

# Guardianship of Adults

	Current Montana Law	Uniform Law
<i>Basis for appointment</i>	<ul style="list-style-type: none"> <li>• Court may appoint guardian if satisfied that: (1) the person for whom guardianship is sought is incapacitated; and (2) judicial intervention in the person’s personal freedom of action and decision is necessary to meet essential requirements for the person’s physical health or safety (72-5-316)</li> <li>• Incapacitated means impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the person or which cause has so impaired the person’s judgment that the person is incapable of realizing and making a rational decision with respect to the person’s need for treatment (72-5-101)</li> <li>• Testamentary appointment by parent of unmarried incapacitated person or by spouse of married incapacitated person allowed (72-5-302)</li> </ul>	<ul style="list-style-type: none"> <li>• Court may appoint a guardian if finds by clear and convincing evidence that: (1) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate services, technological assistance, or supported decisionmaking; and (2) the respondent’s identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative (301)</li> <li>• No testamentary appointments allowed</li> </ul>
<i>Contents of petition for appointment of guardian</i>	<ul style="list-style-type: none"> <li>• Petition must contain: (1) petitioner’s name, residence, address, and relationship to and interest in the alleged incapacitated person; (2) name, residence, and mailing address of alleged incapacitated person; (3) nature and degree of incapacity; (4) a statement of the incapacitated person’s property; (5) whether there already is a full or limited guardian or conservator; (6) the name, residence, and mailing address of the person the petitioner wants appointed guardian; (7) persons most closely related by blood or marriage; (8) person or institution caring for the incapacitated person; (9) why guardianship is sought and</li> </ul>	<ul style="list-style-type: none"> <li>• Petition must contain: (1) the petitioner’s name, residence, address, and relationship to the respondent and the respondent’s name, age, residence, and the address of the dwelling where the respondent will reside if a guardian is appointed; (2) the respondent’s family members, existing agents, care providers, and decisionmaking supporters; (3) any guardian nominated by the respondent or the respondent’s parent or spouse in a will and the guardian the petitioner is proposing; (4) less restrictive alternatives for meeting the respondent’s needs that have been considered or implemented and why less</li> </ul>

	<p>whether a full or limited guardianship is requested; (10) facts supporting incapacity and need for a guardian and specific areas of protection and limitation of rights requested; (11) if limited guardianship requested, powers petitioner seeks to vest in guardian and duration; and (12) if full guardianship requested, the duration the guardianship is expected to last (72-5-319)</p>	<p>restrictive alternatives would not meet the respondent's needs; (5) whether the petitioner seeks a full or limited guardianship; (6) any person with whom the petitioner seeks to limit the respondent's contact; (7) a statement of the respondent's property; and (8) the respondent's need for an interpreter, translator, or other form of support (302)</p> <ul style="list-style-type: none"> <li>• Includes sample petition form that petitioners may use (603)</li> </ul>
<i>Notice</i>	<ul style="list-style-type: none"> <li>• In a proceeding for the appointment or removal of a guardian, notice must be given to: (1) the ward or person alleged to be incapacitated and the spouse, parents, and adult children (notice must be served personally if they can be found within the state), or, if none, at least one of the closest adult relatives, if any can be found; and (2) any person who is serving as the ward's or person's guardian or conservator or who has custody of the ward or person or is acting as the ward's or person's caregiver</li> <li>• No specific requirement for advisement of rights or description of proceedings and consequences</li> <li>• Notice of any proceeding must be delivered to the guardian (72-5-301(2))</li> <li>• In testamentary appointments, the guardian must provide 7 days' prior notice to the incapacitated person and the person having the care of the incapacitated person or the nearest adult relative before accepting the appointment (72-5-302)</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of petition for appointment of a guardian and notice of the hearing must be personally served on the respondent. Notice must: (1) inform respondent of respondent's rights, including right to an attorney and to attend the hearing; and (2) include a description of the nature, purpose, and consequences of granting the petition</li> <li>• Notice of a petition for appointment of a guardian must be served on the respondent's family members, existing agents, care providers, and decisionmaking supporters and any guardian nominated by the respondent or the respondent's parent or spouse or proposed by the petitioner</li> <li>• After a guardian is appointed, notice of subsequent hearings on petitions must be provided to: (1) the adult subject to guardianship; (2) the guardian; and (3) any other person the court determines (303)</li> </ul>
<i>Appointment &amp; role of visitor</i>	<ul style="list-style-type: none"> <li>• Visitor is defined as a person trained in law, nursing, social work, medical care, mental health care, pastoral care, education, or rehabilitation and is an officer, employee, or special appointee of the court with no personal interest in the proceedings (72-5-313)</li> <li>• Whenever possible, the court shall appoint a visitor who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling</li> </ul>	<p>A court is required to appoint a visitor when a petition for appointment of a guardian is filed. The visitor must have training or experience in the type of abilities, limitations, and needs alleged in the petition. Duties of the visitor include:</p> <ul style="list-style-type: none"> <li>• interviewing the respondent in a manner the respondent is best able to understand to: (1) explain the proceedings, the respondent's rights at the hearing, and the general powers and duties of a guardian; (2) determine the</li> </ul>

	<p>condition that is alleged to be the cause of incapacity. The visitor is required to:</p> <ul style="list-style-type: none"> <li>• interview the alleged incapacitated person, the petitioner, and the person nominated as guardian;</li> <li>• visit the place where the alleged incapacitated person is living and the place where it is proposed the person will live if the appointment is made; and</li> <li>• submit the visitor's report in writing to the court (72-5-315)</li> </ul>	<p>respondent's views about appointment; and (3) inform the respondent of the right to an attorney and that all costs and expenses of the proceeding may be paid from the respondent's assets;</p> <ul style="list-style-type: none"> <li>• interviewing the petitioner and proposed guardian;</li> <li>• visiting the respondent's present dwelling and any dwelling where the respondent will reside if a guardian is appointed;</li> <li>• obtaining information from any doctor or person who treated or assessed the respondent;</li> <li>• investigating the allegations in the petition; and</li> <li>• filing a report with the court that must include: (1) a recommendation of whether an attorney should be appointed for the respondent; (2) a summary of self-care and independent living tasks that the respondent can manage, could manage with supports, or cannot manage; (3) a recommendation regarding the appropriateness of guardianship and, if recommended, whether it should be full or limited and, if limited, the powers to be granted to the guardian; (5) a statement of the proposed guardian's qualifications and whether the respondent approves; (6) whether the proposed dwelling meets the respondent's needs and the respondent's preference for a residence; (7) whether a professional evaluation is recommended; (8) whether the respondent is able to attend a hearing where court proceedings are typically held; (9) whether the respondent is able to participate in a hearing and any supports needed to enhance the respondent's ability to participate; and (10) any other matter the court directs (304)</li> </ul>
<p><i>Appointment &amp; role of attorney</i></p>	<ul style="list-style-type: none"> <li>• The alleged incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the Office of State Public Defender to assign counsel to represent the person (72-5-315)</li> </ul>	<ul style="list-style-type: none"> <li>• Court shall appoint an attorney to represent respondent in a proceeding for appointment of a guardian if: (1) respondent requests the appointment; (2) the visitor recommends appointment; or (3) the court determines the respondent needs representation (305 (Alt. A))</li> </ul>

	<ul style="list-style-type: none"> <li>Ward is entitled to counsel, in accordance with the Montana Public Defender Act, in a commitment hearing under Title 53, chapter 21 (72-5-322)</li> </ul>	<ul style="list-style-type: none"> <li>Specifies the role of the attorney, including making reasonable efforts to ascertain the respondent's wishes and advocating for those wishes or, if the respondent's wishes are not ascertainable, advocating for the less restrictive result, consistent with the respondent's interests (305)</li> </ul>
<i>Professional evaluation</i>	<ul style="list-style-type: none"> <li>Alleged incapacitated person must be examined by a physician appointed by the court, and the physician is required to submit a written report to the court (72-5-315)</li> </ul>	<ul style="list-style-type: none"> <li>Court shall order a professional evaluation of a respondent if requested by the respondent or in other cases <i>unless</i> the court finds it has sufficient information to determine the respondent's needs and abilities</li> <li>Evaluator must be a licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's abilities and limitations and who does not have a conflict of interest</li> <li>Evaluator is required to file a report with the court that: (1) describes the respondent's abilities and limitations; (2) evaluates the respondent's mental and physical condition, educational potential, adaptive behavior, and social skills; (3) includes a prognosis for improvement and recommendations for appropriate treatment and supports; and (4) states the date of the evaluation</li> <li>A respondent may refuse to participate in an evaluation (306)</li> </ul>
<i>Attendance &amp; rights at hearing</i>	<ul style="list-style-type: none"> <li>The alleged incapacitated person is entitled to be present at the hearing in person and to see or hear all evidence</li> <li>The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the evaluator or visitor, and to trial by jury</li> <li>The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's attorney requests it (72-5-315)</li> </ul>	<ul style="list-style-type: none"> <li>A hearing on appointment of a guardian may proceed without the respondent in attendance if the court finds by clear and convincing evidence that: (1) the respondent consistently and repeatedly has refused to attend after being informed of the respondent's rights and consequences of failing to attend; or (2) there is no practicable way for the respondent to attend, even with supports and technological assistance</li> <li>If a respondent is unable to attend in court, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or via real-time audio-visual technology</li> </ul>

		<ul style="list-style-type: none"> <li>• The respondent is entitled to be assisted by persons of the respondent's choosing, including an attorney</li> <li>• The respondent may present evidence, subpoena witnesses and documents, examine witnesses, including any court-appointed evaluation or visitor, and otherwise participate in the proceeding</li> <li>• A proposed guardian is required to attend the hearing unless excused for good cause</li> <li>• The court shall close the hearing at the request of the respondent on a showing of good cause</li> <li>• A person may request to participate in a hearing, which the court may grant on determining that the best interest of the respondent will be served (307)</li> </ul>
<i>Confidentiality of records</i>	<ul style="list-style-type: none"> <li>• Confidential information may be redacted per court rules</li> </ul>	<ul style="list-style-type: none"> <li>• A guardianship case is a matter of public record, but the court may seal the records at the respondent's request and if the petition for guardianship was dismissed or the guardianship is terminated</li> <li>• Access to underlying records of guardianship is restricted (308)</li> </ul>
<i>Who may be guardian -- priority</i>	<ul style="list-style-type: none"> <li>• Any competent person or suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian</li> <li>• Persons have priority for appointment in the following order (the priorities are not binding, and the court shall appoint the person that is best qualified and willing to serve): <ol style="list-style-type: none"> <li>(1) a person, association, or private, nonprofit corporation nominated by the incapacitated person (if the person had the capacity to make a reasonably intelligent choice at the time of nomination);</li> <li>(2) a spouse;</li> <li>(3) an adult child;</li> <li>(4) a parent;</li> <li>(5) any relative with whom the incapacitated person has resided for more than 6 months prior to the filing of the petition;</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• A court shall consider the following order of priority when appointing a guardian (but may appoint a person having lower or no priority): <ol style="list-style-type: none"> <li>(1) a guardian acting for the respondent in another jurisdiction;</li> <li>(2) a person nominated by the respondent;</li> <li>(3) an agent appointed by the respondent under a power of attorney for health care;</li> <li>(4) a spouse; and</li> <li>(5) a family member or other individual who has shown special care and concern for the respondent</li> </ol> </li> <li>• If 2 or more persons have equal priority, the court shall appoint the best qualified person</li> <li>• Persons providing paid services to the respondent are prohibited from being appointed guardian unless the person is related to the respondent or the court finds by clear and convincing evidence that the person is the best</li> </ul>

	<p>(6) a private association or nonprofit corporation with a guardianship program, including members and volunteers; and</p> <p>(7) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person</p> <ul style="list-style-type: none"> <li>• Court may not appoint a person if the person: (1) provides or is likely to provide during the guardianship substantial services to the incapacitated person in a professional or business capacity other than in the capacity of guardian; (2) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian; (3) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or (4) is employed by a person, institution, association, or nonprofit corporation that would be disqualified under the above</li> <li>• If there is no qualified person able to serve, the court may appoint a state or federal agency that is authorized or required by statute to provide services to the person or to persons suffering from the same kind of disability that the incapacitated person suffers from (72-5-312)</li> </ul>	<p>qualified person and appointment is in the respondent's best interest</p> <ul style="list-style-type: none"> <li>• An owner, operator, or employee of a long-term care facility is prohibited from being appointed guardian unless the person is related to the respondent (309)</li> </ul>
<p><i>Order of appointment</i></p>	<ul style="list-style-type: none"> <li>• A court order must specify whether a full or limited guardianship is being created and, if a limited guardianship is ordered, must specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created</li> <li>• An incapacitated person may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's order specifically provides for the limitations</li> <li>• The order must state that all rights not specifically limited are retained by the incapacitated person (72-5-316)</li> </ul>	<p>A court order appointing a guardian must:</p> <ul style="list-style-type: none"> <li>• include specific findings that there is clear and convincing evidence that the respondent's needs cannot be met by a protective arrangement or other less restrictive alternative and that the respondent was given proper notice;</li> <li>• state whether the respondent retains the right to vote and marry and, if not, findings supporting the removal of the rights;</li> <li>• if a full guardianship is ordered, state the reason for doing so and why a limited guardianship is inappropriate;</li> <li>• if limited guardianship ordered, state the powers granted to the guardian; and</li> <li>• identify any person that is entitled to receive:</li> </ul>

		<p>(1) notice of the rights of the adult, notice of a change in the adult’s dwelling, notice of the guardian delegating certain powers, and notice that the guardian will not be able to visit the adult for more than 2 months or is unavailable to perform duties for more than 1 month;</p> <p>(2) a copy of the guardian’s plan;</p> <p>(3) access to guardianship court records;</p> <p>(4) notice of the death or a significant change in the condition of the adult;</p> <p>(5) notice that the guardian’s powers have been limited or modified; and</p> <p>(6) notice of the guardian’s removal (**a spouse and adult children of the adult are presumed to be entitled to notice unless the court finds that notice would be contrary to the preferences or prior directions or best interest of the adult)</p> <p>(310)</p>
<p><i>Notice of order of appointment &amp; rights</i></p>		<ul style="list-style-type: none"> <li>• Not later than 14 days after appointment, the guardian shall give the adult subject to guardianship (and any other persons who were entitled to notice of the petition for appointment) a copy of the order of appointment and notice of the right to request termination or modification</li> <li>• Not later than 30 days after appointment, a court shall give the guardian, adult subject to guardianship, and any person entitled to notice in the order of appointment a statement of the rights of the adult subject to guardianship and procedures for seeking relief if the adult is denied those rights, including the right to: <ul style="list-style-type: none"> <li>(1) seek termination, modification, or removal and the right to an attorney in those matters;</li> <li>(2) be involved in decisions about the adult’s care, dwelling, activities, or social interactions, to the extent reasonably feasible;</li> <li>(3) be involved in health care decisionmaking;</li> <li>(4) be notified at least 14 days before a change in primary dwelling or before a permanent move to a facility that</li> </ul> </li> </ul>

		<p>restricts the adult’s ability to leave or have visitors (with exceptions) and how to object to the change;</p> <p>(5) communicate and receive visitors (with exceptions);</p> <p>(6) receive a copy of the guardian’s plan and report; and</p> <p>(7) object to the guardian’s plan or report (311)</p>
<i>Emergency guardian</i>	<ul style="list-style-type: none"> <li>• If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing</li> <li>• If the welfare of the incapacitated person requires immediate action, court may appoint, with or without notice, a temporary guardian (full or limited) for a period not to exceed 6 months</li> <li>• A temporary guardian is required to make any report the court requires (72-5-317)</li> </ul>	<ul style="list-style-type: none"> <li>• Court may appoint emergency guardian if court finds: (1) appointment is likely to prevent substantial harm to the adult’s physical health, safety, or welfare; (2) no other person appears to have authority and willingness to act; and (3) there is reason to believe that a basis for appointment of a guardian exists</li> <li>• An emergency guardianship may not exceed 60 days but may be extended once for not more than 60 days</li> <li>• When a petition for appointment of an emergency guardian is filed, court should appoint an attorney for the respondent and schedule a hearing on the petition <i>unless</i> the court finds from an affidavit or testimony that the respondent’s physical health, safety, or welfare will be substantially harmed before a hearing with notice can be held, in which case the court may appoint an emergency guardian without notice and a hearing, but the court must give notice of the appointment not later than 48 hours after the appointment and hold a hearing on the appropriateness of the appointment not later than 5 days after the appointment (312)</li> </ul>
<i>Duties of guardian</i>	<ul style="list-style-type: none"> <li>• Limited guardian’s duties are those specified in the court’s order of appointment</li> <li>• Full guardian has same duties respecting ward that a parent has respecting an unemancipated minor child, including: (1) if entitled to custody of the ward, providing for the care, comfort, and maintenance of the ward and arranging for the ward’s training and education; (2) taking reasonable care of the ward’s clothing, furniture, vehicles, and other personal effects and commencing protective proceedings if other property is in need of protection; and (3) paying</li> </ul>	<p>Guardian is a fiduciary and shall:</p> <ul style="list-style-type: none"> <li>• make decisions regarding the support, care, education, health, and welfare of the adult to the extent necessitated by the adult’s limitations;</li> <li>• promote self-determination of the adult and encourage the adult to develop and regain capacity, in furtherance of which the guardian shall: (1) become acquainted with the adult and maintain contact through regular visits; (2) identify the values/preferences of the adult and involve the adult in decisions affecting the adult; and (3) identify</li> </ul>

	<p>excess funds to the conservator, if one has been appointed (72-5-321)</p>	<p>and facilitate supportive relationships and services for the adult;</p> <ul style="list-style-type: none"> <li>• exercise reasonable care, diligence, and prudence when making decisions for the adult, including: (1) taking care of the personal effects, pets, and support animals of the adult and bringing a conservatorship or protective arrangement proceeding if necessary to protect the adult's property; (2) expending funds for the adult's support, care, education, health, and welfare; (3) conserving funds for future needs or, if a conservator has been appointed, paying funds at least quarterly to the conservator; and (4) monitoring the quality of services provided to the adult;</li> <li>• in making decisions, make the decision the guardian reasonably believes the adult would make if the adult were able <i>unless</i> doing so would unreasonably harm or endanger the adult's welfare of financial interests;</li> <li>• if the decision the adult probably would make if able is harmful or the guardian cannot determine the decision the adult would make if able, the guardian shall act in accordance with the best interest of the adult, taking into consideration: (1) information received from professionals and interested persons; (2) other information the guardian believes the adult would have considered; and (3) other factors a reasonable person would consider; and</li> <li>• immediately notify the court if the adult's condition has changed and the adult is capable of exercising a right previously removed (313)</li> </ul>
<p><i>Powers of guardian</i></p>	<ul style="list-style-type: none"> <li>• Limited guardian's powers are those specified in the court's order of appointment</li> <li>• Full guardian has same powers respecting ward that a parent has respecting an unemancipated minor child, including: (1) entitled to the custody of the ward and may establish the ward's residence; (2) may give consents or approvals for medical or professional care, counsel, treatment, or service, except may not consent to withholding or withdrawal of life-sustaining treatment or to</li> </ul>	<ul style="list-style-type: none"> <li>• Unless limited by court order, a guardian may: (1) apply for and receive funds and benefits to support the adult, unless a conservator is appointed with those powers; (2) establish the adult's residence; (3) consent to health or other care; (4) if a conservator has not been appointed, commence proceedings to compel another person to support the adult or pay funds for the adult's benefit; (5) to extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and (6)</li> </ul>

	<p>a do not resuscitate order unless has the power to consent under Title 50, ch. 9 or 10, or petitions court for authority to do so; (3) if a conservator has not been appointed, may institute proceedings to compel persons to pay support owed to ward or may receive money and property deliverable to the ward and apply it for the support, care, and education of the ward, except may not use funds for room and board provided by the full guardian or the full guardian's family unless a charge for the service is approved by the court with notice to next of kin, if possible; and (4) if a conservator has been appointed, entitled to reasonable sums for the guardian's services and for provision of room and board to the ward, as agreed upon between the guardian and conservator as long as sums are reasonable (72-5-321)</p> <ul style="list-style-type: none"> <li>• In <i>Marriage of Denowh</i>, 2003 MT 244, the Montana Supreme Court held that a guardian does not have the power to bring or maintain a dissolution proceeding on behalf of a ward</li> </ul>	<p>receive personally identifiable health care information about the adult</p> <ul style="list-style-type: none"> <li>• If ordered by the court, a guardian may: (1) consent to the adult's adoption; (2) consent or withhold consent to the marriage of the adult; (3) petition for dissolution or annulment of the marriage of the adult; or (4) support or oppose a petition for dissolution or annulment of marriage of the adult</li> <li>• In establishing the adult's residence, the guardian is required to: (1) make the decision using substituted judgment or, if that is not possible, choose a setting that is consistent with the adult's best interest; (2) give priority to a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner; (3) not later than 30 days after a change in the dwelling, give notice to certain persons; (4) move the adult to a nursing home, mental health facility, or other facility that restricts the adult's ability to leave or have visitors only if certain conditions are met; (5) move the adult outside of this state only if consistent with the guardian's plan and authorized by the court; and (6) sell or surrender the lease to the primary dwelling of the adult only if in the guardian's plan, approved by the court, or notice is given and none of the persons entitled to notice object</li> <li>• In making health care decisions, guardian shall: (1) involve adult and support adult in understanding risks and benefits; (2) defer decision to a health care power of attorney; and (3) take into account risks and benefits and the current and previous wishes and values of the adult, if known (314)</li> </ul>
<p><i>Special limits on guardian's power</i></p>	<ul style="list-style-type: none"> <li>• A full or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability a ward who is unwilling or unable to give informed consent to commitment unless the</li> </ul>	<ul style="list-style-type: none"> <li>• Guardian may not initiate commitment of adult to a mental health facility except in accordance with state's procedure for involuntary commitment</li> <li>• Unless authorized by a court order, guardian does not have power to revoke or amend a health care power of</li> </ul>

	<p>procedure for involuntary commitment set forth in Title 53, ch. 20 or 21, is followed</p> <ul style="list-style-type: none"> <li>• If a ward has a primary diagnosis of major neurocognitive disorder and because of this disorder is unwilling or unable to consent to treatment, a full or limited guardian may seek admission of the ward to a hospital, skilled nursing facility, or other appropriate treatment facility other than the Montana State Hospital (72-5-321)</li> <li>• A guardian has the same power to revoke or amend a health care power of attorney that the principal would have had if the principal were not disabled or incapacitated (72-5-501)</li> <li>• A power of attorney for finances is not terminated if a court appoints a guardian unless ordered by the court (72-31-308)</li> </ul>	<p>attorney or a power of attorney for finances and, unless there is a contrary court order, the decisions of an agent takes precedence over that of the guardian</p> <ul style="list-style-type: none"> <li>• Guardian may not restrict the adult’s ability to communicate with others unless: (1) authorized by court order; (2) a protective order or protective arrangement is in effect that limits contact between the adult and a person; or (3) the guardian has good cause to believe restriction is necessary because the person poses a significant physical, psychological, or financial harm to the adult and the restriction is for not more than 7 business days if the person has a family or preexisting social relationship with the adult or for a period of not more than 60 days if the person does not have a family or preexisting social relationship with the adult (315)</li> </ul>
<p><i>Guardian’s plan</i></p>		<ul style="list-style-type: none"> <li>• A guardian shall file with the court a plan for the care of the adult: (1) no later than 60 days after appointment; (2) when there is a significant change in circumstances; and (3) when the guardian seeks to deviate significantly from the guardian’s plan</li> <li>• Plan must include: (1) living arrangement, services, and supports for the adult; (2) social and educational activities; (3) how visitation will be facilitated between the adult and other persons; (4) nature and frequency of guardian’s visits and communication with adult; (5) goals for the adult; (6) whether adult has existing plan and whether the guardian’s plan is consistent; and (7) the amount the guardian proposed to charge for each service the guardian anticipates providing to the adult</li> <li>• Guardian is required to give notice of the plan, including a statement of the right to object to the plan, no later than 14 days after filing the plan</li> <li>• The adult or a person entitled to receive notice may object to the plan</li> <li>• Court may not approve a plan until 30 days after its filing, and the guardian is required to provide copies of the</li> </ul>

		approved plan to the adult and other persons entitled to notice (316)
<i>Guardian's report</i>	<ul style="list-style-type: none"> <li>• Limited guardian is required to report the condition of the incapacitated person and of the estate as required by the court or by court rule</li> <li>• Unless waived by the court, a full guardian is required to report annually on the condition of the ward and of the estate that has been subject to the guardian's possession or control, and a copy of the report must be served on the ward's parent, child, or sibling</li> <li>• If the full guardian fails to file an annual report, as determined by the clerk of court, the court shall order the full guardian to file the report and give good cause for the failure to file a timely report (72-5-321)</li> </ul>	<ul style="list-style-type: none"> <li>• Guardian shall file a report with the court not later than 60 days after appointing and at least annually thereafter</li> <li>• Report must include the following information: (1) the adult's condition and living arrangements; (2) supports and services provided to the adult; (3) summary of guardian's visits and date of visits; (4) actions taken on behalf of the adult; (5) extent that the adult has participated in decisionmaking; (6) if the adult is living in a facility, whether the guardian considers the facility's current plan of care consistent with the adult's preferences, values, prior directions, and best interest; (7) anything of more than de minimus value that the guardian or individuals related to the guardian have received from an individual providing goods or services to the adult; (8) powers delegated and the reason for doing so; (9) any business relation the guardian has with a person the guardian has paid or who has benefitted from the adult's property; (10) whether the guardian has deviated from the guardian's plan and why; (11) future plans for the adult's care and support; (12) recommendations on the continued need for a guardianship and any recommended change in scope of the guardianship; and (13) whether a co-guardian or successor is alive and able to serve</li> <li>• Notice of the report and a copy of the report must be given to the adult and persons entitled to notice within 14 days after its filing</li> <li>• Court is required to review each report at least annually to determine whether: (1) the guardian has complied with guardian's duties; (2) the guardianship should continue; and (3) guardian's fees should be approved</li> <li>• Allows court to request additional information, appoint a visitor, or hold hearings on removal of the guardian, termination of the guardianship, modification, or adjustment of fees</li> </ul>

		<ul style="list-style-type: none"> <li>Guardian may petition the court for approval of a report, and if the court approves the report, there is a rebuttable presumption the report is accurate as to any matter disclosed in the report (317)</li> </ul>
<i>Removal of guardian</i>	<ul style="list-style-type: none"> <li>On petition of the ward or any interested person, the court, after a hearing, may remove a guardian if in the best interests of the ward</li> <li>The court may appoint a successor guardian and make any other appropriate order</li> <li>Before appointing a successor guardian, court is required to follow same procedures to safeguard the rights of the ward that apply to a petition for appointing a guardian (72-5-325)</li> </ul>	<ul style="list-style-type: none"> <li>Court may remove a guardian for failure to perform the guardian's duties or for good cause</li> <li>Requires court to hold hearing in three circumstances: (1) if the court determines a hearing would be in the best interest of the adult; (2) if the adult, guardian, or interested person petitions for removal, and the petition contains allegations that, if true, support a reasonable belief that removal is in order (court may decline to hold hearing if a similar petition was filed in the previous 6 months); and (3) if the court receives a communication that supports a reasonable belief that removal is appropriate</li> <li>Notice of a petition for removal must be given to the adult, guardian, or any other person the court determines</li> <li>The adult has the right to representation by an attorney</li> <li>If the court removes a guardian, the court is required to appoint a successor following the appointment priorities and notice of the successor must be provided to the adult and other persons entitled to notice (318)</li> </ul>
<i>Termination – modification of guardianship</i>	<ul style="list-style-type: none"> <li>An order adjudicating incapacity may specify a minimum period, not to exceed 6 months, during which a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave</li> <li>Subject to the restriction above, a ward or any interested person may petition for an order that the ward is no longer incapacitated and for termination of the guardianship</li> <li>A request for termination of the guardianship may also be made informally to the court</li> <li>Before terminating a guardianship, court is required to follow same procedures to safeguard the rights of the ward that apply to a petition for appointing a guardian (72-5-325)</li> </ul>	<ul style="list-style-type: none"> <li>Adult subject to guardianship, guardian, or interested person may petition for: (1) termination of the guardianship on the ground that a basis for appointment no longer exists or termination would be in the best interest of the adult or for other good cause; or (2) modification of the guardianship because the extent of protection or assistance granted is not appropriate or for other good cause (notice of the petition must be given to the adult, guardian, or any other person the court determines)</li> <li>Court shall hold a hearing on termination or modification in four circumstances: (1) if the court determines a hearing would be in the best interest of the adult; (2) if the</li> </ul>

		<p>petition contains allegations that, if true, support a reasonable belief that termination or modification is in order (court may decline to hold hearing if a similar petition was filed in the previous 6 months); (3) if the court receives a communication that supports a reasonable belief that termination or modification is appropriate; or (4) a guardian's or conservator's report indicates that termination or modification may be appropriate because needs of the adult or services or supports have changed or a less restrictive alternative is available</p> <ul style="list-style-type: none"><li>• Adult has right to an attorney</li><li>• Court shall follow procedures to safeguard the rights of the adult, including appointing a visitor</li><li>• On presentation of prima facie evidence for termination, the court shall order termination unless it is proven that a basis for appointment of a guardian exists</li><li>• Court shall modify the powers granted to a guardian if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports, or other circumstances (319)</li></ul>
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