust

A charitable foundation is a distinct legal body, authorized to collect funds from donors and other bodies, receive gifts, grants, and bequests of assets or property solely for the benefit of a trust. A charitable foundation could establish and manage a pooled trust with separate trust accounts established for the benefit of any individual who is disabled. Any funds that remain in a beneficiary's account at his or her death would be retained by the trust or used to reimburse the state. Establishing a pooled trust should be explored.

Secure Funding via the Older Americans Act

Congress passed the Older Americans Act (OAA) in 1965, in response to concern by policymakers about a lack of community social services for older persons. The legislation established authority for grants to states for community planning and social services, research and development projects, and personnel training in the field of aging. The law also established the Administration on Aging (AoA) to administer the newly created grant programs and to serve as the federal focal point on matters concerning older persons. The OAA authorizes a wide array of service programs through a national network of state agencies on aging, area agencies on aging, service providers, and Tribal organizations. The OAA also includes community service employment for low-income older Americans; training, research, and demonstration activities in the field of aging; and vulnerable elder rights protection activities. Guardianship services and alternatives represent relevant recipients for OAA funds and this funding source should be explored.

Conclusion

State law 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”. (RCW 11.88.005)

Legislative intent recognizes that decisional capacity is not global and that decisions concerning the liberty and autonomy of individuals should be person-centered and individualized. Implementing the recommendations included, honors the intent of the Legislature.