

June 25, 2014

TESTIMONY OF:
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Sunset Advisory Commission
Senator Nelson – Chair and Members

Texas Department of Family & Protective Services- Sunset Review

Thank you for the opportunity to testify before this Commission today. I would like to address a matter that I believe the legislature has overlooked or perhaps were misled in the restructure or reforms of APS in 2005 pursuant to investigations by both APS and DADS regarding referrals for Guardianship Services.

As a member of GRADE for 5 years now, we have received numerous complaints regarding court initiated guardianships which seems to be occurring through APS and DADS referrals, including complaints from families who seem to be losing access to participate in the care, visitations or in any medical decisions when their elderly or disabled family member has been guardianized under local guardianship programs. Most of the complaints we receive are their vulnerable adults are either being removed from their homes by force or if under these types of guardianships, not APS or DADS can protect them from abuse neglect or exploitation by guardians of local guardianship programs. These individuals become trapped and unprotected because the court require substantial fees, including hiring legal representation for anyone to address the court in protecting their elderly or disabled relatives from the court appointed protectors.

Here is the problem that is forcing people into Court appointed Guardianships, which in reality Texas's vulnerable adults or their families are forced to pay to be protected or to protect their estates if they have one by removing APS and DADS authority to investigate allegations of abuse, neglect or exploitation PRIOR to any referrals to the courts.

Chapter 48.209 (d) and Subchapter E Section 161.102 (copies attached) are sections of the Human Resources Code that are causing many injustices to our vulnerable adults and their families when APS or DADS have carte blanche to refer any individual to a court just because the court has requested the departments to notify the court of any individual who may be appropriate for a court initiated guardianship proceeding as per Section 1102.001 of the Estates Code well known as a 683 referral.

“What is appropriate for a court initiated guardianship without an investigation”? Is the preference of a referral of an individual dependent upon the financial resources, or sizable estates of the elderly, or government benefits of both the elderly & persons with physical or intellectual disabilities? It certainly can't be that the person needs protection or protection of their estates, because APS or DADS doesn't investigate to make that determination if a person needs protection. Nor are they required to investigate if the person is incapacitated and may need a guardianship, nor do they investigate any less restrictive alternatives. They just simply notify the court if the courts request them to do so, if an individual is appropriate for a court initiated guardianship. “What does that mean”????

When APS and DADS make these referrals without the requirement of an investigation, it is an immediate disregard, termination and violations of the rights as described in the Human Resources Code-

Title 6 Chapter 102- RIGHTS OF THE ELDERLY, and the RIGHTS OF PEOPLE WITH INTELLECTUAL & DEVELOPMENTAL DISABILITIES as described in the Health & Safety Code- Title 7, Chapters 591, 592, & 593, including their 4th & 14 Amendment Rights of the Constitution. These rights are protected unless lawfully restricted. At the time of the referrals they are not restricted. This could create a potential class action lawsuit for the State of Texas, and should be carefully reviewed.

I have attached additional information to my testimony , the dates are important to note because they represent misleading testimony on 2/10/2005 at the Senate Health & Human Services Committee, that proceeded with changes of the investigative authority from APS & DADS to protect an elderly or disabled person from abuse, neglect or exploitation protected by a local guardianship program. The person mentioned was age 67 when she died, no one would protect her.

The flood gates have been opened to continue this abuse by APS, DADS and the Court Appointed Protectors.

Recommendation:

Abolish Section 48.209 (d) and Section 161.102 (b) of the Human Resources Code –to protect the non restricted rights of the elderly & disabled. APS & DADS are abusing the very people they are charged with protecting by disregarding these rights and forcing them into a legal system that strips them of their civil rights once a guardianship is created, whether the guardianship was needed or not.

Prohibit referrals to probate courts for court initiated guardianships without a complete and thorough investigation that will determine the need for a guardianship, to ensure the elderly & disabled are protected from abuse, neglect or exploitation-as described in current Human Resources Code.

I sincerely thank you for the opportunity to testify before the Sunset Advisory Commission.

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