

ALTERNATIVES TO GUARDIANSHIP



guardianship and alternatives

Familiarity with definitions and terms related to

Clear understanding of what guardianship is and is not

LEARNING OBJECTIVES

Knowledge of less restrictive alternatives to guardianship and when each one might be appropriate

Knowledge of options for people who need support

Where to find more information and resources





The mission of Oregon WINGS is to implement a collaborative approach toward problem solving that strengthens guardianship practice. By combining the efforts of all stakeholders, we can improve judicial processes, better protect individual rights, and promote fiduciary standards and guardian accountability.



ABOUT WINGS

Working

nterdisciplinary

Network of

Guardianship

Stakeholders



- **Self-Determination** the ability to make your own decisions about life, health, finances, etc.
- Respondent is a person who is the subject of a guardianship or conservatorship petition.
- Incapacitated means that the person cannot make decisions about his or her own health and safety, AND serious physical injury or illness is likely to occur as a result.
- **Protected Person** is the person who is under a guardianship and/or a conservatorship.
- Fiduciary is the person who is responsible for the health, care, or finances of another person. A fiduciary can be a guardian, conservator, health care representative, power of attorney or other decision maker.
- Restoration of Rights the process by which a guardianship or conservatorship is terminated and the person regains self-determination.

TERMINOLOGY





WHAT IS GUARDIANSHIP?

A legal process in which a Guardian is appointed and given legal authority to make medical and placement decisions for a person deemed incapacitated by the Court.





REQUIREMENTS FOR GUARDIANSHIP

A judge appoints a guardian for a person if clear and convincing evidence shows three things:

- The person is incapacitated;
- A guardian is necessary to oversee the care and supervision of the person; and
- The guardian is qualified, suitable and willing to serve.





A **limited guardianship** occurs when a guardian is appointed for a short period of time (temporary guardianship) and/or the powers of the guardian are limited by the court for a specific reason.

Under Oregon law:

- The petitioner must state whether they are seeking a full (plenary) guardianship or a limited guardianship.
- A court may appoint a guardian "only as necessary to promote and protect the wellbeing of the protected person" and only to the extent necessitated by the person's actual mental and physical limitations.

LIMITED GUARDIANSHIP



A full (plenary) guardian has all powers available to guardians under the law.

- This restricts civil liberties the most, resulting in the greatest loss of autonomy and selfdetermination for the protected person.
- A full guardianship does not mean that the protected person has lost all rights; instead the protected person retains all civil rights aside from those given to the fiduciary.
- In all guardianships the guardian must consider the wishes and preferences of the protected person.

FULL GUARDIANSHIP



DECISIONS MADE BY GUARDIANS







Decisions that *cannot* be made by another person

- Marry
- Vote
- Seek or retain employment

Decisions that *can* be made by another person

- Contract
- Sue and defend lawsuits
- Apply for government benefits
- Manage money or property
- Decide where to live
- Consent to medical treatment
- Decide with whom to associate or be friends with

Decisions that can be made by another person only with a court order

- Committing the person to a facility or institution
- Consenting to experiments
- Filing for divorce
- Consenting to termination of parental rights
- Consenting to sterilization or abortion



WHAT IS CONSERVATORSHIP?



Conservatorship is the formal court process where a judge appoints another person, called a conservator, to administer the finances of a financially incapable person.





REQUIREMENTS FOR CONSERVATORSHIP



A judge appoints a conservator for a person if clear and convincing evidence shows three things:

- The person is financially incapable;
- A conservator is necessary to oversee the finances of the person; and
- The conservator is qualified, suitable and willing to serve.





DECISIONS MADE BY CONSERVATORS







MONEY MANAGEMENT



PROPERTY MANAGEMENT





- Use substituted judgement make decisions based on how the person would decide for themselves
- Follow the best practices set by the National Guardianship Association
- Act only in the best interest of the person if the person's own desires are not or cannot be known
- Manage the person's affairs carefully and keep good records of decisions made for the person

RESPONSIBILITIES OF A GUARDIAN OR CONSERVATOR

The authority of a fiduciary is limited by law, either by statute or the judgement that grants their authority.



Do:

- ✓ Know your authority and any limits that may be in place on your ability to make decisions for the person
- ✓ Communicate with the protected person and understand their wishes and desires
- ✓ Maximize the independence and selfreliance of the person

Don't:

- ✓ Make decisions *without* including and considering the person and preferences
- ✓ Take any action that the protected person can do on their own

DO'S & DON'TS OF A GUARDIAN OR CONSERVATOR



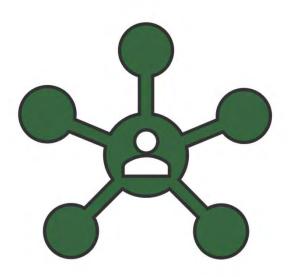
STORIES



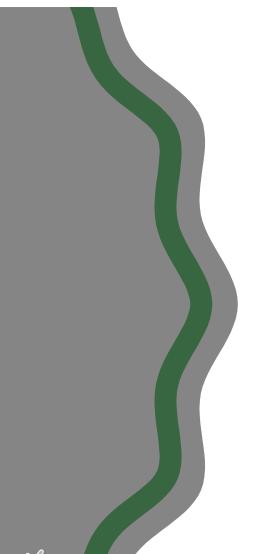


Oregon Revised Statutes state:

- Every person has a right to selfreliance and independence
- ALL less restrictive alternatives must be considered before a guardian or conservator is appointed







AVAILABLE ALTERNATIVES

SAFETY & WELL-BEING MEDICAL TREATMENT MONEY MANAGEMENT





SAFETY & WELL-BEING ALTERNATIVES

Supported Decision Making

Case Management

Direct Care / Support

Department of Human Services





Supported Decision-Making is an alternative where people with disabilities retain their rights and their decision-making capacity.

- Trusted supporters/advisors such as friends, family, or professionals, help the person make their own choices.
- The supporters help the person with a disability understand, make, and communicate her own choices.

SAFETY & WELL-BEING

Supported
Decision Making





Case management and services coordination connect people to community programs and services that can help them:

- Meet their goals
- Obtain needed services
- Prevent crisis

Case management is usually a Medicaid service through the Department of Human Services; however, people who are not eligible for Medicaid can purchase private case management services.

SAFETY & WELL-BEING

Case Management



Direct support comes in many forms.
These types of support and/or care for a person are often referred to in Oregon as long-term services and supports.

Some are provided through Oregon's Department of Human Services and Medicaid. Others may be via private insurance or select limited coverage under Medicare.

SAFETY & WELL-BEING

Direct Care / Support



Types of Services Include:

- Case Management Services
- Personal care assistance in
 - Person's own home
 - Provider-owned home
 - Foster home
 - Provider facility
- Independent Living Centers
- Employment services
- Day habilitation
- Caregiver Support, Respite
- Reporting Adult Abuse 1-855-503-SAFE

SAFETY & WELL-BEING

Oregon

Department of

Human Services



The Oregon Office of the Long-Term Care Ombudsman serves as a watchdog and advocate for residents of all ages and abilities in many settings, including long term care including small group and residential home facilities. It can provide data and feedback on facility citations and surveys.

It also houses the **Oregon Public Guardian** program.

OREGON OFFICE OF THE LONG-TERM CARE OMBUDSMAN

https://www.oltco.org/oltco



MATCH-MAKER

READ EACH
SCENARIO AND
DECIDE WHICH
ALTERNATIVE
SEEMS LIKE THE
BEST MATCH



MEDICAL TREATMENT ALTERNATIVES

HIPAA Release of Information

Advance Directive with Health Care Representative

Health Care Advocate (IDD)

Portable Orders for Life-Sustaining Treatment (POLST)

Declaration of Mental Health Treatment (DMHT)

Civil Commitment





- A HIPAA Release authorizes the disclosure of protected medical information to a third party.
- It is not a grant of authority to act
 rather, it is the right to receive
 information.
- Strict adherence to confidentiality must be maintained.

HIPAA

Release of

Information



• The **Advance Directive** serves two purposes:

- 1. Appoints a Health Care Representative who is authorized to make medical decisions when the patient cannot speak for themselves; and,
- 2. Provides end-of-life instructions regarding life-support and tube feeding.
- The Advance Directive allows the patient to add additional instructions regarding the type of care that they would like to receive if the Health Care Representative is serving.
- The designated Health Care Representative must agree to serve as the decision maker.

MEDICAL TREATMENT

Advance
Directive
w/Health Care
Representative

https://sharedsystems.dh soha.state.or.us/DHSFor ms/Served/le3905.pdf



- A Health Care Advocate (HCA) may be appointed to make certain health care decisions on behalf of the person if:
 - √ The person has an intellectual or developmental disability (defined by state law);
 - ✓ The person is enrolled in services through Oregon's Office of Developmental Disabilities Services; and
 - ✓ A court or attending physician has determined the person cannot make certain health care decisions.
- The person, with their Individualized Written Service Plan (ISP) team, may appoint an HCA.
- The HCA's authority is withdrawn if the person objects.
- Significant health care decisions must be discussed with ISP team.

Health Care Advocate

For more information, contact the local Community Developmental Disability program through a toll-free number: 1-800-282-8096.



- This is a medical order executed between a patient with capacity and a health care professional.
- Sets forth specific medical treatments the patient wants during a medical emergency.
- The POLST is registered in a state database so that health care providers including EMTs, hospitals and long-term care facilities can access.
- The POLST can be used in conjunction with an Advance Directive, but does not replace it.

Portable Orders for Life-Sustaining Treatment (POLST)

http://oregonpolst.org



- A person may complete the DMHT form to tell health care providers what kind of mental health treatment they desire if a mental health crisis arises and they cannot speak for themselves.
- The DMHT form also allows the person to name a representative to make treatment decisions for the person in a mental health crisis.
- The DMHT covers mental health medications, treatments and admissions to a health care facility for up to 17 days for mental health treatment.

Declaration of Mental Health Treatment (DMHT)

https://www.oregon.gov/o ha/HSD/amh/forms/declar ation.pdf



- A civil court process used when a person needs psychiatric treatment but will not or cannot consent to hospitalization.
- A judge decides the person is a danger to themselves or others or is unable to care for themselves due to a mental disease or defect.
- Civil commitment lasts no more than 180 days unless a judge orders recommitment.

Civil Commitment



MATCH-MAKER

READ EACH
SCENARIO AND
DECIDE WHICH
ALTERNATIVE
SEEMS LIKE THE
BEST MATCH



MONEY MANAGEMENT ALTERNATIVES **ABLE Accounts**

Money Management Assistance

Joint accounts

Representative Payee / VA Fiduciary

Power of Attorney

Trusts





ELIGIBILITY

 Have a disability or blindness that developed before the age of 26 that will last, or has lasted at least a year

BENEFITS

- Save money without jeopardizing benefits
- Appoint an "authorized representative" to help manage funds
- Use money for "qualified disability expenses"

MONEY MANAGEMENT

Achieving a
Better Life
Experience
(ABLE)
Accounts

www.OregonAbleSavings.com



A money management program, administered by various local service providers, may be able to help people in need manage their money.

The Money Management Program can help people by:

- Organizing financial papers
- Paying bills
- Banking

MONEY MANAGEMENT

Money
Management
Assistance



- A joint account functions like a standard bank account except that two or more people own the account.
- This may be helpful so that one owner of the account may aid another with paying bills, and making necessary purchases.
- Most joint accounts carry rights of survivorship that can lead to problems for an account holder's heirs.

MONEY MANAGEMENT

Joint Accounts



When a person gets benefits from the Social Security Administration, the Railroad Retirement Board or the Department of Veterans Affairs, a representative may be appointed to help the person manage the benefits.

- For Social Security and Railroad
 Retirement benefits, the representative is called a "representative payee."
- For veterans' benefits, the representative is called a "VA fiduciary."

MONEY MANAGEMENT

Representative
Payee
VA Fiduciary



A "Power of Attorney" is a legal document that allows a person to give another person (called an "agent") the right to act on the person's behalf.

- Can only be used for financial decisions.
- The authority given to the agent can be limited or broad.
- Can be written to go into effect immediately, even when the person giving the authority to the agent still has full capacity, or to go into effect only when the person becomes incapacitated.

MONEY MANAGEMENT

Power of Attorney



- A trust holds money or property for the benefit of the person or organization.
- The trust can benefit the person who made the trust, or it can benefit someone else.
- There are many different kinds of trusts.
- People should work with an attorney to decide if a trust is right for them and, if so, which trust works best for their interests.

MONEY MANAGEMENT

Trusts



MATCH-MAKER

READ EACH
SCENARIO AND
DECIDE WHICH
ALTERNATIVE
SEEMS LIKE THE
BEST MATCH



REMEMBER

Oregon Revised Statutes state:

- Every person has a right to selfreliance and independence
- ALL less restrictive alternatives must be considered before a guardian or conservator is appointed



HOW TO ASSESS OPTIONS

CHARTING THE LIFECOURSE TOOLS

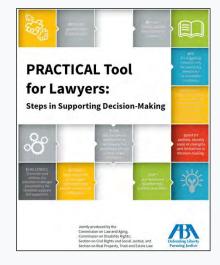
- **✓INTEGRATED STAR**
- ✓ EXPLORING DECISION MAKING SUPPORTS

AMERICAN BAR ASSOCIATION

✓ PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making









SCENARIOS

WHAT OTHER SUPPORTS COULD BE USED INSTEAD OF FULL GUARDIANSHIP TO SUPPORT THE PERSON?









OREGONWINGS.ORG