

OREGON STATE HOSPITAL

PORTLAND – SALEM

POLICIES AND PROCEDURES

SECTION 6: Patient Care

POLICY: 6.044

SUBJECT: Guardianship/Conservatorship

POINT DEBORAH HOWARD

PERSON: DIRECTOR, CONSUMER & FAMILY SERVICES

APPROVED:  GREGORY P. ROBERTS
SUPERINTENDENT

DATE: JUNE 17, 2011

I. POLICY

Oregon State Hospital (OSH) acknowledges that guardianship is appropriate for only a limited number of patients within the hospital. Guardianship shall only be pursued for those patients who are determined to be incapacitated, unable to give an informed consent or informed refusal, and in danger. Guardianship is only considered after all other less restrictive alternatives have been determined unable to meet the patient's needs. This policy shall address individuals as patients when discussing protected persons and guardianship/conservatorship.

II. DEFINITIONS

- A. "Conservator" means an adult appointed by the court to make important decisions for the patient about his or her finances. The patient must be determined financially incapable by the courts for them to appoint a conservator.
- B. "Court Visitor" means an independent investigator appointed by the court to meet with the patient and talk with doctors, caregivers, family members, and others who may have relevant information about whether a guardian is needed. The Court Visitor shall also speak with the proposed guardian (or conservator) and others who may have relevant information about qualification and suitability of the proposed guardian (or conservator). The Court Visitor writes a report to the court. The report specifies if guardianship (or conservatorship) is legally indicated as well as if the proposed guardian (or conservator) is qualified and is the best person to become guardian.
- C. "Emergency Guardianship/Temporary Guardianship" means a temporary guardian may be appointed by the court if the patient is found to meet all

three of the following criteria: 1) the patient is incapacitated; 2) there is immediate and serious danger to the patient's life/health; and 3) the patient's welfare requires immediate action. The appointment is only made for a specific purpose and a specific period of time (not more than 30 days). The court can extend the temporary guardianship for an additional 30 days.

- D. "Family" means the biological or legal parents, siblings, other relatives, foster parents, legal guardians, spouse, domestic partner, caregivers, and other primary relations to the individual whether by blood, adoption, legal, or social relationships. Family also means any natural, formal, or informal support persons identified as important by the patient.
- E. "Financially Incapable" means when a patient has a condition that makes him or her unable to manage his or her financial resources effectively. To be financially capable, the patient must be able to carry out actions necessary to obtain, administer, and dispose of real property (e.g., house), personal property (e.g., furniture, clothes, or car), intangible property (e.g., bank accounts), business property, benefits, and income.
- F. "General Guardianship" means the guardian has all the powers allowed by law. A general guardian has the power to decide where a patient shall live, care of patient's personal property (unless a conservator has been appointed), health care decisions, advance funeral and burial arrangements, disposition of patient's remains, and may receive/spend the patient's money for the patient's support, care, and education.
- G. "Guardian" means an adult appointed by a court to make important decisions for a patient for his or her care and well-being. The guardian is to encourage the development of maximum self-reliance and independence for the patient and is authorized only to the extent necessitated by the patient's actual mental and physical limitations [ORS 125.300(1)].
- H. "Guardianship Proceeding/Protective Proceeding" means a court process in which a judge shall determine if a patient is incapacitated and requires a guardian. The judge shall determine if the proposed guardian is appropriate and for which areas of decision-making the guardian is permitted to make decisions.
- I. "Incapacitated" means the patient has a condition in which his or her ability to receive and evaluate information effectively, or to functionally communicate by any means/method their decisions, is impaired to such an extent that the patient presently lacks the capacity to meet the essential requirements for the person's physical health or safety. "Meeting the essential requirements for physical health and safety" means those

actions necessary to provide the health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is likely to occur (ORS 125.005). A patient may be incapacitated in some areas but not in others.

- J. "Limited Guardianship" means the guardian is only given decision-making authority in the area(s) that the adult is incapacitated (e.g., health care [medical treatment, psychiatric treatment], residential placement decisions, general care and comfort, fiscal).
- K. "Professional Guardian/Professional Fiduciary" means an individual who acts as guardian for three or more protected persons for whom he or she is not related.
- L. "Protected Person" means a patient who has a guardian, conservator, or both.
- M. "Public Guardian" means when a governmental agency is appointed guardian/professional fiduciary for a protected person.

III. PROCEDURES

A. Interdisciplinary Treatment Team (IDT) Responsibilities

1. The IDT shall determine if a patient meets the legal definition of incapacity, and if this incapacity places them in danger of serious physical injury or illness while at the hospital or in the community.
2. If the IDT determines that the patient is incapacitated, the IDT shall also determine which decision-making area(s) are impacted: health care (medical treatment, psychiatric treatment), residential placement, and/or financial.
3. The IDT shall assess if this incapacity is limited in duration or an ongoing incapacity.
 - a. If incapacity is limited in duration then temporary guardianship may be considered but general guardianship should not be pursued.
 - b. If incapacity is ongoing then the IDT shall review what other less restrictive options could be utilized to meet the patient's needs before pursuing guardianship.

4. If the IDT determines that guardianship appears to be most appropriate to meet the patient's needs, the IDT shall contact the Director of Consumer and Family Services to review the case.

B. Director of Consumer and Family Services Responsibilities

1. Meet with the patient face-to-face, review the case, and determine if guardianship appears appropriate for the patient's needs. Determine if the patient's family is qualified, suitable, and willing to perform the duties of guardian. If the patient's family is qualified, suitable, and willing to perform duties of guardian then they are the first choice for such a role.
2. If the patient's family is unable, unwilling, or unsuitable to take on this responsibility, then the Director of Consumer and Family Services shall identify necessary resources and individuals appropriate to perform the duties of guardian.

C. When evaluating the appropriateness of guardianship to meet a patient's needs, the IDT and the Director of Consumer and Family Services shall consider the following general guidelines:

1. When guardianship is appropriate it should be limited to the least restrictive scope necessary to protect the patient.
2. The guardian should encourage the development of maximum self-reliance and independence of the patient.
3. Patients who are appointed a guardian maintain all their legal and civil rights provided by law except those that have been specifically granted to the guardian by the court.
4. A guardian may not authorize sterilization; authorize electroconvulsive therapy (ECT) without specific authority within the guardianship appointment; use the patient's money to pay for room and board provided by the guardian or a close relative of the guardian unless approved by the court; put the patient into a mental health treatment facility, nursing home, or residential facility unless the guardian gives prior written notice to the court as well as notification to the patient and other interested parties and provides the patient with the opportunity to object and have a hearing. If the patient requests a hearing then they may not be moved to the mental health treatment facility, nursing home, or residential facility until after the hearing.

- D. Copies of court documents appointing an individual as guardian for a patient and specifying the area(s) the guardian has authority must be presented to OSH upon admission or upon receipt from the court, whichever is sooner.
- E. Oregon State Hospital Medical Record Services Department shall maintain copies of court documents of guardianship and a copy shall be maintained within the patient's chart.
- F. Oregon State Hospital shall provide guardians with the same rights as patients as they relate to the area(s) of authority provided by the court guardianship documents, unless another authority's power overrides the guardian's authority on a specific topic (e.g., civil commitment order can override a guardian's authority to remove a patient from OSH).
- G. Guardianship Process
1. An attorney shall file a petition to the court requesting a guardian (to be named within the petition) be appointed for the patient. The petition shall specify reasons the patient needs a guardian, including area(s) the guardian shall be authorized to make decisions about. The petition shall provide name and contact information for any/all family members and why they are not being proposed to be guardian.
 2. If the proposed protected person is a patient at OSH, then Disability Rights Oregon and the patient's family must be notified of the guardianship petition. Notification shall occur by the attorney when he/she files the petition with the courts. At that time, a copy shall be sent to Disability Rights Oregon and the patient's family.
 3. Upon receipt of the petition, the court shall appoint a Court Visitor who shall interview the patient, doctors, family, proposed guardian, and other relevant individuals, and provide a written report/recommendation to the judge.
 4. The patient shall be notified of his or her right to object to the appointment of a guardian and to have a hearing before the judge if he or she objects to the guardianship proceeding.
 5. The patient has a right to an attorney.
 - a. The law does not provide for resources to pay for an attorney for the patient if he or she does not have the resources to pay for one.

- b. The judge may appoint a pro bono attorney, or request that OSH pay for an attorney for the patient (subject to OSH agreement), or may dismiss the case if the judge believes an attorney to represent the patient's rights is necessary and no other resources are available to pay for the attorney.
6. The judge has authority regarding approval of guardianship, scope of guardianship, and whether the proposed guardian is qualified, suitable, and willing to serve.

IV. REFERENCES
ORS 125.005
ORS 125.300(1)

New Oregon State Hospital policy.