

**WHITE PAPER**  
**RPPTL SECTION'S**  
**OPPOSING ADOPTION OF**  
**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT**

**I. SUMMARY**

The National Conference of Commissioners on Uniform State Laws (NCCUSL) adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) as an addition to the Uniform Guardianship Act. Florida did not adopt the Uniform Guardianship Act as Florida is in a national leader in guardianship matters with regard to protecting the rights of individuals whom are declared incapacitated. There will be a fiscal impact upon local governments if the UAGPPA is adopted.

**II. CURRENT SITUATION**

The UAGPPA is designed as an addition to the Uniform Guardianship Act (UGA) which acts as a foundation for the UAGPPA. That foundation, the UGA, however, has not been adopted in Florida. Instead, the Legislature has taken a different approach, Florida's guardianship laws are significantly different from the UGA, and substantial adjustments in the UAGPPA would be required in order to reconcile the beneficial provisions of the UAGPPA with Florida's existing statutory scheme.

Florida's existing guardianship statutes are recognized nationally as providing significant protections. Integral to the balance between personal rights and oversight, the Florida Legislature created a stepped process, two separate and distinct statutory schemes to protect elderly and vulnerable adults. Chapter 415 of the Florida Statutes governs protective services, while Chapter 744 governs guardianship. The UAGPPA does not reflect the differences between these two (2) statutory schemes and if passed is more than likely to result in additional unnecessary litigation that is detrimental to the elderly and vulnerable it seeks to protect.

**III. EFFECT OF PROPOSED CHANGES**

The UAGPPA mistakenly presumes that all protective services proceedings are also guardianship proceedings. In fact, recognizing that both proceedings are not always necessary, existing Florida law authorizes protective services proceedings without guardianship proceedings and guardianship proceedings without protective services proceedings. These two separate proceedings should remain separate and distinct to reduce the costs to the elderly, vulnerable adult, and families with regard to court actions.

Under the UAGPPA, an individual appointed as a responsible party or guardian has no obligation to report his or her actions if appointed in Florida and the home state directs the Florida action be dismissed. The result may be that neither court protects the person or property of the elderly person or vulnerable adult.

With respect to granting authority to act in emergencies, the UAGPPA appears to require a lower burden than currently required under existing Florida law. Florida Statutes §415.1051(2) requires the Department of Children and Family Services to file an action if there is “reasonable cause to believe that a vulnerable adult is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable adult.” Florida Statutes §744.3031(1) authorizes the appointment of an emergency temporary guardian if “there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.” The UAGPPA threshold for appointment is lower, simply requiring a situation which “may result in substantial harm to a respondent’s health, safety, or welfare and for which the appointment of a guardian is necessary because no other person has authority or is willing to act on the respondent’s behalf.”

Complicating filing decisions, the UAGPPA refers to “jurisdiction” when the issue may in fact be a determination of the most appropriate forum. The UAGPPA appears to blur the technical legal distinctions between jurisdiction, venue, and appropriate forum.

#### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The UAGPPA will have a fiscal impact on local governments if it is adopted. Local government will pay increased communications expenses as judges of this state communicate with judges of other states.

#### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

There does not appear to be a direct economic impact on the private sector.

#### **VI. CONSTITUTIONAL ISSUES**

There are no constitutional issues.

#### **V. OTHER INTERESTED PARTIES**

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