Office of Public Guardian referral information

Information and referral

The Office of Public Guardian (OPG) provides information, resources and consultation on matters related to guardianship and conservatorship. We encourage you to call to ask guardianship related questions and discuss potential referrals. When submitting a potential referral, information must contain assessments and documentation required by the program to ensure intakes comply with statutory requirements. We encourage you to enlist the support of the treatment team (if applicable) when completing the attached worksheet.

A referral letter or existing narrative from evaluations, reports or case notes may be substituted if this documentation can sufficiently address the areas of an individual's diminished capacity and inability to understand and participate in decision making. We must have the required information to file as evidence with OPG's petition for guardianship. Petitioning the court for guardianship and conservatorship is a process involving assessment and documentation which includes clear and convincing evidence and a legal proceeding in the respective district court. Also include in the referral a list of what less restrictive options have been tried and how they failed to meet an individual's needs.

Eligibility and program criteria

- Age 18 or over
- Utah resident
- No family willing and able to serve as guardian
- Inability to afford or no funds to pay for a private guardian
- High risk of abuse, neglect, exploitation, and/or loss of life or health
- No less restrictive options available
- Meets Utah Statute 75-1-201 (22) incapacitated adult (see excerpts below)

Guardianship (Personal and health care decisions)

OPG will conduct an investigation and gather evidence from all sources to present to the court. The Office of Public Guardian does not conduct capacity assessments necessary to determine and document incapacity; we rely on the assessments of medical and psychological professionals.

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Referrals must be documented sufficiently to allow an intake decision, a responsible and complete court filing, and to support a contested case hearing.

> Defined in Utah Code 75-1-201(22) "Incapacitated" or "incapacity" is measured by the functional limitations and means a judicial determination after proof by clear and convincing evidence that an adult's ability to do the following is impaired to the extent that the individual lacks the ability, even with appropriate technological assistance, to meet the essential requirements for financial protection or physical health, safety, or self-care:
>
> (a) Receive and evaluate information;
> (b) Make and communicate decisions; or
> (c) Provide for necessities such as food, shelter, clothing, health, or safety.

The Office of Public Guardian petitions the court on cases for which it has agreed to serve as guardian; the court decides whether guardianship and/or conservatorship will be granted. Within statutory (Rule 549) and program criteria we must take cases that are at the highest priority first. Individuals who have been found or are likely to be found legally incapacitated and in need of guardianship and/or conservatorship, and who have no other responsible, willing, and able person to serve as their guardian, may be eligible for the Office of Public Guardian's services. However, due to the OPG's limited staff and resources, OPG is unable to serve all individuals who may be eligible for its services. Per Rule 549, OPG will give priority to incapacitated individuals, as follows and in the following order:

1. Individuals who are in life-threatening situations, where immediate guardianship assistance or intervention is necessary for the preservation of life or the prevention of serious harm or injury.
2. Individuals who are experiencing abuse, neglect or self-neglect, or financial exploitation.
3. Individuals who are at significant risk of experiencing abuse, neglect, or self-neglect or financial exploitation.

Emergency and temporary guardianship

Under Utah Code 75-5-310 a petition for emergency guardianship can be filed:

(1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an emergency guardian for the person for a specified period not to exceed 30 days pending notice and hearing.

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Under Utah Code 75-5-310.5 the court can appoint a temporary guardian:

(1) If, after notice and hearing as required by Section 75-5-303, the court finds good cause, the court may:
   a. Appoint a temporary guardian;
   b. Convert an emergency guardian to a temporary guardian if an emergency guardian has been appointed under Section 75-5-310; or
   c. Appoint a different person as temporary guardian to replace an emergency guardian appointed under Section 75-5-310.

Documentation requirements

Documentation submitted with this worksheet should address **BOTH** inability to make decisions **AND** functional limitations as outlined 75-1-201(22) and the results of that diminished capacity. Opinions should be supported by facts. The factual information must demonstrate that appointment is necessary as a means of preservation of life, prevention of serious harm or injury, and/or prevention of abuse, neglect and exploitation. Included in this information must be a clear expectation of what guardianship can and will accomplish. Reports should be recent and suitable for court review.

Referral worksheet/letter: The worksheet (see attached) should contain the factual information that supports the request for the appointment of a guardian or conservator and the names/addresses of all persons who have information that would support a finding of incapacity.

Medical statement: To determine an individual's need for guardianship, it is necessary for OPG to have documentation from the treating physician which summarizes the diagnoses, at least one of which relates to the inability to make decisions, and relevant medical issues. This report should outline needed medical decisions, and include a clear statement of opinion about the individual's incapacity and a recommendation for guardianship.

AND/OR

Psychological/Psychiatric Assessment: This should directly address the areas of mental or functional impairment. Extensive testing is not required if simple or partial instruments display the deficit(s) clearly, and are interpreted. In cases involving judgment and insight deficits only, psychological testing is essential, as well as discussion by the clinician concerning the link between reported harmful behavior and the deficit(s).

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Worksheet submission instructions

Submit the below worksheet for referral via:

- Email to utahopg@utah.gov
- Fax to 801-538-8243
- Mail to the Office of Public Guardian, 288 N. 1460 W. Salt Lake City, UT 84116

Please address submissions to: Attention: Office of Public Guardian intake.

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