

National Disability Forum on

# Financial Independence: Directing the Management of One's Social Security Benefits

---

Testimony of Nina A. Kohn  
Associate Dean for Research and Online Education  
David M. Levy Professor of Law  
Syracuse University College of Law



SYRACUSE UNIVERSITY  
AGING STUDIES INSTITUTE

**SYRACUSE UNIVERSITY**  
**COLLEGE OF LAW**

# **I. Overview of Testimony**

---

# Today's roadmap

---

- Share how a newly adopted Uniform Act addressed parallel issues
- Suggest key lessons for the representative payee system



## **II. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA)**

---

# The Act's Origins

---

- Product of the Uniform Law Commission
- Result of a multi-year consultative process involving a range of stakeholders including:



# UGCOPAA : Limited grounds for appointment

---

- Appointment may be made only if:
  - (1) there is clear-and-convincing evidence that the adult is unable to manage property or finances because “of a limitation in the adult’s ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or supported decision making,” and
  - (2) appointment is necessary to avoid harm to the adult or significant dissipation of property; or to provide for the adult or someone entitled to the adult’s support.
- Appointment prohibited if the person’s needs could be met with less restrictive means, including supported decision-making.

# UGCOPAA: Trained professionals assess needs

---

- Unless the respondent is represented by an attorney, UGCOPAA requires appointment of a “visitor” who:
  - has training or experience in the types of limitations and abilities alleged; and
  - will interview the petitioner and proposed appointee, and investigate the respondent’s needs.
- If needed by the court or demanded by the respondent, UGCOPPPAA requires a professional evaluation by a physician, psychologist, social worker, or other qualified individual without a conflict of interest.

# UGCOPAA: Needs assessed in light of supports

---

- Supporters may render a conservatorship unnecessary.
  - Conservatorship not proper if needs could be met with supported decision-making, which is defined as: “assistance from one or more persons of an individual’s choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual’s wishes.”
- Respondent entitled to assistance of supporters at hearing.
- Supporters entitled to notice of petition for appointment.



# UGCOPAA: Embraces restoration of rights

---

- Termination of conservatorship required where
  - ✓ in the best interest of the individual; or
  - ✓ no basis for appointment exists.
- Reconsideration of appointment required if:
  - ✓ the court receives a communication (formal or informal) that supports a reasonable belief that the appointment is unnecessary.
  - ✓ a report by the conservator indicates termination may be appropriate; or
  - ✓ the court determines that reconsideration is appropriate.

# UGCOPAA: Adopts clear, person-centered decision-making standards for appointees

---

Conservators must:

- make the decision they reasonably believe the adult would make if the adult were able unless that decision would not preserve the resources needed to maintain the adult's well-being and lifestyle or would otherwise unreasonably harm or endanger the adult's welfare or interests.
- consider the individual's directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator" to determine the decision the adult would make; and
- use a "best interests" approach if – but only if – the conservator cannot determine the decision the person would make, or making that decision would fail to preserve needed resources or would otherwise unreasonably harm or endanger the adult's welfare or interests.

# **III. Lessons for the Representative Payee System**

---

# Lesson 1: Tie appointment to functional need

---

- Regulations should be updated with a functionally based definition of when appointment is in the “interest of the beneficiary”
- A functionally-based definition would:
  1. limit appointment to situations where less restrictive measures will not work (e.g., person cannot direct funds even with support);
  2. recognize that appointment not necessary where persons needs can be met with support;
  3. recognize the possibility of limited guardianship/conservatorship (ie., make legal incompetence a basis only where it is related to financial management); and
  4. use a single standard regardless of age at onset of disability.

# Lesson 2: Improve methodology for determining abilities and limitations

---

- Examiners should:
  - ✓ ask questions focused on ability to direct financial management;
  - ✓ give weight to information provided by persons with experience and training in the alleged disability;
  - ✓ be alert to potential for biased evidence;
  - ✓ assess capabilities in the context of supports; and
  - ✓ have training and experience in assessing the types of limitations alleged.

# Lesson 3: Create workable processes for termination of appointment and restoration of rights

---

- Capability should not be assumed to be static.
- User-friendly procedures should enable individuals with representative payees, and other interested persons, to trigger reconsideration.
- Rights should be restored if the basis for appointment does not exist.

# Lesson 4: Recognize that supporters' presence does not change legal status of the beneficiary

---

- Individuals with known supporters should be given the same respect and treatment as those without known supporters.



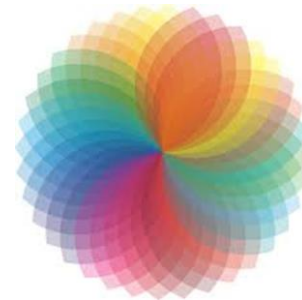
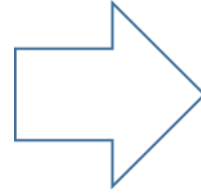
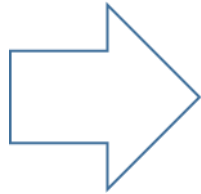
“Supervised direct payment” is not supported decision-making.

- Individuals should be entitled to have supporters present during interviews.

# Lesson 5: Implement person-centered standards

---

- Problem: Current approach is inconsistent with modern legal trends and a modern understanding of disability.



- Recommendation: Require representative payees to make the decision they reasonably believe the beneficiary would make unless that decision would:
  - ✓ fail to meet the beneficiary's basic needs,
  - ✓ otherwise significantly harm the beneficiary's welfare or interests, or
  - ✓ fail to meet the basic support needs of those entitled to the beneficiary's support.



# **IV. Final Thoughts**

---

# Assessing decision-making

---

Decisions are substantively congruent with the individual's wishes and values.

Decisions are made using a process consistent with the individual's wishes and values.

**Successful Decision-Making**

Decisions promote the individual's well-being.

Decision-making processes respect the humanity of the people involved.

# Contact information

---

Nina A. Kohn  
David M. Levy Professor of Law  
Syracuse University College of Law  
420 Dineen Hall  
Syracuse, NY 13244  
(315) 443-6565  
[nakohn@law.syr.edu](mailto:nakohn@law.syr.edu)

