

Regarding Guardianshipⁱ

DID YOU KNOW?

All persons alleged to be incapacitated or partially incapacitated have rights which include: being in attendance at their hearing; calling for witnesses and cross-examining them; presenting evidence; submitting appeals; court-appointed representation and requesting their hearing be closed to the public.

“Any guardian who willfully violates the duties or willfully misuses the power assigned by the court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward.”ⁱⁱ

A guardian can be held liable for the actions of their ward if, as a result of the guardian’s negligence, the ward caused injury to another person.

A guardian is legally obligated to maintain the property of their ward – preventing unnecessary waste or destruction and keeping it secure.

“Every guardian must be allowed the amount of his reasonable expenses in execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.”ⁱⁱⁱ

Two points to consider:

- 1) Most guardians within the DDS system do not request compensation since wards’ funds tend to be limited.
- 2) Although OK is not one of them, many states have a thriving “professional guardian” industry.

A guardian may not use a power of attorney to appoint someone to act as guardian while they are unavailable (due to illness, trips, etc). According to DHS, “To do so would circumvent the law that is designed to protect vulnerable adults, by allowing a person who had not been screened and approved by the court to perform duties on behalf of an incapacitated person.”

The court must be notified if the subject of the hearing is on any psychotropic drugs including the purpose of the medications and the effect it can have on their behavior and participation at their hearing.

Mediation is available when a team is concerned about the performance of a guardian. To learn more, call the Administrative Office of the Courts at 405.522.7876.

There is usually a court order for a final accounting to be filed within 30 days of a guardianship being terminated.

HIPAA^{iv} rules do not apply to guardians and they can have full access to their ward’s records.

A guardian cannot sign a DNR^v order unless there is an approved and executed advance directive in place. The guardian may petition the original guardianship court for a separate DNR order.

DEFINITIONS

A general guardian oversees the person and/or all of their property.

A limited guardian is authorized by the court to exercise limited powers over the person and/or their property.

A guardian of an incapacitated person is appointed by the court to assure the essential requirements for the health and safety of the ward are met and/or manage the estate and financial resources.

A guardian ad litem is appointed by the court and assists in the decision making process of selecting a guardian.

Abuse is the intentional infliction of physical pain, injury or mental anguish or the deprivation of food, clothing, shelter or medical care to an incapacitated person, partially incapacitated person or a minor (IP/PIP/M) by a guardian or other person responsible for providing these services.

Exploitation means the unjust use of the resources of an IP/PIP/M for the profit or advantage...of a person other than an IP/PIP/M through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

Neglect means the failure to provide protection for an IP/PIP/M in terms of protecting that person's interests; failure to provide adequate shelter and clothing; harming/threatening the person through action or inaction.

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1. These facts are sourced from OKDHS' website "Guardianship Assistance" and the OK State Courts Network (www.osen.net).
 2. Sec 4-901 of OK's guardianship law
 3. Sec 4-901 of OK's guardianship law
 4. HIPAA is the Health Insurance Portability and Accountability Act and outlines the privacy of a person's medical records.
 5. DNR means "do not resuscitate" and means the withdrawal of life-sustaining interventions.