Guardianship Signature Program One Sheet

(1) Why the Guardianship Signature Program?

- Because Utah Code §75-5-303 provides that "[u]nless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding . . . ."
- Because the need for representation of respondents exists throughout the state and resources are extremely limited outside the Ogden-to-Provo urban corridor. Despite many generously contributed hours, there remains a large unmet need.
- Because Informal Opinion 10-2 and Informal Opinion 12-02 cast doubt on the current methods used in some courts of appointing lawyers to represent respondents.
- Because representation of respondents by Utah Legal Services is very limited, and the organization focuses more on providing help to indigent petitioners.
- Because some lawyers are representing both petitioner and respondent, creating a conflict of interest, and judges have no resource for an alternative appointment.
- Because the lawyers in the Self Help Center regularly receive requests for representation, but they do not have a list of lawyers to which they can refer clients.

(2) How does it work in a typical case?

- When a guardianship petition is filed without a lawyer assigned to the respondent or the petitioner files a request to appoint counsel for the respondent, the clerk will email the list of lawyers in their district. The first lawyer to respond is appointed as counsel for the respondent.
- The clerk prepares an order appointing the lawyer, which the judge signs, and then the clerk attaches the lawyer to the case. The lawyer has access through e-filing to contact information for his or her client and all previously filed documents.
- The lawyer then meets with the respondent and the case proceeds from there.
- At the conclusion of the case, the lawyer will file a notice of withdrawal as counsel and may also file a request for attorney's fees if the respondent has assets.

(3) Who supports this program?

The Judicial Council, the Board of District Court Judges, and the Bar Commission support this program. The courts have helped to build other lawyer volunteer programs similar to this one:

- Service Member Attorney Volunteer Program, in which a volunteer lawyer represents a service member who is facing a default judgment. The SMAV program is strictly pro bono, regardless of income.
- Private Guardian ad Litem Program, in which a volunteer lawyer represents a child in divorce proceedings who is alleged to have been abused. The private GAL program has a fee structure similar to the one proposed for this program.

(4) Will petitioners' lawyers still be able to ask the judge to appoint a particular lawyer to represent the respondent?

Yes. This Guardianship Signature Program does not prohibit a petitioner's lawyer from requesting that the judge appoint a particular lawyer to represent the respondent, but Informal Opinion 10-2 and Informal Opinion 12-02 might restrict the judge's ability to do so.

(5) How do the fees work?

By volunteering to be appointed, a lawyer is agreeing to represent the client for a fee in accordance with the standards established for pro bono and modest means programs:

- $0, if the client's income is not more than 125% of poverty;
- $50/hour if the client's income is not more than 200% of poverty;
- $75/hour if the client's income is not more than 300% of poverty; or
- a reasonable fee approved by the judge if the client's income is more than 300% of poverty.

As part of the representation, the lawyer will assist the respondent in completing a form to identify the respondent's income and assets. This information might then be used to help the guardian prepare an inventory of the protected person's estate.

(6) What if the client has a lot of assets but very little income?

The program outline includes the principle that the respondent's assets should be considered as a source for establishing and paying the fee when the respondent has substantial assets but low income and for other good cause.

(7) What resources are available to help volunteer lawyers?

The courts have several webpages about guardianships and conservatorships (see http://www.utcourts.gov/howto/family/gc/) including a webpage on the Guardianship Signature Program, found at http://www.utcourts.gov/howto/family/gc/signature/. That webpage includes an online training program for lawyers. The Board of Directors will also prepare CLE courses and will work with the law schools to develop administrative and research assistance and representation under Rule 14-807.

(8) Wasn't the Volunteer Court Visitor Program supposed to address all of these problems?

No. Volunteer court visitors do not represent parties. That program's scope is limited to investigating the respondent's circumstances, assisting he judge in reviewing a guardian's annual reports, and finding missing guardians and protected parties.

(9) Who can I contact with questions?

You can contact Nancy Sylvester, Staff Attorney with the Administrative Office of the Courts, by phone at (801) 578-3808 or by email at nancyjs@utcourts.gov.

Guardianship Signature Program
Volunteer Attorney Certification

I am willing to accept appointments to represent respondents in guardianship and conservatorship cases and hereby certify that I

- am competent in guardianship and conservatorship law and/or
- have taken the Guardianship Signature Program Online Training or attended a guardianship/conservatorship CLE,
- and I also maintain my own malpractice insurance.

_____
Attorney name

_____
Attorney Signature

_____
Date

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Guardians and Conservators for Adults[2]

1. **General Types of Protections.** There are several tools available for protecting the persons and estates of adults who could use assistance due to reduced abilities or incapacity. These can be used in any number of combinations and include:

- Durable powers of attorney;
- Health care directives;
- Trusts of various kinds, created by the person or by third parties for the person, including support trusts, special needs trusts, etc.;
- Care agreements and arrangements with care facilities or family members;
- Representative payee to receive benefits for a person under the Social Security Act, such as SSI (Supplemental Security Income), SSD (Social Security Disability), and Social Security retirement benefits, or representative payee to receive Veteran's benefits or Railroad Retirement Act benefits;
- Guardianships;
- Conservatorships; and
- Governmental agency and private charity or professional assistance, including Medicaid, Adult Protective Services, and the local police, on the governmental side, and including church groups, health care and social work providers, and the Disability Law Center on the private side.

Each of these types of protective tools has its place. Although, we will focus here on guardianships and conservatorships, we should not forget the other types of protective tools.

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[1] This outline is provided for informational purposes only. It is not intended as, and does not constitute, legal advice. Further, access to or receipt of this article by anyone does not create an attorney-client relationship. Although this outline was believed to be correct within the scope of its purposes when written, it may be incorrect or incomplete, was not intended to comprehensively cover any subject, does not cover a number of related matters, and does not cover anyone's particular situation. As such, it is not reasonable for anyone to rely upon it with respect to any particular legal matter. Rather, readers are encouraged to retain a licensed attorney to provide individualized and current legal advice.

[2] Last substantial update: October 2, 2015.

A guardianship can be broad or limited. They place the physical and to some extent financial welfare of the person in the hands of a decision maker other than that person. Since a broad guardianship is a serious deprivation of liberty for the person, the law favors partial guardianships where feasible. UCA § 75-5-304(2). A conservatorship deals with property and money, but (with a limited exception for certain minors) not the person; however, payment for such personal care and welfare would be part of the conservator's responsibility. See UCA § 75-5-401(2). One or the other or both of a guardianship or conservatorship may be used depending on circumstances. A single proceeding could be used to have a court appoint a person in both capacities.

2. **Guardianships**. Guardians can be appointed in two ways, by the parent or spouse of a disabled adult by means of a will or of a written statement (UCA § 75-5-301) making the appointment (and not just a nomination for a court appointment), or by the court by means of a court order of appointment (UCA § 75-5-303).

a. Parental or Spousal Appointment. A parental or spousal appointment by will or written statement becomes effective when (i) 7 days' notice of intention to accept the appointment has been provided to the incapacitated person and also either to the person with whom the incapacitated person resides or who is responsible for the incapacitated person's care, or else to at least one adult relative in the nearest degree of kinship, and (ii) the acceptance has been filed with the court where the will has been probated (formally or informally) or the written instrument of appointment has been filed. UCA § 75-5-301. Absent a denial of probate, the order of priority, in case of conflict is:

- Spousal appointment. UCA § 75-5-301(2).
- Appointment by the last to die of the parents. UCA § 75-5-301(1).
- Appointment by the earlier dying parent where the surviving parent is incapacitated. UCA § 75-5-301(1) and (2).
- A parental appointment of a guardian for a minor is not effective for an adult disabled child unless it appears from the will that this is the testator's intent. UCA § 75-5-301(1).
- Appointment by the court is subject to the priority of spousal or parental appointments. UCA § 75-5-304(3).

If any objection is filed (no time limit is specified) in the court where the will was probated or written instrument was filed, the appointment is terminated. UCA § 75-5-301(4). This makes the guardianship effectively terminable at will by the protected person; court appointments are not so terminable at will. Also, if both parents are dead, the appointment by informally probated will of the last to die is terminated by a formal proceeding denying probate. UCA § 75-5-306.

For a written instrument, other than a will, which relates to a parental appointment, there is a cross reference to UCA § 75-5-202.5 which apparently was intended to require the same procedures as apply for written instruments for parental appointments of guardians for minor children. The section referred to calls for filing the instrument with a petition for guardianship in the court with probate jurisdiction in the county of residence of the last parent to die, along with an affidavit of acceptance specifying enumerated elements.

b. Court Appointment Process. The procedure most used is that for a court appointed guardian. This process requires these steps:

i. A petition must be filed by an interested person (see UCA § 75-1-201(24)) requesting the appointment of a guardian. It typically alleges jurisdiction, venue, cause, the identity and location of the parties and persons to receive notice, priority for appointment, property and bond matters (if any property will come to the possession or control of the guardian), and requests relief.

ii. Notice must be given to the alleged incapacitated person, and to his or her spouse, parents, and adult children, or if there are none of these relatives, then to at least one of the closest adult relatives who can be found, and to anyone serving as guardian or conservator or who has care and custody of the person, and to any guardian appointed by the will of the last parent to die or of the spouse of the alleged incapacitated person. The notice must meet certain technical requirements (e.g., large type, plain English, etc. UCA § 75-5-309), and the person and his or her spouse or parents in Utah must be served personally. Any waiver of notice by the alleged incapacitated person must be confirmed in person or by a court visitor. UCA § 75-5-309(3).

iii. A court must find incapacity after a hearing, which may be after trial by jury or, if requested by the alleged incapacitated person or his or her counsel, a closed session hearing without jury. See UCA § 75-5-303(5)(c). Incapacity is measured by functional limitations, and is shown on proof by clear and convincing evidence that the adult lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, and self-care. These functional limitations are limitations on the person's ability to receive and evaluate information, make and communicate decisions, or provide for necessities such as food, shelter, clothing, healthcare, or safety. UCA § 75-1-201(22). This requires findings of fact and conclusions of law.

iv. The appointment of counsel for the alleged incapacitated person is required if that person does not have counsel of his or her choice. We will discuss further the role of counsel below.

v. There must be an examination by a physician appointed by the court who must submit a written report and who may be interviewed by a court appointed visitor.

vi. The alleged incapacitated person must personally appear in court or, if a waiver of presence is requested, the court may appoint a visitor to investigate matters with authority to interview the physician and the person seeking guardianship, to visit any

residence of, or proposed for, the alleged incapacitated person, and to otherwise investigate and make observations. The visitor must file a written report with the court. A visitor is an official, employee, or special appointee of the court, and needs to have training in law, nursing, or social work. UCA § 75-5-308. A visitor's investigation may be waived only on clear and convincing evidence from a physician that the alleged incapacitated person has fourth degree Alzheimer's disease, extended comatosis, or an intellectual disability or an I.Q. score below 20 to 25. The courts have a program for pro-bono court visitors.

vii. The appointed person must file an acceptance of the guardianship and consent to jurisdiction. UCA § 75-5-305.

viii. If the guardian comes to possess or control property of the ward, the bond requirements applicable to conservators will need to be met. UCA § 75-5-105. These requirements are described in the section on conservatorships, below.

ix. A certificate of taking a test about guardianships by the proposed guardian must be filed. The test covers guardian duties, reports, accountings, etc.

x. An order of appointment specifying the terms of the guardianship needs to be entered. As already mentioned, limited guardianships are preferred unless no alternatives exists, in which case a specific finding that nothing less than a full guardianship is adequate must be made by the court. UCA § 75-5-304.

xi. Letters of guardianship are issued to evidence the appointment.

c. Who May Be Appointed by the Court? Assuming no disqualification, the priority is:

i. Parental or spousal appointments (discussed above) by will or written instrument have priority under UCA § 75-5-304(13) (as described above). However, if the alleged incapacitated person has nominated before disability in a signed writing, someone to serve, that person serves absent good cause. UCA § 75-5-311(2). Presumably, this supersedes the parental or spousal nomination.

ii. A person nominated under another form of nomination by the alleged incapacitated person when over age 14 with sufficient capacity to make the nomination.

iii. The spouse of the person comes next. Note that although a spouse may make an appointment by will (UCA § 75-5-301), the spouse, unlike a parent, as described under (v) below, cannot nominate a person for court appointment by will.

iv. An adult child of the person.

v. A parent, or a person nominated by will or written instrument of a deceased parent.

vi. Any relative with whom the person has resided for more than six months.

vii. A person nominated by the person who is caring for the person or paying benefits to the alleged incapacitated person.

viii. A specialized care professional (as certified - see UCA § 75-5-311(1)(a)) serving without profit or compensation except for direct costs of providing guardianship or conservatorship services.

ix. Any competent person or suitable institution. Such an institution is a business or non-profit organization employing a specialized care professional. See UCA § 75-5-311(1)(b).

d. Temporary Appointments. A temporary guardian may be appointed in an emergency or where an appointed guardian is not effectively performing its duties. A temporary appointment suspends the powers of the prior court appointed guardian. The suspension of appointed personal guardians only applies to court appointed guardians, not those appointed by will; in cases of an appointment by will, the guardian may need to be removed by the filing of an objection by the protected person, or may need to be removed or suspended by order of the court. To make the temporary appointment, the court must find that the welfare of the incapacitated person requires immediate action and may without notice appoint an official for up to a 30 day period pending notice and hearing within 5 days. At the final hearing an appointed attorney or official represents the person. The hearing is a full hearing under UCA § 75-5-303, which may include court appointed visitors, trial by jury, and so on. UCA § 75-5-310.

e. The Role of Counsel. The statute contemplates that the allegedly incapacitated person will be represented by his or her own counsel or by counsel appointed by the court. This is necessary particularly where personal freedom is at stake. Such counsel, of course, must not be the same as the counsel for the petitioner seeking the appointment of the guardian or any attorney in the same firm as that counsel, under general conflicts of interest principles. Utah Rules of Professional Conduct ("URPC") Rules 1.7 and 1.10.

i. The Court has authority to appoint such counsel, but who will be such counsel? To help in cases of impecunious persons, the courts have developed a program for recruiting and training a roster of attorneys who may take on such representation initially as a pro-bono engagement, but possibly as a paid or partially paid engagement should the alleged incapacitated person turn out to have adequate assets (something not likely to be fully known at the commencement of the representation). This roster provides the court with one possible place to look for an attorney to appoint. Otherwise, the court may need to look elsewhere, including to counsel nominated by the counsel for the person seeking the guardianship. The idea of a petitioner's counsel nominating his or her own opponent will give the court pause, and should give such nominated counsel pause as well, because there is no excuse for such counsel not to do his or her duty by the allegedly incapacitated person. See, e.g., URPC 1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.7 (conflicts of interest), etc. Among other things, nominated counsel in such circumstances should consider whether the

representation will be materially limited by a personal interest of the lawyer. URPC § 1.7(a)(2). Among other things, nominated counsel may be looking to the petitioner ultimately for payment of his or her fees. See comments (10), (11), and (13) to that rule. In such cases, informed consent by the client, i.e., the alleged incapacitated person, may not be a satisfactory cure, since the client's very capacity to give such informed consent may be at issue. It would be best to inform the appointing court of any such compensation arrangement. Although a court may not have a lot of choice under the circumstances in making such an appointment, it does have the opportunity to closely monitor the lawyer's performance.

ii. The job of counsel for the allegedly incapacitated person is to be an advocate to protect the liberty of the person by defeating or limiting the guardianship. If such counsel believes the proposed guardianship is justified in fact and law, the attorney should make a record of the analysis; an analytical brief is a good way to do this. Unlike the original version of the Uniform Probate Code, the appointed counsel does not in Utah have the powers of a guardian ad litem who acts as the eyes and ears of the court, and thus counsel does not make a report to the court with recommendations as to what is in the allegedly incapacitated person's best interests. Cf. 53 Am Jur. 2d Mentally Impaired Persons § 16.4.

iii. Taking instructions from a person whose capacity may be reduced or questionable can be quite difficult for counsel. What is counsel to do? Counsel should first read URPC Rule 1.14 which deals with clients with diminished capacity. Generally, the lawyer maintains a normal attorney-client relationship to the extent reasonably possible. Rule 1.14(a). However, the lawyer may take protective action, including seeking appointment of a guardian ad litem (see UCA §§ 75-5-104 on power of court to appoint guardian ad litem for minor, and 75-1-103 on supplementary principles of law), a conservator, or a guardian where the lawyer reasonably believes the client has diminished capacity, cannot adequately act in the clients' own interest, and the client is at risk of substantial physical, financial, or other harm unless action is taken. This allows such action in the case of an emergency or an immediate problem, but does not allow the lawyer to cease seeking the least restrictive alternatives. Comments (7), (9), and (10) to Rule 1.14. Absent exigent circumstances which would make matters even more difficult, representing persons with diminished capacity often requires a good deal of patience and persistence.

iv. Generally, the representation of the incapacitated person ends if a guardian is appointed. But there are exceptions: a conservatorship proceeding is still pending, there is an appeal of the court's decision, or the court orders continuation of the representation for good cause. UCA § 75-5-303(3).

v. Counsel representing the allegedly incapacitated person is entitled to be paid for the service (unless the representation is wholly pro-bono). The fees of counsel defending against the petition are paid by the allegedly incapacitated person. If the petition is successful, the petitioner's fees and costs also are paid by the incapacitated person. However, if the court determines the petition is without merit, fees and costs are paid by the petitioner seeking the guardianship. UCA § 75-5-303(2).

vi. Once a guardian (or conservator) is appointed for a client, generally the lawyer takes instruction from the person appointed fiduciary because that person is entitled to act for the client, but there are exceptions where the lawyer represents the client in a matter against the interests of that person or that person instructs the lawyer to act in a manner that the lawyer knows will violate the person's legal duties toward the client. Restatement (Third) of the Law Governing Lawyers § 24 (2000).

vii. Under what circumstances may an attorney who has represented a party in conjunction with a proceeding to appoint a guardian for an adult incapacitated person represent the guardian that is subsequently appointed as a result of that proceeding? UT Eth. Op. 08-02 (Utah St.Bar.), 2008 WL 2110963, answers this question by saying, in the context of a contentious proceeding where the guardian and the party earlier represented are not the same person: "The representation of a court-appointed guardian by an attorney who has also represented one of the parties to the proceeding for the appointment of the guardian must be analyzed under Rules of Professional Conduct, Rules 1.7 and 1.9, the same way an attorney would analyze any conflict of interest between two current clients or between a current and former client....[T]he attorney should either avoid the joint representation or exercise great care in obtaining the informed written consent of both affected clients. If there is an on-going proceeding involving both the former client and the prospective new client (the guardian), the conflict may not be waived and the representation of the guardian must be avoided."

f. Special Procedures. There are some special procedures applicable to veterans and to the Utah State Developmental Center.

i. For veterans, a Veterans Administration rating of incompetency so that a guardian appointment is necessary for veteran's benefits to be paid, acts as prima facie evidence of the necessity for an appointment. UCA § 75-5-314. Also, certified copies of public records are to be provided without charge to the applicant for veteran's benefits or to the Veterans Administration. UCA § 75-5-315.

ii. There are expedited limited guardianship procedures for granting consent to medical care and participation in the approval of the individualized program plan for a resident of the Utah Development Center. The appointment is mostly based on the affidavit of the Superintendent of the Center, although the court has discretion to appoint a guardian ad litem and to request an independent evaluation by a physician appointed by the court. If the proposed guardian is not a parent or relative, notice is given to the spouse, parents, and adult children of the ward. UCA § 75-5-316.

g. What Court Decides? The district courts in Utah have subject matter jurisdiction under the Utah Uniform Probate Code. UCA §§ 75-5-101, 75-1-302(1)(b). That Code applies, among other things, to the affairs and estates and affairs of persons to be protected domiciled in Utah, and to incapacitated persons in Utah. UCA § 75-1-301(1) and (3).

i. A court where the ward resides has concurrent jurisdiction with the appointing court with respect to proceedings after appointment. If the place of appointment or residence is not the same, the court in which post-appointment proceedings are started, in

appropriate cases is to notify the other court in Utah or another state and consult to determine whether to retain or transfer the proceedings, in the best interest of the ward. A copy of a resignation or of a removal order is to be sent to the appointing court (i.e., in which the acceptance of appointment is filed. UCA § 75-5-211.) However, these provisions are subject to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, described below.

ii. Venue for guardianship proceedings is where the incapacitated person resides or is present. UCA § 75-5-302. See also the venue rules of UCA § 75-1-303 (if more than one place applies, the venue is in the first place a proceeding is commenced; the court has authority to transfer venue in the interest of justice; where there is no contest or all consent, a hearing may be held anywhere in the judicial district).

h. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Utah also has adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"), applicable to both guardianship and conservatorship proceedings involving more than one state or another country. UCA § 75-5b-101 *et seq*. This Act encourages a Utah court to communicate with the other court and allow party participation. A record of the communication or just the fact of communication is to be made except as to purely administrative matters (scheduling, court records, and the like). UCA § 75-5b-104. The Act also encourages cooperation between courts and authorizes the Utah court to request the other court to do a number of things, and if requested by the other court to itself do those things, such as hold an evidentiary hearing, compel testimony or evidence, order investigations, and so on. UCA § 75-5b-105. The court may allow testimony to be taken in the other jurisdiction and may allow testimony by electronic means and may accept document copies without objection based on the best evidence rule. UCA § 75-5b-106.

i. Obtaining Jurisdiction and UAGPPJA. The jurisdiction of the Utah court in appointment proceedings applies in these circumstances:

i. Utah has jurisdiction where Utah is the respondent's (i.e., the alleged incapacitated person's) home state. The home state is the one in which the person was physically present for at least 6 consecutive months before the filing of the petition for appointment of a guardian or protective order (i.e., for a conservatorship or order relating to property management). UCA § 75-5b-102 (7) ("home state"), (12) ("protective order"), and (15) ("respondent").

ii. For the other bases for jurisdiction described in (iii) and (iv) below, Utah must be a significant-connection state. This is a state other than the home state with significant connections, other than physical presence, in which substantial evidence concerning the person is available. UCA §§ 75-5b-102(16) (definition) and 75-5b-201(2) (factors for connection). Assuming Utah is a significant-connection state, the following two bases for jurisdiction become available.

iii. The person does not have a home state or the home state court has declined jurisdiction in favor of Utah as a more appropriate forum. UCA § 75-5b-202(2)(a).

iv. The person has a home state elsewhere than Utah and (i) no petition is pending in the home state or any other significant connection state, and (ii) before the Utah court makes the appointment or issues the order, no competing petition is filed in the home state, and (iii) no objection to the Utah court's jurisdiction is filed by a person entitled to notice of the proceeding (both in Utah and in the different home state; UCA §75-5b-207), and (iv) the Utah court concludes it is an appropriate forum taking into account various factors listed in the Act (at UCA § 75-5b-205). UCA § 75-5b-202(2)(b).

v. If no Utah jurisdiction results under the foregoing, Utah nevertheless may have jurisdiction if the home state and all significant connection states decline to exercise jurisdiction in favor of Utah and Utah's jurisdiction is consistent with the Utah and U.S. Constitutions.

vi. If still there is no Utah jurisdiction under the foregoing bases, Utah will nevertheless have limited special jurisdiction to make an emergency 90 day guardian appointment for a person physically present, issue protective orders for real or personal property located in Utah, or make an appointment of a guardian or conservator for a person for whom a provisional order of transfer of the proceedings has been issued. Any emergency appointment will be dismissed on request of a court in the home state. UCA §§ 75-5b-202 and 203.

vii. Once a court (in Utah or elsewhere) has issued an appointment or order it retains exclusive and continuing jurisdiction (except as provided for the exercise of special jurisdiction). UCA § 75-5b-204.

viii. Where there are proceedings in more than one jurisdiction, if Utah has jurisdiction it may continue to exercise it unless another state acquires jurisdiction before the appointment or order is issued; but if Utah does not have jurisdiction or loses it prior to the appointment, the Utah court is to stay proceedings, communicate with the other court, and ultimately dismiss the matter unless the other court determines Utah is the more appropriate forum. UCA § 75-5b-208.

j. Declining Jurisdiction Under UAGPPJA. The Utah court which may otherwise have jurisdiction may decline to exercise it and defer to a more appropriate jurisdiction by dismissing or staying the proceeding, and may condition that action as the court deems proper including by requiring the prompt filing of a petition in another state.

i. The Utah court considers numerous factors listed in the Act including the preference of the person to be the protected, any abuse, the time the person was located in a jurisdiction, distance, financial concerns, the nature and location of evidence, a court's familiarity with the facts and issues, and the ability to monitor the guardian or conservator, etc. UCA § 75-5b-205(3).

ii. The court may also decline jurisdiction where it finds it acquired jurisdiction by reason of unjustifiable conduct. It may, however, exercise jurisdiction in such cases to craft an appropriate remedy (which could include stays or the assessment of costs,

attorneys' fees, etc.) or it may continue to exercise jurisdiction after considering various circumstances. UCA § 75-56-206.

k. Transfer of Jurisdiction. Under the UAGPPJA the Utah court may entertain a petition to transfer a guardian or conservator appointment in Utah to another jurisdiction. This is done through notice and a hearing. UCA § 75-5b-301(1), (2), and (3). The Utah court then may issue a conditional transfer where:

i. A petition must be made in the other jurisdiction to allow the transfer. As to a conservator, the Utah court must be satisfied the other court will accept the conservatorship; as to a guardianship, the Utah court must receive a provisional order accepting the proceeding.

ii. As to a conservatorship, the court also needs to find that the person is or is reasonably expected to be in the other jurisdiction or has a significant contact with it, no objection has been made or the objection has not shown the transfer to be contrary to the interests of the protected person, and adequate arrangements have been made for management of the protected person's property.

iii. As to either a guardianship or conservatorship, the order is conditioned on the receipt by the Utah court of documents to terminate the guardianship or conservatorship in Utah. UCA § 75-5b-301(4), (5), and (6).

l. Foreign Appointees. Appointees in other states may seek to transfer the appointment to Utah or may register the appointment in Utah to exercise powers in Utah.

i. There are reciprocal provisions for a Utah court, on petition, notice, and hearing, to accept from other jurisdictions conservatorships and guardianships and issue a final order on the matter. Within 90 days of the final order of acceptance, the court is to determine whether the guardianship or conservatorship needs to be modified to conform to Utah law. UCA § 75-5b-302.

ii. In addition, an appointee from another jurisdiction may register its appointment in Utah as if it were a foreign judgment, if there is no pending proceeding or protective order in Utah and notice is given to the appointing court. Such a registration allows the exercise of powers not prohibited by Utah law, including the power to maintain actions and proceedings subject to any conditions imposed on non-resident parties where the conservator or guardian is not a Utah resident. Also, the Utah court may grant relief to enforce such a registered order. UCA §§ 75-5b-401, 402, and 403.

m. Termination of Guardianship. As we have already seen, a guardian appointed by the will or written statement of a spouse or parent is terminable at will by the ward filing an objection to it at any time (UCA § 75-5-301(4)), and a formal denial of probate terminates such an appointment under an informally probated will, as well (UCA § 75-5-306). On petition by the ward or any person interested in the welfare of the ward, the court may remove and replace a guardian if it is in the best interests of the ward. Also, on petition of the

guardian, the court may accept the guardian's resignation and make any order which may be appropriate. UCA § 75-5-307(1). The ward or any person interested in the ward's welfare may petition for a termination of the guardianship on the basis that the ward is no longer incapacitated; such a termination request may be quite informal, such as by a letter to the court and interference with making the request can be a contempt of court. However, the original order may specify a time not exceeding one year during which no such petition may be filed based on regained capacity without special leave of the court. UCA § 75-5-307(2).

i. Any of these petitions require the same procedures and protections for the ward as with the initial appointment. UCA § 75-5-307(3) referring to § 75-5-303. These protections include counsel for the ward and presence of the ward at the hearing. Notice is given as described in UCA § 75-5-309.

ii. The resignation, death, or incapacity of the guardian, or the death of the ward, ends the guardian's authority but not the guardianship. Resignation does not terminate the guardianship until it has been approved by the court. UCA § 75-5-306.

n. Powers and Duties of Guardian. The guardian's powers and duties may be limited by the court; this is consistent with the concept of using a limited guardianship where possible. UCA §§ 75-5-312(1); 75-5-304(2). However, absent a limiting order, the guardian generally has the powers, rights, and duties of a parent over a minor child (but without liability arising from the parental relationship). UCA § 75-5-312(2).

i. Note that the parental relationship provides very little authority to deal with the ward's (child's) property. See UCA §§ 75-5-209 and 75-5-102. However, the guardian of an adult has some authority, where there is no conservator, to compel support or welfare payments and receive money and tangible property (clothes, vehicles, furniture, personal effects) and apply it to the support of the ward. UCA § 75-5-312(2)(b) and(d)(i)(ii). This is a rather narrow power. If more power is needed, a conservatorship should be sought. The guardian may commence protective proceedings for property; this includes seeking a conservator. UCA § 75-5-312(2)(b).

ii. Also, the guardian cannot, without court approval, use the ward's funds for paying for room and board furnished by the guardian or his or her close family – spouse, parent, or child. Court approval for such payments requires notice to at least one adult nearest in kinship to the ward. UCA § 75-5-312(d)(ii). Without a conservator, the guardian receives no compensation for services and (absent court approval) no amounts or for room and board, but with a conservator, the guardian is entitled to reasonable sums for service and for room and board, and may request the conservator to expend funds for the ward's care and maintenance. UCA § 75-5-312(3).

iii. The guardian must, however, care for any funds or property of the ward in excess of current needs in order to fund the ward's future needs, or must turn them over to a conservator if there is one. If property is held by the guardian, the bond and accountings required of conservators would apply. The guardian is required by court rule to file within 90 days of appointment an inventory like that of a conservator and serve copies on interested

persons, who may object to it within 30 days. Rules of Judicial Administration ("RJA") 6-501(6)(D) and (7).

iv. By court rule, for purposes of the reporting requirements, the inventory, accountings, and status report are to be served also on interested persons which include persons in addition to those specified by the conservatorship provisions of the statute; under the rule, these are the protected person or ward (as in the statute) but also the person's spouse, adult children, parents (not limited to parents or guardians with whom the ward resides), siblings, and anyone requesting notice under UCA § 75-5-406, and if there are none of these, at least one of the person's closest adult relatives if any can be found. RJA 6-501(3)(B). See also the general definition of "interested person" at UCA § 75-1-201(24). "Serve" under RJA 6-501(3)(D), for purposes of the reporting requirements, means any manner of service under Utah Rule of Civil Procedure ("URCP") 5.

v. The guardian must report with a full accounting to the court at least annually. (There is an exception to the annual accounting and reports for a guardian who is the parent of the ward. UCA § 75-5-312(2)(e)(vi)). Where, however, the amount is less than $50,000 exclusive of any residence owned by the ward, the report and accounting is informal and mailed to the court. UCA §75-5-312(2)(b) and (d)(ii) and (e)(i) and (ii). Where the ward's income is limited to a federal or state program requiring an annual accounting report, that report suffices. UCA § 75-5-312(2)(e)(ii); RJA 6-501(4)(c). Also, corporate fiduciaries need not petition the court but may submit their internal reports annually to the court. UCA § 75-5-312(2)(e)(iii); RJA 6-501(4)(B). The court retains the power to require more where these reporting exceptions apply. RJA 6-501(5). Unless the court changes the reporting period on motion by the guardian, it is an annual period, and the annual report is due 60 days after the anniversary of the guardian's appointment (but not before the end of the annual reporting period; RJA 6-501(6)(A)) and must be served on the interested persons described above who then have 30 days to object to it in writing specifying the specific entries to which objection is made. RJA 6-501(6). Also, the accounting requirements of a conservator which fall on the guardian if there is no conservator, appear to include the requirement for a final accounting, too. RJA 6-501(6)(D) and (9). It too is served on interested persons who have 30 days to object in writing to specific entries.

vi. The annual report also must describe the ward's personal status. UCA § 75-5-312(2)(e)(i), (ii), and (iv). The guardian is also required by court rule to keep contemporaneous records of significant events in the ward's life and produce them if requested by the court. RJA 6-501(2). The personal care of the ward is, of course, the key function of the guardian. The annual report is made with the accounting petition or informal accounting and covers the ward's physical condition, place of residence, and the persons living with the ward in the same household. These reports (financial and personal) are to be examined and approved by the court. UCA § 75-5-312(2)(e)(ii) and (iv). The court must hold a hearing if there is an objection and may hold a hearing even without one. RJA 6-501(6)(C). There are penalties of up to $5,000 for failures to properly report and account or for gross improprieties. UCA § 75-5-312(2)(e)(v). These are not exclusive, and other remedies for improper conduct may apply as well. However, the reporting and penalty rules don't apply where the guardian is a parent of the ward. UCA § 75-5-312(2)(e)(vi); RJA 6-501 (under the heading "applicability").

vii. The guardian, naturally, provides for the ward's place of abode, custody, care, comfort, maintenance, training, and education, and provides consents to medical and professional care, counsel, treatment, or service. UCA § 75-5-312(2)(a), (b), and (c). The guardian is required to serve notice on all interested persons and file with the court a notice of the guardian's intent to move the ward at least 10 days before the move, absent an emergency. In any event, the guardian must take reasonable steps to provide the notice to interested persons and file it with the court as soon as practical following the earlier of the move date or when the guardian's intention to move the ward has been made known to anyone. UCA § 75-5-312(2)(e)(iv).

viii. The guardian must report to all interested persons if the ward is expected to die in 30 days or if the ward does die. UCA § 75-5-312(2)(e)(ii) and (iii).

3. **Conservatorships**. Conservators may be appointed by the court to handle money and property for adults who are unable to do so. The court also has authority to issue other protective orders relating to property, including claims. See UCA § 75-5-401.

a. Appointment Process. In order to obtain an appointment of a conservator for a person, the following are needed:

i. A petition is filed by the person to be protected or by an interested person. UCA § 75-5-404(1). The petition will typically allege jurisdiction and venue, the identity of parties and person entitled to notice, and location for giving notice. The petition needs to set forth, to the extent known, a general description of the protected person's property, and information about the proposed conservator, (including priority to appointment), and about the protected person. UCA § 75-5-404(2). It should deal with bond matters (requests to dispense with bond, alternatives to bonds, etc.). The petition should also specify the cause for the petition which would be that the person is unable to manage the person's property and affairs by reason of such things as mental illness or deficiency, physical illness or disability, chronic intoxication, confinement, disappearance, etc., and should state that property will be wasted or dissipated or that funds are needed for support of the person or the person's dependents and protection is necessary or desirable to obtain the funds. UCA §75-5-401(2). The list of causes is not exclusive but is only suggestive.

ii. Notice needs to be given to the person to be protected and his or her spouse, or if none, his or her parents. The notice must be served personally if these people to be served are in Utah, otherwise the general notice provisions under the probate code (UCA § 75-1-401) apply. A waiver of notice by the person is not effective unless the person attends the hearing or the waiver is confirmed by a court appointed visitor. UCA § 75-5-405(1). Also, any interested person may file a request for notice before a protective order is made. UCA § 75-5-406. A copy of the request is sent as well by the court to any serving conservator and must state the interest in the matter of the requesting person. Notice of proceedings is given to such persons requesting it, and to any interested or other persons as the court may direct. UCA § 75-5-405(2).

iii. The court holds a hearing and must find grounds for the appointment. UCA § 75-5-407. This requires findings of fact and conclusions of law. The standard of proof is not specified to be clear and convincing evidence as with a guardianship, but is a preponderance of the evidence. The statute does not itself create a right to trial by jury.

iv. The court may (not must) appoint counsel to represent the person to be protected. If appointed, the attorney has the powers of a guardian ad litem, and thus may make recommendations to the court as to the best interests of the person to be protected. UCA § 75-5-407(2). This is quite different from the duties of counsel for the person to be protected in a guardianship matter. The representation, however, terminates at the appointment of the conservator unless there are pending guardianship proceedings, the appointment is appealed, or the court finds good cause for continuing the representation. UCA§ 75-5-407(3).

v. If the cause for the conservator relates to mental or physical issues, the court may direct the person be examined by a physician. A visitor may be sent to visit the person; the visitor may be a guardian ad litem or an officer or employee of the court. UCA § 75-5-407(4). There is no requirement for the person to personally appear. Again, this is quite different from the procedure for appointing a guardian.

vi. Anyone appointed in the proceeding such as a visitor, attorney, physician, conservator, etc., is entitled to reasonable fees from the estate. See also UCA § 75-5-424(4)(t) and (w) (powers of conservator to pay compensation to conservator and other expenses and to hire advisors). Further, if the petition is successful, the petitioner's fees and costs also are paid by the estate of the incapacitated person. UCA § 75-5-414. Presumably the protected person pays his or her own fees to oppose a petition; the statute is silent on this point and also on who pays if the court determines the petition is without merit. Perhaps the court has general equitable power either to award fees against an unsuccessful petitioner, by analogy to UCA § 75-5-303(2), or to award fees in favor of an unsuccessful petitioner, by analogy to UCA § 75-3-719 (a person nominated as personal representative is entitled to fees in an appointment proceeding even if unsuccessful). See UCA § 75-1-103 (supplemental principles of equity may apply) and *Hughes v. Cafferty*, 89 P.3d 148 (Ut. 2004) (equitable power of court to award reasonable attorney fees when it deems it appropriate in the interest of justice and equity). The court has general authority under the probate code to award costs of a proceeding. UCA §75-1-310.

vii. The appointed conservator needs to accept the appointment and consent to the jurisdiction of the court by a writing filed with the court. UCA § 75-5-413.

viii. The conservator needs to post a bond (unless it is an exempt corporate fiduciary) in the amount of the aggregate capital value of the estate plus a year's estimated income. However, the court may dispense with the bond for good cause shown. Also, the bond amount is reduced by property which requires court approval to remove (as to cash or securities) or to sell or convey (as to real estate). Other security may be accepted by the court in lieu of bond. UCA §§ 75-5-411 and 412. To the extent a guardian comes to hold or control property, these same bond provisions apply. UCA § 75-5-105.

ix. Conservators need to certify completion of a test about conservatorships (covering duties, accountings, etc.).

x. The court issues an order of appointment with any special restrictions on the withdrawal or sale of property or other protective provisions. UCA § 75-5-407(5).

xi. After appointment, the conservator will receive letters of conservatorship which evidence the transfer of title as to all assets of the protected person to the conservator as a fiduciary. These are recordable in real property records and may be filed in other property records. UCA §§ 75-5-420 and 421.

b. Who May Be Appointed. An individual or a corporation with authority to act as trustee may be appointed. The order of priority for consideration under UCA § 75-5-410, is:

i. Any person already appointed or recognized by any court in which the person resides, as a guardian, conservator, or the like, or person nominated by such an appointed or recognized fiduciary to take its place;

ii. A nominee of the person if the person is age 14 or older with sufficient mental capacity to make an intelligent choice; the statue prescribes a non-exclusive form for making the nomination;

iii. The spouse of the protected person or a person nominated by the spouse;

iv. An adult child of the person or a person nominated by such an adult child;

v. A parent of the person, or a person nominated in a will by a deceased parent (note, the spouse and others with nomination powers have no similar nominating power by Will; rather the others with nomination powers must exercise them while alive in order that the nominated person will take the place of the nominating person), or a person nominated by a (living) parent to take his or her place;

vi. A relative of the person with whom the person has resided for more than 6 months prior to the filing of the petition or a person nominated by such a relative;

vii. "A person nominated by the person who is caring for him or paying benefits to him." Presumably the "him" is the protected person.

c. Other Protective Orders. The court has considerable authority to issue other sorts of protective orders in addition to appointing a conservator. The court may, for example, act itself for the person instead of making an appointment, and may approve single transactions. UCA §§ 75-5-408 and 409. A typical single transaction is the settlement of a

lawsuit. The non-exclusive list of possible court orders is broad and includes the powers to make gifts, establish trusts, make the spousal elective share, etc. UCA § 75-5-408(1)(c).

d. What Court Appoints. Utah District courts have jurisdiction over conservatorship matters. UCA § 75-5-101. The Uniform Adult Guardianship and Protective Proceedings Act (UCA § 75-5b-101 *et seq.*) applies to conservatorship and protective proceedings as well as guardianship proceedings. That Act is described above in the section dealing with guardianship jurisdiction.

e. Termination of Conservatorship. The court may remove a conservator for good cause, on petition from any person interested in the welfare of the protected person (UCA § 75-5-416(1)(d), and after notice and hearing, or may accept the resignation of the conservator. A new conservator may be appointed on the death, removal, or resignation of the conservator. UCA § 75-5-415. The procedure on removal, resignation, or finding that the protected person's incapacity has ended, is the same, and provides the same safeguards for the protected person, as the procedure for the initial appointment. UCA § 75-5-415(2) (referring to UCA § 75-5-407).

f. Powers and Duties of Conservator. The conservator has the powers described in the conservatorship provisions (see UCA § 75-5-424) and also the trustee provisions (see UCA § 75-7-814 and related provisions). The powers are rather broad and extensive, but do not include the power to make a will. See *Estate of Anderson*, 671 P.2d 165 (Ut. 1985). The powers may be expanded to anything the court could do, or may be contracted or limited, by order of the court and any limits need to be endorsed on the letters of appointment. UCA § 75-5-426. The conservator is a fiduciary subject to the standards of care of a trustee. UCA §§ 75-5-417(1) and 75-7-902.

i. The focus of a conservator is on property administration, but a conservator for an unmarried minor as to whom no one has parental rights also has the duties and powers of a guardian of a minor (see UCA § 75-5-209) until the minor attains majority or marries or a guardian is appointed. UCA § 75-5-424(1).

ii. The conservator, on appointment, takes title to the protected person's property, including any held for the person by custodians or attorneys-in-fact, but not property held under any uniform gifts to minor's provisions. UCA § 75-5-420(1). The title transfer is not, however, a transfer or alienation under any general restriction or penalty on transfer under the law or any instrument. UCA § 75-5-420(2).

iii. The existence of a power of attorney does not prevent the appointment of a conservator. Any pre-existing attorney-in-fact or agent accounts to the conservator after appointment, and the conservator may suspend, terminate, or revoke all or any part of the power of attorney or agency pursuant to court order. UCA § 75-5-5-1(5). Disability alone does not terminate the power of attorney if it is a durable power. UCA § 75-5-501(1).

iv. The conservator makes an inventory and files it with the court within 90 days of appointment and provides a copy to the protected person (if over 14 and with

sufficient mental capacity) and any parent or guardian with whom the protected person resides. Also, records must be kept and provided to any interested person on request. UCA § 75-5-418.

v. By court rule, for conservatorships as with guardianships, the inventory and accountings are to be served also on other interested persons who include the protected person or ward (as in the statute) but also the person's spouse, adult children, parents, siblings, and anyone requesting notice under UCA § 75-5-406, and if there are none of these, at least one of the person's closest adult relatives if any can be found. RJA 6-501(3)(B). See also the general definitions of "interested person" at UCA § 75-1-201(24). As with guardianships, to "serve" means, for this purpose, in a manner under URCP 5.

vi. The conservator also accounts annually to the court; if less than $50,000, excluding the residence of the ward, the report is more informal. A corporate fiduciary need not fully petition the court but submits its internal report to the court. Also, if the estate is limited to federal or state benefits under a program requiring an annual report, that report is sufficient. The inventory and accounting reports are served on the interested persons described above. The annual reports are due 60 days after the anniversary of the conservator's appointment. The interested persons have 30 days to objection in writing to specific entries. RJA 6-501(7) and (8). The inventory and reports are examined and approved by the court. UCA § 75-5-417(2) and (3); RJA 6-501(7), (8), and (9); RJA 6-501(4). A $5,000 penalty for substantial misstatements, willful failures, and gross impropriety may apply. UCA § 755-417(4). The annual report and penalty provisions do not apply to a conservator who is also a parent of the ward. UCA § 75-5-417(5). These provisions are analogous to those applicable to guardians.

vii. In addition, any conservator needs to account to the court on resignation or removal or other times as the court directs. However, on termination of disability the conservator may account to the former protected person or his or her personal representative. UCA § 75-5-419. A final accounting appears always to be required to be filed with the court under court rules, however. RJA 6-501(9)(A). A court accounting, whether intermediate or final, with notice and a hearing will adjudicate matters related to the accounting and, on a final accounting all unsettled liabilities of the conservator to the protected person or the person's successors. The court may require a physical check of the estate. UCA § 75-5-419. As with the inventory and annual reports, the final accounting is served on the class of interested person, who have 30 days to object in writing to specific entries in the final accounting. RJA 6-501(9).

viii. The court has the power to cite and require the appearance of persons suspected of taking or concealing property of the protected person and may require the turnover of wrongfully possessed property to the conservator or guardian. UCA § 75-5-433.

ix. The conservatorship provisions provide some guidance about the use of the conservator's powers for the benefit of the protected person and his or her dependents. UCA § 75-5-425. Preservation of the estate plan of the protected person is an important consideration and the conservator may examine the will of the protected person. UCA § 75-5-427. However, where assets are ample and the protected person might have been expected to make gifts (including to charity) the conservator may make gifts up to 20% of the estate's income. UCA § 75-5-425(2).

x. There is a process for the payment of claims against the protected person. A claim can be filed with the conservator or with the court along with a copy to the conservator. Notice to the conservator of any proceedings pending at the time of appointment must be provided to be treated as a claim against the estate. If the claim is not disallowed in 60 days it is deemed allowed. Presenting the claim tolls any limitations period until 30 days after the claim's disallowance. Prior claims for the care of the protected person have priority in case estate assets are likely to be exhausted before all claims are paid. UCA § 75-5-428.

xi. On the death of the protected person, the conservator may account to the personal representative (or to the court) (UCA § 75-5-419; however, RJA 6-501(9)(A) appears to contemplate a final accounting always being filed with the court and served on interested persons). Moreover, if no one is appointed personal representative and no application is pending within 40 days of death, the conservator may apply for the powers of a personal representative; if the powers are granted the conservator's letters are endorsed to note that these powers and duties have been acquired. UCA § 75-5-425(5).

xii. The conservator generally is liable only in a fiduciary capacity unless otherwise provided by contract or unless the conservator does not disclose the representative capacity or is personally at fault for torts. UCA § 75-5-429.

4. **HIPAA Concerns**. Under the Health Insurance Portability and Accountability Act of 1996, known as HIPAA, 42 USC § 1320d et seq, there are restrictions on access to private health information of an individual other than by the individual. State privacy law may apply as well. See, e.g., UCA §§ 78B-5-618 (patient and third party access to medical records) and 26-45-104 (genetic testing privacy).

a. Personal Representative During Life. However, under the HIPAA rules, a "personal representative" of an individual during the individual's life must be treated as the individual. A personal representative for this purpose is a person authorized by applicable law such as those with authority under a power of attorney or health directive or under an appointment as guardian or conservator). 45 CFR § 164.502(g)(1) and (2).

b. Other Than Personal Representative. In addition, during the life of the individual, the health care provider is authorized (not mandated) to share certain directly relevant information with family members, relatives, close personal friends or others identified by the individual who are involved in the health care or the payment for such care, of the individual. 45 CFR § 164.510(b). This could, in the health care provider's professional judgment as to the best interests of the individual, extend to times when the individual is incapacitated and thus not available to give consent. 45 CFR § 164.510(b)(3). There are also rules which allow in certain circumstances and under specified guidelines, disclosures to appropriate authorities or persons for certain particular purposes such as reporting abuse, neglect, or domestic violence (45 CFR § 164.512(c)), judicial or administrative proceedings (45 CFR § 164.512(e)), law enforcement (45 CFR § 164.510(f)), and workers compensation compliance (45 CFR § 164.512(l)).

___, 200_

[1] and [2]

Salt Lake City, UT 84___

Re: Guardianship and Conservatorship for [3]

Dear [1a] and [2a]:

The Court has set the hearing for _____, 200_, at __ _.m., at the courtroom of the Hon. [4], Room __, at the Matheson Courthouse, 450 South State Street. You should receive [mailed] notice from the Court clerk. An appointment is being arranged for a constable to hand deliver a special notice to [3a]. You should plan to attend the hearing with [3a].

In the meantime, I am enclosing a form of letter concerning [3a]'s condition from an appropriate care provider to submit to the Judge at the hearing. It should be completed by a physician, social worker, or similar professional with a strong base of knowledge about [3a]'s condition, and typed on that person's letterhead. I can e-mail the form to the person to use if you can provide me with the person's name and e-mail address. We will need the original letter at the hearing, but it would be best to have it sufficiently in advance that a copy of it can be shared with the counsel who will be named for [3a], as discussed below.

Also, I am enclosing a letter you may use to authorize the giving of the opinion by the care provider and to authorize that person to answer questions if necessary from counsel for [3a] or from the Court.

The statute requires [3a] to have separate counsel, who may be appointed by the Court. This is because personal freedom is at stake. There are agencies which have attorneys who can perform this task. We will see if such counsel can be arranged in advance to streamline the hearing process. Such counsel will want to see the letter from the care provider, may want to ask questions about it, and may want to meet with [3a] to assess the situation before the hearing.

Please call me with any questions you may have.

Sincerely,

[6]

db
Enclosures

[Letterhead]

[Judge]
Third District Court for Salt Lake County
450 South State Street
Salt Lake City, UT 84111

Re: ***[2]***
Case No. 073901072
Statement Regarding Condition

Dear Judge ___:

I have examined and have had the opportunity to interact with [2] over the course of [_____ examinations, _____ years, etc.] as his [treating physician, social worker, etc.]. I am licensed in Utah as a [medical doctor, clinical social worker, etc.] and have the experience and training necessary to give the opinion in this letter.

It is my opinion, based on my observation and training, that [2] suffers from autism [other details of diagnosis, if appropriate]. His level of functioning can be described as [description]. He is an incapacitated person in that he is impaired by reason of mental illness, mental deficiency, physical illness or disability, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. The incapacity creates an ongoing need for protection, supervision, and assistance relating to financial and property matters and to matters relating to daily living, care, health and safety, and providing for necessities, including protection, supervision, and assistance in managing potential outbursts of inappropriate behavior. His incapacity is total, and he needs total protection, supervision, and assistance by a guardian or guardians; partial protection, supervision, or assistance will not be adequate for him.

Very truly yours,

To Care Givers for [2]:

We, the parents of [2], who is currently a minor, authorize you to provide an opinion about [2a]'s condition to the Court in the guardianship and conservatorship proceeding with respect to [2a] in the Utah Third District Court for Salt Lake County, Case Number _____. Such opinion may relate to any mental or physical matters without limitation. Also, you are authorized to answer questions about your opinion or [2a]'s condition which may be asked by separate counsel for [2a], the judge of the Court, or any agent of the Court or visitor appointed by the Court in connection with such matter.

These authorizations are intended to allow you to release personally identifiable health information concerning [2a] for these purposes pursuant to HIPAA or any other privacy rules.

Dated _____ ___, 20__.

_____ _____

[3] **[4]**

Guardianship Checklist – Incapacitated Adult

3rd District Court – Salt Lake – 450 S State St – Salt Lake City UT 84114

Please fill out all the blanks on the forms you submit to the Court. Make sure the Court heading and address is filled out as well as your name, complete address and phone number on **ALL** headings.

____ Petition for Appointment of Guardian/Conservator of an Incapacitated Person
____ Filling Fee - $360.00
-OR-

____ Motion for Waiver of Fees and Order to Waive Fees
(To be determined by the Probate Judge)

____ Doctor's Letter (specifying incapacity)

____ Declaration of Completion of Testing by proposed Guardian(s)

This Is What Is Needed At The Hearing:

____ An Attorney to represent the incapacitated person, who must be present at the hearing. (This CANNOT be the same attorney that represents the Petitioners nor an attorney from the same firm)

____ The incapacitated person must be personally served with a copy of the Petition and Notice of Hearing.

____ Proof of Service to the incapacitated person

____ The incapacitated person must be present at the hearing or a Court Visitor must be assigned.

____ Findings of Fact and Conclusions of Law (Judge signs at hearing)

____ Order of Appointment of Guardian of incapacitated person (Judge signs at hearing)

____ Acceptance of Appointment (this can be signed before the hearing but will not be recorded until guardianship/conservatorship is granted)

____ Letters of Guardianship (this is the document you will want to get Certified Copies of once guardianship is granted. Certified copies cost $4.00 per certification and .50 a page)

____ Contact Information Sheet
Your case number is _____ GU

Your hearing is scheduled for Wednesday, _____, 20__ at 8:30 a.m. with Judge _____ in Courtroom _____.

If you cannot make the above Court date, please call the Court at (801) 238-7162.

Guardianship Checklist – Minor

3rd District Court – Salt Lake – 450 S State St – Salt Lake City UT 84114

Please fill out all the blanks on the forms you submit to the Court. Make sure the Court heading and address is filled out as well as your name, complete address and phone number on **ALL** headings.

____ Petition for Appointment of Guardian of a Minor
____ Filling Fee - $360.00 + $20 OCAP if using on-line forms
-OR-
____ Motion for Waiver of Fees and Order to Waive Fees
(To be determined by the Probate Judge)

____ Affidavit of Suspension of Parental Custody Rights

____ Consent of Natural Parents (must be notarized)
-OR-
____ Notarized Affidavit (stating why you are not able to get consent with any supporting documentation)
-OR-
____ Certificate of Search of Paternity (when there is no father on birth certificate (Dept. of Health, 288 N 1460 W, SLC, 84116 Mon-Thurs 7am – 5:30 pm)

____ Affidavit and Waiver by School District (if child is school age)

____ Nomination by Minor (if child is 14 years or older)

____ Declaration of Completion of Testing (not needed if guardianship is for School purposes only)

____ Contact Information Sheet

____ Findings of Fact and Conclusions of Law (Judge signs at hearing)

____ Order of Appointment of Guardian of Minor (Judge signs at hearing)

____ Acceptance of Appointment (this can be signed before the hearing but it will not be recorded until guardianship is granted)

____ Letters of Guardianship (this is the document you will want to get Certified Copies of once guardianship is granted. Certified copies cost $4.00 per certification and .50 a page)

Your hearing is scheduled for Wednesday, _____, 20__ at 8:30 a.m. with Judge _____ in Courtroom _____.

If you cannot make the above Court date, please call the Court at (801) 238-7162 or 238-7164.

1 of 17 DOCUMENTS

LEXISNEXIS' CODE OF FEDERAL REGULATIONS

*** This document is current through the November 6, 2014 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE A -- DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBCHAPTER C -- ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS
PART 164 -- SECURITY AND PRIVACY
SUBPART E -- PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

Go to the CFR Archive Directory

45 CFR 164.502

§ 164.502 Uses and disclosures of protected health information: general rules.

general non-disclosure

(a) Standard. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) Covered entities: Permitted uses and disclosures. A covered entity is permitted to use or disclose protected health information as follows:

may disclose

(i) To the individual;

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§ 164.502(b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure;

(iv) Except for uses and disclosures prohibited under § 164.502(a)(5)(i), pursuant to and in compliance with a valid authorization under § 164.508;

(v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and

(vi) As permitted by and in compliance with this section, § 164.512, § 164.514(e), (f), or (g).

(2) Covered entities: Required disclosures. A covered entity is required to disclose protected health information:

must disclose

(i) To an individual, when requested under, and required by § 164.524 or § 164.528; and

(ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the covered entity's compliance with this subchapter.

(3) Business associates: Permitted uses and disclosures. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or other arrangement pursuant to § 164.504(e) or as required by law. The business associate may not use or disclose protected health information in a manner that would

violate the requirements of this subpart, if done by the covered entity, except for the purposes specified under § 164.504(e)(2)(i)(A) or (B) if such uses or disclosures are permitted by its contract or other arrangement.

(4) Business associates: Required uses and disclosures. A business associate is required to disclose protected health information:

(i) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the business associate's compliance with this subchapter.

(ii) To the covered entity, individual, or individual's designee, as necessary to satisfy a covered entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of protected health information.

(5) Prohibited uses and disclosures.

(i) Use and disclosure of genetic information for underwriting purposes: Notwithstanding any other provision of this subpart, a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, shall not use or disclose protected health information that is genetic information for underwriting purposes. For purposes of paragraph (a)(5)(i) of this section, underwriting purposes means, with respect to a health plan:

(A) Except as provided in paragraph (a)(5)(i)(B) of this section:

(1) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(2) The computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(3) The application of any pre-existing condition exclusion under the plan, coverage, or policy; and

(4) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(B) Underwriting purposes does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy.

(ii) Sale of protected health information:

(A) Except pursuant to and in compliance with § 164.508(a)(4), a covered entity or business associate may not sell protected health information.

(B) For purposes of this paragraph, sale of protected health information means:

(1) Except as provided in paragraph (a)(5)(ii)(B)(2) of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.

(2) Sale of protected health information does not include a disclosure of protected health information:

(i) For public health purposes pursuant to § 164.512(b) or § 164.514(e);

(ii) For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;

(iii) For treatment and payment purposes pursuant to § 164.506(a);

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to § 164.506(a);

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) and 164.504(e), and the only

remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

(vi) To an individual, when requested under § 164.524 or § 164.528;

(vii) Required by law as permitted under § 164.512(a); and

(viii) For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.

(b) Standard: Minimum necessary. (1) Minimum necessary applies. When using or disclosing protected health information or when requesting protected health information from another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) Minimum necessary does not apply. This requirement does not apply to:

(i) Disclosures to or requests by a health care provider for treatment;

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

(iv) Disclosures made to the Secretary in accordance with subpart C of part 160 of this subchapter;

(v) Uses or disclosures that are required by law, as described by § 164.512(a); and

(vi) Uses or disclosures that are required for compliance with applicable requirements of this subchapter.

(c) Standard: Uses and disclosures of protected health information subject to an agreed upon restriction. A covered entity that has agreed to a restriction pursuant to § 164.522(a)(1) may not use or disclose the protected health information covered by the restriction in violation of such restriction, except as otherwise provided in § 164.522(a).

(d) Standard: Uses and disclosures of de-identified protected health information.

(1) Uses and disclosures to create de-identified information. A covered entity may use protected health information to create information that is not individually identifiable health information or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by the covered entity.

(2) Uses and disclosures of de-identified information. Health information that meets the standard and implementation specifications for de-identification under § 164.514(a) and (b) is considered not to be individually identifiable health information, i.e., de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of § 164.514, provided that:

(i) Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and

(ii) If de-identified information is re-identified, a covered entity may use or disclose such re-identified information only as permitted or required by this subpart.

(e)(1) Standard: Disclosures to business associates. (i) A covered entity may disclose protected health information to a business associate and may allow a business associate to create, receive, maintain, or transmit protected health information on its behalf, if the covered entity obtains satisfactory assurance that the business associate will appropriately safeguard the information. A covered entity is not required to obtain such satisfactory assurances from a business associate that is a subcontractor.

(ii) A business associate may disclose protected health information to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit protected health information on its behalf, if the business associate obtains satisfactory assurances, in accordance with § 164.504(e)(1)(i), that the subcontractor will appropriately safeguard the information.

(2) Implementation specification: Documentation. The satisfactory assurances required by paragraph (e)(1) of this section must be documented through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of § 164.504(e).

(f) Standard: Deceased individuals. A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

(g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under § 164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

(4) Implementation specification: Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

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*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE A -- DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBCHAPTER C -- ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS
PART 164 -- SECURITY AND PRIVACY
SUBPART E -- PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

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need agreement generally

§ 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this section.

(a) Standard: use and disclosure for facility directories. (1) Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may:

(i) Use the following protected health information to maintain a directory of individuals in its facility:

(A) The individual's name;

(B) The individual's location in the covered health care provider's facility;

(C) The individual's condition described in general terms that does not communicate specific medical information about the individual; and

(D) The individual's religious affiliation; and

(ii) Use or disclose for directory purposes such information:

(A) To members of the clergy; or

(B) Except for religious affiliation, to other persons who ask for the individual by name.

(2) Opportunity to object. A covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section.

(3) Emergency circumstances. (i) If the opportunity to object to uses or disclosures required by paragraph (a)(2) of this section cannot practicably be provided because of the individual's incapacity or an emergency treatment circum-

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(h) Standard: Confidential communications. A covered health care provider or health plan must comply with the applicable requirements of § 164.522(b) in communicating protected health information.

(i) Standard: Uses and disclosures consistent with notice. A covered entity that is required by § 164.520 to have a notice may not use or disclose protected health information in a manner inconsistent with such notice. A covered entity that is required by § 164.520(b)(1)(iii) to include a specific statement in its notice if it intends to engage in an activity listed in § 164.520(b)(1)(iii)(A)-(C), may not use or disclose protected health information for such activities, unless the required statement is included in the notice.

(j) Standard: Disclosures by whistleblowers and workforce member crime victims.

(1) Disclosures by whistleblowers. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce or a business associate discloses protected health information, provided that:

(i) The workforce member or business associate believes in good faith that the covered entity has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and

(ii) The disclosure is to:

(A) A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or

(B) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described in paragraph (j)(1)(i) of this section.

(2) Disclosures by workforce members who are victims of a crime. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

(i) The protected health information disclosed is about the suspected perpetrator of the criminal act; and

(ii) The protected health information disclosed is limited to the information listed in § 164.512(f)(2)(i).

HISTORY: *[65 FR 82462, 82805,* Dec. 28, 2000; *66 FR 12434,* Feb. 26, 2001; *67 FR 53182, 53267,* Aug. 14, 2002; *78 FR 5566, 5696,* Jan. 25, 2013]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE SUBPART:
42 U.S.C. 1320d-2, 1320d-4, and 1320d-9; sec. 264 of Pub. L. 104-191, *110 Stat. 2033-2034 (42 U.S.C. 1320d-2* (note)); and secs. 13400-13424, Pub. L. 111-5, *123 Stat. 258-279.*

NOTES: [EFFECTIVE DATE NOTE: *78 FR 5566, 5696,* Jan. 25, 2013, amended this section, effective Mar. 26, 2013.]

NOTES APPLICABLE TO ENTIRE SUBTITLE:
[PUBLISHER'S NOTE: Nomenclature changes to Subtitle A appear at *66 FR 39450, 39452,* July 31, 2001.]
[PUBLISHER'S NOTE: For Federal Register citations concerning Race to the Top--Early Learning Challenge (RTT-ELC) program, see: *78 FR 53964,* Aug. 30, 2013.]

NOTES APPLICABLE TO ENTIRE PART :
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 164 Guidance and Request for Information, see: *74 FR 19006,* Apr. 27, 2009.]

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TITLE 45 -- PUBLIC WELFARE
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when not need agreement

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) Standard: Uses and disclosures for public health activities. (1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

stance, a covered health care provider may use or disclose some or all of the protected health information permitted by paragraph (a)(1) of this section for the facility's directory, if such disclosure is:

(A) Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and

(B) In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.

(ii) The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a)(2) of this section when it becomes practicable to do so.

(b) Standard: uses and disclosures for involvement in the individual's care and notification purposes. (1) Permitted uses and disclosures. (i) A covered entity may, in accordance with paragraphs (b)(2), (b)(3), or (b)(5) of this section, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's health care or payment related to the individual's health care.

(ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of this section, as applicable.

(2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:

(i) Obtains the individual's agreement;

(ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

(iii) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

(3) Limited uses and disclosures when the individual is not present. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's care or payment related to the individual's health care or needed for notification purposes. A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

(4) Uses and disclosures for disaster relief purposes. A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph (b)(1)(ii) of this section. The requirements in paragraphs (b)(2), (b)(3), or (b)(5) of this section apply to such uses and disclosures to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

(5) Uses and disclosures when the individual is deceased. If the individual is deceased, a covered entity may disclose to a family member, or other persons identified in paragraph (b)(1) of this section who were involved in the individual's care or payment for health care prior to the individual's death, protected health information of the individual that is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity.

HISTORY: *[65 FR 82462, 82812,* Dec. 28, 2000; *66 FR 12434,* Feb. 26, 2001; *67 FR 53182, 53270,* Aug. 14, 2002; *78 FR 5566, 5699,* Jan. 25, 2013]

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

(v) An employer, about an individual who is a member of the workforce of the employer, if:

(A) The covered entity is a covered health care provider who provides health care to the individual at the request of the employer:

(1) To conduct an evaluation relating to medical surveillance of the workplace; or

(2) To evaluate whether the individual has a work-related illness or injury;

(B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

(C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

(D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of the notice to the individual at the time the health care is provided; or

(2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.

(vi) A school, about an individual who is a student or prospective student of the school, if:

(A) The protected health information that is disclosed is limited to proof of immunization;

(B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and

(C) The covered entity obtains and documents the agreement to the disclosure from either:

(1) A parent, guardian, or other person acting in loco parentis of the individual, if the individual is an unemancipated minor; or

(2) The individual, if the individual is an adult or emancipated minor.

(2) Permitted uses. If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

abuse or neglect

(c) Standard: Disclosures about victims of abuse, neglect or domestic violence. (1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(d) Standard: Uses and disclosures for health oversight activities. (1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. [Notwithstanding] paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

(e) Standard: Disclosures for judicial and administrative proceedings. judicial proceedings

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

(1) No objections were filed; or

(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(v) of this section.

(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.

law enforcement

(f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) Permitted disclosure: Reporting crime in emergencies. (i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

(A) The commission and nature of a crime;

(B) The location of such crime or of the victim(s) of such crime; and

(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

decedents

(g) Standard: Uses and disclosures about decedents. (1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

(2) Funeral directors. A covered entity may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.

(h) Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes. A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

(i) Standard: Uses and disclosures for research purposes. (1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that:

(i) Board approval of a waiver of authorization. The covered entity obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by § 164.508 for use or disclosure of protected health information has been approved by either:

(A) An Institutional Review Board (IRB), established in accordance with 7 CFR lc.107, *10 CFR 745.107*, *14 CFR 1230.107*, *15 CFR 27.107*, *16 CFR 1028.107*, *21 CFR 56.107*, *22 CFR 225.107*, 24 CFR 60.107, *28 CFR 46.107*, *32 CFR 219.107*, *34 CFR 97.107*, *38 CFR 16.107*, *40 CFR 26.107*, *45 CFR 46.107*, *45 CFR 690.107*, or *49 CFR 11.107*; or

(B) A privacy board that:

(1) Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;

(2) Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and

(3) Does not have any member participating in a review of any project in which the member has a conflict of interest.

(ii) Reviews preparatory to research. The covered entity obtains from the researcher representations that:

(A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and

(C) The protected health information for which use or access is sought is necessary for the research purposes.

(iii) Research on decedent's information. The covered entity obtains from the researcher:

(A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents;

(B) Documentation, at the request of the covered entity, of the death of such individuals; and

(C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.

(2) Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following:

(i) Identification and date of action. A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;

(ii) Waiver criteria. A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(1) An adequate plan to protect the identifiers from improper use and disclosure;

(2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(3) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

(iii) Protected health information needed. A brief description of the protected health information for which use or access has been determined to be necessary by the institutional review board or privacy board, pursuant to paragraph (i)(2)(ii)(C) of this section;

(iv) Review and approval procedures. A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:

(A) An IRB must follow the requirements of the Common Rule, including the normal review procedures (*7 CFR 1c.108(b), 10 CFR 745.108(b), 14 CFR 1230.108(b), 15 CFR 27.108(b), 16 CFR 1028.108(b), 21 CFR 56.108(b), 22 CFR 225.108(b),* 24 CFR 60.108(b), *28 CFR 46.108(b), 32 CFR 219.108(b), 34 CFR 97.108(b), 38 CFR 16.108(b), 40 CFR 26.108(b), 45 CFR 46.108(b), 45 CFR 690.108(b),* or *49 CFR 11.108(b)*) or the expedited review procedures (*7 CFR 1c.110, 10 CFR 745.110, 14 CFR 1230.110, 15 CFR 27.110, 16 CFR 1028.110, 21 CFR 56.110, 22 CFR 225.110,* 24 CFR 60.110, *28 CFR 46.110, 32 CFR 219.110, 34 CFR 97.110, 38 CFR 16.110, 40 CFR 26.110, 45 CFR 46.110, 45 CFR 690.110,* or *49 CFR 11.110*);

(B) A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph (i)(1)(i)(B)(2) of this section, and the alteration or waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph (i)(2)(iv)(C) of this section;

(C) A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the protected health information for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and

(v) Required signature. The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.

(j) Standard: Uses and disclosures to avert a serious threat to health or safety. (1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(ii) Is necessary for law enforcement authorities to identify or apprehend an individual:

(A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or

(B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in § 164.501.

(2) Use or disclosure not permitted. A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:

(i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or

(ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.

(3) Limit on information that may be disclosed. A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) Standard: Uses and disclosures for specialized government functions. (1) Military and veterans activities. (i) Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

(A) Appropriate military command authorities; and

(B) The purposes for which the protected health information may be used or disclosed.

(ii) Separation or discharge from military service. A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

(iii) Veterans. A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

(iv) Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

(2) National security and intelligence activities. A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act *(50 U.S.C. 401,* et seq.) and implementing authority (e.g., Executive Order 12333).

(3) Protective services for the President and others. A covered entity may disclose protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by *18 U.S.C. 3056* or to foreign heads of state or other persons authorized by *22 U.S.C. 2709*(a)(3), or for the conduct of investigations authorized by *18 U.S.C. 871* and 879.

(4) Medical suitability determinations. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:

(i) For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12968;

(ii) As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or

(iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) Correctional institutions and other law enforcement custodial situations. (i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;

(B) The health and safety of such individual or other inmates;

(C) The health and safety of the officers or employees of or others at the correctional institution;

(D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;

(E) Law enforcement on the premises of the correctional institution; or

(F) The administration and maintenance of the safety, security, and good order of the correctional institution.

(ii) Permitted uses. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

(6) Covered entities that are government programs providing public benefits. (i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

workers comp

(l) Standard: Disclosures for workers' compensation. A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

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Utah State Court Webpages on Guardianships and Conservatorships:

1. Guardianships and Conservatorships: www.utcourts.gov/howto/family/gc/
2. The Guardianship Signature Program: www.utcourts.gov/howto/family/gc/signature/
3. Authorities and Responsibilities of a Guardian: www.utcourts.gov/howto/family/gc/authority-guardian.html
4. Decision Making Standards: www.utcourts.gov/howto/family/gc/decisions.html
5. Procedure for Appointing a Guardian for an Adult: www.utcourts.gov/howto/family/gc/guardianship
6. Options for Protecting an Adult with Diminished Capacity: www.utcourts.gov/howto/family/gc/options.html
7. Volunteer Court Visitor Program: http://www.utcourts.gov/visitor/resources/

UTAH COURTS

Guardianships and Conservatorships

For an Adult | For a Minor | Related Information

For an Adult

Thinking about Guardianship or Conservatorship?

- Options for Protecting an Adult with Diminished Capacity
- Nominating a Guardian and Conservator
- Authority and Responsibilities of a Conservator
- Authority and Responsibilities of a Guardian
- Video about Guardianship of an Adult

Asking to Be Appointed as a Guardian or Conservator

- Procedure for Appointing a Conservator for an Adult
- Procedure for Appointing a Guardian for An Adult
- Procedure for Appointing an Emergency Guardian for an Adult
- Pre-appointment Tests for Guardians and Conservators

Requirements of a Guardian or Conservator

- Reports Required from the Guardian and Conservator
- Authority and Responsibilities of a Guardian
- Authority and Responsibilities of a Conservator
- Ending a Guardianship or Conservatorship
- Resignation or Removal of a Guardian or Conservator
- Moving a Guardianship or Conservatorship
- Bond from a Guardian or Conservator
- Proceedings after the Appointment of a Guardian or Conservator
- Summary and Required Private Information Record - PDF | Word

Serving as a Guardian or Conservator

- Banking for the Protected Person
- Budgeting for the Protected Person
- Choosing a Place for the Protected Person to Live
- Compensation for a Guardian or Conservator
- Crimes Against the Protected Person
- Decision Making Standards
- Education, Recreation and Work for the Protected Person
- Healthcare Decisions for the Protected Person
- Identifying the Protected Person's Property
- Keeping the Protected Person's Property Safe
- Managing the Protected Person's Property
- Personal Needs of the Protected Person
- Planning for the Protected Person's Needs
- Record Keeping for Guardians and Conservators
- Relationship Between a Guardian and a Conservator and other Decision Makers
- Resolving Conflicts with Family Members and Others
- Resources to Help Guardians and Conservators
- Respecting the Protected Person's Rights

Guardianship and/or Conservatorship of a Minor

- Video about Guardianship of a Minor
- Guardianship of a Minor (A 3-part video describing the guardianship of a minor)
  - Part 1: Guardianship of a Minor Basics
  - Part 2: District Court Procedures
  - Part 3: Responsibilities, Termination, and Modification
- Guardianship of a Minor (OCAP interview and forms)
- Conservatorship of a minor

Requirements of a Guardian or Conservator of a Minor

- Reports required from the conservator (or a guardian if no conservator is appointed)
- Inventory of the minor's income and property
- Conservator's/Guardian's annual accounting
- Conservator's/Guardian's final accounting
- Moving a conservatorship or guardianship
- Ending a conservatorship or guardianship
- Summary and Required Private Information Record - PDF | Word | WordPerfect
- Nominating a Guardian and Conservator

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Related Information

- Abuse Protective Order
- Adult Protective Services (daas.utah.gov)
- Advance Health Care Directive Act
- Advance Health Care Directive - Instructions & Forms (aging.utah.edu)
- Aging and Adult Services (daas.utah.gov)
- Court Locations
- Dictionary of Legal and Medical Terms
- Fee Waiver
- Fees
- Filing Procedures
- Finding Legal Help
- Free Legal Clinics
- Going to Court
- Guardianship for Adults in Utah - a Disability Law Center Publication (disabilitylawcenter.org)
- Guardianship of an Adult Basics Class
- Guardianship of a Minor Basics Class
- Guardianship Signature Program
- Making Medical Decisions for Someone Else: A How-to Guide (americanbar.org)
- Mediation
- Office of Public Guardian (opg.utah.gov)
- Rule 6-501. Reporting requirements for guardians and conservators
- Rules of Civil Procedure
- Self Help Center
- Serving Papers
- Statutes
- Volunteer Court Visitor Program

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UTAH COURTS

Guardianship Signature Program

Volunteering for the Signature Program

The Guardianship Signature Program is endorsed by the Board of District Court Judges and the Bar Commission. This program provides to judges a list of lawyers who have volunteered to represent respondents in guardianship and conservatorship proceedings when the respondents do not have counsel of their own choice. See Utah Code §75-5-303. The representation is for free or on a sliding scale if the client's income qualifies, or for reasonable and necessary attorney fees if the client's income is more than 300% of the federal poverty guidelines.

To volunteer for the Signature Program, go to the "Check YES! Survey" (utahbar.org) of the Utah State Bar. The volunteer lawyer can select the district in which he or she is willing to accept appointments. To participate in the Signature Program, an attorney must:

- maintain malpractice insurance (Because this program merges pro bono and modest means representation, the Bar's malpractice insurance does not cover participants.);
- be admitted to practice law in Utah and be a member of the Utah State Bar in good standing;
- accept the fee limits established for the Bar's Pro Bono and Modest Means programs and described in the next section;
- certify to the Utah State Bar as to competence in guardianship and conservatorship law and procedures or complete the basic course in guardianship and conservatorship law and procedures.

In addition, an attorney is encouraged to biannually complete at least 4 hours of MCLE in guardianship and conservatorship law and procedures.

If an attorney does not have an e-filing account, the attorney may apply for a free account by contacting the Access to Justice Director for an agreement and application for an e-filing account. The attorney must use the account in accordance with the e-filing agreement.

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Fee limits in the Bar's Pro Bono and Modest Means programs

- Utah State Bar's Pro Bono Program
- Utah State Bar's Modest Means Program

Income as a Percent of Federal Poverty Guidelines	Maximum Hourly Fee*	Maximum Flat Fee*
Up to 125%	$0	$0
More than 125% to 200%	$50	Up to 35% of the normal fee charged for the same service, or a flat fee that is calculated based on hourly rates not exceeding $50.00 per hour.
More than 200% to 300%	$75	Up to 50% of normal fee charged for the same service, or a flat fee that is calculated based on hourly rates not exceeding $75.00 per hour.
More than 300%	Reasonable and necessary	Reasonable and necessary

* Although the Signature Program uses the pro bono and modest means income standards for determining fees, there are no restrictions on income or assets to qualify for appointed counsel. Normally the attorney's maximum fee will be determined by the respondent's income. However, the respondent's assets should be considered as a source for establishing and paying the fee when the respondent has substantial assets and modest income or for other good cause.

Resolution of income qualification can be deferred until the end of the proceedings and the attorney and client have evaluated the client's estate.

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Attorney's resources

Mentoring

The Board of Directors that administers the Signature Program will arrange for a mentor for a participating lawyer. To request a mentor, contact the Access to Justice Director at the Utah State Bar.

Third-year law students

The S.J. Quinney College of Law at the University of Utah has organized a program for third year students, educated in the law, procedure and practicalities of guardianship, to assist Signature Program attorneys in representing their clients under Rule 14-807, Law student and law graduate legal assistance. The students, under the direct and immediate personal

supervision and in the presence of a resident attorney, can conduct or assist with interviews and other investigation, do research, prepare pleadings and other papers, and represent the client at hearings. To request the assistance of a third-year student, please contact the 3L Guardianship Fellow at the S.J. Quinney College of Law.

- Certificate of eligibility, stipulation and permission for participation - PDF | Word
- Bar Admissions Certificate - PDF | Word

Basic course in guardianship and conservatorship law and procedures

In order to volunteer for the Guardianship Signature Program, attorneys must certify to the Utah State Bar as to competence in guardianship and conservatorship law and procedures or complete a basic course in guardianship and conservatorship law and procedures.

The link below is a free online training that satisfies this requirement and is eligible for 1 hour of CLE credit. It contains four sections and quiz questions appear throughout. The first section introduces you to the program and also a scenario that is modified throughout in order to illustrate several different ways in which these cases may present themselves. The second section provides an overview of the basic procedures of an initial guardianship proceeding. The third section guides you through the role of the respondent's attorney, and the fourth and final section provides additional resources.

> ⚠ **Note:** Training Quizes must be completed using Internet Explorer or Safari as your web browser, otherwise you may not be able to print your certificates of completion.

- Free Online Guardianship Training
- Free Online Guardianship Training Script - PDF

To receive CLE credit for the training, attorneys will need to submit the Certificate of Completion that appears at the end of the training, along with Self-Study Form 5 (utahbar.org) to the Utah State Bar's MCLE Department.

Signature Program forms

See the Forms section at the bottom of this page.

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Attorney's responsibilities

As provided in the preamble to the Rules of Professional Conduct, an attorney who has agreed to represent the respondent will:

- provide the client with an informed understanding of the client's legal rights and obligations and explain their practical implications;
- zealously assert the client's position under the statutes and rules; and
- seek a result advantageous to the client consistent with the requirements of honest dealing with others.

As warranted by the circumstances, the attorney will also:

- file for the judge's signature an order appointing the attorney;
- file a notice of appearance;
- communicate with the client;
- investigate the nature and extent of the client's claimed incapacity;
- investigate the nature and extent of the client's estate;

- investigate alternatives to guardianship (See, for example, the court's webpage on Options for Protecting an Adult with Diminished Capacity.);
- investigate the proper limited authority of a guardian, ensuring that the court grants a full guardianship only if no alternative exists (See Section 75-5-304 and the court's webpage on Authority and Responsibilities of a Guardian.);
- investigate whether all interested persons have been listed for service of the notice of hearing and petition (See Section 75-5-309 and "Service of the petition and notice of hearing" in the court's webpage on Procedures for appointing a guardian.);
- investigate the priority of the proposed guardian (See Section 75-5-311.);
- consider requesting a guardian ad litem under RPC 1.14 to represent the respondent's best interests (this is rare);
- assist the client in nominating a guardian or conservator (See the court's webpage on Nominating a Guardian and Conservator.);
- ensure that the client is present at the hearing unless excused under Section 75-5-303(5);
- present the client's proposals and contest proposals with which the client does not agree;
- participate in mediation with or on behalf of the client;
- try the case if needed;
- ensure the adequacy of the findings of fact (See Section 75-5-304.); and
- continue to represent the client until the conditions of Section 75-5-303 have been met.

In addition, the attorney should note the following Rules of Professional Conduct.

- Rule 1.1. Competence;
- Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Attorney;
- Rule 1.3. Diligence;
- Rule 1.4. Communication;
- Rule 1.14. Client with Diminished Capacity;
- Rule 3.1. Meritorious Claims and Contentions; and
- Rule 3.3. Candor Toward the Tribunal; and
- Rule 14-301, Standards of Professionalism and Civility.

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Program objectives

Section 75-5-303 requires the district court judge to appoint an attorney to represent the respondent in a guardianship petition if the respondent does not have counsel of his or her choice. Section 75-5-407, is similar—permitting, but not requiring, the judge to do so. The Signature Program provides a roster of attorneys willing to represent adult respondents in guardianship and conservatorship proceedings for no fee, but who may be paid under Section 75-5-303 as circumstances warrant.

In addition, the Signature Program provides an alternative for petitioners and petitioners' attorneys other than to recruit an attorney to represent the respondent. And it allows judges to appoint an attorney in compliance with Informal Opinion 10-2 and Informal Opinion 12-02.

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Requesting appointed counsel and placing the client with an attorney

In the petition or in a separate form, anyone can request that the judge appoint an attorney to represent the respondent. For Signature Program

Forms, see the Forms section at the bottom of this page. For other information and forms, see our page on Procedure for Appointing a Guardian for an Adult.

Petitioners, their counsel and court clerks should make every attempt to identify the need for appointed counsel as soon as possible. This is so the appointed attorney has time to talk with his or her client and investigate the case, making the initial hearing as productive as possible. If necessary, the judge may appoint an emergency guardian under Section 75-5-310 or a temporary guardian under Section 75-5-310.5 if the conditions of those sections are met.

If the judge refers a respondent to the Signature Program, the clerk will notify the attorneys who have volunteered for that district of the need to place the client. The client will be placed with the first attorney to accept the placement. If the clerk is not successful in placing the client, s/he will contact the Signature Program's Board of Directors to assist in placing the client.

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Claim for costs and attorney fees made to guardian or conservator

Under Section 75-5-303, the respondent's costs and attorney fees are paid from the respondent's estate, unless the court determines that the petition is without merit, in which case the petitioner must pay the respondent's costs and attorney fees. Claims for costs and fees should be submitted to the guardian or conservator, if one has been appointed, or, if not, then to the petitioner or to the client, whichever is responsible for payment. A memorandum of costs can be filed under URCP 54 and an affidavit of attorney fees can be filed under URCP 73.

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Program administration

The Signature Program is administered by a Board of Directors with appointees from the Elder Law Section, the Estate Planning Section, the Disability Law Center, Utah Legal Services, the 3L Guardianship Project Fellowship at the S.J. Quinney College of Law, and the Access to Justice Director at the Utah State Bar. A representative from the Administrative Office of the Courts serves as liaison between the Board and the district court. The Board will:

- recruit attorneys to participate in the Signature Program;
- develop a curriculum for basic and continuing education in guardianship and conservatorship law and procedures;
- find a mentor for an attorney as requested by the attorney;
- develop a law student assistance component under Rule 14-807;
- assist in placing clients; and
- modify the Signature Program as experience warrants.

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Forms

Forms to appoint an attorney to represent the respondent

- Checklist - PDF | Word
- Request to Appoint an Attorney to Represent the Respondent - PDF | Word
- Order Appointing an Attorney to Represent the Respondent - PDF | Word

Notice of appearance and withdrawal

- Notice of Appearance of Counsel - PDF | Word
- Notice of Withdrawal of Counsel - PDF | Word

Forms to assign a court visitor

- Checklist - PDF | Word
- Request to Assign a Court Visitor - PDF | Word
- Order Assigning Court Visitor to Report on Request to Excuse Respondent from the Hearing- PDF | Word
- Order Assigning Court Visitor to Report on the Well Being- PDF | Word
- Order Assigning Court Visitor to Report on an Audit of Court Records- PDF | Word
- Order Assigning Court Visitor to Report on the Guardian's and Protected Person's Whereabouts- PDF | Word

Forms to appoint an examiner

- Checklist - PDF | Word
- Request for Order to Examine Respondent - PDF | Word
- Order Appointing Physician to Examine the Respondent - PDF | Word
- Report on Clinical Evaluation - PDF | Word
- Instructions to the Evaluator - PDF | Word

Forms to object to the petition

- Checklist - PDF | Word
- Objection to the Petition - PDF | Word

Invoice for fees and costs

- Invoice for fees and costs - PDF | Word

Other guardianship information and forms

The Utah state courts have published on their website information about planning ahead and alternatives to guardianship, the guardian's responsibilities, court procedures and forms, the protected person's rights, community resources, and more.

- Guardianships and Conservatorships

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UTAH COURTS

Authority and Responsibilities of a Guardian

Guardianship and Conservatorship Home Page

Limited or full appointment

The order appointing you and your letter of guardianship will describe the extent of your authority, limited or full.

You might have authority to make decisions about certain things, called a limited guardianship. Or you might have authority to make decisions about all aspects of the protected person's life, called a plenary or full guardianship.

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Filing required reports

- You must file with the court a report on the protected person's status every year.
- If the protected person does not have a conservator or if you are the conservator, you must file with the court an inventory listing the protected person's property within 90 days after being appointed.
- If the protected person does not have a conservator or if you are the conservator, you must file with the court an accounting of the protected person's estate every year.
- If the protected person does not have a conservator or if you are the conservator, you must file with the court a final accounting when the conservatorship ends, such as if the protected person dies or regains capacity or if the guardianship is moved to another state.
- If the protected person has a conservator other than yourself, you must report to the conservator every year on the financial transactions that you have made on the protected person's behalf.
- The reports are required. Failure to file a report or making a substantial misstatement in a report could result in a $5,000 fine.

- For more information and forms, see our page on Reports Required from the Guardian and Conservator.

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Order and letter of guardianship

Your letter of guardianship is proof of your authority to make decisions and act on the protected person's behalf, and you will present this to others — such as healthcare providers, insurance agents, residence administrators, banks, and other individuals and institutions — when that person asks for a record of your authority. Some persons might ask for a photocopy, which you or they can make. Others might need a certified copy. A certified copy is treated like an original and is available only from the court. There is a fee for a certified copy, and you may want to keep a few certified copies handy for convenient use. For information about fees, see our page on Fees.

The original order and letter of guardianship will remain in the court file, and you may access the file any time the court is open.

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Notice of appointment

As soon as possible after your appointment you should notify the people and entities that you will be working with and interested persons, such as:

- the protected person's spouse, children, parents and other family members who were involved in the case;
- the protected person's employer;
- the administrator or manager of the protected person's residential facility;
- the protected person's healthcare providers and caregivers;
- the protected person's education and training providers;
- banks, savings and loans, credit unions, and other financial institutions where the protected person has savings or checking accounts or credit or debit cards;
- stockbrokers and financial advisers;
- companies in which the protected person owns stock;
- insurance agents;
- government agencies, such as Social Security Administration, Veterans Administration and Workers Compensation Fund, from which the protected person receives payments;
- pension plan administrators;
- people who owe the protected person money or to whom the protected person owes money;
- the county recorder in every county in which the protected person owns land;
- the post office, if you want to change the protected person's mail address; and
- anyone involved in a lawsuit by or against the protected person.

To notify someone of your appointment, you should:

- inform the person or entity that you have been appointed;
- give to each a copy of your letter of guardianship and an address, email address and telephone number at which you can be reached;
- ask the person or entity whether they recognize your authority or need something else.

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Guardian's authority and responsibilities

Limited authority

A limited guardian has the powers listed in the court order. Utah Code Section 75-5-304. Utah law prefers a guardian with limited authority, and the guardian's authority should be tailored to the protected person's needs and abilities. The challenge will be to describe that authority specifically enough to be clear and generally enough to be flexible. Depending on the protected person's needs and abilities, you may need authority to make decisions about:

- health or other professional care, counsel, treatment, or service;
- custody and residence;
- care, comfort, and maintenance;
- training and education; and
- clothing, furniture, vehicles, and other personal effects.

If no conservator has been appointed, you may need authority to make decisions about:

- proceedings to safeguard the protected person's property;
- proceedings to compel a person to support the protected person; and
- receiving money and property for the protected person and applying the money and property for the protected person's support, care, and education.

If you believe that some specific authority is needed, you should describe and request that authority in the petition to appoint a guardian, or you should petition the court to amend your appointment order to include the needed authority. For more information and forms, see our page on Proceedings after the Appointment of a Guardian.

Full authority

If the court finds that nothing less than a full guardianship is adequate, the court can grant full or plenary authority, and the guardian has the same responsibility for a protected person as a parent has for the parent's minor child, except that the guardian does not have to use his or her own money for the protected person's care and support. If no conservator is appointed, the guardian has some of the responsibilities of a conservator. Utah Code Section 75-5-312.

The protected person retains decision making authority not given to the guardian, including decisions about his or her religion, and friends; whether to marry or divorce, drive, or consume legal substances, and other decisions. For more information, see our page on Reports Required from the Guardian and Conservator. If you believe you need authority for these matters, you should describe and request that authority in the petition to appoint a guardian, or you should petition the court to amend your appointment order to include the needed authority. For more information and forms, see our page on Proceedings after the Appointment of a Guardian or Conservator.

The right to vote cannot be assigned to the guardian in any event. If you believe that the protected person should not have the right to vote, you should request that restriction in the petition to appoint a guardian, or you should petition the court to amend its order to include that restriction. For more information and forms, see our page on Proceedings after the Appointment of a Guardian or Conservator.

Restrictions on authority

The court order may have limited your authority, but even in a full guardianship, there are things that you simply cannot do. For more information, see our page on Reports Required from the Guardian and Conservator.

If the court has not appointed a conservator, you, as guardian, will have some of that authority and responsibility. Utah Code Section 75-5-312 . You should consider petitioning the court to appoint a conservator, either you or someone else, if:

- you, as guardian, do not want responsibility for the protected person's financial affairs;
- the protected person owns real property;
- the protected person owns personal property other than clothing, furniture, vehicles and personal effects;
- the protected person has assets over $50,000;
- the protected is entitled to receive a lump sum payment over $10,000 or annual income over $10,000;
- the protected person has property in other states, on-going business affairs or extensive debts or financial investments;
- someone else depends on the protected person for support; or
- persons and organizations will not recognize your authority to make decisions about the protected person's property and financial affairs.

For more information and forms, see our page on Procedure for Appointing a Conservator for an Adult .

But if the court has not appointed a conservator, you, as guardian, will have some of that authority and responsibility. Specifically,

You must:	For more information, see:
Within 90 days after your appointment, file an inventory of the estate with the court.	Our page on Reports Required from the Guardian and Conservator.
File an annual financial accounting with the court.	Our page on Reports Required from the Guardian and Conservator.
File with the court a final accounting when the guardianship ends, such as if the protected person dies or regains capacity or the guardianship is moved to another state or if you resign or are removed.	Our pages on Reports Required from the Guardian and Conservator, Ending a Guardianship or Conservatorship, Moving a Guardianship or Conservatorship, and Resignation or Removal of a Guardian or Conservator.
Identify, locate and take control of the protected person's estate.	Our pages on Identifying the Protected Person's Property.
Collect all income and benefits the protected person is entitled to, and start legal proceedings as needed.	Our page on Identifying the Protected Person's Property.
Manage the protected person's estate to make sure that needs are met throughout his or her expected life.	Our page on Managing the Protected Person's Property.

Specific decision making authority

For more information about some of the guardian's specific decisions, see our pages on:

- Budgeting for the Protected Person
- Choosing a Place for the Protected Person to Live
- Decision Making Standards
- Education, Recreation and Work for the Protected Person
- Ending a Guardianship or Conservatorship
- Healthcare Decisions for the Protected Person
- Keeping the Protected Person's Property Safe
- Moving a Guardianship or Conservatorship
- Personal Needs of the Protected Person
- Planning for the Protected Person's Needs
- Respecting the Protected Person's Rights

Consultation and delegation of authority

You cannot give to someone else the authority that the court gives to you, but you may consult whomever you wish. Consulting with family members and getting professional advice is usually helpful, but the decision, after considering any advice that is given, must be yours. If you consult with someone else, you should maintain the protected person's confidentiality and disclose only what is necessary to help the protected person.

If for some reason — perhaps your illness or absence — you are temporarily unable to make and communicate decisions for the protected person, you may prepare a power of attorney for someone to make the decisions on your behalf. The power of attorney may last for up to six months, but no longer. For more information and forms, see our page on Delegating a Parent's or Guardian's Powers to an Attorney-in-Fact.

If you no longer want to serve as guardian or are no longer able to serve, you should resign and have a replacement appointed. For more information and forms, see our page on Resignation or Removal of a Guardian or Conservator.

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UTAH COURTS

Decision Making Standards

You will help the protected person make decisions or, if necessary, make decisions for the protected person. It is possible that you are not the only decision maker in the protected person's life. There may be a separate guardian, conservator, representative payee, trustee, or healthcare agent. You should make a good faith effort to consult with and cooperate with these others as needed.

In making decisions, you should consult with the protected person, involve the protected person in the decision making process, explain the available choices, and allow the protected person to make as many decisions as possible. Always treat the protected person with courtesy, and respect the protected person's privacy and dignity.

For more information, see "Standards of Practice" (guardianship.org) published by the National Guardianship Association.

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Substituted judgment standard

In making decisions, you should be guided by the protected person's known values and preferences, whether expressed before your appointment or after. In other words, what would the protected person do? This is known as the "substituted judgment" standard, and, no matter what your own personal beliefs are, it should be used as long as the decision being made will not cause harm.

In order to know what the protected person would do, it is important that you become and remain personally involved with the protected person to know about his or her values, preferences, capabilities, limitations, needs, opportunities, and physical and mental health. It is important to discuss the protected person's preferences as soon as possible after appointment and while the protected person is alert and thinking clearly. You may have to make decisions quickly, without the opportunity to consult with the protected person. Some decisions, particularly end-of-life decisions, may need to be made while the protected person cannot communicate.

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Best interest standard

Sometimes you should use what is known as the "best interest" standard. Use the "best interest" standard if:

- the protected person never had decision making capacity;
- you cannot determine what the protected person would do; or
- the protected person's values and preferences will cause harm.

Under the "best interest" standard, choose the alternative that is the least intrusive, least restrictive, and most normalizing course of action to accommodate the protected person's limitations.

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The impact of money on decisions

Most of your decisions should be guided by what the protected person needs and what the protected person wants, and that, in turn, must be guided by what the protected person can afford. What the protected person can afford would affect the decisions that s/he would make, and it will affect your decisions as well.

For more information, see our pages on Budgeting for the Protected Person.

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UTAH COURTS

Procedure for Appointing a Guardian for an Adult

Guardianship and Conservatorship Home Page

- Talk to an attorney
- Definition of incapacity
- Procedure for appointing a guardian
- Forms

Talk to an attorney

The information on this page is not a substitute for legal advice. You are not required to hire an attorney, but legal matters can be complicated. Consider talking to an attorney to go over your options.

See our Finding Legal Help page for information about ways to get legal help. One way to talk to an attorney is to visit a free legal clinic. Clinics provide general legal information and give brief legal advice. You might also hire an attorney for just part of your case or to do one particular thing, rather than represent you for the whole case. Legal help is also available at discounted rates for people with modest incomes.

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Definition of incapacity

Incapacity is a judge's decision, not a doctor's decision, although medical information is important to help the judge decide whether a person is legally incapacitated. Incapacity is measured by the respondent's functional limitations and it means that the respondent's ability to:

- receive and evaluate information; or
- make and communicate decisions; or
- provide for necessities such as food, shelter, clothing, health care, or safety

is impaired to the extent that s/he lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care.

To prove that the respondent is incapacitated, the petitioner must prove these things by clear and convincing evidence.

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Procedure for appointing a guardian

- Summary of Guardianship Proceedings - PDF

This is a general description of the most common procedures, but some procedures may vary from court to court. And the judge may require procedures not described here based on the circumstances of a case.

Petition to appoint a guardian

Any adult may file the petition. The petitioner may request that s/he or someone else be appointed guardian. The petitioner must file the petition in

the county in which the respondent resides or is present. There is a filing fee, but the fee can be waived. For more information, see our pages on Filing Procedures, Fees, and Fee Waiver.

Service of the petition and notice of hearing

Who must be served and how they must be served are governed by Utah Code Section 75-5-309 and Section 75-1-401. The petitioner must serve the petition and notice of the hearing on:

- the respondent;
- the respondent's spouse, parents, and adult children;
- the respondent's closest adult relative if respondent's spouse, parents, and adult children cannot be found;
- the respondent's guardian, conservator, caregiver and custodian;
- the person nominated as guardian by the respondent or by the respondent's parent, spouse, or caregiver;
- the respondent's heathcare decision making agent;
- the respondent's agent under a power of attorney; and
- any other interested person.

The respondent must be personally served in a manner permitted by URCP 4. The respondent's spouse and parents must be personally served in a manner permitted by URCP 4 if they can be found within the state. The others listed may be served by first class mail or other method permitted by URCP 5. Proof of service must be filed with the court. For more information and forms, see our page on Serving Papers.

If the person to be served cannot be found, they can be served by alternative means. For more information and forms, see our page on Alternative Service.

Objecting to the petition

Usually a party "answers" a petition, but in a guardianship, any person served with notice may "object" to the petition. The person may file a written objection before the hearing or appear at the hearing to raise the objection verbally.

Lawyer for the respondent

Utah law requires that the respondent be represented by a lawyer. The petitioner may ask the court to appoint one. The court may need to continue the hearing until the respondent has a lawyer. The respondent will usually have to pay for the lawyer unless the petition is without merit. Some lawyers have volunteered to represent respondents in guardianship proceedings. For more information, see our page on the Guardianship Signature Program. To request a lawyer under this program, complete a Request to Appoint an Attorney to Represent the Respondent and an Order, found in the Forms section below.

The respondent's lawyer represents the respondent in the traditional sense as an advocate, not as a guardian ad litem. The judge may also appoint a guardian ad litem, who will represent the respondent's best interests.

Examination of the respondent

The court may direct that the respondent be examined by a physician. The petitioner, respondent or any interested person may request that the respondent be examined.

Court visitor

Utah law requires the respondent to attend the hearing. If it is proposed that the respondent be excused from attending the hearing, the court must appoint a court visitor to investigate the ability of the respondent to appear unless there is clear and convincing evidence from a physician that the

respondent has fourth stage Alzheimer's disease, extended coma, or an intellectual disability with an intelligence quotient score under 25.

A visitor is a special appointee of the court with no personal interest in the proceedings. The petitioner, respondent or any interested person may request that a visitor be appointed. The court may appoint a visitor on its own initiative.

For more information about court visitors and volunteering to serve as a court visitor, see our page on Volunteer Court Visitors.

Mediation

If someone objects, the court might require the parties to mediate their dispute before proceeding to trial. For more information, see our page on Alternative Dispute Resolution In Probate.

Hearing

The court will set a date for a hearing when the petition is filed. This hearing is not a trial with testimony by witnesses, although the judge may ask questions. The judge will consider:

- whether the petitioner has the necessary claims and proof;
- whether proper notice of the petition and hearing has been given;
- whether the respondent is present or has been excused from attending the hearing;
- whether there is a need to appoint a court visitor;
- whether there is a need to appoint a lawyer to represent the respondent;
- whether the necessary documents have been filed;
- whether the proposed guardian is willing to serve;
- whether the proposed guardian is required to take the guardianship test and file the declaration of completion of testing; and
- whether there are any objections.

Unless someone objects to the petition, the judge will appoint the guardian at the hearing. If there is an objection, the case will be referred to mediation or set for trial at which the petitioner will have to prove the claims made in the petition.

For more information about how to present yourself at the hearing, see our page on Going to Court.

Evidence of incapacity

The petitioner must prove that the respondent is incapacitated by clear and convincing evidence. That means the evidence must leave no serious doubt that the respondent's ability to:

- receive and evaluate information; or
- make and communicate decisions; or
- provide for necessities such as food, shelter, clothing, health care, or safety

is impaired to the extent that s/he lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care.

Even if no one objects to the appointment of the guardian, the petitioner must prove incapacity by clear and convincing evidence. The petitioner should include with the petition (or file before the hearing) affidavits or statements showing clear and convincing evidence of incapacity. Examples include statements of any witnesses who are familiar with the respondent and/or evaluations by respondent's physician.

The judge may ask the petitioner to proffer clear and convincing evidence that the respondent is incapacitated. Proffering evidence means that the party can tell the judge in narrative form the facts showing incapacity. If someone objects and the case goes to trial, the petitioner will have to present testimony or other clear and convincing evidence of incapacity.

Evidence of need for authority

The petitioner must also present evidence about what authority the guardian should have. For a description of what authority the guardian might need, see the section on Guardian's authority. The petitioner must present evidence that the guardian's authority to make decisions in specific areas is necessary or desirable as a means of providing continuing care and supervision for the respondent. The court's order will limit the guardian's authority to these areas.

If the petitioner is seeking plenary or full authority, the petitioner must prove that no alternative exists and that nothing less than a full guardianship is adequate.

Pre-appointment test

Rule 6-501 requires that, before a person can be appointed as guardian, the person must take a test about their authority and responsibilities and file a Certificate of Completion with the court. The law does not require a test for a professional guardian or a parent appointed as guardian of their adult child.

The test is not meant to screen anyone out of their role as guardian; it is meant to reinforce some of the responsibilities of the office. It is permitted to complete the test before appointment and file the form with the petition.

For more information and forms, see our page on Guardianship and Conservatorship Pre-appointment Tests.

Order and letter of guardianship

If the court is satisfied that the respondent is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the respondent, the court will appoint a guardian. The guardian's authority will be limited unless nothing less than a full guardianship is adequate. The court's order will include the guardian's authority, and the letter of guardianship will conform to the order.

The letter shows the guardian's authority to make decisions for the protected person. The guardian will need to provide a copy of the letter to third parties, for example, the protected person's healthcare provider. The guardian should have the court certify at least one copy of the letter. Additional certified copies are available upon request and payment of the required fee.

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Forms

Some forms may not apply in all cases.

Forms to appoint a guardian for an adult

- Checklist - PDF | Word
- Coversheet - PDF | Word
- Petition to Appoint a Guardian for an Adult - PDF | Word
- Schedule A - people who must be served with the petition and notice of hearing - PDF | Word
- Notice of Hearing, Rights and Adverse Consequences of a Guardianship (Notice to the Respondent) - PDF | Word

- Notice of Hearing, Rights and Adverse Consequences of a Guardianship (Notice to Interested Persons) - PDF | Word
- Proof of Service
- Witness Affidavit - PDF | Word
- Report on Clinical Evaluation - PDF | Word
- Physician's Statement Supporting Request to Excuse Respondent from the Hearing - PDF | Word
- Proposed Findings of Fact and Conclusions of Law - PDF | Word
- Proposed Order Appointing Guardian for an Adult - PDF | Word
- Notice of Order - PDF | Word
- Forms for Guardianship and Conservatorship Pre-appointment Test
- Acceptance of Appointment - PDF | Word
- Letter of Limited Guardianship - PDF | Word
- Letter of Full Guardianship - PDF | Word

Forms to appoint an attorney to represent the respondent

- Checklist - PDF | Word
- Request to Appoint an Attorney to Represent the Respondent - PDF | Word
- Order Appointing an Attorney to Represent the Respondent - PDF | Word

Forms to assign a court visitor

- Checklist - PDF | Word
- Request to Assign a Court Visitor - PDF | Word
- Order Assigning Court Visitor to Report on Request to Excuse Respondent from the Hearing- PDF | Word
- Order Assigning Court Visitor to Report on the Well Being- PDF | Word
- Order Assigning Court Visitor to Report on an Audit of Court Records- PDF | Word
- Order Assigning Court Visitor to Report on the Guardian's and Protected Person's Whereabouts- PDF | Word

Forms to appoint an examiner

- Checklist - PDF | Word
- Request for Order to Examine Respondent - PDF | Word
- Order Appointing Physician to Examine the Respondent - PDF | Word
- Report on Clinical Evaluation - PDF | Word
  - Instructions to the Evaluator - PDF | Word

Forms to object to the petition

- Checklist - PDF | Word
- Objection to the Petition - PDF | Word

Court Visitor Report Forms

- Report on Request to Excuse Respondent from the Hearing under Section 75-5-303 - PDF | Word
  - Instructions for reporting on excusing the respondent from the hearing - PDF | Word
- Report on the Protected Person's Well-being - PDF | Word
  - Instructions for reporting on the protected person's well-being - PDF | Word
- Report on Auditing Court Records - PDF | Word
  - Instructions for reporting on auditing court records - PDF | Word

- Report on Guardian's and Protected Person's Whereabouts - PDF | Word
- Instructions for reporting on the guardian's and protected person's whereabouts - PDF | Word

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UTAH COURTS

Español

Options for Protecting an Adult with Diminished Capacity

The page discusses some options and legal tools under Utah law for protecting an adult with diminished capacity. It does not include options for minor children. This page may be a useful resource, but it is not a substitute for specific advice. As needed, seek out a lawyer, accountant, tax preparer, social worker or case manager to answer questions and suggest options and advice.

Plan Ahead

Anyone 18 or older has the right to make decisions based on his or her values and beliefs, even if others disagree with those decisions. Making decisions is an essential part of adult life. Every day we make decisions for ourselves and for the people who depend on us. Decision making can be burdensome, even stressful at times, but few of us would willingly give up the right to make our own decisions. An adult who loses the capacity to make decisions may need special protection, and planning can help ensure that the person's preferences and values will be followed during a time of diminished capacity.

The options described on this page present risks because the person with diminished capacity is allowing someone else to take control of his or her money, property and healthcare. These options have little or no supervision of that other person, and you are trusting that person's ethical values to do the right thing even though no one is watching.

The advice of a lawyer experienced in estate planning and elder law is most important. A lawyer can advise you about steps to protect against abuse, neglect and exploitation of a person with diminished capacity.

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Arranging for Help and Services

The best course of action may be to help the person with diminished capacity make and implement their own decisions. As needed, seek out a lawyer, accountant, tax preparer, social worker or case manager to answer questions and suggest options and advice.

The person with diminished capacity as well as the people caring for that person may benefit from support available, not only from family, friends or spiritual communities, but also from government and community resources and organizations which provide information, services, education, and support. For more information, see our page on Resources to Help a Guardian and Conservator.

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Representative Payee

A representative payee is a person appointed by a government agency, such as the Social Security Administration (ssa.gov), Department of Veterans Affairs (va.gov) or Railroad Retirement Board (rrb.gov), to receive and manage the money paid by that agency. To serve as the representative payee, apply to the agency that provides the benefits. In most cases in which the person with diminished capacity has an agent with power of attorney or a trustee, guardian or conservator, the agency will appoint that person as representative payee. But the agency may appoint any person as representative payee. If a protected person is under guardianship or conservatorship, the agency must appoint a representative payee to receive payments.

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Durable Power of Attorney

Summary

A well-written durable power of attorney may help a person with diminished capacity handle financial matters without the need of more complex arrangements like a trust or a court-appointed guardian or conservator, which removes many or all of the person's decision making authority.

A lawyer experienced in estate planning is the most appropriate person to write a power of attorney. There are many power of attorney forms available on the internet — not on this court website — but they may be too general for your circumstances, they may not follow the requirements of Utah law, and they may not protect against financial exploitation and abuse.

A power of attorney is a document in which one person (called the "principal") gives to another person (the "agent" — or sometimes called the "attorney in fact") authority to act on behalf of the principal. A power of attorney can be very broad, allowing the agent to perform a variety of tasks: for example, handling bank accounts, selling real property, running a business, applying for public benefits. It can also be very limited and restrict the agent to one or more very specific tasks: for example, selling one specific piece of real property. The agent cannot use the principal's assets in a way that is against the principal's wishes.

Once a power of attorney document is written, it must be signed by the principal. Utah law does not require that the principal's signature be

notarized but notarization is wise because it provides assurance to third parties. No witnesses are necessary and there is no need for the agent to sign. Store the original in a safe but accessible place, and give the agent a second original or a copy. Each person the agent deals with will probably want a copy.

At the time of signing the power of attorney, the principal must have sufficient mental capacity to understand that s/he is appointing an agent to handle his or her affairs. The principal does not have to understand how the agent will manage the principal's affairs.

Durability

"Durable" power of attorney means that the agent can act even if the principal becomes disabled or incapacitated. A power of attorney is durable if the document is in writing and includes the words:

- "this power of attorney shall not be affected by disability of the principal," or
- "this power of attorney shall become effective upon the disability of the principal."

Utah Code Section 75-5-501 .

If the first set of words is used, the agent's authority begins immediately and continues even if the principal becomes disabled or incapacitated. If the second set of words is used, the agent's authority does not begin unless the principal becomes disabled or incapacitated. If the second set of words is used, the power of attorney document itself should describe how the principal's disability or incapacity is to be determined. In a guardianship, a judge or jury will determine incapacity, but one objective of a durable power of attorney is to avoid the appointment of a guardian. You may choose to name a doctor who will examine the principal and certify the principal's disability or incapacity in writing, triggering the agent's authority.

Problems

There are problems with powers of attorney, and you should talk with a lawyer about how to guard against them. One problem is the reluctance of third parties to accept the agent's authority. If possible, you should ask about the acceptance policies of banks, brokers, and other persons the agent will deal with. Some companies may want the principal to complete the company's power of attorney form.

Staleness is a related problem. Unless the power of attorney document includes a termination date, the passage of time does not affect the agent's authority. Utah Code Section 75-5-501 . However, some persons are reluctant to rely on a power of attorney that is several years old, especially if the person does not know the principal and agent. As with all estate planning documents, the best practice is to review the power of attorney periodically, perhaps even once a year. The review should include confirmation that the document still expresses the desires of the principal, that the agent is still the appropriate person to make decisions, and that the decisions are still the ones to be made. If there are no changes, the principal can indicate by date and signature that the document remains valid. Even though notarization is not required, a notarized signature provides third parties with some assurance of the validity of the signature.

Under Utah Code Section 75-5-501 , if the principal of a power of attorney does become disabled or incapacitated, the agent must:

- within 30 days of the principal's disability or incapacity, notify all interested persons of the agent's status and the agent's name and address;

- upon written request of an interested person, provide a copy of the power of attorney;
- upon written request of an interested person, provide an annual accounting of the assets to which the power of attorney applies, (unless the power of attorney expressly directs that agent is not required to do so); and
- notify all interested persons of the principal's death.

Because there is no formal supervision of the agent's actions, it is not a good idea to say in the power of attorney document that the agent does not have to provide an accounting. Saying nothing in the document is enough to impose the accounting requirement, and you can say in the document that the agent is required to provide an annual accounting, even without a request.

Changes

A principal can revoke or change a power of attorney at any time. The change must comply with all of the requirements of the original power of attorney document. It must be in writing, signed and should be notarized, and, at the time of the change, the principal must understand that s/he is appointing an agent to handle his or her affairs. The revocation also should be in a dated and signed writing, but it does not need to be notarized. The agent must receive a copy of the revocation. Any third party who has relied on the agent's authority under an earlier power of attorney also should receive a copy of the revocation. A power of attorney automatically terminates upon the death of the principal.

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Trust

Summary

A trust is an arrangement in which one person (called the "settlor") gives his or her money and property to a second person (called the "trustee") to manage, invest and pay out for the benefit of a third person (called the "beneficiary"). A trust can help provide for the care of the settlor's dependents in the event of the settlor's death.

One common type of trust is known as a "living trust" in which one person can play all three roles: settlor, trustee and beneficiary. The administration of a living trust does not differ much from every day saving, spending and managing one's money and property: Once the trust is created, the person's money and property is owned by the trust but managed by the person for his or her own benefit (and any other beneficiaries). Upon the death of the person, the trust assets can be paid to another beneficiary.

There is no such thing as a standard trust and different types of trusts serve a variety of purposes. Each trust should reflect the unique needs and desires of the person who creates it. A trust can contain any provisions so long as they don't conflict with laws or public policy. Creating a trust is highly technical, and you should seek the help of a lawyer experienced in estate planning.

Discretionary trust for a person with disabilities

A special type of trust called a "discretionary trust for a person with disabilities" is a useful planning tool for persons with disabilities and their families. The government benefits that a person with disabilities is entitled to receive may not be reduced because of contributions to a discretionary trust for that person. State agencies disregard a discretionary trust as a resource when determining eligibility for services or support.

A discretionary trust for a person with disabilities is not required to reimburse the state for financial aid or services provided to that person.

State agencies can seek reimbursement from trust property that is distributed to or under the control of the beneficiary, but not from property, goods and services that are owned by the trust and merely used by the beneficiary.

To qualify as a discretionary trust for a person with disabilities, Utah Code Section 62A-5-110, requires that the trust:

- be established by a parent, grandparent, legal guardian, or court for the benefit of a person who, at the time the trust is created, is under age 65 and has a disability;
- gives the trustee discretionary power to determine distributions;
- prohibits the beneficiary from controlling or demanding payments;
- contains the beneficiary's assets;
- be irrevocable, unless the beneficiary no longer has a disability; and
- provides that, upon the death of the beneficiary, the state will receive all amounts remaining in the trust, up to the amount of medical assistance paid on behalf of the beneficiary.

If you have funds that are subject to a state lien, you cannot put those finds into the trust. If the funds become subject to a state lien after they have been deposited in the trust, that portion of the trust is invalid. Utah Code Section 62A-5-110 .

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Health Care Agent and Advance Health Care Directive

Summary

You can appoint an agent to make health care decisions in the event that you no longer have the capacity to do so. Your agent should be someone you trust, who knows, understands and will honor your preferences, and who will be available if needed. An advance health care directive expresses your preferences about health care decisions and helps ensure that your decisions will be carried out, even when you are no longer able to make or communicate those decisions. A health care agent can be appointed in an advance health care directive.

The person appointing an agent must have sufficient mental capacity to understand that s/he is appointing an agent to handle health care decisions. A person might have capacity to appoint an agent even if the person does not have the capacity to make health care decisions for himself or herself or does not have the capacity to make an advance health care directive.

An advance health care directive may be oral, but a written document may be more reliable. The written or oral directive must be witnessed, but does not have to be notarized. If you choose to make a written advance health care directive, you should keep the original in a safe but accessible place, and you should give a copy to your health care agent and to your health care providers.

Appointing a health care agent and making an advance health care directive are not as technical as a trust or a durable power of attorney and many people do it without hiring a lawyer. For more information and forms, see the University of Utah Center on Aging website.

Decisions by an agent or under an advance health care directive

Even after making an advance health care directive you retain the right to make health care decisions as long as you have capacity to do so, and your

current health care decisions, however expressed, always supersede earlier decisions or directions in an advance health care directive.

An advance health care directive or the authority of an agent to make health care decisions are effective only after a physician, physician assistant, or advance practice registered nurse determines that you lack capacity to make health care decisions. They remain in effect during any period of time in which you lack capacity to make health care decisions.

Your agent must make health care decisions, including end-of-life decisions in accordance with:

- your current preferences, if known;
- your written or oral directions, if there are any;
- the agent's understanding of your preferences; or
- the agent's understanding of you would have wanted under the circumstances.

Your agent may not admit you to health care facility for long-term custodial placement other than for assessment, rehabilitative, or respite care over your objection.

Changes

An advance health care directive or the authority of an agent to make health care decisions ends when:

- you disqualify the agent or revoke the advance health care directive;
- a health care provider finds that you have health care decision making capacity;
- a court invalidates your health care directive; or
- you challenge the health care provider's finding of incapacity.

An advance health care directive can be revoked at any time by writing "void" across the document or by destroying the document. If you have appointed your spouse as your health care agent and you are later divorced, the divorce decree acts to revoke the appointment. If you revoke an advance health care directive, you should make your decision known to your health care agent, your health care providers and anyone who has a copy of the directive. If you have more than one directive, the latest one controls.

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Guardianship and Conservatorship

Of the options described on this page, only the appointment of a guardian or conservator necessarily requires a judge's approval. This option is listed last because the appointment of a guardian or conservator removes the right of a person to make his or her own decisions. It should be pursued only after considering other, less restrictive options.

If you are going to be the guardian or conservator for a protected person, consider not only the information on this page but also the other pages linked from Guardianships and Conservatorships for an Adult . You will want to have a clear picture of what is expected of a guardian and conservator before agreeing to serve in those roles.

Summary

A guardian is a person or institution appointed by a court to make decisions about the personal well-being — residence, health care, nutrition, education, personal care, etc. — of an incapacitated adult, who is called a "protected person." A conservator is a person or institution appointed by the court to make decisions about a protected person's estate.

The protected person's estate includes all of his or her property, business and personal. Some examples are income (such as wages, an annuity, a pension, and Social Security or other government benefits), real property (buildings and land), and personal property (furniture, cash, bank accounts, certificates of deposit, stocks, bonds, motor vehicles, and valuables such as jewelry, tools, furs and art). A conservator must use reasonable care, skill and caution to manage and invest the estate to meet the protected person's needs over his or her expected life.

Under appropriate facts, the court might appoint a guardian or a conservator or both. The guardian and the conservator might be two different people, or they might be the same person. If there is no conservator, the guardian has some of the conservator's responsibilities.

If the protected person needs help in some but not all areas of decision making, the court will order a limited guardianship. A limited guardianship is preferred, and the court will grant a full guardianship only if no alternative exists. A limited guardian has only those powers listed in the court order. The court can also limit the authority of a conservator.

Serving as a guardian or conservator for another person requires a large amount of time, patience, sensitivity and care. Before you agree to serve, make sure you have the time and dedication to do a good job. For more information about what is required and expected of a guardian and conservator, see our other pages under Guardianship and Conservatorship for an Adult .

Things that are the same between guardianship and conservatorship

Being a guardian or conservator is a demanding role. A guardian and conservator are responsible for decisions for another person, and they must always act with the utmost honesty, loyalty and fidelity toward that person. A guardian and conservator must always act in good faith. A guardian and conservator also owe duties to the court: They must report annually to the court; they must advise the court when either they or the protected person changes residence; and they must follow all court orders.

A guardian and conservator help the protected person make decisions or, if necessary, make decisions for the protected person. But the guardian and conservator cannot simply do what they want. The guardian and conservator should make the same decision that the protected person would make, unless that decision will cause harm. It is important that the guardian and conservator become and remain personally involved with the protected person to know of his or her preferences, values, capabilities, limitations, needs, opportunities, and physical and mental health.

A guardianship and conservatorship removes the fundamental right of the protected person to make his or her own decisions. Asking the court to appoint a guardian or conservator should be a last resort, after all other, less intrusive means have been examined first. The decision to seek a guardianship or conservatorship should not be based on stereotypical notions of old age, mental illness, or disability. The decision should not be made because you disagree with what an adult with diminished capacity wants to do.

A guardian and conservator may resign, and the court will appoint another if the protected person still needs one. A person who has been appointed as both guardian and conservator can resign as one, or the other, or both. Or the circumstances that justified the appointment in the first place may change so that the protected person no longer needs a guardian or conservator. Regardless of the reason to end the appointment, the guardian and conservator retain their obligations until the court ends the appointment. Utah Code Section 75-5-306 , Section 75-5-307 and Section 75-5-415 .

Protected person's capabilities

To appoint a guardian, the protected person must be incapacitated. "Incapacity" means that an adult's ability to:

- receive and evaluate information;
- make and communicate decisions; or
- provide for necessities such as food, shelter, clothing, health care, or safety

is so impaired that the person lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care. Incapacity is a judicial determination, and is measured by the person's functional limitations. Utah Code Section 75-1-201 .

A person does not have to be incapacitated to appoint a conservator. A conservator may be appointed if a person is unable to manage his or her property effectively and a conservator is needed:

- to prevent the protected person's property from being harmed; or
- to obtain or provide funds for the support of the protected person or the protected person's dependents. Utah Code Section 75-5-401 .

Guardian's and conservator's authority and responsibilities

A guardian makes decisions about the protected person's personal well-being — residence, health care, nutrition, education, personal care, etc. A guardian advocates for effective services. A guardian must keep the protected person from harm and help him or her to be as independent as possible.

A limited guardian has those powers and duties listed in the court order. Utah Code Section 75-5-304 .

Utah Code Section 75-5-312 says that in a plenary or full appointment "the guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child...." However, there are limits imposed on a guardian that might not be imposed on the parent of a minor. For more information, see our page on Respecting the Protected Person's Rights.

Unless limited by the order appointing the conservator, the conservator has the authority conferred by law on conservators plus the same authority as the property owner. Utah Code Section 75-5-408 .

Emergency appointment

In an emergency, the court may appoint an emergency guardian, who serves for no more than 30 days, during which the emergency guardian has authority to make decisions on the respondent's behalf. Within 14 days after the order of the appointment of the emergency guardian, the court must hold a hearing. Utah Code Section 75-5-310. As a result of the hearing, the court may appoint a temporary guardian, convert an emergency guardian to a temporary guardian, or appoint a different person as temporary guardian to replace the emergency guardian. Utah Code Section 75-5-310.5. A temporary guardian has the responsibility of a permanent guardian, either limited or full, depending on the circumstances. Utah Code Section 75-5-312.

Under Utah Code Section 75-5-408(3), the court may appoint a temporary conservator until further order of the court.

Who can serve?

~~The judge can appoint any competent person to serve as guardian, but~~ Utah Code Section 75-5-311 creates a priority list, and the judge will appoint in the following order unless there is a good reason not to:

- a person nominated by the respondent;
- the respondent's spouse;
- the respondent's adult child;
- the respondent's parent;
- a person nominated by the respondent's deceased spouse;
- a person nominated by the respondent's deceased parent;
- any relative with whom the respondent has resided for more than six months before the petition is filed;
- a person nominated by the person who is caring for or paying benefits to the respondent;
- a specialized care professional.

The judge can appoint any competent person to serve as conservator, but Utah Code Section 75-5-410 creates a priority list, and the judge will appoint in the following order unless there is a good reason not to:

- a person already appointed by another court to care for the respondent's affairs;
- a person nominated in writing by another person already appointed by a court to care for the respondent's affairs;
- a person nominated by the respondent;
- the respondent's spouse or a person nominated in writing by the respondent's spouse;
- the respondent's adult child or a person nominated in writing by the respondent's adult child;
- the respondent's parent;
- a person nominated in the will of the respondent's deceased parent or someone chosen by the person nominated in the will;
- a relative with whom the respondent has resided for more than six months before the petition is filed, or someone nominated by that relative;
- a person nominated by whoever is caring for or paying benefits to the respondent.

When to have a guardian, a conservator or both

If the court has not appointed a conservator, the guardian has some of the conservator's authority and responsibility. Utah Code Section 75-5-312 . You should consider petitioning the court to appoint a conservator, either you or someone else, if:

- you, as guardian, do not want responsibility for the protected person's financial affairs;
- the protected person owns real property;
- the protected person has assets over $50,000 or income over $50,000 per year;
- the protected person has property in other states, on-going business affairs or extensive debts or financial investments;
- the protected person owns property other than clothing, furniture and personal effects; or
- someone else depends on the protected person for support.

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UTAH COURTS

Volunteer Court Visitor Resources

Report Forms

- Checklist for Request to Assign Court Visitor - PDF | Word
  - Request to Assign a Court Visitor - PDF | Word
  - Order Assigning Court Visitor to Report on Request to Excuse Respondent from the Hearing- PDF | Word
  - Order Assigning Court Visitor to Report on the Well Being- PDF | Word
  - Order Assigning Court Visitor to Report on an Audit of Court Records- PDF | Word
  - Order Assigning Court Visitor to Report on the Guardian's and Protected Person's Whereabouts- PDF | Word
- Report on Request to Excuse Respondent from the Hearing under Section 75-5-303 - PDF | Word
  - Instructions for reporting on excusing the respondent from the hearing - PDF | Word
- Report on the Protected Person's Well-being - PDF | Word
  - Instructions for reporting on the protected person's well-being - PDF | Word
- Report on Auditing Court Records - PDF | Word
  - Instructions for reporting on auditing court records - PDF | Word
- Report on Guardian's and Protected Person's Whereabouts - PDF | Word
  - Instructions for reporting on the guardian's and protected person's whereabouts - PDF | Word
- Letter on Guardian and Protected Person's Whereabouts - PDF | Word
- Letter on Guardian and Protected Person's Whereabouts (en Espanñol) - PDF | Word

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Volunteer Manuals

- Orientation Manual - PDF
- Excusing Respondent from the Hearing - PDF
- Protected Person's Well-being - PDF
- Auditing Court Records - PDF
- Finding Guardian's Whereabouts - PDF
- Dictionary of Legal and Medical Terms - PDF
- Summary of Volunteer Court Visitor Involvement in the Appointment of a Guardian - PDF

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Volunteer Training

- Training Agenda, St. George (September 4th and 5th, 2014) - PDF
- Training Agenda, Salt Lake City (October 27th, 29th, and 31st, 2014) - PDF

Training will be available for Continuing Legal Education (CLE) credit for attorneys who apply to volunteer. Topics covered in the training include information on:

- guardianship law and court procedures
- typical physical and mental conditions affecting individuals under guardianship
- communication techniques with protected persons and guardians
- overview of problems in guardianships and ways to identify them
- available community resources
- instructions on volunteer roles
- volunteer safety

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Administration

- Volunteer Court Visitor Agreement - PDF
- Emergency Contact Information - PDF
- Mileage Reimbursement - PDF
- Work Report (Online survey of work done on each assignment)
- Court Visitor Volunteer Background Check Results - PDF | Word
- Code of Ethics for Court Visitors - PDF

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Related Information

- Statutes: Protection of Persons Under Disability and Their Property
- Guardianship and Conservatorship Directory
- Newsletter

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MEDICAL EVIDENCE, COMMUNICATING WITH A PERSON WITH A DISABILITY

I Need for medical evidence.

A Up until 2013 the definition of incapacitated person required a court to find that the individual had a mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause for their lack of capacity to make or communicate responsible decisions.

B Now the definition of incapacitated person does not include a causal basis for the individual's functional limitations that demonstrate the requisite deficits in decision-making.

1 Focus is on functional abilities and outcomes.

2 To meet the essential requirements for financial protection or physical health, safety, or self-care:

(a) receive and evaluate information;

(b) make and communicate decisions; or

(c) provide for necessities such as food, shelter, clothing, health care, or safety.

C At this point it would be very risky to go into a guardianship proceeding without proof of some physical or mental impairment that is the source of the functional limitations.

II Developing/finding necessary medical records

A Evidence that is necessary to prove incapacity.

1 Current evidence.

a More important for some types of impairments – degenerative conditions.

b Some types of evidence are relevant even if it is a number of years old.

i The type of evidence that is regularly relied upon by treating health care professionals, including: IQ tests, some evaluations (such as neuropsychologist evaluations where the brain function itself may not change much over time), basic mental health evaluations.

2 Addresses both functional and diagnostic issues.

3 Identifies diagnoses, manifestations of medical condition, how those manifestations result in functional limitations.

B In what format should the medical evidence be provided by the medical or social work professionals to the court?

1 Does not require voluminous records.

2 Could be done using form for initial stages of court proceedings.

a Likely need testimony if any of the parties challenge whether the proposed ward is incapacitated.

C Where existing evidence may be found.

1 Intellectual disabilities.

a School records.

i Psychological evaluations, education plans give some idea of functional skills, OT evaluations.

b Receiving state funded services.

i Psychological evaluation, social work evaluation, service plan.

2 Mental illness.

a May be receiving ongoing mental health treatment.

b School records.

i Psychological evaluations, mental health evaluations, education plans give some idea of functional skills, OT evaluations.

3 Traumatic brain injury.

a Receiving state funded services.

i Psychological evaluation, social work evaluation, service plan.

D Which health professionals are the best sources of information for the medical evidence of incapacity?

1 Preferably from treating health care professional that knows alleged incapacitated person for the medical conditions that are contributing to the cognitive limitations.

2 Depends upon the mental impairment.

a Dementia, Alzheimer's, acquired brain injury: treating internist, gerontologist, neurologist.

b Mental illness: psychiatrist, clinical psychologist, social worker

c Intellectual disability: psychologist, psychiatrist, social worker, education psychologist, occupational therapist;

d Traumatic brain injury: rehabilitation physician, neurologist, neuropsychologist, clinical psychologist, social worker, occupational therapist.

E How the health evaluation should be paid for?

1 Payment has often been a barrier. Insurance companies, Medicare and Medicaid generally don't pay for written evaluations because they feel they are not directly related to treatment.

2 A group of attorneys and physicians have been working on a solution.

a Comes down to using the right billing codes.

i Will not be available for a health care practitioner that is doing the evaluation strictly for the purposes of the guardianship proceeding.

(a) Practitioner appointed by the court to conduct a capacity evaluation.

b There will be an article published on how to conduct the evaluation and be paid for it, as well as a form to use for the report.

F When and how should medical evidence be requested and presented.

1 Ideally, the petitioners in a guardianship proceeding should have the medical evidence in hand at the time of filing the petition.

a Petitioner and legal counsel should evaluate what evidence will be needed and attempt to get the evidence before filing the petition.

b Evidence can then be submitted as part of the initial petition.

c If not possible, attorney should make arrangements for a medical examination and obtain a court appointment of the health care professional at the same time the petition is filed.

d Contested case, the medical evaluation will need to be more detailed setting forth the health care professional's testing process and observations which lead the their final conclusion that the alleged incapacitated person either does or does not lack the functional ability to take in and process information, make reasonable decisions based on that processing, and is or is not able to provide for the necessities of life, health care or safety because of their ability to take in and process information.

e The health care professional should be prepared to be called as a witness at an evidentiary hearing to testify about their qualifications to do the evaluation and the process followed to reach their conclusion.

III Communicating with People with Disabilities.

A People with Dementia or Alzheimer's

1 Characteristics of condition.

a Compensatory skills.

i Since diminished capacity happens over a period of time individual has opportunity to develop compensatory skills.

ii May respond affirmatively even though unclear.

(a) Response will appear to be appropriate.

b At moderate stage of impairment receptive communication will be much more impaired than expressive communication.

i Can be signs of problems based on word retrieval.

2 Minimize stress and anxiety

a Setting – minimize distractions, background interference.

b Allow for plenty of time. Sense of urgency can be communicated.

3 Structure of questions.

a Simple words.

b Multiple questions within one statement.

i May have to ask a series of questions to get that bit of information you want.

c Sentence structure: no multiple clauses, particularly dependent.

d Questions eliciting yes or no responses are preferable.

e May be helpful if you have a list of the questions you want to ask, and give it to the person to review at the beginning.

i Then go through the questions, asking any follow-up questions as necessary.

f May need to ask question more than once, in different form, after some time is passed, to ensure you get an accurate response.

4 Speak slowly and distinctly.

5 Repeat information or question if person doesn't respond.

a Give them extra time to process.

6 If person is having difficulty communicating, don't hesitate to let the person know that it's o.k.

a Encourage person to continue explaining their thoughts.

7 If person has difficulty retrieving word, or seem to have used wrong word, don't hesitate to suggest a word if you are not clear what they are saying.

8 Don't start questions with "Do you remember …" Puts into focus one of the individual's main problems.

a Stressful.

b Alerts them to use compensatory skills.

B People with Intellectual Disabilities

1 Things to keep in mind.

a Sometimes verbal and functional skills are not consistent.

i One may be much stronger than other.

ii Greater verbal skills may mask a lack of understanding consistent with functional skills.

iii Lower verbal skills with greater functional skills may deceive you into believing that their functional decision making abilities are lower than they may be.

iv This can sometimes be found in records, such as psychological evaluation.

b Often times people with intellectual disabilities have a difficult time generalizing, diminished abstract reasoning ability.

i Generalizing – ability to take concept learned for one specific use or circumstance and apply to other.

ii Abstract reasoning ability – related to generalization.

(a) Generalizing

(b) Ability to think and understand beyond immediate circumstances.

iii This can also be found in evaluations.

c People with intellectual disabilities often want to please, and will give you the answer they think you want to hear.

d Transitions may make it harder for individual to focus, converse. Try to avoiding meetings at time of day when there is a change from one environment to another.

e Medications may make conversations more difficult at particular times during the day.

2 Simple language, short sentences.
- a No dependent clauses, multiple clauses, terms of art, abstract words.
- b Break up one question into two or three.
- c Try not to ask yes or no questions only.
  - i Can ask, following up with question asking for further information.

3 Be very concrete and specific to occurrence.
- a Generalizing issue.
- b Start out by testing their knowledge of basic concepts related to issue.
  - i Do you know who your doctor is, what he does.
  - ii General issue of health – do you know what sick means?
  - iii Specific to present – do you know what diabetes is?
  - iv Has doctor told you to do anything.
  - v Do you know what that means?
  - vi Do you do it?
    - (a) Why or why not.
    - (b) Did the doctor, or someone else tell you what would happen if you didn't?
- c Ask questions more than once in different form
  - i Test understanding
- d Ask if understand question and explain it to you.

C Traumatic Brain Injury

1 Often have impulse issues, short attention span.
- a Converse in quiet environment, less stimuli

2 Often have difficulty processing information or questions.
- a Give the person time to answer questions.
- b Don't assume that if they have difficulty answering question at first that they don't have the information.

3 May have similar issues re abstract reasoning, executive functioning.

4 Concrete, specific, take through timeframe.

5 Simple language, direct, short sentences, few clauses.

6 Consider meds, transitions.

D Deaf Individuals

1 Expect exaggerated facial expressions and body language.
- a Consider using greater gestures, facial expressions.

2 Find out if lip read. If do, then make sure don't have moustache, etc. covering lips.

WINGS: The Challenges of Submitting Competent Medical Evidence of Incapacity in Guardianship Proceedings

by Robert Denton

Guardianship is one of many methods available to help ensure that the needs of an individual with limited mental capacity are met. Other than possibly civil commitment, it is the most drastic one. A finding of incapacity by a court and the appointment of a guardian results in the loss of freedom to direct one's life and make basic choices. Because of the significant impact it can have on one's life, it is crucial that competent, persuasive evidence is presented to the judge regarding the individual's incapacity.

Capacity is about decision-making. Many disorders can impair one's capacity to make decisions. Dementia or Alzheimer's disease, mental illness, intellectual disability, traumatic brain injuries, and strokes are some of the most common causes of a decreased ability to make adequate decisions for oneself. With some of these impairments, the individual's capacity is likely declining. With others, it will be static. It is possible that the functional decision-making skills of an individual with an intellectual disability or traumatic brain injury may improve, even though their medical/cognitive abilities remain static. Medical evidence for each of those conditions may come from a different type of health care practitioner using different examinations and test results. With advances in medicine many individuals with these conditions live longer. More individuals need a substitute decision-maker, and our medical knowledge is far more sophisticated. The former places a greater burden on the medical community as it is asked to provide more expert opinions about an individual's capacity, and our advanced knowledge makes the question of the extent of one's capacity, and its duration, more complicated.

Before a guardian can be appointed for an individual, a court must find that the person is incapacitated. "Incapacitated" or "incapacity"

> is measured by functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care: (a) receive and evaluate information; (b) make and communicate decisions; or (c) provide for necessities such as food, shelter, clothing, health care, or safety.

Utah Code Ann. § 75-1-201(22) (LexisNexis 2013). Until 2013, a finding of incapacity required that the individual have a "mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause" for their inability to "make or communicate responsible decisions." Utah Code Ann. § 75-1-201(22) (LexisNexis 2012). Now there is no statutory requirement to prove a physical or mental cause for incapacity. The focus is solely upon the individual's functioning. However, evidence of a physical or mental basis for the alleged incapacitated person's functional limitations should be available to the judge. Since incapacity must be proven by clear and convincing evidence, a judge may be less willing to find incapacity when there is no identified cause for the limited functional abilities. The strongest case of incapacity will include proof of a physical

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or mental impairment, functional limitations that arise specifically from those impairments, and how those functional limitations directly render the individual unable to receive and evaluate information, make and communicate different types of decisions, or provide for necessities such as food, shelter, and clothing.

The medical evaluation of incapacity should be detailed, setting forth the health care professional's testing process and observations that led to his or her conclusion. There should be sufficient evidence to demonstrate in what areas of life the individual needs a substitute decision-maker. The law prefers a limited guardianship. Utah Code Ann. § 75-5-304 (LexisNexis 2013). A petitioner must be able to identify the specific deficits the individual has because of the individual's limited capacity. Areas of decision-making authority could include medical, financial, residential, and prevocational habilitation. The medical and functional evidence should prove decision-making deficits in each of the areas the petitioner wants to be included in the guardianship.

The medical and functional evidence workgroup at the November 6, 2013 guardianship summit identified three issues that are most critical and problematic in relation to the guardianship court process: (1) the minimal information necessary for the court to make a decision on the issue of capacity; (2) cost as a barrier to obtaining competent medical evidence; and (3) identifying critical decision points and the resources available from when the need for a guardian is first identified by the court to appoint a guardian. This final issue is particularly important when events or circumstances arise that place the alleged incapacitated person at greater risk of harm.

Minimum Information Needed by the Court

Providing the best medical evidence of incapacity is not simple. The health care professionals are not necessarily clear about the type of information that is most useful to the judge. There is nothing specific in the law about the type of information a health care professional should provide to the court. Practitioners often do not know when this information is presented or what form it should take. Attorneys often do not know which type of health care professional is the best source of medical information of incapacity and how the health care professional will be reimbursed for the cost of preparing the necessary information.

At the summit, health care professionals talked about various difficulties they have in writing an evaluation of an individual's decision-making capacity. They do not always understand the legal terminology involved in guardianship proceedings. There can be inconsistencies between the legal terminology and the medical terminology they use on a daily basis. On the other hand, attorneys representing the parties may not be as familiar with the medical terminology relevant to conditions that might render an individual incapacitated. The two professionals need to work together to make sure there is a clear understanding of the medical–legal relationships. This is particularly true when the health care professional has not treated the alleged incapacitated person but is asked by the parties or the judge for an evaluation. Some guidelines in blending the medical and legal for both the health care professionals and the attorneys would be helpful, perhaps with a well-crafted evaluation form.

Often the alleged incapacitated person's condition is declining. This presents greater challenges to both attorneys and health care professionals evaluating the individual. Given the strong preference for limited guardianship, the focus must be on what the alleged incapacitated person can currently do or will likely be able to do in the near future. Trying to structure a guardianship to anticipate the inevitable decline while at the same time maintaining the individual's fundamental right to make decisions about important parts of their lives is tricky. Health care professionals can assist with this by projecting, to the extent possible, a timeline for the decline. With this, changes to the guardianship can be a relatively simple matter. At the same time, prognosing this timeline cannot be speculative.

At least one health care professional was unclear on his role when conducting the evaluation. Are they supposed to be advocates for the alleged incapacitated person or are they supposed to provide an objective, neutral opinion? One way for the health care professional to meet her need to be an advocate would be to include in her evaluation a consideration of resources that could be available to the individual that would lessen the need for a guardian or reduce the scope of the guardianship needed. A list of resources typically available to individuals with different types of mental impairments would help the evaluator in some cases.

One part of the discussion was surprising. The workgroup panelists assumed that there is a need not to burden health care providers by asking for too much information about the alleged incapacitated person's medical condition and to avoid submitting too much information to judges. The responses of the health care professionals and judges at the symposium was unexpected – some of the health care providers feel that they cannot adequately address an individual's capacity in less than a ten-to-twelve-page report. The judges feel that too much information is better than too little.

Payment for Professional Evaluations

Many alleged incapacitated persons do not have the income or estate to pay for thorough and competent evaluations of incapacity. Unfortunately, payors such as private insurance, Medicare, and Medicaid only pay for the costs of medical treatment. They will not pay for evaluations for other purposes, such as guardianship proceedings. This problem is exacerbated when the individual has received little, or no, medical treatment in the past. Under these circumstances, more testing and assessments may be necessary since there are no records the evaluator can refer to.

Identifying Critical Decision Points and Available Resources

This generated the liveliest discussion in the breakout sessions. Representatives of law enforcement at the sessions described their frustration when they come upon a person in need of protection who clearly is not capable of making decisions necessary to keep out of harm's way. Too often the individual does not have a guardian, and there is no other alternative available to make sure that decisions can be made to meet the individual's needs. Sometimes, depending upon the individual's disability, it is difficult to determine where to *bring* people when they are in need of protection. At crisis points, such individuals usually do not require acute medical or psychiatric hospitalization and are discharged back into the community with little change in condition or available supports. What works for someone with a mental illness may not work if the person had a traumatic brain injury or an intellectual disability. Someone with Alzheimer's disease or dementia may benefit from a different type of temporary placement.

Family members often do not understand the process for obtaining a guardianship or are intimidated by or do not have the money to go through the process to obtain guardianship. It can be a long period of time between an incident indicating that a person cannot make decisions on his or her own and the day a guardianship petition is granted.

Guardianship is not always necessary to ensure that an individual's basic needs for food, shelter, clothing, and medical care are

met. There are alternatives that can be less expensive and allow the individual to retain greater freedom and independence. Advanced health care directives can identify a substitute decision-maker when an individual is unable to give informed consent to medical care. The law also recognizes a hierarchical order of relatives who can be default decision-makers for medical care. Utah Code Ann. § 75-2a-108 (LexisNexis 2013). By a durable power of attorney, an individual can grant someone else the authority to make decisions and take various actions on their behalf in financial matters. The power of attorney can remain effective after the grantor no longer has the capacity to make informed choices on his or her own. Trusts are another vehicle through which an appointed person can take care of the financial affairs of another. Of course, none of these options are available when the individual has the type of mental impairment that has prevented them from ever being competent, such as an intellectual disability. Likewise, they cannot be created by an individual after they become incapacitated. Advanced planning is required.

A court currently has the ability to grant an emergency temporary guardianship when circumstances warrant, or when a guardian is not performing the guardian's duties. *Id.* § 75-5-310. However, there is no definition of emergency. The judges attending the workgroup discussions did not feel constrained by the lack of a definition of "emergency." They did not think that the lack of a definition has led to any abuse of the provision.

There was also some discussion in the group about time-limited guardianships. Often situations arise when the alleged incapacitated person may be in need of greater support or intervention. The steps to take on his or her behalf may be short in duration. A temporary or time-limited guardianship may be sufficient to meet the individual's immediate critical need. At the same time, in the majority of these situations, the individual's incapacity will not be short lived. He or she will need a guardian long term. In these situations, the time-limited guardianship should be avoided.

The group also discussed the option of civil commitment. The standards for commitment are different. There must be a high degree of impairment before an individual can be committed. For an individual with mental illness, there must be substantial danger that the individual with mental illness will commit suicide, inflict serious bodily injury to himself or others, or will suffer serious bodily injury because he or she is unable to meet their basic needs, such as food, clothing, or shelter. *Id.* §§ 62A-15-602(14), -631(10)(b). For an individual with an intellectual disability, he or she must pose an immediate danger of physical injury to self or others, lack the capacity to provide the basic necessities of life, such as food, clothing, or shelter, or be in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of a condition which poses a threat of serious physical or psychological injury to the individual. *Id.* § 62A-5-312(13).

Commitment will not directly protect the individual's finances. It does not reach to most medical needs. For individuals with mental illness, it reaches only one part of the overall medial need – mental health treatment. Commitment will last only as long as the risk of serious harm to self or others remains. For people with mental illness, sometimes their condition is cyclical. For others, while they are taking their medications, they may not pose the necessary risk. Commitment can be a relatively short-term answer. It can be little more than a mechanism for crisis management.

Forms

There is a Report on Clinical Evaluation form on the Utah State Courts' website. It asks for the critical information of capacity needed by a court. It may not accommodate the evaluator who feels the need to provide the court a great deal of information. The report itself would not justify payment for the evaluation by a private or public insurer. Members of the medical and functional evidence workgroup will tweak the form to meet some of the concerns raised in the summit sessions and enhance the likelihood that the evaluator will be reimbursed for their evaluation. The revised form must be submitted to the Board of District Court Judges for its approval before it can be posted on the Utah State Courts' website. A draft of the revised form will soon be posted on the WINGS website, http://www.utcourts.gov/howto/family/GC/wings/.

Outline of Resources Available

WINGS will outline the types of resources that are available to an individual with potentially limited decision-making capacity, families, health care providers, public agencies, and law enforcement at various points in time when there are threats to the individual's ability to meet his or her own needs. Those resources may help the individual when a critical need is not being met, provide alternative supports and services so that a guardianship is not needed, or be a resource for individuals as they consider filing a petition for guardianship. It will outline the process for obtaining an emergency guardianship. The outline will also be submitted to the Board of District Court Judges for its approval before it can be posted on the Utah State Courts' website.

WINGS: Person-Centered Planning and Supported Decision-Making

by Mary Jane Ciccarello & Maureen Henry

The role of decision-maker for adults with impaired decisional abilities is a challenging one, whether decision-makers are acting informally or as court-appointed guardians. How should they make decisions? Who should they involve in the process, and how should they involve them? What information and support do they need and how can they access information and support? How should they interact with those providing services to the adult?

The Utah WINGS person-centered planning and supported decision-making workgroup explored these questions as one of three workgroups established by the WINGS steering committee. Workgroup members met before, during, and after the November 6, 2013 guardianship summit. The workgroup's goal was to develop an action plan addressing the most pressing issues facing surrogate decision-makers and adults with impaired decisional abilities. The workgroup focused on educational materials and methods for delivering information that would best support the decision-making challenges people confront.

Guardianship in Utah: Brief Overview

Anyone 18 or older has the right to make decisions based on his or her values and beliefs, even if others disagree with those decisions. Decision-making can be burdensome, even stressful at times, but few of us would willingly give up the right to make our own decisions. Guardianship law is based on the presumption that an adult whose ability to make decisions is impaired may need legal protection.

Utah law, like the U.S. legal system in general, has created mechanisms that authorize others to make decisions for persons with impaired decision-making ability. The two most powerful mechanisms are guardianships and conservatorships, which remove an adult's fundamental rights to make decisions about his or her life. Guardianships and conservatorships should be a last resort, after all other, less intrusive means have been examined and attempted first.

In a guardianship action, the court may appoint a person or institution to make decisions on behalf of an adult (a "protected person" once a guardian or conservator is appointed) that the court has determined to lack the capacity to make decisions independently. Decisions made by a guardian may address residence, health care, nutrition, education, and personal care. Conservators make decisions about a protected person's estate. Courts may appoint a guardian, a conservator, or both, and the guardian and conservator may be the same person or entity, or two different people or entities. If the court does not appoint a conservator, the guardian assumes some of the conservator's responsibilities.

Utah law prefers that guardianships be limited to the authority needed to provide protection for an adult with impaired

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Improving Health Care Communication for Persons with Mental Retardation

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"A Strategy to Train Health Care Professionals to Communicate with Persons with Mental Retardation," a brief review of the educational materials, appeared in Academic Medicine, vol. 66, pp. 495–496, 1991.

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Synopsis

There has been little effort directed at training health care professionals in behaviors and attitudes that are effective in communicating with persons with mental retardation. Such training would be beneficial not only to assist those with congenital cognitive deficits but for those with acquired central nervous system conditions as well, for example, dementia. Persons with mental retardation are living in community settings in greater numbers and increasingly participating in vocational, residential, and health care programs. Yet, most health care professionals are not routinely offered an opportunity to gain experience interacting with people who have limited ability to express and understand health care information.

An education program was focused on health care professionals' use of basic communication skills when providing health information to an adult who is mentally retarded. A self-study instructional text and a 20-minute companion video provided methods of communicating with a patient with mental retardation in medical and dental care settings. Resident physicians, medical students, nurses, and nursing assistants improved their communication skills, knew more about mental retardation, and were more proactive in health care interviews following training.

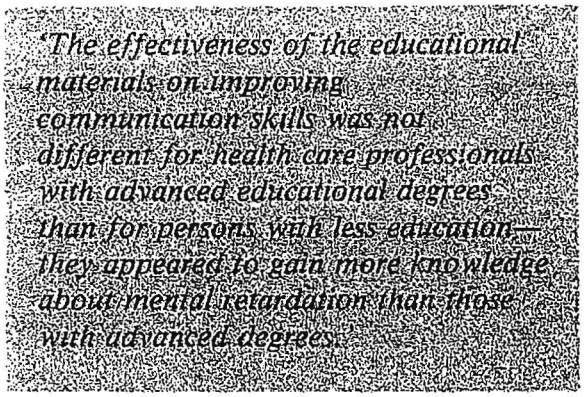
Health care training needs to incorporate educational opportunities focusing on skills to assist special populations. Brief, structured, and interactive skill training in communication offered early in the health care professional's career has positive benefits for the recipient and the provider.

CHANGES IN ethical and legal standards of care have expanded the rights of persons with mental retardation to be informed about and have input into their health care decisions. Open and interactive communication between the health care provider and the patient with mental retardation demonstrates respect for the patient's self-determination and fosters mutual cooperation (*1*).

Health care providers need to adapt information to the needs of the person with mental retardation to facilitate this process (*2*). The number of persons who are identified as having mental retardation is growing due to increased longevity; most of those surviving into their senior years (55 and older) have a mild degree of impairment (*3*). Persons with mental retardation, especially the milder forms, are increasingly taking part in vocational, residential, and health care programs along with their nondisabled peers (*4*). Yet, most health care professionals are not routinely offered an opportunity to gain experience interacting with people who have a limited ability to express and understand health care information.

A review of the current literature demonstrates that health care professionals in training need to be routinely exposed to educational information, role models, skill training, and clinical experiences which promote communication with patients (*5*). Professionals would benefit by learning how to tailor their communications specifically to meet the needs of persons with disabilities (*6*). Otherwise misinformation, myths, selective experiences, and situational factors (for example, the content of the communication) are likely to guide communications.

Persons with mental retardation are able to participate actively in their own health care; however, some persons with mental retardation require



guidance and assistance in facilitating dialogue (*2*). Developing relationships with patients with whom communication is difficult may be even more important than doing so with a fully communicative patient (*7*). Moreover, the right of persons with mental retardation to be informed and make decisions about health care options is more than morally virtuous; it has become a legally enforceable civil right, which has been increasingly expanded by the courts in the past two decades (*8*). The passage of the Americans with Disabilities Act in 1990 has further reinforced the rights of those with disabilities to have equal access to all aspects of society's services.

There has been a general lack in the training of professionals in behaviors and attitudes that are effective in communicating with persons with mental retardation (*9*). The available communication enhancement strategies need to be adapted to the health care setting and integrated into training curriculums (*10*) in the same way that training has been provided for professionals whose patients are adults, children, the mentally ill, and the elderly (*11*). This observation is especially true for populations that are often stigmatized and perceived as being "undesirable" or "uncooperative" patients. Providing a learning experience in which trainees are exposed to members of these populations is important if negative attitudes and stereotypes are to be countered and positive skills are to be developed.

The educational program described in this report provides instructions concerning effective communication with persons who have mental retardation regarding the implementation of their health care regimen, and it may be used to provide an opportunity for health care providers to practice communicating with a person with a developmental disability in a health care setting. Evaluation of the program demonstrates that basic communication skills are often not generalized to unique patient populations by trained health care professionals unless specific training is provided in regard to these unique patient populations.

Educational Materials

"Making Contact: A Strategy to Train Health Care Professionals to Communicate with Adults with Mental Retardation" (*12*) consists of (*a*) a 25-page self-instructional text, (*b*) a 20-minute companion VHS video presentation in which health care professionals model functional methods of assessing and responding to the level of understanding of a patient with mental retardation in health care settings, and (*c*) instructions for developing practice opportunities for the trainees. Additional material included with the educational program consists of instructions on the use of the program and evaluation materials. Trainees generally complete their review of the materials within 45 minutes. The educational materials are available from the authors.

The text and companion video outline two areas:

- The physical and cognitive characteristics of mental retardation, including its nature, etiologies, and vocational outcomes were gathered from standard references describing mental retardation (*13*). This narrative emphasizes the unique capabilities of people to hold and express values and choices within the limits of their capabilities. Attitudinal factors that influence the perception and treatment of persons with mental retardation are also presented.
- The behaviors of health care providers, which enhance communication, are presented through narrative and video demonstration. These behaviors include

1. leveling: physical posturing that results in the participants having comparable eye level (*14*).
2. use of declarative sentence structure: Information describing the speaker's world is provided and accompanies the actions of the speaker. This guideline is suggested in "Studies of Language Interacting with Developmentally Disabled Persons and Care Providers," by B. A. Kenefick, New York State Office Mental Retardation Developmental Disabilities, Albany, 1986 (unpublished paper).
3. use of open-ended questions to avoid acquiescence: the reliability and validity of responses provided by persons with mental retardation is threatened by the tendency to acquiesce, to provide

answers which "please" the interviewer. The use of open-ended questions is a preferred strategy (*15*).

4. providing corrective feedback: feedback to the client following recall permits the correction of facts as well as the opportunity to reinforce participation (*16*).

5. removing distracting objects: communication should occur in a quiet, distraction-free area (*14*).

6. removing distracting individuals: communication should occur in private (*15*). Although persons accompanying the patient may offer important information, the patient should be the primary focus of the professional relationship.

Methods

Evaluation was designed to assess the ability of the health care professionals to use basic communication skills when interacting with an adult with mental retardation. The design used is a pretest-posttest and a 6-week followup treatment with subjects staggered in time to control for the effect of the ongoing education or practice which subjects may have experienced independent of the education program.

Subjects. Volunteers were recruited to represent a broad range of health service providers who are potential consumers of the educational program. Subjects who completed the evaluations included the following groups:

- 12 nursing assistants recruited from the University of Iowa Hospitals and Clinics and from a local residential care facility who had high school educations,
- 9 nurses recruited from the University of Iowa and a residential care facility who had recently completed a bachelor of science degree in nursing,
- 12 medical students recruited from the University of Iowa College of Medicine who were in their second year of the medical training program, and
- 11 resident physicians recruited from the University of Iowa Hospitals and Clinics and the Veterans Administration Medical Center located in Iowa City who had completed a residency program in general medicine.

All persons had previously completed course work focusing on patient communication as required for entry into their respective professions. None of this course work focused specifically on communication with patients with limited cognitive or verbal skills.

Table 1. Pretest, posttest, and followup scores in communication skills of health professionals

Category	Pretest	Posttest	Followup
	11 medical residents		
Open questions[1]	31.8	66.0	58.9
Corrective feedback[1]	43.9	37.5	52.8
Declarative sentences[1]	110.6	87.2	80.2
Leveling[2]	10	11	11
Remove distracting objects[2]	6	11	11
Remove distracting persons[2]	5	10	10
	12 medical students		
Open questions[1]	32.3	50.1	129.4
Corrective feedback[1]	80.8	72.7	38.9
Declarative sentences[1]	143.4	105.4	45.8
Leveling[2]	11	12	12
Remove distracting objects[2]	2	12	11
Remove distracting persons[2]	9	12	12
	9 nurses		
Open questions[1]	61.2	85.2	39.9
Corrective feedback[1]	44.2	36.3	22.1
Declarative sentences[1]	103.1	71.3	88.7
Leveling[2]	9	9	9
Remove distracting objects[2]	3	9	9
Remove distracting persons[2]	2	8	5
	12 nursing assistants		
Open questions[1]	30.7	52.1	36.3
Corrective feedback[1]	14.5	58.5	28.0
Declarative sentences[1]	58.4	49.0	63.5
Leveling[2]	12	12	3
Remove distracting objects[2]	3	10	12
Remove distracting persons[2]	4	12	12

[1] Mean number of seconds when each skill was used.
[2] Total number of role plays when behavior occurred.

Design. The training procedure was as follows: subjects were pretested via a videotaped role play with a patient with mental retardation; subjects read the manual and viewed the video components of the educational material; subjects were posttested via a second videotaped role play with a patient with mental retardation; and subjects completed a posttest for retention of knowledge of communications skills.

Subjects were paired within their professional group and the members of each pair randomly assigned to one of two groups. The communication skills of the first group were evaluated immediately before and then 1 week after they had read the manual and viewed the video. The skills of the members of the second group were evaluated in the same sequence as those of the first group, but the first role play evaluation was delayed so that it coincided in time with the second evaluation of the paired member of group one. Thus, it could be determined if there were other educational events which may have caused an increase in communica-

tion skills independent of the educational materials and role plays. The skills of both groups were evaluated for a third time after 6 weeks to assess the subjects' retention of the communication skills.

Measures. To assess the health professionals' ability to use the desired communication skills, they were videotaped in a model health care examination room while performing the pretest, posttest, and followup health care role plays (that is, examining and caring for a minor burn) with an adult patient who simulated having a moderate degree of mental retardation. These adults with moderate mental retardation were verbal, capable of following two-part instructions, and were all employed and residing in community-based programs. The subject-trainees also completed a short quiz about the educational material immediately following the pre and posttest role plays. The trainees' use of the six communication behaviors that are the focus of the educational materials were later observed by one of three research assistants who were blind to the evaluation procedure; they had been trained to identify reliably the six behaviors to a 85 percent occurrence agreement criteria. These observers recorded, in real time on a Datamyte 1000 hand-held data collector, codes reflecting the presence of the six communication behaviors which have been operationally defined for observation and coding purposes.

We constructed and a research associate scored a 20-item quiz that required subjects to recall specific information about the basic characteristics of mental retardation, which had been presented in the educational materials.

Results

Reliability of the observers. The three observers were trained before beginning observation of the videotaped role plays to identify reliably the six communication behaviors to a 85 percent criteria. To ensure that the behaviors were continuously and reliably observed during the data collection process, 25 videotaped role plays (20 percent of the total number of videotaped role plays) were reviewed by all three observers. The observers were not aware which videotaped role plays were used for reliability testing. Because of the high accuracy of the Datamyte recording system, it was not expected that observers would agree on both the communication behavior and the exact time (to the second) when each behavior occurred. Rather, reliability on occurrence was determined by sequential analysis of the recorded behaviors. Therefore, agreement occurred when the observers agreed upon the sequence of behaviors and the behavior was recorded by all three observers within the same 5-second interval (that is, the observers agreed that leveling preceded an open-ended question followed by a response from the confederate, and the observers were within 5 seconds of each other in recording those events). Occurrence agreement among observers ranged from 76 percent (use of declarative sentences) to 100 percent (leveling, removing distracting persons) suggesting an acceptable level of observer scoring consistency.

Subjects' use of the communication skills. The data were examined to determine if members of the four professional groups benefited equally from the communications training program. Resident physicians, medical students, and nursing assistants increased their use of open-ended questions (t-test, $P<.05$) and corrective feedback (t-test, $P<.05$) while decreasing the amount of time they spent using declarative sentences (t-test, $P<.05$), as can be seen in table 1. All professional groups increased the use of leveling, removing distracting objects, and removing distracting persons. The amount of time spent providing practice and corrective feedback increased following training, but the amount of time decreased at followup. This may have been due to an improvement in the simulated patients' abilities to perform the desired behaviors over time. A one-way analysis of variance employed to compare the number of seconds when the skills were used and the open-ended questions, corrective feedback, and declarative sentences that were used indicated that there were no effects by profession on posttest scores that were significant at the $P<.10$ level.

Data from the knowledge quiz indicated that the nursing assistants benefited most from the educational materials (table 2). This group increased the number of questions answered correctly from pretest (68 percent correct) to posttest (76 percent correct), and a t-test for related means indicates this increase is significant at the $P>.05$ level. Members of the other professional groups, groups who may have had collegiate level instruction about mental retardation, did not raise their scores significantly.

The final analysis focused upon differences between the two paired groups—the 22 subjects who initially received the educational materials and the 22 subjects who served as controls for the evaluation. Initial analysis indicated persons who served

as controls did not improve their performance as they waited to receive the educational materials. The members of the control group did improve their use of the communication skills following their study of the educational materials. A one-way analysis of variance employed to compare the number of seconds when the skills were used and the open-ended questions, corrective feedback, and declarative sentences used indicated that there were no group differences on posttest scores. Similarly, there were no group differences in the number of role plays in which leveling, removing distracting people, and removing distracting objects occurred. Data from the quiz indicated that there were no differences between group members in their ability to increase the percent of questions answered correctly.

Discussion

The results of the evaluation process indicated that despite previous interpersonal communication training within their respective professional programs, the health care professionals, regardless of professional status, often did not use basic communication skills before reviewing the educational materials. Participants often conducted interviews with the examination room door open into a public hallway, and their communication primarily consisted of directive instructions with a minimal amount of patient interaction. It is unclear if the health care professionals who were the subjects of this study would perform similarly if the simulated patient had not had mental retardation.

The short presentation of the communication skills, within the context of the health care setting with video examples of health care workers effectively using the skills to communicate with actual persons with mental retardation, was effective in changing some of the communication behaviors used by the participants. The effectiveness of the educational materials on improving communication skills was not different for health care professionals with advanced educational degrees than for persons with less education—they appeared to gain more knowledge about mental retardation than the persons with advanced degrees.

Members of health care groups from all educational backgrounds were successful at incorporating the contents of the program into their interactions with the simulated patients with mental retardation. Informal feedback from all participants in the training program indicated that they felt they would more likely use the techniques with all patients, that the persons with mental retardation were "more able" than they had previously assumed, and that such role play experiences should be combined with their clinical training.

Table 2. Health professionals' knowledge of mental retardation, in percentages

Health professionals	Correct answers	
	Pretest	Posttest
Medical residents	85	85
Medical students	87	88
Nurses	80	83
Nursing assistants	68	76

The degree to which the educational material altered attitudes is unclear and difficult to measure. Such assessment of attitudes toward disability groups is often limited to written surveys, which have revealed mixed results (*9*). Data that documents changes in activities (for example, increasing access to health care, working with disabled patients) are more difficult to obtain, but are a more robust indicator of positive attitude change. Health care professionals, in general, do profess positive regard for persons with disabilities and try to treat them as they would nondisabled patients. Yet, many professionals do not afford persons with mental retardation the same privacy and information that they might accord nondisabled patients, often because of limited skills and training in dealing with those with cognitive disabilities.

This study suggests that health care professionals need educational opportunities in which they can learn and practice techniques for use with special populations. It cannot be expected that persons will generalize the communication skills that they have learned with "normal" adult patients and adapt them to meet the needs of these special patient populations. This may be especially true for patient populations for whom it is generally and inaccurately perceived that they cannot provide accurate information nor follow directions.

When patient populations are stigmatized, it is incumbent for educators to provide additional training to their students to help them better serve these persons by identifying techniques to overcome stigmatizing barriers, such as the barriers created by difficulties in communication. Through positive learning experiences, negative stereotypes, where present, can be dispelled and more positive attitudes towards persons with mental retardation developed. As the program we present demonstrates, opening communication requires a minimum investment of time and effort.

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Financial and Time Costs to Parents of Severely Disabled Children

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Synopsis

This paper considers the financial burden of parents caring for severely disabled children. A model to predict parents' out-of-pocket expenses and caregiving time demands is described.

Discriminant analysis correctly classified high and low group membership for out-of-pocket expenses and caregiving time at 72 percent and 77 percent, respectively. Expected rates were 50 percent. Time spent caregiving was the best predictor for out-of-pocket expenses, and out-of-pocket expenses was the best predictor of caregiving time.

A need-based approach for the distribution of resources that recognizes and adjusts for caregiving time and out-of-pocket costs is recommended.

IN THE UNITED STATES, an estimated 10–15 percent of all children have a chronic illness, and 1–2 percent have a severe chronic illness (*1*). Because the care of these children is often demanding and expensive, many families face financial difficulties. For example, Newacheck and McManus (*2*) reported that children limited in their activities use more medical services than other children, especially hospital-based services and nonphysician health services, and that out-of-pocket expenses were two to three times higher. They also report that there is an uneven distribution of financial

★☆★
AMERICA'S
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Tips for Communicating with People with Traumatic Brain Injury (TBI) & Post-Traumatic Stress Disorder (PTSD)

Not everyone has experience communicating with people with disabilities. However, it should not be intimidating. Appropriate etiquette when interacting with people with disabilities is based primarily on respect and courtesy.

Listed below are some general suggestions for communicating with people with disabilities, as well as things to keep in mind when interacting with those with combat-related conditions such as Traumatic Brain Injury (TBI) and Post-Traumatic Stress Disorder (PTSD). These tips can apply both inside and outside of the workplace to veterans and non-veterans alike.

GENERAL TIPS FOR COMMUNICATING WITH PEOPLE WITH DISABILITIES

- When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use or who wear an artificial limb can usually shake hands. (Shaking hands with the left hand is an acceptable greeting.)
- If you offer assistance to the person, wait until the offer is accepted. Then listen to or ask for instructions.
- Treat adults as adults. Address people who have disabilities by their first names only when extending the same familiarity to all others.
- Relax. Don't be embarrassed if you happen to use common expressions such as "See you later," or "Did you hear about that?" that seem to relate to a person's disability.
- Don't be afraid to ask questions when you're unsure of what to do

TIPS FOR COMMUNICATING WITH PEOPLE WITH TBI

(Note: Many people who have TBI don't need any assistance.)

- Some people with TBI may have trouble concentrating or organizing their thoughts. If you are in a public area with many distractions, consider moving to a quiet or private location, and try focusing on short-term goals.
- Be prepared to repeat what you say, orally or in writing. Some people with TBI may have short-term memory deficits.
- If you are not sure whether the person understands you, offer assistance completing forms or understanding written instructions and provide extra time for decision-making. Wait for the individual to accept the offer of assistance; do not "over-assist" or be patronizing.
- Be patient, flexible and supportive. Take time to understand the individual, make sure the individual understands you and avoid interrupting the person.

TIPS FOR COMMUNICATING WITH PEOPLE WITH PTSD

(Note: Many people who have PTSD don't need any assistance.)

- Stress can sometimes affect a person's behavior or work performance. Do your best to minimize high pressure situations.

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