

DEPARTMENT OF HUMAN SERVICES BUREAU OF GUARDIANSHIP SERVICES

Role of the Legally Appointed Guardian

A guardian is a person or agency appointed by a court to make personal decisions for an individual who is not capable of making some or any decisions independently.

1. A personal guardian is responsible for:

- encouraging the individual to participate with the guardian in the decision-making process, to the maximum extent of the individual's ability, in order to encourage the individual to act on his or her own behalf whenever he or she is able to do so
- encouraging the individual to develop or regain higher capacity to make decisions to the maximum extent possible in those areas in which he or she is in need of a guardian
- making decisions and giving consents on behalf of the individual, but only to the extent of the court order
- protecting the individual from harm
- looking out for the individual's interests
- safeguarding the individual's human and civil rights
- ensuring that the individual's physical, emotional and developmental needs ,including education and training, are met.
- acting consistently with a previously executed power of attorney for health care or advance directive
- helping the individual to obtain all available and appropriate benefits and supportive services
- visiting the individual not less than once every three months
- initiating legal action on the individual's behalf
- submitting reports to the court as specified by the court

2. A personal guardian is NOT responsible for:

- providing for the individual from his or her own funds
- any liability to another person for acts of the individual
- injury to the individual from the wrongful conduct of another person providing medical or other care
- taking the individual into the guardian's home to live

3. What kinds of decisions might a guardian be expected to make?

A guardian may be asked to give informed consent in matters such as:

- transfers or other major changes of program or treatment
- certain types of medical or dental procedures or for certain types of behavior modification plans
- right-to-privacy issues such as release of confidential records
- trips, vacations and overnight visits

4. What preparation does a guardian need to make these decisions?

The guardian should gather and review as much information as possible about the issue at hand before making a decision. The guardian should also involve the individual as much as possible in the decision making process by learning about his or her interests, preferences and choices. In addition, the guardian should participate in all important conferences regarding the individual's programs, particularly the annual meetings where his/her individual plan is developed and reviewed.

5. Are there limitations on guardianship?

Yes. A guardian cannot consent to shock treatment, psychosurgery, sterilization or medical, behavioral or pharmacological research. The guardian must petition the court for a guardian ad litem that can give specific consent for a particular request.

6. What authority does a guardian have regarding the individual's programming?

Program-related decisions are made by the Division's professional staff with input from the guardian. The guardian has the right and responsibility to be involved in developing and reviewing the individual's program plans and to either give or withhold consent for major program changes. A guardian also

may appeal a program decision and, if necessary, seek a hearing on the matter.

7. If the Bureau of Guardianship Services is appointed guardian, does the individual's family remain involved?

Yes. The Guardianship staff providing services to the individual maintains contact with families or other interested parties, keeping them informed and obtaining their input in decision making.

8. How are changes in guardianship made?

The court that initially appointed a guardian may be petitioned at any time to terminate or transfer guardianship. As part of the individual's annual plan, guardianship is reviewed each year. A court-appointed guardian may name a successor guardian in his/her will, subject to court approval after the guardian's death.

9. Do all individuals with developmental disabilities need guardianship?

No. Guardianship is necessary only for an individual who lacks the ability to make decisions in some or all areas. Many individuals are capable of making their own decisions, with appropriate support and advice, and do not need a guardian.