

Notice of Meeting of the

DELAWARE GUARDIANSHIP COMMISSION

Meeting November 24th, 2014 at 2:00 p.m.

Kent County Courthouse, 2d Floor Conference Room (273)

Kent County Courthouse
414 Federal Street
Dover, DE 19901
Courthouse Telephone 302.735.1900

OPG Office in Kent County Courthouse: 674-7462

AGENDA

Conference Call Option: To join the conference call option, please dial **1-877-366-0711** then enter code: **821767481**

Please be mindful of time constraints in comments. Every effort will be made to reach discussion on all agenda items.

- I. Opening Remarks
- II. Old Business
 - A. Discussion of Possible Statutory Changes
- III. New Business
 - Open
- IV. Items of Interest
- VII. Open to Public

MINUTES

**Delaware Guardianship Commission Meeting
September 29, 2014**

Meeting began at 2 p.m.

Present were:

James R. Reynolds, via TC
Patty Justice (DSAAPD)
Linda Brittingham
Suzanne Seubert, via TC
Brian Hartman, Esq.
Lexie McFassel
Tasha Stevens, Esq., via TC

I. OPENING REMARKS:

The Minutes for March and July 2014 were approved.

The Public Guardian reported that she had met with Chancellor Bouchard to discuss items agreed upon by the Commission: 1) The Volunteer Attorney Program, 2) Standards for Guardians and Proposed Care Plan, 3) Appointment of the Public Guardian as Mediator, and 4) Changes to the Statute, Title 12.

It was agreed that the Public Guardian (PG) would follow up with Vice Chancellor Glasscock and Chancellor Bouchard around the first of November.

It was recommended that the Commission have a special meeting in November to maintain better continuity in business matters.

II. OLD BUSINESS

Discussion on Statutory Changes:

Meeting more frequently was proposed to facilitate progress on statutory change.

Input was solicited on the material regarding supported decision making. The Model supported decision making statute is an alternative to guardianship, which members of the Commission supported. Special note, that on line 298-299, competency is discussed, "Has been or would be found by a Court to lack the capacity". The issue was raised that the supportive decision making agreement still needs a level of capacity to execute, and for the person to make decisions. What level is required? PG will return with more info following the October 3, 2014 meeting with DDDS and ASAN.

Discussion of DMOST (Durable Medical Orders) followed (in terms of coordinating efforts and not replicating language). Commission talked about how the Supported Decision Making Statute and DMOST worked together.

A member explained how DMOST was developed (there were at least two commission members working with the developers) by three distinct groups, which increased difficulty of obtaining complete consensus. There was a religious group, advocates, and trial lawyers. The DMOST proposal is likely to come back before the legislature. The DMOST developing group continues to work on details such as training.

The importance of DMOST was stressed, particularly because of the portability it provides to an individual's advanced health care wishes.

PUBLIC EDUCATION for a variety of audiences remains a most frequently discussed topic, but the issue of developing education programs was suggested to be "parked" until after DMOST is successfully reintroduced and passed.

On the topic of sample statutes, a member suggested that the Commission take a look at the "British Columbia statute" [The Health Care (Consent) and Care Facility (Admission) Act, RSBC 1996, Chapter 181.] Member offered to look for and provide statute to Commission Members attending the meeting with DDDS on October 3, which she did.

General discussion ensued with the following points:

- Statutes may have areas where clean-up is needed, and work would be required to create consistency and to prevent duplication.
- It is noted a fair number of doctors don't understand capacity, and that evaluations of capacity may stem from the patient making choices contrary to the Doctor's recommendation. The thought was voiced that independent medical evaluations always be made, and it was noted that Rule 175 (Court of Chancery) Rule requiring a doctor may be modified to accept Nurse Practitioners.
- There was a suggestion that facilities should be statutorily prevented from requiring that a guardian must be appointed prior to acceptance for admission.
- There was a question as to whether it is necessary for statutory language to include "punitive" language, which enforces following the document (such as ACHD)(and therefore the wishes of the person), or would a provision requiring "exhaustion of all remedies" prior to appointment of a guardian contribute to enforcement of AHCD's.

Meeting adjourned at 3:45 p.m.

END.