



Serving as a Guardian of the Person: Guidelines for decision making

Training developed by the
Guardianship Monitoring Program of the Office of the
Public Guardian
State of Delaware

Introduction

If you are completing this training, you are either in the process of petitioning the Court of Chancery to become someone's guardian or you have recently been appointed guardian of someone's person.

After the training is complete, you will have a clear understanding of the guidelines guardians of the person are expected to follow as they make decisions on behalf of a disabled person.

Throughout this exercise, you will be referred to as “guardian” and the person for whom you are guardian will be referred to as the “disabled person”.

General Standards

It is the responsibility of each guardian to know the extent and limitations of the power and authority granted to them by the Court of Chancery and understand that all actions they take as guardian must be consistent with the court order.

All guardians must comply with the rules and requirements of the Court of Chancery.

All guardians shall seek assistance, as needed, to fulfill their responsibilities to the disabled person.

All guardians must respond to, and remain in contact with, the Court of Chancery.

All guardians are required to promptly contact the Court and report any changes in the disabled person's capacity that may require an expansion or restriction of their authority as guardian.

General Standards

All guardians must treat the person under guardianship with dignity.

All guardians shall promote social interactions and meaningful relationships consistent with the preferences of the disabled person. Guardians should encourage and support the disabled person in maintaining contact with their family and friends unless the contact will cause him or her substantial harm.

A guardian may not interfere with established relationships unless it is necessary to protect the disabled person from substantial harm.

Acting as Guardian of the Person

The guardian may keep immediate family members and friends advised of important medical issues, and allow for their input, if/when doing so would benefit the disabled person.

The guardian should develop and maintain a working knowledge of the services, providers and facilities available in the community that may need to be utilized on behalf of the disabled person.

The guardian shall treat all professionals and service providers with courtesy and respect and foster cooperative efforts on behalf of the disabled person.

If the disabled person has a different guardian for their property, the guardian of the person shall make a good faith effort to cooperate with that person or agency.

Acting as Guardian of the Person

The guardian shall identify and advocate for the disabled person's goals, needs, and preferences. Goals are what are important to the disabled person whereas preferences are specific expressions of choice.

- Ask the disabled person what he or she wants.
- If the disabled person has difficulty expressing what he or she wants, you should do whatever you can to assist him or her with communicating.
- Only when the disabled person cannot express his or her goals and preferences should you seek input from others familiar with the individual to determine what he or she would have wanted.
- If you cannot figure out what the disabled person's goals and preferences are from any source, only then should you make a decision in the disabled person's best interest.

Acting as Guardian of the Person

When making a decision, the guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the disabled person while placing the least amount of restrictions on his or her rights and freedom.

The guardian should weigh the risks and benefits and develop a balance between maximizing the disabled person's independency and maintaining the disabled person's safety, protection and dignity.

The guardian should attempt to maximize the self-reliance and independence of the disabled person.

Acting as Guardian of the Person

The guardian should provide the disabled person with every opportunity to exercise those individual rights that he or she might be capable of exercising (i.e. personal care, financial needs, etc.) as long as doing so would not cause him or her harm.

The guardian should encourage the disabled person to participate in decisions that will affect him or her as well as assist and support the disabled person in regaining some or all of his or her capacity.

Duties and Obligations of the Guardian of the Person

Unless the court order appointing you guardian states otherwise, the following are some of your duties and obligations as guardian of the person:

- Ensure that the disabled person is living in the most appropriate setting that meets his or hers goals, needs, and preferences. Consider home and community based settings first as long as they are not inconsistent with the disabled person's wishes and would not cause him or her harm.
- Authorize moving the disabled person to a more restrictive environment only after evaluating all pertinent medical and health care options currently available and making an independent determination that the move is necessary to minimize the risk of substantial harm and to secure the best treatment possible for the disabled person.
- Before choosing a residential placement, consider how close the disabled person will be to the people and activities that are important to him or her.

Duties and Obligations of the Guardian of the Person

- Make provisions for the support, care, comfort, health and maintenance of the disabled person.
- Make reasonable efforts to secure medical, psychological, and therapeutic services as well as social services, education, training and vocational services that will maximize the disabled person's self-reliance and independence.
- Seek a second opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where medical intervention poses a significant risk to the disabled person.
- Keep the disabled person's affairs confidential whenever possible and attempt to disclose information only when necessary.
- Seek guidance from the Court when questions arise surrounding marriage, divorce, etc.
- Petition the Court to terminate the guardianship if the disabled person sufficiently improves or recovers from the disability that initiated the guardianship.
- Promptly report to the appropriate authorities suspected abuse, neglect and/or exploitation of the disabled person and then notify the Court of the steps you took and your concerns.

Duties and Obligations of the Guardian of the Person

- Determine whether the disabled person, before the appointment of a guardian, executed any advance directives such as powers of attorney, living wills, organ donation desires or other statements that he or she may have recorded in medical charts. Inform the Court, and any other interested parties, promptly if any such documents are found.
- If the disabled person had expressed, or currently expresses, a preference regarding the withholding or withdrawal of medical treatment, you should follow his or her wishes. If the disabled person's current wishes are in conflict with previously expressed wishes, you should petition the Court for instructions and guidance.
- A guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the disabled person. Impropriety or conflict of interest arises when the guardian has some personal interest that can be perceived as self-serving or adverse to the position or best interest of the disabled person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the disabled person.
- A guardian may not employ his or her family or friends to provide services for a profit or fee unless no alternative is available and the arrangement is authorized by the Court.

Failure to Comply

- If, as a guardian of person, property or both, you fail to comply to all of the rules of the Court of Chancery and the State of Delaware you may:
 - Be removed as guardian
 - Be referred to the Guardianship Monitoring Program for investigation
 - Be sanctioned by the Court of Chancery by having a judgment issued against you
 - Be referred to the Department of Justice for investigation
 - Be referred to local law enforcement for investigation
 - Be referred to Adult Protection Services (APS) or the Division of Long Term Care Resident Protection (DLTCRP) for investigation

Resources

- The website for the Court of Chancery is:
www.courts.delaware.gov/chancery/guardianship
- Division of Health and Social Services (DSAAPD) Division of services for aging and adults with physical disabilities; Contact to download a copy of the Guide to Services for Older Delawareans and Persons with Disabilities.
NCC- (302) 391-3500 Kent/Sussex- (302) 424-7310 Toll Free 1-800-223-9074
or their website: www.dhss.delaware.gov/dsaapd or (ADRC) The Aging and Disability Resource Center for other helpful information:
<http://www.delawareadrc.com>
- Delaware Helpline (Statewide Information for health and human services programs) Toll Free 1-800-464-4357
- Dial 2-1-1 for other social services in the State of Delaware
- To Report Elder Abuse dial 911 or contact 1-800-223-9074