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Setting ground rules for guardianship

- 1 WHEREAS guardianship is a relationship created and governed by State law, in which a court vests in an individual the duty and power to make personal and property decisions for another;
- 2 WHEREAS guardians make critical decisions regarding medical care, placement, finances, and lifestyle for frail older Americans and younger persons with mental disabilities;
- 3 WHEREAS virtually every State has modified State guardianship laws during the past decade, and legislatures have addressed such issues as a scarcity of guardianship services for those in need, protecting procedural due process in guardianship appointments, training guardians, establishing clear standards for determining incapacity, and court monitoring of guardians;
- 4 WHEREAS less restrictive alternatives to traditional guardianship do exist (e.g., health care directives, durable powers of attorney), and may be more appropriate in certain situations; and
- 5 WHEREAS the need for guardians is rapidly increasing as the population ages, the frequency of dementia correspondingly increases, and families have fewer children, more divorces, and greater mobility;

***THEREFORE, BE IT RESOLVED by the 1995 White House Conference on Aging to support policies that:***

- 6 Establish court programs that ensure accountability of guardians/conservators in financial transactions and personal decisions by providing their ongoing supervision;
- 7 Support the adoption of laws and court procedures that promote and encourage limited guardianships and the use of the least restrictive level of guardianship/conservatorship;
- 8 Provide education and training efforts to inform guardians, judges, attorneys, other professionals, families and the general public about guardianship/conservatorship and its less restrictive options;
- 9 Require procedural due process protection in guardianship/conservatorship, including the right of the proposed ward to adequate notice, representation by counsel, to be present, introduce evidence, and otherwise participate at hearings;

- 10 Require guardianship courts to recognize and respect advance directives legally executed by proposed wards at a time when said proposed wards had capacity;
- 11 Develop effective systems on the State and local levels to provide guardians/conservators of last resort for all persons, including needy or indigent persons, without available relatives and friends;
- 12 Support the appointment of a nonresident of the State as guardian/conservator if the person is related by marriage, blood, or legal adoption;
- 13 Require registration and education of individual guardians/conservators;
- 14 Emphasize a functional determination of incapacity rather than a strict medical diagnosis to identify areas of assistance that may be needed, retaining as much autonomy for the proposed ward as possible.

