

GUARDIANSHIP AND CONSERVATORSHIP

Determine the need for guardianship:

The [MO Guardianship Project Resource Guide](http://www.mpcdd.com/documents/2010/MO%20Guardianship%20RESOURCE%20GUIDE%20rev%20Dec%202010.pdf) is a guide designed to help family members and caregivers understand guardianship in Missouri and what their options are. Included in the guide are the Identifying Alternatives to Guardianship checklist and a fast-fact sheet on guardianship.

<http://www.mpcdd.com/documents/2010/MO%20Guardianship%20RESOURCE%20GUIDE%20rev%20Dec%202010.pdf>

Public Administrators

In each county in Missouri, individuals who are determined to be incapacitated by the Probate Court and who do not have family or friends who can be appointed as guardian/conservator receive a Public Administrator (PA) to serve in this role. Public Administrators are elected to their position in each county. They are responsible for making the same decisions that any other guardian or conservator would make.

Support Coordinators (formerly known as Service Coordinators) interact with PAs just as they would with any other guardian or conservator. PAs need information regarding the individual's habilitative needs and supports in order to make informed choices. Because PAs often serve many individuals with various levels of need, SCs are an important source of information to PAs.

Guardianship through the Attorney General's Office

As representatives from the Attorney General's (AGs) office are our lawyers during some guardianship proceedings, it is important that we understand the boundaries of this relationship. The AG representing a support coordinator in a guardianship proceeding does not represent the individual we support or their family/advocate. They represent the State of Missouri and the Regional Office. So, when you involve the AG's office in a guardianship, you are asking the State to petition to limit the rights of the individual you support. Therefore, you are advocating for an adversarial relationship between the State and the person you believe needs a guardian.

In many cases, this adversarial relationship is necessary in order to gain protection for a person who is unable to maintain their own health and safety. The intention of securing a guardian in the case of a person who would otherwise be in danger is a noble one. However, caution in choosing to support this action must be taken. A support coordinator cannot lose sight of the significance of the guardianship procedure. This is a legal process that is not easily reversed and which could have a significant, lifelong effect upon the individual's rights.

As such, utilizing the AG's office to petition for guardianship must be limited. It is always better for an advocate or family member to petition the court for guardianship if that is possible. This

allows the support coordinator, if ordered to give testimony, to limit the assistance they give to professional knowledge of the person's habilitative needs. We provide the court with information regarding the capabilities of the person and their need for support but we are not directly asking the court to limit the person's rights. The family or the advocate has made the petition so the adversarial relationship occurs between the person and the petitioner, not between the Regional Office and the person we support.

Once someone is screened and the need for guardianship has been determined, the person or persons who should petition the Probate court should be identified. Only consumers or families/advocates that are ***indigent*** should be considered when assessing the need to have the AG's office petition for guardianship. We should take responsibility for seeking guardianship through the AGs office only when a true financial hardship would occur that would prevent a family or advocate from seeking their own legal counsel.

Those individuals who should be prioritized for service through the AG's office are as follows, in order of prioritization:

1. Adults over 18 years of age admitted to a public residential facility or who are on a waiting list for admission to such a facility and are unable to give informed consent for placement and medical treatment.
2. Adults over 18 years of age that are moving into a Regional Office contracted community living setting and are unable to give informed consent
3. Adults over 18 years of age in a Regional Office contracted living setting who are unable to give informed consent
4. Adults over 18 years of age who are not in a contracted Regional Office living setting, with current health concerns which may require more than routine medical care and who are unable to give informed consent

Once the need for a referral to the AG's office is identified, the support coordinator should follow the policies and procedures outlined in this manual for petitioning for guardianship. The Regional Office never becomes the guardian of a person. Rather, we ask the AG to petition that the court appoint a guardian and make recommendations as to who should be appointed, i.e., a family member, advocate, or a public administrator.

For individuals and families/advocates that are not indigent, information regarding sources for legal representation may be provided, granted that more than one source for this support is given. A list of attorneys that are known to specialize in probate matters could be provided or referral to a local Bar Association may be appropriate for the family/advocate to receive a referral for legal services. **At no time** should a support coordinator recommend a particular attorney and/or participate in any type of fee for referral process. General information on guardianship proceedings in Missouri, which is useful for families and advocates, may be found in [A Basic Guide for Understanding Guardianship and Conservatorship in Missouri](#) and is available through the local office of Missouri Protection and Advocacy.

SUCCESSOR GUARDIANSHIPS

If an individual's guardian passes away or is no longer able to serve as guardian, and the individual is still in need of a guardian, then a successor guardian may be appointed by the court. In order to

process a request for the appointment of a successor guardian, the Attorney General's Office would need the following information:

1. Copy of original Letters of Guardianship;
2. Copy of Guardian's Death Certificate or a Letter of Resignation signed by the Guardian;
3. Support coordinator's Statement (a sample is attached – please note that this is different than the Statement submitted for a regular guardianship);
4. Support coordinator's Statement concerning the proposed successor guardian;
5. List of Relatives (including name, address, and relationship to individual);
6. Consent to Appointment signed by the proposed successor guardian (not necessary if the proposed successor guardian is the Public Administrator)
7. Consent to Appointment of Successor Guardian signed by all of the relatives

After receiving this information, the Attorney General's Office will draft a Motion for Appointment of Successor Guardian. In most circumstances, the court will appoint a successor guardian without the need for a hearing.