

Memorandum 2013-46

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Adjustments Made in Other Jurisdictions**

This memorandum continues the analysis presented in Memorandum 2013-40 of the modifications to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) made by other jurisdictions. This memorandum provides such analysis for Article 3 (Transfer), Article 4 (Registration) and Article 5 (Miscellaneous Provisions) of the Act. This memorandum does not address UAGPPJA Sections 503 (Repeals) and 505 (Effective Date), as these sections are intended to be specific to each state’s circumstances.

As in Memorandum 2013-40, this memorandum focuses on substantive changes to UAGPPJA in 36 of the jurisdictions that have adopted the Act. This memorandum similarly does not discuss Puerto Rico due to concerns about translation of its enactment. This memorandum is not intended to exhaustively address all modifications to UAGPPJA in the enacting jurisdictions.

For the most part, the changes to UAGPPJA made in other jurisdictions do not seem to require any adjustment to the Commission’s tentative recommendation. They are described for informational purposes only. However, the staff has identified a couple of minor substantive or technical changes adopted by other states on which the staff seeks the Commission’s input. Staff uses the hand signal (✋) to call attention to those modifications on which we seek specific input from the Commission.

For ease of reference, this memorandum discusses each provision of UAGPPJA sequentially. For each provision, we first briefly remind the Commission of the nature of the provision. Next, we provide a brief summary of any substantive modifications to UAGPPJA made in the Commission’s Tentative

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

Recommendation on *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act* (June 2013) (hereafter, “Tentative Recommendation”). The memorandum then identifies substantive changes that other jurisdictions made to the provision in their enactments of UAGPPJA. Finally, the memorandum gives the staff’s perspective on the modifications made by other states, such as whether the Commission should make similar modifications in its recommendation for California.

ARTICLE 3 (TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP): SECTION 301 –
TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE

ULC Approach

Section 301 of UAGPPJA provides the procedural rules governing a transfer of a guardianship or conservatorship to another state. Key aspects of this section include:

- A guardian or conservator may petition the court to transfer the proceeding to another state. UAGPPJA § 301(a).
- Notice of such a petition must be given to persons that would be entitled to notice if the petition was for the appointment of a guardian or conservator. *Id.* § 301(b).
- The court is required to hold a hearing on the petition if requested by the guardian or conservator, the incapacitated or protected person, or anyone required to be notified of the petition. *Id.* § 301(c). The court may also hold a hearing on its own motion. *Id.*
- For guardianships, the court shall issue an order provisionally granting the transfer and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted and the court finds that: (1) the incapacitated person is physically present in or reasonably expected to move permanently to the other state, (2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the incapacitated person’s interests, and (3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient. *Id.* § 301(d).
- For conservatorships, the court shall issue an order provisionally granting the transfer and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted and the court finds that: (1) the protected person is physically

present in, is reasonably expected to move permanently to, or has a significant connection to the other state, (2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the protected person's interests, and (3) adequate arrangements for managing the protected person's property will be made. *Id.* § 301(e).

- The court shall issue a final order confirming the transfer and terminating the proceeding upon its receipt of: (1) a provisional order accepting the proceeding from the court of the other state and (2) the documents required to terminate the proceeding in the state. *Id.* § 301(f).

Proposed California Approach

The Tentative Recommendation makes several revisions to this provision, addressing both terminology issues and substantive changes.

The Tentative Recommendation revises this section to coordinate the language of this section with UAGPPJA Section 302 and with California notice practice. In particular, the Tentative Recommendation modifies the language of this section to refer to a petition "to accept a conservatorship," as opposed to a petition "for a conservatorship." *See* Proposed Prob. Code § 2001 Comment. California notice practice requires that a party give notice of a hearing on a motion or petition, not notice of the motion or petition itself. *Id.*

In addition, the Tentative Recommendation makes a hearing on a petition to transfer mandatory. *Id.* § 2001(c); *see also id.* § 2001 Comment.

Finally, the Tentative Recommendation changes the burden on an objector to the transfer of a conservatorship. Rather than the objector having to "establish" that the transfer would be contrary to the protected person's interests, the Tentative Recommendation requires, after an objection, the court to "determine[] that the transfer would not be contrary to the interests of the conservatee" for the transfer to proceed. *Id.* § 2001(d)(2), (e)(2); *see also id.* § 2001 Comment. The Tentative Recommendation specifically requests public comment on this issue and what standard should be used.

Modifications Made By Other Jurisdictions

Standard for Assessing Whether a Transfer Would be Contrary to the Interests of the Conservatee

As noted above, the Tentative Recommendation seeks comment on this issue. A few states make modifications on this point.

In particular, Connecticut modifies the listed findings that the court must make to ensure that the interests of the conserved person include “the reasonable and informed expressed preferences of the conserved person.” Conn. Gen. Stat. Ann. § 45a-667p(d)(2). This point seems sufficiently obvious that it might not be necessary to make a similar clarification in California.

Maine specifies the evidentiary standard (preponderance of the evidence) that the objector must meet to establish that a transfer would be contrary to the best interests of the protected or incapacitated person. Me. Rev. Stat. Ann. tit. 18-A, § 5-531(d)(2), (e)(2).

New Jersey requires issuance of a provisional order unless “an objection to the transfer has not been made or, [the court finds] that the transfer would not be contrary to the interests of the incapacitated person. N.J. Stat. Ann. § 3B:12B-17(d)(2), (e)(2). This New Jersey approach led the California State Bar Trusts & Estates Section (“TEXCOM”) to suggest that California should take a similar approach, as proposed in the Tentative Recommendation. *See* Memorandum 2012-36, Exhibit p. 35; Memorandum 2013-9, Attachment p. 33.

Parties Authorized to Seek Transfer

Arizona allows any interested party to petition for transfer. Ariz. Rev. Stat. Ann. § 14-12301(A).

Connecticut expands the ability to petition for transfer to the conserved person, the conserved person’s attorney, or any person who received notice of an application for involuntary representation under Connecticut law. Conn. Gen. Stat. Ann. § 45a-667p(a). Note, however, that Connecticut does not expand the related provision in UAGPPJA Section 302 to allow additional persons to petition for confirmation of the transfer. *Compare id. with id.* § 45a-667q(a). As noted in Memorandum 2013-40, Connecticut law provides different processes for voluntary versus involuntary representation. Connecticut’s involuntary representation proceeding is akin to a California probate conservatorship, requiring a finding of incapacity based on clear and convincing evidence. Memorandum 2013-40, p. 11.

New Jersey extends the ability to petition for transfer to the conservatee. N.J. Stat. Ann. § 3B:12B-17(a).

Notice Requirement

Connecticut modifies the language regarding notice of the petition to specify that the notice must be provided to “persons that would be entitled to notice of a

petition in this state for the appointment of a conservator of the person or conservator of the estate, *or both.*” Conn. Gen. Stat. Ann. § 45a-667p(b) (emphasis added).

☞ Ohio specifies that it is the guardian’s obligation to provide notice of a petition to transfer to persons entitled to notice for the appointment of a guardian. Ohio Rev. Code Ann. § 2112.31(B).

Hearing Requirement for Transfer

Arizona requires that the matter be set for hearing upon filing of a petition; on the court’s own motion or on the filing of an objection, the matter will be set as an appearance hearing. Ariz. Rev. Stat. Ann. § 14-12301(B), (C). This is similar to the approach proposed in the Tentative Recommendation, in that it mandates a transfer hearing. Unlike Arizona, California does not provide for appearance and non-appearance hearings. However, California rules would permit a court to place the matter on the consent calendar if there is no objection to the transfer. Proposed Prob. Code § 2001 Comment.

Connecticut explicitly allows the conserved person’s attorney to request a hearing. Conn. Gen. Stat. Ann. § 45a-667p(c).

Maine provides an option for the court to either hold a hearing or “provide an opportunity for a hearing to be held.” Me. Rev. Stat. Ann. tit. 18-A, § 5-531(c).

Maryland removes the guardian or conservator from the named persons who can request a hearing. Md. Code Ann., Est. & Trusts § 13.5-301(b).

Nevada excludes the language of subdivision (c) of UAGPPJA Section 301, providing for a hearing upon request or the court’s own motion. *Compare* Nev. Rev. Stat. Ann. § 159.2023 *with* UAGPPJA § 301(c).

Findings Required for Provisional Grant of a Transfer

☞ In addition to modifying the standard for assessing whether a transfer would be contrary to the interest of the conservatee (see above), Connecticut made several other modifications of the findings required to provisionally grant a transfer. In particular, a Connecticut court must not only find that the plans for care and services of the conserved person are reasonable and sufficient, but must also find that such plans are “made after allowing the conserved person the opportunity to participate meaningfully in decision making in accordance with the conserved person’s abilities....” Conn. Gen. Stat. Ann. § 45a-667p(d)(3). Connecticut also requires that plans for care and services in the other state “include assisting the conserved person in removing obstacles to independence,

assisting the conserved person in achieving self-reliance, ascertaining the conserved person's views, making decisions in conformance with the reasonable and informed expressed preferences of the conserved person, and making all reasonable efforts to make decisions in conformance with the conserved person's expressed health care preferences, including health care instructions and other wishes, if any, described in any validly executed health care instructions or otherwise." *Id.*

Further, if the transfer involves specified actions (e.g., termination of tenancy or lease, placement of the conserved person in an institution for long-term care), Connecticut requires compliance with Connecticut law governing those actions. *Id.* §§ 45a-667p(d)(4), 45a-667p(e)(4). To the extent that this approach is meant to clarify that Connecticut law applies during the transfer process, the Tentative Recommendation includes a similar, but more expansive, proposed requirement. Specifically, the Tentative Recommendation requires that "[i]f a conservatorship is transferred from California to another state, the conservator must continue to comply with California law until the court issues a final order confirming the transfer and terminating the conservatorship." Proposed Prob. Code § 2001 Comment; see proposed amendment to Prob. Code § 2300 & Comment. However, to the extent that Connecticut's approach is meant to preclude transfer unless Connecticut law is applied to certain actions, the Tentative Recommendation does not include an analogous provision.

Indiana collapses the different tests in UAGPPJA for guardianship and conservatorship transfer into a single test. *Compare* Ind. Code Ann. § 29-3.5-3-1(d) with UAGPPJA § 301 (d), (e). Thus, for all transfers, the Indiana court must find that both (1) plans for care and services of the person are reasonable and sufficient and (2) adequate arrangements will be made for management of the person's property. Ind. Code Ann. § 29-3.5-3-1(d)(3), (4). Indiana's test provides three options for the person's connection with the other state, allowing a transfer if the person is either physically present, reasonably expected to move to, or has a significant connection to the other state. *Id.* § 29-3.5-3-1(d)(1).

Nevada collapses the separate findings required for the transfers of a UAGPPJA guardianship and conservatorship into a single list of findings. Nev. Rev. Stat. Ann. § 159.2023(2). Further, Nevada makes several modifications to the findings that the court is required to make in the transfer process, as follows:

- Nevada has no requirement that the court must be satisfied that the guardianship will be accepted by the court in the other state (as in UAGPPJA § 301(d), (e)).
- Nevada does not provide the option for transfer when the ward only has a significant connection with the other state (as in *id.* § 301(e)(1)).
- Nevada excludes any requirement regarding arrangements for the property of the ward (as in *id.* § 301(e)(3)).

For a transfer to a significant connection state, Ohio requires the court to find that the requirements for a significant connection state to exercise jurisdiction are met (see UAGPPJA Section 203(2)). Ohio Rev. Code Ann. § 2112.31(E)(1).

Provisional and Final Orders Granting Transfer

Arizona does not “direct the guardian to petition” the other state for guardianship, but instead “authorize[s] the guardian or another appropriate person to petition for guardianship in the other state.” Ariz. Rev. Stat. Ann. § 14-12301(D). Arizona appears to require a second phase of notice and hearing before entering an order confirming the transfer. *Id.* § 14-12301(F).

Maryland removes the language obligating the court to direct the guardian or conservator to file a petition in the state to which the proceeding will be transferred. Md. Code Ann., Est. & Trusts § 13.5-301(d). Maryland also excludes the language of subdivision (f) of UAGPPJA Section 301 regarding the final order confirming the transfer and terminating the guardianship or conservatorship.

Nevada requires the court to direct the guardian “or other interested party” to petition for guardianship in the other state after specified findings are made. Nev. Rev. Stat. Ann. § 159.2023(2).

Documents Required for a Final Order

Arizona provides additional specificity regarding what documents are required before a court can issue an order confirming the transfer and terminating the guardianship or conservatorship (i.e., “[a] certified copy of the letters of office or other authority indicating appointment ... issued by the appropriate authority in the state to which the proceeding is to be transferred” and “any required accounting for the period of administration before the transfer...”). Ariz. Rev. Stat. Ann. § 14-12301(F)(1), (2).

Nevada eliminates the language regarding “the documents required to terminate a guardianship or conservatorship in this state” and instead includes a

reference to the petition for termination provisions in Nevada law. *See Nev. Rev. Stat. Ann. § 159.2023(3).*

Miscellaneous Modifications

Alabama authorizes the appointment of a guardian ad litem to represent the interests of the incapacitated or protected person and the requirement for prepayment of guardian ad litem fees. Ala. Code § 26-2B-301(g).

Tennessee explicitly identifies minors as persons who could be subject to the transfer process. *See, e.g., Tenn. Code Ann. § 34-8-301(d)(1).*

Staff Analysis

Regarding Ohio's modification of Section 301 specifying *who* is required to provide notice, staff recommended in Memorandum 2013-40 (p. 26) that the Commission consider making a similar change to UAGPPJA Section 208, based on Ohio's version of that section. The same reasons for making the change in Section 208 apply to Section 301. To wit, the change appears to be technical and it provides helpful clarification. For these reasons, **staff recommends that the Commission revise proposed Probate Code Section 2001(b) and the corresponding Comment as shown in ~~strikeout~~ and underscore below:**

(b) ~~Notice~~ The petitioner must give notice of a hearing on a petition under subdivision (a). The petitioner must give that notice ~~must be given~~ to the persons that would be entitled to notice of a hearing on a petition in this state for the appointment of a conservator.

Comment. Section 2001...

Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made to specify that the petitioner is responsible for giving the notice (cf. Ohio Rev. Code Ann. 2112.31(B)), and to conform to California practice, under which a party is required to give notice *of a hearing* on a motion or petition, not just notice *of a petition*.

The staff also sees potential merit in Connecticut's requirement of a finding that the conservatee had an opportunity to participate meaningfully in decision-making relating to the plans for care and services of the conservatee. If the Commission is inclined to require such a finding, **it could do so by revising proposed Probate Code Section 2001(d) and the corresponding comment as shown below:**

(d) The court shall issue an order provisionally granting a petition to transfer a conservatorship of the person, and shall direct

the conservator of the person to petition for acceptance of the conservatorship in the other state, if the court is satisfied that the conservatorship will be accepted by the court in the other state and the court finds all of the following:

(1) The conservatee is physically present in or is reasonably expected to move permanently to the other state.

(2) An objection to the transfer has not been made or, if an objection has been made, the court determines that the transfer would not be contrary to the interests of the conservatee.

(3) Plans for care and services for the conservatee in the other state are reasonable and sufficient.

(4) The conservatee had an opportunity to participate meaningfully, in accordance with the conservatee's abilities, in decision-making relating to the plans for care and services for the conservatee in the other state.

Comment. Section 2001...

Subdivision (d) corresponds to Section 301(d) of UAGPPJA, but modifies the procedure that applies if a person objects to transfer of a conservatorship of the person. In that circumstance, the objector does not bear the burden of establishing that the transfer would be contrary to the interests of the conservatee. Rather, the requirement of paragraph (d)(2) is satisfied only if the court determines that the transfer would not be contrary to the interests of the conservatee.

Revisions have also been made to require a finding that the conservatee had an opportunity to participate meaningfully, in accordance with the conservatee's abilities, in decision-making relating to the plans for care and services for the conservatee in the other state. Cf. Conn. Gen. Stat. Ann. § 45a-667p(d)(3).

Aside from these modifications and the modifications already incorporated into the Tentative Recommendation, the staff's preliminary view is that the other modifications to UAGPPJA Section 301 discussed above do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

ARTICLE 3: SECTION 302 – ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP
TRANSFERRED FROM ANOTHER STATE

UAGPPJA Section 302 specifies requirements for a petition to accept transfer of a guardianship or conservatorship. For ease of reference, the discussion in this

section uses the term “transfer petition” to refer to such a petition, except when it is necessary to be more specific.

ULC Approach

Section 302 of UAGPPJA provides the procedural rules by which a state would accept a guardianship or conservatorship. The key points of this section are summarized below:

- The guardian or conservator must petition the court “to accept the guardianship or conservatorship.” UAGPPJA § 302(a). The petition must include the other state’s provisional order of transfer. *Id.*
- Notice of the petition must be given to persons entitled to notice of a petition for the appointment of a guardian or conservator in both the transferring state and the accepting state. *Id.* § 302(b).
- The court is required to hold a hearing on the transfer petition if requested by the guardian or conservator, the incapacitated or protected person, or anyone required to be notified of the petition. *Id.* § 302(c). The court may also hold a hearing on its own motion. *Id.*
- The court is obligated to issue an order provisionally granting the transfer petition unless either (1) an objection is made and the objector establishes that the transfer would be contrary to the interests of the incapacitated or protected person or (2) the guardian or conservator is ineligible for appointment in the accepting state. *Id.* § 302(d).
- The court is then obligated to issue a final order accepting the proceeding and appointing the guardian or conservator upon receipt of a final order from the transferring state. *Id.* § 302(e).
- Within 90 days after the order accepting the transfer, the court must determine whether the guardianship or conservatorship needs to be modified to conform to the accepting state’s law. *Id.* § 302(f).
- The court is obligated to recognize a guardianship or conservatorship order from the other state, including the determination of incapacity and the appointment of the guardian or conservator. *Id.* § 302(g).
- Any denial of a transfer petition does not affect the ability of the guardian or conservator to seek appointment as a guardian or conservator under the state’s ordinary procedures, so long as the court has jurisdiction. *Id.* § 302(h).

Proposed California Approach

The Tentative Recommendation makes a number of revisions to this section, which are described below. Minor changes to conform to California practice and ensure that the conservatorship is subject to the appropriate requirements of California law are not discussed here.

First, the Tentative Recommendation requires the petition to state, on the first page, that the conservatorship is eligible for transfer and does not fall within the limitations established in proposed Probate Code Section 1981. Proposed Prob. Code § 2002(a)(3).

The Tentative Recommendation modifies the hearing provision in UAGPPJA to make a hearing mandatory in all cases. *See id.* § 2002(c); *see also id.* § 2002 Comment.

The Tentative Recommendation changes the language regarding the burden of the objecting party. Where UAGPPJA refers to “the objector establish[ing]” that the transfer is contrary to the interests of the incapacitated or protected person, the Tentative Recommendation refers to “the court determin[ing]” whether the transfer is contrary to the conservatee’s interests. *Compare id.* § 2002(d)(1) *with* UAGPPJA § 302(d)(1).

The Tentative Recommendation modifies and supplements the exceptions that would relieve a court from the obligation to issue an order provisionally granting the transfer petition. In particular, the Tentative Recommendation provides for different types of ineligibility of the conservator (i.e., under the laws of the transferring state and under California laws). Proposed Prob. Code § 2002(d)(2), (d)(3); *see also id.* § 2002 Comment. In addition, the Tentative Recommendation includes an exception for situations where “[t]he court determines that this chapter is inapplicable under Section 1981.” *Id.* § 2002(d)(4).

The Tentative Recommendation clarifies that the transfer does not become effective until the final order accepting the conservatorship and appointing the conservator is issued. *Id.* § 2002(e)(2). In addition, the Tentative Recommendation specifies the procedural steps that must occur before a conservator may take an action in California pursuant to a transfer petition. *Id.* § 2002(e)(2)(A)-(E).

The Tentative Recommendation includes an express authorization for a court to “take any step necessary” in modifying a conservatorship to conform to California law. *Id.* § 2002(f)(1).

Finally, the Tentative Recommendation expressly imposes some significant limitations on a California court's obligation to recognize a conservatorship order from another state. *Id.* § 2002(g).

Modifications Made By Other Jurisdictions

Nevada makes substantial changes to this section, omitting some subdivisions altogether and substantially re-wording others. While some of the re-wording changes appear to be nonsubstantive, the reason for and purpose of these changes is unclear. The discussion below covers some, but not all, examples of the re-wording found in Nevada's enactment.

Petition to Accept the Proceeding

Alabama specifically requires additional information to be submitted to the court when filing a transfer petition. Ala. Code § 26-2B-302(a)(2)-(4).

While UAGPPJA requires that the transfer petition "include a certified copy of the other state's provisional order of transfer," Arizona requires that the petition include "the other state's order authorizing the guardian or conservator to petition the court of this state for guardianship, conservatorship, or other protective order." Compare UAGPPJA § 302(a) with Ariz. Rev. Stat. Ann. § 14-12302(A); see also *supra* pp. 6-7.

Nevada describes the petition as seeking a "transfer [of] *jurisdiction* of a guardianship or conservatorship to this State," rather than "confirm[ation of a] transfer of a *guardianship or conservatorship*." Compare Nev. Rev. Stat. Ann. § 159.2024(1) (emphasis added) with UAGPPJA § 302(a) (emphasis added). While a transfer might involve a jurisdictional change, explicitly referring to a transfer of *jurisdiction* raises questions about how and whether this provision would interact with UAGPPJA's Article 2 jurisdiction provisions.

Persons Authorized to Petition

Arizona provides that an interested person may petition the court to confirm transfer of a guardianship or conservatorship. Ariz. Rev. Stat. Ann. § 14-12302(A); see also *supra* p. 4.

Nevada extends the ability to petition to other interested parties. Nev. Rev. Stat. Ann. § 159.2024(1). Nevada also specifies that the party must petition the court "for guardianship pursuant to [the Act]" and requires that the petition include proof that the "ward is physically present in, or is reasonably expected to move permanently to, this State." *Id.* § 159.2024(1).

Notice

Nevada omits this provision. *Compare* Nev. Rev. Stat. Ann. § 159.2024 *with* UAGPPJA § 302 (b).

Hearing

Arizona provides that any objection to a transfer petition will trigger an appearance hearing; the court can also set the matter for an appearance hearing on its own motion. Ariz. Rev. Stat. Ann. § 14-12302(C). Absent an objection or court action, the hearing will be nonappearance. *Id.* Again, this is somewhat similar to the approach proposed in the Tentative Recommendation, under which a hearing would be mandatory but the court could place the matter on the consent calendar if there is no objection to the transfer petition.

Maryland removes “the guardian or conservator” from the list of persons who can request a hearing on the transfer petition and replaces UAGPPJA’s “person required to be notified of the proceeding” with “interested person.” *Compare* Md. Code Ann., Est. & Trusts § 13.5-302(c) *with* UAGPPJA § 302(c).

Nevada omits this provision. *Compare* Nev. Rev. Stat. Ann. § 159.2024 *with* UAGPPJA § 302(c).

Grounds for Denying a Transfer

Alabama provides an additional ground for a court to deny a provisional order granting a petition to confirm transfer, namely if Alabama’s additional informational requirements for the petition (discussed previously) are not met. Ala. Code § 26-2B-302(d)(3).

Connecticut specifies that the conserved person’s interests, which must be considered when the court is determining whether an objector has established that the transfer would be contrary to such interests, include “the reasonable and informed expressed preferences of the conserved person.” Conn. Gen. Stat. Ann. § 45a-667q(d)(1). This point seems sufficiently obvious that it might not be necessary to make a similar clarification in California.

Maine adds the evidentiary standard (preponderance of the evidence) by which the objector must establish that the transfer is contrary to the incapacitated or protected person’s interests. Me. Rev. Stat. Ann. tit. 18-A, § 5-532(d)(1).

Maryland changes the effect of a guardian’s or conservator’s ineligibility to act in the state. Specifically, where UAGPPJA uses this ineligibility to excuse the court’s issuance of a provisional order, Maryland uses this ineligibility to excuse the court’s recognition of the guardian or conservator upon approving the

petition. Compare Md. Code Ann., Est. & Trusts § 13.5-302(d), (e) with UAGPPJA § 302(d), (g). This is akin to, but slightly different from, the approach taken in the Tentative Recommendation, which would differentiate between ineligibility based on California law and ineligibility based on the law of the transferring state. See Proposed Prob. Code § 2002(d) & Comment.

Since Nevada extends the ability to petition for transfer to any “other interested party,” Nevada also modifies UAGPPJA’s second ground for denying a provisional order to transfer (UAGPPJA Section 302(d)(2)). Specifically, a Nevada court may deny such an order on the ground that “[t]he guardian or petitioner is not qualified for appointment as a guardian in this State pursuant to [Nevada Revised Statutes] 159.059.” Nev. Rev. Stat. Ann. § 159.2024(2)(b). Nevada’s use of “not qualified,” which differs from UAGPPJA’s term “ineligible,” reflects the terminology used in Nevada’s existing guardianship law. See *id.* § 159.059 (regarding qualifications of guardian).

New Jersey modifies the standard applicable when an objection is raised. Instead of permitting a court to deny a provisional order to transfer when “*the objector establishes that transfer ... would be contrary to the interests of the incapacitated or protected person,*” New Jersey permits denial when “an objection is made and *the court determines that transfer ... would be contrary to the interests of the incapacitated or protected person or conservatee.*” Compare UAGPPJA § 302(d)(1) (emphasis added) with N.J. Stat. Ann. § 3B:12B-18(d)(1) (emphasis added). The Tentative Recommendation proposes the same approach for California.

Final Orders Accepting the Transfer

Alabama adds a condition for the court’s issuance of a final order, requiring compliance with the specific provision of Alabama law requiring that a conservator furnish a bond. Ala. Code § 26-2B-302(e); see also *id.* § 26-2A-139.

Maryland omits the provision providing for a final order. Compare Md. Code Ann., Est. & Trusts § 13.5-302 with UAGPPJA § 302(e).

Nevada makes significant modifications to the provision on issuing a final order (UAGPPJA Section 302(e)). Its version reads:

The court shall issue a final order *granting guardianship upon filing of* a final order issued by the other state terminating proceedings in that state and transferring the proceedings to this State.

Nev. Rev. Stat. Ann. § 159.2024(3) (emphasis added). Using the phrase “granting guardianship” (as opposed to UAGPPJA’s “accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state”) is consistent with Nevada’s references to a petition “for guardianship” (discussed previously). By specifying that the final order is triggered “upon filing,” Nevada appears to put the burden of filing on the petitioner, while UAGPPJA seems to contemplate a court-to-court exchange of orders. *Compare id.* § 159.2024(3) *with* UAGPPJA § 302(e).

Determination of Whether the Proceeding Needs to Be Modified to Conform to the Law of the Accepting State

Like the Tentative Recommendation, Alabama provides some additional specificity regarding what changes may be required by the court to ensure that the proceeding conforms to Alabama law. Ala. Code § 26-2B-302(f).

Connecticut directs the court to order any modifications required to ensure that the conservatorship or guardianship conforms to its laws. Conn. Gen. Stat. Ann. § 45a-667q(g).

Maine omits the provision requiring a court to determine whether the proceeding needs to be modified to conform the laws of the accepting state. *Compare* Me. Rev. Stat. Ann. tit. 18-A, § 5-532 *with* UAGPPJA § 302(f).

Maryland omits this provision. *Compare* Md. Code Ann., Est. & Trusts § 13.5-302 *with* UAGPPJA § 302(f).

Ohio omits this provision. *Compare* Ohio Rev. Code Ann. § 2112.32 *with* UAGPPJA § 302(f).

New Jersey, rather than making it mandatory that a court determine whether a guardianship or conservatorship needs to be modified to conform the state’s laws, provides that the court shall make this determination “[u]pon application of a party or upon the court’s own motion.” N.J. Stat. Ann. § 3B:12B-18(f).

Virginia requires a final order accepting a transfer to include a determination of whether the guardianship or conservatorship needs to be modified to conform to Virginia law. Va. Code Ann. § 64.2-2115(E).

Obligation to Recognize an Order Made in Another State

In Iowa, a court’s obligation to recognize a guardianship or conservatorship order from another state is subject to the limitations on provisionally granting the transfer petition and the requirement to determine whether the guardianship

or conservatorship needs to be modified to conform to Iowa's laws. Iowa Code Ann. § 633.717(7).

Effect of Denial of Transfer Petition

Connecticut specifies that denial of a transfer petition does not affect the ability of a guardian or conservator to seek *involuntary representation*. Conn. Gen. Stat. Ann. § 45a-667q(i); *see also supra* p. 4 (discussing Connecticut's distinction between voluntary and involuntary representation).

Maryland says simply that the denial of a transfer petition "does not affect the ability of a guardian or conservator appointed by a court in another state to seek appointment as guardian of the person or property of the disabled person under Title 13 of this article." Md. Code Ann., Est. & Trusts § 13.5-302(f). In contrast, UAGPPJA Section 302(h) says that the denial of a transfer petition does not affect the ability of a guardian or conservator to seek appointment under the state's ordinary procedures for appointment of a guardian or conservator "*if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.*" (Emphasis added.)

Nevada omits the provision on the effect of denying a transfer petition. *Compare* Nev. Rev. Stat. Ann. § 159.2024 *with* UAGPPJA § 302(h).

Miscellaneous Modifications

Connecticut adds two subdivisions to UAGPPJA Section 302. One of these requires that at least 30 days before issuing a final order accepting a transfer, the court ensure that the conserved person is represented by counsel and is notified of his or her rights. Conn. Gen. Stat. Ann. § 45a-667q(f). The Tentative Recommendation would provide similar protections through the review process that must be completed not later than ninety days after the issuance of a final order accepting a transfer. *See* Proposed Prob. Code §§ 1851.1, 2002(f).

The other special Connecticut provision specifies that granting a transfer petition gives the conservatee the same rights as if the conservatee originally had a Connecticut conservator, and imposes on the conservator the duties required by Connecticut's laws. Conn. Gen. Stat. Ann. § 45a-667q(j). This is similar to the approach taken in the Tentative Recommendation. *See* Proposed Prob. Code § 2002(e)(3).

Similarly, Wyoming explicitly grants court authority to require any report or impose any duty provided for in specified sections of Wyoming's guardianship statutes. Wyo. Stat. Ann. § 3-8-302(j).

Ohio specifies that nothing in this section “shall limit the probate court’s authority under Chapter 2111. [sic] of the Revised Code.” Ohio Rev. Code Ann. § 2112.32(F); *see also id.* Chapter 2111 (pertaining to guardianships and conservatorships generally).

Staff Analysis

Aside from the modifications already incorporated into the Tentative Recommendation, the staff’s preliminary view is that the modifications made by other states to UAGPPJA Section 302 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

ARTICLE 4 (REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES):
SECTION 401 – REGISTRATION OF GUARDIANSHIP ORDERS

ULC Approach

Section 401 of UAGPPJA specifies the process for registering a guardianship order in another state. Specifically, where a guardianship proceeding is not pending in the state where registration is sought, a guardian from another state may, after notice to the appointing court, register the guardianship. UAGPPJA § 401. The guardian may register by filing certified copies of the order and letters of office as a foreign judgment in a court, in an appropriate county. *Id.*

Proposed California Approach

The Tentative Recommendation changes the reference to the “appointing court” to “the court supervising the conservatorship” to reflect the possibility that the conservatorship had previously been transferred. Proposed Prob. Code § 2011; *see also id.* § 2011 Comment.

The Tentative Recommendation removes the language specifying that the required papers are to be filed “as a foreign judgment.” *Compare* Proposed Prob. Code § 2011 *with* UAGPPJA § 401.

The Tentative Recommendation specifies that the registration filing must include a cover sheet approved by the Judicial Council. Proposed Prob. Code § 2011.

As in UAGPPJA, the Tentative Recommendation includes a separate section to address registration of conservatorship of the estate orders. Proposed Prob. Code § 2012. Due to the terminological differences and the fact that a person can act as both a conservator of the person and conservator of the estate for a conservatee, the Tentative Recommendation includes an additional section pertaining to registration of an order appointing a conservator of the person and estate. *Id.* § 2013. With the exception of terminology changes and minor conforming changes to address the different situations, the substance of these three sections is effectively the same. *Compare id.* § 2011 *with id.* §§ 2012, 2013.

Modifications Made By Other Jurisdictions

Conditions Under Which a Proceeding Can Be Registered

UAGPPJA Section 401 limits eligibility for registering a guardianship to situations in which “a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state.”

In contrast to UAGPPJA Section 401, the corresponding Maryland provision omits the explicit requirement that a guardian has been appointed in another state. Md. Code Ann., Est. & Trusts § 13.5-401. Maryland replaces this requirement with language explicitly limiting registration eligibility to situations in which “a guardian has not been appointed in this State” *Id.*

Who is Eligible to Register

Maryland also appears to recognize that there may be multiple guardians appointed in other states, changing the phrase identifying who can register from “the guardian appointed in another state” to “a guardian appointed in another state.” *Compare id.* with UAGPPJA § 401.

Notice Requirement

Connecticut specifically requires that the conservator of the person give notice to the appointing court of the intent to register the order *in Connecticut*. Conn. Gen. Stat. Ann. § 45a-667r(a). Maine seems to have a similar implicit requirement. *See infra* p. 19.

Nevada requires that the guardian seeking to register in Nevada give notice to the appointing court of the “reason for registration.” Nev. Rev. Stat. Ann. § 159.2025.

Registration Filing Location

A few jurisdictions modify the filing location specified in UAGPPJA. For instance, Connecticut specifies that the order is to be registered “in the district in which the conserved person resides, is domiciled or is located at the time of the filing” Conn. Gen. Stat. Ann. § 45a-667r(a).

Indiana provides additional detail regarding which county is the appropriate place to file a registration. To wit, Indiana permits registration by filing the required papers in “a court of this state having probate jurisdiction and venue of the registered guardianship.” Ind. Code Ann. § 29-3.5-4-1.

Nebraska has a special rule for a guardianship in which the incapacitated person has a real property interest in Nebraska and does not have a conservator. Specifically, Nebraska requires the guardian in such situation to file the registration paperwork in every county where such property is located. Neb. Rev. Stat. Ann. § 30-3918.

New Jersey specifies what an “appropriate county” means for the different types of protective proceedings. Specifically, the statute provides that:

[f]or purposes of a guardian of the person, an appropriate county is any county where the guardian seeks to maintain an action or proceeding on behalf of the incapacitated person; for purposes of a guardian of the property or of a conservatorship, an appropriate county is the county where the property belonging to the incapacitated person or conservatee is located.

N.J. Stat. Ann. § 3B:12B-19.

Virginia provides that the registration can be filed in a court in “any appropriate county *or city*.” Va. Code Ann. § 64.2-2116 (emphasis added).

Papers Required for Registration Filing

Unless otherwise noted, the requirements mentioned below are in addition to the registration papers required by UAGPPJA.

Maine requires the filing of the “guardian’s notification to the appointing court of an intent to register in this State.” Me. Rev. Stat. Ann. tit. 18-A, § 5-541.

Nevada requires a guardian seeking to register in the state to file “[a] copy of the guardian’s driver’s license, passport or other valid photo identification card in a sealed envelope.” Nev. Rev. Stat. Ann. § 159.2025.

Miscellaneous Modifications

Connecticut requires that each probate court maintain a publicly-accessible registry of conservator of the person orders registered in the state. Conn. Gen. Stat. Ann. § 45a-667r(b). This provision provides a means for third parties to confirm conservatorship registration. The Tentative Recommendation includes two provisions addressing related matters: (1) proposed Probate Code Section 2015 establishes a “safe harbor” for third parties, under which a person who relies in good faith on a UAGPPJA registration would be protected from liability in specified circumstances and (2) proposed Probate Code Section 2016 authorizes recordation of UAGPPJA registration documents.

Delaware replaces UAGPPJA Article 4 with a single section that reads: “The authority of a guardian or conservator appointed in another state to act in this state is governed by § 3904 of this title.” *See* Del. Code Ann. tit. 12, § 39A-401. Section 3904 states:

(a) A guardian, conservator, committee or other similar fiduciary, appointed by an appropriate court of another jurisdiction to manage the property of a person with a disability may, subject to the provisions of subsection (c) of this section, exercise in this State all powers of office, including the power to sell, purchase or mortgage real estate in the State; collect, receipt for and take possession of money due, tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action located in this State and remove it to the other jurisdiction.

(b) A guardian of the person, or other like fiduciary, appointed by an appropriate court of another jurisdiction to care for the person of a person with a disability, whenever such person with a disability is brought into the State for care and maintenance, such foreign fiduciary may, subject to the provisions of subsection (c) of this section, exercise all powers granted by the other jurisdiction for the care and protection of the person of such nonresident person with a disability.

(c) A foreign guardian shall not be entitled to exercise the powers set forth in subsections (a) and (b) of this section until the foreign guardian has filed for record in the Office of the Register in Chancery in any county of this State a certificate of the guardian's appointment from the other jurisdiction. Upon filing the certificate of appointment, the guardian will be authorized to petition the Court of Chancery of this State pursuant to court Rule 178 to exercise powers not granted by subchapter II of this chapter upon the giving of such security as the Court of Chancery of this State may order. Upon authorization, such foreign fiduciary shall account to the Court at such times as would a fiduciary for a resident of this State appointed under this chapter, and in the case

of guardians of the property shall be issued a certificate in accordance with § 3901 of this title.

(d) Whenever it appears to the satisfaction of the Court of Chancery of this State that the person with a disability is then a nonresident and the property in this State belonging to any such nonresident person with a disability has been removed to the state wherein such fiduciary was duly appointed and has been accounted for by the fiduciary according to the laws of the state wherein such fiduciary was duly appointed, the Court of Chancery may relieve such fiduciary from further accounting before the Court.

Nevada combines the registration provisions in UAGPPJA Sections 401 and 402 into a single section. *Compare* Nev. Rev. Stat. Ann. § 159.2025 *with* UAGPPJA §§ 401, 402.

New Jersey combines the provisions for registration of a guardianship and conservatorship into a single provision. *See* N.J. Stat. Ann. § 3B:12B-19. It appears that New Jersey uses the “conservator” terminology only for proceedings in which the protected person has not been deemed incapacitated, and refers to a UAGPPJA “conservatorship” proceeding wherein the respondent is deemed incapacitated as a “guardianship of the estate” proceeding. *Compare id.* § 3B:12B-3(b), (e) *with* UAGPPJA § 102(2), (3).

Oregon requires any person registering an order or making an appearance in the proceeding to pay a filing fee. Or. Rev. Stat. Ann. § 125.842. The Tentative Recommendation similarly requires payment of a filing fee for a UAGPPJA registration. *See* proposed Gov’t Code § 70662.

Tennessee combines the provisions for registration of a guardianship and conservatorship into a single provision. *See* Tenn. Code Ann. § 34-8-401. In doing so, Tennessee essentially replaces “guardian” with “conservator or guardian” and “guardianship” with “conservatorship or guardianship.” *Compare id. with* UAGPPJA § 401. These changes diverge from UAGPPJA terminology, as the term “protective order” is not used.

Staff Analysis

As discussed above, Oregon’s filing fee requirement is akin to the one in the Tentative Recommendation. In addition, the Tentative Recommendation, in its “safe harbor” and recordation approach, addresses issues related to those covered by Connecticut’s requirement of a publicly-accessible registry.

Aside from those modifications already included in the Tentative Recommendation, the staff’s preliminary view is that the modifications made by

other states to UAGPPJA Section 401 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

ARTICLE 4: SECTION 402 – REGISTRATION OF PROTECTIVE ORDERS

ULC Approach

Section 402 of UAGPPJA specifies the process for registering a protective order in another state. Specifically, where a petition for protective order is not pending in the state where registration is sought, a conservator from another state may, after notice to the appointing court, register the protective order by filing as a foreign judgment certified copies of the order and letters of office and of any bond. UAGPPJA § 402.

Proposed California Approach

The Tentative Recommendation makes the same changes to Section 402 as to Section 401. *See supra at p. 17.*

Modifications Made By Other Jurisdictions

Combined Registration Provisions

Several states, Delaware, Nevada, New Jersey, and Tennessee, combine the registration provisions for guardians and conservators into a single section. For the most part, the modifications that these states make to the registration provisions are included in the previous discussion in this memorandum, pertaining to UAGPPJA Section 401.

Conditions Under Which a Proceeding Can Be Registered

Two states modify the UAGPPJA language limiting eligibility for registration to situations where a “petition for a protective order is not pending” in the state where registration is sought. *See UAGPPJA § 402.*

Indiana limits eligibility for registration to situations where a proceeding for a “guardianship or protective order” is not pending in the state. Ind. Code Ann. § 29-3.5-4-2(2) (emphasis added).

Maryland explicitly limits eligibility for registration of a protective order to situations where a guardian has not been appointed in Maryland. The state does

not include UAGPPJA Section 402's explicit condition that a conservator has been appointed in another state. *Compare* Md. Code Ann., Est. & Trusts § 13.5-402 *with* UAGPPJA § 402; *see also supra* p. 18.

Who May Register

Maryland appears to recognize that there may be multiple conservators appointed in other states, changing the phrase identifying who can register from "the conservator appointed in another state" to "a conservator appointed in another state." *Compare* Md. Code Ann., Est. & Trusts § 13.5-402 *with* UAGPPJA § 402.

What May Be Registered

Ohio specifies that a guardian of the estate may register "a protective order or guardianship," whereas UAGPPJA Section 402 only allows a guardian of the estate to register a "protective order." *Compare* Ohio Rev. Code Ann. § 2112.42 *with* UAGPPJA § 402. The reason for this modification is unclear, as the definition of "protective order" in Ohio's enactment appears to include a guardianship order. Ohio Rev. Code Ann. § 2112.01(M). Specifically, Ohio modifies the definition of "protective order" to include "an order appointing a guardian or other order ... related to the management of an adult's person, property, or both or an order ... related to the management of an individual's property." *Id.*

Notice Requirement

Connecticut specifically requires that the conservator of the estate give notice to the appointing court of the intent to register the order *in Connecticut* (as opposed to simply requiring notice of an intent to register). Conn. Gen. Stat. Ann. § 45a-667s(a); *see also infra* p. 24 (similar implicit requirement in Maine).

Registration Filing Location

A few jurisdictions modify the filing location specified in UAGPPJA.

Connecticut permits the conservator of the estate to both:

- (1) register the conservator of the estate order in this state as a conservator of the estate order by filing, as a foreign judgment, certified copies of the order and letters of office and of any bond in the court of probate in the district in which the conserved person resides, is domiciled or is located at the time of the filing of the certified copies, and
- (2) file certified copies of the conservator of the estate order with the town clerk of the town in which any real

property of the conserved person is located for recording on the land records.

Conn. Gen. Stat. Ann. § 45a-667s(a).

Indiana permits registration by filing the required papers in “the court of this state having probate jurisdiction in any county in which property belonging to the protected person is located.” Ind. Code Ann. § 29-3.5-4-2.

Nebraska appears to require the conservator to file the registration paperwork “in every county in which property belonging to the protected person is located.” Neb. Rev. Stat. Ann. § 30-3919.

Virginia provides that the registration can be filed in a court in “any appropriate county *or city*.” Va. Code Ann. § 64.2-2117 (emphasis added).

Papers Required for Registration Filing

Regarding the bond requirement, Arizona specifies that only “any then current bond required by the appointing court” needs to be filed in order to register. Ariz. Rev. Stat. Ann. § 14-12402.

Maine requires, in addition to the papers UAGPPJA requires be filed to register, that the “conservator’s notification to the appointing court of an intent to register in this State” be filed. Me. Rev. Stat. Ann. tit. 18-A, § 5-542.

Nevada does not explicitly require the filing of a bond. *See* Nev. Rev. Stat. Ann. § 159.2025.

Tennessee also does not explicitly require the filing of a bond. *See* Tenn. Code Ann. § 34-8-401.

Miscellaneous Modifications

Connecticut requires that each probate court maintain a publicly-accessible registry of conservator of the estate orders registered in the state. Conn. Gen. Stat. Ann. § 45a-667s(b). As discussed previously, the Tentative Recommendation addresses related issues through its “safe harbor” and recordation approach.

Oregon specifies that the person registering the order, and any other person making an appearance in the proceeding, must pay the filing fee established by Oregon law. Or. Rev. Stat. Ann. § 125.845. The Tentative Recommendation similarly requires payment of a filing fee for a UAGPPJA registration. *See* proposed Gov’t Code § 70662.

Staff Analysis

As discussed above, Oregon’s filing fee requirement is akin to the one in the Tentative Recommendation. In addition, the Tentative Recommendation, in its “safe harbor” and recordation approach, addresses issues related to those covered by Connecticut’s requirement of a publicly-accessible registry.

Aside from those modifications already included in the Tentative Recommendation, the staff’s preliminary view is that the modifications made by other states to UAGPPJA Section 402 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

ARTICLE 4: SECTION 403 – EFFECT OF REGISTRATION

ULC Approach

Section 403 of UAGPPJA specifies the effect of registration, which allows the guardian or conservator to exercise “all powers authorized in the order of appointment except as prohibited under the laws of this state....”

Proposed California Approach

The Tentative Recommendation makes revisions that clarify (1) registration in a single county is sufficient and (2) registration is only effective while the conservatee resides in another jurisdiction. Proposed Prob. Code § 2014 Comment.

Modifications Made By Other Jurisdictions

Scope of Registration

Arizona modifies this section to explicitly apply to registration of a “conservatorship,” in addition to “any other protective order.” *Compare, e.g.,* Ariz. Rev. Stat. Ann. § 14-12403(A) *with* UAGPPJA § 403. Staff notes that the term “protective order” includes a conservatorship in both the uniform act and Arizona’s enactment. UAGPPJA § 102(10), Ariz. Rev. Stat. Ann. § 14-12102(10).

Rights and Responsibilities Conferred on Registering Party

To identify the rights and responsibilities conferred on a party that registers, Alabama cites to a provision of its uniform Guardianship and Protective Proceedings enactment. Ala. Code § 26-2B-403(a). This provision specifies that a “domiciliary foreign conservator may exercise as to assets in this state all powers of a conservator appointed in this state and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.” *Id.* § 26-2A-160.

Court Authority Over Registered Proceeding

New Jersey adds a subdivision to this section, providing that a court of the State “shall recognize and enforce, but may not modify, except in accordance with [the state’s enactment of UAGPPJA], a registered order.” N.J. Stat. Ann. § 3B:12B-20(c).

Wyoming adds a subdivision providing that “[a]ny court in this state issuing a guardianship or protective order pursuant to this act may require the guardian or conservator to file a certified copy of any report or accounting the guardian or conservator files with the court.” Wyo. Stat Ann. § 3-8-403.

Miscellaneous Modifications

Connecticut provides that the registration of a conservator of the person order shall lapse 120 days after registration, except that the registration can be extended by the court for an additional 120 days for good cause. Conn. Gen. Stat. Ann. § 45a-667t(a). For discussion of the possibility of using a similar approach in California, see Second Supplement to Memorandum 2013-26, pp. 11-13.

Delaware omits this section. *See supra* pp. 19-20.

Staff Analysis

The staff’s preliminary view is that the modifications made by other states to UAGPPJA Section 403 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

ARTICLE 5 (MISCELLANEOUS PROVISIONS): SECTION 501 – UNIFORMITY OF
APPLICATION AND CONSTRUCTION

ULC Approach

Section 501 of UAGPPJA provides that “[i]n applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.”

Proposed California Approach

The Tentative Recommendation specifies that the consideration of the need to promote uniformity must be “consistent with the need to protect individual civil rights and in accordance with due process.” Proposed Prob. Code § 2021.

Modifications Made By Other Jurisdictions

Connecticut’s enactment was the model for the modification to the Tentative Recommendation described above. Specifically, Connecticut’s enactment specifies that the consideration of the need to promote uniformity be “consistent with the need to protect individual civil rights and in accordance with due process.” Conn. Gen. Stat. Ann. § 45a-667u.

Several states modify the wording of UAGPPJA Section 501, some substantially, but the changes do not appear to be substantive. *See, e.g.,* Ariz. Rev. Stat. Ann. § 14-12501, Nev. Rev. Stat. Ann. § 159.2029.

Delaware, Minnesota, Ohio, and Wyoming all omit this section from their enactments.

Staff Analysis

While some states omit this provision entirely, staff sees a benefit to retaining a statement promoting uniformity in the Commission’s recommendation.

Aside from the language of Connecticut’s enactment, which is already incorporated in the Tentative Recommendation, staff found no substantive modifications to the language of this section in its review of the UAGPPJA enactments in other states. Therefore, **we see no need for the Commission to change its proposed treatment of this provision.**

ARTICLE 5: SECTION 502 – RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

ULC Approach

Section 502 of UAGPPJA specifies that the Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (E-SIGN), with noted exceptions.

Proposed California Approach

The Tentative Recommendation retains the substance of this section largely unchanged. *Compare* UAGPPJA § 502 *with* proposed Prob. Code § 2022.

Modifications Made By Other Jurisdictions

Generally, enacting states included the language of this section largely unchanged or omitted the section altogether. Delaware, Minnesota, Nevada, New Jersey, and Ohio all omit this section from their enactments.

Staff Analysis

Staff sees no benefit to excluding the language of UAGPPJA Section 502 as some states have done. As discussed in Memorandum 2013-14, staff believes it is prudent to include Section 502 in the Commission’s recommendation. Therefore, **staff does not recommend any changes to this provision.**

ARTICLE 5: SECTION 504 – TRANSITIONAL PROVISION

ULC Approach

Section 504 of UAGPPJA provides that the Act applies to proceedings begun on or after the effective date of the legislation. UAGPPJA § 504(a). Certain provisions apply to proceedings begun before the effective date, regardless of whether a guardianship or protective order has been issued. *Id.* § 504(b).

Proposed California Approach

The Tentative Recommendation retains the substance of this section largely unchanged. *Compare* UAGPPJA § 504 *with* proposed Prob. Code § 2024.

Modifications Made By Other Jurisdictions

Generally, to the extent that states include this provision, they do not modify its text. Several states omit the provision entirely, while other states omit subdivision (b).

Alabama, Connecticut, Minnesota, Nevada, and Ohio omit this section entirely; Delaware and Maryland omit subdivision (b). *See* Del. Code Ann. tit. 12, § 39A-402; Md. Code Ann., Est. & Trusts § 13.5-503.

Staff Analysis

While some states omit this provision entirely, staff sees a benefit to retaining a statement clarifying the applicability of the legislation to different proceedings.

Absent further information about the purpose or effect of omitting all or part of UAGPPJA Section 504, **staff does not recommend that the Commission explore the possibility of making such a change in California.**

Respectfully submitted,

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