



# KGA: The First Edition

## A review of 2016

IMPROVING ADULT GUARDIANSHIP IN KENTUCKY

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## Welcome to the KGA!

by Robert McClelland

Welcome to the second Newsletter for the Kentucky Guardianship Association, Inc. Our goal is to help Kentucky guardians in serving the ones who, because of their legal disability, need us most. If you have not watched the Kentucky Guardianship Training Video sponsored by the KGA with funding from the Kentucky Bar Foundation, please take twenty four (24) minutes and get a summary of a guardian's role both before the court appointment and after. The link is here on our web page. It will download automatically. This video was created to help the normal (non-lawyer) person understand the "whats and whys" of guardianship and conservatorship. Of course each guardian's role will be unique because of the particular needs of the individual they care for. But, the video shows generally what to expect as a guardian.

The Board of Directors has authorized the creation of a new "pooled" special needs trust to handle even small trust funds to preserve Medicaid and SSI eligibility for those who may become unexpected beneficiaries or who may receive awards from law suits.

If you have not heard of "ABLE" accounts, these are bank accounts for those receiving SSI and/or Medicaid who want to work and earn wages but have those wages exempt from resource consideration by the agencies. There are several states that have opened these accounts

but Kentucky has not. However, Kentucky residents can participate in one of the other state accounts so it is important to take a look at how they work. Currently the account can only be set up by someone who has been disabled prior to 26 years of age. But, essentially, any person can contribute to a disabled person's account up to a total of \$14,000 per year and the disabled person can access the account themselves similar to a savings or checking account, so long as the money is being spent on a "qualified disability expense." These expenditures are effectively the same as SSI limitations.

Remember, nursing home residents who have resources can do Medicaid based estate planning to preserve funds for their future use by using special needs trusts and other strategies and families need to understand the difference between "1st party special needs trusts (Medicaid payback provisions) and "3rd party special needs trusts" (no Medicaid payback).

We hope you will encourage other guardians to join our Association, we are stronger together. Look forward to our annual conference next fall. It is already in the planning stage. Thank you for your interest in the Kentucky Guardianship Association.

Robert L. McClelland, JD; LLM; CELA

ElderLawLexington



### Transitioning from Child to Adult

One of the recurring questions brought to our booths this Spring and Summer had to do with transitioning to adult guardianship.

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### I JUST WANT TO RAISE MY CHILD

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# Transitioning from Child to Adult

By Adanne Bagby

One of the recurring questions brought to our booths this Spring and Summer had to do with transitioning to adult guardianship.

Families of vulnerable children approaching the Age of Major

ity, 18, have no way under current Kentucky Laws to smoothly transition to adult guardianship. Courts will not docket an adult guardianship trial until the child reaches age of majority, consequently there is a lapse in time when the guardian of the child can make decisions as guardian of the adult. The vulnerable child has transitioned to a vulnerable adult and therefore still lacks capacity to make informed decisions and has no one to make these for him/her until the court trial. Maybe lawmakers need to look at law to see how this transition can be made without harm to the vulnerable adult. For instance, a type of guardianship called "transitional guardianship" could work the same way an "emergency guardianship" works with many of the same limitations in place until a full hearing on guardianship can be held.



Until there is a better solution to this problem, the Kentucky Guardianship Association recommends working with a doctor, psychologist and social worker who will comprise the Interdisciplinary team for the guardianship hearing at least one year prior to the age of eighteen.

Six months from the child turning 18, the parents or guardian of the child should contact their county clerk and county attorney to determine a timeline and what these public officials will expect in order to start the adult guardianship process. Even though state law applies statewide, each county handles this law differently. Once the timeline and process is determined, then the guardianship process can proceed and the trial can be held as close to the child turning 18 and an adult as soon as possible.

"the Kentucky Guardianship Association recommends working with a doctor, psychologist and social worker who will comprise the Interdisciplinary team for the guardianship hearing at least one year prior to the age of eighteen."

TRANSITIONING  
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## E - TOWN, LEXINGTON, PADUCAH, OWENSBORO & GRAYSON!

Kentucky Guardianship Association took its presentation on the road this Spring and Summer.



*Kristen Pearson and Adanne Bagby at the 2016 KAG Conference in Louisville, KY.*

# KGA HAS BEEN ON THE ROAD!

by Adanne Bagby

### Kentucky Association for Gerontology

The Kentucky Association for Gerontology partnered with the University of Louisville Institute for Sustainable Health & Optimal Aging for a three day conference on June 12 – June 14 in Louisville at the Brown Hotel titled *Optimal Aging*. This conference was dedicated to creating a nation where optimal aging is achievable for all persons. The Institute and KAG recognized that achieving such a future requires deep collaboration across all disciplines and perspectives and achieved this by bringing together presentees and attendees from all areas of academic and professional workforces. KGA was there with a booth hosted by Kristen Pearson, Adanne Bagby and Candy Kalisz. While Becky Smith and Robert McClelland presented "Guardianship: The Last Resort". Becky and Robert presented an hour and one-half segment with Wells Fargo. Wells Fargo has an initiative to catch fraud before it happens. They reviewed the first year talking about exploitation which flowed naturally into why guardianship.

### Arc of Kentucky Statewide Family Support Coalition

Kristen Pearson and Adanne Bagby could be spotted in Elizabethtown,

Lexington and Grayson. Adanne Bagby and Candy Kalisz were seen in Paducah and Owensboro. The Arc of Kentucky Statewide Family Support Coalition hosted five regional family resource fairs in these cities. The Family Support Coalition exists to improve supports to all families of people with disabilities and seniors in the State. At each of these Fairs, there was a 2 hours window for people to visit the exhibits and each pizza. Then Arc presented two sessions on future planning and Behavior in the Home/Community. After a break, resource roundtables began were attendees could hop from table to table and ask more questions. These Fairs were not attended as well as hoped for but the families and persons who did attend were very impressed and let us know that they learned a lot. Our booth on guardianship was busy. People crave information on guardianship, particularly when to pursue it and how to pursue it. Also, they were asking "why guardianship"?

Kristen Pearson and Adanne Bagby attended a follow-up meeting with Arc of Kentucky in Louisville on August 25 where the future of the Fairs was discussed. Since these Fairs were funded by a one type grant from the Federal Arc, it is unknown at this time if the Family Support Coalition will host these

types of Fairs in the future. If they do, Kentucky Guardianship Association will be pleased to participate because they give us a chance to reach those persons having questions about guardianship.

### Bluegrass Autism Walk

Last but not least, Kentucky Guardianship Association was seen at the Bluegrass Autism Walk on Sunday August 28, 2016 at the Whitaker Bank Ball Park. There were over 400 participants in the walk, 50 booths and sponsors, games, inflatables and a silent auction. All to raise funds for education, advocacy and support for Central Kentuckians on the Autism Spectrum and their families, caregivers and the professionals who work with them. We were competing with Coach Cal who was hosting a fundraiser after us.



The temperature went up then the rain came down but the walkers walked anyway. The cotton candy got sticky and the chocolate melted but a good time was had by all.

# I JUST WANT TO RAISE MY CHILD:

## Discrimination Against Parents with Disabilities

by Robert L. McClelland, JD, LLM, CELA

As an attorney, I often hear claims of “discrimination” from laypersons and my thought immediately goes to the issue of “illegal discrimination” as opposed to simply “discrimination.” In the legal experience, discrimination is “the effect [italics added] of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap.” The Americans with Disabilities Act (herein referred to as the “ADA”), 1973 Rehabilitation of the Handicapped Act and the Fair Housing Act (FHA), when combined with state statutes, identify limitations in a broad context of treatments which are prohibited when providing services and lack of accommodations to those with identified disabilities.

In 2013, the National Council on Disability submitted to members of Congress, an extensive and detailed report entitled “Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children.” The report identified in detail Twenty (20) “Findings” (and recommendations) that impact discrimination against parents who live with their own disabilities and how the discrimination affected their ability to parent their children, including the fact that all states, whether through statute or case law, actually have “disability” as a basis for termination of parental rights.

Some of the findings were:

**FINDING #2:** The child welfare system is ill-equipped to support parents with disabilities and their families, resulting in disproportionately high rates of involvement with child welfare services and devastatingly high rates of parents with disabilities losing their parental rights.

One recommendation from the Council was for the HHS and the Department of Justice to “issue guidance to states (specifically child welfare agencies and dependency courts) on their legal obligations pursuant to the ADA.” In August, 2015, the Obama administration did publish technical assistance from the Departments of Justice and Health and Human Services to help us “ensure that parents and prospective parents are not discriminatorily deprived of custody of their children or denied the opportunity to adopt or serve as foster parents, because of stereotypes and unfounded assumptions about persons with disabilities....”

HHR OCR is responsible for ensuring that entities receiving Federal financial assistance from HHS, including child welfare agencies and state courts, comply with their legal obligation under Section 504 [of the Rehabilitation Act of 1973] to provide equal access to child welfare services and activities in a nondiscriminatory manner. In addition, both DOJ and HHS OCR enforce Title II of the ADA against public entities, including child welfare agencies and state courts.

According to the report, “Analyzing data from the 2010 American Community Survey, TLG estimates that at least 4.1 million parents with reported disabilities in the United States have children under age 18; meaning that at least 6.2 percent of American parents who have children under age 18 have at least one reported disability.” “Despite limited funding and little national attention given to parents with disabilities and their families, a number of programs and support services have begun to emerge across the nation....”

**FINDING #3:** Parents with disabilities who are engaged in custody or visitation disputes in the family law system regularly encounter discriminatory practices.

The Council recommended that Family court professionals—including judges, attorneys, and evaluation personnel—should receive regular, mandatory training related to parenting with a disability and the requirements of the ADA.

**FINDING 4:** Parents with disabilities who are involved in dependency or family proceedings regularly face evidence regarding their parental fitness that is developed using inappropriate and unadapted parenting assessments.... Among the recommendations was that “[s]tates should establish adaptive parenting equipment reuse and loan programs. Most often when looking at the question of the effect of discrimination on parents with specific disabilities, I found deafness and hearing limitations to be high profile. With an exploding Spanish speaking population, the public schools and courts have realized the need for translators and have them on staff. However, few local schools or courts have signors for deaf parents readily available. Often the child is the interpreter for the parent. In a parent/teacher conference, this is not the ideal arrangement, especially where discipline may be discussed and parent cooperation necessary.

Although hallways and access for ingress and regress have been widened and eased for mobility, for those parents who cannot leave their family residence for parent child conferences schools can electronically provide a convenient means of distant communication connections. It is necessary for parents to assure that school districts are on line for solutions for disabled parents. Transportation for those who can travel to make a parent/teacher conference or school activity has improved but is rarely convenient or, in some rural situations, available. A visually impaired parent or one with limited cognitive function may still receive printed notes from teachers or counselors. The parent may expect an assist from his/her child, perhaps even the child who may be the focus of remedial or disciplinary action, or a non-reading preschooler.

**FINDING 5:** Prospective adoptive parents with disabilities face significant barriers to adopting children, both domestically and internationally.



The Council recommended “that adoption agency staff ... be provided with training regarding parents with disabilities, adaptive equipment, techniques, and supportive services.” With many grandparents raising grandchildren, either by adoption or custody, “disability” should be viewed in a broader context than usually contemplated. Aging “[grand] parents” and custodians may also

have unique issues relating to adopting children when their age is combined with a disability in the agency’s evaluation.

“Accommodation” is important. Although a teacher may not be able to go to a student’s home, Telephone with TTY and sign interpreters is available. Are your city recreation facilities accommodating?

As special needs planners, our opportunities to educate and address failures of our communities are unique leadership roles. These thoughts and resources can help.

## Call for articles and topics!

Would you like an article of yours related to guardianship published in our newsletter?

Do you have a topic that you want the KGA to dive into?

Let us know at [kgainc2008@gmail.com](mailto:kgainc2008@gmail.com)

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