

One of the primary concerns for people with severe intellectual disabilities in our state has been the issue of guardianship. Over the past several years, guardianship ‘rights’ laws have been created here: the Guardianship Right of Association act and the Guardianship Bill of Rights, both passed in 2022, granted broad rights to individuals without consideration of competence or capacity.

These laws caused uncertainty about the scope of authority a guardian could have in protecting a vulnerable person from predatory associations or oversight of medical decisions, among many other things. The full implementation of the Medicaid HCBS Settings rule exacerbated the problem, with adults denied adequate support and supervision. Providers were caught between protecting the health and safety of their clients and complying with state rules against restrictions.

This year, the state courts requested some modifications to the Guardianship Bill of Rights; the language left them unclear as to which rights could be waived to accommodate the principal’s needs.

HB334 was proposed as a solution to these issues, making amendments to the Bill of Rights and outlining rules for Supported Decision Making agreements. I participated in the work group in drafting this bill. While we were able to reach some compromises with our Disability Law Center representatives in the language, several of us felt it did not provide adequate protection for individuals with significant disabilities.

Two of the women, both guardianship lawyers and mothers of adult children with severe disabilities, had been working on a bill for two years that would carve out additional protections for people with severe lifelong conditions and make the guardianship process easier for families. Many families in our state simply do not have the resources to complete the process. Even though the state offers pro se online forms, they can prove problematic and are geared towards limited guardianships that may not be helpful enough.

They found a senator willing to sponsor this carveout, titled SB199, which received wide support from the legislature. It passed almost unanimously, with only one negative vote from the Senate. Ironically, this was a woman who is a longtime educator and who had promised constituents she would support the bill.

Despite the women lawyers having discussed the carveout with the Disability Law representatives previously, they were irate with the new bill, claiming it deprived the principals of their rights without due process.

The DLC and the local and national ACLU have joined in a lawsuit against the state to block this law. I have read the complaint; it refers to guardianship as 'civil death' and continues in similar hyperbolic language. The case has been assigned to a judge known for controversial decisions and a very broad definition of rights. His decision 10 years ago had national implications, so this should be of interest to other states. I have included the links below; reviewing the Senate committee hearing of SB199 gives clues to their thinking, which seems to fully disregard court authority...

Guardianship Right of Association:

<https://le.utah.gov/xcode/Title75/Chapter5/75-5-S312.5.html>

Guardianship Bill of Rights:

<https://le.utah.gov/~2022/bills/static/HB0320.html>

HB334:

<https://le.utah.gov/~2025/bills/static/HB0334.html>

SB199: (to see the Senate hearing, click on the top right bar, Hearings and Debate)

<https://le.utah.gov/~2025/bills/static/SB0199.html>