

Adult Guardianship and the Aging Society— Enhancing Society’s Role to Ensure the Quality of Life

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1. Introduction

In April 2000, along with the Long-term Care (LTC) Insurance System, another system was initiated to support the aging society—the Adult Guardianship System. The two systems were expected to work in unison to support the daily living and decision-making needs of the elderly.

The LTC insurance system made good progress from the start due to its existing base of LTC service users, and the fact that it consolidated two existing systems—the elderly health care system and elderly welfare system.

On the other hand, the adult guardianship system still remains overlooked and under-used after four years of operation. In addition to its complexity, the system has been handicapped by the poor reputation of its precursor, the quasi-competency guardianship system, which was often invoked in cases of bankruptcy and criminal conviction.

This paper describes the new adult guardianship program, examines current problems, and considers ways to promote its wider adoption.

2. Description of Adult Guardianship

The adult guardianship system compensates for impaired judgment capacity and protects the rights of adults when they cannot make decisions because of illness, injury or disability.

1. Legal Foundation

The new system is unusual in that it has no basic law. The laws underlying the system are the Amendment to the Civil Code, Law Concerning Contracts for Voluntary Guardianship, Law Concerning the Servicing of Related Laws for the Enactment of the Civil Code Amendment, and Law Concerning Guardian Registration.

In the past, legal protection was provided under the competency and quasi-competency guardianship system of the Civil Code. However, to correct gaping inadequacies due to its uniformity of protection and narrow scope, and impediments to its use—particularly the need to make an entry in the family registry—the adult guardianship system was created by amendments to the Civil Code.

Despite this unusual legal foundation, the system deserves to be understood and operated as a system in its own right—particularly in light of its implementation alongside the LTC insurance system to serve the ultra-aging society that looms ahead.

2. Characteristics of the New Guardianship System

The guardianship system covers two broad areas of concern: personal management, and estate management. Personal management deals with decisions about daily life including health care and long-term care, physical and mental well-being, and living arrangements. Estate management deals with the management of property, assets, and income.

Four classifications are used: *koken* (which covers estate management), *hosa* (protection and assistance), *hojo* (assistance), and *nin'i koken* (voluntary guardian). The first two are roughly synonymous with the incompetency and quasi-incompetency guardianship systems, respectively, under the previous scheme. The third is a new classification to address cases of slight impairment. The fourth classification—voluntary guardianship, the main feature of the new system—enables individuals to choose a guardian in advance to perform personal and estate management, and takes the form of a voluntary guardianship agreement..

Figure 1 Overview of Adult Guardianship

	Statutory guardianship			<i>Nin'i koken</i> (voluntary guardianship agreement)
	<i>Koken</i>	<i>Hosa</i>	<i>Hojo</i>	
Ward's capacity for rational judgment	Fully impaired	Severely impaired	Slightly impaired	
Application procedure	Petition is filed in family court; guardianship starts when court issues final approval			By certification; takes effect when court approves supervisor
Scope of guardian's authority to review decisions made by ward	Acts other than those pertaining to daily life	Acts described in Civil Code Article 12(1)	Acts specified in petition and granted by court	Acts specified in agreement
Scope of guardian's power of attorney	All acts pertaining to the estate	Acts specified in petition and granted by court	Acts specified in petition and granted by court	Acts specified in agreement
Registration	Registration of authority granted to guardian			Registration of agreement
Duties & responsibilities	Duty to consider ward's mental & physical well-being and living arrangements			

Source: Compiled from Ministry of Justice, Civil Affairs Bureau Counselor's Reference Room documents.

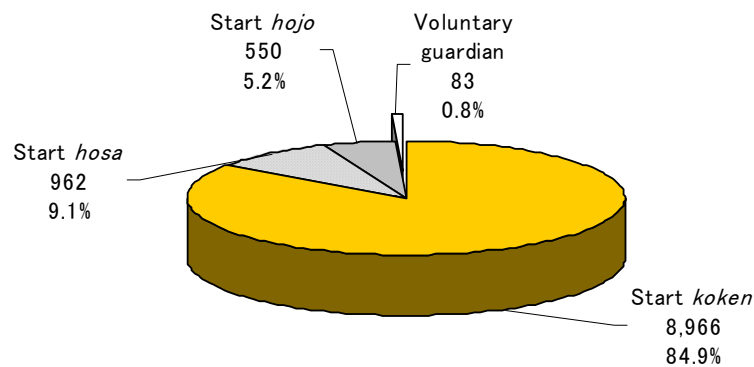
3. Present Status of Use

Because of the nature of the adult guardianship system, data is more difficult to obtain than for the LTC insurance system. Below we rely on data from *Overview of Adult Guardianship Cases from April 2002 to March 2003* (Family Bureau, General Secretariat of the Supreme Court) regarding the status of guardianship petitions and final court approvals.

1. Types of Guardianship

In fiscal year 2002, family courts approved a total of 10,561 cases to initiate the four types of guardianship, whose composition is shown in Figure 2. For reference, the number of voluntary guardianship agreements registered in the same year was 1,801 (however, guardianship begins when the voluntary guardian supervisor is approved by the court).

Figure 2 Composition of Final Court Approvals



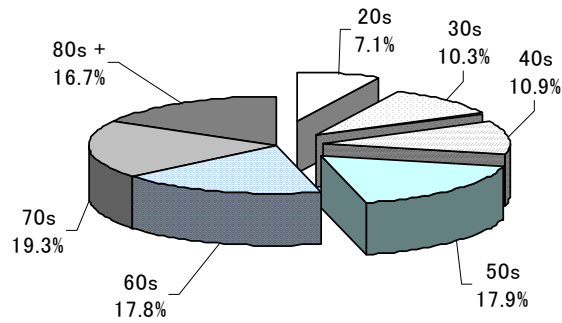
Source: Supreme Court, *Overview of Adult Guardianship Cases from April 2002 to March 2003*.

2. Age Composition of Wards

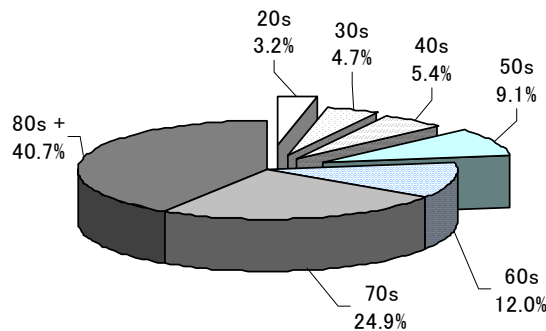
Regarding the age composition of wards, approximately 54% of men and 77% of women are elderly persons aged 60 and over (Figure 3). While adult guardianship is not restricted to elderly persons, these results clearly point to the system's characteristic as a complement to the LTC insurance system in addressing the needs of the elderly.

Figure 3 Age of Ward, by Gender

① Men



② Women

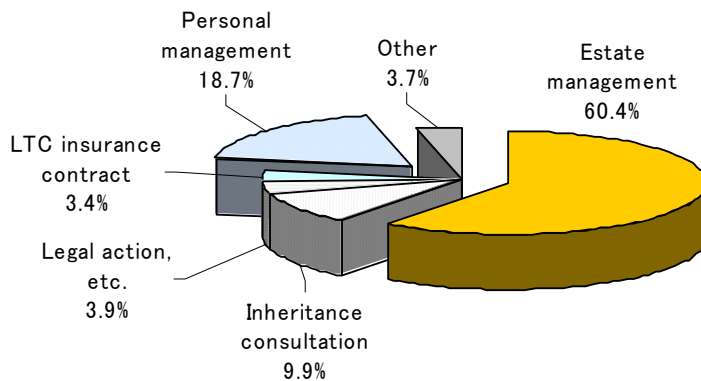


Source: See Figure 2.

3. Reasons for Filing Petition

As for reasons for filing a petition for guardianship, the most prevalent by far is estate management (60.4%), followed by personal management (18.7%) and inheritance consultation to prepare a will (9.9%; Figure 4). These results indicate that the system bears a close resemblance to the previous guardianship model, which mainly focused on estate management, and that the needs of users are still oriented around estate management.

Figure 4 Reason for Filing

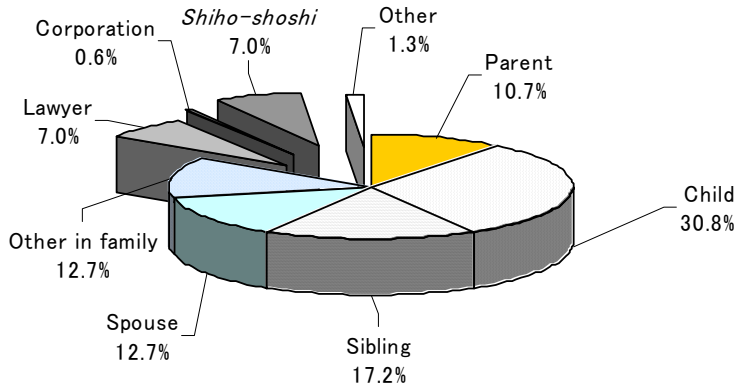


Source: See Figure 2.

4. Relationship to Ward

Finally, regarding the guardian’s relationship to the ward, family members—children, siblings, and spouses—comprise approximately 84% of the total (Figure 5). However, there has been rapid growth in the number of third-party guardians who are not family members—760 are lawyers (up 21% from the previous year), 814 are *shiho-shoshi* lawyers (up 106%), and 62 are corporations (up 32%).

Figure 5 Guardian’s Relationship to Ward



Source: See Figure 2.

4. The Essential Nature of Adult Guardianship

Based on the history of adult guardianship and its record over the past three years, the main purpose of the new system at first glance appears to be unchanged from the past—to facilitate estate management.

However, while no clear purpose is specified in law, a strong case can be made that internal and external factors surrounding the new system—the rapid aging of society, simultaneous implementation of the LTC insurance system in which elderly persons contract for services, and adoption of a voluntary guardianship system that enables individuals to choose a guardian in advance—have changed the essential nature of adult guardianship. As a result, a new objective has emerged—to create a society that respects the decisions of elderly persons. Thus even while estate management remains important, the primary emphasis has shifted to personal management.

As interpreted under Article 858 of the Civil Code, personal management generally pertains to the following acts: (1) maintaining long-term care and matters of daily life, (2) securing living arrangements, (3) monitoring admission, treatment, and release from care facilities, and filing complaints (4) medical treatment, and (5) education and rehabilitation (Figure 6).

Figure 6 Article 858 of the Civil Code

In attending to matters of daily living, medical treatment and care, and property management, the *seinen koken-nin* (adult guardian) must respect the intentions of the ward, as well as consider the ward's physical and mental condition and living arrangements.

※ Article 876(5) pertains to the *hosa-nin*.

※ Article 876(10) pertains to the *hojo-nin*.

As such, we must understand and promote adult guardianship not primarily as a means of estate management for individuals with impaired capacity, but as a way for individuals to “be themselves” and manage their estate as they see fit even in the event of impaired capacity.

And as aging accelerates in the future, respect for the rights and dignity of individuals can be enhanced by empowering people to “be themselves” even when they can no longer make their own decisions. This would be in the interest of the elderly as well as society as a whole.

The objective of the LTC insurance system was to socialize long-term care—that is, to shift the growing burden of physical care of the elderly from families to society. This became necessary because families could no longer meet the physical care and housework needs of the elderly. In addition, physical abuse of elderly persons by family members was a growing social problem. The LTC insurance system has to an extent successfully enhanced the quality of life (QOL) of the elderly in terms of physical care.

We now need to shift the burden of supporting the decision-making of the elderly from the family to society. Elderly persons with impaired capacity are at a disadvantage in today's contract-centered economic society, and cases of fraud and swindling are growing sharply. Also, similar to the physical care aspect of the quality of life, families are increasingly unable to provide support here as well. Using the adult guardianship system, we need to socialize personal management, and thereby improve the quality of life with regard to decision-making.

5. Promoting Adult Guardianship

1. Urgency (Background Factors)

In the three years since the new adult guardianship system was introduced, approximately 30,000 cases have been approved in court. This is a small fraction of the three million users of LTC insurance (including assistance and long-term care), of which 1.5 million are

estimated to have impaired capacity, and of the approximately 20 million persons aged 65 and over who are potential users of voluntary guardianship. Japan also lags far behind other countries, where an adult guardianship usage rate of 1% is considered appropriate internationally.

Considering the rapid aging of society—particularly the growing number of elderly with impaired capacity—and the resulting growth of problems with services (for example, ineffective LTC insurance services and uniform care plans) and involving money (such as fraud and swindling), promoting the adult guardianship system is an urgent priority.

2. Structural Problems

One factor constraining the growth of adult guardianship is the shortage of available guardians. The LTC insurance system has approximately 3.5 million elderly persons needing care, who are served by 30,000 active care managers, and 220,000 home helpers acting as a bridge between the elderly and care managers.

By comparison, the adult guardianship system (including voluntary guardian agreements) has a huge potential market of 20 million persons including elderly persons who are still healthy. According to the study cited earlier, while family members serve as guardians in the vast majority of cases, only about 1,000 cases involve trained professional guardians (including lawyers, *shiho-shoshi* lawyers, certified public tax accountants, social welfare counselors, etc.; the actual number is probably even less due to multiple appointments).

Given the severe imbalance between the number of potential users and professional guardians, the difficulty of access to a professional guardian is a major problem. Another problem is the lack of intermediaries (as an occupational category) to facilitate access, and venues for interaction. These obstacles impede the recognition and penetration of the system itself.

3. Policy Recommendation

Here we briefly consider how to make the adult guardianship system more accessible and understandable.

The method adopted to encourage use of the LTC insurance system was to require people to enroll or else be barred from the continued use of LTC services. However, this application of a measure external to the system would be inappropriate for adult guardianship, as it would interfere with contractual responsibilities (for example, by inducing families to make contracts for no particular reason) and also encourage cases of fraud.

Thus the best method would be to train and develop human resources that will serve as intermediaries between users and professionals. At the same time, we also need to establish venues for their operation.

7. Conclusion

In promoting adult guardianship, the objective should not be simply to increase the number of petitions filed or boost results, but rather to respect the decisions of the elderly as much as possible. The system must support decisions of the elderly so they can enjoy unique lifestyles in daily living and choose the life they want to live. Ultimately, the best way to achieve this is to train and develop more human resources to perform the new role of adviser (Figure 7).

By relying on these advisers to expand the system, the aim is to socialize the personal management of adults with impaired capacity—that is, to shift the burden of decision-making for these adults to someone outside of the family—and thereby create a society where more elderly persons can make decisions to live rich, rewarding lives. After all, as the country with the world’s greatest longevity, Japan should lead in creating a society where people can age with dignity.

Figure 7 Scheme to Expand Adult Guardianship

