

Guardianship and Conservatorship for Adults with Mental Illness

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**IOWA
GUARDIANSHIP
and
CONSERVATORSHIP
ASSOCIATION
(IGCA)**

Iowa Guardianship and Conservatorship Association (IGCA) Mission

- The IGCA promotes the welfare of vulnerable adults and children in Iowa under court-ordered guardianships and conservatorships.
- The IGCA advocates for needed care and protection of adults and children under guardianship and conservatorship and for the interests of the guardians and conservators responsible for their care and protection.
- The IGCA promotes the implementation of the recommendations of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force and the 2019 guardianship and conservatorship reform laws.
- The IGCA promotes the implementation of nationally recognized standards of practice for guardians and conservators.

<https://www.iowagca.org/about-us/>

Website Resources

Legal Resources

- Iowa Guardianship and Conservatorship Laws
- Reporting Forms

Educational Resources

Guardianship and Conservatorship Reform Task Force Resources

BACKGROUND

Iowa Guardianship and Conservatorship System

- Iowa has a guardianship and conservatorship system administered by the judicial branch of government.
- The Iowa Code, Chapter 633 and Chapter 232, provides the legal framework for the guardianship and conservatorship system.
- The Iowa Code authorizes the court to appoint substitute decision-makers, known as guardians and conservators, for adults who lack decision-making capacity and meet other substantive criteria.
- The filing of a petition for the appointment of a guardian, a conservator, or both, initiates the court process. Once a guardianship or a conservatorship is established, the court is responsible for ongoing monitoring to ensure that persons under guardianship and conservatorship are receiving proper care and protection and that their property and finances are being managed properly.

Terminology: Guardian, Conservator, Protected Person

- A guardian is appointed by the court to make decisions and manage the personal affairs of a person with diminished decision-making capacity, who as a result can not care for and protect himself or herself
- A conservator is appointed by the court to make decisions and manage the financial affairs of an adult with diminished decision-making capacity, who as a result can not manage his/her financial affairs.
- A person under guardianship or conservatorship is called a protected person.

- There were 22,752 total pending (open) guardianship and conservatorship cases at end of 2021.
- Adults under guardianship and conservatorship had mental illness, intellectual and developmental disabilities, Alzheimer's and other dementias and brain injuries.

Iowa Supreme Court's Guardianship and Conservatorship Reform Task Force (2015-2017)

- 72 members representative of multiple stakeholders
 - The Bench—Judges and other Judicial Branch Personnel
 - The Bar
 - Guardians and Conservators
 - Banks and Bonding Companies
 - Disability, Aging, Mental Health, Brain Injuries Organizations and Advocates
 - Child Welfare Advocates
 - State Agencies
 - Service Providers
- 272 Task Force recommendations addressed many serious problems and deficiencies in the guardianship and conservatorship system.

2019 Guardianship and Conservatorship Reform Legislation

- The Iowa General Assembly passed guardianship and conservatorship reform legislation unanimously on a bipartisan basis and the Governor signed this legislation into law in May of 2019.
- This legislation incorporated and reflected the reforms of the Iowa Supreme Court Guardianship and Conservatorship Reform Task Force.
- The goal of this legislation was to strengthen and enhance the procedural and substantive protections for highly vulnerable Iowans—both adults with diminished decision-making capacity and children.

**ESTABLISHMENT OF
GUARDIANSHIP AND
CONSERVATORSHIP:
CRITERIA AND EVIDENCE
REQUIRED**

Basis for Appointment of a Guardian for Adult

- The Iowa Code § 633.552 provides that the court may appoint a guardian for an adult if the court finds by clear and convincing evidence that all of the following are true:
 - *“a. The decision-making capacity of the respondent is so impaired that the respondent is unable to care for the respondent’s safety, or to provide for necessities such as food, shelter, clothing, or medical care without which physical injury or illness may occur.”*
 - *“b. The appointment of a guardian is in the best interest of the respondent.”*

Basis for Appointment of Conservator for Adult

- Iowa Code § 633.553 provides that the court may appoint a conservator for an adult if the court finds by clear and convincing evidence that both of the following are true:
 - *“a. The decision-making capacity of the respondent is so impaired that the respondent is unable to make, communicate, or carry out important decisions concerning the respondent’s financial affairs.”*
 - *“b. The appointment of a conservator is in the best interest of the respondent.”*

Court Ordered Professional Evaluation of Respondent

- The Iowa Code § 633.563 authorizes the court to order a professional evaluation of a respondent to determine if the criteria for granting a petition for the appointment a guardian or a conservator have been met.

A person living with mental health challenges does not necessarily satisfy the requirement of diminished decision-making capacity for the appointment of a guardian or conservator.

Any diagnosis or treatment that compromises cognition may be associated with incapacity.

No diagnosis or treatment is invariably predictive of incapacity.

The assignment of diagnostic categories may be confused with the determination of capacity.

The Decisional Capacity Spectrum

- Evaluations of capacity by clinicians do not ordinarily lead to unambiguous ratings of “no ability” or “full ability.”
- Most patients fall somewhere in the middle!
- Decisional capacity is a spectrum of ability.
- A common scenario: a patient may be unable to make financial decisions and be able to make medical decisions.
- Decisional capacity may fluctuate with the course of illness, treatment, nature of the decision, and available social support.
- Assessments of decisional capacity need to be an ongoing process.

Evidence of Functional Limitations

- In order to establish a guardianship, there must be evidence that, as a result of impairment of decision-making capacity, the person *“is unable to care for the respondent’s safety, or to provide for necessities such as food, shelter, clothing, or medical care without which physical injury or illness may occur.”*
- In order to establish a conservatorship, there must be evidence that, as the result of impairment of decision-making capacity, the person *“is unable to make, communicate, or carry out important decisions concerning the respondent’s financial affairs.”*
- The evidence required may take multiple forms and differs from case to case.

Requirements Re Less Restrictive Alternatives To Guardianship or Conservatorship

- A less drastic alternative to a guardianship or conservatorship can be generally defined as “an approach to meeting an individual’s needs which restrict fewer rights of the individual than would the appointment of a guardian or conservator.”
- The Iowa Code, § 633.551(4), provides that a petition for a guardianship or conservatorship shall contain *“a concise statement of why there is no less restrictive alternative to the appointment of a guardian or conservator.”*
- The Iowa Code, § 633.551(4), also provides that in proceedings to establish, modify or terminate a guardianship or conservatorship, the court *“shall consider credible evidence as to whether there are less restrictive alternatives, including third party assistance, that would meet the needs of the respondent or the protected person.”*
- The Iowa Code, § 633.551(4), further provides that *“[h]owever, neither party to the action shall have the burden to produce such evidence relating to other less restrictive alternatives, including but not limited to third-party assistance.”*

Requirements Re Limited Guardianship or Conservatorship

- A limited guardianship or conservatorship can be generally defined as one in which the court has not granted all of the powers that the Iowa Code permits the court to grant to the guardian or conservator.
- The Iowa Code, § 633.551(3) provides that in proceedings to establish, modify or terminate a guardianship or conservatorship, the court “shall consider if a limited guardianship ... is appropriate.” [§ 633.551(3)]

Alternatives to Guardianships & Conservatorships and Limited Guardianships & Conservatorships: Benefits

- When individuals with diminished decision-making capacity are able to the extent possible to exercise autonomy and self-determination in decision-making, they were more likely to live independently, to be employed and to have a better quality of life
- Alternatives to guardianships and conservatorship and limited guardianships and conservatorship conserves scarce judicial resources

- Guardianship and conservatorship can severely limit a person's individual rights and autonomy. They are intended for persons whose difficulty in receiving and processing information and making and carrying out decisions create serious risks to their health, safety and wellbeing and their property and finances.
- It is very important to ascertain relevant facts and think carefully before making a decision about whether a guardianship or a conservatorship is right for a person with mental health problems.

**ESTABLISHMENT OF
GUARDIANSHIP/CONSERVATORSHIP
PROCEDURES AND REQUIREMENTS**

Procedures and Requirements

- There are requirements re filing and contents of petition for appointment of guardian or conservator.
- Respondent to petition is entitled to counsel.
- A hearing must be conducted by court.
- Background check of prospective guardian or conservator is required.
- A bond, or bond alternative is required for conservator.

Qualifications of Guardians and Conservators

1. The Iowa Code, §633.564, provides that the court may appoint a person that is “qualified and suitable” and “willing to serve.”
2. The court has broad discretion as to whom to appoint.
3. The majority of guardians and conservators are family members.

**POWERS AND DUTIES
OF
GUARDIANS AND CONSERVATORS**

General Powers and Duties of Guardian

- Iowa Code, sec 633.635. provides that the court may grant the guardian the following general powers and duties:
 - “ Making decisions regarding the care, maintenance, health, education and welfare, and safety of the protected person”

Specific Powers and Duties of Guardian: Health Care Treatment & Services

- Iowa Code, § 633.635. provides that the duties and powers the court may grant the guardian include, but are not limited to the following:
 - “Consenting to and arranging for medical, dental , and other health care treatment and services”
- However, the Code further provides the guardian must specifically obtain specific prior court approval to exercise the following powers
 - “Consenting to, withholding, or withdrawal of life-sustaining procedures, abortion, or sterilization.”

**JUST BECAUSE THE GUARDIAN HAS
POWER TO MAKE DECISIONS WITH
RESPECT TO TREATMENT AND
MEDICATIONS DOESN'T MEAN THE
PROTECTED PERSON WILL COOPERATE
WITH THE GUARDIAN**

Specific Powers and Duties of Guardian: Residence of Protected Person

- Iowa Code, § 633.635. provides that the duties and powers the court may grant the guardian include, but are not limited to the following:
 - “Establishing the protected person’s permanent residence”
- However, the Code further provides the guardian must obtain specific prior court approval to exercise the following powers”
 - “Changing at the guardian’s request , the protected person’s permanent residence to a nursing home, other secure facility . Or secure portion of a facility that restricts the protected person’s ability to leave or have visitors , unless advance notice was included in the guardian’s initial care plan approved by the court. In an emergency situation the court shall review a request for approval on an expedited basis..”

Specific Powers and Duties of Guardian: Catchall Provision

In addition to setting forth general and specific powers that the court may grant to a guardian, the Iowa Code, § 633.636, provides the court may grant the guardian “[a]ny other powers or duties the court may specify.”

Powers and Duties of Conservator

- In general the Iowa Code §§ 633.641,-642 provide that conservator may exercise powers and carry out duties regarding the following:
 - Protection of assets and financial condition of protected person;
 - Management and investment of protected person's assets;
 - Expenditure of funds/assets for protected person's benefit.

**COURT MONITORING
of
GUARDIANHIPS/
CONSERVATORSHIPS
and
REPORTING REQUIREMENTS**

Goal of 2019 Reform Legislation Re Court Monitoring

- To promote more effective court monitoring of guardianships and conservatorships, the reform legislation requires court approval of powers to be exercised by guardians and conservators
- And the reform legislation requires enhanced reporting to to the court by guardians and conservators.

Goal of 2019 Reform Legislation Re Court Monitoring

- The reform legislation promotes more effective court monitoring of guardianships and conservatorships in order to:
 - ensure needed care and protection of protected persons and prevent their abuse and neglect by guardians.
 - ensure the appropriate management of the assets of protected persons and prevent, detect and remedy the misuse and misappropriation of their assets by conservators.

Reporting Requirements of Guardians and Conservators: Initial Plans

- Iowa Code §§ 633.669(1)(a) and 633.670 requires for the first time that upon an appointment, a guardian or conservator must submit an initial plan for court review and approval within 60 days of appointment.
- Its purpose is:
 - to encourage a newly appointed guardian or conservator to determine the needs of the protected person, to identify the resources and services available to meet those needs and then to develop a plan to meet those needs,
 - to enable the court to determine at an early stage whether a guardian or a conservator has developed an appropriate plan to meet the needs of the protected person and to furnish the court with a benchmark to evaluate the guardian or the conservator's future performance, and
 - to prevent problems before they arise or before they have negative consequences.

Reporting Requirements of Guardians and Conservators: Annual Reports

- Iowa Code, § 633.669, requires the guardian to submit annual reports to the court and specifies information to be provided in those plans.
- Iowa Code, § 633.670(3), requires a conservator to file annual reports with the court and specifies the content of those reports.
 - Unlike prior law, the filing of annual reports cannot be waived by the court.

Reporting Forms for Use by Guardians and Conservators

- The Task Force found that the forms being used by guardians and conservators for their required reporting to the court were not providing adequate guidance to them because of their lack of specificity.
- The Task Force also found that that these forms were not generating the information needed by judges to effectively and efficiently carry out their responsibility to monitor guardianships and conservatorships.
- After the enactment of the 2019 guardianship and conservatorship reform legislation, the Iowa Supreme Court issued new forms setting forth the specific information, if applicable, to be included in the guardian's initial care plan and annual report and the specific information, if applicable, to be included in the conservator's initial financial management plan and annual report.

Reporting Forms for Use by Guardians and Conservators, cont'd

- These forms must be used by pro se guardians and conservators, i.e., guardians and conservators who are not represented by an attorney. It is not required that a guardian or conservator have an attorney to fill out the forms and submit them to the court. The majority of guardians and conservators in fact prepare and submit the required forms without the assistance of an attorney.
- The Supreme Court forms are available in a fillable PDF format on the Iowa Guardianship and Conservatorship Association website:
<http://iowagca.org>

TERMINATION OF GUARDIANSHIPS and CONSERVATORSHIPS

Standard and Procedure for Termination

- The Iowa Code, § 633.675, provides that court shall terminate a guardianship or conservatorship if the court determines it *“is no longer necessary.”*
- The Iowa Code, § 633.675, further provides that court shall terminate a guardianship *“if it finds by clear and convincing evidence that for appointing a guardian ... is not satisfied”* and that the court shall terminate a conservatorship *“if it finds by clear and convincing evidence that for appointing a conservator ... is not satisfied.”*
- The procedure for guardianship and conservatorship termination is generally to file a petition for termination with the court.

Standard and Procedure for Termination con'td

- The procedure for guardianship and conservatorship termination is generally to file a petition for termination and restoration of the protected person's rights with the court.
- Among the situations that may lead a court to terminate a guardianship or conservatorship are those where a protected persons regains decision making capacity. For example, a person with a mental illness may regain decision making capacity because of effective treatment and use of medications.

GUARDIAN and CONSERVATOR ABUSE

Guardian and Conservatorship Abuse

- A guardian or conservator may safeguard a person from abuse, neglect or financial exploitation, but they may also be a source of abuse, neglect and financial exploitation.
- While there is limited data on the precise extent of guardian and conservator abuse, there is evidence that it constitutes a serious problem.

Iowa Illustrative Case Examples

➤ A story in a Burlington newspaper described the following case:

A mother and daughter were appointed as the guardian and conservator for a relative with intellectual disabilities who they abused and from whom they stole more \$50,000. The story related that the women “only checked on him once a month,” that “they rarely gave him more than \$10.00,” and that his “his neighbors would bring him canned goods because he always ran out of food.”

Iowa Illustrative Case Examples

- A lawyer for the probate estate of a woman under conservatorship (referred to as the “ward”), reported the following:
 - “Someone called the ward’s son after the ward died and told him the conservator was bragging how they stole all of the ward’s money. There is at least \$106,000 cash stolen in bank accounts by the conservator. None of the ward’s income or money was put in a conservatorship account” ***
 - The conservator put her name on the life insurance as a beneficiary. The conservator took money out of the accounts after the ward died.***
 - ...she had no home care. The hospital stated that the ward was suffering from malnutrition and none of her meds were in her system.

Iowa Illustrative Case Examples, cont'd

- The vice-president of a company that provides bonds for conservators described the company's following cases:
 - A conservator routinely used money of the protected person (his wife) for personal gambling expenses.
 - A conservator sent money of the protected person, who was completely disabled, for bowling fees,
 - A conservator used funds of the protected person for new cars despite the fact that there was already a van with a handicap ramp for transporting the protected person.

2023 Legislative Session: Guardianship and Conservatorship Amendments

Amendments to the 2019 guardianship and conservatorship legislation will be introduced in the Senate during the next legislative session, supported by the Iowa Guardianship and Conservatorship Association and other organizations and individuals.

It would provide greater guidance for guardians and conservators, particularly pro se family members as to their reporting requirements and other legal responsibilities and duties.

It would spell out with greater specificity the items, if applicable, related to the protected person's finances that the conservator should include in the initial financial management plan and the subsequent annual reports submitted to the court in order to prevent and remedy actual and potential financial exploitation of protected persons.

Your support would be appreciated.

QUESTIONS

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Contact Information

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