

Introduction

Good afternoon Chairperson Wells, members of the Committee on the Judiciary and Public Safety, community partners and fellow residents of the District of Columbia. For the record, I am Laura Nuss, Director of the Department on Disability Services (DDS). I am pleased to present testimony on behalf of Mayor Vincent C. Gray on Bill 20-710, the Limitations of Guardianship Amendment Act of 2014 and I am here today to discuss this legislation as it affects all persons who have been identified as needing a guardian, not just those who have an intellectual or developmental disability.

DDS provides innovative, high quality services that enable people with disabilities to lead meaningful and productive lives as vital members of their families, schools, workplaces and communities. DDS is comprised of two administrations, the Developmental Disabilities Administration (DDA), and the Rehabilitations Services Administration (RSA). DDA is responsible for the oversight and coordination of all services and supports provided to qualified persons with intellectual disabilities in the District of Columbia. DDA supports people with intellectual disabilities to have the most independence and choice and control over their own lives through person-centered thinking, service planning and delivery. RSA provides vocational and rehabilitative services to people with disabilities to help them prepare for, secure, regain or retain employment. RSA's

Independent Living Services program provides services to people with disabilities to help them live as independently as possible in the community.

In conjunction with the other District agencies serving people who are affected by guardianship, including the Department of Behavioral Health, Department of Human Services, District of Columbia Office on Aging and the Office of the Attorney General, we offer several amendments to the proposed bill, which I will discuss, aimed at achieving a balance between people's need for support and people's rights to make as many decisions as they are able to make about their own lives. These proposed amendments are attached to my written testimony for the Council's review and consideration. DDS is committed to working collaboratively with these agencies, as well as the Deputy Mayor for Health and Human Services, the Office on Policy and Legislative Affairs, the Council, people with disabilities and others affected by guardianship, their families and advocates on legislative solutions that recognize and build on the ability of people to make as many decisions as they are able to, with or without support, about their lives, while recognizing that some people need decision making support to ensure their health, safety and wellbeing.

According to the Guardianship Assistance Program, which was created by the DC Superior Court to ensure the wellbeing of persons under guardianship in the District, there were 2,157 active guardianship cases in the 2013-2014 reporting

year. The Guardianship Assistance Program reviews all reports guardians file documenting the health, safety and any life changes the person they support experienced in the previous six months. Of the 3,848 reports filed between July 1, 2013 and June 30, 2014, 92% of them were reviewed within 30 days of submission. The program also collects guardianship data, supports guardians through educational training and referrals and works cooperatively with government agencies, nonprofit agencies and the private sector to increase access to services and supports.

There are many people with IDD who have a guardian, both known and unknown to DDS, receiving support from the agency or in the community from family and friends. And of course there are those who due to age, cognitive impairment or mental illness, receiving services from many agencies or none, have a guardian appointed for decision-making, further justifying the need for Council, interagency, and community collaboration and input regarding this legislation.

In FY14, the Developmental Disabilities Administration (DDA) supported 2,223 people with intellectual disabilities and 649 of them were under guardianship. Three hundred forty-seven (347) people had limited guardianship orders and 302 people had general guardianship orders. DDS filed 20 petitions for guardianship in FY14 and participated in an additional 32 guardianship-related hearings initiated by family members or other District agencies for people DDA

supports. Additionally, there is a growing aging population in the District that will result in greater numbers of people potentially needing support with decision making and pursuing the option of guardianship.

My remarks will provide commentary on the intent of the legislation as well as recommendations that DDS believes would strengthen our protections for vulnerable people through the existing guardianship process and ensure that people do not unnecessarily remain under guardianship.

Overall Provisions of the Proposed Legislation

This legislation aims to do three things. First, it proposes that guardians should not limit a person's phone, mail or in person access to any other person against their will. Second, it requires that all proposed paid professional guardians undergo a District of Columbia and national criminal history record check prior to appointment. Further, it requires that proposed non-professional guardians, including family members, self-report any felony or misdemeanor convictions. Third and lastly, the legislation establishes an expiration of limited guardianship orders after three years and general guardianship after five years, at which points, the guardian would need to initiate a new petition for guardianship.

Overall, DDS recognizes that guardianship is a serious intervention in a person's life, that people have the ability to build and gain capacity to make

decisions about their lives, and that there should be an easy and readily available opportunity to explore whether guardianship remains the least restrictive option for the person. Guardianship should always be a last resort, used only when there are no other options for people to get the decision-making support they may need to ensure their health, safety and well-being. DDS, our sister agencies, and the Executive Office of the Mayor are committed to learning about and exploring supported decision making as an emerging best practice and implementing strategies for providing less restrictive protections for people over the next year. Further, DDS is invested in supporting people to be integrated into their communities and develop relationships and friendships with their neighbors, co-workers and fellow community members. Community integration is a necessary piece of ensuring people are protected and supported in all aspects of their lives.

Proposed Changes to Legislation

To address the first part of the legislation which proposes limitations on confinement, DDS agrees that in the vast majority of situations, a person under guardianship should retain the right to choose with whom they spend time and communicate. However, there are limited circumstances in which a person's health or safety may be at risk because of contact between the person and someone who is known to be abusive or otherwise dangerous. DDS proposes that the bill include a mechanism that allows guardians to seek specific authority from the probate court

to take protective action in those limited or extenuating circumstances. This would mirror the process guardians have to follow to make a range of invasive decisions, including consent to an abortion, psycho-surgery, convulsive therapy, experimental treatment or research, civil commitment, or to prohibit marriage, or terminate parental rights.

Regarding background checks for proposed guardians, DDS asserts that it is important to have baseline information on a person's criminal history for anyone being entrusted with the fiduciary duty of guardianship, regardless of whether the proposed guardian is a paid professional, family member or another non-professional. We know from experience that sometimes it is a family member or another person with a close relationship to the person who may be abusive, neglectful or exploitative. As an example, financial abuse victimizes hundreds of thousands of elderly persons each year. It is estimated that in 2011, older persons suffered a loss of approximately \$2.9 billion nationally due to elder abuse. It has also been estimated that at least one in five Americans over the age of 65 -- that's 7.3 million seniors -- has been victimized by financial fraud, although only 1 in 44 cases is actually reported. Unfortunately, this financial exploitation of seniors is typically perpetrated by a family member or other trusted person. Therefore, we recommend that background checks be conducted for all people applying to be guardians.

The bill contains language in Section 3(h) that allows the court to consider all of the information about a proposed guardian and make a decision accordingly, weighing “family first” as a part of the decision-making process. DDS agrees with this approach recognizing that families are critical to supporting, advocating and ensuring that their family member with a disability is able to live as independently as possible in the community. The background check will ensure that the court has complete and accurate information to make guardianship decisions.

Finally, to address the last part of the legislation proposing expiration timelines for guardianship orders, DDS agrees that guardianships ought to be subject to a regular review and ought to terminate when they are no longer the least restrictive alternative to providing a person with needed decision-making support. However, creating an expiration date for each guardianship order and requiring a complete re-initiation of the guardianship matter by the guardian, will undoubtedly create gaps in services and medical treatment for vulnerable people while the guardianship is being renewed. Requiring family guardians, pro se applicants, and agencies to refile petitions for guardianship would be extremely burdensome, especially given that family guardians and pro se applicants may already struggle with understanding the court process. Instead, DDS is proposing that the government agencies who support people under guardianship work collaboratively with the Council and people with disabilities and others affected by guardianship,

their families and advocates to identify alternative solutions that will ensure people's capacity is recognized, that guardianship orders are reviewed on a regular basis, and that create a safeguard so that people will only remain under guardianship for as long as necessary to support their health, safety and wellbeing.

Conclusion

In conclusion, DDS is committed to exploring alternatives to guardianship as well as ensuring that the current rules governing how guardianship works in the District balance a person's choices, rights and health and safety. Thus, on behalf of the Administration, we would support the bill with the amendments I've discussed and we look forward to working collaboratively on those amendments.

Thank you for the opportunity to testify and for your efforts in supporting and protecting the rights of vulnerable people in the District. I am happy to respond to questions at this time.