

## **CATHOLIC CHARITIES NORTH DAKOTA GUARDIANSHIP DIVISION**

When people are not able to gather and evaluate the information necessary to make good decisions for themselves because of their situation or disabilities, they are at risk of being taken advantage of, abused, neglected or not receiving needed medical or other services. When this type of situation occurs a guardianship may be established to protect that person.

Guardianship is very serious and involves taking rights and responsibilities away from the ward and giving them to the guardian. Guardianship is a court appointed relationship between a competent adult (**guardian**) and a person who is not able to handle his or her affairs (**ward**).

There is no easy way to determine with complete certainty who needs a guardianship. Each person's situation **must** be considered carefully and completely and if a guardianship is established it should be as unrestrictive as possible. Some points to consider:

- Is the person able to understand his/her situation and communicate decisions in a way that demonstrates an understanding of the consequences?
- Is there an increased risk to health, safety or quality of life because of the decisions that he or she is making?
- Does a condition or situation exist that places him or her in imminent physical, emotional or financial danger?
- Are there other approaches, services or alternatives that will provide the necessary protection and support to the individual that are less restrictive than establishing a guardianship?
- What damaging effects can the establishment of a guardianship have?
- Will a guardianship provide relief and protection?

North Dakota Century Code recognizes that a ward may need the protection of a guardian in all areas of his or her life or only in certain very specific areas. This ensures that each guardianship will be tailored to meet the needs of the ward.

- A **general guardian** is responsible for decisions in **ALL** aspects of the ward's life. The guardian assures that the ward has a place to live, food to eat, proper clothing and other necessities as well as medical treatment, schooling, vocational opportunities and other needed services. The guardian may oversee entitlements such as social security and medical benefits, but is not required to have the ward live with him or her, or assume personal financial responsibility. **The guardian must ensure the ward's protection and well-being and act in his or her best interests.**
- A **limited guardian** is given the authority to make decisions **ONLY** in specific areas of the ward's life. The court's orders or letters will identify these areas. Again, **the guardian must ensure the protection and well-being of the ward and act in his/her best interests.**
- An **emergency/temporary guardian** may be appointed in situations where immediate action is required to prevent harm to the ward. An emergency guardianship **cannot** be in effect longer than 90 days and has **ONLY** the authority identified by the court at the time of the appointment.
- A **testamentary guardian** - The guardian spouse or guardian parent of a person who has been adjudicated to be incapacitated may, by will, appoint a successor guardian for that person.

A guardian is required to act in and represent the best interests of a ward, to protect the ward and his or her rights. A guardian must ensure that services are provided in the most normalized and least restrictive means possible and are specifically tailored to the needs of the ward.

**North Dakota Century Code requires a guardian to involve the ward in all decisions to the fullest extent possible.** The court will clearly define the limits of the guardian's authority. However, unless first approved by order of the court, the guardian may not approve or authorize the sterilization of a ward; approve or authorize psycho-surgery or experimental treatment; admit a ward to a mental health facility or a state institution for longer than 45 days; or authorize or approve an abortion.

Unless specifically limited by order of the court, a ward retains: the right to vote; the right to seek to change marital status; the right to obtain or retain a motor vehicle license; and the right to testify in any judicial or administrative proceedings.

There are alternatives to guardianship:

- **Medical Consent Strategies** - A hospital or doctor is required to provide treatment in life and death situations even if informed consent cannot be obtained from an individual or guardian.
- **Representative Payee** - This is a person or agency that is given the responsibility of managing SSI, SSDI, veteran's benefits or other entitlements for an individual who is not able to adequately handle these funds. The payee takes charge of the funds and is responsible to see that they are spent on the care, treatment and needs of the ward. A payee must keep records of transactions and expenditures and file regular reports. The appointment process involves some specific steps that are outlined by the respective funding source.
- A **Power of Attorney** gives designated party(ies) the authority to act on behalf of a ward if the need arises. As this is not a court process, a power of authority can be established easily and inexpensively. It can be revoked by the individual at any time. The assignment of the power of attorney assumes the person to be competent but has few safeguards and lacks accountability.
- **Support Network** - This is a network of family, friends and professionals which can assist the ward and serve as a resource in making decisions. These relationships and other types of informal support may be preferable to the appointment of a guardian. However, questions of informed consent and vulnerability must be considered and addressed.
- **Protection & Advocacy Project** - This project provides advocacy services to eligible individuals. If an emergency or threatening situation develops, a Protection and Advocacy representative may be able to supply services that will negate the need for more restrictive measures.
- A **Conservator** may be appointed to manage the estate and finances of a ward. Appointment of a conservator is a separate legal process and does not involve making decisions regarding the individual's personal life. It may not be necessary to have a guardian if a conservator is appointed or have a conservator if a guardian has been appointed.

Catholic Charities North Dakota  
Guardianship Division  
5201 Bishops Blvd., Ste. B  
Fargo, ND 58104  
701-235-4457