

Understanding Guardianship

- Definitions
- Court process
- Duties
- Limitations/Myths
- Ethical Considerations
- Alternatives
- Working with guardians: scenarios, problem solving, utilizing the ISP Team

Information sites

Appointed Fiduciaries ORS Chapter 125

www.leg.state.or.us/ors/125

ISP team appointed HCR OAR 309-041-1500

Self appointed HCR ORS Chapter 127

www.arcoregon.org

Fiduciaries

(in state of Oregon)

- Court process, order signed by judge
- Guardianship: decision making authority associated with person's body (residence, medical care, training)
- Conservatorship: decision making authority regarding finances and estate

Incapacitated: a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety. Requirements means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

Financially incapable:

a condition in which a person is unable to manage financial resources of the person effectively...those actions necessary to obtain, administer and dispose of personal property, benefits, and income.

Court process

- Involvement of an attorney
- Petition filed with the probate court in the county where the protected person resides
 - Personal information
 - Names, addresses of significant others
 - Allegation of incapacity/documentation
 - Information about the nominated guardian
 - Type of guardianship/limitations

Notice

- Petition sent to those listed
- Petition and notice served to proposed protected person
- 15 days to object
- Attorney can be requested
- Court visitor is appointed

Court visitor

- Visitors are selected by the court
- Personal interview
- Interviews with others
- Verify information, incapacity, goals
- Within 15 days submit written report to the court
- Judges respect visitor's recommendation

If no objection:

- No hearing is held
- Judge will sign prepared guardianship order, noting any restrictions
- Guardianship appointed with supervision of the court
- Annual court reports

If objections noted:

- Court hearing is scheduled
- Right to counsel, attendance, witnesses
- Court visitor testifies
- Judge makes decision
- Order may have restrictions

Guardianship Duties

- Provide for the care, comfort and maintenance of the protected person, when possible arrange for training, education
- Custody of protected person, establish residence
- Unless conservator appointed, take care of personal effects
- Consent, refuse consent for health care
- Make funeral, burial arrangements
- File annual court report

Guardianship Limitations

- May not sterilize the protected person
- Cannot use the protected person's estate to pay for room and board that guardian or guardian's spouse, parent or child is providing unless approved by court
- Before placing in residential facility, guardian must file statement with court, notifying person, others

Myths

- Obtain guardianship before age 18
- The younger, the easier it is to get
- Guardianship will keep them safe
- Guardianship will guarantee services
- Guardianship will circumvent selective service registration

Medical Alternatives

Release of information

OAR Health Care Representative

ORS Health Care Representative

Decision making

Substitute judgment: decisions made reflecting what the person would have decided if he/she were capable-- respecting values, beliefs, behaviors, preferences.

Based on history of decision making and lifestyle prior to incapacity.

Best interest: what a reasonable person would do in a similar circumstance.

Carefully consider

health, well-being, impact of decision, risks and consequences.

Ethical considerations

ORS: guardian appointed only as is necessary to promote and protect the well-being of the protected person...designed to encourage maximum self-reliance and independence.