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July 10, 2019

Task Force on Alzheimer's Disease  
*Sent Via Electronic Mail Only, Care of [clbanley@adsd.nv.gov](mailto:clbanley@adsd.nv.gov)*

Re: 2019 Nevada Legislation Related to Alzheimer's Disease

Esteemed Members of the Task Force on Alzheimer's Disease:

Thank you for the invitation to update you regarding legislation that may be of interest in the field of Alzheimer's Disease. You will find that some of these are more tangential to the topic but are relevant because of the ways Alzheimer's Disease can and does affect multiple facets of life for Nevadans. They are included here in numerical order. As this is an informational overview, please do review actual bill language and statutory context if specific areas are of interest.

**Assembly Bill 65** – Assembly Bill 65 was an agency bill brought by the Nevada Secretary of State's Office. The intention was to "clean up" notarial language on forms such as the Guardianship Nomination form. In the 2017 session at the Nevada Legislature, a form was created whereby individuals could nominate the guardian of their choice, should they ever be in guardianship proceedings. The law made provision for placement of the nomination form in a "lockbox" with the Nevada Secretary of State that could be accessed by certain limited parties, such as the guardianship court, to verify compliance with the wishes of an individual prior to alleged incapacity. The form as provided for originally included certifications by notaries that went outside the scope of what was allowed in their role and AB65 sought to correct that. Other bills also ultimately mimicked this correction. People who already have nominations on file with the Secretary of State should not have to re-do them but the law will affect the form in future.

**Assembly Bill 91** – Assembly Bill 91 relates to procedures in Guardianship matters regarding sterilization of protected persons. For possibly older adults who are under guardianship, this means changes to the burden of proof should a guardian seek authority to authorize sterilization. The law in NRS 159 does not define sterilization, nor does this bill, but there are no limitations on age or condition which would not trigger the heightened requirements. This could impact caregivers in their role as guardians if they are seeking court authority for, say, a hysterectomy for a protected person, no matter the actual likelihood of the person exercising their reproductive rights.

**Assembly Bill 170** – Senate Bill 170 is included here as it aims to place pre-existing condition protections from the Affordable Care Act into Nevada law and also for its provisions related to the Office of Consumer Health Assistance having information from insurance companies that it can then use to make more direct communication with those companies possible in the course of their advocacy for Nevadans.

**Assembly Bill 228** – Originally conceived as a renewal of the 2017 attempt to expand the role of the State Long Term Care Ombudsman, Assembly Bill 228 was amended to allow for permissive authority of the Administrator of the Aging and Disability Services Division to direct the referral of the State Long Term Care Ombudsman into additional settings: supported living arrangements, community based living arrangements, adult day care, and facilities for long-term rehabilitation. In a way, this was a return to the pre-2017 discretion of the Administrator of ADSD to have such discretion, but which was amended out in 2017 when the State Long Term Care Ombudsman ceased to only serve those over 60 but instead included others who were in long term care, regardless of their age. The bill will allow for a better understanding, through data related to those who may opt in and request this type of individualized advocacy.

**Assembly Bill 299** – One of several bills regarding powers of attorney, Assembly Bill 299 notably creates a specific provision in the advance directive component of a power of attorney for healthcare decisions that relates to Alzheimer’s Disease. The new form language would include the following:

“6. If I have an incurable or terminal condition, including late stage dementia, or illness and no reasonable hope of long-term recovery or survival, I desire my attending physician to administer any medication to alleviate suffering without regard that the medication is likely to cause addiction or reduce the extension of my life. [.....]”

The bill also distinguishes between “durable” and “nondurable” powers of attorney such that if a Guardianship terminates a power of attorney and the individual is later restored to their rights and exited from the Guardianship, the power of attorney may revive in effectiveness.

**Assembly Bill 480** – Dubbed “The Supported Decision-Making Act,” Assembly Bill 480 provides an alternative to Guardianship which could be beneficial to individuals with early stage Dementia as they may wish to have support in making informed decisions without the use of a decision making proxy. This may not be an option for all (see also Senate Bill 121 below) and even nationally much of the dialogue regarding Supported Decision Making does focus on its use by individuals with other disabilities.

Supported Decision Making is, simply put, where an individual selects one or more supporters to assist them regarding specific decisions they may wish to make (for example, consenting to medical treatment). The existence of the agreement cannot be used to argue that the individual being supported needs a guardian and the individual at all times retains the final say on the choice they make. The supporter may assist with communicating that choice, informing the individual of their options, or the like, but they have no actual authority to make the decision for the individual. The law also provides some protection from liability for those who rely on an individual’s decision made in accordance with the agreement.

**Senate Bill 20** – Senate Bill 20 covers multiple Guardianship specific areas. Guardianship is a court process by which an individual is deemed legally incapacitated and a guardian is appointed to make decisions in their best interests while also taking into consideration their wishes to the greatest extent

possible (see, for example, the provisions of 2017's Senate Bill 360, creating the Protected Person's Bill of Rights). While there were numerous Guardianship reforms in the 2017 session, Senate Bill 20 sought in 2019 to adjust some areas of those reforms and address other gaps. This included:

- Addressing the issue of successor guardianships. This involves planning for when/if an existing guardian is no longer able to serve in their role.
- Including provision for use of Temporary Guardianships (also known as emergency or expedited guardianships) related to transfer and discharge concerns for an individual. Temporary Guardianships can be of concern because of the suspension of certain important procedural protections in service of emergency authority over another person.
- Referencing Temporary Guardianship authority to possibly include application for assistance or Medicaid and adding requirements related to the Temporary Guardian showing what actions were taken during their authorized temporary role when considering future requests for authority (meant to combat use of these guardianships based on stated emergencies which are then not addressed in the initial maximum ten day window).
- Allowance of certain appearance waivers and alternate appearance methods such as audio or video appearances. This can be helpful if presence in person at court is contraindicated by a physician.
- Clarification as to notification by guardians to interested persons for changes of residence for the protected person in certain emergency situations.
- Correction of the term "Supported Living Arrangement Services" to correct a prior error in statute that was being strictly construed by judges.
- Changes to the rights of refusal rules as to personal property sales (how offers to family members are handled).
- Elimination of requirements to include receipts unless court ordered.
- Recording fee increase to provide additional funding for mandated counsel, for investigators, and for self help assistance in minor guardianship.

**Senate Bill 121** – Senate Bill 121 provides for a Power of Attorney for Dementia. This is meant to address the unnecessary use of Guardianship where a person with a diagnosis of Dementia is denied services because of their diagnosis but without an actual judicial determination of incapacity. Put another way, where a person maybe failed to make their plans known prior to diagnosis, they are afforded a window of opportunity to have assistance in their healthcare decisions from their designated agent.

The bill also provides an explicit affirmation of the role the principal in any power of attorney arrangement continues to play. This means that where an agent is attempting to take action over the objection of the principal, the burden is on the agent to argue the appropriateness of their actions, not on the principal to initiate action to fight the agent's conduct.

Finally, Senate Bill 121 provides, in counties of under 100,000 residents (all counties except Washoe and Clark), certain information *can* be provided to Public Guardians prior to the appointment of a guardian if that information originates from the court, law enforcement, or the Aging and Disability Services Division. This is meant to encourage collaboration regarding referrals of cases to public guardians for possible filing.

**Senate Bill 223** – Senate Bill 223 amended provisions relating to powers of attorney and touches upon transfers and discharges and notifications related thereto. Notification of the State Long Term Care Ombudsman and the patient is included. It was amended in part by Senate Bill 540.

**Senate Bill 312** – Senate Bill 312 could represent a benefit to caregivers of those with Dementia as it creates a requirement for paid leave to be provided by employers with over 50 employees. Employees are not required to provide a reason for the use of their leave.

**Senate Bill 362** – Senate Bill 362 requires certain assessments related to the condition and daily activities of residents be undertaken at various points in time, including upon admission, annually, and upon observed changes in condition. Placement in a residential facility for groups remains appropriate upon certain determinations relating to dementia while other determinations may result in the requirement that placement be at such a location that is certified to care for that individual under NRS 449.0302(2).

**Senate Bill 540** – Senate Bill 540 was an agency budget bill draft from the Aging and Disability Services Division aimed at addressing a gap in protective services provision for those 18-59 who are vulnerable under NRS 200. This means an individual with early onset Dementia under the age of 60 can, as of July 1, 2019, avail themselves of protective services previously reserved for those 60 and older. The bill contemplates collaboration between law enforcement and protective services as well as adjusting some confidentiality provisions to reflect the involvement of protected person's counsel in guardianship. *Note: Contact information for Adult Protective Services remains the same as the prior Elder Protective Services. See [adsd.nv.gov](http://adsd.nv.gov) for more information.*

The bill also provides for amendments to the power of attorney form related to transfer and placement authority of an agent to phrase such options in a manner which informs an individual that if authority of their agent to make placement decisions is not granted, guardianship may be necessary.

Thank you for the opportunity to highlight a sampling of legislation touching upon legal issues persons with Alzheimer's Disease or other Dementias may face, as well as those who support them. Thank you also for your work in this area.

Sincerely,

/s/ Homa S. Woodrum

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