



## Guardianship defined

Guardianship is a **court-ordered relationship** in which a judge appoints one person **to manage the health care and placement decisions of another.**

The person who has a guardian appointed is referred to as a protected person. A protected person under a guardianship is someone who is determined to be legally incapacitated. A protected person can be a child or an adult.

## What does “incapacitated” mean in Oregon law?

Incapacitated is defined in Oregon law as “a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety.” Essential requirements include the ability to provide health care, food, shelter, clothing, personal hygiene and other care.

## Additional information

Additional information on guardianship and related topics can be found at the Oregon Department of Human Services’ State Unit on Aging:  
<http://tinyurl.com/oregon-guardianship-resources>

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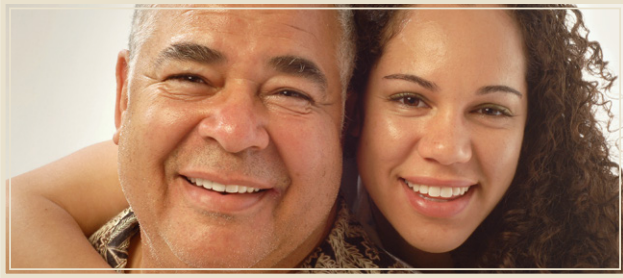
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# Guardianship in Oregon

explained in brief for medical and other care professionals





## Guardian decisions should honor protected person's values

The law requires the guardian to give the protected person as much independence as his or her condition will allow, and to consider his/her wishes and choices when making decisions on their behalf.

Oregon law requires that a guardianship "be designed to encourage the development of maximum self-reliance and independence of the protected person." Oregon law also requires that "a protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court."

The court judgment appointing the guardian will define the powers of the guardian. Check the judgment to confirm the specific powers.

## What is the difference between guardianship and conservatorship?

Conservatorship is a **court-ordered relationship** in which a judge appoints one person **to manage the financial affairs of another**. A protected person in a conservatorship is found to be financially incapable.

A conservator oversees the protected person's finances, income and assets. A conservator does not make health care related decisions, but may work with other decision-makers to secure housing or other medical services.

*It is possible for a protected person to have both a conservator and a guardian. It is also possible for an individual to serve as both the conservator and guardian.*

## Powers of attorney – NOT court appointed

A power of attorney is a **legal document** where an individual appoints another person to act as an agent on his or her behalf. **Powers of attorney are limited to financial decisions.** A power of attorney can be revoked and terminates once the person dies.

## Advance directives – NOT court appointed

An Advance Directive is the form used **to designate a health care representative and provide health care instructions.** A health care representative is the person who should be making health care decisions when a person no longer has the capacity to make medical decisions for his or her self.

Check with your legal counsel to determine who has authority to act in situations where one person is appointed as a guardian and a different person has been named a health care representative in an advance directive.

## POLST (Physician Orders for Life-Sustaining Treatment)

A POLST is a **physician's order** that should be completed with the patient, the health care representative, the guardian if one is appointed, or the patient's next of kin.

## Declaration for Mental Health Treatment (DMHT)

A DMHT is a form that an individual can use to tell doctors what kind of mental health treatment they would like if they have a mental health crisis. Only a court or two physicians can decide that a person is in a mental health crisis and a valid DMHT should be applied.



## Civil commitments and guardianship

A civil commitment is a process in which a judge decides whether a person should be admitted to a psychiatric hospital or accept other mental health treatment. The civil commitment process exists to put protections in place for individuals who are determined to have mental illness as well as to be a danger to themselves or others or unable to care for their basic needs. A civil commitment is limited to 180 days and is a separate legal process from guardianship.