

## **Testimony for the Behavioral Health and Wellness Council DRAFT**

October 6, 2014

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There is an inextricable relationship between guardianship and behavioral health in the older population. In order to be placed under guardianship, a person must be found incompetent by a court. Incompetence is a very broad term that encompasses anything from being unable to manage finances to not being able to express your wishes at all. When an older person is placed under guardianship, it most likely means that the person is suffering from some type of dementia or has a medical condition resulting from a chronic disease or a stroke that affects their cognitive ability.

Guardianship intertwines issues that affect a person's health and their ability to function in society.

One Friday night, I received a call from the Washoe County Sheriff's Department. They had to release a person who was arrested during a domestic violence call according to a court order. The man was elderly, had dementia, and his behavior was erratic and sometimes violent. He had threatened his wife with a large knife, frightened her, and she called law enforcement. He had been in jail for the amount of time he could be held without being charged, and had to be released. The deputy told me that they had been working for hours trying to find someplace to release him to, and couldn't find a place. The deputy said that they were going to have to release him to a shelter if I couldn't come up with an alternative. I couldn't come up with an alternative. He couldn't go to the hospital, no licensed facility would take him, and he couldn't be released to his home, where his wife was. They finally released him to a shelter, and his family picked him up and took him home to his wife.

In another situation, where an older person with behavioral health issues was placed in jail, and was in jail for twice as long as he should have been (thanks to a judge who understood the situation) because there was no place else for him to go. This situation resulted in many meetings among all interested social services agencies, law enforcement, lawyers and judges trying to devise a solution to keep this from happening again. No solution was found, and it is still an issue.

Guardianship law is very specific in that it requires that a person be found to be unable to take care of themselves, someone has to come forward to agree to take care of the needs of this person 24/7, the court must hold hearings and determine that the person needs a guardian, and one is appointed. In most cases in Nevada, the person under guardianship loses almost all of their civil rights, and their ability to make any choices in their lives. The guardian can be a family member, or it can be a complete stranger. Often, the person under guardianship is moved into a long-term care facility. In Nevada at this time, 30 people over the age of 60 are placed in facilities outside of our state, away from their familiar surroundings and support systems. They are visited once or twice a year by their guardian. This is because they have behavioral issues and no facility in Nevada will take them.

I was asked by a district court judge to investigate a troubling case. A man I'll call Mr. Smith had lived in the same house in Sparks for 40 years. He worked on the railroad until he retired with a decent pension. Elder Protective Services was called by one of his neighbors who was worried about him. He had been

seen giving taxi drivers money to run errands for him. Sometimes it was a substantial amount of money. He went to downtown Sparks with large bills stuck in his shirt pocket. He seemed unkempt and disoriented. EPS went to his home, and he would not let them in. Law enforcement was called, and Mr. Smith still would not let them in. A gun was spotted on the table in the house, so they entered the house. It became evident that he was a danger to himself and others, so law enforcement sent him to the hospital.

Mr. Smith had lived in the same house for most of his adult life. He had no immediate family and was estranged from his extended family. He was nearly blind, and walked with a cane. He was taken from his house against his will and placed in a hospital—a situation that was totally foreign to him. He couldn't see. He was found to have egregious wounds on his legs and other medical conditions. He was in pain and he was frightened. He acted out, threatening medical staff with his cane and yelling. He refused treatment. Medical charts said he was acting out violently. He was given drugs so they could treat his medical conditions.

After a couple of weeks in the hospital, he was sent to a rehab facility. Again, he acted out and was given drugs. Medical charts said he had behavioral issues. He was sent to a geriatric psych hospital, where the treatment was to give him drugs to calm him down. Medical charts said he was unmanageable without drugs. He was sent back to the rehab facility. A couple of weeks later, he was released from rehab, but they could not find a facility in the state that would admit him, because he was violent, had anger issues, and needed drugs to be manageable. He was sent to a facility in Utah. This man, who had lived in the same place for 40 years, was moved against his will five times in less than two months. He died two weeks after he arrived in Utah.

My investigation showed that while Mr. Smith died when he might have lived under different circumstances, his case was handled within the usual and customary standards of the community. Nobody making decisions for him had intentionally or negligently caused harm, and in many instances they were doing all they could do.

I tell you about these instances to illustrate the challenges that Nevada faces when trying to do the best we can for older people whose mental and physical health has reached the point that they need assistance. Critical needs include:

- Facilities in which people with a diagnosis of dementia can be placed on both temporary and long-term bases when their behavior is inappropriate for general populations.
- Revision of NRS 433.115 to include people who have diseases of the brain other than mental illness, including but not limited to all types of dementia, Parkinson's disease, and stroke. This would allow existing facilities to treat people with behavioral health issues of all kinds; not just those that are considered "mental illness."
- Training of health care providers regarding the unintended consequences of the remarks they put on charts. Once a person is labeled with being a behavioral problem, they are likely to be placed out of state, regardless of the circumstances surrounding the problem or when and how it may be controlled.

- Reviewing manner in which long-term care facilities are surveyed by regulators to be certain that the facilities can appropriately medicate persons with behavioral issues without receiving a negative report.

Older persons often have no place to turn when their mental capacity and mental health deteriorates. Families are ill-equipped to deal with a loved one whose personality has changed dramatically, and whose ability to cope with life has disappeared. Under current statutes and policies, people with brain diseases that cannot be cured are not covered by the statutes that would provide immediate short-term assistance, and resources are not available to provide short-term or long-term care. It is heartbreaking to see or hear about older people who have created a bad situation, whose family, if they have one, is at their wits' end, and to learn that the only place they could go was to jail or to a homeless shelter. Guardianship can be an answer, but it is not an immediate answer, and often it results in the person being moved out of Nevada against their will.

We need to find the will and the resources to address these issues, as the older population grows and the incidence of dementia and other brain diseases increases.