

Colorado's New Law Regarding Guardianship for Adults

A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian, at all times, shall act in the ward's best interest and exercise reasonable care, diligence, and prudence. (Colorado Revised Statute 15-14-314(1), effective 01/01/01).

One of the most significant changes is the recommendation of limited guardianships over full guardianships. This is, at least in part, due to a new definition of *incapacitated person*. The new law redefines incapacitated person as: "...an individual, other than a minor, who is unable to effectively receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance." This new definition is significantly different from the former definition and makes it clear that a disability is not in itself reason for a guardian and does not in itself meet the definition.

As found in the newly outlined duties of a guardian, there is a new emphasis that a guardian should always consult with the individual in the decision making process. Except as limited by the court, a guardian shall exercise authority *only as necessary* based on the ward's limitations. The guardian shall encourage participation by the ward to act on his or her own behalf and develop capacity to enable the individual to help make decisions in regard to their own personal affairs. The guardian is instructed to be personally acquainted with the individual and maintain contact to have an understanding of the ward's capacities, limitations, needs and desires.

A new provision in the law allows for the appointment in advance of a standby guardian. This provision permits someone to be designated in advance to be able to serve immediately if there is a vacancy. The new law however, eliminates the administrative appointment of a guardian. Formerly an appointment of a guardian could be made for an adult child or spouse in the form of writing or a will. This is no longer permitted as it was deemed to violate basic due process rights and protections since the individual was not given notice, hearing or the opportunity to be represented.

Included in the new law are new procedures and process requirements. Respondents can no longer waive their right and must appear and be personally served. In the past there has been no requirement that the respondent attend the hearing and no obligation for the petitioner to encourage attendance. In order for someone to waive their right the court has to excuse the person and be satisfied that reasonable efforts of appearance have been satisfied. The petitioner in the situation has the burden of proof of these efforts.

A particular new addition to the application for guardianship is the disclosure of assets and income. The petition will include a general statement of the respondent's property with an estimate of value. Also, in contrast to the former statute, guardians may not move the ward out of state without authorization by the court.

Court visitors have expanded duties in relation to the new statute. Visitors will now have responsibility to include review of proposed placements; summary of daily functions of the respondent; recommendations for less restrictive environments and limitations suggested to be placed on the guardian. The court visitor can also recommend whether a functional evaluation is

necessary for the respondent. The evaluation focuses on functional abilities of the respondent, the nature and duration of the incapacity and technology available to assist the individual. The visitor also has the obligation to inform the respondent of his or her rights, as specified in the new statute.

Notice of petition for guardianship has changed from old provisions. A copy of the petition must be served personally at least ten days prior to the date of the hearing. There is an expanded notification requirements for others who may need to be served. Others receiving notice may include the respondents physician, care custody, legal representatives and any other person who could be nominated as guardian. The notice must include that the respondent must be physically present for the hearing, unless excused by the court; include the individual's rights; and describe the nature and purpose of the proceedings. Other notice requirements after appointment of a guardian have changed as well. People granted guardianship need to become familiar with the new requirements.

There is a new priority order for those potentially appointed as guardian. The court has the authority to depart from the statutory priority list and appoint someone with lower or no priority. New provisions prohibit long-term care providers from serving as guardian, unless related by blood or marriage and against professionals serving in dual capacities. Professionals may not serve dually as: guardian/conservator; guardian/direct service provider; or, conservator/direct service provider. Additionally, professional care managers cannot also serve as direct service providers.

If a guardian is appointed notice is required to be given to the ward and to all others listed in the petition within 30 days after the appointment. This is a new requirement to inform those receiving initial notice as to the outcome of the hearing.

Under the new statute there is not a provision for appointment of a temporary guardian. Instead, an emergency guardian may be appointed for up to 60 days if there is cause for concern of substantial harm to the ward's health, safety or welfare. Appointment of an emergency is not a determination of incapacity. If a guardian is not performing effectively a temporary substitute guardian may be appointed for up to six months.

Reports that a guardian must submit have been expanded to include a personal care plan, accounting for assets within 60 days of appointment. Annual reports from the guardian are required that include: current mental, physical and social condition of the ward; the ward's living arrangement; medical, educational and vocational services and adequacy of care; summary of guardian visits and actions, including the ward's participation on his/her own behalf; information as to whether the current care plan is in the best interest of the individual; plans for future care; and recommendations as to continued need for guardianship or suggested changes to the guardianship.

If you are currently a guardian for an individual, or are considering becoming a guardian, please be sure you are familiar with the roles and responsibilities of such a decision especially in regard to this new statute.

A good source for more information on Guardianship is the Guardianship Alliance of Colorado, P.O. Box 740745, Arvada CO 80006, (303) 423-2898.