
Guardianship

ADAP Online News, May 15, 2014

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A guardian is charged with the responsibility to make decisions for the care of an incapacitated person (or ward). A conservator has the fiduciary responsibility for managing the assets of a ward. This article addresses guardianships only.

Practically speaking, a person acting as a full guardian stands in the shoes of the ward, making decisions on the ward's behalf. The guardian makes simple day-to-day choices and either directs or undertakes all activities of daily living—in some instances including choosing the type and method of the ward's clothing, bathing, and feeding. The guardian is responsible for the ward's health care and living arrangements, including the provision of informed consent for treatment. Accordingly, the guardian must cooperate fully with all care providers, including residential facilities and treating physicians.

Because a full guardianship intrudes on a person's rights, Alabama law favors limited guardianships. That is, a guardian's powers are limited to providing only those services that the ward cannot provide for himself or herself. See Sections 26-2A-105(a) and (c), *Code of Alabama*. For example, an individual with a disability may need help making proper medical decisions, but may be perfectly capable of making his or her own decisions relative to living arrangements, recreational activities, and employment.

Guardianships do not have to last forever. A guardian should seek to maximize the ward's independence and self-reliance. This can be done in a variety of ways, such as arranging for physical therapy, rehabilitation in cases of head injury or stroke, special education, or employment opportunities. If possible, the ward should have restored to him or her complete decision-making capacity and the guardianship should be terminated. Where some level of supervision is called for, the full guardianship can be changed to a limited guardianship to give the ward more decision-making authority in certain areas of his or her life. To change to a limited guardianship or terminate a guardianship, it is advisable that the support and testimony of a treating professional be available.

Providers of services to individuals with developmental disabilities are specifically prohibited by Alabama law from serving as guardians. Section 26-2A-104.01, *Code of Alabama* states that in no case shall a "corporation appointed under this section engage in providing direct or indirect services to the wards/protected persons under its care or take any other action that could be considered a conflict of interest."

Because guardianships and conservatorships severely limit a person's individual decision-making authority, they should not be sought without substantial thought and individualized examination of a person's true abilities. Less restrictive alternatives may be warranted; guardianships or conservatorships should be used only as a last resort.