



Who Decides?

Guardianship and Resident Autonomy

Reference Guide

Washington State Long-Term Care Ombudsman Program

Who Decides? Guardianship & Resident Autonomy

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The Washington State Long-Term Care Ombudsman Program (LTCOP) is an independent statewide organization that advocates for the residents of nursing homes, adult family homes, and assisted living facilities.

The LTCOP's mission is to support the quality of life and dignity of these residents by supporting and promoting their access to the Resident Rights they are guaranteed under Federal and State law.

Our trained staff and volunteers provide residents, their families and long-term care professionals with information about Resident Rights, other applicable legal rights and available resources. They investigate and resolve complaints concerning resident autonomy, health, safety, care, welfare and rights. They also help to ensure that residents are treated in a fair and dignified manner.

Introduction

In 2017 the Washington State Legislature directed the LTCOP to provide information about surrogate (sometimes referred to as "substitute") decision makers for persons working in long-term care facilities (LTCF). A surrogate decision-maker is someone who has been given the authority to make certain decisions on another person's behalf and for that person's benefit.

You are likely familiar with common tools of surrogate decision-making such as guardianship and powers of attorney.

While they may be common, the extent of their authority is not always clear or completely understood by persons working in LTCF. That lack of understanding may also extend to the residents and those who serve as surrogate decision makers.

The failure to fully understand the intent and scope of a power of attorney or guardianship order can lead to situations that can both unnecessarily complicate LTCF staff's ability to care for a resident, and in turn, negatively impact a resident's autonomy and quality of life.

This Reference Guide has been prepared to support the presentation "Who Decides? Guardianship & Resident Autonomy", which is available on the LTCOP website at www.waombudsman.org.

It can also be employed as an independent resource.

The Reference Guide is not intended to provide an exhaustive review of guardianships, but instead to focus on the basic information that LTCF staff should know when caring for a resident who has a guardian, or may be in need of one.

The Reference Guide does not attempt to provide a detailed discussion of the complex set of laws and regulations that govern guardianships. References to applicable legal authorities and information about how to access them can be found in the Appendix to the Reference Guide.

The Reference Guide is also not intended to provide, or function as a substitute for, legal advice. The laws on substitute decision-making are subject to change. Major changes concerning guardianships became effective in July 2017, and the effects of those changes are in process. Long-term care facility administrators may choose to exercise their discretion to seek legal advice to determine the scope and effect of the laws governing guardianships.

The Reference Guide is divided into 4 Sections.

- Section 1: KEY CONCEPTS – how the appointment of a guardian can affect an individual’s independent decision-making authority.
- Section 2: THE GUARDIANSHIP APPOINTMENT PROCESS - the court-based process for appointing a guardian, and the evidentiary standards that the court will employ to determine if a guardian is needed.
- Section 3: GUARDIANS: QUALIFICATIONS, TYPES & PAYMENT FOR SERVICES - who can serve as a guardian and who cannot, the types of guardians, the availability of payment for their services
- Section 4: LIMITATIONS ON GUARDIAN AUTHORITY, OVERSIGHT & RESIDENT RIGHTS - limitations on guardian authority, prohibited actions, guardian decision-making standards, formal oversight by the court and the Certified Professional Guardianship Board, the continuing importance of resident autonomy and Resident Rights for a resident with a guardian.

Information is presented in a convenient Q&A format throughout, allowing you to quickly locate a particular topic or issue.

Additionally, as this Reference Guide is primarily intended for use in connection with residents in licensed long-term care facilities, please note the following.

The laws governing guardianship uses many standardized terms. Two commonly found terms are:¹

Alleged Incapacitated Person: this term is used to describe an individual that is involved in a proceeding to determine the need for a guardian. At this stage, the court has not finally determined the individual's need for a guardian.

Incapacitated Person: this term is used to describe an individual who has a court-appointed guardian. The court has determined that an individual lacks legal capacity to make some or all decisions regarding personal and or property (including financial) interests.

For the purposes of clarity and consistency with applicable law, these terms will be used as intended throughout this Reference Guide.

Accordingly, it is important to keep in mind that whenever one of these particular terms is used in the Reference Guide it is also explicitly referring to a resident in a long-term care facility.

The valuable time and effort that you expend reviewing this Reference Guide will hopefully enable you recognize and avoid, or better handle issues that may arise while providing care for your residents who may have or may be considered for a guardianship.

¹ The terms, their meanings and usages are discussed in Section 2: THE GUARDIANSHIP APPOINTMENT PROCESS.

Section One:

Key Concepts



What is a guardian?

A guardian is a person who is appointed by a court to make decisions for an individual (described as an “incapacitated person”) who has been found to have a *demonstrated inability* to adequately:

- Provide for nutrition, health, housing, physical safety, and or
- Manage property or financial affairs.

The guardian’s identity and decision-making authority is described in the court order that is issued as a result of a formal guardianship proceeding. The order may provide the guardian with full decision-making authority, or only limited authority over an incapacitated person’s person and property interests. The incapacitated person retains decision-making authority over matters that are not expressly given to the guardian in the court order.

How is a guardianship different from other types of surrogate decision makers?

Result of a court proceeding

Guardianship is fundamentally different from all other forms of surrogate decision-making because it can only be created by a court.

For example, in the case of a power of attorney (POA), an individual independently appoints a chosen person to serve as an agent and to make decisions on the individual’s behalf and benefit as described in the POA. Significantly, the individual can terminate the POA at any time, provided the individual has legal capacity¹.

In the case of a guardianship, the court has made a formal determination that an individual is an “incapacitated person” who does not have the legal

¹ The determination of an individual’s legal capacity is a legal decision. The procedure and criteria employed by the court to make this determination are discussed in Section 2.

capacity to make some or all of the decisions concerning the individual's personal needs or property related affairs.

The court imposes the guardianship on that individual, and only the court has the authority to modify or terminate the guardianship.

Tool of last resort: potential loss of individual rights

Aside from the potential loss of decision-making authority, the appointment of a guardian may result in the loss of individual rights that are ordinarily taken for granted, including the right to:

- Consent to medical treatment.
- Make decisions affecting social life.
- Appoint a power of attorney.
- Revoke a will.
- Have a driver's license and drive.
- Vote, or hold elected office.
- Marry.
- Buy, own sell or lease property.
- Enter into contract.
- Sue or be sued.

Accordingly, the appointment of a guardian should be relied on as a tool of last resort only after all potential alternatives have been considered and ruled out.

The court in a guardianship proceeding is required to consider the availability of alternative measures before appointing a guardian and will ensure that the incapacitated person's rights and decision-making authority is limited only as may be necessary to protect that person's personal and property interests.

What are some alternatives to a guardianship?

Some alternatives to a guardianship include the following:

- Durable power of attorney.
- Durable power of attorney for health care decisions.
- Living will (health care directives).
- Mental health advance directives.
- Representative Payee.
- Trust.
- Joint Property Arrangement.

Section Two

The Guardianship Appointment Process



What are the stages of a guardianship proceeding?

Filing Petition for guardianship

Guardianship proceedings begin with the filing of a formal document known as a “Petition” in the Superior Court. The person filing the Petition is referred to as the “Petitioner”.

- The Petition asks the court to appoint a guardian for an identified individual who is alleged to have demonstrated the lack of capacity to make decisions regarding his or her person or property. The individual in question is described as an alleged incapacitated person.
- The Petitioner may ask to be appointed as the guardian or nominate someone else to serve.
- A guardian can also be nominated by a will or power of attorney. The court will ordinarily accept this nomination in the absence of proof that the nominated person is not qualified to serve.

Court appoints Guardian ad Litem

Thereafter, the court will appoint a Guardian ad Litem (GAL). The GAL is an unbiased investigator for the court, who will investigate the allegations in the Petition and prepare a formal report with recommendations for the court to consider.

Guardian ad Litem responsibilities

Following appointment, the GAL will:

- Meet with the alleged incapacitated person (AIP) within 5 days and advise the AIP of his or her rights, including the right to an attorney, to contest the appointment of a guardian, and to personally appear in all court proceedings.

- The GAL does not represent the AIP, but is required to act in the “best interests” of the AIP.
- Consult with interested and more knowledgeable persons to help ascertain the AIP’s competence.
- Arrange for a medical or psychological exam of the AIP.
- Investigate alternative substitute decision-making arrangements such as a durable power of attorney.
- Meet with the proposed guardian.
- If necessary, consent for necessary medical treatment if the AIP is unable to provide informed consent.
- If necessary, take action, with court approval, to stop the abuse, abandonment, neglect or exploitation of the AIP, or address the AIP’s other emergency needs.
- Submit a report to the court, generally within 45 days, with findings and recommendations as to whether a guardian is needed and who should be appointed as guardian.

The AIP and others may file responses to the GAL’s report.

Court Determinations

Once all of the necessary information is filed, the court will hold a hearing and determine:

- Whether the AIP is an incapacitated person.
- If a guardian will be appointed or if alternative measures may be sufficient.
- If guardian is appointed, who will serve as guardian.
- The full extent of the guardian’s authority.

The court will incorporate its determinations in a court order. The court order will also direct the clerk of the court to issue Letters of Guardianship.

At this point the GAL is generally dismissed.

What are Letters of Guardianship?

Letters of Guardianship is a document issued by the clerk of the court that verifies the guardian's appointment to serve and also identifies whether the guardianship is of the person, of the estate or both. It will also describe whether the guardianship is full or limited.

Letters of Guardianship may be issued for a period of up to five years, after which they must be renewed by a new court order.

How does a guardianship end?

A guardianship ends when the incapacitated person dies or the court terminates it.

Who can file a Petition for the appointment of a guardian?

Any person or organization (including a long term care facility or health care provider) acting in good faith and with a reasonable basis, can file a Petition to have a guardian appointed.

Furthermore, the law specifies that there is no liability for anyone who files a Petition for these reasons.

What if there is no one available or willing to file a Petition?

The Attorney General can file a Petition where there is reason to believe that an individual is in need of guardian and no one is willing or available to file one.

Adult Protective Services and the Department of Social and Health Services may file a petition on behalf of any individual who is being abused, abandoned, neglected or exploited and needs the protection of a guardianship.

A resident's attorney may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the resident and, in appropriate cases, seeking the appointment of a guardian ad litem, or guardian, if the attorney reasonably believes that the resident has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in his or her own interest.

Any health care provider or facility that meets the eligibility requirements for a petitioner can file a petition requesting the appointment of a guardian.

Skilled nursing facilities are required to have guidelines for when to recommend the initiation of guardianship proceedings. Information about how to obtain access to those procedures can be found in the Appendix to this Reference Guide.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding the filing of a Petition to appoint a guardian for a resident.

Additionally, your local Long-Term Care Ombuds is knowledgeable about Resident Rights law and is available to provide relevant information and support for a resident in situations where a long-term care facility believes that a resident may require a guardian.

What is an alleged incapacitated person?

What rights does an alleged incapacitated person have?

An alleged incapacitated person (AIP) is an individual who is named in the Petition and described as someone who requires the appointment of a guardian.

The AIP has the right to:

- Oppose the appointment of a guardian.
- Attend all hearings.
- Testify and present evidence on his or her behalf.
- Request a trial by either judge or jury on the issue of capacity.
- Representation by an attorney.

The AIP may independently choose an attorney. If the AIP cannot afford an attorney the court will appoint one. Regardless, the attorney must support and promote the AIP's expressed preferences.

What is an incapacitated person?

An incapacitated person (IP) is an individual who has been judged by the court in a guardianship proceeding to lack legal capacity, based upon a significant risk of:

- Personal harm based on a *demonstrated inability* to adequately provide for nutrition, health, housing or safety; and, or
- Financial harm based on a *demonstrated inability* to adequately manage property or financial affairs.

The determination of an individual's legal capacity is a legal decision, based upon a demonstration of management insufficiencies over time. A person's age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of that the individual does not have legal capacity.

What is a guardian ad litem?

What are the guardian ad litem's role, duties and obligations?

The guardian ad litem (GAL) is appointed by the court from an approved registry, and is typically an attorney or a social worker. The GAL must complete minimum training requirements and meet specific standards.

The GAL is appointed as an unbiased investigator for the court and is required to investigate and make recommendations to the court about the alleged incapacitated person (AIP)'s need for a guardian. The GAL does not represent the petitioner, the AIP, or the proposed guardian.

The GAL has no decision-making authority, however, the GAL can provide informed consent for life saving treatment for the AIP, and can, with court approval, take action to stop the abuse, abandonment, neglect or exploitation of the AIP, and or address any other emergency needs.

The GAL's duties are further described above in the discussion of the stages of a guardianship proceeding.

The court will generally dismiss the GAL when the guardianship proceedings are completed.

Who pays for a guardianship proceeding?

Generally the alleged incapacitated person (AIP) will pay all costs unless the AIP does not have sufficient assets.

The ordinary and major costs associated with a guardianship proceeding include the fees for the:

- Court filing.
- Guardian ad Litem.
- Physician and or psychologist reports.
- Attorney representing the alleged incapacitated person (AIP).

The court will determine any and all fees, and the amounts, that are to be paid, except for the filing fee.

If the AIP's assets are less than \$3000, the court's filing fee is waived.

If the AIP has limited means the county will pay the guardian ad litem's fee, and AIP's attorneys fees.

How can a long-term care facility assist an alleged incapacitated person who is a resident of the long-term care facility?

Where the alleged incapacitated person (AIP) is a resident of a long-term care facility, the facility should:

- Assist the Guardian ad litem (GAL)'s ability to access the AIP.
- Enable the AIP to receive information about the AIP's rights during guardianship proceedings.
- Cooperate fully with the GAL's investigation; it is likely that the GAL will want to speak with facility staff about the AIP's cognitive abilities and needs.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding the provision of any assistance to an AIP who is a resident at the facility and involved in a guardianship proceeding.

Additionally, your local Long-Term Care Ombuds is knowledgeable about Resident Rights law and is available to provide relevant information and support an AIP in such situations.

Section Three

Guardians:
Qualifications, Types & Payment for Services



Who is eligible, and ineligible, for appointment as a guardian?

Any individual may be appointed who meets the following conditions:

- Over the age of 18
- Of sound mind²
- Has no felony convictions, or
- Convictions for misdemeanors involving moral turpitude.³

The individual must also complete applicable training, and be also found suitable by the court.

Special Rule for adult family homes

Any provider, entity representative, resident manager, or staff who ***was appointed as the resident's guardian prior to February 1, 2009*** may continue to be the resident's guardian. Such an appointment ***cannot be made after February 1, 2009***.

What is a guardianship of the person?

What is a guardianship of the estate?

A court can appoint a guardian for the *person*, the *estate* or both.

A guardian is appointed for the *person* where the court finds that the:

² the state of mind of a person, which is sufficient to reason and reach a judgment upon ordinary subjects, like any other rational person.

³ Crimes involving moral turpitude have an inherent quality of baseness, vileness, or depravity with respect to a person's duty to another or to society in general.

- Incapacitated person (IP) has a significant risk of personal harm based on a demonstrated inability to adequately provide for nutrition, health, housing or safety.

A guardian is appointed for the *estate* where the court finds that the:

- IP has a significant risk of financial harm based on a demonstrated inability to adequately manage property or financial affairs.

What is a full guardianship?

What is a limited guardianship?

A guardianship can be either *full* or *limited* in scope.

In a *full guardianship*, the court order provides the guardian with the final authority to make decisions regarding the either incapacitated person (IP)'s *person* or *estate*, or both. The IP does not retain any authority concerning the decisions that he or she might normally make.

In a *limited guardianship*, the court order will identify the decisions that the guardian has final authority to make and the decisions that the IP will continue to be able to make. The IP retains the decision-making authority for all matters that are not expressly given to the guardian in the court order.

What is the lay guardian?

What is a certified professional guardian?

The majority of guardians are *lay guardians*. They are generally a family member and are not, but can be, paid for the services they provide. They must also complete training specific to their role as guardian, and comply with the duties and obligations imposed by law on all court-appointed guardians.

A *certified professional guardian* (CPG) is not a member of the incapacitated person (IP)'s family. The majority of CPGs are practicing attorneys, and charge fees for their services. The Court and the Certified Professional Guardianship Board regulate professional guardians by prescribing minimum certification, training, practice and discipline standards.

Can a guardian be paid for the services that are provided?

Both certified professional guardians and lay guardians can receive reasonable fees and reimbursement of costs as payment for their services as a court-appointed guardian. The court must approve any and all fees and costs.

Generally, the incapacitated person (IP) pays for the services, if the IP has sufficient income and assets.

If the IP is on Medicaid or receiving services under a Medicaid waiver program, the Department of Social and Health Services (DSHS) can deduct the fees and costs from the IP's "participation amount". DSHS can amend the IP's Medicaid award letter to increase the DSHS payment to cover the fees and costs, in order to ensure the IP's facility or providers receive the same amount for their services.

Where guardianship services are provided through the Office of Public Guardianship (OPG), OPG will apply to the court for approval of the incurred reasonable fees and costs.

Attorneys who are certified professional guardians can provide services "Pro Bono", that is at no cost.

Section Four

Limitations on Guardian Authority, Formal Oversight & Resident Rights



What decisions is a guardian prohibited from making?

A guardian may not without a court order:

- Involuntarily commit an incapacitated person (IP) for mental health treatment.
- Detain an IP in a residential treatment facility that provides nursing or other care.⁴
- Consent to the IP's receipt of convulsive therapies, psychosurgery (lobotomy), other psychiatric or mental health procedures that restrict the IP's freedom of movement.

Can a guardian restrict the right of an incapacitated person to choose to freely communicate, interact, visit or associate with persons inside or outside of a long-term care facility?

In 2017, Washington amended the law to specifically limit the ability of a guardian⁵ to restrict the right of an incapacitated person (IP) to communicate or visit with persons of his or her choice.

The amended law explicitly states that an IP retains the right to associate with persons of the IP's choosing regardless of the appointment of a guardian. It also states that this right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means.

⁴ A guardian can place an IP in a long-term care facility, if the placement is made with the IP's valid consent, and the facility setting is the *least restrictive* one to the IP's freedom and appropriate personal care needs.

⁵ The amended law applies equally to both full and limited guardians.

If an IP is unable to either express consent for communication, visitation or interaction, or make a decision regarding association with another person, the guardian must:

- Personally inform the IP of the decision under consideration, using plain language, in a manner calculated to maximize the understanding of the incapacitated person
- Maximize the IP's participation in the decision-making process to the greatest extent possible, consistent with the IP's abilities, and
- Give substantial weight to the IP's preferences, both expressed and historical.

Importantly, a guardian may not restrict an IP's right to communicate, visit, interact or associate with persons of the IP's choosing, whether inside or outside of the facility, unless one of following three conditions is in place.

- The guardian obtains an amendment of the guardianship court order that specifically limits contact between the IP and specific persons.
- The guardian obtains a Vulnerable Adult Protection Order (VAPO) that specifically limits contact between the IP and specific persons.
- The guardian has good cause to believe that there is an immediate need to restrict an IP's right to communicate, visit, interact or associate with persons on the IP's choosing in order to protect the IP from abuse, neglect, abandonment or financial exploitation.

However, under this last condition, the guardian must file for a VAPO within 14 days of imposing the restriction. The restriction may remain in place until the court rules on the need for the VAPO.

Any VAPO that is issued by the court may not, in part

- Be more restrictive than is necessary to protect the IP from abuse, neglect, abandonment, or financial exploitation, or
- Deny communication, visitation, interaction, or other association between the IP and another person unless the court finds that reasonable time, place, or manner restrictions will not sufficiently protect the IP from abuse, neglect, abandonment, or financial exploitation.

The guardian should also report any actual or suspected concerns about potential abuse, neglect, abandonment or financial exploitation to the appropriate authorities.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding situations where a guardian acts in any manner to restrict the right of an IP to choose to communicate, visit, interact or associate with another person.

Your local Long-Term Care Ombuds is knowledgeable about Resident Rights law and is available to provide information and support for an IP in such situations.

What is a Vulnerable Adult Protection Order (VAPO)?

The Washington State Vulnerable Adult Protection Act protects persons from abuse, neglect, self-neglect, exploitation, and abandonment, who

- Are 60 or older who are functionally, mentally, or physically unable to care for themselves, or
- Have a court appointed guardian, or
- Have a developmental disability, or
- Live in nursing homes, assisted living facilities, adult family homes, or any other facility, or
- Receive services from home health, hospice, or home healthcare agencies, or
- Receive services from an individual care provider or personal aide.

The vulnerable adult or an interested person may file for a Vulnerable Adult Protection Order (VAPO) in the Superior Court of the county where the vulnerable adult lives.

The court may order relief that it feels is necessary for the protection of a vulnerable adult, including, but not limited to the following.

- Restraining a person from committing acts of abandonment, abuse, neglect, or financial exploitation.
- Excluding a person from the vulnerable adult's residence.
- Prohibiting a person from contacting the vulnerable adult.
- Prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance from a specified location.
- Requiring an accounting of the disposition of the vulnerable adult's income or other resources.
- Restraining the transfer of property for a specified period not exceeding ninety days.

Additional information about the VAPO, and other protections to prevent the abuse of vulnerable adults can be found in the Appendix to this Reference Guide.

What decision-making standards must a guardian follow?

A guardian is not free to just make decisions based on what he or she thinks is best for an incapacitated person (IP) and without considering the IP's views and desires.

A guardian is legally obligated to first:

- Choose what the IP would do if the IP was aware of all the circumstances including the effect of the lack of legal capacity.
- Give substantial weight to the IP's current stated desires and wishes through past statements, practices, information shared with others and observations.
- Seriously consider the IP's behavior and verbal expressions as they are both a form of communication.
- Consider the opinions of professionals, relatives and friends with knowledge of the IP.

- Seek independent professional evaluations and opinions to support the IP's decision-making ability.

Only after these options have been exhausted must the guardian make a decision in the IP's "best interests".

Can an incapacitated person override the decision of a guardian?

The answer depends upon the type of guardianship authority.

If the court order grants the guardian the right to make a decision, the guardian is legally empowered to make the final decision.

- In a full guardianship the guardian is the final decision maker for matters concerning the incapacitated person (IP)'s *person* and or *estate* as stated in the court order and recorded in the Letters of Guardianship.
- In a limited guardianship, the limited guardian is the final decision maker for only the parts of the IP's *person* or *estate* that are specifically stated in the court order and recorded in Letters of Guardianship. The IP retains the right to make decisions for matters that the court order does not grant to the limited guardian.

Regardless of the type of guardianship, a guardian's final decision-making authority is not necessarily absolute, as the guardian must comply with decision-making standards that respect the IP's known and expressed choices and desires.

Can an incapacitated person participate in healthcare related or other decisions concerning a residence at a long-term care facility?

An incapacitated person (IP) has the right to participate in all decisions relating to a residence in a long-term care facility to the maximum extent that the IP willing and capable.

Even where a guardian has final decision-making authority, a guardian:

- Is required to choose what the IP would do if the IP was aware of all the circumstances including the effect of the lack of legal capacity, and consider and respect the IP's current and historical

desires and wishes, expressed through written, verbal or other behavioral expressions.

- Must respect and support the IP's right as a resident in a long-term care facility to the protections guaranteed by the Resident Rights law which includes the right to participate in decisions related to health care, residence and social life to the extent that an IP is willing and capable.
- Must foster the resident's growth, independence and self-reliance.
- May not demand particular treatments if they are not permitted in the care setting or are not a reasonable medical option.

A long-term care facility always has an independent obligation to promote the right of a resident who is an IP to participate in all decision-making to the extent that the resident is capable.

If the long-term care facility believes the IP's interests are not being well served by the guardian it should contact the court and request a hearing. It may also, in the case of a certified professional guardian, make a complaint to the Certified Professional Guardianship Board.

Long-term Care Facility administrators may exercise their discretion to seek legal advice in such situations.

Your local Long-Term Care Ombuds is knowledgeable about Resident Rights law and is available to provide relevant information and support for a resident who is an IP.

Can DSHS or a long-term care facility override the decision of a guardian?

Where a guardian is authorized by the court to make healthcare and, or other decisions for a resident who is an incapacitated person (IP) the Guardian is the final decision-maker.

Regardless, a guardian:

- Is required to choose what the IP would do if the IP was aware of all the circumstances including the effect of the lack of legal capacity, and consider and respect the IP's current and historical desires and wishes, expressed through written, verbal or other behavioral expressions.

- Must respect and support the IP's right to the protections guaranteed by the Resident Rights law which includes the right to participate in decisions related to health care, residence and social life to the extent that an IP is willing and capable.
- May not demand particular treatments if they are not permitted in the care setting or are not a reasonable medical option.

A long-term care facility always has an independent obligation to promote a resident's right to participate in all decision-making to the extent that the resident is capable.

If the long-term care facility believes the resident's interests are not being well served by the guardian it should contact the court and request a hearing. It may also, in the case of a certified professional guardian, make a complaint to the Certified Professional Guardianship Board.

Long-term Care Facility administrators may exercise their discretion to seek legal advice in such situations.

Your local Long-Term Care Ombuds (LTCO) is knowledgeable about Resident Rights law and is available to provide relevant information and support for a resident who is an IP.

How can a long-term care facility support the rights of an incapacitated person who has a guardian?

All long-term care facilities must determine and document in the incapacitated person (IP)'s resident record:

- The IP's cognitive capacity.
- Identify whether the IP or a surrogate decision-maker has the authority to make healthcare decisions.
- Whether the IP has a guardian, a power of attorney or any type of advanced directives.

A long-term care facility must:

- Ensure that an IP's guardian is able to participate in resident related decision-making.
- Observe that the guardian acts consistent with required decision-making standards.

All long-term care facilities are required to comply with the rights granted to their residents by Washington's Resident Rights law, and the laws and regulations governing each type of facility.

Those Resident Rights include the right to:

- Participate in planning care and treatment
- Receive and refuse any particular service
- Choose activities, schedules and healthcare consistent with interests and care plans
- Privacy in communications
- Communication with people inside and outside the facility
- Visits from family, friends and others
- Access to physicians, state representatives, advocates, long-term care ombuds
- Freedom from physical & chemical restraints, verbal, sexual & mental abuse, corporal punishment, involuntary seclusion or isolation.

Consistent with resident rights laws, a long-term care facility has the obligation to promote a resident who is an IP's right to participate in all decision-making to the maximum extent that the IP is willing and capable. This is so even where a resident may have a guardian.

Information about how to obtain information about the Resident Rights law and the laws and regulations governing skilled nursing facilities, assisted living facilities and adult family homes can be found in the Appendix to this Reference Guide.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding Resident Rights and the facility's duties and obligations to promote them and ensure compliance with them.

Your local Long-Term Care Ombuds is knowledgeable about Resident Rights law and is available to provide relevant information and support for a resident who is an IP.

Do the mandatory reporter rules apply to actions by guardians?

Long-term care facility staff are mandated reporters and must report to the appropriate authorities any instances of actual or suspected abuse, neglect, exploitation, abandonment by a guardian, or a person acting for a guardian.

Additional information about how to report actual or suspected abuse, neglect, exploitation, abandonment of a resident by any person can be found in the Appendix to this Reference Guide.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding Resident Rights and the facility's duties and obligations as mandated reporters.

Is a guardian subject to formal oversight?

- All guardians are court-appointed and subject to court oversight.
- Certified Professional Guardians are also subject to oversight by the Certified Professional Guardianship Board.

Court Oversight. Includes the following:

- A guardian is required to file annual reports of his or her activities on behalf of an incapacitated person (IP).
- The court may replace a guardian, modify or terminate a guardianship and or grant any relief that it deems in the IP's best interests.
- The court must also modify or terminate a guardianship when it finds that a less restrictive alternative to guardianship, such as a trust or a durable power of attorney, is available and will adequately provide for the needs of the IP.
- An action to modify or terminate a guardianship, or to make a complaint concerning a guardian, can be initiated by the court, filed by an attorney, or by an unrepresented person.

A guardian must obtain a court order prior to being able to take the following actions:

- Involuntarily consenting to the provision of any therapy that induces convulsions.

- Detaining an IP in a residential treatment facility that provides nursing or other care (including a long-term care facility).
- Consenting to the provision of any psychiatric or mental health procedures that restrict the IP's physical freedom.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding court oversight of guardians.

Certified Professional Guardianship Board

The Certified Professional Guardianship Board (CPGB) is a part of the Washington State Courts and is responsible for regulating the certification, practice, training and discipline of certified professional guardians (CPG).

Any person can file a complaint with the CPGB regarding a CPG alleging the violation of any law, regulation, rule, practice, fiduciary duty, or any other requirement governing the conduct of a CPG.

Long-term Care Facility administrators may exercise their discretion to seek legal advice regarding the CPGB, including its purpose, procedures and authority.

Appendix

Where can I find the rules governing guardians and guardianship?

The laws governing the appointment, qualification and removal of guardians are found in the Revised Code of Washington, *Chapter 11.88 RCW*. They may be reviewed online at www.leg.wa.gov .

The laws governing the powers and duties of guardians are found at *Chapter 11.92 RCW*. They may be reviewed online at www.leg.wa.gov .

The Washington Courts, Office of Public Guardianship, publishes information regarding guardians and guardianship online at:

<https://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.org>

Information about Certified Professional Guardians and the Certified Professional Guardianship Board (CPGB) can be found online at:

https://www.courts.wa.gov/programs_orgs/guardian/?fa=guardian.display&fileName=rulesindex

Where can I find the additional information about the Vulnerable Adult Protection Act and Vulnerable Adult Protection Orders?

The Vulnerable Adult Protection Act is found at *Chapter 74.34 RCW*. It may be reviewed online at: www.leg.wa.gov .

The forms and instructions for obtaining a Vulnerable Adult Protection Order (VAPO) are available online at:

www.courts.wa.gov/forms/?fa=forms.contribute&formID=70

Where can I find information about how to report my concerns to Adult Protective Services/Department of Health and Social Services about a vulnerable adult?

Information about how to report concerns of actual or suspected abuse, neglect, self-neglect, or exploitation concerning a vulnerable adult can be found online at:

<https://www.dshs.wa.gov/altsa/home-and-community-services/report-concerns-involving-vulnerable-adults>

Where can I find the Washington State Resident Rights law?

The Washington State Resident Rights law can be found at Revised Code of Washington, Chapter *70.129 RCW*. They may be reviewed online at:

<http://app.leg.wa.gov/RCW/default.aspx?cite=70.129>

Where can I find information about the obligations of skilled nursing facilities?

The Washington State regulations governing skilled nursing facilities are found at Washington Administrative Code, Chapter *388-97 WAC*. They may be reviewed online at:

<http://apps.leg.wa.gov/WAC/default.aspx?cite=388-97>

The Federal regulations governing skilled nursing facilities are found at Washington Title *42 CFR Part 483, Subpart B*. They may be reviewed online at

<https://www.law.cornell.edu/cfr/text/42/part-483/subpart-B>

Where can I find information about the obligations of assisted living facilities?

The Washington State regulations governing assisted living facilities are found at Washington Administrative Code, Chapter 388-78A *WAC*. They may be reviewed online at:

<http://apps.leg.wa.gov/WAC/default.aspx?cite=388-78A>

Where can I find information about the obligations of adult family homes?

The Washington State regulations governing adult family homes are found at Washington Administrative Code, Chapter 388-76 *WAC*. They may be reviewed online at:

<http://app.leg.wa.gov/WAC/default.aspx?cite=388-76>