



**Policy Statement  
Revised April 2002 by  
Oregon Council on  
Developmental Disabilities**

## **Guardianship**

### **Summary of Issue:**

Since guardianship represents a transfer of the responsibility for exercising an individual's rights, adequate safeguards are needed to assure that the individual retains as much decision making power as possible. Persons with disabilities and their families need the knowledge and education to balance the right of the individual to make decisions affecting their lives and the need for intervention and protection. Guardianship should not be overused and over-extended in favor of protection above the rights of the individual.

### **Council Position:**

The Oregon Council on Developmental Disabilities believes that most people with developmental disabilities can manage their own affairs with informal assistance and guidance from family, friends, members of the community and or service agencies. People with developmental disabilities benefit by having concerned and involved advocates working cooperatively with them. A person does not need to be a guardian in order to fill this role.

The Oregon Council on Developmental Disabilities believes that the appointment of a guardian is a serious matter involving the limitation of a person's independence and rights. When guardianship is appropriate, it should be used sparingly and adequately monitored by the legal system as well as by advocates to insure that the best interests of the individual are protected.

- All decisions about guardianship should be made on an individual basis, person by person.
- Appointment of a guardian should be made only to the extent necessary for the protection and well-being of the individual and

not for the convenience of the family, the service system, or society.

- Guardianship should be designed to encourage the development of maximum self-reliance and independence of the protected person and should be ordered only to the extent necessitated by the person's current mental and physical limitations.
- An individual for whom a guardian has been appointed should not be presumed to be incompetent to make all decisions about his or her own life.
- Less restrictive alternatives to full guardianship, including limited guardianship, power of attorney, etc., should always be considered first.
- The restrictions on the individual's rights and decision-making powers should be confined to those areas where the person clearly lacks the capacity to understand the consequences of his or her decisions or actions.
- A protected person should retain all legal and civil rights provided by law except those that have been expressly limited or specifically granted to the guardian by the court.
- The guardian, preferably a family member, should be someone who is committed to the well-being of the individual, knows and understands the individual's needs and wishes and acts in accordance with them and the legal responsibilities of guardianship.
- The guardian must be accountable for his or her actions and those actions should be reviewed regularly, by the legal system, including the need for guardianship.

### **Background:**

A guardianship occurs when a guardian is appointed by a court to make important decisions for another adult who is considered incapacitated. A person is considered incapacitated if he or she cannot make decisions well enough to get health care, food, shelter, and other care that is necessary to avoid serious physical injury or illness. A person with a guardian is called a protected person. In Oregon, prior to the appointment of a guardian, the Court orders a "court visitor" to conduct a review of the circumstances surrounding the petition for guardianship.

A guardian has only those powers that are given him or her by the court. When a guardian has all of the powers allowed by law, this is called a full guardianship. When the court has not given the guardian all powers, this is called a limited guardianship. A guardian may also be appointed on a specified time-limited basis. This is called a temporary guardianship.

Often when a guardianship is granted, the guardian and /or the protected person do not feel as if the details of the guardianship have been adequately defined or described to them.

### **Possible Future Activity**

#### Legislative / Administrative:

- Advocate for legislation requiring training for all guardians on the roles and responsibilities of guardianship and training for Court Visitors.
- Advocate for support for programs that provide advocates and guardians for individuals who do not have involved family and who are determined to need such services.

#### Education:

- Work in collaboration with The Arc of Oregon, the Oregon Advocacy Center and others to increase the awareness on the part of families, consumers, providers, courts and others in the legal and service professions, of the issues related to guardianship for people with developmental disabilities.

#### Research: There are a number of issues where further research should occur:

- Adequacy of the court visitor process
- Adequacy of the public guardian program
- Use of “guardians for hire”. What is the process? Who are they? How are they regulated?
- Specific limitations in the Letters of Guardianship. Process for challenging.
- Process for resolving conflicts. How to deal with crisis? What to do when problems with guardianships are observed? How to deal with the increased need for short-term medical decision making situations?
- High cost of accessing guardianship.

