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# Primary Responsibilities of a Guardian of the Person of a Disabled Adult in Illinois in 2021

by Steve Raminiak, Esq.

*This article provides general information about Guardianship of a disabled adult in Illinois. For legal advice about your particular circumstances, please consult with an attorney.*

*I intend to update this article near the end of every year. If you are reading this article in 2023 or beyond, please search for me, Steve Raminiak, on the internet and my website will provide you with the most recent version of this article.*

The purpose of this article is to inform a Plenary Guardian of the Person about his/her primary obligations. [Click here to see my companion article about the primary responsibilities of a Guardian of the Estate.](#) However, this article cannot be exhaustive as every Disabled Person's needs are somewhat different. Also, if a Limited Guardian is appointed, that Limited Guardian's duties are restricted to those specifically mentioned by Court Order. Be sure to consult with your attorney or Guardian *ad Litem* about your specific circumstances. This article presumes that a Plenary Guardian, without any limitation, has been appointed.

As Guardian of the Person, you are now an officer of the Court who has legal custody of a Disabled Person. It is your Court-appointed responsibility to tend to the Disabled Person's day-to-day needs regarding his/her care, comfort, health, placement (i.e., residence), education and support, as appropriate. As Guardian of the Person, you also determine who may visit with the Disabled Person. However, if you refuse to allow reasonable visitation to an adult child, spouse, adult grandchild, parent, or adult sibling, such persons can file a Petition with the Court to try to reverse or modify certain visitation decisions.

## *I. Application for Benefits*

**If a Guardian of the Estate is appointed for the Disabled Person, then it is the Guardian of the Estate, and not the Guardian of the Person, who has the responsibility to apply for benefits for the Disabled Person. If a Guardian of the Estate has been appointed for the Disabled Person, please skip this section.**

If there no Guardian of the Estate has been appointed, then you are required to apply for all public and private benefits available to the Disabled Person (including but not limited to Social Security benefits, Medicaid or Medicare (as appropriate), Department of Healthcare and Family Services benefits, the State of Illinois' "Circuit Breaker" program) and to gather all eligible disbursements of social security payments or certain other income for the Disabled Person's best interests. The following websites may be of assistance with this:

<https://www.benefits.gov/categories>, <https://www.benefitscheckup.org>, or <https://www.usa.gov/benefits>.

As Guardian, you must either become the representative payee for the Disabled Person's Social Security benefits or assign such payments directly to the facility where s/he is residing.

If the Disabled Person, or his/her spouse, is a veteran, contact the Veterans Benefits Administration regarding whether s/he is eligible for additional funds or benefits. Information is available online at <http://www.vba.va.gov/>.

If the Disabled Person has developmental disabilities, you can locate your local Independent Service Coordination Agency (ISC) at <https://www.illinois.gov/dd/Pages/SignUp.aspx>. ISCs are non-profit organizations which are licensed by the State of Illinois to provide assessment and other services. Most notably, your ISC can assist in the completion of a Prioritization of Urgency of Need for Services (PUNS) assessment, which may ultimately result in additional benefits for the Disabled Person. PUNS is a database of Illinois infants, children, adolescents, and adults with developmental disabilities who have a need for developmental disability services or supports. While completion of a PUNS assessment does not guarantee services, it does make sure that the State is aware of the Disabled Person's individual need for services. Possible benefits provided by the State of Illinois after completion of a PUNS assessment may include in-home supports, respite care, job coaches, residential living arrangements, and adaptive equipment.

Private agencies or certain attorneys may help you identify all other possible State and Federal sources of potential benefits available to the Disabled Person. Feel free to contact me for a referral.

## *II. Training Program*

Within one (1) year of your appointment as Guardian of the Person, you should complete a training program provided by the Illinois Guardianship and Advocacy Commssion. This training outlines the responsibilities of the Guardian of the Person and the rights of the person under

Guardianship. At this time, Guardians appointed in Cook County are exempt from this requirement. However, I direct you to take this training anyways because: (a) it provides further helpful information in a different way, (b) I anticipate that Cook County will not be exempt from this requirement indefinitely, and (c) after you file a Certificate which shows that you completed this training, it may encourage a Judge to think more favorably of you when that Judge is reviewing future filings from you.

Start at <https://onenet.illinois.gov/> which will guide you through (1) the process of creating an account with the State of Illinois' public portal, then (2) directing you to the training. On the last slide of the training, you will need to enter the Circuit, County, Case Number, and Matter of your case. Have that information handy. After you enter that information, you must click the "I certify" button to get credit for completing the course. After you click the "I certify" button, you will see a screen that says "Training Completed" and gives you a link to view, save, or print your training certificate. Save and print your certificate, and provide a copy of it to me. If you get interrupted or get an error message, try starting the training again -- it should pick up right where you left off.

### *III. Decision Making*

Your decisions as Guardian may be made by conforming as closely as possible to what the Disabled Person, if competent, would have done or intended under the circumstances, taking into account his or her personal, philosophical, religious and moral beliefs, and ethical values.

If the Disabled Person's wishes are unknown and remain unknown after your reasonable efforts to identify them, then you must determine his or her best interests by considering the reason for and nature of the proposed action, the benefit or necessity of the action, the possible risks and other consequences of the proposed action, and any available alternatives and their risks, consequences and benefits. In that exercise, you should also take into account any other information, including the views of family and friends, that you believe the Disabled Person would have considered if s/he was presently able to act.

As Guardian of the Person, you are responsible for making everyday, basic decisions in the Disabled Person's daily life. However, for certain major decisions, you must seek the approval of the Court.

The Court must approve major decisions involving the Disabled Person (e.g. placement in a setting which is more restrictive, moving the Disabled Person out of Cook County, hiring any attorney for the Disabled Person).

While you are not required to ask the Court's approval for surgery or intensive medical treatments, I strongly recommend that you do so. Such procedures always carry some degree of risk. As a Guardian, you insulate yourself from liability for making a bad decision, or if something goes unexpectedly wrong, if you ask for the Court's advance permission.

As Guardian of the Person, you are the Disabled Person's Health Care Surrogate and can make health care decisions (except for decisions that might end the Disabled Person's life) pursuant to 755 ILCS 40/20(b-5)(1), which states the following (which I have edited to reflect only that circumstance where a Guardian is making medical decisions which would not intentionally end the Disabled Person's life).

"Decisions concerning medical treatment on behalf of a (Disabled Person) who lacks decisional capacity may be made by a (Guardian) in consultation with the attending physician... with the exception that decisions to forgo life-sustaining treatment may be made only when a patient has a qualifying condition. A (Guardian) shall make decisions for the (Disabled Person) conforming as closely as possible to what the (Disabled Person) would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the (Disabled Person's) personal, philosophical, religious, and moral beliefs and ethical values relative to the purpose of life, sickness, medical procedures, suffering, and death. In the event an unrevoked advance directive, such as a living will, a declaration for mental health treatment, or a power of attorney for health care, is no longer valid due to a technical deficiency or is not applicable to the (Disabled Person's) condition, that document may be used as evidence of a (Disabled Person's) wishes. The absence of a living will, declaration for mental health treatment, or power of attorney for health care shall not give rise to any presumption as to the (Disabled Person's) preferences regarding any process. If the (Disabled Person's) wishes are unknown and remain unknown after reasonable efforts to discern them... the decision shall be made on the basis of the (Disabled Person's) best interests as determined by the (Guardian). In determining the (Disabled Person's) best interests, the (Guardian) shall weigh the burdens on and benefits to the (Disabled Person) of the treatment against the burdens and benefits of that treatment and shall take into account any other information, including the views of family and friends, that the (Guardian) believes the (Disabled Person) would have considered if able to act for herself or himself."

At least, this is the state of the law at this writing as of January 1, 2022. Feel free to review the relevant statute yourself at

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2111&ChapterID=60>. Once on the page, scroll down until you reach 755 ILCS 40/20(b-5)(1).

If the Disabled Person's condition dramatically worsens, or an additional injury renders him/her in a state near death, you may wish to direct that the Disabled Person's death should not be needlessly prolonged. Certain additional requirements must be met before you may direct any doctor, hospital or health care organization to forgo life-sustaining treatment for the Disabled Person. "Life-sustaining treatment" means any medical treatment, procedure, or intervention that would not be effective to treat the Disabled Person's condition, but would serve only to prolong the dying process. Therefore, before you can establish a DNR ("Do Not Resuscitate") order or a DNI ("Do Not Intubate") order for the Disabled Person, or give any other written or verbal direction to a medical professional regarding ending the suffering of the Disabled Person, I strongly recommend that you document that certain conditions have been met. To best insulate yourself from liability, I also recommend presenting such documentation to the Court and asking for the Court's approval prior to allowing the Disabled Person to pass away.

This can usually be placed before the Court on an emergency basis. If you presently have this concern, please raise it with your attorney or contact me. Due to the fact that internet postings can be republished infinitely by others in the future, I cannot post instructions as to such documentation online.

Also, even though a Guardian can make health care decisions for a Disabled Person, the Guardian cannot consent to psychotropic medications, electroconvulsive therapy, or commitment to an institution or facility which provides treatment for persons with mental illness unless (1) the Disabled Person consents, or (2) the Guardian complies with procedures described by Mental Health and Developmental Disabilities Code. Again, this is the state of the law at this writing in 2021, per 405 ILCS 5/2-107.1 and 405 ILCS 5/3.

Essentially, if you want to do anything which fundamentally changes something concerning the Disabled Person, you must often seek Court approval to do so. Of course, in an emergency, the Court won't hold it against you if you clearly act in the Disabled Person's best interests. However, in many such cases, Court approval should be sought, even after the fact.

Unless there is a Court Order to the contrary, you must use reasonable efforts to notify the Disabled Person's known adult children (who have requested notification and provided contact information), of the Disabled Person's admission to a hospital, hospice program, or palliative care program, and of the Disabled Person's death and arrangements for the disposition of the Disabled Person's remains.

Lastly, the Disabled Person should not be allowed to drive any automobile without a Court Order that specifically provides for that.

#### *IV. New Assets (If Any)*

There are two forms of Guardianship in Illinois: (1) Guardianship of the Person, and (2) Guardianship of the Estate. If you have ***only*** been appointed as the Guardian of Person, you have no authority to manage the Disabled Person's assets, except for social security benefits which may be deposited in an account in your name. In certain other circumstances, you may be allowed to manage certain other small sources of income (e.g., a pension that delivers \$200.00/month) if such income is specifically referenced by a Court Order. Keep the Disabled Person's funds separate from your funds at all times. You may not make gifts or donations of the Disabled Person's funds without a Court Order.

A Guardianship of the Estate is necessary when there are a significant amount of assets in a Disabled Person's name. Sometimes this is unnecessary at an earlier point in that person's life, but later becomes necessary due to the fact that the Disabled Person has received funds from a new source (e.g., an inheritance, lottery winnings, settlement in a lawsuit). Please note, in most circumstances, a Guardian of the Person is not authorized to file pleadings in any Court except for the Guardianship Court. Also, a Guardian of the Person cannot bring a

lawsuit on behalf of a Disabled Person, or accept a settlement for a Disabled Person, as those responsibilities are allocated to a Guardian of the Estate.

A Guardianship of the Estate may not be required if the Disabled Person gains new resources as the beneficiary of a Trust. However, depending on the language used, the Trust may disqualify the Disabled Person from receiving government benefits. In short, if the Disabled Person later gains resources due to the death of another or due to any Trust, contact an attorney who is knowledgeable about Guardianship. Similarly, if you intend to leave any of your funds to the Disabled Person at your death, I strongly advise you to consult with an attorney who is knowledgeable about both estate planning and Guardianship. I always provide free initial consultations for such matters.

Do **not** create an account in the Disabled Person's name as a savings account to hold gifts intended to be ultimately used for his/her benefit. Such gifts may disqualify him/her from receiving certain government benefits. Similarly, do **not** place assets in joint tenancy with the Disabled Person (e.g. do **not** create a joint savings account), as such ownership could also disqualify the Disabled Person in regards to certain benefits.

### *V. Annual Report on Ward*

Every year, beginning in the year after your appointment as Guardian, most Illinois Courts (including all Courts in the Chicagoland area) require you to provide an "Annual Report on Ward" to the Court regarding certain aspects of the Disabled Person's daily life. If you have an attorney, s/he can present this to the Court for you. If you do not have an attorney, then you are usually not required to appear at Court to hand the Report to the Judge, but are only required to mail it to the Court before a certain deadline.

Take a look at the Order that appointed you as Guardian. That Order likely has an entry which tells you the date when your first Annual Report on Ward is due. If the Order does not contain that date, then the Report should be provided to the Court prior to your first anniversary as Guardian. Subsequent Reports should be filed every year, prior to that same date. If you are mailing this Report, feel free to drop it in the mail up to a month in advance.

Be sure to make copies of the Report prior to sending. Keep one for your records and send one to your attorney.

If you fail to provide an Annual Report on Ward, the Court may contact you to demand that you do so, or the Court may appoint an attorney as a Guardian ad Litem ("GAL" for short) as a friend of the Court to investigate why this Report has not been filed.

As of 2021, this Annual Report on Ward is available from the Clerk of the Circuit Court of Cook County at [https://services.cookcountyclerkofcourt.org/Forms/Forms/pdf\\_files/CCP0222.pdf](https://services.cookcountyclerkofcourt.org/Forms/Forms/pdf_files/CCP0222.pdf). While other counties have their own forms, and while you should use your county's forms

whenever possible, I suspect that most Courts will accept an Annual Report on Ward that is completed on another county's form.

## VI. Additional Copies of Your "Letters of Office"

Your "Letters of Office" is the official court document showing your authority as plenary Guardian of the Person. These "Letters of Office" (which is usually only one page) is certified by the Clerk of the Court as to a specific date. Some institutions will refuse to acknowledge that you are still the Guardian if your Letters of Office were certified many years ago. Additional certified "Letters of Office" can probably be obtained by mail from the Court Clerk of the appropriate county in Illinois.

For Cook County Guardianships, you may obtain additional Letters of Office, either in person or by mail, from Room 1202 at the Daley Center. If you are my client, I can get these for you. If you are not my client, or would just simply prefer to do this yourself, call (312) 603-6558 to confirm the cost of each copy (currently \$2.00 per copy as of 2021) and then mail a check for the appropriate amount, a stamped, self-addressed envelope, and a brief letter explaining your request to: Richard J. Daley Center, Room 1202, Probate Division, 50 W. Washington, Chicago, Illinois 60602. Make the check payable to: Clerk of the Circuit Court. Be sure to mention this matter's file number (e.g., 01 P 2345) on the check and in your written request.

## VII. Final Note

I hope this letter gives you a clearer picture of your role as Guardian, as of now and as you look into the future. If you are or were a client, or if you knew me as a Guardian ad Litem, feel free to call on me as the need arises. (However, if I was the Guardian ad Litem and you are presently represented by an attorney, then I need your lawyer's permission before I can speak with you.) If we haven't met before, and you would like assistance in a Guardianship matter, I encourage you to contact me for a free consultation.

*The Law Offices of Steve Raminak, P.C. provide counsel for estate planning and the administration of estates and trusts established for Decedents, Minors and Disabled Persons. Steve regularly tackles contested estates, and has been appointed as Guardian ad Litem, Special Administrator, and as counsel for Disabled Persons by Judges in the Probate Division of the Circuit Court of Cook County.*

*Steve serves as a resource for Chicago Volunteer Legal Services (CVLS) by handling pro bono matters and providing direction to volunteer attorneys. He also contributes to Lawguru.com, a site that offers free answers to legal questions. Steve speaks with groups about estate planning and how to assist elderly or disabled family members with financial and legal issues. He also hosts seminars for lawyers about probate procedures.*