Illinois
Guardianship
& Advocacy
Commission

A Guide to Adult Guardianship in Illinois

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FOREWORD

The Illinois Guardianship and Advocacy Commission has established a record of public service that is unsurpassed by any provider of guardianship services. As the largest public guardian of its kind in the United States, the Commission's Office of State Guardian handles personal or financial decisions for adults with disabilities. It also manages cash assets and personal property for persons with disabilities throughout Illinois.

The Illinois Guardianship and Advocacy Commission has been the beneficiary of the collective skills of exceptionally talented and dedicated advocates. This guide has been the collaborative effort of several guardianship professionals, caseworkers, attorneys and administrators, and is dedicated to each IGAC employee .

This booklet answers questions commonly asked about Illinois guardianship for persons with disabilities. If you require more detailed information, please refer to the Probate Act of Illinois or consult an attorney.

Additionally, the booklet communicates some basic facts about the Commission's Office of State Guardian, to social workers, nurses, police, family, attorneys, judges or anyone who has considered, or will consider, contacting this agency about guardianship for adults with disabilities.

These guidelines may answer your questions about whether or not someone needs guardianship services and whether or not the Commission, through its Office of State Guardian, can be of assistance to you. This booklet is designed to provide general information about guardianship law and procedures; it is not intended as legal advice about any particular problem. If legal advice or other expert assistance is required, please seek the resources of a competent professional.

Please feel free to visit our World Wide Web site for more information about the Illinois Guardianship and Advocacy Commission. You can find us at:

http://gac.state.il.us

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A guardian is a person, institution or agency appointed by the Probate Court to manage the affairs of another, called the ward.

2. WHO MAY HAVE A GUARDIAN APPOINTED TO MANAGE HIS/HER AFFAIRS?

The law presumes that an adult eighteen years of age or older is capable of handling his/her own affairs. A guardian may be appointed to serve as a substitute decision maker if a person is disabled because of (1) mental deterioration, (2) physical incapacity, (3) mental illness, or (4) developmental disability. The disability must prevent the person from making or communicating responsible decisions about his/her personal affairs. A guardian may also be appointed if, because of "gambling, idleness, debauchery, or excessive use of intoxicants or drugs", a person spends or wastes his/her estate so as to expose himself/herself or his/her family to want or suffering. In either case, guardianship may be necessary to protect the person and to promote the interests of others, such as service providers or creditors.

3. WHAT ARE THE STEPS IN THE GUARDIANSHIP PROCESS?

In Illinois, the only way someone can be a guardian for a person who is eighteen years old or older is to be appointed by the Circuit Court. A parent's guardianship over his/her child stops by operation of law when the child turns eighteen.

The procedures for obtaining a court-appointed guardian are set forth in Section 11a of the Illinois Probate Act, 755 ILCS 5/1-1 et seq. Each county circuit court may also have its own practices or rules. In Cook County, the rules are found in Part 12 of the general rules of practice for the Circuit Court of Cook County. If there are written rules in other courts, they can be obtained from the Probate Court Clerk.

Preliminary Steps - Physician's Report and Consideration of Limited Guardianship

Before starting a court proceeding, one must obtain a report certifying that the person is disabled and needs a guardian. A pre-printed form for the report can usually be obtained from the Probate Clerk of the court where the guardianship proceeding would take place. This is the court in the county where the person with disabilities resides. If the court does not have a pre-printed form, an attorney should be consulted. The report should be completed and signed by a licensed physician and any other professionals who are familiar with the person with disabilities. One or more of the persons who sign the report may be needed later to testify in court. It is important that the report contain all of the information required by paragraph 11a-9 of the Probate Act:

> (1) a description of the nature and type of the respondent's disability, and an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently; (2) an analysis and results of evaluations of the respondent's mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed within three months of the date of the filing of the petition; (3) an opinion as to whether guardianship is needed, and the reasons therefore; (4) a recommendation as to the most suitable living arrangement and, where appropriate, treatment or habilitation plan for the respondent and the reasons therefore; (5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician and a statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.

The more detailed the report, the more likely it will contain all of the information legally required for the court's decision. Since many Illinois physicians are unfamiliar with limited guardianship, it is important for the petitioner or his/her attorney to fully

explore the potential for limited guardianship in each case regardless of the initial recommendation of the physician. Total (plenary) guardianship should only be used when the person with disabilities is so incapacitated that he/she truly cannot make any decisions himself/herself. The report should accurately reflect the skills and abilities of the person as well as deficits and problems. It is up to the petitioner to assure that this is done; it may be necessary to have other professionals contribute to the report if the physician is not familiar with all aspects of the person's life or if the nature of the disability is outside the physician's area of expertise.

Attorney Representation and Other Protections

Although an individual seeking guardianship for another may do so without the use of an attorney, the advice of legal counsel may be beneficial. The involvement of an attorney can be helpful where the alleged person with disabilities objects to guardianship, or where complicated personal or financial issues are presented to the court. When a person opts to petition for guardianship without representation by legal counsel, the Commission's intake unit or a legal assistance agency may be consulted to learn about specific practices or requirements in a particular court. In addition, the clerk of the court should be consulted to obtain copies of local court forms, and to learn about the scheduling of guardianship cases.

A person facing a guardianship adjudication has the right to a court appointed attorney and a trial by a jury of six persons, although jury trials are quite rare. An individual facing a guardianship adjudication also has the right to request an independent medical evaluation, which must be paid from the funds of the alleged person with disabilities.

Guardians Ad Litem

Most counties in Illinois require the appointment of a guardian ad litem, a private attorney or trained professional charged with

independently advising the court concerning the apparent need for guardianship. Although the process described in the Illinois Probate Act anticipates the appointment of guardians ad litem in all cases, many probate courts will waive this requirement for cause.

It is the duty of the guardian ad litem to report to the court concerning the respondent's best interests. Under the law, if the guardian ad litem is not a licensed attorney, he shall be qualified, by training or experience, to work with or advocate for the developmentally disabled, mentally ill, physically disabled, the elderly, or persons disabled because of mental deterioration, depending on the type of disability that is alleged in the petition. The court may allow the guardian ad litem reasonable compensation.

The guardian ad litem must meet with the respondent and tell him about the pending guardianship proceedings, and try to determine the respondent's position with respect to being adjudicated disabled, the proposed guardian, any changes in residential placement, changes in care that may result from the guardianship, and whatever else the court may deem appropriate. The guardian ad litem files a written report and appears and testifies concerning the appropriateness of guardianship. It is good practice for the petitioner or the petitioner's attorney to discuss the guardianship case with the guardian ad litem prior to the court hearing.

Preparation For Court

Once the report is obtained, if guardianship is appropriate, the person who will pursue the guardianship, or his/her attorney, will need to prepare the following documents:

1. Petition: the official request to the court for appointment of a guardian.

2. Rights Notice: a plain-language summary of the respondent's rights as required under Section 5/11a-10 of the Probate Act.

3. Summons: the official notice to the person with disabilities of the guardianship proceedings. This gives the court jurisdiction over the respondent (person with disabilities) if it is delivered to the person with disabilities in the correct manner.

4. Notice To Interested Parties: an announcement of the date, time and place of the guardianship proceedings, given to all close relatives, the proposed guardian, and the person with whom the person with disabilities resides so that they can appear in court if they wish.

5. Order: a proposed order for the court to sign if it decides that guardianship is warranted. Some courts have forms for various types of guardianship; others have one form which is used for all types of guardianship with appropriate spaces filled in or crossed out.

6. Oath: or Oath of Office, which is the official agreement of the appointed guardian to serve as guardian.

7. Bond: a promise to be responsible for financial damage to the estate up to a certain designated limit. The court may require someone to co-sign as a surety. The court may waive bond in non-estate cases.

8. Statement of Right to Discharge Guardian or Modify Guardianship Order. This form (CCP-214) is required in Cook County. Other counties vary as to whether they require such a document. It tells the newly adjudicated ward about his/her rights.

9. Order for GAL: a proposed order for the court to appoint a guardian ad litem (GAL) to protect the interests of the alleged person with disabilities in the guardianship proceedings. If the judge decides to appoint a GAL, the draft order may be used with or without changes.

Court Procedures

The petition is filed with the Probate Court Clerk, usually along with the report of the physician. A fee will be charged for the filing of the case. The summons, with a copy of the petition attached, is stamped by the clerk and usually given to the sheriff to deliver to the person with disabilities.

In some counties the clerk of the court gives the papers to the sheriff. In other counties the petitioner (individual requesting guardianship) must do this. The sheriff will charge a fee to deliver the papers. The petitioner must pay the fee unless he/she is indigent and asks the court for permission to file the case as a "poor person."

It is possible to make special arrangements for a court order authorizing someone other than the sheriff to deliver the court papers to the alleged person with disabilities. This may be appropriate if there is some concern that the appearance of a sheriff would upset the individual, or if he/she moves to another county after the case is filed but before the papers are delivered. It can also be done to save the cost of the sheriff's fees.

The notice, with a copy of the petition attached, is sent to each person whose name and address appears in the petition. This includes the proposed guardian, and the person with whom the alleged person with disabilities resides, as well as any current, acting guardian of the alleged disabled person.

The order and oath are either given to the clerk of the court at the time of filing, or presented to the judge at the hearing. Practices vary from county to county.

It is a good idea to have at least two extra copies of all papers when filing the case with the court. This is in addition to the extra copies of the petition to be attached to the summons and all of the notices and copies for the petitioner's file. It should also be

remembered that the court must receive original documents; others may receive copies.

A hearing date should be set by the court clerk or the judge within 30 days of the filing of the petition. In Cook County the date of the hearing should be as close as possible to 30 days from the filing date to assure that there is time for the sheriff to deliver the summons. If the date assigned is in excess of 30 days, it should be brought to the attention of the judge.

At the guardianship hearing, it may be necessary to have at least one witness to testify in support of the need for guardianship. In Cook County witnesses are rarely called unless the alleged person with disabilities contests the appointment of a guardian, or some other unusual circumstance exists. In other counties the judge may require a witness to prove the case even if there is no contest. The doctor is not required to testify unless the court requires it. The witness could be a nurse, therapist, social worker, nursing home administrator, etc. If it is not clear whether witnesses are required, it is best to be prepared with a witness "just in case."

The alleged person with disabilities is entitled to attend the hearing. If the person wishes to attend, but has difficulty with mobility or transportation, the court and guardian ad litem should be advised.

4. CAN GUARDIANSHIP BE USED IN THE CASE OF AN EMERGENCY?

Yes. When the court determines that emergency protection is warranted, a temporary guardian may be appointed. If there is an emergency situation requiring a guardian to be appointed before the hearing on the guardianship petition can be completed, one can ask the court to appoint a temporary guardian until the hearing. A petition for temporary guardianship should be prepared, along with a proposed order for the judge to sign. Cook County, and a few other counties, have forms for temporary guardianship

but, in general, the documents must be drafted by the petitioner or his/her attorney. The court must designate what, if any, notice shall be given, how, and to whom. The court can then appoint a temporary guardian with very specific powers and duties written into the order. The temporary guardianship expires automatically when a permanent guardian is appointed, the guardianship petition is dismissed, or in 60 days, whichever comes first. A temporary guardianship is appropriate only if there is a substantial need. In determining the necessity for temporary guardianship, the immediate welfare and protection of the alleged disabled person and his estate shall be of paramount concern, and the interests of the petitioner, any care provider, or any other party shall not outweigh the interests of the alleged disabled person.

5. CAN GUARDIANSHIP BE USED AS A PROTECTIVE MEASURE ALONG WITH ORDERS OF PROTECTION?

Yes. Guardianship is meant to protect the person and property of those who cannot manage for themselves, but it must be used with caution. Guardianship is an extreme form of intervention in the life of a person, because control over personal and/or financial decisions is transferred to someone else for an indefinite, often permanent, period.

Once established, it can be extremely difficult to revoke, even if the guardian or the original petitioner believes that guardianship is no longer necessary. If the courts require expert testimony to support the revocation of guardianship, experts may be hesitant to certify that the person does not need guardianship. The right to privacy and independence in determining how to manage one's own affairs is paramount and should be limited or removed only for the gravest cause.

The law requires that guardianship be used only if it will promote the well-being of the person with disabilities and protect the person with disabilities against neglect, exploitation and abuse, and encourages development of maximum self-reliance and independence.

Orders of protection are defined under the Illinois Domestic Violence Act (IDVA) of 1986, and the Probate Act incorporates the provisions of the IDVA by reference. The Probate Act provides that all IDVA procedures for the issuance, enforcement and recording of orders of protection shall also be available in guardianship cases. Consequently, an order of protection may be joined together with a plenary or temporary petition for adjudication of disability, and a court may enter both orders of protection and orders appointing guardians in the same proceeding.

6. HOW DOES ONE ASSESS THAT A PERSON MAY BE IN NEED OF GUARDIANSHIP?

The fact that a person has a mental disability does not automatically dictate a need for guardianship. The test for determining the need for guardianship focuses on decisional capacity: the ability of the person to make decisions and to properly communicate decisions once made. Making incorrect or ill-advised decisions on a periodic basis is not the test. Rather, it is an inability to engage in the decision making in the first place which is important. Practical questions that may be addressed are as follows:

1) Does the person understand that a particular decision needs to be made?

2) Does the person understand the options available in any decision?

3) Does the person understand the consequences of each option?

4) Is the person able to properly inform appropriate parties once the decision has been made?

The inability to make sound decisions about where to live, where to work, how and when to seek medical care or other professional services, how to properly care for dependents, and how

to purchase items like food and clothing are indications that a person may be in need of some guardianship services.

7. POWERS OF ATTORNEY, SURROGATE DECISION MAKERS AND OTHER ALTERNATIVES TO GUARDIANSHIP

Guardianship can be the most restrictive alternative available to a person in need of personal or financial assistance. Guardianship always means the involvement of a court, with the likelihood of a public examination of one's private affairs, and the costs associated with litigation and on-going compliance with court directives and supervision. All possible alternatives should be explored before instituting guardianship proceedings. Competent medical and legal professionals, social workers, caretakers, family and friends should consult and agree on a suitable course of action whenever possible.

The use of representative or protective payeeships, financial counseling and bill paying assistance programs, living trusts, homemaker and other in-home support programs, and other advocacy services may avoid the need for guardianship.

In addition, Illinois law provides additional means of caring for persons in need, offering both conventional durable powers of attorney and a declaration for mental health treatment. These are advance directives that designate another person to make medical, personal or financial decisions. Finally, Illinois law provides for an alternative means of decision-making under the terms of the Health Care Surrogate Act, which is available for those who did not or could not execute a proper advance directive.

Under the Illinois Power of Attorney Act, each person is given the right to appoint an agent to make property or personal and health care decisions. When the person becomes disabled or incapacitated, the agent makes financial and personal decisions for the person, consistent with the terms of the power of attorney. By signing a power of attorney form, the person is able to detail specific things he or she wishes an agent to do or not to do. A

person may customize the form to limit or increase the powers available to the agent, so as to reflect personal preferences. The execution of the form requires no court involvement, and forms are readily available. By law, an official statutory form listing personal and financial options, if properly signed and executed, is presumed to be valid.

For information about mental health issues, please refer to the Mental Health Treatment Preference Declaration Act. Like conventional powers of attorney, the declaration for mental health treatment is intended to give the principal the ability to determine what will and will not happen in the event the person is in need of mental health services. Unlike conventional powers of attorney, declarations for mental health treatment may not be revocable.

The Health Care Surrogate Act provides an additional means of making health care determinations on behalf of an incapacitated person who requires medical decision making. Under this law, a parent, spouse, child, sibling, relative, or friend of a person who lacks capacity to consent or refuse medical decisions can act as a substitute decision maker. The surrogate decision maker may act without court appointment and is legally authorized to make decisions to forgo life sustaining treatment, where a doctor has found a qualifying medical condition to be in place. The process provided for under this law may be invoked where no guardian has been appointed, and no power of attorney or living will has been executed.

Under amendments to the Health Care Surrogate Act adopted in 1998, surrogates are authorized to make all kinds of medical decisions, in addition to the traditional end-of-life decisions addressed under the original Act. Accordingly, the law empowers surrogates, and guardians acting as surrogates, to make nearly all medical decisions without court review. These changes may mean that important healthcare decisions may be made without resorting to guardianship, where a patient with a disability has a family member or friend who can act as surrogate.

An attorney should be consulted to better understand the nuances of powers of attorney and other types of surrogate decision making.

8. WHO MAY ACT AS A GUARDIAN?

Any person at least 18 years of age who is of sound mind, has not been convicted of a felony, is a resident of the United States and is acceptable to the court may be named guardian of the person and estate of an adult with disabilities.

Any agency, public or private, may serve as guardian of the person or estate, if the court finds that it is capable of providing an active guardianship program. The court shall not appoint as guardian an agency which is providing residential services to the person with disabilities. This is to ensure against any conflict of interest.

A banking institution may be appointed guardian of the estate but not guardian of the person.

9. WHAT TYPES OF GUARDIANSHIP ARE AVAILABLE UNDER ILLINOIS LAW?

There are several types of guardianship available under the Illinois Probate Act. It is important that all available options be considered to determine the appropriate form of guardianship for a specific person with disabilities. In each case, consideration should be given to requesting either limited or plenary guardianship. Limited guardianship is used when the person with disabilities can make some, but not all, decisions regarding his/her personal care and/or finances.

The basic forms guardianship can take are as follows:

A. Limited Guardianship - used when the person with disabilities can make some, but not all, decisions regarding his/her person and/or estate. "Guardianship shall be or-

dered only to the extent necessitated by the individual's mental, physical and adaptive limitations." A limited guardian makes only those decisions about personal care and/or finances which the ward cannot make. The powers of a limited guardian must be specifically listed in the court order. The ward retains the power to make all other decisions regarding his/her person or estate. Limited guardianship may be used to appoint a limited guardian of the person, a limited guardian of the estate, or both.

B. Plenary Guardianship - used when the individual's mental, physical and adaptive limitations necessitate a guardian who has the power to make all important decisions regarding the individual's personal care and finances. Plenary guardianship may be used for the person, the estate, or both.

C. Guardianship of the Person - used when a person, because of his disability, lacks sufficient understanding or capacity to make or communicate responsible decisions regarding the care of his person. The guardian of the person makes decisions regarding the support, care, comfort, health, education, maintenance, and professional services (such as educational, vocational, habilitation, treatment and medical services) for the person under guardianship who is called a ward.

D. Guardianship of the Estate - used when the person because of his disability is unable to manage his estate or financial affairs. A guardian of the estate makes decisions about management of the ward's property and finances.

E. Temporary Guardianship - used in an emergency situation. Temporary guardianship can last no longer than 60 days, and is a means to assure that the person who evidences need for guardianship receives immediate protection.

F. Successor Guardianship - used upon the death, disability,

or resignation of the initially appointed guardian, when guardianship is still needed.

G. Testamentary Guardianship - used by parents of a person with disabilities and designates, by will, a person who assumes the guardianship appointment upon the death of a parent. The designated person must still be appointed by the court before he/she can serve as guardian. The court will consider the designated person but is not bound by the testamentary designation. It can appoint someone else if the proposed guardian is found to be inappropriate.

H. Standby Guardianship– used to provide continuity in the guardianship case if the primary guardian dies, becomes incapacitated or is no longer acting. The court creates the standby guardian upon the filing of a petition for the appointment, when a plenary or limited guardian is appointed. The court applies the same standards used in determining the suitability of a plenary or limited guardian in determining the suitability of a standby guardian. The standby guardian shall have authority to act as guardian without direction of court for a period of up to 60 days. Within that 60 days, the standby guardian shall file or cause to be field a petition for the appointment of a guardian. A court may not appoint the Office of State Guardian or a public guardian as a standby guardian, without the written consent of the state or public guardian or an authorized representative.

I. Short-term Guardianship—used to enable a guardian to appoint an acting guardian for short periods. The guardian of a disabled person may appoint in writing, without court approval, a short-term guardian of the disabled person. The written instrument shall be signed by, or at the direction of, the appointing guardian in the presence of at least two credible witnesses at least 18 years of age, neither of whom is the person appointed as the short-term guardian. The person appointed as the short-term guardian shall also sign the written instrument, but need not sign at the same time as the appointing guardian.

The duration of the appointment cannot exceed a cumulative total of 60 days in any 12 month period. A guardian may not appoint the Office of State Guardian or a public guardian as a short term guardian, without the written consent of the state or public guardian or an authorized representative.

10. HOW LONG DOES THE GUARDIANSHIP PROCESS TAKE?

Temporary guardianship can be obtained quickly; it is possible to have a temporary guardian appointed the same day the petition is filed. The length of time required for the guardianship process when an emergency does not exist depends upon the availability of information necessary for preparation of court papers, the availability of a judge, the type of notice required considering the circumstances of the case, and the existence of complicating factors, such as disagreement among interested parties, controversial issues, etc. In routine cases the most time-consuming process is preparing the documents and gathering the information for the presentation of the case. It is important to thoroughly investigate the case before filing it, because it cannot be withdrawn later without the court's permission. One is not permitted to file a frivolous court case and, if the case is filed and later investigation reveals that there is no justification for the case, there can be serious consequences for the petitioner and also for the petitioning attorney.

Once the case is filed, it usually takes from 14 days to two months for a decision to be reached by the court. The fact that a temporary guardian may have been appointed does not determine whether a permanent guardian will be appointed.

PART II

11. WHAT IS THE OFFICE OF STATE GUARDIAN AND WHY WAS IT CREATED?

The Office of State Guardian (OSG) is one of three divisions of the Illinois Guardianship and Advocacy Commission (IGAC). The IGAC is a model civil rights agency that was created in 1979 to protect the rights and promote the welfare of persons with disabilities in Illinois.

The Commission's Office of State Guardian serves as guardian of last resort for individuals with disabilities when no other person is available to serve. Most of its wards are indigent or have limited assets. In addition, the Commission's intake unit counsels and assists families or others willing to become guardians, with the goal of locating non-public guardians and finding viable alternatives to guardianship.

The other two divisions of the Commission are the Legal Advocacy Service (LAS) and the Human Rights Authority (HRA). The LAS provides legal advice and representation to eligible persons with disabilities of all ages to enforce their rights under mental health and related laws. The HRA also serves persons with disabilities of all ages by investigating complaints of alleged rights violations by service providers.

12. WHEN IS A REFERRAL TO THE OFFICE OF STATE GUARDIAN APPROPRIATE?

Guardianship is appropriate only when a person is unable to manage his/her person or property and consequently is in danger of abuse, victimization or substantial danger to health. If these elements can be proven in court, the person may need a guardian to make decisions for him/her. There must be solid evidence that a person is genuinely unable to manage his/her affairs, and that court action is required to remove his/her decision making rights and give them to someone else. A good way to determine whether guardianship is appropriate is to investigate whether a doctor has evaluated the person and found him/her to be unable to man-

age his/her person or property. In this case, when there is no one else to assume the responsibility of guardianship (when there are no family, friends, relatives, or anyone else interested in serving as a guardian), then a referral to the Office of State Guardian is appropriate. Also, when an impartial or neutral guardian is required, or when the assets of the proposed ward are insufficient to pay the fees usually paid to a guardian of property, a referral to the Office of State Guardian is appropriate.

13. WHAT STEPS SHOULD BE TAKEN BEFORE CONSIDERING REFERRAL TO THE OFFICE OF STATE GUARDIAN?

1) All other possibilities for solution of the client's problem should be exhausted. This includes referral to other agencies for appropriate services, and careful investigation to determine the existence of family, friends and others who may offer viable assistance to the client.

2) Counseling with the client personally to mobilize resources or to help the client accept the services which are available. Often this step is sufficient; a client may accept difficult changes in his/her life if someone takes the time and effort to show that they care.

3) If the client appears genuinely unable to manage his/her affairs, encourage the family or close friends to accept responsibility for the client and become guardian if necessary.

14. HOW IS A REFERRAL MADE TO THE OFFICE OF STATE GUARDIAN?

You may contact the Intake Unit toll free at 1-866-274-8023 or dial 708-338-7500. If a guardianship petition is to be filed requesting the appointment of OSG, the referring person will be asked to provide information regarding the alleged disabled person and all known relatives and interested parties.

15. WHAT IS EXPECTED OF A PERSON OR AGENCY AFTER THE INITIAL REFERRAL?

The referring person may be asked to fill out a Referral / Client Status form and shall obtain a properly written report, signed by a physician, certifying that guardianship is necessary. The information thus presented is necessary for an assessment of the case and for appropriate follow-up once OSG is appointed. OSG can provide counseling regarding the preparation of papers for the guardianship proceedings. OSG will accept appointment by the court if guardianship is appropriate and there is no other suitable person or organization willing and able to serve.

When a guardianship petition is filed, OSG must receive at least 14 days notice and copies of all relevant documents. In the event of temporary guardianship appointments, OSG should be notified as early as possible. Delays in notification can result in delays in decision making once OSG is appointed. Lack of adequate notice may also give rise to the need for a continuance of the hearing to permit OSG to investigate the case. Issues must be discussed in advance with OSG staff, before the guardianship case is filed.

16. DOES THE REFERRAL OF A CLIENT TO THE OFFICE OF STATE GUARDIAN MEAN THAT THE CLIENT NOW BECOMES THE OFFICE OF STATE GUARDIAN' S RESPONSIBILITY?

No. The first task of the Office of State Guardian is to determine if guardianship is necessary at all and whether this need can be proven in court. OSG is responsible for the welfare of a person with disabilities only when actually appointed legal guardian by the court.

Until court appointment of OSG, the client may require services which cannot be supplied by this Office; referring persons and agencies remain ethically responsible for the well

-being of the person with disabilities.

17. ARE THE CRITERIA FOR THE APPOINTMENT OF THE OFFICE OF STATE GUARDIAN DIFFERENT FROM THOSE FOR OTHER GUARDIANS?

No. The prospective ward of the Office of State Guardian must meet the same conditions set out in the law for the appointment of any other guardian, and the conditions must be proven in court in exactly the same way.

18. CAN THE OFFICE OF STATE GUARDIAN BE APPOINTED IF THERE ARE OTHER FAMILY MEMBERS?

The Office of State Guardian should be considered only as a last resort. When a person becomes physically or mentally disabled and needs a guardian, the responsibility of guardianship is best dealt with by family or friends capable of providing an active and suitable program of guardianship. They may be referred to the Office of State Guardian for information on the alternatives which are open to them, but it should be clearly explained that the responsibility for the person remains with them.

19. CAN THE OFFICE OF STATE GUARDIAN BE APPOINTED GUARDIAN TO HANDLE A PERSON' S MONEY OR FINANCIAL AFFAIRS?

Yes. Under the law, when a person's assets are $25,000 or less and there is no one else to serve, OSG can be appointed. If the person's estate is valued at more than $25,000, the County Public Guardian (in counties that have one) may take the case. If the County Guardian decides not to take the case, and there is no one else to serve, the Office of State Guardian may be appointed.

20. WHAT DOES THE OFFICE OF STATE GUARDIAN DO FOR WARDS AFTER THE APPOINTMENT?

The Office of State Guardian is required to visit its wards four

times each year and to otherwise fulfill the duties of a guardian as set forth in the Probate Act.

If OSG is guardian of the person, the worker assigned to the case also does the following:

1) evaluates the needs of the ward for housing, financial support, professional services, medical care, comfort and education;

2) takes steps to meet identified needs;

3) makes decisions about whether the ward should receive services or participate in activities; and

4) seeks enforcement of the ward's legal rights.

When OSG is guardian of the estate, in addition to the four visits per year and advocating for the ward's legal rights, the worker assigned to the case does the following:

1) investigates and collects money and assets of the ward;

2) pays bills out of the ward's estate;

3) protects and manages the ward's assets;

4) enters into and completes the ward's contracts; and

5) represents the ward in legal proceedings, unless another person is appointed.

21. DOES THE OFFICE OF STATE GUARDIAN ADVOCATE ON BEHALF OF ITS WARDS?

Yes. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if

competent, would have done or intended under the circumstances. If the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the ward's best interests as determined by the guardian. The Office of State Guardian, like any other guardian, has a legal responsibility to seek the best interests of its wards. This may mean dealing with individuals or institutions, public or private, to defend the rights of a ward or to obtain services which are due. However, in cases where the ward and the Office of State Guardian do not agree on what is in the ward's best interest, the Office of State Guardian takes steps to obtain an advocate independent of IGAC to assert the ward's wishes.

22. IS THERE A COST FOR SERVICE FROM THE OFFICE OF STATE GUARDIAN?

There is no charge involved in making a referral. If proceedings for the appointment of a guardian are begun in court, the cost of the guardian ad litem may be levied against the assets of the person with disabilities. However, the court may order a petitioner to pay for the guardian ad litem expense when the petitioner is deemed indigent.

Once the person with disabilities has become a ward of the Office of State Guardian, any ward who has assets can be charged a fee for the Office of State Guardian's services. The fees are determined on a sliding scale basis, pursuant to the Illinois Administrative Code.

STATE OF ILLINOIS

GUARDIANSHIP AND ADVOCACY COMMISSION

Telephone	Office Location	Fax
217/785-1540	**OFFICE OF THE DIRECTOR** 521 Stratton Building 401 S. Spring Street Springfield, Illinois 62706	217/524-0088
312/793-5900	**OFFICE OF THE DIRECTOR** Michael A. Bilandic Building 160 N. LaSalle, Suite S-500 Chicago, Illinois 60601-3115	312/793-4311
217/278-5577	**EAST CENTRAL REGIONAL OFFICE** 2125 South First Street Champaign, IL 61820	217/278-5588
618/833-4897	**EGYPTIAN REGIONAL OFFICE** #7 Cottage Drive Anna, Illinois 62906-1669	618/833-5219
618/474-5503	**METRO EAST REGIONAL OFFICE** 4500 College Avenue Suite 100 Alton, Illinois 62002-5051	618/474-5517
847/294-4264	**NORTH SUBURBAN REG. OFFICE** 9511 Harrison Avenue, W-300 Des Plaines, Illinois 60016-1565	847/294-4263
309/671-3030	**PEORIA REGIONAL OFFICE** 401 Main Street, Suite 620 Peoria, Illinois 61602	309/671-3060
815/987-7657	**ROCKFORD REGIONAL OFFICE** 4302 North Main Street, Suite 108 Rockford, Illinois 61103-5202	815/987-7227
708/338-7500	**WEST SUBURBAN REG. OFFICE** at Madden Mental Health Center #9 P.O. Box 7009 Hines, Illinois 60141-7009	708/338-7505

Illinois Guardianship & Advocacy Commission

Please feel free to visit our World Wide Web site for more information about the Commission. You can find us at: **http://gac.state.il.us**