

NICOLE POORE
Majority Leder
STATE SENATOR
12th District



SENATE
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

The Non-Acute Patient Medical Guardianship Task Force

Monday, September 23, 2019
Carvel State Building, 3rd Floor Conference Room

Task Force Members Present:

Senator Nicole Poore
Representative Raymond Seigfried
Representative Michael Smith
Staci Marvel, Department of Health and Social Services
Patty Resnik, Christiana Care
Barb Little, Bayhealth Hospital
Cheryl Heiks, DHCFA
Robert Kleiner, DSBA Elder Bar Section
Julie Devlin, Department of Health and Social Services
Lexie McFassel, Office of the Public Guardian

Attendees:

Melissa Smith, Department of Health and Social Services
Dava Newman, Department of Health and Social Services
Renee Kinsey, Chancery Court
Selena Molina, Chancery Court
Lisa Goodman
Wayne Smith
Yrene E. Waldron

Senator Nicole Poore, Chair, convened the meeting at 1:07 pm.

Senator Poore requested approval of meeting minutes from the August 26th meeting.

Patty Resnik made a motion to approve the minutes, and **Lexie McFassel** seconded the motion. The meeting minutes were unanimously approved.

Selena Molina provided an overview of all petitions for guardianship that were filed statewide during July and August.

Senator Poore asked how many cases the Chancery Court typically hears per day.

Ms. Molina replied that it varies. She commented that she has seen as many as twenty give in one day and as little as three or four. She added that appointments are typically made one month ahead of time.

Renee Kinsey commented that the New Castle County average is five and four in Kent County.

Senator Poore asked why there is a six-month delay in some cases.

Ms. Kinsey replied that the first case on the chart had the longest delay due to an objection from the patient during the guardianship process.

Lexie McFassel added that in the example case, the patient was in Department of Corrections care, which complicates guardianship cases from the beginning. She added that the first case on the chart has an unusual level of complexity.

Senator Poore asked participants to review the eighth case on the chart.

Ms. Molina stated that between August 2019 and June 2019, the case was not referred to Chancery Court, but once it was, the Court turned around the case in approximately two months.

Ms. Kinsey stated that there were objections in this example case as well.

Senator Poore remarked that the individual stayed in the hospital for a year due to the family dispute. She asked what could be done to improve the process.

Yrene Waldron stated that family members may block the guardianship process due to their own financial interest.

Patty Resnik stated that in this type of case, if there is financial exploitation, the hospital will call Adult Protective Services. She added that the hospital can also report fraud and abuse to the Social Security Administration. Ms. Resnik said that there has been an exponential increase in adult exploitation cases.

Ms. McFassel stated that it would be helpful to have time parameters for families requiring them to initiate the guardianship process.

Representative Seigfried chose three example cases ((#19117-N, 19119-N, and 19125-N) and asked Lexie McFassel, Patty Resnik, Barb Little, Selena Molina, and Pat Griffin to review the example cases and identify blockages and resolutions in those cases.

Senator Poore asked if there are statistics on how many times an attorney missed a court date.

Ms. Kinsey said that missed appointments is not a problem.

Representative Smith asked if there were any small similarities in these cases.

Senator Poore referred participants to the NCSL research brief that was distributed. She added that states have addressed this issue; for example, Colorado criminalized abandonment.

Ms. Resnik stated that sometimes family members are caring but are just frustrated and do not know how to navigate the process.

Ms. McFassel commented that if the behavior was criminalized, it may lead to even more exploitation.

Mr. Kleiner stated that there may be an opportunity to put a safe harbor provision in legislation.

Ms. Waldron said that participants may need to look at and rework the Colorado legislation.

Dava Newnam said it is dangerous to force someone to be a caregiver but educating family members is crucial. She added that caregiver fatigue is a huge issue and providing family members with resources earlier in the process will go a long way. Ms. Newnam stated that when she looked at the example case, it did not immediately appear to be a case of exploitation, but more that the hospital tried to keep guardianship within the family.

Ms. Resnik commented that hospitals do try to keep family engaged but there must be time limits.

Ms. McFassel said that her office has discussed a 30/60/90 timeline: 30 to inform families, 60 to remind them, and 90 for the case to move forward to the Office of the Public Guardian or a fee-for-service guardian.

Ms. Resnik stated that she would advocate for a tighter timeline.

Ms. Molina commented that there is a statutory duty to care for people in next of kin. She commented that this is within Family Court's jurisdiction, but the civil statute is vague.

Senator Poore stated that not every family member is a caregiver, and individuals cannot be forced to be caregivers.

Mr. Kleiner stated that he has seen this statute used in divorce cases relating to college expenses for children.

Senator Poore asked if families are responsible for costs associated with leaving family members in the hospital.

Ms. Resnik replied that if a person is on Medicaid, there is no letter of noncoverage sent to the family.

Ms. McFassel stated that time limits would be a good idea to ensure that hospitals and the state does not continue to incur these costs.

Representative Seigfried asked how hospitals determine who in the family is going to be in charge.

Ms. McFassel replied that there is a list in the surrogacy statute that outlines which family member the hospital is supposed to connect with first.

Senator Poore asked if legislation is needed or time limits could be written into regulations.

Ms. McFassel asked who the regulations would apply to.

Ms. Waldron stated that she believed a statutory change would be necessary.

Lisa Goodman stated that a statute change would be needed to take away someone's autonomy.

Senator Poore asked Ms. McFassel to explain her work on how the Office of the Public Guardian could collect fees.

Ms. McFassel provided an overview of the cost savings associated with allocating new resources to the OPG. She then explained how other states determines fee schedules for the Office of the Public Guardian. She emphasized how adding additional personnel would lessen the time it would take for her office to accept new guardianship cases.

Senator Poore asked what Medicaid can do to help shorten this process.

Ms. Marvel said that her office is encouraging people to apply online and initiate the process early.

Ms. Resnik stated that a guardian is needed to fill out the Medicaid application.

Ms. McFassel stated that there is typically 30 to 60 days before they can move on a Medicaid application to make sure that they have all the required information.

Ms. Marvel stated that initiating the process is important to determine what programs a patient is eligible for.

Ms. McFassel stated that allowing the Office of the Public Guardian to charge fees would shorten the process.

Mr. Kleiner asked if fee for service providers should have representation on the commission that would establish the fees.

Ms. McFassel replied that they are already represented on the guardianship commission and provided an overview of its membership.

Representative Seigfried asked if there is a document that outlines the responsibility of the guardian.

Ms. McFassel said that there is a document on the Chancery Court website and emphasized that the Court has done a great job of providing resources that explain the responsibilities of a guardian.

Representative Seigfried asked if time limits could be added to that document.

Ms. McFassel asked if this information could be provided as part of the admissions paperwork.

Ms. Resnik said that the admissions paperwork already can be overwhelming, but the hospital has put processes in place to identify cases where additional education is necessary. She added that in their primary care practice, Christiana Care is working to address the guardianship issue while patients can make decisions for themselves.

Ms. McFassel asked after there are delays in the Medicaid process after a guardian is appointed.

Ms. Resnik said that the hospital carefully tracks the process.

Ms. McFassel asked what the typical acceptance rate is for Medicaid cases.

Ms. Marvel that the statewide average is 45 days from application to eligibility.

Ms. Heiks underscored the importance of financial literacy for those navigating the process and shared her experiences serving as a POA for her mother.

Ms. Newnam asked when the time limits would start, if legislated.

Ms. Little said that the process should start when decision-making capacity is determined.

Ms. Heiks noted that the need for a new physician's affidavit delayed the process in multiple cases.

Ms. Resnik stated the Court has already provided an example physician's affidavit that should help address that problem.

Julie Devlin provided an overview of adult protective services statistics. She added that APS had investigated approximately 1,600 cases of financial exploitation. Ms. Devlin commented that the office received 4,000 allegations in 2018. She clarified that these cases are all from home and community-based settings. Finally, she stated the Department increased education on how to report cases of abuse, which likely resulted in an increased number of complaints.

Ms. Waldron asked if cases are ever referred to the Department of Justice.

Ms. Devlin replied that they are often referred, and APS works closely with two Deputy Attorney Generals.

Representative Seigfried asked how many hospitals would engage with APS.

Ms. Little replied that she engaged with APS.

Ms. Devlin stated that will likely be changes to code that will make medical practitioners mandatory reporters.

Ms. Resnik asked if hospitals could be notified after a complaint is received and processed.

Ms. Devlin replied that she should have received letters but would check on that.

Senator Poore asked for public comment.

Wayne Smith asked if Chancery Court would be willing to hold more than one hearing a month in Kent County.

Ms. Molina stated that Chancery Court would consider that.

Mr. Smith added that the 30-60-90 timeline seems too long and asked the committee to consider one that is more aggressive. Finally, he asked Ms. McFassel if fees were collected, would they go to these types of cases.

Ms. McFassel replied that additional funds would go towards hiring additional financial staff, which would directly address this issue.

Mr. Smith asked if there is a Medicaid cutout that would allow funds to be collected for guardianship.

Ms. Marvel replied that the Department has submitted a state plan amendment, which was a takeaway from this task force.

Senator Poore asked Ms. Resnik to work with individuals with Boston to gather out of state feedback.

Ms. Resnik stated that she would reach out to out-of-state facilities that accept Delaware residents. She also provided information on Maryland's system of placing case workers in hospitals that assist with the Medicaid process.

Senator Poore asked what stops facilities from accepting patients and how do we encourage facilities to accept patients in need of care beyond their period of acuity.

Ms. Resnik stated that it would be important to speak to facilities that have a footprint in other states.

Senator Poore provided an overview of deliverables and adjourned the meeting at 2:43 pm.