CARING FOR GEORGIA’S unbefriended elders
AN UPDATE: SURVEY RESULTS
April 2017
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Background

In response to the growing number of incapacitated elderly persons who are outliving their familial caregivers and other health care decision makers, the Georgia General Assembly in 2010 passed amendments to Georgia’s consent and guardianship laws (‘the Amendments’). The purpose of the Amendments was to provide probate courts with the authority to appoint a temporary medical consent guardian for these elderly individuals under special circumstances.

To gauge the effectiveness of this legislation, Georgia Appleseed, in collaboration with lead pro bono counsel, Alston & Bird, published a report entitled, Caring for Georgia’s Unbefriended Elders: A View from the Probate Bench (2013). Nine probate judges and one hearing officer serving in various counties across Georgia were interviewed and their responses were summarized. The 2013 Report found that over half of judges interviewed had not been presented with a temporary medical consent petition and that a majority of the petitions that were filed were either withdrawn or dismissed. Only a minority of judges believed that the Amendments were effective as written. Most judges reported that health care and social workers were largely unaware of the Amendments’ provisions. The judges were also concerned that there was a shortage of individuals willing to serve as guardians.

The 2013 Report recommended continued monitoring of the effectiveness of the Amendments through a survey of stakeholders. In 2014 and 2015, follow up surveys were conducted to obtain a more recent and larger scale assessment of the efficacy and impact of the Amendments. The surveys were distributed to Georgia probate judges and relevant community stakeholders. The results are summarized below.

Probate Judges

With the critical assistance of Judge Lynwood Jordan, Forsyth County Probate Court Judge, during 2014, Georgia Appleseed and Alston & Bird sought updated information on the use of the Amendments during calendar year 2013. Judge Jordan emailed the survey instrument to each judge twice. Thirty-nine judges returned completed surveys, a twenty-five percent (25%) response rate. Of these, 33 judges (84.6%) reported that no petitions had been filed under the Amendments in the period under review. Three judges (7.7%) reported one petition, two judges (5.1%) reported two petitions, and one judge (2.6%) reported three petitions had been filed.

In other words, six judges (in six different counties) reported receiving at least one petition and a total of ten petitions were filed in Georgia during 2013. Out of the ten petitions filed, five (50%) were granted and one (10%) was dismissed. Of the five individuals who were appointed temporary guardians, three (60%) were private citizens, one (20%) was a social worker, and one is unknown.

In 2015, again with the invaluable assistance of Judge Jordan, Georgia Appleseed surveyed the Probate Court Judges to determine the extent of use of the Amendments in calendar year 2014.
Fifty-one judges responded reflecting an increase in the response rate to approximately 32 percent. 49 judges responded with information about their use of the Amendments in 2014. 42 judges (86.7%) reported that no petitions had been filed under the Amendments in the period under review. Two judges (4%) reported one petition; one judge (2%) reported three petitions; one judge (2%) reported four petitions. Three judges (6%) reported that five or more petitions had been filed. Most of the individuals appointed as guardians were private citizens.

Thus, while the use of the Amendments continued to be relatively rare in 2014, increases were reported in certain jurisdictions. We believe that this was likely the result of the efforts of proactive Probate Court Judges in those jurisdictions. Note the comment below from one of the survey respondents:

I have one hospital who uses this procedure and it is only because the hospital attorney became familiar with this option through discussions with me. I do not believe enough information is disseminated about the option for it to be of much use. In 2015 I had over 10 petitions filed and this year have already had 5. … [A] large percentage of the patients are elderly patients who were once long term patients with developmental disabilities in State Hospitals and then placed in a community nursing home placement and truly have no one because the families abandoned them. It is a very useful tool but it is not easy to find someone to serve as the TMC guardian.

Community Stakeholders

Volunteer lawyers with Alston & Bird also contacted 12 different organizations that were identified as community stakeholders – those who are affected by or share an interest in the needs of the elderly. 27 individuals from four stakeholder organizations returned responses.

18 stakeholders (66.7%) reported being aware of the Amendment’s provisions while 9 stakeholders (33.3%) were not. None of the stakeholders surveyed had ever invoked the Amendments to assist an incapacitated individual, even though according to the survey, nine (33.3%) of the respondent stakeholders encountered at least one elder person in 2013 who could have benefited from the Act’s provision and two stakeholders encountered upwards of five elders in need.

The survey results indicate that community stakeholders may be missing the critical information they need in order to feel comfortable using the Amendments. Stakeholders reported that they would be more likely make use of the temporary medical consent guardianship procedure if they were provided additional information and materials explaining the procedure, such as a guidebook, sample petitions, and training (in person or online modules).

When asked to consider the type of individual they may request to serve as the temporary guardian, 21 stakeholders (78%) responded that they would contact a private citizen. Other potential guardians that were indicated are social workers (16 stakeholders), members of the clergy (13 stakeholders), community stakeholders themselves (6 stakeholders), and clerks of the court.
stakeholders). A significant majority of stakeholders (24, 89%) believed that upon request, the individual would be receptive to the role of temporary guardianship.

Summary

The survey results continue to indicate relatively limited use of the temporary medical consent guardianship provisions created in 2010. In certain jurisdictions, however, the use of this tool appears to be on the increase likely because of outreach and education efforts by individual Probate Court Judges. Georgia Appleseed will share this assessment with the probate bench and with health care and legal community stakeholders in the hope that such outreach and education efforts can help spread awareness and use of the Amendments across the state.
End Notes

1 For a more detailed explanation of the Amendments, see http://www.gaappleseed.org/docs/caring-for-elders.pdf.
2 This guardianship option is available for individuals of any age who are incapable of giving informed consent.
3 We assume that the remaining four petitions were either withdrawn or remained pending as of December 31, 2013.
4 74% were members of the Elder Law Section of the Georgia Bar.
5 Participating Organizations included: Elder Law Section of Georgia Bar, Georgia Association for Home Health Agencies, Georgia Division of Aging Services, Georgia Gerontology Society, and Georgia Senior Legal Hotline (Georgia Legal Aid).
6 12 stakeholders (44.4%) stated that they had not, in the last 12 months, encountered incapacitated individuals that could benefit from O.C.G.A. § 29-4-18, 6 stakeholders (22.2%) reported that they did not know if they had, 4 stakeholders (14.8%) encountered 1 incapacitated elder, 3 stakeholders (11.1%) encountered 2-4 incapacitated elders, and 2 stakeholders (7.4%) reported having encountered more than 5 incapacitated elders.
7 21 community stakeholders (78%) responded they would like additional information.
8 22 community stakeholders (81%) said they would like a guidebook. In addition to guidebooks, 19 stakeholders would find a sample petition useful, 12 would find online training modules useful, and 7 would find in person training sessions useful.