

DISABILITY & AGING RIGHTS



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ABUSE, NEGLECT AND EXPLOITATION

Obtaining Guardianship in Emergency Situations

People with disabilities and older adults have a right to be free from abuse, neglect and financial exploitation; to be as independent as possible; and to make decisions and have those decisions respected. However, sometimes it is necessary to appoint an emergency decision-maker when a person appears unable to make decisions and when that person is at imminent risk of serious harm.

This fact sheet will discuss the rights of people with disabilities and older adults residing in domestic living situations to have help and protective services. It will also explain what temporary/emergency guardianship is, and how to pursue guardianship to consent to an assessment and protective services for people with disabilities and older adults.

Right to assistance and protection from harm

People with disabilities and older adults have a right to protective services if they are being abused, neglected or financially exploited while living in a domestic living situation. A domestic living situation is either a community-based unlicensed facility or a residence where the person with a disability or older adult lives alone, with family, with a support worker or caregiver, or with others.

The Department on Aging's Adult Protective Services (APS) unit is responsible for addressing all reports of abuse, neglect and financial exploitation of adults with disabilities and adults age 60 or older who reside in domestic living situations. Reports can be made directly to the APS hotline, to one of the regional administrative agencies designated by the Department on Aging, or to one of the many public or nonprofit provider agencies approved by the Department to receive and assess reports.



When a provider agency receives a report, it must conduct a face-to-face assessment of the victim. The provider agency must visit the victim's residence and may interview or consult with service agencies or other people who might know about the victim's circumstances. If the victim is in serious physical harm or in immediate danger of death or serious physical harm, the assessment must occur within 24 hours. The provider agency must respond to other reports involving immediate risk of harm within 72 hours and all other reports within seven days.

If the provider agency finds reason to believe abuse, neglect or financial exploitation occurred, the provider agency must develop a service care plan for the adult with disabilities or older adult that provides for services to meet the adult's needs. In developing the plan, the provider agency may consult with any other professional or provider of services such as care coordination, counseling, law enforcement, long-term care, medical, personal assistance, respite and disability agencies. The plan should help people with disabilities or older adults continue to function independently in the least restrictive setting.

The agency cannot conduct an assessment or provide protective services based on a report of abuse, neglect or financial exploitation if the person with disabilities or older adult does not consent to the assessment or services. If the person with disabilities or older adult is unable to make decisions regarding care and has a court-appointed guardian, the guardian can consent to the assessment and services on behalf of the victim.

What guardianship is

Guardianship is a court process where someone asks the court to appoint a person or an entity to make certain decisions on behalf of a person when that person is no longer able to make decisions because of mental illness, intellectual/developmental disability, mental deterioration or physical incapacity. Once appointed, the guardian has authority to take actions and provide consent on behalf of the person as allowed in the court's order.

Guardian of the person

A guardian of the person makes important decisions affecting a person's well-being and health, such as where the person will live and the medical care he or she will receive.

Guardian of the estate

A guardian of the estate manages the money, property, and other assets of the person, and spends money as necessary for the person's best interest. The same person or entity may serve as guardian of the person and the estate, or different people or entities may serve.



Types of guardianship and temporary guardianship in emergencies

Plenary guardianship

To obtain guardianship over a person with disabilities or older adult, the law requires that you give the person written notice, and “summons,” at least 14 days before the court holds a hearing and appoints a guardian. The hearing must be held within 30 days of filing the petition. If a guardian is appointed at the hearing, the guardian is known as the plenary guardian.

A plenary guardian has broad powers and continues to serve as guardian throughout the life of the person with disabilities or older adult unless the court enters an order ending the guardianship. For this reason, plenary guardianship is sometimes referred to as “permanent” guardianship. However, the court can always cancel or change the guardianship if the person no longer needs a plenary guardian.

Limited guardianship

Instead of appointing a plenary guardian, the court may appoint a limited guardian if the court finds that the person needs help with some decisions, but is capable of making other decisions.

Temporary guardianship

In emergencies, a court may appoint a temporary guardian before appointing a plenary guardian and without providing 14-day notice to the person with disabilities or older adult. The court will appoint a temporary guardian when the appointment is necessary for the immediate welfare and protection of the person or his or her estate. The temporary guardian has all the powers and duties that a plenary guardian would have as long as they are listed in the court’s order appointing the temporary guardian.

Temporary guardianship allows the guardian to step in quickly to protect the person from imminent risk of abuse, neglect or financial exploitation. The temporary guardian can provide consent to an assessment and protective services on behalf of the person and can take a number of other actions to protect him or her from further harm.

How to obtain guardianship

Completing and filing the petitions

To start the guardianship process, you need to complete and file certain court forms. The forms are available at the local civil courthouse and may be available online on the court clerk's website for the county where the person with a disability or the older adult lives.

To obtain temporary guardianship, a Petition for Temporary Guardian must be completed and filed. The person asking the court to appoint a guardian is considered the petitioner. The individual with disabilities or the older adult is the respondent. The petition must explain why a temporary guardian is necessary. The petition should ask the court to appoint a temporary guardian of the person to consent to an assessment and protective services for the person with disabilities or older person. If the person's assets are at imminent risk of harm, the petition may also ask the court to appoint a temporary guardian of the estate.

The petition must nominate a person or an entity to serve as temporary guardian. People may serve as temporary guardians if they are over 18 years old, U.S. residents, do not have a guardian, and have not committed certain

felonies. The person filing the petition may nominate himself or herself, another person, or an agency or other entity that is qualified and willing to serve as temporary guardian.

If the person filing the petition is unable or does not want to serve as the guardian, the person can contact the Illinois Office of State Guardian to make a referral or for other assistance. The Office of State Guardian serves as temporary and plenary guardian for a person when no family members, friends or others are willing and able to act as guardian. If the victim lives in Cook County and has enough money or assets, the Office of the Cook County Public Guardian may also serve as temporary and plenary guardian.

Even though temporary guardianship is being sought, a Petition for Appointment of Guardian for Disabled Person must also be completed and filed. This form is known as the plenary petition. The same qualifications for serving as temporary guardian apply to serving as plenary guardian. A plenary petition must be filed to seek temporary guardianship. The plenary petition cannot be withdrawn or dismissed without the court's permission.

The petitions should be filed at the civil courthouse in the county where the person with a disability or older adult lives. The clerk will assign a case number and a judge once the plenary petition is filed.



Court hearing

Each county handles requests for temporary guardianship differently. The petitioner may be asked to appear before the judge in a courtroom immediately after the temporary petition is filed. After hearing from the petitioner, the judge may immediately appoint a temporary guardian. Or the judge may ask an attorney known as a guardian ad litem to meet with the person with disabilities or older adult and with others with helpful information, and report back for the court's ruling.

The court may ask the petitioner if he or she has a doctor's report that describes the person's disabilities and medical condition; results of any evaluations; an opinion as to whether guardianship is needed and the reasons why; and a recommendation regarding the most appropriate living arrangement. If the petitioner does not have one, the court should order appropriate medical evaluations to be performed, but may appoint a temporary

guardian without the report. The petitioner should bring to court any information regarding the nature of the person's disability or condition and how it affects his or her ability to protect himself or herself from harm.

If the judge appoints a temporary guardian, the judge's order should give the temporary guardian authority to consent to assessments and protective services for the person with disabilities or older person. ■

For more information:

Illinois Department on Aging, Adult Protective Services:
1-866-800-1409 or **1-888-206-1327** (TTY)

Illinois Office of State Guardian:
1-866-274-8023
www.illinois.gov/sites/gac/OSG/Pages/default.aspx

Illinois Department of Public Health:
1-800-252-4343

Equip for Equality:
1-800-537-2632 or **1-800-610-2779** (TTY)



Equip for Equality
20 North Michigan Avenue
Suite 300
Chicago, IL 60602

www.equipforequality.org
1-800-537-2632
1-800-610-2779 (TTY)

Illinois Department on Aging
One Natural Resources Way
Suite 100
Springfield, IL 62702-1271

Senior HelpLine:
1-800-252-8966
1-888-206-1327 (TTY)
www.illinois.gov/aging

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